

1 AN ACT concerning public utilities.

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 1-10, 1-56, and 1-75 as follows:

6 (20 ILCS 3855/1-10)

7 Sec. 1-10. Definitions.

8 "Agency" means the Illinois Power Agency.

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

17 "Authority" means the Illinois Finance Authority.

18 "Clean coal facility" means an electric generating
19 facility that uses primarily coal as a feedstock and that
20 captures and sequesters carbon emissions at the following
21 levels: at least 50% of the total carbon emissions that the
22 facility would otherwise emit if, at the time construction
23 commences, the facility is scheduled to commence operation

1 before 2016, at least 70% of the total carbon emissions that
2 the facility would otherwise emit if, at the time construction
3 commences, the facility is scheduled to commence operation
4 during 2016 or 2017, and at least 90% of the total carbon
5 emissions that the facility would otherwise emit if, at the
6 time construction commences, the facility is scheduled to
7 commence operation after 2017. The power block of the clean
8 coal facility shall not exceed allowable emission rates for
9 sulfur dioxide, nitrogen oxides, carbon monoxide, particulates
10 and mercury for a natural gas-fired combined-cycle facility the
11 same size as and in the same location as the clean coal
12 facility at the time the clean coal facility obtains an
13 approved air permit. All coal used by a clean coal facility
14 shall have high volatile bituminous rank and greater than 1.7
15 pounds of sulfur per million btu content, unless the clean coal
16 facility does not use gasification technology and was operating
17 as a conventional coal-fired electric generating facility on
18 June 1, 2009 (the effective date of Public Act 95-1027).

19 "Clean coal SNG facility" means a facility that uses a
20 gasification process to produce substitute natural gas, that
21 sequesters at least 90% of the total carbon emissions that the
22 facility would otherwise emit and that uses petroleum coke or
23 coal as a feedstock, with all such coal having a high
24 bituminous rank and greater than 1.7 pounds of sulfur per
25 million btu content.

26 "Commission" means the Illinois Commerce Commission.

1 "Costs incurred in connection with the development and
2 construction of a facility" means:

3 (1) the cost of acquisition of all real property and
4 improvements in connection therewith and equipment and
5 other property, rights, and easements acquired that are
6 deemed necessary for the operation and maintenance of the
7 facility;

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

10 (3) all origination, commitment, utilization,
11 facility, placement, underwriting, syndication, credit
12 enhancement, and rating agency fees;

13 (4) engineering, design, procurement, consulting,
14 legal, accounting, title insurance, survey, appraisal,
15 escrow, trustee, collateral agency, interest rate hedging,
16 interest rate swap, capitalized interest and other
17 financing costs, and other expenses for professional
18 services; and

19 (5) the costs of plans, specifications, site study and
20 investigation, installation, surveys, other Agency costs
21 and estimates of costs, and other expenses necessary or
22 incidental to determining the feasibility of any project,
23 together with such other expenses as may be necessary or
24 incidental to the financing, insuring, acquisition, and
25 construction of a specific project and placing that project
26 in operation.

1 "Department" means the Department of Commerce and Economic
2 Opportunity.

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

4 "Demand-response" means measures that decrease peak
5 electricity demand or shift demand from peak to off-peak
6 periods.

7 "Distributed renewable energy generation device" means a
8 device that is:

9 (1) powered by wind, solar thermal energy,
10 photovoltaic cells and panels, biodiesel, crops and
11 untreated and unadulterated organic waste biomass, tree
12 waste, and hydropower that does not involve new
13 construction or significant expansion of hydropower dams;

14 (2) interconnected at the distribution system level of
15 either an electric utility as defined in this Section, an
16 alternative retail electric supplier as defined in Section
17 16-102 of the Public Utilities Act, a municipal utility as
18 defined in Section 3-105 of the Public Utilities Act, or a
19 rural electric cooperative as defined in Section 3-119 of
20 the Public Utilities Act;

21 (3) located on the customer side of the customer's
22 electric meter and is primarily used to offset that
23 customer's electricity load; and

24 (4) limited in nameplate capacity to no more than 2,000
25 kilowatts.

26 "Energy efficiency" means measures that reduce the amount

1 of electricity or natural gas required to achieve a given end
2 use.

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

5 "Facility" means an electric generating unit or a
6 co-generating unit that produces electricity along with
7 related equipment necessary to connect the facility to an
8 electric transmission or distribution system.

9 "Governmental aggregator" means one or more units of local
10 government that individually or collectively procure
11 electricity to serve residential retail electrical loads
12 located within its or their jurisdiction.

13 "Local government" means a unit of local government as
14 defined in Article VII of Section 1 of the Illinois
15 Constitution.

16 "Municipality" means a city, village, or incorporated
17 town.

18 "Person" means any natural person, firm, partnership,
19 corporation, either domestic or foreign, company, association,
20 limited liability company, joint stock company, or association
21 and includes any trustee, receiver, assignee, or personal
22 representative thereof.

23 "Project" means the planning, bidding, and construction of
24 a facility.

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

1 "Real property" means any interest in land together with
2 all structures, fixtures, and improvements thereon, including
3 lands under water and riparian rights, any easements,
4 covenants, licenses, leases, rights-of-way, uses, and other
5 interests, together with any liens, judgments, mortgages, or
6 other claims or security interests related to real property.

7 "Renewable energy credit" means a tradable credit that
8 represents the environmental attributes of a certain amount of
9 energy produced from a renewable energy resource.

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

25 "Revenue bond" means any bond, note, or other evidence of
26 indebtedness issued by the Authority, the principal and

1 interest of which is payable solely from revenues or income
2 derived from any project or activity of the Agency.

3 "Sequester" means permanent storage of carbon dioxide by
4 injecting it into a saline aquifer, a depleted gas reservoir,
5 or an oil reservoir, directly or through an enhanced oil
6 recovery process that may involve intermediate storage in a
7 salt dome.

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

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

22 "Total resource cost test" or "TRC test" means a standard
23 that is met if, for an investment in energy efficiency or
24 demand-response measures, the benefit-cost ratio is greater
25 than one. The benefit-cost ratio is the ratio of the net
26 present value of the total benefits of the program to the net

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

17 (Source: P.A. 95-481, eff. 8-28-07; 95-913, eff. 1-1-09;
18 95-1027, eff. 6-1-09; 96-33, eff. 7-10-09; 96-159, eff.
19 8-10-09; 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10.)

20 (20 ILCS 3855/1-56)

21 Sec. 1-56. Illinois Power Agency Renewable Energy
22 Resources Fund.

23 (a) The Illinois Power Agency Renewable Energy Resources
24 Fund is created as a special fund in the State treasury.

25 (b) The Illinois Power Agency Renewable Energy Resources

1 Fund shall be administered by the Agency to procure renewable
2 energy resources. Prior to June 1, 2011, resources procured
3 pursuant to this Section shall be procured from facilities
4 located in Illinois, provided the resources are available from
5 those facilities. If resources are not available in Illinois,
6 then they shall be procured in states that adjoin Illinois. If
7 resources are not available in Illinois or in states that
8 adjoin Illinois, then they may be purchased elsewhere.
9 Beginning June 1, 2011, resources procured pursuant to this
10 Section shall be procured from facilities located in Illinois
11 or states that adjoin Illinois. If resources are not available
12 in Illinois or in states that adjoin Illinois, then they may be
13 procured elsewhere. To the extent available, at least 75% of
14 these renewable energy resources shall come from wind
15 generation. Of the renewable energy resources procured
16 pursuant to this Section at least the following specified
17 percentages shall come from photovoltaics on the following
18 schedule: 0.5% by June 1, 2012; 1.5% by June 1, 2013; 3% by
19 June 1, 2014; and 6% by June 1, 2015 and thereafter. Of the
20 renewable energy resources procured pursuant to this Section,
21 at least the following percentages shall come from distributed
22 renewable energy generation devices: 0.5% by June 1, 2013,
23 0.75% by June 1, 2014, and 1% by June 1, 2015 and thereafter.
24 To the extent available, half of the renewable energy resources
25 procured from distributed renewable energy generation shall
26 come from devices of less than 25 kilowatts in nameplate

1 capacity. Renewable energy resources procured from distributed
2 generation devices may also count towards the required
3 percentages for wind and solar photovoltaics. Procurement of
4 renewable energy resources from distributed renewable energy
5 generation devices shall be done on an annual basis through
6 multi-year contracts of no less than 5 years, and shall consist
7 solely of renewable energy credits.

8 The Agency shall create credit requirements for suppliers
9 of distributed renewable energy. In order to minimize the
10 administrative burden on contracting entities, the Agency
11 shall solicit the use of third-party organizations to aggregate
12 distributed renewable energy into groups of no less than one
13 megawatt in installed capacity. These third-party
14 organizations shall administer contracts with individual
15 distributed renewable energy generation device owners. An
16 individual distributed renewable energy generation device
17 owner shall have the ability to measure the output of his or
18 her distributed renewable energy generation device.

19 (c) The Agency shall procure renewable energy resources at
20 least once each year in conjunction with a procurement event
21 for electric utilities required to comply with Section 1-75 of
22 the Act and shall, whenever possible, enter into long-term
23 contracts on an annual basis for a portion of the incremental
24 requirement for the given procurement year.

25 (d) The price paid to procure renewable energy credits
26 using monies from the Illinois Power Agency Renewable Energy

1 Resources Fund shall not exceed the winning bid prices paid for
2 like resources procured for electric utilities required to
3 comply with Section 1-75 of this Act.

4 (e) All renewable energy credits procured using monies from
5 the Illinois Power Agency Renewable Energy Resources Fund shall
6 be permanently retired.

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

10 (g) All disbursements from the Illinois Power Agency
11 Renewable Energy Resources Fund shall be made only upon
12 warrants of the Comptroller drawn upon the Treasurer as
13 custodian of the Fund upon vouchers signed by the Director or
14 by the person or persons designated by the Director for that
15 purpose. The Comptroller is authorized to draw the warrant upon
16 vouchers so signed. The Treasurer shall accept all warrants so
17 signed and shall be released from liability for all payments
18 made on those warrants.

19 (h) The Illinois Power Agency Renewable Energy Resources
20 Fund shall not be subject to sweeps, administrative charges, or
21 chargebacks, including, but not limited to, those authorized
22 under Section 8h of the State Finance Act, that would in any
23 way result in the transfer of any funds from this Fund to any
24 other fund of this State or in having any such funds utilized
25 for any purpose other than the express purposes set forth in
26 this Section.

1 (Source: P.A. 96-159, eff. 8-10-09; 96-1000, eff. 7-2-10;
2 96-1437, eff. 8-17-10.)

3 (20 ILCS 3855/1-75)

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

7 (a) The Planning and Procurement Bureau shall each
8 year, beginning in 2008, develop procurement plans and
9 conduct competitive procurement processes in accordance
10 with the requirements of Section 16-111.5 of the Public
11 Utilities Act for the eligible retail customers of electric
12 utilities that on December 31, 2005 provided electric
13 service to at least 100,000 customers in Illinois. For the
14 purposes of this Section, the term "eligible retail
15 customers" has the same definition as found in Section
16 16-111.5(a) of the Public Utilities Act.

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

23 (A) direct previous experience assembling
24 large-scale power supply plans or portfolios for
25 end-use customers;

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

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

6 (D) expertise in wholesale electricity market
7 rules, including those established by the Federal
8 Energy Regulatory Commission and regional
9 transmission organizations;

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

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

14 (G) the absence of a conflict of interest and
15 inappropriate bias for or against potential
16 bidders or the affected electric utilities.

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

23 (A) direct previous experience administering a
24 large-scale competitive procurement process;

25 (B) an advanced degree in economics,
26 mathematics, engineering, or a related area of

1 study;

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

4 (D) expertise in wholesale electricity market
5 rules, including those established by the Federal
6 Energy Regulatory Commission and regional
7 transmission organizations;

8 (E) expertise in credit and contract
9 protocols;

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

12 (G) the absence of a conflict of interest and
13 inappropriate bias for or against potential
14 bidders or the affected electric utilities.

15 (3) The Agency shall provide affected utilities
16 and other interested parties with the lists of
17 qualified experts or expert consulting firms
18 identified through the request for qualifications
19 processes that are under consideration to develop the
20 procurement plans and to serve as the procurement
21 administrator. The Agency shall also provide each
22 qualified expert's or expert consulting firm's
23 response to the request for qualifications. All
24 information provided under this subparagraph shall
25 also be provided to the Commission. The Agency may
26 provide by rule for fees associated with supplying the

1 information to utilities and other interested parties.
2 These parties shall, within 5 business days, notify the
3 Agency in writing if they object to any experts or
4 expert consulting firms on the lists. Objections shall
5 be based on:

6 (A) failure to satisfy qualification criteria;

7 (B) identification of a conflict of interest;

8 or

9 (C) evidence of inappropriate bias for or
10 against potential bidders or the affected
11 utilities.

12 The Agency shall remove experts or expert
13 consulting firms from the lists within 10 days if there
14 is a reasonable basis for an objection and provide the
15 updated lists to the affected utilities and other
16 interested parties. If the Agency fails to remove an
17 expert or expert consulting firm from a list, an
18 objecting party may seek review by the Commission
19 within 5 days thereafter by filing a petition, and the
20 Commission shall render a ruling on the petition within
21 10 days. There is no right of appeal of the
22 Commission's ruling.

23 (4) The Agency shall issue requests for proposals
24 to the qualified experts or expert consulting firms to
25 develop a procurement plan for the affected utilities
26 and to serve as procurement administrator.

1 (5) The Agency shall select an expert or expert
2 consulting firm to develop procurement plans based on
3 the proposals submitted and shall award one-year
4 contracts to those selected with an option for the
5 Agency for a one-year renewal.

6 (6) The Agency shall select an expert or expert
7 consulting firm, with approval of the Commission, to
8 serve as procurement administrator based on the
9 proposals submitted. If the Commission rejects, within
10 5 days, the Agency's selection, the Agency shall submit
11 another recommendation within 3 days based on the
12 proposals submitted. The Agency shall award a one-year
13 contract to the expert or expert consulting firm so
14 selected with Commission approval with an option for
15 the Agency for a one-year renewal.

16 (b) The experts or expert consulting firms retained by
17 the Agency shall, as appropriate, prepare procurement
18 plans, and conduct a competitive procurement process as
19 prescribed in Section 16-111.5 of the Public Utilities Act,
20 to ensure adequate, reliable, affordable, efficient, and
21 environmentally sustainable electric service at the lowest
22 total cost over time, taking into account any benefits of
23 price stability, for eligible retail customers of electric
24 utilities that on December 31, 2005 provided electric
25 service to at least 100,000 customers in the State of
26 Illinois.

1 (c) Renewable portfolio standard.

2 (1) The procurement plans shall include
3 cost-effective renewable energy resources. A minimum
4 percentage of each utility's total supply to serve the
5 load of eligible retail customers, as defined in
6 Section 16-111.5(a) of the Public Utilities Act,
7 procured for each of the following years shall be
8 generated from cost-effective renewable energy
9 resources: at least 2% by June 1, 2008; at least 4% by
10 June 1, 2009; at least 5% by June 1, 2010; at least 6%
11 by June 1, 2011; at least 7% by June 1, 2012; at least
12 8% by June 1, 2013; at least 9% by June 1, 2014; at
13 least 10% by June 1, 2015; and increasing by at least
14 1.5% each year thereafter to at least 25% by June 1,
15 2025. To the extent that it is available, at least 75%
16 of the renewable energy resources used to meet these
17 standards shall come from wind generation and,
18 beginning on June 1, 2011, at least the following
19 percentages of the renewable energy resources used to
20 meet these standards shall come from photovoltaics on
21 the following schedule: 0.5% by June 1, 2012, 1.5% by
22 June 1, 2013; 3% by June 1, 2014; and 6% by June 1,
23 2015 and thereafter. Of the renewable energy resources
24 procured pursuant to this Section, at least the
25 following percentages shall come from distributed
26 renewable energy generation devices: 0.5% by June 1,

1 2013, 0.75% by June 1, 2014, and 1% by June 1, 2015 and
2 thereafter. To the extent available, half of the
3 renewable energy resources procured from distributed
4 renewable energy generation shall come from devices of
5 less than 25 kilowatts in nameplate capacity.
6 Renewable energy resources procured from distributed
7 generation devices may also count towards the required
8 percentages for wind and solar photovoltaics.
9 Procurement of renewable energy resources from
10 distributed renewable energy generation devices shall
11 be done on an annual basis through multi-year contracts
12 of no less than 5 years, and shall consist solely of
13 renewable energy credits.

14 The Agency shall create credit requirements for
15 suppliers of distributed renewable energy. In order to
16 minimize the administrative burden on contracting
17 entities, the Agency shall solicit the use of
18 third-party organizations to aggregate distributed
19 renewable energy into groups of no less than one
20 megawatt in installed capacity. These third-party
21 organizations shall administer contracts with
22 individual distributed renewable energy generation
23 device owners. An individual distributed renewable
24 energy generation device owner shall have the ability
25 to measure the output of his or her distributed
26 renewable energy generation device. For purposes of

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

11 (2) For purposes of this subsection (c), the
12 required procurement of cost-effective renewable
13 energy resources for a particular year shall be
14 measured as a percentage of the actual amount of
15 electricity (megawatt-hours) supplied by the electric
16 utility to eligible retail customers in the planning
17 year ending immediately prior to the procurement. For
18 purposes of this subsection (c), the amount paid per
19 kilowatthour means the total amount paid for electric
20 service expressed on a per kilowatthour basis. For
21 purposes of this subsection (c), the total amount paid
22 for electric service includes without limitation
23 amounts paid for supply, transmission, distribution,
24 surcharges, and add-on taxes.

25 Notwithstanding the requirements of this
26 subsection (c), the total of renewable energy

1 resources procured pursuant to the procurement plan
2 for any single year shall be reduced by an amount
3 necessary to limit the annual estimated average net
4 increase due to the costs of these resources included
5 in the amounts paid by eligible retail customers in
6 connection with electric service to:

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

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

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

20 (D) in 2011, the greater of an additional 0.5%
21 of the amount paid per kilowatthour by those
22 customers during the year ending May 31, 2010 or 2%
23 of the amount paid per kilowatthour by those
24 customers during the year ending May 31, 2007; and

25 (E) thereafter, the amount of renewable energy
26 resources procured pursuant to the procurement

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

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

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

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

13 (4) The electric utility shall retire all
14 renewable energy credits used to comply with the
15 standard.

16 (5) Beginning with the year commencing June 1,
17 2010, an electric utility subject to this subsection
18 (c) shall apply the lesser of the maximum alternative
19 compliance payment rate or the most recent estimated
20 alternative compliance payment rate for its service
21 territory for the corresponding compliance period,
22 established pursuant to subsection (d) of Section
23 16-115D of the Public Utilities Act to its retail
24 customers that take service pursuant to the electric
25 utility's hourly pricing tariff or tariffs. The
26 electric utility shall retain all amounts collected as

1 a result of the application of the alternative
2 compliance payment rate or rates to such customers,
3 and, beginning in 2011, the utility shall include in
4 the information provided under item (1) of subsection
5 (d) of Section 16-111.5 of the Public Utilities Act the
6 amounts collected under the alternative compliance
7 payment rate or rates for the prior year ending May 31.
8 Notwithstanding any limitation on the procurement of
9 renewable energy resources imposed by item (2) of this
10 subsection (c), the Agency shall increase its spending
11 on the purchase of renewable energy resources to be
12 procured by the electric utility for the next plan year
13 by an amount equal to the amounts collected by the
14 utility under the alternative compliance payment rate
15 or rates in the prior year ending May 31.

16 (d) Clean coal portfolio standard.

17 (1) The procurement plans shall include electricity
18 generated using clean coal. Each utility shall enter into
19 one or more sourcing agreements with the initial clean coal
20 facility, as provided in paragraph (3) of this subsection
21 (d), covering electricity generated by the initial clean
22 coal facility representing at least 5% of each utility's
23 total supply to serve the load of eligible retail customers
24 in 2015 and each year thereafter, as described in paragraph
25 (3) of this subsection (d), subject to the limits specified
26 in paragraph (2) of this subsection (d). It is the goal of

1 the State that by January 1, 2025, 25% of the electricity
2 used in the State shall be generated by cost-effective
3 clean coal facilities. For purposes of this subsection (d),
4 "cost-effective" means that the expenditures pursuant to
5 such sourcing agreements do not cause the limit stated in
6 paragraph (2) of this subsection (d) to be exceeded and do
7 not exceed cost-based benchmarks, which shall be developed
8 to assess all expenditures pursuant to such sourcing
9 agreements covering electricity generated by clean coal
10 facilities, other than the initial clean coal facility, by
11 the procurement administrator, in consultation with the
12 Commission staff, Agency staff, and the procurement
13 monitor and shall be subject to Commission review and
14 approval.

15 (A) A utility party to a sourcing agreement shall
16 immediately retire any emission credits that it
17 receives in connection with the electricity covered by
18 such agreement.

19 (B) Utilities shall maintain adequate records
20 documenting the purchases under the sourcing agreement
21 to comply with this subsection (d) and shall file an
22 accounting with the load forecast that must be filed
23 with the Agency by July 15 of each year, in accordance
24 with subsection (d) of Section 16-111.5 of the Public
25 Utilities Act.

26 (C) A utility shall be deemed to have complied with

1 the clean coal portfolio standard specified in this
2 subsection (d) if the utility enters into a sourcing
3 agreement as required by this subsection (d).

4 (2) For purposes of this subsection (d), the required
5 execution of sourcing agreements with the initial clean
6 coal facility for a particular year shall be measured as a
7 percentage of the actual amount of electricity
8 (megawatt-hours) supplied by the electric utility to
9 eligible retail customers in the planning year ending
10 immediately prior to the agreement's execution. For
11 purposes of this subsection (d), the amount paid per
12 kilowatthour means the total amount paid for electric
13 service expressed on a per kilowatthour basis. For purposes
14 of this subsection (d), the total amount paid for electric
15 service includes without limitation amounts paid for
16 supply, transmission, distribution, surcharges and add-on
17 taxes.

18 Notwithstanding the requirements of this subsection
19 (d), the total amount paid under sourcing agreements with
20 clean coal facilities pursuant to the procurement plan for
21 any given year shall be reduced by an amount necessary to
22 limit the annual estimated average net increase due to the
23 costs of these resources included in the amounts paid by
24 eligible retail customers in connection with electric
25 service to:

26 (A) in 2010, no more than 0.5% of the amount

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

3 (B) in 2011, the greater of an additional 0.5%
4 of the amount paid per kilowatthour by those
5 customers during the year ending May 31, 2010 or 1%
6 of the amount paid per kilowatthour by those
7 customers during the year ending May 31, 2009;

8 (C) in 2012, the greater of an additional 0.5%
9 of the amount paid per kilowatthour by those
10 customers during the year ending May 31, 2011 or
11 1.5% of the amount paid per kilowatthour by those
12 customers during the year ending May 31, 2009;

13 (D) in 2013, the greater of an additional 0.5%
14 of the amount paid per kilowatthour by those
15 customers during the year ending May 31, 2012 or 2%
16 of the amount paid per kilowatthour by those
17 customers during the year ending May 31, 2009; and

18 (E) thereafter, the total amount paid under
19 sourcing agreements with clean coal facilities
20 pursuant to the procurement plan for any single
21 year shall be reduced by an amount necessary to
22 limit the estimated average net increase due to the
23 cost of these resources included in the amounts
24 paid by eligible retail customers in connection
25 with electric service to no more than the greater
26 of (i) 2.015% of the amount paid per kilowatthour

1 by those customers during the year ending May 31,
2 2009 or (ii) the incremental amount per
3 kilowatthour paid for these resources in 2013.
4 These requirements may be altered only as provided
5 by statute. No later than June 30, 2015, the
6 Commission shall review the limitation on the
7 total amount paid under sourcing agreements, if
8 any, with clean coal facilities pursuant to this
9 subsection (d) and report to the General Assembly
10 its findings as to whether that limitation unduly
11 constrains the amount of electricity generated by
12 cost-effective clean coal facilities that is
13 covered by sourcing agreements.

14 (3) Initial clean coal facility. In order to promote
15 development of clean coal facilities in Illinois, each
16 electric utility subject to this Section shall execute a
17 sourcing agreement to source electricity from a proposed
18 clean coal facility in Illinois (the "initial clean coal
19 facility") that will have a nameplate capacity of at least
20 500 MW when commercial operation commences, that has a
21 final Clean Air Act permit on the effective date of this
22 amendatory Act of the 95th General Assembly, and that will
23 meet the definition of clean coal facility in Section 1-10
24 of this Act when commercial operation commences. The
25 sourcing agreements with this initial clean coal facility
26 shall be subject to both approval of the initial clean coal

1 facility by the General Assembly and satisfaction of the
2 requirements of paragraph (4) of this subsection (d) and
3 shall be executed within 90 days after any such approval by
4 the General Assembly. The Agency and the Commission shall
5 have authority to inspect all books and records associated
6 with the initial clean coal facility during the term of
7 such a sourcing agreement. A utility's sourcing agreement
8 for electricity produced by the initial clean coal facility
9 shall include:

10 (A) a formula contractual price (the "contract
11 price") approved pursuant to paragraph (4) of this
12 subsection (d), which shall:

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

23 (ii) provide that all miscellaneous net
24 revenue, including but not limited to net revenue
25 from the sale of emission allowances, if any,
26 substitute natural gas, if any, grants or other

1 support provided by the State of Illinois or the
2 United States Government, firm transmission
3 rights, if any, by-products produced by the
4 facility, energy or capacity derived from the
5 facility and not covered by a sourcing agreement
6 pursuant to paragraph (3) of this subsection (d) or
7 item (5) of subsection (d) of Section 16-115 of the
8 Public Utilities Act, whether generated from the
9 synthesis gas derived from coal, from SNG, or from
10 natural gas, shall be credited against the revenue
11 requirement for this initial clean coal facility;

12 (B) power purchase provisions, which shall:

13 (i) provide that the utility party to such
14 sourcing agreement shall pay the contract price
15 for electricity delivered under such sourcing
16 agreement;

17 (ii) require delivery of electricity to the
18 regional transmission organization market of the
19 utility that is party to such sourcing agreement;

20 (iii) require the utility party to such
21 sourcing agreement to buy from the initial clean
22 coal facility in each hour an amount of energy
23 equal to all clean coal energy made available from
24 the initial clean coal facility during such hour
25 times a fraction, the numerator of which is such
26 utility's retail market sales of electricity

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

15 (iv) be considered pre-existing contracts in
16 such utility's procurement plans for eligible
17 retail customers;

18 (C) contract for differences provisions, which
19 shall:

20 (i) require the utility party to such sourcing
21 agreement to contract with the initial clean coal
22 facility in each hour with respect to an amount of
23 energy equal to all clean coal energy made
24 available from the initial clean coal facility
25 during such hour times a fraction, the numerator of
26 which is such utility's retail market sales of

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

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

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

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

11 (D) general provisions, which shall:

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

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

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

1 accordance with applicable laws governing
2 cost-based wholesale power contracts;

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

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

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

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

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

13 (vii) require Commission review: (1) to
14 determine the justness, reasonableness, and
15 prudence of the inputs to the formula referenced in
16 subparagraphs (A)(i) through (A)(iii) of paragraph
17 (3) of this subsection (d), prior to an adjustment
18 in those inputs including, without limitation, the
19 capital structure and return on equity, fuel
20 costs, and other operations and maintenance costs
21 and (2) to approve the costs to be passed through
22 to customers under the sourcing agreement by which
23 the utility satisfies its statutory obligations.
24 Commission review shall occur no less than every 3
25 years, regardless of whether any adjustments have
26 been proposed, and shall be completed within 9

1 months;

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

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

15 (x) provide that the owner or owners of the
16 initial clean coal facility, which is the
17 counterparty to such sourcing agreement, shall
18 have the right from time to time to elect whether
19 the obligations of the utility party thereto shall
20 be governed by the power purchase provisions or the
21 contract for differences provisions;

22 (xi) append documentation showing that the
23 formula rate and contract, insofar as they relate
24 to the power purchase provisions, have been
25 approved by the Federal Energy Regulatory
26 Commission pursuant to Section 205 of the Federal

1 Power Act;

2 (xii) provide that any changes to the terms of
3 the contract, insofar as such changes relate to the
4 power purchase provisions, are subject to review
5 under the public interest standard applied by the
6 Federal Energy Regulatory Commission pursuant to
7 Sections 205 and 206 of the Federal Power Act; and

8 (xiii) conform with customary lender
9 requirements in power purchase agreements used as
10 the basis for financing non-utility generators.

11 (4) Effective date of sourcing agreements with the
12 initial clean coal facility. Any proposed sourcing
13 agreement with the initial clean coal facility shall not
14 become effective unless the following reports are prepared
15 and submitted and authorizations and approvals obtained:

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

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

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

1 experts or consultants prior to receipt of the
2 facility cost report.

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

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

1 The facility cost report shall be prepared as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 approval. The Commission shall have authority to inspect
2 all books and records associated with these clean coal
3 facilities during the term of any such contract.

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

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

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

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

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

24 (Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09;
25 96-159, eff. 8-10-09; 96-1437, eff. 8-17-10.)

1 Section 10. The Public Utilities Act is amended by changing
2 Sections 8-103, 16-107.5, 16-111.5, 16-111.7, and 16-128 and by
3 adding Sections 8-103A, 16-108.5, 16-108.6, 16-108.7,
4 16-108.8, 16-111.5B, and 16-128A as follows:

5 (220 ILCS 5/8-103)

6 Sec. 8-103. Energy efficiency and demand-response
7 measures.

8 (a) It is the policy of the State that electric utilities
9 are required to use cost-effective energy efficiency and
10 demand-response measures to reduce delivery load. Requiring
11 investment in cost-effective energy efficiency and
12 demand-response measures will reduce direct and indirect costs
13 to consumers by decreasing environmental impacts and by
14 avoiding or delaying the need for new generation, transmission,
15 and distribution infrastructure. It serves the public interest
16 to allow electric utilities to recover costs for reasonably and
17 prudently incurred expenses for energy efficiency and
18 demand-response measures. As used in this Section,
19 "cost-effective" means that the measures satisfy the total
20 resource cost test. The low-income measures described in
21 subsection (f)(4) of this Section shall not be required to meet
22 the total resource cost test. For purposes of this Section, the
23 terms "energy-efficiency", "demand-response", "electric
24 utility", and "total resource cost test" shall have the
25 meanings set forth in the Illinois Power Agency Act. For

1 purposes of this Section, the amount per kilowatthour means the
2 total amount paid for electric service expressed on a per
3 kilowatthour basis. For purposes of this Section, the total
4 amount paid for electric service includes without limitation
5 estimated amounts paid for supply, transmission, distribution,
6 surcharges, and add-on-taxes.

7 (b) Electric utilities shall implement cost-effective
8 energy efficiency measures to meet the following incremental
9 annual energy savings goals:

10 (1) 0.2% of energy delivered in the year commencing
11 June 1, 2008;

12 (2) 0.4% of energy delivered in the year commencing
13 June 1, 2009;

14 (3) 0.6% of energy delivered in the year commencing
15 June 1, 2010;

16 (4) 0.8% of energy delivered in the year commencing
17 June 1, 2011;

18 (5) 1% of energy delivered in the year commencing June
19 1, 2012;

20 (6) 1.4% of energy delivered in the year commencing
21 June 1, 2013;

22 (7) 1.8% of energy delivered in the year commencing
23 June 1, 2014; and

24 (8) 2% of energy delivered in the year commencing June
25 1, 2015 and each year thereafter.

26 (c) Electric utilities shall implement cost-effective

1 demand-response measures to reduce peak demand by 0.1% over the
2 prior year for eligible retail customers, as defined in Section
3 16-111.5 of this Act, and for customers that elect hourly
4 service from the utility pursuant to Section 16-107 of this
5 Act, provided those customers have not been declared
6 competitive. This requirement commences June 1, 2008 and
7 continues for 10 years.

8 (d) Notwithstanding the requirements of subsections (b)
9 and (c) of this Section, an electric utility shall reduce the
10 amount of energy efficiency and demand-response measures
11 implemented in any single year by an amount necessary to limit
12 the estimated average increase in the amounts paid by retail
13 customers in connection with electric service due to the cost
14 of those measures to:

15 (1) in 2008, no more than 0.5% of the amount paid per
16 kilowatthour by those customers during the year ending May
17 31, 2007;

18 (2) in 2009, the greater of an additional 0.5% of the
19 amount paid per kilowatthour by those customers during the
20 year ending May 31, 2008 or 1% of the amount paid per
21 kilowatthour by those customers during the year ending May
22 31, 2007;

23 (3) in 2010, the greater of an additional 0.5% of the
24 amount paid per kilowatthour by those customers during the
25 year ending May 31, 2009 or 1.5% of the amount paid per
26 kilowatthour by those customers during the year ending May

1 31, 2007;

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

7 (5) thereafter, the amount of energy efficiency and
8 demand-response measures implemented for any single year
9 shall be reduced by an amount necessary to limit the
10 estimated average net increase due to the cost of these
11 measures included in the amounts paid by eligible retail
12 customers in connection with electric service to no more
13 than the greater of 2.015% of the amount paid per
14 kilowatthour by those customers during the year ending May
15 31, 2007 or the incremental amount per kilowatthour paid
16 for these measures in 2011.

17 No later than June 30, 2011, the Commission shall review
18 the limitation on the amount of energy efficiency and
19 demand-response measures implemented pursuant to this Section
20 and report to the General Assembly its findings as to whether
21 that limitation unduly constrains the procurement of energy
22 efficiency and demand-response measures.

23 (e) Electric utilities shall be responsible for overseeing
24 the design, development, and filing of energy efficiency and
25 demand-response plans with the Commission. Electric utilities
26 shall implement 100% of the demand-response measures in the

1 plans. Electric utilities shall implement 75% of the energy
2 efficiency measures approved by the Commission, and may, as
3 part of that implementation, outsource various aspects of
4 program development and implementation. The remaining 25% of
5 those energy efficiency measures approved by the Commission
6 shall be implemented by the Department of Commerce and Economic
7 Opportunity, and must be designed in conjunction with the
8 utility and the filing process. The Department may outsource
9 development and implementation of energy efficiency measures.
10 A minimum of 10% of the entire portfolio of cost-effective
11 energy efficiency measures shall be procured from units of
12 local government, municipal corporations, school districts,
13 and community college districts. The Department shall
14 coordinate the implementation of these measures.

15 The apportionment of the dollars to cover the costs to
16 implement the Department's share of the portfolio of energy
17 efficiency measures shall be made to the Department once the
18 Department has executed grants or contracts for energy
19 efficiency measures and provided supporting documentation for
20 those grants and the contracts to the utility.

21 The details of the measures implemented by the Department
22 shall be submitted by the Department to the Commission in
23 connection with the utility's filing regarding the energy
24 efficiency and demand-response measures that the utility
25 implements.

26 A utility providing approved energy efficiency and

1 demand-response measures in the State shall be permitted to
2 recover costs of those measures through an automatic adjustment
3 clause tariff filed with and approved by the Commission. The
4 tariff shall be established outside the context of a general
5 rate case. Each year the Commission shall initiate a review to
6 reconcile any amounts collected with the actual costs and to
7 determine the required adjustment to the annual tariff factor
8 to match annual expenditures.

9 Each utility shall include, in its recovery of costs, the
10 costs estimated for both the utility's and the Department's
11 implementation of energy efficiency and demand-response
12 measures. Costs collected by the utility for measures
13 implemented by the Department shall be submitted to the
14 Department pursuant to Section 605-323 of the Civil
15 Administrative Code of Illinois and shall be used by the
16 Department solely for the purpose of implementing these
17 measures. A utility shall not be required to advance any moneys
18 to the Department but only to forward such funds as it has
19 collected. The Department shall report to the Commission on an
20 annual basis regarding the costs actually incurred by the
21 Department in the implementation of the measures. Any changes
22 to the costs of energy efficiency measures as a result of plan
23 modifications shall be appropriately reflected in amounts
24 recovered by the utility and turned over to the Department.

25 The portfolio of measures, administered by both the
26 utilities and the Department, shall, in combination, be

1 designed to achieve the annual savings targets described in
2 subsections (b) and (c) of this Section, as modified by
3 subsection (d) of this Section.

4 The utility and the Department shall agree upon a
5 reasonable portfolio of measures and determine the measurable
6 corresponding percentage of the savings goals associated with
7 measures implemented by the utility or Department.

8 No utility shall be assessed a penalty under subsection (f)
9 of this Section for failure to make a timely filing if that
10 failure is the result of a lack of agreement with the
11 Department with respect to the allocation of responsibilities
12 or related costs or target assignments. In that case, the
13 Department and the utility shall file their respective plans
14 with the Commission and the Commission shall determine an
15 appropriate division of measures and programs that meets the
16 requirements of this Section.

17 If the Department is unable to meet incremental annual
18 performance goals for the portion of the portfolio implemented
19 by the Department, then the utility and the Department shall
20 jointly submit a modified filing to the Commission explaining
21 the performance shortfall and recommending an appropriate
22 course going forward, including any program modifications that
23 may be appropriate in light of the evaluations conducted under
24 item (7) of subsection (f) of this Section. In this case, the
25 utility obligation to collect the Department's costs and turn
26 over those funds to the Department under this subsection (e)

1 shall continue only if the Commission approves the
2 modifications to the plan proposed by the Department.

3 (f) No later than November 15, 2007, each electric utility
4 shall file an energy efficiency and demand-response plan with
5 the Commission to meet the energy efficiency and
6 demand-response standards for 2008 through 2010. No later than
7 October 1, 2010, each electric utility shall file an energy
8 efficiency and demand-response plan with the Commission to meet
9 the energy efficiency and demand-response standards for 2011
10 through 2013. Every 3 years thereafter, each electric utility
11 shall file, no later than September ~~October~~ 1, an energy
12 efficiency and demand-response plan with the Commission. If a
13 utility does not file such a plan by September ~~October~~ 1 of an
14 applicable year, it shall face a penalty of \$100,000 per day
15 until the plan is filed. Each utility's plan shall set forth
16 the utility's proposals to meet the utility's portion of the
17 energy efficiency standards identified in subsection (b) and
18 the demand-response standards identified in subsection (c) of
19 this Section as modified by subsections (d) and (e), taking
20 into account the unique circumstances of the utility's service
21 territory. The Commission shall seek public comment on the
22 utility's plan and shall issue an order approving or
23 disapproving each plan within 5 ~~3~~ months after its submission.
24 If the Commission disapproves a plan, the Commission shall,
25 within 30 days, describe in detail the reasons for the
26 disapproval and describe a path by which the utility may file a

1 revised draft of the plan to address the Commission's concerns
2 satisfactorily. If the utility does not refile with the
3 Commission within 60 days, the utility shall be subject to
4 penalties at a rate of \$100,000 per day until the plan is
5 filed. This process shall continue, and penalties shall accrue,
6 until the utility has successfully filed a portfolio of energy
7 efficiency and demand-response measures. Penalties shall be
8 deposited into the Energy Efficiency Trust Fund. In submitting
9 proposed energy efficiency and demand-response plans and
10 funding levels to meet the savings goals adopted by this Act
11 the utility shall:

12 (1) Demonstrate that its proposed energy efficiency
13 and demand-response measures will achieve the requirements
14 that are identified in subsections (b) and (c) of this
15 Section, as modified by subsections (d) and (e).

16 (2) Present specific proposals to implement new
17 building and appliance standards that have been placed into
18 effect.

19 (3) Present estimates of the total amount paid for
20 electric service expressed on a per kilowatthour basis
21 associated with the proposed portfolio of measures
22 designed to meet the requirements that are identified in
23 subsections (b) and (c) of this Section, as modified by
24 subsections (d) and (e).

25 (4) Coordinate with the Department to present a
26 portfolio of energy efficiency measures proportionate to

1 the share of total annual utility revenues in Illinois from
2 households at or below 150% of the poverty level. The
3 energy efficiency programs shall be targeted to households
4 with incomes at or below 80% of area median income.

5 (5) Demonstrate that its overall portfolio of energy
6 efficiency and demand-response measures, not including
7 programs covered by item (4) of this subsection (f), are
8 cost-effective using the total resource cost test and
9 represent a diverse cross-section of opportunities for
10 customers of all rate classes to participate in the
11 programs.

12 (6) Include a proposed cost-recovery tariff mechanism
13 to fund the proposed energy efficiency and demand-response
14 measures and to ensure the recovery of the prudently and
15 reasonably incurred costs of Commission-approved programs.

16 (7) Provide for an annual independent evaluation of the
17 performance of the cost-effectiveness of the utility's
18 portfolio of measures and the Department's portfolio of
19 measures, as well as a full review of the 3-year results of
20 the broader net program impacts and, to the extent
21 practical, for adjustment of the measures on a
22 going-forward basis as a result of the evaluations. The
23 resources dedicated to evaluation shall not exceed 3% of
24 portfolio resources in any given year.

25 (g) No more than 3% of energy efficiency and
26 demand-response program revenue may be allocated for

1 demonstration of breakthrough equipment and devices.

2 (h) This Section does not apply to an electric utility that
3 on December 31, 2005 provided electric service to fewer than
4 100,000 customers in Illinois.

5 (i) If, after 2 years, an electric utility fails to meet
6 the efficiency standard specified in subsection (b) of this
7 Section, as modified by subsections (d) and (e), it shall make
8 a contribution to the Low-Income Home Energy Assistance
9 Program. The combined total liability for failure to meet the
10 goal shall be \$1,000,000, which shall be assessed as follows: a
11 large electric utility shall pay \$665,000, and a medium
12 electric utility shall pay \$335,000. If, after 3 years, an
13 electric utility fails to meet the efficiency standard
14 specified in subsection (b) of this Section, as modified by
15 subsections (d) and (e), it shall make a contribution to the
16 Low-Income Home Energy Assistance Program. The combined total
17 liability for failure to meet the goal shall be \$1,000,000,
18 which shall be assessed as follows: a large electric utility
19 shall pay \$665,000, and a medium electric utility shall pay
20 \$335,000. In addition, the responsibility for implementing the
21 energy efficiency measures of the utility making the payment
22 shall be transferred to the Illinois Power Agency if, after 3
23 years, or in any subsequent 3-year period, the utility fails to
24 meet the efficiency standard specified in subsection (b) of
25 this Section, as modified by subsections (d) and (e). The
26 Agency shall implement a competitive procurement program to

1 procure resources necessary to meet the standards specified in
2 this Section as modified by subsections (d) and (e), with costs
3 for those resources to be recovered in the same manner as
4 products purchased through the procurement plan as provided in
5 Section 16-111.5. The Director shall implement this
6 requirement in connection with the procurement plan as provided
7 in Section 16-111.5.

8 For purposes of this Section, (i) a "large electric
9 utility" is an electric utility that, on December 31, 2005,
10 served more than 2,000,000 electric customers in Illinois; (ii)
11 a "medium electric utility" is an electric utility that, on
12 December 31, 2005, served 2,000,000 or fewer but more than
13 100,000 electric customers in Illinois; and (iii) Illinois
14 electric utilities that are affiliated by virtue of a common
15 parent company are considered a single electric utility.

16 (j) If, after 3 years, or any subsequent 3-year period, the
17 Department fails to implement the Department's share of energy
18 efficiency measures required by the standards in subsection
19 (b), then the Illinois Power Agency may assume responsibility
20 for and control of the Department's share of the required
21 energy efficiency measures. The Agency shall implement a
22 competitive procurement program to procure resources necessary
23 to meet the standards specified in this Section, with the costs
24 of these resources to be recovered in the same manner as
25 provided for the Department in this Section.

26 (k) No electric utility shall be deemed to have failed to

1 meet the energy efficiency standards to the extent any such
2 failure is due to a failure of the Department or the Agency.

3 (Source: P.A. 95-481, eff. 8-28-07; 95-876, eff. 8-21-08;
4 96-33, eff. 7-10-09; 96-159, eff. 8-10-09; 96-1000, eff.
5 7-2-10.)

6 (220 ILCS 5/8-103A new)

7 Sec. 8-103A. Energy efficiency analysis. Beginning in
8 2013, an electric utility subject to the requirements of
9 Section 8-103 of this Act shall include in its energy
10 efficiency and demand-response plan submitted pursuant to
11 subsection (f) of Section 8-103 an analysis of additional
12 cost-effective energy efficiency measures that could be
13 implemented, by customer class, absent the limitations set
14 forth in subsection (d) of Section 8-103. In seeking public
15 comment on the electric utility's plan pursuant to subsection
16 (f) of Section 8-103, the Commission shall include, beginning
17 in 2013, the assessment of additional cost-effective energy
18 efficiency measures submitted pursuant to this Section. For
19 purposes of this Section, the term "energy efficiency" shall
20 have the meaning set forth in Section 1-10 of the Illinois
21 Power Agency Act, and the term "cost-effective" shall have the
22 meaning set forth in subsection (a) of Section 8-103 of this
23 Act.

24 (220 ILCS 5/16-107.5)

1 Sec. 16-107.5. Net electricity metering.

2 (a) The Legislature finds and declares that a program to
3 provide net electricity metering, as defined in this Section,
4 for eligible customers can encourage private investment in
5 renewable energy resources, stimulate economic growth, enhance
6 the continued diversification of Illinois' energy resource
7 mix, and protect the Illinois environment.

8 (b) As used in this Section, (i) "eligible customer" means
9 a retail customer that owns or operates a solar, wind, or other
10 eligible renewable electrical generating facility with a rated
11 capacity of not more than 2,000 kilowatts that is located on
12 the customer's premises and is intended primarily to offset the
13 customer's own electrical requirements; (ii) "electricity
14 provider" means an electric utility or alternative retail
15 electric supplier; (iii) "eligible renewable electrical
16 generating facility" means a generator powered by solar
17 electric energy, wind, dedicated crops grown for electricity
18 generation, agricultural residues, untreated and unadulterated
19 wood waste, landscape trimmings, livestock manure, anaerobic
20 digestion of livestock or food processing waste, fuel cells or
21 microturbines powered by renewable fuels, or hydroelectric
22 energy; and (iv) "net electricity metering" (or "net metering")
23 means the measurement, during the billing period applicable to
24 an eligible customer, of the net amount of electricity supplied
25 by an electricity provider to the customer's premises or
26 provided to the electricity provider by the customer.

1 (c) A net metering facility shall be equipped with metering
2 equipment that can measure the flow of electricity in both
3 directions at the same rate.

4 (1) For eligible ~~residential~~ customers whose electric
5 service has not been declared competitive pursuant to
6 Section 16-113 of this Act and whose electric delivery
7 service is provided and measured on a kilowatt-hour basis
8 and electric supply service is not provided based on hourly
9 pricing, this shall typically be accomplished through use
10 of a single, bi-directional meter. If the eligible
11 customer's existing electric revenue meter does not meet
12 this requirement, the electricity provider shall arrange
13 for the local electric utility or a meter service provider
14 to install and maintain a new revenue meter at the
15 electricity provider's expense.

16 (2) For eligible customers whose electric service has
17 not been declared competitive pursuant to Section 16-113 of
18 this Act and whose electric delivery service is provided
19 and measured on a kilowatt demand basis and electric supply
20 service is not provided based on hourly pricing, this shall
21 typically be accomplished through use of a dual channel
22 meter capable of measuring the flow of electricity both
23 into and out of the customer's facility at the same rate
24 and ratio. If such customer's existing electric revenue
25 meter does not meet this requirement, then the electricity
26 provider shall arrange for the local electric utility or a

1 meter service provider to install and maintain a new
2 revenue meter at the electricity provider's expense.

3 (3) For all other eligible customers, ~~For~~
4 ~~non-residential customers,~~ the electricity provider may
5 arrange for the local electric utility or a meter service
6 provider to install and maintain metering equipment
7 capable of measuring the flow of electricity both into and
8 out of the customer's facility at the same rate and ratio,
9 typically through the use of a dual channel meter. If the
10 eligible customer's existing electric revenue meter does
11 not meet this requirement, then the costs of installing
12 such equipment shall be paid for by the customer. ~~For~~
13 ~~generators with a nameplate rating of 40 kilowatts and~~
14 ~~below, the costs of installing such equipment shall be paid~~
15 ~~for by the electricity provider. For generators with a~~
16 ~~nameplate rating over 40 kilowatts and up to 2,000~~
17 ~~kilowatts capacity, the costs of installing such equipment~~
18 ~~shall be paid for by the customer. Any subsequent revenue~~
19 ~~meter change necessitated by any eligible customer shall be~~
20 ~~paid for by the customer.~~

21 (d) An electricity provider shall measure and charge or
22 credit for the net electricity supplied to eligible customers
23 or provided by eligible customers whose electric service has
24 not been declared competitive pursuant to Section 16-113 of the
25 Act and whose electric delivery service is provided and
26 measured on a kilowatt-hour basis and electric supply service

1 is not provided based on hourly pricing in the following
2 manner:

3 (1) If the amount of electricity used by the customer
4 during the billing period exceeds the amount of electricity
5 produced by the customer, the electricity provider shall
6 charge the customer for the net electricity supplied to and
7 used by the customer as provided in subsection (e-5) ~~(e)~~ of
8 this Section.

9 (2) If the amount of electricity produced by a customer
10 during the billing period exceeds the amount of electricity
11 used by the customer during that billing period, the
12 electricity provider supplying that customer shall apply a
13 1:1 kilowatt-hour credit to a subsequent bill for service
14 to the customer for the net electricity supplied to the
15 electricity provider. The electricity provider shall
16 continue to carry over any excess kilowatt-hour credits
17 earned and apply those credits to subsequent billing
18 periods to offset any customer-generator consumption in
19 those billing periods until all credits are used or until
20 the end of the annualized period.

21 (3) At the end of the year or annualized over the
22 period that service is supplied by means of net metering,
23 or in the event that the retail customer terminates service
24 with the electricity provider prior to the end of the year
25 or the annualized period, any remaining credits in the
26 customer's account shall expire.

1 (e) An electricity provider shall measure and charge or
2 credit for the net electricity supplied to eligible customers
3 whose electric service has not been declared competitive
4 pursuant to Section 16-113 of this Act and whose electric
5 delivery service is provided and measured on a kilowatt demand
6 basis and electric supply service is not provided based on
7 hourly pricing in the following manner:

8 (1) If the amount of electricity used by the customer
9 during the billing period exceeds the amount of electricity
10 produced by the customer, then the electricity provider
11 shall charge the customer for the net electricity supplied
12 to and used by the customer as provided in subsection (e-5)
13 of this Section, provided that the electricity provider
14 shall assess and the customer remains responsible for all
15 taxes, fees, and utility delivery charges that would
16 otherwise be applicable to the gross amount of
17 kilowatt-hours supplied to the eligible customer by the
18 electricity provider.

19 (2) If the amount of electricity produced by a customer
20 during the billing period exceeds the amount of electricity
21 used by the customer during that billing period, then the
22 electricity provider supplying that customer shall apply a
23 1:1 kilowatt-hour credit that reflects the kilowatt-hour
24 based charges in the customer's electric service rate to a
25 subsequent bill for service to the customer for the net
26 electricity supplied to the electricity provider. The

1 electricity provider shall continue to carry over any
2 excess kilowatt-hour credits earned and apply those
3 credits to subsequent billing periods to offset any
4 customer-generator consumption in those billing periods
5 until all credits are used or until the end of the
6 annualized period.

7 (3) At the end of the year or annualized over the
8 period that service is supplied by means of net metering,
9 or in the event that the retail customer terminates service
10 with the electricity provider prior to the end of the year
11 or the annualized period, any remaining credits in the
12 customer's account shall expire.

13 (e-5) An electricity provider shall provide electric
14 service to eligible ~~net metering~~ customers whose electric
15 service has not been declared competitive pursuant to Section
16 16-113 of this Act and whose electric supply service is not
17 provided based on hourly pricing who utilize net metering
18 electric service at non-discriminatory rates that are
19 identical, with respect to rate structure, retail rate
20 components, and any monthly charges, to the rates that the
21 customer would be charged if not a net metering customer. An
22 electricity provider shall not charge net metering customers
23 any fee or charge or require additional equipment, insurance,
24 or any other requirements not specifically authorized by
25 interconnection standards authorized by the Commission, unless
26 the fee, charge, or other requirement would apply to other

1 similarly situated customers who are not net metering
2 customers. The customer will remain responsible for all taxes,
3 fees, and utility delivery charges that would otherwise be
4 applicable to the net amount of electricity used by the
5 customer. Subsections (c) through (e) of this Section shall not
6 be construed to prevent an arms-length agreement between an
7 electricity provider and an eligible customer that sets forth
8 different prices, terms, and conditions for the provision of
9 net metering service, including, but not limited to, the
10 provision of the appropriate metering equipment for
11 non-residential customers.

12 (f) Notwithstanding the requirements of subsections (c)
13 through (e-5) ~~(e)~~ of this Section, an electricity provider must
14 require dual-channel metering for customers operating eligible
15 renewable electrical generating facilities with a nameplate
16 rating up to 2,000 kilowatts and to whom the provisions of
17 neither subsection (d) nor (e) of this Section apply
18 ~~non residential customers operating eligible renewable~~
19 ~~electrical generating facilities with a nameplate rating over~~
20 ~~40 kilowatts and up to 2,000 kilowatts.~~ In such cases,
21 electricity charges and credits shall be determined as follows:

22 (1) The electricity provider shall assess and the
23 customer remains responsible for all taxes, fees, and
24 utility delivery charges that would otherwise be
25 applicable to the gross amount of kilowatt-hours supplied
26 to the eligible customer by the electricity provider.

1 (2) Each month that service is supplied by means of
2 dual-channel metering, the electricity provider shall
3 compensate the eligible customer for any excess
4 kilowatt-hour credits at the electricity provider's
5 avoided cost of electricity supply over the monthly period
6 or as otherwise specified by the terms of a power-purchase
7 agreement negotiated between the customer and electricity
8 provider.

9 (3) For all eligible net metering customers taking
10 service from an electricity provider under contracts or
11 tariffs employing time of use rates, any monthly
12 consumption of electricity shall be calculated according
13 to the terms of the contract or tariff to which the same
14 customer would be assigned to or be eligible for if the
15 customer was not a net metering customer. When those same
16 customer-generators are net generators during any discrete
17 time of use period, the net kilowatt-hours produced shall
18 be valued at the same price per kilowatt-hour as the
19 electric service provider would charge for retail
20 kilowatt-hour sales during that same time of use period.

21 (g) For purposes of federal and State laws providing
22 renewable energy credits or greenhouse gas credits, the
23 eligible customer shall be treated as owning and having title
24 to the renewable energy attributes, renewable energy credits,
25 and greenhouse gas emission credits related to any electricity
26 produced by the qualified generating unit. The electricity

1 provider may not condition participation in a net metering
2 program on the signing over of a customer's renewable energy
3 credits; provided, however, this subsection (g) shall not be
4 construed to prevent an arms-length agreement between an
5 electricity provider and an eligible customer that sets forth
6 the ownership or title of the credits.

7 (h) Within 120 days after the effective date of this
8 amendatory Act of the 95th General Assembly, the Commission
9 shall establish standards for net metering and, if the
10 Commission has not already acted on its own initiative,
11 standards for the interconnection of eligible renewable
12 generating equipment to the utility system. The
13 interconnection standards shall address any procedural
14 barriers, delays, and administrative costs associated with the
15 interconnection of customer-generation while ensuring the
16 safety and reliability of the units and the electric utility
17 system. The Commission shall consider the Institute of
18 Electrical and Electronics Engineers (IEEE) Standard 1547 and
19 the issues of (i) reasonable and fair fees and costs, (ii)
20 clear timelines for major milestones in the interconnection
21 process, (iii) nondiscriminatory terms of agreement, and (iv)
22 any best practices for interconnection of distributed
23 generation.

24 (i) All electricity providers shall begin to offer net
25 metering no later than April 1, 2008.

26 (j) An electricity provider shall provide net metering to

1 eligible customers until the load of its net metering customers
2 equals 5% ~~1%~~ of the total peak demand supplied by that
3 electricity provider during the previous year. Electricity
4 providers are authorized to offer net metering beyond the 5% ~~1%~~
5 level if they so choose. ~~The number of new eligible customers~~
6 ~~with generators that have a nameplate rating of 40 kilowatts~~
7 ~~and below will be limited to 200 total new billing accounts for~~
8 ~~the utilities (Ameren Companies, ComEd, and MidAmerican) for~~
9 ~~the period of April 1, 2008 through March 31, 2009.~~

10 (k) Each electricity provider shall maintain records and
11 report annually to the Commission the total number of net
12 metering customers served by the provider, as well as the type,
13 capacity, and energy sources of the generating systems used by
14 the net metering customers. Nothing in this Section shall limit
15 the ability of an electricity provider to request the redaction
16 of information deemed by the Commission to be confidential
17 business information. Each electricity provider shall notify
18 the Commission when the total generating capacity of its net
19 metering customers is equal to or in excess of the 5% ~~1%~~ cap
20 specified in subsection (j) of this Section.

21 (l) Notwithstanding the definition of "eligible customer"
22 in item (i) of subsection (b) of this Section, each electricity
23 provider shall consider whether to allow meter aggregation for
24 the purposes of net metering on:

25 (1) properties owned or leased by multiple customers
26 that contribute to the operation of an eligible renewable

1 electrical generating facility, such as a community-owned
2 wind project, a community-owned biomass project, a
3 community-owned solar project, or a community methane
4 digester processing livestock waste from multiple sources;
5 and

6 (2) individual units, apartments, or properties owned
7 or leased by multiple customers and collectively served by
8 a common eligible renewable electrical generating
9 facility, such as an apartment building served by
10 photovoltaic panels on the roof.

11 For the purposes of this subsection (1), "meter
12 aggregation" means the combination of reading and billing on a
13 pro rata basis for the types of eligible customers described in
14 this Section.

15 (m) Nothing in this Section shall affect the right of an
16 electricity provider to continue to provide, or the right of a
17 retail customer to continue to receive service pursuant to a
18 contract for electric service between the electricity provider
19 and the retail customer in accordance with the prices, terms,
20 and conditions provided for in that contract. Either the
21 electricity provider or the customer may require compliance
22 with the prices, terms, and conditions of the contract.

23 (Source: P.A. 95-420, eff. 8-24-07.)

24 (220 ILCS 5/16-108.5 new)

25 Sec. 16-108.5. Infrastructure investment and

1 modernization; regulatory reform.

2 (a) The General Assembly recognizes that for well over a
3 century Illinois residents and businesses have been
4 well-served by and have benefitted from a comprehensive
5 electric utility system. The General Assembly finds that
6 electric utilities are now entering a new construction cycle
7 that is needed to refurbish, rebuild, modernize, and expand
8 systems to continue to provide safe, reliable, and affordable
9 service to the State's current and future utility customers in
10 this newly digitized age. In particular, the General Assembly
11 finds that it is the policy of this State that significant
12 investments must be made in the State's electric grid over the
13 next decade to modernize and upgrade transmission and
14 distribution facilities in the State. These investments will
15 ensure that the State's electric utility infrastructure will
16 promote future economic development in the State and that the
17 State's electric utilities will be able to continue to provide
18 quality electric service to their customers, including
19 innovative technological offerings that will enhance customer
20 experience and choice such as smart meters that are dependent
21 on a modernized or Smart Grid. These investments, including
22 programs to reinforce the safety and security of high voltage
23 transmission lines, will also ensure that the State's electric
24 utility infrastructure continues to be safe and reliable. The
25 introduction of performance metrics will further ensure that
26 reliability and other indicators are not just maintained but

1 improved over the next decade.

2 The General Assembly further recognizes that, in addition
3 to attracting capital and businesses to the State, these
4 investments will create training opportunities for the
5 citizens of this State, all of which will create new employment
6 opportunities for Illinoisans at a time when they are most
7 needed, especially for minority-owned and female-owned
8 business enterprises. The General Assembly further finds that
9 regulatory reform measures that increase predictability,
10 stability, and transparency in the ratemaking process are
11 needed to promote prudent, long-term infrastructure investment
12 and to mutually benefit the State's electric utilities and
13 their customers, regulators, and investors.

14 (b) For purposes of this Section, "participating utility"
15 means an electric utility or a combination utility serving more
16 than 1,000,000 customers in Illinois that voluntarily elects
17 and commits to undertake the infrastructure investment program
18 consisting of the commitments and obligations described in this
19 subsection (b), notwithstanding any other provisions of this
20 Act and without obtaining any approvals from the Commission or
21 any other agency other than as set forth in this Section,
22 regardless of whether any such approval would otherwise be
23 required. "Combination utility" means a utility that, as of
24 January 1, 2011, provided electric service to at least one
25 million retail customers in Illinois and gas service to at
26 least 500,000 retail customers in Illinois. A participating

1 utility shall recover the expenditures made under the
2 infrastructure investment program through the ratemaking
3 process, including, but not limited to, the performance-based
4 formula rate and process set forth in this Section.

5 During the infrastructure investment program's peak
6 program year, a participating utility other than a combination
7 utility shall create 2,000 full-time equivalent jobs in
8 Illinois, and a participating utility that is a combination
9 utility shall create 450 full-time equivalent jobs in Illinois
10 related to the provision of electric service, including direct
11 jobs, contractor positions, and induced jobs. For purposes of
12 this Section, "peak program year" means the consecutive
13 12-month period with the highest number of full-time equivalent
14 jobs that occurs between the beginning of investment year 2 and
15 the end of investment year 4.

16 A participating utility shall meet one of the following
17 commitments, as applicable:

18 (1) Beginning no later than 180 days after a
19 participating utility other than a combination utility
20 files a performance-based formula rate tariff pursuant to
21 subsection (c) of this Section, or, beginning no later than
22 January 1, 2012 if such utility files such
23 performance-based formula rate tariff within 14 days of the
24 effective date of this amendatory Act of the 97th General
25 Assembly, the participating utility shall, except as
26 provided in subsection (b-5):

1 (A) over a 5-year period, invest an estimated
2 \$1,100,000,000 in electric system upgrades,
3 modernization projects, and training facilities,
4 including, but not limited to:

5 (i) distribution infrastructure improvements
6 totaling an estimated \$1,000,000,000, including
7 underground residential distribution cable
8 injection and replacement and mainline cable
9 system refurbishment and replacement projects;

10 (ii) training facility construction or upgrade
11 projects totaling an estimated \$10,000,000,
12 provided that, at a minimum, one such facility
13 shall be located in a municipality having a
14 population of more than 2 million residents and one
15 such facility shall be located in a municipality
16 having a population of more than 150,000 residents
17 but fewer than 170,000 residents; any such new
18 facility located in a municipality having a
19 population of more than 2 million residents must be
20 designed for the purpose of obtaining, and the
21 owner of the facility shall apply for,
22 certification under the United States Green
23 Building Council's Leadership in Energy Efficiency
24 Design Green Building Rating System; and

25 (iii) wood pole inspection, treatment, and
26 replacement programs; and

1 (B) over a 10-year period, invest an estimated
2 \$1,500,000,000 to upgrade and modernize its
3 transmission and distribution infrastructure and in
4 Smart Grid electric system upgrades, including, but
5 not limited to:

6 (i) additional smart meters;

7 (ii) distribution automation;

8 (iii) associated cyber secure data
9 communication network; and

10 (iv) substation micro-processor relay
11 upgrades.

12 (2) Beginning no later than 180 days after a
13 participating utility that is a combination utility files a
14 performance-based formula rate tariff pursuant to
15 subsection (c) of this Section, or, beginning no later than
16 January 1, 2012 if such utility files such
17 performance-based formula rate tariff within 14 days of the
18 effective date of this amendatory Act of the 97th General
19 Assembly, the participating utility shall, except as
20 provided in subsection (b-5):

21 (A) over a 10-year period, invest an estimated
22 \$265,000,000 in electric system upgrades,
23 modernization projects, and training facilities,
24 including, but not limited to:

25 (i) distribution infrastructure improvements
26 totaling an estimated \$245,000,000, which may

1 include bulk supply substations, transformers,
2 reconductoring, and rebuilding overhead
3 distribution and sub-transmission lines,
4 underground residential distribution cable
5 injection and replacement and mainline cable
6 system refurbishment and replacement projects;

7 (ii) training facility construction or upgrade
8 projects totaling an estimated \$1,000,000; any
9 such new facility must be designed for the purpose
10 of obtaining, and the owner of the facility shall
11 apply for, certification under the United States
12 Green Building Council's Leadership in Energy
13 Efficiency Design Green Building Rating System;
14 and

15 (iii) wood pole inspection, treatment, and
16 replacement programs; and

17 (B) over a 10-year period, invest an estimated
18 \$360,000,000 to upgrade and modernize its transmission
19 and distribution infrastructure and in Smart Grid
20 electric system upgrades, including, but not limited
21 to:

22 (i) additional smart meters;

23 (ii) distribution automation;

24 (iii) associated cyber secure data
25 communication network; and

26 (iv) substation micro-processor relay

1 upgrades.

2 For purposes of this Section, "Smart Grid electric system
3 upgrades" shall have the meaning set forth in subsection (a) of
4 Section 16-108.6 of this Act.

5 The investments in the infrastructure investment program
6 described in this subsection (b) shall be incremental to the
7 participating utility's annual capital investment program, as
8 defined by, for purposes of this subsection (b), the
9 participating utility's average capital spend for calendar
10 years 2008, 2009, and 2010 as reported in the applicable
11 Federal Energy Regulatory Commission (FERC) Form 1; provided
12 that where one or more utilities have merged, the average
13 capital spend shall be determined using the aggregate of the
14 merged utilities' capital spend reported in FERC Form 1 for the
15 years 2008, 2009, and 2010.

16 Within 60 days after filing a tariff under subsection (c)
17 of this Section, a participating utility shall submit to the
18 Commission its plan, including scope, schedule, and staffing,
19 for satisfying its infrastructure investment program
20 commitments pursuant to this subsection (b). The submitted plan
21 shall include a schedule and staffing plan for the next
22 calendar year. The plan shall also include a plan for the
23 creation, operation, and administration of a Smart Grid test
24 bed as described in subsection (c) of Section 16-108.8. The
25 plan need not allocate the work equally over the respective
26 periods, but should allocate material increments throughout

1 such periods commensurate with the work to be undertaken. No
2 later than April 1 of each subsequent year, the utility shall
3 submit to the Commission a report that includes any updates to
4 the plan, a schedule for the next calendar year, the
5 expenditures made for the prior calendar year and cumulatively,
6 and the number of full-time equivalent jobs created for the
7 prior calendar year and cumulatively. If the utility is
8 materially deficient in satisfying a schedule or staffing plan,
9 then the report must also include a corrective action plan to
10 address the deficiency. The fact that the plan, implementation
11 of the plan, or a schedule changes shall not imply the
12 imprudence or unreasonableness of the infrastructure
13 investment program, plan, or schedule.

14 With respect to the participating utility's peak job
15 commitment, if, after considering the utility's corrective
16 action plan and compliance thereunder, the Commission enters an
17 order finding, after notice and hearing, that a participating
18 utility did not satisfy its peak job commitment described in
19 this subsection (b) for reasons that are reasonably within its
20 control, then the Commission shall also determine, after
21 consideration of the evidence, including, but not limited to,
22 evidence submitted by the Department of Commerce and Economic
23 Opportunity and the utility, the deficiency in the number of
24 full-time equivalent jobs during the peak program year due to
25 such failure. The Commission shall notify the Department of any
26 proceeding that is initiated pursuant to this paragraph. For

1 each full-time equivalent job deficiency during the peak
2 program year that the Commission finds as set forth in this
3 paragraph, the participating utility shall, within 30 days
4 after the entry of the Commission's order, pay \$3,000 to a fund
5 for training grants administered under Section 605-800 of The
6 Department of Commerce and Economic Opportunity Law, which
7 shall not be a recoverable expense.

8 With respect to the participating utility's investment
9 amount commitments, if, after considering the utility's
10 corrective action plan and compliance thereunder, the
11 Commission enters an order finding, after notice and hearing,
12 that a participating utility is not satisfying its investment
13 amount commitments described in this subsection (b), then the
14 utility shall no longer be eligible to annually update the
15 performance-based formula rate tariff pursuant to subsection
16 (d) of this Section. In such event, the then current rates
17 shall remain in effect until such time as new rates are set
18 pursuant to Article IX of this Act, subject to retroactive
19 adjustment, with interest, to reconcile rates charged with
20 actual costs.

21 If the Commission finds that a participating utility is no
22 longer eligible to update the performance-based formula rate
23 tariff pursuant to subsection (d) of this Section, or the
24 performance-based formula rate is otherwise terminated, then
25 the participating utility's voluntary commitments and
26 obligations under this subsection (b) shall immediately

1 terminate, except for the utility's obligation to pay an amount
2 already owed to the fund for training grants pursuant to a
3 Commission order.

4 In meeting the obligations of this subsection (b), to the
5 extent feasible and consistent with State and federal law, the
6 investments under the infrastructure investment program should
7 provide employment opportunities for all segments of the
8 population and workforce, including minority-owned and
9 female-owned business enterprises, and shall not, consistent
10 with State and federal law, discriminate based on race or
11 socioeconomic status.

12 (b-5) Nothing in this Section shall prohibit the Commission
13 from investigating the prudence and reasonableness of the
14 expenditures made under the infrastructure investment program
15 during the annual review required by subsection (d) of this
16 Section and shall, as part of such investigation, determine
17 whether the utility's actual costs under the program are
18 prudent and reasonable. The fact that a participating utility
19 invests more than the minimum amounts specified in subsection
20 (b) of this Section or its plan shall not imply imprudence or
21 unreasonableness.

22 If the participating utility finds that it is implementing
23 its plan for satisfying the infrastructure investment program
24 commitments described in subsection (b) of this Section at a
25 cost below the estimated amounts specified in subsection (b) of
26 this Section, then the utility may file a petition with the

1 Commission requesting that it be permitted to satisfy its
2 commitments by spending less than the estimated amounts
3 specified in subsection (b) of this Section. The Commission
4 shall, after notice and hearing, enter its order approving, or
5 approving as modified, or denying each such petition within 150
6 days after the filing of the petition.

7 In no event, absent General Assembly approval, shall the
8 capital investment costs incurred by a participating utility
9 other than a combination utility in satisfying its
10 infrastructure investment program commitments described in
11 subsection (b) of this Section exceed \$3,000,000,000 or, for a
12 participating utility that is a combination utility,
13 \$720,000,000. If the participating utility's updated cost
14 estimates for satisfying its infrastructure investment program
15 commitments described in subsection (b) of this Section exceed
16 the limitation imposed by this subsection (b-5), then it shall
17 submit a report to the Commission that identifies the increased
18 costs and explains the reason or reasons for the increased
19 costs no later than the year in which the utility estimates it
20 will exceed the limitation. The Commission shall review the
21 report and shall, within 90 days after the participating
22 utility files the report, report to the General Assembly its
23 findings regarding the participating utility's report. If the
24 General Assembly does not amend the limitation imposed by this
25 subsection (b-5), then the utility may modify its plan so as
26 not to exceed the limitation imposed by this subsection (b-5)

1 and may propose corresponding changes to the metrics
2 established pursuant to subparagraphs (5) through (8) of
3 subsection (f) of this Section, and the Commission may modify
4 the metrics and incremental savings goals established pursuant
5 to subsection (f) of this Section accordingly.

6 (c) A participating utility may elect to recover its
7 delivery services costs through a performance-based formula
8 rate approved by the Commission, which shall specify the cost
9 components that form the basis of the rate charged to customers
10 with sufficient specificity to operate in a standardized manner
11 and be updated annually with transparent information that
12 reflects the utility's actual costs to be recovered during the
13 applicable rate year, which is the period beginning with the
14 first billing day of January and extending through the last
15 billing day of the following December. In the event the utility
16 recovers a portion of its costs through automatic adjustment
17 clause tariffs on the effective date of this amendatory Act of
18 the 97th General Assembly, the utility may elect to continue to
19 recover these costs through such tariffs, but then these costs
20 shall not be recovered through the performance-based formula
21 rate.

22 The performance-based formula rate shall be implemented
23 through a tariff filed with the Commission consistent with the
24 provisions of this subsection (c) that shall be applicable to
25 all delivery services customers. The Commission shall initiate
26 and conduct an investigation of the tariff in a manner

1 consistent with the provisions of this subsection (c) and the
2 provisions of Article IX of this Act to the extent they do not
3 conflict with this subsection (c). Except in the case where the
4 Commission finds, after notice and hearing, that a
5 participating utility is not satisfying its investment amount
6 commitments under subsection (b) of this Section, the
7 performance-based formula rate shall remain in effect at the
8 discretion of the utility. The performance-based formula rate
9 approved by the Commission shall do the following:

10 (1) Provide for the recovery of the utility's actual
11 costs of delivery services that are prudently incurred and
12 reasonable in amount consistent with Commission practice
13 and law. The sole fact that a cost differs from that
14 incurred in a prior calendar year or that an investment is
15 different from that made in a prior calendar year shall not
16 imply the imprudence or unreasonableness of that cost or
17 investment.

18 (2) Reflect the utility's actual capital structure for
19 the applicable calendar year, excluding goodwill, subject
20 to a determination of prudence and reasonableness
21 consistent with Commission practice and law.

22 (3) Include a cost of equity, which shall be calculated
23 as the sum of the following:

24 (A) the average for the applicable calendar year of
25 the monthly average yields of 30-year U.S. Treasury
26 bonds published by the Board of Governors of the

1 Federal Reserve System in its weekly H.15 Statistical
2 Release or successor publication; and

3 (B) 600 basis points.

4 At such time as the Board of Governors of the Federal
5 Reserve System ceases to include the monthly average yields
6 of 30-year U.S. Treasury bonds in its weekly H.15
7 Statistical Release or successor publication, the monthly
8 average yields of the U.S. Treasury bonds then having the
9 longest duration published by the Board of Governors in its
10 weekly H.15 Statistical Release or successor publication
11 shall instead be used for purposes of this paragraph (3).

12 (4) Permit and set forth protocols, subject to a
13 determination of prudence and reasonableness consistent
14 with Commission practice and law, for the following:

15 (A) recovery of incentive compensation expense
16 that is based on the achievement of operational
17 metrics, including metrics related to budget controls,
18 outage duration and frequency, safety, customer
19 service, efficiency and productivity, and
20 environmental compliance. Incentive compensation
21 expense that is based on net income or an affiliate's
22 earnings per share shall not be recoverable under the
23 performance-based formula rate;

24 (B) recovery of pension and other post-employment
25 benefits expense, provided that such costs are
26 supported by an actuarial study;

1 (C) recovery of severance costs, provided that if
2 the amount is over \$3,700,000 for a participating
3 utility that is a combination utility or \$10,000,000
4 for a participating utility that serves more than 3
5 million retail customers, then the full amount shall be
6 amortized consistent with subparagraph (F) of this
7 paragraph (4);

8 (D) investment return on pension assets net of
9 deferred tax benefits equal to the utility's long-term
10 debt cost of capital as of the end of the applicable
11 calendar year;

12 (E) recovery of the expenses related to the
13 Commission proceeding under this subsection (c) to
14 approve this performance-based formula rate and
15 initial rates or to subsequent proceedings related to
16 the formula, provided that the recovery shall be
17 amortized over a 3-year period; recovery of expenses
18 related to the annual Commission proceedings under
19 subsection (d) of this Section to review the inputs to
20 the performance-based formula rate shall be expensed
21 and recovered through the performance-based formula
22 rate;

23 (F) amortization over a 5-year period of the full
24 amount of each charge or credit that exceeds \$3,700,000
25 for a participating utility that is a combination
26 utility or \$10,000,000 for a participating utility

1 that serves more than 3 million retail customers in the
2 applicable calendar year and that relates to a
3 workforce reduction program's severance costs, changes
4 in accounting rules, changes in law, compliance with
5 any Commission-initiated audit, or a single storm or
6 other similar expense, provided that any unamortized
7 balance shall be reflected in rate base. For purposes
8 of this subparagraph (F), changes in law includes any
9 enactment, repeal, or amendment in a law, ordinance,
10 rule, regulation, interpretation, permit, license,
11 consent, or order, including those relating to taxes,
12 accounting, or to environmental matters, or in the
13 interpretation or application thereof by any
14 governmental authority occurring after the effective
15 date of this amendatory Act of the 97th General
16 Assembly;

17 (G) recovery of existing regulatory assets over
18 the periods previously authorized by the Commission;

19 (H) historical weather normalized billing
20 determinants; and

21 (I) allocation methods for common costs.

22 (5) Provide that if the participating utility's earned
23 rate of return on common equity related to the provision of
24 delivery services for the prior rate year (calculated using
25 costs and capital structure approved by the Commission as
26 provided in subparagraph (2) of this subsection (c),

1 consistent with this Section, in accordance with
2 Commission rules and orders, including, but not limited to,
3 adjustments for goodwill, and after any Commission-ordered
4 disallowances and taxes) is more than 50 basis points
5 higher than the rate of return on common equity calculated
6 pursuant to paragraph (3) of this subsection (c) (after
7 adjusting for any penalties to the rate of return on common
8 equity applied pursuant to the performance metrics
9 provision of subsection (f) of this Section), then the
10 participating utility shall apply a credit through the
11 performance-based formula rate that reflects an amount
12 equal to the value of that portion of the earned rate of
13 return on common equity that is more than 50 basis points
14 higher than the rate of return on common equity calculated
15 pursuant to paragraph (3) of this subsection (c) (after
16 adjusting for any penalties to the rate of return on common
17 equity applied pursuant to the performance metrics
18 provision of subsection (f) of this Section) for the prior
19 rate year, adjusted for taxes. If the participating
20 utility's earned rate of return on common equity related to
21 the provision of delivery services for the prior rate year
22 (calculated using costs and capital structure approved by
23 the Commission as provided in subparagraph (2) of this
24 subsection (c), consistent with this Section, in
25 accordance with Commission rules and orders, including,
26 but not limited to, adjustments for goodwill, and after any

1 Commission-ordered disallowances and taxes) is more than
2 50 basis points less than the return on common equity
3 calculated pursuant to paragraph (3) of this subsection (c)
4 (after adjusting for any penalties to the rate of return on
5 common equity applied pursuant to the performance metrics
6 provision of subsection (f) of this Section), then the
7 participating utility shall apply a charge through the
8 performance-based formula rate that reflects an amount
9 equal to the value of that portion of the earned rate of
10 return on common equity that is more than 50 basis points
11 less than the rate of return on common equity calculated
12 pursuant to paragraph (3) of this subsection (c) (after
13 adjusting for any penalties to the rate of return on common
14 equity applied pursuant to the performance metrics
15 provision of subsection (f) of this Section) for the prior
16 rate year, adjusted for taxes.

17 (6) Provide for an annual reconciliation, with
18 interest as described in subsection (d) of this Section, of
19 the revenue requirement reflected in rates for each
20 calendar year, beginning with the calendar year in which
21 the utility files its performance-based formula rate
22 tariff pursuant to subsection (c) of this Section, with
23 what the revenue requirement would have been had the actual
24 cost information for the applicable calendar year been
25 available at the filing date.

26 The utility shall file, together with its tariff, final

1 data based on its most recently filed FERC Form 1, plus
2 projected plant additions and correspondingly updated
3 depreciation reserve and expense for the calendar year in which
4 the tariff and data are filed, that shall populate the
5 performance-based formula rate and set the initial delivery
6 services rates under the formula. For purposes of this Section,
7 "FERC Form 1" means the Annual Report of Major Electric
8 Utilities, Licensees and Others that electric utilities are
9 required to file with the Federal Energy Regulatory Commission
10 under the Federal Power Act, Sections 3, 4(a), 304 and 209,
11 modified as necessary to be consistent with 83 Ill. Admin. Code
12 Part 415 as of May 1, 2011. Nothing in this Section is intended
13 to allow costs that are not otherwise recoverable to be
14 recoverable by virtue of inclusion in FERC Form 1.

15 After the utility files its proposed performance-based
16 formula rate structure and protocols and initial rates, the
17 Commission shall initiate a docket to review the filing. The
18 Commission shall enter an order approving, or approving as
19 modified, the performance-based formula rate, including the
20 initial rates, as just and reasonable within 270 days after the
21 date on which the tariff was filed, or, if the tariff is filed
22 within 14 days after the effective date of this amendatory Act
23 of the 97th General Assembly, then by May 31, 2012. Such review
24 shall be based on the same evidentiary standards, including,
25 but not limited to, those concerning the prudence and
26 reasonableness of the costs incurred by the utility, the

1 Commission applies in a hearing to review a filing for a
2 general increase in rates under Article IX of this Act. The
3 initial rates shall take effect within 30 days after the
4 Commission's order approving the performance-based formula
5 rate tariff.

6 Until such time as the Commission approves a different rate
7 design and cost allocation pursuant to subsection (e) of this
8 Section, rate design and cost allocation across customer
9 classes shall be consistent with the Commission's most recent
10 order regarding the participating utility's request for a
11 general increase in its delivery services rates.

12 Subsequent changes to the performance-based formula rate
13 structure or protocols shall be made as set forth in Section
14 9-201 of this Act, but nothing in this subsection (c) is
15 intended to limit the Commission's authority under Article IX
16 and other provisions of this Act to initiate an investigation
17 of a participating utility's performance-based formula rate
18 tariff, provided that any such changes shall be consistent with
19 paragraphs (1) through (6) of this subsection (c). Any change
20 ordered by the Commission shall be made at the same time new
21 rates take effect following the Commission's next order
22 pursuant to subsection (d) of this Section, provided that the
23 new rates take effect no less than 30 days after the date on
24 which the Commission issues an order adopting the change.

25 A participating utility that files a tariff pursuant to
26 this subsection (c) must submit a one-time \$200,000 filing fee

1 at the time the Chief Clerk of the Commission accepts the
2 filing, which shall be a recoverable expense.

3 In the event the performance-based formula rate is
4 terminated, the then current rates shall remain in effect until
5 such time as new rates are set pursuant to Article IX of this
6 Act, subject to retroactive rate adjustment, with interest, to
7 reconcile rates charged with actual costs. At such time that
8 the performance-based formula rate is terminated, the
9 participating utility's voluntary commitments and obligations
10 under subsection (b) of this Section shall immediately
11 terminate, except for the utility's obligation to pay an amount
12 already owed to the fund for training grants pursuant to a
13 Commission order issued under subsection (b) of this Section.

14 (d) Subsequent to the Commission's issuance of an order
15 approving the utility's performance-based formula rate
16 structure and protocols, and initial rates under subsection (c)
17 of this Section, the utility shall file, on or before May 1 of
18 each year, with the Chief Clerk of the Commission its updated
19 cost inputs to the performance-based formula rate for the
20 applicable rate year and the corresponding new charges. Each
21 such filing shall conform to the following requirements and
22 include the following information:

23 (1) The inputs to the performance-based formula rate
24 for the applicable rate year shall be based on final
25 historical data reflected in the utility's most recently
26 filed annual FERC Form 1 plus projected plant additions and

1 correspondingly updated depreciation reserve and expense
2 for the calendar year in which the inputs are filed. The
3 filing shall also include a reconciliation of the revenue
4 requirement that was in effect for the prior rate year (as
5 set by the cost inputs for the prior rate year) with the
6 actual revenue requirement for the prior rate year (as
7 reflected in the applicable FERC Form 1 that reports the
8 actual costs for the prior rate year). Any over-collection
9 or under-collection indicated by such reconciliation shall
10 be reflected as a credit against, or recovered as an
11 additional charge to, respectively, with interest, the
12 charges for the applicable rate year. Provided, however,
13 that the first such reconciliation shall be for the
14 calendar year in which the utility files its
15 performance-based formula rate tariff pursuant to
16 subsection (c) of this Section and shall reconcile (i) the
17 revenue requirement or requirements established by the
18 rate order or orders in effect from time to time during
19 such calendar year (weighted, as applicable) with (ii) the
20 revenue requirement for that calendar year calculated
21 pursuant to the performance-based formula rate using (A)
22 actual costs for that year as reflected in the applicable
23 FERC Form 1, and (B) for the first such reconciliation
24 only, the cost of equity approved by the Commission in such
25 order or orders in effect during that year (weighted, as
26 applicable). The first such reconciliation is not intended

1 to provide for the recovery of costs previously excluded
2 from rates based on a prior Commission order finding of
3 imprudence or unreasonableness. Each reconciliation shall
4 be certified by the participating utility in the same
5 manner that FERC Form 1 is certified. The filing shall also
6 include the charge or credit, if any, resulting from the
7 calculation required by paragraph (6) of subsection (c) of
8 this Section.

9 Notwithstanding anything that may be to the contrary,
10 the intent of the reconciliation is to ultimately reconcile
11 the revenue requirement reflected in rates for each
12 calendar year, beginning with the calendar year in which
13 the utility files its performance-based formula rate
14 tariff pursuant to subsection (c) of this Section, with
15 what the revenue requirement would have been had the actual
16 cost information for the applicable calendar year been
17 available at the filing date.

18 (2) The new charges shall take effect beginning on the
19 first billing day of the following January billing period
20 and remain in effect through the last billing day of the
21 next December billing period regardless of whether the
22 Commission enters upon a hearing pursuant to this
23 subsection (d).

24 (3) The filing shall include relevant and necessary
25 data and documentation for the applicable rate year that is
26 consistent with the Commission's rules applicable to a

1 filing for a general increase in rates or any rules adopted
2 by the Commission to implement this Section. Normalization
3 adjustments shall not be required. Notwithstanding any
4 other provision of this Section or Act or any rule or other
5 requirement adopted by the Commission, a participating
6 utility that is a combination utility with more than one
7 rate zone shall not be required to file a separate set of
8 such data and documentation for each rate zone and may
9 combine such data and documentation into a single set of
10 schedules.

11 Within 45 days after the utility files its annual update of
12 cost inputs to the performance-based formula rate, the
13 Commission shall have the authority, either upon complaint or
14 its own initiative, but with reasonable notice, to enter upon a
15 hearing concerning the prudence and reasonableness of the costs
16 incurred by the utility to be recovered during the applicable
17 rate year that are reflected in the inputs to the
18 performance-based formula rate derived from the utility's FERC
19 Form 1. During the course of the hearing, each objection shall
20 be stated with particularity and evidence provided in support
21 thereof, after which the utility shall have the opportunity to
22 rebut the evidence. Discovery shall be allowed consistent with
23 the Commission's Rules of Practice, which Rules shall be
24 enforced by the Commission or the assigned hearing examiner.
25 The Commission shall apply the same evidentiary standards,
26 including, but not limited to, those concerning the prudence

1 and reasonableness of the costs incurred by the utility, in the
2 hearing as it would apply in a hearing to review a filing for a
3 general increase in rates under Article IX of this Act. The
4 Commission shall not, however, have the authority in a
5 proceeding under this subsection (d) to consider or order any
6 changes to the structure or protocols of the performance-based
7 formula rate approved pursuant to subsection (c) of this
8 Section. In a proceeding under this subsection (d), the
9 Commission shall enter its order no later than the earlier of
10 240 days after the utility's filing of its annual update of
11 cost inputs to the performance-based formula rate or December
12 31. The Commission's determinations of the prudence and
13 reasonableness of the costs incurred for the applicable
14 calendar year shall be final upon entry of the Commission's
15 order and shall not be subject to reopening, reexamination, or
16 collateral attack in any other Commission proceeding, case,
17 docket, order, rule or regulation, provided, however, that
18 nothing in this subsection (d) shall prohibit a party from
19 petitioning the Commission to rehear or appeal to the courts
20 the order pursuant to the provisions of this Act.

21 In the event the Commission does not, either upon complaint
22 or its own initiative, enter upon a hearing within 45 days
23 after the utility files the annual update of cost inputs to its
24 performance-based formula rate, then the costs incurred for the
25 applicable calendar year shall be deemed prudent and
26 reasonable, and the filed charges shall not be subject to

1 reopening, reexamination, or collateral attack in any other
2 proceeding, case, docket, order, rule, or regulation.

3 A participating utility's first filing of the updated cost
4 inputs, and any Commission investigation of such inputs
5 pursuant to this subsection (d) shall proceed notwithstanding
6 the fact that the Commission's investigation under subsection
7 (c) of this Section is still pending and notwithstanding any
8 other law, order, rule, or Commission practice to the contrary.

9 (e) Nothing in subsections (c) or (d) of this Section shall
10 prohibit the Commission from investigating, or a participating
11 utility from filing, revenue-neutral tariff changes related to
12 rate design of a performance-based formula rate that has been
13 placed into effect for the utility. Following approval of a
14 participating utility's performance-based formula rate tariff
15 pursuant to subsection (c) of this Section, the utility shall
16 make a filing with the Commission within one year after the
17 effective date of the performance-based formula rate tariff
18 that proposes changes to the tariff to incorporate the findings
19 of any final rate design orders of the Commission applicable to
20 the participating utility and entered subsequent to the
21 Commission's approval of the tariff. The Commission shall,
22 after notice and hearing, enter its order approving, or
23 approving with modification, the proposed changes to the
24 performance-based formula rate tariff within 240 days after the
25 utility's filing. Following such approval, the utility shall
26 make a filing with the Commission during each subsequent 3-year

1 period that either proposes revenue-neutral tariff changes or
2 re-files the existing tariffs without change, which shall
3 present the Commission with an opportunity to suspend the
4 tariffs and consider revenue-neutral tariff changes related to
5 rate design.

6 (f) Within 30 days after the filing of a tariff pursuant to
7 subsection (c) of this Section, each participating utility
8 shall develop and file with the Commission multi-year metrics
9 designed to achieve, ratably over a 10-year period, improvement
10 over baseline performance values as follows:

11 (1) Twenty percent improvement in the System Average
12 Interruption Frequency Index, using a baseline of the
13 average of the data from 2001 through 2010.

14 (2) Fifteen percent improvement in the system Customer
15 Average Interruption Duration Index, using a baseline of
16 the average of the data from 2001 through 2010.

17 (3) For a participating utility other than a
18 combination utility, 20% improvement in the System Average
19 Interruption Frequency Index for its Southern Region,
20 using a baseline of the average of the data from 2001
21 through 2010. For purposes of this paragraph (C), Southern
22 Region shall have the meaning set forth in the
23 participating utility's most recent report filed pursuant
24 to Section 16-125 of this Act.

25 (4) Seventy-five percent improvement in the total
26 number of customers who exceed the service reliability

1 targets as set forth in subparagraphs (A) through (C) of
2 paragraph (4) of subsection (b) of 83 Ill. Admin. Code Part
3 411.140 as of May 1, 2011, using 2010 as the baseline year.

4 (5) Reduction in issuance of estimated electric bills:
5 90% improvement for a participating utility other than a
6 combination utility, and 56% improvement for a
7 participating utility that is a combination utility, using
8 a baseline of the average number of estimated bills for the
9 years 2008 through 2010.

10 (6) Consumption on inactive meters: 90% improvement
11 for a participating utility other than a combination
12 utility, and 56% improvement for a participating utility
13 that is a combination utility, using a baseline of the
14 average unbilled kilowatthours for the years 2009 and 2010.

15 (7) Unaccounted for energy: 50% improvement for a
16 participating utility other than a combination utility
17 using a baseline of the non-technical line loss unaccounted
18 for energy kilowatthours for the year 2009.

19 (8) Uncollectible expense: reduce uncollectible
20 expense by at least \$30,000,000 for a participating utility
21 other than a combination utility and by at least \$3,500,000
22 for a participating utility that is a combination utility,
23 using a baseline of the average uncollectible expense for
24 the years 2008 through 2010.

25 (9) Opportunities for minority-owned and female-owned
26 business enterprises: design a performance metric

1 regarding the creation of opportunities for minority-owned
2 and female-owned business enterprises consistent with
3 State and federal law using a base performance value of the
4 percentage of the participating utility's capital
5 expenditures that were paid to minority-owned and
6 female-owned business enterprises in 2010.

7 The definitions set forth in 83 Ill. Admin. Code Part
8 411.20 as of May 1, 2011 shall be used for purposes of
9 calculating performance under paragraphs (1) through (3) of
10 this subsection (f), provided, however, that the participating
11 utility may exclude up to 9 extreme weather event days from
12 such calculation for each year. For purposes of this Section,
13 an extreme weather event day is a 24-hour calendar day
14 (beginning at 12:00 a.m. and ending at 11:59 p.m.) during which
15 any weather event (e.g., storm, tornado) caused interruptions
16 for 10,000 or more of the participating utility's customers for
17 3 hours or more. If there are more than 9 extreme weather event
18 days in a year, then the utility may choose no more than 9
19 extreme weather event days to exclude, provided that the same
20 extreme weather event days are excluded from each of the
21 calculations performed under paragraphs (1) through (3) of this
22 subsection (f).

23 The metrics shall include incremental performance goals
24 for each year of the 10-year period, which shall be designed to
25 demonstrate that the utility is on track to achieve the
26 performance goal in each category at the end of the 10-year

1 period. The utility shall elect when the 10-year period shall
2 commence, provided that it begins no later than 14 months
3 following the date on which the utility begins investing
4 pursuant to subsection (b) of this Section.

5 The metrics and performance goals set forth in
6 subparagraphs (5) through (8) of this subsection (f) are based
7 on the assumptions that the participating utility may fully
8 implement the technology described in subsection (b) of this
9 Section, including utilizing the full functionality of such
10 technology and that there is no requirement for personal
11 on-site notification. If the utility is unable to meet the
12 metrics and performance goals set forth in subparagraphs (5)
13 through (8) of this subsection (f) for such reasons, and the
14 Commission so finds after notice and hearing, then the utility
15 shall be excused from compliance, but only to the limited
16 extent achievement of the affected metrics and performance
17 goals was hindered by the less than full implementation.

18 (f-5) The financial penalties applicable to the metrics
19 described in subparagraphs (1) through (8) of subsection (f) of
20 this Section, as applicable, shall be applied through an
21 adjustment to the participating utility's return on equity as
22 follows:

23 (1) With respect to each of the incremental annual
24 performance goals established pursuant to paragraph (1) of
25 subsection (f) of this Section, for each year that a
26 participating utility other than a combination utility

1 does not achieve the annual goal, the participating
2 utility's return on equity shall be reduced by 5 basis
3 points for such unachieved goal for the following 12-month
4 period, and for each year that a participating utility that
5 is a combination utility does not achieve the annual goal,
6 the participating utility's return on equity shall be
7 reduced by 10 basis points for each such unachieved goal
8 for the following 12-month period.

9 (2) With respect to each of the incremental annual
10 performance goals established pursuant to subparagraphs
11 (2), (3), and (4) of subsection (f) of this Section, as
12 applicable, for each year that the participating utility
13 does not achieve each such goal, the participating
14 utility's return on equity shall be reduced by 5 basis
15 points for each such unachieved goal for the following
16 12-month period. With respect to each of the incremental
17 annual performance goals established pursuant to
18 subparagraph (5) of subsection (f) of this Section, for
19 each year that the participating utility does not achieve
20 at least 95% of each such goal, the participating utility's
21 return on equity shall be reduced by 5 basis points for
22 each such unachieved goal for the following 12-month
23 period.

24 (3) With respect to each of the incremental annual
25 performance goals established pursuant to paragraphs (6),
26 (7), and (8) of subsection (f) of this Section, as

1 applicable, the performance under each such goal shall be
2 calculated in terms of the percentage of the goal achieved.
3 The percentage of goal achieved for each of the goals shall
4 be aggregated, and an average percentage value calculated,
5 for each year of the 10-year period. If the utility does
6 not achieve an average percentage value in a given year of
7 at least 95%, the participating utility's return on equity
8 shall be reduced by 5 basis points for the following
9 12-month period.

10 The financial penalties shall be applied as described in
11 this subsection (f-5) through a separate tariff mechanism,
12 which shall be filed by the utility together with its metrics.
13 In the event the formula rate tariff established pursuant to
14 subsection (c) of this Section terminates, the utility's
15 obligations under subsection (f) of this Section and this
16 subsection (f-5) shall also terminate, provided, however, that
17 the tariff mechanism established pursuant to subsection (f) of
18 this Section and this subsection (f-5) shall remain in effect
19 until any penalties due and owing at the time of such
20 termination are applied.

21 The Commission shall, after notice and hearing, enter an
22 order within 120 days after the metrics are filed approving, or
23 approving with modification, a participating utility's tariff
24 or mechanism to satisfy the metrics set forth in subsection (f)
25 of this Section. On June 1 of each subsequent year, each
26 participating utility shall file a report with the Commission

1 that includes, among other things, a description of how the
2 participating utility performed under each metric and an
3 identification of any extraordinary events that adversely
4 impacted the utility's performance. Whenever a participating
5 utility does not satisfy the metrics required pursuant to
6 subsection (f) of this Section, the Commission shall, after
7 notice and hearing, enter an order approving financial
8 penalties in accordance with this subsection (f-5). The
9 Commission-approved financial penalties shall be applied
10 beginning with the next rate year. Nothing in this Section
11 shall authorize the Commission to reduce or otherwise obviate
12 the imposition of financial penalties for failing to achieve
13 one or more of the metrics established pursuant to subparagraph
14 (1) through (4) of subsection (f) of this Section.

15 (g) On or before July 31, 2014, each participating utility
16 shall file a report with the Commission that sets forth the
17 average annual increase in the average amount paid per
18 kilowatthour for residential eligible retail customers,
19 exclusive of the effects of energy efficiency programs,
20 comparing the 12-month period ending May 31, 2012; the 12-month
21 period ending May 31, 2013; and the 12-month period ending May
22 31, 2014. For a participating utility that is a combination
23 utility with more than one rate zone, the weighted average
24 aggregate increase shall be provided. The report shall be filed
25 together with a statement from an independent auditor attesting
26 to the accuracy of the report. The cost of the independent

1 auditor shall be borne by the participating utility and shall
2 not be a recoverable expense.

3 In the event that the average annual increase exceeds 2.5%
4 as calculated pursuant to this subsection (g), then Sections
5 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act, other
6 than this subsection, shall be inoperative as they relate to
7 the utility and its service area as of the date of the report
8 due to be submitted pursuant to this subsection and the utility
9 shall no longer be eligible to annually update the
10 performance-based formula rate tariff pursuant to subsection
11 (d) of this Section. In such event, the then current rates
12 shall remain in effect until such time as new rates are set
13 pursuant to Article IX of this Act, subject to retroactive
14 adjustment, with interest, to reconcile rates charged with
15 actual costs, and the participating utility's voluntary
16 commitments and obligations under subsection (b) of this
17 Section shall immediately terminate, except for the utility's
18 obligation to pay an amount already owed to the fund for
19 training grants pursuant to a Commission order issued under
20 subsection (b) of this Section.

21 In the event that the average annual increase is 2.5% or
22 less as calculated pursuant to this subsection (g), then the
23 performance-based formula rate shall remain in effect as set
24 forth in this Section.

25 For purposes of this Section, the amount per kilowatthour
26 means the total amount paid for electric service expressed on a

1 per kilowatthour basis, and the total amount paid for electric
2 service includes without limitation amounts paid for supply,
3 transmission, distribution, surcharges, and add-on taxes
4 exclusive of any increases in taxes or new taxes imposed after
5 the effective date of this amendatory Act of the 97th General
6 Assembly. For purposes of this Section, "eligible retail
7 customers" shall have the meaning set forth in Section 16-111.5
8 of this Act.

9 The fact that this Section becomes inoperative as set forth
10 in this subsection shall not be construed to mean that the
11 Commission may reexamine or otherwise reopen prudence or
12 reasonableness determinations already made.

13 (h) Sections 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of
14 this Act, other than this subsection, are inoperative after
15 December 31, 2017 for every participating utility, after which
16 time a participating utility shall no longer be eligible to
17 annually update the performance-based formula rate tariff
18 pursuant to subsection (d) of this Section. At such time, the
19 then current rates shall remain in effect until such time as
20 new rates are set pursuant to Article IX of this Act, subject
21 to retroactive adjustment, with interest, to reconcile rates
22 charged with actual costs.

23 By December 31, 2017, the Commission shall prepare and file
24 with the General Assembly a report on the infrastructure
25 program and the performance-based formula rate. The report
26 shall include the change in the average amount per kilowatthour

1 paid by residential customers between June 1, 2011 and May 31,
2 2017. If the change in the total average rate paid exceeds 2.5%
3 compounded annually, the Commission shall include in the report
4 an analysis that shows the portion of the change due to the
5 delivery services component and the portion of the change due
6 to the supply component of the rate. The report shall include
7 separate sections for each participating utility.

8 In the event Sections 16-108.5, 16-108.6, 16-108.7, and
9 16-108.8 of this Act do not become inoperative after December
10 31, 2017, then these Sections are inoperative after December
11 31, 2022 for every participating utility, after which time a
12 participating utility shall no longer be eligible to annually
13 update the performance-based formula rate tariff pursuant to
14 subsection (d) of this Section. At such time, the then current
15 rates shall remain in effect until such time as new rates are
16 set pursuant to Article IX of this Act, subject to retroactive
17 adjustment, with interest, to reconcile rates charged with
18 actual costs.

19 The fact that this Section becomes inoperative as set forth
20 in this subsection shall not be construed to mean that the
21 Commission may reexamine or otherwise reopen prudence or
22 reasonableness determinations already made.

23 (i) While a participating utility may use, develop, and
24 maintain broadband systems and the delivery of broadband
25 services, voice-over-internet-protocol services,
26 telecommunications services, and cable and video programming

1 services for use in providing delivery services and Smart Grid
2 functionality or application to its retail customers,
3 including, but not limited to, the installation,
4 implementation and maintenance of Smart Grid electric system
5 upgrades as defined in Section 16-108.6 of this Act, a
6 participating utility is prohibited from offering to its retail
7 customers broadband services or the delivery of broadband
8 services, voice-over-internet-protocol services,
9 telecommunications services, or cable or video programming
10 services, unless they are part of a service directly related to
11 delivery services or Smart Grid functionality or applications
12 as defined in Section 16-108.6 of this Act, and from recovering
13 the costs of such offerings from retail customers.

14 (j) Nothing in this Section is intended to legislatively
15 overturn the opinion issued in Commonwealth Edison Co. v. Ill.
16 Commerce Comm'n, Nos. 2-08-0959, 2-08-1037, 2-08-1137,
17 1-08-3008, 1-08-3030, 1-08-3054, 1-08-3313 cons. (Ill. App.
18 Ct. 2d Dist. Sept. 30, 2010). This amendatory Act of the 97th
19 General Assembly shall not be construed as creating a contract
20 between the General Assembly and the participating utility, and
21 shall not establish a property right in the participating
22 utility.

23 (220 ILCS 5/16-108.6 new)

24 Sec. 16-108.6. Provisions relating to Smart Grid Advanced
25 Metering Infrastructure Deployment Plan.

1 (a) For purposes of this Section and Sections 16-108.7 and
2 16-108.8 of this Act:

3 "Advanced Metering Infrastructure" or "AMI" means the
4 communications hardware and software and associated system
5 software that enables Smart Grid functions by creating a
6 network between advanced meters and utility business systems
7 and allowing collection and distribution of information to
8 customers and other parties in addition to providing
9 information to the utility itself.

10 "Cost-beneficial" means a determination that the benefits
11 of a participating utility's Smart Grid AMI Deployment Plan
12 exceed the costs of the Smart Grid AMI Deployment Plan as
13 initially filed with the Commission or as subsequently modified
14 by the Commission. This standard is met if the present value of
15 the total benefits of the Smart Grid AMI Deployment Plan
16 exceeds the present value of the total costs of the Smart Grid
17 AMI Deployment Plan. The total cost shall include all utility
18 costs reasonably associated with the Smart Grid AMI Deployment
19 Plan. The total benefits shall include the sum of avoided
20 electricity costs, including avoided utility operational
21 costs, avoided consumer power, capacity, and energy costs, and
22 avoided societal costs associated with the production and
23 consumption of electricity, as well as other societal benefits,
24 including the greater integration of renewable and distributed
25 power resources, reductions in the emissions of harmful
26 pollutants and associated avoided health-related costs, other

1 benefits associated with energy efficiency measures,
2 demand-response activities, and the enabling of greater
3 penetration of alternative fuel vehicles.

4 "Participating utility" has the meaning set forth in
5 Section 16-108.5 of this Act.

6 "Smart Grid" means investments and policies that together
7 promote one or more of the following goals:

8 (1) Increased use of digital information and controls
9 technology to improve reliability, security, and
10 efficiency of the electric grid.

11 (2) Dynamic optimization of grid operations and
12 resources, with full cyber security.

13 (3) Deployment and integration of distributed
14 resources and generation, including renewable resources.

15 (4) Development and incorporation of demand-response,
16 demand-side resources, and energy efficiency resources.

17 (5) Deployment of "smart" technologies (real-time,
18 automated, interactive technologies that optimize the
19 physical operation of appliances and consumer devices) for
20 metering, communications concerning grid operations and
21 status, and distribution automation.

22 (6) Integration of "smart" appliances and consumer
23 devices.

24 (7) Deployment and integration of advanced electricity
25 storage and peak-shaving technologies, including plug-in
26 electric and hybrid electric vehicles, thermal-storage air

1 conditioning and renewable energy generation.

2 (8) Provision to consumers of timely information and
3 control options.

4 (9) Development of open access standards for
5 communication and interoperability of appliances and
6 equipment connected to the electric grid, including the
7 infrastructure serving the grid.

8 (10) Identification and lowering of unreasonable or
9 unnecessary barriers to adoption of Smart Grid
10 technologies, practices, services, and business models
11 that support energy efficiency, demand-response, and
12 distributed generation.

13 "Smart Grid Advisory Council" means the group of
14 stakeholders formed pursuant to subsection (b) of this Section
15 for the purposes of advising and working with participating
16 utilities on the development and implementation of a Smart Grid
17 Advanced Metering Infrastructure Deployment Plan.

18 "Smart Grid electric system upgrades" means any of the
19 following:

20 (1) metering devices, sensors, control devices, and
21 other devices integrated with and attached to an electric
22 utility system that are capable of engaging in Smart Grid
23 functions;

24 (2) other monitoring and communications devices that
25 enable Smart Grid functions, including, but not limited to,
26 distribution automation;

1 (3) software that enables devices or computers to
2 engage in Smart Grid functions;

3 (4) associated cyber secure data communication
4 network, including enhancements to cyber-security
5 technologies and measures;

6 (5) substation micro-processor relay upgrades;

7 (6) devices that allow electric or hybrid-electric
8 vehicles to engage in Smart Grid functions; or

9 (7) devices that enable individual consumers to
10 incorporate distributed and micro-generation.

11 "Smart Grid electric system upgrades" does not include
12 expenditures for: (1) electricity generation, transmission, or
13 distribution infrastructure or equipment that does not
14 directly relate to or support installing, implementing or
15 enabling Smart Grid functions; (2) physical interconnection of
16 generators or other devices to the grid except those that are
17 directly related to enabling Smart Grid functions; or (3)
18 ongoing or routine operation, billing, customer relations,
19 security, and maintenance.

20 "Smart Grid functions" means:

21 (1) the ability to develop, store, send, and receive
22 digital information concerning or enabling grid
23 operations, electricity use, costs, prices, time of use,
24 nature of use, storage, or other information relevant to
25 device, grid, or utility operations, to or from or by means
26 of the electric utility system through one or a combination

1 of devices and technologies;

2 (2) the ability to develop, store, send, and receive
3 digital information concerning electricity use, costs,
4 prices, time of use, nature of use, storage, or other
5 information relevant to device, grid, or utility
6 operations to or from a computer or other control device;

7 (3) the ability to measure or monitor electricity use
8 as a function of time of day, power quality characteristics
9 such as voltage level, current, cycles per second, or
10 source or type of generation and to store, synthesize, or
11 report that information by digital means;

12 (4) the ability to sense and localize disruptions or
13 changes in power flows on the grid and communicate such
14 information instantaneously and automatically for purposes
15 of enabling automatic protective responses to sustain
16 reliability and security of grid operations;

17 (5) the ability to detect, prevent, communicate with
18 regard to, respond to, or recover from system security
19 threats, including cyber-security threats and terrorism,
20 using digital information, media, and devices;

21 (6) the ability of any device or machine to respond to
22 signals, measurements, or communications automatically or
23 in a manner programmed by its owner or operator without
24 independent human intervention;

25 (7) the ability to use digital information to operate
26 functionalities on the electric utility grid that were

1 previously electro-mechanical or manual;

2 (8) the ability to use digital controls to manage and
3 modify electricity demand, enable congestion management,
4 assist in voltage control, provide operating reserves, and
5 provide frequency regulation; or

6 (9) the ability to integrate electric plug-in
7 vehicles, distributed generation, and storage in a safe and
8 cost-effective manner on the electric grid.

9 (b) Within 30 days after the effective date of this
10 amendatory Act of the 97th General Assembly, the Smart Grid
11 Advisory Council shall be established, which shall consist of 7
12 total voting members with each member possessing either
13 technical, business or consumer expertise in Smart Grid issues
14 and each having been the single appointment of one of the
15 following: the Governor, the Speaker of the House, the Minority
16 Leader of the House, the President of the Senate, the Minority
17 Leader of the Senate, the Illinois Science and Technology
18 Coalition, and the Citizens Utility Board. The Governor shall
19 designate one of the members of the Council to serve as
20 chairman, and that person shall serve as the chairman at the
21 pleasure of the Governor. The members shall not be compensated
22 for serving on the Smart Grid Advisory Council. The Smart Grid
23 Advisory Council shall have the following duties:

24 (1) Serve as an advisor to participating utilities
25 subject to this Section and in the manner described in this
26 Section, and the recommendations provided by the Council,

1 although non-binding, shall be considered by the
2 utilities.

3 (2) Serve as trustees of the trust or foundation
4 established pursuant to Section 16-108.7 of this Act with
5 the duties enumerated thereunder.

6 (c) After consultation with the Smart Grid Advisory
7 Council, each participating utility shall file a Smart Grid
8 Advanced Metering Infrastructure Deployment Plan ("AMI Plan")
9 with the Commission within 180 days after the effective date of
10 this amendatory Act of the 97th General Assembly or by November
11 1, 2011, whichever is later, or in the case of a combination
12 utility as defined in Section 16-108.5, by April 1, 2012,
13 provided that a participating utility shall not file its plan
14 until the evaluation report on the Pilot Program described in
15 this subsection (c) is issued. The AMI Plan shall provide for
16 investment over a 10-year period that is sufficient to
17 implement the AMI Plan across its entire service territory in a
18 manner that is consistent with subsection (b) of Section
19 16-108.5 of this Act. The AMI Plan shall contain:

20 (1) the participating utility's Smart Grid AMI vision
21 statement that is consistent with the goal of developing a
22 cost-beneficial Smart Grid;

23 (2) a statement of Smart Grid AMI strategy that
24 includes a description of how the utility evaluates and
25 prioritizes technology choices to create customer value,
26 including a plan to enhance and enable customers' ability

1 to take advantage of Smart Grid functions beginning at the
2 time an account has billed successfully on the AMI network;

3 (3) a deployment schedule and plan that includes
4 deployment of AMI to all customers for a participating
5 utility other than a combination utility, and to 62% of all
6 customers for a participating utility that is a combination
7 utility;

8 (4) annual milestones and metrics for the purposes of
9 measuring the success of the AMI Plan in enabling Smart
10 Grid functions; and enhancing consumer benefits from Smart
11 Grid AMI; and

12 (5) a plan for the consumer education to be implemented
13 by the participating utility.

14 The AMI Plan shall be fully consistent with the standards
15 of the National Institute of Standard and Technology (NIST) for
16 Smart Grid interoperability that are in effect at the time the
17 participating utility files its AMI Plan, shall include open
18 standards and internet protocol to the maximum extent possible
19 consistent with cyber security, and shall maximize, to the
20 extent possible, a flexible smart meter platform that can
21 accept remote device upgrades and contain sufficient internal
22 memory capacity for additional storage capabilities, functions
23 and services without the need for physical access to the meter.

24 The AMI Plan shall secure the privacy of personal
25 information and establish the right of consumers to consent to
26 the disclosure of personal energy information to third parties

1 through electronic, web-based, and other means in accordance
2 with State and federal law and regulations regarding consumer
3 privacy and protection of consumer data.

4 After notice and hearing, the Commission shall, within 60
5 days of the filing of an AMI Plan, issue its order approving,
6 or approving with modification, the AMI Plan if the Commission
7 finds that the AMI Plan contains the information required in
8 paragraphs (1) through (5) of this subsection (c) and further
9 finds that the implementation of the AMI Plan will be
10 cost-beneficial consistent with the principles established
11 through the Illinois Smart Grid Collaborative, giving weight to
12 the results of any Commission-approved pilot designed to
13 examine the benefits and costs of AMI deployment. A
14 participating utility's decision to invest pursuant to an AMI
15 Plan approved by the Commission shall not be subject to
16 prudence reviews in subsequent Commission proceedings. Nothing
17 in this subsection (c) is intended to limit the Commission's
18 ability to review the reasonableness of the costs incurred
19 under the AMI Plan. A participating utility shall be allowed to
20 recover the reasonable costs it incurs in implementing a
21 Commission-approved AMI Plan, including the costs of retired
22 meters, and may recover such costs through its tariffs,
23 including the performance-based formula rate tariff approved
24 pursuant to subsection (c) of Section 16-108.5 of this Act.

25 (d) The AMI Plan shall secure the privacy of the customer's
26 personal information. "Personal information" for this purpose

1 consists of the customer's name, address, telephone number, and
2 other personally identifying information, as well as
3 information about the customer's electric usage. Electric
4 utilities, their contractors or agents, and any third party who
5 comes into possession of such personal information by virtue of
6 working on Smart Grid technology shall not disclose such
7 personal information to be used in mailing lists or to be used
8 for other commercial purposes not reasonably related to the
9 conduct of the utility's business. Electric utilities shall
10 comply with the consumer privacy requirements of the Personal
11 Information Protection Act. In the event a participating
12 utility receives revenues from the sale of information obtained
13 through Smart Grid technology that is not personal information,
14 the participating utility shall use such revenues to offset the
15 revenue requirement.

16 (e) On April 1 of each year beginning in 2013 and after
17 consultation with the Smart Grid Advisory Council, each
18 participating utility shall submit a report regarding the
19 progress it has made toward completing implementation of its
20 AMI Plan. This report shall:

21 (1) describe the AMI investments made during the prior
22 12 months and the AMI investments planned to be made in the
23 following 12 months;

24 (2) provide sufficient detail to determine the
25 utility's progress in meeting the metrics and milestones
26 identified by the utility in its AMI Plan; and

1 (3) identify any updates to the AMI Plan.

2 Within 21 days after the utility files its annual report,
3 the Commission shall have authority, either upon complaint or
4 its own initiative, but with reasonable notice, to enter upon
5 an investigation regarding the utility's progress in
6 implementing the AMI Plan as described in paragraph (1) of this
7 subsection (e). If the Commission finds, after notice and
8 hearing, that the participating utility's progress in
9 implementing the AMI Plan is materially deficient for the given
10 plan year, then the Commission shall issue an order requiring
11 the participating utility to devise a corrective action plan,
12 subject to Commission approval and oversight, to bring
13 implementation back on schedule consistent with the AMI Plan.
14 The Commission's order must be entered within 90 days after the
15 utility files its annual report. If the Commission does not
16 initiate an investigation within 21 days after the utility
17 files its annual report, then the filing shall be deemed
18 accepted by the Commission. The utility shall not be required
19 to suspend implementation of its AMI Plan during any Commission
20 investigation.

21 The participating utility's annual report regarding AMI
22 Plan year 10 shall contain a statement verifying that the
23 implementation of its AMI Plan is complete, provided, however,
24 that if the utility is subject to a corrective action plan that
25 extends the implementation period beyond 10 years, the utility
26 shall include the verification statement in its final annual

1 report. Following the date of a Commission order approving the
2 final annual report or the date on which the final report is
3 deemed accepted by the Commission, the utility's annual
4 reporting obligations under this subsection (d) shall
5 terminate, provided, however, that the utility shall have a
6 continuing obligation to provide information, upon request, to
7 the Commission and Smart Grid Advisory Council regarding the
8 AMI Plan.

9 (f) Each participating utility shall pay a pro rata share,
10 based on number of customers, of \$5,000,000 per year to the
11 trust or foundation established pursuant to Section 16-108.7 of
12 this Act for each plan year of the AMI Plan, which shall be
13 used for purposes of providing customer education regarding
14 smart meters and related consumer-facing technologies and
15 services and 70% of which shall be a recoverable expense;
16 provided that other reasonable amounts expended by the utility
17 for such consumer education shall not be subject to the 70%
18 limitation of this subsection.

19 (g) Within 60 days after the Commission approves a
20 participating utility's AMI Plan pursuant to subsection (c) of
21 this Section, the participating utility, after consultation
22 with the Smart Grid Advisory Council, shall file a proposed
23 tariff with the Commission that offers an opt-in market-based
24 peak time rebate program to all residential retail customers
25 with smart meters that is designed to provide, in a
26 competitively neutral manner, rebates to those residential

1 retail customers that curtail their use of electricity during
2 specific periods that are identified as peak usage periods. The
3 total amount of rebates shall be the amount of compensation the
4 utility obtains through markets or programs at the applicable
5 regional transmission organization. The utility shall make all
6 reasonable attempts to secure funding for the peak time rebate
7 program through markets or programs at the applicable regional
8 transmission organization. The rules and procedures for
9 consumers to opt-in to the peak time rebate program shall
10 include electronic sign-up, be designed to maximize
11 participation, and be included on the utility's website. The
12 Commission shall monitor the performance of programs
13 established pursuant to this subsection (g) and shall order the
14 termination or modification of a program if it determines that
15 the program is not, after a reasonable period of time for
16 development of at least 4 years, resulting in net benefits to
17 the residential customers of the participating utility.

18 (h) If Section 16-108.5 of this Act becomes inoperative
19 with respect to one or more participating utilities as set
20 forth in subsection (g) or (h) of that Section, then Sections
21 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act shall
22 become inoperative as to each affected utility and its service
23 area on the same date as Section 16-108.5 becomes inoperative.

24 (220 ILCS 5/16-108.7 new)

25 Sec. 16-108.7. Illinois Science and Energy Innovation

1 Trust.

2 (a) Within 90 days of the effective date of this amendatory
3 Act of the 97th General Assembly, the members of the Smart Grid
4 Advisory Council established pursuant to Section 16-108.6 of
5 this Act, or a majority of the members thereof, shall cause to
6 be established an Illinois science and energy innovation trust
7 or foundation for the purposes of providing financial and
8 technical support and assistance to entities, public or
9 private, within the State of Illinois including, but not
10 limited to, units of State and local government, educational
11 and research institutions, corporations, and charitable,
12 educational, environmental and community organizations, for
13 programs and projects that support, encourage or utilize
14 innovative technologies or other methods of modernizing the
15 State's electric grid that will benefit the public by promoting
16 economic development in Illinois. Such activities shall be
17 supported through grants, loans, contracts, or other programs
18 designed to assist and further benefit technological advances
19 in the area of electric grid modernization and operation. The
20 trust or foundation shall also be eligible for receipt of other
21 energy and environmental grant opportunities, from public or
22 private sources. The trust or foundation shall not be a
23 governmental entity.

24 (b) Funds received by the trust or foundation pursuant to
25 subsection (f) of Section 16-108.6 of this Act shall be used
26 solely for the purpose of providing consumer education

1 regarding smart meters and related consumer-facing
2 technologies and services and the peak time rebate program
3 described in subsection (g) of Section 16-108.6 of this Act.
4 Thirty percent of such funds received from each participating
5 utility shall be used by the trust or foundation for purposes
6 of providing such education to each participating utility's
7 low-income retail customers, including low-income senior
8 citizens.

9 The trust or foundation shall use all funds received
10 pursuant to subsection (f) of Section 16-108.6 of this Act in a
11 manner that reflects the unique needs and characteristics of
12 each participating utility's service territory and in
13 proportion to each participating utility's payment.

14 (c) Such trust or foundation shall be governed by a
15 declaration of trust or articles of incorporation and bylaws
16 which shall, at a minimum, provide the following:

17 (1) There shall initially be 7 trustees of the trust or
18 foundation, which shall consist of the members of the Smart
19 Grid Advisory Council established pursuant to Section
20 16-108.6 of this Act. Subsequently, the participating
21 utilities shall appoint one trustee and the Clean Energy
22 Trust shall appoint one non-voting trustee who shall
23 provide expertise regarding early stage investment in
24 Smart Grid projects.

25 (2) All trustees shall be entitled to reimbursement for
26 reasonable expenses incurred on behalf of the trust in the

1 performance of their duties as trustees. All such
2 reimbursements shall be paid out of the trust.

3 (3) Trustees shall be appointed within 60 days after
4 the creation of the trust or foundation and shall serve for
5 a term of 5 years commencing upon the date of their
6 respective appointments, until their respective successors
7 are appointed and qualified.

8 (4) A vacancy in the office of trustee shall be filled
9 by the person holding the office responsible for appointing
10 the trustee whose death or resignation creates the vacancy,
11 and a trustee appointed to fill a vacancy shall serve the
12 remainder of the term of the trustee whose resignation or
13 death created the vacancy.

14 (5) The trust or foundation shall have an indefinite
15 term and shall terminate at such time as no trust assets
16 remain.

17 (6) The allocation and disbursement of funds for the
18 various purposes for which the trust or foundation is
19 established shall be determined by the trustees in
20 accordance with the declaration of trust or the articles of
21 incorporation and bylaws.

22 (7) The trust or foundation shall be authorized to
23 employ an executive director and other employees, or
24 contract management of the trust or foundation in its
25 entirety to an outside organization found suitable by the
26 trustees, to enter into leases, contracts and other

1 obligations on behalf of the trust or foundation, and to
2 incur expenses that the trustees deem necessary or
3 appropriate for the fulfillment of the purposes for which
4 the trust or foundation is established, provided, however,
5 that salaries and administrative expenses incurred on
6 behalf of the trust or foundation shall not exceed 3% of
7 the trust's principal value, or \$750,000, whichever is
8 greater, in any given year. The trustees shall not be
9 compensated by the trust or foundation.

10 (8) The trustees may create and appoint advisory boards
11 or committees to assist them with the administration of the
12 trust or foundation, and to advise and make recommendations
13 to them regarding the contribution and disbursement of the
14 trust or foundation funds.

15 (9) All funds dispersed by the trust or foundation for
16 programs and projects to meet the objectives of the trust
17 or foundation as enumerated in this Section shall be
18 subject to a peer-review process as determined by the
19 trustees. This process shall be designed to determine, in
20 an objective and unbiased manner, those programs and
21 projects that best fit the objectives of the trust or
22 foundation. In each fiscal year the trustees shall
23 determine, based solely on the information provided
24 through the peer-review process, a budget for programs and
25 projects for that fiscal year.

26 (10) The trustees shall administer a Smart Grid

1 education fund from which it shall make grants to qualified
2 not-for-profit organizations for the purpose of educating
3 customers with regard to smart meters and related
4 consumer-facing technologies and services. In making such
5 grants the trust or foundation shall strongly encourage
6 grantees to coordinate to the extent practicable and
7 consider recommendations from the participating utilities
8 regarding the development and implementation of customer
9 education plans.

10 (11) One of the objectives of the trust or foundation
11 is to remain self-funding. In order to meet this objective,
12 the trustees may sign agreements with those entities
13 receiving funding that provide for license fees,
14 royalties, or other payments to the trust or foundation
15 from such entities that receive support for their product
16 development from the trust or foundation. Such payments,
17 however, shall be contingent on the commercialization of
18 such products, services, or technologies enabled by the
19 funding provided by the trust or foundation.

20 (d) The trustees shall notify each participating utility as
21 defined in Section 16-108.5 of this Act of the formation of the
22 trust or foundation. Within 90 days after receipt of the
23 notification, each participating utility that is not a
24 combination utility as defined in Section 16-108.5 of this Act
25 shall contribute \$15,000,000 to the trust or foundation, and
26 each participating utility that is a combination utility, as

1 defined in Section 16-108.5 of this Act, shall contribute
2 \$7,500,000 to the trust or foundation established pursuant to
3 this Section. Such contributions shall not be a recoverable
4 expense.

5 (e) If Section 16-108.5 of this Act becomes inoperative
6 with respect to one or more participating utilities as set
7 forth in subsection (g) or (h) of that Section, then Sections
8 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act shall
9 become inoperative as to each affected utility and its service
10 area on the same date as Section 16-108.5 becomes inoperative.

11 (220 ILCS 5/16-108.8 new)

12 Sec. 16-108.8. Illinois Smart Grid test bed.

13 (a) Within 180 days after the effective date of this
14 amendatory Act of the 97th General Assembly, each participating
15 utility, as defined by Section 16-108.5 of this Act, shall
16 create or otherwise designate a Smart Grid test bed, which may
17 be located at one or more places within the utility's system,
18 for the purposes of allowing for the testing of Smart Grid
19 technologies. The objectives of this test bed shall be to:

20 (1) provide an open, unbiased opportunity for testing
21 programs, technologies, business models, and other Smart
22 Grid-related activities;

23 (2) provide on-grid locations for the testing of
24 potentially innovative Smart Grid-related technologies and
25 services, including but not limited to those funded by the

1 trust or foundation established pursuant to Section
2 16-108.7 of this Act;

3 (3) facilitate testing of business models or services
4 that help integrate Smart Grid-related technologies into
5 the electric grid, especially those business models that
6 may help promote new products and services for retail
7 customers;

8 (4) offer opportunities to test and showcase Smart Grid
9 technologies and services, especially those likely to
10 support the economic development goals of the State of
11 Illinois.

12 (b) The test bed shall reside in one or more locations on
13 the participating utility's network. Such locations shall be
14 chosen by the utility to maximize the opportunity for real-time
15 and real-world testing of Smart Grid technologies and services
16 taking into account the safety and security of the
17 participating utility's grid and grid operations.

18 (c) The participating utility, with input from the Smart
19 Grid Advisory Council established pursuant to Section 16-108.6
20 of this Act, shall, as part of its filing under subsection (b)
21 of Section 16-108.5, include a plan for the creation,
22 operation, and administration of the test bed. This plan shall
23 address the following:

24 (1) how the utility proposes to comply with each of the
25 objectives set forth in subsection (a) of this Section;

26 (2) the proposed location or locations of the test bed;

1 (3) the process by which the utility will receive,
2 review, and qualify proposals to use the test bed;

3 (4) the criteria by which the utility proposes to
4 qualify proposals to use the test bed, including, but not
5 limited to, safety, reliability, security, customer data
6 security, privacy, and economic development
7 considerations;

8 (5) the engineering and operations support that the
9 utility will provide to test bed users, including provision
10 of customer data; and

11 (6) the estimated costs to establish, administer and
12 promote the availability of the test bed.

13 (d) The test bed should be open to all qualified entities
14 wishing to test programs, technologies, business models, and
15 other Smart Grid-related activities, provided that the utility
16 retains control of its grid and operations and may reject any
17 programs, technologies, business models, and other Smart
18 Grid-related activities that threaten the reliability, safety,
19 security, or operations of its network, or that would threaten
20 the security of customer-identifiable data in the judgment of
21 the utility. The number of technologies and entities
22 participating in the test bed at any time may be limited by the
23 utility based on its determination of its ability to maintain a
24 secure, safe, and reliable grid.

25 (e) At a minimum, the test bed shall have the ability to
26 receive live signals from PJM Interconnection LLC or other

1 applicable regional transmission organization, the ability to
2 test new applications in a utility scale environment (to
3 include ramp rate regulations for distributed wind and solar
4 resources), critical peak price response, and market-based
5 power dispatch.

6 (f) At the end of the fourth year of operation the test bed
7 shall be subject to an independent evaluation to determine if
8 the test bed is meeting the objectives of this Section or is
9 likely to meet the objectives in the future. The evaluation
10 shall include the performance of the utility as test bed
11 operator. Subject to the findings, the utility and the trust or
12 foundation established pursuant to Section 16-108.7 of this Act
13 may choose to continue operating the test bed.

14 (g) The utility shall be entitled to recover all prudently
15 incurred and reasonable costs associated with evaluation of
16 proposals, engineering, construction, operation, and
17 administration of the test bed through the performance-based
18 formula rate tariff established pursuant to Section 16-108.5 of
19 this Act.

20 (h) The utility is authorized to charge fees to users of
21 the test bed that shall recover the costs associated with the
22 incremental costs to the utility associated with
23 administration of the test bed, provided, however, that any
24 such fees collected by the utility shall be used to offset the
25 costs to be recovered pursuant to subsection (g) of this
26 Section.

1 (i) On a quarterly basis, the utility shall provide the
2 trust or foundation established pursuant to Section 16-108.7 of
3 this Act with a report summarizing test bed activities,
4 customers, discoveries, and other information as shall be
5 mutually deemed relevant.

6 (j) To the extent practicable, the utility and trust or
7 foundation established pursuant to Section 16-108.7 of this Act
8 shall jointly pursue resources that enhance the capabilities
9 and capacity of the test bed.

10 (k) If Section 16-108.5 of this Act becomes inoperative
11 with respect to one or more participating utilities as set
12 forth in subsection (g) or (h) of that Section, then Sections
13 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act shall
14 become inoperative as to each affected utility and its service
15 area on the same date as Section 16-108.5 become inoperative.

16 (220 ILCS 5/16-111.5)

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

18 (a) An electric utility that on December 31, 2005 served at
19 least 100,000 customers in Illinois shall procure power and
20 energy for its eligible retail customers in accordance with the
21 applicable provisions set forth in Section 1-75 of the Illinois
22 Power Agency Act and this Section. "Eligible retail customers"
23 for the purposes of this Section means those retail customers
24 that purchase power and energy from the electric utility under
25 fixed-price bundled service tariffs, other than those retail

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

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

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

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

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

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

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

22 and

23 (iv) growth forecasts by customer class.

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

26 (i) the impact of demand response programs, both

1 current and projected;

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

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

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

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

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

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

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

26 (C) provide for customers' participation in

1 the stream of benefits produced by the
2 demand-response products;

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

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

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

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

25 (v) proposed term structures for each wholesale
26 product type included in the proposed procurement plan

1 portfolio of products; and

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

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

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

23 (1) The procurement administrator shall:

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

1 Commission approval of the procurement plan;

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

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

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

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

14 (vi) administer the request for proposals process;

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

1 (viii) maintain confidentiality of supplier and
2 bidding information in a manner consistent with all
3 applicable laws, rules, regulations, and tariffs;

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

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

9 (xi) administer related contingency procurement
10 events.

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

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

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

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

20 (iv) assess compliance with the procurement plans
21 approved by the Commission for each utility that on
22 December 31, 2005 provided electric service to a least
23 100,000 customers in Illinois;

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

1 (vi) provide expert advice to the Commission and
2 consult with the procurement administrator regarding
3 issues related to procurement process design, rules,
4 protocols, and policy-related matters; and

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

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

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

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

1 procured. Cost-effective demand-response measures shall be
2 procured as set forth in item (iii) of subsection (b) of
3 this Section. Copies of the procurement plan shall be
4 posted and made publicly available on the Agency's and
5 Commission's websites, and copies shall also be provided to
6 each affected electric utility. An affected utility shall
7 have 30 days following the date of posting to provide
8 comment to the Agency on the procurement plan. Other
9 interested entities also may comment on the procurement
10 plan. All comments submitted to the Agency shall be
11 specific, supported by data or other detailed analyses,
12 and, if objecting to all or a portion of the procurement
13 plan, accompanied by specific alternative wording or
14 proposals. All comments shall be posted on the Agency's and
15 Commission's websites. During this 30-day comment period,
16 the Agency shall hold at least one public hearing within
17 each utility's service area for the purpose of receiving
18 public comment on the procurement plan. Within 14 days
19 following the end of the 30-day review period, the Agency
20 shall revise the procurement plan as necessary based on the
21 comments received and file the procurement plan with the
22 Commission and post the procurement plan on the websites.

23 (3) Within 5 days after the filing of the procurement
24 plan, any person objecting to the procurement plan shall
25 file an objection with the Commission. Within 10 days after
26 the filing, the Commission shall determine whether a

1 hearing is necessary. The Commission shall enter its order
2 confirming or modifying the procurement plan within 90 days
3 after the filing of the procurement plan by the Illinois
4 Power Agency.

5 (4) The Commission shall approve the procurement plan,
6 including expressly the forecast used in the procurement
7 plan, if the Commission determines that it will 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.

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

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

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

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

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

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

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

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

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

1 organization market it shall be purchased from the
2 wholesale market.

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

25 (iii) In all cases where there is insufficient
26 supply provided under contracts awarded through the

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

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

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

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

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

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

1 reports be admissible in any proceeding other than one for law
2 enforcement purposes.

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

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

1 procurement plan shall be posted and made publicly available on
2 the Commission's website. The initial procurement plan may
3 include contracts for renewable resources that extend beyond
4 May 2009.

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

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

1 time, taking into account any benefits of price stability.

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

1 filed with the Commission.

2 (k-5) In order to promote price stability for residential
3 and small commercial customers during the infrastructure
4 investment program described in subsection (b) of Section
5 16-108.5 of this Act, and notwithstanding any other provision
6 of this Act or the Illinois Power Agency Act, for each electric
7 utility that serves more than one million retail customers in
8 Illinois, the Illinois Power Agency shall conduct a procurement
9 event within 120 days after the effective date of this
10 amendatory Act of the 97th General Assembly and may procure
11 contracts for energy and renewable energy credits for the
12 period June 1, 2013 through December 31, 2017 that satisfy the
13 requirements of this subsection (k-5), including the
14 benchmarks described in this subsection. These contracts shall
15 be entered into as the result of a competitive procurement
16 event, and, to the extent that any provisions of this Section
17 or the Illinois Power Agency Act do not conflict with this
18 subsection (k-5), such provisions shall apply to the
19 procurement event. The energy contracts shall be for 24 hour by
20 7 day supply over a term that runs from the first delivery year
21 through December 31, 2017. For a utility that serves over 2
22 million customers, the energy contracts shall be multi-year
23 with pricing escalating at 2.5% per annum. The energy contracts
24 may be designed as financial swaps or may require physical
25 delivery.

26 Within 30 days of the effective date of this amendatory Act

1 of the 97th General Assembly, each such utility shall submit to
2 the Agency updated load forecasts for the period June 1, 2013
3 through December 31, 2017. The megawatt volume of the contracts
4 shall be based on the updated load forecasts of the minimum
5 monthly on-peak or off-peak average load requirements shown in
6 the forecasts, taking into account any existing energy
7 contracts in effect as well as the expected migration of the
8 utility's customers to alternative retail electric suppliers.
9 The renewable energy credit volume shall be based on the number
10 of credits that would satisfy the requirements of subsection
11 (c) of Section 1-75 of the Illinois Power Agency Act, subject
12 to the rate impact caps and other provisions of subsection (c)
13 of Section 1-75 of the Illinois Power Agency Act. The
14 evaluation of contract bids in the competitive procurement
15 events for energy and for renewable energy credits shall
16 incorporate price benchmarks set collaboratively by the
17 Agency, the procurement administrator, the staff of the
18 Commission, and the procurement monitor. If the contracts are
19 swap contracts, then they shall be executed as transactions
20 under a negotiated master agreement based on the form of master
21 agreement for financial swap contracts sponsored by the
22 International Swaps and Derivatives Association, Inc. Costs
23 incurred pursuant to a contract authorized by this subsection
24 (k-5) shall be deemed prudently incurred and reasonable in
25 amount and the electric utility shall be entitled to full cost
26 recovery pursuant to the tariffs filed with the Commission.

1 The cost of administering the procurement event described
2 in this subsection (k-5) shall be paid by the winning supplier
3 or suppliers to the procurement administrator through a
4 supplier fee. In the event that there is no winning supplier
5 for a particular utility, such utility will pay the procurement
6 administrator for the costs associated with the procurement
7 event, and those costs shall not be a recoverable expense.
8 Nothing in this subsection (k-5) is intended to alter the
9 recovery of costs for any other procurement event.

10 (1) 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 (1), 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 this ~~the~~ Act, and may request of the Commission any
20 statutory relief required thereunder. If the Commission grants
21 all of the necessary approvals for the proposed facility, such
22 supply shall thereafter be considered as a pre-existing
23 contract under subsection (b) of this Section. The Commission
24 shall in any order approving a proposal under this subsection
25 specify how the utility will recover the prudently incurred
26 costs of investing in, leasing, owning, or operating such

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

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

10 (220 ILCS 5/16-111.5B new)

11 Sec. 16-111.5B. Provisions relating to energy efficiency
12 procurement.

13 (a) Beginning in 2012, procurement plans prepared pursuant
14 to Section 16-111.5 of this Act shall be subject to the
15 following additional requirements:

16 (1) The analysis included pursuant to paragraph (2) of
17 subsection (b) of Section 16-111.5 shall also include the
18 impact of energy efficiency building codes or appliance
19 standards, both current and projected.

20 (2) The procurement plan components described in
21 subsection (b) of Section 16-111.5 shall also include an
22 assessment of opportunities to expand the programs
23 promoting energy efficiency measures that have been
24 offered under plans approved pursuant to Section 8-103 of
25 this Act or to implement additional cost-effective energy

1 efficiency programs or measures.

2 (3) In addition to the information provided pursuant to
3 paragraph (1) of subsection (d) of Section 16-111.5 of this
4 Act, each Illinois utility procuring power pursuant to that
5 Section shall annually provide to the Illinois Power Agency
6 by July 15 of each year, or such other date as may be
7 required by the Commission or Agency, an assessment of
8 cost-effective energy efficiency programs or measures that
9 could be included in the procurement plan. The assessment
10 shall include the following:

11 (A) A comprehensive energy efficiency potential
12 study for the utility's service territory that was
13 completed within the past 3 years.

14 (B) Beginning in 2014, the most recent analysis
15 submitted pursuant to Section 8-103A of this Act and
16 approved by the Commission under subsection (f) of
17 Section 8-103 of this Act.

18 (C) Identification of new or expanded
19 cost-effective energy efficiency programs or measures
20 that are incremental to those included in energy
21 efficiency and demand-response plans approved by the
22 Commission pursuant to Section 8-103 of this Act and
23 that would be offered to eligible retail customers.

24 (D) Analysis showing that the new or expanded
25 cost-effective energy efficiency programs or measures
26 would lead to a reduction in the overall cost of

1 electric service.

2 (E) Analysis of how the cost of procuring
3 additional cost-effective energy efficiency measures
4 compares over the life of the measures to the
5 prevailing cost of comparable supply.

6 (F) An energy savings goal, expressed in
7 megawatt-hours, for the year in which the measures will
8 be implemented.

9 In preparing such assessments, a utility shall conduct
10 an annual solicitation process for purposes of requesting
11 proposals from third-party vendors, the results of which
12 shall be provided to the Agency as part of the assessment,
13 including documentation of all bids received. The utility
14 shall develop requests for proposals consistent with the
15 manner in which it develops requests for proposals under
16 plans approved pursuant to Section 8-103 of this Act, which
17 considers input from the Agency and interested
18 stakeholders.

19 (4) The Illinois Power Agency shall include in the
20 procurement plan prepared pursuant to paragraph (2) of
21 subsection (d) of Section 16-111.5 of this Act energy
22 efficiency programs and measures it determines are
23 cost-effective and the associated annual energy savings
24 goal included in the annual solicitation process and
25 assessment submitted pursuant to paragraph (3) of this
26 subsection (a).

1 (5) Pursuant to paragraph (4) of subsection (d) of
2 Section 16-111.5 of this Act, the Commission shall also
3 approve the energy efficiency programs and measures
4 included in the procurement plan, including the annual
5 energy savings goal, if the Commission determines they
6 fully capture the potential for all achievable
7 cost-effective savings, to the extent practicable, and
8 otherwise satisfy the requirements of Section 8-103 of this
9 Act.

10 In the event the Commission approves the procurement of
11 additional energy efficiency, it shall reduce the amount of
12 power to be procured under the procurement plan to reflect
13 the additional energy efficiency and shall direct the
14 utility to undertake the procurement of such energy
15 efficiency, which shall not be subject to the requirements
16 of subsection (e) of Section 16-111.5 of this Act. The
17 utility shall consider input from the Agency and interested
18 stakeholders on the procurement and administration
19 process.

20 (6) An electric utility shall recover its costs
21 incurred under this Section related to the implementation
22 of energy efficiency programs and measures approved by the
23 Commission in its order approving the procurement plan
24 under Section 16-111.5 of this Act, including, but not
25 limited to, all costs associated with complying with this
26 Section and all start-up and administrative costs and the

1 costs for any evaluation, measurement, and verification of
2 the measures, from eligible retail customers through the
3 automatic adjustment clause tariff established pursuant to
4 Section 8-103 of this Act, provided, however, that the
5 limitations described in subsection (d) of that Section
6 shall not apply to the costs incurred pursuant to this
7 Section or Section 16-111.7 of this Act.

8 (b) For purposes of this Section, the term "energy
9 efficiency" shall have the meaning set forth in Section 1-10 of
10 the Illinois Power Agency Act, and the term "cost-effective"
11 shall have the meaning set forth in subsection (a) of Section
12 8-103 of this Act. In addition, the estimated costs to acquire
13 an additional energy efficiency measure, when divided by the
14 number of kilowatt-hours expected to be saved over the life of
15 the measure, shall be less than or equal to the electricity
16 costs that would be avoided as a result of the energy
17 efficiency measure.

18 (220 ILCS 5/16-111.7)

19 Sec. 16-111.7. On-bill financing program; electric
20 utilities.

21 (a) The Illinois General Assembly finds that Illinois homes
22 and businesses have the potential to save energy through
23 conservation and cost-effective energy efficiency measures.
24 Programs created pursuant to this Section will allow utility
25 customers to purchase cost-effective energy efficiency

1 measures, including measures set forth in a
2 Commission-approved energy efficiency and demand-response plan
3 under Section 8-103 of this Act and that are cost-effective as
4 that term is defined by that Section, with no required initial
5 upfront payment, and to pay the cost of those products and
6 services over time on their utility bill.

7 (b) Notwithstanding any other provision of this Act, an
8 electric utility serving more than 100,000 customers on January
9 1, 2009 shall offer a Commission-approved on-bill financing
10 program ("program") that allows its eligible retail customers,
11 as that term is defined in Section 16-111.5 of this Act, who
12 own a residential single family home, duplex, or other
13 residential building with 4 or less units, or condominium at
14 which the electric service is being provided (i) to borrow
15 funds from a third party lender in order to purchase electric
16 energy efficiency measures approved under the program for
17 installation in such home or condominium without any required
18 upfront payment and (ii) to pay back such funds over time
19 through the electric utility's bill. Based upon the process
20 described in subsection (b-5) of this Section, small commercial
21 retail customers, as that term is defined in Section 16-102 of
22 this Act, who own the premises at which electric service is
23 being provided may be included in such program. After receiving
24 a request from an electric utility for approval of a proposed
25 program and tariffs pursuant to this Section, the Commission
26 shall render its decision within 120 days. If no decision is

1 rendered within 120 days, then the request shall be deemed to
2 be approved.

3 (b-5) Within 30 days after the effective date of this
4 amendatory Act of the 96th General Assembly, the Commission
5 shall convene a workshop process during which interested
6 participants may discuss issues related to the program,
7 including program design, eligible electric energy efficiency
8 measures, vendor qualifications, and a methodology for
9 ensuring ongoing compliance with such qualifications,
10 financing, sample documents such as request for proposals,
11 contracts and agreements, dispute resolution, pre-installment
12 and post-installment verification, and evaluation. The
13 workshop process shall be completed within 150 days after the
14 effective date of this amendatory Act of the 96th General
15 Assembly.

16 (c) Not later than 60 days following completion of the
17 workshop process described in subsection (b-5) of this Section,
18 each electric utility subject to subsection (b) of this Section
19 shall submit a proposed program to the Commission that contains
20 the following components:

21 (1) A list of recommended electric energy efficiency
22 measures that will be eligible for on-bill financing. An
23 eligible electric energy efficiency measure ("measure")
24 shall be defined by the following:

25 (A) the measure would be applied to or replace
26 electric energy-using equipment; and either

1 (B) application of the measure to equipment and
2 systems will have estimated electricity savings
3 (determined by rates in effect at the time of
4 purchase), that are sufficient to cover the costs of
5 implementing the measures, including finance charges
6 and any program fees not recovered pursuant to
7 subsection (f) of this Section; to ~~to~~ assist the
8 electric utility in identifying or approving measures,
9 the utility may consult with the Department of Commerce
10 and Economic Opportunity, as well as with retailers,
11 technicians, and installers of electric energy
12 efficiency measures and energy auditors (collectively
13 "vendors"); or.

14 (C) the measure is included in a
15 Commission-approved energy efficiency and
16 demand-response plan under Section 8-103 of this Act
17 and is cost-effective as that term is defined by that
18 Section.

19 (2) The electric utility shall issue a request for
20 proposals ("RFP") to lenders for purposes of providing
21 financing to participants to pay for approved measures. The
22 RFP criteria shall include, but not be limited to, the
23 interest rate, origination fees, and credit terms. The
24 utility shall select the winning bidders based on its
25 evaluation of these criteria, with a preference for those
26 bids containing the rates, fees, and terms most favorable

1 to participants;

2 (3) The utility shall work with the lenders selected
3 pursuant to the RFP process, and with vendors, to establish
4 the terms and processes pursuant to which a participant can
5 purchase eligible electric energy efficiency measures
6 using the financing obtained from the lender. The vendor
7 shall explain and offer the approved financing packaging to
8 those customers identified in subsection (b) of this
9 Section and shall assist customers in applying for
10 financing. As part of the process, vendors shall also
11 provide to participants information about any other
12 incentives that may be available for the measures.

13 (4) The lender shall conduct credit checks or undertake
14 other appropriate measures to limit credit risk, and shall
15 review and approve or deny financing applications
16 submitted by customers identified in subsection (b) of this
17 Section. Following the lender's approval of financing and
18 the participant's purchase of the measure or measures, the
19 lender shall forward payment information to the electric
20 utility, and the utility shall add as a separate line item
21 on the participant's utility bill a charge showing the
22 amount due under the program each month.

23 (5) A loan issued to a participant pursuant to the
24 program shall be the sole responsibility of the
25 participant, and any dispute that may arise concerning the
26 loan's terms, conditions, or charges shall be resolved

1 between the participant and lender. Upon transfer of the
2 property title for the premises at which the participant
3 receives electric service from the utility or the
4 participant's request to terminate service at such
5 premises, the participant shall pay in full its electric
6 utility bill, including all amounts due under the program,
7 provided that this obligation may be modified as provided
8 in subsection (g) of this Section. Amounts due under the
9 program shall be deemed amounts owed for residential and,
10 as appropriate, small commercial electric service.

11 (6) The electric utility shall remit payment in full to
12 the lender each month on behalf of the participant. In the
13 event a participant defaults on payment of its electric
14 utility bill, the electric utility shall continue to remit
15 all payments due under the program to the lender, and the
16 utility shall be entitled to recover all costs related to a
17 participant's nonpayment through the automatic adjustment
18 clause tariff established pursuant to Section 16-111.8 of
19 this Act. In addition, the electric utility shall retain a
20 security interest in the measure or measures purchased
21 under the program, and the utility retains its right to
22 disconnect a participant that defaults on the payment of
23 its utility bill.

24 (7) The total outstanding amount financed under the
25 program shall not exceed \$2.5 million for an electric
26 utility or electric utilities under a single holding

1 company, provided that the electric utility or electric
2 utilities may petition the Commission for an increase in
3 such amount.

4 (d) A program approved by the Commission shall also include
5 the following criteria and guidelines for such program:

6 (1) guidelines for financing of measures installed
7 under a program, including, but not limited to, RFP
8 criteria and limits on both individual loan amounts and the
9 duration of the loans;

10 (2) criteria and standards for identifying and
11 approving measures;

12 (3) qualifications of vendors that will market or
13 install measures, as well as a methodology for ensuring
14 ongoing compliance with such qualifications;

15 (4) sample contracts and agreements necessary to
16 implement the measures and program; and

17 (5) the types of data and information that utilities
18 and vendors participating in the program shall collect for
19 purposes of preparing the reports required under
20 subsection (g) of this Section.

21 (e) The proposed program submitted by each electric utility
22 shall be consistent with the provisions of this Section that
23 define operational, financial and billing arrangements between
24 and among program participants, vendors, lenders, and the
25 electric utility.

26 (f) An electric utility shall recover all of the prudently

1 incurred costs of offering a program approved by the Commission
2 pursuant to this Section, including, but not limited to, all
3 start-up and administrative costs and the costs for program
4 evaluation. All prudently incurred costs under this Section
5 shall be recovered from the residential and small commercial
6 retail customer classes eligible to participate in the program
7 through the automatic adjustment clause tariff established
8 pursuant to Section 8-103 of this Act.

9 (g) An independent evaluation of a program shall be
10 conducted after 3 years of the program's operation. The
11 electric utility shall retain an independent evaluator who
12 shall evaluate the effects of the measures installed under the
13 program and the overall operation of the program, including but
14 not limited to customer eligibility criteria and whether the
15 payment obligation for permanent electric energy efficiency
16 measures that will continue to provide benefits of energy
17 savings should attach to the meter location. As part of the
18 evaluation process, the evaluator shall also solicit feedback
19 from participants and interested stakeholders. The evaluator
20 shall issue a report to the Commission on its findings no later
21 than 4 years after the date on which the program commenced, and
22 the Commission shall issue a report to the Governor and General
23 Assembly including a summary of the information described in
24 this Section as well as its recommendations as to whether the
25 program should be discontinued, continued with modification or
26 modifications or continued without modification, provided that

1 any recommended modifications shall only apply prospectively
2 and to measures not yet installed or financed.

3 (h) An electric utility offering a Commission-approved
4 program pursuant to this Section shall not be required to
5 comply with any other statute, order, rule, or regulation of
6 this State that may relate to the offering of such program,
7 provided that nothing in this Section is intended to limit the
8 electric utility's obligation to comply with this Act and the
9 Commission's orders, rules, and regulations, including Part
10 280 of Title 83 of the Illinois Administrative Code.

11 (i) The source of a utility customer's electric supply
12 shall not disqualify a customer from participation in the
13 utility's on-bill financing program. Customers of alternative
14 retail electric suppliers may participate in the program under
15 the same terms and conditions applicable to the utility's
16 supply customers.

17 (Source: P.A. 96-33, eff. 7-10-09.)

18 (220 ILCS 5/16-128)

19 Sec. 16-128. Provisions related to utility employees
20 during the mandatory transition period.

21 (a) The General Assembly finds:

22 (1) The reliability and safety of the electric system
23 has depended and depends on a workforce of skilled and
24 dedicated employees, equipped with technical training and
25 experience.

1 (2) The integrity and reliability of the system ~~has~~
2 also requires ~~depended on~~ the industry's commitment to
3 invest in regular inspection and maintenance, to assure
4 that it can withstand the demands of heavy service
5 requirements and emergency situations.

6 (3) It is in the State's interest to protect the
7 interests of utility employees who have and continue to
8 dedicate ~~dedicated~~ themselves to assuring reliable service
9 to the citizens of this State, and who might otherwise be
10 economically displaced in a restructured industry.

11 The General Assembly further finds that it is necessary to
12 assure that employees of electric utilities and employees of
13 contractors or subcontractors performing work on behalf of an
14 electric utility operating in the deregulated industry have the
15 requisite skills, knowledge, training, experience, and
16 competence to provide reliable and safe electrical service
17 under this Act ~~and therefore that alternative retail electric~~
18 ~~suppliers shall be required to demonstrate the competence of~~
19 ~~their employees to work in the industry.~~

20 The General Assembly also finds that it is necessary to
21 assure that employees of alternative retail electric suppliers
22 and employees of contractors or subcontractors performing work
23 on behalf of an alternative retail electric supplier operating
24 in the deregulated industry have the requisite skills,
25 knowledge, training, experience, and competence to provide
26 reliable and safe electrical service under this Act.

1 To ensure that these findings and prerequisites for
2 reliable and safe electrical service continue to prevail, each
3 alternative retail electric supplier, electric utility, and
4 contractors and subcontractors performing work on behalf of an
5 electric utility or alternative retail electric supplier must
6 demonstrate the competence of their respective employees to
7 work on the distribution system.

8 The knowledge, skill, training, experience, and competence
9 levels to be demonstrated shall be consistent with those
10 ~~generally~~ required of or by the electric utilities in this
11 State as of January 1, 2007, with respect to their employees
12 and employees of contractors or subcontractors performing work
13 on their behalf. Nothing in this Section shall prohibit an
14 electric utility from establishing knowledge, skill, training,
15 experience, and competence levels greater than those required
16 as of January 1, 2007.

17 An adequate ~~Adequate~~ demonstration of requisite knowledge,
18 skill, training, experience, and competence shall include, at a
19 minimum, such factors as completion or current participation
20 and ultimate completion by the employee of an accredited or
21 otherwise recognized apprenticeship program for the particular
22 craft, trade or skill, or specified and several years of
23 employment ~~with an electric utility~~ performing a particular
24 work function that is utilized by an electric utility.

25 Notwithstanding any law, tariff, Commission rule, order,
26 or decision to the contrary, the Commission shall have an

1 affirmative statutory obligation to ensure that an electric
2 utility is employing employees, contractors, and
3 subcontractors with employees who meet the requirements of
4 subsection (a) of this Section when installing, constructing,
5 operating, and maintaining generation, transmission, or
6 distribution facilities and equipment within this State
7 pursuant to any provision in this Act or any Commission order,
8 rule, or decision.

9 For purposes of this Section, "distribution facilities and
10 equipment" means any and all of the facilities and equipment,
11 including, but not limited to, substations, distribution
12 feeder circuits, switches, meters, protective equipment,
13 primary circuits, distribution transformers, line extensions
14 and service extensions both above or below ground, conduit,
15 risers, elbows, transformer pads, junction boxes, manholes,
16 pedestals, conductors, and all associated fittings that
17 connect the transmission or distribution system to either the
18 weatherhead on the retail customer's building or other
19 structure for above ground service or to the terminals on the
20 meter base of the retail customer's building or other structure
21 for below ground service.

22 To implement this requirement for alternative retail
23 electric suppliers, the Commission, in determining that an
24 applicant meets the standards for certification as an
25 alternative retail electric supplier, shall require the
26 applicant to demonstrate (i) that the applicant is licensed to

1 do business, and bonded, in the State of Illinois; and (ii)
2 that the employees of the applicant that will be installing,
3 operating, and maintaining generation, transmission, or
4 distribution facilities within this State, or any entity with
5 which the applicant has contracted to perform those functions
6 within this State, have the requisite knowledge, skills,
7 training, experience, and competence to perform those
8 functions in a safe and responsible manner in order to provide
9 safe and reliable service, in accordance with the criteria
10 stated above.

11 (b) The General Assembly finds, based on experience in
12 other industries that have undergone similar transitions, that
13 the introduction of competition into the State's electric
14 utility industry may result in workforce reductions by electric
15 utilities which may adversely affect persons who have been
16 employed by this State's electric utilities in functions
17 important to the public convenience and welfare. The General
18 Assembly further finds that the impacts on employees and their
19 communities of any necessary reductions in the utility
20 workforce directly caused by this restructuring of the electric
21 industry shall be mitigated to the extent practicable through
22 such means as offers of voluntary severance, retraining, early
23 retirement, outplacement and related benefits. Therefore,
24 before any such reduction in the workforce during the
25 transition period, an electric utility shall present to its
26 employees or their representatives a workforce reduction plan

1 outlining the means by which the electric utility intends to
2 mitigate the impact of such workforce reduction on its
3 employees.

4 (c) In the event of a sale, purchase, or any other transfer
5 of ownership during the mandatory transition period of one or
6 more Illinois divisions or business units, and/or generating
7 stations or generating units, of an electric utility, the
8 electric utility's contract and/or agreements with the
9 acquiring entity or persons shall require that the entity or
10 persons hire a sufficient number of non-supervisory employees
11 to operate and maintain the station, division or unit by
12 initially making offers of employment to the non-supervisory
13 workforce of the electric utility's division, business unit,
14 generating station and/or generating unit at no less than the
15 wage rates, and substantially equivalent fringe benefits and
16 terms and conditions of employment that are in effect at the
17 time of transfer of ownership of said division, business unit,
18 generating station, and/or generating units; and said wage
19 rates and substantially equivalent fringe benefits and terms
20 and conditions of employment shall continue for at least 30
21 months from the time of said transfer of ownership unless the
22 parties mutually agree to different terms and conditions of
23 employment within that 30-month period. The utility shall offer
24 a transition plan to those employees who are not offered jobs
25 by the acquiring entity because that entity has a need for
26 fewer workers. If there is litigation concerning the sale, or

1 other transfer of ownership of the electric utility's
2 divisions, business units, generating station, or generating
3 units, the 30-month period will begin on the date the acquiring
4 entity or persons take control or management of the divisions,
5 business units, generating station or generating units of the
6 electric utility.

7 (d) If a utility transfers ownership during the mandatory
8 transition period of one or more Illinois divisions, business
9 units, generating stations or generating units of an electric
10 utility to a majority-owned subsidiary, that subsidiary shall
11 continue to employ the utility's employees who were employed by
12 the utility at such division, business unit or generating
13 station at the time of the transfer under the same terms and
14 conditions of employment as those employees enjoyed at the time
15 of the transfer. If ownership of the subsidiary is subsequently
16 sold or transferred to a third party during the transition
17 period, the transition provisions outlined in subsection (c)
18 shall apply.

19 (e) The plant transfer provisions set forth above shall not
20 apply to any generating station which was the subject of a
21 sales agreement entered into before January 1, 1997.

22 (Source: P.A. 90-561, eff. 12-16-97.)

23 (220 ILCS 5/16-128A new)

24 Sec. 16-128A. Certification of installers.

25 (a) Within 18 months of the effective date of this

1 amendatory Act of the 97th General Assembly, the Commission
2 shall adopt rules, including emergency rules, establishing
3 certification requirements ensuring that entities installing
4 distributed generation facilities are in compliance with the
5 requirements of subsection (a) of Section 16-128 of this Act.

6 For purposes of this Section, the phrase "entities
7 installing distributed generation facilities" shall include,
8 but not be limited to, all entities that are exempt from the
9 definition of "alternative retail electric supplier" under
10 item (v) of Section 16-102 of this Act. For purposes of this
11 Section, the phrase "self-installer" means an individual who
12 (i) leases or purchases a cogeneration facility for his or her
13 own personal use and (ii) installs such cogeneration or
14 self-generation facility on his or her own premises without the
15 assistance of any other person.

16 (b) In addition to any authority granted to the Commission
17 under this Act, the Commission is also authorized to: (1)
18 determine which entities are subject to certification under
19 this Section; (2) impose reasonable certification fees and
20 penalties; (3) adopt disciplinary procedures; (4) investigate
21 any and all activities subject to this Section, including
22 violations thereof; (5) adopt procedures to issue or renew, or
23 to refuse to issue or renew, a certification or to revoke,
24 suspend, place on probation, reprimand, or otherwise
25 discipline a certified entity under this Act or take other
26 enforcement action against an entity subject to this Section;

1 and (6) prescribe forms to be issued for the administration and
2 enforcement of this Section.

3 (c) No electric utility shall provide a retail customer
4 with net metering service related to interconnection of that
5 customer's distributed generation facility unless the customer
6 provides the electric utility with (i) a certification that the
7 customer installing the distributed generation facility was a
8 self-installer or (ii) evidence that the distributed
9 generation facility was installed by an entity certified under
10 this Section that is also in good standing with the Commission.
11 For purposes of this subsection, a retail customer includes
12 that customer's employees, officers, and agents. An electric
13 utility shall file a tariff or tariffs with the Commission
14 setting forth the documentation that a retail customer must
15 provide to an electric utility. The provisions of this
16 subsection (c) shall apply on or after the effective date of
17 the Commission's rules prescribed pursuant to subsection (a) of
18 this Section.

19 (d) Within 180 days after the effective date of this
20 amendatory Act of the 97th General Assembly, the Commission
21 shall initiate a rulemaking proceeding to establish
22 certification requirements that shall be applicable to vendors
23 that install electric vehicle charging stations.

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