



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB4572

Introduced 2/1/2012, by Rep. Brandon W. Phelps

SYNOPSIS AS INTRODUCED:

20 ILCS 3855/1-75

Amends the Illinois Power Agency Act. Removes a provision that no later than June 30, 2011, the Illinois Commerce Commission shall review the limitation on the amount of renewable energy resources procured and report to the General Assembly its findings. Provides that if any procurement plan includes provisions for procurement events that contractually obligate a utility to purchase less than 100% of the required renewable energy resources for one or more future planning years, then the procurement plan shall (i) identify how the annual spending limitation imposed shall be distributed between procurement events and (ii) identify how the requirements concerning both the type and location of renewable energy resources imposed shall be distributed between procurement events. Effective immediately.

LRB097 13605 CEL 58140 b

1 AN ACT concerning State government.

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

4 Section 5. The Illinois Power Agency Act is amended by
5 changing Section 1-75 as follows:

6 (20 ILCS 3855/1-75)

7 Sec. 1-75. Planning and Procurement Bureau. The Planning
8 and Procurement Bureau has the following duties and
9 responsibilities:

10 (a) The Planning and Procurement Bureau shall each year,
11 beginning in 2008, develop procurement plans and conduct
12 competitive procurement processes in accordance with the
13 requirements of Section 16-111.5 of the Public Utilities Act
14 for the eligible retail customers of electric utilities that on
15 December 31, 2005 provided electric service to at least 100,000
16 customers in Illinois. The Planning and Procurement Bureau
17 shall also develop procurement plans and conduct competitive
18 procurement processes in accordance with the requirements of
19 Section 16-111.5 of the Public Utilities Act for the eligible
20 retail customers of small multi-jurisdictional electric
21 utilities that (i) on December 31, 2005 served less than
22 100,000 customers in Illinois and (ii) request a procurement
23 plan for their Illinois jurisdictional load. This Section shall

1 not apply to a small multi-jurisdictional utility until such
2 time as a small multi-jurisdictional utility requests the
3 Agency to prepare a procurement plan for their Illinois
4 jurisdictional load. For the purposes of this Section, the term
5 "eligible retail customers" has the same definition as found in
6 Section 16-111.5(a) of the Public Utilities Act.

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

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

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

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

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

25 (E) expertise in credit protocols and familiarity
26 with contract protocols;

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

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

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

12 (A) direct previous experience administering a
13 large-scale competitive procurement process;

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

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

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

22 (E) expertise in credit and contract protocols;

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

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

1 the affected electric utilities.

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

17 (A) failure to satisfy qualification criteria;

18 (B) identification of a conflict of interest; or

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

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

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

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

9 (5) The Agency shall select an expert or expert
10 consulting firm to develop procurement plans based on the
11 proposals submitted and shall award contracts of up to 5
12 years to those selected.

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

22 (b) The experts or expert consulting firms retained by the
23 Agency shall, as appropriate, prepare procurement plans, and
24 conduct a competitive procurement process as prescribed in
25 Section 16-111.5 of the Public Utilities Act, to ensure
26 adequate, 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, for
3 eligible retail customers of electric utilities that on
4 December 31, 2005 provided electric service to at least 100,000
5 customers in the State of Illinois, and for eligible Illinois
6 retail customers of small multi-jurisdictional electric
7 utilities that (i) on December 31, 2005 served less than
8 100,000 customers in Illinois and (ii) request a procurement
9 plan for their Illinois jurisdictional load.

10 (c) Renewable portfolio standard.

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

1 used to meet these standards shall come from photovoltaics
2 on the following schedule: 0.5% by June 1, 2012, 1.5% by
3 June 1, 2013; 3% by June 1, 2014; and 6% by June 1, 2015 and
4 thereafter. Of the renewable energy resources procured
5 pursuant to this Section, at least the following
6 percentages shall come from distributed renewable energy
7 generation devices: 0.5% by June 1, 2013, 0.75% by June 1,
8 2014, and 1% by June 1, 2015 and thereafter. To the extent
9 available, half of the renewable energy resources procured
10 from distributed renewable energy generation shall come
11 from devices of less than 25 kilowatts in nameplate
12 capacity. Renewable energy resources procured from
13 distributed generation devices may also count towards the
14 required percentages for wind and solar photovoltaics.
15 Procurement of renewable energy resources from distributed
16 renewable energy generation devices shall be done on an
17 annual basis through multi-year contracts of no less than 5
18 years, and shall consist solely of renewable energy
19 credits.

20 The Agency shall create credit requirements for
21 suppliers of distributed renewable energy. In order to
22 minimize the administrative burden on contracting
23 entities, the Agency shall solicit the use of third-party
24 organizations to aggregate distributed renewable energy
25 into groups of no less than one megawatt in installed
26 capacity. These third-party organizations shall administer

1 contracts with individual distributed renewable energy
2 generation device owners. An individual distributed
3 renewable energy generation device owner shall have the
4 ability to measure the output of his or her distributed
5 renewable energy generation device.

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

16 (2) For purposes of this subsection (c), the required
17 procurement of cost-effective renewable energy resources
18 for a particular year shall be measured as a percentage of
19 the actual amount of electricity (megawatt-hours) supplied
20 by the electric utility to eligible retail customers in the
21 planning year ending immediately prior to the procurement.
22 For purposes of this subsection (c), 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 (c), 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 (c), the total of renewable energy resources procured
5 pursuant to the procurement plan for any single year shall
6 be reduced by an amount necessary to limit the annual
7 estimated average net increase due to the costs of these
8 resources included in the amounts paid by eligible retail
9 customers in connection with electric service to:

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

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

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

23 (D) in 2011, the greater of an additional 0.5% of
24 the amount paid per kilowatthour by those customers
25 during the year ending May 31, 2010 or 2% of the amount
26 paid per kilowatthour by those customers during the

1 year ending May 31, 2007; and

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

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

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

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

14 (3-5) If any procurement plan includes provisions for
15 procurement events that may contractually obligate a
16 utility to purchase less than 100% of the required
17 renewable energy resources set forth in paragraph (1) of
18 this subsection, for one or more future planning years,
19 then the procurement plan shall:

20 (A) identify how the annual spending limitation
21 imposed by paragraphs (1) and (2) of this subsection
22 (c) shall be distributed between procurement events;
23 and

24 (B) identify how the requirements concerning both
25 the type and location of renewable energy resources
26 imposed by paragraphs (1) and (3) of this subsection

1 (c) shall be distributed between procurement events.

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

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

1 the prior year ending May 31.

2 (d) Clean coal portfolio standard.

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

1 A utility party to a sourcing agreement shall
2 immediately retire any emission credits that it receives in
3 connection with the electricity covered by such agreement.

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

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

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

1 taxes.

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

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

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

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

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

1 year ending May 31, 2009; and

2 (E) thereafter, the total amount paid under
3 sourcing agreements with clean coal facilities
4 pursuant to the procurement plan for any single year
5 shall be reduced by an amount necessary to limit the
6 estimated average net increase due to the cost of these
7 resources included in the amounts paid by eligible
8 retail customers in connection with electric service
9 to no more than the greater of (i) 2.015% of the amount
10 paid per kilowatthour by those customers during the
11 year ending May 31, 2009 or (ii) the incremental amount
12 per kilowatthour paid for these resources in 2013.
13 These requirements may be altered only as provided by
14 statute.

15 No later than June 30, 2015, the Commission shall
16 review the limitation on the total amount paid under
17 sourcing agreements, if any, with clean coal facilities
18 pursuant to this subsection (d) and report to the General
19 Assembly its findings as to whether that limitation unduly
20 constrains the amount of electricity generated by
21 cost-effective clean coal facilities that is covered by
22 sourcing agreements.

23 (3) Initial clean coal facility. In order to promote
24 development of clean coal facilities in Illinois, each
25 electric utility subject to this Section shall execute a
26 sourcing agreement to source electricity from a proposed

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

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

22 (i) be determined using a cost of service
23 methodology employing either a level or deferred
24 capital recovery component, based on a capital
25 structure consisting of 45% equity and 55% debt,
26 and a return on equity as may be approved by the

1 Federal Energy Regulatory Commission, which in any
2 case may not exceed the lower of 11.5% or the rate
3 of return approved by the General Assembly
4 pursuant to paragraph (4) of this subsection (d);
5 and

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

21 (B) power purchase provisions, which shall:

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

26 (ii) require delivery of electricity to the

1 regional transmission organization market of the
2 utility that is party to such sourcing agreement;

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

24 (iv) be considered pre-existing contracts in
25 such utility's procurement plans for eligible
26 retail customers;

1 (C) contract for differences provisions, which
2 shall:

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

25 (ii) provide that the utility's payment
26 obligation in respect of the quantity of

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

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

20 (D) general provisions, which shall:

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

24 (ii) provide that utilities shall maintain
25 adequate records documenting purchases under the
26 sourcing agreements entered into to comply with

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

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

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

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

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

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

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

22 (vii) require Commission review: (1) to
23 determine the justness, reasonableness, and
24 prudence of the inputs to the formula referenced in
25 subparagraphs (A)(i) through (A)(iii) of paragraph
26 (3) of this subsection (d), prior to an adjustment

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

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

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

24 (x) provide that the owner or owners of the
25 initial clean coal facility, which is the
26 counterparty to such sourcing agreement, shall

1 have the right from time to time to elect whether
2 the obligations of the utility party thereto shall
3 be governed by the power purchase provisions or the
4 contract for differences provisions;

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

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

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

20 (4) Effective date of sourcing agreements with the
21 initial clean coal facility.

22 Any proposed sourcing agreement with the initial clean
23 coal facility shall not become effective unless the
24 following reports are prepared and submitted and
25 authorizations and approvals obtained:

26 (i) Facility cost report. The owner of the initial

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

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

1 busbar by 2016. To assist in the preparation of its
2 report, the Commission, in consultation with the
3 Agency, may hire one or more experts or consultants,
4 the costs of which shall be paid for by the owner of
5 the initial clean coal facility. The Commission and
6 Agency may begin the process of selecting such experts
7 or consultants prior to receipt of the facility cost
8 report.

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

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

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

5 The facility cost report shall be prepared as follows:

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

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

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

1 substitute natural gas or carbon dioxide, potable
2 water supply, natural gas supply, water supply,
3 water discharge, landfill, access roads, and coal
4 delivery.

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

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

19 (C) The facility cost report shall also include an
20 operating and maintenance cost quote that will provide
21 the estimated cost of delivered fuel, personnel,
22 maintenance contracts, chemicals, catalysts,
23 consumables, spares, and other fixed and variable
24 operations and maintenance costs. The delivered fuel
25 cost estimate will be provided by a recognized third
26 party expert or experts in the fuel and transportation

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

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

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

23 (E) Amounts paid to third parties unrelated to the
24 owner or owners of the initial clean coal facility to
25 prepare the core plant construction cost quote,
26 including the front end engineering and design study,

1 and the operating and maintenance cost quote will be
2 reimbursed through Coal Development Bonds.

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

1 consultation with the Commission staff, Agency staff and
2 the procurement monitor, subject to Commission review and
3 approval. The Commission shall have authority to inspect
4 all books and records associated with these clean coal
5 facilities during the term of any such contract.

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

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

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

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

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

25 (Source: P.A. 96-159, eff. 8-10-09; 96-1437, eff. 8-17-10;
26 97-325, eff. 8-12-11; 97-616, eff. 10-26-11; 97-618, eff.

1 10-26-11; revised 11-10-11.)

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