

# SB3577



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

SB3577

Introduced 2/16/2018, by Sen. Don Harmon

#### SYNOPSIS AS INTRODUCED:

220 ILCS 5/16-115  
220 ILCS 5/16-115B

Amends the Electric Service Customer Choice and Rate Relief Law Of 1997 of the Public Utilities Act. Provides that the Illinois Commerce Commission shall grant the application for a certificate of service authority if it finds, among other findings, that the applicant discloses any formal complaints that seek a binding determination from a state or federal regulatory body and verifies that a complaint should not be a basis for denying the certificate of service authority. Provides that the Illinois Commerce Commission shall conduct at least one compliance education training meeting annually for certain alternative retail electric suppliers to discuss regulatory requirements, complaint statistics, and other information determined necessary by the Commission. Effective immediately.

LRB100 20692 SMS 36150 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

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

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

6 (220 ILCS 5/16-115)

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (i) (Blank);

4 (ii) (Blank);

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

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

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

1 facility during such hour, which the utilities are  
2 not required to procure under the terms of  
3 subsection (d) of Section 1-75 of the Illinois  
4 Power Agency Act, multiplied by a fraction, the  
5 numerator of which is the alternative retail  
6 electric supplier's retail market sales of  
7 electricity (expressed in kilowatthours sold) in  
8 the State during the prior calendar month and the  
9 denominator of which is the total sales of  
10 electricity (expressed in kilowatthours sold) in  
11 the State by alternative retail electric suppliers  
12 during such prior month that are subject to the  
13 requirements of this paragraph (5) of subsection  
14 (d) of this Section and subsection (d) of Section  
15 1-75 of the Illinois Power Agency Act plus the  
16 total sales of electricity (expressed in  
17 kilowatthours sold) by utilities outside of their  
18 service areas during such prior month, pursuant to  
19 subsection (c) of Section 16-116 of this Act; or

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

1 subsection (d) of Section 1-75 of the Illinois  
2 Power Agency Act, multiplied by a fraction, the  
3 numerator of which is the alternative retail  
4 electric supplier's retail market sales of  
5 electricity (expressed in kilowatthours sold) in  
6 the State during the prior calendar month and the  
7 denominator of which is the total sales of  
8 electricity (expressed in kilowatthours sold) in  
9 the State by alternative retail electric suppliers  
10 during such prior month that are subject to the  
11 requirements of this paragraph (5) of subsection  
12 (d) of this Section and subsection (d) of Section  
13 1-75 of the Illinois Power Agency Act plus the  
14 total sales of electricity (expressed in  
15 kilowatthours sold) by utilities outside of their  
16 service areas during such prior month, pursuant to  
17 subsection (c) of Section 16-116 of this Act;

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

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

26 (vi) The Commission shall, after notice and



1 hearing, revoke the certification of any alternative  
2 retail electric supplier that fails to execute a  
3 sourcing agreement with the initial clean coal  
4 facility as required by item (5) of subsection (d) of  
5 this Section. The sourcing agreements with this  
6 initial clean coal facility shall be subject to both  
7 approval of the initial clean coal facility by the  
8 General Assembly and satisfaction of the requirements  
9 of item (4) of subsection (d) of Section 1-75 of the  
10 Illinois Power Agency Act, and shall be executed within  
11 90 days after any such approval by the General  
12 Assembly. The Commission shall not accept an  
13 application for certification from an alternative  
14 retail electric supplier that has lost certification  
15 under this subsection (d), or any corporate affiliate  
16 thereof, for at least one year from the date of  
17 revocation;

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

26 (7) That the applicant meets the requirements of

1 subsection (a) of Section 16-128; ~~and~~

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

4 (9) That the applicant discloses any formal complaints  
5 that seek a binding determination from a state or federal  
6 regulatory body and verifies that such complaints should  
7 not be a basis for denying the certificate of service  
8 authority by the Commission.

9 (d-5) (Blank).

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

1 required to pay transition charges on the power and energy that  
2 such retail customer takes from the facility.

3 (f) The Commission shall have the authority to promulgate  
4 rules and regulations to carry out the provisions of this  
5 Section. On or before May 1, 1999, the Commission shall adopt a  
6 rule or rules applicable to the certification of those  
7 alternative retail electric suppliers that seek to serve only  
8 nonresidential retail customers with maximum electrical  
9 demands of one megawatt or more which shall provide for (i)  
10 expedited and streamlined procedures for certification of such  
11 alternative retail electric suppliers and (ii) specific  
12 criteria which, if met by any such alternative retail electric  
13 supplier, shall constitute the demonstration of technical,  
14 financial and managerial resources and abilities to provide  
15 service required by subsection (d) (1) of this Section, such as  
16 a requirement to post a bond or letter of credit, from a  
17 responsible surety or financial institution, of sufficient  
18 size for the nature and scope of the services to be provided;  
19 demonstration of adequate insurance for the scope and nature of  
20 the services to be provided; and experience in providing  
21 similar services in other jurisdictions.

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

26 (1) the total annual kilowatt-hours delivered and sold

1 by an alternative retail electric supplier to retail  
2 customers within each utility service territory and the  
3 total annual kilowatt-hours delivered and sold by an  
4 alternative retail electric supplier to retail customers  
5 in all utility service territories in the preceding  
6 calendar year as required by 83 Ill. Adm. Code 451.770;

7 (2) the total peak demand supplied by an alternative  
8 retail electric supplier during the previous year in each  
9 utility service territory as required by 83 Ill. Adm. Code  
10 465.40;

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

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

1 treatment is sought.

2 If the alternative retail electric supplier has met the  
3 affidavit requirements of this subsection (g), then the  
4 Commission shall afford confidential treatment to the  
5 information identified in the affidavit for a period of 2 years  
6 after the date the affidavit is received by the Commission.

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

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

18 The Commission, on its own motion, may at any time initiate  
19 a docketed proceeding to investigate the continued  
20 applicability of this subsection (g) to the information  
21 contained in items (i), (ii), and (iii) of this subsection (g).  
22 If, at the end of such investigation, the Commission determines  
23 that a particular item of information should no longer be  
24 eligible for the affidavit-based process outlined in this  
25 subsection (g), the Commission may enter an order to remove  
26 that item from the list of items eligible for the process set

1     forth in this subsection (g). Notwithstanding any such order,  
2     in the event the Commission makes such a determination, nothing  
3     in this subsection (g) prevents an alternative retail electric  
4     supplier desiring confidential treatment for such information  
5     from filing a formal petition with the Commission seeking  
6     confidential treatment for such information.

7     (Source: P.A. 99-332, eff. 8-10-15.)

8             (220 ILCS 5/16-115B)

9             Sec. 16-115B. Commission oversight of services provided by  
10     alternative retail electric suppliers.

11            (a) The Commission shall have jurisdiction in accordance  
12     with the provisions of Article X of this Act to entertain and  
13     dispose of any complaint against any alternative retail  
14     electric supplier alleging (i) that the alternative retail  
15     electric supplier has violated or is in nonconformance with any  
16     applicable provisions of Section 16-115 through Section  
17     16-115A; (ii) that an alternative retail electric supplier  
18     serving retail customers having maximum demands of less than  
19     one megawatt has failed to provide service in accordance with  
20     the terms of its contract or contracts with such customer or  
21     customers; (iii) that the alternative retail electric supplier  
22     has violated or is in non-conformance with the delivery  
23     services tariff of, or any of its agreements relating to  
24     delivery services with, the electric utility, municipal  
25     system, or electric cooperative providing delivery services;

1 or (iv) that the alternative retail electric supplier has  
2 violated or failed to comply with the requirements of Sections  
3 8-201 through 8-207, 8-301, 8-505, or 8-507 of this Act as made  
4 applicable to alternative retail electric suppliers.

5 (b) The Commission shall have authority, after notice and  
6 hearing held on complaint or on the Commission's own motion:

7 (1) To order an alternative retail electric supplier to  
8 cease and desist, or correct, any violation of or  
9 non-conformance with the provisions of Section 16-115 or  
10 16-115A;

11 (2) To impose financial penalties for violations of or  
12 non-conformances with the provisions of Section 16-115 or  
13 16-115A, not to exceed (i) \$10,000 per occurrence or (ii)  
14 \$30,000 per day for those violations or non-conformances  
15 which continue after the Commission issues a cease and  
16 desist order; and

17 (3) To alter, modify, revoke or suspend the certificate  
18 of service authority of an alternative retail electric  
19 supplier for substantial or repeated violations of or  
20 non-conformances with the provisions of Section 16-115 or  
21 16-115A.

22 (c) The Commission shall conduct a least one compliance  
23 education training meeting annually for alternative retail  
24 electric suppliers that service retail and small commercial  
25 retail customers in an electric utility's service area  
26 regarding statutory and rule requirements, consumer complaint

1 statistics, and any other information determined necessary by  
2 the Commission. Completion of the Commission's compliance  
3 education training is a condition for continuing compliance  
4 with certification requirements for alternative retail  
5 electric suppliers under 83 Ill. Adm. Code 451.Subpart H.

6 (Source: P.A. 90-561, eff. 12-16-97.)

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