



Sen. Mike Jacobs

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1 AMENDMENT TO SENATE BILL 1608

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1608 by replacing  
3 everything after the enacting clause with the following:

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

6 (220 ILCS 5/16-111.5)

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

8 (a) An electric utility that on December 31, 2005 served at  
9 least 100,000 customers in Illinois shall procure power and  
10 energy for its eligible retail customers in accordance with the  
11 applicable provisions set forth in Section 1-75 of the Illinois  
12 Power Agency Act and this Section. "Eligible retail customers"  
13 for the purposes of this Section means those retail customers  
14 that purchase power and energy from the electric utility under  
15 fixed-price bundled service tariffs, other than those retail  
16 customers whose service is declared or deemed competitive under

1 Section 16-113 and those other customer groups specified in  
2 this Section, including self-generating customers, customers  
3 electing hourly pricing, or those customers who are otherwise  
4 ineligible for fixed-price bundled tariff service. Those  
5 customers that are excluded from the definition of "eligible  
6 retail customers" shall not be included in the procurement plan  
7 load requirements, and the utility shall procure any supply  
8 requirements, including capacity, ancillary services, and  
9 hourly priced energy, in the applicable markets as needed to  
10 serve those customers, provided that the utility may include in  
11 its procurement plan load requirements for the load that is  
12 associated with those retail customers whose service has been  
13 declared or deemed competitive pursuant to Section 16-113 of  
14 this Act to the extent that those customers are purchasing  
15 power and energy during one of the transition periods  
16 identified in subsection (b) of Section 16-113 of this Act.

17 (b) A procurement plan shall be prepared for each electric  
18 utility consistent with the applicable requirements of the  
19 Illinois Power Agency Act and this Section. For purposes of  
20 this Section, Illinois electric utilities that are affiliated  
21 by virtue of a common parent company are considered to be a  
22 single electric utility. Each procurement plan shall analyze  
23 the projected balance of supply and demand for eligible retail  
24 customers over a 5-year period with the first planning year  
25 beginning on June 1 of the year following the year in which the  
26 plan is filed. The plan shall specifically identify the

1 wholesale products to be procured following plan approval, and  
2 shall follow all the requirements set forth in the Public  
3 Utilities Act and all applicable State and federal laws,  
4 statutes, rules, or regulations, as well as Commission orders.  
5 Nothing in this Section precludes consideration of contracts  
6 longer than 5 years and related forecast data. Unless specified  
7 otherwise in this Section, in the procurement plan or in the  
8 implementing tariff, any procurement occurring in accordance  
9 with this plan shall be competitively bid through a request for  
10 proposals process. Approval and implementation of the  
11 procurement plan shall be subject to review and approval by the  
12 Commission according to the provisions set forth in this  
13 Section. A procurement plan shall include each of the following  
14 components:

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

16 (i) multi-year historical analysis of hourly  
17 loads;

18 (ii) switching trends and competitive retail  
19 market analysis;

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

21 and

22 (iv) growth forecasts by customer class.

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

25 (i) the impact of demand response programs, both  
26 current and projected;

1           (ii) supply side needs that are projected to be  
2           offset by purchases of renewable energy resources, if  
3           any; and

4           (iii) the impact of energy efficiency programs,  
5           both current and projected.

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

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

11           (ii) the proposed mix of demand-response products  
12           for which contracts will be executed during the next  
13           year. The cost-effective demand-response measures  
14           shall be procured whenever the cost is lower than  
15           procuring comparable capacity products, provided that  
16           such products shall:

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

19                   (B) at least satisfy the demand-response  
20                   requirements of the regional transmission  
21                   organization market in which the utility's service  
22                   territory is located, including, but not limited  
23                   to, any applicable capacity or dispatch  
24                   requirements;

25                   (C) provide for customers' participation in  
26                   the stream of benefits produced by the

1 demand-response products;

2 (D) provide for reimbursement by the  
3 demand-response provider of the utility for any  
4 costs incurred as a result of the failure of the  
5 supplier of such products to perform its  
6 obligations thereunder; and

7 (E) meet the same credit requirements as apply  
8 to suppliers of capacity, in the applicable  
9 regional transmission organization market;

10 (iii) monthly forecasted system supply  
11 requirements, including expected minimum, maximum, and  
12 average values for the planning period;

13 (iv) the proposed mix and selection of standard  
14 wholesale products for which contracts will be  
15 executed during the next year, separately or in  
16 combination, to meet that portion of its load  
17 requirements not met through pre-existing contracts,  
18 including but not limited to monthly 5 x 16 peak period  
19 block energy, monthly off-peak wrap energy, monthly 7 x  
20 24 energy, annual 5 x 16 energy, annual off-peak wrap  
21 energy, annual 7 x 24 energy, monthly capacity, annual  
22 capacity, peak load capacity obligations, capacity  
23 purchase plan, and ancillary services;

24 (v) proposed term structures for each wholesale  
25 product type included in the proposed procurement plan  
26 portfolio of products; and

1           (vi) an assessment of the price risk, load  
2           uncertainty, and other factors that are associated  
3           with the proposed procurement plan; this assessment,  
4           to the extent possible, shall include an analysis of  
5           the following factors: contract terms, time frames for  
6           securing products or services, fuel costs, weather  
7           patterns, transmission costs, market conditions, and  
8           the governmental regulatory environment; the proposed  
9           procurement plan shall also identify alternatives for  
10          those portfolio measures that are identified as having  
11          significant price risk.

12          (4) Proposed procedures for balancing loads. The  
13          procurement plan shall include, for load requirements  
14          included in the procurement plan, the process for (i)  
15          hourly balancing of supply and demand and (ii) the criteria  
16          for portfolio re-balancing in the event of significant  
17          shifts in load.

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

22          (1) The procurement administrator shall:

23               (i) design the final procurement process in  
24               accordance with Section 1-75 of the Illinois Power  
25               Agency Act and subsection (e) of this Section following  
26               Commission approval of the procurement plan;

1           (ii) develop benchmarks in accordance with  
2 subsection (e)(3) to be used to evaluate bids; these  
3 benchmarks shall be submitted to the Commission for  
4 review and approval on a confidential basis prior to  
5 the procurement event;

6           (iii) serve as the interface between the electric  
7 utility and suppliers;

8           (iv) manage the bidder pre-qualification and  
9 registration process;

10          (v) obtain the electric utilities' agreement to  
11 the final form of all supply contracts and credit  
12 collateral agreements;

13          (vi) administer the request for proposals process;

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

26          (viii) maintain confidentiality of supplier and

1 bidding information in a manner consistent with all  
2 applicable laws, rules, regulations, and tariffs;

3 (ix) submit a confidential report to the  
4 Commission recommending acceptance or rejection of  
5 bids;

6 (x) notify the utility of contract counterparties  
7 and contract specifics; and

8 (xi) administer related contingency procurement  
9 events.

10 (2) The procurement monitor, who shall be retained by  
11 the Commission, shall:

12 (i) monitor interactions among the procurement  
13 administrator, suppliers, and utility;

14 (ii) monitor and report to the Commission on the  
15 progress of the procurement process;

16 (iii) provide an independent confidential report  
17 to the Commission regarding the results of the  
18 procurement event;

19 (iv) assess compliance with the procurement plans  
20 approved by the Commission for each utility that on  
21 December 31, 2005 provided electric service to a least  
22 100,000 customers in Illinois;

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

26 (vi) provide expert advice to the Commission and



1           consult with the procurement administrator regarding  
2           issues related to procurement process design, rules,  
3           protocols, and policy-related matters; and

4           (vii) consult with the procurement administrator  
5           regarding the development and use of benchmark  
6           criteria, standard form contracts, credit policies,  
7           and bid documents.

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

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

21           (2) Beginning in 2011 ~~2008~~, the Illinois Power Agency  
22           shall prepare a draft procurement plan by August 15th of  
23           each year, or such other date as may be required by the  
24           Commission. The procurement plan shall identify the  
25           portfolio of demand-response and power and energy products  
26           to be procured. The draft procurement plan shall also

1 indicate, in legislative style, the specific changes to the  
2 most recent Commission-approved procurement plan.

3 Cost-effective demand-response measures shall be procured  
4 as set forth in item (iii) of subsection (b) of this  
5 Section. Copies of the draft procurement plan shall be  
6 posted and made publicly available on the Agency's and  
7 Commission's websites, and copies shall also be provided to  
8 each affected electric utility. An affected utility shall  
9 have 30 days following the date of posting to provide  
10 comment to the Agency on the draft procurement plan. Other  
11 interested entities also may comment on the procurement  
12 plan within the timeframe outlined in this Section. All

13 comments submitted to the Agency shall be specific,  
14 supported by data or other detailed analyses, and, if  
15 objecting to all or a portion of the draft procurement  
16 plan, accompanied by specific alternative wording or  
17 proposals. All comments shall be posted on the Agency's and  
18 Commission's websites. During this 30-day comment period,  
19 the Agency shall hold at least one public hearing within  
20 each utility's service area for the purpose of receiving  
21 public comment on the draft procurement plan. Within 14  
22 days following the end of the 30-day review period, the  
23 Agency shall revise the draft procurement plan as necessary  
24 based on the comments received and file the agency's final  
25 version of the procurement plan with the Commission and  
26 post the Agency's final version of the procurement plan on

1 the websites. The Agency shall identify any revisions to  
2 the draft procurement plan by documenting such revisions in  
3 legislative style.

4 (3) Within 10 ~~5~~ days after the filing of the Agency's  
5 final version of the procurement plan, any person objecting  
6 to the procurement plan shall file an objection with the  
7 Commission. Within 15 ~~10~~ days after the filing, the  
8 Commission shall determine whether a hearing is necessary.  
9 The Commission shall enter its order confirming or  
10 modifying the final procurement plan within 90 days after  
11 the filing of the final procurement plan, including all  
12 modifications and additions, by the Illinois Power Agency.

13 (4) The Commission shall approve the procurement plan,  
14 including expressly the forecast used in the procurement  
15 plan, if the Commission determines that it will ensure  
16 adequate, reliable, affordable, efficient, and  
17 environmentally sustainable electric service at the lowest  
18 total cost over time, taking into account any benefits of  
19 price stability.

20 (e) The procurement process shall include each of the  
21 following components:

22 (1) Solicitation, pre-qualification, and registration  
23 of bidders. The procurement administrator shall  
24 disseminate information to potential bidders to promote a  
25 procurement event, notify potential bidders that the  
26 procurement administrator may enter into a post-bid price

1 negotiation with bidders that meet the applicable  
2 benchmarks, provide supply requirements, and otherwise  
3 explain the competitive procurement process. In addition  
4 to such other publication as the procurement administrator  
5 determines is appropriate, this information shall be  
6 posted on the Illinois Power Agency's and the Commission's  
7 websites. The procurement administrator shall also  
8 administer the prequalification process, including  
9 evaluation of credit worthiness, compliance with  
10 procurement rules, and agreement to the standard form  
11 contract developed pursuant to paragraph (2) of this  
12 subsection (e). The procurement administrator shall then  
13 identify and register bidders to participate in the  
14 procurement event.

15 (2) Standard contract forms and credit terms and  
16 instruments. The procurement administrator, in  
17 consultation with the utilities, the Commission, and other  
18 interested parties and subject to Commission oversight,  
19 shall develop and provide standard contract forms for the  
20 supplier contracts that meet generally accepted industry  
21 practices. Standard credit terms and instruments that meet  
22 generally accepted industry practices shall be similarly  
23 developed. The procurement administrator shall make  
24 available to the Commission all written comments it  
25 receives on the contract forms, credit terms, or  
26 instruments. If the procurement administrator cannot reach

1 agreement with the applicable electric utility as to the  
2 contract terms and conditions, the procurement  
3 administrator must notify the Commission of any disputed  
4 terms and the Commission shall resolve the dispute. The  
5 terms of the contracts shall not be subject to negotiation  
6 by winning bidders, and the bidders must agree to the terms  
7 of the contract in advance so that winning bids are  
8 selected solely on the basis of price.

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

1           (4) Request for proposals competitive procurement  
2 process. The procurement administrator shall design and  
3 issue a request for proposals to supply electricity in  
4 accordance with each utility's procurement plan, as  
5 approved by the Commission. The request for proposals shall  
6 set forth a procedure for sealed, binding commitment  
7 bidding with pay-as-bid settlement, and provision for  
8 selection of bids on the basis of price.

9           (5) A plan for implementing contingencies in the event  
10 of supplier default or failure of the procurement process  
11 to fully meet the expected load requirement due to  
12 insufficient supplier participation, Commission rejection  
13 of results, or any other cause.

14           (i) Event of supplier default: In the event of  
15 supplier default, the utility shall review the  
16 contract of the defaulting supplier to determine if the  
17 amount of supply is 200 megawatts or greater, and if  
18 there are more than 60 days remaining of the contract  
19 term. If both of these conditions are met, and the  
20 default results in termination of the contract, the  
21 utility shall immediately notify the Illinois Power  
22 Agency that a request for proposals must be issued to  
23 procure replacement power, and the procurement  
24 administrator shall run an additional procurement  
25 event. If the contracted supply of the defaulting  
26 supplier is less than 200 megawatts or there are less

1           than 60 days remaining of the contract term, the  
2           utility shall procure power and energy from the  
3           applicable regional transmission organization market,  
4           including ancillary services, capacity, and day-ahead  
5           or real time energy, or both, for the duration of the  
6           contract term to replace the contracted supply;  
7           provided, however, that if a needed product is not  
8           available through the regional transmission  
9           organization market it shall be purchased from the  
10          wholesale market.

11           (ii) Failure of the procurement process to fully  
12          meet the expected load requirement: If the procurement  
13          process fails to fully meet the expected load  
14          requirement due to insufficient supplier participation  
15          or due to a Commission rejection of the procurement  
16          results, the procurement administrator, the  
17          procurement monitor, and the Commission staff shall  
18          meet within 10 days to analyze potential causes of low  
19          supplier interest or causes for the Commission  
20          decision. If changes are identified that would likely  
21          result in increased supplier participation, or that  
22          would address concerns causing the Commission to  
23          reject the results of the prior procurement event, the  
24          procurement administrator may implement those changes  
25          and rerun the request for proposals process according  
26          to a schedule determined by those parties and

1 consistent with Section 1-75 of the Illinois Power  
2 Agency Act and this subsection. In any event, a new  
3 request for proposals process shall be implemented by  
4 the procurement administrator within 90 days after the  
5 determination that the procurement process has failed  
6 to fully meet the expected load requirement.

7 (iii) In all cases where there is insufficient  
8 supply provided under contracts awarded through the  
9 procurement process to fully meet the electric  
10 utility's load requirement, the utility shall meet the  
11 load requirement by procuring power and energy from the  
12 applicable regional transmission organization market,  
13 including ancillary services, capacity, and day-ahead  
14 or real time energy or both; provided, however, that if  
15 a needed product is not available through the regional  
16 transmission organization market it shall be purchased  
17 from the wholesale market.

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

21 (f) Within 2 business days after opening the sealed bids,  
22 the procurement administrator shall submit a confidential  
23 report to the Commission. The report shall contain the results  
24 of the bidding for each of the products along with the  
25 procurement administrator's recommendation for the acceptance  
26 and rejection of bids based on the price benchmark criteria and



1 other factors observed in the process. The procurement monitor  
2 also shall submit a confidential report to the Commission  
3 within 2 business days after opening the sealed bids. The  
4 report shall contain the procurement monitor's assessment of  
5 bidder behavior in the process as well as an assessment of the  
6 procurement administrator's compliance with the procurement  
7 process and rules. The Commission shall review the confidential  
8 reports submitted by the procurement administrator and  
9 procurement monitor, and shall accept or reject the  
10 recommendations of the procurement administrator within 2  
11 business days after receipt of the reports.

12 (g) Within 3 business days after the Commission decision  
13 approving the results of a procurement event, the utility shall  
14 enter into binding contractual arrangements with the winning  
15 suppliers using the standard form contracts; except that the  
16 utility shall not be required either directly or indirectly to  
17 execute the contracts if a tariff that is consistent with  
18 subsection (1) of this Section has not been approved and placed  
19 into effect for that utility.

20 (h) The names of the successful bidders and the load  
21 weighted average of the winning bid prices for each contract  
22 type and for each contract term shall be made available to the  
23 public at the time of Commission approval of a procurement  
24 event. The Commission, the procurement monitor, the  
25 procurement administrator, the Illinois Power Agency, and all  
26 participants in the procurement process shall maintain the

1 confidentiality of all other supplier and bidding information  
2 in a manner consistent with all applicable laws, rules,  
3 regulations, and tariffs. Confidential information, including  
4 the confidential reports submitted by the procurement  
5 administrator and procurement monitor pursuant to subsection  
6 (f) of this Section, shall not be made publicly available and  
7 shall not be discoverable by any party in any proceeding,  
8 absent a compelling demonstration of need, nor shall those  
9 reports be admissible in any proceeding other than one for law  
10 enforcement purposes.

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

20 (j) Within 60 days following the effective date of this  
21 amendatory Act, each electric utility that on December 31, 2005  
22 provided electric service to at least 100,000 customers in  
23 Illinois shall prepare and file with the Commission an initial  
24 procurement plan, which shall conform in all material respects  
25 to the requirements of the procurement plan set forth in  
26 subsection (b); provided, however, that the Illinois Power

1 Agency Act shall not apply to the initial procurement plan  
2 prepared pursuant to this subsection. The initial procurement  
3 plan shall identify the portfolio of power and energy products  
4 to be procured and delivered for the period June 2008 through  
5 May 2009, and shall identify the proposed procurement  
6 administrator, who shall have the same experience and expertise  
7 as is required of a procurement administrator hired pursuant to  
8 Section 1-75 of the Illinois Power Agency Act. Copies of the  
9 procurement plan shall be posted and made publicly available on  
10 the Commission's website. The initial procurement plan may  
11 include contracts for renewable resources that extend beyond  
12 May 2009.

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

1           (ii) The order shall approve or modify the procurement  
2 plan, approve an independent procurement administrator,  
3 and approve or modify the electric utility's tariffs that  
4 are proposed with the initial procurement plan. The  
5 Commission shall approve the procurement plan if the  
6 Commission determines that it will ensure adequate,  
7 reliable, affordable, efficient, and environmentally  
8 sustainable electric service at the lowest total cost over  
9 time, taking into account any benefits of price stability.

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

1 form of master agreement for financial swap contracts sponsored  
2 by the International Swaps and Derivatives Association, Inc.  
3 and shall be considered pre-existing contracts in the  
4 utilities' procurement plans for residential and small  
5 commercial customers. Costs incurred pursuant to a contract  
6 authorized by this subsection (k) shall be deemed prudently  
7 incurred and reasonable in amount and the electric utility  
8 shall be entitled to full cost recovery pursuant to the tariffs  
9 filed with the Commission.

10 (l) An electric utility shall recover its costs incurred  
11 under this Section, including, but not limited to, the costs of  
12 procuring power and energy demand-response resources under  
13 this Section. The utility shall file with the initial  
14 procurement plan its proposed tariffs through which its costs  
15 of procuring power that are incurred pursuant to a  
16 Commission-approved procurement plan and those other costs  
17 identified in this subsection (l), will be recovered. The  
18 tariffs shall include a formula rate or charge designed to pass  
19 through both the costs incurred by the utility in procuring a  
20 supply of electric power and energy for the applicable customer  
21 classes with no mark-up or return on the price paid by the  
22 utility for that supply, plus any just and reasonable costs  
23 that the utility incurs in arranging and providing for the  
24 supply of electric power and energy. The formula rate or charge  
25 shall also contain provisions that ensure that its application  
26 does not result in over or under recovery due to changes in

1 customer usage and demand patterns, and that provide for the  
2 correction, on at least an annual basis, of any accounting  
3 errors that may occur. A utility shall recover through the  
4 tariff all reasonable costs incurred to implement or comply  
5 with any procurement plan that is developed and put into effect  
6 pursuant to Section 1-75 of the Illinois Power Agency Act and  
7 this Section, including any fees assessed by the Illinois Power  
8 Agency, costs associated with load balancing, and contingency  
9 plan costs. The electric utility shall also recover its full  
10 costs of procuring electric supply for which it contracted  
11 before the effective date of this Section in conjunction with  
12 the provision of full requirements service under fixed-price  
13 bundled service tariffs subsequent to December 31, 2006. All  
14 such costs shall be deemed to have been prudently incurred. The  
15 pass-through tariffs that are filed and approved pursuant to  
16 this Section shall not be subject to review under, or in any  
17 way limited by, Section 16-111(i) of this Act.

18 (m) The Commission has the authority to adopt rules to  
19 carry out the provisions of this Section. For the public  
20 interest, safety, and welfare, the Commission also has  
21 authority to adopt rules to carry out the provisions of this  
22 Section on an emergency basis immediately following the  
23 effective date of this amendatory Act.

24 (n) Notwithstanding any other provision of this Act, any  
25 affiliated electric utilities that submit a single procurement  
26 plan covering their combined needs may procure for those

1 combined needs in conjunction with that plan, and may enter  
2 jointly into power supply contracts, purchases, and other  
3 procurement arrangements, and allocate capacity and energy and  
4 cost responsibility therefor among themselves in proportion to  
5 their requirements.

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

10 (p) An electric utility subject to this Section may propose  
11 to invest, lease, own, or operate an electric generation  
12 facility as part of its procurement plan, provided the utility  
13 demonstrates that such facility is the least-cost option to  
14 provide electric service to eligible retail customers. If the  
15 facility is shown to be the least-cost option and is included  
16 in a procurement plan prepared in accordance with Section 1-75  
17 of the Illinois Power Agency Act and this Section, then the  
18 electric utility shall make a filing pursuant to Section 8-406  
19 of the Act, and may request of the Commission any statutory  
20 relief required thereunder. If the Commission grants all of the  
21 necessary approvals for the proposed facility, such supply  
22 shall thereafter be considered as a pre-existing contract under  
23 subsection (b) of this Section. The Commission shall in any  
24 order approving a proposal under this subsection specify how  
25 the utility will recover the prudently incurred costs of  
26 investing in, leasing, owning, or operating such generation

1 facility through just and reasonable rates charged to eligible  
2 retail customers. Cost recovery for facilities included in the  
3 utility's procurement plan pursuant to this subsection shall  
4 not be subject to review under or in any way limited by the  
5 provisions of Section 16-111(i) of this Act. Nothing in this  
6 Section is intended to prohibit a utility from filing for a  
7 fuel adjustment clause as is otherwise permitted under Section  
8 9-220 of this Act.

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

10 Section 99. Effective date. This Act takes effect upon  
11 becoming law."