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LRB096 14944 ASK 44172 a

1 AMENDMENT TO SENATE BILL 2485

2 AMENDMENT NO. _____. Amend Senate Bill 2485 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Power Agency Act is amended by
5 changing Sections 1-10, 1-20, and 1-75 and by adding Sections
6 1-76, 1-76.5, 1-77, 1-78, and 1-79 as follows:

7 (20 ILCS 3855/1-10)

8 Sec. 1-10. Definitions.

9 "Agency" means the Illinois Power Agency.

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

1 project.

2 "Authority" means the Illinois Finance Authority.

3 "Clean coal energy" means all energy produced by the
4 initial clean coal facility.

5 "Clean coal facility" means an electric generating
6 facility that uses primarily coal as a feedstock and that
7 captures and sequesters carbon emissions at the following
8 levels: at least 50% of the total carbon dioxide emissions that
9 the facility would otherwise emit if, at the time construction
10 commences, the facility is scheduled to commence operation
11 before 2016, at least 70% of the total carbon dioxide emissions
12 that the facility would otherwise emit if, at the time
13 construction commences, the facility is scheduled to commence
14 operation during 2016 or 2017, and at least 90% of the total
15 carbon dioxide emissions that the facility would otherwise emit
16 if, at the time construction commences, the facility is
17 scheduled to commence operation after 2017. The power block of
18 the clean coal facility shall not exceed allowable emission
19 rates for sulfur dioxide, nitrogen oxides, carbon monoxide,
20 particulates and mercury for a natural gas-fired
21 combined-cycle facility the same size as and in the same
22 location as the clean coal facility at the time the clean coal
23 facility obtains an approved air permit. All coal used by a
24 clean coal facility shall have high volatile bituminous rank
25 and greater than 1.7 pounds of sulfur per million btu content,
26 unless the clean coal facility does not use gasification

1 technology and was operating as a conventional coal-fired
2 electric generating facility on June 1, 2009 (the effective
3 date of Public Act 95-1027).

4 "Clean coal SNG facility" means a facility that uses a
5 gasification process to produce substitute natural gas, that
6 sequesters at least 90% of the total carbon dioxide emissions
7 that the facility would otherwise emit and that uses petroleum
8 coke or coal as a feedstock, with all such coal having a high
9 bituminous rank and greater than 1.7 pounds of sulfur per
10 million btu content.

11 "Commission" means the Illinois Commerce Commission.

12 "Costs incurred in connection with the development and
13 construction of a facility" means:

14 (1) the cost of acquisition of all real property and
15 improvements in connection therewith and equipment and
16 other property, rights, and easements acquired that are
17 deemed necessary for the operation and maintenance of the
18 facility;

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

21 (3) all origination, commitment, utilization,
22 facility, placement, underwriting, syndication, credit
23 enhancement, and rating agency fees;

24 (4) engineering, design, procurement, consulting,
25 legal, accounting, title insurance, survey, appraisal,
26 escrow, trustee, collateral agency, interest rate hedging,

1 interest rate swap, capitalized interest and other
2 financing costs, and other expenses for professional
3 services; and

4 (5) the costs of plans, specifications, site study and
5 investigation, installation, surveys, other Agency costs
6 and estimates of costs, and other expenses necessary or
7 incidental to determining the feasibility of any project,
8 together with such other expenses as may be necessary or
9 incidental to the financing, insuring, acquisition, and
10 construction of a specific project and placing that project
11 in operation.

12 "Department" means the Department of Commerce and Economic
13 Opportunity.

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

15 "Demand-response" means measures that decrease peak
16 electricity demand or shift demand from peak to off-peak
17 periods.

18 "Energy efficiency" means measures that reduce the amount
19 of electricity or natural gas required to achieve a given end
20 use.

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

23 "Facility" means an electric generating unit or a
24 co-generating unit that produces electricity along with
25 related equipment necessary to connect the facility to an
26 electric transmission or distribution system.

1 "Governmental aggregator" means one or more units of local
2 government that individually or collectively procure
3 electricity to serve residential retail electrical loads
4 located within its or their jurisdiction.

5 "Initial clean coal facility" means an electric generating
6 facility using gasification technology that: (1) has a
7 nameplate capacity of at least 500 MW; (2) irrevocably commits
8 in its proposed sourcing agreement to use coal for at least 50%
9 of the total feedstock over the term of a sourcing agreement,
10 with all coal having high volatile bituminous rank and greater
11 than 1.7 pounds of sulfur per million btu content; (3) is
12 designed to capture and sequester at least 90% of the carbon
13 dioxide emissions that the portion of the facility that
14 produces SNG would otherwise emit and at least 50% of the total
15 carbon dioxide emissions that the facility as a whole would
16 otherwise emit; (4) absent an appeal of a permit or regulatory
17 order, is reasonably capable of achieving commercial operation
18 by no later than 5 years after the execution of the sourcing
19 agreement; (5) has a feasible financing plan that is expected
20 to enable such clean coal facility to borrow an amount equal to
21 at least 55% of its capital structure at an interest rate of
22 less than 6% per annum; (6) has completed system impact studies
23 for the delivery of power in the applicable amounts to
24 Commonwealth Edison Company and Ameren Illinois; and (7) has a
25 power block designed not to exceed allowable emission rates for
26 sulfur dioxide, nitrogen oxides, carbon monoxide,

1 particulates, and mercury for a natural gas-fired
2 combined-cycle facility the same size as and in the same
3 location as the electric generating facility at the time the
4 electric generating facility obtains an approved air permit.

5 "Local government" means a unit of local government as
6 defined in Article VII of Section 1 of the Illinois
7 Constitution.

8 "Municipality" means a city, village, or incorporated
9 town.

10 "Person" means any natural person, firm, partnership,
11 corporation, either domestic or foreign, company, association,
12 limited liability company, joint stock company, or association
13 and includes any trustee, receiver, assignee, or personal
14 representative thereof.

15 "Project" means the planning, bidding, and construction of
16 a facility.

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

19 "Real property" means any interest in land together with
20 all structures, fixtures, and improvements thereon, including
21 lands under water and riparian rights, any easements,
22 covenants, licenses, leases, rights-of-way, uses, and other
23 interests, together with any liens, judgments, mortgages, or
24 other claims or security interests related to real property.

25 "Renewable energy credit" means a tradable credit that
26 represents the environmental attributes of a certain amount of

1 energy produced from a renewable energy resource.

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

17 "Revenue bond" means any bond, note, or other evidence of
18 indebtedness issued by the Authority, the principal and
19 interest of which is payable solely from revenues or income
20 derived from any project or activity of the Agency.

21 "Sequester" means permanent storage of carbon dioxide only
22 as approved by the Commission pursuant to Section 1-77 of this
23 Act by injecting it into a saline aquifer, a depleted gas
24 reservoir, or an oil reservoir, directly or through an enhanced
25 oil recovery process that may involve intermediate storage in a
26 salt dome, regardless of whether these activities are conducted

1 by a clean coal facility, initial clean coal facility, clean
2 coal SNG facility, or a party with which a clean coal facility,
3 initial clean coal facility, or clean coal SNG facility has
4 contracted for such purposes.

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

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

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

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

14 (Source: P.A. 95-481, eff. 8-28-07; 95-913, eff. 1-1-09;
15 95-1027, eff. 6-1-09; 96-33, eff. 7-10-09; 96-159, eff.
16 8-10-09; 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10.)

17 (20 ILCS 3855/1-20)

18 Sec. 1-20. General powers of the Agency.

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

20 (1) Develop electricity procurement plans to ensure
21 adequate, reliable, affordable, efficient, and
22 environmentally sustainable electric service at the lowest
23 total cost over time, taking into account any benefits of
24 price stability, for electric utilities that on December
25 31, 2005 provided electric service to at least 100,000

1 customers in Illinois. The procurement plans shall be
2 updated on an annual basis and shall include electricity
3 generated from renewable resources sufficient to achieve
4 the standards specified in this Act.

5 (2) Conduct competitive procurement processes to
6 procure the supply resources identified in the procurement
7 plan, pursuant to Section 16-111.5 of the Public Utilities
8 Act.

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

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

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

21 (1) To have a corporate seal, and to alter that seal at
22 pleasure, and to use it by causing it or a facsimile to be
23 affixed or impressed or reproduced in any other manner.

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

26 (3) To negotiate and enter into loan agreements and

1 other agreements with the Illinois Finance Authority.

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

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

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

19 (7) To sell, convey, lease, exchange, transfer,
20 abandon, or otherwise dispose of, or mortgage, pledge, or
21 create a security interest in, any of its assets,
22 properties, or any interest therein, wherever situated.

23 (8) To purchase, take, receive, subscribe for, or
24 otherwise acquire, hold, make a tender offer for, vote,
25 employ, sell, lend, lease, exchange, transfer, or
26 otherwise dispose of, mortgage, pledge, or grant a security

1 interest in, use, and otherwise deal in and with, bonds and
2 other obligations, shares, or other securities (or
3 interests therein) issued by others, whether engaged in a
4 similar or different business or activity.

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

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

19 (11) To borrow money at such rate or rates of interest
20 as the Agency may determine, issue its notes, bonds, or
21 other obligations to evidence that indebtedness, and
22 secure any of its obligations by mortgage or pledge of its
23 real or personal property, machinery, equipment,
24 structures, fixtures, inventories, revenues, grants, and
25 other funds as provided or any interest therein, wherever
26 situated.

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

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

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

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

19 (16) To enter into management agreements for the
20 operation of any of the property or facilities owned by the
21 Agency.

22 (17) To enter into an agreement to transfer and to
23 transfer any land, facilities, fixtures, or equipment of
24 the Agency to one or more municipal electric systems,
25 governmental aggregators, or rural electric agencies or
26 cooperatives, for such consideration and upon such terms as

1 the Agency may determine to be in the best interest of the
2 citizens of Illinois.

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

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

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

13 (21) To accept and expend appropriations.

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

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

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

25 (25) To conduct competitive gasification feedstock
26 procurement processes to procure the feedstocks for the

1 initial clean coal facility in accordance with the
2 requirements of Section 1-78 of this Act. ~~To manage~~
3 ~~procurement of substitute natural gas from a facility that~~
4 ~~meets the criteria specified in subsection (a) of Section~~
5 ~~1-58 of this Act, on terms and conditions that may be~~
6 ~~approved by the Agency pursuant to subsection (d) of~~
7 ~~Section 1-58 of this Act, to support the operations of~~
8 ~~State agencies and local governments that agree to such~~
9 ~~terms and conditions. This procurement process is not~~
10 ~~subject to the Procurement Code.~~

11 (26) To review, revise, and approve sourcing
12 agreements and mediate and resolve disputes between
13 electric utilities or alternative retail electric
14 suppliers and the initial clean coal facility pursuant to
15 paragraph (4) of subsection (d) of Section 1-75 of this
16 Act.

17 (Source: P.A. 95-481, eff. 8-28-07; 96-784, eff. 8-28-09;
18 96-1000, eff. 7-2-10.)

19 (20 ILCS 3855/1-75)

20 Sec. 1-75. Planning and Procurement Bureau. The Planning
21 and Procurement Bureau has the following duties and
22 responsibilities:

23 (a) The Planning and Procurement Bureau shall each
24 year, beginning in 2008, develop procurement plans and
25 conduct competitive procurement processes in accordance

1 with the requirements of Section 16-111.5 of the Public
2 Utilities Act for the eligible retail customers of electric
3 utilities that on December 31, 2005 provided electric
4 service to at least 100,000 customers in Illinois. For the
5 purposes of this Section, the term "eligible retail
6 customers" has the same definition as found in Section
7 16-111.5(a) of the Public Utilities Act.

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

14 (A) direct previous experience assembling
15 large-scale power supply plans or portfolios for
16 end-use customers;

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

20 (C) ten ~~10~~ years of experience in the
21 electricity sector, including managing supply
22 risk;

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

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

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

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

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

14 (A) direct previous experience administering a
15 large-scale competitive procurement process;

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

19 (C) ten ~~10~~ years of experience in the
20 electricity sector, including risk management
21 experience;

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

26 (E) expertise in credit and contract

1 protocols;

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

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

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

24 (A) failure to satisfy qualification criteria;

25 (B) identification of a conflict of interest;

26 or

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

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

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

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

24 (6) The Agency shall select an expert or expert
25 consulting firm, with approval of the Commission, to
26 serve as procurement administrator based on the

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

8 (a-1) The Planning and Procurement Bureau shall each
9 year beginning in 2012 develop feedstock procurement plans
10 and conduct competitive feedstock procurement processes in
11 accordance with the requirements of Section 1-78 of this
12 Act.

13 (1) The Agency shall, at least once every 5 years
14 beginning in 2012, issue a request for qualifications
15 for experts or expert consulting firms to develop the
16 feedstock procurement plans in accordance with Section
17 1-78 of this Act. In order to qualify, an expert or, in
18 the case of an expert consulting firm, the individual
19 who shall be directly responsible for the work, must
20 have:

21 (A) direct previous experience assembling
22 large scale feedstock supply plans or portfolios
23 involving coal and natural gas for industrial
24 customers;

25 (B) an advanced degree in economics,
26 mathematics, engineering, risk management, or a

1 related area of study;

2 (C) ten years of experience in the energy
3 sector, including coal and gas procurement and
4 managing fuel supply risk;

5 (D) expertise in the feedstock markets, which
6 may be particularized to the specific type of
7 feedstock to be purchased in that procurement
8 event;

9 (E) expertise in credit protocols and
10 familiarity with contract protocols;

11 (F) adequate resources to perform and fulfill
12 the required functions and responsibilities; and

13 (G) the absence of a conflict of interest and
14 inappropriate bias for or against potential
15 bidders or the initial clean coal facility.

16 (2) The Agency shall each year beginning in 2012,
17 as needed, issue a request for qualifications for a
18 feedstock procurement administrator to conduct the
19 competitive feedstock procurement processes in
20 accordance with Section 1-78 of this Act. In order to
21 qualify, an expert or, in the case of an expert
22 consulting firm, the individual who shall be directly
23 responsible for the work, must have:

24 (A) direct previous experience administering a
25 large scale competitive feedstock procurement
26 process involving coal and natural gas;

1 (B) an advanced degree in economics,
2 mathematics, engineering, or a related area of
3 study;

4 (C) ten years of experience in the energy
5 sector, including coal and gas procurement and
6 managing fuel supply risk;

7 (D) expertise in feedstock market rules and
8 practices, which may be particularized to the
9 specific type of feedstock to be purchased in that
10 procurement event;

11 (E) expertise in credit and contract
12 protocols;

13 (F) adequate resources to perform and fulfill
14 the required functions and responsibilities; and

15 (G) the absence of a conflict of interest and
16 inappropriate bias for or against potential
17 bidders or the initial clean coal facility.

18 (3) The Agency shall provide the initial clean coal
19 facility and other interested parties with the lists of
20 qualified experts or expert consulting firms
21 identified through the request for qualifications
22 processes that are under consideration to develop the
23 feedstock procurement plans and to serve as the
24 feedstock procurement administrator. The Agency shall
25 also provide the initial clean coal facility and other
26 interested parties with each qualified expert's or

1 expert consulting firm's response to the request for
2 qualifications. All information provided under this
3 subparagraph (3) shall also be provided to the
4 Commission. The Agency may provide by rule for fees
5 associated with supplying the information to the
6 initial clean coal facility and other interested
7 parties. The initial clean coal facility and other
8 interested parties shall, within 5 business days after
9 receiving the lists and information, notify the Agency
10 in writing if they object to any experts or expert
11 consulting firms on the lists. Objections shall be
12 based on:

13 (A) failure to satisfy qualification criteria;

14 (B) identification of a conflict of interest;

15 or

16 (C) evidence of inappropriate bias for or
17 against potential bidders or the initial clean
18 coal facility.

19 The Agency shall remove experts or expert
20 consulting firms from the lists within 10 days after
21 receiving the objections if there is a reasonable basis
22 for an objection and provide the updated lists to the
23 initial clean coal facility and other interested
24 parties. If the Agency fails to remove an expert or
25 expert consulting firm from a list, then an objecting
26 party may seek review by the Commission within 5 days

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

4 (4) The Agency shall issue requests for proposals
5 to the qualified experts or expert consulting firms to
6 develop a feedstock procurement plan for the initial
7 clean coal facility and to serve as feedstock
8 procurement administrator.

9 (5) The Agency shall select an expert or expert
10 consulting firm to develop feedstock procurement plans
11 based on the proposals submitted and shall award at
12 least one-year contracts to those selected with an
13 option for the Agency for renewal for an additional
14 length of time equal to the term of the contract.

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

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

12 (b-1) The experts or expert consulting firms retained
13 by the Agency pursuant to subsection (a-1) shall, as
14 appropriate, prepare feedstock procurement plans, and
15 conduct a competitive feedstock procurement process as
16 prescribed in Section 1-78 of this Act to ensure adequate,
17 reliable, affordable feedstocks, taking into account any
18 benefits of price stability, for the initial clean coal
19 facility.

20 (c) Renewable portfolio standard.

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

1 generated from cost-effective renewable energy
2 resources: at least 2% by June 1, 2008; at least 4% by
3 June 1, 2009; at least 5% by June 1, 2010; at least 6%
4 by June 1, 2011; at least 7% by June 1, 2012; at least
5 8% by June 1, 2013; at least 9% by June 1, 2014; at
6 least 10% by June 1, 2015; and increasing by at least
7 1.5% each year thereafter to at least 25% by June 1,
8 2025. To the extent that it is available, at least 75%
9 of the renewable energy resources used to meet these
10 standards shall come from wind generation and,
11 beginning on June 1, 2011, at least the following
12 percentages of the renewable energy resources used to
13 meet these standards shall come from photovoltaics on
14 the following schedule: 0.5% by June 1, 2012, 1.5% by
15 June 1, 2013; 3% by June 1, 2014; and 6% by June 1,
16 2015 and thereafter. For purposes of this subsection
17 (c), "cost-effective" means that the costs of
18 procuring renewable energy resources do not cause the
19 limit stated in paragraph (2) of this subsection (c) to
20 be exceeded and do not exceed benchmarks based on
21 market prices for renewable energy resources in the
22 region, which shall be developed by the procurement
23 administrator, in consultation with the Commission
24 staff, Agency staff, and the procurement monitor and
25 shall be subject to Commission review and approval.

26 (2) For purposes of this subsection (c), the

1 required procurement of cost-effective renewable
2 energy resources for a particular year shall be
3 measured as a percentage of the actual amount of
4 electricity (megawatt-hours) supplied by the electric
5 utility to eligible retail customers in the planning
6 year ending immediately prior to the procurement. For
7 purposes of this subsection (c), the amount paid per
8 kilowatthour means the total amount paid for electric
9 service expressed on a per kilowatthour basis. For
10 purposes of this subsection (c), the total amount paid
11 for electric service includes without limitation
12 amounts paid for supply, transmission, distribution,
13 surcharges, and add-on taxes.

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

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

25 (B) in 2009, the greater of an additional 0.5%
26 of the amount paid per kilowatthour by those

1 customers during the year ending May 31, 2008 or 1%
2 of the amount paid per kilowatthour by those
3 customers during the year ending May 31, 2007;

4 (C) in 2010, the greater of an additional 0.5%
5 of the amount paid per kilowatthour by those
6 customers during the year ending May 31, 2009 or
7 1.5% of the amount paid per kilowatthour by those
8 customers during the year ending May 31, 2007;

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

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

26 No later than June 30, 2011, the Commission shall

1 review the limitation on the amount of renewable energy
2 resources procured pursuant to this subsection (c) and
3 report to the General Assembly its findings as to
4 whether that limitation unduly constrains the
5 procurement of cost-effective renewable energy
6 resources.

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

1 elsewhere and shall be counted towards compliance.

2 (4) The electric utility shall retire all
3 renewable energy credits used to comply with the
4 standard.

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

1 procured by the electric utility for the next plan year
2 by an amount equal to the amounts collected by the
3 utility under the alternative compliance payment rate
4 or rates in the prior year ending May 31.

5 (d) Clean coal portfolio standard.

6 (1) The procurement plans shall include cost-effective
7 electricity generated using clean coal. Each electric
8 utility shall enter into one or more sourcing agreements
9 with the initial clean coal facility, as provided in
10 paragraph (3) of this subsection (d), covering electricity
11 generated by the initial clean coal facility representing
12 (A) at least 5% of ~~that each~~ utility's ~~total supply to~~
13 ~~serve the~~ load of eligible retail electric customers in the
14 immediately preceding year 2015 and each year thereafter,
15 as described in paragraph (3) of this subsection (d), or
16 (B) such lesser amount as may be available from the initial
17 clean coal facility, reduced by ~~subject to~~ the limits on
18 the amount of power to be purchased specified in paragraph
19 (2) of this subsection (d). It is the goal of the State
20 that by January 1, 2025, 25% of the electricity used in the
21 State shall be generated by cost-effective clean coal
22 facilities. Unless otherwise noted, for ~~For~~ purposes of
23 this subsection (d), "cost-effective" means that the
24 expenditures pursuant to such sourcing agreements do not
25 cause the limit stated in paragraph (2) of this subsection
26 (d) to be exceeded and do not exceed cost-based benchmarks,

1 which shall be developed to assess all expenditures
2 pursuant to such sourcing agreements covering electricity
3 generated by clean coal facilities, other than the initial
4 clean coal facility, by the procurement administrator, in
5 consultation with the Commission staff, Agency staff, and
6 the procurement monitor and shall be subject to Commission
7 review and approval.

8 (A) A utility party to a sourcing agreement shall
9 immediately retire any emission credits that it
10 receives in connection with the electricity covered by
11 such agreement.

12 (B) Utilities shall maintain adequate records
13 documenting the purchases under the sourcing agreement
14 to comply with this subsection (d) and shall file an
15 accounting with the load forecast that must be filed
16 with the Agency by July 15 of each year, in accordance
17 with subsection (d) of Section 16-111.5 of the Public
18 Utilities Act.

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

23 (2) For purposes of this subsection (d), the ~~required~~
24 ~~execution of~~ sourcing agreements with the initial clean
25 coal facility for a particular year shall be measured as a
26 percentage of the actual amount of electricity

1 (megawatt-hours) supplied by the electric utility to
2 eligible retail electric customers in the immediately
3 preceding year ~~planning year ending immediately prior to~~
4 ~~the agreement's execution~~. For purposes of this subsection
5 (d), the amount paid per kilowatthour means the total
6 amount paid for electric service expressed on a per
7 kilowatthour basis. For purposes of this subsection (d),
8 the total amount paid for electric service includes without
9 limitation amounts paid for supply, transmission,
10 distribution, surcharges and add-on taxes.

11 Notwithstanding the requirements of this subsection
12 (d), the total amount purchased ~~paid~~ under sourcing
13 agreements with the initial clean coal facility ~~clean coal~~
14 ~~facilities~~ pursuant to the procurement plan for any given
15 year shall be reduced by an amount necessary to limit the
16 annual estimated average net increase due to the costs of
17 these resources included in the amounts paid by eligible
18 retail customers in connection with electric service to:

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

22 (B) in 2011, the greater of an additional 0.5%
23 of the amount paid per kilowatthour by those
24 customers during the year ending May 31, 2010 or 1%
25 of the amount paid per kilowatthour by those
26 customers during the year ending May 31, 2009;

1 (C) in 2012, the greater of an additional 0.5%
2 of the amount paid per kilowatthour by those
3 customers during the year ending May 31, 2011 or
4 1.5% of the amount paid per kilowatthour by those
5 customers during the year ending May 31, 2009;

6 (D) in 2013, the greater of an additional 0.5%
7 of the amount paid per kilowatthour by those
8 customers during the year ending May 31, 2012 or 2%
9 of the amount paid per kilowatthour by those
10 customers during the year ending May 31, 2009; and

11 (E) thereafter, the total amount purchased
12 ~~paid~~ under sourcing agreements with the initial
13 clean coal facility ~~facilities~~ pursuant to the
14 procurement plan for any single year shall be
15 reduced by an amount necessary to limit the
16 estimated average net increase due to the cost of
17 these resources included in the amounts paid by
18 eligible retail customers in connection with
19 electric service to no more than the greater of (i)
20 2.015% of the amount paid per kilowatthour by those
21 customers during the year ending May 31, 2009 or
22 (ii) the incremental amount per kilowatthour paid
23 for these resources in 2013. These requirements
24 may be altered only as provided by statute. No
25 later than June 30, 2016 ~~2015~~, the Commission shall
26 review the limitation on the total amount

1 purchased ~~paid~~ under sourcing agreements, if any,
2 with initial clean coal facilities pursuant to
3 this subsection (d) and report to the General
4 Assembly its findings as to the effect of the
5 ~~whether that~~ limitation on the initial clean coal
6 facility, electric utilities, alternative retail
7 electric suppliers, and customers of the electric
8 utilities and the alternative retail electric
9 suppliers ~~unduly constrains the amount of~~
10 ~~electricity generated by cost-effective clean coal~~
11 ~~facilities that is covered by sourcing agreements.~~

12 (3) Initial clean coal facility. In order to promote
13 development of clean coal facilities in Illinois, each
14 electric utility subject to this Section shall execute a
15 sourcing agreement to source electricity from the initial
16 clean coal facility. The Agency shall accept applications
17 to be designated the initial clean coal facility, which
18 shall include a proposed sourcing agreement in accordance
19 with the requirements of this Section and information
20 showing that the applicant meets the other criteria set out
21 in the definition of initial clean coal facility provided
22 in Section 1-10 of this Act, for a period of 30 days after
23 the effective date of this amendatory Act of the 96th
24 General Assembly. In the event that more than one proposed
25 initial clean coal facility that meet each of the
26 requirements shall submit a proposed sourcing agreement to

1 the Agency within that time period, the Agency shall select
2 as the initial clean coal facility the electric generating
3 facility that is likely to have the lowest cost of debt
4 comprising 55% of its capital structure. The Agency shall
5 announce the designation of the initial clean coal facility
6 within 45 days after the effective date of this amendatory
7 Act of the 96th General Assembly ~~a proposed clean coal~~
8 ~~facility in Illinois (the "initial clean coal facility")~~
9 ~~that will have a nameplate capacity of at least 500 MW when~~
10 ~~commercial operation commences, that has a final Clean Air~~
11 ~~Act permit on the effective date of this amendatory Act of~~
12 ~~the 95th General Assembly, and that will meet the~~
13 ~~definition of clean coal facility in Section 1-10 of this~~
14 ~~Act when commercial operation commences. The sourcing~~
15 ~~agreements with this initial clean coal facility shall be~~
16 ~~subject to both approval of the initial clean coal facility~~
17 ~~by the General Assembly and satisfaction of the~~
18 ~~requirements of paragraph (4) of this subsection (d) and~~
19 ~~shall be executed within 90 days after any such approval by~~
20 ~~the General Assembly.~~ The Agency and the Commission shall
21 have authority to inspect all books and records associated
22 with the initial clean coal facility during the term of
23 such a sourcing agreement. A utility's sourcing agreement
24 for electricity produced by the initial clean coal facility
25 shall include:

26 (A) The price paid for electricity generated by the

1 initial clean coal facility, which shall be determined
2 by the provisions set forth in Section 1-76 of this
3 Act; a formula contractual price (the "contract
4 price") approved pursuant to paragraph (4) of this
5 subsection (d), which shall:

6 ~~(i) be determined using a cost of service~~
7 ~~methodology employing either a level or deferred~~
8 ~~capital recovery component, based on a capital~~
9 ~~structure consisting of 45% equity and 55% debt,~~
10 ~~and a return on equity as may be approved by the~~
11 ~~Federal Energy Regulatory Commission, which in any~~
12 ~~case may not exceed the lower of 11.5% or the rate~~
13 ~~of return approved by the General Assembly~~
14 ~~pursuant to paragraph (4) of this subsection (d);~~
15 ~~and~~

16 ~~(ii) provide that all miscellaneous net~~
17 ~~revenue, including but not limited to net revenue~~
18 ~~from the sale of emission allowances, if any,~~
19 ~~substitute natural gas, if any, grants or other~~
20 ~~support provided by the State of Illinois or the~~
21 ~~United States Government, firm transmission~~
22 ~~rights, if any, by products produced by the~~
23 ~~facility, energy or capacity derived from the~~
24 ~~facility and not covered by a sourcing agreement~~
25 ~~pursuant to paragraph (3) of this subsection (d) or~~
26 ~~item (5) of subsection (d) of Section 16-115 of the~~

1 ~~Public Utilities Act, whether generated from the~~
2 ~~synthesis gas derived from coal, from SNG, or from~~
3 ~~natural gas, shall be credited against the revenue~~
4 ~~requirement for this initial clean coal facility;~~

5 (B) power purchase provisions, which shall:

6 (i) provide that the utility party to such
7 sourcing agreement shall pay the contract price
8 for electricity delivered under such sourcing
9 agreement determined pursuant to subparagraph (A);

10 (ii) require delivery of electricity by the
11 initial clean coal facility to the regional
12 transmission organization market of the utility
13 that is party to such sourcing agreement;

14 (iii) require the utility party to such
15 sourcing agreement to buy from the initial clean
16 coal facility in each hour an amount of energy
17 equal to all clean coal energy made available from
18 the initial clean coal facility during such hour
19 times a fraction, the numerator of which is such
20 utility's retail market sales of electricity
21 (expressed in kilowatthours sold) in the utility's
22 service area in the State during the third month
23 preceding the current ~~prior calendar~~ month and the
24 denominator of which is the total retail market
25 sales of electricity (expressed in kilowatthours
26 sold) in the State by utilities during such third

1 month preceding the current ~~prior~~ month and the
2 sales of electricity (expressed in kilowatthours
3 sold) in the State by alternative retail electric
4 suppliers during the third month preceding the
5 current ~~such prior~~ month that are subject to the
6 requirements of this subsection (d) and paragraph
7 (5) of subsection (d) of Section 16-115 of the
8 Public Utilities Act, provided that the amount
9 purchased by the utility in any year will be
10 limited by paragraph (2) of this subsection (d);
11 and

12 (iv) be considered pre-existing contracts in
13 such utility's procurement plans for eligible
14 retail customers;

15 (C) contract for differences provisions, which
16 shall:

17 (i) require the utility party to such sourcing
18 agreement to contract with the initial clean coal
19 facility in each hour with respect to an amount of
20 energy equal to all clean coal energy made
21 available from the initial clean coal facility
22 during such hour times a fraction, the numerator of
23 which is such utility's retail market sales of
24 electricity (expressed in kilowatthours sold) in
25 the utility's service area ~~territory~~ in the State
26 during the third month preceding the current ~~prior~~

1 ~~calendar~~ month and the denominator of which is the
2 total retail market sales of electricity
3 (expressed in kilowatthours sold) in the State by
4 utilities during the third month preceding the
5 current ~~such~~ ~~prior~~ month and the sales of
6 electricity (expressed in kilowatthours sold) in
7 the State by alternative retail electric suppliers
8 during such third month preceding the current
9 ~~prior~~ month that are subject to the requirements of
10 this subsection (d) and paragraph (5) of
11 subsection (d) of Section 16-115 of the Public
12 Utilities Act, provided that the amount purchased
13 ~~paid~~ by the utility in any year will be limited by
14 paragraph (2) of this subsection (d);

15 (ii) provide that the utility's payment
16 obligation in respect of the quantity of
17 electricity determined pursuant to the preceding
18 clause (i) shall be limited to an amount equal to
19 (1) the difference between the contract price
20 determined pursuant to subparagraph (A) of
21 paragraph (3) of this subsection (d) and the
22 day-ahead price for electricity delivered to the
23 regional transmission organization market of the
24 electric utility that is party to such sourcing
25 agreement (or any successor delivery point at
26 which such utility's supply obligations are

1 financially settled on an hourly basis) (the
2 "reference price") on the day preceding the day on
3 which the electricity is delivered to the initial
4 clean coal facility busbar, multiplied by (2) the
5 quantity of electricity determined pursuant to the
6 preceding clause (i); and

7 (iii) not require the utility to take physical
8 delivery of the electricity produced by the
9 facility;

10 (D) general provisions, which shall:

11 (i) specify a term of no more than 30 years,
12 commencing on the commercial operation date of the
13 facility;

14 (ii) provide that electric utilities shall
15 maintain adequate records documenting purchases
16 under the sourcing agreements entered into to
17 comply with this subsection (d) and shall file an
18 accounting with the load forecast that must be
19 filed with the Agency by July 15 of each year, in
20 accordance with subsection (d) of Section 16-111.5
21 of the Public Utilities Act.

22 (iii) provide that all costs associated with
23 the initial clean coal facility will be
24 periodically reported to the Federal Energy
25 Regulatory Commission and to purchasers in
26 accordance with applicable laws governing

1 cost-based wholesale power contracts;

2 (iv) permit the Illinois Power Agency, if it is
3 so authorized by law, to assume ownership of the
4 initial clean coal facility, without monetary
5 consideration and otherwise on reasonable terms
6 acceptable to the Agency, if the Agency so requests
7 no less than 3 years prior to the end of the stated
8 contract term;

9 (v) require the owner of the initial clean coal
10 facility to comply with Section 1-76.5 of this Act;
11 ~~provide documentation to the Commission each year~~
12 ~~, starting in the facility's first year of~~
13 ~~commercial operation, accurately reporting the~~
14 ~~quantity of carbon emissions from the facility~~
15 ~~that have been captured and sequestered and report~~
16 ~~any quantities of carbon released from the site or~~
17 ~~sites at which carbon emissions were sequestered~~
18 ~~in prior years, based on continuous monitoring of~~
19 ~~such sites. If, in any year after the first year of~~
20 ~~commercial operation, the owner of the facility~~
21 ~~fails to demonstrate that the initial clean coal~~
22 ~~facility captured and sequestered at least 50% of~~
23 ~~the total carbon emissions that the facility would~~
24 ~~otherwise emit or that sequestration of emissions~~
25 ~~from prior years has failed, resulting in the~~
26 ~~release of carbon dioxide into the atmosphere, the~~

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

1 ~~initial clean coal facility, with the advance~~
2 ~~written approval of the Attorney General. The~~
3 ~~Commission may, in the course of the review~~
4 ~~specified in item (vii), reduce the allowable~~
5 ~~return on equity for the facility if the facility~~
6 ~~wilfully fails to comply with the carbon capture~~
7 ~~and sequestration requirements set forth in this~~
8 ~~item (v).~~

9 (vi) ~~include limits on, and accordingly~~
10 provide for a reduction ~~modification of,~~ the
11 amount the utility is required to source under the
12 sourcing agreement consistent with paragraph (2)
13 of this subsection (d);

14 ~~(vii) require Commission review: (1) to~~
15 ~~determine the justness, reasonableness, and~~
16 ~~prudence of the inputs to the formula referenced in~~
17 ~~subparagraphs (A) (i) through (A) (iii) of paragraph~~
18 ~~(3) of this subsection (d), prior to an adjustment~~
19 ~~in those inputs including, without limitation, the~~
20 ~~capital structure and return on equity, fuel~~
21 ~~costs, and other operations and maintenance costs~~
22 ~~and (2) to approve the costs to be passed through~~
23 ~~to customers under the sourcing agreement by which~~
24 ~~the utility satisfies its statutory obligations.~~
25 ~~Commission review shall occur no less than every 3~~
26 ~~years, regardless of whether any adjustments have~~

1 ~~been proposed, and shall be completed within 9~~
2 ~~months;~~

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

10 (viii) ~~(ix)~~ limit the utility's or alternative
11 retail electric supplier's obligation to incur any
12 liability to only those times ~~until such time as~~
13 the facility is in commercial operation and
14 generating power and energy and such power and
15 energy is being delivered to the facility busbar;

16 (ix) ~~(x)~~ provide that each electric utility
17 ~~the owner or owners of the initial clean coal~~
18 ~~facility, which is the counterparty to such~~
19 ~~sourcing agreement,~~ shall have the right to
20 determine ~~from time to time to elect~~ whether the
21 obligations of the utility party under the
22 sourcing agreement ~~thereto~~ shall be governed by
23 the power purchase provisions or the contract for
24 differences provisions before entering into the
25 sourcing agreements;

26 (x) ~~(xi)~~ append documentation showing that the

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

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

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

16 (xiii) provide for performance incentives
17 regarding availability, efficiency and by-product
18 quantities, with premium performance and
19 shortfalls in performance to result in positive
20 and negative adjustments, respectively, to the
21 rate of return approved by the Commission,
22 provided that such rate of return in any year shall
23 not be decreased by more than \$25,000,000 or
24 increased by more than \$12,500,000 as a result of
25 such performance incentives. The rate of return
26 shall only be increased as a result of such

1 performance incentives to the extent the amount of
2 the increase is less than the amount of benefits to
3 the consumers resulting from the initial clean
4 coal facility's achievement of that performance
5 incentive;

6 (xiv) include forecasting and scheduling
7 obligations that take account of the requirements
8 of the applicable regional transmission
9 organizations; and

10 (xv) include operating guidelines relating to
11 the operating configuration and dispatch of the
12 initial clean coal facility, which guidelines
13 shall be subject to change from time to time with
14 input from a committee consisting of
15 representatives of the electric utilities and
16 alternative retail electric suppliers that are
17 parties to sourcing agreements with the initial
18 clean coal facility; any actions taken or not taken
19 by the owner of the initial clean coal facility in
20 compliance with such operating guidelines shall be
21 deemed to be prudent, and the prudence of the costs
22 resulting from the action shall be evaluated in
23 light of the fact that the initial clean coal
24 facility is required to comply with such operating
25 guidelines.

26 (4) Effective date of sourcing agreements with the

1 initial clean coal facility. No later than 30 days after
2 the effective date of this amendatory Act of the 96th
3 General Assembly, the initial clean coal facility shall
4 submit a draft sourcing agreement to the Agency and each
5 electric utility required to enter into such agreements
6 pursuant to paragraph (3) of this subsection, and the
7 initial clean coal facility and each such electric utility
8 shall promptly and diligently negotiate in good faith over
9 the terms of the sourcing agreement. Within 30 days after
10 receipt of the draft sourcing agreement, each such electric
11 utility shall provide the Agency and the initial clean coal
12 facility with its comments and recommended revisions to the
13 draft sourcing agreement. Within 15 days after the receipt
14 of the electric utility's comments and recommended
15 revisions, the owner of the initial clean coal facility
16 shall submit its responsive comments and a further revised
17 draft of the sourcing agreement to the Agency. The Agency
18 shall review the draft sourcing agreement and comments and
19 retain an independent, qualified, and experienced mediator
20 to mediate disputes over the draft sourcing agreement's
21 terms. The mediator shall not own or control any direct or
22 indirect interest in the initial clean coal facility and
23 shall have no contractual relationship with the initial
24 clean coal facility.

25 If the parties to the sourcing agreement do not agree
26 on the terms in the sourcing agreement within 15 days after

1 receiving the owner's responsive comments and further
2 revised draft, then the mediator retained by the Agency
3 shall mediate the dispute between the parties. If the
4 parties are in agreement on the terms of the sourcing
5 agreement, then the Agency shall approve the final draft
6 sourcing agreement within 30 days after the parties reach
7 agreement and notify the Agency of that agreement. If,
8 within 30 days after the commencement of mediation, the
9 parties have failed to come to agreement, then the Agency
10 shall review and revise the draft sourcing agreement as
11 necessary.

12 The Agency may approve a sourcing agreement only after
13 it finds the sourcing agreement is consistent with the
14 provisions of this Act and contains only terms that are
15 balanced and equitable and fairly protect the interests of
16 the parties to the sourcing agreement, with such approval
17 to occur no later than 60 days after the commencement of
18 the mediation. The Agency shall not withhold or condition
19 its approval of the sourcing agreement based upon least
20 cost resource principles or whether or not it would be
21 prudent for buyers to enter into such an agreement if there
22 were no legal requirement to do so, nor shall the
23 resolution of open issues be based on these principles.

24 If the sourcing agreement is approved, then each
25 electric utility required to enter into a sourcing
26 agreement shall have 30 days after either the Agency's

1 approval to enter into the sourcing agreement or the
2 issuance of any necessary approval by the Federal Energy
3 Regulatory Commission, whichever is later. The Agency
4 shall submit the approved sourcing agreement to the
5 Commission within 15 days after approval. Each electric
6 utility and the initial clean coal facility shall pay a
7 reasonable fee as required by the Agency for its services
8 under this paragraph (4) and shall pay the mediator's
9 reasonable fees, if any. The Agency shall adopt and make
10 public a policy detailing the process for retaining a
11 mediator under this Section. Any proposed sourcing
12 agreement with the initial clean coal facility shall not
13 become effective unless the following reports are prepared
14 and submitted ~~and authorizations and approvals obtained:~~

15 (i) Facility cost report. The owner of the
16 initial clean coal facility shall submit to the
17 Commission, the Agency, and the General Assembly a
18 front-end engineering and design study, a facility
19 cost report, method of financing (including but
20 not limited to structure and associated costs),
21 and an operating and maintenance cost quote for the
22 facility (collectively "facility cost report"),
23 which shall be prepared in accordance with the
24 requirements of this paragraph (4) of subsection
25 (d) of this Section, and shall provide the
26 Commission and the Agency access to the work

1 papers, relied upon documents, and any other
2 backup documentation related to the facility cost
3 report.

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

1 facility cost report.

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

14 ~~(iv) Commission review. If the General~~
15 ~~Assembly enacts authorizing legislation pursuant~~
16 ~~to subparagraph (iii) approving a sourcing~~
17 ~~agreement, the Commission shall, within 90 days of~~
18 ~~such enactment, complete a review of such sourcing~~
19 ~~agreement. During such time period, the Commission~~
20 ~~shall implement any directive of the General~~
21 ~~Assembly, resolve any disputes between the parties~~
22 ~~to the sourcing agreement concerning the terms of~~
23 ~~such agreement, approve the form of such~~
24 ~~agreement, and issue an order finding that the~~
25 ~~sourcing agreement is prudent and reasonable.~~

26 The facility cost report shall be prepared as follows:

1 (A) The facility cost report shall be prepared by
2 duly licensed engineering and construction firms
3 detailing the estimated capital costs payable to one or
4 more contractors or suppliers for the engineering,
5 procurement and construction of the components
6 comprising the initial clean coal facility and the
7 estimated costs of operation and maintenance of the
8 facility. The facility cost report shall include:

9 (i) an estimate of the capital cost of the core
10 plant based on one or more front end engineering
11 and design studies for the gasification island and
12 related facilities. The core plant shall include
13 all civil, structural, mechanical, electrical,
14 control, and safety systems.

15 (ii) an estimate of the capital cost of the
16 balance of the plant, including any capital costs
17 associated with sequestration of carbon dioxide
18 emissions and all interconnects and interfaces
19 required to operate the facility, such as
20 transmission of electricity, construction or
21 backfeed power supply, pipelines to transport
22 substitute natural gas or carbon dioxide, potable
23 water supply, natural gas supply, water supply,
24 water discharge, landfill, access roads, and coal
25 delivery.

26 The quoted construction costs shall be expressed

1 in nominal dollars as of the date that the quote is
2 prepared and shall include (1) capitalized financing
3 costs during construction, (2) taxes, insurance, and
4 other owner's costs, and (3) an assumed escalation in
5 materials and labor beyond the date as of which the
6 construction cost quote is expressed.

7 (B) The front end engineering and design study for
8 the gasification island and the cost study for the
9 balance of plant shall include sufficient design work
10 to permit quantification of major categories of
11 materials, commodities and labor hours, and receipt of
12 quotes from vendors of major equipment required to
13 construct and operate the clean coal facility.

14 (C) The facility cost report shall also include an
15 operating and maintenance cost quote that will provide
16 the estimated cost of delivered fuel, personnel,
17 maintenance contracts, chemicals, catalysts,
18 consumables, spares, and other fixed and variable
19 operations and maintenance costs.

20 (a) The delivered fuel cost estimate will be
21 provided by a recognized third party expert or
22 experts in the fuel and transportation industries.

23 (b) The balance of the operating and
24 maintenance cost quote, excluding delivered fuel
25 costs will be developed based on the inputs
26 provided by duly licensed engineering and

1 construction firms performing the construction
2 cost quote, potential vendors under long-term
3 service agreements and plant operating agreements,
4 or recognized third party plant operator or
5 operators.

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

14 (D) The facility cost report shall also include (i)
15 an analysis of the initial clean coal facility's
16 ability to deliver power and energy into the applicable
17 regional transmission organization markets and (ii) an
18 analysis of the expected capacity factor for the
19 initial clean coal facility.

20 (E) Amounts paid to third parties unrelated to the
21 owner or owners of the initial clean coal facility to
22 prepare the core plant construction cost quote,
23 including the front end engineering and design study,
24 and the operating and maintenance cost quote will be
25 reimbursed through Coal Development Bonds.

26 (5) Re-powering and retrofitting coal-fired power

1 plants previously owned by Illinois utilities to qualify as
2 clean coal facilities. During the 2009 procurement
3 planning process and thereafter, the Agency and the
4 Commission shall consider sourcing agreements covering
5 electricity generated by power plants that were previously
6 owned by Illinois utilities and that have been or will be
7 converted into clean coal facilities, as defined by Section
8 1-10 of this Act. Pursuant to such procurement planning
9 process, the owners of such facilities may propose to the
10 Agency sourcing agreements with utilities and alternative
11 retail electric suppliers required to comply with
12 subsection (d) of this Section and item (5) of subsection
13 (d) of Section 16-115 of the Public Utilities Act, covering
14 electricity generated by such facilities. In the case of
15 sourcing agreements that are power purchase agreements,
16 the contract price for electricity sales shall be
17 established on a cost of service basis. In the case of
18 sourcing agreements that are contracts for differences,
19 the contract price from which the reference price is
20 subtracted shall be established on a cost of service basis.
21 The Agency and the Commission may approve any such utility
22 sourcing agreements that do not exceed cost-based
23 benchmarks developed by the procurement administrator, in
24 consultation with the Commission staff, Agency staff and
25 the procurement monitor, subject to Commission review and
26 approval. The Commission shall have authority to inspect

1 all books and records associated with these clean coal
2 facilities during the term of any such contract.

3 (6) Costs incurred by a utility under this subsection
4 (d) or pursuant to a contract or sourcing agreement entered
5 into under this subsection (d) shall be deemed prudently
6 incurred and reasonable in amount and the electric utility
7 shall be entitled to full cost recovery pursuant to the
8 tariffs filed with the Commission.

9 (e) The draft procurement plans are subject to public
10 comment, as required by Section 16-111.5 of the Public
11 Utilities Act and Section 1-78 of this Act.

12 (f) The Agency shall submit the final procurement plan
13 to the Commission. The Agency shall revise a procurement
14 plan if the Commission determines that it does not meet the
15 standards set forth in Section 16-111.5 of the Public
16 Utilities Act or Section 1-78 of this Act.

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

20 (h) The Agency shall assess fees to each bidder to
21 recover the costs incurred in connection with a competitive
22 procurement process.

23 (i) The Agency shall assess fees to the initial clean
24 coal facility to recover the costs incurred in preparation
25 of each procurement plan for the initial clean coal
26 facility.

1 (Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09;
2 96-159, eff. 8-10-09; 96-1437, eff. 8-17-10.)

3 (20 ILCS 3855/1-76 new)

4 Sec. 1-76. Costs and revenue recoverable by the initial
5 clean coal facility.

6 (a) The price paid for electricity generated by the initial
7 clean coal facility shall be based on a formula rate using a
8 cost of service methodology applicable to wholesale electric
9 power contracts employing a level or deferred capital component
10 and in accordance with the Uniform System of Accounts, subject
11 to and as specifically limited by the provisions set forth in
12 Section.

13 No later than 30 days after the approval of the sourcing
14 agreement by the Agency pursuant to paragraph (4) of subsection
15 (d) of Section 1-75, the initial clean coal facility shall
16 provide to the Commission projections of its costs and dispatch
17 levels for the term of the sourcing agreements. Within 90 days
18 thereafter, the Commission shall determine a projected price
19 per MWh for each year for the initial clean coal facility,
20 based upon such projections and the provisions of this Section.
21 No later than 6 months before the expected commencement of
22 commercial operation of the initial clean coal facility and the
23 commencement of each operating year thereafter, the initial
24 clean coal facility shall submit to the Commission projections
25 of its costs and dispatch levels for the upcoming year. Within

1 120 days receipt of the initial clean coal facility's
2 projections of its costs and dispatch levels for the upcoming
3 year, the Commission shall approve a price per MWh for the
4 upcoming year based upon such projections and the provisions of
5 this Section. If the Commission does not approve a price for
6 any year as of the beginning of such year, the initial clean
7 coal facility shall calculate the price based upon its
8 projections and the provisions of this Section, with any
9 subsequent cost disallowance by the Commission to be reflected
10 through a true-up of costs in the next year. Over the course of
11 any year, the initial clean coal facility may generate
12 electricity in an aggregate amount equal to the total
13 generation incorporated in projected dispatch levels used to
14 calculate the price per MWh for such year. To the extent that
15 the total revenue actually collected by the initial clean coal
16 facility in any quarterly period based upon the approved price
17 per MWh is more or less than the actual costs incurred by the
18 initial clean coal facility in respect of such period subject
19 to the limits of this Section, the excess or shortfall shall be
20 incorporated into the calculation of an adjusted price per MWh
21 for the second subsequent quarterly period. If at any time the
22 Commission, acting in accordance with this Section, disallows
23 any cost incurred by the initial clean coal facility, the
24 amount of such disallowance shall be incorporated into the
25 calculation of the rate per MWh for the next year.

26 (b) Capital costs set by the Commission according to this

1 subsection (b) shall be included in the formula rate. "Capital
2 costs" means costs incurred on the purchase of land, buildings,
3 construction, and equipment to be used in the production of
4 electricity, and other costs recorded in the Electric Plant
5 Accounts and other applicable Balance Sheet Accounts of the
6 Uniform System of Accounts for the initial clean coal facility.
7 The Capital Development Board shall calculate a range of
8 capital costs that it believes would be a reasonable cost for
9 the initial clean coal facility. The Capital Development Board
10 shall commence performing its responsibilities under this
11 subsection (b) within 30 days after the effective date of this
12 amendatory Act of the 96th General Assembly. In determining a
13 range of capital costs, the Capital Development Board shall
14 base its evaluation and judgment on professional engineering
15 and regulatory accounting principles and include any update on
16 costs that may be provided by the initial clean coal facility
17 and shall not employ least cost resource principles. In
18 addition the Capital Development Board may:

19 (1) include in its consideration the information in a
20 facility cost report, if any, that was prepared and
21 submitted by the initial clean coal facility to the
22 Commission in accordance with paragraph (4) of subsection
23 (d) of Section 1-75 of this Act and any update on costs
24 that may be provided by the initial clean coal facility;

25 (2) consult as much as it deems necessary with the
26 initial clean coal facility;

1 (3) conduct whatever research and investigation it
2 deems necessary; and

3 (4) retain third parties to assist in its
4 determination, provided that such third parties shall not
5 own or control any direct or indirect interest in the
6 initial clean coal facility and shall have no contractual
7 relationship with in the initial clean coal facility.

8 The initial clean coal facility shall cooperate with the
9 Capital Development Board in any investigation it deems
10 necessary.

11 The Capital Development Board shall make its final
12 determination of the range of capital costs confidentially and
13 shall submit that range to the Commission in a confidential
14 filing no later than 90 days after the Capital Development
15 Board is required to commence performing its responsibilities
16 under this subsection (b). The initial clean coal facility
17 shall submit to the Commission its estimate of the capital
18 costs to be included in the formula rate. Only after the
19 initial clean coal facility has submitted this estimate shall
20 the Commission publicly announce the range of capital costs
21 submitted by the Capital Development Board. In the event that
22 the estimate submitted by the initial clean coal facility is
23 within or below the range submitted by the Capital Development
24 Board, the initial clean coal facility's estimate shall be
25 approved by the Commission as the amount of pre-approved
26 capital costs.

1 In the event that the estimate submitted by the initial
2 clean coal facility is above the range submitted by the Capital
3 Development Board, the amount of capital costs at the lowest
4 end of the range submitted by the Capital Development Board
5 shall be approved by the Commission as the amount of
6 pre-approved capital costs. "Pre-approved capital costs" means
7 the amount of capital costs that will be included in the
8 formula rate to the extent such costs are actually incurred,
9 with no further review or approval in respect to whether they
10 are prudently incurred. The Commission's determination of
11 pre-approved capital costs shall be made within 15 days after
12 the initial clean coal facility submits its capital cost
13 estimate. The Commission's decision regarding pre-approved
14 capital costs shall be final and shall not be subject to
15 judicial or administrative review.

16 Once made, the Commission's determination of the amount of
17 pre-approved capital costs may not be increased unless the
18 Commission determines that the incremental costs are
19 reasonable, in which case one-third of such reasonable
20 incremental costs shall be included in the formula rate and
21 recoverable by the initial clean coal facility and two-thirds
22 of such costs shall be borne by the initial clean coal facility
23 and its contractors, provided that to the extent such
24 reasonable incremental costs are the result of change in law or
25 non-insurable force majeure, all of such costs shall be
26 included in the formula rate and recoverable by the initial

1 clean coal facility.

2 "Change in law" means any change, including any enactment,
3 repeal, or amendment, in a law, ordinance, rule, regulation,
4 interpretation, permit, license, consent or order, including
5 those relating to taxes or to environmental matters, or in the
6 interpretation or application thereof by any governmental
7 authority occurring after January 1, 2011.

8 "Non-insurable force majeure" means events outside of the
9 reasonable control of the owner of the initial clean coal
10 facility and its contractors, subcontractors, and agents that
11 are not included on a list, to be attached to the sourcing
12 agreement and agreed upon by the utility entering the sourcing
13 agreement, of events that are customarily covered by a
14 builder's risk insurance policies for the construction of
15 electric generating plants and other large process plants in
16 the United States. "Non-insurable force majeure" shall not
17 include changes in prices or other changes in market
18 conditions.

19 Any rebates, refunds, or other payments received by the
20 owner of the initial clean coal facility from any of its
21 contractors in respect to such contractor bearing risk for
22 capital cost overruns shall be excluded from miscellaneous net
23 revenue and shall not otherwise reduce the costs of the owner
24 of the initial clean coal facility for purposes of the formula
25 rate. For purposes of this subsection (b), "reasonable" means
26 that the decisions, construction, and supervision of

1 construction by the owner of the initial clean coal facility
2 and its contractors underlying the initial capital cost and
3 significant additions to the initial capital cost of the
4 initial clean coal facility resulted in efficient, economical,
5 and timely construction. In determining the reasonableness of
6 the capital costs of the initial clean coal facility, the
7 Commission shall consider the knowledge and circumstances
8 prevailing at the time of each relevant decision or action of
9 the owner of the initial clean coal facility and its
10 contractors.

11 The Commission may determine that the amount of
12 pre-approved capital costs may be increased only after notice
13 and a hearing. At that hearing, the Capital Development Board
14 shall submit a report recommending whether the incremental
15 costs should be approved in full or in part or rejected. The
16 Commission may approve in whole or in part or reject the
17 incremental capital costs based on standards in respect of
18 prudently incurred costs that are normally applicable to
19 electric ratemaking in Illinois. At the request of the owner of
20 the initial clean coal facility made not more often than once
21 every 12 months during the construction period of the initial
22 clean coal facility, the Commission shall conduct interim
23 reviews to determine whether capital costs specified in such
24 request and incurred or to be incurred by the owner of the
25 initial clean coal facility, are reasonable.

26 The Capital Development Board shall monitor the

1 construction of the initial clean coal facility for the full
2 duration of construction. The Capital Development Board, in its
3 discretion, may retain third parties to facilitate such
4 monitoring, provided that such third parties shall not own or
5 control any direct or indirect interest in the initial clean
6 coal facility and shall have no contractual relationship with
7 in the initial clean coal facility. The initial clean coal
8 facility shall pay a reasonable fee as required by the Capital
9 Development Board for the Capital Development Board's services
10 under this subsection (b), and such fee shall not be passed
11 through to a utility or its customers. If a third party is
12 retained by the Capital Development Board for the determination
13 of a range of capital costs or monitoring of construction, the
14 initial clean coal facility must pay for the third party's
15 reasonable fees, and such costs may not be passed through to a
16 utility or its customers.

17 The provisions of this subsection (b) shall apply to the
18 capital costs for the initial construction of the initial clean
19 coal facility and not to capital costs incurred beyond the
20 initial construction, including costs for replacement of
21 equipment and capital improvements, which such capital costs
22 shall be subject to review by the Commission and included in
23 the formula rate to the extent they are determined to be
24 prudently incurred.

25 (c) Operations and maintenance costs set by the Commission
26 according to this subsection (c) shall be included in the

1 formula rate. Operations and maintenance costs mean costs
2 incurred for the administration, supervision, operation,
3 maintenance, preservation, and protection of the initial clean
4 coal facility's physical plant and other costs recorded in the
5 Operation and Maintenance Expense Accounts and other
6 applicable Income Statement Accounts of the Uniform System of
7 Accounts. The Commission shall assess the prudence of the
8 operations and maintenance costs for the initial clean coal
9 facility and shall allow the initial clean coal facility to
10 include in the formula rate only those costs the Commission
11 deems to be prudent. The Commission may in its discretion
12 retain an expert to assist in its review of operations and
13 maintenance costs. The initial clean coal facility shall pay
14 for the expert's fees if an expert is retained by the
15 Commission, and such costs may not be passed through to a
16 utility or its customers. The Commission's determination
17 regarding the amount of operations and maintenance costs that
18 may be included in the formula rate for each year shall be made
19 in accordance with this Section.

20 (d) Actual fuel costs shall be set by the Agency through a
21 SNG feedstock procurement, pursuant to Section 1-78 of this
22 Act, to be performed at least every 5 years, and purchased by
23 the initial clean coal facility pursuant to a reasonable fuel
24 supply plan, with coal comprising at least 50% of the total
25 feedstock for producing SNG over the term of a sourcing
26 agreement with all coal having high volatile bituminous rank

1 and greater than 1.7 pounds of sulfur per million, SNG derived
2 from coal comprising at least 50% of the fuel to generate
3 electricity, SNG derived from biomass comprising up to 10% of
4 the fuel to generate electricity with the approval of the
5 Commission, and natural gas comprising the remainder of the
6 fuel to generate electricity. Actual fuel costs, as so
7 determined, shall be reduced by miscellaneous net revenue
8 received by the owner of the initial clean coal facility,
9 including, but not limited to, net revenue from the sale of
10 emission allowances, if any, substitute natural gas, if any,
11 grants or other support provided by the State of Illinois or
12 the United States Government, firm transmission rights, if any,
13 by-products produced by the facility, any capacity derived from
14 the facility and bid into the capacity markets or otherwise
15 sold and any energy generated as a result of such capacity
16 being called, whether generated from synthesis gas derived from
17 coal, from SNG, or from natural gas. All actual fuel costs
18 incurred pursuant to such a fuel supply plan shall be included
19 in the formula rate without any determination by the Commission
20 or the Agency as to prudence.

21 (e) Sequestration costs set by the Commission according to
22 this subsection (e) shall be included in the formula rate.
23 "Sequestration costs" means costs incurred to (i) capture
24 carbon dioxide; (ii) compress carbon dioxide; (iii) build,
25 operate, and maintain a sequestration site in which carbon
26 dioxide may be injected; (iv) build, operate, and maintain a

1 carbon dioxide pipeline, which is owned by the initial clean
2 coal facility; (v) transport the carbon dioxide to a
3 sequestration site or a pipeline; and (vi) perform monitoring,
4 verification, and other activities associated with carbon
5 capture and sequestration. "Sequestration capital costs" means
6 sequestration costs recorded in the Electric Plant Accounts and
7 other applicable Balance Sheet Accounts of the Uniform System
8 of Accounts. "Sequestration operations and maintenance costs"
9 means sequestration costs that are recorded in the Operation
10 and Maintenance Expense Accounts and other applicable Income
11 Statement Accounts of the Uniform System of Accounts, and shall
12 include maintenance, monitoring, and verification costs.

13 The Capital Development Board shall calculate an estimate
14 of sequestration capital costs that it believes would be a
15 reasonable cost for the initial clean coal facility's
16 sequestration facilities and an estimate of average annual
17 sequestration operations and maintenance costs that it
18 believes would be a reasonable average annual operation and
19 maintenance cost for the initial clean coal facility's carbon
20 capture and sequestration activities. The Capital Development
21 Board shall commence performing its responsibilities under
22 this subsection (e) within 30 days after the effective date of
23 this amendatory Act of the 96th General Assembly. In
24 determining a range of capital costs, the Capital Development
25 Board shall base its evaluation and judgment on professional
26 engineering and regulatory accounting principles and include

1 any update on costs that may be provided by the initial clean
2 coal facility and shall not least cost resource principles. In
3 addition the Capital Development Board may: (i) include in its
4 consideration cost estimate information in a facility cost
5 report, if any, that was prepared and submitted by the initial
6 clean coal facility to the Commission in accordance with
7 paragraph (4) of subsection (d) of Section 1-75 of this Act and
8 any update on costs that may be provided by the initial clean
9 coal facility; (ii) consult as much as it deems necessary with
10 the initial clean coal facility; (iii) conduct whatever
11 research and investigation it deems necessary; and (iv) retain
12 third parties to assist in its determination, provided that
13 such third parties shall not own or control any direct or
14 indirect interest in the initial clean coal facility and shall
15 have no contractual relationship with the initial clean coal
16 facility. The initial clean coal facility shall cooperate with
17 the Capital Development Board in any investigation it deems
18 necessary.

19 The Capital Development Board shall make its final
20 determination of sequestration capital costs and sequestration
21 operations and maintenance costs and submit such determination
22 to the Commission no later than 90 days after the Capital
23 Development Board is required to commence performing its
24 responsibilities under this subsection (e). The Capital
25 Development Board shall monitor construction of the
26 sequestration facilities in the same manner, and with the same

1 rights to retain an expert and recover the costs thereof, as
2 set forth in subsection (b) of this Section.

3 "Actual sequestration costs" means for any year the sum of:
4 (i) the annual amortized portion of sequestration capital
5 costs, based on level amortization from the later of the date
6 such costs are incurred and the commercial operation date until
7 the end of the term of the sourcing agreements; (ii) the rate
8 of return approved by the Commission pursuant to subsection (e)
9 of this Section applied to sequestration capital costs; and
10 (iii) the sequestration operations and maintenance costs
11 incurred in such year.

12 "Target sequestration costs" means the sum of: (i) the
13 annual amortized portion of the estimated sequestration
14 capital costs determined by the Capital Development Board,
15 based on level amortization from the later of the date such
16 costs are incurred and the commercial operation date until the
17 end of the term of the sourcing agreements; (ii) the rate of
18 return approved by the Commission pursuant to subsection (f) of
19 this Section applied to the estimated sequestration capital
20 costs determined by the Capital Development Board; (iii) the
21 estimate of average annual sequestration operations and
22 maintenance costs determined by the Capital Development Board,
23 escalated in accordance with an escalation factor to be
24 provided in the sourcing agreement from the date of the Capital
25 Development Board's determination to the mid-point of the
26 applicable year; (iv) the sequestration cost underrun, if any,

1 for the immediately preceding year, except to the extent
2 applied to allow recovery of a sequestration cost overrun from
3 a prior year; and (v) any sequestration costs that are the
4 result of a change in law or non-insurable force majeure.

5 "Sequestration cost underrun" means for any year the
6 excess, if any, of target sequestration costs for such year
7 over actual sequestration costs for such year.

8 "Sequestration cost overrun" means for any year the excess,
9 if any, of actual sequestration costs for such year over target
10 sequestration costs for such year.

11 For any year in which there is a sequestration cost
12 underrun, all actual sequestration costs shall be conclusively
13 deemed to be prudent and shall be included in the formula rate
14 with no further review or approval in respect of whether they
15 are prudently incurred.

16 For any year in which there is a sequestration cost
17 overrun, the Commission shall determine whether all or a
18 portion of such sequestration cost overrun was prudently
19 incurred, except that the rate of return shall not be subject
20 to review. If the Commission determines that the sequestration
21 cost overrun was prudently incurred, one-third of such
22 sequestration cost overrun shall be included in the formula
23 rate and recoverable by the initial clean coal facility and
24 two-thirds of such sequestration cost overrun shall be borne by
25 the initial clean coal facility and not passed through to a
26 utility, an alternative retail electric supplier, or the

1 customers of a utility or an alternative retail electric
2 supplier unless and until there is a sequestration cost
3 underrun for a subsequent year, in which event the
4 sequestration cost overrun will be included in the formula rate
5 and recoverable by the initial clean coal facility up to the
6 amount of the sequestration cost underrun; provided, however,
7 that if for any year two-thirds of such sequestration cost
8 overrun exceeds the difference of \$20,000,000 minus the amount
9 of penalty, if any, payable by the initial clean coal facility
10 pursuant to Section 1-76.5 in respect to that year, the amount
11 of such excess shall also be included in the formula rate and
12 recoverable by the initial clean coal facility. The detailed
13 procedures for implementing this provision shall be set forth
14 in the sourcing agreements.

15 "Change in law" means any change, including any enactment,
16 repeal and amendment, in a law, ordinance, rule, regulation,
17 interpretation, permit, license, consent or order, including
18 those relating to taxes or to environmental matters, or in the
19 interpretation or application thereof by any governmental
20 authority occurring after January 1, 2011.

21 "Non-insurable force majeure" means events outside of the
22 reasonable control of the owner of the initial clean coal
23 facility and its contractors, subcontractors, and agents that
24 are not included on a list, to be attached to the sourcing
25 agreement and agreed upon by the utility entering the sourcing
26 agreement, of events that are customarily covered by a

1 builder's risk insurance policies for the construction of
2 electric generating plants and other large process plants in
3 the United States "Non-insurable force majeure" shall not
4 include changes in prices or other changes in market
5 conditions.

6 (f) The Commission shall, by the later of 90 days after the
7 effective date of this amendatory Act of the 96th General
8 Assembly and 90 days after the owner of the initial clean coal
9 facility files initial direct testimony regarding rate of
10 return with the Commission, determine the total rate of return
11 on invested capital for the initial clean coal facility
12 following notice and a public hearing. At the hearing, all
13 interested parties, including utilities, alternative retail
14 electric suppliers, the Attorney General, the Agency, and
15 customers, shall be given an opportunity to be heard. In
16 determining the rate of return, the Commission shall select a
17 commercially reasonable rate that takes into account the rates
18 of return received by developers of facilities similar to the
19 initial clean coal facility inside or outside Illinois, the
20 need to balance an incentive for clean-coal technology with the
21 need to protect Illinois ratepayers from high electricity
22 costs, and any other information the Commission deems relevant.

23 The rate of return shall be no lower than 75 basis points
24 lower than the weighted average authorized total rates of
25 return of the utilities for their electric distribution assets
26 as of January 1, 2011. Notwithstanding the minimum rate of

1 return established in the preceding sentence, the rate of
2 return shall be no greater than the total rate of return on
3 invested capital that the initial clean coal facility would
4 achieve based on an assumed 55% debt and 45% equity capital
5 structure, with the cost of debt being the actual average cost,
6 including all associated costs and fees, of the initial clean
7 coal facility's U.S. Government guaranteed debt and the cost of
8 equity being 11.5%. The Commission's determination of the rate
9 of return shall include a mechanism providing for a one-time
10 adjustment at or about the commencement of commercial operation
11 of the initial clean coal facility to take account of changes
12 in applicable Treasury yield rates between the date of its
13 provisional determination of the rate of return and the dates
14 of construction period borrowing by the initial clean coal
15 facility, which adjustment shall apply to 55% of total capital.

16 The Agency shall recommend a rate of return to the
17 Commission utilizing the criteria in this subsection (f). The
18 Commission shall further take into account the recommendation
19 of the Agency but shall not be bound by it. The Commission's
20 decision shall be final and not subject to any rehearing or
21 administrative or judicial review. The rate of return
22 determined by the Commission pursuant to this subsection (f)
23 shall apply for the term of the sourcing agreements and shall
24 not be subject to change, except for the one-time adjustment to
25 reflect Treasury yield rate changes as expressly contemplated
26 by this subsection (f) and as otherwise provided in this Act.

1 (g) The following shall not be included in determining the
2 contract price: advertising expenses that do not meet the
3 requirements of Sections 9-225 and 9-226 of the Public
4 Utilities Act, political activity or lobbying expenses as
5 defined by Section 9-224 of the Public Utilities Act, social
6 club due, or charitable contributions, to the extent, in each
7 case, that a utility would not be permitted to recover such
8 costs.

9 (h) Unless otherwise provided, within 30 days after a
10 decision of the Commission on recoverable costs under this
11 Section, any interested party to the Commission's decision may
12 apply for a rehearing with respect to the decision. The
13 Commission shall receive and consider such application for
14 rehearing and shall grant or deny the application in whole or
15 in part within 20 days from the date of the receipt thereof by
16 the Commission. If no rehearing is applied for within the
17 required 30 days or an application for rehearing is denied, the
18 Commission decision shall be final.

19 If an application for rehearing is granted, the Commission
20 shall hold a rehearing within 30 days after granting the
21 application. The decision of the Commission upon rehearing
22 shall be final. Any person affected by a decision of the
23 Commission under this Section 1-76 may have the decision
24 reviewed only under and in accordance with the Administrative
25 Review Law. Unless otherwise provided, the provisions of the
26 Administrative Review Law, all amendments modifications

1 thereof and the rules adopted pursuant thereto, shall apply to
2 and govern all proceedings for the judicial review of final
3 administrative decisions of the Commission under this
4 subsection (h). The term "administrative decision" is defined
5 as in Section 3-101 of the Code of Civil Procedure.

6 (h) The Capital Development Board shall adopt and make
7 public a policy detailing the process for retaining third
8 parties under this Section. Any third parties retained to
9 assist with calculating the range of capital costs or
10 operations and maintenance costs shall be retained no later
11 than 45 days after the effective date of this amendatory Act of
12 the 96th General Assembly.

13 (20 ILCS 3855/1-76.5 new)

14 Sec. 1-76.5. Capture and sequestration requirements for
15 initial clean coal facility.

16 (a) The initial clean coal facility shall provide
17 documentation to the Commission each year of commercial
18 operation accurately reporting the quantity of carbon
19 emissions from the facility that have been captured and
20 sequestered and report any quantities of carbon released from
21 the site or sites at which carbon emissions were sequestered in
22 prior years, based on continuous monitoring of such sites. If,
23 in any year, the owner of the facility fails to demonstrate
24 that (i) the portion of the facility that produces SNG captured
25 and sequestered at least 90% of the carbon dioxide it would

1 otherwise emit and (ii) the initial clean coal facility as a
2 whole captured and sequestered at least 50% of the total carbon
3 emissions that the facility would otherwise emit or if the
4 capture and sequestration of emissions from prior years has
5 failed, resulting in the release of carbon dioxide into the
6 atmosphere, or both, then the owner of the initial clean coal
7 facility must pay a penalty of \$20,000,000, which shall be
8 deposited into the Energy Efficiency Trust Fund and distributed
9 pursuant to subsection (b) of Section 6-6 of the Renewable
10 Energy, Energy Efficiency, and Coal Resources Development Law
11 of 1997.

12 If during the first 12 months of commercial operation of
13 the initial clean coal facility, there are more than 4 stops
14 and starts of the portion of the facility that produces SNG,
15 with each stop and start of an individual unit constituting one
16 stop and start, then the calculation of the quantities
17 described in this subsection (a) shall not take into account
18 any carbon dioxide emissions from the portion of the facility
19 that produces SNG occurring during the stop and start-up
20 periods, including related periods of non-steady state
21 operation, associated with such excess stops and starts. The
22 penalty resulting from the failure to capture and sequester at
23 least the minimum amount of carbon dioxide shall not be passed
24 through to a utility, an alternative retail electric supplier,
25 or the customers of a utility or an alternative retail electric
26 supplier. The initial clean coal facility shall not forfeit its

1 designation as a clean coal facility if the facility fails to
2 fully comply with the applicable carbon sequestration
3 requirements in any given year, provided the requisite
4 penalties are complied with.

5 (b) In addition to any penalty for the initial clean coal
6 facility's failure to capture and sequester at least its
7 minimum sequestration requirement, the Attorney General, on
8 behalf of the People of the State of Illinois, shall
9 specifically enforce the facility's sequestration requirement
10 and the other terms of this contract provision. Such action may
11 be filed in any circuit court in Illinois. By entering into a
12 sourcing agreement pursuant to subsection (d) of Section 1-75
13 of this Act, the initial clean coal facility agrees to waive
14 any objections to venue or to the jurisdiction of the court
15 with regard to the Attorney General's action for specific
16 performance under this Section. The Commission may reduce the
17 recoverable rate of return approved pursuant to Section 1-76 of
18 this Act for the facility if the facility willfully fails to
19 comply with the carbon capture and sequestration requirements
20 set forth in this Section.

21 (c) Compliance with the capture and sequestration
22 requirements of this Section shall be assessed annually by the
23 Commission, which may in its discretion retain an expert to
24 facilitate its assessment. The initial clean coal facility
25 shall pay for the expert's reasonable fees if an expert is
26 retained by the Commission, and such costs shall not be passed

1 through to a utility, an alternative retail electric supplier,
2 or the customers of a utility or an alternative retail electric
3 supplier. The Commission shall adopt and make public a policy
4 detailing the process for retaining or an expert under this
5 Section.

6 (d) Responsibility for compliance with the capture and
7 sequestration requirements specified in this Section for the
8 initial clean coal facility shall reside solely with the
9 initial clean coal facility regardless of whether the facility
10 has contracted with another party to capture, transport, or
11 sequester carbon dioxide.

12 (20 ILCS 3855/1-77 new)

13 Sec. 1-77. Sequestration permitting, oversight, and
14 investigations.

15 (a) No clean coal facility, initial clean coal facility, or
16 clean coal SNG facility may transport or sequester carbon
17 dioxide unless the Commission approves the method of carbon
18 dioxide transportation or sequestration as provided in this
19 Section. Approval shall be required regardless of whether the
20 SNG facility has contracted with another to transport or
21 sequester the carbon dioxide. Nothing in this subsection (a)
22 shall release the owner or operator of a carbon dioxide
23 sequestration site or carbon dioxide pipeline from any other
24 permitting requirements under applicable State and federal
25 laws, statutes, rules, or regulations.

1 (b) No later than 3 months prior to the date upon which the
2 company intends to commence construction of the facility, the
3 owner of the facility shall file with the Commission a carbon
4 dioxide transportation or sequestration plan. The Commission
5 shall review proposed carbon dioxide transportation and
6 sequestration methods and shall approve those methods it deems
7 reasonable and cost-effective. For purposes of this review,
8 "cost-effective" means a commercially reasonable price for
9 similar carbon dioxide transportation or sequestration
10 techniques. In determining whether sequestration through
11 injection is reasonable and cost-effective, the Commission may
12 consult with the Illinois State Geological Survey.

13 The Commission shall hold a public hearing within 30 days
14 after receipt of the facility's carbon dioxide transportation
15 or sequestration plan. The Commission shall post notice of the
16 review on its website upon submission of a carbon dioxide
17 transportation or sequestration method and shall accept
18 written public comments. The Commission shall take the comments
19 into account when making its decision. However, the Commission
20 shall not approve a carbon dioxide sequestration method if the
21 owner or operator of the sequestration site has not received:
22 (i) an Underground Injection Control permit from the Illinois
23 Environmental Protection Agency pursuant to the Environmental
24 Protection Act, (ii) an Underground Injection Control permit
25 from the Illinois Department of Natural Resources pursuant to
26 the Illinois Oil and Gas Act, or (iii) a permit similar to

1 items (i) or (ii) from the state in which the sequestration
2 site is located if the sequestration shall take place outside
3 of Illinois. The Commission shall approve or deny the carbon
4 dioxide transportation or sequestration method within 90 days
5 after the receipt of all required information.

6 (c) At least annually, the Illinois Environmental
7 Protection Agency shall inspect all carbon dioxide
8 sequestration sites in Illinois to ensure the safety and
9 feasibility of those sequestration sites. However, the
10 Illinois Environmental Protection Agency may, as often as
11 deemed necessary, monitor and conduct investigations of those
12 sites. The owner or operator of the sequestration site must
13 cooperate with the Illinois Environmental Protection Agency
14 investigations of carbon dioxide sequestration sites. If the
15 Illinois Environmental Protection Agency determines at any
16 time a site creates conditions that warrant the issuance of a
17 seal order under Section 34 of the Environmental Protection
18 Act, then the Illinois Environmental Protection Agency shall
19 seal the site pursuant to the Environmental Protection Act. If
20 the Illinois Environmental Protection Agency determines at any
21 time a carbon dioxide sequestration site creates conditions
22 that warrant the institution of a civil action for an
23 injunction under Section 43 of the Environmental Protection
24 Act, then the Illinois Environmental Protection Agency shall
25 request the State's Attorney or the Attorney General institute
26 such action. The Illinois Environmental Protection Agency

1 shall provide notice of any such actions as soon as possible on
2 its website.

3 (d) At least annually, the Commission shall inspect all
4 carbon dioxide pipelines in Illinois that transport carbon
5 dioxide to ensure the safety and feasibility of those
6 pipelines. However, the Commission may, as often as deemed
7 necessary, monitor and conduct investigations of those
8 pipelines. The owner or operator of the pipeline must cooperate
9 with the Commission investigations of the carbon dioxide
10 pipelines. If the Commission determines at any time that a
11 carbon dioxide pipeline creates conditions that warrant the
12 issuance of a seal order under Section 34 of the Environmental
13 Protection Act, then the Commission shall notify the Illinois
14 Environmental Protection Agency of such conditions. If the
15 Commission determines at any time a carbon dioxide pipeline
16 creates conditions that warrant the institution of a civil
17 action for an injunction under Section 43 of the Environmental
18 Protection Act, then the Illinois Environmental Protection
19 Agency shall request the State's Attorney or the Attorney
20 General institute such action. The Commission shall provide
21 notice of any such actions as soon as possible on its website.

22 (20 ILCS 3855/1-78 new)

23 Sec. 1-78. Feedstock procurement.

24 (a) A feedstock procurement plan shall, at least every 5
25 years, be prepared for the initial clean coal facility based on

1 the initial clean coal facility's projection of feedstock usage
2 and ratios, and consistent with the applicable requirements of
3 the Illinois Power Agency Act and this Section. The plan shall
4 specifically identify the feedstock products to be procured
5 following plan approval and shall follow all the requirements
6 set forth in this Act and all applicable State and federal
7 laws, statutes, rules, or regulations, as well as Commission
8 orders. Nothing in this Section precludes consideration of
9 contracts longer than 5 years and related forecast data. Any
10 feedstock procurement occurring in accordance with this plan
11 shall be competitively bid through a request for proposals
12 process. Approval and implementation of the feedstock
13 procurement plan shall be subject to review and approval by the
14 Commission according to the provisions set forth in this
15 Section. A feedstock procurement plan shall include each of the
16 following components:

17 (1) Daily load analysis. This analysis shall include:

18 (A) multi-year historical analysis of hourly
19 loads; and

20 (B) known or projected changes to future loads.

21 (2) Determination of the fuel specifications required
22 for the initial clean coal facility, including:

23 (A) feedstock mix, as set by the initial clean coal
24 facility with coal having high volatile bituminous
25 rank and greater than 1.7 pounds of sulfur per million
26 btu content and comprising at least 50% of the total

1 annual feedstock;

2 (B) volume of each feedstock required;

3 (C) quality standards of each feedstock;

4 (D) transportation and delivery requirements and
5 associated costs and impacts on the performance,
6 availability, and reliability of the initial clean
7 coal facility;

8 (E) technical specifications of the initial clean
9 coal facility for its feedstocks; and

10 (F) appropriate testing of any proposed feedstock
11 before it is incorporated into the feedstock
12 procurement plan or process to determine the effect of
13 such feedstock on the performance, availability, and
14 reliability of the initial clean coal facility.

15 (b) The feedstock procurement process shall be
16 administered by a feedstock procurement administrator and
17 monitored by a feedstock procurement monitor.

18 (1) The feedstock procurement administrator shall:

19 (A) design the final feedstock procurement process
20 in accordance with subsection (d) of this Section
21 following Commission approval of the feedstock
22 procurement plan;

23 (B) develop feedstock benchmarks in accordance
24 with subsection (d)(3) to be used to evaluate bids;
25 these benchmarks shall be submitted to the Commission
26 for review and approval on a confidential basis prior

1 to the feedstock procurement event;

2 (C) serve as the interface between the initial
3 clean coal facility and feedstock suppliers regarding
4 bidding and contract negotiations;

5 (D) manage the bidder pre-qualification and
6 registration process;

7 (E) obtain the initial clean coal facility's
8 agreement to the final form of all supply contracts and
9 credit collateral agreements;

10 (F) administer the request for feedstock proposals
11 process;

12 (G) have the discretion to negotiate to determine
13 whether bidders are willing to lower the price of bids
14 that meet the benchmarks approved by the Commission;
15 any post-bid negotiations with bidders shall be
16 limited to price only and shall be completed within 24
17 hours after opening the sealed bids and shall be
18 conducted in a fair and unbiased manner; in conducting
19 the negotiations, there shall be no disclosure of any
20 information derived from proposals submitted by
21 competing bidders; if information is disclosed to any
22 bidder, it shall be provided to all competing bidders;

23 (H) maintain confidentiality of supplier and
24 bidding information in a manner consistent with all
25 applicable laws, rules, regulations, and tariffs;

26 (I) submit a confidential report to the Commission

1 recommending acceptance or rejection of bids;

2 (J) notify the facility of contract counterparties
3 and contract specifics; and

4 (K) administer related contingency feedstock
5 procurement events.

6 (2) The feedstock procurement monitor, who shall be
7 retained by the Commission, shall:

8 (A) monitor interactions among the feedstock
9 procurement administrator, suppliers, and the initial
10 clean coal facility;

11 (B) monitor and report to the Commission on the
12 progress of the feedstock procurement process;

13 (C) provide an independent confidential report to
14 the Commission regarding the results of the feedstock
15 procurement event;

16 (D) preserve the confidentiality of supplier and
17 bidding information in a manner consistent with all
18 applicable laws, rules, regulations, and tariffs;

19 (E) provide expert advice to the Commission and
20 consult with the feedstock procurement administrator
21 regarding issues related to feedstock procurement
22 process design, rules, protocols, and policy-related
23 matters;

24 (F) consult with the feedstock procurement
25 administrator regarding the development and use of
26 benchmark criteria, standard form contracts, credit

1 policies, and bid documents; and

2 (G) assess compliance with the procurement plans
3 approved by the Commission.

4 (c) The feedstock planning process shall be conducted as
5 follows:

6 (1) Beginning in 2012, the initial clean coal facility
7 shall annually provide a range of feedstock requirement
8 forecasts to the Agency by July 15 of each year, or such
9 other date as may be required by the Commission or Agency.
10 The feedstock requirement forecasts shall cover the 5-year
11 feedstock procurement planning period for the next
12 feedstock procurement plan, or such other longer period
13 that the Agency or the Commission may require, and shall
14 include daily data representing a high-load, low-load, and
15 expected-load scenario for the load of the utilities and
16 alternative retail suppliers required to enter into
17 sourcing agreements with the initial clean coal facility.
18 The utilities and alternative retail suppliers shall
19 provide supporting data and assumptions for each of the
20 scenarios.

21 (2) Beginning in 2012, the Agency shall, as necessary,
22 prepare a feedstock procurement plan by August 15th of each
23 year, or such other date as may be required by the
24 Commission. The feedstock procurement plan shall identify
25 the portfolio of feedstocks to be procured. Copies of the
26 feedstock procurement plan shall be posted and made

1 publicly available on the Agency's and Commission's
2 websites, and copies shall also be provided to the initial
3 clean coal facility. The initial clean coal facility shall
4 have 30 days following the date of posting to provide
5 comment to the Agency on the feedstock procurement plan.
6 Other interested entities also may comment on the feedstock
7 procurement plan. All comments submitted to the Agency
8 shall be specific, supported by data or other detailed
9 analyses, and, if objecting to all or a portion of the
10 feedstock procurement plan, accompanied by specific
11 alternative wording or proposals. All comments shall be
12 posted on the Agency's and Commission's websites. During
13 this 30-day comment period, the Agency shall hold at least
14 one public hearing for the purpose of receiving public
15 comment on the procurement plan. Within 14 days following
16 the end of the 30-day review period, the Agency shall
17 revise the feedstock procurement plan as necessary based on
18 the comments received, file the feedstock procurement plan
19 with the Commission, and post the feedstock procurement
20 plan on the websites.

21 (3) Within 5 days after the filing of the feedstock
22 procurement plan, any person objecting to the feedstock
23 procurement plan shall file an objection with the
24 Commission. Within 10 days after the filing, the Commission
25 shall determine whether a hearing is necessary. The
26 Commission shall enter its order confirming or modifying

1 the feedstock procurement plan within 90 days after the
2 filing of the feedstock procurement plan by the Agency.

3 (4) The Commission shall approve the feedstock
4 procurement plan, including expressly the forecast used in
5 the feedstock procurement plan, if the Commission
6 determines that it shall ensure adequate, reliable,
7 affordable, and environmentally sustainable feedstocks to
8 the clean coal facility at the lowest total cost over time,
9 taking into account any benefits of price stability and
10 other criteria set forth in this Section.

11 (d) The feedstock procurement process shall include each of
12 the following components:

13 (1) Solicitation, pre-qualification, and registration
14 of bidders. The feedstock procurement administrator shall
15 disseminate information to potential bidders to promote a
16 feedstock procurement event, notify potential bidders that
17 the feedstock procurement administrator may enter into a
18 post-bid price negotiation with bidders that meet the
19 applicable benchmarks, provide supply requirements, and
20 otherwise explain the competitive feedstock procurement
21 process. In addition to such other publication as the
22 feedstock procurement administrator determines is
23 appropriate, this information shall be posted on the
24 Agency's and the Commission's websites. The feedstock
25 procurement administrator shall also administer the
26 prequalification process, including evaluation of credit

1 worthiness, compliance with feedstock procurement rules,
2 and agreement to the standard form contract developed
3 pursuant to paragraph (2) of this subsection (d). The
4 feedstock procurement administrator shall then identify
5 and register bidders to participate in the feedstock
6 procurement event.

7 (2) Standard contract forms and credit terms and
8 instruments. The feedstock procurement administrator, in
9 consultation with the initial clean coal facility,
10 electric utilities, alternative retail electric suppliers,
11 the Commission, and other interested parties and subject to
12 Commission oversight, shall develop and provide standard
13 contract forms for the supplier contracts that meet
14 generally accepted industry practices. Standard credit
15 terms and instruments that meet generally accepted
16 industry practices shall be similarly developed. The
17 feedstock procurement administrator shall make available
18 to the Commission all written comments it receives on the
19 contract forms, credit terms, or instruments. If the
20 feedstock procurement administrator cannot reach agreement
21 with the initial clean coal facility as to the contract
22 terms and conditions, then the feedstock procurement
23 administrator must notify the Commission of any disputed
24 terms and the Commission shall resolve the dispute. The
25 terms of the contracts shall not be subject to negotiation
26 by winning bidders, and the bidders must agree to the terms

1 of the contract in advance so that winning bids are
2 selected solely on the basis of price.

3 (3) Establishment of a market-based price benchmark.
4 As part of the development of the feedstock procurement
5 process, the feedstock procurement administrator, in
6 consultation with the Commission staff, Agency staff, and
7 the feedstock procurement monitor, shall establish
8 benchmarks for evaluating the final prices in the contracts
9 for each of the feedstocks that shall be procured through
10 the feedstock procurement process. The benchmarks shall be
11 based on price data for similar feedstocks for the same
12 delivery period and similar delivery points, or other
13 delivery points after adjusting for that difference. The
14 price benchmarks may also be adjusted to take into account
15 differences between the information reflected in the
16 underlying data sources and the specific feedstocks and
17 gasification feedstock procurement process being used to
18 procure for the initial clean coal facility. The benchmarks
19 shall be confidential but shall be provided to, and shall
20 be subject to Commission review and approval, prior to a
21 feedstock procurement event.

22 (4) Request for proposals. The feedstock procurement
23 administrator shall design and issue a request for
24 proposals to supply coal or natural gas in accordance with
25 the initial clean coal facility's usage plan, as approved
26 by the Commission. The request for proposals shall set

1 forth a procedure for sealed, binding commitment bidding
2 with pay-as-bid settlement, and provision for selection of
3 bids on the basis of price.

4 (5) A plan for implementing contingencies in the event
5 of supplier default or failure of the feedstock procurement
6 process to fully meet the expected load requirement due to
7 insufficient supplier participation, Commission rejection
8 of results, or any other cause. The plan must be specific
9 to the initial clean coal facility's feedstock
10 specifications and requirements.

11 The feedstock procurement process described in this
12 subsection (d) is exempt from the requirements of the Illinois
13 Procurement Code, pursuant to Section 20-10 of that Code.

14 (e) Within 2 business days after opening the sealed bids,
15 the feedstock procurement administrator shall submit a
16 confidential report to the Commission. The report shall contain
17 the results of the bidding for each of the feedstock types
18 along with the feedstock procurement administrator's
19 recommendation for the acceptance and rejection of bids based
20 on the price benchmark criteria and other factors observed in
21 the process. The feedstock procurement monitor also shall
22 submit a confidential report to the Commission within 2
23 business days after opening the sealed bids. The report shall
24 contain the feedstock procurement monitor's assessment of
25 bidder behavior in the process, as well as an assessment of the
26 feedstock procurement administrator's compliance with the

1 feedstock procurement process and rules. The Commission shall
2 review the confidential reports submitted by the feedstock
3 procurement administrator and feedstock procurement monitor
4 and shall accept or reject the recommendations of the feedstock
5 procurement administrator within 2 business days after receipt
6 of the reports.

7 (f) Within 3 business days after the Commission decision
8 approving the results of a feedstock procurement event, the
9 initial clean coal facility shall enter into binding
10 contractual arrangements with the winning suppliers using
11 standard form contracts.

12 (g) The names of the successful bidders and the amount of
13 feedstock to be delivered for each contract type and for each
14 contract term shall be made available to the public at the time
15 of Commission approval of a feedstock procurement event. The
16 Commission, the procurement monitor, the feedstock procurement
17 administrator, the Agency, and all participants in the
18 feedstock procurement process shall maintain the
19 confidentiality of all other supplier and bidding information
20 in a manner consistent with all applicable laws, rules,
21 regulations, and tariffs. Confidential information, including
22 the confidential reports submitted by the feedstock
23 procurement administrator and feedstock procurement monitor
24 pursuant to subsection (e) of this Section, shall not be made
25 publicly available and shall not be discoverable by any party
26 in any proceeding, absent a compelling demonstration of need,

1 nor shall those reports be admissible in any proceeding other
2 than one for law enforcement purposes.

3 (h) Within 2 business days after a Commission decision
4 approving the results of a feedstock procurement event or such
5 other date as may be required by the Commission from time to
6 time, the initial clean coal facility shall file for
7 informational purposes with the Commission its actual or
8 estimated feedstock costs reflecting the costs associated with
9 the feedstock procurement.

10 (i) The initial clean coal facility shall pay for
11 reasonable costs incurred by the Agency in administering the
12 feedstock procurement events. The Agency shall determine the
13 amount owed for each feedstock procurement event, and the
14 initial clean coal facility shall pay that amount to the Agency
15 within 30 days after being informed by the Agency of the amount
16 owed. Those funds shall be deposited into the Agency Operations
17 Fund, pursuant to Section 1-55 of this Act, to be used to
18 reimburse expenses related to the feedstock procurement.

19 (j) The Commission has the authority to adopt rules to
20 carry out the provisions of this Section. For the public
21 interest, safety, and welfare, the Commission also has the
22 authority to adopt rules to carry out the provisions of this
23 Section on an emergency basis.

24 (k) On or before April 1 of each year, the Commission may
25 hold an informal hearing for the purpose of receiving comments
26 on the prior year's feedstock procurement process and any

1 recommendations for change.

2 (1) For all purposes of this Section 1-78 and subsection
3 (a-1) of Section 1-75 of this Act, (i) feedstock procurement
4 shall be deemed to include transportation of the feedstock
5 products to the initial clean coal facility (including the
6 acquisition by the initial clean coal facility, as appropriate,
7 of trucks, railcars or other transportation equipment), (ii)
8 feedstock procurement shall not be deemed to include day-to-day
9 performance and administration of feedstock procurement and
10 transportation arrangements, including scheduling, weighing,
11 quality determination, acceptance or rejection of shipments,
12 price adjustments, documentation and related activities, all
13 of which shall be performed by the owner of the initial clean
14 coal facility, and (iii) feedstock supplier shall be deemed to
15 include feedstock transporters and providers of feedstock
16 transportation equipment.

17 (20 ILCS 3855/1-79 new)

18 Sec. 1-79. Limited non-impairment.

19 (a) The State of Illinois pledges that the State shall not
20 enact any law or take any action to:

21 (1) break, or repeal the authority for, sourcing
22 agreements in a form approved by the Agency and entered
23 into between electric utilities and the initial clean coal
24 facility pursuant to subsection (d) of Section 1-75 of this
25 Act;

1 (2) break, or repeal the authority for, sourcing
2 agreements in a form approved by the Agency and entered
3 into between alternative retail electric suppliers and the
4 initial clean coal facility;

5 (3) deny public utilities full cost recovery for their
6 costs incurred under those sourcing agreements;

7 (4) deny the initial clean coal facility full cost
8 recovery under those sourcing agreements for costs that are
9 recoverable under Section 1-76 of this Act.

10 (5) repeal or remove the requirement that public
11 utilizes shall enter into sourcing agreements with the
12 initial clean coal facility under paragraph (1) of
13 subsection (d) of Section 1-75 of this Act or subsection
14 (c) of Section 16-116 of the Public Utilities Act; or

15 (6) repeal or remove the requirement that alternative
16 retail electric suppliers shall enter into sourcing
17 agreements with the initial clean coal facility under item
18 (iv) of paragraph (5) of subsection (d) of Section 16-115
19 of the Public Utilities Act.

20 These pledges are for the benefit of the parties to those
21 sourcing agreements and the issuers and holders of bonds or
22 other obligations issued or incurred to finance or refinance
23 the initial clean coal facility. The initial clean coal
24 facility is authorized to include and refer to these pledges in
25 any financing agreement into which it may enter in regard to
26 those sourcing agreements.

1 (b) The State of Illinois retains and reserves all other
2 rights to enact new or amendatory legislation or take any other
3 action, without impairment of the right of the initial clean
4 coal facility to recover prudently incurred costs resulting
5 from the new or amendatory legislation or other action as
6 approved by the Commission, including, but not limited to,
7 legislation or other action that would:

8 (1) directly or indirectly raise the costs that clean
9 coal facilities must incur;

10 (2) directly or indirectly place additional
11 restrictions, regulations, or requirements on the initial
12 clean coal facility;

13 (3) prohibit sequestration in general or prohibit a
14 specific sequestration method or project; or

15 (4) increase minimum sequestration requirements for
16 the initial clean coal facility to a technically feasible
17 extent.

18 Section 10. The Illinois Procurement Code is amended by
19 changing Sections 1-10 and 20-10 as follows:

20 (30 ILCS 500/1-10)

21 Sec. 1-10. Application.

22 (a) This Code applies only to procurements for which
23 contractors were first solicited on or after July 1, 1998. This
24 Code shall not be construed to affect or impair any contract,

1 or any provision of a contract, entered into based on a
2 solicitation prior to the implementation date of this Code as
3 described in Article 99, including but not limited to any
4 covenant entered into with respect to any revenue bonds or
5 similar instruments. All procurements for which contracts are
6 solicited between the effective date of Articles 50 and 99 and
7 July 1, 1998 shall be substantially in accordance with this
8 Code and its intent.

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

12 (1) Contracts between the State and its political
13 subdivisions or other governments, or between State
14 governmental bodies except as specifically provided in
15 this Code.

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

18 (3) Purchase of care.

19 (4) Hiring of an individual as employee and not as an
20 independent contractor, whether pursuant to an employment
21 code or policy or by contract directly with that
22 individual.

23 (5) Collective bargaining contracts.

24 (6) Purchase of real estate, except that notice of this
25 type of contract with a value of more than \$25,000 must be
26 published in the Procurement Bulletin within 7 days after

1 the deed is recorded in the county of jurisdiction. The
2 notice shall identify the real estate purchased, the names
3 of all parties to the contract, the value of the contract,
4 and the effective date of the contract.

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

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

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

23 (10) Procurement expenditures by the Illinois Health
24 Information Exchange Authority involving private funds
25 from the Health Information Exchange Fund. "Private funds"
26 means gifts, donations, and private grants.

1 (c) This Code does not apply to the electric power
2 procurement process provided for under Section 1-75 of the
3 Illinois Power Agency Act and Section 16-111.5 of the Public
4 Utilities Act.

5 (d) Except for Section 20-160 and Article 50 of this Code,
6 and as expressly required by Section 9.1 of the Illinois
7 Lottery Law, the provisions of this Code do not apply to the
8 procurement process provided for under Section 9.1 of the
9 Illinois Lottery Law.

10 (e) This Code does not apply to the process used by the
11 Capital Development Board to retain a person or entity to
12 assist the Capital Development Board with its duties related to
13 the determination of costs of an initial clean coal facility,
14 as defined under Section 1-10 of the Illinois Power Agency Act,
15 as required under Section 1-76 of the Illinois Power Agency
16 Act, including calculating the range of capital costs, the
17 range of operating and maintenance costs, or the sequestration
18 costs or monitoring the construction of initial clean coal
19 facility for the full duration of construction.

20 (f) This Code does not apply to the process used by the
21 Illinois Power Agency to retain a mediator to mediate sourcing
22 agreement disputes between electric utilities or alternative
23 retail electric suppliers and the initial clean coal facility,
24 as defined under Section 1-10 of the Illinois Power Agency Act,
25 as required under paragraph (4) of subsection (d) of Section
26 1-75 of the Illinois Power Agency Act.

1 (Source: P.A. 95-481, eff. 8-28-07; 95-615, eff. 9-11-07;
2 95-876, eff. 8-21-08; 96-840, eff. 12-23-09; 96-1331, eff.
3 7-27-10.)

4 (30 ILCS 500/20-10)

5 (Text of Section from P.A. 96-159 and 96-588)

6 Sec. 20-10. Competitive sealed bidding; reverse auction.

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

10 (b) Invitation for bids. An invitation for bids shall be
11 issued and shall include a purchase description and the
12 material contractual terms and conditions applicable to the
13 procurement.

14 (c) Public notice. Public notice of the invitation for bids
15 shall be published in the Illinois Procurement Bulletin at
16 least 14 days before the date set in the invitation for the
17 opening of bids.

18 (d) Bid opening. Bids shall be opened publicly in the
19 presence of one or more witnesses at the time and place
20 designated in the invitation for bids. The name of each bidder,
21 the amount of each bid, and other relevant information as may
22 be specified by rule shall be recorded. After the award of the
23 contract, the winning bid and the record of each unsuccessful
24 bid shall be open to public inspection.

25 (e) Bid acceptance and bid evaluation. Bids shall be

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

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

21 (g) Award. The contract shall be awarded with reasonable
22 promptness by written notice to the lowest responsible and
23 responsive bidder whose bid meets the requirements and criteria
24 set forth in the invitation for bids, except when a State
25 purchasing officer determines it is not in the best interest of
26 the State and by written explanation determines another bidder

1 shall receive the award. The explanation shall appear in the
2 appropriate volume of the Illinois Procurement Bulletin.

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

10 (i) Alternative procedures. Notwithstanding any other
11 provision of this Act to the contrary, the Director of the
12 Illinois Power Agency may create alternative bidding
13 procedures to be used in procuring professional services under
14 subsection (a) of Section 1-75 and subsection (d) of Section
15 1-78 ~~1-75(a)~~ of the Illinois Power Agency Act and Section
16 16-111.5(c) of the Public Utilities Act and to procure
17 renewable energy resources under Section 1-56 of the Illinois
18 Power Agency Act. These alternative procedures shall be set
19 forth together with the other criteria contained in the
20 invitation for bids, and shall appear in the appropriate volume
21 of the Illinois Procurement Bulletin.

22 (j) Reverse auction. Notwithstanding any other provision
23 of this Section and in accordance with rules adopted by the
24 Director of Central Management Services as chief procurement
25 officer, a State purchasing officer under that chief
26 procurement officer's jurisdiction may procure supplies or

1 services through a competitive electronic auction bidding
2 process after the purchasing officer explains in writing to the
3 chief procurement officer his or her determination that the use
4 of such a process will be in the best interest of the State.
5 The chief procurement officer shall publish that determination
6 in his or her next volume of the Illinois Procurement Bulletin.

7 An invitation for bids shall be issued and shall include
8 (i) a procurement description, (ii) all contractual terms,
9 whenever practical, and (iii) conditions applicable to the
10 procurement, including a notice that bids will be received in
11 an electronic auction manner.

12 Public notice of the invitation for bids shall be given in
13 the same manner as provided in subsection (c).

14 Bids shall be accepted electronically at the time and in
15 the manner designated in the invitation for bids. During the
16 auction, a bidder's price shall be disclosed to other bidders.
17 Bidders shall have the opportunity to reduce their bid prices
18 during the auction. At the conclusion of the auction, the
19 record of the bid prices received and the name of each bidder
20 shall be open to public inspection.

21 After the auction period has terminated, withdrawal of bids
22 shall be permitted as provided in subsection (f).

23 The contract shall be awarded within 60 days after the
24 auction by written notice to the lowest responsible bidder, or
25 all bids shall be rejected except as otherwise provided in this
26 Code. Extensions of the date for the award may be made by

1 mutual written consent of the State purchasing officer and the
2 lowest responsible bidder.

3 This subsection does not apply to (i) procurements of
4 professional and artistic services, including but not limited
5 to telecommunications services, communications services,
6 Internet services, and information services, and (ii)
7 contracts for construction projects.

8 (Source: P.A. 95-481, eff. 8-28-07; 96-159, eff. 8-10-09;
9 96-588, eff. 8-18-09; revised 10-5-10.)

10 (Text of Section from P.A. 96-159 and 96-795)

11 Sec. 20-10. Competitive sealed bidding; reverse auction.

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

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

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

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

1 the amount of each bid, and other relevant information as may
2 be specified by rule shall be recorded. After the award of the
3 contract, the winning bid and the record of each unsuccessful
4 bid shall be open to public inspection.

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

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

26 (g) Award. The contract shall be awarded with reasonable

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

9 (1) a description of the agency's needs;

10 (2) a determination that the anticipated cost will be
11 fair and reasonable;

12 (3) a listing of all responsible and responsive
13 bidders; and

14 (4) the name of the bidder selected, pricing, and the
15 reasons for selecting that bidder.

16 Each chief procurement officer may adopt guidelines to
17 implement the requirements of this subsection (g).

18 The written explanation shall be filed with the Legislative
19 Audit Commission and the Procurement Policy Board and be made
20 available for inspection by the public within 30 days after the
21 agency's decision to award the contract.

22 (h) Multi-step sealed bidding. When it is considered
23 impracticable to initially prepare a purchase description to
24 support an award based on price, an invitation for bids may be
25 issued requesting the submission of unpriced offers to be
26 followed by an invitation for bids limited to those bidders

1 whose offers have been qualified under the criteria set forth
2 in the first solicitation.

3 (i) Alternative procedures. Notwithstanding any other
4 provision of this Act to the contrary, the Director of the
5 Illinois Power Agency may create alternative bidding
6 procedures to be used in procuring professional services under
7 subsection (a) of Section 1-75 and subsection (d) of Section
8 1-78 ~~1-75(a)~~ of the Illinois Power Agency Act and Section
9 16-111.5(c) of the Public Utilities Act and to procure
10 renewable energy resources under Section 1-56 of the Illinois
11 Power Agency Act. These alternative procedures shall be set
12 forth together with the other criteria contained in the
13 invitation for bids, and shall appear in the appropriate volume
14 of the Illinois Procurement Bulletin.

15 (j) Reverse auction. Notwithstanding any other provision
16 of this Section and in accordance with rules adopted by the
17 chief procurement officer, that chief procurement officer may
18 procure supplies or services through a competitive electronic
19 auction bidding process after the chief procurement officer
20 determines that the use of such a process will be in the best
21 interest of the State. The chief procurement officer shall
22 publish that determination in his or her next volume of the
23 Illinois Procurement Bulletin.

24 An invitation for bids shall be issued and shall include
25 (i) a procurement description, (ii) all contractual terms,
26 whenever practical, and (iii) conditions applicable to the

1 procurement, including a notice that bids will be received in
2 an electronic auction manner.

3 Public notice of the invitation for bids shall be given in
4 the same manner as provided in subsection (c).

5 Bids shall be accepted electronically at the time and in
6 the manner designated in the invitation for bids. During the
7 auction, a bidder's price shall be disclosed to other bidders.
8 Bidders shall have the opportunity to reduce their bid prices
9 during the auction. At the conclusion of the auction, the
10 record of the bid prices received and the name of each bidder
11 shall be open to public inspection.

12 After the auction period has terminated, withdrawal of bids
13 shall be permitted as provided in subsection (f).

14 The contract shall be awarded within 60 days after the
15 auction by written notice to the lowest responsible bidder, or
16 all bids shall be rejected except as otherwise provided in this
17 Code. Extensions of the date for the award may be made by
18 mutual written consent of the State purchasing officer and the
19 lowest responsible bidder.

20 This subsection does not apply to (i) procurements of
21 professional and artistic services, (ii) telecommunications
22 services, communication services, and information services,
23 and (iii) contracts for construction projects.

24 (Source: P.A. 95-481, eff. 8-28-07; 96-159, eff. 8-10-09;
25 96-795, eff. 7-1-10 (see Section 5 of P.A. 96-793 for the
26 effective date of changes made by P.A. 96-795); revised

1 10-5-10.)

2 Section 15. The Public Utilities Act is amended by changing
3 Sections 3-101, 16-115, and 16-116 and by adding Section 3-123
4 as follows:

5 (220 ILCS 5/3-101) (from Ch. 111 2/3, par. 3-101)

6 Sec. 3-101. Definitions. Unless otherwise specified, the
7 terms set forth in Sections 3-102 through 3-123 ~~3-121~~ are used
8 in this Act as therein defined.

9 (Source: P.A. 84-617; 84-1118.)

10 (220 ILCS 5/3-123 new)

11 Sec. 3-123. Initial clean coal facility; sequester;
12 sourcing agreement; substitute natural gas or SNG. As used in
13 this Act:

14 "Initial clean coal facility" shall have the same meaning
15 as provided in Section 1-10 of the Illinois Power Agency Act.

16 "Sequester" shall have the same meaning as provided in
17 Section 1-10 of the Illinois Power Agency Act.

18 "Sourcing agreement" means an agreement between the owner
19 of the initial clean coal facility and an alternative retail
20 electric supplier that has the terms and conditions meeting the
21 requirements of paragraph (5) of subsection (d) of Section
22 16-115 of this Act.

23 "Substitute natural gas" or "SNG" shall have the same

1 meaning as provided in Section 1-10 of the Illinois Power
2 Agency Act.

3 (220 ILCS 5/16-115)

4 Sec. 16-115. Certification of alternative retail electric
5 suppliers.

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

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

23 (c) An application for a certificate of service authority
24 shall identify the area or areas in which the applicant intends
25 to offer service and the types of services it intends to offer.

1 Applicants that seek to serve residential or small commercial
2 retail customers within a geographic area that is smaller than
3 an electric utility's service area shall submit evidence
4 demonstrating that the designation of this smaller area does
5 not violate Section 16-115A. An applicant that seeks to serve
6 residential or small commercial retail customers may state in
7 its application for certification any limitations that will be
8 imposed on the number of customers or maximum load to be
9 served.

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

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

25 (2) That the applicant will comply with all applicable
26 federal, State, regional and industry rules, policies,

1 practices and procedures for the use, operation, and
2 maintenance of the safety, integrity and reliability, of
3 the interconnected electric transmission system;

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

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

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

24 (i) (blank) ~~(Blank)~~;

25 (ii) (blank) ~~(Blank)~~;

26 (iii) (blank); ~~the required sourcing of~~

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

8 (iv) all alternative retail electric suppliers, whether certified before or after the effective date of
9 this amendatory Act of the 96th General Assembly, shall
10 execute a sourcing agreement to source electricity
11 from the initial clean coal facility, on the terms set
12 forth in paragraphs (3) and (4) of subsection (d) of
13 Section 1-75 of the Illinois Power Agency Act, except
14 that in lieu of the requirements in subparagraph
15 subparagraphs (A) (v), (B) (i), (C) (v), and (C) (vi) of
16 paragraph (3) of that subsection (d), the sourcing
17 agreement applicant shall contain execute one or more
18 of the following:

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

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

22 (2) provisions requiring the alternative
23 retail supplier to pay or receive for ~~if the~~
24 ~~sourcing agreement is a contract for differences,~~
25 ~~a contract with the initial clean coal facility in~~
26 each hour with respect to an amount of electricity

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

22 (v) the initial clean coal facility shall comply
23 with Section 1-76.5 of the Illinois Power Agency Act;
24 ~~if, in any year after the first year of commercial~~
25 ~~operation, the owner of the clean coal facility fails~~
26 ~~to demonstrate to the Commission that the initial clean~~

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

1 ~~apply to the initial clean coal facility shall be~~
2 ~~reviewed annually by an independent expert retained by~~
3 ~~the owner of the initial clean coal facility, with the~~
4 ~~advance written approval of the Attorney General;~~

5 (vi) ~~the~~ The Commission shall, after notice and
6 ~~hearing, revoke the certification of any alternative~~
7 ~~retail electric supplier that fails to execute a~~
8 ~~sourcing agreement with the initial clean coal~~
9 ~~facility as required by item (5) of subsection (d) of~~
10 ~~this Section. The sourcing agreements with the ~~this~~~~
11 ~~initial clean coal facility shall be subject to~~
12 ~~approval both approval of the initial clean coal~~
13 ~~facility by the Illinois Power Agency pursuant to~~
14 ~~paragraph (4) of subsection (d) of Section 1-75 of the~~
15 ~~Illinois Power Agency Act General Assembly and~~
16 ~~satisfaction of the requirements of item (4) of~~
17 ~~subsection (d) of Section 1-75 of the Illinois Power~~
18 ~~Agency Act, and shall be executed within 30 ~~90~~ days~~
19 ~~after either the ~~any such~~ approval by the Illinois~~
20 ~~Power Agency or the issuance of any necessary approval~~
21 ~~by the Federal Energy Regulatory Commission, whichever~~
22 ~~is later;~~

23 (vii) The Commission shall have jurisdiction over
24 disciplinary proceedings and complaints for violations
25 of this Section. If, upon complaint, the Commission
26 determines an alternative retail electric supplier has

1 failed to execute a sourcing agreement with the initial
2 clean coal facility, then the Commission shall issue
3 notice of the finding to the alternative retail
4 electric supplier. The alternative retail electric
5 supplier shall have 30 days after the receipt of notice
6 to enter into a sourcing agreement. If, after the
7 notice period, the Commission finds an alternative
8 retail electric supplier has failed to comply, then the
9 Commission shall revoke the alternative retail
10 electric supplier's certificate for 6 months ~~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 (d-5) (Blank).

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

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

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

16 (Source: P.A. 95-130, eff. 1-1-08; 95-1027, eff. 6-1-09;
17 96-159, eff. 8-10-09.)

18 (220 ILCS 5/16-116)

19 Sec. 16-116. Commission oversight of electric utilities
20 serving retail customers outside their service areas or
21 providing competitive, non-tariffed services.

22 (a) An electric utility that has a tariff on file for
23 delivery services may, without regard to any otherwise
24 applicable tariffs on file, provide electric power and energy
25 to one or more retail customers located outside its service

1 area, but only to the extent (i) such retail customer (A) is
2 eligible for delivery services under any delivery services
3 tariff filed with the Commission by the electric utility in
4 whose service area the retail customer is located and (B) has
5 either elected to take such delivery services or has paid or
6 contracted to pay the charges specified in Sections 16-108 and
7 16-114, or (ii) if such retail customer is served by a
8 municipal system or electric cooperative, the customer is
9 eligible for delivery services under the terms and conditions
10 for such service established by the municipal system or
11 electric cooperative serving that customer.

12 (b) An electric utility may offer any competitive service
13 to any customer or group of customers without filing contracts
14 with or seeking approval of the Commission, notwithstanding any
15 rule or regulation that would require such approval. The
16 Commission shall not increase or decrease the prices, and may
17 not alter or add to the terms and conditions for the utility's
18 competitive services, from those agreed to by the electric
19 utility and the customer or customers. Non-tariffed,
20 competitive services shall not be subject to the provisions of
21 the Electric Supplier Act or to Articles V, VII, VIII or IX of
22 the Act, except to the extent that any provisions of such
23 Articles are made applicable to alternative retail electric
24 suppliers pursuant to Sections 16-115 and 16-115A, but shall be
25 subject to the provisions of subsections (b) through (g) of
26 Section 16-115A, and Section 16-115B to the same extent such

1 provisions are applicable to the services provided by
2 alternative retail electric suppliers.

3 (c) Electric utilities serving retail customers outside
4 their service areas shall be subject to the requirements of
5 paragraph (5) of subsection (d) of Section 16-115 of the Public
6 Utilities Act, except that the numerators referred to in that
7 subsection (d) shall be the utility's retail market sales of
8 electricity (expressed in kilowatthours sold) in the State
9 outside of the utility's service territory in the third month
10 preceding the current ~~prior~~ month.

11 (Source: P.A. 95-1027, eff. 6-1-09.)

12 Section 20. The Illinois Gas Pipeline Safety Act is amended
13 by changing Sections 2.02, 2.03, 2.04, and 3 as follows:

14 (220 ILCS 20/2.02) (from Ch. 111 2/3, par. 552.2)

15 Sec. 2.02. "Gas" means natural gas, flammable gas or gas
16 which is toxic or corrosive. "Gas" also means carbon dioxide in
17 any physical form, whenever transported by pipeline for the
18 purpose of sequestration.

19 (Source: P.A. 76-1588.)

20 (220 ILCS 20/2.03) (from Ch. 111 2/3, par. 552.3)

21 Sec. 2.03. "Transportation of gas" means the gathering,
22 transmission, or distribution of gas by pipeline or its
23 storage, within this State and not subject to the jurisdiction

1 of the Federal Energy Regulatory Commission under the Natural
2 Gas Act, except that it includes the transmission of gas
3 through pipeline facilities within this State that transport
4 gas from an interstate gas pipeline to a direct sales customer
5 within this State purchasing gas for its own consumption.
6 "Transportation of gas" also includes the conveyance of gas
7 from a gas main through the primary fuel line to the outside
8 wall of residential premises. If the gas meter is placed within
9 3 feet of the structure, the utility's responsibility shall end
10 at the outlet side of the meter. "Transportation of gas" also
11 includes the conveyance of carbon dioxide in any physical form
12 for the purpose of sequestration.
13 (Source: P.A. 87-1092; 88-314.)

14 (220 ILCS 20/2.04) (from Ch. 111 2/3, par. 552.4)
15 Sec. 2.04. "Pipeline facilities" includes new and existing
16 pipe rights-of-way and any equipment, facility, or building
17 used in the transportation of gas or the treatment of gas
18 during the course of transportation and includes facilities
19 within this State that transport gas from an interstate gas
20 pipeline to a direct sales customer within this State
21 purchasing gas for its own consumption, but "rights-of-way" as
22 used in this Act does not authorize the Commission to
23 prescribe, under this Act, the location or routing of any
24 pipeline facility. "Pipeline facilities" also includes new and
25 existing pipes and lines and any other equipment, facility, or

1 structure, except customer-owned branch lines connected to the
2 primary fuel lines, used to convey gas from a gas main to the
3 outside wall of residential premises, and any person who
4 provides gas service directly to its residential customer
5 through these facilities shall be deemed to operate such
6 pipeline facilities for purposes of this Act irrespective of
7 the ownership of the facilities or the location of the
8 facilities with respect to the meter, except that a person who
9 provides gas service to a "master meter system", as that term
10 is defined at 49 C.F.R. Section 191.3, shall not be deemed to
11 operate any facilities downstream of the master meter.
12 "Pipeline facilities" also includes new and existing pipe
13 rights-of-way and any equipment, facility, or building used in
14 the transportation of carbon dioxide in any physical form for
15 the purpose of sequestration.

16 (Source: P.A. 87-1092; 88-314.)

17 (220 ILCS 20/3) (from Ch. 111 2/3, par. 553)

18 Sec. 3. (a) As soon as practicable, but not later than 3
19 months after the effective date of this Act, the Commission
20 shall adopt rules establishing minimum safety standards for the
21 transportation of gas and for pipeline facilities. Such rules
22 shall be at least as inclusive, as stringent, and compatible
23 with, the minimum safety standards adopted by the Secretary of
24 Transportation under the Federal Act. Thereafter, the
25 Commission shall maintain such rules so that the rules are at

1 least as inclusive, as stringent, and compatible with, the
2 minimum standards from time to time in effect under the Federal
3 Act. The Commission shall also adopt rules establishing minimum
4 safety standards for the transportation of carbon dioxide in
5 any physical form for the purpose of sequestration and for
6 pipeline facilities used for that function.

7 (b) Standards established under this Act may apply to the
8 design, installation, inspection, testing, construction,
9 extension, operation, replacement, and maintenance of pipeline
10 facilities. Standards affecting the design, installation,
11 construction, initial inspection and initial testing are not
12 applicable to pipeline facilities in existence on the date such
13 standards are adopted. Whenever the Commission finds a
14 particular facility to be hazardous to life or property, it may
15 require the person operating such facility to take the steps
16 necessary to remove the hazard.

17 (c) Standards established by the Commission under this Act
18 shall, subject to paragraphs (a) and (b) of this Section 3, be
19 practicable and designed to meet the need for pipeline safety.
20 In prescribing such standards, the Commission shall consider:
21 similar standards established in other states; relevant
22 available pipeline safety data; whether such standards are
23 appropriate for the particular type of pipeline
24 transportation; the reasonableness of any proposed standards;
25 and the extent to which such standards will contribute to
26 public safety.

1 Rules adopted under this Act are subject to "The Illinois
2 Administrative Procedure Act", approved September 22, 1975, as
3 amended.

4 (Source: P.A. 83-333.)

5 Section 25. The Environmental Protection Act is amended by
6 adding Section 13.7 as follows:

7 (415 ILCS 5/13.7 new)

8 Sec. 13.7. Carbon dioxide sequestration sites.

9 (a) For purposes of this Section, the term "carbon dioxide
10 sequestration site" means a site or facility for which the
11 Agency has issued a permit for the underground injection of
12 carbon dioxide.

13 (b) The Agency shall inspect carbon dioxide sequestration
14 sites for compliance with this Act, rules adopted under this
15 Act, and permits issued by the Agency.

16 (c) If the Agency issues a seal order under Section 34 of
17 this Act in relation to a carbon dioxide sequestration site, or
18 if a civil action for an injunction to halt activity at a
19 carbon dioxide sequestration site is initiated under Section 43
20 of this Act at the request of the Agency, then the Agency shall
21 post notice of the action on its website.

22 (d) Persons seeking a permit or permit modification for the
23 underground injection of carbon dioxide shall be liable to the
24 Agency for all reasonable and documented costs incurred by the

1 Agency that are associated with review and issuance of the
2 permit, including, but not limited to, costs associated with
3 public hearings and the review of permit applications. Once a
4 permit is issued, the permittee shall be liable to the Agency
5 for all reasonable and documented costs incurred by the Agency
6 that are associated with inspections and other oversight of the
7 carbon dioxide sequestration site. Persons liable for costs
8 under this subsection (d) must pay the costs upon invoicing, or
9 other request or demand for payment, by the Agency.

10 Moneys collected under this subsection (d) shall be
11 deposited into the Environmental Protection Permit and
12 Inspection Fund established under Section 22.8 of this Act. The
13 Agency may adopt rules relating to the collection of costs due
14 under this subsection (d).

15 (e) The Agency shall not issue a permit or permit
16 modification for the underground injection of carbon dioxide
17 unless all costs for which the permittee is liable under
18 subsection (d) of this Section have been paid.

19 (f) No person shall fail or refuse to pay costs for which
20 the person is liable under subsection (d) of this Section.

21 Section 85. Rulemaking. The Illinois Environmental
22 Protection Agency, the Illinois Commerce Commission, the
23 Capital Development Board, and the Illinois Department of
24 Natural Resources shall have rulemaking authority to implement
25 the provisions of this amendatory Act of the 96th General

1 Assembly.

2 Section 90. Inseverability. The provisions of this Act are
3 mutually dependent and inseverable. If any provision is held
4 invalid, then this entire Act, including all new and amendatory
5 provisions, is invalid.

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