



Rep. Patrick J. Verschoore

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1 AMENDMENT TO HOUSE BILL 1865

2 AMENDMENT NO. _____. Amend House Bill 1865 by deleting
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Power Agency Act is amended by
5 changing Sections 1-5, 1-20, and 1-75 as follows:

6 (20 ILCS 3855/1-5)

7 Sec. 1-5. Legislative declarations and findings. The
8 General Assembly finds and declares:

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

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

1 electricity costs from retail and wholesale competition.

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

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

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

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

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

24 (8) The State should encourage the use of advanced
25 clean coal technologies that capture and sequester carbon
26 dioxide emissions to advance environmental protection

1 goals and to demonstrate the viability of coal and
2 coal-derived fuels in a carbon-constrained economy.

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

7 (A) Develop electricity procurement plans to ensure
8 adequate, reliable, affordable, efficient, and
9 environmentally sustainable electric service at the lowest
10 total cost over time, taking into account any benefits of
11 price stability, for electric utilities that on December
12 31, 2005 provided electric service to at least 100,000
13 customers in Illinois and for small multi-jurisdictional
14 electric utilities that (i) on December 31, 2005 served
15 less than 100,000 customers in Illinois and (ii) request a
16 procurement plan for their Illinois jurisdictional load.

17 The procurement plan shall be updated on an annual basis
18 and shall include renewable energy resources sufficient to
19 achieve the standards specified in this Act.

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

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

1 (D) Supply electricity from the Agency's facilities at
2 cost to one or more of the following: municipal electric
3 systems, governmental aggregators, or rural electric
4 cooperatives in Illinois.

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

6 (20 ILCS 3855/1-20)

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

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

9 (1) Develop electricity procurement plans to ensure
10 adequate, reliable, affordable, efficient, and
11 environmentally sustainable electric service at the lowest
12 total cost over time, taking into account any benefits of
13 price stability, for electric utilities that on December
14 31, 2005 provided electric service to at least 100,000
15 customers in Illinois and for small multi-jurisdictional
16 electric utilities that (A) on December 31, 2005 served
17 less than 100,000 customers in Illinois and (B) request a
18 procurement plan for their Illinois jurisdictional load.

19 The procurement plans shall be updated on an annual basis
20 and shall include electricity generated from renewable
21 resources sufficient to achieve the standards specified in
22 this Act.

23 (2) Conduct competitive procurement processes to
24 procure the supply resources identified in the procurement
25 plan, pursuant to Section 16-111.5 of the Public Utilities

1 Act.

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

6 (4) Supply electricity from the Agency's facilities at
7 cost to one or more of the following: municipal electric
8 systems, governmental aggregators, or rural electric
9 cooperatives in Illinois.

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

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

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

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

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

25 (5) To purchase, receive, take by grant, gift, devise,
26 bequest, or otherwise, lease, or otherwise acquire, own,

1 hold, improve, employ, use, and otherwise deal in and with,
2 real or personal property whether tangible or intangible,
3 or any interest therein, within the State.

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

12 (7) To sell, convey, lease, exchange, transfer,
13 abandon, or otherwise dispose of, or mortgage, pledge, or
14 create a security interest in, any of its assets,
15 properties, or any interest therein, wherever situated.

16 (8) To purchase, take, receive, subscribe for, or
17 otherwise acquire, hold, make a tender offer for, vote,
18 employ, sell, lend, lease, exchange, transfer, or
19 otherwise dispose of, mortgage, pledge, or grant a security
20 interest in, use, and otherwise deal in and with, bonds and
21 other obligations, shares, or other securities (or
22 interests therein) issued by others, whether engaged in a
23 similar or different business or activity.

24 (9) To make and execute agreements, contracts, and
25 other instruments necessary or convenient in the exercise
26 of the powers and functions of the Agency under this Act,

1 including contracts with any person, local government,
2 State agency, or other entity; and all State agencies and
3 all local governments are authorized to enter into and do
4 all things necessary to perform any such agreement,
5 contract, or other instrument with the Agency. No such
6 agreement, contract, or other instrument shall exceed 40
7 years.

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

12 (11) To borrow money at such rate or rates of interest
13 as the Agency may determine, issue its notes, bonds, or
14 other obligations to evidence that indebtedness, and
15 secure any of its obligations by mortgage or pledge of its
16 real or personal property, machinery, equipment,
17 structures, fixtures, inventories, revenues, grants, and
18 other funds as provided or any interest therein, wherever
19 situated.

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

23 (13) To procure insurance against any loss in
24 connection with its properties or operations in such amount
25 or amounts and from such insurers, including the federal
26 government, as it may deem necessary or desirable, and to

1 pay any premiums therefor.

2 (14) To negotiate and enter into agreements with
3 trustees or receivers appointed by United States
4 bankruptcy courts or federal district courts or in other
5 proceedings involving adjustment of debts and authorize
6 proceedings involving adjustment of debts and authorize
7 legal counsel for the Agency to appear in any such
8 proceedings.

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

12 (16) To enter into management agreements for the
13 operation of any of the property or facilities owned by the
14 Agency.

15 (17) To enter into an agreement to transfer and to
16 transfer any land, facilities, fixtures, or equipment of
17 the Agency to one or more municipal electric systems,
18 governmental aggregators, or rural electric agencies or
19 cooperatives, for such consideration and upon such terms as
20 the Agency may determine to be in the best interest of the
21 citizens of Illinois.

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

26 (19) To maintain an office or offices at such place or

1 places in the State as it may determine.

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

6 (21) To accept and expend appropriations.

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

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

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

18 (25) To manage procurement of substitute natural gas
19 from a facility that meets the criteria specified in
20 subsection (a) of Section 1-58 of this Act, on terms and
21 conditions that may be approved by the Agency pursuant to
22 subsection (d) of Section 1-58 of this Act, to support the
23 operations of State agencies and local governments that
24 agree to such terms and conditions. This procurement
25 process is not subject to the Procurement Code.

26 (Source: P.A. 95-481, eff. 8-28-07; 96-784, eff. 8-28-09;

1 96-1000, eff. 7-2-10.)

2 (20 ILCS 3855/1-75)

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

6 (a) The Planning and Procurement Bureau shall each
7 year, beginning in 2008, develop procurement plans and
8 conduct competitive procurement processes in accordance
9 with the requirements of Section 16-111.5 of the Public
10 Utilities Act for the eligible retail customers of electric
11 utilities that on December 31, 2005 provided electric
12 service to at least 100,000 customers in Illinois. The
13 Planning and Procurement Bureau shall also develop
14 procurement plans and conduct competitive procurement
15 processes in accordance with the requirements of Section
16 16-111.5 of the Public Utilities Act for the eligible
17 retail customers of small multi-jurisdictional electric
18 utilities that (i) on December 31, 2005 served less than
19 100,000 customers in Illinois and (ii) request a
20 procurement plan for their Illinois jurisdictional load.
21 This Section shall not apply to a small
22 multi-jurisdictional utility until such time as a small
23 multi-jurisdictional utility requests the Agency to
24 prepare a procurement plan for their Illinois
25 jurisdictional load. For the purposes of this Section, the

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

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

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

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

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

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

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

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

25 (G) the absence of a conflict of interest and
26 inappropriate bias for or against potential

1 bidders or the affected electric utilities.

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

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

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

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

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

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

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

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

26 (3) The Agency shall provide affected utilities

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

17 (A) failure to satisfy qualification criteria;

18 (B) identification of a conflict of interest;

19 or

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

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

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

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

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

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

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

16 (c) Renewable portfolio standard.

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

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

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

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

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

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

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

26 (C) in 2010, the greater of an additional 0.5%

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

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

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

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

1 procurement of cost-effective renewable energy
2 resources.

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

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

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

1 (d) Clean coal portfolio standard.

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

26 (A) A utility party to a sourcing agreement shall

1 immediately retire any emission credits that it
2 receives in connection with the electricity covered by
3 such agreement.

4 (B) Utilities shall maintain adequate records
5 documenting the purchases under the sourcing agreement
6 to comply with this subsection (d) and shall file an
7 accounting with the load forecast that must be filed
8 with the Agency by July 15 of each year, in accordance
9 with subsection (d) of Section 16-111.5 of the Public
10 Utilities Act.

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

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

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

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

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

14 (B) in 2011, the greater of an additional 0.5%
15 of the amount paid per kilowatthour by those
16 customers during the year ending May 31, 2010 or 1%
17 of the amount paid per kilowatthour by those
18 customers during the year ending May 31, 2009;

19 (C) in 2012, the greater of an additional 0.5%
20 of the amount paid per kilowatthour by those
21 customers during the year ending May 31, 2011 or
22 1.5% of the amount paid per kilowatthour by those
23 customers during the year ending May 31, 2009;

24 (D) in 2013, the greater of an additional 0.5%
25 of the amount paid per kilowatthour by those
26 customers during the year ending May 31, 2012 or 2%

1 of the amount paid per kilowatthour by those
2 customers during the year ending May 31, 2009; and

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

25 (3) Initial clean coal facility. In order to promote
26 development of clean coal facilities in Illinois, each

1 electric utility subject to this Section shall execute a
2 sourcing agreement to source electricity from a proposed
3 clean coal facility in Illinois (the "initial clean coal
4 facility") that will have a nameplate capacity of at least
5 500 MW when commercial operation commences, that has a
6 final Clean Air Act permit on the effective date of this
7 amendatory Act of the 95th General Assembly, and that will
8 meet the definition of clean coal facility in Section 1-10
9 of this Act when commercial operation commences. The
10 sourcing agreements with this initial clean coal facility
11 shall be subject to both approval of the initial clean coal
12 facility by the General Assembly and satisfaction of the
13 requirements of paragraph (4) of this subsection (d) and
14 shall be executed within 90 days after any such approval by
15 the General Assembly. The Agency and the Commission shall
16 have authority to inspect all books and records associated
17 with the initial clean coal facility during the term of
18 such a sourcing agreement. A utility's sourcing agreement
19 for electricity produced by the initial clean coal facility
20 shall include:

21 (A) a formula contractual price (the "contract
22 price") approved pursuant to paragraph (4) of this
23 subsection (d), which shall:

24 (i) be determined using a cost of service
25 methodology employing either a level or deferred
26 capital recovery component, based on a capital

1 structure consisting of 45% equity and 55% debt,
2 and a return on equity as may be approved by the
3 Federal Energy Regulatory Commission, which in any
4 case may not exceed the lower of 11.5% or the rate
5 of return approved by the General Assembly
6 pursuant to paragraph (4) of this subsection (d);
7 and

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

23 (B) power purchase provisions, which shall:

24 (i) provide that the utility party to such
25 sourcing agreement shall pay the contract price
26 for electricity delivered under such sourcing

1 agreement;

2 (ii) require delivery of electricity to the
3 regional transmission organization market of the
4 utility that is party to such sourcing agreement;

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

26 (iv) be considered pre-existing contracts in

1 such utility's procurement plans for eligible
2 retail customers;

3 (C) contract for differences provisions, which
4 shall:

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

1 (ii) provide that the utility's payment
2 obligation in respect of the quantity of
3 electricity determined pursuant to the preceding
4 clause (i) shall be limited to an amount equal to
5 (1) the difference between the contract price
6 determined pursuant to subparagraph (A) of
7 paragraph (3) of this subsection (d) and the
8 day-ahead price for electricity delivered to the
9 regional transmission organization market of the
10 utility that is party to such sourcing agreement
11 (or any successor delivery point at which such
12 utility's supply obligations are financially
13 settled on an hourly basis) (the "reference
14 price") on the day preceding the day on which the
15 electricity is delivered to the initial clean coal
16 facility busbar, multiplied by (2) the quantity of
17 electricity determined pursuant to the preceding
18 clause (i); and

19 (iii) not require the utility to take physical
20 delivery of the electricity produced by the
21 facility;

22 (D) general provisions, which shall:

23 (i) specify a term of no more than 30 years,
24 commencing on the commercial operation date of the
25 facility;

26 (ii) provide that utilities shall maintain

1 adequate records documenting purchases under the
2 sourcing agreements entered into to comply with
3 this subsection (d) and shall file an accounting
4 with the load forecast that must be filed with the
5 Agency by July 15 of each year, in accordance with
6 subsection (d) of Section 16-111.5 of the Public
7 Utilities Act.

8 (iii) provide that all costs associated with
9 the initial clean coal facility will be
10 periodically reported to the Federal Energy
11 Regulatory Commission and to purchasers in
12 accordance with applicable laws governing
13 cost-based wholesale power contracts;

14 (iv) permit the Illinois Power Agency to
15 assume ownership of the initial clean coal
16 facility, without monetary consideration and
17 otherwise on reasonable terms acceptable to the
18 Agency, if the Agency so requests no less than 3
19 years prior to the end of the stated contract term;

20 (v) require the owner of the initial clean coal
21 facility to provide documentation to the
22 Commission each year, starting in the facility's
23 first year of commercial operation, accurately
24 reporting the quantity of carbon emissions from
25 the facility that have been captured and
26 sequestered and report any quantities of carbon

1 released from the site or sites at which carbon
2 emissions were sequestered in prior years, based
3 on continuous monitoring of such sites. If, in any
4 year after the first year of commercial operation,
5 the owner of the facility fails to demonstrate that
6 the initial clean coal facility captured and
7 sequestered at least 50% of the total carbon
8 emissions that the facility would otherwise emit
9 or that sequestration of emissions from prior
10 years has failed, resulting in the release of
11 carbon dioxide into the atmosphere, the owner of
12 the facility must offset excess emissions. Any
13 such carbon offsets must be permanent, additional,
14 verifiable, real, located within the State of
15 Illinois, and legally and practicably enforceable.
16 The cost of such offsets for the facility that are
17 not recoverable shall not exceed \$15 million in any
18 given year. No costs of any such purchases of
19 carbon offsets may be recovered from a utility or
20 its customers. All carbon offsets purchased for
21 this purpose and any carbon emission credits
22 associated with sequestration of carbon from the
23 facility must be permanently retired. The initial
24 clean coal facility shall not forfeit its
25 designation as a clean coal facility if the
26 facility fails to fully comply with the applicable

1 carbon sequestration requirements in any given
2 year, provided the requisite offsets are
3 purchased. However, the Attorney General, on
4 behalf of the People of the State of Illinois, may
5 specifically enforce the facility's sequestration
6 requirement and the other terms of this contract
7 provision. Compliance with the sequestration
8 requirements and offset purchase requirements
9 specified in paragraph (3) of this subsection (d)
10 shall be reviewed annually by an independent
11 expert retained by the owner of the initial clean
12 coal facility, with the advance written approval
13 of the Attorney General. The Commission may, in the
14 course of the review specified in item (vii),
15 reduce the allowable return on equity for the
16 facility if the facility wilfully fails to comply
17 with the carbon capture and sequestration
18 requirements set forth in this item (v);

19 (vi) include limits on, and accordingly
20 provide for modification of, the amount the
21 utility is required to source under the sourcing
22 agreement consistent with paragraph (2) of this
23 subsection (d);

24 (vii) require Commission review: (1) to
25 determine the justness, reasonableness, and
26 prudence of the inputs to the formula referenced in

1 subparagraphs (A) (i) through (A) (iii) of paragraph
2 (3) of this subsection (d), prior to an adjustment
3 in those inputs including, without limitation, the
4 capital structure and return on equity, fuel
5 costs, and other operations and maintenance costs
6 and (2) to approve the costs to be passed through
7 to customers under the sourcing agreement by which
8 the utility satisfies its statutory obligations.
9 Commission review shall occur no less than every 3
10 years, regardless of whether any adjustments have
11 been proposed, and shall be completed within 9
12 months;

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

20 (ix) limit the utility's or alternative retail
21 electric supplier's obligation to incur any
22 liability until such time as the facility is in
23 commercial operation and generating power and
24 energy and such power and energy is being delivered
25 to the facility busbar;

26 (x) provide that the owner or owners of the

1 initial clean coal facility, which is the
2 counterparty to such sourcing agreement, shall
3 have the right from time to time to elect whether
4 the obligations of the utility party thereto shall
5 be governed by the power purchase provisions or the
6 contract for differences provisions;

7 (xi) append documentation showing that the
8 formula rate and contract, insofar as they relate
9 to the power purchase provisions, have been
10 approved by the Federal Energy Regulatory
11 Commission pursuant to Section 205 of the Federal
12 Power Act;

13 (xii) provide that any changes to the terms of
14 the contract, insofar as such changes relate to the
15 power purchase provisions, are subject to review
16 under the public interest standard applied by the
17 Federal Energy Regulatory Commission pursuant to
18 Sections 205 and 206 of the Federal Power Act; and

19 (xiii) conform with customary lender
20 requirements in power purchase agreements used as
21 the basis for financing non-utility generators.

22 (4) Effective date of sourcing agreements with the
23 initial clean coal facility. Any proposed sourcing
24 agreement with the initial clean coal facility shall not
25 become effective unless the following reports are prepared
26 and submitted and authorizations and approvals obtained:

1 (i) Facility cost report. The owner of the
2 initial clean coal facility shall submit to the
3 Commission, the Agency, and the General Assembly a
4 front-end engineering and design study, a facility
5 cost report, method of financing (including but
6 not limited to structure and associated costs),
7 and an operating and maintenance cost quote for the
8 facility (collectively "facility cost report"),
9 which shall be prepared in accordance with the
10 requirements of this paragraph (4) of subsection
11 (d) of this Section, and shall provide the
12 Commission and the Agency access to the work
13 papers, relied upon documents, and any other
14 backup documentation related to the facility cost
15 report.

16 (ii) Commission report. Within 6 months
17 following receipt of the facility cost report, the
18 Commission, in consultation with the Agency, shall
19 submit a report to the General Assembly setting
20 forth its analysis of the facility cost report.
21 Such report shall include, but not be limited to, a
22 comparison of the costs associated with
23 electricity generated by the initial clean coal
24 facility to the costs associated with electricity
25 generated by other types of generation facilities,
26 an analysis of the rate impacts on residential and

1 small business customers over the life of the
2 sourcing agreements, and an analysis of the
3 likelihood that the initial clean coal facility
4 will commence commercial operation by and be
5 delivering power to the facility's busbar by 2016.
6 To assist in the preparation of its report, the
7 Commission, in consultation with the Agency, may
8 hire one or more experts or consultants, the costs
9 of which shall be paid for by the owner of the
10 initial clean coal facility. The Commission and
11 Agency may begin the process of selecting such
12 experts or consultants prior to receipt of the
13 facility cost report.

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

26 (iv) Commission review. If the General

1 Assembly enacts authorizing legislation pursuant
2 to subparagraph (iii) approving a sourcing
3 agreement, the Commission shall, within 90 days of
4 such enactment, complete a review of such sourcing
5 agreement. During such time period, the Commission
6 shall implement any directive of the General
7 Assembly, resolve any disputes between the parties
8 to the sourcing agreement concerning the terms of
9 such agreement, approve the form of such
10 agreement, and issue an order finding that the
11 sourcing agreement is prudent and reasonable.

12 The facility cost report shall be prepared as follows:

13 (A) The facility cost report shall be prepared by
14 duly licensed engineering and construction firms
15 detailing the estimated capital costs payable to one or
16 more contractors or suppliers for the engineering,
17 procurement and construction of the components
18 comprising the initial clean coal facility and the
19 estimated costs of operation and maintenance of the
20 facility. The facility cost report shall include:

21 (i) an estimate of the capital cost of the core
22 plant based on one or more front end engineering
23 and design studies for the gasification island and
24 related facilities. The core plant shall include
25 all civil, structural, mechanical, electrical,
26 control, and safety systems.

1 (ii) an estimate of the capital cost of the
2 balance of the plant, including any capital costs
3 associated with sequestration of carbon dioxide
4 emissions and all interconnects and interfaces
5 required to operate the facility, such as
6 transmission of electricity, construction or
7 backfeed power supply, pipelines to transport
8 substitute natural gas or carbon dioxide, potable
9 water supply, natural gas supply, water supply,
10 water discharge, landfill, access roads, and coal
11 delivery.

12 The quoted construction costs shall be expressed
13 in nominal dollars as of the date that the quote is
14 prepared and shall include (1) capitalized financing
15 costs during construction, (2) taxes, insurance, and
16 other owner's costs, and (3) an assumed escalation in
17 materials and labor beyond the date as of which the
18 construction cost quote is expressed.

19 (B) The front end engineering and design study for
20 the gasification island and the cost study for the
21 balance of plant shall include sufficient design work
22 to permit quantification of major categories of
23 materials, commodities and labor hours, and receipt of
24 quotes from vendors of major equipment required to
25 construct and operate the clean coal facility.

26 (C) The facility cost report shall also include an

1 operating and maintenance cost quote that will provide
2 the estimated cost of delivered fuel, personnel,
3 maintenance contracts, chemicals, catalysts,
4 consumables, spares, and other fixed and variable
5 operations and maintenance costs.

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

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

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

26 (D) The facility cost report shall also include (i)

1 an analysis of the initial clean coal facility's
2 ability to deliver power and energy into the applicable
3 regional transmission organization markets and (ii) an
4 analysis of the expected capacity factor for the
5 initial clean coal facility.

6 (E) Amounts paid to third parties unrelated to the
7 owner or owners of the initial clean coal facility to
8 prepare the core plant construction cost quote,
9 including the front end engineering and design study,
10 and the operating and maintenance cost quote will be
11 reimbursed through Coal Development Bonds.

12 (5) Re-powering and retrofitting coal-fired power
13 plants previously owned by Illinois utilities to qualify as
14 clean coal facilities. During the 2009 procurement
15 planning process and thereafter, the Agency and the
16 Commission shall consider sourcing agreements covering
17 electricity generated by power plants that were previously
18 owned by Illinois utilities and that have been or will be
19 converted into clean coal facilities, as defined by Section
20 1-10 of this Act. Pursuant to such procurement planning
21 process, the owners of such facilities may propose to the
22 Agency sourcing agreements with utilities and alternative
23 retail electric suppliers required to comply with
24 subsection (d) of this Section and item (5) of subsection
25 (d) of Section 16-115 of the Public Utilities Act, covering
26 electricity generated by such facilities. In the case of

1 sourcing agreements that are power purchase agreements,
2 the contract price for electricity sales shall be
3 established on a cost of service basis. In the case of
4 sourcing agreements that are contracts for differences,
5 the contract price from which the reference price is
6 subtracted shall be established on a cost of service basis.
7 The Agency and the Commission may approve any such utility
8 sourcing agreements that do not exceed cost-based
9 benchmarks developed by the procurement administrator, in
10 consultation with the Commission staff, Agency staff and
11 the procurement monitor, subject to Commission review and
12 approval. The Commission shall have authority to inspect
13 all books and records associated with these clean coal
14 facilities during the term of any such contract.

15 (6) Costs incurred under this subsection (d) or
16 pursuant to a contract entered into under this subsection
17 (d) shall be deemed prudently incurred and reasonable in
18 amount and the electric utility shall be entitled to full
19 cost recovery pursuant to the tariffs filed with the
20 Commission.

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

24 (f) The Agency shall submit the final procurement plan
25 to the Commission. The Agency shall revise a procurement
26 plan if the Commission determines that it does not meet the

1 standards set forth in Section 16-111.5 of the Public
2 Utilities Act.

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

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

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

11 Section 10. The Public Utilities Act is amended by changing
12 Section 16-111.5 as follows:

13 (220 ILCS 5/16-111.5)

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

15 (a) An electric utility that on December 31, 2005 served at
16 least 100,000 customers in Illinois shall procure power and
17 energy for its eligible retail customers in accordance with the
18 applicable provisions set forth in Section 1-75 of the Illinois
19 Power Agency Act and this Section. A small multi-jurisdictional
20 electric utility that on December 31, 2005 served less than
21 100,000 customers in Illinois may elect to procure power and
22 energy for all or a portion of its eligible Illinois retail
23 customers in accordance with the applicable provisions set
24 forth in this Section and Section 1-75 of the Illinois Power

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

26 (b) A procurement plan shall be prepared for each electric

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

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

1 (i) multi-year historical analysis of hourly
2 loads;

3 (ii) switching trends and competitive retail
4 market analysis;

5 (iii) known or projected changes to future loads;
6 and

7 (iv) growth forecasts by customer class.

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

10 (i) the impact of demand response programs and
11 energy efficiency programs, both current and
12 projected; for small multi-jurisdictional utilities,
13 the impact of demand response and energy efficiency
14 programs approved pursuant to Section 8-408 this Act,
15 both current and projected; and

16 (ii) supply side needs that are projected to be
17 offset by purchases of renewable energy resources, if
18 any. ~~and~~

19 ~~(iii) the impact of energy efficiency programs,~~
20 ~~both current and projected.~~

21 (3) A plan for meeting the expected load requirements
22 that will not be met through preexisting contracts. This
23 plan shall include:

24 (i) definitions of the different Illinois retail
25 customer classes for which supply is being purchased;

26 (ii) the proposed mix of demand-response products

1 for which contracts will be executed during the next
2 year. For small multi-jurisdictional electric
3 utilities that on December 31, 2005 served fewer than
4 100,000 customers in Illinois, these shall be defined
5 as demand-response products offered in an energy
6 efficiency plan approved pursuant to Section 8-408 of
7 this Act. The cost-effective demand-response measures
8 shall be procured whenever the cost is lower than
9 procuring comparable capacity products, provided that
10 such products shall:

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

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

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

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

1 (E) meet the same credit requirements as apply
2 to suppliers of capacity, in the applicable
3 regional transmission organization market;

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

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

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

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

1 patterns, transmission costs, market conditions, and
2 the governmental regulatory environment; the proposed
3 procurement plan shall also identify alternatives for
4 those portfolio measures that are identified as having
5 significant price risk.

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

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

16 (1) The procurement administrator shall:

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

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

26 (iii) serve as the interface between the electric

1 utility and suppliers;

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

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

7 (vi) administer the request for proposals process;

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

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

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

26 (x) notify the utility of contract counterparties

1 and contract specifics; and

2 (xi) administer related contingency procurement
3 events.

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

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

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

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

13 (iv) assess compliance with the procurement plans
14 approved by the Commission for each utility that on
15 December 31, 2005 provided electric service to a least
16 100,000 customers in Illinois and for each small
17 multi-jurisdictional utility that on December 31, 2005
18 served less than 100,000 customers in Illinois;

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

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

26 (vii) consult with the procurement administrator

1 regarding the development and use of benchmark
2 criteria, standard form contracts, credit policies,
3 and bid documents.

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

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

17 (2) Beginning in 2008, the Illinois Power Agency shall
18 prepare a procurement plan by August 15th of each year, or
19 such other date as may be required by the Commission. The
20 procurement plan shall identify the portfolio of
21 demand-response and power and energy products to be
22 procured. Cost-effective demand-response measures shall be
23 procured as set forth in item (iii) of subsection (b) of
24 this Section. Copies of the procurement plan shall be
25 posted and made publicly available on the Agency's and
26 Commission's websites, and copies shall also be provided to

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

18 (3) Within 5 days after the filing of the procurement
19 plan, any person objecting to the procurement plan shall
20 file an objection with the Commission. Within 10 days after
21 the filing, the Commission shall determine whether a
22 hearing is necessary. The Commission shall enter its order
23 confirming or modifying the procurement plan within 90 days
24 after the filing of the procurement plan by the Illinois
25 Power Agency.

26 (4) The Commission shall approve the procurement plan,

1 including expressly the forecast used in the procurement
2 plan, if the Commission determines that it will ensure
3 adequate, reliable, affordable, efficient, and
4 environmentally sustainable electric service at the lowest
5 total cost over time, taking into account any benefits of
6 price stability.

7 (e) The procurement process shall include each of the
8 following components:

9 (1) Solicitation, pre-qualification, and registration
10 of bidders. The procurement administrator shall
11 disseminate information to potential bidders to promote a
12 procurement event, notify potential bidders that the
13 procurement administrator may enter into a post-bid price
14 negotiation with bidders that meet the applicable
15 benchmarks, provide supply requirements, and otherwise
16 explain the competitive procurement process. In addition
17 to such other publication as the procurement administrator
18 determines is appropriate, this information shall be
19 posted on the Illinois Power Agency's and the Commission's
20 websites. The procurement administrator shall also
21 administer the prequalification process, including
22 evaluation of credit worthiness, compliance with
23 procurement rules, and agreement to the standard form
24 contract developed pursuant to paragraph (2) of this
25 subsection (e). The procurement administrator shall then
26 identify and register bidders to participate in the

1 procurement event.

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

22 (3) Establishment of a market-based price benchmark.
23 As part of the development of the procurement process, the
24 procurement administrator, in consultation with the
25 Commission staff, Agency staff, and the procurement
26 monitor, shall establish benchmarks for evaluating the

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

14 (4) Request for proposals competitive procurement
15 process. The procurement administrator shall design and
16 issue a request for proposals to supply electricity in
17 accordance with each utility's procurement plan, as
18 approved by the Commission. The request for proposals shall
19 set forth a procedure for sealed, binding commitment
20 bidding with pay-as-bid settlement, and provision for
21 selection of bids on the basis of price.

22 (5) A plan for implementing contingencies in the event
23 of supplier default or failure of the procurement process
24 to fully meet the expected load requirement due to
25 insufficient supplier participation, Commission rejection
26 of results, or any other cause.

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

24 (ii) Failure of the procurement process to fully
25 meet the expected load requirement: If the procurement
26 process fails to fully meet the expected load

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

20 (iii) In all cases where there is insufficient
21 supply provided under contracts awarded through the
22 procurement process to fully meet the electric
23 utility's load requirement, the utility shall meet the
24 load requirement by procuring power and energy from the
25 applicable regional transmission organization market,
26 including ancillary services, capacity, and day-ahead

1 or real time energy or both; provided, however, that if
2 a needed product is not available through the regional
3 transmission organization market it shall be purchased
4 from the wholesale market.

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

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

25 (g) Within 3 business days after the Commission decision
26 approving the results of a procurement event, the utility shall

1 enter into binding contractual arrangements with the winning
2 suppliers using the standard form contracts; except that the
3 utility shall not be required either directly or indirectly to
4 execute the contracts if a tariff that is consistent with
5 subsection (l) of this Section has not been approved and placed
6 into effect for that utility.

7 (h) The names of the successful bidders and the load
8 weighted average of the winning bid prices for each contract
9 type and for each contract term shall be made available to the
10 public at the time of Commission approval of a procurement
11 event. The Commission, the procurement monitor, the
12 procurement administrator, the Illinois Power Agency, and all
13 participants in the procurement process shall maintain the
14 confidentiality of all other supplier and bidding information
15 in a manner consistent with all applicable laws, rules,
16 regulations, and tariffs. Confidential information, including
17 the confidential reports submitted by the procurement
18 administrator and procurement monitor pursuant to subsection
19 (f) of this Section, shall not be made publicly available and
20 shall not be discoverable by any party in any proceeding,
21 absent a compelling demonstration of need, nor shall those
22 reports be admissible in any proceeding other than one for law
23 enforcement purposes.

24 (i) Within 2 business days after a Commission decision
25 approving the results of a procurement event or such other date
26 as may be required by the Commission from time to time, the

1 utility shall file for informational purposes with the
2 Commission its actual or estimated retail supply charges, as
3 applicable, by customer supply group reflecting the costs
4 associated with the procurement and computed in accordance with
5 the tariffs filed pursuant to subsection (l) of this Section
6 and approved by the Commission.

7 (j) Within 60 days following the effective date of this
8 amendatory Act, each electric utility that on December 31, 2005
9 provided electric service to at least 100,000 customers in
10 Illinois shall prepare and file with the Commission an initial
11 procurement plan, which shall conform in all material respects
12 to the requirements of the procurement plan set forth in
13 subsection (b); provided, however, that the Illinois Power
14 Agency Act shall not apply to the initial procurement plan
15 prepared pursuant to this subsection. The initial procurement
16 plan shall identify the portfolio of power and energy products
17 to be procured and delivered for the period June 2008 through
18 May 2009, and shall identify the proposed procurement
19 administrator, who shall have the same experience and expertise
20 as is required of a procurement administrator hired pursuant to
21 Section 1-75 of the Illinois Power Agency Act. Copies of the
22 procurement plan shall be posted and made publicly available on
23 the Commission's website. The initial procurement plan may
24 include contracts for renewable resources that extend beyond
25 May 2009.

26 (i) Within 14 days following filing of the initial

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

14 (ii) The order shall approve or modify the procurement
15 plan, approve an independent procurement administrator,
16 and approve or modify the electric utility's tariffs that
17 are proposed with the initial procurement plan. The
18 Commission shall approve the procurement plan if the
19 Commission determines that it will ensure adequate,
20 reliable, affordable, efficient, and environmentally
21 sustainable electric service at the lowest total cost over
22 time, taking into account any benefits of price stability.

23 (k) In order to promote price stability for residential and
24 small commercial customers during the transition to
25 competition in Illinois, and notwithstanding any other
26 provision of this Act, each electric utility subject to this

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

23 (1) An electric utility shall recover its costs incurred
24 under this Section, including, but not limited to, the costs of
25 procuring power and energy demand-response resources under
26 this Section. The utility shall file with the initial

1 procurement plan its proposed tariffs through which its costs
2 of procuring power that are incurred pursuant to a
3 Commission-approved procurement plan and those other costs
4 identified in this subsection (1), will be recovered. The
5 tariffs shall include a formula rate or charge designed to pass
6 through both the costs incurred by the utility in procuring a
7 supply of electric power and energy for the applicable customer
8 classes with no mark-up or return on the price paid by the
9 utility for that supply, plus any just and reasonable costs
10 that the utility incurs in arranging and providing for the
11 supply of electric power and energy. The formula rate or charge
12 shall also contain provisions that ensure that its application
13 does not result in over or under recovery due to changes in
14 customer usage and demand patterns, and that provide for the
15 correction, on at least an annual basis, of any accounting
16 errors that may occur. A utility shall recover through the
17 tariff all reasonable costs incurred to implement or comply
18 with any procurement plan that is developed and put into effect
19 pursuant to Section 1-75 of the Illinois Power Agency Act and
20 this Section, including any fees assessed by the Illinois Power
21 Agency, costs associated with load balancing, and contingency
22 plan costs. The electric utility shall also recover its full
23 costs of procuring electric supply for which it contracted
24 before the effective date of this Section in conjunction with
25 the provision of full requirements service under fixed-price
26 bundled service tariffs subsequent to December 31, 2006. All

1 such costs shall be deemed to have been prudently incurred. The
2 pass-through tariffs that are filed and approved pursuant to
3 this Section shall not be subject to review under, or in any
4 way limited by, Section 16-111(i) of this Act.

5 (m) The Commission has the authority to adopt rules to
6 carry out the provisions of this Section. For the public
7 interest, safety, and welfare, the Commission also has
8 authority to adopt rules to carry out the provisions of this
9 Section on an emergency basis immediately following the
10 effective date of this amendatory Act.

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

19 (o) On or before June 1 of each year, the Commission shall
20 hold an informal hearing for the purpose of receiving comments
21 on the prior year's procurement process and any recommendations
22 for change.

23 (p) An electric utility subject to this Section may propose
24 to invest, lease, own, or operate an electric generation
25 facility as part of its procurement plan, provided the utility
26 demonstrates that such facility is the least-cost option to

1 provide electric service to eligible retail customers. If the
2 facility is shown to be the least-cost option and is included
3 in a procurement plan prepared in accordance with Section 1-75
4 of the Illinois Power Agency Act and this Section, then the
5 electric utility shall make a filing pursuant to Section 8-406
6 of the Act, and may request of the Commission any statutory
7 relief required thereunder. If the Commission grants all of the
8 necessary approvals for the proposed facility, such supply
9 shall thereafter be considered as a pre-existing contract under
10 subsection (b) of this Section. The Commission shall in any
11 order approving a proposal under this subsection specify how
12 the utility will recover the prudently incurred costs of
13 investing in, leasing, owning, or operating such generation
14 facility through just and reasonable rates charged to eligible
15 retail customers. Cost recovery for facilities included in the
16 utility's procurement plan pursuant to this subsection shall
17 not be subject to review under or in any way limited by the
18 provisions of Section 16-111(i) of this Act. Nothing in this
19 Section is intended to prohibit a utility from filing for a
20 fuel adjustment clause as is otherwise permitted under Section
21 9-220 of this Act.

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

23 Section 99. Effective date. This Act takes effect upon
24 becoming law."