



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

**HB3688**

by Rep. Kelly M. Burke

#### SYNOPSIS AS INTRODUCED:

220 ILCS 5/16-111.5

Amends the Public Utilities Act. Provides that the Illinois Commerce Commission shall quarterly review the price of any zero emission credits procured by the Illinois Power Agency to ensure no more than the unrecovered costs of the plants based on market sales and pricing is recovered. Provides that if the plant shows a profit for more than one year, the zero emission credit program shall be rebid and the Illinois Power Agency shall have the authority to expand the definition to include additional Illinois-based zero emission generation sources as eligible for the program. Provides that the Commission shall ensure any qualifying nuclear plant is not receiving excessive earnings through its zero emission credit compensation, and if a plant is found to have received excessive earnings due to the zero emission credit pricing, that plant shall have its zero emission credit qualification revoked. Provides that nothing prevents the Commission from initiating a docketed proceeding to reconcile zero emission credit payments with allowed costs. Effective immediately or on the date certain provisions of Public Act 99-906 take effect, whichever is later.

LRB100 06864 RJF 16913 b

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

6 (220 ILCS 5/16-111.5)

7 (Text of Section before amendment by P.A. 99-906)

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

9 (a) An electric utility that on December 31, 2005 served at  
10 least 100,000 customers in Illinois shall procure power and  
11 energy for its eligible retail customers in accordance with the  
12 applicable provisions set forth in Section 1-75 of the Illinois  
13 Power Agency Act and this Section. A small multi-jurisdictional  
14 electric utility that on December 31, 2005 served less than  
15 100,000 customers in Illinois may elect to procure power and  
16 energy for all or a portion of its eligible Illinois retail  
17 customers in accordance with the applicable provisions set  
18 forth in this Section and Section 1-75 of the Illinois Power  
19 Agency Act. This Section shall not apply to a small  
20 multi-jurisdictional utility until such time as a small  
21 multi-jurisdictional utility requests the Illinois Power  
22 Agency to prepare a procurement plan for its eligible retail  
23 customers. "Eligible retail customers" for the purposes of this

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

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

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

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

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

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

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

1 and

2 (iv) growth forecasts by customer class.

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

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

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

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

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

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

1 shall be procured whenever the cost is lower than  
2 procuring comparable capacity products, provided that  
3 such products shall:

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

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

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

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

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

23 (iii) monthly forecasted system supply  
24 requirements, including expected minimum, maximum, and  
25 average values for the planning period;

26 (iv) the proposed mix and selection of standard

1 wholesale products for which contracts will be  
2 executed during the next year, separately or in  
3 combination, to meet that portion of its load  
4 requirements not met through pre-existing contracts,  
5 including but not limited to monthly 5 x 16 peak period  
6 block energy, monthly off-peak wrap energy, monthly 7 x  
7 24 energy, annual 5 x 16 energy, annual off-peak wrap  
8 energy, annual 7 x 24 energy, monthly capacity, annual  
9 capacity, peak load capacity obligations, capacity  
10 purchase plan, and ancillary services;

11 (v) proposed term structures for each wholesale  
12 product type included in the proposed procurement plan  
13 portfolio of products; and

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

25 (4) Proposed procedures for balancing loads. The  
26 procurement plan shall include, for load requirements

1 included in the procurement plan, the process for (i)  
2 hourly balancing of supply and demand and (ii) the criteria  
3 for portfolio re-balancing in the event of significant  
4 shifts in load.

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

9 (1) The procurement administrator shall:

10 (i) design the final procurement process in  
11 accordance with Section 1-75 of the Illinois Power  
12 Agency Act and subsection (e) of this Section following  
13 Commission approval of the procurement plan;

14 (ii) develop benchmarks in accordance with  
15 subsection (e)(3) to be used to evaluate bids; these  
16 benchmarks shall be submitted to the Commission for  
17 review and approval on a confidential basis prior to  
18 the procurement event;

19 (iii) serve as the interface between the electric  
20 utility and suppliers;

21 (iv) manage the bidder pre-qualification and  
22 registration process;

23 (v) obtain the electric utilities' agreement to  
24 the final form of all supply contracts and credit  
25 collateral agreements;

26 (vi) administer the request for proposals process;



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

13           (viii) maintain confidentiality of supplier and  
14 bidding information in a manner consistent with all  
15 applicable laws, rules, regulations, and tariffs;

16           (ix) submit a confidential report to the  
17 Commission recommending acceptance or rejection of  
18 bids;

19           (x) notify the utility of contract counterparties  
20 and contract specifics; and

21           (xi) administer related contingency procurement  
22 events.

23           (2) The procurement monitor, who shall be retained by  
24 the Commission, shall:

25           (i) monitor interactions among the procurement  
26 administrator, suppliers, and utility;

1           (ii) monitor and report to the Commission on the  
2 progress of the procurement process;

3           (iii) provide an independent confidential report  
4 to the Commission regarding the results of the  
5 procurement event;

6           (iv) assess compliance with the procurement plans  
7 approved by the Commission for each utility that on  
8 December 31, 2005 provided electric service to a least  
9 100,000 customers in Illinois and for each small  
10 multi-jurisdictional utility that on December 31, 2005  
11 served less than 100,000 customers in Illinois;

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

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

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

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

25           (1) Beginning in 2008, each Illinois utility procuring  
26 power pursuant to this Section shall annually provide a

1 range of load forecasts to the Illinois Power Agency by  
2 July 15 of each year, or such other date as may be required  
3 by the Commission or Agency. The load forecasts shall cover  
4 the 5-year procurement planning period for the next  
5 procurement plan and shall include hourly data  
6 representing a high-load, low-load and expected-load  
7 scenario for the load of the eligible retail customers. 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 and power and energy products to be  
15 procured. Cost-effective demand-response measures shall be  
16 procured as set forth in item (iii) of subsection (b) of  
17 this Section. Copies of the procurement plan shall be  
18 posted and made publicly available on the Agency's and  
19 Commission's websites, and copies shall also be provided to  
20 each affected electric utility. An affected utility shall  
21 have 30 days following the date of posting to provide  
22 comment to the Agency on the procurement plan. Other  
23 interested entities also may comment on the procurement  
24 plan. All comments submitted to the Agency shall be  
25 specific, supported by data or other detailed analyses,  
26 and, if objecting to all or a portion of the procurement

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

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

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

26 (e) The procurement process shall include each of the

1 following components:

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

21 (2) Standard contract forms and credit terms and  
22 instruments. The procurement administrator, in  
23 consultation with the utilities, the Commission, and other  
24 interested parties and subject to Commission oversight,  
25 shall develop and provide standard contract forms for the  
26 supplier contracts that meet generally accepted industry

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

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

1 reflected in the underlying data sources and the specific  
2 products and procurement process being used to procure  
3 power for the Illinois utilities. The benchmarks shall be  
4 confidential but shall be provided to, and will be subject  
5 to Commission review and approval, prior to a procurement  
6 event.

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

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

20 (i) Event of supplier default: In the event of  
21 supplier default, the utility shall review the  
22 contract of the defaulting supplier to determine if the  
23 amount of supply is 200 megawatts or greater, and if  
24 there are more than 60 days remaining of the contract  
25 term. If both of these conditions are met, and the  
26 default results in termination of the contract, the

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

17 (ii) Failure of the procurement process to fully  
18 meet the expected load requirement: If the procurement  
19 process fails to fully meet the expected load  
20 requirement due to insufficient supplier participation  
21 or due to a Commission rejection of the procurement  
22 results, the procurement administrator, the  
23 procurement monitor, and the Commission staff shall  
24 meet within 10 days to analyze potential causes of low  
25 supplier interest or causes for the Commission  
26 decision. If changes are identified that would likely



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

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

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

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

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

26           (h) The names of the successful bidders and the load

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

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

26 (j) Within 60 days following the effective date of this

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

19 (i) Within 14 days following filing of the initial  
20 procurement plan, any person may file a detailed objection  
21 with the Commission contesting the procurement plan  
22 submitted by the electric utility. All objections to the  
23 electric utility's plan shall be specific, supported by  
24 data or other detailed analyses. The electric utility may  
25 file a response to any objections to its procurement plan  
26 within 7 days after the date objections are due to be

1 filed. Within 7 days after the date the utility's response  
2 is due, the Commission shall determine whether a hearing is  
3 necessary. If it determines that a hearing is necessary, it  
4 shall require the hearing to be completed and issue an  
5 order on the procurement plan within 60 days after the  
6 filing of the procurement plan by the electric utility.

7 (ii) The order shall approve or modify the procurement  
8 plan, approve an independent procurement administrator,  
9 and approve or modify the electric utility's tariffs that  
10 are proposed with the initial procurement plan. The  
11 Commission shall approve the procurement plan if the  
12 Commission determines that it will 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.

16 (k) In order to promote price stability for residential and  
17 small commercial customers during the transition to  
18 competition in Illinois, and notwithstanding any other  
19 provision of this Act, each electric utility subject to this  
20 Section shall enter into one or more multi-year financial swap  
21 contracts that become effective on the effective date of this  
22 amendatory Act. These contracts may be executed with generators  
23 and power marketers, including affiliated interests of the  
24 electric utility. These contracts shall be for a term of no  
25 more than 5 years and shall, for each respective utility or for  
26 any Illinois electric utilities that are affiliated by virtue

1 of a common parent company and that are thereby considered a  
2 single electric utility for purposes of this subsection (k),  
3 not exceed in the aggregate 3,000 megawatts for any hour of the  
4 year. The contracts shall be financial contracts and not energy  
5 sales contracts. The contracts shall be executed as  
6 transactions under a negotiated master agreement based on the  
7 form of master agreement for financial swap contracts sponsored  
8 by the International Swaps and Derivatives Association, Inc.  
9 and shall be considered pre-existing contracts in the  
10 utilities' procurement plans for residential and small  
11 commercial customers. Costs incurred pursuant to a contract  
12 authorized by this subsection (k) shall be deemed prudently  
13 incurred and reasonable in amount and the electric utility  
14 shall be entitled to full cost recovery pursuant to the tariffs  
15 filed with the Commission.

16 (k-5) In order to promote price stability for residential  
17 and small commercial customers during the infrastructure  
18 investment program described in subsection (b) of Section  
19 16-108.5 of this Act, and notwithstanding any other provision  
20 of this Act or the Illinois Power Agency Act, for each electric  
21 utility that serves more than one million retail customers in  
22 Illinois, the Illinois Power Agency shall conduct a procurement  
23 event within 120 days after October 26, 2011 (the effective  
24 date of Public Act 97-616) and may procure contracts for energy  
25 and renewable energy credits for the period June 1, 2013  
26 through December 31, 2017 that satisfy the requirements of this

1 subsection (k-5), including the benchmarks described in this  
2 subsection. These contracts shall be entered into as the result  
3 of a competitive procurement event, and, to the extent that any  
4 provisions of this Section or the Illinois Power Agency Act do  
5 not conflict with this subsection (k-5), such provisions shall  
6 apply to the procurement event. The energy contracts shall be  
7 for 24 hour by 7 day supply over a term that runs from the first  
8 delivery year through December 31, 2017. For a utility that  
9 serves over 2 million customers, the energy contracts shall be  
10 multi-year with pricing escalating at 2.5% per annum. The  
11 energy contracts may be designed as financial swaps or may  
12 require physical delivery.

13       Within 30 days of October 26, 2011 (the effective date of  
14 Public Act 97-616), each such utility shall submit to the  
15 Agency updated load forecasts for the period June 1, 2013  
16 through December 31, 2017. The megawatt volume of the contracts  
17 shall be based on the updated load forecasts of the minimum  
18 monthly on-peak or off-peak average load requirements shown in  
19 the forecasts, taking into account any existing energy  
20 contracts in effect as well as the expected migration of the  
21 utility's customers to alternative retail electric suppliers.  
22 The renewable energy credit volume shall be based on the number  
23 of credits that would satisfy the requirements of subsection  
24 (c) of Section 1-75 of the Illinois Power Agency Act, subject  
25 to the rate impact caps and other provisions of subsection (c)  
26 of Section 1-75 of the Illinois Power Agency Act. The

1 evaluation of contract bids in the competitive procurement  
2 events for energy and for renewable energy credits shall  
3 incorporate price benchmarks set collaboratively by the  
4 Agency, the procurement administrator, the staff of the  
5 Commission, and the procurement monitor. If the contracts are  
6 swap contracts, then they shall be executed as transactions  
7 under a negotiated master agreement based on the form of master  
8 agreement for financial swap contracts sponsored by the  
9 International Swaps and Derivatives Association, Inc. Costs  
10 incurred pursuant to a contract authorized by this subsection  
11 (k-5) shall be deemed prudently incurred and reasonable in  
12 amount and the electric utility shall be entitled to full cost  
13 recovery pursuant to the tariffs filed with the Commission.

14 The cost of administering the procurement event described  
15 in this subsection (k-5) shall be paid by the winning supplier  
16 or suppliers to the procurement administrator through a  
17 supplier fee. In the event that there is no winning supplier  
18 for a particular utility, such utility will pay the procurement  
19 administrator for the costs associated with the procurement  
20 event, and those costs shall not be a recoverable expense.  
21 Nothing in this subsection (k-5) is intended to alter the  
22 recovery of costs for any other procurement event.

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



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

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

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

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

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

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

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

22 (Source: P.A. 97-325, eff. 8-12-11; 97-616, eff. 10-26-11;  
23 97-813, eff. 7-13-12.)

24 (Text of Section after amendment by P.A. 99-906)

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 and  
3           energy for its eligible retail customers in accordance with the  
4           applicable provisions set forth in Section 1-75 of the Illinois  
5           Power Agency Act and this Section. Beginning with the delivery  
6           year commencing on June 1, 2017, such electric utility shall  
7           also procure zero emission credits from zero emission  
8           facilities in accordance with the applicable provisions set  
9           forth in Section 1-75 of the Illinois Power Agency Act, and,  
10          for years beginning on or after June 1, 2017, the utility shall  
11          procure renewable energy resources in accordance with the  
12          applicable provisions set forth in Section 1-75 of the Illinois  
13          Power Agency Act and this Section. A small multi-jurisdictional  
14          electric utility that on December 31, 2005 served less than  
15          100,000 customers in Illinois may elect to procure power and  
16          energy for all or a portion of its eligible Illinois retail  
17          customers in accordance with the applicable provisions set  
18          forth in this Section and Section 1-75 of the Illinois Power  
19          Agency Act. This Section shall not apply to a small  
20          multi-jurisdictional utility until such time as a small  
21          multi-jurisdictional utility requests the Illinois Power  
22          Agency to prepare a procurement plan for its eligible retail  
23          customers. "Eligible retail customers" for the purposes of this  
24          Section means those retail customers that purchase power and  
25          energy from the electric utility under fixed-price bundled  
26          service tariffs, other than those retail customers whose

1 service is declared or deemed competitive under Section 16-113  
2 and those other customer groups specified in this Section,  
3 including self-generating customers, customers electing hourly  
4 pricing, or those customers who are otherwise ineligible for  
5 fixed-price bundled tariff service. For those customers that  
6 are excluded from the procurement plan's electric supply  
7 service requirements, and the utility shall procure any supply  
8 requirements, including capacity, ancillary services, and  
9 hourly priced energy, in the applicable markets as needed to  
10 serve those customers, provided that the utility may include in  
11 its procurement plan load requirements for the load that is  
12 associated with those retail customers whose service has been  
13 declared or deemed competitive pursuant to Section 16-113 of  
14 this Act to the extent that those customers are purchasing  
15 power and energy during one of the transition periods  
16 identified in subsection (b) of Section 16-113 of this Act.

17 (b) A procurement plan shall be prepared for each electric  
18 utility consistent with the applicable requirements of the  
19 Illinois Power Agency Act and this Section. For purposes of  
20 this Section, Illinois electric utilities that are affiliated  
21 by virtue of a common parent company are considered to be a  
22 single electric utility. Small multi-jurisdictional utilities  
23 may request a procurement plan for a portion of or all of its  
24 Illinois load. Each procurement plan shall analyze the  
25 projected balance of supply and demand for those retail  
26 customers to be included in the plan's electric supply service

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

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

19 (i) multi-year historical analysis of hourly  
20 loads;

21 (ii) switching trends and competitive retail  
22 market analysis;

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

24 and

25 (iv) growth forecasts by customer class.

26 (2) Analysis of the impact of any demand side and

1 renewable energy initiatives. This analysis shall include:

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

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

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

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

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

1 (A) be procured by a demand-response provider  
2 from those retail customers included in the plan's  
3 electric supply service requirements;

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

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

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

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

21 (iii) monthly forecasted system supply  
22 requirements, including expected minimum, maximum, and  
23 average values for the planning period;

24 (iv) the proposed mix and selection of standard  
25 wholesale products for which contracts will be  
26 executed during the next year, separately or in



1 combination, to meet that portion of its load  
2 requirements not met through pre-existing contracts,  
3 including but not limited to monthly 5 x 16 peak period  
4 block energy, monthly off-peak wrap energy, monthly 7 x  
5 24 energy, annual 5 x 16 energy, annual off-peak wrap  
6 energy, annual 7 x 24 energy, monthly capacity, annual  
7 capacity, peak load capacity obligations, capacity  
8 purchase plan, and ancillary services;

9 (v) proposed term structures for each wholesale  
10 product type included in the proposed procurement plan  
11 portfolio of products; and

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

23 (4) Proposed procedures for balancing loads. The  
24 procurement plan shall include, for load requirements  
25 included in the procurement plan, the process for (i)  
26 hourly balancing of supply and demand and (ii) the criteria

1 for portfolio re-balancing in the event of significant  
2 shifts in load.

3 (5) Long-Term Renewable Resources Procurement Plan.  
4 The Agency shall prepare a long-term renewable resources  
5 procurement plan for the procurement of renewable energy  
6 credits under Sections 1-56 and 1-75 of the Illinois Power  
7 Agency Act for delivery beginning in the 2017 delivery  
8 year.

9 (i) The initial long-term renewable resources  
10 procurement plan and all subsequent revisions shall be  
11 subject to review and approval by the Commission. For  
12 the purposes of this Section, "delivery year" has the  
13 same meaning as in Section 1-10 of the Illinois Power  
14 Agency Act. For purposes of this Section, "Agency"  
15 shall mean the Illinois Power Agency.

16 (ii) The long-term renewable resources planning  
17 process shall be conducted as follows:

18 (A) Electric utilities shall provide a range  
19 of load forecasts to the Illinois Power Agency  
20 within 45 days of the Agency's request for  
21 forecasts, which request shall specify the length  
22 and conditions for the forecasts including, but  
23 not limited to, the quantity of distributed  
24 generation expected to be interconnected for each  
25 year.

26 (B) The Agency shall publish for comment the

1 initial long-term renewable resources procurement  
2 plan no later than 120 days after the effective  
3 date of this amendatory Act of the 99th General  
4 Assembly and shall review, and may revise, the plan  
5 at least every 2 years thereafter. To the extent  
6 practicable, the Agency shall review and propose  
7 any revisions to the long-term renewable energy  
8 resources procurement plan in conjunction with the  
9 Agency's other planning and approval processes  
10 conducted under this Section. The initial  
11 long-term renewable resources procurement plan  
12 shall:

13 (aa) Identify the procurement programs and  
14 competitive procurement events consistent with  
15 the applicable requirements of the Illinois  
16 Power Agency Act and shall be designed to  
17 achieve the goals set forth in subsection (c)  
18 of Section 1-75 of that Act.

19 (bb) Include a schedule for procurements  
20 for renewable energy credits from  
21 utility-scale wind projects, utility-scale  
22 solar projects, and brownfield site  
23 photovoltaic projects consistent with  
24 subparagraph (G) of paragraph (1) of  
25 subsection (c) of Section 1-75 of the Illinois  
26 Power Agency Act.

1                   (cc) Identify the process whereby the  
2                   Agency will submit to the Commission for review  
3                   and approval the proposed contracts to  
4                   implement the programs required by such plan.

5                   Copies of the initial long-term renewable  
6                   resources procurement plan and all subsequent  
7                   revisions shall be posted and made publicly  
8                   available on the Agency's and Commission's  
9                   websites, and copies shall also be provided to each  
10                  affected electric utility. An affected utility and  
11                  other interested parties shall have 45 days  
12                  following the date of posting to provide comment to  
13                  the Agency on the initial long-term renewable  
14                  resources procurement plan and all subsequent  
15                  revisions. All comments submitted to the Agency  
16                  shall be specific, supported by data or other  
17                  detailed analyses, and, if objecting to all or a  
18                  portion of the procurement plan, accompanied by  
19                  specific alternative wording or proposals. All  
20                  comments shall be posted on the Agency's and  
21                  Commission's websites. During this 45-day comment  
22                  period, the Agency shall hold at least one public  
23                  hearing within each utility's service area that is  
24                  subject to the requirements of this paragraph (5)  
25                  for the purpose of receiving public comment.  
26                  Within 21 days following the end of the 45-day

1 review period, the Agency may revise the long-term  
2 renewable resources procurement plan based on the  
3 comments received and shall file the plan with the  
4 Commission for review and approval.

5 (C) Within 14 days after the filing of the  
6 initial long-term renewable resources procurement  
7 plan or any subsequent revisions, any person  
8 objecting to the plan may file an objection with  
9 the Commission. Within 21 days after the filing of  
10 the plan, the Commission shall determine whether a  
11 hearing is necessary. The Commission shall enter  
12 its order confirming or modifying the initial  
13 long-term renewable resources procurement plan or  
14 any subsequent revisions within 120 days after the  
15 filing of the plan by the Illinois Power Agency.

16 (D) The Commission shall approve the initial  
17 long-term renewable resources procurement plan and  
18 any subsequent revisions, including expressly the  
19 forecast used in the plan and taking into account  
20 that funding will be limited to the amount of  
21 revenues actually collected by the utilities, if  
22 the Commission determines that the plan will  
23 reasonably and prudently accomplish the  
24 requirements of Section 1-56 and subsection (c) of  
25 Section 1-75 of the Illinois Power Agency Act. The  
26 Commission shall also approve the process for the

1 submission, review, and approval of the proposed  
2 contracts to procure renewable energy credits or  
3 implement the programs authorized by the  
4 Commission pursuant to a long-term renewable  
5 resources procurement plan approved under this  
6 Section.

7 (iii) The Agency or third parties contracted by the  
8 Agency shall implement all programs authorized by the  
9 Commission in an approved long-term renewable  
10 resources procurement plan without further review and  
11 approval by the Commission. Third parties shall not  
12 begin implementing any programs or receive any payment  
13 under this Section until the Commission has approved  
14 the contract or contracts under the process authorized  
15 by the Commission in item (D) of subparagraph (ii) of  
16 paragraph (5) of this subsection (b) and the third  
17 party and the Agency or utility, as applicable, have  
18 executed the contract. For those renewable energy  
19 credits subject to procurement through a competitive  
20 bid process under the plan or under the initial forward  
21 procurements for wind and solar resources described in  
22 subparagraph (G) of paragraph (1) of subsection (c) of  
23 Section 1-75 of the Illinois Power Agency Act, the  
24 Agency shall follow the procurement process specified  
25 in the provisions relating to electricity procurement  
26 in subsections (e) through (i) of this Section.

1           (iv) An electric utility shall recover its costs  
2 associated with the procurement of renewable energy  
3 credits under this Section through an automatic  
4 adjustment clause tariff under subsection (k) of  
5 Section 16-108 of this Act. A utility shall not be  
6 required to advance any payment or pay any amounts  
7 under this Section that exceed the actual amount of  
8 revenues collected by the utility under paragraph (6)  
9 of subsection (c) of Section 1-75 of the Illinois Power  
10 Agency Act and subsection (k) of Section 16-108 of this  
11 Act, and contracts executed under this Section shall  
12 expressly incorporate this limitation.

13           (v) For the public interest, safety, and welfare,  
14 the Agency and the Commission may adopt rules to carry  
15 out the provisions of this Section on an emergency  
16 basis immediately following the effective date of this  
17 amendatory Act of the 99th General Assembly.

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

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

- 1 (1) The procurement administrator shall:
- 2 (i) design the final procurement process in  
3 accordance with Section 1-75 of the Illinois Power  
4 Agency Act and subsection (e) of this Section following  
5 Commission approval of the procurement plan;
- 6 (ii) develop benchmarks in accordance with  
7 subsection (e)(3) to be used to evaluate bids; these  
8 benchmarks shall be submitted to the Commission for  
9 review and approval on a confidential basis prior to  
10 the procurement event;
- 11 (iii) serve as the interface between the electric  
12 utility and suppliers;
- 13 (iv) manage the bidder pre-qualification and  
14 registration process;
- 15 (v) obtain the electric utilities' agreement to  
16 the final form of all supply contracts and credit  
17 collateral agreements;
- 18 (vi) administer the request for proposals process;
- 19 (vii) have the discretion to negotiate to  
20 determine whether bidders are willing to lower the  
21 price of bids that meet the benchmarks approved by the  
22 Commission; any post-bid negotiations with bidders  
23 shall be limited to price only and shall be completed  
24 within 24 hours after opening the sealed bids and shall  
25 be conducted in a fair and unbiased manner; in  
26 conducting the negotiations, there shall be no



1 disclosure of any information derived from proposals  
2 submitted by competing bidders; if information is  
3 disclosed to any bidder, it shall be provided to all  
4 competing bidders;

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

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

11 (x) notify the utility of contract counterparties  
12 and contract specifics; and

13 (xi) administer related contingency procurement  
14 events.

15 (2) The procurement monitor, who shall be retained by  
16 the Commission, shall:

17 (i) monitor interactions among the procurement  
18 administrator, suppliers, and utility;

19 (ii) monitor and report to the Commission on the  
20 progress of the procurement process;

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

24 (iv) assess compliance with the procurement plans  
25 approved by the Commission for each utility that on  
26 December 31, 2005 provided electric service to at least

1 100,000 customers in Illinois and for each small  
2 multi-jurisdictional utility that on December 31, 2005  
3 served less than 100,000 customers in Illinois;

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

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

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

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

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

1 utility shall provide supporting data and assumptions for  
2 each of the scenarios.

3 (2) Beginning in 2008, the Illinois Power Agency shall  
4 prepare a procurement plan by August 15th of each year, or  
5 such other date as may be required by the Commission. The  
6 procurement plan shall identify the portfolio of  
7 demand-response and power and energy products to be  
8 procured. Cost-effective demand-response measures shall be  
9 procured as set forth in item (iii) of subsection (b) of  
10 this Section. Copies of the procurement plan shall be  
11 posted and made publicly available on the Agency's and  
12 Commission's websites, and copies shall also be provided to  
13 each affected electric utility. An affected utility shall  
14 have 30 days following the date of posting to provide  
15 comment to the Agency on the procurement plan. Other  
16 interested entities also may comment on the procurement  
17 plan. All comments submitted to the Agency shall be  
18 specific, supported by data or other detailed analyses,  
19 and, if objecting to all or a portion of the procurement  
20 plan, accompanied by specific alternative wording or  
21 proposals. All comments shall be posted on the Agency's and  
22 Commission's websites. During this 30-day comment period,  
23 the Agency shall hold at least one public hearing within  
24 each utility's service area for the purpose of receiving  
25 public comment on the procurement plan. Within 14 days  
26 following the end of the 30-day review period, the Agency

1 shall revise the procurement plan as necessary based on the  
2 comments received and file the procurement plan with the  
3 Commission and post the procurement plan on the websites.

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

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

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

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

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

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

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

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

26 (4) Request for proposals competitive procurement

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

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

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

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

10 (ii) Failure of the procurement process to fully  
11 meet the expected load requirement: If the procurement  
12 process fails to fully meet the expected load  
13 requirement due to insufficient supplier participation  
14 or due to a Commission rejection of the procurement  
15 results, the procurement administrator, the  
16 procurement monitor, and the Commission staff shall  
17 meet within 10 days to analyze potential causes of low  
18 supplier interest or causes for the Commission  
19 decision. If changes are identified that would likely  
20 result in increased supplier participation, or that  
21 would address concerns causing the Commission to  
22 reject the results of the prior procurement event, the  
23 procurement administrator may implement those changes  
24 and rerun the request for proposals process according  
25 to a schedule determined by those parties and  
26 consistent with Section 1-75 of the Illinois Power



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

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

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

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

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

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

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

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

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

19 (j) Within 60 days following August 28, 2007 (the effective  
20 date of Public Act 95-481), each electric utility that on  
21 December 31, 2005 provided electric service to at least 100,000  
22 customers in Illinois shall prepare and file with the  
23 Commission an initial procurement plan, which shall conform in  
24 all material respects to the requirements of the procurement  
25 plan set forth in subsection (b); provided, however, that the  
26 Illinois Power Agency Act shall not apply to the initial

1 procurement plan prepared pursuant to this subsection. The  
2 initial procurement plan shall identify the portfolio of power  
3 and energy products to be procured and delivered for the period  
4 June 2008 through May 2009, and shall identify the proposed  
5 procurement administrator, who shall have the same experience  
6 and expertise as is required of a procurement administrator  
7 hired pursuant to Section 1-75 of the Illinois Power Agency  
8 Act. Copies of the procurement plan shall be posted and made  
9 publicly available on the Commission's website. The initial  
10 procurement plan may include contracts for renewable resources  
11 that extend beyond May 2009.

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

26 (ii) The order shall approve or modify the procurement

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

9 (k) (Blank).

10 (k-5) (Blank).

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

1 does not result in over or under recovery due to changes in  
2 customer usage and demand patterns, and that provide for the  
3 correction, on at least an annual basis, of any accounting  
4 errors that may occur. A utility shall recover through the  
5 tariff all reasonable costs incurred to implement or comply  
6 with any procurement plan that is developed and put into effect  
7 pursuant to Section 1-75 of the Illinois Power Agency Act and  
8 this Section, including any fees assessed by the Illinois Power  
9 Agency, costs associated with load balancing, and contingency  
10 plan costs. The electric utility shall also recover its full  
11 costs of procuring electric supply for which it contracted  
12 before the effective date of this Section in conjunction with  
13 the provision of full requirements service under fixed-price  
14 bundled service tariffs subsequent to December 31, 2006. All  
15 such costs shall be deemed to have been prudently incurred. The  
16 pass-through tariffs that are filed and approved pursuant to  
17 this Section shall not be subject to review under, or in any  
18 way limited by, Section 16-111(i) of this Act. All of the costs  
19 incurred by the electric utility associated with the purchase  
20 of zero emission credits in accordance with subsection (d-5) of  
21 Section 1-75 of the Illinois Power Agency Act and, beginning  
22 June 1, 2017, all of the costs incurred by the electric utility  
23 associated with the purchase of renewable energy resources in  
24 accordance with Sections 1-56 and 1-75 of the Illinois Power  
25 Agency Act, shall be recovered through the electric utility's  
26 tariffed charges applicable to all of its retail customers, as

1 specified in subsection (k) of Section 16-108 of this Act, and  
2 shall not be recovered through the electric utility's tariffed  
3 charges for electric power and energy supply to its eligible  
4 retail customers.

5 (m) The Commission has the authority to adopt rules to  
6 carry out the provisions of this Section. For the public  
7 interest, safety, and welfare, the Commission also has  
8 authority to adopt rules to carry out the provisions of this  
9 Section on an emergency basis immediately following August 28,  
10 2007 (the effective date of Public Act 95-481).

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

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

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

1 provide electric service to those retail customers included in  
2 the plan's electric supply service requirements. If the  
3 facility is shown to be the least-cost option and is included  
4 in a procurement plan prepared in accordance with Section 1-75  
5 of the Illinois Power Agency Act and this Section, then the  
6 electric utility shall make a filing pursuant to Section 8-406  
7 of this Act, and may request of the Commission any statutory  
8 relief required thereunder. If the Commission grants all of the  
9 necessary approvals for the proposed facility, such supply  
10 shall thereafter be considered as a pre-existing contract under  
11 subsection (b) of this Section. The Commission shall in any  
12 order approving a proposal under this subsection specify how  
13 the utility will recover the prudently incurred costs of  
14 investing in, leasing, owning, or operating such generation  
15 facility through just and reasonable rates charged to those  
16 retail customers included in the plan's electric supply service  
17 requirements. Cost recovery for facilities included in the  
18 utility's procurement plan pursuant to this subsection shall  
19 not be subject to review under or in any way limited by the  
20 provisions of Section 16-111(i) of this Act. Nothing in this  
21 Section is intended to prohibit a utility from filing for a  
22 fuel adjustment clause as is otherwise permitted under Section  
23 9-220 of this Act.

24 (q) If the Illinois Power Agency filed with the Commission,  
25 under Section 16-111.5 of this Act, its proposed procurement  
26 plan for the period commencing June 1, 2017, and the Commission



1 has not yet entered its final order approving the plan on or  
2 before the effective date of this amendatory Act of the 99th  
3 General Assembly, then the Illinois Power Agency shall file a  
4 notice of withdrawal with the Commission, after the effective  
5 date of this amendatory Act of the 99th General Assembly, to  
6 withdraw the proposed procurement of renewable energy  
7 resources to be approved under the plan, other than the  
8 procurement of renewable energy credits from distributed  
9 renewable energy generation devices using funds previously  
10 collected from electric utilities' retail customers that take  
11 service pursuant to electric utilities' hourly pricing tariff  
12 or tariffs and, for an electric utility that serves less than  
13 100,000 retail customers in the State, other than the  
14 procurement of renewable energy credits from distributed  
15 renewable energy generation devices. Upon receipt of the  
16 notice, the Commission shall enter an order that approves the  
17 withdrawal of the proposed procurement of renewable energy  
18 resources from the plan. The initially proposed procurement of  
19 renewable energy resources shall not be approved or be the  
20 subject of any further hearing, investigation, proceeding, or  
21 order of any kind.

22 This amendatory Act of the 99th General Assembly preempts  
23 and supersedes any order entered by the Commission that  
24 approved the Illinois Power Agency's procurement plan for the  
25 period commencing June 1, 2017, to the extent it is  
26 inconsistent with the provisions of this amendatory Act of the

1 99th General Assembly. To the extent any previously entered  
2 order approved the procurement of renewable energy resources,  
3 the portion of that order approving the procurement shall be  
4 void, other than the procurement of renewable energy credits  
5 from distributed renewable energy generation devices using  
6 funds previously collected from electric utilities' retail  
7 customers that take service under electric utilities' hourly  
8 pricing tariff or tariffs and, for an electric utility that  
9 serves less than 100,000 retail customers in the State, other  
10 than the procurement of renewable energy credits for  
11 distributed renewable energy generation devices.

12 (r) The Commission shall quarterly review the price of any  
13 zero emission credits procured by the Illinois Power Agency  
14 under subsection (d-5) of Section 1-75 of the Illinois Power  
15 Agency Act to ensure no more than the unrecovered costs of the  
16 plants based on market sales and pricing is recovered. If the  
17 plant shows a profit for more than one year, the zero emission  
18 credit program shall be rebid and the Illinois Power Agency  
19 shall have the authority to expand the definition to include  
20 additional Illinois-based zero emission generation sources as  
21 eligible for the program, including an annual procurement  
22 process. Additionally, the Commission, in its review, shall  
23 ensure any qualifying nuclear plant is not receiving excessive  
24 earnings through its zero emission compensation under this  
25 Section, and if a plant is found to have received excessive  
26 earnings due to the zero emission credit pricing, that plant

1 shall have its zero emission credit qualification revoked.  
2 Nothing prevents the Commission from initiating a docketed  
3 proceeding to reconcile zero emission credit payments with  
4 allowed costs identified under this Section.

5 (Source: P.A. 99-906, eff. 6-1-17.)

6 Section 95. No acceleration or delay. Where this Act makes  
7 changes in a statute that is represented in this Act by text  
8 that is not yet or no longer in effect (for example, a Section  
9 represented by multiple versions), the use of that text does  
10 not accelerate or delay the taking effect of (i) the changes  
11 made by this Act or (ii) provisions derived from any other  
12 Public Act.

13 Section 99. Effective date. This Act takes effect upon  
14 becoming law or on the date the provisions of Public Act 99-906  
15 that amend Section 16-111.5 of the Public Utilities Act take  
16 effect, whichever is later.