



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB2392

Introduced 2/15/2013, by Sen. Andy Manar

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Power Agency Act and the Public Utilities Act to provide for the procurement of renewable energy resources from a clean coal facility, initial clean coal facility, and clean coal SNG facility, including amending provisions concerning Agency powers, aggregate distributed renewable energy, the renewable portfolio standard, and procurement of energy efficiency products and adding provisions concerning the development of feedstock procurement plans and feedstock procurement processes; makes corresponding changes in various other Acts. Allows certain facilities to recover certain costs and revenue associated with the generation of electricity and sequestration. Contains provisions concerning the permitting, oversight, and investigation for capture, transport, and sequestration of carbon dioxide. In the Public Utilities Act, makes changes to provisions concerning net electricity metering. Makes other changes. Contains a severability provision.

LRB098 10321 CEL 40506 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

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

4 Section 1. Short title. This amendatory Act may be referred
5 to as the Illinois Renewable Electricity Resources Act.

6 Section 5. The Illinois Power Agency Act is amended by
7 changing Sections 1-10, 1-20, 1-56, and 1-75 and by adding
8 Sections 1-76, 1-76.5, 1-77.5, 1-79, and 1-81 as follows:

9 (20 ILCS 3855/1-10)

10 Sec. 1-10. Definitions.

11 "Agency" means the Illinois Power Agency.

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

20 "Authority" means the Illinois Finance Authority.

21 "Bundled renewable energy resources" means electricity
22 generated by a renewable energy resource and its associated

1 renewable energy credit.

2 "Clean coal electricity buyer" means (1) each electric
3 utility and (2) each alternative electric retail supplier that
4 is subject to the requirements of subsection (d) of Section
5 1-75 of this Act and paragraph (5) of subsection (d) of Section
6 16-115 of the Public Utilities Act.

7 "Clean coal energy" means all energy produced by the
8 initial clean coal facility.

9 "Clean coal facility" means an electric generating
10 facility that uses primarily coal as a feedstock and that
11 captures and sequesters carbon dioxide emissions at the
12 following levels: at least 50% of the total carbon dioxide
13 emissions that the facility would otherwise emit if, at the
14 time construction commences, the facility is scheduled to
15 commence operation before 2016, at least 70% of the total
16 carbon dioxide emissions that the facility would otherwise emit
17 if, at the time construction commences, the facility is
18 scheduled to commence operation during 2016 or 2017, and at
19 least 90% of the total carbon dioxide emissions that the
20 facility would otherwise emit if, at the time construction
21 commences, the facility is scheduled to commence operation
22 after 2017. The power block of the clean coal facility shall
23 not exceed allowable emission rates for sulfur dioxide,
24 nitrogen oxides, carbon monoxide, particulates and mercury for
25 a natural gas-fired combined-cycle facility the same size as
26 and in the same location as the clean coal facility at the time

1 the clean coal facility obtains an approved air permit. All
2 coal used by a clean coal facility shall have high volatile
3 bituminous rank and greater than 1.7 pounds of sulfur per
4 million btu content, unless the clean coal facility does not
5 use gasification technology and was operating as a conventional
6 coal-fired electric generating facility on June 1, 2009 (the
7 effective date of Public Act 95-1027).

8 "Clean coal fraction" means, with respect to a clean coal
9 electricity buyer for a month, a fraction, the numerator of
10 which is such clean coal electricity buyer's retail market
11 sales of electricity (expressed in kilowatthours sold) in the
12 State during the third month preceding the applicable month and
13 the denominator of which is the total retail market sales of
14 electricity (expressed in kilowatthours sold) in the State by
15 all clean coal electricity buyers during such third month
16 preceding the applicable month, as such fraction may be
17 adjusted pursuant to subparagraph (E) of paragraph (2) of
18 subsection (d) of Section 1-75 of this Act.

19 "Clean coal SNG brownfield facility" means a facility that
20 (1) has commenced construction by July 1, 2015 on an urban
21 brownfield site in a municipality with at least 1,000,000
22 residents; (2) uses a gasification process to produce
23 substitute natural gas; (3) uses coal as at least 50% of the
24 total feedstock over the term of any sourcing agreement with a
25 utility and the remainder of the feedstock may be either
26 petroleum coke or coal, with all such coal having a high

1 bituminous rank and greater than 1.7 pounds of sulfur per
2 million Btu content unless the facility reasonably determines
3 that it is necessary to use additional petroleum coke to
4 deliver additional consumer savings, in which case the facility
5 shall use coal for at least 35% of the total feedstock over the
6 term of any sourcing agreement; and (4) captures and sequesters
7 at least 85% of the total carbon dioxide emissions that the
8 facility would otherwise emit.

9 "Clean coal SNG facility" means a facility that uses a
10 gasification process to produce substitute natural gas, that
11 sequesters at least 90% of the total carbon dioxide emissions
12 that the facility would otherwise emit, that uses at least 90%
13 coal as a feedstock, with all such coal having a high
14 bituminous rank and greater than 1.7 pounds of sulfur per
15 million btu content, and that has a valid and effective permit
16 to construct emission sources and air pollution control
17 equipment and approval with respect to the federal regulations
18 for Prevention of Significant Deterioration of Air Quality
19 (PSD) for the plant pursuant to the federal Clean Air Act;
20 provided, however, a clean coal SNG brownfield facility shall
21 not be a clean coal SNG facility.

22 "Commission" means the Illinois Commerce Commission.

23 "Costs incurred in connection with the development and
24 construction of a facility" means:

25 (1) the cost of acquisition of all real property,
26 fixtures, and improvements in connection therewith and

1 equipment, personal property, and other property, rights,
2 and easements acquired that are deemed necessary for the
3 operation and maintenance of the facility;

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

6 (3) all origination, commitment, utilization,
7 facility, placement, underwriting, syndication, credit
8 enhancement, and rating agency fees;

9 (4) engineering, design, procurement, consulting,
10 legal, accounting, title insurance, survey, appraisal,
11 escrow, trustee, collateral agency, interest rate hedging,
12 interest rate swap, capitalized interest, contingency, as
13 required by lenders, and other financing costs, and other
14 expenses for professional services; and

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

23 "Delivery services" has the same definition as found in
24 Section 16-102 of the Public Utilities Act.

25 "Delivery services non-eligible retail customers" means
26 the retail customers in an electric utility's service area for

1 which the electric utility provides delivery services, but
2 which are not eligible retail customers as defined in
3 subsection (a) of Section 1-75 of this Act.

4 "Department" means the Department of Commerce and Economic
5 Opportunity.

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

7 "Demand-response" means measures that decrease peak
8 electricity demand or shift demand from peak to off-peak
9 periods.

10 "Distributed renewable energy generation device" means a
11 device that is:

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

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

24 (3) located on the customer side of the customer's
25 electric meter and is primarily used to offset that
26 customer's electricity load; and

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

3 "Energy efficiency" means measures that reduce the amount
4 of electricity or natural gas required to achieve a given end
5 use.

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

8 "Excluded renewable energy resources contract costs" means
9 the amount by which the costs of renewable energy resources,
10 purchased for a particular year to meet the renewable energy
11 resources standards of paragraph (1) of subsection (c) of
12 Section 1-75 of this Act applicable to the load of an electric
13 utility's eligible retail customers pursuant to a contract with
14 a term greater than one year that the electric utility entered
15 into in a previous year in accordance with a procurement
16 approved by the Commission pursuant to Section 16-111.5 of the
17 Public Utilities Act, exceed the limitations imposed by
18 paragraph (2) of subsection (c) of Section 1-75 of this Act for
19 the particular year.

20 "Facility" means an electric generating unit or a
21 co-generating unit that produces electricity along with
22 related equipment necessary to connect the facility to an
23 electric transmission or distribution system.

24 "Governmental aggregator" means one or more units of local
25 government that individually or collectively procure
26 electricity to serve residential retail electrical loads

1 located within its or their jurisdiction.

2 "Initial clean coal facility" means an electric generating
3 facility using gasification technology that: (1) has a
4 nameplate capacity of at least 500 MW; (2) irrevocably commits
5 in its proposed sourcing agreement to use coal for at least 50%
6 of the total feedstock over the term of a sourcing agreement,
7 with all coal having high volatile bituminous rank and greater
8 than 1.7 pounds of sulfur per million btu content; (3) is
9 designed to capture and sequester at least 90% of the carbon
10 dioxide emissions that the portion of the facility, if any,
11 that produces SNG would otherwise emit and at least 50% of the
12 total carbon dioxide emissions that the facility as a whole
13 would otherwise emit; (4) absent an appeal of a permit or
14 regulatory order, is reasonably capable of achieving
15 commercial operation by no later than 5 years after the
16 execution of the sourcing agreements; (5) has a feasible
17 financing plan; (6) has a reliable and cost-effective
18 transmission plan to deliver energy to Commonwealth Edison
19 Company and Ameren Illinois; and (7) has a power block designed
20 not to exceed allowable emission rates for sulfur dioxide,
21 nitrogen oxides, carbon monoxide, particulates, and mercury
22 for a natural gas-fired combined-cycle facility the same size
23 as and in the same location as the electric generating facility
24 at the time the electric generating facility obtains an
25 approved air permit.

26 "Large electric customer" means a customer that (1) obtains

1 retail electric service in the State from an electric utility
2 or an alternative retail electric supplier and (2) is not a
3 small electric customer.

4 "Local government" means a unit of local government as
5 defined in Section 1 of Article VII of the Illinois
6 Constitution.

7 "Municipality" means a city, village, or incorporated
8 town.

9 "Person" means any natural person, firm, partnership,
10 corporation, either domestic or foreign, company, association,
11 limited liability company, joint stock company, or association
12 and includes any trustee, receiver, assignee, or personal
13 representative thereof.

14 "Project" means the planning, bidding, and construction of
15 a facility.

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

18 "Real property" means any interest in land together with
19 all structures, fixtures, and improvements thereon, including
20 lands under water and riparian rights, any easements,
21 covenants, licenses, leases, rights-of-way, uses, and other
22 interests, together with any liens, judgments, mortgages, or
23 other claims or security interests related to real property.

24 "Renewable energy credit" means a tradable credit that
25 represents the environmental attributes of a certain amount of
26 energy produced from a renewable energy resource.

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

17 "Revenue bond" means any bond, note, or other evidence of
18 indebtedness issued by the Authority, the principal and
19 interest of which is payable solely from revenues or income
20 derived from any project or activity of the Agency.

21 "Sequester" means permanent storage of carbon dioxide by
22 injecting it into a saline aquifer, a depleted gas reservoir,
23 or an oil reservoir, directly or through an enhanced oil
24 recovery process that may involve intermediate storage,
25 regardless of whether these activities are conducted by a clean
26 coal facility, the initial clean coal facility, a clean coal

1 SNG facility, a clean coal SNG brownfield facility, or a party
2 with which a clean coal facility, initial clean coal facility,
3 clean coal SNG facility, or clean coal SNG brownfield facility
4 has contracted for such purposes.

5 "Service area" has the same definition as found in Section
6 16-102 of the Public Utilities Act.

7 "Sourcing agreement" means (i) in the case of an electric
8 utility, an agreement between the owner of a clean coal
9 facility or initial clean coal facility and such electric
10 utility, which agreement shall have terms and conditions
11 meeting the requirements of paragraph (3) of subsection (d) of
12 Section 1-75, (ii) in the case of an alternative retail
13 electric supplier, an agreement between the owner of a clean
14 coal facility or initial clean coal facility and such
15 alternative retail electric supplier, which agreement shall
16 have terms and conditions meeting the requirements of Section
17 16-115(d) (5) of the Public Utilities Act, and (iii) in case of
18 a gas utility, an agreement between the owner of a clean coal
19 SNG brownfield facility and the gas utility, which agreement
20 shall have the terms and conditions meeting the requirements of
21 subsection (h-1) of Section 9-220 of the Public Utilities Act.

22 "Small electric customer" means a residential retail
23 electric customer that obtains electric service in the State
24 from an electric utility or an alternative retail electric
25 supplier.

26 "Substitute natural gas" or "SNG" means a gas manufactured

1 by gasification of hydrocarbon feedstock, which is
2 substantially interchangeable in use and distribution with
3 conventional natural gas.

4 "Total resource cost test" or "TRC test" means a standard
5 that is met if, for an investment in energy efficiency or
6 demand-response measures, the benefit-cost ratio is greater
7 than one. The benefit-cost ratio is the ratio of the net
8 present value of the total benefits of the program to the net
9 present value of the total costs as calculated over the
10 lifetime of the measures. A total resource cost test compares
11 the sum of avoided electric utility costs, representing the
12 benefits that accrue to the system and the participant in the
13 delivery of those efficiency measures, as well as other
14 quantifiable societal benefits, including avoided natural gas
15 utility costs, to the sum of all incremental costs of end-use
16 measures that are implemented due to the program (including
17 both utility and participant contributions), plus costs to
18 administer, deliver, and evaluate each demand-side program, to
19 quantify the net savings obtained by substituting the
20 demand-side program for supply resources. In calculating
21 avoided costs of power and energy that an electric utility
22 would otherwise have had to acquire, reasonable estimates shall
23 be included of financial costs likely to be imposed by future
24 regulations and legislation on emissions of greenhouse gases.
25 (Source: P.A. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09;
26 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10; 97-96, eff.

1 7-13-11; 97-239, eff. 8-2-11; 97-491, eff. 8-22-11; 97-616,
2 eff. 10-26-11; 97-813, eff. 7-13-12.)

3 (20 ILCS 3855/1-20)

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

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

6 (1) Develop electricity procurement plans to ensure
7 adequate, reliable, affordable, efficient, and
8 environmentally sustainable electric service at the lowest
9 total cost over time, taking into account any benefits of
10 price stability, for electric utilities that on December
11 31, 2005 provided electric service to at least 100,000
12 customers in Illinois and for small multi-jurisdictional
13 electric utilities that (A) on December 31, 2005 served
14 less than 100,000 customers in Illinois and (B) request a
15 procurement plan for their Illinois jurisdictional load.
16 The procurement plans shall be updated on an annual basis
17 and shall include electricity generated from renewable
18 resources sufficient to achieve the standards specified in
19 this Act. For periods beginning on and after June 1, 2014,
20 the procurement plans shall also include procurement of
21 renewable energy credits, in accordance with subsection
22 (c) of Section 1-75 of this Act, in amounts projected to be
23 sufficient to meet the renewable energy resources standard
24 specified in subsection (c) of Section 1-75 of this Act
25 with respect to the kilowatthour usage of delivery services

1 non-eligible retail customers in such electric utilities'
2 service areas.

3 (2) Conduct competitive procurement processes to
4 procure the supply resources identified in the procurement
5 plan, pursuant to Section 16-111.5 of the Public Utilities
6 Act.

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

11 (4) Supply electricity from the Agency's facilities at
12 cost to one or more of the following: municipal electric
13 systems, governmental aggregators, or rural electric
14 cooperatives in Illinois.

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

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

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

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

26 (4) To obtain and employ personnel and hire consultants

1 that are necessary to fulfill the Agency's purposes, and to
2 make expenditures for that purpose within the
3 appropriations for that purpose.

4 (5) To purchase, receive, take by grant, gift, devise,
5 bequest, or otherwise, lease, or otherwise acquire, own,
6 hold, improve, employ, use, and otherwise deal in and with,
7 real or personal property whether tangible or intangible,
8 or any interest therein, within the State.

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

17 (7) To sell, convey, lease, exchange, transfer,
18 abandon, or otherwise dispose of, or mortgage, pledge, or
19 create a security interest in, any of its assets,
20 properties, or any interest therein, wherever situated.

21 (8) To purchase, take, receive, subscribe for, or
22 otherwise acquire, hold, make a tender offer for, vote,
23 employ, sell, lend, lease, exchange, transfer, or
24 otherwise dispose of, mortgage, pledge, or grant a security
25 interest in, use, and otherwise deal in and with, bonds and
26 other obligations, shares, or other securities (or

1 interests therein) issued by others, whether engaged in a
2 similar or different business or activity.

3 (9) To make and execute agreements, contracts, and
4 other instruments necessary or convenient in the exercise
5 of the powers and functions of the Agency under this Act,
6 including contracts with any person, including personal
7 service contracts, or with any local government, State
8 agency, or other entity; and all State agencies and all
9 local governments are authorized to enter into and do all
10 things necessary to perform any such agreement, contract,
11 or other instrument with the Agency. No such agreement,
12 contract, or other instrument shall exceed 40 years.

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

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

25 (12) To enter into agreements with the Illinois Finance
26 Authority to issue bonds whether or not the income

1 therefrom is exempt from federal taxation.

2 (13) To procure insurance against any loss in
3 connection with its properties or operations in such amount
4 or amounts and from such insurers, including the federal
5 government, as it may deem necessary or desirable, and to
6 pay any premiums therefor.

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

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

17 (16) To enter into management agreements for the
18 operation of any of the property or facilities owned by the
19 Agency.

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

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

5 (19) To maintain an office or offices at such place or
6 places in the State as it may determine.

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

11 (21) To accept and expend appropriations.

12 (22) To engage in any activity or operation that is
13 incidental to and in furtherance of efficient operation to
14 accomplish the Agency's purposes, including hiring
15 employees that the Director deems essential for the
16 operations of the Agency.

17 (23) To adopt, revise, amend, and repeal rules with
18 respect to its operations, properties, and facilities as
19 may be necessary or convenient to carry out the purposes of
20 this Act, subject to the provisions of the Illinois
21 Administrative Procedure Act and Sections 1-22 and 1-35 of
22 this Act.

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

25 (25) To conduct competitive gasification feedstock
26 procurement processes to procure the feedstocks for the

1 clean coal SNG brownfield facility in accordance with the
2 requirements of Section 1-78 of this Act.

3 (26) To review, revise, and approve sourcing
4 agreements and mediate and resolve disputes between gas
5 utilities and the clean coal SNG brownfield facility
6 pursuant to subsection (h-1) of Section 9-220 of the Public
7 Utilities Act.

8 (27) To review, revise, and approve sourcing
9 agreements and mediate and resolve disputes between
10 electric utilities or alternative retail electric
11 suppliers and the initial clean coal facility pursuant to
12 paragraph (4) of subsection (d) of Section 1-75 of this
13 Act.

14 (28) To conduct competitive gasification feedstock
15 procurement processes to procure the feedstocks for the
16 initial clean coal facility in accordance with the
17 requirements of Section 1-79 of this Act.

18 (Source: P.A. 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10;
19 97-96, eff. 7-13-11; 97-325, eff. 8-12-11; 97-618, eff.
20 10-26-11; 97-813, eff. 7-13-12.)

21 (20 ILCS 3855/1-56)

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

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

1 (b) The Illinois Power Agency Renewable Energy Resources
2 Fund shall be administered by the Agency to procure renewable
3 energy resources. Prior to June 1, 2011, resources procured
4 pursuant to this Section shall be procured from facilities
5 located in Illinois, provided the resources are available from
6 those facilities. If resources are not available in Illinois,
7 then they shall be procured in states that adjoin Illinois. If
8 resources are not available in Illinois or in states that
9 adjoin Illinois, then they may be purchased elsewhere.
10 Beginning June 1, 2011, resources procured pursuant to this
11 Section shall be procured from facilities located in Illinois
12 or states that adjoin Illinois. If resources are not available
13 in Illinois or in states that adjoin Illinois, then they may be
14 procured elsewhere. To the extent available, at least 75% of
15 these renewable energy resources shall come from wind
16 generation. Of the renewable energy resources procured
17 pursuant to this Section at least the following specified
18 percentages shall come from photovoltaics on the following
19 schedule: 0.5% by June 1, 2012; 1.5% by June 1, 2013; 3% by
20 June 1, 2014; and 6% by June 1, 2015 and thereafter. Of the
21 renewable energy resources procured pursuant to this Section,
22 at least the following percentages shall come from distributed
23 renewable energy generation devices: 0.5% by June 1, 2014 ~~2013~~,
24 0.75% by June 1, 2015 ~~2014~~, and 1% by June 1, 2016 ~~2015~~ and
25 thereafter. To the extent available, half of the renewable
26 energy resources procured from distributed renewable energy

1 generation shall come from devices of less than 25 kilowatts in
2 nameplate capacity. Renewable energy resources procured from
3 distributed generation devices may also count towards the
4 required percentages for wind and solar photovoltaics.
5 Procurement of renewable energy resources from distributed
6 renewable energy generation devices shall be done on an annual
7 basis through multi-year contracts of no less than 5 years, and
8 shall consist solely of renewable energy credits.

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

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

26 (d) The price paid to procure renewable energy credits

1 using monies from the Illinois Power Agency Renewable Energy
2 Resources Fund shall not exceed the winning bid prices paid for
3 like resources procured for electric utilities required to
4 comply with Section 1-75 of this Act.

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

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

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

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

1 this Section.

2 (i) The Illinois Power Agency Renewable Energy Resources
3 Fund shall be terminated upon depletion of all funds therein
4 through the purchase of renewable energy credits.

5 (Source: P.A. 96-159, eff. 8-10-09; 96-1000, eff. 7-2-10;
6 96-1437, eff. 8-17-10; 97-616, eff. 10-26-11.)

7 (20 ILCS 3855/1-75)

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

11 (a) The Planning and Procurement Bureau shall each year,
12 beginning in 2008, develop procurement plans and conduct
13 competitive procurement processes in accordance with the
14 requirements of Section 16-111.5 of the Public Utilities Act
15 for the eligible retail customers of electric utilities that on
16 December 31, 2005 provided electric service to at least 100,000
17 customers in Illinois, and for years beginning on and after
18 June 1, 2014, for the procurement of renewable energy credits
19 in respect of the kilowatthour usage of delivery services
20 non-eligible retail customers in such electric utilities'
21 service areas. The Planning and Procurement Bureau shall also
22 develop procurement plans and conduct competitive procurement
23 processes in accordance with the requirements of Section
24 16-111.5 of the Public Utilities Act for the eligible retail
25 customers of small multi-jurisdictional electric utilities

1 that (i) on December 31, 2005 served less than 100,000
2 customers in Illinois and (ii) request a procurement plan for
3 their Illinois jurisdictional load. This Section shall not
4 apply to a small multi-jurisdictional utility until such time
5 as a small multi-jurisdictional utility requests the Agency to
6 prepare a procurement plan for their Illinois jurisdictional
7 load. For the purposes of this Section, the term "eligible
8 retail customers" has the same definition as found in Section
9 16-111.5(a) of the Public Utilities Act.

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

16 (A) direct previous experience assembling
17 large-scale power supply plans or portfolios for
18 end-use customers;

19 (B) an advanced degree in economics, mathematics,
20 engineering, risk management, or a related area of
21 study;

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

24 (D) expertise in wholesale electricity market
25 rules, including those established by the Federal
26 Energy Regulatory Commission and regional transmission

1 organizations;

2 (E) expertise in credit protocols and familiarity
3 with contract protocols;

4 (F) adequate resources to perform and fulfill the
5 required functions and responsibilities; and

6 (G) the absence of a conflict of interest and
7 inappropriate bias for or against potential bidders or
8 the affected electric utilities.

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

15 (A) direct previous experience administering a
16 large-scale competitive procurement process;

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

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

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

25 (E) expertise in credit and contract protocols;

26 (F) adequate resources to perform and fulfill the

1 required functions and responsibilities; and

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

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

20 (A) failure to satisfy qualification criteria;

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

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

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

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

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

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

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

25 (a-5) The Planning and Procurement Bureau shall at least
26 every 5 years beginning in 2014 develop feedstock procurement

1 plans and conduct competitive feedstock procurement processes
2 in accordance with the requirements of Section 1-79 of this
3 Act.

4 (1) The Agency shall, at least once every 5 years
5 beginning in 2014, issue a request for qualifications for
6 experts or expert consulting firms to develop the feedstock
7 procurement plans in accordance with Section 1-79 of this
8 Act. In order to qualify, an expert or, in the case of an
9 expert consulting firm, the individual who shall be
10 directly responsible for the work, must have:

11 (A) direct previous experience assembling large
12 scale feedstock supply plans or portfolios involving
13 coal and natural gas for industrial customers;

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

17 (C) ten years of experience in the energy sector,
18 including coal and gas procurement and managing fuel
19 supply risk;

20 (D) expertise in the feedstock markets, which may
21 be particularized to the specific type of feedstock to
22 be purchased in that procurement event;

23 (E) expertise in credit protocols and familiarity
24 with contract protocols;

25 (F) adequate resources to perform and fulfill the
26 required functions and responsibilities; and

1 (G) the absence of a conflict of interest and
2 inappropriate bias for or against potential bidders or
3 the initial clean coal facility.

4 (2) The Agency shall at least every 5 years beginning
5 in 2014, as needed, issue a request for qualifications for
6 a feedstock procurement administrator to conduct the
7 competitive feedstock procurement processes in accordance
8 with Section 1-79 of this Act. In order to qualify, an
9 expert or, in the case of an expert consulting firm, the
10 individual who shall be directly responsible for the work,
11 must have:

12 (A) direct previous experience administering a
13 large scale competitive feedstock procurement process
14 involving coal and natural gas;

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

17 (C) ten years of experience in the energy sector,
18 including coal and gas procurement and managing fuel
19 supply risk;

20 (D) expertise in feedstock market rules and
21 practices, which may be particularized to the specific
22 type of feedstock to be purchased in that procurement
23 event;

24 (E) expertise in credit and contract protocols;

25 (F) adequate resources to perform and fulfill the
26 required functions and responsibilities; and

1 (G) the absence of a conflict of interest and
2 inappropriate bias for or against potential bidders or
3 the initial clean coal facility.

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

23 (A) failure to satisfy qualification criteria;

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

25 (C) evidence of inappropriate bias for or against
26 potential bidders or the initial clean coal facility.

1 The Agency shall remove experts or expert consulting
2 firms from the lists within 10 days after receiving the
3 objections if there is a reasonable basis for an objection
4 and provide the updated lists to the initial clean coal
5 facility and other interested parties. If the Agency fails
6 to remove an expert or expert consulting firm from a list,
7 then an objecting party may seek review by the Commission
8 within 5 days thereafter by filing a petition, and the
9 Commission shall render a ruling on the petition within 10
10 days. There is no right of appeal of the Commission's
11 ruling.

12 (4) The Agency shall issue requests for proposals to
13 the qualified experts or expert consulting firms to develop
14 a feedstock procurement plan for the initial clean coal
15 facility and to serve as feedstock procurement
16 administrator.

17 (5) The Agency shall select an expert or expert
18 consulting firm to develop feedstock procurement plans
19 based on the proposals submitted and shall award at least
20 one-year contracts to those selected with an option for the
21 Agency for renewal for an additional length of time equal
22 to the term of the contract.

23 (6) The Agency shall select, with approval of the
24 Commission, an expert or expert consulting firm to serve as
25 feedstock procurement administrator based on the proposals
26 submitted. If the Commission rejects the Agency's

1 selection within 5 days after being notified of the
2 Agency's selection, then the Agency shall submit another
3 recommendation within 3 days after the Commission's
4 rejection based on the proposals submitted. The Agency
5 shall award a 5-year contract to the expert or expert
6 consulting firm so selected with Commission approval with
7 an option for the Agency for a 5-year renewal.

8 (b) The experts or expert consulting firms retained by the
9 Agency under subsection (a) of this Section shall, as
10 appropriate, prepare procurement plans, and conduct a
11 competitive procurement process as prescribed in Section
12 16-111.5 of the Public Utilities Act, to ensure adequate,
13 reliable, affordable, efficient, and environmentally
14 sustainable electric service at the lowest total cost over
15 time, taking into account any benefits of price stability, for
16 eligible retail customers of electric utilities that on
17 December 31, 2005 provided electric service to at least 100,000
18 customers in the State of Illinois, and for eligible Illinois
19 retail customers of small multi-jurisdictional electric
20 utilities that (i) on December 31, 2005 served less than
21 100,000 customers in Illinois and (ii) request a procurement
22 plan for their Illinois jurisdictional load.

23 (b-5) The experts or expert consulting firms retained by
24 the Agency pursuant to subsection (a-5) of this Section shall,
25 as appropriate, prepare feedstock procurement plans and
26 conduct a competitive feedstock procurement process as

1 prescribed in Section 1-79 of this Act to ensure adequate,
2 reliable, affordable feedstocks, taking into account any
3 benefits of price stability, for the initial clean coal
4 facility.

5 (c) Renewable portfolio standard.

6 (1) The procurement plans under subsection (a) of this
7 Section shall include cost-effective renewable energy
8 resources. A minimum percentage of each utility's total
9 supply to serve the load of eligible retail customers, as
10 defined in Section 16-111.5(a) of the Public Utilities Act,
11 procured for each of the following years shall be generated
12 from cost-effective renewable energy resources: at least
13 2% by June 1, 2008; at least 4% by June 1, 2009; at least 5%
14 by June 1, 2010; at least 6% by June 1, 2011; at least 7% by
15 June 1, 2012; at least 8% by June 1, 2013; at least 9% by
16 June 1, 2014; at least 10% by June 1, 2015; and increasing
17 by at least 1.5% each year thereafter to at least 25% by
18 June 1, 2025. For periods beginning on and after June 1,
19 2014, the procurement plans shall include the procurement
20 of cost-effective renewable energy credits equal to the
21 projected kilowatthour usage of the delivery services
22 non-eligible retail customers within the service area of
23 the electric utility times the applicable renewable energy
24 resource percentage for that year as set forth under this
25 paragraph (1). To the extent that it is available, at least
26 75% of the renewable energy resources used to meet these

1 standards shall come from wind generation and, beginning on
2 June 1, 2011, at least the following percentages of the
3 renewable energy resources used to meet these standards
4 shall come from photovoltaics on the following schedule:
5 0.5% by June 1, 2012, 1.5% by June 1, 2013; 3% by June 1,
6 2014; and 6% by June 1, 2015 and thereafter. Of the
7 renewable energy resources procured pursuant to this
8 Section, at least the following percentages shall come from
9 distributed renewable energy generation devices: 0.5% by
10 June 1, 2014 ~~2013~~, 0.75% by June 1, 2015 ~~2014~~, and 1% by
11 June 1, 2016 ~~2015~~ and thereafter. To the extent available,
12 half of the renewable energy resources procured from
13 distributed renewable energy generation shall come from
14 devices of less than 25 kilowatts in nameplate capacity.
15 Renewable energy resources procured from distributed
16 generation devices may also count towards the required
17 percentages for wind and solar photovoltaics. Procurement
18 of renewable energy resources from distributed renewable
19 energy generation devices shall be done on an annual basis
20 through multi-year contracts of no less than 5 years, and
21 shall consist solely of renewable energy credits.

22 The Agency shall create credit requirements for
23 suppliers of distributed renewable energy. In order to
24 minimize the administrative burden on contracting
25 entities, the Agency shall solicit the use of third-party
26 organizations to aggregate distributed renewable energy

1 into groups of no less than one megawatt in installed
2 capacity. These third-party organizations shall administer
3 contracts with individual distributed renewable energy
4 generation device owners. An individual distributed
5 renewable energy generation device owner shall have the
6 ability to measure the output of his or her distributed
7 renewable energy generation device.

8 For purposes of this subsection (c), "cost-effective"
9 means that the costs of procuring renewable energy
10 resources to serve the load of the electric utility's
11 eligible retail customers and the costs of procuring
12 renewable energy credits with respect to the kilowatthour
13 usage of the delivery services non-eligible retail
14 customers within the electric utility's service area do not
15 cause the applicable limits ~~limit~~ stated in paragraph (2)
16 of this subsection (c) to be exceeded and do not exceed
17 benchmarks based on market prices for renewable energy
18 resources in the region, which shall be developed by the
19 procurement administrator, in consultation with the
20 Commission staff, Agency staff, and the procurement
21 monitor and shall be subject to Commission review and
22 approval.

23 (2) For purposes of this subsection (c), the required
24 procurement of cost-effective renewable energy resources
25 to serve the load of the electric utility's eligible retail
26 customers for a particular year shall be measured as a

1 percentage of the actual amount of electricity
2 (megawatt-hours) supplied by the electric utility to
3 eligible retail customers in the planning year ending
4 immediately prior to the procurement and, for periods
5 beginning on and after June 1, 2014, the required
6 procurement of cost-effective renewable energy credits
7 with respect to the delivery services non-eligible retail
8 customers of the electric utility shall be based on the
9 actual amount of electricity (megawatt-hours) delivered by
10 the electric utility to delivery services non-eligible
11 retail customers in its service area in the planning year
12 ending immediately prior to the procurement. For purposes
13 of this subsection (c), the amount paid per kilowatthour
14 means the total amount paid for electric service expressed
15 on a per kilowatthour basis. For purposes of this
16 subsection (c), the total amount paid for electric service
17 includes without limitation amounts paid for supply,
18 transmission, distribution, surcharges, and add-on taxes.

19 Notwithstanding the requirements of this subsection
20 (c), the total of renewable energy resources procured
21 pursuant to the procurement plan with respect to the load
22 of the electric utility's eligible retail customers for any
23 single year shall be reduced by an amount necessary to
24 limit the annual estimated average net increase due to the
25 costs of these resources included in the amounts paid by
26 eligible retail customers in connection with electric

1 service to:

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

5 (B) in 2009, the greater of an additional 0.5% of
6 the amount paid per kilowatthour by those customers
7 during the year ending May 31, 2008 or 1% of the amount
8 paid per kilowatthour by those customers during the
9 year ending May 31, 2007;

10 (C) in 2010, the greater of an additional 0.5% of
11 the amount paid per kilowatthour by those customers
12 during the year ending May 31, 2009 or 1.5% of the
13 amount paid per kilowatthour by those customers during
14 the year ending May 31, 2007;

15 (D) in 2011, the greater of an additional 0.5% of
16 the amount paid per kilowatthour by those customers
17 during the year ending May 31, 2010 or 2% of the amount
18 paid per kilowatthour by those customers during the
19 year ending May 31, 2007; and

20 (E) thereafter, the amount of renewable energy
21 resources procured pursuant to the procurement plan
22 for any single year shall be reduced by an amount
23 necessary to limit the estimated average net increase
24 due to the cost of these resources included in the
25 amounts paid by eligible retail customers in
26 connection with electric service to no more than the

1 greater of 2.015% of the amount paid per kilowatthour
2 by those customers during the year ending May 31, 2007
3 or the incremental amount per kilowatthour paid for
4 these resources in 2011.

5 For periods beginning on and after June 1, 2014,
6 any excluded renewable energy resources contract costs
7 shall be recoverable by the electric utility through
8 its tariffed charges for delivery services pursuant to
9 Section 16-108 of the Public Utilities Act to its
10 residential class delivery services non-eligible
11 retail customers.

12 Notwithstanding the requirements of this
13 subsection (c), for years beginning on and after June
14 1, 2014, the total amount of renewable energy credits
15 procured pursuant to the procurement plan with respect
16 to the kilowatthour usage of the delivery services
17 non-eligible retail customers in the electric
18 utility's service area shall be reduced by an amount
19 necessary to limit the cost of renewable energy credits
20 and excluded renewable energy resources costs included
21 in the electric utility's charges per kilowatthour for
22 delivery services to its delivery services
23 non-eligible retail customers to an amount equal to no
24 more than 2.015% of the amount paid by the electric
25 utility's eligible retail customers per kilowatthour
26 for electric service during the year ended May 31,

1 2007.

2 No later than June 30, 2011, the Commission shall
3 review the limitation on the amount of renewable energy
4 resources procured pursuant to this subsection (c) and
5 report to the General Assembly its findings as to
6 whether that limitation unduly constrains the
7 procurement of cost-effective renewable energy
8 resources.

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

1 ~~Illinois, they shall be purchased elsewhere and shall be~~
2 ~~counted towards compliance.~~

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

5 (5) Beginning with the year commencing June 1, 2010,
6 and ending with the year commencing June 1, 2014, an
7 electric utility subject to this subsection (c) shall apply
8 the lesser of the maximum alternative compliance payment
9 rate or the most recent estimated alternative compliance
10 payment rate for its service territory for the
11 corresponding compliance period, established pursuant to
12 subsection (d) of Section 16-115D of the Public Utilities
13 Act to its retail customers that take service pursuant to
14 the electric utility's hourly pricing tariff or tariffs.
15 The electric utility shall retain all amounts collected as
16 a result of the application of the alternative compliance
17 payment rate or rates to such customers, and, beginning in
18 2011, the utility shall include in the information provided
19 under item (1) of subsection (d) of Section 16-111.5 of the
20 Public Utilities Act the amounts collected under the
21 alternative compliance payment rate or rates for the prior
22 year ending May 31. Notwithstanding any limitation on the
23 procurement of renewable energy resources imposed by item
24 (2) of this subsection (c), the Agency shall increase its
25 spending on the purchase of renewable energy resources to
26 be procured by the electric utility for the next plan year

1 by an amount equal to the amounts collected by the utility
2 under the alternative compliance payment rate or rates in
3 the prior year ending May 31. For years commencing on and
4 after June 1, 2014, the kilowatthours supplied by the
5 electric utility to its retail customers that take service
6 pursuant to the electric utility's hourly pricing tariff or
7 tariffs shall be considered usage of delivery services
8 non-eligible retail customers. Beginning April 1, 2012,
9 and each year thereafter, the Agency shall prepare a public
10 report for the General Assembly and Illinois Commerce
11 Commission that shall include, but not necessarily be
12 limited to:

13 (A) a comparison of the costs associated with the
14 Agency's procurement of renewable energy resources to
15 (1) the Agency's costs associated with electricity
16 generated by other types of generation facilities and
17 (2) the benefits associated with the Agency's
18 procurement of renewable energy resources; and

19 (B) an analysis of the rate impacts associated with
20 the Illinois Power Agency's procurement of renewable
21 resources, including, but not limited to, any
22 long-term contracts, on the eligible retail customers
23 of electric utilities.

24 The analysis shall include the Agency's estimate of the
25 total dollar impact that the Agency's procurement of
26 renewable resources has had on the annual electricity bills

1 of the customer classes that comprise each eligible retail
2 customer class taking service from an electric utility. The
3 Agency's report shall also analyze how the operation of the
4 alternative compliance payment mechanism, any long-term
5 contracts, or other aspects of the applicable renewable
6 portfolio standards impacts the rates of customers of
7 alternative retail electric suppliers.

8 (6) Each annual procurement plan for periods beginning
9 on and after June 1, 2014 shall include (i) the procurement
10 of electricity from cost-effective renewable energy
11 resources to meet the renewable energy resource
12 requirements specified in paragraph (2) of this subsection
13 (c) with respect to the load of the electric utility's
14 eligible retail customers and (ii) the procurement of
15 renewable energy credits to meet the renewable energy
16 resource requirements specified in paragraph (2) of this
17 subsection (c) with respect to the kilowatthour usage of
18 the electric utility's delivery services non-eligible
19 retail customers; provided that the electric utility's
20 obligation to purchase renewable energy credits with
21 respect to the kilowatthour usage of delivery services
22 non-eligible retail customers shall be reduced by the
23 amount of any purchases of renewable energy credits by the
24 Agency for the year in respect of the electric utility's
25 service area pursuant to Section 1-56 of this Act using the
26 Illinois Power Agency Renewable Energy Resources Fund. All

1 procurements of bundled renewable energy resources and
2 renewable energy credits in the procurement plans of the
3 electric utilities shall be pursuant to competitive
4 bidding processes and shall be approved by the Commission
5 pursuant to Section 16-111.5 of the Public Utilities Act.
6 Procurements of bundled renewable energy resources shall
7 be used to secure supply from renewable energy assets that
8 can provide monthly energy quantity guarantees for peak and
9 off-peak wrap periods. Projects shall be chosen based on
10 the value of the energy procured. The value of the energy
11 shall be determined by the Agency by utilizing a "time of
12 day" methodology to evaluate the energy profile of each
13 project.

14 (d) Clean coal portfolio standard.

15 (1) The General Assembly finds that there are abundant
16 and cost-effective supplies of high volatile rank
17 bituminous coal with a sulfur content of at least 1.7
18 pounds per million btu energy content, and that it is
19 technologically feasible to produce electric energy using
20 such coal supplies reliably. The General Assembly further
21 finds that state-of-the-art gasification systems are
22 available to convert coal supplies with the foregoing
23 characteristics into gas and that it is feasible to use
24 such gas to generate electric energy without exceeding
25 allowable emission rates for sulfur dioxide, nitrogen
26 oxides, carbon monoxide, particulates, and mercury for a

1 natural gas-fired combined-cycle facility of the same size
2 as and in the same location as a clean coal facility
3 incorporating a gasification system and a combined cycle
4 power block. The General Assembly also finds that it is
5 feasible to engineer and construct systems designed to
6 capture and sequester the percentages of the carbon dioxide
7 emissions from clean coal facilities as specified in this
8 Act. Accordingly, the General Assembly finds it necessary
9 for the health, safety, welfare, and prosperity of Illinois
10 citizens to require Illinois electric utilities and
11 alternative retail electric suppliers to contract with the
12 initial clean coal facility to meet a portion of the needs
13 of each such electric utility's and alternative retail
14 electric supplier's retail load on the terms and conditions
15 described under this Act.

16 The procurement plans under subsection (a) of this
17 Section shall include electricity generated using clean
18 coal. Each electric utility shall enter into one or more
19 sourcing agreements with the initial clean coal facility,
20 as provided in paragraph (3) of this subsection (d),
21 covering electricity generated by the initial clean coal
22 facility representing (A) at least 5% of that ~~each~~
23 utility's ~~total supply to serve the~~ load of eligible retail
24 customers in the immediately preceding year ~~2015 and each~~
25 ~~year thereafter~~, as described in paragraph (3) of this
26 subsection (d), or (B) such lesser amount as may be

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

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

21 Utilities shall maintain adequate records documenting
22 the purchases under the sourcing agreement to comply with
23 this subsection (d) and shall file an accounting with the
24 load forecast that must be filed with the Agency by July 15
25 of each year, in accordance with subsection (d) of Section
26 16-111.5 of the Public Utilities Act.

1 A utility shall be deemed to have complied with the
2 clean coal portfolio standard specified in this subsection
3 (d) if the utility enters into a sourcing agreement as
4 required by this subsection (d).

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

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

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

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

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

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

19 (E) thereafter:

20 (i) A calculation shall be made for each year
21 to determine whether, ~~the total amount paid under~~
22 ~~sourcing agreements with clean coal facilities~~
23 ~~pursuant to the procurement plan for any single~~
24 ~~year shall be reduced by an amount necessary to~~
25 ~~limit~~ the estimated average net per kilowatthour
26 increase due to the cost of electric power

1 purchased under sourcing agreements and ~~these~~
2 ~~resources~~ included in the amounts paid by small
3 electric ~~eligible retail~~ customers in connection
4 with electric service exceeds ~~to no more than~~ the
5 greater of (i) 2.015% of the amount paid per
6 kilowatthour by eligible retail ~~those~~ customers
7 during the year ending May 31, 2009 or (ii) the
8 incremental amount per kilowatthour paid for these
9 resources in 2013. These requirements may be
10 altered only as provided by statute. For purposes
11 of such calculation, such average net per
12 kilowatthour increase in rates of small electric
13 customers that are not eligible retail customers
14 shall be deemed to be equal to such average net per
15 kilowatthour increase in rates of eligible retail
16 customers.

17 (ii) If for any year the small customer rate
18 impact would exceed the limitation described in
19 item (i) of this subparagraph (E), the clean coal
20 fraction for each clean coal electricity buyer
21 shall be adjusted for such year in a manner that
22 will result in (a) the quantity of electric power
23 projected to be purchased by each clean coal
24 electricity buyer being reduced by an amount
25 sufficient to result in such deemed rate impact on
26 all small electric customers (whether served by

1 electric utilities or alternative retail electric
2 suppliers) being equal to such limitation for such
3 year and (b) any such reductions in amounts
4 allocated to the clean coal electricity buyers in
5 order to achieve the objective described in clause
6 (a) of this item (ii) being allocated to, and
7 purchased and paid for by, the clean coal
8 electricity buyers in proportion to their retail
9 sales to large electric customers.

10 (iii) Each year, after taking account of the
11 adjustment, if any, provided for in item (ii) of
12 this subparagraph (E), a calculation shall be made
13 to determine whether the large customer deemed
14 rate impact for such year exceeds \$0.005 per
15 kilowatthour. The "large customer deemed rate
16 impact" for any year is the projected increase in
17 electric rates of large electric customers
18 (whether served by electric utilities or
19 alternative retail electric suppliers) due to the
20 cost of electric power purchased under sourcing
21 agreements to the extent it is based on each clean
22 coal electricity buyer's retail sales to large
23 electric customers, which shall be calculated in
24 substantially the same manner as the calculation
25 of rate impact on small electric customers, and
26 shall assume that such cost of purchases under

1 sourcing agreements is passed through
2 proportionally by the clean coal electricity
3 buyers to their large electric customers. The
4 calculation of the large customer deemed rate
5 impact shall (a) assume that the total retail sales
6 (expressed in kilowatthours sold) to large
7 electric customers by all clean coal electricity
8 buyers for any year is the greater of the actual
9 amount of such sales in such year and the amount of
10 such sales in 2009 and (b) exclude from the
11 calculation any actual costs for such year
12 incurred by the initial clean coal facility to the
13 extent such costs exceed the corresponding amount
14 assumed in the "reference case" of the facility
15 cost report for the initial clean coal facility for
16 such year and are not principally within the
17 reasonable control of the initial clean coal
18 facility.

19 Any operating costs or revenues deviating from
20 the corresponding costs assumed in the "reference
21 case" of the facility cost report for the initial
22 clean coal facility as a result of changes in
23 market prices, including, but not limited to,
24 prices of coal, natural gas, electricity,
25 by-products, and emissions allowances, shall be
26 deemed to be outside of the reasonable control of

1 the initial clean coal facility and excluded from
2 the calculation.

3 Any costs exceeding the corresponding costs
4 assumed in the "reference case" of the facility
5 cost report for the initial clean coal facility as
6 a result of changes in capital costs, fixed
7 operating costs, variable operating costs,
8 operating efficiency, and availability, except in
9 each case to the extent resulting from a change in
10 market prices, as described in the immediately
11 preceding paragraph, or from a change in law, as
12 defined in subsection (b) of Section 1-76 of this
13 Act, shall be deemed to be within the reasonable
14 control of the initial clean coal facility and
15 included in the calculation.

16 (iv) If for any year the large customer deemed
17 rate impact would exceed the limitation described
18 in item (iii) of this subparagraph (E), the
19 quantity of electric power required to be
20 purchased by each clean coal electricity buyer
21 that serves large electric customers under its
22 sourcing agreement for such year shall be reduced
23 by such amount as will result in the large customer
24 deemed rate impact being equal to such limitation
25 for such year, and the clean coal fractions of each
26 clean coal electricity buyer that serves large

1 electric customers shall be adjusted for such year
2 to reflect this reduction; provided, however, that
3 the reduction under this item (iv) shall not exceed
4 in any year an amount that would result in revenues
5 under the sourcing agreements being reduced by
6 more than \$50,000,000 in the aggregate for such
7 year. Any quantities of electric power not
8 required to be purchased pursuant to the operation
9 of the immediately preceding sentence may be
10 disposed of by the initial clean coal facility for
11 its own account, and the proceeds of any sales of
12 such electric power shall not be included in the
13 formula rate.

14 (v) The details of the calculations
15 contemplated by this subparagraph (E) shall be set
16 forth in the sourcing agreements.

17 (vi) No later than June 30, 2016 2015, the
18 Commission shall review the limitation on the
19 total amount purchased ~~paid~~ under sourcing
20 agreements, if any, with the initial clean coal
21 facility ~~facilities~~ pursuant to this subsection
22 (d) and report to the General Assembly its findings
23 as to the effect of the ~~whether that~~ limitation on
24 the initial clean coal facility, electric
25 utilities, alternative retail electric suppliers,
26 and customers of the electric utilities and the

1 ~~alternative retail electric suppliers unduly~~
2 ~~constrains the amount of electricity generated by~~
3 ~~cost-effective clean coal facilities that is~~
4 ~~covered by sourcing agreements.~~

5 (3) Initial clean coal facility. In order to promote
6 the use development of clean coal electric power facilities
7 in Illinois, each electric utility subject to this Section
8 shall execute a sourcing agreement to source electricity
9 from the initial clean coal facility. The Agency shall
10 accept applications to be designated the initial clean coal
11 facility for a period of 30 days after the effective date
12 of this amendatory Act of the 98th General Assembly. Each
13 application shall include a proposed sourcing agreement in
14 accordance with the requirements of this paragraph (3) and
15 information showing that the applicant meets the other
16 criteria set out in the definition of initial clean coal
17 facility provided in Section 1-10 of this Act. In the event
18 that only one proposed initial clean coal facility that
19 meets each of the requirements submits a proposed sourcing
20 agreement to the Agency within that time period, the Agency
21 shall select such proposed initial clean coal facility as
22 the initial clean coal facility. In the event that more
23 than one proposed initial clean coal facility that meets
24 each of the requirements submit a proposed sourcing
25 agreement to the Agency within that time period, the Agency
26 shall select as the initial clean coal facility the

1 electric generating facility that the Agency determines
2 best promotes the needs and interests of the citizens of
3 the State of Illinois. In making such determination, the
4 Agency shall take into account for each proposed initial
5 clean coal facility the technical and economic feasibility
6 of such facility, including access to capital and the
7 financeability of the facility based upon the proposed
8 sourcing agreement, the projected environmental
9 performance of such facility, the ability of such facility
10 to be dispatched to support the transmission grid's
11 capability to integrate with wind, solar, and other
12 intermittent resources, and the reliability and cost of
13 electric transmission service from the facility to the
14 electric utilities. The Agency shall announce the
15 designation of the initial clean coal facility within 45
16 days after the effective date of this amendatory Act of the
17 98th General Assembly. ~~a proposed clean coal facility in~~
18 ~~Illinois (the "initial clean coal facility") that will have~~
19 ~~a nameplate capacity of at least 500 MW when commercial~~
20 ~~operation commences, that has a final Clean Air Act permit~~
21 ~~on the effective date of this amendatory Act of the 95th~~
22 ~~General Assembly, and that will meet the definition of~~
23 ~~clean coal facility in Section 1-10 of this Act when~~
24 ~~commercial operation commences. The sourcing agreements~~
25 ~~with this initial clean coal facility shall be subject to~~
26 ~~both approval of the initial clean coal facility by the~~

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

10 (A) provisions governing the price paid for
11 electricity generated by the initial clean coal
12 facility, which shall be determined according to
13 clause (iv) of subparagraph (B) of this paragraph (3);
14 ~~a formula contractual price (the "contract price")~~
15 ~~approved pursuant to paragraph (4) of this subsection~~
16 ~~(d), which shall:~~

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

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

16 (B) power purchase provisions, which shall:

17 (i) provide that the utility party to the
18 sourcing agreement shall pay the contract price
19 under such sourcing agreement determined pursuant
20 to subparagraph (A);

21 (ii) require delivery of electricity by the
22 initial clean coal facility to the regional
23 transmission organization market of the utility
24 party to the sourcing agreement;

25 (iii) require the utility party to the
26 sourcing agreement to buy from the initial clean

1 coal facility in each hour an amount of energy
2 equal to all clean coal energy made available from
3 the initial clean coal facility during such hour
4 times the clean coal fraction for such utility for
5 the applicable month, provided that the amount
6 purchased by the utility in any year will be
7 limited by paragraph (2) of this subsection (d);

8 (iv) require the utility party to the sourcing
9 agreement to pay to the initial clean coal facility
10 for each month the following: the electric
11 generation variable charge multiplied by the
12 quantity of energy required to be purchased by such
13 utility in such month plus the product of the sum
14 of the fuel charge plus the fixed monthly charge,
15 based on the MW of nameplate capacity of the
16 initial clean coal facility's power block, for
17 such month, multiplied by the fraction determined
18 for the utility for such month according to clause
19 (iii) of this subparagraph (B); for purposes of
20 this clause (iv), "electric generation variable
21 charge", "fuel charge", and "fixed monthly charge"
22 shall each have the meaning ascribed to the term in
23 subsection (a) of Section 1-76 of this Act; and

24 (v) be considered pre-existing contracts in
25 the utility's procurement plans for eligible
26 retail customers; the provisions of this

1 subparagraph (B) are severable under Section 1.31
2 of the Statute on Statutes;

3 ~~(i) provide that the utility party to such~~
4 ~~sourcing agreement shall pay the contract price~~
5 ~~for electricity delivered under such sourcing~~
6 ~~agreement;~~

7 ~~(ii) require delivery of electricity to the~~
8 ~~regional transmission organization market of the~~
9 ~~utility that is party to such sourcing agreement;~~

10 ~~(iii) require the utility party to such~~
11 ~~sourcing agreement to buy from the initial clean~~
12 ~~coal facility in each hour an amount of energy~~
13 ~~equal to all clean coal energy made available from~~
14 ~~the initial clean coal facility during such hour~~
15 ~~times a fraction, the numerator of which is such~~
16 ~~utility's retail market sales of electricity~~
17 ~~(expressed in kilowatthours sold) in the State~~
18 ~~during the prior calendar month and the~~
19 ~~denominator of which is the total retail market~~
20 ~~sales of electricity (expressed in kilowatthours~~
21 ~~sold) in the State by utilities during such prior~~
22 ~~month and the sales of electricity (expressed in~~
23 ~~kilowatthours sold) in the State by alternative~~
24 ~~retail electric suppliers during such prior month~~
25 ~~that are subject to the requirements of this~~
26 ~~subsection (d) and paragraph (5) of subsection (d)~~

1 ~~of Section 16-115 of the Public Utilities Act,~~
2 ~~provided that the amount purchased by the utility~~
3 ~~in any year will be limited by paragraph (2) of~~
4 ~~this subsection (d); and~~

5 ~~(iv) be considered pre existing contracts in~~
6 ~~such utility's procurement plans for eligible~~
7 ~~retail customers;~~

8 (C) contract for differences provisions, which
9 shall:

10 (i) require the utility party to such sourcing
11 agreement to contract with the initial clean coal
12 facility in each hour with respect to an amount of
13 energy equal to all clean coal energy made
14 available from the initial clean coal facility
15 during such hour times the clean coal a fraction
16 for such utility for applicable month, ~~the~~
17 ~~numerator of which is such utility's retail market~~
18 ~~sales of electricity (expressed in kilowatthours~~
19 ~~sold) in the utility's service territory in the~~
20 ~~State during the prior calendar month and the~~
21 ~~denominator of which is the total retail market~~
22 ~~sales of electricity (expressed in kilowatthours~~
23 ~~sold) in the State by utilities during such prior~~
24 ~~month and the sales of electricity (expressed in~~
25 ~~kilowatthours sold) in the State by alternative~~
26 ~~retail electric suppliers during such prior month~~

1 ~~that are subject to the requirements of this~~
2 ~~subsection (d) and paragraph (5) of subsection (d)~~
3 ~~of Section 16-115 of the Public Utilities Act,~~
4 provided that the amount purchased ~~paid~~ by the
5 utility in any year will be limited by paragraph
6 (2) of this subsection (d);

7 (ii) provide that the utility's payment
8 obligation in respect of the quantity of
9 electricity determined pursuant to the preceding
10 clause (i) for any month shall be ~~limited to an~~
11 ~~amount~~ equal to ~~(1)~~ the difference of the electric
12 generation variable charge, the fuel charge, and
13 the fixed monthly charge, that would be payable by
14 the utility for such month based on such quantity
15 of electricity between the contract price
16 ~~determined~~ pursuant to clause (iv) of subparagraph
17 (B) (A) of this paragraph (3), minus the product of
18 ~~of this subsection (d) and the day-ahead price for~~
19 electricity delivered to the regional transmission
20 organization market of the electric utility that
21 is party to such sourcing agreement (or any
22 successor delivery point at which such utility's
23 supply obligations are financially settled on an
24 hourly basis) (the "reference price") on the day
25 preceding the day on which the electricity is
26 delivered to the initial clean coal facility

1 busbar, multiplied by (2) the quantity of
2 electricity determined pursuant to the preceding
3 clause (i), calculated for each hour in such month;
4 and

5 (iii) not require the utility to take physical
6 delivery of the electricity produced by the
7 facility;

8 (D) general provisions, which shall:

9 (i) specify a term of no more than 30 years,
10 commencing on the commercial operation date of the
11 facility;

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

20 (iii) provide that all costs associated with
21 the initial clean coal facility will be
22 periodically reported to the Federal Energy
23 Regulatory Commission and to purchasers in
24 accordance with applicable laws governing
25 cost-based wholesale power contracts;

26 (iv) permit the Illinois Power Agency, if it is

1 so authorized by law, to assume ownership of the
2 initial clean coal facility, without monetary
3 consideration and otherwise on reasonable terms
4 acceptable to the Agency, if the Agency so requests
5 no less than 3 years prior to the end of the stated
6 contract term;

7 (v) require the owner of the initial clean coal
8 facility to comply with provisions reflecting
9 those set forth in Section 1-76.5 of this Act
10 ~~provide documentation to the Commission each year,~~
11 ~~starting in the facility's first year of~~
12 ~~commercial operation, accurately reporting the~~
13 ~~quantity of carbon emissions from the facility~~
14 ~~that have been captured and sequestered and report~~
15 ~~any quantities of carbon released from the site or~~
16 ~~sites at which carbon emissions were sequestered~~
17 ~~in prior years, based on continuous monitoring of~~
18 ~~such sites. If, in any year after the first year of~~
19 ~~commercial operation, the owner of the facility~~
20 ~~fails to demonstrate that the initial clean coal~~
21 ~~facility captured and sequestered at least 50% of~~
22 ~~the total carbon emissions that the facility would~~
23 ~~otherwise emit or that sequestration of emissions~~
24 ~~from prior years has failed, resulting in the~~
25 ~~release of carbon dioxide into the atmosphere, the~~
26 ~~owner of the facility must offset excess~~

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

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

8 (vi) ~~include limits on, and accordingly~~
9 provide for a reduction ~~modification~~ of, the
10 amount the utility is required to source under the
11 sourcing agreement consistent with paragraph (2)
12 of this 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 (vii) ~~(viii)~~ limit the utility's obligation to
3 such amount as the utility is allowed to recover
4 through tariffs filed with the Commission,
5 ~~provided that neither the clean coal facility nor~~
6 ~~the utility waives any right to assert federal~~
7 ~~pre-emption or any other argument in response to a~~
8 ~~purported disallowance of recovery costs;~~

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

15 (ix) provide that each electric utility shall
16 have the right to determine whether the
17 obligations of the utility party under the
18 sourcing agreement shall be governed by the power
19 purchase provisions or the contract for
20 differences provisions before entering into the
21 sourcing agreements; the provisions of this item
22 (ix) are severable under Section 1.31 of the
23 Statute on Statutes;

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

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

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

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

18 (xii) ~~(xiii)~~ conform with customary lender
19 requirements in power purchase agreements used as
20 the basis for financing non-utility generators; ~~and~~

21 (xiii) provide for performance incentives
22 regarding availability, efficiency, and by-product
23 quantities, with premium performance and
24 shortfalls in performance to result in positive
25 and negative adjustments, respectively, to the
26 rate of return approved by the Commission,

1 provided that such rate of return in any year shall
2 not be decreased by more than \$25,000,000 or
3 increased by more than \$12,500,000 as a result of
4 such performance incentives. Such performance
5 incentives shall be structured so that any
6 increases in the rate of return as a result of such
7 performance incentives are designed not to exceed
8 the projected benefits to the buyers resulting
9 from the initial clean coal facility's achievement
10 of that performance incentive;

11 (xiv) include forecasting and scheduling
12 obligations that take account of the requirements
13 of the applicable regional transmission
14 organizations;

15 (xv) include operating guidelines relating to
16 the operating configuration and dispatch of the
17 initial clean coal facility, which guidelines
18 shall be subject to change from time to time with
19 input from a committee consisting of
20 representatives of the electric utilities and
21 alternative retail electric suppliers that are
22 parties to sourcing agreements with the initial
23 clean coal facility; such operating guidelines
24 shall take account the initial clean coal
25 facility's obligations under any agreement for the
26 purchase of SNG entered into pursuant to item (xvi)

1 of this subparagraph (D) and shall be based on
2 principles of economic dispatch and the assumption
3 that the variable cost of SNG purchased pursuant to
4 such agreement is equal to the market price of
5 natural gas delivered to the initial clean coal
6 facility; any actions taken or not taken by the
7 owner of the initial clean coal facility in
8 compliance with such operating guidelines shall be
9 deemed to be prudent, and the prudence of the costs
10 resulting from the action shall be evaluated in
11 light of the fact that the initial clean coal
12 facility is required to comply with such operating
13 guidelines; and

14 (xvi) authorize the initial clean coal
15 facility to enter into an agreement with a clean
16 coal SNG facility or a clean coal SNG brownfield
17 facility for the purchase by the initial clean coal
18 facility during all or part of the term of the
19 sourcing agreement a quantity of SNG produced by
20 such clean coal SNG facility or clean coal SNG
21 brownfield facility each year up to the lesser of
22 (x) the initial clean coal facility's requirements
23 for imported methane in such year and (y) 16% of
24 the SNG produced by such clean coal SNG facility or
25 clean coal SNG brownfield facility during such
26 year at a delivered price to be set forth in such

1 agreement; such agreement shall provide for the
2 timing of gas deliveries in a manner that
3 reasonably accommodates the initial clean coal
4 facility's fuel requirements and generation
5 schedule; the parties to such agreement may, if
6 they mutually agree, structure such agreement as a
7 financial settlement arrangement for the
8 quantities of SNG set forth above, and such
9 arrangement shall be deemed to be an agreement
10 contemplated by this item (xvi); the form for such
11 agreement shall be subject to approval by the
12 Agency pursuant to a procedure substantially the
13 same as that provided in paragraph (4) of this
14 subsection (d) for the sourcing agreements, with
15 the clean coal SNG facility or clean coal SNG
16 brownfield facility participating in place of each
17 electric utility, and pursuant to a schedule to be
18 proposed by the initial clean coal facility and
19 approved by the Agency.

20 (4) Effective date of sourcing agreements with the
21 initial clean coal facility. No later than 30 days after
22 the effective date of this amendatory Act of the 98th
23 General Assembly, the initial clean coal facility shall
24 submit a draft sourcing agreement to the Agency and each
25 electric utility required to enter into such agreements
26 pursuant to paragraph (3) of this subsection and the

1 initial clean coal facility and each such electric utility
2 shall promptly and diligently negotiate in good faith over
3 the terms of the sourcing agreement. Within 30 days after
4 receipt of the draft sourcing agreement, each such electric
5 utility shall provide the Agency and the owner of the
6 initial clean coal facility with its comments and
7 recommended revisions to the draft sourcing agreement.
8 Within 15 days after the receipt of the electric utility's
9 comments and recommended revisions, the owner of the
10 initial clean coal facility shall submit its responsive
11 comments and a further revised draft of the sourcing
12 agreement to the Agency. The Agency shall review the draft
13 sourcing agreement and comments and retain an independent,
14 qualified, and experienced mediator to mediate disputes
15 over the draft sourcing agreement's terms. The mediator
16 shall not own or control any direct or indirect interest in
17 the initial clean coal facility and shall have no
18 contractual relationship with the initial clean coal
19 facility. The mediator shall have knowledge of the energy
20 industry.

21 If the parties to the sourcing agreement do not agree
22 on the terms in the sourcing agreement within 15 days after
23 receiving the owner's responsive comments and further
24 revised draft, then the mediator retained by the Agency
25 shall mediate the dispute between the parties. If the
26 parties are in agreement on the terms of the sourcing

1 agreement, then the Agency shall approve the final draft
2 sourcing agreement within 30 days after the parties reach
3 agreement and notify the Commission of that agreement. If,
4 within 30 days after the commencement of mediation, the
5 parties have failed to come to agreement, then the Agency
6 shall, with assistance, as appropriate, from the mediator
7 retained pursuant to this paragraph (4), review and revise
8 the draft sourcing agreement as necessary.

9 The Agency may approve a sourcing agreement only after
10 it finds the sourcing agreement is consistent with the
11 provisions of this Act and contains only terms that are
12 balanced and equitable and fairly protect the interests of
13 the parties to the sourcing agreement, with such approval
14 to occur no later than 60 days after the commencement of
15 the mediation. The Agency shall not withhold or condition
16 its approval of the sourcing agreement based upon least
17 cost resource principles or whether or not it would be
18 prudent for buyers to enter into such an agreement if there
19 were no legal requirement to do so, nor shall the
20 resolution of open issues be based on these principles.

21 If the sourcing agreement is approved, then each
22 electric utility required to enter into a sourcing
23 agreement shall have 30 days after either the Agency's
24 approval or the issuance of any necessary approval by the
25 Federal Energy Regulatory Commission, whichever is later,
26 to enter into the sourcing agreement. The Agency shall

1 submit the approved sourcing agreement to the Commission
2 within 15 days after approval. Each electric utility and
3 the initial clean coal facility shall pay a reasonable fee
4 as required by the Agency for its services under this
5 paragraph (4) and shall pay the mediator's reasonable fees,
6 if any. The Agency shall adopt and make public a policy
7 detailing the process for retaining a mediator under this
8 paragraph (4).

9 ~~(4) Effective date of sourcing agreements with the~~
10 ~~initial clean coal facility.~~

11 Any proposed sourcing agreement with the initial clean
12 coal facility shall not become effective unless a facility
13 cost report and Commission report, as described in this
14 paragraph (4), the following reports are prepared and
15 submitted, whether prepared and submitted before or after
16 the effective date of this amendatory Act of the 98th
17 General Assembly. and authorizations and approvals
18 obtained.

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

1 accordance with the requirements of this paragraph (4)
2 of subsection (d) of this Section, and shall provide
3 the Commission and the Agency access to the work
4 papers, relied upon documents, and any other backup
5 documentation related to the facility cost report.

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

1 to receipt of the facility cost report.

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

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

24 ~~The facility cost report shall be prepared as follows:~~

25 (A) The facility cost report shall be prepared by
26 duly licensed engineering and construction firms

1 detailing the estimated capital costs payable to one or
2 more contractors or suppliers for the engineering,
3 procurement and construction of the components
4 comprising the initial clean coal facility and the
5 estimated costs of operation and maintenance of the
6 facility. The facility cost report shall include:

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

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

24 In the facility cost report, the ~~The~~ quoted
25 construction costs shall be expressed in nominal
26 dollars as of the date that the quote is prepared and

1 shall include capitalized financing costs during
2 construction, taxes, insurance, and other owner's
3 costs, and an assumed escalation in materials and labor
4 beyond the date as of which the construction cost quote
5 is expressed.

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

14 (C) The facility cost report shall also include an
15 operating and maintenance cost quote that will provide
16 the estimated cost of delivered fuel, personnel,
17 maintenance contracts, chemicals, catalysts,
18 consumables, spares, and other fixed and variable
19 operations and maintenance costs. The delivered fuel
20 cost estimate will be provided by a recognized third
21 party expert or experts in the fuel and transportation
22 industries. The balance of the operating and
23 maintenance cost quote, excluding delivered fuel
24 costs, will be developed based on the inputs provided
25 by duly licensed engineering and construction firms
26 performing the construction cost quote, potential

1 vendors under long-term service agreements and plant
2 operating agreements, or recognized third party plant
3 operator or operators.

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

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

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

24 (5) Re-powering and retrofitting coal-fired power
25 plants previously owned by Illinois utilities to qualify as
26 clean coal facilities. During the 2009 procurement

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

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

7 (e) The draft procurement plans are subject to public
8 comment, as required by Section 16-111.5 of the Public
9 Utilities Act and Section 1-78 of this Act.

10 (f) The Agency shall submit the final procurement plan to
11 the Commission. The Agency shall revise a procurement plan if
12 the Commission determines that it does not meet the standards
13 set forth in Section 16-111.5 of the Public Utilities Act and
14 Section 1-78 of this Act.

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

18 (h) The Agency shall assess fees to each bidder to recover
19 the costs incurred in connection with a competitive procurement
20 process.

21 (i) The Agency shall assess fees to the initial clean coal
22 facility to recover the costs incurred in preparation of each
23 procurement plan for the initial clean coal facility.

24 (j) The General Assembly finds that enterprises owned by
25 minorities, women, and persons with disabilities are
26 under-represented in sales of goods and services used in the

1 construction of energy projects and accordingly deems it a
2 prudent business practice that is in the interests of the
3 People of the State of Illinois to develop and promote economic
4 opportunities for enterprises owned by minorities, women, and
5 persons with disabilities in the energy production industry.

6 The initial clean coal facility, any clean coal facility,
7 any clean coal SNG brownfield facility, and any clean coal SNG
8 facility shall include in any agreement to sell electric power
9 or SNG entered into pursuant to this Act provisions that
10 require the owner of the facility to make a good faith effort
11 to ensure that an amount equal to not less than 15% of the
12 value of its prime construction contract for the facility shall
13 be established as a goal to be awarded to minority owned
14 businesses, female owned businesses, and businesses owned by a
15 person with a disability; provided that at least 75% of the
16 amount of such total goal shall be for minority owned
17 businesses.

18 "Minority owned business", "female owned business", and
19 "business owned by a person with a disability" shall have the
20 meanings ascribed to them in Section 2 of the Business
21 Enterprise for Minorities, Females, and Persons with
22 Disabilities Act.

23 (k) Any clean coal SNG facility or clean coal SNG
24 brownfield facility shall be authorized to enter into an SNG
25 purchase agreement with the initial clean coal facility as
26 described in item (xvi) of subparagraph (D) of paragraph (3) of

1 subsection (d) of this Section.

2 (Source: P.A. 96-159, eff. 8-10-09; 96-1437, eff. 8-17-10;
3 97-325, eff. 8-12-11; 97-616, eff. 10-26-11; 97-618, eff.
4 10-26-11; 97-658, eff. 1-13-12; 97-813, eff. 7-13-12; revised
5 7-25-12.)

6 (20 ILCS 3855/1-76 new)

7 Sec. 1-76. Costs and revenue recoverable by the initial
8 clean coal facility.

9 (a) The price paid for electricity generated by the initial
10 clean coal facility shall be based on a formula rate using a
11 cost of service methodology applicable to wholesale electric
12 power contracts employing a level or deferred capital component
13 and in accordance with the Uniform System of Accounts, subject
14 to and as specifically limited by the provisions set forth in
15 this Section.

16 The formula rate shall determine 3 components of the price
17 under the sourcing agreements: (1) a fuel charge, (2) an
18 electric generation variable charge, and (3) a fixed monthly
19 charge. The fuel charge for any month shall be stated in
20 dollars per month and shall consist of the total actual fuel
21 costs incurred, after taking account of the subtraction of
22 miscellaneous net revenue as provided in subsection (d) of this
23 Section. The electric generation variable charge for any period
24 shall be stated in dollars per MWh and shall consist of all
25 costs incurred by the initial clean coal facility, other than

1 fuel costs, associated with production of electric energy by
2 the initial clean coal facility's power block, which costs vary
3 directly with the level of production of electric energy. The
4 fixed monthly charge shall be stated in dollars per month per
5 MW of nameplate capacity of the initial clean coal facility's
6 power block and shall consist of all costs incurred by the
7 initial clean coal facility that are described in, and as
8 limited by the provisions of, subsections (b), (c), (d), (e),
9 (f), and (g) of this Section, other than the costs incorporated
10 into the calculation of the fuel charge and the electric
11 generation variable charge.

12 No later than 30 days after the approval of the sourcing
13 agreement by the Agency pursuant to paragraph (4) of subsection
14 (d) of Section 1-75 of this Act, the initial clean coal
15 facility shall provide to the Commission projections of its
16 costs for the term of the sourcing agreements. Within 90 days
17 thereafter, the Commission shall, based upon such projections
18 and the provisions of this Section, determine the projected
19 components of the price for each year for the initial clean
20 coal facility. No later than 6 months before the expected
21 commencement of commercial operation of the initial clean coal
22 facility and the commencement of each operating year
23 thereafter, the initial clean coal facility shall submit to the
24 Commission projections of its costs and dispatch levels for the
25 upcoming year. Within 120 days after the receipt of the initial
26 clean coal facility's projections of its costs and dispatch

1 levels for the upcoming year, the Commission shall calculate a
2 fixed monthly charge and an electric generation variable charge
3 for the upcoming year using the inputs to the formula rate
4 under the provisions of this Section. If the Commission does
5 not calculate such components of the price for any year as of
6 the beginning of such year, then the initial clean coal
7 facility shall calculate such components of the price based
8 upon its projections and the provisions of this Section, with
9 any subsequent cost disallowance by the Commission to be
10 reflected through a true-up of costs in the next year. If at
11 any time the Commission, acting in accordance with this
12 Section, disallows any cost, then the amount of such
13 disallowance shall be incorporated as a deduction into the
14 calculation of the fixed monthly charge and the electric
15 generation variable charge, as applicable, for the next year.

16 (b) Capital costs set by the Commission according to this
17 subsection (b) shall be included in the formula rate. "Capital
18 costs" means costs for the purchase of land, buildings,
19 construction, and equipment to be used in the production of
20 electricity, and other costs recorded in the Electric Plant
21 Accounts and other applicable Balance Sheet Accounts of the
22 Uniform System of Accounts for the initial clean coal facility.
23 The Capital Development Board shall calculate a range of
24 capital costs that it believes would be a reasonable cost for
25 the initial clean coal facility. The Capital Development Board
26 shall commence performing its responsibilities under this

1 subsection (b) within 30 days after the effective date of this
2 amendatory Act of the 98th General Assembly. In determining a
3 range of capital costs, the Capital Development Board shall
4 base its evaluation and judgment on professional engineering
5 and regulatory accounting principles and include any cost
6 information and update on costs that may be provided by the
7 initial clean coal facility and shall not employ least cost
8 resource principles. In addition, the Capital Development
9 Board may:

10 (1) include in its consideration the information in a
11 facility cost report, if any, that was prepared and
12 submitted by the initial clean coal facility to the
13 Commission in accordance with paragraph (4) of subsection
14 (d) of Section 1-75 of this Act;

15 (2) consult as much as it deems necessary with the
16 initial clean coal facility;

17 (3) conduct whatever research and investigation it
18 deems necessary; and

19 (4) retain third parties to assist in its
20 determination, provided that such third parties shall not
21 own or control any direct or indirect interest in the
22 initial clean coal facility and shall have no contractual
23 relationship with the initial clean coal facility.

24 The initial clean coal facility shall cooperate with the
25 Capital Development Board in any investigation it deems
26 necessary.

1 The Capital Development Board shall make its final
2 determination of the range of capital costs confidentially and
3 shall submit that range to the Commission in a confidential
4 filing no later than 90 days after the Capital Development
5 Board is required to commence performing its responsibilities
6 under this subsection (b). The initial clean coal facility
7 shall submit to the Commission its estimate of the capital
8 costs to be included in the formula rate. Only after the
9 initial clean coal facility has submitted this estimate shall
10 the Commission publicly announce the range of capital costs
11 submitted by the Capital Development Board. In the event that
12 the estimate submitted by the initial clean coal facility is
13 within or below the range submitted by the Capital Development
14 Board, the initial clean coal facility's estimate shall be
15 approved by the Commission as the amount of pre-approved
16 capital costs.

17 In the event that the estimate submitted by the initial
18 clean coal facility is above the range submitted by the Capital
19 Development Board, the amount of capital costs at the lowest
20 end of the range submitted by the Capital Development Board
21 shall be approved by the Commission as the amount of
22 pre-approved capital costs. "Pre-approved capital costs" means
23 the amount of capital costs that will be included in the
24 formula rate to the extent such costs are actually incurred,
25 with no further review or approval with respect to whether they
26 are prudently incurred. The Commission's determination of

1 pre-approved capital costs shall be made within 15 days after
2 the initial clean coal facility submits its capital cost
3 estimate. The Commission's decision regarding pre-approved
4 capital costs shall be final and shall not be subject to
5 judicial or administrative review.

6 Once made, the Commission's determination of the amount of
7 pre-approved capital costs may not be increased unless the
8 Commission determines that the incremental costs are
9 reasonable, in which case one-third of such reasonable
10 incremental costs shall be included in the formula rate and
11 recoverable by the initial clean coal facility and two-thirds
12 of such costs shall be borne by the initial clean coal facility
13 and its contractors, provided that to the extent such
14 reasonable incremental costs are the result of change in law or
15 non-insurable force majeure, all of such costs shall be
16 included in the formula rate and recoverable by the initial
17 clean coal facility.

18 "Change in law" means any change, including any enactment,
19 repeal, or amendment, in a law, ordinance, rule, regulation,
20 interpretation, permit, license, consent or order, including
21 those relating to taxes or to environmental matters, or in the
22 interpretation or application thereof by any governmental
23 authority occurring after May 31, 2013.

24 "Non-insurable force majeure" means events outside of the
25 reasonable control of the owner of the initial clean coal
26 facility and its contractors, subcontractors, and agents that

1 are not included on a list, to be attached to the sourcing
2 agreement and subject to the procedures set forth in paragraph
3 (4) of subsection (d) of Section 1-75 of this Act, of events
4 that are customarily covered by builder's risk insurance
5 policies for the construction of electric generating plants and
6 other large process plants in the United States. "Non-insurable
7 force majeure" shall not include changes in prices or other
8 changes in market conditions.

9 Any rebates, refunds, or other payments received by the
10 owner of the initial clean coal facility from any of its
11 contractors with respect to the contractor bearing risk for
12 capital cost overruns shall be excluded from miscellaneous net
13 revenue and shall not otherwise reduce the costs of the owner
14 of the initial clean coal facility for purposes of the formula
15 rate. For purposes of this subsection (b), "reasonable" means
16 that the decisions, construction, and supervision of
17 construction by the owner of the initial clean coal facility
18 and its contractors underlying the initial capital cost and
19 significant additions to the initial capital cost of the
20 initial clean coal facility resulted in efficient, economical,
21 and timely construction. In determining the reasonableness of
22 the capital costs of the initial clean coal facility, the
23 Commission shall consider the knowledge and circumstances
24 prevailing at the time of each relevant decision or action of
25 the owner of the initial clean coal facility and its
26 contractors.

1 The Commission may determine that the amount of
2 pre-approved capital costs may be increased only after notice
3 and a hearing. At that hearing, the Capital Development Board
4 shall submit a report recommending whether the incremental
5 costs should be approved in full or in part or rejected. The
6 Commission may approve in whole or in part or reject the
7 incremental capital costs based on whether they are reasonable.
8 At the request of the owner of the initial clean coal facility
9 made not more often than once every 12 months during the
10 construction period of the initial clean coal facility, the
11 Commission shall conduct interim reviews to determine whether
12 capital costs specified in such request and incurred or to be
13 incurred by the owner of the initial clean coal facility are
14 reasonable.

15 The Capital Development Board shall monitor the
16 construction of the initial clean coal facility for the full
17 duration of construction. The Capital Development Board, in its
18 discretion, may retain third parties to facilitate such
19 monitoring, provided that such third parties shall not own or
20 control any direct or indirect interest in the initial clean
21 coal facility and shall have no contractual relationship with
22 the initial clean coal facility. The initial clean coal
23 facility shall pay a reasonable fee as required by the Capital
24 Development Board for the Capital Development Board's services
25 under this subsection (b), and such fee shall not be passed
26 through to a utility or its customers. If a third party is

1 retained by the Capital Development Board for the determination
2 of a range of capital costs or monitoring of construction, the
3 initial clean coal facility must pay for the third party's
4 reasonable fees, and such costs may not be passed through to a
5 utility or its customers.

6 The provisions of this subsection (b) shall apply to the
7 capital costs for the initial construction of the initial clean
8 coal facility and not to capital costs incurred beyond the
9 initial construction, including costs for replacement of
10 equipment and capital improvements, which capital costs shall
11 be subject to review by the Commission and included in the
12 formula rate to the extent they are determined to be prudently
13 incurred.

14 (c) Operations and maintenance costs set by the Commission
15 according to this subsection (c) shall be included in the
16 formula rate. Operations and maintenance costs mean costs
17 incurred for the administration, supervision, operation,
18 maintenance, preservation, and protection of the initial clean
19 coal facility's physical plant and other costs recorded in the
20 Operation and Maintenance Expense Accounts and other
21 applicable Income Statement Accounts of the Uniform System of
22 Accounts for the initial clean coal facility. The Commission
23 shall assess the prudence of the operations and maintenance
24 costs for the initial clean coal facility and shall allow the
25 initial clean coal facility to include in the formula rate only
26 those costs the Commission deems to be prudent. The Commission

1 may in its discretion retain an expert to assist in its review
2 of operations and maintenance costs. The initial clean coal
3 facility shall pay for the expert's fees if an expert is
4 retained by the Commission, and such costs may not be passed
5 through to a utility or its customers. The Commission's
6 determination regarding the amount of operations and
7 maintenance costs that may be included in the formula rate for
8 each year shall be made in accordance with this Section.

9 (d) Actual fuel costs shall be set by the Agency through a
10 SNG feedstock procurement, pursuant to Section 1-79 of this
11 Act, to be performed at least every 5 years, and purchased by
12 the initial clean coal facility pursuant to a reasonable fuel
13 supply plan, with coal comprising at least 50% of the total
14 feedstock over the term of a sourcing agreement with all coal
15 having high volatile bituminous rank and greater than 1.7
16 pounds of sulfur per million btu content, SNG derived from coal
17 comprising at least 50% of the fuel to generate electricity,
18 SNG derived from biomass comprising up to 10% of the fuel to
19 generate electricity with the approval of the Commission, and
20 natural gas comprising the remainder of the fuel to generate
21 electricity. Actual fuel costs shall consist of all costs
22 associated with the procurement of fuel, including, but not
23 limited to, commodity costs, transportation costs,
24 administrative costs, and costs relating to the procurement
25 process. Actual fuel costs, as so determined, shall be reduced
26 by miscellaneous net revenue received by the owner of the

1 initial clean coal facility, including, but not limited to, net
2 revenue from the sale of emission allowances, if any,
3 substitute natural gas, if any, grants or other support
4 provided by the State of Illinois or the United States
5 Government, firm transmission rights, if any, by-products
6 produced by the facility, any capacity derived from the
7 facility and bid into the capacity markets or otherwise sold
8 and any energy generated as a result of such capacity being
9 called, whether generated from synthesis gas derived from coal,
10 from SNG, or from natural gas, less non-generation variable
11 costs. "Non-generation variable costs" means all costs, other
12 than fuel costs, associated with the production of SNG that is
13 not consumed by the initial clean coal facility's power block,
14 which costs vary directly with the level of production of SNG.
15 Actual fuel costs shall be calculated pursuant to this
16 subsection (d) and included in the formula rate without any
17 determination by the Commission as to prudence.

18 (e) Sequestration costs set by the Commission according to
19 this subsection (e) shall be included in the formula rate.

20 "Sequestration costs" means costs incurred to (1) capture
21 carbon dioxide; (2) compress carbon dioxide; (3) build,
22 operate, and maintain a sequestration site in which carbon
23 dioxide may be injected; (4) build, operate, and maintain a
24 carbon dioxide pipeline, which is owned by the initial clean
25 coal facility; (5) transport the carbon dioxide to a
26 sequestration site or a pipeline; and (6) perform monitoring,

1 verification and other activities associated with carbon
2 capture and sequestration.

3 "Sequestration capital costs" means sequestration costs
4 recorded in the Electric Plant Accounts and other applicable
5 Balance Sheet Accounts of the Uniform System of Accounts for
6 the initial clean coal facility.

7 "Sequestration operations and maintenance costs" means
8 sequestration costs that are recorded in the Operation and
9 Maintenance Expense Accounts and other applicable Income
10 Statement Accounts of the Uniform System of Accounts for the
11 initial clean coal facility and shall include maintenance,
12 monitoring, and verification costs.

13 The Capital Development Board shall calculate an estimate
14 of sequestration capital costs that it believes would be a
15 reasonable cost for the initial clean coal facility's
16 sequestration facilities and an estimate of average annual
17 sequestration operations and maintenance costs that it
18 believes would be a reasonable average annual operation and
19 maintenance cost for the initial clean coal facility's carbon
20 capture and sequestration activities. The Capital Development
21 Board shall commence performing its responsibilities under
22 this subsection (e) within 30 days after the effective date of
23 this amendatory Act of the 98th General Assembly. In
24 determining sequestration capital costs and sequestration
25 operations and maintenance costs, the Capital Development
26 Board shall base its evaluation and judgment on professional

1 engineering and regulatory accounting principles and include
2 any cost information and update on costs that may be provided
3 by the initial clean coal facility and shall not employ least
4 cost resource principles. In addition, the Capital Development
5 Board may: (A) include in its consideration cost estimate
6 information in a facility cost report, if any, that was
7 prepared and submitted by the initial clean coal facility to
8 the Commission in accordance with paragraph (4) of subsection
9 (d) of Section 1-75 of this Act; (B) consult as much as it
10 deems necessary with the initial clean coal facility; (C)
11 conduct whatever research and investigation it deems
12 necessary; and (D) retain third parties to assist in its
13 determination, provided that such third parties shall not own
14 or control any direct or indirect interest in the initial clean
15 coal facility and shall have no contractual relationship with
16 the initial clean coal facility. The initial clean coal
17 facility shall cooperate with the Capital Development Board in
18 any investigation it deems necessary.

19 The Capital Development Board shall make its final
20 determination of sequestration capital costs and sequestration
21 operations and maintenance costs and submit such determination
22 to the Commission no later than 90 days after the Capital
23 Development Board is required to commence performing its
24 responsibilities under this subsection (e). The Capital
25 Development Board shall monitor construction of the
26 sequestration facilities in the same manner, and with the same

1 rights to retain an expert and recover the costs thereof, as
2 set forth in subsection (b) of this Section.

3 "Actual sequestration costs" means for any year the sum of:
4 (i) the annual amortized portion of sequestration capital
5 costs, based on level amortization from the later of the date
6 such costs are incurred and the commercial operation date until
7 the end of the term of the sourcing agreements; (ii) the rate
8 of return approved by the Commission pursuant to subsection (f)
9 of this Section applied to sequestration capital costs; and
10 (iii) the sequestration operations and maintenance costs
11 incurred in such year.

12 "Target sequestration costs" means the sum of: (i) the
13 annual amortized portion of the estimated sequestration
14 capital costs determined by the Capital Development Board,
15 based on level amortization from the later of the date such
16 costs are incurred and the commercial operation date until the
17 end of the term of the sourcing agreements; (ii) the rate of
18 return approved by the Commission pursuant to subsection (f) of
19 this Section applied to the estimated sequestration capital
20 costs determined by the Capital Development Board; (iii) the
21 estimate of average annual sequestration operations and
22 maintenance costs determined by the Capital Development Board,
23 escalated in accordance with an escalation factor to be
24 provided in the sourcing agreement from the date of the Capital
25 Development Board's determination to the mid-point of the
26 applicable year; (iv) the sequestration cost underrun, if any,

1 for the immediately preceding year, except to the extent
2 applied to allow recovery of a sequestration cost overrun from
3 a prior year; and (v) any sequestration costs that are the
4 result of a change in law or non-insurable force majeure.

5 "Sequestration cost underrun" means for any year the
6 excess, if any, of target sequestration costs for such year
7 over actual sequestration costs for such year.

8 "Sequestration cost overrun" means for any year the excess,
9 if any, of actual sequestration costs for such year over target
10 sequestration costs for such year.

11 For any year in which there is a sequestration cost
12 underrun, all actual sequestration costs shall be conclusively
13 deemed to be prudent and shall be included in the formula rate
14 with no further review or approval in respect of whether they
15 are prudently incurred. The Commission shall review the costs
16 to ensure they are mathematically correct.

17 For any year in which there is a sequestration cost
18 overrun, the Commission shall determine whether all or a
19 portion of such sequestration cost overrun was prudently
20 incurred, except that the rate of return shall not be subject
21 to review. If the Commission determines that the sequestration
22 cost overrun was prudently incurred, one-third of such
23 sequestration cost overrun shall be included in the formula
24 rate and recoverable by the initial clean coal facility and
25 two-thirds of such sequestration cost overrun shall be borne by
26 the initial clean coal facility and not passed through to a

1 utility, an alternative retail electric supplier, or the
2 customers of a utility unless and until there is a
3 sequestration cost underrun for a subsequent year, in which
4 event the sequestration cost overrun will be included in the
5 formula rate and recoverable by the initial clean coal facility
6 up to the amount of the sequestration cost underrun; provided,
7 however, that if for any year two-thirds of such sequestration
8 cost overrun exceeds the difference of \$20,000,000 minus the
9 amount of penalty, if any, payable by the initial clean coal
10 facility pursuant to Section 1-76.5 with respect to that year,
11 the amount of such excess shall also be included in the formula
12 rate and recoverable by the initial clean coal facility. The
13 detailed procedures for implementing this provision shall be
14 set forth in the sourcing agreements, which procedures shall
15 include a mechanism for equitably adjusting target
16 sequestration costs for any year in which the quantity of
17 carbon dioxide actually captured and sequestered by the initial
18 clean coal facility is greater than the quantity assumed in
19 calculating the estimated costs for such year.

20 "Change in law" means any change, including any enactment,
21 repeal, or amendment, in a law, ordinance, rule, regulation,
22 interpretation, permit, license, consent or order, including
23 those relating to taxes or to environmental matters, or in the
24 interpretation or application thereof by any governmental
25 authority occurring after May 31, 2013.

26 "Non-insurable force majeure" means events outside of the

1 reasonable control of the owner of the initial clean coal
2 facility and its contractors, subcontractors, and agents that
3 are not included on a list, to be attached to the sourcing
4 agreement and subject to the procedures set forth in paragraph
5 (4) of subsection (d) of Section 1-75 of this Act, of events
6 that are customarily covered by builder's risk insurance
7 policies for the construction of electric generating plants and
8 other large process plants in the United States. "Non-insurable
9 force majeure" shall not include changes in prices or other
10 changes in market conditions.

11 (f) The Commission shall determine within 120 days after
12 the effective date of this amendatory Act of the 98th General
13 Assembly or 120 days after the owner of the initial clean coal
14 facility files initial direct testimony regarding rate of
15 return with the Commission, whichever is later, the total rate
16 of return on invested capital for the initial clean coal
17 facility following notice and a public hearing. At the hearing,
18 all interested parties, including utilities, alternative
19 retail electric suppliers, the Attorney General, the Agency,
20 and customers, shall be given an opportunity to be heard. In
21 determining the rate of return, the Commission shall select a
22 sufficient return on investment so as to enable the initial
23 clean coal facility to attract capital in financial markets at
24 competitive rates. The Commission shall consider the rates of
25 return received by developers of facilities similar to the
26 initial clean coal facility inside or outside Illinois, the

1 need to balance an incentive for clean-coal technology with the
2 need to protect Illinois ratepayers from high electricity
3 costs, and any other information the Commission deems relevant.

4 The Agency shall recommend a rate of return to the
5 Commission utilizing the criteria in this subsection (f). The
6 Commission shall further take into account the recommendation
7 of the Agency, but shall not be bound by it. The rate of return
8 shall be no lower than 75 basis points lower than the weighted
9 average authorized total rates of return of the electric
10 utilities in accordance with original cost rate base for their
11 electric distribution assets as of the effective date of this
12 amendatory Act of the 98th General Assembly. Notwithstanding
13 the minimum rate of return established in the preceding
14 sentence, the rate of return shall be no greater than the total
15 rate of return on invested capital that the initial clean coal
16 facility would achieve based on an assumed 55% debt and 45%
17 equity capital structure, with the cost of debt being the
18 actual average cost, including all associated costs and fees,
19 of the initial clean coal facility's debt and the cost of
20 equity being 11.5%. The Commission's determination of the rate
21 of return shall include a mechanism providing for a one-time
22 adjustment at or about the commencement of commercial operation
23 of the initial clean coal facility to adjust for changes in
24 applicable Treasury yield rates between the date of its
25 provisional determination of the rate of return and the dates
26 of construction period borrowing by the initial clean coal

1 facility, which adjustment shall apply to 55% of total capital.

2 The Commission's decision shall be final and not subject to
3 any rehearing or administrative or judicial review. The rate of
4 return determined by the Commission pursuant to this subsection
5 (f) shall apply for the term of the sourcing agreements and
6 shall not be subject to change, except for the one-time
7 adjustment to reflect Treasury yield rate changes as expressly
8 contemplated by this subsection (f) and as otherwise expressly
9 provided in subsection (b) of Section 1-76.5 of this Act.

10 (g) The following shall not be included in determining the
11 formula rate: advertising expenses that do not meet the
12 requirements of Sections 9-225 and 9-226 of the Public
13 Utilities Act, political activity or lobbying expenses as
14 defined by Section 9-224 of the Public Utilities Act, social
15 club dues, or charitable contributions, to the extent, in each
16 case, that a utility would not be permitted to recover such
17 costs.

18 (h) Except as otherwise provided in subsections (b) and (f)
19 of this Section 1-76, within 30 days after a decision of the
20 Commission on recoverable costs under this Section, any
21 interested party to the Commission's decision may apply for a
22 rehearing with respect to the decision. The Commission shall
23 receive and consider such application for rehearing and shall
24 grant or deny the application in whole or in part within 20
25 days from the date of the receipt thereof by the Commission. If
26 no rehearing is applied for within the required 30 days or an

1 application for rehearing is denied, the Commission decision
2 shall be final.

3 If an application for rehearing is granted, the Commission
4 shall hold a rehearing within 30 days after granting the
5 application. The decision of the Commission upon rehearing
6 shall be final. Except as otherwise provided in subsections (b)
7 and (f) of this Section 1-76, any person affected by a decision
8 of the Commission under this Section 1-76 may have the decision
9 reviewed only under and in accordance with the Administrative
10 Review Law. Except as otherwise provided in subsections (b) and
11 (f) of this Section 1-76, the provisions of the Administrative
12 Review Law, all amendments and modifications thereof and the
13 rules adopted pursuant thereto, shall apply to and govern all
14 proceedings for the judicial review of final administrative
15 decisions of the Commission under this subsection (h). The term
16 "administrative decision" is defined as in Section 3-101 of the
17 Code of Civil Procedure.

18 (i) The Capital Development Board shall adopt and make
19 public a policy detailing the process for retaining third
20 parties under this Section. Any third parties retained to
21 assist with calculating the capital costs or sequestration
22 costs shall be retained no later than 45 days after the
23 effective date of this amendatory Act of the 98th General
24 Assembly.

1 Sec. 1-76.5. Capture and sequestration requirements for
2 initial clean coal facility.

3 (a) The initial clean coal facility shall provide
4 documentation to the Commission each year of commercial
5 operation accurately reporting the quantity of carbon
6 emissions from the facility that have been captured and
7 sequestered and report any quantities of carbon released from
8 the site or sites at which carbon emissions were sequestered in
9 prior years, based on continuous monitoring of such sites. If,
10 in any year, the owner of the facility fails to demonstrate
11 that (1) the portion of the facility that produces SNG captured
12 and sequestered at least 90% of the carbon dioxide it would
13 otherwise emit and (2) the initial clean coal facility as a
14 whole captured and sequestered at least 50% of the total carbon
15 emissions that the facility would otherwise emit or if the
16 sequestration of emissions from prior years has failed,
17 resulting in the release of carbon dioxide into the atmosphere,
18 or both, then the owner of the initial clean coal facility must
19 pay a penalty of \$20,000,000, which shall be deposited into the
20 Energy Efficiency Trust Fund and distributed pursuant to
21 subsection (b) of Section 6-6 of the Renewable Energy, Energy
22 Efficiency, and Coal Resources Development Law of 1997.

23 If during the first 12 months of commercial operation of
24 the initial clean coal facility, there are more than 4 stops
25 and starts of the portion of the facility that produces SNG,
26 with each stop and start of an individual unit constituting one

1 stop and start, then the calculation of the quantities
2 described in this subsection (a) shall not take into account
3 any carbon dioxide emissions from the portion of the facility
4 that produces SNG occurring during the stop and start-up
5 periods, including related periods of non-steady state
6 operation, associated with such excess stops and starts. The
7 penalty resulting from the failure to capture and sequester at
8 least the minimum amount of carbon dioxide shall not be passed
9 through to a utility, an alternative retail electric supplier,
10 or the customers of a utility. The initial clean coal facility
11 shall not forfeit its designation as the initial clean coal
12 facility if the facility fails to fully comply with the
13 applicable carbon sequestration requirements in any given
14 year, provided the requisite penalties are complied with.

15 (b) In addition to any penalty for the initial clean coal
16 facility's failure to capture and sequester at least its
17 minimum sequestration requirement, the Attorney General, on
18 behalf of the People of the State of Illinois, shall
19 specifically enforce the facility's sequestration requirement
20 and the other terms of this contract provision. Such action may
21 be filed in any circuit court in Illinois. By entering into a
22 sourcing agreement pursuant to subsection (d) of Section 1-75
23 of this Act, the initial clean coal facility agrees to waive
24 any objections to venue or to the jurisdiction of the court
25 with regard to the Attorney General's action for specific
26 performance under this Section. The Commission may reduce the

1 recoverable rate of return approved pursuant to Section 1-76 of
2 this Act for the facility if the facility willfully fails to
3 comply with the carbon capture and sequestration requirements
4 set forth in this Section.

5 (c) Compliance with the capture and sequestration
6 requirements of this Section shall be assessed annually by the
7 Commission, which may in its discretion retain an expert to
8 facilitate its assessment. The initial clean coal facility
9 shall pay for the expert's reasonable fees if an expert is
10 retained by the Commission, and such costs shall not be passed
11 through to a utility, an alternative retail electric supplier,
12 or the customers of a utility. The Commission shall adopt and
13 make public a policy detailing the process for retaining an
14 expert under this Section.

15 (d) Responsibility for compliance with the capture and
16 sequestration requirements specified in this Section for the
17 initial clean coal facility shall reside solely with the
18 initial clean coal facility regardless of whether the facility
19 has contracted with another party to capture, transport, or
20 sequester carbon dioxide.

21 (20 ILCS 3855/1-77.5 new)

22 Sec. 1-77.5. Sequestration permitting, oversight, and
23 investigations.

24 (a) No clean coal facility, initial clean coal facility,
25 clean coal SNG brownfield facility, or clean coal SNG facility

1 may transport or sequester carbon dioxide unless the Commission
2 approves the method of carbon dioxide transportation or
3 sequestration as provided in this Section. Approval shall be
4 required regardless of whether the facility has contracted with
5 another party to transport or sequester the carbon dioxide.
6 Nothing in this subsection (a) shall release the owner or
7 operator of a carbon dioxide sequestration site or carbon
8 dioxide pipeline from any other permitting requirements under
9 applicable State and federal laws, statutes, rules, or
10 regulations.

11 (b) No later than 3 months prior to the date upon which the
12 company intends to commence construction of the facility, the
13 owner of the facility shall file with the Commission a carbon
14 dioxide transportation or sequestration plan. The Commission
15 shall review proposed carbon dioxide transportation and
16 sequestration methods and shall approve those methods it deems
17 reasonable and cost-effective. For purposes of this review,
18 "cost-effective" means a commercially reasonable price for
19 similar carbon dioxide transportation or sequestration
20 techniques. In determining whether sequestration through
21 injection is reasonable and cost-effective, the Commission may
22 consult with the Illinois State Geological Survey.

23 The Commission shall hold a public hearing within 30 days
24 after receipt of the facility's carbon dioxide transportation
25 or sequestration plan. The Commission shall post notice of the
26 review on its website upon submission of a carbon dioxide

1 transportation or sequestration method and shall accept
2 written public comments. The Commission shall take the comments
3 into account when making its decision. However, the Commission
4 shall not approve a carbon dioxide sequestration method if the
5 owner or operator of the sequestration site has not received
6 (1) an Underground Injection Control permit from the Illinois
7 Environmental Protection Agency or the United States
8 Environmental Protection Agency pursuant to the Environmental
9 Protection Act, (2) an Underground Injection Control permit
10 from the Illinois Department of Natural Resources pursuant to
11 the Illinois Oil and Gas Act, or (3) any applicable permit from
12 the state in which the sequestration site is located if the
13 sequestration shall take place outside of Illinois. The
14 Commission shall approve or deny the carbon dioxide
15 transportation or sequestration method within 90 days after the
16 receipt of all required information.

17 (c) At least annually, the Illinois Environmental
18 Protection Agency shall inspect all carbon dioxide
19 sequestration sites in Illinois to ensure the safety and
20 feasibility of those sequestration sites. However, the
21 Illinois Environmental Protection Agency may, as often as
22 deemed necessary, monitor and conduct investigations of those
23 sites. The owner or operator of the sequestration site must
24 cooperate with the Illinois Environmental Protection Agency
25 investigations of carbon dioxide sequestration sites. If the
26 Illinois Environmental Protection Agency determines at any

1 time a site creates conditions that warrant the issuance of a
2 seal order under Section 34 of the Environmental Protection
3 Act, then the Illinois Environmental Protection Agency shall
4 seal the site pursuant to the Environmental Protection Act. If
5 the Illinois Environmental Protection Agency determines at any
6 time a carbon dioxide sequestration site creates conditions
7 that warrant the institution of a civil action for an
8 injunction under Section 43 of the Environmental Protection
9 Act, then the Illinois Environmental Protection Agency shall
10 request the State's Attorney or the Attorney General to
11 institute such action. The Illinois Environmental Protection
12 Agency shall provide notice of any such actions as soon as
13 possible on its website.

14 (d) At least annually, the Commission shall inspect all
15 carbon dioxide pipelines in Illinois that transport carbon
16 dioxide to ensure the safety and feasibility of those
17 pipelines. However, the Commission may, as often as deemed
18 necessary, monitor and conduct investigations of those
19 pipelines. The owner or operator of the pipeline must cooperate
20 with the Commission investigations of the carbon dioxide
21 pipelines. If the Commission determines at any time that a
22 carbon dioxide pipeline creates conditions that warrant the
23 issuance of a seal order under Section 34 of the Environmental
24 Protection Act, then the Commission shall notify the Illinois
25 Environmental Protection Agency of such conditions. In
26 circumstances in which the carbon dioxide pipeline creates a

1 substantial danger to the environment or public health or to
2 the welfare of persons when the danger is to the livelihood of
3 those persons, the State's Attorney or Attorney General may,
4 upon the request of the Commission or on his or her own motion,
5 institute a civil action for an immediate injunction to halt
6 any discharge or other activity causing or contributing to the
7 danger or require any other action as may be necessary. The
8 Court may issue an ex parte order and shall schedule a hearing
9 on the matter no later than 3 business days after the date of
10 the injunction. The Commission shall provide notice of any such
11 actions as soon as possible on its website.

12 (20 ILCS 3855/1-79 new)

13 Sec. 1-79. Feedstock procurement.

14 (a) A feedstock procurement plan shall, every 5 years, or
15 more frequently with respect to feedstock that cannot
16 reasonably be procured for a 5-year period on acceptable terms,
17 be prepared for the initial clean coal facility based on the
18 initial clean coal facility's projection of feedstock usage and
19 ratios, and consistent with the applicable requirements of this
20 Act. The plan shall specifically identify the feedstock
21 products to be procured following plan approval and shall
22 follow all the requirements set forth in this Act and all
23 applicable State and federal laws, statutes, rules, or
24 regulations, as well as Commission orders. Nothing in this
25 Section precludes consideration of contracts longer than 5

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

9 (1) Daily generation analysis. This analysis shall
10 include:

11 (A) multi-year historical analysis of hourly
12 generation; and

13 (B) known or projected changes to future
14 generation.

15 (2) Determination of the fuel specifications required
16 for the initial clean coal facility, including:

17 (A) feedstock mix, as set by the initial clean coal
18 facility with coal having high volatile bituminous
19 rank and greater than 1.7 pounds of sulfur per million
20 btu content and comprising at least 50% of the total
21 feedstock over the term of the sourcing agreement;

22 (B) volume of each feedstock required;

23 (C) quality standards of each feedstock;

24 (D) transportation and delivery requirements and
25 associated costs and impacts on the performance,
26 availability, and reliability of the initial clean

1 coal facility;

2 (E) technical specifications of the initial clean
3 coal facility for its feedstocks; and

4 (F) appropriate testing of any proposed feedstock
5 before it is incorporated into the feedstock
6 procurement plan or process to determine the effect of
7 such feedstock on the performance, availability, and
8 reliability of the initial clean coal facility.

9 (b) The feedstock procurement process shall be
10 administered by a feedstock procurement administrator and
11 monitored by a feedstock procurement monitor.

12 (1) The feedstock procurement administrator shall:

13 (A) design the final feedstock procurement process
14 in accordance with subsection (d) of this Section
15 following Commission approval of the feedstock
16 procurement plan;

17 (B) develop feedstock benchmarks in accordance
18 with paragraph (3) of subsection (d) of this Section to
19 be used to evaluate bids; these benchmarks shall be
20 submitted to the Commission for review and approval on
21 a confidential basis prior to the feedstock
22 procurement event;

23 (C) serve as the interface between the initial
24 clean coal facility and feedstock suppliers regarding
25 bidding and contract negotiations;

26 (D) manage the bidder pre-qualification and

1 registration process;

2 (E) obtain the initial clean coal facility's
3 agreement to the final form of all supply contracts and
4 credit collateral agreements;

5 (F) administer the request for feedstock proposals
6 process;

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

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

21 (I) submit a confidential report to the Commission
22 recommending acceptance or rejection of bids;

23 (J) notify the facility of contract counterparties
24 and contract specifics; and

25 (K) administer related contingency feedstock
26 procurement events.

1 (2) The feedstock procurement monitor, who shall be
2 retained by the Commission, shall:

3 (A) monitor interactions among the feedstock
4 procurement administrator, suppliers, and the initial
5 clean coal facility;

6 (B) monitor and report to the Commission on the
7 progress of the feedstock procurement process;

8 (C) provide an independent confidential report to
9 the Commission regarding the results of the feedstock
10 procurement event;

11 (D) preserve the confidentiality of supplier and
12 bidding information in a manner consistent with all
13 applicable laws, rules, regulations, and tariffs;

14 (E) provide expert advice to the Commission and
15 consult with the feedstock procurement administrator
16 regarding issues related to feedstock procurement
17 process design, rules, protocols, and policy-related
18 matters;

19 (F) consult with the feedstock procurement
20 administrator regarding the development and use of
21 benchmark criteria, standard form contracts, credit
22 policies, and bid documents; and

23 (G) assess compliance with the procurement plans
24 approved by the Commission.

25 (c) The feedstock procurement process shall be conducted as
26 follows:

1 (1) Beginning in 2014, the initial clean coal facility
2 shall annually provide a range of feedstock requirement
3 forecasts to the Agency by July 15 of each year, or such
4 other date as may be required by the Commission or Agency.
5 The feedstock requirement forecasts shall cover the 5-year
6 feedstock procurement planning period for the next
7 feedstock procurement plan, or such other longer period
8 that the Agency or the Commission may require, and shall
9 include daily data representing a high generation, low
10 generation and expected generation scenario for the
11 initial clean coal facility. The initial clean coal
12 facility shall provide supporting data and assumptions for
13 each of the scenarios.

14 (2) Beginning in 2014, the Agency shall at least every
15 5 years prepare a feedstock procurement plan by August 15th
16 of the applicable year, or such other date as may be
17 required by the Commission. The feedstock procurement plan
18 shall identify the portfolio of feedstocks to be procured.
19 Copies of the feedstock procurement plan shall be posted
20 and made publicly available on the Agency's and
21 Commission's websites, and copies shall also be provided to
22 the initial clean coal facility. The initial clean coal
23 facility shall have 30 days following the date of posting
24 to provide comment to the Agency on the feedstock
25 procurement plan. Other interested entities also may
26 comment on the feedstock procurement plan. All comments

1 submitted to the Agency shall be specific, supported by
2 data or other detailed analyses, and, if objecting to all
3 or a portion of the feedstock procurement plan, accompanied
4 by specific alternative wording or proposals. All comments
5 shall be posted on the Agency's and Commission's websites.
6 During this 30-day comment period, the Agency shall hold at
7 least one public hearing for the purpose of receiving
8 public comment on the procurement plan. Within 14 days
9 following the end of the 30-day review period, the Agency
10 shall revise the feedstock procurement plan as necessary
11 based on the comments received, file the feedstock
12 procurement plan with the Commission, and post the
13 feedstock procurement plan on the websites.

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

22 (4) The Commission shall approve the feedstock
23 procurement plan, including expressly the forecast used in
24 the feedstock procurement plan, if the Commission
25 determines that it shall ensure adequate, reliable,
26 affordable, and environmentally sustainable feedstocks to

1 the initial clean coal facility at the lowest total cost
2 over time, taking into account any benefits of price
3 stability and other criteria set forth in this Section.

4 (d) The feedstock procurement process shall include each of
5 the following components:

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

26 (2) Standard contract forms and credit terms and

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

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

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

15 (4) Request for proposals. The feedstock procurement
16 administrator shall design and issue a request for
17 proposals to supply coal or natural gas in accordance with
18 the initial clean coal facility's usage plan, as approved
19 by the Commission. The request for proposals shall set
20 forth a procedure for sealed, binding commitment bidding
21 with pay-as-bid settlement, and provision for selection of
22 bids on the basis of price.

23 (5) A plan for implementing contingencies in the event
24 of supplier default or failure of the feedstock procurement
25 process to fully meet the expected generation requirement
26 due to insufficient supplier participation, Commission

1 rejection of results, or any other cause. The plan must be
2 specific to the initial clean coal facility's feedstock
3 specifications and requirements.

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

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

1 (f) Within 3 business days after the Commission decision
2 approving the results of a feedstock procurement event, the
3 initial clean coal facility shall enter into binding
4 contractual arrangements with the winning suppliers using
5 standard form contracts.

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

23 (h) Within 2 business days after a Commission decision
24 approving the results of a feedstock procurement event or such
25 other date as may be required by the Commission from time to
26 time, the initial clean coal facility shall file for

1 informational purposes with the Commission its actual or
2 estimated feedstock costs reflecting the costs associated with
3 the feedstock procurement.

4 (i) The initial clean coal facility shall pay for
5 reasonable costs incurred by the Agency in administering the
6 feedstock procurement events. The Agency shall determine the
7 amount owed for each feedstock procurement event, and the
8 initial clean coal facility shall pay that amount to the Agency
9 within 30 days after being informed by the Agency of the amount
10 owed. Those funds shall be deposited into the Agency Operations
11 Fund, pursuant to Section 1-55 of this Act, to be used to
12 reimburse expenses related to the feedstock procurement.

13 (j) The Commission has the authority to adopt rules to
14 carry out the provisions of this Section. For the public
15 interest, safety, and welfare, the Commission also has the
16 authority to adopt rules to carry out the provisions of this
17 Section on an emergency basis.

18 (k) On or before April 1 of each year, the Commission may,
19 hold an informal hearing for the purpose of receiving comments
20 on the prior year's feedstock procurement process and any
21 recommendations for change.

22 (l) For all purposes of this Section 1-79 and subsection
23 (a-5) of Section 1-75 of this Act, (i) feedstock procurement
24 shall be deemed to include transportation of the feedstock
25 products to the initial clean coal facility (including the
26 acquisition by the initial clean coal facility, as appropriate,

1 of trucks, railcars or other transportation equipment), (ii)
2 feedstock procurement shall not be deemed to include day-to-day
3 performance and administration of feedstock procurement and
4 transportation arrangements, including scheduling, weighing,
5 quality determination, acceptance or rejection of shipments,
6 price adjustments, documentation and related activities, all
7 of which shall be performed by the owner of the initial clean
8 coal facility, and (iii) feedstock supplier shall be deemed to
9 include feedstock transporters and providers of feedstock
10 transportation equipment.

11 (m) Any agreement for the purchase of SNG entered into by
12 the initial clean coal facility pursuant to item (xvi) of
13 subparagraph (D) of paragraph (3) of subsection (d) of Section
14 1-75 of this Act shall be deemed for all purposes, including,
15 but not limited to, the inclusion of costs under such agreement
16 being included as part of the initial clean coal facility's
17 actual fuel costs pursuant to subsection (d) of Section 1-76 of
18 this Act, to have been entered into pursuant to the procurement
19 process set forth in this Section 1-79, even though such
20 agreement shall not be subject to competitive bidding. The
21 Agency, the feedstock procurement administrator, and the
22 feedstock procurement monitor shall take account of the initial
23 clean coal facility's obligations under any such agreement in
24 determining the feedstock procurement arrangements that may be
25 entered into by the initial clean coal facility pursuant to
26 this Section 1-79, as well as the implementation and

1 administration of such feedstock procurement arrangements.

2 (20 ILCS 3855/1-81 new)

3 Sec. 1-81. Limited non-impairment.

4 (a) The State of Illinois pledges that the State shall not
5 enact any law or take any action to:

6 (1) break, or repeal the authority for, sourcing
7 agreements in a form approved by the Agency and entered
8 into between electric utilities and the initial clean coal
9 facility pursuant to subsection (d) of Section 1-75 of this
10 Act;

11 (2) break, or repeal the authority for, sourcing
12 agreements in a form approved by the Agency and entered
13 into between alternative retail electric suppliers and the
14 initial clean coal facility;

15 (3) deny electric utilities full cost recovery for
16 their costs incurred under those sourcing agreements;

17 (4) deny the initial clean coal facility full cost
18 recovery under those sourcing agreements for costs that are
19 recoverable under Section 1-76 of this Act.

20 (5) repeal or remove the requirement that electric
21 utilities shall enter into sourcing agreements with the
22 initial clean coal facility under paragraph (3) of
23 subsection (d) of Section 1-75 of this Act or subsection
24 (c) of Section 16-116 of the Public Utilities Act; or

25 (6) repeal or remove the requirement that alternative

1 retail electric suppliers shall enter into sourcing
2 agreements with the initial clean coal facility under item
3 (iv) of paragraph (5) of subsection (d) of Section 16-115
4 of the Public Utilities Act.

5 These pledges are for the benefit of the parties to those
6 sourcing agreements and the issuers and holders of bonds or
7 other obligations issued or incurred to finance or refinance
8 the initial clean coal facility. The initial clean coal
9 facility is authorized to include and refer to these pledges in
10 any financing agreement into which it may enter in regard to
11 those sourcing agreements.

12 (b) The State of Illinois retains and reserves all other
13 rights to enact new or amendatory legislation or take any other
14 action, without impairment of the right of the initial clean
15 coal facility to recover prudently incurred costs resulting
16 from the new or amendatory legislation or other action as
17 approved by the Commission, including, but not limited to,
18 legislation or other action that would: (1) directly or
19 indirectly raise the costs that the initial clean coal facility
20 must incur; (2) directly or indirectly place additional
21 restrictions, regulations, or requirements on the initial
22 clean coal facility; (3) prohibit sequestration in general or
23 prohibit a specific sequestration method or project; or (4)
24 increase minimum sequestration requirements for the initial
25 clean coal facility to a technically feasible extent.

1 Section 10. The Illinois Procurement Code is amended by
2 changing Sections 1-10 and 20-10 as follows:

3 (30 ILCS 500/1-10)

4 Sec. 1-10. Application.

5 (a) This Code applies only to procurements for which
6 contractors were first solicited on or after July 1, 1998. This
7 Code shall not be construed to affect or impair any contract,
8 or any provision of a contract, entered into based on a
9 solicitation prior to the implementation date of this Code as
10 described in Article 99, including but not limited to any
11 covenant entered into with respect to any revenue bonds or
12 similar instruments. All procurements for which contracts are
13 solicited between the effective date of Articles 50 and 99 and
14 July 1, 1998 shall be substantially in accordance with this
15 Code and its intent.

16 (b) This Code shall apply regardless of the source of the
17 funds with which the contracts are paid, including federal
18 assistance moneys. This Code shall not apply to:

19 (1) Contracts between the State and its political
20 subdivisions or other governments, or between State
21 governmental bodies except as specifically provided in
22 this Code.

23 (2) Grants, except for the filing requirements of
24 Section 20-80.

25 (3) Purchase of care.

1 (4) Hiring of an individual as employee and not as an
2 independent contractor, whether pursuant to an employment
3 code or policy or by contract directly with that
4 individual.

5 (5) Collective bargaining contracts.

6 (6) Purchase of real estate, except that notice of this
7 type of contract with a value of more than \$25,000 must be
8 published in the Procurement Bulletin within 7 days after
9 the deed is recorded in the county of jurisdiction. The
10 notice shall identify the real estate purchased, the names
11 of all parties to the contract, the value of the contract,
12 and the effective date of the contract.

13 (7) Contracts necessary to prepare for anticipated
14 litigation, enforcement actions, or investigations,
15 provided that the chief legal counsel to the Governor shall
16 give his or her prior approval when the procuring agency is
17 one subject to the jurisdiction of the Governor, and
18 provided that the chief legal counsel of any other
19 procuring entity subject to this Code shall give his or her
20 prior approval when the procuring entity is not one subject
21 to the jurisdiction of the Governor.

22 (8) Contracts for services to Northern Illinois
23 University by a person, acting as an independent
24 contractor, who is qualified by education, experience, and
25 technical ability and is selected by negotiation for the
26 purpose of providing non-credit educational service

1 activities or products by means of specialized programs
2 offered by the university.

3 (9) Procurement expenditures by the Illinois
4 Conservation Foundation when only private funds are used.

5 (10) Procurement expenditures by the Illinois Health
6 Information Exchange Authority involving private funds
7 from the Health Information Exchange Fund. "Private funds"
8 means gifts, donations, and private grants.

9 (11) Public-private agreements entered into according
10 to the procurement requirements of Section 20 of the
11 Public-Private Partnerships for Transportation Act and
12 design-build agreements entered into according to the
13 procurement requirements of Section 25 of the
14 Public-Private Partnerships for Transportation Act.

15 (c) This Code does not apply to the electric power
16 procurement process provided for under Section 1-75 of the
17 Illinois Power Agency Act and Section 16-111.5 of the Public
18 Utilities Act.

19 (d) Except for Section 20-160 and Article 50 of this Code,
20 and as expressly required by Section 9.1 of the Illinois
21 Lottery Law, the provisions of this Code do not apply to the
22 procurement process provided for under Section 9.1 of the
23 Illinois Lottery Law.

24 (e) This Code does not apply to the process used by the
25 Capital Development Board to retain a person or entity to
26 assist the Capital Development Board with its duties related to

1 the determination of costs of a clean coal SNG brownfield
2 facility, as defined by Section 1-10 of the Illinois Power
3 Agency Act, as required in subsection (h-3) of Section 9-220 of
4 the Public Utilities Act, including calculating the range of
5 capital costs, the range of operating and maintenance costs, or
6 the sequestration costs or monitoring the construction of clean
7 coal SNG brownfield facility for the full duration of
8 construction.

9 (f) This Code does not apply to the process used by the
10 Illinois Power Agency to retain a mediator to mediate sourcing
11 agreement disputes between gas utilities and the clean coal SNG
12 brownfield facility, as defined in Section 1-10 of the Illinois
13 Power Agency Act, as required under subsection (h-1) of Section
14 9-220 of the Public Utilities Act.

15 (g) This Code does not apply to the processes used by the
16 Illinois Power Agency to retain a mediator to mediate contract
17 disputes between gas utilities and the clean coal SNG facility
18 and to retain an expert to assist in the review of contracts
19 under subsection (h) of Section 9-220 of the Public Utilities
20 Act. This Code does not apply to the process used by the
21 Illinois Commerce Commission to retain an expert to assist in
22 determining the actual incurred costs of the clean coal SNG
23 facility and the reasonableness of those costs as required
24 under subsection (h) of Section 9-220 of the Public Utilities
25 Act.

26 (h) This Code does not apply to the process to procure or

1 contracts entered into in accordance with Sections 11-5.2 and
2 11-5.3 of the Illinois Public Aid Code.

3 (i) ~~(h)~~ Each chief procurement officer may access records
4 necessary to review whether a contract, purchase, or other
5 expenditure is or is not subject to the provisions of this
6 Code, unless such records would be subject to attorney-client
7 privilege.

8 (j) This Code does not apply to the process used by the
9 Capital Development Board to retain a person or entity to
10 assist the Capital Development Board with its duties related to
11 the determination of costs of an initial clean coal facility,
12 as defined under Section 1-10 of the Illinois Power Agency Act,
13 as required under Section 1-76 of the Illinois Power Agency
14 Act, including calculating the range of capital costs or the
15 sequestration costs or monitoring the construction of initial
16 clean coal facility for the full duration of construction.

17 (k) This Code does not apply to the process used by the
18 Illinois Power Agency to retain a mediator to mediate sourcing
19 agreement disputes between electric utilities or alternative
20 retail electric suppliers and the initial clean coal facility,
21 as defined under Section 1-10 of the Illinois Power Agency Act,
22 as required under paragraph (4) of subsection (d) of Section
23 1-75 of the Illinois Power Agency Act. This Code does not apply
24 to the process used by the Illinois Commerce Commission to
25 retain an expert to assist the Commission with its duties
26 related to the determination of the costs of an initial clean

1 coal facility, as defined under Section 1-10 of the Illinois
2 Power Agency Act, as required under Section 1-76 of the
3 Illinois Power Agency Act, including determining the initial
4 clean coal facility's operations and maintenance costs, or
5 compliance with capture and sequestration requirements.

6 (Source: P.A. 96-840, eff. 12-23-09; 96-1331, eff. 7-27-10;
7 97-96, eff. 7-13-11; 97-239, eff. 8-2-11; 97-502, eff. 8-23-11;
8 97-689, eff. 6-14-12; 97-813, eff. 7-13-12; 97-895, eff.
9 8-3-12; revised 8-23-12.)

10 (30 ILCS 500/20-10)

11 (Text of Section from P.A. 96-159, 96-588, 97-96, and
12 97-895)

13 Sec. 20-10. Competitive sealed bidding; reverse auction.

14 (a) Conditions for use. All contracts shall be awarded by
15 competitive sealed bidding except as otherwise provided in
16 Section 20-5.

17 (b) Invitation for bids. An invitation for bids shall be
18 issued and shall include a purchase description and the
19 material contractual terms and conditions applicable to the
20 procurement.

21 (c) Public notice. Public notice of the invitation for bids
22 shall be published in the Illinois Procurement Bulletin at
23 least 14 days before the date set in the invitation for the
24 opening of bids.

25 (d) Bid opening. Bids shall be opened publicly in the

1 presence of one or more witnesses at the time and place
2 designated in the invitation for bids. The name of each bidder,
3 the amount of each bid, and other relevant information as may
4 be specified by rule shall be recorded. After the award of the
5 contract, the winning bid and the record of each unsuccessful
6 bid shall be open to public inspection.

7 (e) Bid acceptance and bid evaluation. Bids shall be
8 unconditionally accepted without alteration or correction,
9 except as authorized in this Code. Bids shall be evaluated
10 based on the requirements set forth in the invitation for bids,
11 which may include criteria to determine acceptability such as
12 inspection, testing, quality, workmanship, delivery, and
13 suitability for a particular purpose. Those criteria that will
14 affect the bid price and be considered in evaluation for award,
15 such as discounts, transportation costs, and total or life
16 cycle costs, shall be objectively measurable. The invitation
17 for bids shall set forth the evaluation criteria to be used.

18 (f) Correction or withdrawal of bids. Correction or
19 withdrawal of inadvertently erroneous bids before or after
20 award, or cancellation of awards of contracts based on bid
21 mistakes, shall be permitted in accordance with rules. After
22 bid opening, no changes in bid prices or other provisions of
23 bids prejudicial to the interest of the State or fair
24 competition shall be permitted. All decisions to permit the
25 correction or withdrawal of bids based on bid mistakes shall be
26 supported by written determination made by a State purchasing

1 officer.

2 (g) Award. The contract shall be awarded with reasonable
3 promptness by written notice to the lowest responsible and
4 responsive bidder whose bid meets the requirements and criteria
5 set forth in the invitation for bids, except when a State
6 purchasing officer determines it is not in the best interest of
7 the State and by written explanation determines another bidder
8 shall receive the award. The explanation shall appear in the
9 appropriate volume of the Illinois Procurement Bulletin. The
10 written explanation must include:

- 11 (1) a description of the agency's needs;
- 12 (2) a determination that the anticipated cost will be
13 fair and reasonable;
- 14 (3) a listing of all responsible and responsive
15 bidders; and
- 16 (4) the name of the bidder selected, the total contract
17 price, and the reasons for selecting that bidder.

18 Each chief procurement officer may adopt guidelines to
19 implement the requirements of this subsection (g).

20 The written explanation shall be filed with the Legislative
21 Audit Commission and the Procurement Policy Board, and be made
22 available for inspection by the public, within 30 days after
23 the agency's decision to award the contract.

24 (h) Multi-step sealed bidding. When it is considered
25 impracticable to initially prepare a purchase description to
26 support an award based on price, an invitation for bids may be

1 issued requesting the submission of unpriced offers to be
2 followed by an invitation for bids limited to those bidders
3 whose offers have been qualified under the criteria set forth
4 in the first solicitation.

5 (i) Alternative procedures. Notwithstanding any other
6 provision of this Act to the contrary, the Director of the
7 Illinois Power Agency may create alternative bidding
8 procedures to be used in procuring professional services under
9 subsections ~~subsection~~ (a) and (a-5) of Section 1-75, ~~and~~
10 subsection (d) of Section 1-78, and subsection (d) of Section
11 1-79 of the Illinois Power Agency Act and Section 16-111.5(c)
12 of the Public Utilities Act and to procure renewable energy
13 resources under Section 1-56 of the Illinois Power Agency Act.
14 These alternative procedures shall be set forth together with
15 the other criteria contained in the invitation for bids, and
16 shall appear in the appropriate volume of the Illinois
17 Procurement Bulletin.

18 (j) Reverse auction. Notwithstanding any other provision
19 of this Section and in accordance with rules adopted by the
20 chief procurement officer, that chief procurement officer may
21 procure supplies or services through a competitive electronic
22 auction bidding process after the chief procurement officer
23 determines that the use of such a process will be in the best
24 interest of the State. The chief procurement officer shall
25 publish that determination in his or her next volume of the
26 Illinois Procurement Bulletin.

1 An invitation for bids shall be issued and shall include
2 (i) a procurement description, (ii) all contractual terms,
3 whenever practical, and (iii) conditions applicable to the
4 procurement, including a notice that bids will be received in
5 an electronic auction manner.

6 Public notice of the invitation for bids shall be given in
7 the same manner as provided in subsection (c).

8 Bids shall be accepted electronically at the time and in
9 the manner designated in the invitation for bids. During the
10 auction, a bidder's price shall be disclosed to other bidders.
11 Bidders shall have the opportunity to reduce their bid prices
12 during the auction. At the conclusion of the auction, the
13 record of the bid prices received and the name of each bidder
14 shall be open to public inspection.

15 After the auction period has terminated, withdrawal of bids
16 shall be permitted as provided in subsection (f).

17 The contract shall be awarded within 60 days after the
18 auction by written notice to the lowest responsible bidder, or
19 all bids shall be rejected except as otherwise provided in this
20 Code. Extensions of the date for the award may be made by
21 mutual written consent of the State purchasing officer and the
22 lowest responsible bidder.

23 This subsection does not apply to (i) procurements of
24 professional and artistic services, (ii) telecommunications
25 services, communication services, and information services,
26 and (iii) contracts for construction projects, including

1 design professional services.

2 (Source: P.A. 96-159, eff. 8-10-09; 96-588, eff. 8-18-09;
3 97-96, eff. 7-13-11; 97-895, eff. 8-3-12.)

4 (Text of Section from P.A. 96-159, 96-795, 97-96, and
5 97-895)

6 Sec. 20-10. Competitive sealed bidding; reverse auction.

7 (a) Conditions for use. All contracts shall be awarded by
8 competitive sealed bidding except as otherwise provided in
9 Section 20-5.

10 (b) Invitation for bids. An invitation for bids shall be
11 issued and shall include a purchase description and the
12 material contractual terms and conditions applicable to the
13 procurement.

14 (c) Public notice. Public notice of the invitation for bids
15 shall be published in the Illinois Procurement Bulletin at
16 least 14 days before the date set in the invitation for the
17 opening of bids.

18 (d) Bid opening. Bids shall be opened publicly in the
19 presence of one or more witnesses at the time and place
20 designated in the invitation for bids. The name of each bidder,
21 the amount of each bid, and other relevant information as may
22 be specified by rule shall be recorded. After the award of the
23 contract, the winning bid and the record of each unsuccessful
24 bid shall be open to public inspection.

25 (e) Bid acceptance and bid evaluation. Bids shall be

1 unconditionally accepted without alteration or correction,
2 except as authorized in this Code. Bids shall be evaluated
3 based on the requirements set forth in the invitation for bids,
4 which may include criteria to determine acceptability such as
5 inspection, testing, quality, workmanship, delivery, and
6 suitability for a particular purpose. Those criteria that will
7 affect the bid price and be considered in evaluation for award,
8 such as discounts, transportation costs, and total or life
9 cycle costs, shall be objectively measurable. The invitation
10 for bids shall set forth the evaluation criteria to be used.

11 (f) Correction or withdrawal of bids. Correction or
12 withdrawal of inadvertently erroneous bids before or after
13 award, or cancellation of awards of contracts based on bid
14 mistakes, shall be permitted in accordance with rules. After
15 bid opening, no changes in bid prices or other provisions of
16 bids prejudicial to the interest of the State or fair
17 competition shall be permitted. All decisions to permit the
18 correction or withdrawal of bids based on bid mistakes shall be
19 supported by written determination made by a State purchasing
20 officer.

21 (g) Award. The contract shall be awarded with reasonable
22 promptness by written notice to the lowest responsible and
23 responsive bidder whose bid meets the requirements and criteria
24 set forth in the invitation for bids, except when a State
25 purchasing officer determines it is not in the best interest of
26 the State and by written explanation determines another bidder

1 shall receive the award. The explanation shall appear in the
2 appropriate volume of the Illinois Procurement Bulletin. The
3 written explanation must include:

4 (1) a description of the agency's needs;

5 (2) a determination that the anticipated cost will be
6 fair and reasonable;

7 (3) a listing of all responsible and responsive
8 bidders; and

9 (4) the name of the bidder selected, the total contract
10 price, and the reasons for selecting that bidder.

11 Each chief procurement officer may adopt guidelines to
12 implement the requirements of this subsection (g).

13 The written explanation shall be filed with the Legislative
14 Audit Commission and the Procurement Policy Board, and be made
15 available for inspection by the public, within 30 days after
16 the agency's decision to award the contract.

17 (h) Multi-step sealed bidding. When it is considered
18 impracticable to initially prepare a purchase description to
19 support an award based on price, an invitation for bids may be
20 issued requesting the submission of unpriced offers to be
21 followed by an invitation for bids limited to those bidders
22 whose offers have been qualified under the criteria set forth
23 in the first solicitation.

24 (i) Alternative procedures. Notwithstanding any other
25 provision of this Act to the contrary, the Director of the
26 Illinois Power Agency may create alternative bidding

1 procedures to be used in procuring professional services under
2 subsections ~~subsection~~ (a) and (a-5) of Section 1-75, ~~and~~
3 subsection (d) of Section 1-78, and subsection (d) of Section
4 1-79 of the Illinois Power Agency Act and Section 16-111.5(c)
5 of the Public Utilities Act and to procure renewable energy
6 resources under Section 1-56 of the Illinois Power Agency Act.
7 These alternative procedures shall be set forth together with
8 the other criteria contained in the invitation for bids, and
9 shall appear in the appropriate volume of the Illinois
10 Procurement Bulletin.

11 (j) Reverse auction. Notwithstanding any other provision
12 of this Section and in accordance with rules adopted by the
13 chief procurement officer, that chief procurement officer may
14 procure supplies or services through a competitive electronic
15 auction bidding process after the chief procurement officer
16 determines that the use of such a process will be in the best
17 interest of the State. The chief procurement officer shall
18 publish that determination in his or her next volume of the
19 Illinois Procurement Bulletin.

20 An invitation for bids shall be issued and shall include
21 (i) a procurement description, (ii) all contractual terms,
22 whenever practical, and (iii) conditions applicable to the
23 procurement, including a notice that bids will be received in
24 an electronic auction manner.

25 Public notice of the invitation for bids shall be given in
26 the same manner as provided in subsection (c).

1 Bids shall be accepted electronically at the time and in
2 the manner designated in the invitation for bids. During the
3 auction, a bidder's price shall be disclosed to other bidders.
4 Bidders shall have the opportunity to reduce their bid prices
5 during the auction. At the conclusion of the auction, the
6 record of the bid prices received and the name of each bidder
7 shall be open to public inspection.

8 After the auction period has terminated, withdrawal of bids
9 shall be permitted as provided in subsection (f).

10 The contract shall be awarded within 60 days after the
11 auction by written notice to the lowest responsible bidder, or
12 all bids shall be rejected except as otherwise provided in this
13 Code. Extensions of the date for the award may be made by
14 mutual written consent of the State purchasing officer and the
15 lowest responsible bidder.

16 This subsection does not apply to (i) procurements of
17 professional and artistic services, (ii) telecommunications
18 services, communication services, and information services,
19 and (iii) contracts for construction projects, including
20 design professional services.

21 (Source: P.A. 96-159, eff. 8-10-09; 96-795, eff. 7-1-10 (see
22 Section 5 of P.A. 96-793 for the effective date of changes made
23 by P.A. 96-795); 97-96, eff. 7-13-11; 97-895, eff. 8-3-12.)

24 Section 15. The Public Utilities Act is amended by changing
25 Sections 16-107.5, 16-108, 16-111.5, 16-115, 16-115D, and

1 16-116 as follows:

2 (220 ILCS 5/16-107.5)

3 Sec. 16-107.5. Net electricity metering.

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

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

1 or hydroelectric energy; and (iv) "net electricity metering"
2 (or "net metering") means the measurement, during the billing
3 period applicable to an eligible customer, of the net amount of
4 electricity supplied by an electricity provider to the
5 customer's premises or provided to the electricity provider by
6 the customer.

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

10 (1) For eligible customers whose electric service has
11 not been declared competitive pursuant to Section 16-113 of
12 this Act as of July 1, 2011 and whose electric delivery
13 service is provided and measured on a kilowatt-hour basis
14 and electric supply service is not provided based on hourly
15 pricing, this shall typically be accomplished through use
16 of a single, bi-directional meter. If the eligible
17 customer's existing electric revenue meter does not meet
18 this requirement, the electricity provider shall arrange
19 for the local electric utility or a meter service provider
20 to install and maintain a new revenue meter at the
21 electricity provider's expense.

22 (2) For eligible customers whose electric service has
23 not been declared competitive pursuant to Section 16-113 of
24 this Act as of July 1, 2011 and whose electric delivery
25 service is provided and measured on a kilowatt demand basis
26 and electric supply service is not provided based on hourly

1 pricing, this shall typically be accomplished through use
2 of a dual channel meter capable of measuring the flow of
3 electricity both into and out of the customer's facility at
4 the same rate and ratio. If such customer's existing
5 electric revenue meter does not meet this requirement, then
6 the electricity provider shall arrange for the local
7 electric utility or a meter service provider to install and
8 maintain a new revenue meter at the electricity provider's
9 expense.

10 (3) For all other eligible customers, the electricity
11 provider may arrange for the local electric utility or a
12 meter service provider to install and maintain metering
13 equipment capable of measuring the flow of electricity both
14 into and out of the customer's facility at the same rate
15 and ratio, typically through the use of a dual channel
16 meter. If the eligible customer's existing electric
17 revenue meter does not meet this requirement, then the
18 costs of installing such equipment shall be paid for by the
19 customer.

20 (d) An electricity provider shall measure and charge or
21 credit for the net electricity supplied to eligible customers
22 or provided by eligible customers whose electric service has
23 not been declared competitive pursuant to Section 16-113 of the
24 Act as of July 1, 2011 and whose electric delivery service is
25 provided and measured on a kilowatt-hour basis and electric
26 supply service is not provided based on hourly pricing in the

1 following manner:

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

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

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

26 (d-5) An electricity provider shall measure and charge or

1 credit for the net electricity supplied to eligible customers
2 or provided by eligible customers whose electric service has
3 not been declared competitive pursuant to Section 16-113 of
4 this Act as of July 1, 2011 and whose electric delivery service
5 is provided and measured on a kilowatt-hour basis and electric
6 supply service is provided based on hourly pricing in the
7 following manner:

8 (1) If the amount of electricity used by the customer
9 during any hourly period exceeds the amount of electricity
10 produced by the customer, the electricity provider shall
11 charge the customer for the net electricity supplied to and
12 used by the customer according to the terms of the contract
13 or tariff to which the same customer would be assigned to
14 or be eligible for if the customer was not a net metering
15 customer.

16 (2) If the amount of electricity produced by a customer
17 during any hourly period exceeds the amount of electricity
18 used by the customer during that hourly period, the energy
19 provider shall apply a credit for the net kilowatt-hours
20 produced in such period. The credit shall consist of an
21 energy credit and a delivery service credit. The energy
22 credit shall be valued at the same price per kilowatt-hour
23 as the electric service provider would charge for
24 kilowatt-hour energy sales during that same hourly period.
25 The delivery credit shall be equal to the net
26 kilowatt-hours produced in such hourly period times a

1 credit that reflects all kilowatt-hour based charges in the
2 customer's electric service rate, excluding energy
3 charges.

4 (e) An electricity provider shall measure and charge or
5 credit for the net electricity supplied to eligible customers
6 whose electric service has not been declared competitive
7 pursuant to Section 16-113 of this Act as of July 1, 2011 and
8 whose electric delivery service is provided and measured on a
9 kilowatt demand basis and electric supply service is not
10 provided based on hourly pricing in the following manner:

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

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

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

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

14 (e-5) An electricity provider shall provide electric
15 service to eligible customers who utilize net metering at
16 non-discriminatory rates that are identical, with respect to
17 rate structure, retail rate components, and any monthly
18 charges, to the rates that the customer would be charged if not
19 a net metering customer. An electricity provider shall not
20 charge net metering customers any fee or charge or require
21 additional equipment, insurance, or any other requirements not
22 specifically authorized by interconnection standards
23 authorized by the Commission, unless the fee, charge, or other
24 requirement would apply to other similarly situated customers
25 who are not net metering customers. The customer will remain
26 responsible for all taxes, fees, and utility delivery charges

1 that would otherwise be applicable to the net amount of
2 electricity used by the customer. Subsections (c) through (e)
3 of this Section shall not be construed to prevent an
4 arms-length agreement between an electricity provider and an
5 eligible customer that sets forth different prices, terms, and
6 conditions for the provision of net metering service,
7 including, but not limited to, the provision of the appropriate
8 metering equipment for non-residential customers.

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

17 ~~(1) The electricity provider shall assess and the~~
18 ~~customer remains responsible for all taxes, fees, and~~
19 ~~utility delivery charges that would otherwise be~~
20 ~~applicable to the gross amount of kilowatt-hours supplied~~
21 ~~to the eligible customer by the electricity provider.~~

22 ~~(2) Each month that service is supplied by means of~~
23 ~~dual-channel metering, the electricity provider shall~~
24 ~~compensate the eligible customer for any excess~~
25 ~~kilowatt-hour credits at the electricity provider's~~
26 ~~avoided cost of electricity supply over the monthly period~~

1 ~~or as otherwise specified by the terms of a power purchase~~
2 ~~agreement negotiated between the customer and electricity~~
3 ~~provider.~~

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

16 (g) For purposes of federal and State laws providing
17 renewable energy credits or greenhouse gas credits, the
18 eligible customer shall be treated as owning and having title
19 to the renewable energy attributes, renewable energy credits,
20 and greenhouse gas emission credits related to any electricity
21 produced by the qualified generating unit. The electricity
22 provider may not condition participation in a net metering
23 program on the signing over of a customer's renewable energy
24 credits; provided, however, this subsection (g) shall not be
25 construed to prevent an arms-length agreement between an
26 electricity provider and an eligible customer that sets forth

1 the ownership or title of the credits.

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

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

21 (j) An electricity provider shall provide net metering to
22 eligible customers until the load of its net metering customers
23 equals 5% of the total peak demand supplied by that electricity
24 provider during the previous year. Electricity providers are
25 authorized to offer net metering beyond the 5% level if they so
26 choose.

1 (k) Each electricity provider shall maintain records and
2 report annually to the Commission the total number of net
3 metering customers served by the provider, as well as the type,
4 capacity, and energy sources of the generating systems used by
5 the net metering customers. Nothing in this Section shall limit
6 the ability of an electricity provider to request the redaction
7 of information deemed by the Commission to be confidential
8 business information. Each electricity provider shall notify
9 the Commission when the total generating capacity of its net
10 metering customers is equal to or in excess of the 5% cap
11 specified in subsection (j) of this Section.

12 (l) Notwithstanding the definition of "eligible customer"
13 in item (i) of subsection (b) of this Section, each electricity
14 provider shall ~~consider whether to~~ allow meter aggregation for
15 the purposes of net metering on:

16 (1) properties owned or leased by multiple customers
17 that contribute to the operation of an eligible renewable
18 electrical generating facility, such as a community-owned
19 wind project, a community-owned biomass project, a
20 community-owned solar project, or a community methane
21 digester processing livestock waste from multiple sources;
22 ~~and~~

23 (2) individual units, apartments, or properties owned
24 or leased by multiple customers and collectively served by
25 a common eligible renewable electrical generating
26 facility, such as an apartment building served by

1 photovoltaic panels on the roof; and -

2 (3) multiple meters that are located on an eligible
3 customer's contiguous property and are used to measure only
4 electricity used for the eligible customer's requirements.

5 For the purposes of this subsection (1), "meter
6 aggregation" means the combination of reading and billing on a
7 pro rata basis for the types of eligible customers described in
8 this Section such as to allocate benefits of participation onto
9 the customers' monthly electric bills. Meter aggregation shall
10 be allowed whether the eligible renewable energy generating
11 device is located on the premises of the eligible customer or
12 is interconnected to the distribution grid of the eligible
13 customer's electricity provider or alternative retail electric
14 supplier. Such meter aggregation shall be subject to the terms
15 and conditions approved by the Commission in a proceeding
16 establishing the rules applicable to meter aggregation under
17 this subsection (1), which shall commence no less than 180 days
18 after the effective date of this amendatory Act of the 98th
19 General Assembly and be completed within 365 days after the
20 effective date of this amendatory Act of the 98th General
21 Assembly.

22 (m) Nothing in this Section shall affect the right of an
23 electricity provider to continue to provide, or the right of a
24 retail customer to continue to receive service pursuant to a
25 contract for electric service between the electricity provider
26 and the retail customer in accordance with the prices, terms,

1 and conditions provided for in that contract. Either the
2 electricity provider or the customer may require compliance
3 with the prices, terms, and conditions of the contract.

4 (Source: P.A. 97-616, eff. 10-26-11; 97-646, eff. 12-30-11;
5 97-824, eff. 7-18-12.)

6 (220 ILCS 5/16-108)

7 Sec. 16-108. Recovery of costs associated with the
8 provision of delivery services.

9 (a) An electric utility shall file a delivery services
10 tariff with the Commission at least 210 days prior to the date
11 that it is required to begin offering such services pursuant to
12 this Act. An electric utility shall provide the components of
13 delivery services that are subject to the jurisdiction of the
14 Federal Energy Regulatory Commission at the same prices, terms
15 and conditions set forth in its applicable tariff as approved
16 or allowed into effect by that Commission. The Commission shall
17 otherwise have the authority pursuant to Article IX to review,
18 approve, and modify the prices, terms and conditions of those
19 components of delivery services not subject to the jurisdiction
20 of the Federal Energy Regulatory Commission, including the
21 authority to determine the extent to which such delivery
22 services should be offered on an unbundled basis. In making any
23 such determination the Commission shall consider, at a minimum,
24 the effect of additional unbundling on (i) the objective of
25 just and reasonable rates, (ii) electric utility employees, and

1 (iii) the development of competitive markets for electric
2 energy services in Illinois.

3 (b) The Commission shall enter an order approving, or
4 approving as modified, the delivery services tariff no later
5 than 30 days prior to the date on which the electric utility
6 must commence offering such services. The Commission may
7 subsequently modify such tariff pursuant to this Act.

8 (c) The electric utility's tariffs shall define the classes
9 of its customers for purposes of delivery services charges.
10 Delivery services shall be priced and made available to all
11 retail customers electing delivery services in each such class
12 on a nondiscriminatory basis regardless of whether the retail
13 customer chooses the electric utility, an affiliate of the
14 electric utility, or another entity as its supplier of electric
15 power and energy. Charges for delivery services shall be cost
16 based, and shall allow the electric utility to recover the
17 costs of providing delivery services through its charges to its
18 delivery service customers that use the facilities and services
19 associated with such costs. Such costs shall include the costs
20 of owning, operating and maintaining transmission and
21 distribution facilities. Beginning June 1, 2014, charges for
22 delivery services shall also include the recovery of the
23 electric utility's costs of renewable energy credits and
24 excluded renewable energy resources contract costs in
25 accordance with subsection (k) of this Section. The Commission
26 shall also be authorized to consider whether, and if so to what

1 extent, the following costs are appropriately included in the
2 electric utility's delivery services rates: (i) the costs of
3 that portion of generation facilities used for the production
4 and absorption of reactive power in order that retail customers
5 located in the electric utility's service area can receive
6 electric power and energy from suppliers other than the
7 electric utility, and (ii) the costs associated with the use
8 and redispatch of generation facilities to mitigate
9 constraints on the transmission or distribution system in order
10 that retail customers located in the electric utility's service
11 area can receive electric power and energy from suppliers other
12 than the electric utility. Nothing in this subsection shall be
13 construed as directing the Commission to allocate any of the
14 costs described in (i) or (ii) that are found to be
15 appropriately included in the electric utility's delivery
16 services rates to any particular customer group or geographic
17 area in setting delivery services rates.

18 (d) The Commission shall establish charges, terms and
19 conditions for delivery services that are just and reasonable
20 and shall take into account customer impacts when establishing
21 such charges. In establishing charges, terms and conditions for
22 delivery services, the Commission shall take into account
23 voltage level differences. A retail customer shall have the
24 option to request to purchase electric service at any delivery
25 service voltage reasonably and technically feasible from the
26 electric facilities serving that customer's premises provided

1 that there are no significant adverse impacts upon system
2 reliability or system efficiency. A retail customer shall also
3 have the option to request to purchase electric service at any
4 point of delivery that is reasonably and technically feasible
5 provided that there are no significant adverse impacts on
6 system reliability or efficiency. Such requests shall not be
7 unreasonably denied.

8 (e) Electric utilities shall recover the costs of
9 installing, operating or maintaining facilities for the
10 particular benefit of one or more delivery services customers,
11 including without limitation any costs incurred in complying
12 with a customer's request to be served at a different voltage
13 level, directly from the retail customer or customers for whose
14 benefit the costs were incurred, to the extent such costs are
15 not recovered through the charges referred to in subsections
16 (c) and (d) of this Section.

17 (f) An electric utility shall be entitled but not required
18 to implement transition charges in conjunction with the
19 offering of delivery services pursuant to Section 16-104. If an
20 electric utility implements transition charges, it shall
21 implement such charges for all delivery services customers and
22 for all customers described in subsection (h), but shall not
23 implement transition charges for power and energy that a retail
24 customer takes from cogeneration or self-generation facilities
25 located on that retail customer's premises, if such facilities
26 meet the following criteria:

1 (i) the cogeneration or self-generation facilities
2 serve a single retail customer and are located on that
3 retail customer's premises (for purposes of this
4 subparagraph and subparagraph (ii), an industrial or
5 manufacturing retail customer and a third party contractor
6 that is served by such industrial or manufacturing customer
7 through such retail customer's own electrical distribution
8 facilities under the circumstances described in subsection
9 (vi) of the definition of "alternative retail electric
10 supplier" set forth in Section 16-102, shall be considered
11 a single retail customer);

12 (ii) the cogeneration or self-generation facilities
13 either (A) are sized pursuant to generally accepted
14 engineering standards for the retail customer's electrical
15 load at that premises (taking into account standby or other
16 reliability considerations related to that retail
17 customer's operations at that site) or (B) if the facility
18 is a cogeneration facility located on the retail customer's
19 premises, the retail customer is the thermal host for that
20 facility and the facility has been designed to meet that
21 retail customer's thermal energy requirements resulting in
22 electrical output beyond that retail customer's electrical
23 demand at that premises, comply with the operating and
24 efficiency standards applicable to "qualifying facilities"
25 specified in title 18 Code of Federal Regulations Section
26 292.205 as in effect on the effective date of this

1 amendatory Act of 1999;

2 (iii) the retail customer on whose premises the
3 facilities are located either has an exclusive right to
4 receive, and corresponding obligation to pay for, all of
5 the electrical capacity of the facility, or in the case of
6 a cogeneration facility that has been designed to meet the
7 retail customer's thermal energy requirements at that
8 premises, an identified amount of the electrical capacity
9 of the facility, over a minimum 5-year period; and

10 (iv) if the cogeneration facility is sized for the
11 retail customer's thermal load at that premises but exceeds
12 the electrical load, any sales of excess power or energy
13 are made only at wholesale, are subject to the jurisdiction
14 of the Federal Energy Regulatory Commission, and are not
15 for the purpose of circumventing the provisions of this
16 subsection (f).

17 If a generation facility located at a retail customer's
18 premises does not meet the above criteria, an electric utility
19 implementing transition charges shall implement a transition
20 charge until December 31, 2006 for any power and energy taken
21 by such retail customer from such facility as if such power and
22 energy had been delivered by the electric utility. Provided,
23 however, that an industrial retail customer that is taking
24 power from a generation facility that does not meet the above
25 criteria but that is located on such customer's premises will
26 not be subject to a transition charge for the power and energy

1 taken by such retail customer from such generation facility if
2 the facility does not serve any other retail customer and
3 either was installed on behalf of the customer and for its own
4 use prior to January 1, 1997, or is both predominantly fueled
5 by byproducts of such customer's manufacturing process at such
6 premises and sells or offers an average of 300 megawatts or
7 more of electricity produced from such generation facility into
8 the wholesale market. Such charges shall be calculated as
9 provided in Section 16-102, and shall be collected on each
10 kilowatt-hour delivered under a delivery services tariff to a
11 retail customer from the date the customer first takes delivery
12 services until December 31, 2006 except as provided in
13 subsection (h) of this Section. Provided, however, that an
14 electric utility, other than an electric utility providing
15 service to at least 1,000,000 customers in this State on
16 January 1, 1999, shall be entitled to petition for entry of an
17 order by the Commission authorizing the electric utility to
18 implement transition charges for an additional period ending no
19 later than December 31, 2008. The electric utility shall file
20 its petition with supporting evidence no earlier than 16
21 months, and no later than 12 months, prior to December 31,
22 2006. The Commission shall hold a hearing on the electric
23 utility's petition and shall enter its order no later than 8
24 months after the petition is filed. The Commission shall
25 determine whether and to what extent the electric utility shall
26 be authorized to implement transition charges for an additional

1 period. The Commission may authorize the electric utility to
2 implement transition charges for some or all of the additional
3 period, and shall determine the mitigation factors to be used
4 in implementing such transition charges; provided, that the
5 Commission shall not authorize mitigation factors less than
6 110% of those in effect during the 12 months ended December 31,
7 2006. In making its determination, the Commission shall
8 consider the following factors: the necessity to implement
9 transition charges for an additional period in order to
10 maintain the financial integrity of the electric utility; the
11 prudence of the electric utility's actions in reducing its
12 costs since the effective date of this amendatory Act of 1997;
13 the ability of the electric utility to provide safe, adequate
14 and reliable service to retail customers in its service area;
15 and the impact on competition of allowing the electric utility
16 to implement transition charges for the additional period.

17 (g) The electric utility shall file tariffs that establish
18 the transition charges to be paid by each class of customers to
19 the electric utility in conjunction with the provision of
20 delivery services. The electric utility's tariffs shall define
21 the classes of its customers for purposes of calculating
22 transition charges. The electric utility's tariffs shall
23 provide for the calculation of transition charges on a
24 customer-specific basis for any retail customer whose average
25 monthly maximum electrical demand on the electric utility's
26 system during the 6 months with the customer's highest monthly

1 maximum electrical demands equals or exceeds 3.0 megawatts for
2 electric utilities having more than 1,000,000 customers, and
3 for other electric utilities for any customer that has an
4 average monthly maximum electrical demand on the electric
5 utility's system of one megawatt or more, and (A) for which
6 there exists data on the customer's usage during the 3 years
7 preceding the date that the customer became eligible to take
8 delivery services, or (B) for which there does not exist data
9 on the customer's usage during the 3 years preceding the date
10 that the customer became eligible to take delivery services, if
11 in the electric utility's reasonable judgment there exists
12 comparable usage information or a sufficient basis to develop
13 such information, and further provided that the electric
14 utility can require customers for which an individual
15 calculation is made to sign contracts that set forth the
16 transition charges to be paid by the customer to the electric
17 utility pursuant to the tariff.

18 (h) An electric utility shall also be entitled to file
19 tariffs that allow it to collect transition charges from retail
20 customers in the electric utility's service area that do not
21 take delivery services but that take electric power or energy
22 from an alternative retail electric supplier or from an
23 electric utility other than the electric utility in whose
24 service area the customer is located. Such charges shall be
25 calculated, in accordance with the definition of transition
26 charges in Section 16-102, for the period of time that the

1 customer would be obligated to pay transition charges if it
2 were taking delivery services, except that no deduction for
3 delivery services revenues shall be made in such calculation,
4 and usage data from the customer's class shall be used where
5 historical usage data is not available for the individual
6 customer. The customer shall be obligated to pay such charges
7 on a lump sum basis on or before the date on which the customer
8 commences to take service from the alternative retail electric
9 supplier or other electric utility, provided, that the electric
10 utility in whose service area the customer is located shall
11 offer the customer the option of signing a contract pursuant to
12 which the customer pays such charges ratably over the period in
13 which the charges would otherwise have applied.

14 (i) An electric utility shall be entitled to add to the
15 bills of delivery services customers charges pursuant to
16 Sections 9-221, 9-222 (except as provided in Section 9-222.1),
17 and Section 16-114 of this Act, Section 5-5 of the Electricity
18 Infrastructure Maintenance Fee Law, Section 6-5 of the
19 Renewable Energy, Energy Efficiency, and Coal Resources
20 Development Law of 1997, and Section 13 of the Energy
21 Assistance Act.

22 (j) If a retail customer that obtains electric power and
23 energy from cogeneration or self-generation facilities
24 installed for its own use on or before January 1, 1997,
25 subsequently takes service from an alternative retail electric
26 supplier or an electric utility other than the electric utility

1 in whose service area the customer is located for any portion
2 of the customer's electric power and energy requirements
3 formerly obtained from those facilities (including that amount
4 purchased from the utility in lieu of such generation and not
5 as standby power purchases, under a cogeneration displacement
6 tariff in effect as of the effective date of this amendatory
7 Act of 1997), the transition charges otherwise applicable
8 pursuant to subsections (f), (g), or (h) of this Section shall
9 not be applicable in any year to that portion of the customer's
10 electric power and energy requirements formerly obtained from
11 those facilities, provided, that for purposes of this
12 subsection (j), such portion shall not exceed the average
13 number of kilowatt-hours per year obtained from the
14 cogeneration or self-generation facilities during the 3 years
15 prior to the date on which the customer became eligible for
16 delivery services, except as provided in subsection (f) of
17 Section 16-110.

18 (k) Beginning June 1, 2014, the electric utility shall be
19 entitled to recover through its tariffed charges for delivery
20 services (1) the costs of any renewable energy credits
21 purchased to meet the renewable energy resource standards of
22 subsection (c) of Section 1-75 of the Illinois Power Agency
23 Act, pursuant to the electric utility's procurement plan as
24 approved in accordance with Section 16-111.5 of this Act, and
25 (2) any excluded renewable energy resources contract costs as
26 defined in Section 1-10 of the Illinois Power Agency Act. The

1 Commission shall determine a just and reasonable allocation of
2 such costs to the various classes of customers taking delivery
3 services from the electric utility, taking into account the
4 provisions of paragraphs (2) and (6) of subsection (c) of
5 Section 1-75 of the Illinois Power Agency Act and, with respect
6 to excluded renewable energy resources contract costs, the
7 extent to which the electric utility's eligible retail
8 customers have become delivery services non-eligible retail
9 customers subsequent to the year that the contracts giving rise
10 to the excluded renewable energy resources costs were entered
11 into. Provided, that in no event shall the Commission allocate
12 the costs of renewable energy credits and excluded renewable
13 energy resources contract costs in a manner that causes the
14 rate limitations specified in paragraph (2) of subsection (c)
15 of Section 1-75 of the Illinois Power Agency Act to be exceeded
16 for any class of customers.

17 For purposes of recovery through the electric utility's
18 tariffed charges for delivery services, the cost of the
19 renewable energy credits included in purchases of bundled
20 renewable energy resources, as defined in Section 1-10 of the
21 Illinois Power Agency Act, to meet the renewable energy
22 resource standards applicable to the load of the electric
23 utility's eligible retail customers, as defined in subsection
24 (a) of Section 16-111.5 of this Act, shall be the allocated
25 renewable energy credit prices approved by the Commission in
26 accordance with subsection (f) of Section 16-111.5 of this Act.

1 The electric utility shall be entitled to recover the cost
2 of such renewable energy credits and excluded renewable energy
3 resources contract costs through an automatic adjustment
4 charge provision in the electric utility's delivery services
5 tariffs that allows the electric utility to adjust its tariffed
6 charges on a quarterly basis for changes in its costs incurred
7 to purchase renewable energy credits and its excluded renewable
8 energy resources contract costs, if any, without the need to
9 file a general delivery services rate case. The electric
10 utility's collections pursuant to such an automatic adjustment
11 charge tariff shall be subject to annual review,
12 reconciliation, and true-up against actual costs by the
13 Commission pursuant to a procedure that shall be specified in
14 the electric utility's tariff and approved by the Commission in
15 connection with its approval of the tariff. The procedure shall
16 provide that any difference between the electric utility's
17 collections pursuant to the automatic adjustment charge for an
18 annual period and the electric utility's actual costs of
19 renewable energy credits and actual excluded renewable energy
20 resources contract costs for the annual period shall be
21 refunded to or collected from, as applicable, the electric
22 utility's delivery services customers in subsequent periods.

23 (Source: P.A. 91-50, eff. 6-30-99; 92-690, eff. 7-18-02.)

24 (220 ILCS 5/16-111.5)

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

1 (a) An electric utility that on December 31, 2005 served at
2 least 100,000 customers in Illinois shall procure power, energy
3 efficiency products, and energy for its eligible retail
4 customers in accordance with the applicable provisions set
5 forth in Section 1-75 of the Illinois Power Agency Act and this
6 Section and, for years beginning on and after June 1, 2012,
7 shall procure renewable energy credits with respect to the
8 kilowatthour usage of delivery services non-eligible retail
9 customers in the electric utility's service area in accordance
10 with the applicable provisions set forth in Section 1-75 of the
11 Illinois Power Agency Act and this Section. A small
12 multi-jurisdictional electric utility that on December 31,
13 2005 served less than 100,000 customers in Illinois may elect
14 to procure power and energy for all or a portion of its
15 eligible Illinois retail customers in accordance with the
16 applicable provisions set forth in this Section and Section
17 1-75 of the Illinois Power Agency Act. This Section shall not
18 apply to a small multi-jurisdictional utility until such time
19 as a small multi-jurisdictional utility requests the Illinois
20 Power Agency to prepare a procurement plan for its eligible
21 retail customers. "Eligible retail customers" for the purposes
22 of this Section means those retail customers that purchase
23 power and energy from the electric utility under fixed-price
24 bundled service tariffs, other than those retail customers
25 whose service is declared or deemed competitive under Section
26 16-113 and those other customer groups specified in this

1 Section, including self-generating customers, customers
2 electing hourly pricing, or those customers who are otherwise
3 ineligible for fixed-price bundled tariff service. "Delivery
4 services non-eligible retail customers" for the purposes of
5 this Section has the meaning set forth in Section 1-10 of the
6 Illinois Power Agency Act. Those customers that are excluded
7 from the definition of "eligible retail customers" shall not be
8 included in the procurement plan electric supply service load
9 requirements, and the utility shall procure any supply
10 requirements, including capacity, ancillary services, energy
11 efficiency products, and hourly priced energy, in the
12 applicable markets as needed to serve those customers, provided
13 that the utility may include in its procurement plan load
14 requirements for the load that is associated with those retail
15 customers whose service has been declared or deemed competitive
16 pursuant to Section 16-113 of this Act to the extent that those
17 customers are purchasing power and energy during one of the
18 transition periods identified in subsection (b) of Section
19 16-113 of this Act.

20 (b) A procurement plan shall be prepared for each electric
21 utility consistent with the applicable requirements of the
22 Illinois Power Agency Act and this Section. For purposes of
23 this Section, Illinois electric utilities that are affiliated
24 by virtue of a common parent company are considered to be a
25 single electric utility. Small multi-jurisdictional utilities
26 may request a procurement plan for a portion of or all of its

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

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

21 (i) multi-year historical analysis of hourly
22 loads;

23 (ii) switching trends and competitive retail
24 market analysis;

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

26 and

1 (iv) growth forecasts by customer class.

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

4 (i) the impact of demand response programs and
5 energy efficiency programs, both current and
6 projected; for small multi-jurisdictional utilities,
7 the impact of demand response and energy efficiency
8 programs approved pursuant to Section 8-408 of this
9 Act, both current and projected; and

10 (ii) supply side needs that are projected to be
11 offset by purchases of renewable energy resources, if
12 any.

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

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

18 (ii) the proposed mix of demand-response products
19 for which contracts will be executed during the next
20 year. For small multi-jurisdictional electric
21 utilities that on December 31, 2005 served fewer than
22 100,000 customers in Illinois, these shall be defined
23 as demand-response products offered in an energy
24 efficiency plan approved pursuant to Section 8-408 of
25 this Act. The cost-effective demand-response measures
26 shall be procured whenever the cost is lower than

1 procuring comparable capacity products, provided that
2 such products shall:

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

5 (B) at least satisfy the demand-response
6 requirements of the regional transmission
7 organization market in which the utility's service
8 territory is located, including, but not limited
9 to, any applicable capacity or dispatch
10 requirements;

11 (C) provide for customers' participation in
12 the stream of benefits produced by the
13 demand-response products;

14 (D) provide for reimbursement by the
15 demand-response provider of the utility for any
16 costs incurred as a result of the failure of the
17 supplier of such products to perform its
18 obligations thereunder; and

19 (E) meet the same credit requirements as apply
20 to suppliers of capacity, in the applicable
21 regional transmission organization market;

22 (iii) the proposed energy efficiency products for
23 which contracts will be executed during the next year.
24 The cost-effective energy efficiency measures shall be
25 procured whenever the cost is lower than the combined
26 avoided costs of energy, capacity, transmission, and

1 the renewable portfolio standard for a comparable
2 volume of energy provided that the energy efficiency
3 products shall:

4 (A) be procured by an energy efficiency
5 provider from eligible retail customers;

6 (B) at least satisfy evaluation, measurement,
7 and verification standards established pursuant to
8 Section 8-103 of this Act;

9 (C) provide for reimbursement by the energy
10 efficiency provider of the utility for any costs
11 incurred as a result of the failure of the supplier
12 of such products to perform its obligations
13 thereunder; and

14 (D) meet the same credit requirements as apply
15 to suppliers of capacity, in the applicable
16 regional transmission organization market;

17 (iv) ~~(iii)~~ monthly forecasted system supply
18 requirements, including expected minimum, maximum, and
19 average values for the planning period;

20 (v) ~~(iv)~~ the proposed mix and selection of standard
21 wholesale products for which contracts will be
22 executed during the next year, separately or in
23 combination, to meet that portion of its load
24 requirements not met through pre-existing contracts,
25 including but not limited to monthly 5 x 16 peak period
26 block energy, monthly off-peak wrap energy, monthly 7 x

1 24 energy, annual 5 x 16 energy, annual off-peak wrap
2 energy, annual 7 x 24 energy, monthly capacity, annual
3 capacity, peak load capacity obligations, capacity
4 purchase plan, and ancillary services;

5 (vi) ~~(v)~~ proposed term structures for each
6 wholesale product type included in the proposed
7 procurement plan portfolio of products; and

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

19 (4) Proposed procedures for balancing loads. The
20 procurement plan shall include, for load requirements
21 included in the procurement plan, the process for (i)
22 hourly balancing of supply and demand and (ii) the criteria
23 for portfolio re-balancing in the event of significant
24 shifts in load.

25 (c) The procurement process set forth in Section 1-75 of
26 the Illinois Power Agency Act and subsection (e) of this

1 Section shall be administered by a procurement administrator
2 and monitored by a procurement monitor.

3 (1) The procurement administrator shall:

4 (i) design the final procurement process in
5 accordance with Section 1-75 of the Illinois Power
6 Agency Act and subsection (e) of this Section following
7 Commission approval of the procurement plan;

8 (ii) develop benchmarks in accordance with
9 subsection (e)(3) to be used to evaluate bids; these
10 benchmarks shall be submitted to the Commission for
11 review and approval on a confidential basis prior to
12 the procurement event;

13 (iii) serve as the interface between the electric
14 utility and suppliers;

15 (iv) manage the bidder pre-qualification and
16 registration process;

17 (v) obtain the electric utilities' agreement to
18 the final form of all supply contracts and credit
19 collateral agreements;

20 (vi) administer the request for proposals process;

21 (vii) have the discretion to negotiate to
22 determine whether bidders are willing to lower the
23 price of bids that meet the benchmarks approved by the
24 Commission; any post-bid negotiations with bidders
25 shall be limited to price only and shall be completed
26 within 24 hours after opening the sealed bids and shall

1 be conducted in a fair and unbiased manner; in
2 conducting the negotiations, there shall be no
3 disclosure of any information derived from proposals
4 submitted by competing bidders; if information is
5 disclosed to any bidder, it shall be provided to all
6 competing bidders;

7 (viii) maintain confidentiality of supplier and
8 bidding information in a manner consistent with all
9 applicable laws, rules, regulations, and tariffs;

10 (ix) submit a confidential report to the
11 Commission recommending acceptance or rejection of
12 bids;

13 (x) notify the utility of contract counterparties
14 and contract specifics; and

15 (xi) administer related contingency procurement
16 events.

17 (2) The procurement monitor, who shall be retained by
18 the Commission, shall:

19 (i) monitor interactions among the procurement
20 administrator, suppliers, and utility;

21 (ii) monitor and report to the Commission on the
22 progress of the procurement process;

23 (iii) provide an independent confidential report
24 to the Commission regarding the results of the
25 procurement event;

26 (iv) assess compliance with the procurement plans

1 approved by the Commission for each utility that on
2 December 31, 2005 provided electric service to a least
3 100,000 customers in Illinois and for each small
4 multi-jurisdictional utility that on December 31, 2005
5 served less than 100,000 customers in Illinois;

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

9 (vi) provide expert advice to the Commission and
10 consult with the procurement administrator regarding
11 issues related to procurement process design, rules,
12 protocols, and policy-related matters; and

13 (vii) consult with the procurement administrator
14 regarding the development and use of benchmark
15 criteria, standard form contracts, credit policies,
16 and bid documents.

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

19 (1) Beginning in 2008, each Illinois utility procuring
20 power pursuant to this Section shall annually provide a
21 range of load forecasts to the Illinois Power Agency by
22 July 15 of each year, or such other date as may be required
23 by the Commission or Agency. The load forecasts shall cover
24 the 5-year procurement planning period for the next
25 procurement plan and shall include hourly data
26 representing a high-load, low-load and expected-load

1 scenario for the load of the eligible retail customers. For
2 procurement planning periods beginning on and after June 1,
3 2014, the electric utility shall provide a range of annual
4 forecasts for the 5-year procurement planning period of the
5 total kilowatthour usage of eligible retail customers and
6 the total annual kilowatthour usage of delivery services
7 non-eligible retail customers in its service area.The
8 utility shall provide supporting data and assumptions for
9 each of the scenarios.

10 (2) Beginning in 2008, the Illinois Power Agency shall
11 prepare a procurement plan by August 15th of each year, or
12 such other date as may be required by the Commission. The
13 procurement plan shall identify the portfolio of
14 demand-response, energy efficiency products, and power and
15 energy products to be procured. Cost-effective
16 demand-response measures and cost-effective energy
17 measures shall be procured as set forth in items ~~item~~ (iii)
18 and (iv) of subsection (b) of this Section. Copies of the
19 procurement plan shall be posted and made publicly
20 available on the Agency's and Commission's websites, and
21 copies shall also be provided to each affected electric
22 utility. An affected utility shall have 30 days following
23 the date of posting to provide comment to the Agency on the
24 procurement plan. Other interested entities also may
25 comment on the procurement plan. All comments submitted to
26 the Agency shall be specific, supported by data or other

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

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

21 (4) The Commission shall approve the procurement plan,
22 including expressly the forecast used in the procurement
23 plan, if the Commission determines that it will ensure
24 adequate, reliable, affordable, efficient, and
25 environmentally sustainable electric service at the lowest
26 total cost over time, taking into account any benefits of

1 price stability.

2 (e) The procurement process shall include each of the
3 following components:

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

23 (2) Standard contract forms and credit terms and
24 instruments. The procurement administrator, in
25 consultation with the utilities, the Commission, and other
26 interested parties and subject to Commission oversight,

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

17 (3) Establishment of a market-based price benchmark.
18 As part of the development of the procurement process, the
19 procurement administrator, in consultation with the
20 Commission staff, Agency staff, and the procurement
21 monitor, shall establish benchmarks for evaluating the
22 final prices in the contracts for each of the products that
23 will be procured through the procurement process. The
24 benchmarks shall be based on price data for similar
25 products for the same delivery period and same delivery
26 hub, or other delivery hubs after adjusting for that

1 difference. The price benchmarks may also be adjusted to
2 take into account differences between the information
3 reflected in the underlying data sources and the specific
4 products and procurement process being used to procure
5 power for the Illinois utilities. The benchmarks shall be
6 confidential but shall be provided to, and will be subject
7 to Commission review and approval, prior to a procurement
8 event.

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

17 (5) A plan for implementing contingencies in the event
18 of supplier default or failure of the procurement process
19 to fully meet the expected load requirement due to
20 insufficient supplier participation, Commission rejection
21 of results, or any other cause.

22 (i) Event of supplier default: In the event of
23 supplier default, the utility shall review the
24 contract of the defaulting supplier to determine if the
25 amount of supply is 200 megawatts or greater, and if
26 there are more than 60 days remaining of the contract

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

20 (ii) Failure of the procurement process to fully
21 meet the expected load requirement: If the procurement
22 process fails to fully meet the expected load
23 requirement due to insufficient supplier participation
24 or due to a Commission rejection of the procurement
25 results, the procurement administrator, the
26 procurement monitor, and the Commission staff shall

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

16 (iii) In all cases where there is insufficient
17 supply provided under contracts awarded through the
18 procurement process to fully meet the electric
19 utility's load requirement, the utility shall meet the
20 load requirement by procuring 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; provided, however, that if
24 a needed product is not available through the regional
25 transmission organization market it shall be purchased
26 from the wholesale market.

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

4 (f) Within 2 business days after opening the sealed bids,
5 the procurement administrator shall submit a confidential
6 report to the Commission. The report shall contain the results
7 of the bidding for each of the products along with the
8 procurement administrator's recommendation for the acceptance
9 and rejection of bids based on the price benchmark criteria and
10 other factors observed in the process. For procurements
11 applicable to periods beginning on and after June 1, 2014, the
12 report shall also include, with respect to each recommended
13 purchase of bundled renewable energy resources as defined in
14 Section 1-10 of the Illinois Power Agency Act, an allocation of
15 the price between the price of the electricity generated by
16 renewable energy resources and the price of the associated
17 renewable energy credits. The procurement monitor also shall
18 submit a confidential report to the Commission within 2
19 business days after opening the sealed bids. The report shall
20 contain the procurement monitor's assessment of bidder
21 behavior in the process as well as an assessment of the
22 procurement administrator's compliance with the procurement
23 process and rules. The Commission shall review the confidential
24 reports submitted by the procurement administrator and
25 procurement monitor, and shall accept or reject the
26 recommendations of the procurement administrator, including

1 the recommended allocation of the price of each purchase of
2 bundled renewable energy resources between the price of the
3 electricity and the price of the associated renewable energy
4 credits, within 2 business days after receipt of the reports.

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

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

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

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

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

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

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

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

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

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

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

3 (k-5) In order to promote price stability for residential
4 and small commercial customers during the infrastructure
5 investment program described in subsection (b) of Section
6 16-108.5 of this Act, and notwithstanding any other provision
7 of this Act or the Illinois Power Agency Act, for each electric
8 utility that serves more than one million retail customers in
9 Illinois, the Illinois Power Agency shall conduct a procurement
10 event within 120 days after October 26, 2011 (the effective
11 date of Public Act 97-616) and may procure contracts for energy
12 and renewable energy credits for the period June 1, 2013
13 through December 31, 2017 that satisfy the requirements of this
14 subsection (k-5), including the benchmarks described in this
15 subsection. These contracts shall be entered into as the result
16 of a competitive procurement event, and, to the extent that any
17 provisions of this Section or the Illinois Power Agency Act do
18 not conflict with this subsection (k-5), such provisions shall
19 apply to the procurement event. The energy contracts shall be
20 for 24 hour by 7 day supply over a term that runs from the first
21 delivery year through December 31, 2017. For a utility that
22 serves over 2 million customers, the energy contracts shall be
23 multi-year with pricing escalating at 2.5% per annum. The
24 energy contracts may be designed as financial swaps or may
25 require physical delivery.

26 Within 30 days of October 26, 2011 (the effective date of

1 Public Act 97-616), each such utility shall submit to the
2 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, energy efficiency products, and energy
13 demand-response resources under this Section. The utility
14 shall file with the initial procurement plan its proposed
15 tariffs through which its costs of procuring power that are
16 incurred pursuant to a Commission-approved procurement plan
17 and those other costs identified in this subsection (1), will
18 be recovered. The tariffs shall include a formula rate or
19 charge designed to pass through both the costs incurred by the
20 utility in procuring a supply of electric power and energy for
21 the applicable customer classes with no mark-up or return on
22 the price paid by the utility for that supply, plus any just
23 and reasonable costs that the utility incurs in arranging and
24 providing for the supply of electric power and energy. The
25 formula rate or charge shall also contain provisions that
26 ensure that its application does not result in over or under

1 recovery due to changes in customer usage and demand patterns,
2 and that provide for the correction, on at least an annual
3 basis, of any accounting errors that may occur. A utility shall
4 recover through the tariff all reasonable costs incurred to
5 implement or comply with any procurement plan that is developed
6 and put into effect pursuant to Section 1-75 of the Illinois
7 Power Agency Act and this Section, including any fees assessed
8 by the Illinois Power Agency, costs associated with load
9 balancing, and contingency plan costs. The electric utility
10 shall also recover its full costs of procuring electric supply
11 for which it contracted before the effective date of this
12 Section in conjunction with the provision of full requirements
13 service under fixed-price bundled service tariffs subsequent
14 to December 31, 2006. All such costs shall be deemed to have
15 been prudently incurred. The pass-through tariffs that are
16 filed and approved pursuant to this Section shall not be
17 subject to review under, or in any way limited by, Section
18 16-111(i) of this Act. Beginning June 1, 2014, the costs
19 incurred by the electric utility to purchase renewable energy
20 credits in accordance with subsection (c) of Section 1-75 of
21 the Illinois Power Agency Act, and any excluded renewable
22 energy resources contract costs as defined in Section 1-10 of
23 the Illinois Power Agency Act, shall be recovered through the
24 electric utility's tariffed charges for delivery services
25 pursuant to Section 16-108 of this Act and shall not be
26 recovered through the electric utility's tariffed charges for

1 electric power and energy supply to its eligible retail
2 customers.

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

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

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

21 (p) An electric utility subject to this Section may propose
22 to invest, lease, own, or operate an electric generation
23 facility as part of its procurement plan, provided the utility
24 demonstrates that such facility is the least-cost option to
25 provide electric service to eligible retail customers. If the
26 facility is shown to be the least-cost option and is included

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

20 (Source: P.A. 97-325, eff. 8-12-11; 97-616, eff. 10-26-11;
21 97-813, eff. 7-13-12.)

22 (220 ILCS 5/16-115)

23 Sec. 16-115. Certification of alternative retail electric
24 suppliers.

25 (a) Any alternative retail electric supplier must obtain a

1 certificate of service authority from the Commission in
2 accordance with this Section before serving any retail customer
3 or other user located in this State. An alternative retail
4 electric supplier may request, and the Commission may grant, a
5 certificate of service authority for the entire State or for a
6 specified geographic area of the State.

7 (b) An alternative retail electric supplier seeking a
8 certificate of service authority shall file with the Commission
9 a verified application containing information showing that the
10 applicant meets the requirements of this Section. The
11 alternative retail electric supplier shall publish notice of
12 its application in the official State newspaper within 10 days
13 following the date of its filing. No later than 45 days after
14 the application is properly filed with the Commission, and such
15 notice is published, the Commission shall issue its order
16 granting or denying the application.

17 (c) An application for a certificate of service authority
18 shall identify the area or areas in which the applicant intends
19 to offer service and the types of services it intends to offer.
20 Applicants that seek to serve residential or small commercial
21 retail customers within a geographic area that is smaller than
22 an electric utility's service area shall submit evidence
23 demonstrating that the designation of this smaller area does
24 not violate Section 16-115A. An applicant that seeks to serve
25 residential or small commercial retail customers may state in
26 its application for certification any limitations that will be

1 imposed on the number of customers or maximum load to be
2 served.

3 (d) The Commission shall grant the application for a
4 certificate of service authority if it makes the findings set
5 forth in this subsection based on the verified application and
6 such other information as the applicant may submit:

7 (1) That the applicant possesses sufficient technical,
8 financial and managerial resources and abilities to
9 provide the service for which it seeks a certificate of
10 service authority. In determining the level of technical,
11 financial and managerial resources and abilities which the
12 applicant must demonstrate, the Commission shall consider
13 (i) the characteristics, including the size and financial
14 sophistication, of the customers that the applicant seeks
15 to serve, and (ii) whether the applicant seeks to provide
16 electric power and energy using property, plant and
17 equipment which it owns, controls or operates;

18 (2) That the applicant will comply with all applicable
19 federal, State, regional and industry rules, policies,
20 practices and procedures for the use, operation, and
21 maintenance of the safety, integrity and reliability, of
22 the interconnected electric transmission system;

23 (3) That the applicant will only provide service to
24 retail customers in an electric utility's service area that
25 are eligible to take delivery services under this Act;

26 (4) That the applicant will comply with such

1 informational or reporting requirements as the Commission
2 may by rule establish and provide the information required
3 by Section 16-112. Any data related to contracts for the
4 purchase and sale of electric power and energy shall be
5 made available for review by the Staff of the Commission on
6 a confidential and proprietary basis and only to the extent
7 and for the purposes which the Commission determines are
8 reasonably necessary in order to carry out the purposes of
9 this Act;

10 (5) That the applicant will procure renewable energy
11 resources in accordance with Section 16-115D of this Act,
12 and will source electricity from clean coal facilities, as
13 defined in Section 1-10 of the Illinois Power Agency Act,
14 in amounts ~~at least~~ equal to the amounts ~~percentages~~ set
15 forth in subsections (c) and (d) of Section 1-75 of the
16 Illinois Power Agency Act. For purposes of this Section:

17 (i) (blank) ~~(Blank)~~;

18 (ii) (blank) ~~(Blank)~~;

19 (iii) (blank); ~~the required sourcing of~~
20 ~~electricity generated by clean coal facilities, other~~
21 ~~than the initial clean coal facility, shall be limited~~
22 ~~to the amount of electricity that can be procured or~~
23 ~~sourced at a price at or below the benchmarks approved~~
24 ~~by the Commission each year in accordance with item (1)~~
25 ~~of subsection (c) and items (1) and (5) of subsection~~
26 ~~(d) of Section 1-75 of the Illinois Power Agency Act;~~

1 (iv) all alternative retail electric suppliers,
2 whether certified before or after the effective date of
3 this amendatory Act of the 98th General Assembly, shall
4 execute a sourcing agreement to source electricity
5 from the initial clean coal facility, on the terms set
6 forth in paragraphs (3) and (4) of subsection (d) of
7 Section 1-75 of the Illinois Power Agency Act, with
8 each reference therein to "utility" being deemed to be
9 a reference to an alternative retail electric
10 supplier, except that ~~in lieu of the requirements in~~
11 ~~subparagraphs (B) (v), (D) (ii), and (D) (vii) (A) (v),~~
12 ~~(B) (i), (C) (v), and (C) (vi) of paragraph (3) of that~~
13 ~~subsection (d), shall not apply; the applicant shall~~
14 ~~execute one or more of the following:~~

15 ~~(1) if the sourcing agreement is a power~~
16 ~~purchase agreement, a contract with the initial~~
17 ~~clean coal facility to purchase in each hour an~~
18 ~~amount of electricity equal to all clean coal~~
19 ~~energy made available from the initial clean coal~~
20 ~~facility during such hour, which the utilities are~~
21 ~~not required to procure under the terms of~~
22 ~~subsection (d) of Section 1-75 of the Illinois~~
23 ~~Power Agency Act, multiplied by a fraction, the~~
24 ~~numerator of which is the alternative retail~~
25 ~~electric supplier's retail market sales of~~
26 ~~electricity (expressed in kilowatthours sold) in~~

1 ~~the State during the prior calendar month and the~~
2 ~~denominator of which is the total sales of~~
3 ~~electricity (expressed in kilowatthours sold) in~~
4 ~~the State by alternative retail electric suppliers~~
5 ~~during such prior month that are subject to the~~
6 ~~requirements of this paragraph (5) of subsection~~
7 ~~(d) of this Section and subsection (d) of Section~~
8 ~~1-75 of the Illinois Power Agency Act plus the~~
9 ~~total sales of electricity (expressed in~~
10 ~~kilowatthours sold) by utilities outside of their~~
11 ~~service areas during such prior month, pursuant to~~
12 ~~subsection (c) of Section 16-116 of this Act; or~~

13 ~~(2) if the sourcing agreement is a contract for~~
14 ~~differences, a contract with the initial clean~~
15 ~~coal facility in each hour with respect to an~~
16 ~~amount of electricity equal to all clean coal~~
17 ~~energy made available from the initial clean coal~~
18 ~~facility during such hour, which the utilities are~~
19 ~~not required to procure under the terms of~~
20 ~~subsection (d) of Section 1-75 of the Illinois~~
21 ~~Power Agency Act, multiplied by a fraction, the~~
22 ~~numerator of which is the alternative retail~~
23 ~~electric supplier's retail market sales of~~
24 ~~electricity (expressed in kilowatthours sold) in~~
25 ~~the State during the prior calendar month and the~~
26 ~~denominator of which is the total sales of~~

1 ~~electricity (expressed in kilowatthours sold) in~~
2 ~~the State by alternative retail electric suppliers~~
3 ~~during such prior month that are subject to the~~
4 ~~requirements of this paragraph (5) of subsection~~
5 ~~(d) of this Section and subsection (d) of Section~~
6 ~~175 of the Illinois Power Agency Act plus the~~
7 ~~total sales of electricity (expressed in~~
8 ~~kilowatthours sold) by utilities outside of their~~
9 ~~service areas during such prior month, pursuant to~~
10 ~~subsection (c) of Section 16-116 of this Act;~~

11 (v) (blank); ~~if, in any year after the first year~~
12 ~~of commercial operation, the owner of the clean coal~~
13 ~~facility fails to demonstrate to the Commission that~~
14 ~~the initial clean coal facility captured and~~
15 ~~sequestered at least 50% of the total carbon emissions~~
16 ~~that the facility would otherwise emit or that~~
17 ~~sequestration of emissions from prior years has~~
18 ~~failed, resulting in the release of carbon into the~~
19 ~~atmosphere, the owner of the facility must offset~~
20 ~~excess emissions. Any such carbon offsets must be~~
21 ~~permanent, additional, verifiable, real, located~~
22 ~~within the State of Illinois, and legally and~~
23 ~~practicably enforceable. The costs of any such offsets~~
24 ~~that are not recoverable shall not exceed \$15 million~~
25 ~~in any given year. No costs of any such purchases of~~
26 ~~carbon offsets may be recovered from an alternative~~

1 ~~retail electric supplier or its customers. All carbon~~
2 ~~offsets purchased for this purpose and any carbon~~
3 ~~emission credits associated with sequestration of~~
4 ~~carbon from the facility must be permanently retired.~~
5 ~~The initial clean coal facility shall not forfeit its~~
6 ~~designation as a clean coal facility if the facility~~
7 ~~fails to fully comply with the applicable carbon~~
8 ~~sequestration requirements in any given year, provided~~
9 ~~the requisite offsets are purchased. However, the~~
10 ~~Attorney General, on behalf of the People of the State~~
11 ~~of Illinois, may specifically enforce the facility's~~
12 ~~sequestration requirement and the other terms of this~~
13 ~~contract provision. Compliance with the sequestration~~
14 ~~requirements and offset purchase requirements that~~
15 ~~apply to the initial clean coal facility shall be~~
16 ~~reviewed annually by an independent expert retained by~~
17 ~~the owner of the initial clean coal facility, with the~~
18 ~~advance written approval of the Attorney General;~~

19 (vi) the ~~The Commission shall, after notice and~~
20 ~~hearing, revoke the certification of any alternative~~
21 ~~retail electric supplier that fails to execute a~~
22 ~~sourcing agreement with the initial clean coal~~
23 ~~facility as required by item (5) of subsection (d) of~~
24 ~~this Section. The sourcing agreements with the ~~this~~~~
25 ~~initial clean coal facility shall be subject to~~
26 ~~approval both approval of the initial clean coal~~

1 ~~facility~~ by the Illinois Power Agency pursuant to
2 paragraph (4) of subsection (d) of Section 1-75 of the
3 Illinois Power Agency Act ~~General Assembly and~~
4 ~~satisfaction of the requirements of item (4) of~~
5 ~~subsection (d) of Section 1-75 of the Illinois Power~~
6 ~~Agency Act,~~ and shall be executed within 30 ~~90~~ days
7 after any such approval by the Illinois Power Agency or
8 the issuance of any necessary approval by the Federal
9 Energy Regulatory Commission, whichever is later;

10 (vii) The Commission shall have jurisdiction over
11 disciplinary proceedings and complaints for violations
12 of this Section. If, upon complaint, the Commission
13 determines an alternative retail electric supplier has
14 failed to execute a sourcing agreement with the initial
15 clean coal facility, then the Commission shall issue
16 notice of the finding to the alternative retail
17 electric supplier. The alternative retail electric
18 supplier shall have 30 days after the receipt of notice
19 to enter into a sourcing agreement. If, after the
20 notice period, the Commission finds an alternative
21 retail electric supplier has failed to comply, then the
22 Commission shall revoke the alternative retail
23 electric supplier's certificate for 6 months ~~General~~
24 ~~Assembly. The Commission shall not accept an~~
25 ~~application for certification from an alternative~~
26 ~~retail electric supplier that has lost certification~~

1 ~~under this subsection (d), or any corporate affiliate~~
2 ~~thereof, for at least one year from the date of~~
3 ~~revocation;~~

4 (6) With respect to an applicant that seeks to serve
5 residential or small commercial retail customers, that the
6 area to be served by the applicant and any limitations it
7 proposes on the number of customers or maximum amount of
8 load to be served meet the provisions of Section 16-115A,
9 provided, that the Commission can extend the time for
10 considering such a certificate request by up to 90 days,
11 and can schedule hearings on such a request;

12 (7) That the applicant meets the requirements of
13 subsection (a) of Section 16-128; and

14 (8) That the applicant will comply with all other
15 applicable laws and regulations.

16 (d-5) (Blank).

17 (e) A retail customer that owns a cogeneration or
18 self-generation facility and that seeks certification only to
19 provide electric power and energy from such facility to retail
20 customers at separate locations which customers are both (i)
21 owned by, or a subsidiary or other corporate affiliate of, such
22 applicant and (ii) eligible for delivery services, shall be
23 granted a certificate of service authority upon filing an
24 application and notifying the Commission that it has entered
25 into an agreement with the relevant electric utilities pursuant
26 to Section 16-118. Provided, however, that if the retail

1 customer owning such cogeneration or self-generation facility
2 would not be charged a transition charge due to the exemption
3 provided under subsection (f) of Section 16-108 prior to the
4 certification, and the retail customers at separate locations
5 are taking delivery services in conjunction with purchasing
6 power and energy from the facility, the retail customer on
7 whose premises the facility is located shall not thereafter be
8 required to pay transition charges on the power and energy that
9 such retail customer takes from the facility.

10 (f) The Commission shall have the authority to promulgate
11 rules and regulations to carry out the provisions of this
12 Section. On or before May 1, 1999, the Commission shall adopt a
13 rule or rules applicable to the certification of those
14 alternative retail electric suppliers that seek to serve only
15 nonresidential retail customers with maximum electrical
16 demands of one megawatt or more which shall provide for (i)
17 expedited and streamlined procedures for certification of such
18 alternative retail electric suppliers and (ii) specific
19 criteria which, if met by any such alternative retail electric
20 supplier, shall constitute the demonstration of technical,
21 financial and managerial resources and abilities to provide
22 service required by subsection (d) (1) of this Section, such as
23 a requirement to post a bond or letter of credit, from a
24 responsible surety or financial institution, of sufficient
25 size for the nature and scope of the services to be provided;
26 demonstration of adequate insurance for the scope and nature of

1 the services to be provided; and experience in providing
2 similar services in other jurisdictions.

3 (g) In any proceeding initiated by a public utility
4 pursuant to Section 8-406 or Section 8-406.1 of this Act for a
5 certificate of public convenience and necessity to construct
6 and operate any utility plant, equipment, or facility required
7 to provide service to the initial clean coal facility, it shall
8 be conclusively presumed that the public convenience and
9 necessity require the construction of such utility plant,
10 equipment, or facility. In any proceeding initiated by a public
11 utility pursuant to Section 8-503 of this Act for an order
12 directing the addition, extension, or improvement of any
13 utility plant, equipment, facilities, or other property or the
14 erection of any new utility plant, equipment, or facilities to
15 provide service to the initial clean coal facility, it shall be
16 conclusively presumed that such additional, extended, improved
17 or new utility plant, equipment, facility, or other property is
18 necessary and should be added, extended, or erected.

19 (Source: P.A. 95-130, eff. 1-1-08; 95-1027, eff. 6-1-09;
20 96-159, eff. 8-10-09.)

21 (220 ILCS 5/16-115D)

22 Sec. 16-115D. Renewable portfolio standard for alternative
23 retail electric suppliers and electric utilities operating
24 outside their service territories.

25 (a) Until May 31, 2014 an ~~An~~ alternative retail electric

1 supplier shall be responsible for procuring cost-effective
2 renewable energy resources as required under item (5) of
3 subsection (d) of Section 16-115 of this Act as outlined
4 herein:

5 (1) The definition of renewable energy resources
6 contained in Section 1-10 of the Illinois Power Agency Act
7 applies to all renewable energy resources required to be
8 procured by alternative retail electric suppliers.

9 (2) The quantity of renewable energy resources shall be
10 measured as a percentage of the actual amount of metered
11 electricity (megawatt-hours) delivered by the alternative
12 retail electric supplier to Illinois retail customers
13 during the 12-month period June 1 through May 31,
14 commencing June 1, 2009, and the comparable 12-month period
15 in each year thereafter except as provided in item (6) of
16 this subsection (a).

17 (3) The quantity of renewable energy resources shall be
18 in amounts at least equal to the annual percentages set
19 forth in item (1) of subsection (c) of Section 1-75 of the
20 Illinois Power Agency Act. At least 60% of the renewable
21 energy resources procured pursuant to items (1) through (3)
22 of subsection (b) of this Section shall come from wind
23 generation and, starting June 1, 2015, at least 6% of the
24 renewable energy resources procured pursuant to items (1)
25 through (3) of subsection (b) of this Section shall come
26 from solar photovoltaics. If, in any given year, an

1 alternative retail electric supplier does not purchase at
2 least these levels of renewable energy resources, then the
3 alternative retail electric supplier shall make
4 alternative compliance payments, as described in
5 subsection (d) of this Section.

6 (4) The quantity and source of renewable energy
7 resources shall be independently verified through the PJM
8 Environmental Information System Generation Attribute
9 Tracking System (PJM-GATS) or the Midwest Renewable Energy
10 Tracking System (M-RETS), which shall document the
11 location of generation, resource type, month, and year of
12 generation for all qualifying renewable energy resources
13 that an alternative retail electric supplier uses to comply
14 with this Section. No later than June 1, 2009, the Illinois
15 Power Agency shall provide PJM-GATS, M-RETS, and
16 alternative retail electric suppliers with all information
17 necessary to identify resources located in Illinois,
18 within states that adjoin Illinois or within portions of
19 the PJM and MISO footprint in the United States that
20 qualify under the definition of renewable energy resources
21 in Section 1-10 of the Illinois Power Agency Act for
22 compliance with this Section 16-115D. Alternative retail
23 electric suppliers shall not be subject to the requirements
24 in item (3) of subsection (c) of Section 1-75 of the
25 Illinois Power Agency Act.

26 (5) All renewable energy credits used to comply with

1 this Section shall be permanently retired.

2 (6) The required procurement of renewable energy
3 resources by an alternative retail electric supplier shall
4 apply to all metered electricity delivered to Illinois
5 retail customers by the alternative retail electric
6 supplier pursuant to contracts executed or extended after
7 March 15, 2009.

8 (b) Until May 31, 2014 an ~~An~~ alternative retail electric
9 supplier shall comply with the renewable energy portfolio
10 standards by making an alternative compliance payment, as
11 described in subsection (d) of this Section, to cover at least
12 one-half of the alternative retail electric supplier's
13 compliance obligation and any one or combination of the
14 following means to cover the remainder of the alternative
15 retail electric supplier's compliance obligation:

16 (1) Generating electricity using renewable energy
17 resources identified pursuant to item (4) of subsection (a)
18 of this Section.

19 (2) Purchasing electricity generated using renewable
20 energy resources identified pursuant to item (4) of
21 subsection (a) of this Section through an energy contract.

22 (3) Purchasing renewable energy credits from renewable
23 energy resources identified pursuant to item (4) of
24 subsection (a) of this Section.

25 (4) Making an alternative compliance payment as
26 described in subsection (d) of this Section.

1 (c) Use of renewable energy credits.

2 (1) Renewable energy credits that are not used by an
3 alternative retail electric supplier to comply with a
4 renewable portfolio standard in a compliance year may be
5 banked and carried forward up to 2 12-month compliance
6 periods after the compliance period in which the credit was
7 generated for the purpose of complying with a renewable
8 portfolio standard in those 2 subsequent compliance
9 periods. For the 2009-2010 and 2010-2011 compliance
10 periods, an alternative retail electric supplier may use
11 renewable credits generated after December 31, 2008 and
12 before June 1, 2009 to comply with this Section.

13 (2) An alternative retail electric supplier is
14 responsible for demonstrating that a renewable energy
15 credit used to comply with a renewable portfolio standard
16 is derived from a renewable energy resource and that the
17 alternative retail electric supplier has not used, traded,
18 sold, or otherwise transferred the credit.

19 (3) The same renewable energy credit may be used by an
20 alternative retail electric supplier to comply with a
21 federal renewable portfolio standard and a renewable
22 portfolio standard established under this Act. An
23 alternative retail electric supplier that uses a renewable
24 energy credit to comply with a renewable portfolio standard
25 imposed by any other state may not use the same credit to
26 comply with a renewable portfolio standard established

1 under this Act.

2 (d) Alternative compliance payments.

3 (1) The Commission shall establish and post on its
4 website, within 5 business days after entering an order
5 approving a procurement plan pursuant to Section 1-75 of
6 the Illinois Power Agency Act, maximum alternative
7 compliance payment rates, expressed on a per kilowatt-hour
8 basis, that will be applicable in the first compliance
9 period following the plan approval. A separate maximum
10 alternative compliance payment rate shall be established
11 for the service territory of each electric utility that is
12 subject to subsection (c) of Section 1-75 of the Illinois
13 Power Agency Act. Each maximum alternative compliance
14 payment rate shall be equal to the maximum allowable annual
15 estimated average net increase due to the costs of the
16 utility's purchase of renewable energy resources included
17 in the amounts paid by eligible retail customers in
18 connection with electric service, as described in item (2)
19 of subsection (c) of Section 1-75 of the Illinois Power
20 Agency Act for the compliance period, and as established in
21 the approved procurement plan. Following each procurement
22 event through which renewable energy resources are
23 purchased for one or more of these utilities for the
24 compliance period, the Commission shall establish and post
25 on its website estimates of the alternative compliance
26 payment rates, expressed on a per kilowatt-hour basis, that

1 shall apply for that compliance period. Posting of the
2 estimates shall occur no later than 10 business days
3 following the procurement event, however, the Commission
4 shall not be required to establish and post such estimates
5 more often than once per calendar month. By July 1 of each
6 year, the Commission shall establish and post on its
7 website the actual alternative compliance payment rates
8 for the preceding compliance year. For compliance years
9 beginning prior to June 1, 2014, each alternative
10 compliance payment rate shall be equal to the total amount
11 of dollars that the utility contracted to spend on
12 renewable resources, excepting the additional incremental
13 cost attributable to solar resources, for the compliance
14 period divided by the forecasted load of eligible retail
15 customers, at the customers' meters, as previously
16 established in the Commission-approved procurement plan
17 for that compliance year. For compliance years commencing
18 on or after June 1, 2014, each alternative compliance
19 payment rate shall be equal to the total amount of dollars
20 that the utility contracted to spend on all renewable
21 resources for the compliance period divided by the
22 forecasted load of eligible retail customers, at the
23 customers' meters, as previously established in the
24 Commission-approved procurement plan for that compliance
25 year. The actual alternative compliance payment rates may
26 not exceed the maximum alternative compliance payment

1 rates established for the compliance period. For purposes
2 of this subsection (d), the term "eligible retail
3 customers" has the same meaning as found in Section
4 16-111.5 of this Act.

5 (2) In any given compliance year, an alternative retail
6 electric supplier may elect to use alternative compliance
7 payments to comply with all or a part of the applicable
8 renewable portfolio standard. In the event that an
9 alternative retail electric supplier elects to make
10 alternative compliance payments to comply with all or a
11 part of the applicable renewable portfolio standard, such
12 payments shall be made by September 1, 2010 for the period
13 of June 1, 2009 to May 1, 2010 and by September 1 of each
14 year thereafter for the subsequent compliance period, in
15 the manner and form as determined by the Commission. Any
16 election by an alternative retail electric supplier to use
17 alternative compliance payments is subject to review by the
18 Commission under subsection (e) of this Section.

19 (3) An alternative retail electric supplier's
20 alternative compliance payments shall be computed
21 separately for each electric utility's service territory
22 within which the alternative retail electric supplier
23 provided retail service during the compliance period,
24 provided that the electric utility was subject to
25 subsection (c) of Section 1-75 of the Illinois Power Agency
26 Act. For each service territory, the alternative retail

1 electric supplier's alternative compliance payment shall
2 be equal to (i) the actual alternative compliance payment
3 rate established in item (1) of this subsection (d),
4 multiplied by (ii) the actual amount of metered electricity
5 delivered by the alternative retail electric supplier to
6 retail customers within the service territory during the
7 compliance period, multiplied by (iii) the result of one
8 minus the ratios of the quantity of renewable energy
9 resources used by the alternative retail electric supplier
10 to comply with the requirements of this Section within the
11 service territory to the product of the percentage of
12 renewable energy resources required under item (3) of
13 subsection (a) of this Section and the actual amount of
14 metered electricity delivered by the alternative retail
15 electric supplier to retail customers within the service
16 territory during the compliance period.

17 (4) All alternative compliance payments by alternative
18 retail electric suppliers shall be deposited in the
19 Illinois Power Agency Renewable Energy Resources Fund and
20 used to purchase renewable energy credits, in accordance
21 with Section 1-56 of the Illinois Power Agency Act.
22 Beginning April 1, 2012 and by April 1 of each year
23 thereafter, the Illinois Power Agency shall submit an
24 annual report to the General Assembly, the Commission, and
25 alternative retail electric suppliers that shall include,
26 but not be limited to:

1 (A) the total amount of alternative compliance
2 payments received in aggregate from alternative retail
3 electric suppliers by planning year for all previous
4 planning years in which the alternative compliance
5 payment was in effect;

6 (B) the amount of those payments utilized to
7 purchased renewable energy credits itemized by the
8 date of each procurement in which the payments were
9 utilized; and

10 (C) the unused and remaining balance in the Agency
11 Renewable Energy Resources Fund attributable to those
12 payments.

13 (5) The Commission, in consultation with the Illinois
14 Power Agency, shall establish a process or proceeding to
15 consider the impact of a federal renewable portfolio
16 standard, if enacted, on the operation of the alternative
17 compliance mechanism, which shall include, but not be
18 limited to, developing, to the extent permitted by the
19 applicable federal statute, an appropriate methodology to
20 apportion renewable energy credits retired as a result of
21 alternative compliance payments made in accordance with
22 this Section. The Commission shall commence any such
23 process or proceeding within 35 days after enactment of a
24 federal renewable portfolio standard.

25 (e) Each alternative retail electric supplier shall, by
26 September 1, 2010 and by September 1 of each year thereafter,

1 prepare and submit to the Commission a report, in a format to
2 be specified by the Commission on or before December 31, 2009,
3 that provides information certifying compliance by the
4 alternative retail electric supplier with this Section,
5 including copies of all PJM-GATS and M-RETS reports, and
6 documentation relating to banking, retiring renewable energy
7 credits, and any other information that the Commission
8 determines necessary to ensure compliance with this Section. An
9 alternative retail electric supplier may file commercially or
10 financially sensitive information or trade secrets with the
11 Commission as provided under the rules of the Commission. To be
12 filed confidentially, the information shall be accompanied by
13 an affidavit that sets forth both the reasons for the
14 confidentiality and a public synopsis of the information.

15 (f) The Commission may initiate a contested case to review
16 allegations that the alternative retail electric supplier has
17 violated this Section, including an order issued or rule
18 promulgated under this Section. In any such proceeding, the
19 alternative retail electric supplier shall have the burden of
20 proof. If the Commission finds, after notice and hearing, that
21 an alternative retail electric supplier has violated this
22 Section, then the Commission shall issue an order requiring the
23 alternative retail electric supplier to:

24 (1) immediately comply with this Section; and

25 (2) if the violation involves a failure to procure the
26 requisite quantity of renewable energy resources or pay the

1 applicable alternative compliance payment by the annual
2 deadline, the Commission shall require the alternative
3 retail electric supplier to double the applicable
4 alternative compliance payment that would otherwise be
5 required to bring the alternative retail electric supplier
6 into compliance with this Section.

7 If an alternative retail electric supplier fails to comply
8 with the renewable energy resource portfolio requirement in
9 this Section more than once in a 5-year period, then the
10 Commission shall revoke the alternative electric supplier's
11 certificate of service authority. The Commission shall not
12 accept an application for a certificate of service authority
13 from an alternative retail electric supplier that has lost
14 certification under this subsection (f), or any corporate
15 affiliate thereof, for at least one year after the date of
16 revocation.

17 (g) All of the provisions of this Section apply to electric
18 utilities operating outside their service area except under
19 item (2) of subsection (a) of this Section the quantity of
20 renewable energy resources shall be measured as a percentage of
21 the actual amount of electricity (megawatt-hours) supplied in
22 the State outside of the utility's service territory during the
23 12-month period June 1 through May 31, commencing June 1, 2009,
24 and the comparable 12-month period in each year thereafter
25 except as provided in item (6) of subsection (a) of this
26 Section.

1 If any such utility fails to procure the requisite quantity
2 of renewable energy resources by the annual deadline, then the
3 Commission shall require the utility to double the alternative
4 compliance payment that would otherwise be required to bring
5 the utility into compliance with this Section.

6 If any such utility fails to comply with the renewable
7 energy resource portfolio requirement in this Section more than
8 once in a 5-year period, then the Commission shall order the
9 utility to cease all sales outside of the utility's service
10 territory for a period of at least one year.

11 (h) The provisions of this Section and the provisions of
12 subsection (d) of Section 16-115 of this Act relating to
13 procurement of renewable energy resources shall not apply to an
14 alternative retail electric supplier that operates a combined
15 heat and power system in this State or that has a corporate
16 affiliate that operates such a combined heat and power system
17 in this State that supplies electricity primarily to or for the
18 benefit of: (i) facilities owned by the supplier, its
19 subsidiary, or other corporate affiliate; (ii) facilities
20 electrically integrated with the electrical system of
21 facilities owned by the supplier, its subsidiary, or other
22 corporate affiliate; or (iii) facilities that are adjacent to
23 the site on which the combined heat and power system is
24 located.

25 (i) The obligations specified in this Section of
26 alternative retail electric suppliers and electric utilities

1 operating outside their service territories to procure
2 renewable energy resources, make alternative compliance
3 payments, and file annual reports, and the obligations of the
4 Commission to determine and post alternative compliance
5 payment rates, shall terminate effective May 31, 2014, provided
6 that alternative retail electric suppliers and electric
7 utilities operating outside their service territories shall be
8 obligated to make all alternative compliance payments that they
9 were obligated to pay for periods through and including May 31,
10 2014, but were not paid as of that date and to file all
11 required reports for periods prior to June 1, 2014. The
12 Commission shall continue to enforce the payment of unpaid
13 alternative compliance payments after May 31, 2014 in
14 accordance with subsections (f) and (g) of this Section. All
15 alternative compliance payments made after May 31, 2014 shall
16 be deposited in the Illinois Power Agency Renewable Energy
17 Resources Fund and used to purchase renewable energy credits,
18 in accordance with Section 1-56 of the Illinois Power Agency
19 Act.

20 (Source: P.A. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09;
21 96-1437, eff. 8-17-10; 97-658, eff. 1-13-12.)

22 (220 ILCS 5/16-116)

23 Sec. 16-116. Commission oversight of electric utilities
24 serving retail customers outside their service areas or
25 providing competitive, non-tariffed services.

1 (a) An electric utility that has a tariff on file for
2 delivery services may, without regard to any otherwise
3 applicable tariffs on file, provide electric power and energy
4 to one or more retail customers located outside its service
5 area, but only to the extent (i) such retail customer (A) is
6 eligible for delivery services under any delivery services
7 tariff filed with the Commission by the electric utility in
8 whose service area the retail customer is located and (B) has
9 either elected to take such delivery services or has paid or
10 contracted to pay the charges specified in Sections 16-108 and
11 16-114, or (ii) if such retail customer is served by a
12 municipal system or electric cooperative, the customer is
13 eligible for delivery services under the terms and conditions
14 for such service established by the municipal system or
15 electric cooperative serving that customer.

16 (b) An electric utility may offer any competitive service
17 to any customer or group of customers without filing contracts
18 with or seeking approval of the Commission, notwithstanding any
19 rule or regulation that would require such approval. The
20 Commission shall not increase or decrease the prices, and may
21 not alter or add to the terms and conditions for the utility's
22 competitive services, from those agreed to by the electric
23 utility and the customer or customers. Non-tariffed,
24 competitive services shall not be subject to the provisions of
25 the Electric Supplier Act or to Articles V, VII, VIII or IX of
26 the Act, except to the extent that any provisions of such

1 Articles are made applicable to alternative retail electric
2 suppliers pursuant to Sections 16-115 and 16-115A, but shall be
3 subject to the provisions of subsections (b) through (g) of
4 Section 16-115A, and Section 16-115B to the same extent such
5 provisions are applicable to the services provided by
6 alternative retail electric suppliers.

7 (c) Electric utilities serving retail customers outside
8 their service areas shall be subject to the requirements of
9 paragraph (5) of subsection (d) of Section 16-115 of the Public
10 Utilities Act, ~~except that the numerators referred to in that~~
11 ~~subsection (d) shall be the utility's retail market sales of~~
12 ~~electricity (expressed in kilowatthours sold) in the State~~
13 ~~outside of the utility's service territory in the prior month.~~

14 (Source: P.A. 95-1027, eff. 6-1-09.)

15 Section 900. Severability. The provisions of this Act are
16 severable under Section 1.31 of the Statute on Statutes.

1 INDEX

2 Statutes amended in order of appearance

- 3 20 ILCS 3855/1-10
- 4 20 ILCS 3855/1-20
- 5 20 ILCS 3855/1-56
- 6 20 ILCS 3855/1-75
- 7 20 ILCS 3855/1-76 new
- 8 20 ILCS 3855/1-76.5 new
- 9 20 ILCS 3855/1-77.5 new
- 10 20 ILCS 3855/1-79 new
- 11 20 ILCS 3855/1-81 new
- 12 30 ILCS 500/1-10
- 13 30 ILCS 500/20-10
- 14 220 ILCS 5/16-107.5
- 15 220 ILCS 5/16-108
- 16 220 ILCS 5/16-111.5
- 17 220 ILCS 5/16-115
- 18 220 ILCS 5/16-115D
- 19 220 ILCS 5/16-116