

1 AN ACT concerning utilities.

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

4 Section 5. The Illinois Power Agency Act is amended by  
5 changing Sections 1-10 and 1-75 and by adding Section 1-56 as  
6 follows:

7 (20 ILCS 3855/1-10)

8 (Text of Section before amendment by P.A. 95-1027)

9 Sec. 1-10. Definitions.

10 "Agency" means the Illinois Power Agency.

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

19 "Authority" means the Illinois Finance Authority.

20 "Commission" means the Illinois Commerce Commission.

21 "Costs incurred in connection with the development and  
22 construction of a facility" means:

23 (1) the cost of acquisition of all real property and

1 improvements in connection therewith and equipment and  
2 other property, rights, and easements acquired that are  
3 deemed necessary for the operation and maintenance of the  
4 facility;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 "Project" means the planning, bidding, and construction of

1 a facility.

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

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

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

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

1 construction or demolition debris, other than untreated and  
2 unadulterated waste wood.

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

7 "Total resource cost test" or "TRC test" means a standard  
8 that is met if, for an investment in energy efficiency or  
9 demand-response measures, the benefit-cost ratio is greater  
10 than one. The benefit-cost ratio is the ratio of the net  
11 present value of the total benefits of the program to the net  
12 present value of the total costs as calculated over the  
13 lifetime of the measures. A total resource cost test compares  
14 the sum of avoided electric utility costs, representing the  
15 benefits that accrue to the system and the participant in the  
16 delivery of those efficiency measures, to the sum of all  
17 incremental costs of end-use measures that are implemented due  
18 to the program (including both utility and participant  
19 contributions), plus costs to administer, deliver, and  
20 evaluate each demand-side program, to quantify the net savings  
21 obtained by substituting the demand-side program for supply  
22 resources. In calculating avoided costs of power and energy  
23 that an electric utility would otherwise have had to acquire,  
24 reasonable estimates shall be included of financial costs  
25 likely to be imposed by future regulations and legislation on  
26 emissions of greenhouse gases.

1 (Source: P.A. 95-481, eff. 8-28-07; 95-913, eff. 1-1-09.)

2 (Text of Section after amendment by P.A. 95-1027)

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8 the Agency upon terms providing for loan repayment installments  
9 at least sufficient to pay when due all principal of, interest  
10 and premium, if any, on those revenue bonds, and providing for  
11 maintenance, insurance, and other matters in respect of the  
12 project.

13 "Authority" means the Illinois Finance Authority.

14 "Clean coal facility" means an electric generating  
15 facility that uses primarily coal as a feedstock and that  
16 captures and sequesters carbon emissions at the following  
17 levels: at least 50% of the total carbon emissions that the  
18 facility would otherwise emit if, at the time construction  
19 commences, the facility is scheduled to commence operation  
20 before 2016, at least 70% of the total carbon emissions that  
21 the facility would otherwise emit if, at the time construction  
22 commences, the facility is scheduled to commence operation  
23 during 2016 or 2017, and at least 90% of the total carbon  
24 emissions that the facility would otherwise emit if, at the  
25 time construction commences, the facility is scheduled to

1 commence operation after 2017. The power block of the clean  
2 coal facility shall not exceed allowable emission rates for  
3 sulfur dioxide, nitrogen oxides, carbon monoxide, particulates  
4 and mercury for a natural gas-fired combined-cycle facility the  
5 same size as and in the same location as the clean coal  
6 facility at the time the clean coal facility obtains an  
7 approved air permit. All coal used by a clean coal facility  
8 shall have high volatile bituminous rank and greater than 1.7  
9 pounds of sulfur per million btu content, unless the clean coal  
10 facility does not use gasification technology and was operating  
11 as a conventional coal-fired electric generating facility on  
12 June 1, 2009 (the effective date of Public Act 95-1027) ~~this~~  
13 ~~amendatory Act of the 95th General Assembly.~~

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

20 "Commission" means the Illinois Commerce Commission.

21 "Costs incurred in connection with the development and  
22 construction of a facility" means:

23 (1) the cost of acquisition of all real property and  
24 improvements in connection therewith and equipment and  
25 other property, rights, and easements acquired that are  
26 deemed necessary for the operation and maintenance of the

1 facility;

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

4 (3) all origination, commitment, utilization,  
5 facility, placement, underwriting, syndication, credit  
6 enhancement, and rating agency fees;

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

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

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22 Opportunity.

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25 electricity demand or shift demand from peak to off-peak  
26 periods.



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2 of electricity required to achieve a given end use.

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4 Section 16-102 of the Public Utilities Act.

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7 related equipment necessary to connect the facility to an  
8 electric transmission or distribution system.

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11 electricity to serve residential retail electrical loads  
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14 defined in Article VII of Section 1 of the Illinois  
15 Constitution.

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17 town.

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22 representative thereof.

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24 a facility.

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2 all structures, fixtures, and improvements thereon, including  
3 lands under water and riparian rights, any easements,  
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5 interests, together with any liens, judgments, mortgages, or  
6 other claims or security interests related to real property.

7 "Renewable energy credit" means a tradable credit that  
8 represents the environmental attributes of a certain amount of  
9 energy produced from a renewable energy resource.

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

26 "Revenue bond" means any bond, note, or other evidence of

1 indebtedness issued by the Authority, the principal and  
2 interest of which is payable solely from revenues or income  
3 derived from any project or activity of the Agency.

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

9 "Servicing agreement" means (i) in the case of an electric  
10 utility, an agreement between the owner of a clean coal  
11 facility and such electric utility, which agreement shall have  
12 terms and conditions meeting the requirements of paragraph (3)  
13 of subsection (d) of Section 1-75, and (ii) in the case of an  
14 alternative retail electric supplier, an agreement between the  
15 owner of a clean coal facility and such alternative retail  
16 electric supplier, which agreement shall have terms and  
17 conditions meeting the requirements of Section 16-115(d)(5) of  
18 the Public Utilities Act.

19 "Substitute natural gas" or "SNG" means a gas manufactured  
20 by gasification of hydrocarbon feedstock, which is  
21 substantially interchangeable in use and distribution with  
22 conventional natural gas.

23 "Total resource cost test" or "TRC test" means a standard  
24 that is met if, for an investment in energy efficiency or  
25 demand-response measures, the benefit-cost ratio is greater  
26 than one. The benefit-cost ratio is the ratio of the net

1 present value of the total benefits of the program to the net  
2 present value of the total costs as calculated over the  
3 lifetime of the measures. A total resource cost test compares  
4 the sum of avoided electric utility costs, representing the  
5 benefits that accrue to the system and the participant in the  
6 delivery of those efficiency measures, to the sum of all  
7 incremental costs of end-use measures that are implemented due  
8 to the program (including both utility and participant  
9 contributions), plus costs to administer, deliver, and  
10 evaluate each demand-side program, to quantify the net savings  
11 obtained by substituting the demand-side program for supply  
12 resources. In calculating avoided costs of power and energy  
13 that an electric utility would otherwise have had to acquire,  
14 reasonable estimates shall be included of financial costs  
15 likely to be imposed by future regulations and legislation on  
16 emissions of greenhouse gases.

17 (Source: P.A. 95-481, eff. 8-28-07; 95-913, eff. 1-1-09;  
18 95-1027, eff. 6-1-09; revised 1-14-09.)

19 (20 ILCS 3855/1-56 new)

20 Sec. 1-56. Illinois Power Agency Renewable Energy  
21 Resources Fund.

22 (a) The Illinois Power Agency Renewable Energy Resources  
23 Fund is created as a special fund in the State treasury.

24 (b) The Illinois Power Agency Renewable Energy Resources  
25 Fund shall be administered by the Agency to procure renewable

1 energy resources. Prior to June 1, 2011, resources procured  
2 pursuant to this Section shall be procured from facilities  
3 located in Illinois, provided the resources are available from  
4 those facilities. If resources are not available in Illinois,  
5 then they shall be procured in states that adjoin Illinois. If  
6 resources are not available in Illinois or in states that  
7 adjoin Illinois, then they may be purchased elsewhere.  
8 Beginning June 1, 2011, resources procured pursuant to this  
9 Section shall be procured from facilities located in Illinois  
10 or states that adjoin Illinois. If resources are not available  
11 in Illinois or in states that adjoin Illinois, then they may be  
12 procured elsewhere. To the extent available, at least 75% of  
13 these renewable energy resources shall come from wind  
14 generation and, starting June 1, 2015, at least 6% of the  
15 renewable energy resources used to meet these standards shall  
16 come from solar photovoltaics.

17 (c) The Agency shall procure renewable energy resources at  
18 least once each year in conjunction with a procurement event  
19 for electric utilities required to comply with Section 1-75 of  
20 the Act and shall, whenever possible, enter into long-term  
21 contracts.

22 (d) The price paid to procure renewable energy credits  
23 using monies from the Illinois Power Agency Renewable Energy  
24 Resources Fund shall not exceed the winning bid prices paid for  
25 like resources procured for electric utilities required to  
26 comply with Section 1-75 of this Act.

1       (e) All renewable energy credits procured using monies from  
2 the Illinois Power Agency Renewable Energy Resources Fund shall  
3 be permanently retired.

4       (f) The procurement process described in this Section is  
5 exempt from the requirements of the Illinois Procurement Code,  
6 pursuant to Section 20-10 of that Code.

7       (g) All disbursements from the Illinois Power Agency  
8 Renewable Energy Resources Fund shall be made only upon  
9 warrants of the Comptroller drawn upon the Treasurer as  
10 custodian of the Fund upon vouchers signed by the Director or  
11 by the person or persons designated by the Director for that  
12 purpose. The Comptroller is authorized to draw the warrant upon  
13 vouchers so signed. The Treasurer shall accept all warrants so  
14 signed and shall be released from liability for all payments  
15 made on those warrants.

16       (h) The Illinois Power Agency Renewable Energy Resources  
17 Fund shall not be subject to sweeps, administrative charges, or  
18 chargebacks, including, but not limited to, those authorized  
19 under Section 8h of the State Finance Act, that would in any  
20 way result in the transfer of any funds from this Fund to any  
21 other fund of this State or in having any such funds utilized  
22 for any purpose other than the express purposes set forth in  
23 this Section.

24       (20 ILCS 3855/1-75)

25       (Text of Section before amendment by P.A. 95-1027)

1           Sec. 1-75. Planning and Procurement Bureau. The Planning  
2 and Procurement Bureau has the following duties and  
3 responsibilities:

4           (a) The Planning and Procurement Bureau shall each  
5 year, beginning in 2008, develop procurement plans and  
6 conduct competitive procurement processes in accordance  
7 with the requirements of Section 16-111.5 of the Public  
8 Utilities Act for the eligible retail customers of electric  
9 utilities that on December 31, 2005 provided electric  
10 service to at least 100,000 customers in Illinois. For the  
11 purposes of this Section, the term "eligible retail  
12 customers" has the same definition as found in Section  
13 16-111.5(a) of the Public Utilities Act.

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

20           (A) direct previous experience assembling  
21 large-scale power supply plans or portfolios for  
22 end-use customers;

23           (B) an advanced degree in economics,  
24 mathematics, engineering, risk management, or a  
25 related area of study;

26           (C) 10 years of experience in the electricity

1 sector, including managing supply risk;

2 (D) expertise in wholesale electricity market  
3 rules, including those established by the Federal  
4 Energy Regulatory Commission and regional  
5 transmission organizations;

6 (E) expertise in credit protocols and  
7 familiarity with contract protocols;

8 (F) adequate resources to perform and fulfill  
9 the required functions and responsibilities; and

10 (G) the absence of a conflict of interest and  
11 inappropriate bias for or against potential  
12 bidders or the affected electric utilities.

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

19 (A) direct previous experience administering a  
20 large-scale competitive procurement process;

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

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

26 (D) expertise in wholesale electricity market



1 rules, including those established by the Federal  
2 Energy Regulatory Commission and regional  
3 transmission organizations;

4 (E) expertise in credit and contract  
5 protocols;

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

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

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

1 be based on:

2 (A) failure to satisfy qualification criteria;

3 (B) identification of a conflict of interest;

4 or

5 (C) evidence of inappropriate bias for or  
6 against potential bidders or the affected  
7 utilities.

8 The Agency shall remove experts or expert  
9 consulting firms from the lists within 10 days if there  
10 is a reasonable basis for an objection and provide the  
11 updated lists to the affected utilities and other  
12 interested parties. If the Agency fails to remove an  
13 expert or expert consulting firm from a list, an  
14 objecting party may seek review by the Commission  
15 within 5 days thereafter by filing a petition, and the  
16 Commission shall render a ruling on the petition within  
17 10 days. There is no right of appeal of the  
18 Commission's ruling.

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

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

1 Agency for a one-year renewal.

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

12 (b) The experts or expert consulting firms retained by  
13 the Agency shall, as appropriate, prepare procurement  
14 plans, and conduct a competitive procurement process as  
15 prescribed in Section 16-111.5 of the Public Utilities Act,  
16 to ensure 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, for eligible retail customers of electric  
20 utilities that on December 31, 2005 provided electric  
21 service to at least 100,000 customers in the State of  
22 Illinois.

23 (c) Renewable portfolio standard.

24 (1) The procurement plans shall include  
25 cost-effective renewable energy resources. A minimum  
26 percentage of each utility's total supply to serve the

1 load of eligible retail customers, as defined in  
2 Section 16-111.5(a) of the Public Utilities Act,  
3 procured for each of the following years shall be  
4 generated from cost-effective renewable energy  
5 resources: at least 2% by June 1, 2008; at least 4% by  
6 June 1, 2009; at least 5% by June 1, 2010; at least 6%  
7 by June 1, 2011; at least 7% by June 1, 2012; at least  
8 8% by June 1, 2013; at least 9% by June 1, 2014; at  
9 least 10% by June 1, 2015; and increasing by at least  
10 1.5% each year thereafter to at least 25% by June 1,  
11 2025. To the extent that it is available, at least 75%  
12 of the renewable energy resources used to meet these  
13 standards shall come from wind generation and,  
14 beginning on June 1, 2015, at least 6% of the renewable  
15 energy resources used to meet these standards shall  
16 come from photovoltaics. For purposes of this Section,  
17 "cost-effective" means that the costs of procuring  
18 renewable energy resources do not cause the limit  
19 stated in paragraph (2) of this subsection (c) to be  
20 exceeded.

21 (2) For purposes of this subsection (c), the  
22 required procurement of cost-effective renewable  
23 energy resources for a particular year shall be  
24 measured as a percentage of the actual amount of  
25 electricity (megawatt-hours) supplied by the electric  
26 utility to eligible retail customers in the planning

1 year ending immediately prior to the procurement. For  
2 purposes of this subsection (c), the amount per  
3 kilowatthour means the total amount paid for electric  
4 service expressed on a per kilowatthour basis. For  
5 purposes of this subsection (c), the total amount paid  
6 for electric service includes without limitation  
7 amounts paid for supply, transmission, distribution,  
8 surcharges, and add-on taxes.

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

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

20 (B) in 2009, the greater of an additional 0.5%  
21 of the amount paid per kilowatthour by those  
22 customers during the year ending May 31, 2008 or 1%  
23 of the amount paid per kilowatthour by those  
24 customers during the year ending May 31, 2007;

25 (C) in 2010, the greater of an additional 0.5%  
26 of the amount paid per kilowatthour by those

1 customers during the year ending May 31, 2009 or  
2 1.5% of the amount paid per kilowatthour by those  
3 customers during the year ending May 31, 2007;

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

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

21 No later than June 30, 2011, the Commission shall  
22 review the limitation on the amount of renewable energy  
23 resources procured pursuant to this subsection (c) and  
24 report to the General Assembly its findings as to  
25 whether that limitation unduly constrains the  
26 procurement of cost-effective renewable energy

1 resources.

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

23 (4) The electric utility shall retire all  
24 renewable energy credits used to comply with the  
25 standard.

26 (5) Beginning with the year commencing June 1,

1           2010, an electric utility subject to this subsection  
2           (c) shall apply the lesser of the maximum alternative  
3           compliance payment rate or the most recent estimated  
4           alternative compliance payment rate for its service  
5           territory for the corresponding compliance period,  
6           established pursuant to subsection (d) of Section  
7           16-115D of the Public Utilities Act to its retail  
8           customers that take service pursuant to the electric  
9           utility's hourly pricing tariff or tariffs. The  
10           electric utility shall retain all amounts collected as  
11           a result of the application of the alternative  
12           compliance payment rate or rates to such customers,  
13           and, beginning in 2011, the utility shall include in  
14           the information provided under item (1) of subsection  
15           (d) of Section 16-111.5 of the Public Utilities Act the  
16           amounts collected under the alternative compliance  
17           payment rate or rates for the prior year ending May 31.  
18           Notwithstanding any limitation on the procurement of  
19           renewable energy resources imposed by item (2) of this  
20           subsection (c), the Agency shall increase its spending  
21           on the purchase of renewable energy resources to be  
22           procured by the electric utility for the next plan year  
23           by an amount equal to the amounts collected by the  
24           utility under the alternative compliance payment rate  
25           or rates in the prior year ending May 31.

26           (d) The draft procurement plans are subject to public



1 comment, as required by Section 16-111.5 of the Public  
2 Utilities Act.

3 (e) The Agency shall submit the final procurement plan  
4 to the Commission. The Agency shall revise a procurement  
5 plan if the Commission determines that it does not meet the  
6 standards set forth in Section 16-111.5 of the Public  
7 Utilities Act.

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

11 (g) The Agency shall assess fees to each bidder to  
12 recover the costs incurred in connection with a competitive  
13 procurement process.

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

15 (Text of Section after amendment by P.A. 95-1027)

16 Sec. 1-75. Planning and Procurement Bureau. The Planning  
17 and Procurement Bureau has the following duties and  
18 responsibilities:

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

1 purposes of this Section, the term "eligible retail  
2 customers" has the same definition as found in Section  
3 16-111.5(a) of the Public Utilities Act.

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

10 (A) direct previous experience assembling  
11 large-scale power supply plans or portfolios for  
12 end-use customers;

13 (B) an advanced degree in economics,  
14 mathematics, engineering, risk management, or a  
15 related area of study;

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

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

22 (E) expertise in credit protocols and  
23 familiarity with contract protocols;

24 (F) adequate resources to perform and fulfill  
25 the required functions and responsibilities; and

26 (G) the absence of a conflict of interest and

1           inappropriate bias for or against potential  
2           bidders or the affected electric utilities.

3           (2) The Agency shall each year, as needed, issue a  
4           request for qualifications for a procurement  
5           administrator to conduct the competitive procurement  
6           processes in accordance with Section 16-111.5 of the  
7           Public Utilities Act. In order to qualify an expert or  
8           expert consulting firm must have:

9                   (A) direct previous experience administering a  
10                   large-scale competitive procurement process;

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

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

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

20                   (E) expertise in credit and contract  
21                   protocols;

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

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

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

18                   (A) failure to satisfy qualification criteria;

19                   (B) identification of a conflict of interest;

20                   or

21                   (C) evidence of inappropriate bias for or  
22                   against potential bidders or the affected  
23                   utilities.

24          The Agency shall remove experts or expert  
25          consulting firms from the lists within 10 days if there  
26          is a reasonable basis for an objection and provide the

1 updated lists to the affected utilities and other  
2 interested parties. If the Agency fails to remove an  
3 expert or expert consulting firm from a list, an  
4 objecting party may seek review by the Commission  
5 within 5 days thereafter by filing a petition, and the  
6 Commission shall render a ruling on the petition within  
7 10 days. There is no right of appeal of the  
8 Commission's ruling.

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

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

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

1           the Agency for a one-year renewal.

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

13          (c) Renewable portfolio standard.

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

1           2025. To the extent that it is available, at least 75%  
2           of the renewable energy resources used to meet these  
3           standards shall come from wind generation and,  
4           beginning on June 1, 2015, at least 6% of the renewable  
5           energy resources used to meet these standards shall  
6           come from photovoltaics. For purposes of this  
7           subsection (c), "cost-effective" means that the costs  
8           of procuring renewable energy resources do not cause  
9           the limit stated in paragraph (2) of this subsection  
10          (c) to be exceeded and do not exceed benchmarks based  
11          on market prices for renewable energy resources in the  
12          region, which shall be developed by the procurement  
13          administrator, in consultation with the Commission  
14          staff, Agency staff, and the procurement monitor and  
15          shall be subject to Commission review and approval.

16                 (2) For purposes of this subsection (c), the  
17                 required procurement of cost-effective renewable  
18                 energy resources for a particular year shall be  
19                 measured as a percentage of the actual amount of  
20                 electricity (megawatt-hours) supplied by the electric  
21                 utility to eligible retail customers in the planning  
22                 year ending immediately prior to the procurement. For  
23                 purposes of this subsection (c), the amount paid per  
24                 kilowatthour means the total amount paid for electric  
25                 service expressed on a per kilowatthour basis. For  
26                 purposes of this subsection (c), the total amount paid

1           for electric service includes without limitation  
2           amounts paid for supply, transmission, distribution,  
3           surcharges, and add-on taxes.

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

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

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

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

25                   (D) in 2011, the greater of an additional 0.5%  
26                   of the amount paid per kilowatthour by those



1 customers during the year ending May 31, 2010 or 2%  
2 of the amount paid per kilowatthour by those  
3 customers during the year ending May 31, 2007; and

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

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

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

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

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

21 (5) Beginning with the year commencing June 1,  
22 2010, an electric utility subject to this subsection  
23 (c) shall apply the lesser of the maximum alternative  
24 compliance payment rate or the most recent estimated  
25 alternative compliance payment rate for its service  
26 territory for the corresponding compliance period,

1           established pursuant to subsection (d) of Section  
2           16-115D of the Public Utilities Act to its retail  
3           customers that take service pursuant to the electric  
4           utility's hourly pricing tariff or tariffs. The  
5           electric utility shall retain all amounts collected as  
6           a result of the application of the alternative  
7           compliance payment rate or rates to such customers,  
8           and, beginning in 2011, the utility shall include in  
9           the information provided under item (1) of subsection  
10           (d) of Section 16-111.5 of the Public Utilities Act the  
11           amounts collected under the alternative compliance  
12           payment rate or rates for the prior year ending May 31.  
13           Notwithstanding any limitation on the procurement of  
14           renewable energy resources imposed by item (2) of this  
15           subsection (c), the Agency shall increase its spending  
16           on the purchase of renewable energy resources to be  
17           procured by the electric utility for the next plan year  
18           by an amount equal to the amounts collected by the  
19           utility under the alternative compliance payment rate  
20           or rates in the prior year ending May 31.

21           (d) Clean coal portfolio standard.

22           (1) The procurement plans shall include electricity  
23           generated using clean coal. Each utility shall enter into  
24           one or more sourcing agreements with the initial clean coal  
25           facility, as provided in paragraph (3) of this subsection  
26           (d), covering electricity generated by the initial clean

1 coal facility representing at least 5% of each utility's  
2 total supply to serve the load of eligible retail customers  
3 in 2015 and each year thereafter, as described in paragraph  
4 (3) of this subsection (d), subject to the limits specified  
5 in paragraph (2) of this subsection (d). It is the goal of  
6 the State that by January 1, 2025, 25% of the electricity  
7 used in the State shall be generated by cost-effective  
8 clean coal facilities. For purposes of this subsection (d),  
9 "cost-effective" means that the expenditures pursuant to  
10 such sourcing agreements do not cause the limit stated in  
11 paragraph (2) of this subsection (d) to be exceeded and do  
12 not exceed cost-based benchmarks, which shall be developed  
13 to assess all expenditures pursuant to such sourcing  
14 agreements covering electricity generated by clean coal  
15 facilities, other than the initial clean coal facility, by  
16 the procurement administrator, in consultation with the  
17 Commission staff, Agency staff, and the procurement  
18 monitor and shall be subject to Commission review and  
19 approval.

20 (A) A utility party to a sourcing agreement shall  
21 immediately retire any emission credits that it  
22 receives in connection with the electricity covered by  
23 such agreement.

24 (B) Utilities shall maintain adequate records  
25 documenting the purchases under the sourcing agreement  
26 to comply with this subsection (d) and shall file an

1 accounting with the load forecast that must be filed  
2 with the Agency by July 15 of each year, in accordance  
3 with subsection (d) of Section 16-111.5 of the Public  
4 Utilities Act.

5 (C) A utility shall be deemed to have complied with  
6 the clean coal portfolio standard specified in this  
7 subsection (d) if the utility enters into a sourcing  
8 agreement as required by this subsection (d).

9 (2) For purposes of this subsection (d), the required  
10 execution of sourcing agreements with the initial clean  
11 coal facility for a particular year shall be measured as a  
12 percentage of the actual amount of electricity  
13 (megawatt-hours) supplied by the electric utility to  
14 eligible retail customers in the planning year ending  
15 immediately prior to the agreement's execution. For  
16 purposes of this subsection (d), the amount paid per  
17 kilowatthour means the total amount paid for electric  
18 service expressed on a per kilowatthour basis. For purposes  
19 of this subsection (d), the total amount paid for electric  
20 service includes without limitation amounts paid for  
21 supply, transmission, distribution, surcharges and add-on  
22 taxes.

23 Notwithstanding the requirements of this subsection  
24 (d), the total amount paid under sourcing agreements with  
25 clean coal facilities pursuant to the procurement plan for  
26 any given year shall be reduced by an amount necessary to

1           limit the annual estimated average net increase due to the  
2           costs of these resources included in the amounts paid by  
3           eligible retail customers in connection with electric  
4           service to:

5                       (A) in 2010, no more than 0.5% of the amount  
6                       paid per kilowatthour by those customers during  
7                       the year ending May 31, 2009;

8                       (B) in 2011, the greater of an additional 0.5%  
9                       of the amount paid per kilowatthour by those  
10                      customers during the year ending May 31, 2010 or 1%  
11                      of the amount paid per kilowatthour by those  
12                      customers during the year ending May 31, 2009;

13                      (C) in 2012, the greater of an additional 0.5%  
14                      of the amount paid per kilowatthour by those  
15                      customers during the year ending May 31, 2011 or  
16                      1.5% of the amount paid per kilowatthour by those  
17                      customers during the year ending May 31, 2009;

18                      (D) in 2013, the greater of an additional 0.5%  
19                      of the amount paid per kilowatthour by those  
20                      customers during the year ending May 31, 2012 or 2%  
21                      of the amount paid per kilowatthour by those  
22                      customers during the year ending May 31, 2009; and

23                      (E) thereafter, the total amount paid under  
24                      sourcing agreements with clean coal facilities  
25                      pursuant to the procurement plan for any single  
26                      year shall be reduced by an amount necessary to

1 limit the estimated average net increase due to the  
2 cost of these resources included in the amounts  
3 paid by eligible retail customers in connection  
4 with electric service to no more than the greater  
5 of (i) 2.015% of the amount paid per kilowatthour  
6 by those customers during the year ending May 31,  
7 2009 or (ii) the incremental amount per  
8 kilowatthour paid for these resources in 2013.  
9 These requirements may be altered only as provided  
10 by statute. No later than June 30, 2015, the  
11 Commission shall review the limitation on the  
12 total amount paid under sourcing agreements, if  
13 any, with clean coal facilities pursuant to this  
14 subsection (d) and report to the General Assembly  
15 its findings as to whether that limitation unduly  
16 constrains the amount of electricity generated by  
17 cost-effective clean coal facilities that is  
18 covered by sourcing agreements.

19 (3) Initial clean coal facility. In order to promote  
20 development of clean coal facilities in Illinois, each  
21 electric utility subject to this Section shall execute a  
22 sourcing agreement to source electricity from a proposed  
23 clean coal facility in Illinois (the "initial clean coal  
24 facility") that will have a nameplate capacity of at least  
25 500 MW when commercial operation commences, that has a  
26 final Clean Air Act permit on the effective date of this

1           amendatory Act of the 95th General Assembly, and that will  
2           meet the definition of clean coal facility in Section 1-10  
3           of this Act when commercial operation commences. The  
4           sourcing agreements with this initial clean coal facility  
5           shall be subject to both approval of the initial clean coal  
6           facility by the General Assembly and satisfaction of the  
7           requirements of paragraph (4) of this subsection (d) and  
8           shall be executed within 90 days after any such approval by  
9           the General Assembly. The Agency and the Commission shall  
10          have authority to inspect all books and records associated  
11          with the initial clean coal facility during the term of  
12          such a sourcing agreement. A utility's sourcing agreement  
13          for electricity produced by the initial clean coal facility  
14          shall include:

15                (A) a formula contractual price (the "contract  
16                price") approved pursuant to paragraph (4) of this  
17                subsection (d), which shall:

18                   (i) be determined using a cost of service  
19                   methodology employing either a level or deferred  
20                   capital recovery component, based on a capital  
21                   structure consisting of 45% equity and 55% debt,  
22                   and a return on equity as may be approved by the  
23                   Federal Energy Regulatory Commission, which in any  
24                   case may not exceed the lower of 11.5% or the rate  
25                   of return approved by the General Assembly  
26                   pursuant to paragraph (4) of this subsection (d);



1 and

2 (ii) provide that all miscellaneous net  
3 revenue, including but not limited to net revenue  
4 from the sale of emission allowances, if any,  
5 substitute natural gas, if any, grants or other  
6 support provided by the State of Illinois or the  
7 United States Government, firm transmission  
8 rights, if any, by-products produced by the  
9 facility, energy or capacity derived from the  
10 facility and not covered by a sourcing agreement  
11 pursuant to paragraph (3) of this subsection (d) or  
12 item (5) of subsection (d) of Section 16-115 of the  
13 Public Utilities Act, whether generated from the  
14 synthesis gas derived from coal, from SNG, or from  
15 natural gas, shall be credited against the revenue  
16 requirement for this initial clean coal facility;

17 (B) power purchase provisions, which shall:

18 (i) provide that the utility party to such  
19 sourcing agreement shall pay the contract price  
20 for electricity delivered under such sourcing  
21 agreement;

22 (ii) require delivery of electricity to the  
23 regional transmission organization market of the  
24 utility that is party to such sourcing agreement;

25 (iii) require the utility party to such  
26 sourcing agreement to buy from the initial clean

1 coal facility in each hour an amount of energy  
2 equal to all clean coal energy made available from  
3 the initial clean coal facility during such hour  
4 times a fraction, the numerator of which is such  
5 utility's retail market sales of electricity  
6 (expressed in kilowatthours sold) in the State  
7 during the prior calendar month and the  
8 denominator of which is the total retail market  
9 sales of electricity (expressed in kilowatthours  
10 sold) in the State by utilities during such prior  
11 month and the sales of electricity (expressed in  
12 kilowatthours sold) in the State by alternative  
13 retail electric suppliers during such prior month  
14 that are subject to the requirements of this  
15 subsection (d) and paragraph (5) of subsection (d)  
16 of Section 16-115 of the Public Utilities Act,  
17 provided that the amount purchased by the utility  
18 in any year will be limited by paragraph (2) of  
19 this subsection (d); and

20 (iv) be considered pre-existing contracts in  
21 such utility's procurement plans for eligible  
22 retail customers;

23 (C) contract for differences provisions, which  
24 shall:

25 (i) require the utility party to such sourcing  
26 agreement to contract with the initial clean coal

1 facility in each hour with respect to an amount of  
2 energy equal to all clean coal energy made  
3 available from the initial clean coal facility  
4 during such hour times a fraction, the numerator of  
5 which is such utility's retail market sales of  
6 electricity (expressed in kilowatthours sold) in  
7 the utility's service territory in the State  
8 during the prior calendar month and the  
9 denominator of which is the total retail market  
10 sales of electricity (expressed in kilowatthours  
11 sold) in the State by utilities during such prior  
12 month and the sales of electricity (expressed in  
13 kilowatthours sold) in the State by alternative  
14 retail electric suppliers during such prior month  
15 that are subject to the requirements of this  
16 subsection (d) and paragraph (5) of subsection (d)  
17 of Section 16-115 of the Public Utilities Act,  
18 provided that the amount paid by the utility in any  
19 year will be limited by paragraph (2) of this  
20 subsection (d);

21 (ii) provide that the utility's payment  
22 obligation in respect of the quantity of  
23 electricity determined pursuant to the preceding  
24 clause (i) shall be limited to an amount equal to  
25 (1) the difference between the contract price  
26 determined pursuant to subparagraph (A) of

1 paragraph (3) of this subsection (d) and the  
2 day-ahead price for electricity delivered to the  
3 regional transmission organization market of the  
4 utility that is party to such sourcing agreement  
5 (or any successor delivery point at which such  
6 utility's supply obligations are financially  
7 settled on an hourly basis) (the "reference  
8 price") on the day preceding the day on which the  
9 electricity is delivered to the initial clean coal  
10 facility busbar, multiplied by (2) the quantity of  
11 electricity determined pursuant to the preceding  
12 clause (i); and

13 (iii) not require the utility to take physical  
14 delivery of the electricity produced by the  
15 facility;

16 (D) general provisions, which shall:

17 (i) specify a term of no more than 30 years,  
18 commencing on the commercial operation date of the  
19 facility;

20 (ii) provide that utilities shall maintain  
21 adequate records documenting purchases under the  
22 sourcing agreements entered into to comply with  
23 this subsection (d) and shall file an accounting  
24 with the load forecast that must be filed with the  
25 Agency by July 15 of each year, in accordance with  
26 subsection (d) of Section 16-111.5 of the Public

1 Utilities Act.

2 (iii) provide that all costs associated with  
3 the initial clean coal facility will be  
4 periodically reported to the Federal Energy  
5 Regulatory Commission and to purchasers in  
6 accordance with applicable laws governing  
7 cost-based wholesale power contracts;

8 (iv) permit the Illinois Power Agency to  
9 assume ownership of the initial clean coal  
10 facility, without monetary consideration and  
11 otherwise on reasonable terms acceptable to the  
12 Agency, if the Agency so requests no less than 3  
13 years prior to the end of the stated contract term;

14 (v) require the owner of the initial clean coal  
15 facility to provide documentation to the  
16 Commission each year, starting in the facility's  
17 first year of commercial operation, accurately  
18 reporting the quantity of carbon emissions from  
19 the facility that have been captured and  
20 sequestered and report any quantities of carbon  
21 released from the site or sites at which carbon  
22 emissions were sequestered in prior years, based  
23 on continuous monitoring of such sites. If, in any  
24 year after the first year of commercial operation,  
25 the owner of the facility fails to demonstrate that  
26 the initial clean coal facility captured and

1 sequestered at least 50% of the total carbon  
2 emissions that the facility would otherwise emit  
3 or that sequestration of emissions from prior  
4 years has failed, resulting in the release of  
5 carbon dioxide into the atmosphere, the owner of  
6 the facility must offset excess emissions. Any  
7 such carbon offsets must be permanent, additional,  
8 verifiable, real, located within the State of  
9 Illinois, and legally and practicably enforceable.  
10 The cost of such offsets for the facility that are  
11 not recoverable shall not exceed \$15 million in any  
12 given year. No costs of any such purchases of  
13 carbon offsets may be recovered from a utility or  
14 its customers. All carbon offsets purchased for  
15 this purpose and any carbon emission credits  
16 associated with sequestration of carbon from the  
17 facility must be permanently retired. The initial  
18 clean coal facility shall not forfeit its  
19 designation as a clean coal facility if the  
20 facility fails to fully comply with the applicable  
21 carbon sequestration requirements in any given  
22 year, provided the requisite offsets are  
23 purchased. However, the Attorney General, on  
24 behalf of the People of the State of Illinois, may  
25 specifically enforce the facility's sequestration  
26 requirement and the other terms of this contract

1 provision. Compliance with the sequestration  
2 requirements and offset purchase requirements  
3 specified in paragraph (3) of this subsection (d)  
4 shall be reviewed annually by an independent  
5 expert retained by the owner of the initial clean  
6 coal facility, with the advance written approval  
7 of the Attorney General. The Commission may, in the  
8 course of the review specified in item (vii),  
9 reduce the allowable return on equity for the  
10 facility if the facility wilfully fails to comply  
11 with the carbon capture and sequestration  
12 requirements set forth in this item (v);

13 (vi) include limits on, and accordingly  
14 provide for modification of, the amount the  
15 utility is required to source under the sourcing  
16 agreement consistent with paragraph (2) of this  
17 subsection (d);

18 (vii) require Commission review: (1) to  
19 determine the justness, reasonableness, and  
20 prudence of the inputs to the formula referenced in  
21 subparagraphs (A) (i) through (A) (iii) of paragraph  
22 (3) of this subsection (d), prior to an adjustment  
23 in those inputs including, without limitation, the  
24 capital structure and return on equity, fuel  
25 costs, and other operations and maintenance costs  
26 and (2) to approve the costs to be passed through

1 to customers under the sourcing agreement by which  
2 the utility satisfies its statutory obligations.  
3 Commission review shall occur no less than every 3  
4 years, regardless of whether any adjustments have  
5 been proposed, and shall be completed within 9  
6 months;

7 (viii) limit the utility's obligation to such  
8 amount as the utility is allowed to recover through  
9 tariffs filed with the Commission, provided that  
10 neither the clean coal facility nor the utility  
11 waives any right to assert federal pre-emption or  
12 any other argument in response to a purported  
13 disallowance of recovery costs;

14 (ix) limit the utility's or alternative retail  
15 electric supplier's obligation to incur any  
16 liability until such time as the facility is in  
17 commercial operation and generating power and  
18 energy and such power and energy is being delivered  
19 to the facility busbar;

20 (x) provide that the owner or owners of the  
21 initial clean coal facility, which is the  
22 counterparty to such sourcing agreement, shall  
23 have the right from time to time to elect whether  
24 the obligations of the utility party thereto shall  
25 be governed by the power purchase provisions or the  
26 contract for differences provisions;



1           (xi) append documentation showing that the  
2           formula rate and contract, insofar as they relate  
3           to the power purchase provisions, have been  
4           approved by the Federal Energy Regulatory  
5           Commission pursuant to Section 205 of the Federal  
6           Power Act;

7           (xii) provide that any changes to the terms of  
8           the contract, insofar as such changes relate to the  
9           power purchase provisions, are subject to review  
10          under the public interest standard applied by the  
11          Federal Energy Regulatory Commission pursuant to  
12          Sections 205 and 206 of the Federal Power Act; and

13          (xiii) conform with customary lender  
14          requirements in power purchase agreements used as  
15          the basis for financing non-utility generators.

16          (4) Effective date of sourcing agreements with the  
17          initial clean coal facility. Any proposed sourcing  
18          agreement with the initial clean coal facility shall not  
19          become effective unless the following reports are prepared  
20          and submitted and authorizations and approvals obtained:

21               (i) Facility cost report. The owner of the  
22               initial clean coal facility shall submit to the  
23               Commission, the Agency, and the General Assembly a  
24               front-end engineering and design study, a facility  
25               cost report, method of financing (including but  
26               not limited to structure and associated costs),

1 and an operating and maintenance cost quote for the  
2 facility (collectively "facility cost report"),  
3 which shall be prepared in accordance with the  
4 requirements of this paragraph (4) of subsection  
5 (d) of this Section, and shall provide the  
6 Commission and the Agency access to the work  
7 papers, relied upon documents, and any other  
8 backup documentation related to the facility cost  
9 report.

10 (ii) Commission report. Within 6 months  
11 following receipt of the facility cost report, the  
12 Commission, in consultation with the Agency, shall  
13 submit a report to the General Assembly setting  
14 forth its analysis of the facility cost report.  
15 Such report shall include, but not be limited to, a  
16 comparison of the costs associated with  
17 electricity generated by the initial clean coal  
18 facility to the costs associated with electricity  
19 generated by other types of generation facilities,  
20 an analysis of the rate impacts on residential and  
21 small business customers over the life of the  
22 sourcing agreements, and an analysis of the  
23 likelihood that the initial clean coal facility  
24 will commence commercial operation by and be  
25 delivering power to the facility's busbar by 2016.  
26 To assist in the preparation of its report, the

1 Commission, in consultation with the Agency, may  
2 hire one or more experts or consultants, the costs  
3 of which shall be paid for by the owner of the  
4 initial clean coal facility. The Commission and  
5 Agency may begin the process of selecting such  
6 experts or consultants prior to receipt of the  
7 facility cost report.

8 (iii) General Assembly approval. The proposed  
9 sourcing agreements shall not take effect unless,  
10 based on the facility cost report and the  
11 Commission's report, the General Assembly enacts  
12 authorizing legislation approving (A) the  
13 projected price, stated in cents per kilowatthour,  
14 to be charged for electricity generated by the  
15 initial clean coal facility, (B) the projected  
16 impact on residential and small business  
17 customers' bills over the life of the sourcing  
18 agreements, and (C) the maximum allowable return  
19 on equity for the project; and

20 (iv) Commission review. If the General  
21 Assembly enacts authorizing legislation pursuant  
22 to subparagraph (iii) approving a sourcing  
23 agreement, the Commission shall, within 90 days of  
24 such enactment, complete a review of such sourcing  
25 agreement. During such time period, the Commission  
26 shall implement any directive of the General

1           Assembly, resolve any disputes between the parties  
2           to the sourcing agreement concerning the terms of  
3           such agreement, approve the form of such  
4           agreement, and issue an order finding that the  
5           sourcing agreement is prudent and reasonable.

6           The facility cost report shall be prepared as follows:

7           (A) The facility cost report shall be prepared by  
8           duly licensed engineering and construction firms  
9           detailing the estimated capital costs payable to one or  
10          more contractors or suppliers for the engineering,  
11          procurement and construction of the components  
12          comprising the initial clean coal facility and the  
13          estimated costs of operation and maintenance of the  
14          facility. The facility cost report shall include:

15                 (i) an estimate of the capital cost of the core  
16                 plant based on one or more front end engineering  
17                 and design studies for the gasification island and  
18                 related facilities. The core plant shall include  
19                 all civil, structural, mechanical, electrical,  
20                 control, and safety systems.

21                 (ii) an estimate of the capital cost of the  
22                 balance of the plant, including any capital costs  
23                 associated with sequestration of carbon dioxide  
24                 emissions and all interconnects and interfaces  
25                 required to operate the facility, such as  
26                 transmission of electricity, construction or

1 backfeed power supply, pipelines to transport  
2 substitute natural gas or carbon dioxide, potable  
3 water supply, natural gas supply, water supply,  
4 water discharge, landfill, access roads, and coal  
5 delivery.

6 The quoted construction costs shall be expressed  
7 in nominal dollars as of the date that the quote is  
8 prepared and shall include (1) capitalized financing  
9 costs during construction, (2) taxes, insurance, and  
10 other owner's costs, and (3) an assumed escalation in  
11 materials and labor beyond the date as of which the  
12 construction cost quote is expressed.

13 (B) The front end engineering and design study for  
14 the gasification island and the cost study for the  
15 balance of plant shall include sufficient design work  
16 to permit quantification of major categories of  
17 materials, commodities and labor hours, and receipt of  
18 quotes from vendors of major equipment required to  
19 construct and operate the clean coal facility.

20 (C) The facility cost report shall also include an  
21 operating and maintenance cost quote that will provide  
22 the estimated cost of delivered fuel, personnel,  
23 maintenance contracts, chemicals, catalysts,  
24 consumables, spares, and other fixed and variable  
25 operations and maintenance costs.

26 (a) The delivered fuel cost estimate will be

1 provided by a recognized third party expert or  
2 experts in the fuel and transportation industries.

3 (b) The balance of the operating and  
4 maintenance cost quote, excluding delivered fuel  
5 costs will be developed based on the inputs  
6 provided by duly licensed engineering and  
7 construction firms performing the construction  
8 cost quote, potential vendors under long-term  
9 service agreements and plant operating agreements,  
10 or recognized third party plant operator or  
11 operators.

12 The operating and maintenance cost quote  
13 (including the cost of the front end engineering  
14 and design study) shall be expressed in nominal  
15 dollars as of the date that the quote is prepared  
16 and shall include (1) taxes, insurance, and other  
17 owner's costs, and (2) an assumed escalation in  
18 materials and labor beyond the date as of which the  
19 operating and maintenance cost quote is expressed.

20 (D) The facility cost report shall also include (i)  
21 an analysis of the initial clean coal facility's  
22 ability to deliver power and energy into the applicable  
23 regional transmission organization markets and (ii) an  
24 analysis of the expected capacity factor for the  
25 initial clean coal facility.

26 (E) Amounts paid to third parties unrelated to the

1 owner or owners of the initial clean coal facility to  
2 prepare the core plant construction cost quote,  
3 including the front end engineering and design study,  
4 and the operating and maintenance cost quote will be  
5 reimbursed through Coal Development Bonds.

6 (5) Re-powering and retrofitting coal-fired power  
7 plants previously owned by Illinois utilities to qualify as  
8 clean coal facilities. During the 2009 procurement  
9 planning process and thereafter, the Agency and the  
10 Commission shall consider sourcing agreements covering  
11 electricity generated by power plants that were previously  
12 owned by Illinois utilities and that have been or will be  
13 converted into clean coal facilities, as defined by Section  
14 1-10 of this Act. Pursuant to such procurement planning  
15 process, the owners of such facilities may propose to the  
16 Agency sourcing agreements with utilities and alternative  
17 retail electric suppliers required to comply with  
18 subsection (d) of this Section and item (5) of subsection  
19 (d) of Section 16-115 of the Public Utilities Act, covering  
20 electricity generated by such facilities. In the case of  
21 sourcing agreements that are power purchase agreements,  
22 the contract price for electricity sales shall be  
23 established on a cost of service basis. In the case of  
24 sourcing agreements that are contracts for differences,  
25 the contract price from which the reference price is  
26 subtracted shall be established on a cost of service basis.

1           The Agency and the Commission may approve any such utility  
2           sourcing agreements that do not exceed cost-based  
3           benchmarks developed by the procurement administrator, in  
4           consultation with the Commission staff, Agency staff and  
5           the procurement monitor, subject to Commission review and  
6           approval. The Commission shall have authority to inspect  
7           all books and records associated with these clean coal  
8           facilities during the term of any such contract.

9           (6) Costs incurred under this subsection (d) or  
10          pursuant to a contract entered into under this subsection  
11          (d) shall be deemed prudently incurred and reasonable in  
12          amount and the electric utility shall be entitled to full  
13          cost recovery pursuant to the tariffs filed with the  
14          Commission.

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

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

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

26          (h) The Agency shall assess fees to each bidder to



1 recover the costs incurred in connection with a competitive  
2 procurement process.

3 (Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09.)

4 Section 10. The State Finance Act is amended by adding  
5 Section 5.719 as follows:

6 (30 ILCS 105/5.719 new)

7 Sec. 5.719. The Illinois Power Agency Renewable Energy  
8 Resources Fund.

9 Section 15. The Illinois Procurement Code is amended by  
10 changing Section 20-10 as follows:

11 (30 ILCS 500/20-10)

12 Sec. 20-10. Competitive sealed bidding.

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

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

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

1 opening of bids.

2 (d) Bid opening. Bids shall be opened publicly in the  
3 presence of one or more witnesses at the time and place  
4 designated in the invitation for bids. The name of each bidder,  
5 the amount of each bid, and other relevant information as may  
6 be specified by rule shall be recorded. After the award of the  
7 contract, the winning bid and the record of each unsuccessful  
8 bid shall be open to public inspection.

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

20 (f) Correction or withdrawal of bids. Correction or  
21 withdrawal of inadvertently erroneous bids before or after  
22 award, or cancellation of awards of contracts based on bid  
23 mistakes, shall be permitted in accordance with rules. After  
24 bid opening, no changes in bid prices or other provisions of  
25 bids prejudicial to the interest of the State or fair  
26 competition shall be permitted. All decisions to permit the

1 correction or withdrawal of bids based on bid mistakes shall be  
2 supported by written determination made by a State purchasing  
3 officer.

4 (g) Award. The contract shall be awarded with reasonable  
5 promptness by written notice to the lowest responsible and  
6 responsive bidder whose bid meets the requirements and criteria  
7 set forth in the invitation for bids, except when a State  
8 purchasing officer determines it is not in the best interest of  
9 the State and by written explanation determines another bidder  
10 shall receive the award. The explanation shall appear in the  
11 appropriate volume of the Illinois Procurement Bulletin.

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

19 (i) Alternative procedures. Notwithstanding any other  
20 provision of this Act to the contrary, the Director of the  
21 Illinois Power Agency may create alternative bidding  
22 procedures to be used in procuring professional services under  
23 Section 1-75(a) of the Illinois Power Agency Act and Section  
24 16-111.5(c) of the Public Utilities Act and to procure  
25 renewable energy resources under Section 1-56 of the Illinois  
26 Power Agency Act. These alternative procedures shall be set

1     forth together with the other criteria contained in the  
2     invitation for bids, and shall appear in the appropriate volume  
3     of the Illinois Procurement Bulletin.

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

5             Section 20. The Public Utilities Act is amended by changing  
6     Sections 8-103 and 16-115 and by adding Section 16-115D as  
7     follows:

8             (220 ILCS 5/8-103)

9             Sec. 8-103. Energy efficiency and demand-response  
10     measures.

11             (a) It is the policy of the State that electric utilities  
12     are required to use cost-effective energy efficiency and  
13     demand-response measures to reduce delivery load. Requiring  
14     investment in cost-effective energy efficiency and  
15     demand-response measures will reduce direct and indirect costs  
16     to consumers by decreasing environmental impacts and by  
17     avoiding or delaying the need for new generation, transmission,  
18     and distribution infrastructure. It serves the public interest  
19     to allow electric utilities to recover costs for reasonably and  
20     prudently incurred expenses for energy efficiency and  
21     demand-response measures. As used in this Section,  
22     "cost-effective" means that the measures satisfy the total  
23     resource cost test. The low-income measures described in  
24     subsection (f) (4) of this Section shall not be required to meet

1 the total resource cost test. For purposes of this Section, the  
2 terms "energy-efficiency", "demand-response", "electric  
3 utility", and "total resource cost test" shall have the  
4 meanings set forth in the Illinois Power Agency Act. For  
5 purposes of this Section, the amount per kilowatthour means the  
6 total amount paid for electric service expressed on a per  
7 kilowatthour basis. For purposes of this Section, the total  
8 amount paid for electric service includes without limitation  
9 estimated amounts paid for supply, transmission, distribution,  
10 surcharges, and add-on-taxes.

11 (b) Electric utilities shall implement cost-effective  
12 energy efficiency measures to meet the following incremental  
13 annual energy savings goals:

14 (1) 0.2% of energy delivered in the year commencing  
15 June 1, 2008;

16 (2) 0.4% of energy delivered in the year commencing  
17 June 1, 2009;

18 (3) 0.6% of energy delivered in the year commencing  
19 June 1, 2010;

20 (4) 0.8% of energy delivered in the year commencing  
21 June 1, 2011;

22 (5) 1% of energy delivered in the year commencing June  
23 1, 2012;

24 (6) 1.4% of energy delivered in the year commencing  
25 June 1, 2013;

26 (7) 1.8% of energy delivered in the year commencing

1 June 1, 2014; and

2 (8) 2% of energy delivered in the year commencing June  
3 1, 2015 and each year thereafter.

4 (c) Electric utilities shall implement cost-effective  
5 demand-response measures to reduce peak demand by 0.1% over the  
6 prior year for eligible retail customers, as defined in Section  
7 16-111.5 of this Act, and for customers that elect hourly  
8 service from the utility pursuant to Section 16-107 of this  
9 Act, provided those customers have not been declared  
10 competitive. This requirement commences June 1, 2008 and  
11 continues for 10 years.

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

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

22 (2) in 2009, the greater of an additional 0.5% of the  
23 amount paid per kilowatthour by those customers during the  
24 year ending May 31, 2008 or 1% of the amount paid per  
25 kilowatthour by those customers during the year ending May  
26 31, 2007;

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

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

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

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

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

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

25           The details of the measures implemented by the Department  
26 shall be submitted by the Department to the Commission in



1 connection with the utility's filing regarding the energy  
2 efficiency and demand-response measures that the utility  
3 implements.

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

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

1 modifications shall be appropriately reflected in amounts  
2 recovered by the utility and turned over to the Department.

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

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

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

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

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

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

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

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

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

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

24 (4) Coordinate with the Department ~~and the Department~~  
25 ~~of Healthcare and Family Services~~ to present a portfolio of  
26 energy efficiency measures ~~targeted to households at or~~

1 ~~below 150% of the poverty level at a level~~ proportionate to  
2 ~~the these households'~~ share of total annual utility  
3 revenues in Illinois from households at or below 150% of  
4 the poverty level. The energy efficiency programs shall be  
5 targeted to households with incomes at or below 80% of area  
6 median income.

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

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

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

1           (g) No more than 3% of energy efficiency and  
2 demand-response program revenue may be allocated for  
3 demonstration of breakthrough equipment and devices.

4           (h) This Section does not apply to an electric utility that  
5 on December 31, 2005 provided electric service to fewer than  
6 100,000 customers in Illinois.

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

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

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

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

1 provided for the Department in this Section.

2 (k) No electric utility shall be deemed to have failed to  
3 meet the energy efficiency standards to the extent any such  
4 failure is due to a failure of the Department or the Agency.

5 (Source: P.A. 95-481, eff. 8-28-07; 95-876, eff. 8-21-08.)

6 (220 ILCS 5/16-115)

7 (Text of Section before amendment by P.A. 95-1027)

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

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

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



1 granting or denying the application.

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

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

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

1 electric power and energy using property, plant and  
2 equipment which it owns, controls or operates;

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

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

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

21 (5) That the applicant will procure renewable energy  
22 resources in accordance with Section 16-115D of this Act,  
23 and will source electricity from clean coal facilities, as  
24 defined in Section 1-10 of the Illinois Power Agency Act,  
25 in amounts at least equal to the percentages set forth in  
26 subsections (c) and (d) of Section 1-75 of the Illinois

1 Power Agency Act. For purposes of this Section:

2 (i) (Blank);

3 (ii) (Blank);

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

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

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

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

19 (2) if the sourcing agreement is a contract for  
20 differences, a contract with the initial clean  
21 coal facility in each hour with respect to an  
22 amount of electricity equal to all clean coal  
23 energy made available from the initial clean coal  
24 facility during such hour, which the utilities are  
25 not required to procure under the terms of  
26 subsection (d) of Section 1-75 of the Illinois

1           Power Agency Act, multiplied by a fraction, the  
2           numerator of which is the alternative retail  
3           electric supplier's retail market sales of  
4           electricity (expressed in kilowatt-hours sold) in  
5           the State during the prior calendar month and the  
6           denominator of which is the total sales of  
7           electricity (expressed in kilowatt-hours sold) in  
8           the State by alternative retail electric suppliers  
9           during such prior month that are subject to the  
10           requirements of this paragraph (5) of subsection  
11           (d) of this Section and subsection (d) of Section  
12           1-75 of the Illinois Power Agency Act plus the  
13           total sales of electricity (expressed in  
14           kilowatt-hours sold) by utilities outside of their  
15           service areas during such prior month, pursuant to  
16           subsection (c) of Section 16-116 of this Act;  
17           (v) if, in any year after the first year of  
18           commercial operation, the owner of the clean coal  
19           facility fails to demonstrate to the Commission that  
20           the initial clean coal facility captured and  
21           sequestered at least 50% of the total carbon emissions  
22           that the facility would otherwise emit or that  
23           sequestration of emissions from prior years has  
24           failed, resulting in the release of carbon into the  
25           atmosphere, the owner of the facility must offset  
26           excess emissions. Any such carbon offsets must be

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

25 (vi) The Commission shall, after notice and  
26 hearing, revoke the certification of any alternative

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

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

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

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

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

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



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

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

16 (Text of Section after amendment by P.A. 95-1027)

17 Sec. 16-115. Certification of alternative retail electric  
18 suppliers.

19 (a) Any alternative retail electric supplier must obtain a  
20 certificate of service authority from the Commission in  
21 accordance with this Section before serving any retail customer  
22 or other user located in this State. An alternative retail  
23 electric supplier may request, and the Commission may grant, a  
24 certificate of service authority for the entire State or for a  
25 specified geographic area of the State.

1           (b) An alternative retail electric supplier seeking a  
2 certificate of service authority shall file with the Commission  
3 a verified application containing information showing that the  
4 applicant meets the requirements of this Section. The  
5 alternative retail electric supplier shall publish notice of  
6 its application in the official State newspaper within 10 days  
7 following the date of its filing. No later than 45 days after  
8 the application is properly filed with the Commission, and such  
9 notice is published, the Commission shall issue its order  
10 granting or denying the application.

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

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

1           (1) That the applicant possesses sufficient technical,  
2           financial and managerial resources and abilities to  
3           provide the service for which it seeks a certificate of  
4           service authority. In determining the level of technical,  
5           financial and managerial resources and abilities which the  
6           applicant must demonstrate, the Commission shall consider  
7           (i) the characteristics, including the size and financial  
8           sophistication, of the customers that the applicant seeks  
9           to serve, and (ii) whether the applicant seeks to provide  
10          electric power and energy using property, plant and  
11          equipment which it owns, controls or operates;

12          (2) That the applicant will comply with all applicable  
13          federal, State, regional and industry rules, policies,  
14          practices and procedures for the use, operation, and  
15          maintenance of the safety, integrity and reliability, of  
16          the interconnected electric transmission system;

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

20          (4) That the applicant will comply with such  
21          informational or reporting requirements as the Commission  
22          may by rule establish and provide the information required  
23          by Section 16-112. Any data related to contracts for the  
24          purchase and sale of electric power and energy shall be  
25          made available for review by the Staff of the Commission on  
26          a confidential and proprietary basis and only to the extent

1 and for the purposes which the Commission determines are  
2 reasonably necessary in order to carry out the purposes of  
3 this Act;

4 (5) That the applicant will procure renewable energy  
5 resources in accordance with Section 16-115D of this Act,  
6 and will source electricity from clean coal facilities, as  
7 defined in Section 1-10 of the Illinois Power Agency Act,  
8 in amounts at least equal to the percentages set forth in  
9 subsections (c) and (d) of Section 1-75 of the Illinois  
10 Power Agency Act. For purposes of this Section:

11 (i) (Blank); ~~the required procurement of renewable~~  
12 ~~energy resources shall be measured as a percentage of~~  
13 ~~the actual amount of electricity (megawatt hours)~~  
14 ~~supplied by the alternative retail electric supplier~~  
15 ~~in the prior calendar year, as reported for that year~~  
16 ~~to the Commission. This obligation applies to all~~  
17 ~~electricity supplied pursuant to retail contracts~~  
18 ~~executed, extended, or otherwise revised after the~~  
19 ~~effective date of this amendatory Act, provided the~~  
20 ~~alternative retail electric supplier submits all~~  
21 ~~documentation needed by the Commission to determine~~  
22 ~~the actual amount of electricity supplied under~~  
23 ~~contracts that may be excluded under this limitation;~~

24 (ii) (Blank); ~~an alternative retail electric~~  
25 ~~supplier need not actually deliver electricity to its~~  
26 ~~customers to comply with this Section, provided that if~~

1 ~~the alternative retail electric supplier claims credit~~  
2 ~~for such purpose, subsequent purchasers shall not~~  
3 ~~receive any emission credits or renewable energy~~  
4 ~~credits in connection with the purchase of such~~  
5 ~~electricity. Alternative retail electric suppliers~~  
6 ~~shall maintain adequate records documenting the~~  
7 ~~contractual disposition of all electricity procured to~~  
8 ~~comply with this Section and shall file an accounting~~  
9 ~~in the report which must be filed with the Commission~~  
10 ~~on April 1 of each year, starting in 2010, in~~  
11 ~~accordance with subsection (d-5) of this Section;~~

12 (iii) ~~the required procurement of renewable energy~~  
13 ~~resources and~~ sourcing of electricity generated by  
14 clean coal facilities, other than the initial clean  
15 coal facility, shall be limited to the amount of  
16 electricity that can be procured or sourced at a price  
17 at or below the benchmarks approved by the Commission  
18 each year in accordance with item (1) of subsection (c)  
19 and items (1) and (5) of subsection (d) of Section 1-75  
20 of the Illinois Power Agency Act;

21 (iv) all alternative retail electric suppliers  
22 shall execute a sourcing agreement to source  
23 electricity from the initial clean coal facility, on  
24 the terms set forth in paragraphs (3) and (4) of  
25 subsection (d) of Section 1-75 of the Illinois Power  
26 Agency Act, except that in lieu of the requirements in

1           subparagraphs (A) (v), (B) (i), (C) (v), and (C) (vi) of  
2           paragraph (3) of that subsection (d), the applicant  
3           shall execute one or more of the following:

4                   (1) if the sourcing agreement is a power  
5                   purchase agreement, a contract with the initial  
6                   clean coal facility to purchase in each hour an  
7                   amount of electricity equal to all clean coal  
8                   energy made available from the initial clean coal  
9                   facility during such hour, which the utilities are  
10                  not required to procure under the terms of  
11                  subsection (d) of Section 1-75 of the Illinois  
12                  Power Agency Act, multiplied by a fraction, the  
13                  numerator of which is the alternative retail  
14                  electric supplier's retail market sales of  
15                  electricity (expressed in kilowatthours sold) in  
16                  the State during the prior calendar month and the  
17                  denominator of which is the total sales of  
18                  electricity (expressed in kilowatthours sold) in  
19                  the State by alternative retail electric suppliers  
20                  during such prior month that are subject to the  
21                  requirements of this paragraph (5) of subsection  
22                  (d) of this Section and subsection (d) of Section  
23                  1-75 of the Illinois Power Agency Act plus the  
24                  total sales of electricity (expressed in  
25                  kilowatthours sold) by utilities outside of their  
26                  service areas during such prior month, pursuant to

1 subsection (c) of Section 16-116 of this Act; or

2 (2) if the sourcing agreement is a contract for  
3 differences, a contract with the initial clean  
4 coal facility in each hour with respect to an  
5 amount of electricity equal to all clean coal  
6 energy made available from the initial clean coal  
7 facility during such hour, which the utilities are  
8 not required to procure under the terms of  
9 subsection (d) of Section 1-75 of the Illinois  
10 Power Agency Act, multiplied by a fraction, the  
11 numerator of which is the alternative retail  
12 electric supplier's retail market sales of  
13 electricity (expressed in kilowatthours sold) in  
14 the State during the prior calendar month and the  
15 denominator of which is the total sales of  
16 electricity (expressed in kilowatthours sold) in  
17 the State by alternative retail electric suppliers  
18 during such prior month that are subject to the  
19 requirements of this paragraph (5) of subsection  
20 (d) of this Section and subsection (d) of Section  
21 1-75 of the Illinois Power Agency Act plus the  
22 total sales of electricity (expressed in  
23 kilowatthours sold) by utilities outside of their  
24 service areas during such prior month, pursuant to  
25 subsection (c) of Section 16-116 of this Act;

26 (v) if, in any year after the first year of

1 commercial operation, the owner of the clean coal  
2 facility fails to demonstrate to the Commission that  
3 the initial clean coal facility captured and  
4 sequestered at least 50% of the total carbon emissions  
5 that the facility would otherwise emit or that  
6 sequestration of emissions from prior years has  
7 failed, resulting in the release of carbon into the  
8 atmosphere, the owner of the facility must offset  
9 excess emissions. Any such carbon offsets must be  
10 permanent, additional, verifiable, real, located  
11 within the State of Illinois, and legally and  
12 practicably enforceable. The costs of any such offsets  
13 that are not recoverable shall not exceed \$15 million  
14 in any given year. No costs of any such purchases of  
15 carbon offsets may be recovered from an alternative  
16 retail electric supplier or its customers. All carbon  
17 offsets purchased for this purpose and any carbon  
18 emission credits associated with sequestration of  
19 carbon from the facility must be permanently retired.  
20 The initial clean coal facility shall not forfeit its  
21 designation as a clean coal facility if the facility  
22 fails to fully comply with the applicable carbon  
23 sequestration requirements in any given year, provided  
24 the requisite offsets are purchased. However, the  
25 Attorney General, on behalf of the People of the State  
26 of Illinois, may specifically enforce the facility's



1           sequestration requirement and the other terms of this  
2           contract provision. Compliance with the sequestration  
3           requirements and offset purchase requirements that  
4           apply to the initial clean coal facility shall be  
5           reviewed annually by an independent expert retained by  
6           the owner of the initial clean coal facility, with the  
7           advance written approval of the Attorney General;

8           (vi) The Commission shall, after notice and  
9           hearing, revoke the certification of any alternative  
10           retail electric supplier that fails to execute a  
11           sourcing agreement with the initial clean coal  
12           facility as required by item (5) of subsection (d) of  
13           this Section. The sourcing agreements with this  
14           initial clean coal facility shall be subject to both  
15           approval of the initial clean coal facility by the  
16           General Assembly and satisfaction of the requirements  
17           of item (4) of subsection (d) of Section 1-75 of the  
18           Illinois Power Agency Act, and shall be executed within  
19           90 days after any such approval by the General  
20           Assembly. The Commission shall not accept an  
21           application for certification from an alternative  
22           retail electric supplier that has lost certification  
23           under this subsection (d), or any corporate affiliate  
24           thereof, for at least one year from the date of  
25           revocation;

26           (6) With respect to an applicant that seeks to serve

1 residential or small commercial retail customers, that the  
2 area to be served by the applicant and any limitations it  
3 proposes on the number of customers or maximum amount of  
4 load to be served meet the provisions of Section 16-115A,  
5 provided, that the Commission can extend the time for  
6 considering such a certificate request by up to 90 days,  
7 and can schedule hearings on such a request;

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

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

12 (d-5) (Blank). ~~The Commission shall, after notice and~~  
13 ~~hearing, revoke the certification of any alternative retail~~  
14 ~~electric supplier that fails to execute a sourcing agreement~~  
15 ~~with the initial clean coal facility, as required by item (5)~~  
16 ~~of subsection (d) of this Section. The sourcing agreements with~~  
17 ~~this initial clean coal facility shall be subject to both~~  
18 ~~approval of the initial clean coal facility by the General~~  
19 ~~Assembly and satisfaction of the requirements of paragraph (4)~~  
20 ~~of subsection (d) of Section 1-75 of the Illinois Power Agency~~  
21 ~~Act, and shall be executed within 90 days after any such~~  
22 ~~approval by the General Assembly. The Commission shall also~~  
23 ~~revoke the certification of any alternative retail electric~~  
24 ~~supplier that, on April 1, 2010 or on April 1 of any year~~  
25 ~~thereafter, fails to demonstrate that the electricity provided~~  
26 ~~to the alternative retail electricity supplier's Illinois~~

1 ~~customers during the previous year was generated by renewable~~  
2 ~~energy resources and clean coal facilities in amounts at least~~  
3 ~~equal to the percentages set forth in subsections (c) and (d)~~  
4 ~~of Section 1-75 of the Illinois Power Agency Act, as limited by~~  
5 ~~subsection (d) (5) (iii) of this Section. The Commission shall~~  
6 ~~not accept an application for certification from an alternative~~  
7 ~~retail electric supplier that has lost certification under this~~  
8 ~~subsection (d 5), or any corporate affiliate thereof, for at~~  
9 ~~least one year from the date of revocation.~~

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

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

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

22 (Source: P.A. 95-130, eff. 1-1-08; 95-1027, eff. 6-1-09.)

23 (220 ILCS 5/16-115D new)

24 Sec. 16-115D. Renewable portfolio standard for alternative  
25 retail electric suppliers and electric utilities operating

1 outside their service territories.

2 (a) An alternative retail electric supplier shall be  
3 responsible for procuring cost-effective renewable energy  
4 resources as required under item (5) of subsection (d) of  
5 Section 16-115 of this Act as outlined herein:

6 (1) The definition of renewable energy resources  
7 contained in Section 1-10 of the Illinois Power Agency Act  
8 applies to all renewable energy resources required to be  
9 procured by alternative retail electric suppliers.

10 (2) The quantity of renewable energy resources shall be  
11 measured as a percentage of the actual amount of metered  
12 electricity (megawatt-hours) delivered by the alternative  
13 retail electric supplier to Illinois retail customers  
14 during the 12-month period June 1 through May 31,  
15 commencing June 1, 2009, and the comparable 12-month period  
16 in each year thereafter except as provided in item (6) of  
17 this subsection (a).

18 (3) The quantity of renewable energy resources shall be  
19 in amounts at least equal to the annual percentages set  
20 forth in item (1) of subsection (c) of Section 1-75 of the  
21 Illinois Power Agency Act. At least 60% of the renewable  
22 energy resources procured pursuant to items (1) through (3)  
23 of subsection (b) of this Section shall come from wind  
24 generation and, starting June 1, 2015, at least 6% of the  
25 renewable energy resources procured pursuant to items (1)  
26 through (3) of subsection (b) of this Section shall come

1 from solar photovoltaics. If, in any given year, an  
2 alternative retail electric supplier does not purchase at  
3 least these levels of renewable energy resources, then the  
4 alternative retail electric supplier shall make  
5 alternative compliance payments, as described in  
6 subsection (d) of this Section.

7 (4) The quantity and source of renewable energy  
8 resources shall be independently verified through the PJM  
9 Environmental Information System Generation Attribute  
10 Tracking System (PJM-GATS) or the Midwest Renewable Energy  
11 Tracking System (M-RETS), which shall document the  
12 location of generation, resource type, month, and year of  
13 generation for all qualifying renewable energy resources  
14 that an alternative retail electric supplier uses to comply  
15 with this Section. No later than June 1, 2009, the Illinois  
16 Power Agency shall provide PJM-GATS, M-RETS, and  
17 alternative retail electric suppliers with all information  
18 necessary to identify resources located in Illinois,  
19 within states that adjoin Illinois or within portions of  
20 the PJM and MISO footprint in the United States that  
21 qualify under the definition of renewable energy resources  
22 in Section 1-10 of the Illinois Power Agency Act for  
23 compliance with this Section 16-115D. Alternative retail  
24 electric suppliers shall not be subject to the requirements  
25 in item (3) of subsection (c) of Section 1-75 of the  
26 Illinois Power Agency Act.

1           (5) All renewable energy credits used to comply with  
2           this Section shall be permanently retired.

3           (6) The required procurement of renewable energy  
4           resources by an alternative retail electric supplier shall  
5           apply to all metered electricity delivered to Illinois  
6           retail customers by the alternative retail electric  
7           supplier pursuant to contracts executed or extended after  
8           March 15, 2009.

9           (b) An alternative retail electric supplier shall comply  
10          with the renewable energy portfolio standards by making an  
11          alternative compliance payment, as described in subsection (d)  
12          of this Section, to cover at least one-half of the alternative  
13          retail electric supplier's compliance obligation and any one or  
14          combination of the following means to cover the remainder of  
15          the alternative retail electric supplier's compliance  
16          obligation:

17           (1) Generating electricity using renewable energy  
18           resources identified pursuant to item (4) of subsection (a)  
19           of this Section.

20           (2) Purchasing electricity generated using renewable  
21           energy resources identified pursuant to item (4) of  
22           subsection (a) of this Section through an energy contract.

23           (3) Purchasing renewable energy credits from renewable  
24           energy resources identified pursuant to item (4) of  
25           subsection (a) of this Section.

26           (4) Making an alternative compliance payment as

1 described in subsection (d) of this Section.

2 (c) Use of renewable energy credits.

3 (1) Renewable energy credits that are not used by an  
4 alternative retail electric supplier to comply with a  
5 renewable portfolio standard in a compliance year may be  
6 banked and carried forward up to 2 12-month compliance  
7 periods after the compliance period in which the credit was  
8 generated for the purpose of complying with a renewable  
9 portfolio standard in those 2 subsequent compliance  
10 periods. For the 2009-2010 and 2010-2011 compliance  
11 periods, an alternative retail electric supplier may use  
12 renewable credits generated after December 31, 2008 and  
13 before June 1, 2009 to comply with this Section.

14 (2) An alternative retail electric supplier is  
15 responsible for demonstrating that a renewable energy  
16 credit used to comply with a renewable portfolio standard  
17 is derived from a renewable energy resource and that the  
18 alternative retail electric supplier has not used, traded,  
19 sold, or otherwise transferred the credit.

20 (3) The same renewable energy credit may be used by an  
21 alternative retail electric supplier to comply with a  
22 federal renewable portfolio standard and a renewable  
23 portfolio standard established under this Act. An  
24 alternative retail electric supplier that uses a renewable  
25 energy credit to comply with a renewable portfolio standard  
26 imposed by any other state may not use the same credit to



1 comply with a renewable portfolio standard established  
2 under this Act.

3 (d) Alternative compliance payments.

4 (1) The Commission shall establish and post on its  
5 website, within 5 business days after entering an order  
6 approving a procurement plan pursuant to Section 1-75 of  
7 the Illinois Power Agency Act, maximum alternative  
8 compliance payment rates, expressed on a per kilowatt-hour  
9 basis, that will be applicable in the first compliance  
10 period following the plan approval. A separate maximum  
11 alternative compliance payment rate shall be established  
12 for the service territory of each electric utility that is  
13 subject to subsection (c) of Section 1-75 of the Illinois  
14 Power Agency Act. Each maximum alternative compliance  
15 payment rate shall be equal to the maximum allowable annual  
16 estimated average net increase due to the costs of the  
17 utility's purchase of renewable energy resources included  
18 in the amounts paid by eligible retail customers in  
19 connection with electric service, as described in item (2)  
20 of subsection (c) of Section 1-75 of the Illinois Power  
21 Agency Act for the compliance period, and as established in  
22 the approved procurement plan. Following each procurement  
23 event through which renewable energy resources are  
24 purchased for one or more of these utilities for the  
25 compliance period, the Commission shall establish and post  
26 on its website estimates of the alternative compliance

1 payment rates, expressed on a per kilowatt-hour basis, that  
2 shall apply for that compliance period. Posting of the  
3 estimates shall occur no later than 10 business days  
4 following the procurement event, however, the Commission  
5 shall not be required to establish and post such estimates  
6 more often than once per calendar month. By July 1 of each  
7 year, the Commission shall establish and post on its  
8 website the actual alternative compliance payment rates  
9 for the preceding compliance year. Each alternative  
10 compliance payment rate shall be equal to the total amount  
11 of dollars for which the utility contracted to spend on  
12 renewable resources for the compliance period divided by  
13 the forecasted load of eligible retail customers, at the  
14 customers' meters, as previously established in the  
15 Commission-approved procurement plan for that compliance  
16 year. The actual alternative compliance payment rates may  
17 not exceed the maximum alternative compliance payment  
18 rates established for the compliance period. For purposes  
19 of this subsection (d), the term "eligible retail  
20 customers" has the same meaning as found in Section  
21 16-111.5 of this Act.

22 (2) In any given compliance year, an alternative retail  
23 electric supplier may elect to use alternative compliance  
24 payments to comply with all or a part of the applicable  
25 renewable portfolio standard. In the event that an  
26 alternative retail electric supplier elects to make

1 alternative compliance payments to comply with all or a  
2 part of the applicable renewable portfolio standard, such  
3 payments shall be made by September 1, 2010 for the period  
4 of June 1, 2009 to May 1, 2010 and by September 1 of each  
5 year thereafter for the subsequent compliance period, in  
6 the manner and form as determined by the Commission. Any  
7 election by an alternative retail electric supplier to use  
8 alternative compliance payments is subject to review by the  
9 Commission under subsection (e) of this Section.

10 (3) An alternative retail electric supplier's  
11 alternative compliance payments shall be computed  
12 separately for each electric utility's service territory  
13 within which the alternative retail electric supplier  
14 provided retail service during the compliance period,  
15 provided that the electric utility was subject to  
16 subsection (c) of Section 1-75 of the Illinois Power Agency  
17 Act. For each service territory, the alternative retail  
18 electric supplier's alternative compliance payment shall  
19 be equal to (i) the actual alternative compliance payment  
20 rate established in item (1) of this subsection (d),  
21 multiplied by (ii) the actual amount of metered electricity  
22 delivered by the alternative retail electric supplier to  
23 retail customers within the service territory during the  
24 compliance period, multiplied by (iii) the result of one  
25 minus the ratios of the quantity of renewable energy  
26 resources used by the alternative retail electric supplier

1 to comply with the requirements of this Section within the  
2 service territory to the product of the percentage of  
3 renewable energy resources required under item (3) of  
4 subsection (a) of this Section and the actual amount of  
5 metered electricity delivered by the alternative retail  
6 electric supplier to retail customers within the service  
7 territory during the compliance period.

8 (4) All alternative compliance payments by alternative  
9 retail electric suppliers shall be deposited in the  
10 Illinois Power Agency Renewable Energy Resources Fund and  
11 used to purchase renewable energy credits, in accordance  
12 with Section 1-56 of the Illinois Power Agency Act.

13 (5) The Commission, in consultation with the Illinois  
14 Power Agency, shall establish a process or proceeding to  
15 consider the impact of a federal renewable portfolio  
16 standard, if enacted, on the operation of the alternative  
17 compliance mechanism, which shall include, but not be  
18 limited to, developing, to the extent permitted by the  
19 applicable federal statute, an appropriate methodology to  
20 apportion renewable energy credits retired as a result of  
21 alternative compliance payments made in accordance with  
22 this Section. The Commission shall commence any such  
23 process or proceeding within 35 days after enactment of a  
24 federal renewable portfolio standard.

25 (e) Each alternative retail electric supplier shall, by  
26 September 1, 2010 and by September 1 of each year thereafter,

1 prepare and submit to the Commission a report, in a format to  
2 be specified by the Commission on or before December 31, 2009,  
3 that provides information certifying compliance by the  
4 alternative retail electric supplier with this Section,  
5 including copies of all PJM-GATS and M-RETS reports, and  
6 documentation relating to banking, retiring renewable energy  
7 credits, and any other information that the Commission  
8 determines necessary to ensure compliance with this Section. An  
9 alternative retail electric supplier may file commercially or  
10 financially sensitive information or trade secrets with the  
11 Commission as provided under the rules of the Commission. To be  
12 filed confidentially, the information shall be accompanied by  
13 an affidavit that sets forth both the reasons for the  
14 confidentiality and a public synopsis of the information.

15 (f) The Commission may initiate a contested case to review  
16 allegations that the alternative retail electric supplier has  
17 violated this Section, including an order issued or rule  
18 promulgated under this Section. In any such proceeding, the  
19 alternative retail electric supplier shall have the burden of  
20 proof. If the Commission finds, after notice and hearing, that  
21 an alternative retail electric supplier has violated this  
22 Section, then the Commission shall issue an order requiring the  
23 alternative retail electric supplier to:

24 (1) immediately comply with this Section; and

25 (2) if the violation involves a failure to procure the  
26 requisite quantity of renewable energy resources or pay the

1 applicable alternative compliance payment by the annual  
2 deadline, the Commission shall require the alternative retail  
3 electric supplier to double the applicable alternative  
4 compliance payment that would otherwise be required to bring  
5 the alternative retail electric supplier into compliance with  
6 this Section.

7 If an alternative retail electric supplier fails to comply  
8 with the renewable energy resource portfolio requirement in  
9 this Section more than once in a 5-year period, then the  
10 Commission shall revoke the alternative electric supplier's  
11 certificate of service authority. The Commission shall not  
12 accept an application for a certificate of service authority  
13 from an alternative retail electric supplier that has lost  
14 certification under this subsection (f), or any corporate  
15 affiliate thereof, for at least one year after the date of  
16 revocation.

17 (g) All of the provisions of this Section apply to electric  
18 utilities operating outside their service area except under  
19 item (2) of subsection (a) of this Section the quantity of  
20 renewable energy resources shall be measured as a percentage of  
21 the actual amount of electricity (megawatt-hours) supplied in  
22 the State outside of the utility's service territory during the  
23 12-month period June 1 through May 31, commencing June 1, 2009,  
24 and the comparable 12-month period in each year thereafter  
25 except as provided in item (6) of subsection (a) of this  
26 Section.

1       If any such utility fails to procure the requisite quantity  
2 of renewable energy resources by the annual deadline, then the  
3 Commission shall require the utility to double the alternative  
4 compliance payment that would otherwise be required to bring  
5 the utility into compliance with this Section.

6       If any such utility fails to comply with the renewable  
7 energy resource portfolio requirement in this Section more than  
8 once in a 5-year period, then the Commission shall order the  
9 utility to cease all sales outside of the utility's service  
10 territory for a period of at least one year.

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

18       Section 99. Effective date. This Act takes effect upon  
19 becoming law.