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LRB095 14199 MJR 51853 a

1 AMENDMENT TO SENATE BILL 1987

2 AMENDMENT NO. _____. Amend Senate Bill 1987 by replacing
3 everything after the enacting clause with the following:

4 "ARTICLE 1

5 Section 1-5. The Illinois Power Agency Act is amended by
6 changing Sections 1-5, 1-10, 1-75, and 1-80 as follows:

7 (20 ILCS 3855/1-5)

8 Sec. 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

1 complete. Some customers, especially residential and small
2 commercial customers, have failed to benefit from lower
3 electricity costs from retail and wholesale competition.

4 (3) Escalating prices for electricity in Illinois pose
5 a serious threat to the economic well-being, health, and
6 safety of the residents of and the commerce and industry of
7 the State.

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

14 (5) Procuring a diverse electricity supply portfolio
15 will ensure the lowest total cost over time for adequate,
16 reliable, efficient, and environmentally sustainable
17 electric service.

18 (6) Including cost-effective renewable resources in
19 that portfolio will reduce long-term direct and indirect
20 costs to consumers by decreasing environmental impacts and
21 by avoiding or delaying the need for new generation,
22 transmission, and distribution infrastructure.

23 (7) Energy efficiency, demand-response measures, and
24 renewable energy are resources currently underused in
25 Illinois.

26 (8) The State should encourage the use of advanced

1 clean coal technologies that capture and sequester carbon
2 dioxide emissions to advance environmental protection
3 goals and to demonstrate the viability of coal and
4 coal-derived fuels in a carbon-constrained economy.

5 The General Assembly therefore finds that it is necessary
6 to create the Illinois Power Agency and that the goals and
7 objectives of that Agency are to accomplish each of the
8 following:

9 (A) Develop electricity procurement plans to ensure
10 adequate, reliable, affordable, efficient, and
11 environmentally sustainable electric service at the lowest
12 total cost over time, taking into account any benefits of
13 price stability, for electric utilities that on December
14 31, 2005 provided electric service to at least 100,000
15 customers in Illinois. The procurement plan shall be
16 updated on an annual basis and shall include renewable
17 energy resources sufficient to achieve the standards
18 specified in this Act.

19 (B) Conduct competitive procurement processes to
20 procure the supply resources identified in the procurement
21 plan.

22 (C) Develop electric generation and co-generation
23 facilities that use indigenous coal or renewable
24 resources, or both, financed with bonds issued by the
25 Illinois Finance Authority.

26 (D) Supply electricity from the Agency's facilities at

1 cost to one or more of the following: municipal electric
2 systems, governmental aggregators, or rural electric
3 cooperatives in Illinois.

4 (Source: P.A. 95-481, eff. 8-28-07.)

5 (20 ILCS 3855/1-10)

6 Sec. 1-10. Definitions.

7 "Agency" means the Illinois Power Agency.

8 "Agency loan agreement" means any agreement pursuant to
9 which the Illinois Finance Authority agrees to loan the
10 proceeds of revenue bonds issued with respect to a project to
11 the Agency upon terms providing for loan repayment installments
12 at least sufficient to pay when due all principal of, interest
13 and premium, if any, on those revenue bonds, and providing for
14 maintenance, insurance, and other matters in respect of the
15 project.

16 "Authority" means the Illinois Finance Authority.

17 "Clean coal SNG facility" means a facility that uses a
18 gasification process to produce substitute natural gas, that
19 sequesters at least 90% of the total carbon emissions that the
20 facility would otherwise emit and that uses coal as a
21 feedstock, with all such coal having a high bituminous rank and
22 greater than 1.7 pounds of sulfur per million btu content.

23 "Commission" means the Illinois Commerce Commission.

24 "Costs incurred in connection with the development and
25 construction of a facility" means:

1 (1) the cost of acquisition of all real property and
2 improvements in connection therewith and equipment and
3 other property, rights, and easements acquired that are
4 deemed necessary for the operation and maintenance of the
5 facility;

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

8 (3) all origination, commitment, utilization,
9 facility, placement, underwriting, syndication, credit
10 enhancement, and rating agency fees;

11 (4) engineering, design, procurement, consulting,
12 legal, accounting, title insurance, survey, appraisal,
13 escrow, trustee, collateral agency, interest rate hedging,
14 interest rate swap, capitalized interest and other
15 financing costs, and other expenses for professional
16 services; and

17 (5) the costs of plans, specifications, site study and
18 investigation, installation, surveys, other Agency costs
19 and estimates of costs, and other expenses necessary or
20 incidental to determining the feasibility of any project,
21 together with such other expenses as may be necessary or
22 incidental to the financing, insuring, acquisition, and
23 construction of a specific project and placing that project
24 in operation.

25 "Department" means the Department of Commerce and Economic
26 Opportunity.

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

2 "Demand-response" means measures that decrease peak
3 electricity demand or shift demand from peak to off-peak
4 periods.

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

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

9 "Facility" means an electric generating unit or a
10 co-generating unit that produces electricity along with
11 related equipment necessary to connect the facility to an
12 electric transmission or distribution system.

13 "Governmental aggregator" means one or more units of local
14 government that individually or collectively procure
15 electricity to serve residential retail electrical loads
16 located within its or their jurisdiction.

17 "Local government" means a unit of local government as
18 defined in Article VII of Section 1 of the Illinois
19 Constitution.

20 "Municipality" means a city, village, or incorporated
21 town.

22 "Person" means any natural person, firm, partnership,
23 corporation, either domestic or foreign, company, association,
24 limited liability company, joint stock company, or association
25 and includes any trustee, receiver, assignee, or personal
26 representative thereof.

1 "Project" means the planning, bidding, and construction of
2 a facility.

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

5 "Real property" means any interest in land together with
6 all structures, fixtures, and improvements thereon, including
7 lands under water and riparian rights, any easements,
8 covenants, licenses, leases, rights-of-way, uses, and other
9 interests, together with any liens, judgments, mortgages, or
10 other claims or security interests related to real property.

11 "Renewable energy credit" means a tradable credit that
12 represents the environmental attributes of a certain amount of
13 energy produced from a renewable energy resource.

14 "Renewable energy resources" includes energy and its
15 associated renewable energy credit or renewable energy credits
16 from wind, solar thermal energy, photovoltaic cells and panels,
17 biodiesel, crops and untreated and unadulterated organic waste
18 biomass, trees and tree trimmings, hydropower that does not
19 involve new construction or significant expansion of
20 hydropower dams, and other alternative sources of
21 environmentally preferable energy. For purposes of this Act,
22 landfill gas produced in the State is considered a renewable
23 energy resource. "Renewable energy resources" does not include
24 the incineration, burning, or heating of tires, garbage,
25 general household, institutional, and commercial waste,
26 industrial lunchroom or office waste, landscape waste other

1 than trees and tree trimmings, railroad crossties, utility
2 poles, and construction or demolition debris, other than
3 untreated and unadulterated waste wood.

4 "Revenue bond" means any bond, note, or other evidence of
5 indebtedness issued by the Authority, the principal and
6 interest of which is payable solely from revenues or income
7 derived from any project or activity of the Agency.

8 "Sequester" means permanent storage of carbon dioxide by
9 injecting it into a saline aquifer, a depleted gas reservoir,
10 or an oil reservoir, directly or through an enhanced oil
11 recovery process that may involve intermediate storage in a
12 salt dome.

13 "Substitute natural gas" or "SNG" means a gas manufactured
14 by gasification of hydrocarbon feedstock, which is
15 substantially interchangeable in use and distribution with
16 conventional natural gas.

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

1 incremental costs of end-use measures that are implemented due
2 to the program (including both utility and participant
3 contributions), plus costs to administer, deliver, and
4 evaluate each demand-side program, to quantify the net savings
5 obtained by substituting the demand-side program for supply
6 resources. In calculating avoided costs of power and energy
7 that an electric utility would otherwise have had to acquire,
8 reasonable estimates shall be included of financial costs
9 likely to be imposed by future regulations and legislation on
10 emissions of greenhouse gases.

11 (Source: P.A. 95-481, eff. 8-28-07.)

12 (20 ILCS 3855/1-75)

13 Sec. 1-75. Planning and Procurement Bureau. The Planning
14 and Procurement Bureau has the following duties and
15 responsibilities:

16 (a) The Planning and Procurement Bureau shall each
17 year, beginning in 2008, develop procurement plans and
18 conduct competitive procurement processes in accordance
19 with the requirements of Section 16-111.5 of the Public
20 Utilities Act for the eligible retail customers of electric
21 utilities that on December 31, 2005 provided electric
22 service to at least 100,000 customers in Illinois. For the
23 purposes of this Section, the term "eligible retail
24 customers" has the same definition as found in Section
25 16-111.5(a) of the Public Utilities Act.

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

7 (A) direct previous experience assembling
8 large-scale power supply plans or portfolios for
9 end-use customers;

10 (B) an advanced degree in economics,
11 mathematics, engineering, risk management, or a
12 related area of study;

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

15 (D) expertise in wholesale electricity market
16 rules, including those established by the Federal
17 Energy Regulatory Commission and regional
18 transmission organizations;

19 (E) expertise in credit protocols and
20 familiarity with contract protocols;

21 (F) adequate resources to perform and fulfill
22 the required functions and responsibilities; and

23 (G) the absence of a conflict of interest and
24 inappropriate bias for or against potential
25 bidders or the affected electric utilities.

26 (2) The Agency shall each year, as needed, issue a

1 request for qualifications for a procurement
2 administrator to conduct the competitive procurement
3 processes in accordance with Section 16-111.5 of the
4 Public Utilities Act. In order to qualify an expert or
5 expert consulting firm must have:

6 (A) direct previous experience administering a
7 large-scale competitive procurement process;

8 (B) an advanced degree in economics,
9 mathematics, engineering, or a related area of
10 study;

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

13 (D) expertise in wholesale electricity market
14 rules, including those established by the Federal
15 Energy Regulatory Commission and regional
16 transmission organizations;

17 (E) expertise in credit and contract
18 protocols;

19 (F) adequate resources to perform and fulfill
20 the required functions and responsibilities; and

21 (G) the absence of a conflict of interest and
22 inappropriate bias for or against potential
23 bidders or the affected electric utilities.

24 (3) The Agency shall provide affected utilities
25 and other interested parties with the lists of
26 qualified experts or expert consulting firms

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

15 (A) failure to satisfy qualification criteria;

16 (B) identification of a conflict of interest;

17 or

18 (C) evidence of inappropriate bias for or
19 against potential bidders or the affected
20 utilities.

21 The Agency shall remove experts or expert
22 consulting firms from the lists within 10 days if there
23 is a reasonable basis for an objection and provide the
24 updated lists to the affected utilities and other
25 interested parties. If the Agency fails to remove an
26 expert or expert consulting firm from a list, an

1 objecting party may seek review by the Commission
2 within 5 days thereafter by filing a petition, and the
3 Commission shall render a ruling on the petition within
4 10 days. There is no right of appeal of the
5 Commission's ruling.

6 (4) The Agency shall issue requests for proposals
7 to the qualified experts or expert consulting firms to
8 develop a procurement plan for the affected utilities
9 and to serve as procurement administrator.

10 (5) The Agency shall select an expert or expert
11 consulting firm to develop procurement plans based on
12 the proposals submitted and shall award one-year
13 contracts to those selected with an option for the
14 Agency for a one-year renewal.

15 (6) The Agency shall select an expert or expert
16 consulting firm, with approval of the Commission, to
17 serve as procurement administrator based on the
18 proposals submitted. If the Commission rejects, within
19 5 days, the Agency's selection, the Agency shall submit
20 another recommendation within 3 days based on the
21 proposals submitted. The Agency shall award a one-year
22 contract to the expert or expert consulting firm so
23 selected with Commission approval with an option for
24 the Agency for a one-year renewal.

25 (b) The experts or expert consulting firms retained by
26 the Agency shall, as appropriate, prepare procurement

1 plans, and conduct a competitive procurement process as
2 prescribed in Section 16-111.5 of the Public Utilities Act,
3 to ensure adequate, reliable, affordable, efficient, and
4 environmentally sustainable electric service at the lowest
5 total cost over time, taking into account any benefits of
6 price stability, for eligible retail customers of electric
7 utilities that on December 31, 2005 provided electric
8 service to at least 100,000 customers in the State of
9 Illinois.

10 (c) Renewable portfolio standard.

11 (1) The procurement plans shall include
12 cost-effective renewable energy resources. A minimum
13 percentage of each utility's total supply to serve the
14 load of eligible retail customers, as defined in
15 Section 16-111.5(a) of the Public Utilities Act,
16 procured for each of the following years shall be
17 generated from cost-effective renewable energy
18 resources: at least 2% by June 1, 2008; at least 4% by
19 June 1, 2009; at least 5% by June 1, 2010; at least 6%
20 by June 1, 2011; at least 7% by June 1, 2012; at least
21 8% by June 1, 2013; at least 9% by June 1, 2014; at
22 least 10% by June 1, 2015; and increasing by at least
23 1.5% each year thereafter to at least 25% by June 1,
24 2025. To the extent that it is available, at least 75%
25 of the renewable energy resources used to meet these
26 standards shall come from wind generation. For

1 purposes of this Section, "cost-effective" means that
2 the costs of procuring renewable energy resources do
3 not cause the limit stated in paragraph (2) of this
4 subsection (c) to be exceeded and do not exceed
5 benchmarks based on market prices for renewable
6 resources in the region, which shall be developed by
7 the procurement administrator, in consultation with
8 the Commission staff, Agency staff, and the
9 procurement monitor and shall be subject to Commission
10 review and approval.

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

25 Notwithstanding the requirements of this
26 subsection (c), the total of renewable energy

1 resources procured pursuant to the procurement plan
2 for any single year shall be reduced by an amount
3 necessary to limit the annual estimated average net
4 increase due to the costs of these resources included
5 in the amounts paid by eligible retail customers in
6 connection with electric service to:

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

10 (B) in 2009, the greater of an additional 0.5%
11 of the amount paid per kilowatthour by those
12 customers during the year ending May 31, 2008 or 1%
13 of the amount paid per kilowatthour by those
14 customers during the year ending May 31, 2007;

15 (C) in 2010, the greater of an additional 0.5%
16 of the amount paid per kilowatthour by those
17 customers during the year ending May 31, 2009 or
18 1.5% of the amount paid per kilowatthour by those
19 customers during the year ending May 31, 2007;

20 (D) in 2011, the greater of an additional 0.5%
21 of the amount paid per kilowatthour by those
22 customers during the year ending May 31, 2010 or 2%
23 of the amount paid per kilowatthour by those
24 customers during the year ending May 31, 2007; and

25 (E) thereafter, the amount of renewable energy
26 resources procured pursuant to the procurement

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

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

18 (3) Through June 1, 2011, renewable energy
19 resources shall be counted for the purpose of meeting
20 the renewable energy standards set forth in paragraph
21 (1) of this subsection (c) only if they are generated
22 from facilities located in the State, provided that
23 cost-effective renewable energy resources are
24 available from those facilities. If those
25 cost-effective resources are not available in
26 Illinois, they shall be procured in states that adjoin

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

13 (4) The electric utility shall retire all
14 renewable energy credits used to comply with the
15 standard.

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

19 (e) The Agency shall submit the final procurement plan
20 to the Commission. The Agency shall revise a procurement
21 plan if the Commission determines that it does not meet the
22 standards set forth in Section 16-111.5 of the Public
23 Utilities Act.

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

1 (g) The Agency shall assess fees to each bidder to
2 recover the costs incurred in connection with a competitive
3 procurement process.

4 (Source: P.A. 95-481, eff. 8-28-07.)

5 (20 ILCS 3855/1-80)

6 Sec. 1-80. Resource Development Bureau. The Resource
7 Development Bureau has the following duties and
8 responsibilities:

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

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

16 (ii) an appropriation from the General Assembly.

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

22 (c) The Agency may develop, finance, construct, or
23 operate electric generation and co-generation facilities
24 that use indigenous coal or renewable resources, or both,
25 financed with bonds issued by the Authority on behalf of

1 the Agency. Any such facility that uses coal must be a
2 clean coal facility and must be constructed in a location
3 ~~Preference shall be given to technologies that enable~~
4 ~~carbon capture and sites in locations~~ where the geology is
5 suitable for carbon sequestration. The Agency may also
6 develop, finance, construct, or operate a carbon
7 sequestration facility.

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

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

26 (3) The first facility that the Agency develops,

1 finances, or constructs shall be a facility that uses
2 coal produced in Illinois. The Agency may, however,
3 also develop, finance, or construct renewable energy
4 facilities after work on the first facility has
5 commenced.

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

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

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

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

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

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

1 (f) The Agency may sell excess capacity and excess energy
2 into the wholesale electric market at prevailing market rates;
3 provided, however, the Agency may not sell excess capacity or
4 excess energy through the procurement process described in
5 Section 16-111.5 of the Public Utilities Act.

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

10 (Source: P.A. 95-481, eff. 8-28-07.)

11 Section 1-10. The Public Utilities Act is amended by
12 changing Sections 9-220 and 16-115 as follows:

13 (220 ILCS 5/9-220) (from Ch. 111 2/3, par. 9-220)

14 Sec. 9-220. Rate changes based on changes in fuel costs.

15 (a) Notwithstanding the provisions of Section 9-201, the
16 Commission may authorize the increase or decrease of rates and
17 charges based upon changes in the cost of fuel used in the
18 generation or production of electric power, changes in the cost
19 of purchased power, or changes in the cost of purchased gas
20 through the application of fuel adjustment clauses or purchased
21 gas adjustment clauses. The Commission may also authorize the
22 increase or decrease of rates and charges based upon
23 expenditures or revenues resulting from the purchase or sale of
24 emission allowances created under the federal Clean Air Act

1 Amendments of 1990, through such fuel adjustment clauses, as a
2 cost of fuel. For the purposes of this paragraph, cost of fuel
3 used in the generation or production of electric power shall
4 include the amount of any fees paid by the utility for the
5 implementation and operation of a process for the
6 desulfurization of the flue gas when burning high sulfur coal
7 at any location within the State of Illinois irrespective of
8 the attainment status designation of such location; but shall
9 not include transportation costs of coal (i) except to the
10 extent that for contracts entered into on and after the
11 effective date of this amendatory Act of 1997, the cost of the
12 coal, including transportation costs, constitutes the lowest
13 cost for adequate and reliable fuel supply reasonably available
14 to the public utility in comparison to the cost, including
15 transportation costs, of other adequate and reliable sources of
16 fuel supply reasonably available to the public utility, or (ii)
17 except as otherwise provided in the next 3 sentences of this
18 paragraph. Such costs of fuel shall, when requested by a
19 utility or at the conclusion of the utility's next general
20 electric rate proceeding, whichever shall first occur, include
21 transportation costs of coal purchased under existing coal
22 purchase contracts. For purposes of this paragraph "existing
23 coal purchase contracts" means contracts for the purchase of
24 coal in effect on the effective date of this amendatory Act of
25 1991, as such contracts may thereafter be amended, but only to
26 the extent that any such amendment does not increase the

1 aggregate quantity of coal to be purchased under such contract.
2 Nothing herein shall authorize an electric utility to recover
3 through its fuel adjustment clause any amounts of
4 transportation costs of coal that were included in the revenue
5 requirement used to set base rates in its most recent general
6 rate proceeding. Cost shall be based upon uniformly applied
7 accounting principles. Annually, the Commission shall initiate
8 public hearings to determine whether the clauses reflect actual
9 costs of fuel, gas, power, or coal transportation purchased to
10 determine whether such purchases were prudent, and to reconcile
11 any amounts collected with the actual costs of fuel, power,
12 gas, or coal transportation prudently purchased. In each such
13 proceeding, the burden of proof shall be upon the utility to
14 establish the prudence of its cost of fuel, power, gas, or coal
15 transportation purchases and costs. The Commission shall issue
16 its final order in each such annual proceeding for an electric
17 utility by December 31 of the year immediately following the
18 year to which the proceeding pertains, provided, that the
19 Commission shall issue its final order with respect to such
20 annual proceeding for the years 1996 and earlier by December
21 31, 1998.

22 (b) A public utility providing electric service, other than
23 a public utility described in subsections (e) or (f) of this
24 Section, may at any time during the mandatory transition period
25 file with the Commission proposed tariff sheets that eliminate
26 the public utility's fuel adjustment clause and adjust the

1 public utility's base rate tariffs by the amount necessary for
2 the base fuel component of the base rates to recover the public
3 utility's average fuel and power supply costs per kilowatt-hour
4 for the 2 most recent years for which the Commission has issued
5 final orders in annual proceedings pursuant to subsection (a),
6 where the average fuel and power supply costs per kilowatt-hour
7 shall be calculated as the sum of the public utility's prudent
8 and allowable fuel and power supply costs as found by the
9 Commission in the 2 proceedings divided by the public utility's
10 actual jurisdictional kilowatt-hour sales for those 2 years.
11 Notwithstanding any contrary or inconsistent provisions in
12 Section 9-201 of this Act, in subsection (a) of this Section or
13 in any rules or regulations promulgated by the Commission
14 pursuant to subsection (g) of this Section, the Commission
15 shall review and shall by order approve, or approve as
16 modified, the proposed tariff sheets within 60 days after the
17 date of the public utility's filing. The Commission may modify
18 the public utility's proposed tariff sheets only to the extent
19 the Commission finds necessary to achieve conformance to the
20 requirements of this subsection (b). During the 5 years
21 following the date of the Commission's order, but in any event
22 no earlier than January 1, 2007, a public utility whose fuel
23 adjustment clause has been eliminated pursuant to this
24 subsection shall not file proposed tariff sheets seeking, or
25 otherwise petition the Commission for, reinstatement of a fuel
26 adjustment clause.

1 (c) Notwithstanding any contrary or inconsistent
2 provisions in Section 9-201 of this Act, in subsection (a) of
3 this Section or in any rules or regulations promulgated by the
4 Commission pursuant to subsection (g) of this Section, a public
5 utility providing electric service, other than a public utility
6 described in subsection (e) or (f) of this Section, may at any
7 time during the mandatory transition period file with the
8 Commission proposed tariff sheets that establish the rate per
9 kilowatt-hour to be applied pursuant to the public utility's
10 fuel adjustment clause at the average value for such rate
11 during the preceding 24 months, provided that such average rate
12 results in a credit to customers' bills, without making any
13 revisions to the public utility's base rate tariffs. The
14 proposed tariff sheets shall establish the fuel adjustment rate
15 for a specific time period of at least 3 years but not more
16 than 5 years, provided that the terms and conditions for any
17 reinstatement earlier than 5 years shall be set forth in the
18 proposed tariff sheets and subject to modification or approval
19 by the Commission. The Commission shall review and shall by
20 order approve the proposed tariff sheets if it finds that the
21 requirements of this subsection are met. The Commission shall
22 not conduct the annual hearings specified in the last 3
23 sentences of subsection (a) of this Section for the utility for
24 the period that the factor established pursuant to this
25 subsection is in effect.

26 (d) A public utility providing electric service, or a

1 public utility providing gas service may file with the
2 Commission proposed tariff sheets that eliminate the public
3 utility's fuel or purchased gas adjustment clause and adjust
4 the public utility's base rate tariffs to provide for recovery
5 of power supply costs or gas supply costs that would have been
6 recovered through such clause; provided, that the provisions of
7 this subsection (d) shall not be available to a public utility
8 described in subsections (e) or (f) of this Section to
9 eliminate its fuel adjustment clause. Notwithstanding any
10 contrary or inconsistent provisions in Section 9-201 of this
11 Act, in subsection (a) of this Section, or in any rules or
12 regulations promulgated by the Commission pursuant to
13 subsection (g) of this Section, the Commission shall review and
14 shall by order approve, or approve as modified in the
15 Commission's order, the proposed tariff sheets within 240 days
16 after the date of the public utility's filing. The Commission's
17 order shall approve rates and charges that the Commission,
18 based on information in the public utility's filing or on the
19 record if a hearing is held by the Commission, finds will
20 recover the reasonable, prudent and necessary jurisdictional
21 power supply costs or gas supply costs incurred or to be
22 incurred by the public utility during a 12 month period found
23 by the Commission to be appropriate for these purposes,
24 provided, that such period shall be either (i) a 12 month
25 historical period occurring during the 15 months ending on the
26 date of the public utility's filing, or (ii) a 12 month future

1 period ending no later than 15 months following the date of the
2 public utility's filing. The public utility shall include with
3 its tariff filing information showing both (1) its actual
4 jurisdictional power supply costs or gas supply costs for a 12
5 month historical period conforming to (i) above and (2) its
6 projected jurisdictional power supply costs or gas supply costs
7 for a future 12 month period conforming to (ii) above. If the
8 Commission's order requires modifications in the tariff sheets
9 filed by the public utility, the public utility shall have 7
10 days following the date of the order to notify the Commission
11 whether the public utility will implement the modified tariffs
12 or elect to continue its fuel or purchased gas adjustment
13 clause in force as though no order had been entered. The
14 Commission's order shall provide for any reconciliation of
15 power supply costs or gas supply costs, as the case may be, and
16 associated revenues through the date that the public utility's
17 fuel or purchased gas adjustment clause is eliminated. During
18 the 5 years following the date of the Commission's order, a
19 public utility whose fuel or purchased gas adjustment clause
20 has been eliminated pursuant to this subsection shall not file
21 proposed tariff sheets seeking, or otherwise petition the
22 Commission for, reinstatement or adoption of a fuel or
23 purchased gas adjustment clause. Nothing in this subsection (d)
24 shall be construed as limiting the Commission's authority to
25 eliminate a public utility's fuel adjustment clause or
26 purchased gas adjustment clause in accordance with any other

1 applicable provisions of this Act.

2 (e) Notwithstanding any contrary or inconsistent
3 provisions in Section 9-201 of this Act, in subsection (a) of
4 this Section, or in any rules promulgated by the Commission
5 pursuant to subsection (g) of this Section, a public utility
6 providing electric service to more than 1,000,000 customers in
7 this State may, within the first 6 months after the effective
8 date of this amendatory Act of 1997, file with the Commission
9 proposed tariff sheets that eliminate, effective January 1,
10 1997, the public utility's fuel adjustment clause without
11 adjusting its base rates, and such tariff sheets shall be
12 effective upon filing. To the extent the application of the
13 fuel adjustment clause had resulted in net charges to customers
14 after January 1, 1997, the utility shall also file a tariff
15 sheet that provides for a refund stated on a per kilowatt-hour
16 basis of such charges over a period not to exceed 6 months;
17 provided however, that such refund shall not include the
18 proportional amounts of taxes paid under the Use Tax Act,
19 Service Use Tax Act, Service Occupation Tax Act, and Retailers'
20 Occupation Tax Act on fuel used in generation. The Commission
21 shall issue an order within 45 days after the date of the
22 public utility's filing approving or approving as modified such
23 tariff sheet. If the fuel adjustment clause is eliminated
24 pursuant to this subsection, the Commission shall not conduct
25 the annual hearings specified in the last 3 sentences of
26 subsection (a) of this Section for the utility for any period

1 after December 31, 1996 and prior to any reinstatement of such
2 clause. A public utility whose fuel adjustment clause has been
3 eliminated pursuant to this subsection shall not file a
4 proposed tariff sheet seeking, or otherwise petition the
5 Commission for, reinstatement of the fuel adjustment clause
6 prior to January 1, 2007.

7 (f) Notwithstanding any contrary or inconsistent
8 provisions in Section 9-201 of this Act, in subsection (a) of
9 this Section, or in any rules or regulations promulgated by the
10 Commission pursuant to subsection (g) of this Section, a public
11 utility providing electric service to more than 500,000
12 customers but fewer than 1,000,000 customers in this State may,
13 within the first 6 months after the effective date of this
14 amendatory Act of 1997, file with the Commission proposed
15 tariff sheets that eliminate, effective January 1, 1997, the
16 public utility's fuel adjustment clause and adjust its base
17 rates by the amount necessary for the base fuel component of
18 the base rates to recover 91% of the public utility's average
19 fuel and power supply costs for the 2 most recent years for
20 which the Commission, as of January 1, 1997, has issued final
21 orders in annual proceedings pursuant to subsection (a), where
22 the average fuel and power supply costs per kilowatt-hour shall
23 be calculated as the sum of the public utility's prudent and
24 allowable fuel and power supply costs as found by the
25 Commission in the 2 proceedings divided by the public utility's
26 actual jurisdictional kilowatt-hour sales for those 2 years,

1 provided, that such tariff sheets shall be effective upon
2 filing. To the extent the application of the fuel adjustment
3 clause had resulted in net charges to customers after January
4 1, 1997, the utility shall also file a tariff sheet that
5 provides for a refund stated on a per kilowatt-hour basis of
6 such charges over a period not to exceed 6 months. Provided
7 however, that such refund shall not include the proportional
8 amounts of taxes paid under the Use Tax Act, Service Use Tax
9 Act, Service Occupation Tax Act, and Retailers' Occupation Tax
10 Act on fuel used in generation. The Commission shall issue an
11 order within 45 days after the date of the public utility's
12 filing approving or approving as modified such tariff sheet. If
13 the fuel adjustment clause is eliminated pursuant to this
14 subsection, the Commission shall not conduct the annual
15 hearings specified in the last 3 sentences of subsection (a) of
16 this Section for the utility for any period after December 31,
17 1996 and prior to any reinstatement of such clause. A public
18 utility whose fuel adjustment clause has been eliminated
19 pursuant to this subsection shall not file a proposed tariff
20 sheet seeking, or otherwise petition the Commission for,
21 reinstatement of the fuel adjustment clause prior to January 1,
22 2007.

23 (g) The Commission shall have authority to promulgate rules
24 and regulations to carry out the provisions of this Section.

25 (h) Any gas utility may enter into a contract for up to 20
26 years of supply with any company for the purchase of substitute

1 natural gas (SNG) produced from coal through the gasification
2 process if the company has commenced construction of a coal
3 gasification facility by July 1, 2010. The cost for the SNG is
4 reasonable and prudent and recoverable through the purchased
5 gas adjustment clause for years one through 10 of the contract
6 if: (i) the only coal used in the gasification process has high
7 volatile bituminous rank and greater than 1.7 pounds of sulfur
8 per million Btu content; (ii) at the time the contract term
9 commences, the price per million Btu does not exceed \$7.95 in
10 2008 dollars, adjusted annually based on the change in the
11 Annual Consumer Price Index for All Urban Consumers for the
12 Midwest Region as published in April by the United States
13 Department of Labor, Bureau of Labor Statistics (or a suitable
14 Consumer Price Index calculation if this Consumer Price Index
15 is not available) for the previous calendar year; provided that
16 the price per million Btu shall not exceed \$8.95 at any time
17 during the contract; (iii) the utility's aggregate long-term
18 supply contracts for the purchase of SNG does not exceed 25% of
19 the annual system supply requirements of the utility at the
20 time the contract is entered into and the quantity of SNG
21 supplied to a utility by any one producer may not exceed 20
22 billion cubic feet per year; and (iv) the contract is entered
23 into within 120 days after the effective date of this
24 amendatory Act of the 95th General Assembly and terminates no
25 more than 20 years after the commencement of the commercial
26 production of synthetic natural gas at the facility. Contracts

1 greater than 10 years shall provide that if, at any time during
2 supply years 11 through 20 of the contract, the Commission
3 determines that the cost for the synthetic natural gas
4 purchased under the contract during supply years 11 through 20
5 is not reasonable and prudent, then the company shall reimburse
6 the utility for the difference between the cost deemed
7 reasonable and prudent by the Commission and the cost imposed
8 under the contract. All such contracts, regardless of duration,
9 shall require the owner of any facility supplying SNG under the
10 contract to provide documentation to the Commission each year,
11 starting in the facility's third year of commercial operation,
12 accurately reporting the quantity of carbon dioxide emissions
13 from the facility that have been captured and sequestered and
14 reporting any quantities of carbon dioxide released from the
15 site or sites at which carbon dioxide emissions were
16 sequestered in prior years, based on continuous monitoring of
17 those sites. If, in any year, the owner of the facility fails
18 to demonstrate that the SNG facility captured and sequestered
19 at least 90% of the total carbon dioxide emissions that the
20 facility would otherwise emit or that sequestration of
21 emissions from prior years has failed, resulting in the release
22 of carbon dioxide into the atmosphere, the owner of the
23 facility must offset excess emissions. Any such carbon dioxide
24 offsets must be permanent, additional, verifiable, real,
25 located within the State of Illinois, and legally and
26 practicably enforceable. The costs of such offsets that are not

1 recoverable shall not exceed \$30 million in any given year. No
2 costs of any such purchases of carbon offsets may be recovered
3 from a utility or its customers. All carbon offsets purchased
4 for this purpose must be permanently retired. In addition, 50%
5 of the carbon dioxide emission credits associated with the
6 required sequestration of carbon dioxide from the facility must
7 be permanently retired. An SNG facility operating pursuant to
8 this subsection (h) shall not forfeit its designation as a
9 clean coal SNG facility if the facility fails to fully comply
10 with the applicable carbon sequestration requirements in any
11 given year, provided the requisite offsets are purchased.
12 However, the Attorney General, on behalf of the People of the
13 State of Illinois, may specifically enforce the facility's
14 sequestration requirements. ~~Any gas utility may enter into a~~
15 ~~20 year supply contract with any company for synthetic natural~~
16 ~~gas produced from coal through the gasification process if the~~
17 ~~company has commenced construction of a coal gasification~~
18 ~~facility by July 1, 2008. The cost for the synthetic natural~~
19 ~~gas is reasonable and prudent and recoverable through the~~
20 ~~purchased gas adjustment clause for years one through 10 of the~~
21 ~~contract if: (i) the only coal used in the gasification process~~
22 ~~has high volatile bituminous rank and greater than 1.7 pounds~~
23 ~~of sulfur per million Btu content; (ii) at the time the~~
24 ~~contract term commences, the price per million Btu does not~~
25 ~~exceed \$5 in 2004 dollars, adjusted annually based on the~~
26 ~~change in the Annual Consumer Price Index for All Urban~~

1 ~~Consumers for the Midwest Region as published in April by the~~
2 ~~United States Department of Labor, Bureau of Labor Statistics~~
3 ~~(or a suitable Consumer Price Index calculation if this~~
4 ~~Consumer Price Index is not available) for the previous~~
5 ~~calendar year; provided that the price per million Btu shall~~
6 ~~not exceed \$5.50 at any time during the contract; (iii) the~~
7 ~~utility's aggregate long term supply contracts for the~~
8 ~~purchase of synthetic natural gas produced from coal through~~
9 ~~the gasification process does not exceed 25% of the annual~~
10 ~~system supply requirements of the utility at the time the~~
11 ~~contract is entered into; and (iv) the contract is entered into~~
12 ~~within one year after the effective date of this amendatory Act~~
13 ~~of the 94th General Assembly and terminates 20 years after the~~
14 ~~commencement of the production of synthetic natural gas. The~~
15 ~~contract shall provide that if, at any time during years 11~~
16 ~~through 20 of the contract, the Commission determines that the~~
17 ~~cost for the synthetic natural gas under the contract is not~~
18 ~~reasonable and prudent, then the company shall reimburse the~~
19 ~~utility for the difference between the cost deemed reasonable~~
20 ~~and prudent by the Commission and the cost imposed under the~~
21 ~~contract.~~

22 (i) If a gas utility or an affiliate of a gas utility has
23 an ownership interest in any entity that produces or sells
24 synthetic natural gas, Article VII of this Act shall apply.

25 (Source: P.A. 94-63, eff. 6-21-05.)

1 (220 ILCS 5/16-115)

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

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

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

21 (c) An application for a certificate of service authority
22 shall identify the area or areas in which the applicant intends
23 to offer service and the types of services it intends to offer.
24 Applicants that seek to serve residential or small commercial
25 retail customers within a geographic area that is smaller than
26 an electric utility's service area shall submit evidence

1 demonstrating that the designation of this smaller area does
2 not violate Section 16-115A. An applicant that seeks to serve
3 residential or small commercial retail customers may state in
4 its application for certification any limitations that will be
5 imposed on the number of customers or maximum load to be
6 served.

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

11 (1) That the applicant possesses sufficient technical,
12 financial and managerial resources and abilities to
13 provide the service for which it seeks a certificate of
14 service authority. In determining the level of technical,
15 financial and managerial resources and abilities which the
16 applicant must demonstrate, the Commission shall consider
17 (i) the characteristics, including the size and financial
18 sophistication, of the customers that the applicant seeks
19 to serve, and (ii) whether the applicant seeks to provide
20 electric power and energy using property, plant and
21 equipment which it owns, controls or operates;

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

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

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

14 (5) That the applicant will supply electricity
15 generated by renewable energy resources, as defined in
16 Section 1-10 of the Illinois Power Agency Act, to all of
17 the applicant's Illinois customers in amounts at least
18 equal to the percentages set forth in subsection (c) of
19 Section 1-75 of the Illinois Power Agency Act. For purposes
20 of this Section:

21 (i) The required procurement of electricity
22 generated by renewable energy resources shall be
23 measured as a percentage of the actual amount of
24 electricity (megawatt-hours) supplied by the
25 alternative retail electric supplier in the prior
26 calendar year, as reported for that year to the

1 Commission. This purchase obligation applies to all
2 electricity sold pursuant to retail contracts
3 executed, extended, or otherwise revised after the
4 effective date of this amendatory Act, provided the
5 alternative retail electric supplier submits all
6 documentation needed by the Commission to determine
7 the actual amount of electricity supplied under
8 contracts that may be excluded under this limitation.

9 (ii) An alternative retail electric supplier need
10 not actually deliver electricity purchased to comply
11 with this Section to its customers, provided that if
12 the alternative retail electric supplier claims credit
13 for such purpose, subsequent purchasers shall not
14 receive any emission credits or renewable energy
15 credits in connection with the purchase of such
16 electricity. Alternative retail electric suppliers
17 shall maintain adequate records documenting the
18 contractual disposition of all electricity purchased
19 to comply with this Section and shall file an
20 accounting in the report which must be filed with the
21 Commission on April 1 of each year, starting in 2010,
22 in accordance with subsection (e) of this Section.

23 (iii) The required procurement of electricity
24 generated by renewable resources shall be limited to
25 the amount of electricity that can be purchased at a
26 price at or below the benchmarks approved by the

1 Commission each year in accordance with item (1) of
2 subsection (c) of Section 1-75 of the Illinois Power
3 Agency Act

4 ~~(Blank);~~

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

13 (7) That the applicant meets the requirements of
14 subsection (a) of Section 16-128; and

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

17 (d-5) The Commission shall revoke the certification of any
18 alternative retail electric supplier that, on April 1, 2010 and
19 each year thereafter, fails to demonstrate that the electricity
20 provided to the alternative retail electricity supplier's
21 Illinois customers during the previous year was generated by
22 renewable energy resources in amounts at least equal to the
23 percentages set forth in subsection (c) of Section 1-75 of the
24 Illinois Power Agency Act, as limited by subsection (d) (5) (iii)
25 of this Section. The Commission shall not accept an application
26 for certification from an alternative retail electric supplier

1 that has lost certification under this subsection (d-5), or any
2 corporate affiliate thereof, for at least one year from the
3 date of revocation.

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

23 (f) The Commission shall have the authority to promulgate
24 rules and regulations to carry out the provisions of this
25 Section. On or before May 1, 1999, the Commission shall adopt a
26 rule or rules applicable to the certification of those

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

16 (Source: P.A. 95-130, eff. 1-1-08.)

17 ARTICLE 5

18 Section 5-5. The Public Utilities Act is amended by
19 changing Section 2-203 as follows:

20 (220 ILCS 5/2-203)

21 (Section scheduled to be repealed on January 1, 2009)

22 Sec. 2-203. Public Utility Fund base maintenance
23 contribution. Each ~~For each of the years 2003 through 2008,~~

1 ~~each~~ electric utility as defined in Section 16-102 of this Act
2 providing service to more than 12,500 customers in this State
3 on January 1, 1995 shall contribute annually a pro rata share
4 of a total amount of \$5,500,000 based upon the number of
5 kilowatt-hours delivered to retail customers within this State
6 by each such electric utility in the 12 months preceding the
7 year of contribution. On or before May 1 of each year, the
8 Illinois Commerce Commission shall determine and notify the
9 Illinois Department of Revenue of the pro rata share owed by
10 each electric utility based upon information supplied annually
11 to the Commission. On or before June 1 of each year, the
12 Department of Revenue shall send written notification to each
13 electric utility of the amount of pro rata share they owe.
14 These contributions shall be remitted to the Department of
15 Revenue no earlier than July 1 and no later than July 31 of
16 each year the contribution is due on a return prescribed and
17 furnished by the Department of Revenue showing such information
18 as the Department of Revenue may reasonably require. The
19 Department of Revenue shall place the funds remitted under this
20 Section in the Public Utility Fund in the State treasury. The
21 funds received pursuant to this Section shall be subject to
22 appropriation by the General Assembly. If an electric utility
23 does not remit its pro rata share to the Department of Revenue,
24 the Department of Revenue must inform the Illinois Commerce
25 Commission of such failure. The Illinois Commerce Commission
26 may then revoke the certification of that electric utility.

1 This Section is repealed on January 1, 2014 ~~2009~~.

2 (Source: P.A. 92-600, eff. 6-28-02.)

3 ARTICLE 10.

4 Section 10-5. The Public Utilities Act is amended by
5 changing Section 16-125 as follows:

6 (220 ILCS 5/16-125)

7 Sec. 16-125. Transmission and distribution reliability
8 requirements.

9 (a) To assure the reliable delivery of electricity to all
10 customers in this State and the effective implementation of the
11 provisions of this Article, the Commission shall, within 180
12 days of the effective date of this Article, adopt rules and
13 regulations for assessing and assuring the reliability of the
14 transmission and distribution systems and facilities that are
15 under the Commission's jurisdiction.

16 (b) These rules and regulations shall require each electric
17 utility or alternative retail electric supplier owning,
18 controlling, or operating transmission and distribution
19 facilities and equipment subject to the Commission's
20 jurisdiction, referred to in this Section as "jurisdictional
21 entities", to adopt and implement procedures for restoring
22 transmission and distribution services to customers after
23 transmission or distribution outages on a nondiscriminatory

1 basis without regard to whether a customer has chosen the
2 electric utility, an affiliate of the electric utility, or
3 another entity as its provider of electric power and energy.
4 These rules and regulations shall also, at a minimum,
5 specifically require each jurisdictional entity to submit
6 annually to the Commission.

7 (1) the number and duration of planned and unplanned
8 outages during the prior year and their impacts on
9 customers;

10 (2) outages that were controllable and outages that
11 were exacerbated in scope or duration by the condition of
12 facilities, equipment or premises or by the actions or
13 inactions of operating personnel or agents;

14 (3) customer service interruptions that were due
15 solely to the actions or inactions of an alternative retail
16 electric supplier or a public utility in supplying power or
17 energy;

18 (4) a detailed report of the age, current condition,
19 reliability and performance of the jurisdictional entity's
20 existing transmission and distribution facilities, which
21 shall include, without limitation, the following data:

22 (i) a summary of the jurisdictional entity's
23 outages and voltage variances reportable under the
24 Commission's rules;

25 (ii) the jurisdictional entity's expenditures for
26 transmission construction and maintenance, the ratio

1 of those expenditures to the jurisdictional entity's
2 transmission investment, and the average remaining
3 depreciation lives of the entity's transmission
4 facilities, expressed as a percentage of total
5 depreciation lives;

6 (iii) the jurisdictional entity's expenditures for
7 distribution construction and maintenance, the ratio
8 of those expenditures to the jurisdictional entity's
9 distribution investment, and the average remaining
10 depreciation lives of the entity's distribution
11 facilities, expressed as a percentage of total
12 depreciation lives;

13 (iv) a customer satisfaction survey covering,
14 among other areas identified in Commission rules,
15 reliability, customer service, and understandability
16 of the jurisdictional entity's services and prices;
17 and

18 (v) the corresponding information, in the same
19 format, for the previous 3 years, if available;

20 (5) a plan for future investment and reliability
21 improvements for the jurisdictional entity's transmission
22 and distribution facilities that will ensure continued
23 reliable delivery of energy to customers and provide the
24 delivery reliability needed for fair and open competition;
25 and

26 (6) a report of the jurisdictional entity's

1 implementation of its plan filed pursuant to subparagraph
2 (5) for the previous reporting period.

3 (c) The Commission rules shall set forth the criteria that
4 will be used to assess each jurisdictional entity's annual
5 report and evaluate its reliability performance. Such criteria
6 must take into account, at a minimum: the items required to be
7 reported in subsection (b); the relevant characteristics of the
8 area served; the age and condition of the system's equipment
9 and facilities; good engineering practices; the costs of
10 potential actions; and the benefits of avoiding the risks of
11 service disruption.

12 (d) At least every 3 years, beginning in the year the
13 Commission issues the rules required by subsection (a) or the
14 following year if the rules are issued after June 1, the
15 Commission shall assess the annual report of each
16 jurisdictional entity and evaluate its reliability
17 performance. The Commission's evaluation shall include
18 specific identification of, and recommendations concerning,
19 any potential reliability problems that it has identified as a
20 result of its evaluation.

21 (e) In the event that more than either (i) 30,000 (or some
22 other number, but only as provided by statute) of the total
23 customers or (ii) 0.8% (or some other percentage, but only as
24 provided by statute) of the total customers, whichever is less,
25 of an electric utility are subjected to a continuous power
26 interruption of 4 hours or more that results in the

1 transmission of power at less than 50% of the standard voltage,
2 or that results in the total loss of power transmission, the
3 utility shall be responsible for compensating customers
4 affected by that interruption for 4 hours or more for all
5 actual damages, which shall not include consequential damages,
6 suffered as a result of the power interruption. The utility
7 shall also reimburse the affected municipality, county, or
8 other unit of local government in which the power interruption
9 has taken place for all emergency and contingency expenses
10 incurred by the unit of local government as a result of the
11 interruption. A waiver of the requirements of this subsection
12 may be granted by the Commission in instances in which the
13 utility can show that the power interruption was a result of
14 any one or more of the following causes:

15 (1) Unpreventable damage due to weather events or
16 conditions.

17 (2) Customer tampering.

18 (3) Unpreventable damage due to civil or international
19 unrest or animals.

20 (4) Damage to utility equipment or other actions by a
21 party other than the utility, its employees, agents, or
22 contractors.

23 Loss of revenue and expenses incurred in complying with this
24 subsection may not be recovered from ratepayers.

25 (f) In the event of a power surge or other fluctuation that
26 causes damage and affects more than either (i) 30,000 (or some

1 other number, but only as provided by statute) of the total
2 customers or (ii) 0.8% (or some other percentage, but only as
3 provided by statute) of the total customers, whichever is less,
4 the electric utility shall pay to affected customers the
5 replacement value of all goods damaged as a result of the power
6 surge or other fluctuation unless the utility can show that the
7 power surge or other fluctuation was due to one or more of the
8 following causes:

9 (1) Unpreventable damage due to weather events or
10 conditions.

11 (2) Customer tampering.

12 (3) Unpreventable damage due to civil or international
13 unrest or animals.

14 (4) Damage to utility equipment or other actions by a
15 party other than the utility, its employees, agents, or
16 contractors.

17 Loss of revenue and expenses incurred in complying with this
18 subsection may not be recovered from ratepayers. Customers with
19 respect to whom a waiver has been granted by the Commission
20 pursuant to subparagraphs (1)-(4) of subsections (e) and (f)
21 shall not count toward the either (i) 30,000 (or some other
22 number, but only as provided by statute) of the total customers
23 or (ii) 0.8% (or some other percentage, but only as provided by
24 statute) of the total customers required therein.

25 (g) Whenever an electric utility must perform planned or
26 routine maintenance or repairs on its equipment that will

1 result in transmission of power at less than 50% of the
2 standard voltage, loss of power, or power fluctuation (as
3 defined in subsection (f)), the utility shall make reasonable
4 efforts to notify potentially affected customers no less than
5 24 hours in advance of performance of the repairs or
6 maintenance.

7 (h) Remedies provided for under this Section may be sought
8 exclusively through the Illinois Commerce Commission as
9 provided under Section 10-109 of this Act. Damages awarded
10 under this Section for a power interruption shall be limited to
11 actual damages, which shall not include consequential damages,
12 and litigation costs. A utility's request for a waiver of this
13 Section shall be timely if filed no later than 30 days after
14 the date on which a claim is filed with the Commission seeking
15 damages or expense reimbursement under this Section. No utility
16 shall be liable under this Section while a request for waiver
17 is pending. Damage awards may not be paid out of utility rate
18 funds.

19 (i) The provisions of this Section shall not in any way
20 diminish or replace other civil or administrative remedies
21 available to a customer or a class of customers.

22 (j) The Commission shall by rule require an electric
23 utility to maintain service records detailing information on
24 each instance of transmission of power at less than 50% of the
25 standard voltage, loss of power, or power fluctuation (as
26 defined in subsection (f)), that affects 10 or more customers.

1 Occurrences that are momentary shall not be required to be
2 recorded or reported. The service record shall include, for
3 each occurrence, the following information:

4 (1) The date.

5 (2) The time of occurrence.

6 (3) The duration of the incident.

7 (4) The number of customers affected.

8 (5) A description of the cause.

9 (6) The geographic area affected.

10 (7) The specific equipment involved in the fluctuation
11 or interruption.

12 (8) A description of measures taken to restore service.

13 (9) A description of measures taken to remedy the cause
14 of the power interruption or fluctuation.

15 (10) A description of measures taken to prevent future
16 occurrence.

17 (11) The amount of remuneration, if any, paid to
18 affected customers.

19 (12) A statement of whether the fixed charge was waived
20 for affected customers.

21 Copies of the records containing this information shall be
22 available for public inspection at the utility's offices, and
23 copies thereof may be obtained upon payment of a fee not
24 exceeding the reasonable cost of reproduction. A copy of each
25 record shall be filed with the Commission and shall be
26 available for public inspection. Copies of the records may be

1 obtained upon payment of a fee not exceeding the reasonable
2 cost of reproduction.

3 (k) The requirements of subsections (e) through (j) of this
4 Section shall apply only to an electric public utility having
5 100,000 ~~1,000,000~~ or more customers.

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

7 ARTICLE 15

8 Section 15-5. The Public Utilities Act is amended by
9 changing Section 2-202 as follows:

10 (220 ILCS 5/2-202) (from Ch. 111 2/3, par. 2-202)

11 Sec. 2-202. Policy; Public Utility Fund; tax.

12 (a) It is declared to be the public policy of this State
13 that in order to maintain and foster the effective regulation
14 of public utilities under this Act in the interests of the
15 People of the State of Illinois and the public utilities as
16 well, the public utilities subject to regulation under this Act
17 and which enjoy the privilege of operating as public utilities
18 in this State, shall bear the expense of administering this Act
19 by means of a tax on such privilege measured by the annual
20 gross revenue of such public utilities in the manner provided
21 in this Section. For purposes of this Section, "expense of
22 administering this Act" includes any costs incident to studies,
23 whether made by the Commission or under contract entered into

1 by the Commission, concerning environmental pollution problems
2 caused or contributed to by public utilities and the means for
3 eliminating or abating those problems. Such proceeds shall be
4 deposited in the Public Utility Fund in the State treasury.

5 (b) All of the ordinary and contingent expenses of the
6 Commission incident to the administration of this Act shall be
7 paid out of the Public Utility Fund except the compensation of
8 the members of the Commission which shall be paid from the
9 General Revenue Fund. Notwithstanding other provisions of this
10 Act to the contrary, the ordinary and contingent expenses of
11 the Commission incident to the administration of the Illinois
12 Commercial Transportation Law may be paid from appropriations
13 from the Public Utility Fund through the end of fiscal year
14 1986.

15 (c) A tax is imposed upon each public utility subject to
16 the provisions of this Act equal to .08% of its gross revenue
17 for each calendar year commencing with the calendar year
18 beginning January 1, 1982, except that the Commission may, by
19 rule, establish a different rate no greater than 0.1%. For
20 purposes of this Section, "gross revenue" shall not include
21 revenue from the production, transmission, distribution, sale,
22 delivery, or furnishing of electricity. "Gross revenue" shall
23 not include amounts paid by telecommunications retailers under
24 the Telecommunications Infrastructure Maintenance Fee Act.

25 (d) Annual gross revenue returns shall be filed in
26 accordance with paragraph (1) or (2) of this subsection (d).

1 (1) Except as provided in paragraph (2) of this
2 subsection (d), on or before January 10 of each year each
3 public utility subject to the provisions of this Act shall
4 file with the Commission an estimated annual gross revenue
5 return containing an estimate of the amount of its gross
6 revenue for the calendar year commencing January 1 of said
7 year and a statement of the amount of tax due for said
8 calendar year on the basis of that estimate. Public
9 utilities may also file revised returns containing updated
10 estimates and updated amounts of tax due during the
11 calendar year. These revised returns, if filed, shall form
12 the basis for quarterly payments due during the remainder
13 of the calendar year. In addition, on or before March 31 of
14 each year, each public utility shall file an amended return
15 showing the actual amount of gross revenues shown by the
16 company's books and records as of December 31 of the
17 previous year. Forms and instructions for such estimated,
18 revised, and amended returns shall be devised and supplied
19 by the Commission.

20 (2) Beginning with returns due after January 1, 2002,
21 the requirements of paragraph (1) of this subsection (d)
22 shall not apply to any public utility in any calendar year
23 for which the total tax the public utility owes under this
24 Section is less than \$10,000. For such public utilities
25 with respect to such years, the public utility shall file
26 with the Commission, on or before March 31 of the following

1 year, an annual gross revenue return for the year and a
2 statement of the amount of tax due for that year on the
3 basis of such a return. Forms and instructions for such
4 returns and corrected returns shall be devised and supplied
5 by the Commission.

6 (e) All returns submitted to the Commission by a public
7 utility as provided in this subsection (e) or subsection (d) of
8 this Section shall contain or be verified by a written
9 declaration by an appropriate officer of the public utility
10 that the return is made under the penalties of perjury. The
11 Commission may audit each such return submitted and may, under
12 the provisions of Section 5-101 of this Act, take such measures
13 as are necessary to ascertain the correctness of the returns
14 submitted. The Commission has the power to direct the filing of
15 a corrected return by any utility which has filed an incorrect
16 return and to direct the filing of a return by any utility
17 which has failed to submit a return. A taxpayer's signing a
18 fraudulent return under this Section is perjury, as defined in
19 Section 32-2 of the Criminal Code of 1961.

20 (f) (1) For all public utilities subject to paragraph (1)
21 of subsection (d), at least one quarter of the annual amount of
22 tax due under subsection (c) shall be paid to the Commission on
23 or before the tenth day of January, April, July, and October of
24 the calendar year subject to tax. In the event that an
25 adjustment in the amount of tax due should be necessary as a
26 result of the filing of an amended or corrected return under

1 subsection (d) or subsection (e) of this Section, the amount of
2 any deficiency shall be paid by the public utility together
3 with the amended or corrected return and the amount of any
4 excess shall, after the filing of a claim for credit by the
5 public utility, be returned to the public utility in the form
6 of a credit memorandum in the amount of such excess or be
7 refunded to the public utility in accordance with the
8 provisions of subsection (k) of this Section. However, if such
9 deficiency or excess is less than \$1, then the public utility
10 need not pay the deficiency and may not claim a credit.

11 (2) Any public utility subject to paragraph (2) of
12 subsection (d) shall pay the amount of tax due under subsection
13 (c) on or before March 31 next following the end of the
14 calendar year subject to tax. In the event that an adjustment
15 in the amount of tax due should be necessary as a result of the
16 filing of a corrected return under subsection (e), the amount
17 of any deficiency shall be paid by the public utility at the
18 time the corrected return is filed. Any excess tax payment by
19 the public utility shall be returned to it after the filing of
20 a claim for credit, in the form of a credit memorandum in the
21 amount of the excess. However, if such deficiency or excess is
22 less than \$1, the public utility need not pay the deficiency
23 and may not claim a credit.

24 (g) Each installment or required payment of the tax imposed
25 by subsection (c) becomes delinquent at midnight of the date
26 that it is due. Failure to make a payment as required by this

1 Section shall result in the imposition of a late payment
2 penalty, an underestimation penalty, or both, as provided by
3 this subsection. The late payment penalty shall be the greater
4 of:

5 (1) \$25 for each month or portion of a month that the
6 installment or required payment is unpaid or

7 (2) an amount equal to the difference between what
8 should have been paid on the due date, based upon the most
9 recently filed estimated, annual, or amended return, and
10 what was actually paid, times 1%, for each month or portion
11 of a month that the installment or required payment goes
12 unpaid. This penalty may be assessed as soon as the
13 installment or required payment becomes delinquent.

14 The underestimation penalty shall apply to those public
15 utilities subject to paragraph (1) of subsection (d) and shall
16 be calculated after the filing of the amended return. It shall
17 be imposed if the amount actually paid on any of the dates
18 specified in subsection (f) is not equal to at least one-fourth
19 of the amount actually due for the year, and shall equal the
20 greater of:

21 (1) \$25 for each month or portion of a month that the
22 amount due is unpaid or

23 (2) an amount equal to the difference between what
24 should have been paid, based on the amended return, and
25 what was actually paid as of the date specified in
26 subsection (f), times a percentage equal to 1/12 of the sum

1 of 10% and the percentage most recently established by the
2 Commission for interest to be paid on customer deposits
3 under 83 Ill. Adm. Code 280.70(e)(1), for each month or
4 portion of a month that the amount due goes unpaid, except
5 that no underestimation penalty shall be assessed if the
6 amount actually paid on or before each of the dates
7 specified in subsection (f) was based on an estimate of
8 gross revenues at least equal to the actual gross revenues
9 for the previous year. The Commission may enforce the
10 collection of any delinquent installment or payment, or
11 portion thereof by legal action or in any other manner by
12 which the collection of debts due the State of Illinois may
13 be enforced under the laws of this State. The executive
14 director or his designee may excuse the payment of an
15 assessed penalty or a portion of an assessed penalty if he
16 determines that enforced collection of the penalty as
17 assessed would be unjust.

18 (h) All sums collected by the Commission under the
19 provisions of this Section shall be paid promptly after the
20 receipt of the same, accompanied by a detailed statement
21 thereof, into the Public Utility Fund in the State treasury.

22 (i) During the month of October of each odd-numbered year
23 the Commission shall:

24 (1) determine the amount of all moneys deposited in the
25 Public Utility Fund during the preceding fiscal biennium
26 plus the balance, if any, in that fund at the beginning of

1 that biennium;

2 (2) determine the sum total of the following items: (A)
3 all moneys expended or obligated against appropriations
4 made from the Public Utility Fund during the preceding
5 fiscal biennium, plus (B) the sum of the credit memoranda
6 then outstanding against the Public Utility Fund, if any;
7 and

8 (3) determine the amount, if any, by which the sum
9 determined as provided in item (1) exceeds the amount
10 determined as provided in item (2).

11 If the amount determined as provided in item (3) of this
12 subsection exceeds 50% of the previous fiscal year's
13 appropriation level ~~\$5,000,000~~, the Commission shall then
14 compute the proportionate amount, if any, which (x) the tax
15 paid hereunder by each utility during the preceding biennium,
16 and (y) the amount paid into the Public Utility Fund during the
17 preceding biennium by the Department of Revenue pursuant to
18 Sections 2-9 and 2-11 of the Electricity Excise Tax Law, bears
19 to the difference between the amount determined as provided in
20 item (3) of this subsection (i) and 50% of the previous fiscal
21 year's appropriation level ~~\$5,000,000~~. The Commission shall
22 cause the proportionate amount determined with respect to
23 payments made under the Electricity Excise Tax Law to be
24 transferred into the General Revenue Fund in the State
25 Treasury, and notify each public utility that it may file
26 during the 3 month period after the date of notification a

1 claim for credit for the proportionate amount determined with
2 respect to payments made hereunder by the public utility. If
3 the proportionate amount is less than \$10, no notification will
4 be sent by the Commission, and no right to a claim exists as to
5 that amount. Upon the filing of a claim for credit within the
6 period provided, the Commission shall issue a credit memorandum
7 in such amount to such public utility. Any claim for credit
8 filed after the period provided for in this Section is void.

9 (j) Credit memoranda issued pursuant to subsection (f) and
10 credit memoranda issued after notification and filing pursuant
11 to subsection (i) may be applied for the 2 year period from the
12 date of issuance, against the payment of any amount due during
13 that period under the tax imposed by subsection (c), or,
14 subject to reasonable rule of the Commission including
15 requirement of notification, may be assigned to any other
16 public utility subject to regulation under this Act. Any
17 application of credit memoranda after the period provided for
18 in this Section is void.

19 (k) The chairman or executive director may make refund of
20 fees, taxes or other charges whenever he shall determine that
21 the person or public utility will not be liable for payment of
22 such fees, taxes or charges during the next 24 months and he
23 determines that the issuance of a credit memorandum would be
24 unjust.

25 (Source: P.A. 92-11, eff. 6-11-01; 92-22, eff. 6-30-01; 92-526,
26 eff. 1-1-03.)

1 Section 15-10. The Illinois Vehicle Code is amended by
2 changing Section 18c-1503 as follows:

3 (625 ILCS 5/18c-1503) (from Ch. 95 1/2, par. 18c-1503)

4 Sec. 18c-1503. Legislative Intent. It is the intent of the
5 Legislature that the exercise of powers under Sections 18c-1501
6 and 18c-1502 of this Chapter shall not diminish revenues to the
7 Commission, and that any surplus or deficit of revenues in the
8 Transportation Regulatory Fund, together with any projected
9 changes in the cost of administering and enforcing this
10 Chapter, should be considered in establishing or adjusting fees
11 and taxes in succeeding years. The Commission shall administer
12 fees and taxes under this Chapter in such a manner as to insure
13 that any surplus generated or accumulated in the Transportation
14 Regulatory Fund does not exceed 50% of the previous fiscal
15 year's appropriation ~~the surplus accumulated in the Motor~~
16 ~~Vehicle Fund during fiscal year 1984,~~ and shall adjust the
17 level of such fees and taxes to insure compliance with this
18 provision.

19 (Source: P.A. 84-796.)

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.

1 Section 99-99. Effective date. This Act takes effect June
2 1, 2009.".