

1 AN ACT concerning regulation.

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

4 ARTICLE 1

5 Section 1-1. Short title. This Article may be cited as the
6 Illinois Power Agency Act. References in this Article to "this
7 Act" mean this Article.

8 Section 1-5. Legislative declarations and findings. The
9 General Assembly finds and declares:

10 (1) The health, welfare, and prosperity of all Illinois
11 citizens require the provision of adequate, reliable,
12 affordable, efficient, and environmentally sustainable
13 electric service at the lowest total cost over time, taking
14 into account any benefits of price stability.

15 (2) The transition to retail competition is not
16 complete. Some customers, especially residential and small
17 commercial customers, have failed to benefit from lower
18 electricity costs from retail and wholesale competition.

19 (3) Escalating prices for electricity in Illinois pose
20 a serious threat to the economic well-being, health, and
21 safety of the residents of and the commerce and industry of
22 the State.

1 (4) To protect against this threat to economic
2 well-being, health, and safety it is necessary to improve
3 the process of procuring electricity to serve Illinois
4 residents, to promote investment in energy efficiency and
5 demand-response measures, and to support development of
6 clean coal technologies and renewable resources.

7 (5) Procuring a diverse electricity supply portfolio
8 will ensure the lowest total cost over time for adequate,
9 reliable, efficient, and environmentally sustainable
10 electric service.

11 (6) Including cost-effective renewable resources in
12 that portfolio will reduce long-term direct and indirect
13 costs to consumers by decreasing environmental impacts and
14 by avoiding or delaying the need for new generation,
15 transmission, and distribution infrastructure.

16 (7) Energy efficiency, demand-response measures, and
17 renewable energy are resources currently underused in
18 Illinois.

19 The General Assembly therefore finds that it is necessary
20 to create the Illinois Power Agency and that the goals and
21 objectives of that Agency are to accomplish each of the
22 following:

23 (A) Develop electricity procurement plans to ensure
24 adequate, reliable, affordable, efficient, and
25 environmentally sustainable electric service at the lowest
26 total cost over time, taking into account any benefits of

1 price stability, for electric utilities that on December
2 31, 2005 provided electric service to at least 100,000
3 customers in Illinois. The procurement plan shall be
4 updated on an annual basis and shall include renewable
5 energy resources sufficient to achieve the standards
6 specified in this Act.

7 (B) Conduct competitive procurement processes to
8 procure the supply resources identified in the procurement
9 plan.

10 (C) Develop electric generation and co-generation
11 facilities that use indigenous coal or renewable
12 resources, or both, financed with bonds issued by the
13 Illinois Finance Authority.

14 (D) Supply electricity from the Agency's facilities at
15 cost to one or more of the following: municipal electric
16 systems, governmental aggregators, or rural electric
17 cooperatives in Illinois.

18 Section 1-10. Definitions.

19 "Agency" means the Illinois Power Agency.

20 "Agency loan agreement" means any agreement pursuant to
21 which the Illinois Finance Authority agrees to loan the
22 proceeds of revenue bonds issued with respect to a project to
23 the Agency upon terms providing for loan repayment installments
24 at least sufficient to pay when due all principal of, interest
25 and premium, if any, on those revenue bonds, and providing for

1 maintenance, insurance, and other matters in respect of the
2 project.

3 "Authority" means the Illinois Finance Authority.

4 "Commission" means the Illinois Commerce Commission.

5 "Costs incurred in connection with the development and
6 construction of a facility" means:

7 (1) the cost of acquisition of all real property and
8 improvements in connection therewith and equipment and
9 other property, rights, and easements acquired that are
10 deemed necessary for the operation and maintenance of the
11 facility;

12 (2) financing costs with respect to bonds, notes, and
13 other evidences of indebtedness of the Agency;

14 (3) all origination, commitment, utilization,
15 facility, placement, underwriting, syndication, credit
16 enhancement, and rating agency fees;

17 (4) engineering, design, procurement, consulting,
18 legal, accounting, title insurance, survey, appraisal,
19 escrow, trustee, collateral agency, interest rate hedging,
20 interest rate swap, capitalized interest and other
21 financing costs, and other expenses for professional
22 services; and

23 (5) the costs of plans, specifications, site study and
24 investigation, installation, surveys, other Agency costs
25 and estimates of costs, and other expenses necessary or
26 incidental to determining the feasibility of any project,

1 together with such other expenses as may be necessary or
2 incidental to the financing, insuring, acquisition, and
3 construction of a specific project and placing that project
4 in operation.

5 "Department" means the Department of Commerce and Economic
6 Opportunity.

7 "Director" means the Director of the Illinois Power Agency.

8 "Demand-response" means measures that decrease peak
9 electricity demand or shift demand from peak to off-peak
10 periods.

11 "Energy efficiency" means measures that reduce the amount
12 of electricity required to achieve a given end use.

13 "Electric utility" has the same definition as found in
14 Section 16-102 of the Public Utilities Act.

15 "Facility" means an electric generating unit or a
16 co-generating unit that produces electricity along with
17 related equipment necessary to connect the facility to an
18 electric transmission or distribution system.

19 "Governmental aggregator" means one or more units of local
20 government that individually or collectively procure
21 electricity to serve residential retail electrical loads
22 located within its or their jurisdiction.

23 "Local government" means a unit of local government as
24 defined in Article VII of Section 1 of the Illinois
25 Constitution.

26 "Municipality" means a city, village, or incorporated

1 town.

2 "Person" means any natural person, firm, partnership,
3 corporation, either domestic or foreign, company, association,
4 limited liability company, joint stock company, or association
5 and includes any trustee, receiver, assignee, or personal
6 representative thereof.

7 "Project" means the planning, bidding, and construction of
8 a facility.

9 "Public utility" has the same definition as found in
10 Section 3-105 of the Public Utilities Act.

11 "Real property" means any interest in land together with
12 all structures, fixtures, and improvements thereon, including
13 lands under water and riparian rights, any easements,
14 covenants, licenses, leases, rights-of-way, uses, and other
15 interests, together with any liens, judgments, mortgages, or
16 other claims or security interests related to real property.

17 "Renewable energy credit" means a tradable credit that
18 represents the environmental attributes of a certain amount of
19 energy produced from a renewable energy resource.

20 "Renewable energy resources" includes energy and its
21 associated renewable energy credit or renewable energy credits
22 from wind, solar thermal energy, photovoltaic cells and panels,
23 biodiesel, crops and untreated and unadulterated organic waste
24 biomass, trees and tree trimmings, hydropower that does not
25 involve new construction or significant expansion of
26 hydropower dams, and other alternative sources of

1 environmentally preferable energy. For purposes of this Act,
2 landfill gas produced in the State is considered a renewable
3 energy resource. "Renewable energy resources" does not include
4 the incineration, burning, or heating of tires, garbage,
5 general household, institutional, and commercial waste,
6 industrial lunchroom or office waste, landscape waste other
7 than trees and tree trimmings, railroad crossties, utility
8 poles, and construction or demolition debris, other than
9 untreated and unadulterated waste wood.

10 "Revenue bond" means any bond, note, or other evidence of
11 indebtedness issued by the Authority, the principal and
12 interest of which is payable solely from revenues or income
13 derived from any project or activity of the Agency.

14 "Total resource cost test" or "TRC test" means a standard
15 that is met if, for an investment in energy efficiency or
16 demand-response measures, the benefit-cost ratio is greater
17 than one. The benefit-cost ratio is the ratio of the net
18 present value of the total benefits of the program to the net
19 present value of the total costs as calculated over the
20 lifetime of the measures. A total resource cost test compares
21 the sum of avoided electric utility costs, representing the
22 benefits that accrue to the system and the participant in the
23 delivery of those efficiency measures, to the sum of all
24 incremental costs of end-use measures that are implemented due
25 to the program (including both utility and participant
26 contributions), plus costs to administer, deliver, and

1 evaluate each demand-side program, to quantify the net savings
2 obtained by substituting the demand-side program for supply
3 resources. In calculating avoided costs of power and energy
4 that an electric utility would otherwise have had to acquire,
5 reasonable estimates shall be included of financial costs
6 likely to be imposed by future regulations and legislation on
7 emissions of greenhouse gases.

8 Section 1-15. Illinois Power Agency.

9 (a) For the purpose of effectuating the policy declared in
10 Section 1-5 of this Act, a State agency known as the Illinois
11 Power Agency is created. The Agency shall exercise governmental
12 and public powers, be perpetual in duration, and have the
13 powers and duties enumerated in this Act, together with such
14 others conferred upon it by law.

15 (b) The Agency is not created or organized, and its
16 operations shall not be conducted, for the purpose of making a
17 profit. No part of the revenues or assets of the Agency shall
18 inure to the benefit of or be distributable to any of its
19 employees or any other private persons, except as provided in
20 this Act for actual services rendered.

21 Section 1-20. General powers of the Agency.

22 (a) The Agency is authorized to do each of the following:

23 (1) Develop electricity procurement plans to ensure
24 adequate, reliable, affordable, efficient, and

1 environmentally sustainable electric service at the lowest
2 total cost over time, taking into account any benefits of
3 price stability, for electric utilities that on December
4 31, 2005 provided electric service to at least 100,000
5 customers in Illinois. The procurement plans shall be
6 updated on an annual basis and shall include electricity
7 generated from renewable resources sufficient to achieve
8 the standards specified in this Act.

9 (2) Conduct competitive procurement processes to
10 procure the supply resources identified in the procurement
11 plan, pursuant to Section 16-111.5 of the Public Utilities
12 Act.

13 (3) Develop electric generation and co-generation
14 facilities that use indigenous coal or renewable
15 resources, or both, financed with bonds issued by the
16 Illinois Finance Authority.

17 (4) Supply electricity from the Agency's facilities at
18 cost to one or more of the following: municipal electric
19 systems, governmental aggregators, or rural electric
20 cooperatives in Illinois.

21 (b) Except as otherwise limited by this Act, the Agency has
22 all of the powers necessary or convenient to carry out the
23 purposes and provisions of this Act, including without
24 limitation, each of the following:

25 (1) To have a corporate seal, and to alter that seal at
26 pleasure, and to use it by causing it or a facsimile to be

1 affixed or impressed or reproduced in any other manner.

2 (2) To use the services of the Illinois Finance
3 Authority necessary to carry out the Agency's purposes.

4 (3) To negotiate and enter into loan agreements and
5 other agreements with the Illinois Finance Authority.

6 (4) To obtain and employ personnel and hire consultants
7 that are necessary to fulfill the Agency's purposes, and to
8 make expenditures for that purpose within the
9 appropriations for that purpose.

10 (5) To purchase, receive, take by grant, gift, devise,
11 bequest, or otherwise, lease, or otherwise acquire, own,
12 hold, improve, employ, use, and otherwise deal in and with,
13 real or personal property whether tangible or intangible,
14 or any interest therein, within the State.

15 (6) To acquire real or personal property, whether
16 tangible or intangible, including without limitation
17 property rights, interests in property, franchises,
18 obligations, contracts, and debt and equity securities,
19 and to do so by the exercise of the power of eminent domain
20 in accordance with Section 1-21; except that any real
21 property acquired by the exercise of the power of eminent
22 domain must be located within the State.

23 (7) To sell, convey, lease, exchange, transfer,
24 abandon, or otherwise dispose of, or mortgage, pledge, or
25 create a security interest in, any of its assets,
26 properties, or any interest therein, wherever situated.

1 (8) To purchase, take, receive, subscribe for, or
2 otherwise acquire, hold, make a tender offer for, vote,
3 employ, sell, lend, lease, exchange, transfer, or
4 otherwise dispose of, mortgage, pledge, or grant a security
5 interest in, use, and otherwise deal in and with, bonds and
6 other obligations, shares, or other securities (or
7 interests therein) issued by others, whether engaged in a
8 similar or different business or activity.

9 (9) To make and execute agreements, contracts, and
10 other instruments necessary or convenient in the exercise
11 of the powers and functions of the Agency under this Act,
12 including contracts with any person, local government,
13 State agency, or other entity; and all State agencies and
14 all local governments are authorized to enter into and do
15 all things necessary to perform any such agreement,
16 contract, or other instrument with the Agency. No such
17 agreement, contract, or other instrument shall exceed 40
18 years.

19 (10) To lend money, invest and reinvest its funds in
20 accordance with the Public Funds Investment Act, and take
21 and hold real and personal property as security for the
22 payment of funds loaned or invested.

23 (11) To borrow money at such rate or rates of interest
24 as the Agency may determine, issue its notes, bonds, or
25 other obligations to evidence that indebtedness, and
26 secure any of its obligations by mortgage or pledge of its

1 real or personal property, machinery, equipment,
2 structures, fixtures, inventories, revenues, grants, and
3 other funds as provided or any interest therein, wherever
4 situated.

5 (12) To enter into agreements with the Illinois Finance
6 Authority to issue bonds whether or not the income
7 therefrom is exempt from federal taxation.

8 (13) To procure insurance against any loss in
9 connection with its properties or operations in such amount
10 or amounts and from such insurers, including the federal
11 government, as it may deem necessary or desirable, and to
12 pay any premiums therefor.

13 (14) To negotiate and enter into agreements with
14 trustees or receivers appointed by United States
15 bankruptcy courts or federal district courts or in other
16 proceedings involving adjustment of debts and authorize
17 proceedings involving adjustment of debts and authorize
18 legal counsel for the Agency to appear in any such
19 proceedings.

20 (15) To file a petition under Chapter 9 of Title 11 of
21 the United States Bankruptcy Code or take other similar
22 action for the adjustment of its debts.

23 (16) To enter into management agreements for the
24 operation of any of the property or facilities owned by the
25 Agency.

26 (17) To enter into an agreement to transfer and to

1 transfer any land, facilities, fixtures, or equipment of
2 the Agency to one or more municipal electric systems,
3 governmental aggregators, or rural electric agencies or
4 cooperatives, for such consideration and upon such terms as
5 the Agency may determine to be in the best interest of the
6 citizens of Illinois.

7 (18) To enter upon any lands and within any building
8 whenever in its judgment it may be necessary for the
9 purpose of making surveys and examinations to accomplish
10 any purpose authorized by this Act.

11 (19) To maintain an office or offices at such place or
12 places in the State as it may determine.

13 (20) To request information, and to make any inquiry,
14 investigation, survey, or study that the Agency may deem
15 necessary to enable it effectively to carry out the
16 provisions of this Act.

17 (21) To accept and expend appropriations.

18 (22) To engage in any activity or operation that is
19 incidental to and in furtherance of efficient operation to
20 accomplish the Agency's purposes.

21 (23) To adopt, revise, amend, and repeal rules with
22 respect to its operations, properties, and facilities as
23 may be necessary or convenient to carry out the purposes of
24 this Act, subject to the provisions of the Illinois
25 Administrative Procedure Act and Sections 1-22 and 1-35 of
26 this Act.

1 (24) To establish and collect charges and fees as
2 described in this Act.

3 Section 1-21. Eminent domain. The Agency may take and
4 acquire possession by eminent domain of any property or
5 interest in property that the Agency is authorized to acquire
6 under this Act for the construction, maintenance, or operation
7 of a facility with the consent in writing of the Governor,
8 after following the provisions of Section 1-85(a) of this Act,
9 to acquire by private purchase, or by condemnation in the
10 manner provided for the exercise of the power of eminent domain
11 under the Eminent Domain Act. The power of condemnation shall
12 be exercised, however, solely for the purposes of one or more
13 of the following: siting, rights of way, and easements
14 appurtenant. The Agency shall not exercise its powers of
15 condemnation until it has used reasonable good faith efforts to
16 acquire the property before filing a petition for condemnation
17 and may thereafter use those powers when it determines that the
18 condemnation of the property rights is necessary to avoid
19 unreasonable delay or economic hardship to the progress of
20 activities carried out in the exercise of powers granted under
21 this Act. Before use of the power of condemnation for projects,
22 the Agency shall hold a public hearing to receive comments on
23 the exercise of the power of condemnation. The Agency shall use
24 the information received at the hearing in making its final
25 decision on the exercise of the power of condemnation. The

1 hearing shall be held in a location reasonably accessible to
2 the public interested in the decision. The Agency shall
3 promulgate guidelines for the conduct of the hearing. The
4 Agency shall conduct a feasibility study showing that the
5 taking is necessary to accomplish the purposes of this Act and
6 that is adequate to meet the environmental standards set forth
7 by the State and the federal governments. The Agency may not
8 exercise the authority provided in Article 20 of the Eminent
9 Domain Act (quick-take procedure) providing for immediate
10 possession in those proceedings. The Agency does not have the
11 power to exercise eminent domain over the property of any
12 public utility or any person owning an electric generating
13 plant.

14 Section 1-22. Authority of the Illinois Commerce
15 Commission. Nothing in this Act infringes upon the authority
16 granted to the Commission.

17 Section 1-25. Agency subject to other laws. Unless
18 otherwise stated, the Agency is subject to the provisions of
19 all applicable laws, including but not limited to, each of the
20 following:

- 21 (1) The State Records Act.
- 22 (2) The Illinois Procurement Code.
- 23 (3) The Freedom of Information Act.
- 24 (4) The State Property Control Act.

1 (5) The Personnel Code.

2 (6) The State Officials and Employees Ethics Act.

3 Section 1-30.1. Administrative Procedure Act applies. The
4 provisions of the Illinois Administrative Procedure Act are
5 expressly adopted and incorporated into this Act, and apply to
6 all administrative rules and procedures of the Agency.

7 Section 1-30.2. Administrative Review Law applies. Any
8 final administrative decision of the Agency, or of the Director
9 of the Agency, that is not subject to review by the Commission,
10 is subject to review under the provisions of the Administrative
11 Review Law.

12 Section 1-30.3. Illinois State Auditing Act applies. For
13 purposes of the Illinois State Auditing Act, the Agency is a
14 "State agency" within the meaning of the Act and is subject to
15 the jurisdiction of the Auditor General.

16 Section 1-35. Agency rules. The Agency shall adopt rules as
17 may be necessary and appropriate for the operation of the
18 Agency. In addition to other rules relevant to the operation of
19 the Agency, the Agency shall adopt rules that accomplish each
20 of the following:

21 (1) Establish procedures for monitoring the
22 administration of any contract administered directly or

1 indirectly by the Agency; except that the procedures shall
2 not extend to executed contracts between electric
3 utilities and their suppliers.

4 (2) Establish procedures for the recovery of costs
5 incurred in connection with the development and
6 construction of a facility should the Agency cancel a
7 project, provided that no such costs shall be passed on to
8 public utilities or their customers or paid from the
9 Illinois Power Agency Operations Fund.

10 (3) Implement accounting rules and a system of
11 accounts, in accordance with State law, permitting all
12 reporting (i) required by the State, (ii) required under
13 this Act, (iii) required by the Authority, or (iv) required
14 under the Public Utilities Act.

15 The Agency shall not adopt any rules that infringe upon the
16 authority granted to the Commission.

17 Section 1-40. Illinois Power Agency Operations Fund.

18 (a) The Illinois Power Agency Operations Fund is created as
19 a special fund in the State treasury.

20 (b) The Illinois Power Agency Operations Fund shall be
21 administered by the Agency for the Agency's operations as
22 specified in this Section.

23 (c) All moneys used by the Agency from the Illinois Power
24 Agency Operations Fund are subject to appropriation by the
25 General Assembly.

1 (d) All disbursements from the Illinois Power Agency
2 Operations Fund shall be made only upon warrants of the State
3 Comptroller drawn upon the State Treasurer as custodian of the
4 Fund upon vouchers signed by the Director or by the person or
5 persons designated by the Director for that purpose. The
6 Comptroller is authorized to draw the warrant upon vouchers so
7 signed. The State Treasurer shall accept all warrants so signed
8 and shall be released from liability for all payments made on
9 those warrants.

10 Section 1-45. Illinois Power Agency Facilities Fund.

11 (a) The Illinois Power Agency Facilities Fund is created as
12 a special fund in the State treasury.

13 (b) The Illinois Power Agency Facilities Fund shall be
14 administered by the Agency for costs incurred in connection
15 with the development and construction of a facility by the
16 Agency as well as costs incurred in connection with the
17 operation and maintenance of an Agency facility.

18 (c) All moneys used by the Agency from the Illinois Power
19 Agency Facilities Fund are subject to appropriation by the
20 General Assembly.

21 (d) All disbursements from the Illinois Power Agency
22 Facilities Fund shall be made only upon warrants of the State
23 Comptroller drawn upon the State Treasurer as custodian of the
24 Fund upon vouchers signed by the Director or by the person or
25 persons designated by the Director for that purpose. The

1 Comptroller is authorized to draw the warrant upon vouchers so
2 signed. The State Treasurer shall accept all warrants so signed
3 and shall be released from liability for all payments made on
4 those warrants.

5 Section 1-50. Illinois Power Agency Debt Service Fund.

6 (a) The Illinois Power Agency Debt Service Fund is created
7 as a special fund in the State treasury.

8 (b) The Illinois Power Agency Debt Service Fund shall be
9 administered by the Agency for retirement of revenue bonds
10 issued for any Agency facility.

11 Section 1-55. Operations Funding. The Agency shall adopt
12 rules regarding charges and fees it is expressly authorized to
13 collect in order to fund the operations of the Agency. These
14 charges and fees shall be deposited into the Illinois Power
15 Agency Operations Fund.

16 Section 1-57. Facility financing.

17 (a) The Agency shall have the power (1) to borrow from the
18 Authority, through one or more Agency loan agreements, the net
19 proceeds of revenue bonds for costs incurred in connection with
20 the development and construction of a facility, provided that
21 the stated maturity date of any of those revenue bonds shall
22 not exceed 40 years from their respective issuance dates, (2)
23 to accept prepayments from purchasers of electric energy from a

1 project and to apply the same to costs incurred in connection
2 with the development and construction of a facility, subject to
3 any obligation to refund the same under the circumstances
4 specified in the purchasers' contract for the purchase and sale
5 of electric energy from that project, (3) to enter into leases
6 or similar arrangements to finance the property constituting a
7 part of a project and associated costs incurred in connection
8 with the development and construction of a facility, provided
9 that the term of any such lease or similar arrangement shall
10 not exceed 40 years from its inception, and (4) to enter into
11 agreements for the sale of revenue bonds that bear interest at
12 a rate or rates not exceeding the maximum rate permitted by the
13 Bond Authorization Act. All Agency loan agreements shall
14 include terms making the obligations thereunder subject to
15 redemption before maturity.

16 (b) The Agency may from time to time engage the services of
17 the Authority, attorneys, appraisers, architects, engineers,
18 accountants, credit analysts, bond underwriters, bond
19 trustees, credit enhancement providers, and other financial
20 professionals and consultants, if the Agency deems it
21 advisable.

22 (c) The Agency may pledge, as security for the payment of
23 its revenue bonds in respect of a project, (1) revenues derived
24 from the operation of the project in part or whole, (2) the
25 real and personal property, machinery, equipment, structures,
26 fixtures, and inventories directly associated with the

1 project, (3) grants or other revenues or taxes expected to be
2 received by the Agency directly linked to the project, (4)
3 payments to be made by another governmental unit or other
4 entity pursuant to a service, user, or other similar agreement
5 with that governmental unit or other entity that is a result of
6 the project, (5) any other revenues or moneys deposited or to
7 be deposited directly linked to the project, (6) all design,
8 engineering, procurement, construction, installation,
9 management, and operation agreements associated with the
10 project, (7) any reserve or debt service funds created under
11 the agreements governing the indebtedness, (8) the Illinois
12 Power Agency Facilities Fund or the Illinois Power Agency Debt
13 Service Fund, or (9) any combination thereof. Any such pledge
14 shall be authorized in a writing, signed by the Director of the
15 Agency, and then signed by the Governor of Illinois. At no time
16 shall the funds contained in the Illinois Power Agency Trust
17 Fund be pledged or used in any way to pay for the indebtedness
18 of the Agency. The Director shall not authorize the issuance or
19 grant of any pledge until he or she has certified that any
20 associated project is in full compliance with Sections 1-85 and
21 1-86 of this Act. The certification shall be duly attached or
22 referenced in the agreements reflecting the pledge. Any such
23 pledge made by the Agency shall be valid and binding from the
24 time the pledge is made. The revenues, property, or funds that
25 are pledged and thereafter received by the Agency shall
26 immediately be subject to the lien of the pledge without any

1 physical delivery thereof or further act; and, subject only to
2 the provisions of prior liens, the lien of the pledge shall be
3 valid and binding as against all parties having claims of any
4 kind in tort, contract, or otherwise against the Agency
5 irrespective of whether the parties have notice thereof. All
6 bonds issued on behalf of the Agency must be issued by the
7 Authority and must be revenue bonds. These revenue bonds may be
8 taxable or tax-exempt.

9 (d) All indebtedness issued by or on behalf of the Agency,
10 including, without limitation, any revenue bonds issued by the
11 Authority on behalf of the Agency, shall not be a debt of the
12 State, the Authority, any political subdivision thereof (other
13 than the Agency to the extent provided in agreements governing
14 the indebtedness), any local government, any governmental
15 aggregator as defined in the this Act, or any local government,
16 and none of the State, the Authority, any political subdivision
17 thereof (other than the Agency to the extent provided in
18 agreements governing the indebtedness), any local government,
19 or any government aggregator shall be liable thereon. Neither
20 the Authority nor the Agency shall have the power to pledge the
21 credit, the revenues, or the taxing power of the State, any
22 political subdivision thereof (other than the Agency), any
23 governmental aggregator, or of any local government, and
24 neither the credit, the revenues, nor the taxing power of the
25 State, any political subdivision thereof (other than the
26 Agency), any governmental aggregator, or any local government

1 shall be, or shall be deemed to be, pledged to the payment of
2 any revenue bonds, notes, or other obligations of the Agency.
3 In addition, the agreements governing any issue of indebtedness
4 shall provide that all holders of that indebtedness, by virtue
5 of their acquisition thereof, have agreed to waive and release
6 all claims and causes of action against the State of Illinois
7 in respect of the indebtedness or any project associated
8 therewith based on any theory of law. However, the waiver shall
9 not prohibit the holders of indebtedness issued on behalf of
10 the Agency from filing any cause of action against or
11 recovering damages from the Agency, recovering from any
12 property or funds pledged to secure the indebtedness, or
13 recovering from any property or funds to which the Agency holds
14 title, provided the property or funds are directly associated
15 with the project for which the indebtedness was specifically
16 issued. Each evidence of indebtedness of the Agency, including
17 the revenue bonds issued by the Authority on behalf of the
18 Agency, shall contain a clear and explicit statement of the
19 provisions of this Section.

20 (e) The Agency may from time to time enter into an
21 agreement or agreements to defease indebtedness issued on its
22 behalf or to refund, at maturity, at a redemption date or in
23 advance of either, any indebtedness issued on its behalf or
24 pursuant to redemption provisions or at any time before
25 maturity. All such refunding indebtedness shall be subject to
26 the requirements set forth in subsections (a), (c), and (d) of

1 this Section. No revenue bonds issued to refund or advance
2 refund revenue bonds issued under this Section may mature later
3 than the longest maturity date of the series of bonds being
4 refunded. After the aggregate original principal amount of
5 revenue bonds authorized in this Section has been issued, the
6 payment of any principal amount of those revenue bonds does not
7 authorize the issuance of additional revenue bonds (except
8 refunding revenue bonds).

9 (f) If the Agency fails to pay the principal of, interest,
10 or premium, if any, on any indebtedness as the same becomes
11 due, a civil action to compel payment may be instituted in the
12 appropriate circuit court by the holder or holders of the
13 indebtedness on which the default of payment exists or by any
14 administrative agent, collateral agent, or indenture trustee
15 acting on behalf of those holders. Delivery of a summons and a
16 copy of the complaint to the Director of the Agency shall
17 constitute sufficient service to give the circuit court
18 jurisdiction over the subject matter of the suit and
19 jurisdiction over the Agency and its officers named as
20 defendants for the purpose of compelling that payment. Any
21 case, controversy, or cause of action concerning the validity
22 of this Act shall relate to the revenue of the Agency. Any such
23 claims and related proceedings are subject in all respects to
24 the provisions of subsection (d) of this Section. The State of
25 Illinois shall not be liable or in any other way financially
26 responsible for any indebtedness issued by or on behalf of the

1 Agency or the performance or non-performance of any covenants
2 associated with any such indebtedness. The foregoing statement
3 shall not prohibit the holders of any indebtedness issued on
4 behalf of the Agency from filing any cause of action against or
5 recovering damages from the Agency recovering from any property
6 pledged to secure that indebtedness or recovering from any
7 property or funds to which the Agency holds title provided such
8 property or funds are directly associated with the project for
9 which the indebtedness is specifically issued.

10 (g) Upon each delivery of the revenue bonds authorized to
11 be issued by the Authority under this Act, the Agency shall
12 compute and certify to the State Comptroller the total amount
13 of principal of and interest on the Agency loan agreement
14 supporting the revenue bonds issued that will be payable in
15 order to retire those revenue bonds and the amount of principal
16 of and interest on the Agency loan agreement that will be
17 payable on each payment date during the then current and each
18 succeeding fiscal year. As soon as possible after the first day
19 of each month, beginning on the date set forth in the Agency
20 loan agreement where that date specifies when the Agency shall
21 begin setting aside revenues and other moneys for repayment of
22 the revenue bonds per the agreed to schedule, the Agency shall
23 certify to the Comptroller and the Comptroller shall order
24 transferred and the Treasurer shall transfer from the Illinois
25 Power Agency Facilities Fund to the Illinois Power Agency Debt
26 Service Fund for each month remaining in the State fiscal year

1 a sum of money, appropriated for that purpose, equal to the
2 result of the amount of principal of and interest on those
3 revenue bonds payable on the next payment date divided by the
4 number of full calendar months between the date of those
5 revenue bonds, and the first such payment date, and thereafter
6 divided by the number of months between each succeeding payment
7 date after the first. The Comptroller is authorized and
8 directed to draw warrants on the State Treasurer from the
9 Illinois Power Agency Facilities Fund and the Illinois Power
10 Agency Debt Service Fund for the amount of all payments of
11 principal and interest on the Agency loan agreement relating to
12 the Authority revenue bonds issued under this Act. The State
13 Treasurer or the State Comptroller shall deposit or cause to be
14 deposited any amount of grants or other revenues expected to be
15 received by the Agency that the Agency has pledged to the
16 payment of revenue bonds directly into the Illinois Power
17 Agency Debt Service Fund.

18 Section 1-60. Moneys made available by private or public
19 entities.

20 (a) The Agency may apply for, receive, expend, allocate, or
21 disburse funds and moneys made available by public or private
22 entities, including, but not limited to, contracts, private or
23 public financial gifts, bequests, grants, or donations from
24 individuals, corporations, foundations, or public or private
25 institutions of higher learning. All funds received by the

1 Agency from these sources shall be deposited:

2 (1) into the Illinois Power Agency Operations Fund, if
3 for general Agency operations, to be held by the State
4 Treasurer as ex officio custodian, and subject to the
5 Comptroller-Treasurer, voucher-warrant system; or

6 (2) into the Illinois Power Agency Facilities Fund, if
7 for costs incurred in connection with the development and
8 construction of a facility by the Agency, to be held by the
9 State Treasurer as ex officio custodian, and subject to the
10 Comptroller-Treasurer, voucher-warrant system.

11 Any funds received, expended, allocated, or disbursed
12 shall be expended by the Agency for the purposes as indicated
13 by the grantor, donor, or, in the case of funds or moneys given
14 or donated for no specific purposes, for any purpose deemed
15 appropriate by the Director in administering the
16 responsibilities of the Agency as set forth in this Act.

17 Section 1-65. Appropriations for operations.

18 (a) The General Assembly may appropriate moneys from the
19 General Revenue Fund for the operation of the Illinois Power
20 Agency in Fiscal Year 2008 not to exceed \$1,250,000 and in
21 Fiscal Year 2009 not to exceed \$1,500,000. These appropriated
22 funds shall constitute an advance that the Agency shall repay
23 without interest to the State in Fiscal Year 2010 and in Fiscal
24 Year 2011. Beginning with Fiscal Year 2010, the operation of
25 the Agency shall be funded solely from moneys in the Illinois

1 Power Agency Operations Fund with no liability or obligation
2 imposed on the State by those operations.

3 Section 1-70. Agency officials.

4 (a) The Agency shall have a Director who meets the
5 qualifications specified in Section 5-222 of the Civil
6 Administrative Code of Illinois (20 ILCS 5/5-222).

7 (b) Within the Illinois Power Agency, the Agency shall
8 establish a Planning and Procurement Bureau and a Resource
9 Development Bureau. Each Bureau shall report to the Director.

10 (c) The Chief of the Planning and Procurement Bureau shall
11 be appointed by the Director and (i) shall have at least 10
12 years of direct experience in electricity supply planning and
13 procurement and (ii) shall also hold an advanced degree in risk
14 management, law, business, or a related field.

15 (d) The Chief of the Resource Development Bureau shall be
16 appointed by the Director and (i) shall have at least 10 years
17 of direct experience in electric generating project
18 development and (ii) shall also hold an advanced degree in
19 economics, engineering, law, business, or a related field.

20 (e) The Director shall receive an annual salary of \$100,000
21 or as set by the Compensation Review Board, whichever is
22 higher. The Bureau Chiefs shall each receive an annual salary
23 of \$85,000 or as set by the Compensation Review Board,
24 whichever is higher.

25 (f) The Director and Bureau Chiefs shall not, for 2 years

1 prior to appointment or for 2 years after he or she leaves his
2 or her position, be employed by an electric utility,
3 independent power producer, power marketer, or alternative
4 retail electric supplier regulated by the Commission or the
5 Federal Energy Regulatory Commission.

6 (g) The Director and Bureau Chiefs are prohibited from: (i)
7 owning, directly or indirectly, 5% or more of the voting
8 capital stock of an electric utility, independent power
9 producer, power marketer, or alternative retail electric
10 supplier; (ii) being in any chain of successive ownership of 5%
11 or more of the voting capital stock of any electric utility,
12 independent power producer, power marketer, or alternative
13 retail electric supplier; (iii) receiving any form of
14 compensation, fee, payment, or other consideration from an
15 electric utility, independent power producer, power marketer,
16 or alternative retail electric supplier, including legal fees,
17 consulting fees, bonuses, or other sums. These limitations do
18 not apply to any compensation received pursuant to a defined
19 benefit plan or other form of deferred compensation, provided
20 that the individual has otherwise severed all ties to the
21 utility, power producer, power marketer, or alternative retail
22 electric supplier.

23 Section 1-75. Planning and Procurement Bureau. The
24 Planning and Procurement Bureau has the following duties and
25 responsibilities:

1 (a) The Planning and Procurement Bureau shall each
2 year, beginning in 2008, develop procurement plans and
3 conduct competitive procurement processes in accordance
4 with the requirements of Section 16-111.5 of the Public
5 Utilities Act for the eligible retail customers of electric
6 utilities that on December 31, 2005 provided electric
7 service to at least 100,000 customers in Illinois. For the
8 purposes of this Section, the term "eligible retail
9 customers" has the same definition as found in Section
10 16-111.5(a) of the Public Utilities Act.

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

17 (A) direct previous experience assembling
18 large-scale power supply plans or portfolios for
19 end-use customers;

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

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

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

1 Energy Regulatory Commission and regional
2 transmission organizations;

3 (E) expertise in credit protocols and
4 familiarity with contract protocols;

5 (F) adequate resources to perform and fulfill
6 the required functions and responsibilities; and

7 (G) the absence of a conflict of interest and
8 inappropriate bias for or against potential
9 bidders or the affected electric utilities.

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

16 (A) direct previous experience administering a
17 large-scale competitive procurement process;

18 (B) an advanced degree in economics,
19 mathematics, engineering, or a related area of
20 study;

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

23 (D) expertise in wholesale electricity market
24 rules, including those established by the Federal
25 Energy Regulatory Commission and regional
26 transmission organizations;

1 (E) expertise in credit and contract
2 protocols;

3 (F) adequate resources to perform and fulfill
4 the required functions and responsibilities; and

5 (G) the absence of a conflict of interest and
6 inappropriate bias for or against potential
7 bidders or the affected electric utilities.

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

25 (A) failure to satisfy qualification criteria;

26 (B) identification of a conflict of interest;

1 or

2 (C) evidence of inappropriate bias for or
3 against potential bidders or the affected
4 utilities.

5 The Agency shall remove experts or expert
6 consulting firms from the lists within 10 days if there
7 is a reasonable basis for an objection and provide the
8 updated lists to the affected utilities and other
9 interested parties. If the Agency fails to remove an
10 expert or expert consulting firm from a list, an
11 objecting party may seek review by the Commission
12 within 5 days thereafter by filing a petition, and the
13 Commission shall render a ruling on the petition within
14 10 days. There is no right of appeal of the
15 Commission's ruling.

16 (4) The Agency shall issue requests for proposals
17 to the qualified experts or expert consulting firms to
18 develop a procurement plan for the affected utilities
19 and to serve as procurement administrator.

20 (5) The Agency shall select an expert or expert
21 consulting firm to develop procurement plans based on
22 the proposals submitted and shall award one-year
23 contracts to those selected with an option for the
24 Agency for a one-year renewal.

25 (6) The Agency shall select an expert or expert
26 consulting firm, with approval of the Commission, to

1 serve as procurement administrator based on the
2 proposals submitted. If the Commission rejects, within
3 5 days, the Agency's selection, the Agency shall submit
4 another recommendation within 3 days based on the
5 proposals submitted. The Agency shall award a one-year
6 contract to the expert or expert consulting firm so
7 selected with Commission approval with an option for
8 the Agency for a one-year renewal.

9 (b) The experts or expert consulting firms retained by
10 the Agency shall, as appropriate, prepare procurement
11 plans, and conduct a competitive procurement process as
12 prescribed in Section 16-111.5 of the Public Utilities Act,
13 to ensure adequate, reliable, affordable, efficient, and
14 environmentally sustainable electric service at the lowest
15 total cost over time, taking into account any benefits of
16 price stability, for eligible retail customers of electric
17 utilities that on December 31, 2005 provided electric
18 service to at least 100,000 customers in the State of
19 Illinois.

20 (c) Renewable portfolio standard.

21 (1) The procurement plans shall include
22 cost-effective renewable energy resources. A minimum
23 percentage of each utility's total supply to serve the
24 load of eligible retail customers, as defined in
25 Section 16-111.5(a) of the Public Utilities Act,
26 procured for each of the following years shall be

1 generated from cost-effective renewable energy
2 resources: at least 2% by June 1, 2008; at least 4% by
3 June 1, 2009; at least 5% by June 1, 2010; at least 6%
4 by June 1, 2011; at least 7% by June 1, 2012; at least
5 8% by June 1, 2013; at least 9% by June 1, 2014; at
6 least 10% by June 1, 2015; and increasing by at least
7 1.5% each year thereafter to at least 25% by June 1,
8 2025. To the extent that it is available, at least 75%
9 of the renewable energy resources used to meet these
10 standards shall come from wind generation. For
11 purposes of this Section, "cost-effective" means that
12 the costs of procuring renewable energy resources do
13 not cause the limit stated in paragraph (2) of this
14 subsection (c) to be exceeded.

15 (2) For purposes of this subsection (c), the
16 required procurement of cost-effective renewable
17 energy resources for a particular year shall be
18 measured as a percentage of the actual amount of
19 electricity (megawatt-hours) supplied by the electric
20 utility to eligible retail customers in the planning
21 year ending immediately prior to the procurement. For
22 purposes of this subsection (c), the amount per
23 kilowatthour means the total amount paid for electric
24 service expressed on a per kilowatthour basis. For
25 purposes of this subsection (c), the total amount paid
26 for electric service includes without limitation

1 amounts paid for supply, transmission, distribution,
2 surcharges, and add-on taxes.

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

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

14 (B) in 2009, the greater of an additional 0.5%
15 of the amount paid per kilowatthour by those
16 customers during the year ending May 31, 2008 or 1%
17 of the amount paid per kilowatthour by those
18 customers during the year ending May 31, 2007;

19 (C) in 2010, the greater of an additional 0.5%
20 of the amount paid per kilowatthour by those
21 customers during the year ending May 31, 2009 or
22 1.5% of the amount paid per kilowatthour by those
23 customers during the year ending May 31, 2007;

24 (D) in 2011, the greater of an additional 0.5%
25 of the amount paid per kilowatthour by those
26 customers during the year ending May 31, 2010 or 2%

1 of the amount paid per kilowatthour by those
2 customers during the year ending May 31, 2007; and

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

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

22 (3) Through June 1, 2011, renewable energy
23 resources shall be counted for the purpose of meeting
24 the renewable energy standards set forth in paragraph
25 (1) of this subsection (c) only if they are generated
26 from facilities located in the State, provided that

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

17 (4) The electric utility shall retire all
18 renewable energy credits used to comply with the
19 standard.

20 (d) The draft procurement plans are subject to public
21 comment, as required by Section 16-111.5 of the Public
22 Utilities Act.

23 (e) The Agency shall submit the final procurement plan
24 to the Commission. The Agency shall revise a procurement
25 plan if the Commission determines that it does not meet the
26 standards set forth in Section 16-111.5 of the Public

1 Utilities Act.

2 (f) The Agency shall assess fees to each affected
3 utility to recover the costs incurred in preparation of the
4 annual procurement plan for the utility.

5 (g) The Agency shall assess fees to each bidder to
6 recover the costs incurred in connection with a competitive
7 procurement process.

8 Section 1-80. Resource Development Bureau. The Resource
9 Development Bureau has the following duties and
10 responsibilities:

11 (a) At the Agency's discretion, conduct feasibility
12 studies on the construction of any facility. Funding for a
13 study shall come from either:

14 (i) fees assessed by the Agency on municipal
15 electric systems, governmental aggregators, unit or
16 units of local government, or rural electric
17 cooperatives requesting the feasibility study; or

18 (ii) an appropriation from the General Assembly.

19 (b) If the Agency undertakes the construction of a
20 facility, moneys generated from the sale of revenue bonds
21 by the Authority for the facility shall be used to
22 reimburse the source of the money used for the facility's
23 feasibility study.

24 (c) The Agency may develop, finance, construct, or
25 operate electric generation and co-generation facilities

1 that use indigenous coal or renewable resources, or both,
2 financed with bonds issued by the Authority on behalf of
3 the Agency. Preference shall be given to technologies that
4 enable carbon capture and sites in locations where the
5 geology is suitable for carbon sequestration.

6 (1) The Agency may enter into contractual
7 arrangements with private and public entities,
8 including but not limited to municipal electric
9 systems, governmental aggregators, and rural electric
10 cooperatives, to plan, site, construct, improve,
11 rehabilitate, and operate those electric generation
12 and co-generation facilities. No contract shall be
13 entered into by the Agency that would jeopardize the
14 tax-exempt status of any bond issued in connection with
15 a project for which the Agency entered into the
16 contract.

17 (2) The Agency shall hold at least one public
18 hearing before entering into any such contractual
19 arrangements. At least 30-days' notice of the hearing
20 shall be given by publication once in each week during
21 that period in 6 newspapers within the State, at least
22 one of which has a circulation area that includes the
23 location of the proposed facility.

24 (3) The first facility that the Agency develops,
25 finances, or constructs shall be a facility that uses
26 coal produced in Illinois. The Agency may, however,

1 also develop, finance, or construct renewable energy
2 facilities after work on the first facility has
3 commenced.

4 (4) The Agency may not develop, finance, or
5 construct a nuclear power plant.

6 (5) The Agency shall assess fees to applicants
7 seeking to partner with the Agency on projects.

8 (d) Use of electricity generated by the Agency's
9 facilities. The Agency may supply electricity produced by
10 the Agency's facilities to municipal electric systems,
11 governmental aggregators, or rural electric cooperatives
12 in Illinois. The electricity shall be supplied at cost.

13 (1) Contracts to supply power and energy from the
14 Agency's facilities shall provide for the effectuation
15 of the policies set forth in this Act.

16 (2) The contracts shall also provide that,
17 notwithstanding any provision in the Public Utilities
18 Act, entities supplied with power and energy from an
19 Agency facility shall supply the power and energy to
20 retail customers at the same price paid to purchase
21 power and energy from the Agency.

22 (e) Electric utilities shall not be required to purchase
23 electricity directly or indirectly from facilities developed
24 or sponsored by the Agency.

25 (f) The Agency may sell excess capacity and excess energy
26 into the wholesale electric market at prevailing market rates;

1 provided, however, the Agency may not sell excess capacity or
2 excess energy through the procurement process described in
3 Section 16-111.5 of the Public Utilities Act.

4 (g) The Agency shall not directly sell electric power and
5 energy to retail customers. Nothing in this paragraph shall be
6 construed to prohibit sales to municipal electric systems,
7 governmental aggregators, or rural electric cooperatives.

8 Section 1-85. Construction of facilities. The Agency may
9 begin construction of a facility costing the Agency more than
10 \$100,000,000 only if the Agency demonstrates each of the
11 following:

12 (a) After conducting a study, that the construction and
13 operation of the facility is feasible.

14 (b) That the project does not materially adversely
15 affect overall real property taxes in the taxing
16 jurisdictions where the facility is to be located.

17 (c) That the Agency has received all required federal,
18 State, and local government licenses, permits, or approval
19 for the facility.

20 (d) That the Agency has obtained binding written
21 commitments from municipal electric systems, governmental
22 aggregators, or rural electric cooperatives constituting
23 agreements to purchase, in the aggregate, at least 75% of
24 the anticipated output of the facility for a time period
25 long enough to ensure recovery of:

1 (1) all costs, including interest, amortization
2 charges, and reserve charges, sufficient to retire
3 revenue bonds issued for costs incurred in connection
4 with the development and construction of a facility;
5 and

6 (2) all operating, capital, administrative, and
7 general expenses for the continued operation of the
8 facility, including fiscal reserves, and any
9 depreciation charges or costs.

10 (e) That the Agency has a reasonable plan to sell the
11 remaining anticipated output of the facility to municipal
12 electric systems, governmental aggregators, or rural
13 electric cooperatives.

14 Section 1-86. General Assembly approval. For projects
15 costing the Agency \$1,000,000,000 or more, in addition to the
16 provisions of Section 1-85, the General Assembly must adopt a
17 joint resolution of the House of Representatives and the Senate
18 approving the construction of the facility.

19 Section 1-87. Management and operating agreements. For
20 projects costing the Agency \$1,000,000,000 or more, the Agency
21 shall enter into management and operating agreements for the
22 relevant facility or facilities. Solicitation for any such
23 management and operating agreement shall be pursuant to a
24 request for proposals. The agreements must comply with the

1 Internal Revenue Code and its regulations and shall not
2 jeopardize the tax-exempt status of any bond issued in
3 connection with a project for which the Agency entered into the
4 agreement.

5 Section 1-90. Distribution and transmission facilities.
6 The Agency shall not own or acquire distribution or
7 transmission facilities except as necessary to connect an
8 Agency facility to an electric transmission or distribution
9 system.

10 Section 1-95. Insurance. Upon the Authority's issuance of
11 revenue bonds for an Agency facility, the Agency shall purchase
12 an insurance policy to cover those construction and operation
13 costs associated with the facility. The policy shall remain in
14 effect for the time period under which the Agency may accrue
15 any liabilities associated with the facility.

16 Section 1-100. Timely payment to Agency. Any party
17 receiving electricity shall make timely payment on all bills
18 rendered by the Agency. Any violation of contractual terms by a
19 party receiving electricity from an Agency facility is grounds
20 for cancellation and termination of the contract.

21 Section 1-105. Deposit of revenue. All revenue from
22 contracts described in Section 1-80(d) shall be deposited into

1 the Illinois Power Agency Facilities Fund.

2 Section 1-110. State Police reimbursement. The Agency
3 shall reimburse the Department of State Police for any expenses
4 associated with security at facilities from the Illinois Power
5 Agency Facilities Fund.

6 Section 1-115. Revenue from real estate. All revenue from
7 any sale, conveyance, lease, exchange, transfer, abandonment,
8 or other disposition of real property shall be deposited into
9 the Illinois Power Agency Facilities Fund.

10 Section 1-120. Protection of confidential and proprietary
11 information. The Agency shall provide adequate protection for
12 confidential and proprietary information furnished, delivered,
13 or filed by any person, corporation, or other entity.

14 Section 1-125. Agency annual reports. The Agency shall
15 report annually to the Governor and the General Assembly on the
16 operations and transactions of the Agency. The annual report
17 shall include, but not be limited to, each of the following:

18 (1) The quantity, price, and term of all contracts for
19 electricity procured under the procurement plans for
20 electric utilities.

21 (2) The quantity, price, and rate impact of all
22 renewable resources purchased under the electricity

1 procurement plans for electric utilities.

2 (3) The quantity, price, and rate impact of all energy
3 efficiency and demand response measures purchased for
4 electric utilities.

5 (4) The amount of power and energy produced by each
6 Agency facility.

7 (5) The quantity of electricity supplied by each Agency
8 facility to municipal electric systems, governmental
9 aggregators, or rural electric cooperatives in Illinois.

10 (6) The revenues as allocated by the Agency to each
11 facility.

12 (7) The costs as allocated by the Agency to each
13 facility.

14 (8) The accumulated depreciation for each facility.

15 (9) The status of any projects under development.

16 (10) Basic financial and operating information
17 specifically detailed for the reporting year and
18 including, but not limited to, income and expense
19 statements, balance sheets, and changes in financial
20 position, all in accordance with generally accepted
21 accounting principles, debt structure, and a summary of
22 funds on a cash basis.

23 Section 1-127. Minority, female, and disabled persons
24 businesses; reports.

25 (a) The Director of the Illinois Power Agency, or his or

1 her designee, when offering bids for professional services,
2 shall conduct outreach to minority owned businesses, female
3 owned businesses, and businesses owned by persons with
4 disabilities. Outreach shall include, but is not limited to,
5 advertisements in periodicals and newspapers, mailings, and
6 other appropriate media.

7 (b) The Director or his or her designee shall, upon
8 request, provide technical assistance to minority owned
9 businesses, female owned businesses, and businesses owned by
10 persons with disabilities seeking to do business with the
11 Agency.

12 (c) The Director or his or her designee, upon request,
13 shall conduct post-bid reviews with minority owned businesses,
14 female owned businesses, and businesses owned by persons with
15 disabilities whose bids were not selected by the Agency.
16 Post-bid reviews shall provide a business with detailed and
17 specific reasons why the bid of that business was rejected and
18 concrete recommendations to improve its bid application on
19 future Agency professional services opportunities.

20 (d) The Agency shall report annually to the Governor and
21 the General Assembly by July 1. The report shall identify the
22 businesses that have provided bids to offer professional
23 services to the Agency and shall also include, but not be
24 limited to, the following information:

25 (1) whether or not the businesses are minority owned
26 businesses, female owned businesses, or businesses owned

1 by persons with disabilities;

2 (2) the percentage of professional service contracts
3 that were awarded to minority owned businesses, female
4 owned businesses, and businesses owned by persons with
5 disabilities as compared to other businesses; and

6 (3) the actions the Agency has undertaken to increase
7 the use of the minority owned businesses, female owned
8 businesses, and businesses owned by persons with
9 disabilities in professional service contracts.

10 (e) In this Section, "professional services" means
11 services that use skills that are predominantly mental or
12 intellectual, rather than physical or manual, including, but
13 not limited to, accounting, architecture, consulting,
14 engineering, finance, legal, and marketing. "Professional
15 services" does not include bidders into the competitive
16 procurement process pursuant to Section 16-111.5 of the Public
17 Utilities Act.

18 Section 1-130. Home rule preemption.

19 (a) The authorization to impose any new taxes or fees
20 specifically related to the generation of electricity by, the
21 capacity to generate electricity by, or the emissions into the
22 atmosphere by electric generating facilities after the
23 effective date of this Act is an exclusive power and function
24 of the State. A home rule unit may not levy any new taxes or
25 fees specifically related to the generation of electricity by,

1 the capacity to generate electricity by, or the emissions into
2 the atmosphere by electric generating facilities after the
3 effective date of this Act. This Section is a denial and
4 limitation on home rule powers and functions under subsection
5 (g) of Section 6 of Article VII of the Illinois Constitution.

6 (b) This Section is repealed on January 1, 2019.

7 ARTICLE 5

8 Section 5-900. The Freedom of Information Act is amended by
9 changing Section 7 as follows:

10 (5 ILCS 140/7) (from Ch. 116, par. 207)

11 Sec. 7. Exemptions.

12 (1) The following shall be exempt from inspection and
13 copying:

14 (a) Information specifically prohibited from
15 disclosure by federal or State law or rules and regulations
16 adopted under federal or State law.

17 (b) Information that, if disclosed, would constitute a
18 clearly unwarranted invasion of personal privacy, unless
19 the disclosure is consented to in writing by the individual
20 subjects of the information. The disclosure of information
21 that bears on the public duties of public employees and
22 officials shall not be considered an invasion of personal
23 privacy. Information exempted under this subsection (b)

1 shall include but is not limited to:

2 (i) files and personal information maintained with
3 respect to clients, patients, residents, students or
4 other individuals receiving social, medical,
5 educational, vocational, financial, supervisory or
6 custodial care or services directly or indirectly from
7 federal agencies or public bodies;

8 (ii) personnel files and personal information
9 maintained with respect to employees, appointees or
10 elected officials of any public body or applicants for
11 those positions;

12 (iii) files and personal information maintained
13 with respect to any applicant, registrant or licensee
14 by any public body cooperating with or engaged in
15 professional or occupational registration, licensure
16 or discipline;

17 (iv) information required of any taxpayer in
18 connection with the assessment or collection of any tax
19 unless disclosure is otherwise required by State
20 statute;

21 (v) information revealing the identity of persons
22 who file complaints with or provide information to
23 administrative, investigative, law enforcement or
24 penal agencies; provided, however, that identification
25 of witnesses to traffic accidents, traffic accident
26 reports, and rescue reports may be provided by agencies

1 of local government, except in a case for which a
2 criminal investigation is ongoing, without
3 constituting a clearly unwarranted per se invasion of
4 personal privacy under this subsection; and

5 (vi) the names, addresses, or other personal
6 information of participants and registrants in park
7 district, forest preserve district, and conservation
8 district programs.

9 (c) Records compiled by any public body for
10 administrative enforcement proceedings and any law
11 enforcement or correctional agency for law enforcement
12 purposes or for internal matters of a public body, but only
13 to the extent that disclosure would:

14 (i) interfere with pending or actually and
15 reasonably contemplated law enforcement proceedings
16 conducted by any law enforcement or correctional
17 agency;

18 (ii) interfere with pending administrative
19 enforcement proceedings conducted by any public body;

20 (iii) deprive a person of a fair trial or an
21 impartial hearing;

22 (iv) unavoidably disclose the identity of a
23 confidential source or confidential information
24 furnished only by the confidential source;

25 (v) disclose unique or specialized investigative
26 techniques other than those generally used and known or

1 disclose internal documents of correctional agencies
2 related to detection, observation or investigation of
3 incidents of crime or misconduct;

4 (vi) constitute an invasion of personal privacy
5 under subsection (b) of this Section;

6 (vii) endanger the life or physical safety of law
7 enforcement personnel or any other person; or

8 (viii) obstruct an ongoing criminal investigation.

9 (d) Criminal history record information maintained by
10 State or local criminal justice agencies, except the
11 following which shall be open for public inspection and
12 copying:

13 (i) chronologically maintained arrest information,
14 such as traditional arrest logs or blotters;

15 (ii) the name of a person in the custody of a law
16 enforcement agency and the charges for which that
17 person is being held;

18 (iii) court records that are public;

19 (iv) records that are otherwise available under
20 State or local law; or

21 (v) records in which the requesting party is the
22 individual identified, except as provided under part
23 (vii) of paragraph (c) of subsection (1) of this
24 Section.

25 "Criminal history record information" means data
26 identifiable to an individual and consisting of

1 descriptions or notations of arrests, detentions,
2 indictments, informations, pre-trial proceedings, trials,
3 or other formal events in the criminal justice system or
4 descriptions or notations of criminal charges (including
5 criminal violations of local municipal ordinances) and the
6 nature of any disposition arising therefrom, including
7 sentencing, court or correctional supervision,
8 rehabilitation and release. The term does not apply to
9 statistical records and reports in which individuals are
10 not identified and from which their identities are not
11 ascertainable, or to information that is for criminal
12 investigative or intelligence purposes.

13 (e) Records that relate to or affect the security of
14 correctional institutions and detention facilities.

15 (f) Preliminary drafts, notes, recommendations,
16 memoranda and other records in which opinions are
17 expressed, or policies or actions are formulated, except
18 that a specific record or relevant portion of a record
19 shall not be exempt when the record is publicly cited and
20 identified by the head of the public body. The exemption
21 provided in this paragraph (f) extends to all those records
22 of officers and agencies of the General Assembly that
23 pertain to the preparation of legislative documents.

24 (g) Trade secrets and commercial or financial
25 information obtained from a person or business where the
26 trade secrets or information are proprietary, privileged

1 or confidential, or where disclosure of the trade secrets
2 or information may cause competitive harm, including:

3 (i) All information determined to be confidential
4 under Section 4002 of the Technology Advancement and
5 Development Act.

6 (ii) All trade secrets and commercial or financial
7 information obtained by a public body, including a
8 public pension fund, from a private equity fund or a
9 privately held company within the investment portfolio
10 of a private equity fund as a result of either
11 investing or evaluating a potential investment of
12 public funds in a private equity fund. The exemption
13 contained in this item does not apply to the aggregate
14 financial performance information of a private equity
15 fund, nor to the identity of the fund's managers or
16 general partners. The exemption contained in this item
17 does not apply to the identity of a privately held
18 company within the investment portfolio of a private
19 equity fund, unless the disclosure of the identity of a
20 privately held company may cause competitive harm.

21 Nothing contained in this paragraph (g) shall be construed
22 to prevent a person or business from consenting to disclosure.

23 (h) Proposals and bids for any contract, grant, or
24 agreement, including information which if it were
25 disclosed would frustrate procurement or give an advantage
26 to any person proposing to enter into a contractor

1 agreement with the body, until an award or final selection
2 is made. Information prepared by or for the body in
3 preparation of a bid solicitation shall be exempt until an
4 award or final selection is made.

5 (i) Valuable formulae, computer geographic systems,
6 designs, drawings and research data obtained or produced by
7 any public body when disclosure could reasonably be
8 expected to produce private gain or public loss. The
9 exemption for "computer geographic systems" provided in
10 this paragraph (i) does not extend to requests made by news
11 media as defined in Section 2 of this Act when the
12 requested information is not otherwise exempt and the only
13 purpose of the request is to access and disseminate
14 information regarding the health, safety, welfare, or
15 legal rights of the general public.

16 (j) Test questions, scoring keys and other examination
17 data used to administer an academic examination or
18 determined the qualifications of an applicant for a license
19 or employment.

20 (k) Architects' plans, engineers' technical
21 submissions, and other construction related technical
22 documents for projects not constructed or developed in
23 whole or in part with public funds and the same for
24 projects constructed or developed with public funds, but
25 only to the extent that disclosure would compromise
26 security, including but not limited to water treatment

1 facilities, airport facilities, sport stadiums, convention
2 centers, and all government owned, operated, or occupied
3 buildings.

4 (l) Library circulation and order records identifying
5 library users with specific materials.

6 (m) Minutes of meetings of public bodies closed to the
7 public as provided in the Open Meetings Act until the
8 public body makes the minutes available to the public under
9 Section 2.06 of the Open Meetings Act.

10 (n) Communications between a public body and an
11 attorney or auditor representing the public body that would
12 not be subject to discovery in litigation, and materials
13 prepared or compiled by or for a public body in
14 anticipation of a criminal, civil or administrative
15 proceeding upon the request of an attorney advising the
16 public body, and materials prepared or compiled with
17 respect to internal audits of public bodies.

18 (o) Information received by a primary or secondary
19 school, college or university under its procedures for the
20 evaluation of faculty members by their academic peers.

21 (p) Administrative or technical information associated
22 with automated data processing operations, including but
23 not limited to software, operating protocols, computer
24 program abstracts, file layouts, source listings, object
25 modules, load modules, user guides, documentation
26 pertaining to all logical and physical design of

1 computerized systems, employee manuals, and any other
2 information that, if disclosed, would jeopardize the
3 security of the system or its data or the security of
4 materials exempt under this Section.

5 (q) Documents or materials relating to collective
6 negotiating matters between public bodies and their
7 employees or representatives, except that any final
8 contract or agreement shall be subject to inspection and
9 copying.

10 (r) Drafts, notes, recommendations and memoranda
11 pertaining to the financing and marketing transactions of
12 the public body. The records of ownership, registration,
13 transfer, and exchange of municipal debt obligations, and
14 of persons to whom payment with respect to these
15 obligations is made.

16 (s) The records, documents and information relating to
17 real estate purchase negotiations until those negotiations
18 have been completed or otherwise terminated. With regard to
19 a parcel involved in a pending or actually and reasonably
20 contemplated eminent domain proceeding under the Eminent
21 Domain Act, records, documents and information relating to
22 that parcel shall be exempt except as may be allowed under
23 discovery rules adopted by the Illinois Supreme Court. The
24 records, documents and information relating to a real
25 estate sale shall be exempt until a sale is consummated.

26 (t) Any and all proprietary information and records

1 related to the operation of an intergovernmental risk
2 management association or self-insurance pool or jointly
3 self-administered health and accident cooperative or pool.

4 (u) Information concerning a university's adjudication
5 of student or employee grievance or disciplinary cases, to
6 the extent that disclosure would reveal the identity of the
7 student or employee and information concerning any public
8 body's adjudication of student or employee grievances or
9 disciplinary cases, except for the final outcome of the
10 cases.

11 (v) Course materials or research materials used by
12 faculty members.

13 (w) Information related solely to the internal
14 personnel rules and practices of a public body.

15 (x) Information contained in or related to
16 examination, operating, or condition reports prepared by,
17 on behalf of, or for the use of a public body responsible
18 for the regulation or supervision of financial
19 institutions or insurance companies, unless disclosure is
20 otherwise required by State law.

21 (y) Information the disclosure of which is restricted
22 under Section 5-108 of the Public Utilities Act.

23 (z) Manuals or instruction to staff that relate to
24 establishment or collection of liability for any State tax
25 or that relate to investigations by a public body to
26 determine violation of any criminal law.

1 (aa) Applications, related documents, and medical
2 records received by the Experimental Organ Transplantation
3 Procedures Board and any and all documents or other records
4 prepared by the Experimental Organ Transplantation
5 Procedures Board or its staff relating to applications it
6 has received.

7 (bb) Insurance or self insurance (including any
8 intergovernmental risk management association or self
9 insurance pool) claims, loss or risk management
10 information, records, data, advice or communications.

11 (cc) Information and records held by the Department of
12 Public Health and its authorized representatives relating
13 to known or suspected cases of sexually transmissible
14 disease or any information the disclosure of which is
15 restricted under the Illinois Sexually Transmissible
16 Disease Control Act.

17 (dd) Information the disclosure of which is exempted
18 under Section 30 of the Radon Industry Licensing Act.

19 (ee) Firm performance evaluations under Section 55 of
20 the Architectural, Engineering, and Land Surveying
21 Qualifications Based Selection Act.

22 (ff) Security portions of system safety program plans,
23 investigation reports, surveys, schedules, lists, data, or
24 information compiled, collected, or prepared by or for the
25 Regional Transportation Authority under Section 2.11 of
26 the Regional Transportation Authority Act or the St. Clair

1 County Transit District under the Bi-State Transit Safety
2 Act.

3 (gg) Information the disclosure of which is restricted
4 and exempted under Section 50 of the Illinois Prepaid
5 Tuition Act.

6 (hh) Information the disclosure of which is exempted
7 under the State Officials and Employees Ethics Act.

8 (ii) Beginning July 1, 1999, information that would
9 disclose or might lead to the disclosure of secret or
10 confidential information, codes, algorithms, programs, or
11 private keys intended to be used to create electronic or
12 digital signatures under the Electronic Commerce Security
13 Act.

14 (jj) Information contained in a local emergency energy
15 plan submitted to a municipality in accordance with a local
16 emergency energy plan ordinance that is adopted under
17 Section 11-21.5-5 of the Illinois Municipal Code.

18 (kk) Information and data concerning the distribution
19 of surcharge moneys collected and remitted by wireless
20 carriers under the Wireless Emergency Telephone Safety
21 Act.

22 (ll) Vulnerability assessments, security measures, and
23 response policies or plans that are designed to identify,
24 prevent, or respond to potential attacks upon a community's
25 population or systems, facilities, or installations, the
26 destruction or contamination of which would constitute a

1 clear and present danger to the health or safety of the
2 community, but only to the extent that disclosure could
3 reasonably be expected to jeopardize the effectiveness of
4 the measures or the safety of the personnel who implement
5 them or the public. Information exempt under this item may
6 include such things as details pertaining to the
7 mobilization or deployment of personnel or equipment, to
8 the operation of communication systems or protocols, or to
9 tactical operations.

10 (mm) Maps and other records regarding the location or
11 security of ~~a utility's~~ generation, transmission,
12 distribution, storage, gathering, treatment, or switching
13 facilities owned by a utility or by the Illinois Power
14 Agency.

15 (nn) Law enforcement officer identification
16 information or driver identification information compiled
17 by a law enforcement agency or the Department of
18 Transportation under Section 11-212 of the Illinois
19 Vehicle Code.

20 (oo) Records and information provided to a residential
21 health care facility resident sexual assault and death
22 review team or the Executive Council under the Abuse
23 Prevention Review Team Act.

24 (pp) Information provided to the predatory lending
25 database created pursuant to Article 3 of the Residential
26 Real Property Disclosure Act, except to the extent

1 authorized under that Article.

2 (qq) Defense budgets and petitions for certification
3 of compensation and expenses for court appointed trial
4 counsel as provided under Sections 10 and 15 of the Capital
5 Crimes Litigation Act. This subsection (qq) shall apply
6 until the conclusion of the trial of the case, even if the
7 prosecution chooses not to pursue the death penalty prior
8 to trial or sentencing.

9 (rr) Information contained in or related to proposals,
10 bids, or negotiations related to electric power
11 procurement under Section 1-75 of the Illinois Power Agency
12 Act and Section 16-111.5 of the Public Utilities Act that
13 is determined to be confidential and proprietary by the
14 Illinois Power Agency or by the Illinois Commerce
15 Commission.

16 (2) This Section does not authorize withholding of
17 information or limit the availability of records to the public,
18 except as stated in this Section or otherwise provided in this
19 Act.

20 (Source: P.A. 93-43, eff. 7-1-03; 93-209, eff. 7-18-03; 93-237,
21 eff. 7-22-03; 93-325, eff. 7-23-03, 93-422, eff. 8-5-03;
22 93-577, eff. 8-21-03; 93-617, eff. 12-9-03; 94-280, eff.
23 1-1-06; 94-508, eff. 1-1-06; 94-664, eff. 1-1-06; 94-931, eff.
24 6-26-06; 94-953, eff. 6-27-06; 94-1055, eff. 1-1-07; revised
25 8-3-06.)

1 Section 5-905. The Civil Administrative Code of Illinois is
2 amended by changing Sections 5-15 and 5-20 and by adding
3 Section 5-222 as follows:

4 (20 ILCS 5/5-15) (was 20 ILCS 5/3)

5 Sec. 5-15. Departments of State government. The
6 Departments of State government are created as follows:

7 The Department on Aging.

8 The Department of Agriculture.

9 The Department of Central Management Services.

10 The Department of Children and Family Services.

11 The Department of Commerce and Economic Opportunity.

12 The Department of Corrections.

13 The Department of Employment Security.

14 The Emergency Management Agency.

15 The Department of Financial Institutions.

16 The Department of Healthcare and Family Services.

17 The Department of Human Rights.

18 The Department of Human Services.

19 The Illinois Power Agency.

20 The Department of Insurance.

21 The Department of Juvenile Justice.

22 The Department of Labor.

23 The Department of the Lottery.

24 The Department of Natural Resources.

25 The Department of Professional Regulation.

1 ~~The Department of Public Aid.~~

2 The Department of Public Health.

3 The Department of Revenue.

4 The Department of State Police.

5 The Department of Transportation.

6 The Department of Veterans' Affairs.

7 (Source: P.A. 93-25, eff. 6-20-03; 93-1029, eff. 8-25-04;
8 94-696, eff. 6-1-06; revised 9-14-06.)

9 (20 ILCS 5/5-20) (was 20 ILCS 5/4)

10 Sec. 5-20. Heads of departments. Each department shall have
11 an officer as its head who shall be known as director or
12 secretary and who shall, subject to the provisions of the Civil
13 Administrative Code of Illinois, execute the powers and
14 discharge the duties vested by law in his or her respective
15 department.

16 The following officers are hereby created:

17 Director of Aging, for the Department on Aging.

18 Director of Agriculture, for the Department of
19 Agriculture.

20 Director of Central Management Services, for the
21 Department of Central Management Services.

22 Director of Children and Family Services, for the
23 Department of Children and Family Services.

24 Director of Commerce and Economic Opportunity, for the
25 Department of Commerce and Economic Opportunity.

1 Director of Corrections, for the Department of
2 Corrections.

3 Director of Emergency Management Agency, for the Emergency
4 Management Agency.

5 Director of Employment Security, for the Department of
6 Employment Security.

7 Director of Financial Institutions, for the Department of
8 Financial Institutions.

9 Director of Healthcare and Family Services, for the
10 Department of Healthcare and Family Services.

11 Director of Human Rights, for the Department of Human
12 Rights.

13 Secretary of Human Services, for the Department of Human
14 Services.

15 Director of the Illinois Power Agency, for the Illinois
16 Power Agency.

17 Director of Insurance, for the Department of Insurance.

18 Director of Juvenile Justice, for the Department of
19 Juvenile Justice.

20 Director of Labor, for the Department of Labor.

21 Director of the Lottery, for the Department of the Lottery.

22 Director of Natural Resources, for the Department of
23 Natural Resources.

24 Director of Professional Regulation, for the Department of
25 Professional Regulation.

26 ~~Director of Public Aid, for the Department of Public Aid.~~

1 Director of Public Health, for the Department of Public
2 Health.

3 Director of Revenue, for the Department of Revenue.

4 Director of State Police, for the Department of State
5 Police.

6 Secretary of Transportation, for the Department of
7 Transportation.

8 Director of Veterans' Affairs, for the Department of
9 Veterans' Affairs.

10 (Source: P.A. 93-25, eff. 6-20-03; 93-1029, eff. 8-25-04;
11 94-696, eff. 6-1-06; revised 9-14-06.)

12 (20 ILCS 5/5-222 new)

13 Sec. 5-222. Director of the Illinois Power Agency. The
14 Director of the Illinois Power Agency must have at least 15
15 years of combined experience in the electric industry,
16 electricity policy, or electricity markets and must possess:
17 (i) general knowledge of the responsibilities of being a
18 director, (ii) managerial experience, and (iii) an advanced
19 degree in economics, risk management, law, business,
20 engineering, or a related field.

21 Section 5-910. The Renewable Energy, Energy Efficiency,
22 and Coal Resources Development Law of 1997 is amended by
23 changing Sections 6-5 and 6-7 as follows:

1 (20 ILCS 687/6-5)

2 (Section scheduled to be repealed on December 16, 2007)

3 Sec. 6-5. Renewable Energy Resources and Coal Technology
4 Development Assistance Charge.

5 (a) Notwithstanding the provisions of Section 16-111 of the
6 Public Utilities Act but subject to subsection (e) of this
7 Section, each public utility, electric cooperative, as defined
8 in Section 3.4 of the Electric Supplier Act, and municipal
9 utility, as referenced in Section 3-105 of the Public Utilities
10 Act, that is engaged in the delivery of electricity or the
11 distribution of natural gas within the State of Illinois shall,
12 effective January 1, 1998, assess each of its customer accounts
13 a monthly Renewable Energy Resources and Coal Technology
14 Development Assistance Charge. The delivering public utility,
15 municipal electric or gas utility, or electric or gas
16 cooperative for a self-assessing purchaser remains subject to
17 the collection of the fee imposed by this Section. The monthly
18 charge shall be as follows:

19 (1) \$0.05 per month on each account for residential
20 electric service as defined in Section 13 of the Energy
21 Assistance Act;

22 (2) \$0.05 per month on each account for residential gas
23 service as defined in Section 13 of the Energy Assistance
24 Act;

25 (3) \$0.50 per month on each account for nonresidential
26 electric service, as defined in Section 13 of the Energy

1 Assistance Act, which had less than 10 megawatts of peak
2 demand during the previous calendar year;

3 (4) \$0.50 per month on each account for nonresidential
4 gas service, as defined in Section 13 of the Energy
5 Assistance Act, which had distributed to it less than
6 4,000,000 therms of gas during the previous calendar year;

7 (5) \$37.50 per month on each account for nonresidential
8 electric service, as defined in Section 13 of the Energy
9 Assistance Act, which had 10 megawatts or greater of peak
10 demand during the previous calendar year; and

11 (6) \$37.50 per month on each account for nonresidential
12 gas service, as defined in Section 13 of the Energy
13 Assistance Act, which had 4,000,000 or more therms of gas
14 distributed to it during the previous calendar year.

15 (b) The Renewable Energy Resources and Coal Technology
16 Development Assistance Charge assessed by electric and gas
17 public utilities shall be considered a charge for public
18 utility service.

19 (c) Fifty percent of the moneys collected pursuant to this
20 Section shall be deposited in the Renewable Energy Resources
21 Trust Fund by the Department of Revenue. The remaining 50
22 percent of the moneys collected pursuant to this Section shall
23 be deposited in the Coal Technology Development Assistance Fund
24 by the Department of Revenue for the exclusive purposes of (1)
25 capturing or sequestering carbon emissions produced by coal
26 combustion; (2) supporting research on the capture and

1 sequestration of carbon emissions produced by coal combustion;
2 and (3) improving coal miner safety ~~use under the Illinois Coal~~
3 ~~Technology Development Assistance Act.~~

4 (d) By the 20th day of the month following the month in
5 which the charges imposed by this Section were collected, each
6 utility and alternative retail electric supplier collecting
7 charges pursuant to this Section shall remit to the Department
8 of Revenue for deposit in the Renewable Energy Resources Trust
9 Fund and the Coal Technology Development Assistance Fund all
10 moneys received as payment of the charge provided for in this
11 Section on a return prescribed and furnished by the Department
12 of Revenue showing such information as the Department of
13 Revenue may reasonably require.

14 (e) The charges imposed by this Section shall only apply to
15 customers of municipal electric or gas utilities and electric
16 or gas cooperatives if the municipal electric or gas utility or
17 electric or gas cooperative makes an affirmative decision to
18 impose the charge. If a municipal electric or gas utility or an
19 electric or gas cooperative makes an affirmative decision to
20 impose the charge provided by this Section, the municipal
21 electric or gas utility or electric or gas cooperative shall
22 inform the Department of Revenue in writing of such decision
23 when it begins to impose the charge. If a municipal electric or
24 gas utility or electric or gas cooperative does not assess this
25 charge, its customers shall not be eligible for the Renewable
26 Energy Resources Program.

1 (f) The Department of Revenue may establish such rules as
2 it deems necessary to implement this Section.

3 (Source: P.A. 92-690, eff. 7-18-02.)

4 (20 ILCS 687/6-7)

5 (Section scheduled to be repealed on December 16, 2007)

6 Sec. 6-7. Repeal. The provisions of this Law are repealed
7 on December 12, 2015 ~~10 years after the effective date of this~~
8 ~~amendatory Act of 1997 unless renewed by act of the General~~
9 ~~Assembly.~~

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

11 Section 5-915. The Illinois Finance Authority Act is
12 amended by adding Section 825-90 and by changing Sections
13 801-40 and 845-5 as follows:

14 (20 ILCS 3501/801-40)

15 Sec. 801-40. In addition to the powers otherwise authorized
16 by law and in addition to the foregoing general corporate
17 powers, the Authority shall also have the following additional
18 specific powers to be exercised in furtherance of the purposes
19 of this Act.

20 (a) The Authority shall have power (i) to accept grants,
21 loans or appropriations from the federal government or the
22 State, or any agency or instrumentality thereof, to be used for
23 the operating expenses of the Authority, or for any purposes of

1 the Authority, including the making of direct loans of such
2 funds with respect to projects, and (ii) to enter into any
3 agreement with the federal government or the State, or any
4 agency or instrumentality thereof, in relationship to such
5 grants, loans or appropriations.

6 (b) The Authority shall have power to procure and enter
7 into contracts for any type of insurance and indemnity
8 agreements covering loss or damage to property from any cause,
9 including loss of use and occupancy, or covering any other
10 insurable risk.

11 (c) The Authority shall have the continuing power to issue
12 bonds for its corporate purposes. Bonds may be issued by the
13 Authority in one or more series and may provide for the payment
14 of any interest deemed necessary on such bonds, of the costs of
15 issuance of such bonds, of any premium on any insurance, or of
16 the cost of any guarantees, letters of credit or other similar
17 documents, may provide for the funding of the reserves deemed
18 necessary in connection with such bonds, and may provide for
19 the refunding or advance refunding of any bonds or for accounts
20 deemed necessary in connection with any purpose of the
21 Authority. The bonds may bear interest payable at any time or
22 times and at any rate or rates, notwithstanding any other
23 provision of law to the contrary, and such rate or rates may be
24 established by an index or formula which may be implemented or
25 established by persons appointed or retained therefor by the
26 Authority, or may bear no interest or may bear interest payable

1 at maturity or upon redemption prior to maturity, may bear such
2 date or dates, may be payable at such time or times and at such
3 place or places, may mature at any time or times not later than
4 40 years from the date of issuance, may be sold at public or
5 private sale at such time or times and at such price or prices,
6 may be secured by such pledges, reserves, guarantees, letters
7 of credit, insurance contracts or other similar credit support
8 or liquidity instruments, may be executed in such manner, may
9 be subject to redemption prior to maturity, may provide for the
10 registration of the bonds, and may be subject to such other
11 terms and conditions all as may be provided by the resolution
12 or indenture authorizing the issuance of such bonds. The holder
13 or holders of any bonds issued by the Authority may bring suits
14 at law or proceedings in equity to compel the performance and
15 observance by any person or by the Authority or any of its
16 agents or employees of any contract or covenant made with the
17 holders of such bonds and to compel such person or the
18 Authority and any of its agents or employees to perform any
19 duties required to be performed for the benefit of the holders
20 of any such bonds by the provision of the resolution
21 authorizing their issuance, and to enjoin such person or the
22 Authority and any of its agents or employees from taking any
23 action in conflict with any such contract or covenant.
24 Notwithstanding the form and tenor of any such bonds and in the
25 absence of any express recital on the face thereof that it is
26 non-negotiable, all such bonds shall be negotiable

1 instruments. Pending the preparation and execution of any such
2 bonds, temporary bonds may be issued as provided by the
3 resolution. The bonds shall be sold by the Authority in such
4 manner as it shall determine. The bonds may be secured as
5 provided in the authorizing resolution by the receipts,
6 revenues, income and other available funds of the Authority and
7 by any amounts derived by the Authority from the loan agreement
8 or lease agreement with respect to the project or projects; and
9 bonds may be issued as general obligations of the Authority
10 payable from such revenues, funds and obligations of the
11 Authority as the bond resolution shall provide, or may be
12 issued as limited obligations with a claim for payment solely
13 from such revenues, funds and obligations as the bond
14 resolution shall provide. The Authority may grant a specific
15 pledge or assignment of and lien on or security interest in
16 such rights, revenues, income, or amounts and may grant a
17 specific pledge or assignment of and lien on or security
18 interest in any reserves, funds or accounts established in the
19 resolution authorizing the issuance of bonds. Any such pledge,
20 assignment, lien or security interest for the benefit of the
21 holders of the Authority's bonds shall be valid and binding
22 from the time the bonds are issued without any physical
23 delivery or further act, and shall be valid and binding as
24 against and prior to the claims of all other parties having
25 claims against the Authority or any other person irrespective
26 of whether the other parties have notice of the pledge,

1 assignment, lien or security interest. As evidence of such
2 pledge, assignment, lien and security interest, the Authority
3 may execute and deliver a mortgage, trust agreement, indenture
4 or security agreement or an assignment thereof. A remedy for
5 any breach or default of the terms of any such agreement by the
6 Authority may be by mandamus proceedings in any court of
7 competent jurisdiction to compel the performance and
8 compliance therewith, but the agreement may prescribe by whom
9 or on whose behalf such action may be instituted. It is
10 expressly understood that the Authority may, but need not,
11 acquire title to any project with respect to which it exercises
12 its authority.

13 (d) With respect to the powers granted by this Act, the
14 Authority may adopt rules and regulations prescribing the
15 procedures by which persons may apply for assistance under this
16 Act. Nothing herein shall be deemed to preclude the Authority,
17 prior to the filing of any formal application, from conducting
18 preliminary discussions and investigations with respect to the
19 subject matter of any prospective application.

20 (e) The Authority shall have power to acquire by purchase,
21 lease, gift or otherwise any property or rights therein from
22 any person useful for its purposes, whether improved for the
23 purposes of any prospective project, or unimproved. The
24 Authority may also accept any donation of funds for its
25 purposes from any such source. The Authority shall have no
26 independent power of condemnation but may acquire any property

1 or rights therein obtained upon condemnation by any other
2 authority, governmental entity or unit of local government with
3 such power.

4 (f) The Authority shall have power to develop, construct
5 and improve either under its own direction, or through
6 collaboration with any approved applicant, or to acquire
7 through purchase or otherwise, any project, using for such
8 purpose the proceeds derived from the sale of its bonds or from
9 governmental loans or grants, and to hold title in the name of
10 the Authority to such projects.

11 (g) The Authority shall have power to lease pursuant to a
12 lease agreement any project so developed and constructed or
13 acquired to the approved tenant on such terms and conditions as
14 may be appropriate to further the purposes of this Act and to
15 maintain the credit of the Authority. Any such lease may
16 provide for either the Authority or the approved tenant to
17 assume initially, in whole or in part, the costs of
18 maintenance, repair and improvements during the leasehold
19 period. In no case, however, shall the total rentals from any
20 project during any initial leasehold period or the total loan
21 repayments to be made pursuant to any loan agreement, be less
22 than an amount necessary to return over such lease or loan
23 period (1) all costs incurred in connection with the
24 development, construction, acquisition or improvement of the
25 project and for repair, maintenance and improvements thereto
26 during the period of the lease or loan; provided, however, that

1 the rentals or loan repayments need not include costs met
2 through the use of funds other than those obtained by the
3 Authority through the issuance of its bonds or governmental
4 loans; (2) a reasonable percentage additive to be agreed upon
5 by the Authority and the borrower or tenant to cover a properly
6 allocable portion of the Authority's general expenses,
7 including, but not limited to, administrative expenses,
8 salaries and general insurance, and (3) an amount sufficient to
9 pay when due all principal of, interest and premium, if any on,
10 any bonds issued by the Authority with respect to the project.
11 The portion of total rentals payable under clause (3) of this
12 subsection (g) shall be deposited in such special accounts,
13 including all sinking funds, acquisition or construction
14 funds, debt service and other funds as provided by any
15 resolution, mortgage or trust agreement of the Authority
16 pursuant to which any bond is issued.

17 (h) The Authority has the power, upon the termination of
18 any leasehold period of any project, to sell or lease for a
19 further term or terms such project on such terms and conditions
20 as the Authority shall deem reasonable and consistent with the
21 purposes of the Act. The net proceeds from all such sales and
22 the revenues or income from such leases shall be used to
23 satisfy any indebtedness of the Authority with respect to such
24 project and any balance may be used to pay any expenses of the
25 Authority or be used for the further development, construction,
26 acquisition or improvement of projects. In the event any

1 project is vacated by a tenant prior to the termination of the
2 initial leasehold period, the Authority shall sell or lease the
3 facilities of the project on the most advantageous terms
4 available. The net proceeds of any such disposition shall be
5 treated in the same manner as the proceeds from sales or the
6 revenues or income from leases subsequent to the termination of
7 any initial leasehold period.

8 (i) The Authority shall have the power to make loans to
9 persons to finance a project, to enter into loan agreements
10 with respect thereto, and to accept guarantees from persons of
11 its loans or the resultant evidences of obligations of the
12 Authority.

13 (j) The Authority may fix, determine, charge and collect
14 any premiums, fees, charges, costs and expenses, including,
15 without limitation, any application fees, commitment fees,
16 program fees, financing charges or publication fees from any
17 person in connection with its activities under this Act.

18 (k) In addition to the funds established as provided
19 herein, the Authority shall have the power to create and
20 establish such reserve funds and accounts as may be necessary
21 or desirable to accomplish its purposes under this Act and to
22 deposit its available monies into the funds and accounts.

23 (l) At the request of the governing body of any unit of
24 local government, the Authority is authorized to market such
25 local government's revenue bond offerings by preparing bond
26 issues for sale, advertising for sealed bids, receiving bids at

1 its offices, making the award to the bidder that offers the
2 most favorable terms or arranging for negotiated placements or
3 underwritings of such securities. The Authority may, at its
4 discretion, offer for concurrent sale the revenue bonds of
5 several local governments. Sales by the Authority of revenue
6 bonds under this Section shall in no way imply State guarantee
7 of such debt issue. The Authority may require such financial
8 information from participating local governments as it deems
9 necessary in order to carry out the purposes of this subsection
10 (1).

11 (m) The Authority may make grants to any county to which
12 Division 5-37 of the Counties Code is applicable to assist in
13 the financing of capital development, construction and
14 renovation of new or existing facilities for hospitals and
15 health care facilities under that Act. Such grants may only be
16 made from funds appropriated for such purposes from the Build
17 Illinois Bond Fund.

18 (n) The Authority may establish an urban development action
19 grant program for the purpose of assisting municipalities in
20 Illinois which are experiencing severe economic distress to
21 help stimulate economic development activities needed to aid in
22 economic recovery. The Authority shall determine the types of
23 activities and projects for which the urban development action
24 grants may be used, provided that such projects and activities
25 are broadly defined to include all reasonable projects and
26 activities the primary objectives of which are the development

1 of viable urban communities, including decent housing and a
2 suitable living environment, and expansion of economic
3 opportunity, principally for persons of low and moderate
4 incomes. The Authority shall enter into grant agreements from
5 monies appropriated for such purposes from the Build Illinois
6 Bond Fund. The Authority shall monitor the use of the grants,
7 and shall provide for audits of the funds as well as recovery
8 by the Authority of any funds determined to have been spent in
9 violation of this subsection (n) or any rule or regulation
10 promulgated hereunder. The Authority shall provide technical
11 assistance with regard to the effective use of the urban
12 development action grants. The Authority shall file an annual
13 report to the General Assembly concerning the progress of the
14 grant program.

15 (o) The Authority may establish a Housing Partnership
16 Program whereby the Authority provides zero-interest loans to
17 municipalities for the purpose of assisting in the financing of
18 projects for the rehabilitation of affordable multi-family
19 housing for low and moderate income residents. The Authority
20 may provide such loans only upon a municipality's providing
21 evidence that it has obtained private funding for the
22 rehabilitation project. The Authority shall provide 3 State
23 dollars for every 7 dollars obtained by the municipality from
24 sources other than the State of Illinois. The loans shall be
25 made from monies appropriated for such purpose from the Build
26 Illinois Bond Fund. The total amount of loans available under

1 the Housing Partnership Program shall not exceed \$30,000,000.
2 State loan monies under this subsection shall be used only for
3 the acquisition and rehabilitation of existing buildings
4 containing 4 or more dwelling units. The terms of any loan made
5 by the municipality under this subsection shall require
6 repayment of the loan to the municipality upon any sale or
7 other transfer of the project.

8 (p) The Authority may award grants to universities and
9 research institutions, research consortiums and other
10 not-for-profit entities for the purposes of: remodeling or
11 otherwise physically altering existing laboratory or research
12 facilities, expansion or physical additions to existing
13 laboratory or research facilities, construction of new
14 laboratory or research facilities or acquisition of modern
15 equipment to support laboratory or research operations
16 provided that such grants (i) be used solely in support of
17 project and equipment acquisitions which enhance technology
18 transfer, and (ii) not constitute more than 60 percent of the
19 total project or acquisition cost.

20 (q) Grants may be awarded by the Authority to units of
21 local government for the purpose of developing the appropriate
22 infrastructure or defraying other costs to the local government
23 in support of laboratory or research facilities provided that
24 such grants may not exceed 40% of the cost to the unit of local
25 government.

26 (r) The Authority may establish a Direct Loan Program to

1 make loans to individuals, partnerships or corporations for the
2 purpose of an industrial project, as defined in Section 801-10
3 of this Act. For the purposes of such program and not by way of
4 limitation on any other program of the Authority, the Authority
5 shall have the power to issue bonds, notes, or other evidences
6 of indebtedness including commercial paper for purposes of
7 providing a fund of capital from which it may make such loans.
8 The Authority shall have the power to use any appropriations
9 from the State made especially for the Authority's Direct Loan
10 Program for additional capital to make such loans or for the
11 purposes of reserve funds or pledged funds which secure the
12 Authority's obligations of repayment of any bond, note or other
13 form of indebtedness established for the purpose of providing
14 capital for which it intends to make such loans under the
15 Direct Loan Program. For the purpose of obtaining such capital,
16 the Authority may also enter into agreements with financial
17 institutions and other persons for the purpose of selling loans
18 and developing a secondary market for such loans. Loans made
19 under the Direct Loan Program may be in an amount not to exceed
20 \$300,000 and shall be made for a portion of an industrial
21 project which does not exceed 50% of the total project. No loan
22 may be made by the Authority unless approved by the affirmative
23 vote of at least 8 members of the board. The Authority shall
24 establish procedures and publish rules which shall provide for
25 the submission, review, and analysis of each direct loan
26 application and which shall preserve the ability of each board

1 member to reach an individual business judgment regarding the
2 propriety of making each direct loan. The collective discretion
3 of the board to approve or disapprove each loan shall be
4 unencumbered. The Authority may establish and collect such fees
5 and charges, determine and enforce such terms and conditions,
6 and charge such interest rates as it determines to be necessary
7 and appropriate to the successful administration of the Direct
8 Loan Program. The Authority may require such interests in
9 collateral and such guarantees as it determines are necessary
10 to protect the Authority's interest in the repayment of the
11 principal and interest of each loan made under the Direct Loan
12 Program.

13 (s) The Authority may guarantee private loans to third
14 parties up to a specified dollar amount in order to promote
15 economic development in this State.

16 (t) The Authority may adopt rules and regulations as may be
17 necessary or advisable to implement the powers conferred by
18 this Act.

19 (u) The Authority shall have the power to issue bonds,
20 notes or other evidences of indebtedness, which may be used to
21 make loans to units of local government which are authorized to
22 enter into loan agreements and other documents and to issue
23 bonds, notes and other evidences of indebtedness for the
24 purpose of financing the protection of storm sewer outfalls,
25 the construction of adequate storm sewer outfalls, and the
26 provision for flood protection of sanitary sewage treatment

1 plans, in counties that have established a stormwater
2 management planning committee in accordance with Section
3 5-1062 of the Counties Code. Any such loan shall be made by the
4 Authority pursuant to the provisions of Section 820-5 to 820-60
5 of this Act. The unit of local government shall pay back to the
6 Authority the principal amount of the loan, plus annual
7 interest as determined by the Authority. The Authority shall
8 have the power, subject to appropriations by the General
9 Assembly, to subsidize or buy down a portion of the interest on
10 such loans, up to 4% per annum.

11 (v) The Authority may accept security interests as provided
12 in Sections 11-3 and 11-3.3 of the Illinois Public Aid Code.

13 (w) Moral Obligation. In the event that the Authority
14 determines that monies of the Authority will not be sufficient
15 for the payment of the principal of and interest on its bonds
16 during the next State fiscal year, the Chairperson, as soon as
17 practicable, shall certify to the Governor the amount required
18 by the Authority to enable it to pay such principal of and
19 interest on the bonds. The Governor shall submit the amount so
20 certified to the General Assembly as soon as practicable, but
21 no later than the end of the current State fiscal year. This
22 subsection shall apply only to any bonds or notes as to which
23 the Authority shall have determined, in the resolution
24 authorizing the issuance of the bonds or notes, that this
25 subsection shall apply. Whenever the Authority makes such a
26 determination, that fact shall be plainly stated on the face of

1 the bonds or notes and that fact shall also be reported to the
2 Governor. In the event of a withdrawal of moneys from a reserve
3 fund established with respect to any issue or issues of bonds
4 of the Authority to pay principal or interest on those bonds,
5 the Chairperson of the Authority, as soon as practicable, shall
6 certify to the Governor the amount required to restore the
7 reserve fund to the level required in the resolution or
8 indenture securing those bonds. The Governor shall submit the
9 amount so certified to the General Assembly as soon as
10 practicable, but no later than the end of the current State
11 fiscal year. The Authority shall obtain written approval from
12 the Governor for any bonds and notes to be issued under this
13 Section. In addition to any other bonds authorized to be issued
14 under Sections 825-60, 825-65(e), 830-25 and 845-5, the
15 principal amount of Authority bonds outstanding issued under
16 this Section 801-40(w) or under 20 ILCS 3850/1-80 or 30 ILCS
17 360/2-6(c), which have been assumed by the Authority, shall not
18 exceed \$150,000,000. This subsection (w) shall in no way be
19 applied to any bonds issued by the Authority on behalf of the
20 Illinois Power Agency under Section 825-90 of this Act.

21 (Source: P.A. 93-205, eff. 1-1-04; 94-91, eff. 7-1-05.)

22 (20 ILCS 3501/825-90 new)

23 Sec. 825-90. Illinois Power Agency Bonds.

24 (a) In this Section:

25 "Agency" means the Illinois Power Agency.

1 "Agency loan agreement" means any agreement pursuant to
2 which the Illinois Finance Authority agrees to loan the
3 proceeds of its revenue bonds issued with respect to a specific
4 Illinois Power Agency project to the Illinois Power Agency upon
5 terms providing for loan repayment installments at least
6 sufficient to pay when due all principal of, interest and
7 premium, if any, on any revenue bonds of the Authority, if any,
8 issued with respect to the Illinois Power Agency project, and
9 providing for maintenance, insurance, and other matters as may
10 be deemed desirable by the Authority.

11 "Authority" means the Illinois Finance Authority.

12 "Director" means the Director of the Illinois Power Agency.

13 "Facility" means an electric generating unit or a
14 co-generating unit that produces electricity along with
15 related equipment necessary to connect the facility to an
16 electric transmission or distribution system.

17 "Governmental aggregator" means one or more units of local
18 government that individually or collectively procures
19 electricity to serve residential retail electrical loads
20 located within its or their jurisdiction.

21 "Local government" means a unit of local government as
22 defined in Section 1 of Article VII of the Illinois
23 Constitution of 1970.

24 "Project" means any project as defined in the Illinois
25 Power Agency Act.

26 "Real property" means any interest in land, together with

1 all structures, fixtures, and improvements thereon, including
2 lands under water and riparian rights, any easements,
3 covenants, licenses, leases, rights-of-way, uses, and other
4 interests, together with any liens, judgments, mortgages, or
5 other claims or security interests related to real property.

6 "Revenue bond" means any bond, note, or other evidence of
7 indebtedness issued by the Illinois Finance Authority on behalf
8 of the Illinois Power Agency, the principal and interest of
9 which is payable solely from revenues or income derived from
10 any project or activity of the Agency.

11 (b) Powers and duties; Illinois Power Agency Program. The
12 Authority has the power:

13 (1) To accept from time to time pursuant to an Agency
14 loan agreement any pledge or a pledge agreement by the
15 Agency subject to the requirements and limitations of the
16 Illinois Power Agency Act.

17 (2) To issue revenue bonds in one or more series
18 pursuant to one or more resolutions of the Authority to
19 loan funds to the Agency pursuant to one or more Agency
20 loan agreements meeting the requirements of the Illinois
21 Power Agency Act and providing for the payment of any
22 interest deemed necessary on those revenue bonds, paying
23 for the cost of issuance of those revenue bonds, providing
24 for the payment of the cost of any guarantees, letters of
25 credit, insurance contracts or other similar credit
26 support or liquidity instruments, or providing for the

1 funding of any reserves deemed necessary in connection with
2 those revenue bonds and refunding or advance refunding of
3 any such revenue bonds and the interest and any premium
4 thereon, pursuant to this Act. Authority for the agreements
5 shall conform to the requirements of the Illinois Power
6 Agency Act. The Authority may issue up to \$4,000,000,000
7 aggregate principal amount of revenue bonds, the net
8 proceeds of which shall be loaned to the Agency pursuant to
9 one or more Agency loan agreements. No revenue bonds issued
10 to refund or advance refund revenue bonds issued under this
11 Section may mature later than the longest maturity date of
12 the series of bonds being refunded. After the aggregate
13 original principal amount of revenue bonds authorized in
14 this Section has been issued, the payment of any principal
15 amount of those revenue bonds does not authorize the
16 issuance of additional revenue bonds (except refunding
17 revenue bonds). Such revenue bond authorization is in
18 addition to any other bonds authorized in this Act. All
19 bonds issued on behalf of the Agency must be issued by the
20 Authority and must be revenue bonds. These revenue bonds
21 may be taxable or tax-exempt.

22 (3) To provide for the funding of any reserves or other
23 funds or accounts deemed necessary by the Authority on
24 behalf of the Agency in connection with its issuance of
25 Agency revenue bonds.

26 (4) To accept the pledge of any Agency revenue,

1 including any payments thereon, and any other property or
2 funds of the Agency or funds made available to the
3 Authority through the applicable Agency loan agreement
4 with the Agency that may be applied to such purpose, as
5 security for any revenue bonds or any guarantees, letters
6 of credit, insurance contracts, or similar credit support
7 or liquidity instruments securing the revenue bonds.

8 (5) To enter into agreements or contracts with third
9 parties, whether public or private, including without
10 limitation the United States of America, the State, or any
11 department or agency thereof, to obtain any grants, loans,
12 or guarantees that are deemed necessary or desirable by the
13 Authority. Any such guarantee, agreement, or contract may
14 contain terms and provisions necessary or desirable in
15 connection with the program, subject to the requirements
16 established by this Article.

17 (6) To charge reasonable fees to defray the cost of
18 obtaining letters of credit, insurance contracts, or other
19 similar documents, and to charge such other reasonable fees
20 to defray the cost of trustees, depositories, paying
21 agents, legal counsel, bond registrars, escrow agents, and
22 other administrative expenses. Any such fees shall be
23 payable by the Agency, in such amounts and at such times as
24 the Authority shall determine.

25 (7) To obtain and maintain guarantees, letters of
26 credit, insurance contracts, or similar credit support or

1 liquidity instruments that are deemed necessary or
2 desirable in connection with any revenue bonds or other
3 obligations of the Authority for any Agency revenue bonds.

4 (8) To provide technical assistance, at the request of
5 the Agency, with respect to the financing or refinancing
6 for any public purpose.

7 (9) To sell, transfer, or otherwise defease revenue
8 bonds issued on behalf of the Agency at the request and
9 authorization of the Agency.

10 (10) To enter into agreements or contracts with any
11 person necessary or appropriate to place the payment
12 obligations of the Agency relating to revenue bonds in
13 whole or in part on any interest rate basis, cash flow
14 basis, or other basis desired by the Authority, including
15 without limitation agreements or contracts commonly known
16 as "interest rate swap agreements", "forward payment
17 conversion agreements", and "futures", or agreements or
18 contracts to exchange cash flows or a series of payments,
19 or agreements or contracts, including without limitation
20 agreements or contracts commonly known as "options",
21 "puts" or "calls", to hedge payment, rate spread, or
22 similar exposure; provided, that any such agreement or
23 contract shall not constitute an obligation for borrowed
24 money, and shall not be taken into account under Section
25 845-5 of this Act or any other debt limit of the Authority
26 or the State of Illinois.

1 (11) To make and enter into all other agreements and
2 contracts and execute all instruments necessary or
3 incidental to performance of its duties and the execution
4 of its powers under this Article.

5 (12) To contract for and finance the costs of audits
6 and to contract for and finance the cost of project
7 monitoring. Any such contract shall be executed only after
8 it has been jointly negotiated by the Authority and the
9 Agency.

10 (13) To exercise such other powers as are necessary or
11 incidental to the foregoing.

12 (c) Illinois Power Agency participation. The Agency is
13 authorized to voluntarily participate in this program as
14 described in the Illinois Power Agency Act. The Authority may
15 issue revenue bonds on behalf of the Agency pursuant to an
16 Agency loan agreement entered into by the parties as set forth
17 in the Illinois Power Agency Act. Any proceeds from the sale of
18 those revenue bonds shall be deposited into the Illinois Power
19 Agency Facilities Fund to be used by the Agency for the
20 purposes set forth in the Illinois Power Agency Act.

21 (d) Pledge of revenues by the Agency. Any pledge of
22 revenues or other moneys made by the Agency shall be binding
23 from the time the pledge is made. Revenues and other moneys so
24 pledged shall be held in the Illinois Power Agency Facilities
25 Fund, Illinois Power Agency Debt Service Fund, or other funds
26 as directed by the Agency loan agreement. Revenues or other

1 moneys so pledged and thereafter received by the State
2 Treasurer shall immediately be subject to the lien of the
3 pledge without any physical delivery thereof or further act,
4 and the lien of any pledge shall be binding against all parties
5 having claims of any kind of tort, contract, or otherwise
6 against the Authority, irrespective of whether the parties have
7 notice thereof. Neither the resolution nor any other instrument
8 by which a pledge is created need be filed or recorded except
9 in the records of the Authority. The State pledges to and
10 agrees with the holders of revenue bonds, and the beneficial
11 owners of the revenue bonds issued on behalf of the Agency,
12 that the State shall not limit or restrict the rights hereby
13 vested in the Authority to purchase, acquire, hold, sell, or
14 defease revenue bonds or other investments or to establish and
15 collect such fees or other charges as may be convenient or
16 necessary to produce sufficient revenues to meet the expenses
17 of operation of the Authority, and to fulfill the terms of any
18 agreement made with the holders of the revenue bonds issued by
19 the Authority on behalf of the Agency or in any way impair the
20 rights or remedies of the holders of those revenue bonds or the
21 beneficial owners of the revenue bonds until those revenue
22 bonds are fully paid and discharged or provision for their
23 payment has been made. The revenue bonds shall not be a debt of
24 the State, the Authority, any political subdivision thereof
25 (other than the Agency to the extent provided therein), any
26 governmental aggregator as defined in the Illinois Power Agency

1 Act, or any local government, and neither the State, the
2 Authority, any political subdivision thereof (other than the
3 Agency to the extent provided therein), any governmental
4 aggregator, nor any local government shall be liable thereon.
5 The Authority shall not have the power to pledge the credit,
6 the revenues, or the taxing power of the State, any political
7 subdivision thereof (other than the Agency to the extent
8 provided in the Agency loan agreement relating to the revenue
9 bonds in question), any governmental aggregator, or of any
10 local government, and neither the credit, the revenues, nor the
11 taxing power of the State, any political subdivision thereof
12 (other than the Agency to the extent provided in the Agency
13 loan agreement relating to the revenue bonds in question), any
14 governmental aggregator, or of any local government shall be,
15 or shall be deemed to be, pledged to the payment of any revenue
16 bonds, or obligations of the Agency.

17 (e) Exemption from taxation. The creation of the Illinois
18 Power Agency is in all respects for the benefit of the people
19 of Illinois and for the improvement of their health, safety,
20 welfare, comfort, and security, and its purposes are public
21 purposes. In consideration thereof, the revenue bonds issued on
22 behalf of the Agency pursuant to this Act and the income from
23 these revenue bonds may be free from all taxation by the State
24 or its political subdivisions, except for estate, transfer, and
25 inheritance taxes. The exemption from taxation provided by the
26 preceding sentence shall apply to the income on any revenue

1 bonds issued on behalf of the Agency only if the Authority with
2 concurrence of the Agency in its sole judgment determines that
3 the exemption enhances the marketability of the revenue bonds
4 or reduces the interest rates that would otherwise be borne by
5 the revenue bonds and that the project for which the revenue
6 bonds will be issued will be owned by the Agency or another
7 governmental entity and that the project is used for public
8 consumption. For purposes of Section 250 of the Illinois Income
9 Tax Act, the exemption of the Agency shall terminate after all
10 of the revenue bonds have been paid. The amount of the income
11 that shall be added and then subtracted on the Illinois income
12 tax return of a taxpayer, subject to Section 203 of the
13 Illinois Income Tax Act, from federal adjusted gross income or
14 federal taxable income in computing Illinois base income shall
15 be the interest net of any bond premium amortization.

16 (20 ILCS 3501/845-5)

17 Sec. 845-5. Bond limitations.

18 (a) The Authority may not have outstanding at any one time
19 bonds for any of its corporate purposes in an aggregate
20 principal amount exceeding \$25,200,000,000, excluding bonds
21 issued to refund the bonds of the Authority or bonds of the
22 Predecessor Authorities.

23 (b) The Authority may not have outstanding at any one time
24 revenue bonds in an aggregate principal amount exceeding
25 \$4,000,000,000 on behalf of the Illinois Power Agency as set

1 forth in Section 825-90. Any such revenue bonds issued on
2 behalf of the Illinois Power Agency pursuant to this Act shall
3 not be counted against the bond authorization limit set forth
4 in subsection (a).

5 (Source: P.A. 93-205, eff. 1-1-04; 93-1101, eff. 3-31-05;
6 94-1068, eff. 8-1-06.)

7 Section 5-920. The State Finance Act is amended by adding
8 Sections 5.680, 5.681, 5.682, 5.683, and 6z-75 and by changing
9 Section 8h as follows:

10 (30 ILCS 105/5.680 new)

11 Sec. 5.680. The Illinois Power Agency Operations Fund.

12 (30 ILCS 105/5.681 new)

13 Sec. 5.681. The Illinois Power Agency Facilities Fund.

14 (30 ILCS 105/5.682 new)

15 Sec. 5.682. The Illinois Power Agency Debt Service Fund.

16 (30 ILCS 105/5.683 new)

17 Sec. 5.683. The Illinois Power Agency Trust Fund.

18 (30 ILCS 105/6z-75 new)

19 Sec. 6z-75. The Illinois Power Agency Trust Fund.

20 (a) Creation. The Illinois Power Agency Trust Fund is

1 created as a special fund in the State treasury. The State
2 Treasurer shall be the custodian of the Fund. Amounts in the
3 Fund, both principal and interest not appropriated, shall be
4 invested as provided by law.

5 (b) Funding and investment.

6 (1) The Illinois Power Agency Trust Fund may accept,
7 receive, and administer any grants, loans, or other funds
8 made available to it by any source. Any such funds received
9 by the Fund shall not be considered income, but shall be
10 added to the principal of the Fund.

11 (2) The investments of the Fund shall be managed by the
12 Illinois State Board of Investment, for the purpose of
13 obtaining a total return on investments for the long term,
14 as provided for under Article 22A of the Illinois Pension
15 Code.

16 (c) Investment proceeds. Subject to the provisions of
17 subsection (d) of this Section, the General Assembly may
18 annually appropriate from the Illinois Power Agency Trust Fund
19 to the Illinois Power Agency Operations Fund an amount not to
20 exceed 90% of the annual investment income earned by the Fund
21 to the Illinois Power Agency. Any investment income not
22 appropriated by the General Assembly in a given fiscal year
23 shall be added to the principal of the Fund, and thereafter
24 considered a part thereof and not subject to appropriation as
25 income earned by the Fund.

26 (d) Expenditures.

1 (1) During Fiscal Year 2008 and Fiscal Year 2009, the
2 General Assembly shall not appropriate any of the
3 investment income earned by the Illinois Power Agency Trust
4 Fund to the Illinois Power Agency.

5 (2) During Fiscal Year 2010 and Fiscal Year 2011, the
6 General Assembly shall appropriate a portion of the
7 investment income earned by the Illinois Power Agency Trust
8 Fund to repay to the General Revenue Fund of the State of
9 Illinois those amounts, if any, appropriated from the
10 General Revenue Fund for the operation of the Illinois
11 Power Agency during Fiscal Year 2008 and Fiscal Year 2009,
12 so that at the end of Fiscal Year 2011, the entire amount,
13 if any, appropriated from the General Revenue Fund for the
14 operation of the Illinois Power Agency during Fiscal Year
15 2008 and Fiscal Year 2009 will be repaid in full to the
16 General Revenue Fund.

17 (3) In Fiscal Year 2012 and thereafter, the General
18 Assembly shall consider the need to balance its
19 appropriations from the investment income earned by the
20 Fund with the need to provide for the growth of the
21 principal of the Illinois Power Agency Trust Fund in order
22 to ensure that the Fund is able to produce sufficient
23 investment income to fund the operations of the Illinois
24 Power Agency in future years.

25 (4) If the Illinois Power Agency shall cease
26 operations, then, unless otherwise provided for by law or

1 appropriation, the principal and any investment income
2 earned by the Fund shall be transferred into the
3 Supplemental Low-Income Energy Assistance Program (LIHEAP)
4 Fund under Section 13 of the Energy Assistance Act of 1989.

5 (e) Implementation. The provisions of this Section shall
6 not be operative until the Illinois Power Agency Trust Fund has
7 accumulated a principal balance of \$25,000,000.

8 (30 ILCS 105/8h)

9 Sec. 8h. Transfers to General Revenue Fund.

10 (a) Except as otherwise provided in this Section and
11 Section 8n of this Act, and ~~(e), (d), or (c)~~, notwithstanding
12 any other State law to the contrary, the Governor may, through
13 June 30, 2007, from time to time direct the State Treasurer and
14 Comptroller to transfer a specified sum from any fund held by
15 the State Treasurer to the General Revenue Fund in order to
16 help defray the State's operating costs for the fiscal year.
17 The total transfer under this Section from any fund in any
18 fiscal year shall not exceed the lesser of (i) 8% of the
19 revenues to be deposited into the fund during that fiscal year
20 or (ii) an amount that leaves a remaining fund balance of 25%
21 of the July 1 fund balance of that fiscal year. In fiscal year
22 2005 only, prior to calculating the July 1, 2004 final
23 balances, the Governor may calculate and direct the State
24 Treasurer with the Comptroller to transfer additional amounts
25 determined by applying the formula authorized in Public Act

1 93-839 to the funds balances on July 1, 2003. No transfer may
2 be made from a fund under this Section that would have the
3 effect of reducing the available balance in the fund to an
4 amount less than the amount remaining unexpended and unreserved
5 from the total appropriation from that fund estimated to be
6 expended for that fiscal year. This Section does not apply to
7 any funds that are restricted by federal law to a specific use,
8 to any funds in the Motor Fuel Tax Fund, the Intercity
9 Passenger Rail Fund, the Hospital Provider Fund, the Medicaid
10 Provider Relief Fund, the Teacher Health Insurance Security
11 Fund, the Reviewing Court Alternative Dispute Resolution Fund,
12 the Voters' Guide Fund, the Foreign Language Interpreter Fund,
13 the Lawyers' Assistance Program Fund, the Supreme Court Federal
14 Projects Fund, the Supreme Court Special State Projects Fund,
15 the Supplemental Low-Income Energy Assistance Fund, the Good
16 Samaritan Energy Trust Fund, the Low-Level Radioactive Waste
17 Facility Development and Operation Fund, the Horse Racing
18 Equity Trust Fund, or the Hospital Basic Services Preservation
19 Fund, or to any funds to which subsection (f) of Section 20-40
20 of the Nursing and Advanced Practice Nursing Act applies. No
21 transfers may be made under this Section from the Pet
22 Population Control Fund. Notwithstanding any other provision
23 of this Section, for fiscal year 2004, the total transfer under
24 this Section from the Road Fund or the State Construction
25 Account Fund shall not exceed the lesser of (i) 5% of the
26 revenues to be deposited into the fund during that fiscal year

1 or (ii) 25% of the beginning balance in the fund. For fiscal
2 year 2005 through fiscal year 2007, no amounts may be
3 transferred under this Section from the Road Fund, the State
4 Construction Account Fund, the Criminal Justice Information
5 Systems Trust Fund, the Wireless Service Emergency Fund, or the
6 Mandatory Arbitration Fund.

7 In determining the available balance in a fund, the
8 Governor may include receipts, transfers into the fund, and
9 other resources anticipated to be available in the fund in that
10 fiscal year.

11 The State Treasurer and Comptroller shall transfer the
12 amounts designated under this Section as soon as may be
13 practicable after receiving the direction to transfer from the
14 Governor.

15 (a-5) Transfers directed to be made under this Section on
16 or before February 28, 2006 that are still pending on May 19,
17 2006 (the effective date of Public Act 94-774) ~~this amendatory~~
18 ~~Act of the 94th General Assembly~~ shall be redirected as
19 provided in Section 8n of this Act.

20 (b) This Section does not apply to: (i) the Ticket For The
21 Cure Fund; (ii) any fund established under the Community Senior
22 Services and Resources Act; or (iii) on or after January 1,
23 2006 (the effective date of Public Act 94-511), the Child Labor
24 and Day and Temporary Labor Enforcement Fund.

25 (c) This Section does not apply to the Demutualization
26 Trust Fund established under the Uniform Disposition of

1 Unclaimed Property Act.

2 (d) This Section does not apply to moneys set aside in the
3 Illinois State Podiatric Disciplinary Fund for podiatric
4 scholarships and residency programs under the Podiatric
5 Scholarship and Residency Act.

6 (e) Subsection (a) does not apply to, and no transfer may
7 be made under this Section from, the Pension Stabilization
8 Fund.

9 (f) Subsection (a) does not apply to, and no transfer may
10 be made under this Section from, the Illinois Power Agency
11 Operations Fund, the Illinois Power Agency Facilities Fund, the
12 Illinois Power Agency Debt Service Fund, and the Illinois Power
13 Agency Trust Fund.

14 (Source: P.A. 93-32, eff. 6-20-03; 93-659, eff. 2-3-04; 93-674,
15 eff. 6-10-04; 93-714, eff. 7-12-04; 93-801, eff. 7-22-04;
16 93-839, eff. 7-30-04; 93-1054, eff. 11-18-04; 93-1067, eff.
17 1-15-05; 94-91, eff. 7-1-05; 94-120, eff. 7-6-05; 94-511, eff.
18 1-1-06; 94-535, eff. 8-10-05; 94-639, eff. 8-22-05; 94-645,
19 eff. 8-22-05; 94-648, eff. 1-1-06; 94-686, eff. 11-2-05;
20 94-691, eff. 11-2-05; 94-726, eff. 1-20-06; 94-773, eff.
21 5-18-06; 94-774, eff. 5-19-06; 94-804, eff. 5-26-06; 94-839,
22 eff. 6-6-06; revised 6-19-06.)

23 Section 5-925. The Illinois Procurement Code is amended by
24 changing Sections 1-10, 1-15.15, 1-15.25, 15-1, 20-10, 30-20,
25 30-22, 30-25, 35-15, 35-20, 35-25, 35-30, 35-35, 35-40, and

1 50-70 as follows:

2 (30 ILCS 500/1-10)

3 Sec. 1-10. Application.

4 (a) This Code applies only to procurements for which
5 contractors were first solicited on or after July 1, 1998. This
6 Code shall not be construed to affect or impair any contract,
7 or any provision of a contract, entered into based on a
8 solicitation prior to the implementation date of this Code as
9 described in Article 99, including but not limited to any
10 covenant entered into with respect to any revenue bonds or
11 similar instruments. All procurements for which contracts are
12 solicited between the effective date of Articles 50 and 99 and
13 July 1, 1998 shall be substantially in accordance with this
14 Code and its intent.

15 (b) This Code shall apply regardless of the source of the
16 funds with which the contracts are paid, including federal
17 assistance moneys. This Code shall not apply to:

18 (1) Contracts between the State and its political
19 subdivisions or other governments, or between State
20 governmental bodies except as specifically provided in
21 this Code.

22 (2) Grants, except for the filing requirements of
23 Section 20-80.

24 (3) Purchase of care.

25 (4) Hiring of an individual as employee and not as an

1 independent contractor, whether pursuant to an employment
2 code or policy or by contract directly with that
3 individual.

4 (5) Collective bargaining contracts.

5 (6) Purchase of real estate.

6 (7) Contracts necessary to prepare for anticipated
7 litigation, enforcement actions, or investigations,
8 provided that the chief legal counsel to the Governor shall
9 give his or her prior approval when the procuring agency is
10 one subject to the jurisdiction of the Governor, and
11 provided that the chief legal counsel of any other
12 procuring entity subject to this Code shall give his or her
13 prior approval when the procuring entity is not one subject
14 to the jurisdiction of the Governor.

15 (8) Contracts for services to Northern Illinois
16 University by a person, acting as an independent
17 contractor, who is qualified by education, experience, and
18 technical ability and is selected by negotiation for the
19 purpose of providing non-credit educational service
20 activities or products by means of specialized programs
21 offered by the university.

22 (9) Procurement expenditures by the Illinois
23 Conservation Foundation when only private funds are used.

24 (c) This Code does not apply to the electric power
25 procurement process provided for under Section 1-75 of the
26 Illinois Power Agency Act and Section 16-111.5 of the Public

1 Utilities Act.

2 (Source: P.A. 91-627, eff. 8-19-99; 91-904, eff. 7-6-00;
3 92-797, eff. 8-15-02.)

4 (30 ILCS 500/1-15.15)

5 Sec. 1-15.15. Chief Procurement Officer. "Chief
6 Procurement Officer" means:

7 (1) for procurements for construction and
8 construction-related services committed by law to the
9 jurisdiction or responsibility of the Capital Development
10 Board, the executive director of the Capital Development Board.

11 (2) for procurements for all construction,
12 construction-related services, operation of any facility, and
13 the provision of any service or activity committed by law to
14 the jurisdiction or responsibility of the Illinois Department
15 of Transportation, including the direct or reimbursable
16 expenditure of all federal funds for which the Department of
17 Transportation is responsible or accountable for the use
18 thereof in accordance with federal law, regulation, or
19 procedure, the Secretary of Transportation.

20 (3) for all procurements made by a public institution of
21 higher education, a representative designated by the Governor.

22 (4) for all procurements made by the Illinois Power Agency,
23 the Director of the Illinois Power Agency.

24 (5) ~~(4)~~ for all other procurements, the Director of the
25 Department of Central Management Services.

1 (Source: P.A. 90-572, eff. 2-6-98.)

2 (30 ILCS 500/1-15.25)

3 Sec. 1-15.25. Construction agency. "Construction agency"
4 means the Capital Development Board for construction or
5 remodeling of State-owned facilities; the Illinois Department
6 of Transportation for construction or maintenance of roads,
7 highways, bridges, and airports; the Illinois Toll Highway
8 Authority for construction or maintenance of toll highways; the
9 Illinois Power Agency for construction, maintenance, and
10 expansion of Agency-owned facilities, as defined in Section
11 1-10 of the Illinois Power Agency Act; and any other State
12 agency entering into construction contracts as authorized by
13 law or by delegation from the chief procurement officer.

14 (Source: P.A. 90-572, eff. 2-6-98.)

15 (30 ILCS 500/15-1)

16 Sec. 15-1. Publisher. The Department of Central Management
17 Services is the State agency responsible for publishing its
18 volumes of the Illinois Procurement Bulletin. The Capital
19 Development Board is responsible for publishing its volumes of
20 the Illinois Procurement Bulletin. The Department of
21 Transportation is responsible for publishing its volumes of the
22 Illinois Procurement Bulletin. The higher education chief
23 procurement officer is responsible for publishing the higher
24 education volumes of the Illinois Procurement Bulletin. The

1 Illinois Power Agency is the State agency responsible for
2 publishing its volumes of the Illinois Procurement Bulletin.

3 Each volume of the Illinois Procurement Bulletin shall be
4 available electronically and may be available in print.
5 References in this Code to the publication and distribution of
6 the Illinois Procurement Bulletin include both its print and
7 electronic formats.

8 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

9 (30 ILCS 500/20-10)

10 Sec. 20-10. Competitive sealed bidding.

11 (a) Conditions for use. All contracts shall be awarded by
12 competitive sealed bidding except as otherwise provided in
13 Section 20-5.

14 (b) Invitation for bids. An invitation for bids shall be
15 issued and shall include a purchase description and the
16 material contractual terms and conditions applicable to the
17 procurement.

18 (c) Public notice. Public notice of the invitation for bids
19 shall be published in the Illinois Procurement Bulletin at
20 least 14 days before the date set in the invitation for the
21 opening of bids.

22 (d) Bid opening. Bids shall be opened publicly in the
23 presence of one or more witnesses at the time and place
24 designated in the invitation for bids. The name of each bidder,
25 the amount of each bid, and other relevant information as may

1 be specified by rule shall be recorded. After the award of the
2 contract, the winning bid and the record of each unsuccessful
3 bid shall be open to public inspection.

4 (e) Bid acceptance and bid evaluation. Bids shall be
5 unconditionally accepted without alteration or correction,
6 except as authorized in this Code. Bids shall be evaluated
7 based on the requirements set forth in the invitation for bids,
8 which may include criteria to determine acceptability such as
9 inspection, testing, quality, workmanship, delivery, and
10 suitability for a particular purpose. Those criteria that will
11 affect the bid price and be considered in evaluation for award,
12 such as discounts, transportation costs, and total or life
13 cycle costs, shall be objectively measurable. The invitation
14 for bids shall set forth the evaluation criteria to be used.

15 (f) Correction or withdrawal of bids. Correction or
16 withdrawal of inadvertently erroneous bids before or after
17 award, or cancellation of awards of contracts based on bid
18 mistakes, shall be permitted in accordance with rules. After
19 bid opening, no changes in bid prices or other provisions of
20 bids prejudicial to the interest of the State or fair
21 competition shall be permitted. All decisions to permit the
22 correction or withdrawal of bids based on bid mistakes shall be
23 supported by written determination made by a State purchasing
24 officer.

25 (g) Award. The contract shall be awarded with reasonable
26 promptness by written notice to the lowest responsible and

1 responsive bidder whose bid meets the requirements and criteria
2 set forth in the invitation for bids, except when a State
3 purchasing officer determines it is not in the best interest of
4 the State and by written explanation determines another bidder
5 shall receive the award. The explanation shall appear in the
6 appropriate volume of the Illinois Procurement Bulletin.

7 (h) Multi-step sealed bidding. When it is considered
8 impracticable to initially prepare a purchase description to
9 support an award based on price, an invitation for bids may be
10 issued requesting the submission of unpriced offers to be
11 followed by an invitation for bids limited to those bidders
12 whose offers have been qualified under the criteria set forth
13 in the first solicitation.

14 (i) Alternative procedures. Notwithstanding any other
15 provision of this Act to the contrary, the Director of the
16 Illinois Power Agency may create alternative bidding
17 procedures to be used in procuring professional services under
18 Section 1-75(a) of the Illinois Power Agency Act and Section
19 16-111.5(c) of the Public Utilities Act. These alternative
20 procedures shall be set forth together with the other criteria
21 contained in the invitation for bids, and shall appear in the
22 appropriate volume of the Illinois Procurement Bulletin.

23 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

24 (30 ILCS 500/30-20)

25 Sec. 30-20. Prequalification.

1 (a) The Capital Development Board shall promulgate rules
2 for the development of prequalified supplier lists for
3 construction and construction-related professional services
4 and the periodic updating of those lists. Construction and
5 construction-related professional services contracts over
6 \$25,000 may be awarded to any qualified suppliers.

7 (b) The Illinois Power Agency shall promulgate rules for
8 the development of prequalified supplier lists for
9 construction and construction-related professional services
10 and the periodic updating of those lists. Construction and
11 construction related professional services contracts over
12 \$25,000 may be awarded to any qualified suppliers, pursuant to
13 a competitive bidding process.

14 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

15 (30 ILCS 500/30-22)

16 Sec. 30-22. Construction contracts; responsible bidder
17 requirements. To be considered a responsible bidder on a
18 construction contract for purposes of this Code, a bidder must
19 comply with all of the following requirements and must present
20 satisfactory evidence of that compliance to the appropriate
21 construction agency:

22 (1) The bidder must comply with all applicable laws
23 concerning the bidder's entitlement to conduct business in
24 Illinois.

25 (2) The bidder must comply with all applicable

1 provisions of the Prevailing Wage Act.

2 (3) The bidder must comply with Subchapter VI ("Equal
3 Employment Opportunities") of Chapter 21 of Title 42 of the
4 United States Code (42 U.S.C. 2000e and following) and with
5 Federal Executive Order No. 11246 as amended by Executive
6 Order No. 11375.

7 (4) The bidder must have a valid Federal Employer
8 Identification Number or, if an individual, a valid Social
9 Security Number.

10 (5) The bidder must have a valid certificate of
11 insurance showing the following coverages: general
12 liability, professional liability, product liability,
13 workers' compensation, completed operations, hazardous
14 occupation, and automobile.

15 (6) The bidder and all bidder's subcontractors must
16 participate in applicable apprenticeship and training
17 programs approved by and registered with the United States
18 Department of Labor's Bureau of Apprenticeship and
19 Training.

20 (7) For contracts with the Illinois Power Agency, the
21 Director of the Illinois Power Agency may establish
22 additional requirements for responsible bidders. These
23 additional requirements, if established, shall be set
24 forth together with the other criteria contained in the
25 invitation for bids, and shall appear in the appropriate
26 volume of the Illinois Procurement Bulletin.

1 The provisions of this Section shall not apply to federally
2 funded construction projects if such application would
3 jeopardize the receipt or use of federal funds in support of
4 such a project.

5 (Source: P.A. 93-642, eff. 6-1-04.)

6 (30 ILCS 500/30-25)

7 Sec. 30-25. Retention of a percentage of contract price.
8 Whenever any contract entered into by a construction agency for
9 the repair, remodeling, renovation, or construction of a
10 building or structure, for the construction or maintenance of a
11 highway, as those terms are defined in Article 2 of the
12 Illinois Highway Code, for the construction or maintenance of
13 facilities as that term is defined under Section 1-10 of the
14 Illinois Power Agency Act, or for the reclamation of abandoned
15 lands as those terms are defined in Article I of the Abandoned
16 Mined Lands and Water Reclamation Act provides for the
17 retention of a percentage of the contract price until final
18 completion and acceptance of the work, upon the request of the
19 contractor and with the approval of the construction agency the
20 amount so retained may be deposited under a trust agreement
21 with an Illinois bank or financial institution of the
22 contractor's choice and subject to the approval of the
23 construction agency. The contractor shall receive any interest
24 on the deposited amount. Upon application by the contractor,
25 the trust agreement must contain, at a minimum, the following

1 provisions:

2 (1) the amount to be deposited subject to the trust;

3 (2) the terms and conditions of payment in case of
4 default by the contractor;

5 (3) the termination of the trust agreement upon
6 completion of the contract; and

7 (4) the contractor shall be responsible for obtaining
8 the written consent of the bank trustee and for any costs
9 or service fees.

10 The trust agreement may, at the discretion of the
11 construction agency and upon request of the contractor, become
12 effective at the time of the first partial payment in
13 accordance with existing statutes and rules.

14 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

15 (30 ILCS 500/35-15)

16 Sec. 35-15. Prequalification.

17 (a) The Director of Central Management Services, the
18 Illinois Power Agency, and the higher education chief
19 procurement officer shall each develop appropriate and
20 reasonable prequalification standards and categories of
21 professional and artistic services.

22 (b) The prequalifications and categorizations shall be
23 submitted to the Procurement Policy Board and published for
24 public comment prior to their submission to the Joint Committee
25 on Administrative Rules for approval.

1 (c) The Director of Central Management Services, the
2 Illinois Power Agency, and the higher education chief
3 procurement officer shall each also assemble and maintain a
4 comprehensive list of prequalified and categorized businesses
5 and persons.

6 (d) Prequalification shall not be used to bar or prevent
7 any qualified business or person for bidding or responding to
8 invitations for bid or proposal.

9 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

10 (30 ILCS 500/35-20)

11 Sec. 35-20. Uniformity in procurement.

12 (a) The Director of Central Management Services, the
13 Illinois Power Agency, and the higher education chief
14 procurement officer shall each develop, cause to be printed,
15 and distribute uniform documents for the solicitation, review,
16 and acceptance of all professional and artistic services.

17 (b) All chief procurement officers, State purchasing
18 officers, and their designees shall use the appropriate uniform
19 procedures and forms specified in this Code for all
20 professional and artistic services.

21 (c) These forms shall include in detail, in writing, at
22 least:

23 (1) a description of the goal to be achieved;

24 (2) the services to be performed;

25 (3) the need for the service;

1 (4) the qualifications that are necessary; and

2 (5) a plan for post-performance review.

3 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

4 (30 ILCS 500/35-25)

5 Sec. 35-25. Uniformity in contract.

6 (a) The Director of Central Management Services, the
7 Illinois Power Agency, and the higher education chief
8 procurement officer shall each develop, cause to be printed,
9 and distribute uniform documents for the contracting of
10 professional and artistic services.

11 (b) All chief procurement officers, State purchasing
12 officers, and their designees shall use the appropriate uniform
13 contracts and forms in contracting for all professional and
14 artistic services.

15 (c) These contracts and forms shall include in detail, in
16 writing, at least:

17 (1) the detail listed in subsection (c) of Section
18 35-20;

19 (2) the duration of the contract, with a schedule of
20 delivery, when applicable;

21 (3) the method for charging and measuring cost (hourly,
22 per day, etc.);

23 (4) the rate of remuneration; and

24 (5) the maximum price.

25 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

1 (30 ILCS 500/35-30)

2 Sec. 35-30. Awards.

3 (a) All State contracts for professional and artistic
4 services, except as provided in this Section, shall be awarded
5 using the competitive request for proposal process outlined in
6 this Section.

7 (b) For each contract offered, the chief procurement
8 officer, State purchasing officer, or his or her designee shall
9 use the appropriate standard solicitation forms available from
10 the Department of Central Management Services, the Illinois
11 Power Agency, or the higher education chief procurement
12 officer.

13 (c) Prepared forms shall be submitted to the Department of
14 Central Management Services, the Illinois Power Agency, or the
15 higher education chief procurement officer, whichever is
16 appropriate, for publication in its Illinois Procurement
17 Bulletin and circulation to the Department of Central
18 Management Services' or the higher education chief procurement
19 officer's list of prequalified vendors. Notice of the offer or
20 request for proposal shall appear at least 14 days before the
21 response to the offer is due.

22 (d) All interested respondents shall return their
23 responses to the Department of Central Management Services, the
24 Illinois Power Agency, or the higher education chief
25 procurement officer, whichever is appropriate, which shall

1 open and record them. The Department or higher education chief
2 procurement officer then shall forward the responses, together
3 with any information it has available about the qualifications
4 and other State work of the respondents.

5 (e) After evaluation, ranking, and selection, the
6 responsible chief procurement officer, State purchasing
7 officer, or his or her designee shall notify the Department of
8 Central Management Services, the Illinois Power Agency, or the
9 higher education chief procurement officer, whichever is
10 appropriate, of the successful respondent and shall forward a
11 copy of the signed contract for the Department's, Agency's, or
12 higher education chief procurement officer's file. The
13 Department, Agency, or higher education chief procurement
14 officer shall publish the names of the responsible procurement
15 decision-maker, the agency letting the contract, the
16 successful respondent, a contract reference, and value of the
17 let contract in the next appropriate volume of the Illinois
18 Procurement Bulletin.

19 (f) For all professional and artistic contracts with
20 annualized value that exceeds \$25,000, evaluation and ranking
21 by price are required. Any chief procurement officer or State
22 purchasing officer, but not their designees, may select an
23 offeror other than the lowest bidder by price. In any case,
24 when the contract exceeds the \$25,000 threshold ~~threshold~~ and
25 the lowest bidder is not selected, the chief procurement
26 officer or the State purchasing officer shall forward together

1 with the contract notice of who the low bidder was and a
2 written decision as to why another was selected to the
3 Department of Central Management Services, the Illinois Power
4 Agency, or the higher education chief procurement officer,
5 whichever is appropriate. The Department, Agency, or higher
6 education chief procurement officer shall publish as provided
7 in subsection (e) of Section 35-30, but shall include notice of
8 the chief procurement officer's or State purchasing officer's
9 written decision.

10 (g) The Department of Central Management Services, the
11 Illinois Power Agency, and higher education chief procurement
12 officer may each refine, but not contradict, this Section by
13 promulgating rules for submission to the Procurement Policy
14 Board and then to the Joint Committee on Administrative Rules.
15 Any refinement shall be based on the principles and procedures
16 of the federal Architect-Engineer Selection Law, Public Law
17 92-582 Brooks Act, and the Architectural, Engineering, and Land
18 Surveying Qualifications Based Selection Act; except that
19 pricing shall be an integral part of the selection process.

20 (Source: P.A. 90-572, eff. date - See Sec. 99-5; revised
21 10-19-05.)

22 (30 ILCS 500/35-35)

23 Sec. 35-35. Exceptions.

24 (a) Exceptions to Section 35-30 are allowed for sole source
25 procurements, emergency procurements, and at the discretion of

1 the chief procurement officer or the State purchasing officer,
2 but not their designees, for professional and artistic
3 contracts that are nonrenewable, one year or less in duration,
4 and have a value of less than \$20,000.

5 (b) All exceptions granted under this Article must still be
6 submitted to the Department of Central Management Services, the
7 Illinois Power Agency, or the higher education chief
8 procurement officer, whichever is appropriate, and published
9 as provided for in subsection (f) of Section 35-30, shall name
10 the authorizing chief procurement officer or State purchasing
11 officer, and shall include a brief explanation of the reason
12 for the exception.

13 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

14 (30 ILCS 500/35-40)

15 Sec. 35-40. Subcontractors.

16 (a) Any contract granted under this Article shall state
17 whether the services of a subcontractor will be used. The
18 contract shall include the names and addresses of all
19 subcontractors and the expected amount of money each will
20 receive under the contract.

21 (b) If at any time during the term of a contract, a
22 contractor adds or changes any subcontractors, he or she shall
23 promptly notify, in writing, the Department of Central
24 Management Services, the Illinois Power Agency, or the higher
25 education chief procurement officer, whichever is appropriate,

1 and the responsible chief procurement officer, State
2 purchasing officer, or their designee of the names and
3 addresses and the expected amount of money each new or replaced
4 subcontractor will receive.

5 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

6 (30 ILCS 500/50-70)

7 Sec. 50-70. Additional provisions. This Code is subject to
8 applicable provisions of the following Acts:

9 (1) Article 33E of the Criminal Code of 1961;

10 (2) the Illinois Human Rights Act;

11 (3) the Discriminatory Club Act;

12 (4) the Illinois Governmental Ethics Act;

13 (5) the State Prompt Payment Act;

14 (6) the Public Officer Prohibited Activities Act; ~~and~~

15 (7) the Drug Free Workplace Act; and-

16 (8) the Illinois Power Agency Act.

17 (Source: P.A. 90-572, eff. 2-6-98.)

18 Section 5-930. The State Property Control Act is amended by
19 changing Section 1.02 as follows:

20 (30 ILCS 605/1.02) (from Ch. 127, par. 133b3)

21 Sec. 1.02. "Property" means State owned property and
22 includes all real estate, with the exception of rights of way
23 for State water resource and highway improvements, traffic

1 signs and traffic signals, and with the exception of common
2 school property; and all tangible personal property with the
3 exception of properties specifically exempted by the
4 administrator, provided that any property originally
5 classified as real property which has been detached from its
6 structure shall be classified as personal property.

7 "Property" does not include property owned by the Illinois
8 Medical District Commission and leased or occupied by others
9 for purposes permitted under the Illinois Medical District Act.

10 "Property" also does not include property owned and held by the
11 Illinois Medical District Commission for redevelopment.

12 "Property" does not include property described under
13 Section 5 of Public Act 92-371 with respect to depositing the
14 net proceeds from the sale or exchange of the property as
15 provided in Section 10 of that Act.

16 "Property" does not include that property described under
17 Section 5 of Public Act 94-405 ~~this amendatory Act of the 94th~~
18 ~~General Assembly.~~

19 "Property" does not include real property owned or operated
20 by the Illinois Power Agency or any electricity generated on
21 that real property or by the Agency. For purposes of this
22 subsection only, "real property" includes any interest in land,
23 all buildings and improvements located thereon, and all
24 fixtures and equipment used or designed for the production and
25 transmission of electricity located thereon.

26 (Source: P.A. 94-405, eff. 8-2-05; revised 8-31-05.)

1 Section 5-935. The Public Utilities Act is amended by
2 changing Sections 3-105, 4-404, 4-502, 8-403, 16-101A, 16-111,
3 and 16-113 and by adding Sections 12-103, 16-103.1, 16-111.5,
4 16-111.5A, 16-111.6, 16-126.1, and 16-127 as follows:

5 (220 ILCS 5/3-105) (from Ch. 111 2/3, par. 3-105)

6 Sec. 3-105. Public utility.

7 (a) "Public utility" means and includes, except where
8 otherwise expressly provided in this Section, every
9 corporation, company, limited liability company, association,
10 joint stock company or association, firm, partnership or
11 individual, their lessees, trustees, or receivers appointed by
12 any court whatsoever that owns, controls, operates or manages,
13 within this State, directly or indirectly, for public use, any
14 plant, equipment or property used or to be used for or in
15 connection with, or owns or controls any franchise, license,
16 permit or right to engage in:

17 (1) ~~a.~~ the production, storage, transmission, sale,
18 delivery or furnishing of heat, cold, power, electricity,
19 water, or light, except when used solely for communications
20 purposes;

21 (2) ~~b.~~ the disposal of sewerage; or

22 (3) ~~c.~~ the conveyance of oil or gas by pipe line.

23 (b) "Public utility" does not include, however:

24 (1)~~.~~ public utilities that are owned and operated by

1 any political subdivision, public institution of higher
2 education or municipal corporation of this State, or public
3 utilities that are owned by such political subdivision,
4 public institution of higher education, or municipal
5 corporation and operated by any of its lessees or operating
6 agents;

7 (2) water companies which are purely mutual concerns,
8 having no rates or charges for services, but paying the
9 operating expenses by assessment upon the members of such a
10 company and no other person;

11 (3) electric cooperatives as defined in Section
12 3-119;

13 (4) the following natural gas cooperatives:

14 (A) residential natural gas cooperatives that are
15 not-for-profit corporations established for the
16 purpose of administering and operating, on a
17 cooperative basis, the furnishing of natural gas to
18 residences for the benefit of their members who are
19 residential consumers of natural gas. For entities
20 qualifying as residential natural gas cooperatives and
21 recognized by the Illinois Commerce Commission as
22 such, the State shall guarantee legally binding
23 contracts entered into by residential natural gas
24 cooperatives for the express purpose of acquiring
25 natural gas supplies for their members. The Illinois
26 Commerce Commission shall establish rules and

1 regulations providing for such guarantees. The total
2 liability of the State in providing all such guarantees
3 shall not at any time exceed \$1,000,000, nor shall the
4 State provide such a guarantee to a residential natural
5 gas cooperative for more than 3 consecutive years; and

6 (B) natural gas cooperatives that are
7 not-for-profit corporations operated for the purpose
8 of administering, on a cooperative basis, the
9 furnishing of natural gas for the benefit of their
10 members and that, prior to 90 days after the effective
11 date of this amendatory Act of the 94th General
12 Assembly, either had acquired or had entered into an
13 asset purchase agreement to acquire all or
14 substantially all of the operating assets of a public
15 utility or natural gas cooperative with the intention
16 of operating those assets as a natural gas cooperative;

17 ~~(5)~~ sewage disposal companies which provide sewage
18 disposal services on a mutual basis without establishing
19 rates or charges for services, but paying the operating
20 expenses by assessment upon the members of the company and
21 no others;

22 ~~(6)~~ (Blank);

23 ~~(7)~~ cogeneration facilities, small power production
24 facilities, and other qualifying facilities, as defined in
25 the Public Utility Regulatory Policies Act and regulations
26 promulgated thereunder, except to the extent State

1 regulatory jurisdiction and action is required or
2 authorized by federal law, regulations, regulatory
3 decisions or the decisions of federal or State courts of
4 competent jurisdiction;

5 ~~(8)~~ the ownership or operation of a facility that
6 sells compressed natural gas at retail to the public for
7 use only as a motor vehicle fuel and the selling of
8 compressed natural gas at retail to the public for use only
9 as a motor vehicle fuel; ~~and~~

10 ~~(9)~~ alternative retail electric suppliers as defined
11 in Article XVI; ~~and~~

12 (10) the Illinois Power Agency.

13 (Source: P.A. 94-738, eff. 5-4-06.)

14 (220 ILCS 5/4-404)

15 Sec. 4-404. Protection of confidential and proprietary
16 information. The Commission shall provide adequate protection
17 for confidential and proprietary information furnished,
18 delivered or filed by any person, corporation or other entity,
19 including proprietary information provided to the Commission
20 by the Illinois Power Agency.

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

22 (220 ILCS 5/4-502)

23 Sec. 4-502. Small public utility or telecommunications
24 carrier; acquisition by capable utility; Commission

1 determination; procedure.

2 (a) The Commission may provide for the acquisition of a
3 small public utility or telecommunications carrier by a capable
4 public utility or telecommunications carrier, if the
5 Commission, after notice and an opportunity to be heard,
6 determines one or more of the following:

7 (1) the small public utility or telecommunications
8 carrier is failing to provide safe, adequate, or reliable
9 service;

10 (2) the small public utility or telecommunications
11 carrier no longer possesses sufficient technical,
12 financial, or managerial resources and abilities to
13 provide the service or services for which its certificate
14 was originally granted;

15 (3) the small public utility or telecommunications
16 carrier has been actually or effectively abandoned by its
17 owners or operators;

18 (4) the small public utility or telecommunications
19 carrier has defaulted on a bond, note, or loan issued or
20 guaranteed by a department, office, commission, board,
21 authority, or other unit of State government;

22 (5) the small public utility or telecommunications
23 carrier has wilfully failed to comply with any provision of
24 this Act, any other provision of State or federal law, or
25 any rule, regulation, order, or decision of the Commission;
26 or

1 (6) the small public utility or telecommunications
2 carrier has wilfully allowed property owned or controlled
3 by it to be used in violation of this Act, any other
4 provision of State or federal law, or any rule, regulation,
5 order, or decision of the Commission.

6 (b) As used in this Section, "small public utility or
7 telecommunications carrier" means a public utility or
8 telecommunications carrier that regularly provides service to
9 fewer than 7,500 customers.

10 (c) In making a determination under subsection (a), the
11 Commission shall consider all of the following:

12 (1) The financial, managerial, and technical ability
13 of the small public utility or telecommunications carrier.

14 (2) The financial, managerial, and technical ability
15 of all proximate public utilities or telecommunications
16 carriers providing the same type of service.

17 (3) The expenditures that may be necessary to make
18 improvements to the small public utility or
19 telecommunications carrier to assure compliance with
20 applicable statutory and regulatory standards concerning
21 the adequacy, efficiency, safety, or reasonableness of
22 utility service.

23 (4) The expansion of the service territory of the
24 acquiring capable public utility or telecommunications
25 carrier to include the service area of the small public
26 utility or telecommunications carrier to be acquired.

1 (5) Whether the rates charged by the acquiring capable
2 public utility or telecommunications carrier to its
3 acquisition customers will increase unreasonably because
4 of the acquisition.

5 (6) Any other matter that may be relevant.

6 (d) For the purposes of this Section, a "capable public
7 utility or telecommunications carrier" means a public utility,
8 as defined under Section 3-105 of this Act, including those
9 entities listed in items (1) through (5) of subsection (b)
10 ~~subsections 1 through 5~~ of Section 3-105, or a
11 telecommunications carrier, as defined under Section 13-202 of
12 this Act, including those entities listed in subsections (a)
13 and (b) of Section 13-202, that:

14 (1) regularly provides the same type of service as the
15 small public utility or telecommunications carrier, to
16 7,500 or more customers, and provides safe, adequate, and
17 reliable service to those customers; however, public
18 utility or telecommunications carrier that would otherwise
19 be a capable public utility except for the fact that it has
20 fewer than 7,500 customers may elect to be a capable public
21 utility or telecommunications carrier for the purposes of
22 this Section regardless of the number of its customers and
23 regardless of whether or not it is proximate to the small
24 public utility or telecommunications carrier to be
25 acquired;

26 (2) is not an affiliated interest of the small public

1 utility or telecommunications carrier;

2 (3) agrees to acquire the small public utility or
3 telecommunications carrier that is the subject of the
4 proceeding, under the terms and conditions contained in the
5 Commission order approving the acquisition; and

6 (4) is financially, managerially, and technically
7 capable of acquiring and operating the small public utility
8 or telecommunications carrier in compliance with
9 applicable statutory and regulatory standards.

10 (e) The Commission may, on its own motion or upon petition,
11 initiate a proceeding in order to determine whether an order of
12 acquisition should be entered. Upon the establishment of a
13 prima facie case that the acquisition of the small public
14 utility or telecommunications carrier would be in the public
15 interest and in compliance with the provisions of this Section
16 all of the following apply:

17 (1) The small public utility or telecommunications
18 carrier that is the subject of the acquisition proceedings
19 has the burden of proving its ability to render safe,
20 adequate, and reliable service at just and reasonable
21 rates.

22 (2) The small public utility or telecommunications
23 carrier that is the subject of the acquisition proceedings
24 may present evidence to demonstrate the practicality and
25 feasibility of the following alternatives to acquisition:

26 (A) the reorganization of the small public utility

1 or telecommunications carrier under new management;

2 (B) the entering of a contract with another public
3 utility, telecommunications carrier, or a management
4 or service company to operate the small public utility
5 or telecommunications carrier;

6 (C) the appointment of a receiver to operate the
7 small public utility or telecommunications carrier, in
8 accordance with the provisions of Section 4-501 of this
9 Act; or

10 (D) the merger of the small public utility or
11 telecommunications carrier with one or more other
12 public utilities or telecommunications carriers.

13 (3) A public utility or telecommunications carrier
14 that desires to acquire the small public utility or
15 telecommunications carrier has the burden of proving that
16 it is a capable public utility or telecommunications
17 carrier.

18 (f) Subject to the determinations and considerations
19 required by subsections (a), (b), (c), (d) and (e) of this
20 Section, the Commission shall issue an order concerning the
21 acquisition of the small public utility or telecommunications
22 carrier by a capable public utility or telecommunications
23 carrier. If the Commission finds that the small public utility
24 or telecommunications carrier should be acquired by the capable
25 public utility or telecommunications carrier, the order shall
26 also provide for the extension of the service area of the

1 acquiring capable public utility or telecommunications
2 carrier.

3 (g) The price for the acquisition of the small public
4 utility or telecommunications carrier shall be determined by
5 agreement between the small public utility or
6 telecommunications carrier and the acquiring capable public
7 utility or telecommunications carrier subject to a
8 determination by the Commission that the price is reasonable.
9 If the small public utility or telecommunications carrier and
10 the acquiring capable public utility or telecommunications
11 carrier are unable to agree on the acquisition price or the
12 Commission disapproves the acquisition price upon which they
13 have agreed, the Commission shall issue an order directing the
14 acquiring capable public utility or telecommunications carrier
15 to acquire the small public utility or telecommunications
16 carrier by following the procedure prescribed for the exercise
17 of the powers of eminent domain under Section 8-509 of this
18 Act.

19 (h) The Commission may, in its discretion and for a
20 reasonable period of time after the date of acquisition, allow
21 the acquiring capable public utility or telecommunications
22 carrier to charge and collect rates from the customers of the
23 acquired small public utility or telecommunications carrier
24 under a separate tariff.

25 (i) A capable public utility or telecommunications carrier
26 ordered by the Commission to acquire a small public utility or

1 telecommunications carrier shall submit to the Commission for
2 approval before the acquisition a plan, including a timetable,
3 for bringing the small public utility or telecommunications
4 carrier into compliance with applicable statutory and
5 regulatory standards.

6 (Source: P.A. 91-357, eff. 7-29-99.)

7 (220 ILCS 5/8-403) (from Ch. 111 2/3, par. 8-403)

8 Sec. 8-403. The Commission shall design and implement
9 policies which encourage the economical utilization of
10 cogeneration and small power production, as these terms are
11 defined in Section 3-105, item (7) of subsection (b) paragraph
12 7, including specifically, but not limited to, the cogeneration
13 or production of heat, steam or electricity by municipal
14 corporations or any other political subdivision of this State.
15 No public utility shall discriminate in any way with respect to
16 the conditions or price for provision of maintenance power,
17 standby power and supplementary power as these terms are
18 defined by current Commission rules, or for any other service.
19 The prices charged by a utility for maintenance power, standby
20 power, supplementary power and all other such services shall be
21 cost-based and just and reasonable.

22 The Commission shall conduct a study of procedures and
23 policies to encourage the full and economical utilization of
24 cogeneration and small power production including, but not
25 limited to, (1) requiring utilities to pay full avoided costs,

1 including long-term avoided capacity costs to cogenerators and
2 small power producers and (2) requiring utilities to make
3 available upon request of the State or a unit of local
4 government, transmission and distribution services to transmit
5 electrical energy produced by cogeneration or small power
6 production facilities located in any structure or on any real
7 property of the State or unit of local government to other
8 locations of this State or a unit of local government. The
9 Commission shall report on this study, with recommendation for
10 legislative consideration, to the General Assembly by March 1,
11 1986.

12 (Source: P.A. 84-1118.)

13 (220 ILCS 5/12-103 new)

14 Sec. 12-103. Energy efficiency and demand-response
15 measures.

16 (a) It is the policy of the State that electric utilities
17 are required to use cost-effective energy efficiency and
18 demand-response measures to reduce delivery load. Requiring
19 investment in cost-effective energy efficiency and
20 demand-response measures will reduce direct and indirect costs
21 to consumers by decreasing environmental impacts and by
22 avoiding or delaying the need for new generation, transmission,
23 and distribution infrastructure. It serves the public interest
24 to allow electric utilities to recover costs for reasonably and
25 prudently incurred expenses for energy efficiency and

1 demand-response measures. As used in this Section,
2 "cost-effective" means that the measures satisfy the total
3 resource cost test. The low-income measures described in
4 subsection (f) (4) of this Section shall not be required to meet
5 the total resource cost test. For purposes of this Section, the
6 terms "energy-efficiency", "demand-response", "electric
7 utility", and "total resource cost test" shall have the
8 meanings set forth in the Illinois Power Agency Act. For
9 purposes of this Section, the amount per kilowatthour means the
10 total amount paid for electric service expressed on a per
11 kilowatthour basis. For purposes of this Section, the total
12 amount paid for electric service includes without limitation
13 estimated amounts paid for supply, transmission, distribution,
14 surcharges, and add-on-taxes.

15 (b) Electric utilities shall implement cost-effective
16 energy efficiency measures to meet the following incremental
17 annual energy savings goals:

18 (1) 0.2% of energy delivered in the year commencing
19 June 1, 2008;

20 (2) 0.4% of energy delivered in the year commencing
21 June 1, 2009;

22 (3) 0.6% of energy delivered in the year commencing
23 June 1, 2010;

24 (4) 0.8% of energy delivered in the year commencing
25 June 1, 2011;

26 (5) 1% of energy delivered in the year commencing June

1 1, 2012;

2 (6) 1.4% of energy delivered in the year commencing
3 June 1, 2013;

4 (7) 1.8% of energy delivered in the year commencing
5 June 1, 2014; and

6 (8) 2% of energy delivered in the year commencing June
7 1, 2015 and each year thereafter.

8 (c) Electric utilities shall implement cost-effective
9 demand-response measures to reduce peak demand by 0.1% over the
10 prior year for eligible retail customers, as defined in Section
11 16-111.5 of this Act. This requirement commences June 1, 2008
12 and continues for 10 years.

13 (d) Notwithstanding the requirements of subsections (b)
14 and (c) of this Section, an electric utility shall reduce the
15 amount of energy efficiency and demand-response measures
16 implemented in any single year by an amount necessary to limit
17 the estimated average increase in the amounts paid by retail
18 customers in connection with electric service due to the cost
19 of those measures to:

20 (1) in 2008, no more than 0.5% of the amount paid
21 per kilowatthour by those customers during the year ending
22 May 31, 2007;

23 (2) in 2009, the greater of an additional 0.5% of
24 the amount paid per kilowatthour by those customers during
25 the year ending May 31, 2008 or 1% of the amount paid per
26 kilowatthour by those customers during the year ending May

1 31, 2007;

2 (3) in 2010, the greater of an additional 0.5% of
3 the amount paid per kilowatthour by those customers during
4 the year ending May 31, 2009 or 1.5% of the amount paid per
5 kilowatthour by those customers during the year ending May
6 31, 2007;

7 (4) in 2011, the greater of an additional 0.5% of
8 the amount paid per kilowatthour by those customers during
9 the year ending May 31, 2010 or 2% of the amount paid per
10 kilowatthour by those customers during the year ending May
11 31, 2007; and

12 (5) thereafter, the amount of energy efficiency
13 and demand-response measures implemented for any single
14 year shall be reduced by an amount necessary to limit the
15 estimated average net increase due to the cost of these
16 measures included in the amounts paid by eligible retail
17 customers in connection with electric service to no more
18 than the greater of 2.015% of the amount paid per
19 kilowatthour by those customers during the year ending May
20 31, 2007 or the incremental amount per kilowatthour paid
21 for these measures in 2011.

22 No later than June 30, 2011, the Commission shall review
23 the limitation on the amount of energy efficiency and
24 demand-response measures implemented pursuant to this Section
25 and report to the General Assembly its findings as to whether
26 that limitation unduly constrains the procurement of energy

1 efficiency and demand-response measures.

2 (e) Electric utilities shall be responsible for overseeing
3 the design, development, and filing of energy efficiency and
4 demand-response plans with the Commission. Electric utilities
5 shall implement 100% of the demand-response measures in the
6 plans. Electric utilities shall implement 75% of the energy
7 efficiency measures approved by the Commission, and may, as
8 part of that implementation, outsource various aspects of
9 program development and implementation. The remaining 25% of
10 those energy efficiency measures approved by the Commission
11 shall be implemented by the Department of Commerce and Economic
12 Opportunity, and must be designed in conjunction with the
13 utility and the filing process. The Department may outsource
14 development and implementation of energy efficiency measures.
15 A minimum of 10% of the entire portfolio of cost-effective
16 energy efficiency measures shall be procured from units of
17 local government, municipal corporations, school districts,
18 and community college districts. The Department shall
19 coordinate the implementation of these measures.

20 The apportionment of the dollars to cover the costs to
21 implement the Department's share of the portfolio of energy
22 efficiency measures shall be made to the Department once the
23 Department has executed grants or contracts for energy
24 efficiency measures and provided supporting documentation for
25 those grants and the contracts to the utility.

26 The details of the measures implemented by the Department

1 shall be submitted by the Department to the Commission in
2 connection with the utility's filing regarding the energy
3 efficiency and demand-response measures that the utility
4 implements.

5 A utility providing approved energy efficiency and
6 demand-response measures in the State shall be permitted to
7 recover costs of those measures through an automatic adjustment
8 clause tariff filed with and approved by the Commission. The
9 tariff shall be established outside the context of a general
10 rate case. Each year the Commission shall initiate a review to
11 reconcile any amounts collected with the actual costs and to
12 determine the required adjustment to the annual tariff factor
13 to match annual expenditures.

14 Each utility shall include, in its recovery of costs, the
15 costs estimated for both the utility's and the Department's
16 implementation of energy efficiency and demand-response
17 measures. Costs collected by the utility for measures
18 implemented by the Department shall be submitted to the
19 Department pursuant to Section 605-323 of the Civil
20 Administrative Code of Illinois and shall be used by the
21 Department solely for the purpose of implementing these
22 measures. A utility shall not be required to advance any moneys
23 to the Department but only to forward such funds as it has
24 collected. The Department shall report to the Commission on an
25 annual basis regarding the costs actually incurred by the
26 Department in the implementation of the measures. Any changes

1 to the costs of energy efficiency measures as a result of plan
2 modifications shall be appropriately reflected in amounts
3 recovered by the utility and turned over to the Department.

4 The portfolio of measures, administered by both the
5 utilities and the Department, shall, in combination, be
6 designed to achieve the annual savings targets described in
7 subsections (b) and (c) of this Section, as modified by
8 subsection (d) of this Section.

9 The utility and the Department shall agree upon a
10 reasonable portfolio of measures and determine the measurable
11 corresponding percentage of the savings goals associated with
12 measures implemented by the utility or Department.

13 No utility shall be assessed a penalty under subsection (f)
14 of this Section for failure to make a timely filing if that
15 failure is the result of a lack of agreement with the
16 Department with respect to the allocation of responsibilities
17 or related costs or target assignments. In that case, the
18 Department and the utility shall file their respective plans
19 with the Commission and the Commission shall determine an
20 appropriate division of measures and programs that meets the
21 requirements of this Section.

22 If the Department is unable to meet incremental annual
23 performance goals for the portion of the portfolio implemented
24 by the Department, then the utility and the Department shall
25 jointly submit a modified filing to the Commission explaining
26 the performance shortfall and recommending an appropriate

1 course going forward, including any program modifications that
2 may be appropriate in light of the evaluations conducted under
3 item (7) of subsection (f) of this Section. In this case, the
4 utility obligation to collect the Department's costs and turn
5 over those funds to the Department under this subsection (e)
6 shall continue only if the Commission approves the
7 modifications to the plan proposed by the Department.

8 (f) No later than November 15, 2007, each electric utility
9 shall file an energy efficiency and demand-response plan with
10 the Commission to meet the energy efficiency and
11 demand-response standards for 2008 through 2010. Every 3 years
12 thereafter, each electric utility shall file an energy
13 efficiency and demand-response plan with the Commission. If a
14 utility does not file such a plan, it shall face a penalty of
15 \$100,000 per day until the plan is filed. Each utility's plan
16 shall set forth the utility's proposals to meet the utility's
17 portion of the energy efficiency standards identified in
18 subsection (b) and the demand-response standards identified in
19 subsection (c) of this Section as modified by subsections (d)
20 and (e), taking into account the unique circumstances of the
21 utility's service territory. The Commission shall seek public
22 comment on the utility's plan and shall issue an order
23 approving or disapproving each plan within 3 months after its
24 submission. If the Commission disapproves a plan, the
25 Commission shall, within 30 days, describe in detail the
26 reasons for the disapproval and describe a path by which the

1 utility may file a revised draft of the plan to address the
2 Commission's concerns satisfactorily. If the utility does not
3 refile with the Commission within 60 days, the utility shall be
4 subject to penalties at a rate of \$100,000 per day until the
5 plan is filed. This process shall continue, and penalties shall
6 accrue, until the utility has successfully filed a portfolio of
7 energy efficiency and demand-response measures. Penalties
8 shall be deposited into the Energy Efficiency Trust Fund. In
9 submitting proposed energy efficiency and demand-response
10 plans and funding levels to meet the savings goals adopted by
11 this Act the utility shall:

12 (1) Demonstrate that its proposed energy efficiency
13 and demand-response measures will achieve the requirements
14 that are identified in subsections (b) and (c) of this
15 Section, as modified by subsections (d) and (e).

16 (2) Present specific proposals to implement new
17 building and appliance standards that have been placed into
18 effect.

19 (3) Present estimates of the total amount paid for
20 electric service expressed on a per kilowatthour basis
21 associated with the proposed portfolio of measures
22 designed to meet the requirements that are identified in
23 subsections (b) and (c) of this Section, as modified by
24 subsections (d) and (e).

25 (4) Coordinate with the Department and the Department
26 of Healthcare and Family Services to present a portfolio of

1 energy efficiency measures targeted to households at or
2 below 150% of the poverty level at a level proportionate to
3 those households' share of total annual utility revenues in
4 Illinois.

5 (5) Demonstrate that its overall portfolio of energy
6 efficiency and demand-response measures, not including
7 programs covered by item (4) of this subsection (f), are
8 cost-effective using the total resource cost test and
9 represent a diverse cross-section of opportunities for
10 customers of all rate classes to participate in the
11 programs.

12 (6) Include a proposed cost-recovery tariff mechanism
13 to fund the proposed energy efficiency and demand-response
14 measures and to ensure the recovery of the prudently and
15 reasonably incurred costs of Commission-approved programs.

16 (7) Provide for an annual independent evaluation of the
17 performance of the cost-effectiveness of the utility's
18 portfolio of measures and the Department's portfolio of
19 measures, as well as a full review of the 3-year results of
20 the broader net program impacts and, to the extent
21 practical, for adjustment of the measures on a
22 going-forward basis as a result of the evaluations. The
23 resources dedicated to evaluation shall not exceed 3% of
24 portfolio resources in any given year.

25 (g) No more than 3% of energy efficiency and
26 demand-response program revenue may be allocated for

1 demonstration of breakthrough equipment and devices.

2 (h) This Section does not apply to an electric utility that
3 on December 31, 2005 provided electric service to fewer than
4 100,000 customers in Illinois.

5 (i) If, after 2 years, an electric utility fails to meet
6 the efficiency standard specified in subsection (b) of this
7 Section, as modified by subsections (d) and (e), it shall make
8 a contribution to the Low-Income Home Energy Assistance
9 Program. The combined total liability for failure to meet the
10 goal shall be \$1,000,000, which shall be assessed as follows: a
11 large electric utility shall pay \$665,000, and a medium
12 electric utility shall pay \$335,000. If, after 3 years, an
13 electric utility fails to meet the efficiency standard
14 specified in subsection (b) of this Section, as modified by
15 subsections (d) and (e), it shall make a contribution to the
16 Low-Income Home Energy Assistance Program. The combined total
17 liability for failure to meet the goal shall be \$1,000,000,
18 which shall be assessed as follows: a large electric utility
19 shall pay \$665,000, and a medium electric utility shall pay
20 \$335,000. In addition, the responsibility for implementing the
21 energy efficiency measures of the utility making the payment
22 shall be transferred to the Illinois Power Agency if, after 3
23 years, or in any subsequent 3-year period, the utility fails to
24 meet the efficiency standard specified in subsection (b) of
25 this Section, as modified by subsections (d) and (e). The
26 Agency shall implement a competitive procurement program to

1 procure resources necessary to meet the standards specified in
2 this Section as modified by subsections (d) and (e), with costs
3 for those resources to be recovered in the same manner as
4 products purchased through the procurement plan as provided in
5 Section 16-111.5. The Director shall implement this
6 requirement in connection with the procurement plan as provided
7 in Section 16-111.5.

8 For purposes of this Section, (i) a "large electric
9 utility" is an electric utility that, on December 31, 2005,
10 served more than 2,000,000 electric customers in Illinois; (ii)
11 a "medium electric utility" is an electric utility that, on
12 December 31, 2005, served 2,000,000 or fewer but more than
13 100,000 electric customers in Illinois; and (iii) Illinois
14 electric utilities that are affiliated by virtue of a common
15 parent company are considered a single electric utility.

16 (j) If, after 3 years, or any subsequent 3-year period, the
17 Department fails to implement the Department's share of energy
18 efficiency measures required by the standards in subsection
19 (b), then the Illinois Power Agency may assume responsibility
20 for and control of the Department's share of the required
21 energy efficiency measures. The Agency shall implement a
22 competitive procurement program to procure resources necessary
23 to meet the standards specified in this Section, with the costs
24 of these resources to be recovered in the same manner as
25 provided for the Department in this Section.

26 (k) No electric utility shall be deemed to have failed to

1 meet the energy efficiency standards to the extent any such
2 failure is due to a failure of the Department or the Agency.

3 (220 ILCS 5/16-101A)

4 Sec. 16-101A. Legislative findings.

5 (a) The citizens and businesses of the State of Illinois
6 have been well-served by a comprehensive electrical utility
7 system which has provided safe, reliable, and affordable
8 service. The electrical utility system in the State of Illinois
9 has historically been subject to State and federal regulation,
10 aimed at assuring the citizens and businesses of the State of
11 safe, reliable, and affordable service, while at the same time
12 assuring the utility system of a return on its investment.

13 (b) Competitive forces are affecting the market for
14 electricity as a result of recent federal regulatory and
15 statutory changes and the activities of other states.
16 Competition in the electric services market may create
17 opportunities for new products and services for customers and
18 lower costs for users of electricity. Long-standing regulatory
19 relationships need to be altered to accommodate the competition
20 that could fundamentally alter the structure of the electric
21 services market.

22 (c) With the advent of increasing competition in this
23 industry, the State has a continued interest in assuring that
24 the safety, reliability, and affordability of electrical power
25 is not sacrificed to competitive pressures, and to that end,

1 intends to implement safeguards to assure that the industry
2 continues to operate the electrical system in a manner that
3 will serve the public's interest. Under the existing regulatory
4 framework, the industry has been encouraged to undertake
5 certain investments in its physical plant and personnel to
6 enhance its efficient operation, the cost of which it has been
7 permitted to pass on to consumers. The State has an interest in
8 providing the existing utilities a reasonable opportunity to
9 obtain a return on certain investments on which they depended
10 in undertaking those commitments in the first instance while,
11 at the same time, not permitting new entrants into the industry
12 to take unreasonable advantage of the investments made by the
13 formerly regulated industry.

14 (d) A competitive wholesale and retail market must benefit
15 all Illinois citizens. The Illinois Commerce Commission should
16 act to promote the development of an effectively competitive
17 electricity market that operates efficiently and is equitable
18 to all consumers. Consumer protections must be in place to
19 ensure that all customers continue to receive safe, reliable,
20 affordable, and environmentally safe electric service.

21 (e) All consumers must benefit in an equitable and timely
22 fashion from the lower costs for electricity that result from
23 retail and wholesale competition and receive sufficient
24 information to make informed choices among suppliers and
25 services. The use of renewable resources and energy efficiency
26 resources should be encouraged in competitive markets.

1 (f) The efficiency of electric markets depends both upon
2 the competitiveness of supply and upon the
3 price-responsiveness of the demand for service. Therefore, to
4 ensure the lowest total cost of service and to enhance the
5 reliability of service, all classes of the electricity
6 customers of electric utilities should have access to and be
7 able to voluntarily use real-time pricing and other
8 price-response and demand-response mechanisms.

9 (g) Including cost-effective renewable resources in a
10 diverse electricity supply portfolio will reduce long-term
11 direct and indirect costs to consumers by decreasing
12 environmental impacts and by avoiding or delaying the need for
13 new generation, transmission, and distribution infrastructure.
14 It serves the public interest to allow electric utilities to
15 recover costs for reasonably and prudently incurred expenses
16 for electricity generated by renewable resources.

17 (Source: P.A. 94-977, eff. 6-30-06.)

18 (220 ILCS 5/16-103.1 new)

19 Sec. 16-103.1. Tariffed service to Unit Owners'
20 Associations. An electric utility that serves at least
21 2,000,000 customers must provide tariffed service to Unit
22 Owners' Associations, as defined by Section 2 of the
23 Condominium Property Act, for condominium properties that are
24 not restricted to nonresidential use at rates that do not
25 exceed on average the rates offered to residential customers on

1 an annual basis. Within 10 days after the effective date of
2 this amendatory Act, the electric utility shall provide the
3 tariffed service to Unit Owners' Associations required by this
4 Section and shall reinstate any residential all-electric
5 discount applicable to any Unit Owners' Association that
6 received such a discount on December 31, 2006. For purposes of
7 this Section, "residential customers" means those retail
8 customers of an electric utility that receive (i) electric
9 utility service for household purposes distributed to a
10 dwelling of 2 or fewer units that is billed under a residential
11 rate or (ii) electric utility service for household purposes
12 distributed to a dwelling unit or units that is billed under a
13 residential rate and is registered by a separate meter for each
14 dwelling unit.

15 (220 ILCS 5/16-111)

16 Sec. 16-111. Rates and restructuring transactions during
17 mandatory transition period; restructuring and other
18 transactions.

19 (a) During the mandatory transition period,
20 notwithstanding any provision of Article IX of this Act, and
21 except as provided in subsections (b), ~~(d), (e),~~ and (f) of
22 this Section, the Commission shall not (i) initiate, authorize
23 or order any change by way of increase (other than in
24 connection with a request for rate increase which was filed
25 after September 1, 1997 but prior to October 15, 1997, by an

1 electric utility serving less than 12,500 customers in this
2 State), (ii) initiate or, unless requested by the electric
3 utility, authorize or order any change by way of decrease,
4 restructuring or unbundling (except as provided in Section
5 16-109A), in the rates of any electric utility that were in
6 effect on October 1, 1996, or (iii) in any order approving any
7 application for a merger pursuant to Section 7-204 that was
8 pending as of May 16, 1997, impose any condition requiring any
9 filing for an increase, decrease, or change in, or other review
10 of, an electric utility's rates or enforce any such condition
11 of any such order; provided, however, that this subsection
12 shall not prohibit the Commission from:

13 (1) approving the application of an electric utility to
14 implement an alternative to rate of return regulation or a
15 regulatory mechanism that rewards or penalizes the
16 electric utility through adjustment of rates based on
17 utility performance, pursuant to Section 9-244;

18 (2) authorizing an electric utility to eliminate its
19 fuel adjustment clause and adjust its base rate tariffs in
20 accordance with subsection (b), (d), or (f) of Section
21 9-220 of this Act, to fix its fuel adjustment factor in
22 accordance with subsection (c) of Section 9-220 of this
23 Act, or to eliminate its fuel adjustment clause in
24 accordance with subsection (e) of Section 9-220 of this
25 Act;

26 (3) ordering into effect tariffs for delivery services

1 and transition charges in accordance with Sections 16-104
2 and 16-108, for real-time pricing in accordance with
3 Section 16-107, or the options required by Section 16-110
4 and subsection (n) of 16-112, allowing a billing experiment
5 in accordance with Section 16-106, or modifying delivery
6 services tariffs in accordance with Section 16-109; or

7 (4) ordering or allowing into effect any tariff to
8 recover charges pursuant to Sections 9-201.5, 9-220.1,
9 9-221, 9-222 (except as provided in Section 9-222.1),
10 16-108, and 16-114 of this Act, Section 5-5 of the
11 Electricity Infrastructure Maintenance Fee Law, Section
12 6-5 of the Renewable Energy, Energy Efficiency, and Coal
13 Resources Development Law of 1997, and Section 13 of the
14 Energy Assistance Act.

15 After December 31, 2004, the provisions of this subsection
16 (a) shall not apply to an electric utility whose average
17 residential retail rate was less than or equal to 90% of the
18 average residential retail rate for the "Midwest Utilities", as
19 that term is defined in subsection (b) of this Section, based
20 on data reported on Form 1 to the Federal Energy Regulatory
21 Commission for calendar year 1995, and which served between
22 150,000 and 250,000 retail customers in this State on January
23 1, 1995 unless the electric utility or its holding company has
24 been acquired by or merged with an affiliate of another
25 electric utility subsequent to January 1, 2002. This exemption
26 shall be limited to this subsection (a) and shall not extend to

1 any other provisions of this Act.

2 (b) Notwithstanding the provisions of subsection (a), each
3 Illinois electric utility serving more than 12,500 customers in
4 Illinois shall file tariffs (i) reducing, effective August 1,
5 1998, each component of its base rates to residential retail
6 customers by 15% from the base rates in effect immediately
7 prior to January 1, 1998 and (ii) if the public utility
8 provides electric service to (A) more than 500,000 customers
9 but less than 1,000,000 customers in this State on January 1,
10 1999, reducing, effective May 1, 2002, each component of its
11 base rates to residential retail customers by an additional 5%
12 from the base rates in effect immediately prior to January 1,
13 1998, or (B) at least 1,000,000 customers in this State on
14 January 1, 1999, reducing, effective October 1, 2001, each
15 component of its base rates to residential retail customers by
16 an additional 5% from the base rates in effect immediately
17 prior to January 1, 1998. Provided, however, that (A) if an
18 electric utility's average residential retail rate is less than
19 or equal to the average residential retail rate for a group of
20 Midwest Utilities (consisting of all investor-owned electric
21 utilities with annual system peaks in excess of 1000 megawatts
22 in the States of Illinois, Indiana, Iowa, Kentucky, Michigan,
23 Missouri, Ohio, and Wisconsin), based on data reported on Form
24 1 to the Federal Energy Regulatory Commission for calendar year
25 1995, then it shall only be required to file tariffs (i)
26 reducing, effective August 1, 1998, each component of its base

1 rates to residential retail customers by 5% from the base rates
2 in effect immediately prior to January 1, 1998, (ii) reducing,
3 effective October 1, 2000, each component of its base rates to
4 residential retail customers by the lesser of 5% of the base
5 rates in effect immediately prior to January 1, 1998 or the
6 percentage by which the electric utility's average residential
7 retail rate exceeds the average residential retail rate of the
8 Midwest Utilities, based on data reported on Form 1 to the
9 Federal Energy Regulatory Commission for calendar year 1999,
10 and (iii) reducing, effective October 1, 2002, each component
11 of its base rates to residential retail customers by an
12 additional amount equal to the lesser of 5% of the base rates
13 in effect immediately prior to January 1, 1998 or the
14 percentage by which the electric utility's average residential
15 retail rate exceeds the average residential retail rate of the
16 Midwest Utilities, based on data reported on Form 1 to the
17 Federal Energy Regulatory Commission for calendar year 2001;
18 and (B) if the average residential retail rate of an electric
19 utility serving between 150,000 and 250,000 retail customers in
20 this State on January 1, 1995 is less than or equal to 90% of
21 the average residential retail rate for the Midwest Utilities,
22 based on data reported on Form 1 to the Federal Energy
23 Regulatory Commission for calendar year 1995, then it shall
24 only be required to file tariffs (i) reducing, effective August
25 1, 1998, each component of its base rates to residential retail
26 customers by 2% from the base rates in effect immediately prior

1 to January 1, 1998; (ii) reducing, effective October 1, 2000,
2 each component of its base rates to residential retail
3 customers by 2% from the base rate in effect immediately prior
4 to January 1, 1998; and (iii) reducing, effective October 1,
5 2002, each component of its base rates to residential retail
6 customers by 1% from the base rates in effect immediately prior
7 to January 1, 1998. Provided, further, that any electric
8 utility for which a decrease in base rates has been or is
9 placed into effect between October 1, 1996 and the dates
10 specified in the preceding sentences of this subsection, other
11 than pursuant to the requirements of this subsection, shall be
12 entitled to reduce the amount of any reduction or reductions in
13 its base rates required by this subsection by the amount of
14 such other decrease. The tariffs required under this subsection
15 shall be filed 45 days in advance of the effective date.
16 Notwithstanding anything to the contrary in Section 9-220 of
17 this Act, no restatement of base rates in conjunction with the
18 elimination of a fuel adjustment clause under that Section
19 shall result in a lesser decrease in base rates than customers
20 would otherwise receive under this subsection had the electric
21 utility's fuel adjustment clause not been eliminated.

22 (c) Any utility reducing its base rates by 15% on August 1,
23 1998 pursuant to subsection (b) shall include the following
24 statement on its bills for residential customers from August 1
25 through December 31, 1998: "Effective August 1, 1998, your
26 rates have been reduced by 15% by the Electric Service Customer

1 Choice and Rate Relief Law of 1997 passed by the Illinois
2 General Assembly.". Any utility reducing its base rates by 5%
3 on August 1, 1998, pursuant to subsection (b) shall include the
4 following statement on its bills for residential customers from
5 August 1 through December 31, 1998: "Effective August 1, 1998,
6 your rates have been reduced by 5% by the Electric Service
7 Customer Choice and Rate Relief Law of 1997 passed by the
8 Illinois General Assembly."

9 Any utility reducing its base rates by 2% on August 1, 1998
10 pursuant to subsection (b) shall include the following
11 statement on its bills for residential customers from August 1
12 through December 31, 1998: "Effective August 1, 1998, your
13 rates have been reduced by 2% by the Electric Service Customer
14 Choice and Rate Relief Law of 1997 passed by the Illinois
15 General Assembly."

16 (d) (Blank.) ~~During the mandatory transition period, but~~
17 ~~not before January 1, 2000, and notwithstanding the provisions~~
18 ~~of subsection (a), an electric utility may request an increase~~
19 ~~in its base rates if the electric utility demonstrates that the~~
20 ~~2-year average of its earned rate of return on common equity,~~
21 ~~calculated as its net income applicable to common stock divided~~
22 ~~by the average of its beginning and ending balances of common~~
23 ~~equity using data reported in the electric utility's Form 1~~
24 ~~report to the Federal Energy Regulatory Commission but adjusted~~
25 ~~to remove the effects of accelerated depreciation or~~
26 ~~amortization or other transition or mitigation measures~~

1 ~~implemented by the electric utility pursuant to subsection (g)~~
2 ~~of this Section and the effect of any refund paid pursuant to~~
3 ~~subsection (c) of this Section, is below the 2-year average for~~
4 ~~the same 2 years of the monthly average yields of 30-year U.S.~~
5 ~~Treasury bonds published by the Board of Governors of the~~
6 ~~Federal Reserve System in its weekly H.15 Statistical Release~~
7 ~~or successor publication. The Commission shall review the~~
8 ~~electric utility's request, and may review the justness and~~
9 ~~reasonableness of all rates for tariffed services, in~~
10 ~~accordance with the provisions of Article IX of this Act,~~
11 ~~provided that the Commission shall consider any special or~~
12 ~~negotiated adjustments to the revenue requirement agreed to~~
13 ~~between the electric utility and the other parties to the~~
14 ~~proceeding. In setting rates under this Section, the Commission~~
15 ~~shall exclude the costs and revenues that are associated with~~
16 ~~competitive services and any billing or pricing experiments~~
17 ~~conducted under Section 16-106.~~

18 (e) (Blank.) ~~For the purposes of this subsection (e) all~~
19 ~~calculations and comparisons shall be performed for the~~
20 ~~Illinois operations of multijurisdictional utilities. During~~
21 ~~the mandatory transition period, notwithstanding the~~
22 ~~provisions of subsection (a), if the 2-year average of an~~
23 ~~electric utility's earned rate of return on common equity,~~
24 ~~calculated as its net income applicable to common stock divided~~
25 ~~by the average of its beginning and ending balances of common~~
26 ~~equity using data reported in the electric utility's Form 1~~

1 ~~report to the Federal Energy Regulatory Commission but adjusted~~
2 ~~to remove the effect of any refund paid under this subsection~~
3 ~~(c), and further adjusted to include the annual amortization of~~
4 ~~any difference between the consideration received by an~~
5 ~~affiliated interest of the electric utility in the sale of an~~
6 ~~asset which had been sold or transferred by the electric~~
7 ~~utility to the affiliated interest subsequent to the effective~~
8 ~~date of this amendatory Act of 1997 and the consideration for~~
9 ~~which such asset had been sold or transferred to the affiliated~~
10 ~~interest, with such difference to be amortized ratably from the~~
11 ~~date of the sale by the affiliated interest to December 31,~~
12 ~~2006, exceeds the 2-year average of the Index for the same 2~~
13 ~~years by 1.5 or more percentage points, the electric utility~~
14 ~~shall make refunds to customers beginning the first billing day~~
15 ~~of April in the following year in the manner described in~~
16 ~~paragraph (3) of this subsection. For purposes of this~~
17 ~~subsection (c), the "Index" shall be the sum of (A) the average~~
18 ~~for the 12 months ended September 30 of the monthly average~~
19 ~~yields of 30-year U.S. Treasury bonds published by the Board of~~
20 ~~Governors of the Federal Reserve System in its weekly H.15~~
21 ~~Statistical Release or successor publication for each year 1998~~
22 ~~through 2006, and (B) (i) 4.00 percentage points for each of~~
23 ~~the 12-month periods ending September 30, 1998 through~~
24 ~~September 30, 1999 or 8.00 percentage points if the electric~~
25 ~~utility's average residential retail rate is less than or equal~~
26 ~~to 90% of the average residential retail rate for the "Midwest~~

1 ~~Utilities", as that term is defined in subsection (b) of this~~
2 ~~Section, based on data reported on Form 1 to the Federal Energy~~
3 ~~Regulatory Commission for calendar year 1995, and the electric~~
4 ~~utility served between 150,000 and 250,000 retail customers on~~
5 ~~January 1, 1995, (ii) 7.00 percentage points for each of the~~
6 ~~12 month periods ending September 30, 2000 through September~~
7 ~~30, 2006 if the electric utility was providing service to at~~
8 ~~least 1,000,000 customers in this State on January 1, 1999, or~~
9 ~~9.00 percentage points if the electric utility's average~~
10 ~~residential retail rate is less than or equal to 90% of the~~
11 ~~average residential retail rate for the "Midwest Utilities", as~~
12 ~~that term is defined in subsection (b) of this Section, based~~
13 ~~on data reported on Form 1 to the Federal Energy Regulatory~~
14 ~~Commission for calendar year 1995 and the electric utility~~
15 ~~served between 150,000 and 250,000 retail customers in this~~
16 ~~State on January 1, 1995, (iii) 11.00 percentage points for~~
17 ~~each of the 12 month periods ending September 30, 2000 through~~
18 ~~September 30, 2006, but only if the electric utility's average~~
19 ~~residential retail rate is less than or equal to 90% of the~~
20 ~~average residential retail rate for the "Midwest Utilities", as~~
21 ~~that term is defined in subsection (b) of this Section, based~~
22 ~~on data reported on Form 1 to the Federal Energy Regulatory~~
23 ~~Commission for calendar year 1995, the electric utility served~~
24 ~~between 150,000 and 250,000 retail customers in this State on~~
25 ~~January 1, 1995, and the electric utility offers delivery~~
26 ~~services on or before June 1, 2000 to retail customers whose~~

1 ~~annual electric energy use comprises 33% of the kilowatt hour~~
2 ~~sales to that group of retail customers that are classified~~
3 ~~under Division D, Groups 20 through 39 of the Standard~~
4 ~~Industrial Classifications set forth in the Standard~~
5 ~~Industrial Classification Manual published by the United~~
6 ~~States Office of Management and Budget, excluding the kilowatt~~
7 ~~hour sales to those customers that are eligible for delivery~~
8 ~~services pursuant to Section 16-104(a)(1)(i), and offers~~
9 ~~delivery services to its remaining retail customers classified~~
10 ~~under Division D, Groups 20 through 39 on or before October 1,~~
11 ~~2000, and, provided further, that the electric utility commits~~
12 ~~not to petition pursuant to Section 16-108(f) for entry of an~~
13 ~~order by the Commission authorizing the electric utility to~~
14 ~~implement transition charges for an additional period after~~
15 ~~December 31, 2006, or (iv) 5.00 percentage points for each of~~
16 ~~the 12 month periods ending September 30, 2000 through~~
17 ~~September 30, 2006 for all other electric utilities or 7.00~~
18 ~~percentage points for such utilities for each of the 12 month~~
19 ~~periods ending September 30, 2000 through September 30, 2006~~
20 ~~for any such utility that commits not to petition pursuant to~~
21 ~~Section 16-108(f) for entry of an order by the Commission~~
22 ~~authorizing the electric utility to implement transition~~
23 ~~charges for an additional period after December 31, 2006 or~~
24 ~~11.00 percentage points for each of the 12-month periods ending~~
25 ~~September 30, 2005 and September 30, 2006 for each electric~~
26 ~~utility providing service to fewer than 6,500, or between~~

1 ~~75,000 and 150,000, electric retail customers in this State on~~
2 ~~January 1, 1995 if such utility commits not to petition~~
3 ~~pursuant to Section 16-108(f) for entry of an order by the~~
4 ~~Commission authorizing the electric utility to implement~~
5 ~~transition charges for an additional period after December 31,~~
6 ~~2006.~~

7 ~~(1) For purposes of this subsection (c), "excess~~
8 ~~earnings" means the difference between (A) the 2 year~~
9 ~~average of the electric utility's earned rate of return on~~
10 ~~common equity, less (B) the 2 year average of the sum of~~
11 ~~(i) the Index applicable to each of the 2 years and (ii)~~
12 ~~1.5 percentage points; provided, that "excess earnings"~~
13 ~~shall never be less than zero.~~

14 ~~(2) On or before March 31 of each year 2000 through~~
15 ~~2007 each electric utility shall file a report with the~~
16 ~~Commission showing its earned rate of return on common~~
17 ~~equity, calculated in accordance with this subsection, for~~
18 ~~the preceding calendar year and the average for the~~
19 ~~preceding 2 calendar years.~~

20 ~~(3) If an electric utility has excess earnings,~~
21 ~~determined in accordance with paragraphs (1) and (2) of~~
22 ~~this subsection, the refunds which the electric utility~~
23 ~~shall pay to its customers beginning the first billing day~~
24 ~~of April in the following year shall be calculated and~~
25 ~~applied as follows:~~

26 ~~(i) The electric utility's excess earnings shall~~

1 ~~be multiplied by the average of the beginning and~~
2 ~~ending balances of the electric utility's common~~
3 ~~equity for the 2-year period in which excess earnings~~
4 ~~occurred.~~

5 ~~(ii) The result of the calculation in (i) shall be~~
6 ~~multiplied by 0.50 and then divided by a number equal~~
7 ~~to 1 minus the electric utility's composite federal and~~
8 ~~State income tax rate.~~

9 ~~(iii) The result of the calculation in (ii) shall~~
10 ~~be divided by the sum of the electric utility's~~
11 ~~projected total kilowatt-hour sales to retail~~
12 ~~customers plus projected kilowatt-hours to be~~
13 ~~delivered to delivery services customers over a one~~
14 ~~year period beginning with the first billing date in~~
15 ~~April in the succeeding year to determine a cents per~~
16 ~~kilowatt hour refund factor.~~

17 ~~(iv) The cents per kilowatt hour refund factor~~
18 ~~calculated in (iii) shall be credited to the electric~~
19 ~~utility's customers by applying the factor on the~~
20 ~~customer's monthly bills to each kilowatt-hour sold or~~
21 ~~delivered until the total amount calculated in (ii) has~~
22 ~~been paid to customers.~~

23 (f) During the mandatory transition period, an electric
24 utility may file revised tariffs reducing the price of any
25 tariffed service offered by the electric utility for all
26 customers taking that tariffed service, which shall be

1 effective 7 days after filing.

2 (g) Until all classes of tariffed services are declared
3 competitive ~~During the mandatory transition period,~~ an
4 electric utility may, without obtaining any approval of the
5 Commission other than that provided for in this subsection and
6 notwithstanding any other provision of this Act or any rule or
7 regulation of the Commission that would require such approval:

8 (1) implement a reorganization, other than a merger of
9 2 or more public utilities as defined in Section 3-105 or
10 their holding companies;

11 (2) retire generating plants from service;

12 (3) sell, assign, lease or otherwise transfer assets to
13 an affiliated or unaffiliated entity and as part of such
14 transaction enter into service agreements, power purchase
15 agreements, or other agreements with the transferee;
16 provided, however, that the prices, terms and conditions of
17 any power purchase agreement must be approved or allowed
18 into effect by the Federal Energy Regulatory Commission; or

19 (4) use any accelerated cost recovery method including
20 accelerated depreciation, accelerated amortization or
21 other capital recovery methods, or record reductions to the
22 original cost of its assets.

23 In order to implement a reorganization, retire generating
24 plants from service, or sell, assign, lease or otherwise
25 transfer assets pursuant to this Section, the electric utility
26 shall comply with subsections (c) and (d) of Section 16-128, if

1 applicable, and subsection (k) of this Section, if applicable,
2 and provide the Commission with at least 30 days notice of the
3 proposed reorganization or transaction, which notice shall
4 include the following information:

5 (i) a complete statement of the entries that the
6 electric utility will make on its books and records of
7 account to implement the proposed reorganization or
8 transaction together with a certification from an
9 independent certified public accountant that such
10 entries are in accord with generally accepted
11 accounting principles and, if the Commission has
12 previously approved guidelines for cost allocations
13 between the utility and its affiliates, a
14 certification from the chief accounting officer of the
15 utility that such entries are in accord with those cost
16 allocation guidelines;

17 (ii) a description of how the electric utility will
18 use proceeds of any sale, assignment, lease or transfer
19 to retire debt or otherwise reduce or recover the costs
20 of services provided by such electric utility;

21 (iii) a list of all federal approvals or approvals
22 required from departments and agencies of this State,
23 other than the Commission, that the electric utility
24 has or will obtain before implementing the
25 reorganization or transaction;

26 (iv) an irrevocable commitment by the electric

1 utility that it will not, as a result of the
2 transaction, impose any stranded cost charges that it
3 might otherwise be allowed to charge retail customers
4 under federal law or increase the transition charges
5 that it is otherwise entitled to collect under this
6 Article XVI; and

7 (v) if the electric utility proposes to sell,
8 assign, lease or otherwise transfer a generating plant
9 that brings the amount of net dependable generating
10 capacity transferred pursuant to this subsection to an
11 amount equal to or greater than 15% of the electric
12 utility's net dependable capacity as of the effective
13 date of this amendatory Act of 1997, and enters into a
14 power purchase agreement with the entity to which such
15 generating plant is sold, assigned, leased, or
16 otherwise transferred, the electric utility also
17 agrees, if its fuel adjustment clause has not already
18 been eliminated, to eliminate its fuel adjustment
19 clause in accordance with subsection (b) of Section
20 9-220 for a period of time equal to the length of any
21 such power purchase agreement or successor agreement,
22 or until January 1, 2005, whichever is longer; if the
23 capacity of the generating plant so transferred and
24 related power purchase agreement does not result in the
25 elimination of the fuel adjustment clause under this
26 subsection, and the fuel adjustment clause has not

1 already been eliminated, the electric utility shall
2 agree that the costs associated with the transferred
3 plant that are included in the calculation of the rate
4 per kilowatt-hour to be applied pursuant to the
5 electric utility's fuel adjustment clause during such
6 period shall not exceed the per kilowatt-hour cost
7 associated with such generating plant included in the
8 electric utility's fuel adjustment clause during the
9 full calendar year preceding the transfer, with such
10 limit to be adjusted each year thereafter by the Gross
11 Domestic Product Implicit Price Deflator.

12 (vi) In addition, if the electric utility proposes
13 to sell, assign, or lease, (A) either (1) an amount of
14 generating plant that brings the amount of net
15 dependable generating capacity transferred pursuant to
16 this subsection to an amount equal to or greater than
17 15% of its net dependable capacity on the effective
18 date of this amendatory Act of 1997, or (2) one or more
19 generating plants with a total net dependable capacity
20 of 1100 megawatts, or (B) transmission and
21 distribution facilities that either (1) bring the
22 amount of transmission and distribution facilities
23 transferred pursuant to this subsection to an amount
24 equal to or greater than 15% of the electric utility's
25 total depreciated original cost investment in such
26 facilities, or (2) represent an investment of

1 \$25,000,000 in terms of total depreciated original
2 cost, the electric utility shall provide, in addition
3 to the information listed in subparagraphs (i) through
4 (v), the following information: (A) a description of
5 how the electric utility will meet its service
6 obligations under this Act in a safe and reliable
7 manner and (B) the electric utility's projected earned
8 rate of return on common equity,~~calculated in~~
9 ~~accordance with subsection (d) of this Section,~~ for
10 each year from the date of the notice through December
11 31, 2006 both with and without the proposed
12 transaction. If the Commission has not issued an order
13 initiating a hearing on the proposed transaction
14 within 30 days after the date the electric utility's
15 notice is filed, the transaction shall be deemed
16 approved. The Commission may, after notice and
17 hearing, prohibit the proposed transaction if it makes
18 either or both of the following findings: (1) that the
19 proposed transaction will render the electric utility
20 unable to provide its tariffed services in a safe and
21 reliable manner, or (2) that there is a strong
22 likelihood that consummation of the proposed
23 transaction will result in the electric utility being
24 entitled to request an increase in its base rates
25 ~~during the mandatory transition period pursuant to~~
26 ~~subsection (d) of this Section.~~ Any hearing initiated

1 by the Commission into the proposed transaction shall
2 be completed, and the Commission's final order
3 approving or prohibiting the proposed transaction
4 shall be entered, within 90 days after the date the
5 electric utility's notice was filed. Provided,
6 however, that a sale, assignment, or lease of
7 transmission facilities to an independent system
8 operator that meets the requirements of Section 16-126
9 shall not be subject to Commission approval under this
10 Section.

11 In any proceeding conducted by the Commission
12 pursuant to this subparagraph (vi), intervention shall
13 be limited to parties with a direct interest in the
14 transaction which is the subject of the hearing and any
15 statutory consumer protection agency as defined in
16 subsection (d) of Section 9-102.1. Notwithstanding the
17 provisions of Section 10-113 of this Act, any
18 application seeking rehearing of an order issued under
19 this subparagraph (vi), whether filed by the electric
20 utility or by an intervening party, shall be filed
21 within 10 days after service of the order.

22 The Commission shall not in any subsequent proceeding or
23 otherwise, review such a reorganization or other transaction
24 authorized by this Section, but shall retain the authority to
25 allocate costs as stated in Section 16-111(i). An entity to
26 which an electric utility sells, assigns, leases or transfers

1 assets pursuant to this subsection (g) shall not, as a result
2 of the transactions specified in this subsection (g), be deemed
3 a public utility as defined in Section 3-105. Nothing in this
4 subsection (g) shall change any requirement under the
5 jurisdiction of the Illinois Department of Nuclear Safety
6 including, but not limited to, the payment of fees. Nothing in
7 this subsection (g) shall exempt a utility from obtaining a
8 certificate pursuant to Section 8-406 of this Act for the
9 construction of a new electric generating facility. Nothing in
10 this subsection (g) is intended to exempt the transactions
11 hereunder from the operation of the federal or State antitrust
12 laws. Nothing in this subsection (g) shall require an electric
13 utility to use the procedures specified in this subsection for
14 any of the transactions specified herein. Any other procedure
15 available under this Act may, at the electric utility's
16 election, be used for any such transaction.

17 (h) During the mandatory transition period, the Commission
18 shall not establish or use any rates of depreciation, which for
19 purposes of this subsection shall include amortization, for any
20 electric utility other than those established pursuant to
21 subsection (c) of Section 5-104 of this Act or utilized
22 pursuant to subsection (g) of this Section. Provided, however,
23 that in any proceeding to review an electric utility's rates
24 for tariffed services pursuant to Section 9-201, 9-202, 9-250
25 or 16-111(d) of this Act, the Commission may establish new
26 rates of depreciation for the electric utility in the same

1 manner provided in subsection (d) of Section 5-104 of this Act.
2 An electric utility implementing an accelerated cost recovery
3 method including accelerated depreciation, accelerated
4 amortization or other capital recovery methods, or recording
5 reductions to the original cost of its assets, pursuant to
6 subsection (g) of this Section, shall file a statement with the
7 Commission describing the accelerated cost recovery method to
8 be implemented or the reduction in the original cost of its
9 assets to be recorded. Upon the filing of such statement, the
10 accelerated cost recovery method or the reduction in the
11 original cost of assets shall be deemed to be approved by the
12 Commission as though an order had been entered by the
13 Commission.

14 (i) Subsequent to the mandatory transition period, the
15 Commission, in any proceeding to establish rates and charges
16 for tariffed services offered by an electric utility, shall
17 consider only (1) the then current or projected revenues,
18 costs, investments and cost of capital directly or indirectly
19 associated with the provision of such tariffed services; (2)
20 collection of transition charges in accordance with Sections
21 16-102 and 16-108 of this Act; (3) recovery of any employee
22 transition costs as described in Section 16-128 which the
23 electric utility is continuing to incur, including recovery of
24 any unamortized portion of such costs previously incurred or
25 committed, with such costs to be equitably allocated among
26 bundled services, delivery services, and contracts with

1 alternative retail electric suppliers; and (4) recovery of the
2 costs associated with the electric utility's compliance with
3 decommissioning funding requirements; and shall not consider
4 any other revenues, costs, investments or cost of capital of
5 either the electric utility or of any affiliate of the electric
6 utility that are not associated with the provision of tariffed
7 services. In setting rates for tariffed services, the
8 Commission shall equitably allocate joint and common costs and
9 investments between the electric utility's competitive and
10 tariffed services. In determining the justness and
11 reasonableness of the electric power and energy component of an
12 electric utility's rates for tariffed services subsequent to
13 the mandatory transition period and prior to the time that the
14 provision of such electric power and energy is declared
15 competitive, the Commission shall consider the extent to which
16 the electric utility's tariffed rates for such component for
17 each customer class exceed the market value determined pursuant
18 to Section 16-112, and, if the electric power and energy
19 component of such tariffed rate exceeds the market value by
20 more than 10% for any customer class, may establish such
21 electric power and energy component at a rate equal to the
22 market value plus 10%. ~~In any such case, the Commission may~~
23 ~~also elect to extend the provisions of Section 16-111(e) for~~
24 ~~any period in which the electric utility is collecting~~
25 ~~transition charges, using information applicable to such~~
26 ~~period.~~

1 (j) During the mandatory transition period, an electric
2 utility may elect to transfer to a non-operating income account
3 under the Commission's Uniform System of Accounts either or
4 both of (i) an amount of unamortized investment tax credit that
5 is in addition to the ratable amount which is credited to the
6 electric utility's operating income account for the year in
7 accordance with Section 46(f)(2) of the federal Internal
8 Revenue Code of 1986, as in effect prior to P.L. 101-508, or
9 (ii) "excess tax reserves", as that term is defined in Section
10 203(e)(2)(A) of the federal Tax Reform Act of 1986, provided
11 that (A) the amount transferred may not exceed the amount of
12 the electric utility's assets that were created pursuant to
13 Statement of Financial Accounting Standards No. 71 which the
14 electric utility has written off during the mandatory
15 transition period, and (B) the transfer shall not be effective
16 until approved by the Internal Revenue Service. An electric
17 utility electing to make such a transfer shall file a statement
18 with the Commission stating the amount and timing of the
19 transfer for which it intends to request approval of the
20 Internal Revenue Service, along with a copy of its proposed
21 request to the Internal Revenue Service for a ruling. The
22 Commission shall issue an order within 14 days after the
23 electric utility's filing approving, subject to receipt of
24 approval from the Internal Revenue Service, the proposed
25 transfer.

26 (k) If an electric utility is selling or transferring to a

1 single buyer 5 or more generating plants located in this State
2 with a total net dependable capacity of 5000 megawatts or more
3 pursuant to subsection (g) of this Section and has obtained a
4 sale price or consideration that exceeds 200% of the book value
5 of such plants, the electric utility must provide to the
6 Governor, the President of the Illinois Senate, the Minority
7 Leader of the Illinois Senate, the Speaker of the Illinois
8 House of Representatives, and the Minority Leader of the
9 Illinois House of Representatives no later than 15 days after
10 filing its notice under subsection (g) of this Section or 5
11 days after the date on which this subsection (k) becomes law,
12 whichever is later, a written commitment in which such electric
13 utility agrees to expend \$2 billion outside the corporate
14 limits of any municipality with 1,000,000 or more inhabitants
15 within such electric utility's service area, over a 6-year
16 period beginning with the calendar year in which the notice is
17 filed, on projects, programs, and improvements within its
18 service area relating to transmission and distribution
19 including, without limitation, infrastructure expansion,
20 repair and replacement, capital investments, operations and
21 maintenance, and vegetation management.

22 (1) Notwithstanding any other provision of this Act or any
23 rule, regulation, or prior order of the Commission, a public
24 utility providing electric and gas service may do any one or
25 more of the following: transfer assets to, reorganize with, or
26 merge with one or more public utilities under common holding

1 company ownership or control in the manner prescribed in
2 subsection (g) of this Section. No merger transaction costs,
3 such as fees paid to attorneys, investment bankers, and other
4 consultants, incurred in connection with a merger pursuant to
5 this subsection (l) shall be recoverable in any subsequent rate
6 proceeding. Approval of a merger pursuant to this subsection
7 (l) shall not constitute approval of, or otherwise require,
8 rate recovery of other costs incurred in connection with, or to
9 implement the merger, such as the cost of restructuring,
10 combining, or integrating debt, assets, or systems. Such other
11 costs may be recovered only to the extent that the surviving
12 utility can demonstrate that the cost savings produced by such
13 restructuring, combination, or integration exceed the
14 associated costs. Nothing in this subsection (l) shall impair
15 the terms or conditions of employment or the collective
16 bargaining rights of any employees of the utilities that are
17 transferring assets, reorganizing, or merging.

18 (m) If an electric utility that on December 31, 2005
19 provided electric service to at least 100,000 customers in
20 Illinois transfers assets, reorganizes, or merges under this
21 Section, then the same provisions apply that applied during the
22 mandatory transition period under Section 16-128.

23 (Source: P.A. 91-50, eff. 6-30-99; 92-537, eff. 6-6-02; 92-690,
24 eff. 7-18-02; revised 9-10-02.)

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

2 (a) An electric utility that on December 31, 2005 served at
3 least 100,000 customers in Illinois shall procure power and
4 energy for its eligible retail customers in accordance with the
5 applicable provisions set forth in Section 1-75 of the Illinois
6 Power Agency Act and this Section. "Eligible retail customers"
7 for the purposes of this Section means those retail customers
8 that purchase power and energy from the electric utility under
9 fixed-price bundled service tariffs, other than those retail
10 customers whose service is declared or deemed competitive under
11 Section 16-113 and those other customer groups specified in
12 this Section, including self-generating customers, customers
13 electing hourly pricing, or those customers who are otherwise
14 ineligible for fixed-price bundled tariff service. Those
15 customers that are excluded from the definition of "eligible
16 retail customers" shall not be included in the procurement plan
17 load requirements, and the utility shall procure any supply
18 requirements, including capacity, ancillary services, and
19 hourly priced energy, in the applicable markets as needed to
20 serve those customers, provided that the utility may include in
21 its procurement plan load requirements for the load that is
22 associated with those retail customers whose service has been
23 declared or deemed competitive pursuant to Section 16-113 of
24 this Act to the extent that those customers are purchasing
25 power and energy during one of the transition periods
26 identified in subsection (b) of Section 16-113 of this Act.

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

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

26 (i) multi-year historical analysis of hourly

1 loads;
2 (ii) switching trends and competitive retail
3 market analysis;
4 (iii) known or projected changes to future loads;
5 and
6 (iv) growth forecasts by customer class.
7 (2) Analysis of the impact of any demand side and
8 renewable energy initiatives. This analysis shall include:
9 (i) the impact of demand response programs, both
10 current and projected;
11 (ii) supply side needs that are projected to be
12 offset by purchases of renewable energy resources, if
13 any; and
14 (iii) the impact of energy efficiency programs,
15 both current and projected.
16 (3) A plan for meeting the expected load requirements
17 that will not be met through preexisting contracts. This
18 plan shall include:
19 (i) definitions of the different retail customer
20 classes for which supply is being purchased;
21 (ii) monthly forecasted system supply
22 requirements, including expected minimum, maximum, and
23 average values for the planning period;
24 (iii) 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 (iv) proposed term structures for each wholesale
10 product type included in the proposed procurement plan
11 portfolio of products; and

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

7 (1) The procurement administrator shall:

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

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

17 (iii) serve as the interface between the electric
18 utility and suppliers;

19 (iv) manage the bidder pre-qualification and
20 registration process;

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

24 (vi) administer the request for proposals process;

25 (vii) have the discretion to negotiate to
26 determine whether bidders are willing to lower the

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

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

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

17 (x) notify the utility of contract counterparties
18 and contract specifics; and

19 (xi) administer related contingency procurement
20 events.

21 (2) The procurement monitor, who shall be retained by
22 the Commission, shall:

23 (i) monitor interactions among the procurement
24 administrator, suppliers, and utility;

25 (ii) monitor and report to the Commission on the
26 progress of the procurement process;

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

4 (iv) assess compliance with the procurement plans
5 approved by the Commission for each utility that on
6 December 31, 2005 provided electric service to a least
7 100,000 customers in Illinois;

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

11 (vi) provide expert advice to the Commission and
12 consult with the procurement administrator regarding
13 issues related to procurement process design, rules,
14 protocols, and policy-related matters; and

15 (vii) consult with the procurement administrator
16 regarding the development and use of benchmark
17 criteria, standard form contracts, credit policies,
18 and bid documents.

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

21 (1) Beginning in 2008, each Illinois utility procuring
22 power pursuant to this Section shall annually provide a
23 range of load forecasts to the Illinois Power Agency by
24 July 15 of each year, or such other date as may be required
25 by the Commission or Agency. The load forecasts shall cover
26 the 5-year procurement planning period for the next

1 procurement plan and shall include hourly data
2 representing a high-load, low-load and expected-load
3 scenario for the load of the eligible retail customers. The
4 utility shall provide supporting data and assumptions for
5 each of the scenarios.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 than 60 days remaining of the contract term, the
2 utility shall procure power and energy from the
3 applicable regional transmission organization market,
4 including ancillary services, capacity, and day-ahead
5 or real time energy, or both, for the duration of the
6 contract term to replace the contracted supply;
7 provided, however, that if a needed product is not
8 available through the regional transmission
9 organization market it shall be purchased from the
10 wholesale market.

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

1 consistent with Section 1-75 of the Illinois Power
2 Agency Act and this subsection. In any event, a new
3 request for proposals process shall be implemented by
4 the procurement administrator within 90 days after the
5 determination that the procurement process has failed
6 to fully meet the expected load requirement.

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

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

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

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

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

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

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

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

20 (j) Within 60 days following the effective date of this
21 amendatory Act, each electric utility that on December 31, 2005
22 provided electric service to at least 100,000 customers in
23 Illinois shall prepare and file with the Commission an initial
24 procurement plan, which shall conform in all material respects
25 to the requirements of the procurement plan set forth in
26 subsection (b); provided, however, that the Illinois Power

1 Agency Act shall not apply to the initial procurement plan
2 prepared pursuant to this subsection. The initial procurement
3 plan shall identify the portfolio of power and energy products
4 to be procured and delivered for the period June 2008 through
5 May 2009, and shall identify the proposed procurement
6 administrator, who shall have the same experience and expertise
7 as is required of a procurement administrator hired pursuant to
8 Section 1-75 of the Illinois Power Agency Act. Copies of the
9 procurement plan shall be posted and made publicly available on
10 the Commission's website. The initial procurement plan may
11 include contracts for renewable resources that extend beyond
12 May 2009.

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

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

10 (k) In order to promote price stability for residential and
11 small commercial customers during the transition to
12 competition in Illinois, and notwithstanding any other
13 provision of this Act, each electric utility subject to this
14 Section shall enter into one or more multi-year financial swap
15 contracts that become effective on the effective date of this
16 amendatory Act. These contracts may be executed with generators
17 and power marketers, including affiliated interests of the
18 electric utility. These contracts shall be for a term of no
19 more than 5 years and shall, for each respective utility or for
20 any Illinois electric utilities that are affiliated by virtue
21 of a common parent company and that are thereby considered a
22 single electric utility for purposes of this subsection (k),
23 not exceed in the aggregate 3,000 megawatts for any hour of the
24 year. The contracts shall be financial contracts and not energy
25 sales contracts. The contracts shall be executed as
26 transactions under a negotiated master agreement based on the

1 form of master agreement for financial swap contracts sponsored
2 by the International Swaps and Derivatives Association, Inc.
3 and shall be considered pre-existing contracts in the
4 utilities' procurement plans for residential and small
5 commercial customers. Costs incurred pursuant to a contract
6 authorized by this subsection (k) shall be deemed prudently
7 incurred and reasonable in amount and the electric utility
8 shall be entitled to full cost recovery pursuant to the tariffs
9 filed with the Commission.

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

1 basis, of any accounting errors that may occur. A utility shall
2 recover through the tariff all reasonable costs incurred to
3 implement or comply with any procurement plan that is developed
4 and put into effect pursuant to Section 1-75 of the Illinois
5 Power Agency Act and this Section, including any fees assessed
6 by the Illinois Power Agency, costs associated with load
7 balancing, and contingency plan costs. The electric utility
8 shall also recover its full costs of procuring electric supply
9 for which it contracted before the effective date of this
10 Section in conjunction with the provision of full requirements
11 service under fixed-price bundled service tariffs subsequent
12 to December 31, 2006. All such costs shall be deemed to have
13 been prudently incurred. The pass-through tariffs that are
14 filed and approved pursuant to this Section shall not be
15 subject to review under, or in any way limited by, Section
16 16-111(i) of this Act.

17 (m) The Commission has the authority to adopt rules to
18 carry out the provisions of this Section. For the public
19 interest, safety, and welfare, the Commission also has
20 authority to adopt rules to carry out the provisions of this
21 Section on an emergency basis immediately following the
22 effective date of this amendatory Act.

23 (n) Notwithstanding any other provision of this Act, any
24 affiliated electric utilities that submit a single procurement
25 plan covering their combined needs may procure for those
26 combined needs in conjunction with that plan, and may enter

1 jointly into power supply contracts, purchases, and other
2 procurement arrangements, and allocate capacity and energy and
3 cost responsibility therefor among themselves in proportion to
4 their requirements.

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

9 (p) An electric utility subject to this Section may propose
10 to invest, lease, own, or operate an electric generation
11 facility as part of its procurement plan, provided the utility
12 demonstrates that such facility is the least-cost option to
13 provide electric service to eligible retail customers. If the
14 facility is shown to be the least-cost option and is included
15 in a procurement plan prepared in accordance with Section 1-75
16 of the Illinois Power Agency Act and this Section, then the
17 electric utility shall make a filing pursuant to Section 8-406
18 of the Act, and may request of the Commission any statutory
19 relief required thereunder. If the Commission grants all of the
20 necessary approvals for the proposed facility, such supply
21 shall thereafter be considered as a pre-existing contract under
22 subsection (b) of this Section. The Commission shall in any
23 order approving a proposal under this subsection specify how
24 the utility will recover the prudently incurred costs of
25 investing in, leasing, owning, or operating such generation
26 facility through just and reasonable rates charged to eligible

1 retail customers. Cost recovery for facilities included in the
2 utility's procurement plan pursuant to this subsection shall
3 not be subject to review under or in any way limited by the
4 provisions of Section 16-111(i) of this Act. Nothing in this
5 Section is intended to prohibit a utility from filing for a
6 fuel adjustment clause as is otherwise permitted under Section
7 9-220 of this Act.

8 (220 ILCS 5/16-111.5A new)

9 Sec. 16-111.5A. Provisions relating to electric rate
10 relief.

11 (a) The General Assembly finds that action must be taken in
12 order to mitigate the 2007 electric rate increases approved for
13 residential and certain nonresidential customers served by the
14 State's largest electric utilities in 2007. The General
15 Assembly further finds that although various means of providing
16 rate relief have been proposed, including imposition of a rate
17 freeze on the electric utilities or a tax on generation within
18 the State, the establishment of voluntary rate relief programs
19 provides the most immediate and certain means of providing that
20 rate relief. Accordingly, if the residential customer electric
21 service rates that were charged to residential customers
22 beginning January 2, 2007 by an electric utility that on
23 December 31, 2005 provided electric service to at least 100,000
24 customers in Illinois resulted in an annual increase of more
25 than 20% in an electric utility's average rate charged to

1 residential customers for bundled electric service, those
2 electric utilities and their holding companies or other
3 affiliates, and any other company owning generation in this
4 State or its affiliates, may, notwithstanding any other
5 provisions of this Act, and without obtaining any approvals
6 from the Commission or any other agency, regardless of whether
7 any such approval would otherwise be required, establish and
8 make payments to provide funds that can be used to provide rate
9 relief beginning on the effective date of this amendatory Act
10 of the 95th General Assembly through July 31, 2011.

11 (b) For purposes of this Section, the "Ameren Utilities"
12 means Illinois Power Company, Central Illinois Public Service
13 Company, and Central Illinois Light Company.

14 (c) For purposes of this Section, the "Generators" means
15 Exelon Generation Company, LLC; Ameren Energy Resources
16 Generating Company; Ameren Energy Marketing Company; Ameren
17 Energy Generating Company; MidAmerican Energy Company; Midwest
18 Generation, LLC; and Dyneq Holdings Inc.; and may include
19 non-utility affiliates of the entities named in this
20 subsection.

21 (d) For purposes of this Section, "Rate Relief Agreements"
22 means the 2 Rate Relief Funding Agreements, the Escrow Funding
23 Agreement, and the Illinois Power Agency Funding Agreement that
24 Commonwealth Edison Company, the Ameren Utilities, and
25 Generators have entered into with the Illinois Attorney General
26 on behalf of the People of the State of Illinois for the

1 purpose of providing \$1,001,000,000 to be used to fund rate
2 relief programs for customers of Commonwealth Edison Company
3 and the Ameren Utilities and for the Illinois Power Agency
4 Trust Fund and that become effective on the effective date of
5 this amendatory Act of the 95th General Assembly. The Rate
6 Relief Agreements have been filed with the Illinois Secretary
7 of State Index Department and designated as "95-GA-C01" through
8 "95-GA-C04" inclusive. The Illinois Attorney General has the
9 right to enforce the provisions of all of the Rate Relief
10 Agreements on behalf of the People of the State of Illinois or
11 the Illinois Power Agency, or both, as appropriate.

12 (e) Subject to the terms, conditions, and contingencies of
13 the Rate Relief Agreements, Commonwealth Edison Company will
14 apply a total of \$488,000,000 in rate relief to residential and
15 certain nonresidential customers from 2007 through 2010.
16 Commonwealth Edison Company will apply bill credits for all of
17 its residential customers in its service territory in the
18 following amounts: \$250,000,000 in 2007, \$125,500,000 in 2008,
19 and \$36,000,000 in 2009. Any undisbursed rate relief funds
20 shall be applied to the targeted programs. Commonwealth Edison
21 Company will provide rate relief for residential and certain
22 nonresidential customers through targeted programs in the
23 following amounts: \$33,000,000 in 2007, \$18,000,000 in 2008,
24 \$15,500,000 in 2009, and \$10,000,000 in 2010. Subject to the
25 terms, conditions, and contingencies of the Rate Relief
26 Agreements, the targeted programs for 2007 consist of the

1 following, some of which are already underway and, in the
2 aggregate, therefore total more than \$33,000,000:

3 (1) an electric space heating customer relief program
4 costing approximately \$8,000,000 designed to lower the
5 average percentage increase of residential electric space
6 heating customers to rate increases similar to other
7 residential customers;

8 (2) a summer assistance program costing approximately
9 \$10,300,000 for working families and low-income customers,
10 including low-income seniors;

11 (3) a residential rate relief program costing
12 approximately \$5,500,000 for working families and
13 low-income customers, including low-income seniors, with
14 higher than average rate increases (over 30%);

15 (4) a residential special hardship program costing
16 approximately \$5,000,000 to address special circumstances
17 and hardships;

18 (5) a nonresidential special hardship program costing
19 approximately \$1,500,000 to address special circumstances
20 and hardships;

21 (6) a relief program for the common area accounts of
22 apartment building owners and condominium associations
23 costing approximately \$4,500,000 designed to reduce rate
24 increases for these customers to rate increases similar to
25 those for residential customers and to mitigate the impact
26 of their rate increase;

1 (7) a weatherization assistance program for electric
2 space heating low-income customers costing approximately
3 \$3,900,000 designed to provide energy efficiency
4 assistance; and

5 (8) energy efficiency, environmental, education, and
6 assistance programs costing approximately \$5,000,000
7 designed to promote the use of energy efficiency programs
8 and services by residential customers, maintenance and
9 upgrades of a website that allows those customers to
10 analyze their energy usage and provides incentives for the
11 purchase of energy efficient products, the provision of
12 energy efficient light bulbs to residential customers at a
13 discount, and free efficient light bulbs and other
14 assistance to low-income customers.

15 Based on the outcome of these targeted programs,
16 Commonwealth Edison Company will design and implement, subject
17 to the terms, conditions, and contingencies of the Rate Relief
18 Agreements, targeted programs for working families, seniors,
19 and other customers in need in 2008, 2009, and 2010.

20 (f) Subject to the terms, conditions, and contingencies of
21 the Rate Relief Agreements, the Ameren Utilities will apply a
22 total of \$488,000,000 in rate relief to residential and certain
23 nonresidential customers from 2007 through 2010. The Ameren
24 Utilities will apply bill credits for all of their residential
25 customers in their service territories in the following
26 aggregate amounts: \$213,000,000 in 2007, \$109,000,000 in 2008,

1 and \$78,000,000 in 2009. The Ameren Utilities will apply bill
2 credits to certain nonresidential customers in the following
3 aggregate amounts: \$26,000,000 in 2007, \$11,000,000 in 2008,
4 and \$11,000,000 in 2009. Any undisbursed rate relief funds
5 shall be applied to the targeted programs. The Ameren Utilities
6 will provide rate relief for residential and certain
7 nonresidential customers through targeted programs in the
8 following amounts: \$13,500,000 in 2007, \$13,500,000 in 2008,
9 \$7,500,000 in 2009, and \$5,500,000 in 2010. Subject to the
10 terms, conditions and contingencies of the Rate Relief
11 Agreements, the targeted programs consist of the following for
12 2007:

13 (1) a cooling assistance program costing approximately
14 \$2,000,000 to provide donations to the Low Income Home
15 Energy Assistance Program;

16 (2) a bill payment assistance program costing
17 approximately \$2,000,000 for working families and
18 low-income customers, including low-income seniors;

19 (3) a residential special hardship program costing
20 approximately \$2,000,000 to address special circumstances
21 and hardships;

22 (4) a nonresidential special hardship program costing
23 approximately \$2,000,000 to address special circumstances
24 and hardships;

25 (5) a percent-of-income payment program pilot costing
26 approximately \$2,500,000 that will be designed to

1 determine for low-income electric space heating customers
2 if paying a percentage of income for their electricity will
3 make electricity more affordable and promote regular
4 paying habits;

5 (6) a weatherization assistance program for all
6 electric space heating low-income customers costing
7 approximately \$1,000,000 designed to provide energy
8 efficiency assistance;

9 (7) a compact fluorescent light bulb distribution
10 program costing approximately \$1,000,000 designed to
11 provide energy efficient light bulbs to residential
12 customers at a discount; and

13 (8) a municipal street lighting conversion program
14 costing approximately \$1,000,000 to convert existing
15 street lights to more efficient lights at a discount.

16 Based on the outcome of these targeted programs, the Ameren
17 Utilities will design and implement, subject to the terms,
18 conditions, and contingencies of the Rate Relief Agreements,
19 targeted programs for working families, seniors, and other
20 customers in need in 2008, 2009, and 2010.

21 In addition, the Ameren Utilities voluntarily agree to
22 waive outstanding late payment charges associated with unpaid
23 electric bills for usage on and after January 2, 2007, through
24 the September 2007 billing period.

25 (g) Programs that use funds that are provided by electric
26 utilities and their holding companies or other affiliates, and

1 any other company owning generation in this State or its
2 affiliates, to reduce utility bills, or to otherwise offset
3 costs incurred by the utilities in mitigating rate increases
4 for certain customer groups, may be implemented through tariffs
5 that are filed with and reviewed by the Commission. If a
6 utility elects to file tariffs with the Commission to implement
7 all or a portion of the programs, those tariffs shall,
8 regardless of the date actually filed, be deemed accepted and
9 approved, and shall become effective, on the effective date of
10 this amendatory Act of the 95th General Assembly. The electric
11 utilities whose customers benefit from the funds that are
12 disbursed as contemplated in this Section shall file annual
13 reports documenting the disbursement of those funds with the
14 Commission and the Illinois Attorney General. The Commission
15 has the authority to audit disbursement of the funds to ensure
16 they were disbursed consistently with this Section.

17 (h) Nothing in this Section shall be interpreted to limit
18 the Commission's general authority over ratemaking.

19 (i) Subject to the terms, conditions, and contingencies of
20 the Rate Relief Agreements, the Generators are providing a
21 total of \$25,000,000 to the Illinois Power Agency Trust Fund.

22 (j) None of the contributions by Commonwealth Edison
23 Company or the Ameren Utilities pursuant to this Section may be
24 recovered in rates.

25 (k) Nothing in this Section shall be interpreted to limit
26 the authority or right of the Illinois Attorney General, under

1 the terms of the Rate Relief Agreements, to review or audit
2 documents, make demands, or file suit or to take other action
3 to enforce the provisions of the Rate Relief Agreements.

4 (220 ILCS 5/16-111.6 new)

5 Sec. 16-111.6. Termination of utility service to electric
6 space-heating customers. Notwithstanding any other provision
7 of this Act or any other law to the contrary, a public utility
8 that, on December 31, 2005, served more than 100,000 electric
9 customers in Illinois may not, prior to September 1, 2007,
10 terminate electric service to a residential electric
11 space-heating customer for non-payment. For 2007 and every year
12 thereafter, such an electric utility shall not terminate
13 electric service to a residential space-heating customer for
14 non-payment from December 1 through March 31.

15 (220 ILCS 5/16-113)

16 Sec. 16-113. Declaration of service as a competitive
17 service.

18 (a) An electric utility may, by petition, request the
19 Commission to declare a tariffed service that is provided by
20 the electric utility, and that has not otherwise been declared
21 to be competitive, to be a competitive service. The electric
22 utility shall give notice of its petition to the public in the
23 same manner that public notice is provided for proposed general
24 increases in rates for tariffed services, in accordance with

1 rules and regulations prescribed by the Commission. The
2 Commission shall hold a hearing and ~~on the petition if a~~
3 ~~hearing is deemed necessary by the Commission. The Commission~~
4 shall declare the class of tariffed service to be a competitive
5 service ~~for some identifiable customer segment or group of~~
6 ~~customers, or some clearly defined geographical area~~ within the
7 electric utility's service area, only after the electric
8 utility demonstrates that at least 33% of the customers in the
9 electric utility's service area that are eligible to take the
10 class of tariffed service instead take service from alternative
11 retail electric suppliers, as defined in Section 16-102, and
12 that at least 3 alternative retail electric suppliers provide
13 service that is comparable to the class of tariffed service to
14 those customers in the electric utility's service area that do
15 not take service from the electric utility. ~~if the service or a~~
16 ~~reasonably equivalent substitute service is reasonably~~
17 ~~available to the customer segment or group or in the defined~~
18 ~~geographical area at a comparable price from one or more~~
19 ~~providers other than the electric utility or an affiliate of~~
20 ~~the electric utility, and the electric utility has lost or~~
21 ~~there is a reasonable likelihood that the electric utility will~~
22 ~~lose business for the service to the other provider or~~
23 ~~providers; provided, that the Commission may not declare the~~
24 ~~provision of electric power and energy to be competitive~~
25 ~~pursuant to this subsection with respect to (i) any retail~~
26 ~~customer or group of retail customers that is not eligible~~

1 ~~pursuant to Section 16-104 to take delivery services provided~~
2 ~~by the electric utility and (ii) any residential and small~~
3 ~~commercial retail customers prior to the last date on which~~
4 ~~such customers are required to pay transition charges. In~~
5 ~~determining whether to grant or deny a petition to declare the~~
6 ~~provision of electric power and energy competitive, the~~
7 ~~Commission shall consider, in applying the above criteria,~~
8 ~~whether there is adequate transmission capacity into the~~
9 ~~service area of the petitioning electric utility to make~~
10 ~~electric power and energy reasonably available to the customer~~
11 ~~segment or group or in the defined geographical area from one~~
12 ~~or more providers other than the electric utility or an~~
13 ~~affiliate of the electric utility, in accordance with this~~
14 ~~subsection.~~ The Commission shall make its determination and
15 issue its final order declaring or refusing to declare the
16 service to be a competitive service within 180 ~~120~~ days
17 following the date that the petition is filed, ~~or otherwise the~~
18 ~~petition shall be deemed to be granted; provided, that if the~~
19 ~~petition is deemed to be granted by operation of law, the~~
20 ~~Commission shall not thereby be precluded from finding and~~
21 ~~ordering, in a subsequent proceeding initiated by the~~
22 ~~Commission, and after notice and hearing, that the service is~~
23 ~~not competitive based on the criteria set forth in this~~
24 ~~subsection.~~

25 (b) Except as otherwise set forth in this Section, any Any
26 customer except a customer identified in subsection (c) of

1 Section 16-103 who is taking a tariffed service that is
2 declared to be a competitive service pursuant to subsection (a)
3 of this Section shall be entitled to continue to take the
4 service from the electric utility on a tariffed basis for a
5 period of 3 years following the date that the service is
6 declared competitive, or such other period as is stated in the
7 electric utility's tariff pursuant to Section 16-110. This
8 subsection shall not require the electric utility to offer or
9 provide on a tariffed basis any service to any customer (except
10 those customers identified in subsection (c) of Section 16-103)
11 that was not taking such service on a tariffed basis on the
12 date the service was declared to be competitive.

13 Customers of an electric utility that on December 31, 2005
14 provided electric service to at least 2,000,000 customers in
15 Illinois and (i) whose service is declared to be a competitive
16 service pursuant to subsection (f) of this Section, (ii) that
17 have peak demand of 400 kilowatts and above, and (iii) that
18 were taking that service from the utility on the effective date
19 of this amendatory Act through fixed-price bundled service
20 tariffs, shall be entitled to continue to take the service from
21 the electric utility on a tariffed basis through the end of the
22 May 2008 billing period. Customers of an electric utility that
23 on December 31, 2005 provided electric service to at least
24 2,000,000 customers in Illinois and (i) whose service is
25 declared to be a competitive service pursuant to subsection (g)
26 of this Section, (ii) that have peak demand of 100 kilowatts

1 and above but less than 400 kilowatts, and (iii) that were
2 taking that service from the utility on the effective date of
3 this amendatory Act through fixed-price bundled service
4 tariffs, shall be entitled to continue to take the service from
5 the electric utility on a tariffed basis through the end of the
6 May 2010 billing period.

7 Customers of an electric utility that on December 31, 2005
8 provided electric service to 2,000,000 or fewer customers but
9 more than 100,000 customers in Illinois and (i) whose service
10 is declared to be a competitive service pursuant to subsection
11 (f) of this Section, (ii) that have peak demand of one megawatt
12 and above, and (iii) that were taking that service from the
13 utility on the effective date of this amendatory Act through
14 fixed-price bundled service tariffs, shall be entitled to
15 continue to take the service from the electric utility on a
16 tariffed basis through the end of May 2008. Customers of an
17 electric utility that on December 31, 2005 provided electric
18 service to 2,000,000 or fewer customers but more than 100,000
19 customers in the State of Illinois and (i) whose service is
20 declared to be a competitive service pursuant to subsection (f)
21 of this Section, (ii) that have peak demand of 400 kilowatts
22 and above but less than one megawatt, and (iii) that were
23 taking that service from the utility on the effective date of
24 this amendatory Act through fixed-price bundled service
25 tariffs, shall be entitled to continue to take the service from
26 the electric utility on a tariffed basis through the end of May

1 2010.

2 (c) If the Commission denies a petition to declare a
3 service to be a competitive service, or determines in a
4 separate proceeding that a service is not competitive based on
5 the criteria set forth in subsection (a), the electric utility
6 may file a new petition no earlier than 6 months following the
7 date of the Commission's order, requesting, on the basis of
8 additional or different facts and circumstances, that the
9 service be declared to be a competitive service.

10 (d) The Commission shall not deny a petition to declare a
11 service to be a competitive service, and shall not find that a
12 service is not a competitive service, on the grounds that it
13 has previously denied the petition of another electric utility
14 to declare the same or a similar service to be a competitive
15 service or has previously determined that the same or a similar
16 service provided by another electric utility is not a
17 competitive service.

18 (e) An electric utility may declare a service, other than
19 delivery services or the provision of electric power or energy,
20 to be competitive by filing with the Commission at least 14
21 days prior to the date on which the service is to become
22 competitive a notice describing the service that is being
23 declared competitive and the date on which it will become
24 competitive; provided, that any customer who is taking a
25 tariffed service that is declared to be a competitive service
26 pursuant to this subsection (e) shall be entitled to continue

1 to take the service from the electric utility on a tariffed
2 basis until the electric utility files, and the Commission
3 grants, a petition to declare the service competitive in
4 accordance with subsection (a) of this Section. The Commission
5 shall be authorized to find and order, after notice and hearing
6 in a subsequent proceeding initiated by the Commission, that
7 any service declared to be competitive pursuant to this
8 subsection (e) is not competitive in accordance with the
9 criteria set forth in subsection (a) of this Section.

10 (f) As of the effective date of this amendatory Act, the
11 provision of electric power and energy, whether through
12 fixed-price bundled service tariffs or otherwise, to those
13 retail customers with peak demands of 400 kilowatts and above
14 that are served by an electric utility that on December 31,
15 2005 served more than 100,000 customers in its service
16 territory in Illinois shall be deemed to be, and is declared to
17 be, a competitive service.

18 (g) An electric utility that provided electric service to
19 at least 100,000 customers in its service territory in Illinois
20 as of December 31, 2005 may seek to declare the provision of
21 electric power and energy, whether through fixed-price bundled
22 service tariffs or otherwise, to those retail customers with
23 peak demand of 100 kilowatts and above but less than 400
24 kilowatts to be competitive by filing with the Commission at
25 least 60 days prior to the date on which the service is to
26 become competitive a petition with attached analyses

1 demonstrating that at least 33% of those customers in the
2 electric utility's service area that are eligible to take the
3 class of tariffed service instead take service from alternative
4 retail electric suppliers, as defined in Section 16-102, and
5 that at least 3 alternative retail electric suppliers provide
6 service that is comparable to that tariffed service to those
7 customers in the electric utility's service area that do not
8 take service from the electric utility. The electric utility
9 shall give notice of its petition to the public in the same
10 manner that public notice is provided for proposed general
11 increases in rates for tariffed services, in accordance with
12 rules and regulations prescribed by the Commission. Within 14
13 days following filing of the petition, any person may file a
14 detailed objection with the Commission contesting the analyses
15 submitted by the electric utility with its petition. All
16 objections to the electric utility's petition shall be
17 specific, supported by data or other detailed analyses, and
18 limited to whether the electric utility has met the standard
19 set forth in this subsection (g). The electric utility may file
20 a response to any objections to its petition within 7 days
21 after the deadline for objections. The Commission shall declare
22 the provision of electric power and energy by the electric
23 utility to those retail customers with peak demand of 100
24 kilowatts and above but less than 400 kilowatts to be a
25 competitive service within 30 days after the filing of the
26 petition if it finds that the electric utility has met the

1 standard set forth in this subsection (g). If, however, the
2 Commission finds that there are material issues of disputed
3 fact, it may require the parties to submit additional
4 information, including through additional filings or as part of
5 an evidentiary hearing. If the Commission has required the
6 parties to submit additional information, it shall issue an
7 order within 60 days after the filing of the petition stating
8 whether the provision of electric power and energy by the
9 utility to those retail customers with peak demand of 100
10 kilowatts and above but less than 400 kilowatts has been
11 declared to be a competitive service.

12 (h) Until July 1, 2012, no electric utility that on
13 December 31, 2005 provided electric service to at least 100,000
14 customers in its service territory in Illinois may seek to
15 declare the class of tariffed service for residential customers
16 and those non-residential customers with peak demand of less
17 than 100 kilowatts to be a competitive service.

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

19 (220 ILCS 5/16-126.1 new)

20 Sec. 16-126.1. Regional transmission organization
21 memberships. The State shall not directly or indirectly
22 prohibit an electric utility that on December 31, 2005 provided
23 electric service to at least 100,000 customers in Illinois from
24 membership in a Federal Energy Regulatory Commission approved
25 regional transmission organization of its choosing. Nothing in

1 this Section limits any authority the Commission otherwise has
2 to regulate that electric utility. This Section ceases to be
3 effective on July 1, 2022 unless extended by the General
4 Assembly by law.

5 (220 ILCS 5/16-127)

6 Sec. 16-127. Environmental disclosure.

7 (a) Effective January 1, 1999, every electric utility and
8 alternative retail electric supplier shall provide the
9 following information, to the maximum extent practicable, with
10 its bills to its customers on a quarterly basis:

11 (i) the known sources of electricity supplied,
12 broken-out by percentages, of biomass power, coal-fired
13 power, hydro power, natural gas-fired power, nuclear
14 power, oil-fired power, solar power, wind power and other
15 resources, respectively; ~~and~~

16 (ii) a pie-chart that ~~which~~ graphically depicts the
17 percentages of the sources of the electricity supplied as
18 set forth in subparagraph (i) of this subsection; ~~and~~.

19 (iii) a pie-chart that graphically depicts the
20 quantity of renewable energy resources procured pursuant
21 to Section 1-75 of the Illinois Power Agency Act as a
22 percentage of electricity supplied to serve eligible
23 retail customers as defined in Section 16-111.5(a) of this
24 Act.

25 (b) In addition, every electric utility and alternative

1 retail electric supplier shall provide, to the maximum extent
2 practicable, with its bills to its customers on a quarterly
3 basis, a standardized chart in a format to be determined by the
4 Commission in a rule following notice and hearings which
5 provides the amounts of carbon dioxide, nitrogen oxides and
6 sulfur dioxide emissions and nuclear waste attributable to the
7 known sources of electricity supplied as set forth in
8 subparagraph (i) of subsection (a) of this Section.

9 (c) The electric utilities and alternative retail electric
10 suppliers may provide their customers with such other
11 information as they believe relevant to the information
12 required in subsections (a) and (b) of this Section.

13 (d) For the purposes of subsection (a) of this Section,
14 "biomass" means dedicated crops grown for energy production and
15 organic wastes.

16 (e) All of the information provided in subsections (a) and
17 (b) of this Section shall be presented to the Commission for
18 inclusion in its World Wide Web Site.

19 (Source: P.A. 90-561, eff. 12-16-97; 90-624, eff. 7-10-98.)

20 ARTICLE 99

21 Section 99-97. Severability. The provisions of this Act are
22 severable under Section 1.31 of the Statute on Statutes.

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