



Rep. Gary Hannig

Filed: 5/31/2008

09500SB1987ham002

LRB095 14199 MJR 51811 a

1 AMENDMENT TO SENATE BILL 1987

2 AMENDMENT NO. _____. Amend Senate Bill 1987 by replacing
3 everything after the enacting clause with the following:

4 "ARTICLE 1

5 Section 1-1. Short title. This Article may be cited as the
6 Clean Coal Portfolio Standard Law.

7 Section 1-5. The Illinois Power Agency Act is amended by
8 changing Sections 1-5, 1-10, 1-75, and 1-80 as follows:

9 (20 ILCS 3855/1-5)

10 Sec. 1-5. Legislative declarations and findings. The
11 General Assembly finds and declares:

12 (1) The health, welfare, and prosperity of all Illinois
13 citizens require the provision of adequate, reliable,
14 affordable, efficient, and environmentally sustainable

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

3 (2) The transition to retail competition is not
4 complete. Some customers, especially residential and small
5 commercial customers, have failed to benefit from lower
6 electricity costs from retail and wholesale competition.

7 (3) Escalating prices for electricity in Illinois pose
8 a serious threat to the economic well-being, health, and
9 safety of the residents of and the commerce and industry of
10 the State.

11 (4) To protect against this threat to economic
12 well-being, health, and safety it is necessary to improve
13 the process of procuring electricity to serve Illinois
14 residents, to promote investment in energy efficiency and
15 demand-response measures, and to support development of
16 clean coal technologies and renewable resources.

17 (5) Procuring a diverse electricity supply portfolio
18 will ensure the lowest total cost over time for adequate,
19 reliable, efficient, and environmentally sustainable
20 electric service.

21 (6) Including cost-effective renewable resources in
22 that portfolio will reduce long-term direct and indirect
23 costs to consumers by decreasing environmental impacts and
24 by avoiding or delaying the need for new generation,
25 transmission, and distribution infrastructure.

26 (7) Energy efficiency, demand-response measures, and

1 renewable energy are resources currently underused in
2 Illinois.

3 (8) The State should encourage the use of advanced
4 clean coal technologies that capture and sequester carbon
5 dioxide emissions to advance environmental protection
6 goals and to demonstrate the viability of coal and
7 coal-derived fuels in a carbon-constrained economy.

8 The General Assembly therefore finds that it is necessary
9 to create the Illinois Power Agency and that the goals and
10 objectives of that Agency are to accomplish each of the
11 following:

12 (A) Develop electricity procurement plans to ensure
13 adequate, reliable, affordable, efficient, and
14 environmentally sustainable electric service at the lowest
15 total cost over time, taking into account any benefits of
16 price stability, for electric utilities that on December
17 31, 2005 provided electric service to at least 100,000
18 customers in Illinois. The procurement plan shall be
19 updated on an annual basis and shall include renewable
20 energy resources sufficient to achieve the standards
21 specified in this Act.

22 (B) Conduct competitive procurement processes to
23 procure the supply resources identified in the procurement
24 plan.

25 (C) Develop electric generation and co-generation
26 facilities that use indigenous coal or renewable

1 resources, or both, financed with bonds issued by the
2 Illinois Finance Authority.

3 (D) Supply electricity from the Agency's facilities at
4 cost to one or more of the following: municipal electric
5 systems, governmental aggregators, or rural electric
6 cooperatives in Illinois.

7 (Source: P.A. 95-481, eff. 8-28-07.)

8 (20 ILCS 3855/1-10)

9 Sec. 1-10. Definitions.

10 "Agency" means the Illinois Power Agency.

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

19 "Authority" means the Illinois Finance Authority.

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

1 before 2015, at least 70% of the total carbon emissions that
2 the facility would otherwise emit if, at the time construction
3 commences, the facility is scheduled to commence operation
4 during 2015 or 2016, and at least 90% of the total carbon
5 emissions that the facility would otherwise emit if, at the
6 time construction commences, the facility is scheduled to
7 commence operation after 2016. The power block of the clean
8 coal facility shall not exceed allowable emission rates for
9 sulfur dioxide, nitrogen oxides, carbon monoxide, particulates
10 and mercury for a natural gas-fired combined-cycle facility the
11 same size as and in the same location as the clean coal
12 facility at the time the clean coal facility obtains an
13 approved air permit. All coal used by a clean coal facility
14 shall have high volatile bituminous rank and greater than 1.7
15 pounds of sulfur per million btu content, unless the clean coal
16 facility does not use gasification technology and was operating
17 as a conventional coal-fired electric generating facility on
18 the effective date of this amendatory Act of the 95th General
19 Assembly.

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

26 "Commission" means the Illinois Commerce Commission.

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

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

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

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

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

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

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

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

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

7 "Energy efficiency" means measures that reduce the amount
8 of electricity required to achieve a given end use.

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

11 "Facility" means an electric generating unit or a
12 co-generating unit that produces electricity along with
13 related equipment necessary to connect the facility to an
14 electric transmission or distribution system.

15 "Governmental aggregator" means one or more units of local
16 government that individually or collectively procure
17 electricity to serve residential retail electrical loads
18 located within its or their jurisdiction.

19 "Local government" means a unit of local government as
20 defined in Article VII of Section 1 of the Illinois
21 Constitution.

22 "Municipality" means a city, village, or incorporated
23 town.

24 "Person" means any natural person, firm, partnership,
25 corporation, either domestic or foreign, company, association,
26 limited liability company, joint stock company, or association

1 and includes any trustee, receiver, assignee, or personal
2 representative thereof.

3 "Project" means the planning, bidding, and construction of
4 a facility.

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

7 "Real property" means any interest in land together with
8 all structures, fixtures, and improvements thereon, including
9 lands under water and riparian rights, any easements,
10 covenants, licenses, leases, rights-of-way, uses, and other
11 interests, together with any liens, judgments, mortgages, or
12 other claims or security interests related to real property.

13 "Renewable energy credit" means a tradable credit that
14 represents the environmental attributes of a certain amount of
15 energy produced from a renewable energy resource.

16 "Renewable energy resources" includes energy and its
17 associated renewable energy credit or renewable energy credits
18 from wind, solar thermal energy, photovoltaic cells and panels,
19 biodiesel, crops and untreated and unadulterated organic waste
20 biomass, trees and tree trimmings, hydropower that does not
21 involve new construction or significant expansion of
22 hydropower dams, and other alternative sources of
23 environmentally preferable energy. For purposes of this Act,
24 landfill gas produced in the State is considered a renewable
25 energy resource. "Renewable energy resources" does not include
26 the incineration, burning, or heating of tires, garbage,

1 general household, institutional, and commercial waste,
2 industrial lunchroom or office waste, landscape waste other
3 than trees and tree trimmings, railroad crossties, utility
4 poles, and construction or demolition debris, other than
5 untreated and unadulterated waste wood.

6 "Revenue bond" means any bond, note, or other evidence of
7 indebtedness issued by the Authority, the principal and
8 interest of which is payable solely from revenues or income
9 derived from any project or activity of the Agency.

10 "Sequester" means permanent storage of carbon dioxide by
11 injecting it into a saline aquifer, a depleted gas reservoir,
12 or an oil reservoir, directly or through an enhanced oil
13 recovery process that may involve intermediate storage in a
14 salt dome.

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

19 "Total resource cost test" or "TRC test" means a standard
20 that is met if, for an investment in energy efficiency or
21 demand-response measures, the benefit-cost ratio is greater
22 than one. The benefit-cost ratio is the ratio of the net
23 present value of the total benefits of the program to the net
24 present value of the total costs as calculated over the
25 lifetime of the measures. A total resource cost test compares
26 the sum of avoided electric utility costs, representing the

1 benefits that accrue to the system and the participant in the
2 delivery of those efficiency measures, to the sum of all
3 incremental costs of end-use measures that are implemented due
4 to the program (including both utility and participant
5 contributions), plus costs to administer, deliver, and
6 evaluate each demand-side program, to quantify the net savings
7 obtained by substituting the demand-side program for supply
8 resources. In calculating avoided costs of power and energy
9 that an electric utility would otherwise have had to acquire,
10 reasonable estimates shall be included of financial costs
11 likely to be imposed by future regulations and legislation on
12 emissions of greenhouse gases.

13 (Source: P.A. 95-481, eff. 8-28-07.)

14 (20 ILCS 3855/1-75)

15 Sec. 1-75. Planning and Procurement Bureau. The Planning
16 and Procurement Bureau has the following duties and
17 responsibilities:

18 (a) The Planning and Procurement Bureau shall each
19 year, beginning in 2008, develop plans for the procurement
20 of electricity supply, including electricity generated by
21 clean coal facilities and facilities that use renewable
22 resources. The Bureau shall ~~plans and~~ conduct competitive
23 procurement processes in accordance with the requirements
24 of Section 16-111.5 of the Public Utilities Act for the
25 eligible retail customers of electric utilities that on

1 December 31, 2005 provided electric service to at least
2 100,000 customers in Illinois. For the purposes of this
3 Section, the term "eligible retail customers" has the same
4 definition as found in Section 16-111.5(a) of the Public
5 Utilities Act.

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

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

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

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

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

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

26 (F) adequate resources to perform and fulfill

1 the required functions and responsibilities; and

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

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

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

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

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

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

22 (E) expertise in credit and contract
23 protocols;

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

26 (G) the absence of a conflict of interest and

1 inappropriate bias for or against potential
2 bidders or the affected electric utilities.

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

20 (A) failure to satisfy qualification criteria;

21 (B) identification of a conflict of interest;

22 or

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

26 The Agency shall remove experts or expert

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

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

15 (5) The Agency shall select an expert or expert
16 consulting firm to develop procurement plans based on
17 the proposals submitted and shall award one-year
18 contracts to those selected with an option for the
19 Agency for a one-year renewal.

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

1 contract to the expert or expert consulting firm so
2 selected with Commission approval with an option for
3 the Agency for a one-year renewal.

4 (b) The experts or expert consulting firms retained by
5 the Agency shall, as appropriate, prepare procurement
6 plans, and conduct a competitive procurement process as
7 prescribed in Section 16-111.5 of the Public Utilities Act,
8 to ensure adequate, reliable, affordable, efficient, and
9 environmentally sustainable electric service at the lowest
10 total cost over time, taking into account any benefits of
11 price stability, for eligible retail customers of electric
12 utilities that on December 31, 2005 provided electric
13 service to at least 100,000 customers in the State of
14 Illinois.

15 (c) Renewable portfolio standard.

16 (1) The procurement plans shall include
17 cost-effective renewable energy resources. A minimum
18 percentage of each utility's total supply to serve the
19 load of eligible retail customers, as defined in
20 Section 16-111.5(a) of the Public Utilities Act,
21 procured for each of the following years shall be
22 generated from cost-effective renewable energy
23 resources: at least 2% by June 1, 2008; at least 4% by
24 June 1, 2009; at least 5% by June 1, 2010; at least 6%
25 by June 1, 2011; at least 7% by June 1, 2012; at least
26 8% by June 1, 2013; at least 9% by June 1, 2014; at

1 least 10% by June 1, 2015; and increasing by at least
2 1.5% each year thereafter to at least 25% by June 1,
3 2025. To the extent that it is available, at least 75%
4 of the renewable energy resources used to meet these
5 standards shall come from wind generation. For
6 purposes of this Section, "cost-effective" means that
7 the costs of procuring renewable energy resources do
8 not cause the limit stated in paragraph (2) of this
9 subsection (c) to be exceeded and do not exceed
10 benchmarks based on market prices for renewable
11 resources in the region, which shall be developed by
12 the procurement administrator, in consultation with
13 the Commission staff, Agency staff, and the
14 procurement monitor and shall be subject to Commission
15 review and approval.

16 (2) For purposes of this subsection (c), the
17 required procurement of cost-effective renewable
18 energy resources for a particular year shall be
19 measured as a percentage of the actual amount of
20 electricity (megawatt-hours) supplied by the electric
21 utility to eligible retail customers in the planning
22 year ending immediately prior to the procurement. For
23 purposes of this subsection (c), the amount per
24 kilowatthour means the total amount paid for electric
25 service expressed on a per kilowatthour basis. For
26 purposes of this subsection (c), the total amount paid

1 for electric service includes without limitation
2 amounts paid for supply, transmission, distribution,
3 surcharges, and add-on taxes.

4 Notwithstanding the requirements of this
5 subsection (c), the total of renewable energy
6 resources procured pursuant to the procurement plan
7 for any single year shall be reduced by an amount
8 necessary to limit the annual estimated average net
9 increase due to the costs of these resources included
10 in the amounts paid by eligible retail customers in
11 connection with electric service to:

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

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

20 (C) in 2010, the greater of an additional 0.5%
21 of the amount paid per kilowatthour by those
22 customers during the year ending May 31, 2009 or
23 1.5% of the amount paid per kilowatthour by those
24 customers during the year ending May 31, 2007;

25 (D) in 2011, the greater of an additional 0.5%
26 of the amount paid per kilowatthour by those

1 customers during the year ending May 31, 2010 or 2%
2 of the amount paid per kilowatthour by those
3 customers during the year ending May 31, 2007; and

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

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

23 (3) Through June 1, 2011, renewable energy
24 resources shall be counted for the purpose of meeting
25 the renewable energy standards set forth in paragraph
26 (1) of this subsection (c) only if they are generated

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

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

21 (d) Clean coal portfolio standard.

22 (1) The procurement plans shall include electricity
23 generated using clean coal. At least 5% of each utility's
24 total supply to serve the load of eligible retail customers
25 in 2015 and each year thereafter shall be generated by the
26 initial clean coal facility, subject to the limits

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

17 (A) A utility need not actually deliver
18 electricity purchased to comply with this Section to
19 eligible retail customers, provided that if the
20 utility claims credit for such purpose, subsequent
21 purchasers shall not receive any emission credits in
22 connection with the purchase of such electricity.

23 (B) Utilities shall maintain adequate records
24 documenting the contractual disposition of all
25 electricity purchased to comply with this Section and
26 shall file an accounting with the load forecast that

1 must be filed with the Agency by July 15 of each year,
2 in accordance with subsection (d) of Section 16-111.5
3 of the Public Utilities Act.

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

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

25 (i) in 2010, no more than 0.5% of the amount
26 paid per kilowatthour by those customers during

1 the year ending May 31, 2009;

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

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

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

17 (v) thereafter, the amount of electricity
18 generated by clean coal facilities procured
19 pursuant to the procurement plan for any single
20 year shall be reduced by an amount necessary to
21 limit the estimated average net increase due to the
22 cost of these resources included in the amounts
23 paid by eligible retail customers in connection
24 with electric service to no more than the greater
25 of (i) 2.015% of the amount paid per kilowatthour
26 by those customers during the year ending May 31,

1 2009 or (ii) the incremental amount per
2 kilowatthour paid for these resources in 2013.
3 These requirements may be altered only as provided
4 by statute. No later than June 30, 2015, the
5 Commission shall review the limitation on the
6 amount of electricity generated by clean coal
7 facilities procured pursuant to this subsection
8 (d) and report to the General Assembly its findings
9 as to whether that limitation unduly constrains
10 the procurement of cost-effective clean coal
11 facilities.

12 (3) Initial clean coal facility. In order to promote
13 development of clean coal facilities in Illinois, each
14 electric utility subject to this Section shall execute a
15 power purchase agreement to purchase electricity from a
16 proposed clean coal facility in Illinois (the "initial
17 clean coal facility") that will have a nameplate capacity
18 of at least 500 MW when commercial operation commences,
19 that has a final Clean Air Act permit on the effective date
20 of this amendatory Act of the 95th General Assembly, and
21 that will meet the definition of clean coal facility in
22 Section 1-10 of this Act when commercial operation
23 commences. The power purchase agreements with this initial
24 clean coal facility shall be executed within 60 days after
25 the later of the effective date of this amendatory Act of
26 the 95th General Assembly or approval of the agreement by

1 the Federal Energy Regulatory Commission and shall be
2 considered pre-existing contracts in the utilities'
3 procurement plans for eligible retail customers. The
4 Agency and the Commission shall have authority to inspect
5 all books and records associated with the initial clean
6 coal facility during the term of such a power purchase
7 agreement. A utility's power purchase agreement for the
8 sale of energy and capacity produced by the initial clean
9 coal facility shall:

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

21 (ii) provide that all miscellaneous net
22 revenue, including but not limited to net revenue
23 from the sale of emission allowances, if any,
24 substitute natural gas, if any, grants or other
25 support provided by the State of Illinois or the
26 United States Government, firm transmission

1 rights, if any, by-products produced by the
2 facility, energy or capacity derived from the
3 facility and not purchased pursuant to paragraph
4 (3) of this subsection (d) or item (5) of
5 subsection (d) of Section 16-115 of the Public
6 Utilities Act, whether generated from the
7 synthesis gas derived from coal, from substitute
8 natural gas, or from natural gas, shall be credited
9 against the revenue requirement for this initial
10 clean coal facility;

11 (iii) establish a plant availability target of
12 85% starting in the third year of commercial
13 operation and an incentive structure based on this
14 target, under which the penalty in any given year
15 shall not exceed 15% of the amount of return on
16 equity approved pursuant to paragraph (4) of this
17 subsection (d) and the bonus shall not exceed 10%
18 of the amount of return on equity approved pursuant
19 to paragraph (4) of this subsection (d);

20 (iv) require delivery of electricity to the
21 initial clean coal facility busbar, which shall be
22 interconnected with transmission facilities
23 operated by the Midwest Independent System
24 Operator, the PJM Interconnection or their
25 successors;

26 (v) specify a term of no more than 30 years,

1 commencing on the commercial operation date of the
2 facility;

3 (vi) require a utility subject to this Section
4 to buy from the initial clean coal facility in each
5 hour an amount of energy equal to all clean coal
6 energy made available from the initial clean coal
7 facility during such hour times a fraction, the
8 numerator of which is such utility's market share
9 of electricity sold in the utility's service
10 territory (expressed in kilowatt-hours sold)
11 during the prior calendar month and the
12 denominator of which is the total market shares
13 during the prior month of all utilities and
14 alternative retail electric suppliers that are
15 party to a power purchase agreement with the
16 initial clean coal facility, provided that the
17 amount purchased by the utility in any year will be
18 limited by item (2) of this subsection (d);

19 (vii) append documentation showing that the
20 formula rate and contract have been approved by the
21 Federal Energy Regulatory Commission pursuant to
22 Section 205 of the Federal Power Act;

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

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

3 (ix) provide that any changes to the terms of
4 the contract are subject to review under the public
5 interest standard applied by the Federal Energy
6 Regulatory Commission pursuant to Sections 205 and
7 206 of the Federal Power Act;

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

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

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

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

1 behalf of the People of the State of Illinois, may
2 specifically enforce the facility's sequestration
3 requirement and the other terms of this contract
4 provision;

5 (xiii) include limits on, and accordingly
6 provide for modification of, the amount of energy
7 the utility is required to purchase under the
8 contract consistent with item (2) of this
9 subsection (d);

10 (xiv) require Commission review: (A) to
11 determine the justness, reasonableness, and
12 prudence of the inputs to the formula referenced in
13 subparagraph (i) of item (3) of this subsection
14 (d), prior to an adjustment in those inputs
15 including, without limitation, the capital
16 structure and return on equity, fuel costs, and
17 other operations and maintenance costs and (B) to
18 approve the costs passed through to customers
19 under this contract by which the utility satisfies
20 its statutory obligations;

21 (xv) limit the utility's obligation to such
22 amount as the utility is allowed to recover through
23 tariffs filed with the Commission, provided that
24 neither the clean coal facility nor the utility
25 waives any right to assert federal pre-emption or
26 any other argument in response to a purported

1 disallowance of recovery costs;

2 (xvi) limit the purchaser's obligation to
3 incur any liability until such time as the facility
4 is generating power and energy and such power and
5 energy is being delivered to the facility busbar.

6 (4) Effective date of power purchase agreements for the
7 initial clean coal facility. Power purchase agreements
8 with the initial clean coal facility shall not become
9 effective unless authorizing legislation is enacted to
10 approve the projected price, stated in cents per
11 kilowatt-hour, to be charged for electricity generated by
12 the initial clean coal facility; the projected impact on
13 residential and small business customers' bills over the
14 life of the power purchase agreement; and allowable return
15 on equity for the project, based on a front end engineering
16 and design study, a facility cost report, and an operating
17 and maintenance cost quote for the facility, which shall be
18 prepared as follows:

19 (A) The facility cost report shall be prepared by
20 duly licensed engineering and construction firms
21 detailing the estimated capital costs payable to one or
22 more contractors or suppliers for the engineering,
23 procurement and construction of the components
24 comprising the initial clean coal facility and the
25 estimated costs of operation and maintenance of the
26 facility. The facility cost report shall include:

1 (i) an estimate of the capital cost of the core
2 plant based on one or more front end engineering
3 and design studies for the gasification island and
4 related facilities. The core plant shall include
5 all civil, structural, mechanical, electrical,
6 control, and safety systems.

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

18 The quoted construction costs shall be expressed
19 in nominal dollars as of the date that the quote is
20 prepared and shall include (1) capitalized financing
21 costs during construction, (2) taxes, insurance, and
22 other owners costs, and (3) an assumed escalation in
23 materials and labor beyond the date as of which the
24 construction cost quote is expressed.

25 (B) The front end engineering and design study for
26 the gasification island and the cost study for the

1 balance of plant shall include sufficient design work
2 to permit quantification of major categories of
3 materials, commodities and labor hours, and receipt of
4 quotes from vendors of major equipment required to
5 construct and operate the clean coal facility.

6 (C) The facility cost report shall also include an
7 operating and maintenance cost quote that will provide
8 the estimated cost of delivered fuel, personnel,
9 maintenance contracts, chemicals, catalysts,
10 consumables, spares, and other fixed and variable
11 operations and maintenance costs.

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

15 (b) The balance of the operating and
16 maintenance cost quote, excluding delivered fuel
17 costs will be developed based on the inputs
18 provided by duly licensed engineering and
19 construction firms performing the construction
20 cost quote, potential vendors under long-term
21 service agreements and plant operating agreements,
22 or recognized third party plant operator or
23 operators.

24 The operating and maintenance cost quote
25 (including the cost of the front end engineering
26 and design study) shall be expressed in nominal

1 dollars as of the date that the quote is prepared
2 and shall include (1) taxes, insurance, and other
3 owner's costs, and (2) an assumed escalation in
4 materials and labor beyond the date as of which the
5 operating and maintenance cost quote is expressed.

6 (D) Amounts paid to third parties unrelated to the
7 owner or owners of the initial clean coal facility to
8 prepare the core plant construction cost quote,
9 including the front end engineering and design study,
10 and the operating and maintenance cost quote will be
11 reimbursed through Coal Development Bonds.

12 (5) Re-powering and retrofitting coal-fired power
13 plants previously owned by Illinois utilities to qualify as
14 clean coal facilities. During the 2009 procurement
15 planning process and thereafter, the Agency and the
16 Commission shall consider contracts to purchase
17 electricity generated by power plants that were previously
18 owned by Illinois utilities and that have been or will be
19 converted into clean coal facilities, as defined by Section
20 1-10 of this Act. The owners of such facilities may propose
21 long-term power purchase agreements to sell electricity on
22 a cost of service basis, to utilities and Alternative
23 Retail Electric Suppliers required, under subsection (d)
24 of this Section and item (5) of subsection (d) of Section
25 16-115 of the Public Utilities Act to comply with the clean
26 coal portfolio standard. The Agency and the Commission may

1 approve any such utility contracts that do not exceed
2 cost-based benchmarks developed by the procurement
3 administrator, in consultation with the Commission staff,
4 Agency staff and the procurement monitor, subject to
5 Commission review and approval. The Commission shall have
6 authority to inspect all books and records associated with
7 these clean coal facilities during the term of any such
8 contract.

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

15 (e) ~~(d)~~ The draft procurement plans are subject to
16 public comment, as required by Section 16-111.5 of the
17 Public Utilities Act.

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

23 (g) ~~(f)~~ The Agency shall assess fees to each affected
24 utility to recover the costs incurred in preparation of the
25 annual procurement plan for the utility.

26 (h) ~~(g)~~ The Agency shall assess fees to each bidder to

1 recover the costs incurred in connection with a competitive
2 procurement process.

3 (Source: P.A. 95-481, eff. 8-28-07.)

4 (20 ILCS 3855/1-80)

5 Sec. 1-80. Resource Development Bureau. The Resource
6 Development Bureau has the following duties and
7 responsibilities:

8 (a) At the Agency's discretion, conduct feasibility
9 studies on the construction of any facility. Funding for a
10 study shall come from either:

11 (i) fees assessed by the Agency on municipal
12 electric systems, governmental aggregators, unit or
13 units of local government, or rural electric
14 cooperatives requesting the feasibility study; or

15 (ii) an appropriation from the General Assembly.

16 (b) If the Agency undertakes the construction of a
17 facility, moneys generated from the sale of revenue bonds
18 by the Authority for the facility shall be used to
19 reimburse the source of the money used for the facility's
20 feasibility study.

21 (c) The Agency may develop, finance, construct, or
22 operate electric generation and co-generation facilities
23 that use indigenous coal or renewable resources, or both,
24 financed with bonds issued by the Authority on behalf of
25 the Agency. Any such facility that uses coal must be a

1 clean coal facility and must be constructed in a location
2 ~~Preference shall be given to technologies that enable~~
3 ~~carbon capture and sites in locations~~ where the geology is
4 suitable for carbon sequestration. The Agency may also
5 develop, finance, construct, or operate a carbon
6 sequestration facility.

7 (1) The Agency may enter into contractual
8 arrangements with private and public entities,
9 including but not limited to municipal electric
10 systems, governmental aggregators, and rural electric
11 cooperatives, to plan, site, construct, improve,
12 rehabilitate, and operate those electric generation
13 and co-generation facilities. No contract shall be
14 entered into by the Agency that would jeopardize the
15 tax-exempt status of any bond issued in connection with
16 a project for which the Agency entered into the
17 contract.

18 (2) The Agency shall hold at least one public
19 hearing before entering into any such contractual
20 arrangements. At least 30-days' notice of the hearing
21 shall be given by publication once in each week during
22 that period in 6 newspapers within the State, at least
23 one of which has a circulation area that includes the
24 location of the proposed facility.

25 (3) The first facility that the Agency develops,
26 finances, or constructs shall be a facility that uses

1 coal produced in Illinois. The Agency may, however,
2 also develop, finance, or construct renewable energy
3 facilities after work on the first facility has
4 commenced.

5 (4) The Agency may not develop, finance, or
6 construct a nuclear power plant.

7 (5) The Agency shall assess fees to applicants
8 seeking to partner with the Agency on projects.

9 (d) Use of electricity generated by the Agency's
10 facilities. The Agency may supply electricity produced by
11 the Agency's facilities to municipal electric systems,
12 governmental aggregators, or rural electric cooperatives
13 in Illinois. The electricity shall be supplied at cost.

14 (1) Contracts to supply power and energy from the
15 Agency's facilities shall provide for the effectuation
16 of the policies set forth in this Act.

17 (2) The contracts shall also provide that,
18 notwithstanding any provision in the Public Utilities
19 Act, entities supplied with power and energy from an
20 Agency facility shall supply the power and energy to
21 retail customers at the same price paid to purchase
22 power and energy from the Agency.

23 (e) Electric utilities shall not be required to purchase
24 electricity directly or indirectly from facilities developed
25 or sponsored by the Agency.

26 (f) The Agency may sell excess capacity and excess energy

1 into the wholesale electric market at prevailing market rates;
2 provided, however, the Agency may not sell excess capacity or
3 excess energy through the procurement process described in
4 Section 16-111.5 of the Public Utilities Act.

5 (g) The Agency shall not directly sell electric power and
6 energy to retail customers. Nothing in this paragraph shall be
7 construed to prohibit sales to municipal electric systems,
8 governmental aggregators, or rural electric cooperatives.

9 (Source: P.A. 95-481, eff. 8-28-07.)

10 Section 1-10. The Public Utilities Act is amended by
11 changing Sections 9-220, 16-101A, and 16-115 as follows:

12 (220 ILCS 5/9-220) (from Ch. 111 2/3, par. 9-220)

13 Sec. 9-220. Rate changes based on changes in fuel costs.

14 (a) Notwithstanding the provisions of Section 9-201, the
15 Commission may authorize the increase or decrease of rates and
16 charges based upon changes in the cost of fuel used in the
17 generation or production of electric power, changes in the cost
18 of purchased power, or changes in the cost of purchased gas
19 through the application of fuel adjustment clauses or purchased
20 gas adjustment clauses. The Commission may also authorize the
21 increase or decrease of rates and charges based upon
22 expenditures or revenues resulting from the purchase or sale of
23 emission allowances created under the federal Clean Air Act
24 Amendments of 1990, through such fuel adjustment clauses, as a

1 cost of fuel. For the purposes of this paragraph, cost of fuel
2 used in the generation or production of electric power shall
3 include the amount of any fees paid by the utility for the
4 implementation and operation of a process for the
5 desulfurization of the flue gas when burning high sulfur coal
6 at any location within the State of Illinois irrespective of
7 the attainment status designation of such location; but shall
8 not include transportation costs of coal (i) except to the
9 extent that for contracts entered into on and after the
10 effective date of this amendatory Act of 1997, the cost of the
11 coal, including transportation costs, constitutes the lowest
12 cost for adequate and reliable fuel supply reasonably available
13 to the public utility in comparison to the cost, including
14 transportation costs, of other adequate and reliable sources of
15 fuel supply reasonably available to the public utility, or (ii)
16 except as otherwise provided in the next 3 sentences of this
17 paragraph. Such costs of fuel shall, when requested by a
18 utility or at the conclusion of the utility's next general
19 electric rate proceeding, whichever shall first occur, include
20 transportation costs of coal purchased under existing coal
21 purchase contracts. For purposes of this paragraph "existing
22 coal purchase contracts" means contracts for the purchase of
23 coal in effect on the effective date of this amendatory Act of
24 1991, as such contracts may thereafter be amended, but only to
25 the extent that any such amendment does not increase the
26 aggregate quantity of coal to be purchased under such contract.

1 Nothing herein shall authorize an electric utility to recover
2 through its fuel adjustment clause any amounts of
3 transportation costs of coal that were included in the revenue
4 requirement used to set base rates in its most recent general
5 rate proceeding. Cost shall be based upon uniformly applied
6 accounting principles. Annually, the Commission shall initiate
7 public hearings to determine whether the clauses reflect actual
8 costs of fuel, gas, power, or coal transportation purchased to
9 determine whether such purchases were prudent, and to reconcile
10 any amounts collected with the actual costs of fuel, power,
11 gas, or coal transportation prudently purchased. In each such
12 proceeding, the burden of proof shall be upon the utility to
13 establish the prudence of its cost of fuel, power, gas, or coal
14 transportation purchases and costs. The Commission shall issue
15 its final order in each such annual proceeding for an electric
16 utility by December 31 of the year immediately following the
17 year to which the proceeding pertains, provided, that the
18 Commission shall issue its final order with respect to such
19 annual proceeding for the years 1996 and earlier by December
20 31, 1998.

21 (b) A public utility providing electric service, other than
22 a public utility described in subsections (e) or (f) of this
23 Section, may at any time during the mandatory transition period
24 file with the Commission proposed tariff sheets that eliminate
25 the public utility's fuel adjustment clause and adjust the
26 public utility's base rate tariffs by the amount necessary for

1 the base fuel component of the base rates to recover the public
2 utility's average fuel and power supply costs per kilowatt-hour
3 for the 2 most recent years for which the Commission has issued
4 final orders in annual proceedings pursuant to subsection (a),
5 where the average fuel and power supply costs per kilowatt-hour
6 shall be calculated as the sum of the public utility's prudent
7 and allowable fuel and power supply costs as found by the
8 Commission in the 2 proceedings divided by the public utility's
9 actual jurisdictional kilowatt-hour sales for those 2 years.
10 Notwithstanding any contrary or inconsistent provisions in
11 Section 9-201 of this Act, in subsection (a) of this Section or
12 in any rules or regulations promulgated by the Commission
13 pursuant to subsection (g) of this Section, the Commission
14 shall review and shall by order approve, or approve as
15 modified, the proposed tariff sheets within 60 days after the
16 date of the public utility's filing. The Commission may modify
17 the public utility's proposed tariff sheets only to the extent
18 the Commission finds necessary to achieve conformance to the
19 requirements of this subsection (b). During the 5 years
20 following the date of the Commission's order, but in any event
21 no earlier than January 1, 2007, a public utility whose fuel
22 adjustment clause has been eliminated pursuant to this
23 subsection shall not file proposed tariff sheets seeking, or
24 otherwise petition the Commission for, reinstatement of a fuel
25 adjustment clause.

26 (c) Notwithstanding any contrary or inconsistent

1 provisions in Section 9-201 of this Act, in subsection (a) of
2 this Section or in any rules or regulations promulgated by the
3 Commission pursuant to subsection (g) of this Section, a public
4 utility providing electric service, other than a public utility
5 described in subsection (e) or (f) of this Section, may at any
6 time during the mandatory transition period file with the
7 Commission proposed tariff sheets that establish the rate per
8 kilowatt-hour to be applied pursuant to the public utility's
9 fuel adjustment clause at the average value for such rate
10 during the preceding 24 months, provided that such average rate
11 results in a credit to customers' bills, without making any
12 revisions to the public utility's base rate tariffs. The
13 proposed tariff sheets shall establish the fuel adjustment rate
14 for a specific time period of at least 3 years but not more
15 than 5 years, provided that the terms and conditions for any
16 reinstatement earlier than 5 years shall be set forth in the
17 proposed tariff sheets and subject to modification or approval
18 by the Commission. The Commission shall review and shall by
19 order approve the proposed tariff sheets if it finds that the
20 requirements of this subsection are met. The Commission shall
21 not conduct the annual hearings specified in the last 3
22 sentences of subsection (a) of this Section for the utility for
23 the period that the factor established pursuant to this
24 subsection is in effect.

25 (d) A public utility providing electric service, or a
26 public utility providing gas service may file with the

1 Commission proposed tariff sheets that eliminate the public
2 utility's fuel or purchased gas adjustment clause and adjust
3 the public utility's base rate tariffs to provide for recovery
4 of power supply costs or gas supply costs that would have been
5 recovered through such clause; provided, that the provisions of
6 this subsection (d) shall not be available to a public utility
7 described in subsections (e) or (f) of this Section to
8 eliminate its fuel adjustment clause. Notwithstanding any
9 contrary or inconsistent provisions in Section 9-201 of this
10 Act, in subsection (a) of this Section, or in any rules or
11 regulations promulgated by the Commission pursuant to
12 subsection (g) of this Section, the Commission shall review and
13 shall by order approve, or approve as modified in the
14 Commission's order, the proposed tariff sheets within 240 days
15 after the date of the public utility's filing. The Commission's
16 order shall approve rates and charges that the Commission,
17 based on information in the public utility's filing or on the
18 record if a hearing is held by the Commission, finds will
19 recover the reasonable, prudent and necessary jurisdictional
20 power supply costs or gas supply costs incurred or to be
21 incurred by the public utility during a 12 month period found
22 by the Commission to be appropriate for these purposes,
23 provided, that such period shall be either (i) a 12 month
24 historical period occurring during the 15 months ending on the
25 date of the public utility's filing, or (ii) a 12 month future
26 period ending no later than 15 months following the date of the

1 public utility's filing. The public utility shall include with
2 its tariff filing information showing both (1) its actual
3 jurisdictional power supply costs or gas supply costs for a 12
4 month historical period conforming to (i) above and (2) its
5 projected jurisdictional power supply costs or gas supply costs
6 for a future 12 month period conforming to (ii) above. If the
7 Commission's order requires modifications in the tariff sheets
8 filed by the public utility, the public utility shall have 7
9 days following the date of the order to notify the Commission
10 whether the public utility will implement the modified tariffs
11 or elect to continue its fuel or purchased gas adjustment
12 clause in force as though no order had been entered. The
13 Commission's order shall provide for any reconciliation of
14 power supply costs or gas supply costs, as the case may be, and
15 associated revenues through the date that the public utility's
16 fuel or purchased gas adjustment clause is eliminated. During
17 the 5 years following the date of the Commission's order, a
18 public utility whose fuel or purchased gas adjustment clause
19 has been eliminated pursuant to this subsection shall not file
20 proposed tariff sheets seeking, or otherwise petition the
21 Commission for, reinstatement or adoption of a fuel or
22 purchased gas adjustment clause. Nothing in this subsection (d)
23 shall be construed as limiting the Commission's authority to
24 eliminate a public utility's fuel adjustment clause or
25 purchased gas adjustment clause in accordance with any other
26 applicable provisions of this Act.

1 (e) Notwithstanding any contrary or inconsistent
2 provisions in Section 9-201 of this Act, in subsection (a) of
3 this Section, or in any rules promulgated by the Commission
4 pursuant to subsection (g) of this Section, a public utility
5 providing electric service to more than 1,000,000 customers in
6 this State may, within the first 6 months after the effective
7 date of this amendatory Act of 1997, file with the Commission
8 proposed tariff sheets that eliminate, effective January 1,
9 1997, the public utility's fuel adjustment clause without
10 adjusting its base rates, and such tariff sheets shall be
11 effective upon filing. To the extent the application of the
12 fuel adjustment clause had resulted in net charges to customers
13 after January 1, 1997, the utility shall also file a tariff
14 sheet that provides for a refund stated on a per kilowatt-hour
15 basis of such charges over a period not to exceed 6 months;
16 provided however, that such refund shall not include the
17 proportional amounts of taxes paid under the Use Tax Act,
18 Service Use Tax Act, Service Occupation Tax Act, and Retailers'
19 Occupation Tax Act on fuel used in generation. The Commission
20 shall issue an order within 45 days after the date of the
21 public utility's filing approving or approving as modified such
22 tariff sheet. If the fuel adjustment clause is eliminated
23 pursuant to this subsection, the Commission shall not conduct
24 the annual hearings specified in the last 3 sentences of
25 subsection (a) of this Section for the utility for any period
26 after December 31, 1996 and prior to any reinstatement of such

1 clause. A public utility whose fuel adjustment clause has been
2 eliminated pursuant to this subsection shall not file a
3 proposed tariff sheet seeking, or otherwise petition the
4 Commission for, reinstatement of the fuel adjustment clause
5 prior to January 1, 2007.

6 (f) Notwithstanding any contrary or inconsistent
7 provisions in Section 9-201 of this Act, in subsection (a) of
8 this Section, or in any rules or regulations promulgated by the
9 Commission pursuant to subsection (g) of this Section, a public
10 utility providing electric service to more than 500,000
11 customers but fewer than 1,000,000 customers in this State may,
12 within the first 6 months after the effective date of this
13 amendatory Act of 1997, file with the Commission proposed
14 tariff sheets that eliminate, effective January 1, 1997, the
15 public utility's fuel adjustment clause and adjust its base
16 rates by the amount necessary for the base fuel component of
17 the base rates to recover 91% of the public utility's average
18 fuel and power supply costs for the 2 most recent years for
19 which the Commission, as of January 1, 1997, has issued final
20 orders in annual proceedings pursuant to subsection (a), where
21 the average fuel and power supply costs per kilowatt-hour shall
22 be calculated as the sum of the public utility's prudent and
23 allowable fuel and power supply costs as found by the
24 Commission in the 2 proceedings divided by the public utility's
25 actual jurisdictional kilowatt-hour sales for those 2 years,
26 provided, that such tariff sheets shall be effective upon

1 filing. To the extent the application of the fuel adjustment
2 clause had resulted in net charges to customers after January
3 1, 1997, the utility shall also file a tariff sheet that
4 provides for a refund stated on a per kilowatt-hour basis of
5 such charges over a period not to exceed 6 months. Provided
6 however, that such refund shall not include the proportional
7 amounts of taxes paid under the Use Tax Act, Service Use Tax
8 Act, Service Occupation Tax Act, and Retailers' Occupation Tax
9 Act on fuel used in generation. The Commission shall issue an
10 order within 45 days after the date of the public utility's
11 filing approving or approving as modified such tariff sheet. If
12 the fuel adjustment clause is eliminated pursuant to this
13 subsection, the Commission shall not conduct the annual
14 hearings specified in the last 3 sentences of subsection (a) of
15 this Section for the utility for any period after December 31,
16 1996 and prior to any reinstatement of such clause. A public
17 utility whose fuel adjustment clause has been eliminated
18 pursuant to this subsection shall not file a proposed tariff
19 sheet seeking, or otherwise petition the Commission for,
20 reinstatement of the fuel adjustment clause prior to January 1,
21 2007.

22 (g) The Commission shall have authority to promulgate rules
23 and regulations to carry out the provisions of this Section.

24 (h) Any gas utility may enter into a contract for up to 20
25 years of supply with any company for the purchase of substitute
26 natural gas (SNG) produced from coal through the gasification

1 process if the company has commenced construction of a coal
2 gasification facility by July 1, 2010. The cost for the SNG is
3 reasonable and prudent and recoverable through the purchased
4 gas adjustment clause for years one through 10 of the contract
5 if: (i) the only coal used in the gasification process has high
6 volatile bituminous rank and greater than 1.7 pounds of sulfur
7 per million Btu content; (ii) at the time the contract term
8 commences, the price per million Btu does not exceed \$7.95 in
9 2008 dollars, adjusted annually based on the change in the
10 Annual Consumer Price Index for All Urban Consumers for the
11 Midwest Region as published in April by the United States
12 Department of Labor, Bureau of Labor Statistics (or a suitable
13 Consumer Price Index calculation if this Consumer Price Index
14 is not available) for the previous calendar year; provided that
15 the price per million Btu shall not exceed \$8.95 at any time
16 during the contract; (iii) the utility's aggregate long-term
17 supply contracts for the purchase of SNG does not exceed 25% of
18 the annual system supply requirements of the utility at the
19 time the contract is entered into and the quantity of SNG
20 supplied to a utility by any one producer may not exceed 20
21 billion cubic feet per year; and (iv) the contract is entered
22 into within 120 days after the effective date of this
23 amendatory Act of the 95th General Assembly and terminates no
24 more than 20 years after the commencement of the commercial
25 production of synthetic natural gas at the facility. Contracts
26 greater than 10 years shall provide that if, at any time during

1 supply years 11 through 20 of the contract, the Commission
2 determines that the cost for the synthetic natural gas
3 purchased under the contract during supply years 11 through 20
4 is not reasonable and prudent, then the company shall reimburse
5 the utility for the difference between the cost deemed
6 reasonable and prudent by the Commission and the cost imposed
7 under the contract. All such contracts, regardless of duration,
8 shall require the owner of any facility supplying SNG under the
9 contract to provide documentation to the Commission each year,
10 starting in the facility's third year of commercial operation,
11 accurately reporting the quantity of carbon dioxide emissions
12 from the facility that have been captured and sequestered and
13 reporting any quantities of carbon dioxide released from the
14 site or sites at which carbon dioxide emissions were
15 sequestered in prior years, based on continuous monitoring of
16 those sites. If, in any year, the owner of the facility fails
17 to demonstrate that the SNG facility captured and sequestered
18 at least 90% of the total carbon dioxide emissions that the
19 facility would otherwise emit or that sequestration of
20 emissions from prior years has failed, resulting in the release
21 of carbon dioxide into the atmosphere, the owner of the
22 facility must offset excess emissions. Any such carbon dioxide
23 offsets must be permanent, additional, verifiable, real,
24 located within the State of Illinois, and legally and
25 practicably enforceable. The costs of such offsets that are not
26 recoverable shall not exceed \$30 million in any given year. No

1 costs of any such purchases of carbon offsets may be recovered
2 from a utility or its customers. All carbon offsets purchased
3 for this purpose must be permanently retired. In addition, 50%
4 of the carbon dioxide emission credits associated with the
5 required sequestration of carbon dioxide from the facility must
6 be permanently retired. An SNG facility operating pursuant to
7 this subsection (h) shall not forfeit its designation as a
8 clean coal SNG facility if the facility fails to fully comply
9 with the applicable carbon sequestration requirements in any
10 given year, provided the requisite offsets are purchased.
11 However, the Attorney General, on behalf of the People of the
12 State of Illinois, may specifically enforce the facility's
13 sequestration requirements. Any gas utility may enter into a
14 20 year supply contract with any company for synthetic natural
15 gas produced from coal through the gasification process if the
16 company has commenced construction of a coal gasification
17 facility by July 1, 2008. The cost for the synthetic natural
18 gas is reasonable and prudent and recoverable through the
19 purchased gas adjustment clause for years one through 10 of the
20 contract if: (i) the only coal used in the gasification process
21 has high volatile bituminous rank and greater than 1.7 pounds
22 of sulfur per million Btu content; (ii) at the time the
23 contract term commences, the price per million Btu does not
24 exceed \$5 in 2004 dollars, adjusted annually based on the
25 change in the Annual Consumer Price Index for All Urban
26 Consumers for the Midwest Region as published in April by the

1 ~~United States Department of Labor, Bureau of Labor Statistics~~
2 ~~(or a suitable Consumer Price Index calculation if this~~
3 ~~Consumer Price Index is not available) for the previous~~
4 ~~calendar year; provided that the price per million Btu shall~~
5 ~~not exceed \$5.50 at any time during the contract; (iii) the~~
6 ~~utility's aggregate long term supply contracts for the~~
7 ~~purchase of synthetic natural gas produced from coal through~~
8 ~~the gasification process does not exceed 25% of the annual~~
9 ~~system supply requirements of the utility at the time the~~
10 ~~contract is entered into; and (iv) the contract is entered into~~
11 ~~within one year after the effective date of this amendatory Act~~
12 ~~of the 94th General Assembly and terminates 20 years after the~~
13 ~~commencement of the production of synthetic natural gas. The~~
14 ~~contract shall provide that if, at any time during years 11~~
15 ~~through 20 of the contract, the Commission determines that the~~
16 ~~cost for the synthetic natural gas under the contract is not~~
17 ~~reasonable and prudent, then the company shall reimburse the~~
18 ~~utility for the difference between the cost deemed reasonable~~
19 ~~and prudent by the Commission and the cost imposed under the~~
20 ~~contract.~~

21 (i) If a gas utility or an affiliate of a gas utility has
22 an ownership interest in any entity that produces or sells
23 synthetic natural gas, Article VII of this Act shall apply.

24 (Source: P.A. 94-63, eff. 6-21-05.)

1 Sec. 16-101A. Legislative findings.

2 (a) The citizens and businesses of the State of Illinois
3 have been well-served by a comprehensive electrical utility
4 system which has provided safe, reliable, and affordable
5 service. The electrical utility system in the State of Illinois
6 has historically been subject to State and federal regulation,
7 aimed at assuring the citizens and businesses of the State of
8 safe, reliable, and affordable service, while at the same time
9 assuring the utility system of a return on its investment.

10 (b) Competitive forces are affecting the market for
11 electricity as a result of recent federal regulatory and
12 statutory changes and the activities of other states.
13 Competition in the electric services market may create
14 opportunities for new products and services for customers and
15 lower costs for users of electricity. Long-standing regulatory
16 relationships need to be altered to accommodate the competition
17 that could fundamentally alter the structure of the electric
18 services market.

19 (c) With the advent of increasing competition in this
20 industry, the State has a continued interest in assuring that
21 the safety, reliability, and affordability of electrical power
22 is not sacrificed to competitive pressures, and to that end,
23 intends to implement safeguards to assure that the industry
24 continues to operate the electrical system in a manner that
25 will serve the public's interest. Under the existing regulatory
26 framework, the industry has been encouraged to undertake

1 certain investments in its physical plant and personnel to
2 enhance its efficient operation, the cost of which it has been
3 permitted to pass on to consumers. The State has an interest in
4 providing the existing utilities a reasonable opportunity to
5 obtain a return on certain investments on which they depended
6 in undertaking those commitments in the first instance while,
7 at the same time, not permitting new entrants into the industry
8 to take unreasonable advantage of the investments made by the
9 formerly regulated industry.

10 (d) A competitive wholesale and retail market must benefit
11 all Illinois citizens. The Illinois Commerce Commission should
12 act to promote the development of an effectively competitive
13 electricity market that operates efficiently and is equitable
14 to all consumers. Consumer protections must be in place to
15 ensure that all customers continue to receive safe, reliable,
16 affordable, and environmentally safe electric service.

17 (e) All consumers must benefit in an equitable and timely
18 fashion from the lower costs for electricity that result from
19 retail and wholesale competition and receive sufficient
20 information to make informed choices among suppliers and
21 services. The use of renewable resources and energy efficiency
22 resources should be encouraged in competitive markets.

23 (f) The efficiency of electric markets depends both upon
24 the competitiveness of supply and upon the
25 price-responsiveness of the demand for service. Therefore, to
26 ensure the lowest total cost of service and to enhance the

1 reliability of service, all classes of the electricity
2 customers of electric utilities should have access to and be
3 able to voluntarily use real-time pricing and other
4 price-response and demand-response mechanisms.

5 (g) Including cost-effective renewable resources in a
6 diverse electricity supply portfolio will reduce long-term
7 direct and indirect costs to consumers by decreasing
8 environmental impacts and by avoiding or delaying the need for
9 new generation, transmission, and distribution infrastructure.
10 It serves the public interest to allow electric utilities to
11 recover costs for reasonably and prudently incurred expenses
12 for electricity generated by renewable resources.

13 (h) Including electricity generated by clean coal
14 facilities, as defined under Section 1-10 of the Illinois Power
15 Agency Act, in a diverse electricity procurement portfolio will
16 reduce the need to purchase, directly or indirectly, carbon
17 dioxide emission credits and will decrease environmental
18 impacts. It serves the public interest to allow electric
19 utilities to recover costs for reasonably and prudently
20 incurred expenses for electricity generated by clean coal
21 facilities.

22 (Source: P.A. 94-977, eff. 6-30-06; 95-481, eff. 8-28-07.)

23 (220 ILCS 5/16-115)

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

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

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

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

1 its application for certification any limitations that will be
2 imposed on the number of customers or maximum load to be
3 served.

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

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

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

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

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

11 (5) That the applicant will supply electricity
12 generated by renewable energy resources and clean coal
13 facilities, as defined in Section 1-10 of the Illinois
14 Power Agency Act, to all of the applicant's Illinois
15 customers in amounts at least equal to the percentages set
16 forth in subsections (c) and (d) of Section 1-72 of the
17 Illinois Power Agency Act. For purposes of this Section:

18 (i) The required procurement of electricity
19 generated by renewable energy resources and clean coal
20 facilities shall be measured as a percentage of the
21 actual amount of electricity (megawatt-hours) supplied
22 by the alternative retail electric supplier in the
23 prior calendar year, as reported for that year to the
24 Commission. This purchase obligation applies to all
25 electricity sold pursuant to retail contracts
26 executed, extended, or otherwise revised after the

1 effective date of this amendatory Act, provided the
2 alternative retail electric supplier submits all
3 documentation needed by the Commission to determine
4 the actual amount of electricity supplied under
5 contracts that may be excluded under this limitation.

6 (ii) An alternative retail electric supplier need
7 not actually deliver electricity purchased to comply
8 with this Section to its customers, provided that if
9 the alternative retail electric supplier claims credit
10 for such purpose, subsequent purchasers shall not
11 receive any emission credits or renewable energy
12 credits in connection with the purchase of such
13 electricity. Alternative retail electric suppliers
14 shall maintain adequate records documenting the
15 contractual disposition of all electricity purchased
16 to comply with this Section and shall file an
17 accounting in the report which must be filed with the
18 Commission on August 1 of each year, starting in 2009,
19 in accordance with subsection (e) of this Section.

20 (iii) The required procurement of electricity
21 generated by renewable resources and clean coal
22 facilities, other than the initial clean coal
23 facility, shall be limited to the amount of electricity
24 that can be purchased at a price at or below the
25 benchmarks approved by the Commission each year in
26 accordance with item (1) of subsection (c) and items

1 (1) and (5) of subsection (d) of Section 1-75 of the
2 Illinois Power Agency Act.

3 (iv) all alternative retail electric suppliers
4 shall execute a power purchase agreement to purchase
5 electricity from the initial clean coal facility, on
6 the terms set forth in items (3) and (4) of subsection
7 (d) of Section 1-75 of the Illinois Power Agency Act,
8 except that in lieu of the requirements in items
9 (3) (vi), (xiii), and (xiv) of that subsection (d), the
10 applicant shall contract to purchase in each hour an
11 amount of electricity equal to all clean coal energy
12 made available from the initial clean coal facility to
13 all alternative retail electric suppliers, multiplied
14 by a fraction, the numerator of which is the
15 alternative electricity retail electric supplier's
16 Illinois market share, expressed in kilowatt-hours
17 sold during the prior month and the denominator of
18 which is the total market shares during the prior month
19 of all alternative retail electric suppliers that are
20 party to power purchase agreements with the initial
21 clean coal facility.

22 (v) if, in any year after the third year of
23 commercial operation, the owner of the clean coal
24 facility fails to demonstrate to the Commission that
25 the initial clean coal facility captured and
26 sequestered at least 50% of the total carbon emissions

1 that the facility would otherwise emit or that
2 sequestration of emissions from prior years has
3 failed, resulting in the release of carbon into the
4 atmosphere, the owner of the facility must offset
5 excess emissions. Any such carbon offsets must be
6 permanent, additional, verifiable, real, located
7 within the State of Illinois, and legally and
8 practicably enforceable. The costs of any such offsets
9 that are not recoverable shall not exceed \$15 million
10 in any given year. No costs of any such purchases of
11 carbon offsets may be recovered from an alternative
12 retail electric supplier or its customers. All carbon
13 offsets purchased for this purpose and any carbon
14 emission credits associated with sequestration of
15 carbon from the facility must be permanently retired.
16 The initial clean coal facility shall not forfeit its
17 designation as a clean coal facility if the facility
18 fails to fully comply with the applicable carbon
19 sequestration requirements in any given year, provided
20 the requisite offsets are purchased. However, the
21 Attorney General, on behalf of the People of the State
22 of Illinois, may specifically enforce the facility's
23 sequestration requirement and the other terms of this
24 contract provision ~~(Blank)~~;

25 (6) With respect to an applicant that seeks to serve
26 residential or small commercial retail customers, that the

1 area to be served by the applicant and any limitations it
2 proposes on the number of customers or maximum amount of
3 load to be served meet the provisions of Section 16-115A,
4 provided, that the Commission can extend the time for
5 considering such a certificate request by up to 90 days,
6 and can schedule hearings on such a request;

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

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

11 (d-5) The Commission shall revoke the certification of any
12 alternative retail electric supplier that fails to execute a
13 power purchase agreement to purchase electricity from the
14 initial clean coal facility, as required by item (5) of
15 subsection (d) of this Section, within 60 days after the later
16 of the effective date of this amendatory Act or approval of the
17 agreement by the Federal Energy Regulatory Commission, and
18 that, on August 1, 2009 and each year thereafter, fails to
19 demonstrate that the electricity provided to the alternative
20 retail electricity supplier's Illinois customers during the
21 previous year was generated by renewable energy resources and
22 clean coal facilities in amounts at least equal to the
23 percentages set forth in subsections (c) and (d) of Section
24 1-75 of the Illinois Power Agency Act, as limited by subsection
25 (d) (5) (iii) of this Section. The Commission shall not accept an
26 application for certification from an alternative retail

1 electric supplier that has lost certification under this
2 subsection (d-5), or any corporate affiliate thereof, for at
3 least one year from the date of revocation.

4 (e) A retail customer that owns a cogeneration or
5 self-generation facility and that seeks certification only to
6 provide electric power and energy from such facility to retail
7 customers at separate locations which customers are both (i)
8 owned by, or a subsidiary or other corporate affiliate of, such
9 applicant and (ii) eligible for delivery services, shall be
10 granted a certificate of service authority upon filing an
11 application and notifying the Commission that it has entered
12 into an agreement with the relevant electric utilities pursuant
13 to Section 16-118. Provided, however, that if the retail
14 customer owning such cogeneration or self-generation facility
15 would not be charged a transition charge due to the exemption
16 provided under subsection (f) of Section 16-108 prior to the
17 certification, and the retail customers at separate locations
18 are taking delivery services in conjunction with purchasing
19 power and energy from the facility, the retail customer on
20 whose premises the facility is located shall not thereafter be
21 required to pay transition charges on the power and energy that
22 such retail customer takes from the facility.

23 (f) The Commission shall have the authority to promulgate
24 rules and regulations to carry out the provisions of this
25 Section. On or before May 1, 1999, the Commission shall adopt a
26 rule or rules applicable to the certification of those

1 alternative retail electric suppliers that seek to serve only
2 nonresidential retail customers with maximum electrical
3 demands of one megawatt or more which shall provide for (i)
4 expedited and streamlined procedures for certification of such
5 alternative retail electric suppliers and (ii) specific
6 criteria which, if met by any such alternative retail electric
7 supplier, shall constitute the demonstration of technical,
8 financial and managerial resources and abilities to provide
9 service required by subsection (d) (1) of this Section, such as
10 a requirement to post a bond or letter of credit, from a
11 responsible surety or financial institution, of sufficient
12 size for the nature and scope of the services to be provided;
13 demonstration of adequate insurance for the scope and nature of
14 the services to be provided; and experience in providing
15 similar services in other jurisdictions.

16 (Source: P.A. 95-130, eff. 1-1-08.)

17 ARTICLE 5

18 Section 5-5. The Public Utilities Act is amended by
19 changing Section 2-203 as follows:

20 (220 ILCS 5/2-203)

21 (Section scheduled to be repealed on January 1, 2009)

22 Sec. 2-203. Public Utility Fund base maintenance
23 contribution. Each ~~For each of the years 2003 through 2008,~~

1 ~~each~~ electric utility as defined in Section 16-102 of this Act
2 providing service to more than 12,500 customers in this State
3 on January 1, 1995 shall contribute annually a pro rata share
4 of a total amount of \$5,500,000 based upon the number of
5 kilowatt-hours delivered to retail customers within this State
6 by each such electric utility in the 12 months preceding the
7 year of contribution. On or before May 1 of each year, the
8 Illinois Commerce Commission shall determine and notify the
9 Illinois Department of Revenue of the pro rata share owed by
10 each electric utility based upon information supplied annually
11 to the Commission. On or before June 1 of each year, the
12 Department of Revenue shall send written notification to each
13 electric utility of the amount of pro rata share they owe.
14 These contributions shall be remitted to the Department of
15 Revenue no earlier than July 1 and no later than July 31 of
16 each year the contribution is due on a return prescribed and
17 furnished by the Department of Revenue showing such information
18 as the Department of Revenue may reasonably require. The
19 Department of Revenue shall place the funds remitted under this
20 Section in the Public Utility Fund in the State treasury. The
21 funds received pursuant to this Section shall be subject to
22 appropriation by the General Assembly. If an electric utility
23 does not remit its pro rata share to the Department of Revenue,
24 the Department of Revenue must inform the Illinois Commerce
25 Commission of such failure. The Illinois Commerce Commission
26 may then revoke the certification of that electric utility.

1 This Section is repealed on January 1, 2014 ~~2009~~.

2 (Source: P.A. 92-600, eff. 6-28-02.)

3 ARTICLE 10.

4 Section 10-5. The Public Utilities Act is amended by
5 changing Section 16-125 as follows:

6 (220 ILCS 5/16-125)

7 Sec. 16-125. Transmission and distribution reliability
8 requirements.

9 (a) To assure the reliable delivery of electricity to all
10 customers in this State and the effective implementation of the
11 provisions of this Article, the Commission shall, within 180
12 days of the effective date of this Article, adopt rules and
13 regulations for assessing and assuring the reliability of the
14 transmission and distribution systems and facilities that are
15 under the Commission's jurisdiction.

16 (b) These rules and regulations shall require each electric
17 utility or alternative retail electric supplier owning,
18 controlling, or operating transmission and distribution
19 facilities and equipment subject to the Commission's
20 jurisdiction, referred to in this Section as "jurisdictional
21 entities", to adopt and implement procedures for restoring
22 transmission and distribution services to customers after
23 transmission or distribution outages on a nondiscriminatory

1 basis without regard to whether a customer has chosen the
2 electric utility, an affiliate of the electric utility, or
3 another entity as its provider of electric power and energy.
4 These rules and regulations shall also, at a minimum,
5 specifically require each jurisdictional entity to submit
6 annually to the Commission.

7 (1) the number and duration of planned and unplanned
8 outages during the prior year and their impacts on
9 customers;

10 (2) outages that were controllable and outages that
11 were exacerbated in scope or duration by the condition of
12 facilities, equipment or premises or by the actions or
13 inactions of operating personnel or agents;

14 (3) customer service interruptions that were due
15 solely to the actions or inactions of an alternative retail
16 electric supplier or a public utility in supplying power or
17 energy;

18 (4) a detailed report of the age, current condition,
19 reliability and performance of the jurisdictional entity's
20 existing transmission and distribution facilities, which
21 shall include, without limitation, the following data:

22 (i) a summary of the jurisdictional entity's
23 outages and voltage variances reportable under the
24 Commission's rules;

25 (ii) the jurisdictional entity's expenditures for
26 transmission construction and maintenance, the ratio

1 of those expenditures to the jurisdictional entity's
2 transmission investment, and the average remaining
3 depreciation lives of the entity's transmission
4 facilities, expressed as a percentage of total
5 depreciation lives;

6 (iii) the jurisdictional entity's expenditures for
7 distribution construction and maintenance, the ratio
8 of those expenditures to the jurisdictional entity's
9 distribution investment, and the average remaining
10 depreciation lives of the entity's distribution
11 facilities, expressed as a percentage of total
12 depreciation lives;

13 (iv) a customer satisfaction survey covering,
14 among other areas identified in Commission rules,
15 reliability, customer service, and understandability
16 of the jurisdictional entity's services and prices;
17 and

18 (v) the corresponding information, in the same
19 format, for the previous 3 years, if available;

20 (5) a plan for future investment and reliability
21 improvements for the jurisdictional entity's transmission
22 and distribution facilities that will ensure continued
23 reliable delivery of energy to customers and provide the
24 delivery reliability needed for fair and open competition;
25 and

26 (6) a report of the jurisdictional entity's

1 implementation of its plan filed pursuant to subparagraph
2 (5) for the previous reporting period.

3 (c) The Commission rules shall set forth the criteria that
4 will be used to assess each jurisdictional entity's annual
5 report and evaluate its reliability performance. Such criteria
6 must take into account, at a minimum: the items required to be
7 reported in subsection (b); the relevant characteristics of the
8 area served; the age and condition of the system's equipment
9 and facilities; good engineering practices; the costs of
10 potential actions; and the benefits of avoiding the risks of
11 service disruption.

12 (d) At least every 3 years, beginning in the year the
13 Commission issues the rules required by subsection (a) or the
14 following year if the rules are issued after June 1, the
15 Commission shall assess the annual report of each
16 jurisdictional entity and evaluate its reliability
17 performance. The Commission's evaluation shall include
18 specific identification of, and recommendations concerning,
19 any potential reliability problems that it has identified as a
20 result of its evaluation.

21 (e) In the event that more than either (i) 30,000 (or some
22 other number, but only as provided by statute) of the total
23 customers or (ii) 0.8% (or some other percentage, but only as
24 provided by statute) of the total customers, whichever is less,
25 of an electric utility are subjected to a continuous power
26 interruption of 4 hours or more that results in the

1 transmission of power at less than 50% of the standard voltage,
2 or that results in the total loss of power transmission, the
3 utility shall be responsible for compensating customers
4 affected by that interruption for 4 hours or more for all
5 actual damages, which shall not include consequential damages,
6 suffered as a result of the power interruption. The utility
7 shall also reimburse the affected municipality, county, or
8 other unit of local government in which the power interruption
9 has taken place for all emergency and contingency expenses
10 incurred by the unit of local government as a result of the
11 interruption. A waiver of the requirements of this subsection
12 may be granted by the Commission in instances in which the
13 utility can show that the power interruption was a result of
14 any one or more of the following causes:

15 (1) Unpreventable damage due to weather events or
16 conditions.

17 (2) Customer tampering.

18 (3) Unpreventable damage due to civil or international
19 unrest or animals.

20 (4) Damage to utility equipment or other actions by a
21 party other than the utility, its employees, agents, or
22 contractors.

23 Loss of revenue and expenses incurred in complying with this
24 subsection may not be recovered from ratepayers.

25 (f) In the event of a power surge or other fluctuation that
26 causes damage and affects more than either (i) 30,000 (or some

1 other number, but only as provided by statute) of the total
2 customers or (ii) 0.8% (or some other percentage, but only as
3 provided by statute) of the total customers, whichever is less,
4 the electric utility shall pay to affected customers the
5 replacement value of all goods damaged as a result of the power
6 surge or other fluctuation unless the utility can show that the
7 power surge or other fluctuation was due to one or more of the
8 following causes:

9 (1) Unpreventable damage due to weather events or
10 conditions.

11 (2) Customer tampering.

12 (3) Unpreventable damage due to civil or international
13 unrest or animals.

14 (4) Damage to utility equipment or other actions by a
15 party other than the utility, its employees, agents, or
16 contractors.

17 Loss of revenue and expenses incurred in complying with this
18 subsection may not be recovered from ratepayers. Customers with
19 respect to whom a waiver has been granted by the Commission
20 pursuant to subparagraphs (1)-(4) of subsections (e) and (f)
21 shall not count toward the either (i) 30,000 (or some other
22 number, but only as provided by statute) of the total customers
23 or (ii) 0.8% (or some other percentage, but only as provided by
24 statute) of the total customers required therein.

25 (g) Whenever an electric utility must perform planned or
26 routine maintenance or repairs on its equipment that will

1 result in transmission of power at less than 50% of the
2 standard voltage, loss of power, or power fluctuation (as
3 defined in subsection (f)), the utility shall make reasonable
4 efforts to notify potentially affected customers no less than
5 24 hours in advance of performance of the repairs or
6 maintenance.

7 (h) Remedies provided for under this Section may be sought
8 exclusively through the Illinois Commerce Commission as
9 provided under Section 10-109 of this Act. Damages awarded
10 under this Section for a power interruption shall be limited to
11 actual damages, which shall not include consequential damages,
12 and litigation costs. A utility's request for a waiver of this
13 Section shall be timely if filed no later than 30 days after
14 the date on which a claim is filed with the Commission seeking
15 damages or expense reimbursement under this Section. No utility
16 shall be liable under this Section while a request for waiver
17 is pending. Damage awards may not be paid out of utility rate
18 funds.

19 (i) The provisions of this Section shall not in any way
20 diminish or replace other civil or administrative remedies
21 available to a customer or a class of customers.

22 (j) The Commission shall by rule require an electric
23 utility to maintain service records detailing information on
24 each instance of transmission of power at less than 50% of the
25 standard voltage, loss of power, or power fluctuation (as
26 defined in subsection (f)), that affects 10 or more customers.

1 Occurrences that are momentary shall not be required to be
2 recorded or reported. The service record shall include, for
3 each occurrence, the following information:

4 (1) The date.

5 (2) The time of occurrence.

6 (3) The duration of the incident.

7 (4) The number of customers affected.

8 (5) A description of the cause.

9 (6) The geographic area affected.

10 (7) The specific equipment involved in the fluctuation
11 or interruption.

12 (8) A description of measures taken to restore service.

13 (9) A description of measures taken to remedy the cause
14 of the power interruption or fluctuation.

15 (10) A description of measures taken to prevent future
16 occurrence.

17 (11) The amount of remuneration, if any, paid to
18 affected customers.

19 (12) A statement of whether the fixed charge was waived
20 for affected customers.

21 Copies of the records containing this information shall be
22 available for public inspection at the utility's offices, and
23 copies thereof may be obtained upon payment of a fee not
24 exceeding the reasonable cost of reproduction. A copy of each
25 record shall be filed with the Commission and shall be
26 available for public inspection. Copies of the records may be

1 obtained upon payment of a fee not exceeding the reasonable
2 cost of reproduction.

3 (k) The requirements of subsections (e) through (j) of this
4 Section shall apply only to an electric public utility having
5 100,000 ~~1,000,000~~ or more customers.

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

7 ARTICLE 15

8 Section 15-5. The Public Utilities Act is amended by
9 changing Section 2-202 as follows:

10 (220 ILCS 5/2-202) (from Ch. 111 2/3, par. 2-202)

11 Sec. 2-202. Policy; Public Utility Fund; tax.

12 (a) It is declared to be the public policy of this State
13 that in order to maintain and foster the effective regulation
14 of public utilities under this Act in the interests of the
15 People of the State of Illinois and the public utilities as
16 well, the public utilities subject to regulation under this Act
17 and which enjoy the privilege of operating as public utilities
18 in this State, shall bear the expense of administering this Act
19 by means of a tax on such privilege measured by the annual
20 gross revenue of such public utilities in the manner provided
21 in this Section. For purposes of this Section, "expense of
22 administering this Act" includes any costs incident to studies,
23 whether made by the Commission or under contract entered into

1 by the Commission, concerning environmental pollution problems
2 caused or contributed to by public utilities and the means for
3 eliminating or abating those problems. Such proceeds shall be
4 deposited in the Public Utility Fund in the State treasury.

5 (b) All of the ordinary and contingent expenses of the
6 Commission incident to the administration of this Act shall be
7 paid out of the Public Utility Fund except the compensation of
8 the members of the Commission which shall be paid from the
9 General Revenue Fund. Notwithstanding other provisions of this
10 Act to the contrary, the ordinary and contingent expenses of
11 the Commission incident to the administration of the Illinois
12 Commercial Transportation Law may be paid from appropriations
13 from the Public Utility Fund through the end of fiscal year
14 1986.

15 (c) A tax is imposed upon each public utility subject to
16 the provisions of this Act equal to .08% of its gross revenue
17 for each calendar year commencing with the calendar year
18 beginning January 1, 1982, except that the Commission may, by
19 rule, establish a different rate no greater than 0.1%. For
20 purposes of this Section, "gross revenue" shall not include
21 revenue from the production, transmission, distribution, sale,
22 delivery, or furnishing of electricity. "Gross revenue" shall
23 not include amounts paid by telecommunications retailers under
24 the Telecommunications Infrastructure Maintenance Fee Act.

25 (d) Annual gross revenue returns shall be filed in
26 accordance with paragraph (1) or (2) of this subsection (d).

1 (1) Except as provided in paragraph (2) of this
2 subsection (d), on or before January 10 of each year each
3 public utility subject to the provisions of this Act shall
4 file with the Commission an estimated annual gross revenue
5 return containing an estimate of the amount of its gross
6 revenue for the calendar year commencing January 1 of said
7 year and a statement of the amount of tax due for said
8 calendar year on the basis of that estimate. Public
9 utilities may also file revised returns containing updated
10 estimates and updated amounts of tax due during the
11 calendar year. These revised returns, if filed, shall form
12 the basis for quarterly payments due during the remainder
13 of the calendar year. In addition, on or before March 31 of
14 each year, each public utility shall file an amended return
15 showing the actual amount of gross revenues shown by the
16 company's books and records as of December 31 of the
17 previous year. Forms and instructions for such estimated,
18 revised, and amended returns shall be devised and supplied
19 by the Commission.

20 (2) Beginning with returns due after January 1, 2002,
21 the requirements of paragraph (1) of this subsection (d)
22 shall not apply to any public utility in any calendar year
23 for which the total tax the public utility owes under this
24 Section is less than \$10,000. For such public utilities
25 with respect to such years, the public utility shall file
26 with the Commission, on or before March 31 of the following

1 year, an annual gross revenue return for the year and a
2 statement of the amount of tax due for that year on the
3 basis of such a return. Forms and instructions for such
4 returns and corrected returns shall be devised and supplied
5 by the Commission.

6 (e) All returns submitted to the Commission by a public
7 utility as provided in this subsection (e) or subsection (d) of
8 this Section shall contain or be verified by a written
9 declaration by an appropriate officer of the public utility
10 that the return is made under the penalties of perjury. The
11 Commission may audit each such return submitted and may, under
12 the provisions of Section 5-101 of this Act, take such measures
13 as are necessary to ascertain the correctness of the returns
14 submitted. The Commission has the power to direct the filing of
15 a corrected return by any utility which has filed an incorrect
16 return and to direct the filing of a return by any utility
17 which has failed to submit a return. A taxpayer's signing a
18 fraudulent return under this Section is perjury, as defined in
19 Section 32-2 of the Criminal Code of 1961.

20 (f) (1) For all public utilities subject to paragraph (1)
21 of subsection (d), at least one quarter of the annual amount of
22 tax due under subsection (c) shall be paid to the Commission on
23 or before the tenth day of January, April, July, and October of
24 the calendar year subject to tax. In the event that an
25 adjustment in the amount of tax due should be necessary as a
26 result of the filing of an amended or corrected return under

1 subsection (d) or subsection (e) of this Section, the amount of
2 any deficiency shall be paid by the public utility together
3 with the amended or corrected return and the amount of any
4 excess shall, after the filing of a claim for credit by the
5 public utility, be returned to the public utility in the form
6 of a credit memorandum in the amount of such excess or be
7 refunded to the public utility in accordance with the
8 provisions of subsection (k) of this Section. However, if such
9 deficiency or excess is less than \$1, then the public utility
10 need not pay the deficiency and may not claim a credit.

11 (2) Any public utility subject to paragraph (2) of
12 subsection (d) shall pay the amount of tax due under subsection
13 (c) on or before March 31 next following the end of the
14 calendar year subject to tax. In the event that an adjustment
15 in the amount of tax due should be necessary as a result of the
16 filing of a corrected return under subsection (e), the amount
17 of any deficiency shall be paid by the public utility at the
18 time the corrected return is filed. Any excess tax payment by
19 the public utility shall be returned to it after the filing of
20 a claim for credit, in the form of a credit memorandum in the
21 amount of the excess. However, if such deficiency or excess is
22 less than \$1, the public utility need not pay the deficiency
23 and may not claim a credit.

24 (g) Each installment or required payment of the tax imposed
25 by subsection (c) becomes delinquent at midnight of the date
26 that it is due. Failure to make a payment as required by this

1 Section shall result in the imposition of a late payment
2 penalty, an underestimation penalty, or both, as provided by
3 this subsection. The late payment penalty shall be the greater
4 of:

5 (1) \$25 for each month or portion of a month that the
6 installment or required payment is unpaid or

7 (2) an amount equal to the difference between what
8 should have been paid on the due date, based upon the most
9 recently filed estimated, annual, or amended return, and
10 what was actually paid, times 1%, for each month or portion
11 of a month that the installment or required payment goes
12 unpaid. This penalty may be assessed as soon as the
13 installment or required payment becomes delinquent.

14 The underestimation penalty shall apply to those public
15 utilities subject to paragraph (1) of subsection (d) and shall
16 be calculated after the filing of the amended return. It shall
17 be imposed if the amount actually paid on any of the dates
18 specified in subsection (f) is not equal to at least one-fourth
19 of the amount actually due for the year, and shall equal the
20 greater of:

21 (1) \$25 for each month or portion of a month that the
22 amount due is unpaid or

23 (2) an amount equal to the difference between what
24 should have been paid, based on the amended return, and
25 what was actually paid as of the date specified in
26 subsection (f), times a percentage equal to 1/12 of the sum

1 of 10% and the percentage most recently established by the
2 Commission for interest to be paid on customer deposits
3 under 83 Ill. Adm. Code 280.70(e)(1), for each month or
4 portion of a month that the amount due goes unpaid, except
5 that no underestimation penalty shall be assessed if the
6 amount actually paid on or before each of the dates
7 specified in subsection (f) was based on an estimate of
8 gross revenues at least equal to the actual gross revenues
9 for the previous year. The Commission may enforce the
10 collection of any delinquent installment or payment, or
11 portion thereof by legal action or in any other manner by
12 which the collection of debts due the State of Illinois may
13 be enforced under the laws of this State. The executive
14 director or his designee may excuse the payment of an
15 assessed penalty or a portion of an assessed penalty if he
16 determines that enforced collection of the penalty as
17 assessed would be unjust.

18 (h) All sums collected by the Commission under the
19 provisions of this Section shall be paid promptly after the
20 receipt of the same, accompanied by a detailed statement
21 thereof, into the Public Utility Fund in the State treasury.

22 (i) During the month of October of each odd-numbered year
23 the Commission shall:

24 (1) determine the amount of all moneys deposited in the
25 Public Utility Fund during the preceding fiscal biennium
26 plus the balance, if any, in that fund at the beginning of

1 that biennium;

2 (2) determine the sum total of the following items: (A)
3 all moneys expended or obligated against appropriations
4 made from the Public Utility Fund during the preceding
5 fiscal biennium, plus (B) the sum of the credit memoranda
6 then outstanding against the Public Utility Fund, if any;
7 and

8 (3) determine the amount, if any, by which the sum
9 determined as provided in item (1) exceeds the amount
10 determined as provided in item (2).

11 If the amount determined as provided in item (3) of this
12 subsection exceeds 50% of the previous fiscal year's
13 appropriation level \$5,000,000, the Commission shall then
14 compute the proportionate amount, if any, which (x) the tax
15 paid hereunder by each utility during the preceding biennium,
16 and (y) the amount paid into the Public Utility Fund during the
17 preceding biennium by the Department of Revenue pursuant to
18 Sections 2-9 and 2-11 of the Electricity Excise Tax Law, bears
19 to the difference between the amount determined as provided in
20 item (3) of this subsection (i) and 50% of the previous fiscal
21 year's appropriation level \$5,000,000. The Commission shall
22 cause the proportionate amount determined with respect to
23 payments made under the Electricity Excise Tax Law to be
24 transferred into the General Revenue Fund in the State
25 Treasury, and notify each public utility that it may file
26 during the 3 month period after the date of notification a

1 claim for credit for the proportionate amount determined with
2 respect to payments made hereunder by the public utility. If
3 the proportionate amount is less than \$10, no notification will
4 be sent by the Commission, and no right to a claim exists as to
5 that amount. Upon the filing of a claim for credit within the
6 period provided, the Commission shall issue a credit memorandum
7 in such amount to such public utility. Any claim for credit
8 filed after the period provided for in this Section is void.

9 (j) Credit memoranda issued pursuant to subsection (f) and
10 credit memoranda issued after notification and filing pursuant
11 to subsection (i) may be applied for the 2 year period from the
12 date of issuance, against the payment of any amount due during
13 that period under the tax imposed by subsection (c), or,
14 subject to reasonable rule of the Commission including
15 requirement of notification, may be assigned to any other
16 public utility subject to regulation under this Act. Any
17 application of credit memoranda after the period provided for
18 in this Section is void.

19 (k) The chairman or executive director may make refund of
20 fees, taxes or other charges whenever he shall determine that
21 the person or public utility will not be liable for payment of
22 such fees, taxes or charges during the next 24 months and he
23 determines that the issuance of a credit memorandum would be
24 unjust.

25 (Source: P.A. 92-11, eff. 6-11-01; 92-22, eff. 6-30-01; 92-526,
26 eff. 1-1-03.)

1 Section 15-10. The Illinois Vehicle Code is amended by
2 changing Section 18c-1503 as follows:

3 (625 ILCS 5/18c-1503) (from Ch. 95 1/2, par. 18c-1503)

4 Sec. 18c-1503. Legislative Intent. It is the intent of the
5 Legislature that the exercise of powers under Sections 18c-1501
6 and 18c-1502 of this Chapter shall not diminish revenues to the
7 Commission, and that any surplus or deficit of revenues in the
8 Transportation Regulatory Fund, together with any projected
9 changes in the cost of administering and enforcing this
10 Chapter, should be considered in establishing or adjusting fees
11 and taxes in succeeding years. The Commission shall administer
12 fees and taxes under this Chapter in such a manner as to insure
13 that any surplus generated or accumulated in the Transportation
14 Regulatory Fund does not exceed 50% of the previous fiscal
15 year's appropriation ~~the surplus accumulated in the Motor~~
16 ~~Vehicle Fund during fiscal year 1984,~~ and shall adjust the
17 level of such fees and taxes to insure compliance with this
18 provision.

19 (Source: P.A. 84-796.)

20 ARTICLE 99

21 Section 99-97. Severability. The provisions of this Act are
22 severable under Section 1.31 of the Statute on Statutes.

1 Section 99-99. Effective date. This Act takes effect upon
2 becoming law.".