



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB4116

by Rep. Carolyn H. Krause

SYNOPSIS AS INTRODUCED:

220 ILCS 5/16-131 new

Amends the Electric Service Customer Choice and Rate Relief Law of 1997 in the Public Utilities Act. Creates an electric procurement process that shall be administered by an independent Procurement Administrator and overseen by an independent Procurement Monitor. Provides that a utility shall obtain an independent Procurement Administrator that shall design and administer the request-for-proposal procurement process that shall be approved by the Illinois Commerce Commission. Specifies the duties of the Procurement Administrator and Procurement Monitor. Provides that the fees of the Procurement Administrator and Procurement Monitor shall be paid through fees assessed to the bidders. Specifies the procedures of the request-for-proposal procurement process. Provides that the Procurement Administrator and Procurement Monitor shall establish a price benchmark according to specified criteria. Contains provisions concerning the required reports from the Procurement Administrator and Procurement Monitor to the Commission. Contains the procedures for the Commission to approve or disapprove the reports submitted to it by the Procurement Administrator and Procurement Monitor. Provides that within 5 business days after the Commission's decision to approve the results of a procurement event, the utility shall enter into binding contractual arrangements with the winning suppliers using the standard form contracts. Provides that a utility shall file its proposed tariffs with the Commission through which its costs of procuring power for the applicable customer classes that are incurred pursuant to a Commission-approved procurement event will be recovered. Provides that if the prices of the request-for-proposal procurement process results in an increase in electric rates of more than 10%, then the utilities shall be required to give written notification to the public at least 60 days prior to the increase taking effect. Effective immediately.

LRB095 12580 MJR 37825 b

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 adding
5 Section 16-131 as follows:

6 (220 ILCS 5/16-131 new)

7 Sec. 16-131. Electric procurement process.

8 (a) A utility shall obtain an independent Procurement
9 Administrator that shall design and administer the
10 request-for-proposal procurement process that shall be
11 approved by the Commission.

12 The procurement process shall be administered by an
13 independent Procurement Administrator and overseen by an
14 independent Procurement Monitor.

15 (b) The Procurement Administrator shall do all of the
16 following:

17 (1) design the final request-for-proposal procurement
18 process in accordance and with final approval by the
19 Commission;

20 (2) interface between the utility and suppliers;

21 (3) manage the bidder pre-qualification process;

22 (4) administer the request-for-proposal process and
23 identify the winning bids;

1 (5) maintain confidentiality as to the identity of the
2 bidders, with the exception of the disclosure required by
3 subsection (g) of this Section, and preserve the
4 confidentiality of all supplier and bidding information in
5 a manner consistent with all applicable laws, rules,
6 regulations and tariffs;

7 (6) submit a confidential report to the Commission for
8 approval of the results;

9 (7) notify the utility of contract counterparts and
10 contract specifics; and

11 (8) administer related contingency procurement events.

12 (c) The Procurement Monitor, who shall be retained by the
13 Commission, shall:

14 (1) oversee all interactions among the Procurement
15 Administrator, suppliers, and utility;

16 (2) monitor and report to the Commission on the
17 progress of the procurement process;

18 (3) provide an independent confidential report to the
19 Commission regarding the results of the procurement event;

20 (4) ensure compliance with the procurement plan
21 approved by the Commission; and

22 (5) maintain confidentiality as to the identity of the
23 bidders, with the exception of the disclosure required by
24 subsection (g) of this Section, and preserve the
25 confidentiality of all supplier and bidding information in
26 a manner consistent with all applicable laws, rules,

1 regulations, and tariffs.

2 (d) The fees of the Procurement Administrator and
3 Procurement Monitor shall be paid through fees assessed to the
4 bidders. The Commission may adopt rules, as provided for in
5 this Section, that establish the criteria to be used in
6 selecting the independent Procurement Monitor and Procurement
7 Administrator, and other procedures related to hiring and
8 payment.

9 (e) The Procurement Administrator shall design and issue a
10 request-for-proposal that shall be approved by the Commission.
11 The Administrator shall set forth a procedure for sealed,
12 binding commitment bidding with pay-as-bid settlement, and
13 provision for selection of bids on the basis of price and in
14 accordance with the price benchmark established.

15 (f) The Procurement Administrator, in consultation with
16 the Procurement Monitor, shall establish a price benchmark
17 applicable to the products purchased in accordance with a
18 procurement plan approved under this Section that are
19 consistent with the following criteria:

20 (1) The price benchmark shall incorporate forward
21 market price data for identical products for the same
22 delivery period and at the same delivery point; if
23 identical product transactions are not available, the
24 Procurement Administrator may recommend other criteria to
25 consider in making a determination to accept or reject bids
26 in its confidential report to the Commission.

1 (2) The price benchmark may consist of a range of
2 prices based on a variety of publicly available data
3 sources that have been approved for this use by the
4 Commission.

5 (3) The price benchmark may be adjusted to take into
6 account specific differences between transaction data
7 observed in public data sources and the procurement of
8 products for Illinois utilities, including adjustments to
9 account for the difference in counterpart credit risk.

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

26 (h) The Commission shall have 5 business days after

1 receiving the report of the request-for-proposal procurement
2 process from the Administrator and from the Monitor, to review
3 and rule on the results of the request-for-proposal process.
4 The Commission shall do one of the following:

5 (1) approve the results of the procurement process in
6 whole;

7 (2) approve the results of the procurement process in
8 part, and disapprove in part; and

9 (3) if more than 50% of the contracts resulted in a 10%
10 increase above the established benchmarks, disapprove the
11 entire request-for-proposal, and order another round of
12 request-for-proposal procurement process.

13 If the Commission disapproves in part, the
14 request-for-proposal procurement process, then the Procurement
15 Administrator shall be allowed to directly negotiate with
16 bidders to obtain the remaining percentage necessary to meet
17 the utility's load requirements. The Procurement Monitor shall
18 monitor all of the negotiations.

19 The Commission may allow up to 10% above the established
20 benchmarks to provide for a small-risk premium that may result
21 from such impacting events such as weather, supply, and demand.

22 (i) Within 5 business days after the Commission's decision
23 to approve the results of a procurement event, the utility
24 shall enter into binding contractual arrangements with the
25 winning suppliers using the standard form contracts; provided,
26 however, that the utility shall not be required either directly

1 or indirectly to execute the contracts if a tariff has not been
2 approved and placed into effect for the utility.

3 (j) The utility shall file its proposed tariffs with the
4 Commission through which its costs of procuring power for the
5 applicable customer classes that are incurred pursuant to a
6 Commission-approved procurement event will be recovered. The
7 tariffs shall include a formula rate or charge designed to pass
8 through both the costs incurred by the utility in procuring a
9 supply of electric power and energy for the applicable customer
10 classes with no mark-up or return on the price paid by the
11 utility for such supply, plus any just and reasonable costs
12 that the utility incurs in arranging and providing for the
13 supply of electric power and energy. The formula rate or charge
14 shall also contain provisions that ensure that its application
15 does not result in over or under recovery due to changes in
16 customer usage and demand patterns, and that provide for the
17 correction, on at least an annual basis, of any accounting
18 errors that may occur. A utility shall recover through the
19 tariff all its wholesale costs of purchasing power and energy
20 and also those ongoing costs of procuring electric supply for
21 which it contracted before the effective date of this
22 amendatory Act of the 95th General Assembly in conjunction with
23 the provision of full requirements service under fixed price
24 bundled service tariffs. All such costs shall be deemed to have
25 been prudently incurred. The pass-through tariffs that are
26 filed and approved pursuant to this Section shall not be

1 subject to review under or in any way limited by subsection (i)
2 of Section 16-111 of this Act.

3 (k) If the prices of the request-for-proposal procurement
4 process results in an increase in electric rates of more than
5 10%, then the utilities shall be required to give written
6 notification to the public at least 60 days prior to the
7 increase taking effect. The criteria for the written
8 notification shall be determined by the Commission, and the
9 utility shall issue the notification according to those
10 criteria.

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