

# HB1369



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB1369

Introduced 2/9/2011, by Rep. Thomas Holbrook

#### SYNOPSIS AS INTRODUCED:

220 ILCS 5/16-111.5

Amends the Public Utilities Act. Provides that the required procurement plan for an electric utility shall include proposed bidding rules, bid documents, standard form contracts, and credit documents and policies. Changes provisions concerning the draft and final procurement plans by the Illinois Power Agency, including the role of the Illinois Commerce Commission. Effective immediately.

LRB097 09305 ASK 49440 b

A BILL FOR

1 AN ACT concerning utilities.

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

4 Section 5. The Public Utilities Act is amended by changing  
5 Section 16-111.5 as follows:

6 (220 ILCS 5/16-111.5)

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

8 (a) An electric utility that on December 31, 2005 served at  
9 least 100,000 customers in Illinois shall procure power and  
10 energy for its eligible retail customers in accordance with the  
11 applicable provisions set forth in Section 1-75 of the Illinois  
12 Power Agency Act and this Section. "Eligible retail customers"  
13 for the purposes of this Section means those retail customers  
14 that purchase power and energy from the electric utility under  
15 fixed-price bundled service tariffs, other than those retail  
16 customers whose service is declared or deemed competitive under  
17 Section 16-113 and those other customer groups specified in  
18 this Section, including self-generating customers, customers  
19 electing hourly pricing, or those customers who are otherwise  
20 ineligible for fixed-price bundled tariff service. Those  
21 customers that are excluded from the definition of "eligible  
22 retail customers" shall not be included in the procurement plan  
23 load requirements, and the utility shall procure any supply

1 requirements, including capacity, ancillary services, and  
2 hourly priced energy, in the applicable markets as needed to  
3 serve those customers, provided that the utility may include in  
4 its procurement plan load requirements for the load that is  
5 associated with those retail customers whose service has been  
6 declared or deemed competitive pursuant to Section 16-113 of  
7 this Act to the extent that those customers are purchasing  
8 power and energy during one of the transition periods  
9 identified in subsection (b) of Section 16-113 of this Act.

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

1 implementing tariff, any procurement occurring in accordance  
2 with this plan shall be competitively bid through a request for  
3 proposals process. Approval and implementation of the  
4 procurement plan shall be subject to review and approval by the  
5 Commission according to the provisions set forth in this  
6 Section. A procurement plan shall include each of the following  
7 components:

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

9 (i) multi-year historical analysis of hourly  
10 loads;

11 (ii) switching trends and competitive retail  
12 market analysis;

13 (iii) known or projected changes to future loads;

14 and

15 (iv) growth forecasts by customer class.

16 (2) Analysis of the impact of any demand side and  
17 renewable energy initiatives. This analysis shall include:

18 (i) the impact of demand response programs, both  
19 current and projected;

20 (ii) supply side needs that are projected to be  
21 offset by purchases of renewable energy resources, if  
22 any; and

23 (iii) the impact of energy efficiency programs,  
24 both current and projected.

25 (3) A plan for meeting the expected load requirements  
26 that will not be met through preexisting contracts. This

1 plan shall include:

2 (i) definitions of the different retail customer  
3 classes for which supply is being purchased;

4 (ii) the proposed mix of demand-response products  
5 for which contracts will be executed during the next  
6 year. The cost-effective demand-response measures  
7 shall be procured whenever the cost is lower than  
8 procuring comparable capacity products, provided that  
9 such products shall:

10 (A) be procured by a demand-response provider  
11 from eligible retail customers;

12 (B) at least satisfy the demand-response  
13 requirements of the regional transmission  
14 organization market in which the utility's service  
15 territory is located, including, but not limited  
16 to, any applicable capacity or dispatch  
17 requirements;

18 (C) provide for customers' participation in  
19 the stream of benefits produced by the  
20 demand-response products;

21 (D) provide for reimbursement by the  
22 demand-response provider of the utility for any  
23 costs incurred as a result of the failure of the  
24 supplier of such products to perform its  
25 obligations thereunder; and

26 (E) meet the same credit requirements as apply

1 to suppliers of capacity, in the applicable  
2 regional transmission organization market;

3 (iii) monthly forecasted system supply  
4 requirements, including expected minimum, maximum, and  
5 average values for the planning period;

6 (iv) the proposed mix and selection of standard  
7 wholesale products for which contracts will be  
8 executed during the next year, separately or in  
9 combination, to meet that portion of its load  
10 requirements not met through pre-existing contracts,  
11 including but not limited to monthly 5 x 16 peak period  
12 block energy, monthly off-peak wrap energy, monthly 7 x  
13 24 energy, annual 5 x 16 energy, annual off-peak wrap  
14 energy, annual 7 x 24 energy, monthly capacity, annual  
15 capacity, peak load capacity obligations, capacity  
16 purchase plan, and ancillary services;

17 (v) proposed term structures for each wholesale  
18 product type included in the proposed procurement plan  
19 portfolio of products; and

20 (vi) an assessment of the price risk, load  
21 uncertainty, and other factors that are associated  
22 with the proposed procurement plan; this assessment,  
23 to the extent possible, shall include an analysis of  
24 the following factors: contract terms, time frames for  
25 securing products or services, fuel costs, weather  
26 patterns, transmission costs, market conditions, and

1 the governmental regulatory environment; the proposed  
2 procurement plan shall also identify alternatives for  
3 those portfolio measures that are identified as having  
4 significant price risk.

5 (4) Proposed procedures for balancing loads. The  
6 procurement plan shall include, for load requirements  
7 included in the procurement plan, the process for (i)  
8 hourly balancing of supply and demand and (ii) the criteria  
9 for portfolio re-balancing in the event of significant  
10 shifts in load.

11 (5) Proposed bidding rules, bid documents, standard  
12 form contracts, and credit documents and policies.

13 (c) The procurement process set forth in Section 1-75 of  
14 the Illinois Power Agency Act and subsection (e) of this  
15 Section shall be administered by a procurement administrator  
16 and monitored by a procurement monitor.

17 (1) The procurement administrator shall:

18 (i) design the final procurement process in  
19 accordance with Section 1-75 of the Illinois Power  
20 Agency Act and subsection (e) of this Section following  
21 Commission approval of the procurement plan;

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

1 (iii) serve as the interface between the electric  
2 utility and suppliers;

3 (iv) manage the bidder pre-qualification and  
4 registration process;

5 (v) obtain the electric utilities' agreement to  
6 the final form of all supply contracts and credit  
7 collateral agreements;

8 (vi) administer the request for proposals process;

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

21 (viii) maintain confidentiality of supplier and  
22 bidding information in a manner consistent with all  
23 applicable laws, rules, regulations, and tariffs;

24 (ix) submit a confidential report to the  
25 Commission recommending acceptance or rejection of  
26 bids;



1           (x) notify the utility of contract counterparties  
2 and contract specifics; and

3           (xi) administer related contingency procurement  
4 events.

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

7           (i) monitor interactions among the procurement  
8 administrator, suppliers, and utility;

9           (ii) monitor and report to the Commission on the  
10 progress of the procurement process;

11           (iii) provide an independent confidential report  
12 to the Commission regarding the results of the  
13 procurement event;

14           (iv) assess compliance with the procurement plans  
15 approved by the Commission for each utility that on  
16 December 31, 2005 provided electric service to a least  
17 100,000 customers in Illinois;

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

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

25           (vii) consult with the procurement administrator  
26 regarding the development and use of benchmark

1 criteria, standard form contracts, credit policies,  
2 and bid documents.

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

5 (1) Beginning in 2008, each Illinois utility procuring  
6 power pursuant to this Section shall annually provide a  
7 range of load forecasts to the Illinois Power Agency by  
8 July 15 of each year, or such other date as may be required  
9 by the Commission or Agency. The load forecasts shall cover  
10 the 5-year procurement planning period for the next  
11 procurement plan and shall include hourly data  
12 representing a high-load, low-load and expected-load  
13 scenario for the load of the eligible retail customers. The  
14 utility shall provide supporting data and assumptions for  
15 each of the scenarios.

16 (2) Beginning in 2011 ~~2008~~, the Illinois Power Agency  
17 shall prepare a draft procurement plan by August 15th of  
18 each year, or such other date as may be required by the  
19 Commission. The procurement plan shall identify the  
20 portfolio of demand-response and power and energy products  
21 to be procured. The draft procurement plan shall also  
22 indicate, in legislative style, the specific changes to the  
23 most recent Commission-approved procurement plan.  
24 Cost-effective demand-response measures shall be procured  
25 as set forth in item (iii) of subsection (b) of this  
26 Section. Copies of the draft procurement plan shall be

1 posted and made publicly available on the Agency's and  
2 Commission's websites, and copies shall also be provided to  
3 each affected electric utility and each alternative retail  
4 electric supplier. An affected utility shall have 30 days  
5 following the date of posting to provide comment to the  
6 Agency on the draft procurement plan. Other interested  
7 entities, including alternative retail electric suppliers,  
8 also may comment on the procurement plan within the  
9 timeframe outlined in this Section. All comments submitted  
10 to the Agency shall be specific, supported by data or other  
11 detailed analyses, and, if objecting to all or a portion of  
12 the draft procurement plan, accompanied by specific  
13 alternative wording or proposals. All comments shall be  
14 posted on the Agency's and Commission's websites. During  
15 this 30-day comment period, the Agency shall hold at least  
16 one public hearing within each utility's service area for  
17 the purpose of receiving public comment on the draft  
18 procurement plan. The Agency shall endeavor at all times to  
19 identify interested parties and proactively seek out  
20 comment from parties affected by Agency proposals. Within  
21 14 days following the end of the 30-day review period, the  
22 Agency shall revise the draft procurement plan as necessary  
23 based on the comments received and file the agency's final  
24 version of the procurement plan with the Commission and  
25 post the Agency's final version of the procurement plan on  
26 the websites. The Agency shall identify any revisions to

1       the draft procurement plan by documenting such revisions in  
2       legislative style.

3           (3) Within 10 ~~5~~ days after the filing of the Agency's  
4       final version of the procurement plan, any person objecting  
5       to the procurement plan shall file an objection with the  
6       Commission. Within 15 ~~10~~ days after the filing, the  
7       Commission shall determine whether a hearing is necessary.  
8       Given the short timeframe in which parties have to review  
9       and comment upon the Agency's final version of the  
10       procurement plan, the Commission may, in its discretion,  
11       reject any subsequent supplements, amendments, or  
12       modifications proposed by the Agency to its final version  
13       of the procurement plan filed with the Commission. Any such  
14       supplement, amendment, or modification may be proposed by  
15       the Agency in subsequent draft plans. The Commission shall  
16       enter its order confirming or modifying the final  
17       procurement plan within 90 days after the filing of the  
18       final procurement plan, including all modifications and  
19       additions, by the Illinois Power Agency. In its order  
20       disposing of the Agency's final procurement plan, the  
21       Commission may specifically require and direct the Agency  
22       to undertake additional research on specific Agency  
23       proposals contained in the Agency's final procurement plan  
24       for which the Commission finds the evidentiary record is  
25       insufficient or incomplete. The Commission may provide the  
26       Agency with specific questions or areas of inquiry related

1       to the Agency's proposal that the Commission wishes the  
2       Agency to pursue. The Commission may require that the  
3       Agency provide a report back to the Commission on the  
4       results of the Agency's research in a format, and by a date  
5       certain, acceptable to the Commission.

6           (4) The Commission shall approve the procurement plan,  
7       including expressly the forecast used in the procurement  
8       plan, if the Commission determines that it will ensure  
9       adequate, reliable, affordable, efficient, and  
10      environmentally sustainable electric service at the lowest  
11      total cost over time, taking into account any benefits of  
12      price stability.

13           (e) The procurement process shall include each of the  
14      following components:

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

1 administer the prequalification process, including  
2 evaluation of credit worthiness, compliance with  
3 procurement rules, and agreement to the standard form  
4 contract developed pursuant to paragraph (2) of this  
5 subsection (e). The procurement administrator shall then  
6 identify and register bidders to participate in the  
7 procurement event.

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

1 selected solely on the basis of price.

2 (3) Establishment of a market-based price benchmark.

3 As part of the development of the procurement process, the  
4 procurement administrator, in consultation with the  
5 Commission staff, Agency staff, and the procurement  
6 monitor, shall establish benchmarks for evaluating the  
7 final prices in the contracts for each of the products that  
8 will be procured through the procurement process. The  
9 benchmarks shall be based on price data for similar  
10 products for the same delivery period and same delivery  
11 hub, or other delivery hubs after adjusting for that  
12 difference. The price benchmarks may also be adjusted to  
13 take into account differences between the information  
14 reflected in the underlying data sources and the specific  
15 products and procurement process being used to procure  
16 power for the Illinois utilities. The benchmarks shall be  
17 confidential but shall be provided to, and will be subject  
18 to Commission review and approval, prior to a procurement  
19 event.

20 (4) Request for proposals competitive procurement  
21 process. The procurement administrator shall design and  
22 issue a request for proposals to supply electricity in  
23 accordance with each utility's procurement plan, as  
24 approved by the Commission. The request for proposals shall  
25 set forth a procedure for sealed, binding commitment  
26 bidding with pay-as-bid settlement, and provision for

1 selection of bids on the basis of price.

2 (5) A plan for implementing contingencies in the event  
3 of supplier default or failure of the procurement process  
4 to fully meet the expected load requirement due to  
5 insufficient supplier participation, Commission rejection  
6 of results, or any other cause.

7 (i) Event of supplier default: In the event of  
8 supplier default, the utility shall review the  
9 contract of the defaulting supplier to determine if the  
10 amount of supply is 200 megawatts or greater, and if  
11 there are more than 60 days remaining of the contract  
12 term. If both of these conditions are met, and the  
13 default results in termination of the contract, the  
14 utility shall immediately notify the Illinois Power  
15 Agency that a request for proposals must be issued to  
16 procure replacement power, and the procurement  
17 administrator shall run an additional procurement  
18 event. If the contracted supply of the defaulting  
19 supplier is less than 200 megawatts or there are less  
20 than 60 days remaining of the contract term, the  
21 utility shall procure power and energy from the  
22 applicable regional transmission organization market,  
23 including ancillary services, capacity, and day-ahead  
24 or real time energy, or both, for the duration of the  
25 contract term to replace the contracted supply;  
26 provided, however, that if a needed product is not



1 available through the regional transmission  
2 organization market it shall be purchased from the  
3 wholesale market.

4 (ii) Failure of the procurement process to fully  
5 meet the expected load requirement: If the procurement  
6 process fails to fully meet the expected load  
7 requirement due to insufficient supplier participation  
8 or due to a Commission rejection of the procurement  
9 results, the procurement administrator, the  
10 procurement monitor, and the Commission staff shall  
11 meet within 10 days to analyze potential causes of low  
12 supplier interest or causes for the Commission  
13 decision. If changes are identified that would likely  
14 result in increased supplier participation, or that  
15 would address concerns causing the Commission to  
16 reject the results of the prior procurement event, the  
17 procurement administrator may implement those changes  
18 and rerun the request for proposals process according  
19 to a schedule determined by those parties and  
20 consistent with Section 1-75 of the Illinois Power  
21 Agency Act and this subsection. In any event, a new  
22 request for proposals process shall be implemented by  
23 the procurement administrator within 90 days after the  
24 determination that the procurement process has failed  
25 to fully meet the expected load requirement.

26 (iii) In all cases where there is insufficient

1 supply provided under contracts awarded through the  
2 procurement process to fully meet the electric  
3 utility's load requirement, the utility shall meet the  
4 load requirement by procuring power and energy from the  
5 applicable regional transmission organization market,  
6 including ancillary services, capacity, and day-ahead  
7 or real time energy or both; provided, however, that if  
8 a needed product is not available through the regional  
9 transmission organization market it shall be purchased  
10 from the wholesale market.

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

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

1 reports submitted by the procurement administrator and  
2 procurement monitor, and shall accept or reject the  
3 recommendations of the procurement administrator within 2  
4 business days after receipt of the reports.

5 (g) Within 3 business days after the Commission decision  
6 approving the results of a procurement event, the utility shall  
7 enter into binding contractual arrangements with the winning  
8 suppliers using the standard form contracts; except that the  
9 utility shall not be required either directly or indirectly to  
10 execute the contracts if a tariff that is consistent with  
11 subsection (l) of this Section has not been approved and placed  
12 into effect for that utility.

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

1 absent a compelling demonstration of need, nor shall those  
2 reports be admissible in any proceeding other than one for law  
3 enforcement purposes.

4 (i) Within 2 business days after a Commission decision  
5 approving the results of a procurement event or such other date  
6 as may be required by the Commission from time to time, the  
7 utility shall file for informational purposes with the  
8 Commission its actual or estimated retail supply charges, as  
9 applicable, by customer supply group reflecting the costs  
10 associated with the procurement and computed in accordance with  
11 the tariffs filed pursuant to subsection (l) of this Section  
12 and approved by the Commission.

13 (j) Within 60 days following the effective date of this  
14 amendatory Act, each electric utility that on December 31, 2005  
15 provided electric service to at least 100,000 customers in  
16 Illinois shall prepare and file with the Commission an initial  
17 procurement plan, which shall conform in all material respects  
18 to the requirements of the procurement plan set forth in  
19 subsection (b); provided, however, that the Illinois Power  
20 Agency Act shall not apply to the initial procurement plan  
21 prepared pursuant to this subsection. The initial procurement  
22 plan shall identify the portfolio of power and energy products  
23 to be procured and delivered for the period June 2008 through  
24 May 2009, and shall identify the proposed procurement  
25 administrator, who shall have the same experience and expertise  
26 as is required of a procurement administrator hired pursuant to

1 Section 1-75 of the Illinois Power Agency Act. Copies of the  
2 procurement plan shall be posted and made publicly available on  
3 the Commission's website. The initial procurement plan may  
4 include contracts for renewable resources that extend beyond  
5 May 2009.

6 (i) Within 14 days following filing of the initial  
7 procurement plan, any person may file a detailed objection  
8 with the Commission contesting the procurement plan  
9 submitted by the electric utility. All objections to the  
10 electric utility's plan shall be specific, supported by  
11 data or other detailed analyses. The electric utility may  
12 file a response to any objections to its procurement plan  
13 within 7 days after the date objections are due to be  
14 filed. Within 7 days after the date the utility's response  
15 is due, the Commission shall determine whether a hearing is  
16 necessary. If it determines that a hearing is necessary, it  
17 shall require the hearing to be completed and issue an  
18 order on the procurement plan within 60 days after the  
19 filing of the procurement plan by the electric utility.

20 (ii) The order shall approve or modify the procurement  
21 plan, approve an independent procurement administrator,  
22 and approve or modify the electric utility's tariffs that  
23 are proposed with the initial procurement plan. The  
24 Commission shall approve the procurement plan if the  
25 Commission determines that it will ensure adequate,  
26 reliable, affordable, efficient, and environmentally

1           sustainable electric service at the lowest total cost over  
2           time, taking into account any benefits of price stability.

3           (k) In order to promote price stability for residential and  
4           small commercial customers during the transition to  
5           competition in Illinois, and notwithstanding any other  
6           provision of this Act, each electric utility subject to this  
7           Section shall enter into one or more multi-year financial swap  
8           contracts that become effective on the effective date of this  
9           amendatory Act. These contracts may be executed with generators  
10          and power marketers, including affiliated interests of the  
11          electric utility. These contracts shall be for a term of no  
12          more than 5 years and shall, for each respective utility or for  
13          any Illinois electric utilities that are affiliated by virtue  
14          of a common parent company and that are thereby considered a  
15          single electric utility for purposes of this subsection (k),  
16          not exceed in the aggregate 3,000 megawatts for any hour of the  
17          year. The contracts shall be financial contracts and not energy  
18          sales contracts. The contracts shall be executed as  
19          transactions under a negotiated master agreement based on the  
20          form of master agreement for financial swap contracts sponsored  
21          by the International Swaps and Derivatives Association, Inc.  
22          and shall be considered pre-existing contracts in the  
23          utilities' procurement plans for residential and small  
24          commercial customers. Costs incurred pursuant to a contract  
25          authorized by this subsection (k) shall be deemed prudently  
26          incurred and reasonable in amount and the electric utility

1 shall be entitled to full cost recovery pursuant to the tariffs  
2 filed with the Commission.

3 (1) An electric utility shall recover its costs incurred  
4 under this Section, including, but not limited to, the costs of  
5 procuring power and energy demand-response resources under  
6 this Section. The utility shall file with the initial  
7 procurement plan its proposed tariffs through which its costs  
8 of procuring power that are incurred pursuant to a  
9 Commission-approved procurement plan and those other costs  
10 identified in this subsection (1), will be recovered. The  
11 tariffs shall include a formula rate or charge designed to pass  
12 through both the costs incurred by the utility in procuring a  
13 supply of electric power and energy for the applicable customer  
14 classes with no mark-up or return on the price paid by the  
15 utility for that supply, plus any just and reasonable costs  
16 that the utility incurs in arranging and providing for the  
17 supply of electric power and energy. The formula rate or charge  
18 shall also contain provisions that ensure that its application  
19 does not result in over or under recovery due to changes in  
20 customer usage and demand patterns, and that provide for the  
21 correction, on at least an annual basis, of any accounting  
22 errors that may occur. A utility shall recover through the  
23 tariff all reasonable costs incurred to implement or comply  
24 with any procurement plan that is developed and put into effect  
25 pursuant to Section 1-75 of the Illinois Power Agency Act and  
26 this Section, including any fees assessed by the Illinois Power

1 Agency, costs associated with load balancing, and contingency  
2 plan costs. The electric utility shall also recover its full  
3 costs of procuring electric supply for which it contracted  
4 before the effective date of this Section in conjunction with  
5 the provision of full requirements service under fixed-price  
6 bundled service tariffs subsequent to December 31, 2006. All  
7 such costs shall be deemed to have been prudently incurred. The  
8 pass-through tariffs that are filed and approved pursuant to  
9 this Section shall not be subject to review under, or in any  
10 way limited by, Section 16-111(i) of this Act.

11 (m) The Commission has the authority to adopt rules to  
12 carry out the provisions of this Section. For the public  
13 interest, safety, and welfare, the Commission also has  
14 authority to adopt rules to carry out the provisions of this  
15 Section on an emergency basis immediately following the  
16 effective date of this amendatory Act.

17 (n) Notwithstanding any other provision of this Act, any  
18 affiliated electric utilities that submit a single procurement  
19 plan covering their combined needs may procure for those  
20 combined needs in conjunction with that plan, and may enter  
21 jointly into power supply contracts, purchases, and other  
22 procurement arrangements, and allocate capacity and energy and  
23 cost responsibility therefor among themselves in proportion to  
24 their requirements.

25 (o) On or before June 1 of each year, the Commission shall  
26 hold an informal hearing for the purpose of receiving comments



1 on the prior year's procurement process and any recommendations  
2 for change.

3 (p) An electric utility subject to this Section may propose  
4 to invest, lease, own, or operate an electric generation  
5 facility as part of its procurement plan, provided the utility  
6 demonstrates that such facility is the least-cost option to  
7 provide electric service to eligible retail customers. If the  
8 facility is shown to be the least-cost option and is included  
9 in a procurement plan prepared in accordance with Section 1-75  
10 of the Illinois Power Agency Act and this Section, then the  
11 electric utility shall make a filing pursuant to Section 8-406  
12 of the Act, and may request of the Commission any statutory  
13 relief required thereunder. If the Commission grants all of the  
14 necessary approvals for the proposed facility, such supply  
15 shall thereafter be considered as a pre-existing contract under  
16 subsection (b) of this Section. The Commission shall in any  
17 order approving a proposal under this subsection specify how  
18 the utility will recover the prudently incurred costs of  
19 investing in, leasing, owning, or operating such generation  
20 facility through just and reasonable rates charged to eligible  
21 retail customers. Cost recovery for facilities included in the  
22 utility's procurement plan pursuant to this subsection shall  
23 not be subject to review under or in any way limited by the  
24 provisions of Section 16-111(i) of this Act. Nothing in this  
25 Section is intended to prohibit a utility from filing for a  
26 fuel adjustment clause as is otherwise permitted under Section

1 9-220 of this Act.

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

3 Section 99. Effective date. This Act takes effect upon  
4 becoming law.