



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB1610

Introduced 2/9/2017, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

220 ILCS 5/16-111.5

Amends the Public Utilities Act. Provides that the Illinois Commerce Commission shall quarterly review the price of any zero emission credits procured by the Illinois Power Agency to ensure no more than the unrecovered costs of the plants based on market sales and pricing is recovered. Provides that if the plant shows a profit for more than one year, the zero emission credit program shall be rebid and the Illinois Power Agency shall have the authority to expand the definition to include additional Illinois-based zero emission generation sources as eligible for the program. Provides that the Commission shall ensure any qualifying nuclear plant is not receiving excessive earnings through its zero emission credit compensation, and if a plant is found to have received excessive earnings due to the zero emission credit pricing, that plant shall have its zero emission credit qualification revoked. Provides that nothing prevents the Commission from initiating a docketed proceeding to reconcile zero emission credit payments with allowed costs. Effective immediately or on the date certain provisions of Public Act 99-906 take effect, whichever is later.

LRB100 06863 RJF 16912 b

1 AN ACT concerning regulation.

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

4 Section 5. The Public Utilities Act is amended by changing
5 Section 16-111.5 as follows:

6 (220 ILCS 5/16-111.5)

7 (Text of Section before amendment by P.A. 99-906)

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

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

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

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

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

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

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

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

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

1 and

2 (iv) growth forecasts by customer class.

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

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

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

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

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

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

1 shall be procured whenever the cost is lower than
2 procuring comparable capacity products, provided that
3 such products shall:

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

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

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

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

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

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

26 (iv) the proposed mix and selection of standard

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

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

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

25 (4) Proposed procedures for balancing loads. The
26 procurement plan shall include, for load requirements

1 included in the procurement plan, the process for (i)
2 hourly balancing of supply and demand and (ii) the criteria
3 for portfolio re-balancing in the event of significant
4 shifts in load.

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

9 (1) The procurement administrator shall:

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

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

19 (iii) serve as the interface between the electric
20 utility and suppliers;

21 (iv) manage the bidder pre-qualification and
22 registration process;

23 (v) obtain the electric utilities' agreement to
24 the final form of all supply contracts and credit
25 collateral agreements;

26 (vi) administer the request for proposals process;

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

13 (viii) maintain confidentiality of supplier and
14 bidding information in a manner consistent with all
15 applicable laws, rules, regulations, and tariffs;

16 (ix) submit a confidential report to the
17 Commission recommending acceptance or rejection of
18 bids;

19 (x) notify the utility of contract counterparties
20 and contract specifics; and

21 (xi) administer related contingency procurement
22 events.

23 (2) The procurement monitor, who shall be retained by
24 the Commission, shall:

25 (i) monitor interactions among the procurement
26 administrator, suppliers, and utility;

1 (ii) monitor and report to the Commission on the
2 progress of the procurement process;

3 (iii) provide an independent confidential report
4 to the Commission regarding the results of the
5 procurement event;

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

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

15 (vi) provide expert advice to the Commission and
16 consult with the procurement administrator regarding
17 issues related to procurement process design, rules,
18 protocols, and policy-related matters; and

19 (vii) consult with the procurement administrator
20 regarding the development and use of benchmark
21 criteria, standard form contracts, credit policies,
22 and bid documents.

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

25 (1) Beginning in 2008, each Illinois utility procuring
26 power pursuant to this Section shall annually provide a

1 range of load forecasts to the Illinois Power Agency by
2 July 15 of each year, or such other date as may be required
3 by the Commission or Agency. The load forecasts shall cover
4 the 5-year procurement planning period for the next
5 procurement plan and shall include hourly data
6 representing a high-load, low-load and expected-load
7 scenario for the load of the eligible retail customers. The
8 utility shall provide supporting data and assumptions for
9 each of the scenarios.

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

1 plan, accompanied by specific alternative wording or
2 proposals. All comments shall be posted on the Agency's and
3 Commission's websites. During this 30-day comment period,
4 the Agency shall hold at least one public hearing within
5 each utility's service area for the purpose of receiving
6 public comment on the procurement plan. Within 14 days
7 following the end of the 30-day review period, the Agency
8 shall revise the procurement plan as necessary based on the
9 comments received and file the procurement plan with the
10 Commission and post the procurement plan on the websites.

11 (3) Within 5 days after the filing of the procurement
12 plan, any person objecting to the procurement plan shall
13 file an objection with the Commission. Within 10 days after
14 the filing, the Commission shall determine whether a
15 hearing is necessary. The Commission shall enter its order
16 confirming or modifying the procurement plan within 90 days
17 after the filing of the procurement plan by the Illinois
18 Power Agency.

19 (4) The Commission shall approve the procurement plan,
20 including expressly the forecast used in the procurement
21 plan, if the Commission determines that it will ensure
22 adequate, reliable, affordable, efficient, and
23 environmentally sustainable electric service at the lowest
24 total cost over time, taking into account any benefits of
25 price stability.

26 (e) The procurement process shall include each of the

1 following components:

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

21 (2) Standard contract forms and credit terms and
22 instruments. The procurement administrator, in
23 consultation with the utilities, the Commission, and other
24 interested parties and subject to Commission oversight,
25 shall develop and provide standard contract forms for the
26 supplier contracts that meet generally accepted industry

1 practices. Standard credit terms and instruments that meet
2 generally accepted industry practices shall be similarly
3 developed. The procurement administrator shall make
4 available to the Commission all written comments it
5 receives on the contract forms, credit terms, or
6 instruments. If the procurement administrator cannot reach
7 agreement with the applicable electric utility as to the
8 contract terms and conditions, the procurement
9 administrator must notify the Commission of any disputed
10 terms and the Commission shall resolve the dispute. The
11 terms of the contracts shall not be subject to negotiation
12 by winning bidders, and the bidders must agree to the terms
13 of the contract in advance so that winning bids are
14 selected solely on the basis of price.

15 (3) Establishment of a market-based price benchmark.
16 As part of the development of the procurement process, the
17 procurement administrator, in consultation with the
18 Commission staff, Agency staff, and the procurement
19 monitor, shall establish benchmarks for evaluating the
20 final prices in the contracts for each of the products that
21 will be procured through the procurement process. The
22 benchmarks shall be based on price data for similar
23 products for the same delivery period and same delivery
24 hub, or other delivery hubs after adjusting for that
25 difference. The price benchmarks may also be adjusted to
26 take into account differences between the information

1 reflected in the underlying data sources and the specific
2 products and procurement process being used to procure
3 power for the Illinois utilities. The benchmarks shall be
4 confidential but shall be provided to, and will be subject
5 to Commission review and approval, prior to a procurement
6 event.

7 (4) Request for proposals competitive procurement
8 process. The procurement administrator shall design and
9 issue a request for proposals to supply electricity in
10 accordance with each utility's procurement plan, as
11 approved by the Commission. The request for proposals shall
12 set forth a procedure for sealed, binding commitment
13 bidding with pay-as-bid settlement, and provision for
14 selection of bids on the basis of price.

15 (5) A plan for implementing contingencies in the event
16 of supplier default or failure of the procurement process
17 to fully meet the expected load requirement due to
18 insufficient supplier participation, Commission rejection
19 of results, or any other cause.

20 (i) Event of supplier default: In the event of
21 supplier default, the utility shall review the
22 contract of the defaulting supplier to determine if the
23 amount of supply is 200 megawatts or greater, and if
24 there are more than 60 days remaining of the contract
25 term. If both of these conditions are met, and the
26 default results in termination of the contract, the

1 utility shall immediately notify the Illinois Power
2 Agency that a request for proposals must be issued to
3 procure replacement power, and the procurement
4 administrator shall run an additional procurement
5 event. If the contracted supply of the defaulting
6 supplier is less than 200 megawatts or there are less
7 than 60 days remaining of the contract term, the
8 utility shall procure power and energy from the
9 applicable regional transmission organization market,
10 including ancillary services, capacity, and day-ahead
11 or real time energy, or both, for the duration of the
12 contract term to replace the contracted supply;
13 provided, however, that if a needed product is not
14 available through the regional transmission
15 organization market it shall be purchased from the
16 wholesale market.

17 (ii) Failure of the procurement process to fully
18 meet the expected load requirement: If the procurement
19 process fails to fully meet the expected load
20 requirement due to insufficient supplier participation
21 or due to a Commission rejection of the procurement
22 results, the procurement administrator, the
23 procurement monitor, and the Commission staff shall
24 meet within 10 days to analyze potential causes of low
25 supplier interest or causes for the Commission
26 decision. If changes are identified that would likely

1 result in increased supplier participation, or that
2 would address concerns causing the Commission to
3 reject the results of the prior procurement event, the
4 procurement administrator may implement those changes
5 and rerun the request for proposals process according
6 to a schedule determined by those parties and
7 consistent with Section 1-75 of the Illinois Power
8 Agency Act and this subsection. In any event, a new
9 request for proposals process shall be implemented by
10 the procurement administrator within 90 days after the
11 determination that the procurement process has failed
12 to fully meet the expected load requirement.

13 (iii) In all cases where there is insufficient
14 supply provided under contracts awarded through the
15 procurement process to fully meet the electric
16 utility's load requirement, the utility shall meet the
17 load requirement by procuring power and energy from the
18 applicable regional transmission organization market,
19 including ancillary services, capacity, and day-ahead
20 or real time energy or both; provided, however, that if
21 a needed product is not available through the regional
22 transmission organization market it shall be purchased
23 from the wholesale market.

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

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

18 (g) Within 3 business days after the Commission decision
19 approving the results of a procurement event, the utility shall
20 enter into binding contractual arrangements with the winning
21 suppliers using the standard form contracts; except that the
22 utility shall not be required either directly or indirectly to
23 execute the contracts if a tariff that is consistent with
24 subsection (1) of this Section has not been approved and placed
25 into effect for that utility.

26 (h) The names of the successful bidders and the load

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

17 (i) Within 2 business days after a Commission decision
18 approving the results of a procurement event or such other date
19 as may be required by the Commission from time to time, the
20 utility shall file for informational purposes with the
21 Commission its actual or estimated retail supply charges, as
22 applicable, by customer supply group reflecting the costs
23 associated with the procurement and computed in accordance with
24 the tariffs filed pursuant to subsection (l) of this Section
25 and approved by the Commission.

26 (j) Within 60 days following the effective date of this

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

19 (i) Within 14 days following filing of the initial
20 procurement plan, any person may file a detailed objection
21 with the Commission contesting the procurement plan
22 submitted by the electric utility. All objections to the
23 electric utility's plan shall be specific, supported by
24 data or other detailed analyses. The electric utility may
25 file a response to any objections to its procurement plan
26 within 7 days after the date objections are due to be

1 filed. Within 7 days after the date the utility's response
2 is due, the Commission shall determine whether a hearing is
3 necessary. If it determines that a hearing is necessary, it
4 shall require the hearing to be completed and issue an
5 order on the procurement plan within 60 days after the
6 filing of the procurement plan by the electric utility.

7 (ii) The order shall approve or modify the procurement
8 plan, approve an independent procurement administrator,
9 and approve or modify the electric utility's tariffs that
10 are proposed with the initial procurement plan. The
11 Commission shall approve the procurement plan if the
12 Commission determines that it will ensure adequate,
13 reliable, affordable, efficient, and environmentally
14 sustainable electric service at the lowest total cost over
15 time, taking into account any benefits of price stability.

16 (k) In order to promote price stability for residential and
17 small commercial customers during the transition to
18 competition in Illinois, and notwithstanding any other
19 provision of this Act, each electric utility subject to this
20 Section shall enter into one or more multi-year financial swap
21 contracts that become effective on the effective date of this
22 amendatory Act. These contracts may be executed with generators
23 and power marketers, including affiliated interests of the
24 electric utility. These contracts shall be for a term of no
25 more than 5 years and shall, for each respective utility or for
26 any Illinois electric utilities that are affiliated by virtue

1 of a common parent company and that are thereby considered a
2 single electric utility for purposes of this subsection (k),
3 not exceed in the aggregate 3,000 megawatts for any hour of the
4 year. The contracts shall be financial contracts and not energy
5 sales contracts. The contracts shall be executed as
6 transactions under a negotiated master agreement based on the
7 form of master agreement for financial swap contracts sponsored
8 by the International Swaps and Derivatives Association, Inc.
9 and shall be considered pre-existing contracts in the
10 utilities' procurement plans for residential and small
11 commercial customers. Costs incurred pursuant to a contract
12 authorized by this subsection (k) shall be deemed prudently
13 incurred and reasonable in amount and the electric utility
14 shall be entitled to full cost recovery pursuant to the tariffs
15 filed with the Commission.

16 (k-5) In order to promote price stability for residential
17 and small commercial customers during the infrastructure
18 investment program described in subsection (b) of Section
19 16-108.5 of this Act, and notwithstanding any other provision
20 of this Act or the Illinois Power Agency Act, for each electric
21 utility that serves more than one million retail customers in
22 Illinois, the Illinois Power Agency shall conduct a procurement
23 event within 120 days after October 26, 2011 (the effective
24 date of Public Act 97-616) and may procure contracts for energy
25 and renewable energy credits for the period June 1, 2013
26 through December 31, 2017 that satisfy the requirements of this

1 subsection (k-5), including the benchmarks described in this
2 subsection. These contracts shall be entered into as the result
3 of a competitive procurement event, and, to the extent that any
4 provisions of this Section or the Illinois Power Agency Act do
5 not conflict with this subsection (k-5), such provisions shall
6 apply to the procurement event. The energy contracts shall be
7 for 24 hour by 7 day supply over a term that runs from the first
8 delivery year through December 31, 2017. For a utility that
9 serves over 2 million customers, the energy contracts shall be
10 multi-year with pricing escalating at 2.5% per annum. The
11 energy contracts may be designed as financial swaps or may
12 require physical delivery.

13 Within 30 days of October 26, 2011 (the effective date of
14 Public Act 97-616), each such utility shall submit to the
15 Agency updated load forecasts for the period June 1, 2013
16 through December 31, 2017. The megawatt volume of the contracts
17 shall be based on the updated load forecasts of the minimum
18 monthly on-peak or off-peak average load requirements shown in
19 the forecasts, taking into account any existing energy
20 contracts in effect as well as the expected migration of the
21 utility's customers to alternative retail electric suppliers.
22 The renewable energy credit volume shall be based on the number
23 of credits that would satisfy the requirements of subsection
24 (c) of Section 1-75 of the Illinois Power Agency Act, subject
25 to the rate impact caps and other provisions of subsection (c)
26 of Section 1-75 of the Illinois Power Agency Act. The

1 evaluation of contract bids in the competitive procurement
2 events for energy and for renewable energy credits shall
3 incorporate price benchmarks set collaboratively by the
4 Agency, the procurement administrator, the staff of the
5 Commission, and the procurement monitor. If the contracts are
6 swap contracts, then they shall be executed as transactions
7 under a negotiated master agreement based on the form of master
8 agreement for financial swap contracts sponsored by the
9 International Swaps and Derivatives Association, Inc. Costs
10 incurred pursuant to a contract authorized by this subsection
11 (k-5) shall be deemed prudently incurred and reasonable in
12 amount and the electric utility shall be entitled to full cost
13 recovery pursuant to the tariffs filed with the Commission.

14 The cost of administering the procurement event described
15 in this subsection (k-5) shall be paid by the winning supplier
16 or suppliers to the procurement administrator through a
17 supplier fee. In the event that there is no winning supplier
18 for a particular utility, such utility will pay the procurement
19 administrator for the costs associated with the procurement
20 event, and those costs shall not be a recoverable expense.
21 Nothing in this subsection (k-5) is intended to alter the
22 recovery of costs for any other procurement event.

23 (1) An electric utility shall recover its costs incurred
24 under this Section, including, but not limited to, the costs of
25 procuring power and energy demand-response resources under
26 this Section. The utility shall file with the initial

1 procurement plan its proposed tariffs through which its costs
2 of procuring power that are incurred pursuant to a
3 Commission-approved procurement plan and those other costs
4 identified in this subsection (1), will be recovered. The
5 tariffs shall include a formula rate or charge designed to pass
6 through both the costs incurred by the utility in procuring a
7 supply of electric power and energy for the applicable customer
8 classes with no mark-up or return on the price paid by the
9 utility for that supply, plus any just and reasonable costs
10 that the utility incurs in arranging and providing for the
11 supply of electric power and energy. The formula rate or charge
12 shall also contain provisions that ensure that its application
13 does not result in over or under recovery due to changes in
14 customer usage and demand patterns, and that provide for the
15 correction, on at least an annual basis, of any accounting
16 errors that may occur. A utility shall recover through the
17 tariff all reasonable costs incurred to implement or comply
18 with any procurement plan that is developed and put into effect
19 pursuant to Section 1-75 of the Illinois Power Agency Act and
20 this Section, including any fees assessed by the Illinois Power
21 Agency, costs associated with load balancing, and contingency
22 plan costs. The electric utility shall also recover its full
23 costs of procuring electric supply for which it contracted
24 before the effective date of this Section in conjunction with
25 the provision of full requirements service under fixed-price
26 bundled service tariffs subsequent to December 31, 2006. All

1 such costs shall be deemed to have been prudently incurred. The
2 pass-through tariffs that are filed and approved pursuant to
3 this Section shall not be subject to review under, or in any
4 way limited by, Section 16-111(i) of this Act.

5 (m) The Commission has the authority to adopt rules to
6 carry out the provisions of this Section. For the public
7 interest, safety, and welfare, the Commission also has
8 authority to adopt rules to carry out the provisions of this
9 Section on an emergency basis immediately following the
10 effective date of this amendatory Act.

11 (n) Notwithstanding any other provision of this Act, any
12 affiliated electric utilities that submit a single procurement
13 plan covering their combined needs may procure for those
14 combined needs in conjunction with that plan, and may enter
15 jointly into power supply contracts, purchases, and other
16 procurement arrangements, and allocate capacity and energy and
17 cost responsibility therefor among themselves in proportion to
18 their requirements.

19 (o) On or before June 1 of each year, the Commission shall
20 hold an informal hearing for the purpose of receiving comments
21 on the prior year's procurement process and any recommendations
22 for change.

23 (p) An electric utility subject to this Section may propose
24 to invest, lease, own, or operate an electric generation
25 facility as part of its procurement plan, provided the utility
26 demonstrates that such facility is the least-cost option to

1 provide electric service to eligible retail customers. If the
2 facility is shown to be the least-cost option and is included
3 in a procurement plan prepared in accordance with Section 1-75
4 of the Illinois Power Agency Act and this Section, then the
5 electric utility shall make a filing pursuant to Section 8-406
6 of this Act, and may request of the Commission any statutory
7 relief required thereunder. If the Commission grants all of the
8 necessary approvals for the proposed facility, such supply
9 shall thereafter be considered as a pre-existing contract under
10 subsection (b) of this Section. The Commission shall in any
11 order approving a proposal under this subsection specify how
12 the utility will recover the prudently incurred costs of
13 investing in, leasing, owning, or operating such generation
14 facility through just and reasonable rates charged to eligible
15 retail customers. Cost recovery for facilities included in the
16 utility's procurement plan pursuant to this subsection shall
17 not be subject to review under or in any way limited by the
18 provisions of Section 16-111(i) of this Act. Nothing in this
19 Section is intended to prohibit a utility from filing for a
20 fuel adjustment clause as is otherwise permitted under Section
21 9-220 of this Act.

22 (Source: P.A. 97-325, eff. 8-12-11; 97-616, eff. 10-26-11;
23 97-813, eff. 7-13-12.)

24 (Text of Section after amendment by P.A. 99-906)

25 Sec. 16-111.5. Provisions relating to procurement.

1 (a) An electric utility that on December 31, 2005 served at
2 least 100,000 customers in Illinois shall procure power and
3 energy for its eligible retail customers in accordance with the
4 applicable provisions set forth in Section 1-75 of the Illinois
5 Power Agency Act and this Section. Beginning with the delivery
6 year commencing on June 1, 2017, such electric utility shall
7 also procure zero emission credits from zero emission
8 facilities in accordance with the applicable provisions set
9 forth in Section 1-75 of the Illinois Power Agency Act, and,
10 for years beginning on or after June 1, 2017, the utility shall
11 procure renewable energy resources in accordance with the
12 applicable provisions set forth in Section 1-75 of the Illinois
13 Power Agency Act and this Section. A small multi-jurisdictional
14 electric utility that on December 31, 2005 served less than
15 100,000 customers in Illinois may elect to procure power and
16 energy for all or a portion of its eligible Illinois retail
17 customers in accordance with the applicable provisions set
18 forth in this Section and Section 1-75 of the Illinois Power
19 Agency Act. This Section shall not apply to a small
20 multi-jurisdictional utility until such time as a small
21 multi-jurisdictional utility requests the Illinois Power
22 Agency to prepare a procurement plan for its eligible retail
23 customers. "Eligible retail customers" for the purposes of this
24 Section means those retail customers that purchase power and
25 energy from the electric utility under fixed-price bundled
26 service tariffs, other than those retail customers whose

1 service is declared or deemed competitive under Section 16-113
2 and those other customer groups specified in this Section,
3 including self-generating customers, customers electing hourly
4 pricing, or those customers who are otherwise ineligible for
5 fixed-price bundled tariff service. For those customers that
6 are excluded from the procurement plan's electric supply
7 service requirements, and the utility shall procure any supply
8 requirements, including capacity, ancillary services, and
9 hourly priced energy, in the applicable markets as needed to
10 serve those customers, provided that the utility may include in
11 its procurement plan load requirements for the load that is
12 associated with those retail customers whose service has been
13 declared or deemed competitive pursuant to Section 16-113 of
14 this Act to the extent that those customers are purchasing
15 power and energy during one of the transition periods
16 identified in subsection (b) of Section 16-113 of this Act.

17 (b) A procurement plan shall be prepared for each electric
18 utility consistent with the applicable requirements of the
19 Illinois Power Agency Act and this Section. For purposes of
20 this Section, Illinois electric utilities that are affiliated
21 by virtue of a common parent company are considered to be a
22 single electric utility. Small multi-jurisdictional utilities
23 may request a procurement plan for a portion of or all of its
24 Illinois load. Each procurement plan shall analyze the
25 projected balance of supply and demand for those retail
26 customers to be included in the plan's electric supply service

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

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

19 (i) multi-year historical analysis of hourly
20 loads;

21 (ii) switching trends and competitive retail
22 market analysis;

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

24 and

25 (iv) growth forecasts by customer class.

26 (2) Analysis of the impact of any demand side and

1 renewable energy initiatives. This analysis shall include:

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

8 (ii) supply side needs that are projected to be
9 offset by purchases of renewable energy resources, if
10 any.

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

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

16 (ii) the proposed mix of demand-response products
17 for which contracts will be executed during the next
18 year. For small multi-jurisdictional electric
19 utilities that on December 31, 2005 served fewer than
20 100,000 customers in Illinois, these shall be defined
21 as demand-response products offered in an energy
22 efficiency plan approved pursuant to Section 8-408 of
23 this Act. The cost-effective demand-response measures
24 shall be procured whenever the cost is lower than
25 procuring comparable capacity products, provided that
26 such products shall:

1 (A) be procured by a demand-response provider
2 from those retail customers included in the plan's
3 electric supply service requirements;

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

10 (C) provide for customers' participation in
11 the stream of benefits produced by the
12 demand-response products;

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

18 (E) meet the same credit requirements as apply
19 to suppliers of capacity, in the applicable
20 regional transmission organization market;

21 (iii) monthly forecasted system supply
22 requirements, including expected minimum, maximum, and
23 average values for the planning period;

24 (iv) the proposed mix and selection of standard
25 wholesale products for which contracts will be
26 executed during the next year, separately or in

1 combination, to meet that portion of its load
2 requirements not met through pre-existing contracts,
3 including but not limited to monthly 5 x 16 peak period
4 block energy, monthly off-peak wrap energy, monthly 7 x
5 24 energy, annual 5 x 16 energy, annual off-peak wrap
6 energy, annual 7 x 24 energy, monthly capacity, annual
7 capacity, peak load capacity obligations, capacity
8 purchase plan, and ancillary services;

9 (v) proposed term structures for each wholesale
10 product type included in the proposed procurement plan
11 portfolio of products; and

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

23 (4) Proposed procedures for balancing loads. The
24 procurement plan shall include, for load requirements
25 included in the procurement plan, the process for (i)
26 hourly balancing of supply and demand and (ii) the criteria

1 for portfolio re-balancing in the event of significant
2 shifts in load.

3 (5) Long-Term Renewable Resources Procurement Plan.
4 The Agency shall prepare a long-term renewable resources
5 procurement plan for the procurement of renewable energy
6 credits under Sections 1-56 and 1-75 of the Illinois Power
7 Agency Act for delivery beginning in the 2017 delivery
8 year.

9 (i) The initial long-term renewable resources
10 procurement plan and all subsequent revisions shall be
11 subject to review and approval by the Commission. For
12 the purposes of this Section, "delivery year" has the
13 same meaning as in Section 1-10 of the Illinois Power
14 Agency Act. For purposes of this Section, "Agency"
15 shall mean the Illinois Power Agency.

16 (ii) The long-term renewable resources planning
17 process shall be conducted as follows:

18 (A) Electric utilities shall provide a range
19 of load forecasts to the Illinois Power Agency
20 within 45 days of the Agency's request for
21 forecasts, which request shall specify the length
22 and conditions for the forecasts including, but
23 not limited to, the quantity of distributed
24 generation expected to be interconnected for each
25 year.

26 (B) The Agency shall publish for comment the

1 initial long-term renewable resources procurement
2 plan no later than 120 days after the effective
3 date of this amendatory Act of the 99th General
4 Assembly and shall review, and may revise, the plan
5 at least every 2 years thereafter. To the extent
6 practicable, the Agency shall review and propose
7 any revisions to the long-term renewable energy
8 resources procurement plan in conjunction with the
9 Agency's other planning and approval processes
10 conducted under this Section. The initial
11 long-term renewable resources procurement plan
12 shall:

13 (aa) Identify the procurement programs and
14 competitive procurement events consistent with
15 the applicable requirements of the Illinois
16 Power Agency Act and shall be designed to
17 achieve the goals set forth in subsection (c)
18 of Section 1-75 of that Act.

19 (bb) Include a schedule for procurements
20 for renewable energy credits from
21 utility-scale wind projects, utility-scale
22 solar projects, and brownfield site
23 photovoltaic projects consistent with
24 subparagraph (G) of paragraph (1) of
25 subsection (c) of Section 1-75 of the Illinois
26 Power Agency Act.

1 (cc) Identify the process whereby the
2 Agency will submit to the Commission for review
3 and approval the proposed contracts to
4 implement the programs required by such plan.

5 Copies of the initial long-term renewable
6 resources procurement plan and all subsequent
7 revisions shall be posted and made publicly
8 available on the Agency's and Commission's
9 websites, and copies shall also be provided to each
10 affected electric utility. An affected utility and
11 other interested parties shall have 45 days
12 following the date of posting to provide comment to
13 the Agency on the initial long-term renewable
14 resources procurement plan and all subsequent
15 revisions. All comments submitted to the Agency
16 shall be specific, supported by data or other
17 detailed analyses, and, if objecting to all or a
18 portion of the procurement plan, accompanied by
19 specific alternative wording or proposals. All
20 comments shall be posted on the Agency's and
21 Commission's websites. During this 45-day comment
22 period, the Agency shall hold at least one public
23 hearing within each utility's service area that is
24 subject to the requirements of this paragraph (5)
25 for the purpose of receiving public comment.
26 Within 21 days following the end of the 45-day

1 review period, the Agency may revise the long-term
2 renewable resources procurement plan based on the
3 comments received and shall file the plan with the
4 Commission for review and approval.

5 (C) Within 14 days after the filing of the
6 initial long-term renewable resources procurement
7 plan or any subsequent revisions, any person
8 objecting to the plan may file an objection with
9 the Commission. Within 21 days after the filing of
10 the plan, the Commission shall determine whether a
11 hearing is necessary. The Commission shall enter
12 its order confirming or modifying the initial
13 long-term renewable resources procurement plan or
14 any subsequent revisions within 120 days after the
15 filing of the plan by the Illinois Power Agency.

16 (D) The Commission shall approve the initial
17 long-term renewable resources procurement plan and
18 any subsequent revisions, including expressly the
19 forecast used in the plan and taking into account
20 that funding will be limited to the amount of
21 revenues actually collected by the utilities, if
22 the Commission determines that the plan will
23 reasonably and prudently accomplish the
24 requirements of Section 1-56 and subsection (c) of
25 Section 1-75 of the Illinois Power Agency Act. The
26 Commission shall also approve the process for the

1 submission, review, and approval of the proposed
2 contracts to procure renewable energy credits or
3 implement the programs authorized by the
4 Commission pursuant to a long-term renewable
5 resources procurement plan approved under this
6 Section.

7 (iii) The Agency or third parties contracted by the
8 Agency shall implement all programs authorized by the
9 Commission in an approved long-term renewable
10 resources procurement plan without further review and
11 approval by the Commission. Third parties shall not
12 begin implementing any programs or receive any payment
13 under this Section until the Commission has approved
14 the contract or contracts under the process authorized
15 by the Commission in item (D) of subparagraph (ii) of
16 paragraph (5) of this subsection (b) and the third
17 party and the Agency or utility, as applicable, have
18 executed the contract. For those renewable energy
19 credits subject to procurement through a competitive
20 bid process under the plan or under the initial forward
21 procurements for wind and solar resources described in
22 subparagraph (G) of paragraph (1) of subsection (c) of
23 Section 1-75 of the Illinois Power Agency Act, the
24 Agency shall follow the procurement process specified
25 in the provisions relating to electricity procurement
26 in subsections (e) through (i) of this Section.

1 (iv) An electric utility shall recover its costs
2 associated with the procurement of renewable energy
3 credits under this Section through an automatic
4 adjustment clause tariff under subsection (k) of
5 Section 16-108 of this Act. A utility shall not be
6 required to advance any payment or pay any amounts
7 under this Section that exceed the actual amount of
8 revenues collected by the utility under paragraph (6)
9 of subsection (c) of Section 1-75 of the Illinois Power
10 Agency Act and subsection (k) of Section 16-108 of this
11 Act, and contracts executed under this Section shall
12 expressly incorporate this limitation.

13 (v) For the public interest, safety, and welfare,
14 the Agency and the Commission may adopt rules to carry
15 out the provisions of this Section on an emergency
16 basis immediately following the effective date of this
17 amendatory Act of the 99th General Assembly.

18 (vi) On or before July 1 of each year, the
19 Commission shall hold an informal hearing for the
20 purpose of receiving comments on the prior year's
21 procurement process and any recommendations for
22 change.

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

- 1 (1) The procurement administrator shall:
- 2 (i) design the final procurement process in
3 accordance with Section 1-75 of the Illinois Power
4 Agency Act and subsection (e) of this Section following
5 Commission approval of the procurement plan;
- 6 (ii) develop benchmarks in accordance with
7 subsection (e)(3) to be used to evaluate bids; these
8 benchmarks shall be submitted to the Commission for
9 review and approval on a confidential basis prior to
10 the procurement event;
- 11 (iii) serve as the interface between the electric
12 utility and suppliers;
- 13 (iv) manage the bidder pre-qualification and
14 registration process;
- 15 (v) obtain the electric utilities' agreement to
16 the final form of all supply contracts and credit
17 collateral agreements;
- 18 (vi) administer the request for proposals process;
- 19 (vii) have the discretion to negotiate to
20 determine whether bidders are willing to lower the
21 price of bids that meet the benchmarks approved by the
22 Commission; any post-bid negotiations with bidders
23 shall be limited to price only and shall be completed
24 within 24 hours after opening the sealed bids and shall
25 be conducted in a fair and unbiased manner; in
26 conducting the negotiations, there shall be no

1 disclosure of any information derived from proposals
2 submitted by competing bidders; if information is
3 disclosed to any bidder, it shall be provided to all
4 competing bidders;

5 (viii) maintain confidentiality of supplier and
6 bidding information in a manner consistent with all
7 applicable laws, rules, regulations, and tariffs;

8 (ix) submit a confidential report to the
9 Commission recommending acceptance or rejection of
10 bids;

11 (x) notify the utility of contract counterparties
12 and contract specifics; and

13 (xi) administer related contingency procurement
14 events.

15 (2) The procurement monitor, who shall be retained by
16 the Commission, shall:

17 (i) monitor interactions among the procurement
18 administrator, suppliers, and utility;

19 (ii) monitor and report to the Commission on the
20 progress of the procurement process;

21 (iii) provide an independent confidential report
22 to the Commission regarding the results of the
23 procurement event;

24 (iv) assess compliance with the procurement plans
25 approved by the Commission for each utility that on
26 December 31, 2005 provided electric service to at least

1 100,000 customers in Illinois and for each small
2 multi-jurisdictional utility that on December 31, 2005
3 served less than 100,000 customers in Illinois;

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

7 (vi) provide expert advice to the Commission and
8 consult with the procurement administrator regarding
9 issues related to procurement process design, rules,
10 protocols, and policy-related matters; and

11 (vii) consult with the procurement administrator
12 regarding the development and use of benchmark
13 criteria, standard form contracts, credit policies,
14 and bid documents.

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

17 (1) Beginning in 2008, each Illinois utility procuring
18 power pursuant to this Section shall annually provide a
19 range of load forecasts to the Illinois Power Agency by
20 July 15 of each year, or such other date as may be required
21 by the Commission or Agency. The load forecasts shall cover
22 the 5-year procurement planning period for the next
23 procurement plan and shall include hourly data
24 representing a high-load, low-load, and expected-load
25 scenario for the load of those retail customers included in
26 the plan's electric supply service requirements. The

1 utility shall provide supporting data and assumptions for
2 each of the scenarios.

3 (2) Beginning in 2008, the Illinois Power Agency shall
4 prepare a procurement plan by August 15th of each year, or
5 such other date as may be required by the Commission. The
6 procurement plan shall identify the portfolio of
7 demand-response and power and energy products to be
8 procured. Cost-effective demand-response measures shall be
9 procured as set forth in item (iii) of subsection (b) of
10 this Section. Copies of the procurement plan shall be
11 posted and made publicly available on the Agency's and
12 Commission's websites, and copies shall also be provided to
13 each affected electric utility. An affected utility shall
14 have 30 days following the date of posting to provide
15 comment to the Agency on the procurement plan. Other
16 interested entities also may comment on the procurement
17 plan. All comments submitted to the Agency shall be
18 specific, supported by data or other detailed analyses,
19 and, if objecting to all or a portion of the procurement
20 plan, accompanied by specific alternative wording or
21 proposals. All comments shall be posted on the Agency's and
22 Commission's websites. During this 30-day comment period,
23 the Agency shall hold at least one public hearing within
24 each utility's service area for the purpose of receiving
25 public comment on the procurement plan. Within 14 days
26 following the end of the 30-day review period, the Agency

1 shall revise the procurement plan as necessary based on the
2 comments received and file the procurement plan with the
3 Commission and post the procurement plan on the websites.

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

12 (4) The Commission shall approve the procurement plan,
13 including expressly the forecast used in the procurement
14 plan, if the Commission determines that it will ensure
15 adequate, reliable, affordable, efficient, and
16 environmentally sustainable electric service at the lowest
17 total cost over time, taking into account any benefits of
18 price stability.

19 (e) The procurement process shall include each of the
20 following components:

21 (1) Solicitation, pre-qualification, and registration
22 of bidders. The procurement administrator shall
23 disseminate information to potential bidders to promote a
24 procurement event, notify potential bidders that the
25 procurement administrator may enter into a post-bid price
26 negotiation with bidders that meet the applicable

1 benchmarks, provide supply requirements, and otherwise
2 explain the competitive procurement process. In addition
3 to such other publication as the procurement administrator
4 determines is appropriate, this information shall be
5 posted on the Illinois Power Agency's and the Commission's
6 websites. The procurement administrator shall also
7 administer the prequalification process, including
8 evaluation of credit worthiness, compliance with
9 procurement rules, and agreement to the standard form
10 contract developed pursuant to paragraph (2) of this
11 subsection (e). The procurement administrator shall then
12 identify and register bidders to participate in the
13 procurement event.

14 (2) Standard contract forms and credit terms and
15 instruments. The procurement administrator, in
16 consultation with the utilities, the Commission, and other
17 interested parties and subject to Commission oversight,
18 shall develop and provide standard contract forms for the
19 supplier contracts that meet generally accepted industry
20 practices. Standard credit terms and instruments that meet
21 generally accepted industry practices shall be similarly
22 developed. The procurement administrator shall make
23 available to the Commission all written comments it
24 receives on the contract forms, credit terms, or
25 instruments. If the procurement administrator cannot reach
26 agreement with the applicable electric utility as to the

1 contract terms and conditions, the procurement
2 administrator must notify the Commission of any disputed
3 terms and the Commission shall resolve the dispute. The
4 terms of the contracts shall not be subject to negotiation
5 by winning bidders, and the bidders must agree to the terms
6 of the contract in advance so that winning bids are
7 selected solely on the basis of price.

8 (3) Establishment of a market-based price benchmark.
9 As part of the development of the procurement process, the
10 procurement administrator, in consultation with the
11 Commission staff, Agency staff, and the procurement
12 monitor, shall establish benchmarks for evaluating the
13 final prices in the contracts for each of the products that
14 will be procured through the procurement process. The
15 benchmarks shall be based on price data for similar
16 products for the same delivery period and same delivery
17 hub, or other delivery hubs after adjusting for that
18 difference. The price benchmarks may also be adjusted to
19 take into account differences between the information
20 reflected in the underlying data sources and the specific
21 products and procurement process being used to procure
22 power for the Illinois utilities. The benchmarks shall be
23 confidential but shall be provided to, and will be subject
24 to Commission review and approval, prior to a procurement
25 event.

26 (4) Request for proposals competitive procurement

1 process. The procurement administrator shall design and
2 issue a request for proposals to supply electricity in
3 accordance with each utility's procurement plan, as
4 approved by the Commission. The request for proposals shall
5 set forth a procedure for sealed, binding commitment
6 bidding with pay-as-bid settlement, and provision for
7 selection of bids on the basis of price.

8 (5) A plan for implementing contingencies in the event
9 of supplier default or failure of the procurement process
10 to fully meet the expected load requirement due to
11 insufficient supplier participation, Commission rejection
12 of results, or any other cause.

13 (i) Event of supplier default: In the event of
14 supplier default, the utility shall review the
15 contract of the defaulting supplier to determine if the
16 amount of supply is 200 megawatts or greater, and if
17 there are more than 60 days remaining of the contract
18 term. If both of these conditions are met, and the
19 default results in termination of the contract, the
20 utility shall immediately notify the Illinois Power
21 Agency that a request for proposals must be issued to
22 procure replacement power, and the procurement
23 administrator shall run an additional procurement
24 event. If the contracted supply of the defaulting
25 supplier is less than 200 megawatts or there are less
26 than 60 days remaining of the contract term, the

1 utility shall procure power and energy from the
2 applicable regional transmission organization market,
3 including ancillary services, capacity, and day-ahead
4 or real time energy, or both, for the duration of the
5 contract term to replace the contracted supply;
6 provided, however, that if a needed product is not
7 available through the regional transmission
8 organization market it shall be purchased from the
9 wholesale market.

10 (ii) Failure of the procurement process to fully
11 meet the expected load requirement: If the procurement
12 process fails to fully meet the expected load
13 requirement due to insufficient supplier participation
14 or due to a Commission rejection of the procurement
15 results, the procurement administrator, the
16 procurement monitor, and the Commission staff shall
17 meet within 10 days to analyze potential causes of low
18 supplier interest or causes for the Commission
19 decision. If changes are identified that would likely
20 result in increased supplier participation, or that
21 would address concerns causing the Commission to
22 reject the results of the prior procurement event, the
23 procurement administrator may implement those changes
24 and rerun the request for proposals process according
25 to a schedule determined by those parties and
26 consistent with Section 1-75 of the Illinois Power

1 Agency Act and this subsection. In any event, a new
2 request for proposals process shall be implemented by
3 the procurement administrator within 90 days after the
4 determination that the procurement process has failed
5 to fully meet the expected load requirement.

6 (iii) In all cases where there is insufficient
7 supply provided under contracts awarded through the
8 procurement process to fully meet the electric
9 utility's load requirement, the utility shall meet the
10 load requirement by procuring power and energy from the
11 applicable regional transmission organization market,
12 including ancillary services, capacity, and day-ahead
13 or real time energy, or both; provided, however, that
14 if a needed product is not available through the
15 regional transmission organization market it shall be
16 purchased from the wholesale market.

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

20 (f) Within 2 business days after opening the sealed bids,
21 the procurement administrator shall submit a confidential
22 report to the Commission. The report shall contain the results
23 of the bidding for each of the products along with the
24 procurement administrator's recommendation for the acceptance
25 and rejection of bids based on the price benchmark criteria and
26 other factors observed in the process. The procurement monitor

1 also shall submit a confidential report to the Commission
2 within 2 business days after opening the sealed bids. The
3 report shall contain the procurement monitor's assessment of
4 bidder behavior in the process as well as an assessment of the
5 procurement administrator's compliance with the procurement
6 process and rules. The Commission shall review the confidential
7 reports submitted by the procurement administrator and
8 procurement monitor, and shall accept or reject the
9 recommendations of the procurement administrator within 2
10 business days after receipt of the reports.

11 (g) Within 3 business days after the Commission decision
12 approving the results of a procurement event, the utility shall
13 enter into binding contractual arrangements with the winning
14 suppliers using the standard form contracts; except that the
15 utility shall not be required either directly or indirectly to
16 execute the contracts if a tariff that is consistent with
17 subsection (1) of this Section has not been approved and placed
18 into effect for that utility.

19 (h) The names of the successful bidders and the load
20 weighted average of the winning bid prices for each contract
21 type and for each contract term shall be made available to the
22 public at the time of Commission approval of a procurement
23 event. The Commission, the procurement monitor, the
24 procurement administrator, the Illinois Power Agency, and all
25 participants in the procurement process shall maintain the
26 confidentiality of all other supplier and bidding information

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

10 (i) Within 2 business days after a Commission decision
11 approving the results of a procurement event or such other date
12 as may be required by the Commission from time to time, the
13 utility shall file for informational purposes with the
14 Commission its actual or estimated retail supply charges, as
15 applicable, by customer supply group reflecting the costs
16 associated with the procurement and computed in accordance with
17 the tariffs filed pursuant to subsection (l) of this Section
18 and approved by the Commission.

19 (j) Within 60 days following August 28, 2007 (the effective
20 date of Public Act 95-481), each electric utility that on
21 December 31, 2005 provided electric service to at least 100,000
22 customers in Illinois shall prepare and file with the
23 Commission an initial procurement plan, which shall conform in
24 all material respects to the requirements of the procurement
25 plan set forth in subsection (b); provided, however, that the
26 Illinois Power Agency Act shall not apply to the initial

1 procurement plan prepared pursuant to this subsection. The
2 initial procurement plan shall identify the portfolio of power
3 and energy products to be procured and delivered for the period
4 June 2008 through May 2009, and shall identify the proposed
5 procurement administrator, who shall have the same experience
6 and expertise as is required of a procurement administrator
7 hired pursuant to Section 1-75 of the Illinois Power Agency
8 Act. Copies of the procurement plan shall be posted and made
9 publicly available on the Commission's website. The initial
10 procurement plan may include contracts for renewable resources
11 that extend beyond May 2009.

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

26 (ii) The order shall approve or modify the procurement

1 plan, approve an independent procurement administrator,
2 and approve or modify the electric utility's tariffs that
3 are proposed with the initial procurement plan. The
4 Commission shall approve the procurement plan if the
5 Commission determines that it will ensure adequate,
6 reliable, affordable, efficient, and environmentally
7 sustainable electric service at the lowest total cost over
8 time, taking into account any benefits of price stability.

9 (k) (Blank).

10 (k-5) (Blank).

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

1 does not result in over or under recovery due to changes in
2 customer usage and demand patterns, and that provide for the
3 correction, on at least an annual basis, of any accounting
4 errors that may occur. A utility shall recover through the
5 tariff all reasonable costs incurred to implement or comply
6 with any procurement plan that is developed and put into effect
7 pursuant to Section 1-75 of the Illinois Power Agency Act and
8 this Section, including any fees assessed by the Illinois Power
9 Agency, costs associated with load balancing, and contingency
10 plan costs. The electric utility shall also recover its full
11 costs of procuring electric supply for which it contracted
12 before the effective date of this Section in conjunction with
13 the provision of full requirements service under fixed-price
14 bundled service tariffs subsequent to December 31, 2006. All
15 such costs shall be deemed to have been prudently incurred. The
16 pass-through tariffs that are filed and approved pursuant to
17 this Section shall not be subject to review under, or in any
18 way limited by, Section 16-111(i) of this Act. All of the costs
19 incurred by the electric utility associated with the purchase
20 of zero emission credits in accordance with subsection (d-5) of
21 Section 1-75 of the Illinois Power Agency Act and, beginning
22 June 1, 2017, all of the costs incurred by the electric utility
23 associated with the purchase of renewable energy resources in
24 accordance with Sections 1-56 and 1-75 of the Illinois Power
25 Agency Act, shall be recovered through the electric utility's
26 tariffed charges applicable to all of its retail customers, as

1 specified in subsection (k) of Section 16-108 of this Act, and
2 shall not be recovered through the electric utility's tariffed
3 charges for electric power and energy supply to its eligible
4 retail customers.

5 (m) The Commission has the authority to adopt rules to
6 carry out the provisions of this Section. For the public
7 interest, safety, and welfare, the Commission also has
8 authority to adopt rules to carry out the provisions of this
9 Section on an emergency basis immediately following August 28,
10 2007 (the effective date of Public Act 95-481).

11 (n) Notwithstanding any other provision of this Act, any
12 affiliated electric utilities that submit a single procurement
13 plan covering their combined needs may procure for those
14 combined needs in conjunction with that plan, and may enter
15 jointly into power supply contracts, purchases, and other
16 procurement arrangements, and allocate capacity and energy and
17 cost responsibility therefor among themselves in proportion to
18 their requirements.

19 (o) On or before June 1 of each year, the Commission shall
20 hold an informal hearing for the purpose of receiving comments
21 on the prior year's procurement process and any recommendations
22 for change.

23 (p) An electric utility subject to this Section may propose
24 to invest, lease, own, or operate an electric generation
25 facility as part of its procurement plan, provided the utility
26 demonstrates that such facility is the least-cost option to

1 provide electric service to those retail customers included in
2 the plan's electric supply service requirements. If the
3 facility is shown to be the least-cost option and is included
4 in a procurement plan prepared in accordance with Section 1-75
5 of the Illinois Power Agency Act and this Section, then the
6 electric utility shall make a filing pursuant to Section 8-406
7 of this Act, and may request of the Commission any statutory
8 relief required thereunder. If the Commission grants all of the
9 necessary approvals for the proposed facility, such supply
10 shall thereafter be considered as a pre-existing contract under
11 subsection (b) of this Section. The Commission shall in any
12 order approving a proposal under this subsection specify how
13 the utility will recover the prudently incurred costs of
14 investing in, leasing, owning, or operating such generation
15 facility through just and reasonable rates charged to those
16 retail customers included in the plan's electric supply service
17 requirements. Cost recovery for facilities included in the
18 utility's procurement plan pursuant to this subsection shall
19 not be subject to review under or in any way limited by the
20 provisions of Section 16-111(i) of this Act. Nothing in this
21 Section is intended to prohibit a utility from filing for a
22 fuel adjustment clause as is otherwise permitted under Section
23 9-220 of this Act.

24 (q) If the Illinois Power Agency filed with the Commission,
25 under Section 16-111.5 of this Act, its proposed procurement
26 plan for the period commencing June 1, 2017, and the Commission

1 has not yet entered its final order approving the plan on or
2 before the effective date of this amendatory Act of the 99th
3 General Assembly, then the Illinois Power Agency shall file a
4 notice of withdrawal with the Commission, after the effective
5 date of this amendatory Act of the 99th General Assembly, to
6 withdraw the proposed procurement of renewable energy
7 resources to be approved under the plan, other than the
8 procurement of renewable energy credits from distributed
9 renewable energy generation devices using funds previously
10 collected from electric utilities' retail customers that take
11 service pursuant to electric utilities' hourly pricing tariff
12 or tariffs and, for an electric utility that serves less than
13 100,000 retail customers in the State, other than the
14 procurement of renewable energy credits from distributed
15 renewable energy generation devices. Upon receipt of the
16 notice, the Commission shall enter an order that approves the
17 withdrawal of the proposed procurement of renewable energy
18 resources from the plan. The initially proposed procurement of
19 renewable energy resources shall not be approved or be the
20 subject of any further hearing, investigation, proceeding, or
21 order of any kind.

22 This amendatory Act of the 99th General Assembly preempts
23 and supersedes any order entered by the Commission that
24 approved the Illinois Power Agency's procurement plan for the
25 period commencing June 1, 2017, to the extent it is
26 inconsistent with the provisions of this amendatory Act of the

1 99th General Assembly. To the extent any previously entered
2 order approved the procurement of renewable energy resources,
3 the portion of that order approving the procurement shall be
4 void, other than the procurement of renewable energy credits
5 from distributed renewable energy generation devices using
6 funds previously collected from electric utilities' retail
7 customers that take service under electric utilities' hourly
8 pricing tariff or tariffs and, for an electric utility that
9 serves less than 100,000 retail customers in the State, other
10 than the procurement of renewable energy credits for
11 distributed renewable energy generation devices.

12 (r) The Commission shall quarterly review the price of any
13 zero emission credits procured by the Illinois Power Agency
14 under subsection (d-5) of Section 1-75 of the Illinois Power
15 Agency Act to ensure no more than the unrecovered costs of the
16 plants based on market sales and pricing is recovered. If the
17 plant shows a profit for more than one year, the zero emission
18 credit program shall be rebid and the Illinois Power Agency
19 shall have the authority to expand the definition to include
20 additional Illinois-based zero emission generation sources as
21 eligible for the program, including an annual procurement
22 process. Additionally, the Commission, in its review, shall
23 ensure any qualifying nuclear plant is not receiving excessive
24 earnings through its zero emission compensation under this
25 Section, and if a plant is found to have received excessive
26 earnings due to the zero emission credit pricing, that plant

1 shall have its zero emission credit qualification revoked.
2 Nothing prevents the Commission from initiating a docketed
3 proceeding to reconcile zero emission credit payments with
4 allowed costs identified under this Section.

5 (Source: P.A. 99-906, eff. 6-1-17.)

6 Section 95. No acceleration or delay. Where this Act makes
7 changes in a statute that is represented in this Act by text
8 that is not yet or no longer in effect (for example, a Section
9 represented by multiple versions), the use of that text does
10 not accelerate or delay the taking effect of (i) the changes
11 made by this Act or (ii) provisions derived from any other
12 Public Act.

13 Section 99. Effective date. This Act takes effect upon
14 becoming law or on the date the provisions of Public Act 99-906
15 that amend Section 16-111.5 of the Public Utilities Act take
16 effect, whichever is later.