



Rep. Gary Hannig

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LRB095 14199 MJR 52124 a

1 AMENDMENT TO SENATE BILL 1987

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1987, AS AMENDED,  
3 by replacing everything after the enacting clause with the  
4 following:

5 "ARTICLE 1

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

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

10 (20 ILCS 3855/1-5)

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

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

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

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

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

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

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

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

1           (7) Energy efficiency, demand-response measures, and  
2           renewable energy are resources currently underused in  
3           Illinois.

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

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

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

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

26           (C) Develop electric generation and co-generation

1 facilities that use indigenous coal or renewable  
2 resources, or both, financed with bonds issued by the  
3 Illinois Finance Authority.

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

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

9 (20 ILCS 3855/1-10)

10 Sec. 1-10. Definitions.

11 "Agency" means the Illinois Power Agency.

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

20 "Authority" means the Illinois Finance Authority.

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

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

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

1 "Commission" means the Illinois Commerce Commission.

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

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

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

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

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

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

1 in operation.

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

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

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

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

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

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

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

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

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

25 "Person" means any natural person, firm, partnership,  
26 corporation, either domestic or foreign, company, association,

1 limited liability company, joint stock company, or association  
2 and includes any trustee, receiver, assignee, or personal  
3 representative thereof.

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

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

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

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

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



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

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

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

16 "Servicing agreement" means (i) in the case of an electric  
17 utility, an agreement between the owner of a clean coal  
18 facility and such electric utility, which agreement shall have  
19 terms and conditions meeting the requirements of paragraph (3)  
20 of subsection (d) of Section 1-75, and (ii) in the case of an  
21 alternative retail electric supplier, an agreement between the  
22 owner of a clean coal facility and such alternative retail  
23 electric supplier, which agreement shall have terms and  
24 conditions meeting the requirements of Section 16-115(d) (5) of  
25 the Public Utilities Act.

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

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

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

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

1           Sec. 1-75. Planning and Procurement Bureau. The Planning  
2 and Procurement Bureau has the following duties and  
3 responsibilities:

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

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

20           (A) direct previous experience assembling  
21 large-scale power supply plans or portfolios for  
22 end-use customers;

23           (B) an advanced degree in economics,  
24 mathematics, engineering, risk management, or a  
25 related area of study;

26           (C) 10 years of experience in the electricity

1 sector, including managing supply risk;

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

6 (E) expertise in credit protocols and  
7 familiarity with contract protocols;

8 (F) adequate resources to perform and fulfill  
9 the required functions and responsibilities; and

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

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

19 (A) direct previous experience administering a  
20 large-scale competitive procurement process;

21 (B) an advanced degree in economics,  
22 mathematics, engineering, or a related area of  
23 study;

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

26 (D) expertise in wholesale electricity market

1 rules, including those established by the Federal  
2 Energy Regulatory Commission and regional  
3 transmission organizations;

4 (E) expertise in credit and contract  
5 protocols;

6 (F) adequate resources to perform and fulfill  
7 the required functions and responsibilities; and

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

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

1 be based on:

2 (A) failure to satisfy qualification criteria;

3 (B) identification of a conflict of interest;

4 or

5 (C) evidence of inappropriate bias for or  
6 against potential bidders or the affected  
7 utilities.

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

19 (4) The Agency shall issue requests for proposals  
20 to the qualified experts or expert consulting firms to  
21 develop a procurement plan for the affected utilities  
22 and to serve as procurement administrator.

23 (5) The Agency shall select an expert or expert  
24 consulting firm to develop procurement plans based on  
25 the proposals submitted and shall award one-year  
26 contracts to those selected with an option for the

1 Agency for a one-year renewal.

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

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

23 (c) Renewable portfolio standard.

24 (1) The procurement plans shall include  
25 cost-effective renewable energy resources. A minimum  
26 percentage of each utility's total supply to serve the

1 load of eligible retail customers, as defined in  
2 Section 16-111.5(a) of the Public Utilities Act,  
3 procured for each of the following years shall be  
4 generated from cost-effective renewable energy  
5 resources: at least 2% by June 1, 2008; at least 4% by  
6 June 1, 2009; at least 5% by June 1, 2010; at least 6%  
7 by June 1, 2011; at least 7% by June 1, 2012; at least  
8 8% by June 1, 2013; at least 9% by June 1, 2014; at  
9 least 10% by June 1, 2015; and increasing by at least  
10 1.5% each year thereafter to at least 25% by June 1,  
11 2025. To the extent that it is available, at least 75%  
12 of the renewable energy resources used to meet these  
13 standards shall come from wind generation. For  
14 purposes of this subsection (c) ~~Section~~,  
15 "cost-effective" means that the costs of procuring  
16 renewable energy resources do not cause the limit  
17 stated in paragraph (2) of this subsection (c) to be  
18 exceeded and do not exceed benchmarks based on market  
19 prices for renewable energy resources in the region,  
20 which shall be developed by the procurement  
21 administrator, in consultation with the Commission  
22 staff, Agency staff, and the procurement monitor and  
23 shall be subject to Commission review and approval.

24 (2) For purposes of this subsection (c), the  
25 required procurement of cost-effective renewable  
26 energy resources for a particular year shall be



1 measured as a percentage of the actual amount of  
2 electricity (megawatt-hours) supplied by the electric  
3 utility to eligible retail customers in the planning  
4 year ending immediately prior to the procurement. For  
5 purposes of this subsection (c), the amount paid per  
6 kilowatthour means the total amount paid for electric  
7 service expressed on a per kilowatthour basis. For  
8 purposes of this subsection (c), the total amount paid  
9 for electric service includes without limitation  
10 amounts paid for supply, transmission, distribution,  
11 surcharges, and add-on taxes.

12 Notwithstanding the requirements of this  
13 subsection (c), the total of renewable energy  
14 resources procured pursuant to the procurement plan  
15 for any single year shall be reduced by an amount  
16 necessary to limit the annual estimated average net  
17 increase due to the costs of these resources included  
18 in the amounts paid by eligible retail customers in  
19 connection with electric service to:

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

23 (B) in 2009, the greater of an additional 0.5%  
24 of the amount paid per kilowatthour by those  
25 customers during the year ending May 31, 2008 or 1%  
26 of the amount paid per kilowatthour by those

1 customers during the year ending May 31, 2007;

2 (C) in 2010, the greater of an additional 0.5%  
3 of the amount paid per kilowatthour by those  
4 customers during the year ending May 31, 2009 or  
5 1.5% of the amount paid per kilowatthour by those  
6 customers during the year ending May 31, 2007;

7 (D) in 2011, the greater of an additional 0.5%  
8 of the amount paid per kilowatthour by those  
9 customers during the year ending May 31, 2010 or 2%  
10 of the amount paid per kilowatthour by those  
11 customers during the year ending May 31, 2007; and

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

24 No later than June 30, 2011, the Commission shall  
25 review the limitation on the amount of renewable energy  
26 resources procured pursuant to this subsection (c) and

1 report to the General Assembly its findings as to  
2 whether that limitation unduly constrains the  
3 procurement of cost-effective renewable energy  
4 resources.

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

26 (4) The electric utility shall retire all

1 renewable energy credits used to comply with the  
2 standard.

3 (d) Clean coal portfolio standard.

4 (1) The procurement plans shall include electricity  
5 generated using clean coal. Each utility shall enter into  
6 one or more sourcing agreements with the initial clean coal  
7 facility, as provided in paragraph (3) of this subsection  
8 (d), covering electricity generated by the initial clean  
9 coal facility representing at least 5% of each utility's  
10 total supply to serve the load of eligible retail customers  
11 in 2015 and each year thereafter, as described in paragraph  
12 (3) of this subsection (d), subject to the limits specified  
13 in paragraph (2) of this subsection (d). It is the goal of  
14 the State that by January 1, 2025, 25% of the electricity  
15 used in the State shall be generated by cost-effective  
16 clean coal facilities. For purposes of this subsection (d),  
17 "cost-effective" means that the expenditures pursuant to  
18 such sourcing agreements do not cause the limit stated in  
19 paragraph (2) of this subsection (d) to be exceeded and do  
20 not exceed cost-based benchmarks, which shall be developed  
21 to assess all expenditures pursuant to such sourcing  
22 agreements covering electricity generated by clean coal  
23 facilities, other than the initial clean coal facility, by  
24 the procurement administrator, in consultation with the  
25 Commission staff, Agency staff, and the procurement  
26 monitor and shall be subject to Commission review and

1       approval.

2               (A) A utility party to a sourcing agreement shall  
3       immediately retire any emission credits that it  
4       receives in connection with the electricity covered by  
5       such agreement.

6               (B) Utilities shall maintain adequate records  
7       documenting the purchases under the sourcing agreement  
8       to comply with this subsection (d) and shall file an  
9       accounting with the load forecast that must be filed  
10       with the Agency by July 15 of each year, in accordance  
11       with subsection (d) of Section 16-111.5 of the Public  
12       Utilities Act.

13               (C) A utility shall be deemed to have complied with  
14       the clean coal portfolio standard specified in this  
15       subsection (d) if the utility enters into a sourcing  
16       agreement as required by this subsection (d).

17               (2) For purposes of this subsection (d), the required  
18       execution of sourcing agreements with the initial clean  
19       coal facility for a particular year shall be measured as a  
20       percentage of the actual amount of electricity  
21       (megawatt-hours) supplied by the electric utility to  
22       eligible retail customers in the planning year ending  
23       immediately prior to the agreement's execution. For  
24       purposes of this subsection (d), the amount paid per  
25       kilowatthour means the total amount paid for electric  
26       service expressed on a per kilowatthour basis. For purposes

1       of this subsection (d), the total amount paid for electric  
2       service includes without limitation amounts paid for  
3       supply, transmission, distribution, surcharges and add-on  
4       taxes.

5       Notwithstanding the requirements of this subsection  
6       (d), the total amount paid under sourcing agreements with  
7       clean coal facilities pursuant to the procurement plan for  
8       any given year shall be reduced by an amount necessary to  
9       limit the annual estimated average net increase due to the  
10       costs of these resources included in the amounts paid by  
11       eligible retail customers in connection with electric  
12       service to:

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

16               (B) in 2011, the greater of an additional 0.5%  
17               of the amount paid per kilowatthour by those  
18               customers during the year ending May 31, 2010 or 1%  
19               of the amount paid per kilowatthour by those  
20               customers during the year ending May 31, 2009;

21               (C) in 2012, the greater of an additional 0.5%  
22               of the amount paid per kilowatthour by those  
23               customers during the year ending May 31, 2011 or  
24               1.5% of the amount paid per kilowatthour by those  
25               customers during the year ending May 31, 2009;

26               (D) in 2013, the greater of an additional 0.5%

1           of the amount paid per kilowatthour by those  
2           customers during the year ending May 31, 2012 or 2%  
3           of the amount paid per kilowatthour by those  
4           customers during the year ending May 31, 2009; and

5           (E) thereafter, the total amount paid under  
6           sourcing agreements with clean coal facilities  
7           pursuant to the procurement plan for any single  
8           year shall be reduced by an amount necessary to  
9           limit the estimated average net increase due to the  
10           cost of these resources included in the amounts  
11           paid by eligible retail customers in connection  
12           with electric service to no more than the greater  
13           of (i) 2.015% of the amount paid per kilowatthour  
14           by those customers during the year ending May 31,  
15           2009 or (ii) the incremental amount per  
16           kilowatthour paid for these resources in 2013.  
17           These requirements may be altered only as provided  
18           by statute. No later than June 30, 2015, the  
19           Commission shall review the limitation on the  
20           total amount paid under sourcing agreements, if  
21           any, with clean coal facilities pursuant to this  
22           subsection (d) and report to the General Assembly  
23           its findings as to whether that limitation unduly  
24           constrains the amount of electricity generated by  
25           cost-effective clean coal facilities that is  
26           covered by sourcing agreements.

1           (3) Initial clean coal facility. In order to promote  
2           development of clean coal facilities in Illinois, each  
3           electric utility subject to this Section shall execute a  
4           sourcing agreement to source electricity from a proposed  
5           clean coal facility in Illinois (the "initial clean coal  
6           facility") that will have a nameplate capacity of at least  
7           500 MW when commercial operation commences, that has a  
8           final Clean Air Act permit on the effective date of this  
9           amendatory Act of the 95th General Assembly, and that will  
10           meet the definition of clean coal facility in Section 1-10  
11           of this Act when commercial operation commences. The  
12           sourcing agreements with this initial clean coal facility  
13           shall be subject to both approval of the initial clean coal  
14           facility by the General Assembly and satisfaction of the  
15           requirements of paragraph (4) of this subsection (d) and  
16           shall be executed within 90 days after any such approval by  
17           the General Assembly. The Agency and the Commission shall  
18           have authority to inspect all books and records associated  
19           with the initial clean coal facility during the term of  
20           such a sourcing agreement. A utility's sourcing agreement  
21           for electricity produced by the initial clean coal facility  
22           shall include:

23                   (A) a formula contractual price (the "contract  
24                   price") approved pursuant to paragraph (4) of this  
25                   subsection (d), which shall:

26                           (i) be determined using a cost of service



1           methodology employing either a level or deferred  
2           capital recovery component, based on a capital  
3           structure consisting of 45% equity and 55% debt,  
4           and a return on equity as may be approved by the  
5           Federal Energy Regulatory Commission, which in any  
6           case may not exceed the lower of 11.5% or the rate  
7           of return approved by the General Assembly  
8           pursuant to paragraph (4) of this subsection (d);  
9           and

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

25           (B) power purchase provisions, which shall:

26           (i) provide that the utility party to such

1 sourcing agreement shall pay the contract price  
2 for electricity delivered under such sourcing  
3 agreement;

4 (ii) require delivery of electricity to the  
5 regional transmission organization market of the  
6 utility that is party to such sourcing agreement;

7 (iii) require the utility party to such  
8 sourcing agreement to buy from the initial clean  
9 coal facility in each hour an amount of energy  
10 equal to all clean coal energy made available from  
11 the initial clean coal facility during such hour  
12 times a fraction, the numerator of which is such  
13 utility's retail market sales of electricity  
14 (expressed in kilowatthours sold) in the State  
15 during the prior calendar month and the  
16 denominator of which is the total retail market  
17 sales of electricity (expressed in kilowatthours  
18 sold) in the State by utilities during such prior  
19 month and the sales of electricity (expressed in  
20 kilowatthours sold) in the State by alternative  
21 retail electric suppliers during such prior month  
22 that are subject to the requirements of this  
23 subsection (d) and paragraph (5) of subsection (d)  
24 of Section 16-115 of the Public Utilities Act,  
25 provided that the amount purchased by the utility  
26 in any year will be limited by paragraph (2) of

1           this subsection (d); and

2           (iv) be considered pre-existing contracts in  
3           such utility's procurement plans for eligible  
4           retail customers;

5           (C) contract for differences provisions, which  
6           shall:

7           (i) require the utility party to such sourcing  
8           agreement to contract with the initial clean coal  
9           facility in each hour with respect to an amount of  
10           energy equal to all clean coal energy made  
11           available from the initial clean coal facility  
12           during such hour times a fraction, the numerator of  
13           which is such utility's retail market sales of  
14           electricity (expressed in kilowatthours sold) in  
15           the utility's service territory in the State  
16           during the prior calendar month and the  
17           denominator of which is the total retail market  
18           sales of electricity (expressed in kilowatthours  
19           sold) in the State by utilities during such prior  
20           month and the sales of electricity (expressed in  
21           kilowatthours sold) in the State by alternative  
22           retail electric suppliers during such prior month  
23           that are subject to the requirements of this  
24           subsection (d) and paragraph (5) of subsection (d)  
25           of Section 16-115 of the Public Utilities Act,  
26           provided that the amount paid by the utility in any

1           year will be limited by paragraph (2) of this  
2           subsection (d);

3           (ii) provide that the utility's payment  
4           obligation in respect of the quantity of  
5           electricity determined pursuant to the preceding  
6           clause (i) shall be limited to an amount equal to  
7           (1) the difference between the contract price  
8           determined pursuant to subparagraph (A) of  
9           paragraph (3) of this subsection (d) and the  
10           day-ahead price for electricity delivered to the  
11           regional transmission organization market of the  
12           utility that is party to such sourcing agreement  
13           (or any successor delivery point at which such  
14           utility's supply obligations are financially  
15           settled on an hourly basis) (the "reference  
16           price") on the day preceding the day on which the  
17           electricity is delivered to the initial clean coal  
18           facility busbar, multiplied by (2) the quantity of  
19           electricity determined pursuant to the preceding  
20           clause (i); and

21           (iii) not require the utility to take physical  
22           delivery of the electricity produced by the  
23           facility;

24           (D) general provisions, which shall:

25           (i) specify a term of no more than 30 years,  
26           commencing on the commercial operation date of the

1 facility;

2 (ii) provide that utilities shall maintain  
3 adequate records documenting purchases under the  
4 sourcing agreements entered into to comply with  
5 this subsection (d) and shall file an accounting  
6 with the load forecast that must be filed with the  
7 Agency by July 15 of each year, in accordance with  
8 subsection (d) of Section 16-111.5 of the Public  
9 Utilities Act.

10 (iii) provide that all costs associated with  
11 the initial clean coal facility will be  
12 periodically reported to the Federal Energy  
13 Regulatory Commission and to purchasers in  
14 accordance with applicable laws governing  
15 cost-based wholesale power contracts;

16 (iv) permit the Illinois Power Agency to  
17 assume ownership of the initial clean coal  
18 facility, without monetary consideration and  
19 otherwise on reasonable terms acceptable to the  
20 Agency, if the Agency so requests no less than 3  
21 years prior to the end of the stated contract term;

22 (v) require the owner of the initial clean coal  
23 facility to provide documentation to the  
24 Commission each year, starting in the facility's  
25 first year of commercial operation, accurately  
26 reporting the quantity of carbon emissions from

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

1           designation as a clean coal facility if the  
2           facility fails to fully comply with the applicable  
3           carbon sequestration requirements in any given  
4           year, provided the requisite offsets are  
5           purchased. However, the Attorney General, on  
6           behalf of the People of the State of Illinois, may  
7           specifically enforce the facility's sequestration  
8           requirement and the other terms of this contract  
9           provision. Compliance with the sequestration  
10          requirements and offset purchase requirements  
11          specified in paragraph (3) of this subsection (d)  
12          shall be reviewed annually by an independent  
13          expert retained by the owner of the initial clean  
14          coal facility, with the advance written approval  
15          of the Attorney General. The Commission may, in the  
16          course of the review specified in item (vii),  
17          reduce the allowable return on equity for the  
18          facility if the facility fails to comply with the  
19          carbon capture and sequestration requirements set  
20          forth in this item (v);

21                (vi) include limits on, and accordingly  
22                provide for modification of, the amount the  
23                utility is required to source under the sourcing  
24                agreement consistent with paragraph (2) of this  
25                subsection (d);

26                (vii) require Commission review: (1) to

1 determine the justness, reasonableness, and  
2 prudence of the inputs to the formula referenced in  
3 subparagraphs (A)(i) through (A)(iii) of paragraph  
4 (3) of this subsection (d), prior to an adjustment  
5 in those inputs including, without limitation, the  
6 capital structure and return on equity, fuel  
7 costs, and other operations and maintenance costs  
8 and (2) to approve the costs to be passed through  
9 to customers under the sourcing agreement by which  
10 the utility satisfies its statutory obligations.  
11 Commission review shall occur no less than every 3  
12 years, regardless of whether any adjustments have  
13 been proposed, and shall be completed within 9  
14 months;

15 (viii) limit the utility's obligation to such  
16 amount as the utility is allowed to recover through  
17 tariffs filed with the Commission, provided that  
18 neither the clean coal facility nor the utility  
19 waives any right to assert federal pre-emption or  
20 any other argument in response to a purported  
21 disallowance of recovery costs;

22 (ix) limit the utility's or alternative retail  
23 electric supplier's obligation to incur any  
24 liability until such time as the facility is in  
25 commercial operation and generating power and  
26 energy and such power and energy is being delivered



1           to the facility busbar;

2           (x) provide that the owner or owners of the  
3           initial clean coal facility, which is the  
4           counterparty to such sourcing agreement, shall  
5           have the right from time to time to elect whether  
6           the obligations of the utility party thereto shall  
7           be governed by the power purchase provisions or the  
8           contract for differences provisions;

9           (xi) append documentation showing that the  
10           formula rate and contract, insofar as they relate  
11           to the power purchase provisions, have been  
12           approved by the Federal Energy Regulatory  
13           Commission pursuant to Section 205 of the Federal  
14           Power Act;

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

21           (xiii) conform with customary lender  
22           requirements in power purchase agreements used as  
23           the basis for financing non-utility generators.

24           (4) Effective date of sourcing agreements with the  
25           initial clean coal facility. Any proposed sourcing  
26           agreement with the initial clean coal facility shall not

1       become effective unless the following reports are prepared  
2       and submitted and authorizations and approvals obtained:

3               (i) Facility cost report. The owner of the  
4               initial clean coal facility shall submit to the  
5               Commission, the Agency, and the General Assembly a  
6               front-end engineering and design study, a facility  
7               cost report, method of financing (including but  
8               not limited to structure and associated costs),  
9               and an operating and maintenance cost quote for the  
10              facility (collectively "facility cost report"),  
11              which shall be prepared in accordance with the  
12              requirements of this paragraph (4) of subsection  
13              (d) of this Section, and shall provide the  
14              Commission and the Agency access to the work  
15              papers, relied upon documents, and any other  
16              backup documentation related to the facility cost  
17              report.

18              (ii) Commission report. Within 6 months  
19              following receipt of the facility cost report, the  
20              Commission, in consultation with the Agency, shall  
21              submit a report to the General Assembly setting  
22              forth its analysis of the facility cost report.  
23              Such report shall include, but not be limited to, a  
24              comparison of the costs associated with  
25              electricity generated by the initial clean coal  
26              facility to the costs associated with electricity

1 generated by other types of generation facilities,  
2 an analysis of the rate impacts on residential and  
3 small business customers over the life of the  
4 sourcing agreements, and an analysis of the  
5 likelihood that the initial clean coal facility  
6 will commence commercial operation by and be  
7 delivering power to the facility's busbar by 2016.  
8 To assist in the preparation of its report, the  
9 Commission, in consultation with the Agency, may  
10 hire one or more experts or consultants, the costs  
11 of which shall be paid for by the owner of the  
12 initial clean coal facility. The Commission and  
13 Agency may begin the process of selecting such  
14 experts or consultants prior to receipt of the  
15 facility cost report.

16 (iii) General Assembly approval. The proposed  
17 sourcing agreements shall not take effect unless,  
18 based on the facility cost report and the  
19 Commission's report, the General Assembly enacts  
20 authorizing legislation approving (A) the  
21 projected price, stated in cents per kilowatthour,  
22 to be charged for electricity generated by the  
23 initial clean coal facility, (B) the projected  
24 impact on residential and small business  
25 customers' bills over the life of the sourcing  
26 agreements, and (C) the maximum allowable return

1           on equity for the project; and

2           (iv) Commission review. If the General  
3           Assembly enacts authorizing legislation pursuant  
4           to subparagraph (iii) approving a sourcing  
5           agreement, the Commission shall, within 90 days of  
6           such enactment, complete a review of such sourcing  
7           agreement. During such time period, the Commission  
8           shall implement any directive of the General  
9           Assembly, resolve any disputes between the parties  
10           to the sourcing agreement concerning the terms of  
11           such agreement, approve the form of such  
12           agreement, and issue an order finding that the  
13           sourcing agreement is prudent and reasonable.

14       The facility cost report shall be prepared as follows:

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

23           (i) an estimate of the capital cost of the core  
24           plant based on one or more front end engineering  
25           and design studies for the gasification island and  
26           related facilities. The core plant shall include

1           all civil, structural, mechanical, electrical,  
2           control, and safety systems.

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

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

21           (B) The front end engineering and design study for  
22           the gasification island and the cost study for the  
23           balance of plant shall include sufficient design work  
24           to permit quantification of major categories of  
25           materials, commodities and labor hours, and receipt of  
26           quotes from vendors of major equipment required to

1           construct and operate the clean coal facility.

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

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

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

20          The operating and maintenance cost quote  
21          (including the cost of the front end engineering  
22          and design study) shall be expressed in nominal  
23          dollars as of the date that the quote is prepared  
24          and shall include (1) taxes, insurance, and other  
25          owner's costs, and (2) an assumed escalation in  
26          materials and labor beyond the date as of which the

1 operating and maintenance cost quote is expressed.

2 (D) The facility cost report shall also include (i)  
3 an analysis of the initial clean coal facility's  
4 ability to deliver power and energy into the applicable  
5 regional transmission organization markets and (ii) an  
6 analysis of the expected capacity factor for the  
7 initial clean coal facility.

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

14 (5) Re-powering and retrofitting coal-fired power  
15 plants previously owned by Illinois utilities to qualify as  
16 clean coal facilities. During the 2009 procurement  
17 planning process and thereafter, the Agency and the  
18 Commission shall consider sourcing agreements covering  
19 electricity generated by power plants that were previously  
20 owned by Illinois utilities and that have been or will be  
21 converted into clean coal facilities, as defined by Section  
22 1-10 of this Act. Pursuant to such procurement planning  
23 process, the owners of such facilities may propose to the  
24 Agency sourcing agreements with utilities and alternative  
25 retail electric suppliers required to comply with  
26 subsection (d) of this Section and item (5) of subsection

1       (d) of Section 16-115 of the Public Utilities Act, covering  
2       electricity generated by such facilities. In the case of  
3       sourcing agreements that are power purchase agreements,  
4       the contract price for electricity sales shall be  
5       established on a cost of service basis. In the case of  
6       sourcing agreements that are contracts for differences,  
7       the contract price from which the reference price is  
8       subtracted shall be established on a cost of service basis.  
9       The Agency and the Commission may approve any such utility  
10       sourcing agreements that do not exceed cost-based  
11       benchmarks developed by the procurement administrator, in  
12       consultation with the Commission staff, Agency staff and  
13       the procurement monitor, subject to Commission review and  
14       approval. The Commission shall have authority to inspect  
15       all books and records associated with these clean coal  
16       facilities during the term of any such contract.

17       (6) Costs incurred under this subsection (d) or  
18       pursuant to a contract entered into under this subsection  
19       (d) shall be deemed prudently incurred and reasonable in  
20       amount and the electric utility shall be entitled to full  
21       cost recovery pursuant to the tariffs filed with the  
22       Commission.

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

26       (f) ~~(e)~~ The Agency shall submit the final procurement



1 plan to the Commission. The Agency shall revise a  
2 procurement plan if the Commission determines that it does  
3 not meet the standards set forth in Section 16-111.5 of the  
4 Public Utilities Act.

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

8 (h) ~~(g)~~ The Agency shall assess fees to each bidder to  
9 recover the costs incurred in connection with a competitive  
10 procurement process.

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

12 (20 ILCS 3855/1-80)

13 Sec. 1-80. Resource Development Bureau. The Resource  
14 Development Bureau has the following duties and  
15 responsibilities:

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

19 (i) fees assessed by the Agency on municipal  
20 electric systems, governmental aggregators, unit or  
21 units of local government, or rural electric  
22 cooperatives requesting the feasibility study; or

23 (ii) an appropriation from the General Assembly.

24 (b) If the Agency undertakes the construction of a  
25 facility, moneys generated from the sale of revenue bonds

1 by the Authority for the facility shall be used to  
2 reimburse the source of the money used for the facility's  
3 feasibility study.

4 (c) The Agency may develop, finance, construct, or  
5 operate electric generation and co-generation facilities  
6 that use indigenous coal or renewable resources, or both,  
7 financed with bonds issued by the Authority on behalf of  
8 the Agency. Any such facility that uses coal must be a  
9 clean coal facility and must be constructed in a location  
10 ~~Preference shall be given to technologies that enable~~  
11 ~~carbon capture and sites in locations~~ where the geology is  
12 suitable for carbon sequestration. The Agency may also  
13 develop, finance, construct, or operate a carbon  
14 sequestration facility.

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

26 (2) The Agency shall hold at least one public

1 hearing before entering into any such contractual  
2 arrangements. At least 30-days' notice of the hearing  
3 shall be given by publication once in each week during  
4 that period in 6 newspapers within the State, at least  
5 one of which has a circulation area that includes the  
6 location of the proposed facility.

7 (3) The first facility that the Agency develops,  
8 finances, or constructs shall be a facility that uses  
9 coal produced in Illinois. The Agency may, however,  
10 also develop, finance, or construct renewable energy  
11 facilities after work on the first facility has  
12 commenced.

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

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

17 (d) Use of electricity generated by the Agency's  
18 facilities. The Agency may supply electricity produced by  
19 the Agency's facilities to municipal electric systems,  
20 governmental aggregators, or rural electric cooperatives  
21 in Illinois. The electricity shall be supplied at cost.

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

25 (2) The contracts shall also provide that,  
26 notwithstanding any provision in the Public Utilities

1 Act, entities supplied with power and energy from an  
2 Agency facility shall supply the power and energy to  
3 retail customers at the same price paid to purchase  
4 power and energy from the Agency.

5 (e) Electric utilities shall not be required to purchase  
6 electricity directly or indirectly from facilities developed  
7 or sponsored by the Agency.

8 (f) The Agency may sell excess capacity and excess energy  
9 into the wholesale electric market at prevailing market rates;  
10 provided, however, the Agency may not sell excess capacity or  
11 excess energy through the procurement process described in  
12 Section 16-111.5 of the Public Utilities Act.

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

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

18 Section 1-10. The Public Utilities Act is amended by  
19 changing Sections 9-220, 16-101A, 16-111.5, 16-115, and 16-116  
20 as follows:

21 (220 ILCS 5/9-220) (from Ch. 111 2/3, par. 9-220)

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

23 (a) Notwithstanding the provisions of Section 9-201, the  
24 Commission may authorize the increase or decrease of rates and

1 charges based upon changes in the cost of fuel used in the  
2 generation or production of electric power, changes in the cost  
3 of purchased power, or changes in the cost of purchased gas  
4 through the application of fuel adjustment clauses or purchased  
5 gas adjustment clauses. The Commission may also authorize the  
6 increase or decrease of rates and charges based upon  
7 expenditures or revenues resulting from the purchase or sale of  
8 emission allowances created under the federal Clean Air Act  
9 Amendments of 1990, through such fuel adjustment clauses, as a  
10 cost of fuel. For the purposes of this paragraph, cost of fuel  
11 used in the generation or production of electric power shall  
12 include the amount of any fees paid by the utility for the  
13 implementation and operation of a process for the  
14 desulfurization of the flue gas when burning high sulfur coal  
15 at any location within the State of Illinois irrespective of  
16 the attainment status designation of such location; but shall  
17 not include transportation costs of coal (i) except to the  
18 extent that for contracts entered into on and after the  
19 effective date of this amendatory Act of 1997, the cost of the  
20 coal, including transportation costs, constitutes the lowest  
21 cost for adequate and reliable fuel supply reasonably available  
22 to the public utility in comparison to the cost, including  
23 transportation costs, of other adequate and reliable sources of  
24 fuel supply reasonably available to the public utility, or (ii)  
25 except as otherwise provided in the next 3 sentences of this  
26 paragraph. Such costs of fuel shall, when requested by a

1 utility or at the conclusion of the utility's next general  
2 electric rate proceeding, whichever shall first occur, include  
3 transportation costs of coal purchased under existing coal  
4 purchase contracts. For purposes of this paragraph "existing  
5 coal purchase contracts" means contracts for the purchase of  
6 coal in effect on the effective date of this amendatory Act of  
7 1991, as such contracts may thereafter be amended, but only to  
8 the extent that any such amendment does not increase the  
9 aggregate quantity of coal to be purchased under such contract.  
10 Nothing herein shall authorize an electric utility to recover  
11 through its fuel adjustment clause any amounts of  
12 transportation costs of coal that were included in the revenue  
13 requirement used to set base rates in its most recent general  
14 rate proceeding. Cost shall be based upon uniformly applied  
15 accounting principles. Annually, the Commission shall initiate  
16 public hearings to determine whether the clauses reflect actual  
17 costs of fuel, gas, power, or coal transportation purchased to  
18 determine whether such purchases were prudent, and to reconcile  
19 any amounts collected with the actual costs of fuel, power,  
20 gas, or coal transportation prudently purchased. In each such  
21 proceeding, the burden of proof shall be upon the utility to  
22 establish the prudence of its cost of fuel, power, gas, or coal  
23 transportation purchases and costs. The Commission shall issue  
24 its final order in each such annual proceeding for an electric  
25 utility by December 31 of the year immediately following the  
26 year to which the proceeding pertains, provided, that the

1 Commission shall issue its final order with respect to such  
2 annual proceeding for the years 1996 and earlier by December  
3 31, 1998.

4 (b) A public utility providing electric service, other than  
5 a public utility described in subsections (e) or (f) of this  
6 Section, may at any time during the mandatory transition period  
7 file with the Commission proposed tariff sheets that eliminate  
8 the public utility's fuel adjustment clause and adjust the  
9 public utility's base rate tariffs by the amount necessary for  
10 the base fuel component of the base rates to recover the public  
11 utility's average fuel and power supply costs per kilowatt-hour  
12 for the 2 most recent years for which the Commission has issued  
13 final orders in annual proceedings pursuant to subsection (a),  
14 where the average fuel and power supply costs per kilowatt-hour  
15 shall be calculated as the sum of the public utility's prudent  
16 and allowable fuel and power supply costs as found by the  
17 Commission in the 2 proceedings divided by the public utility's  
18 actual jurisdictional kilowatt-hour sales for those 2 years.  
19 Notwithstanding any contrary or inconsistent provisions in  
20 Section 9-201 of this Act, in subsection (a) of this Section or  
21 in any rules or regulations promulgated by the Commission  
22 pursuant to subsection (g) of this Section, the Commission  
23 shall review and shall by order approve, or approve as  
24 modified, the proposed tariff sheets within 60 days after the  
25 date of the public utility's filing. The Commission may modify  
26 the public utility's proposed tariff sheets only to the extent

1 the Commission finds necessary to achieve conformance to the  
2 requirements of this subsection (b). During the 5 years  
3 following the date of the Commission's order, but in any event  
4 no earlier than January 1, 2007, a public utility whose fuel  
5 adjustment clause has been eliminated pursuant to this  
6 subsection shall not file proposed tariff sheets seeking, or  
7 otherwise petition the Commission for, reinstatement of a fuel  
8 adjustment clause.

9 (c) Notwithstanding any contrary or inconsistent  
10 provisions in Section 9-201 of this Act, in subsection (a) of  
11 this Section or in any rules or regulations promulgated by the  
12 Commission pursuant to subsection (g) of this Section, a public  
13 utility providing electric service, other than a public utility  
14 described in subsection (e) or (f) of this Section, may at any  
15 time during the mandatory transition period file with the  
16 Commission proposed tariff sheets that establish the rate per  
17 kilowatt-hour to be applied pursuant to the public utility's  
18 fuel adjustment clause at the average value for such rate  
19 during the preceding 24 months, provided that such average rate  
20 results in a credit to customers' bills, without making any  
21 revisions to the public utility's base rate tariffs. The  
22 proposed tariff sheets shall establish the fuel adjustment rate  
23 for a specific time period of at least 3 years but not more  
24 than 5 years, provided that the terms and conditions for any  
25 reinstatement earlier than 5 years shall be set forth in the  
26 proposed tariff sheets and subject to modification or approval



1 by the Commission. The Commission shall review and shall by  
2 order approve the proposed tariff sheets if it finds that the  
3 requirements of this subsection are met. The Commission shall  
4 not conduct the annual hearings specified in the last 3  
5 sentences of subsection (a) of this Section for the utility for  
6 the period that the factor established pursuant to this  
7 subsection is in effect.

8 (d) A public utility providing electric service, or a  
9 public utility providing gas service may file with the  
10 Commission proposed tariff sheets that eliminate the public  
11 utility's fuel or purchased gas adjustment clause and adjust  
12 the public utility's base rate tariffs to provide for recovery  
13 of power supply costs or gas supply costs that would have been  
14 recovered through such clause; provided, that the provisions of  
15 this subsection (d) shall not be available to a public utility  
16 described in subsections (e) or (f) of this Section to  
17 eliminate its fuel adjustment clause. Notwithstanding any  
18 contrary or inconsistent provisions in Section 9-201 of this  
19 Act, in subsection (a) of this Section, or in any rules or  
20 regulations promulgated by the Commission pursuant to  
21 subsection (g) of this Section, the Commission shall review and  
22 shall by order approve, or approve as modified in the  
23 Commission's order, the proposed tariff sheets within 240 days  
24 after the date of the public utility's filing. The Commission's  
25 order shall approve rates and charges that the Commission,  
26 based on information in the public utility's filing or on the

1 record if a hearing is held by the Commission, finds will  
2 recover the reasonable, prudent and necessary jurisdictional  
3 power supply costs or gas supply costs incurred or to be  
4 incurred by the public utility during a 12 month period found  
5 by the Commission to be appropriate for these purposes,  
6 provided, that such period shall be either (i) a 12 month  
7 historical period occurring during the 15 months ending on the  
8 date of the public utility's filing, or (ii) a 12 month future  
9 period ending no later than 15 months following the date of the  
10 public utility's filing. The public utility shall include with  
11 its tariff filing information showing both (1) its actual  
12 jurisdictional power supply costs or gas supply costs for a 12  
13 month historical period conforming to (i) above and (2) its  
14 projected jurisdictional power supply costs or gas supply costs  
15 for a future 12 month period conforming to (ii) above. If the  
16 Commission's order requires modifications in the tariff sheets  
17 filed by the public utility, the public utility shall have 7  
18 days following the date of the order to notify the Commission  
19 whether the public utility will implement the modified tariffs  
20 or elect to continue its fuel or purchased gas adjustment  
21 clause in force as though no order had been entered. The  
22 Commission's order shall provide for any reconciliation of  
23 power supply costs or gas supply costs, as the case may be, and  
24 associated revenues through the date that the public utility's  
25 fuel or purchased gas adjustment clause is eliminated. During  
26 the 5 years following the date of the Commission's order, a

1 public utility whose fuel or purchased gas adjustment clause  
2 has been eliminated pursuant to this subsection shall not file  
3 proposed tariff sheets seeking, or otherwise petition the  
4 Commission for, reinstatement or adoption of a fuel or  
5 purchased gas adjustment clause. Nothing in this subsection (d)  
6 shall be construed as limiting the Commission's authority to  
7 eliminate a public utility's fuel adjustment clause or  
8 purchased gas adjustment clause in accordance with any other  
9 applicable provisions of this Act.

10 (e) Notwithstanding any contrary or inconsistent  
11 provisions in Section 9-201 of this Act, in subsection (a) of  
12 this Section, or in any rules promulgated by the Commission  
13 pursuant to subsection (g) of this Section, a public utility  
14 providing electric service to more than 1,000,000 customers in  
15 this State may, within the first 6 months after the effective  
16 date of this amendatory Act of 1997, file with the Commission  
17 proposed tariff sheets that eliminate, effective January 1,  
18 1997, the public utility's fuel adjustment clause without  
19 adjusting its base rates, and such tariff sheets shall be  
20 effective upon filing. To the extent the application of the  
21 fuel adjustment clause had resulted in net charges to customers  
22 after January 1, 1997, the utility shall also file a tariff  
23 sheet that provides for a refund stated on a per kilowatt-hour  
24 basis of such charges over a period not to exceed 6 months;  
25 provided however, that such refund shall not include the  
26 proportional amounts of taxes paid under the Use Tax Act,

1 Service Use Tax Act, Service Occupation Tax Act, and Retailers'  
2 Occupation Tax Act on fuel used in generation. The Commission  
3 shall issue an order within 45 days after the date of the  
4 public utility's filing approving or approving as modified such  
5 tariff sheet. If the fuel adjustment clause is eliminated  
6 pursuant to this subsection, the Commission shall not conduct  
7 the annual hearings specified in the last 3 sentences of  
8 subsection (a) of this Section for the utility for any period  
9 after December 31, 1996 and prior to any reinstatement of such  
10 clause. A public utility whose fuel adjustment clause has been  
11 eliminated pursuant to this subsection shall not file a  
12 proposed tariff sheet seeking, or otherwise petition the  
13 Commission for, reinstatement of the fuel adjustment clause  
14 prior to January 1, 2007.

15 (f) Notwithstanding any contrary or inconsistent  
16 provisions in Section 9-201 of this Act, in subsection (a) of  
17 this Section, or in any rules or regulations promulgated by the  
18 Commission pursuant to subsection (g) of this Section, a public  
19 utility providing electric service to more than 500,000  
20 customers but fewer than 1,000,000 customers in this State may,  
21 within the first 6 months after the effective date of this  
22 amendatory Act of 1997, file with the Commission proposed  
23 tariff sheets that eliminate, effective January 1, 1997, the  
24 public utility's fuel adjustment clause and adjust its base  
25 rates by the amount necessary for the base fuel component of  
26 the base rates to recover 91% of the public utility's average

1 fuel and power supply costs for the 2 most recent years for  
2 which the Commission, as of January 1, 1997, has issued final  
3 orders in annual proceedings pursuant to subsection (a), where  
4 the average fuel and power supply costs per kilowatt-hour shall  
5 be calculated as the sum of the public utility's prudent and  
6 allowable fuel and power supply costs as found by the  
7 Commission in the 2 proceedings divided by the public utility's  
8 actual jurisdictional kilowatt-hour sales for those 2 years,  
9 provided, that such tariff sheets shall be effective upon  
10 filing. To the extent the application of the fuel adjustment  
11 clause had resulted in net charges to customers after January  
12 1, 1997, the utility shall also file a tariff sheet that  
13 provides for a refund stated on a per kilowatt-hour basis of  
14 such charges over a period not to exceed 6 months. Provided  
15 however, that such refund shall not include the proportional  
16 amounts of taxes paid under the Use Tax Act, Service Use Tax  
17 Act, Service Occupation Tax Act, and Retailers' Occupation Tax  
18 Act on fuel used in generation. The Commission shall issue an  
19 order within 45 days after the date of the public utility's  
20 filing approving or approving as modified such tariff sheet. If  
21 the fuel adjustment clause is eliminated pursuant to this  
22 subsection, the Commission shall not conduct the annual  
23 hearings specified in the last 3 sentences of subsection (a) of  
24 this Section for the utility for any period after December 31,  
25 1996 and prior to any reinstatement of such clause. A public  
26 utility whose fuel adjustment clause has been eliminated

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

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

7 (h) Any gas utility may enter into a contract for up to 20  
8 years of supply with any company for the purchase of substitute  
9 natural gas (SNG) produced from coal through the gasification  
10 process if the company has commenced construction of a coal  
11 gasification facility by July 1, 2010. The cost for the SNG is  
12 reasonable and prudent and recoverable through the purchased  
13 gas adjustment clause for years one through 10 of the contract  
14 if: (i) the only coal used in the gasification process has high  
15 volatile bituminous rank and greater than 1.7 pounds of sulfur  
16 per million Btu content; (ii) at the time the contract term  
17 commences, the price per million Btu does not exceed \$7.95 in  
18 2008 dollars, adjusted annually based on the change in the  
19 Annual Consumer Price Index for All Urban Consumers for the  
20 Midwest Region as published in April by the United States  
21 Department of Labor, Bureau of Labor Statistics (or a suitable  
22 Consumer Price Index calculation if this Consumer Price Index  
23 is not available) for the previous calendar year; provided that  
24 the price per million Btu shall not exceed \$8.95 at any time  
25 during the contract; (iii) the utility's aggregate long-term  
26 supply contracts for the purchase of SNG does not exceed 25% of

1 the annual system supply requirements of the utility at the  
2 time the contract is entered into and the quantity of SNG  
3 supplied to a utility by any one producer may not exceed 20  
4 billion cubic feet per year; and (iv) the contract is entered  
5 into within 120 days after the effective date of this  
6 amendatory Act of the 95th General Assembly and terminates no  
7 more than 20 years after the commencement of the commercial  
8 production of SNG at the facility. Contracts greater than 10  
9 years shall provide that if, at any time during supply years 11  
10 through 20 of the contract, the Commission determines that the  
11 cost for the synthetic natural gas purchased under the contract  
12 during supply years 11 through 20 is not reasonable and  
13 prudent, then the company shall reimburse the utility for the  
14 difference between the cost deemed reasonable and prudent by  
15 the Commission and the cost imposed under the contract. All  
16 such contracts, regardless of duration, shall require the owner  
17 of any facility supplying SNG under the contract to provide  
18 documentation to the Commission each year, starting in the  
19 facility's first year of commercial operation, accurately  
20 reporting the quantity of carbon dioxide emissions from the  
21 facility that have been captured and sequestered and reporting  
22 any quantities of carbon dioxide released from the site or  
23 sites at which carbon dioxide emissions were sequestered in  
24 prior years, based on continuous monitoring of those sites. If,  
25 in any year, the owner of the facility fails to demonstrate  
26 that the SNG facility captured and sequestered at least 90% of

1 the total carbon dioxide emissions that the facility would  
2 otherwise emit or that sequestration of emissions from prior  
3 years has failed, resulting in the release of carbon dioxide  
4 into the atmosphere, the Commission may reduce the price per  
5 million Btu that may be charged during the following year under  
6 the contracts authorized in this subsection (h) and the owner  
7 of the facility must offset excess emissions. Any such carbon  
8 dioxide offsets must be permanent, additional, verifiable,  
9 real, located within the State of Illinois, and legally and  
10 practicably enforceable. The costs of such offsets shall not  
11 exceed \$30 million in any given year. No costs of any purchases  
12 of carbon offsets may be recovered from a utility or its  
13 customers. All carbon offsets purchased for this purpose must  
14 be permanently retired. In addition, carbon dioxide emission  
15 credits equivalent to 50% of the amount of credits associated  
16 with the required sequestration of carbon dioxide from the  
17 facility must be permanently retired. Compliance with the  
18 sequestration requirements and the offset purchase  
19 requirements specified in this subsection (h) shall be assessed  
20 annually by an independent expert retained by the owner of the  
21 SNG facility, with the advance written approval of the Attorney  
22 General. An SNG facility operating pursuant to this subsection  
23 (h) shall not forfeit its designation as a clean coal SNG  
24 facility if the facility fails to fully comply with the  
25 applicable carbon sequestration requirements in any given  
26 year, provided the requisite offsets are purchased. However,



1 the Attorney General, on behalf of the People of the State of  
2 Illinois, may specifically enforce the facility's  
3 sequestration requirements. ~~Any gas utility may enter into a~~  
4 ~~20-year supply contract with any company for synthetic natural~~  
5 ~~gas produced from coal through the gasification process if the~~  
6 ~~company has commenced construction of a coal gasification~~  
7 ~~facility by July 1, 2008. The cost for the synthetic natural~~  
8 ~~gas is reasonable and prudent and recoverable through the~~  
9 ~~purchased gas adjustment clause for years one through 10 of the~~  
10 ~~contract if: (i) the only coal used in the gasification process~~  
11 ~~has high volatile bituminous rank and greater than 1.7 pounds~~  
12 ~~of sulfur per million Btu content; (ii) at the time the~~  
13 ~~contract term commences, the price per million Btu does not~~  
14 ~~exceed \$5 in 2004 dollars, adjusted annually based on the~~  
15 ~~change in the Annual Consumer Price Index for All Urban~~  
16 ~~Consumers for the Midwest Region as published in April by the~~  
17 ~~United States Department of Labor, Bureau of Labor Statistics~~  
18 ~~(or a suitable Consumer Price Index calculation if this~~  
19 ~~Consumer Price Index is not available) for the previous~~  
20 ~~calendar year; provided that the price per million Btu shall~~  
21 ~~not exceed \$5.50 at any time during the contract; (iii) the~~  
22 ~~utility's aggregate long-term supply contracts for the~~  
23 ~~purchase of synthetic natural gas produced from coal through~~  
24 ~~the gasification process does not exceed 25% of the annual~~  
25 ~~system supply requirements of the utility at the time the~~  
26 ~~contract is entered into; and (iv) the contract is entered into~~

1 ~~within one year after the effective date of this amendatory Act~~  
2 ~~of the 94th General Assembly and terminates 20 years after the~~  
3 ~~commencement of the production of synthetic natural gas. The~~  
4 ~~contract shall provide that if, at any time during years 11~~  
5 ~~through 20 of the contract, the Commission determines that the~~  
6 ~~cost for the synthetic natural gas under the contract is not~~  
7 ~~reasonable and prudent, then the company shall reimburse the~~  
8 ~~utility for the difference between the cost deemed reasonable~~  
9 ~~and prudent by the Commission and the cost imposed under the~~  
10 ~~contract.~~

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

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

15 (220 ILCS 5/16-101A)

16 Sec. 16-101A. Legislative findings.

17 (a) The citizens and businesses of the State of Illinois  
18 have been well-served by a comprehensive electrical utility  
19 system which has provided safe, reliable, and affordable  
20 service. The electrical utility system in the State of Illinois  
21 has historically been subject to State and federal regulation,  
22 aimed at assuring the citizens and businesses of the State of  
23 safe, reliable, and affordable service, while at the same time  
24 assuring the utility system of a return on its investment.

25 (b) Competitive forces are affecting the market for

1 electricity as a result of recent federal regulatory and  
2 statutory changes and the activities of other states.  
3 Competition in the electric services market may create  
4 opportunities for new products and services for customers and  
5 lower costs for users of electricity. Long-standing regulatory  
6 relationships need to be altered to accommodate the competition  
7 that could fundamentally alter the structure of the electric  
8 services market.

9 (c) With the advent of increasing competition in this  
10 industry, the State has a continued interest in assuring that  
11 the safety, reliability, and affordability of electrical power  
12 is not sacrificed to competitive pressures, and to that end,  
13 intends to implement safeguards to assure that the industry  
14 continues to operate the electrical system in a manner that  
15 will serve the public's interest. Under the existing regulatory  
16 framework, the industry has been encouraged to undertake  
17 certain investments in its physical plant and personnel to  
18 enhance its efficient operation, the cost of which it has been  
19 permitted to pass on to consumers. The State has an interest in  
20 providing the existing utilities a reasonable opportunity to  
21 obtain a return on certain investments on which they depended  
22 in undertaking those commitments in the first instance while,  
23 at the same time, not permitting new entrants into the industry  
24 to take unreasonable advantage of the investments made by the  
25 formerly regulated industry.

26 (d) A competitive wholesale and retail market must benefit

1 all Illinois citizens. The Illinois Commerce Commission should  
2 act to promote the development of an effectively competitive  
3 electricity market that operates efficiently and is equitable  
4 to all consumers. Consumer protections must be in place to  
5 ensure that all customers continue to receive safe, reliable,  
6 affordable, and environmentally safe electric service.

7 (e) All consumers must benefit in an equitable and timely  
8 fashion from the lower costs for electricity that result from  
9 retail and wholesale competition and receive sufficient  
10 information to make informed choices among suppliers and  
11 services. The use of renewable resources and energy efficiency  
12 resources should be encouraged in competitive markets.

13 (f) The efficiency of electric markets depends both upon  
14 the competitiveness of supply and upon the  
15 price-responsiveness of the demand for service. Therefore, to  
16 ensure the lowest total cost of service and to enhance the  
17 reliability of service, all classes of the electricity  
18 customers of electric utilities should have access to and be  
19 able to voluntarily use real-time pricing and other  
20 price-response and demand-response mechanisms.

21 (g) Including cost-effective renewable resources and  
22 demand-response resources in a diverse electricity supply  
23 portfolio will reduce long-term direct and indirect costs to  
24 consumers by decreasing environmental impacts and by avoiding  
25 or delaying the need for new generation, transmission, and  
26 distribution infrastructure. It serves the public interest to

1 allow electric utilities to recover costs for reasonably and  
2 prudently incurred expenses for electricity generated by  
3 renewable resources and demand-response resources.

4 (h) Including electricity generated by clean coal  
5 facilities, as defined under Section 1-10 of the Illinois Power  
6 Agency Act, in a diverse electricity procurement portfolio will  
7 reduce the need to purchase, directly or indirectly, carbon  
8 dioxide emission credits and will decrease environmental  
9 impacts. It serves the public interest to allow electric  
10 utilities to recover costs for reasonably and prudently  
11 incurred expenses for sourcing electricity generated by clean  
12 coal facilities.

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

14 (220 ILCS 5/16-111.5)

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

16 (a) An electric utility that on December 31, 2005 served at  
17 least 100,000 customers in Illinois shall procure power and  
18 energy for its eligible retail customers in accordance with the  
19 applicable provisions set forth in Section 1-75 of the Illinois  
20 Power Agency Act and this Section. "Eligible retail customers"  
21 for the purposes of this Section means those retail customers  
22 that purchase power and energy from the electric utility under  
23 fixed-price bundled service tariffs, other than those retail  
24 customers whose service is declared or deemed competitive under  
25 Section 16-113 and those other customer groups specified in

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

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

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

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

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

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

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

20 and

21 (iv) growth forecasts by customer class.

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

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

26 (ii) supply side needs that are projected to be

1 offset by purchases of renewable energy resources, if  
2 any; and

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

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

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

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

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

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

24 (C) provide for customers' participation in  
25 the stream of benefits produced by the demand  
26 response products;



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

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

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

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

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

26          (vi) ~~(v)~~ an assessment of the price risk, load

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

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

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

21          (1) The procurement administrator shall:

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

26                 (ii) develop benchmarks in accordance with

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

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

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

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

12 (vi) administer the request for proposals process;

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

25 (viii) maintain confidentiality of supplier and  
26 bidding information in a manner consistent with all

1 applicable laws, rules, regulations, and tariffs;

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

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

7 (xi) administer related contingency procurement  
8 events.

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

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

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

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

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

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

25 (vi) provide expert advice to the Commission and  
26 consult with the procurement administrator regarding

1 issues related to procurement process design, rules,  
2 protocols, and policy-related matters; and

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

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

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

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

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

21        (3) Within 5 days after the filing of the procurement  
22 plan, any person objecting to the procurement plan shall  
23 file an objection with the Commission. Within 10 days after  
24 the filing, the Commission shall determine whether a  
25 hearing is necessary. The Commission shall enter its order  
26 confirming or modifying the procurement plan within 90 days

1 after the filing of the procurement plan by the Illinois  
2 Power Agency.

3 (4) The Commission shall approve the procurement plan,  
4 including expressly the forecast used in the procurement  
5 plan, if the Commission determines that it will ensure  
6 adequate, reliable, affordable, efficient, and  
7 environmentally sustainable electric service at the lowest  
8 total cost over time, taking into account any benefits of  
9 price stability.

10 (e) The procurement process shall include each of the  
11 following components:

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

1 contract developed pursuant to paragraph (2) of this  
2 subsection (e). The procurement administrator shall then  
3 identify and register bidders to participate in the  
4 procurement event.

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

25 (3) Establishment of a market-based price benchmark.  
26 As part of the development of the procurement process, the



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

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

25 (5) A plan for implementing contingencies in the event  
26 of supplier default or failure of the procurement process

1 to fully meet the expected load requirement due to  
2 insufficient supplier participation, Commission rejection  
3 of results, or any other cause.

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

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

23           (iii) In all cases where there is insufficient  
24 supply provided under contracts awarded through the  
25 procurement process to fully meet the electric  
26 utility's load requirement, the utility shall meet the

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

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

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

1 business days after receipt of the reports.

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

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

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

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

1 include contracts for renewable resources that extend beyond  
2 May 2009.

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

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

26 (k) In order to promote price stability for residential and

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

26 (1) An electric utility shall recover its costs incurred



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

1 before the effective date of this Section in conjunction with  
2 the provision of full requirements service under fixed-price  
3 bundled service tariffs subsequent to December 31, 2006. All  
4 such costs shall be deemed to have been prudently incurred. The  
5 pass-through tariffs that are filed and approved pursuant to  
6 this Section shall not be subject to review under, or in any  
7 way limited by, Section 16-111(i) of this Act.

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

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

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

26 (p) An electric utility subject to this Section may propose

1 to invest, lease, own, or operate an electric generation  
2 facility as part of its procurement plan, provided the utility  
3 demonstrates that such facility is the least-cost option to  
4 provide electric service to eligible retail customers. If the  
5 facility is shown to be the least-cost option and is included  
6 in a procurement plan prepared in accordance with Section 1-75  
7 of the Illinois Power Agency Act and this Section, then the  
8 electric utility shall make a filing pursuant to Section 8-406  
9 of the Act, and may request of the Commission any statutory  
10 relief required thereunder. If the Commission grants all of the  
11 necessary approvals for the proposed facility, such supply  
12 shall thereafter be considered as a pre-existing contract under  
13 subsection (b) of this Section. The Commission shall in any  
14 order approving a proposal under this subsection specify how  
15 the utility will recover the prudently incurred costs of  
16 investing in, leasing, owning, or operating such generation  
17 facility through just and reasonable rates charged to eligible  
18 retail customers. Cost recovery for facilities included in the  
19 utility's procurement plan pursuant to this subsection shall  
20 not be subject to review under or in any way limited by the  
21 provisions of Section 16-111(i) of this Act. Nothing in this  
22 Section is intended to prohibit a utility from filing for a  
23 fuel adjustment clause as is otherwise permitted under Section  
24 9-220 of this Act.

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

1 (220 ILCS 5/16-115)

2 Sec. 16-115. Certification of alternative retail electric  
3 suppliers.

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

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

21 (c) An application for a certificate of service authority  
22 shall identify the area or areas in which the applicant intends  
23 to offer service and the types of services it intends to offer.  
24 Applicants that seek to serve residential or small commercial  
25 retail customers within a geographic area that is smaller than  
26 an electric utility's service area shall submit evidence

1 demonstrating that the designation of this smaller area does  
2 not violate Section 16-115A. An applicant that seeks to serve  
3 residential or small commercial retail customers may state in  
4 its application for certification any limitations that will be  
5 imposed on the number of customers or maximum load to be  
6 served.

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

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

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

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

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

14           (5) That the applicant will procure renewable energy  
15 resources and will source electricity from clean coal  
16 facilities, as defined in Section 1-10 of the Illinois  
17 Power Agency Act, in amounts at least equal to the  
18 percentages set forth in subsections (c) and (d) of Section  
19 1-75 of the Illinois Power Agency Act. For purposes of this  
20 Section:

21           (i) the required procurement of renewable energy  
22 resources shall be measured as a percentage of the  
23 actual amount of electricity (megawatt-hours) supplied  
24 by the alternative retail electric supplier in the  
25 prior calendar year, as reported for that year to the  
26 Commission. This obligation applies to all electricity

1 supplied pursuant to retail contracts executed,  
2 extended, or otherwise revised after the effective  
3 date of this amendatory Act, provided the alternative  
4 retail electric supplier submits all documentation  
5 needed by the Commission to determine the actual amount  
6 of electricity supplied under contracts that may be  
7 excluded under this limitation;

8 (ii) an alternative retail electric supplier need  
9 not actually deliver electricity to its customers to  
10 comply with this Section, provided that if the  
11 alternative retail electric supplier claims credit for  
12 such purpose, subsequent purchasers shall not receive  
13 any emission credits or renewable energy credits in  
14 connection with the purchase of such electricity.  
15 Alternative retail electric suppliers shall maintain  
16 adequate records documenting the contractual  
17 disposition of all electricity procured to comply with  
18 this Section and shall file an accounting in the report  
19 which must be filed with the Commission on April 1 of  
20 each year, starting in 2010, in accordance with  
21 subsection (d-5) of this Section;

22 (iii) the required procurement of renewable energy  
23 resources and sourcing of electricity generated by  
24 clean coal facilities, other than the initial clean  
25 coal facility, shall be limited to the amount of  
26 electricity that can be procured or sourced at a price

1           at or below the benchmarks approved by the Commission  
2           each year in accordance with item (1) of subsection (c)  
3           and items (1) and (5) of subsection (d) of Section 1-75  
4           of the Illinois Power Agency Act;

5           (iv) all alternative retail electric suppliers  
6           shall execute a sourcing agreement to source  
7           electricity from the initial clean coal facility, on  
8           the terms set forth in paragraphs (3) and (4) of  
9           subsection (d) of Section 1-75 of the Illinois Power  
10           Agency Act, except that in lieu of the requirements in  
11           subparagraphs (A)(v), (B)(i), (C)(v), and (C)(vi) of  
12           paragraph (3) of that subsection (d), the applicant  
13           shall execute one or more of the following:

14           (1) if the sourcing agreement is a power  
15           purchase agreement, a contract with the initial  
16           clean coal facility to purchase in each hour an  
17           amount of electricity equal to all clean coal  
18           energy made available from the initial clean coal  
19           facility during such hour multiplied by a  
20           fraction, the numerator of which is the  
21           alternative retail electric supplier's retail  
22           market sales of electricity (expressed in  
23           kilowatthours sold) in the State during the prior  
24           calendar month and the denominator of which is the  
25           total retail market sales of electricity  
26           (expressed in kilowatthours sold) in the State by



1           utilities during such prior month and the sales of  
2           electricity (expressed in kilowatthours sold) in  
3           the State by alternative retail electric suppliers  
4           during such prior month that are subject to the  
5           requirements of this paragraph (5) of subsection  
6           (d) of this Section and subsection (d) of Section  
7           1-75 of the Illinois Power Agency Act; or

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

1           1-75 of the Illinois Power Agency Act;

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

1           Attorney General, on behalf of the People of the State  
2           of Illinois, may specifically enforce the facility's  
3           sequestration requirement and the other terms of this  
4           contract provision. Compliance with the sequestration  
5           requirements and offset purchase requirements that  
6           apply to the initial clean coal facility shall be  
7           reviewed annually by an independent expert retained by  
8           the owner of the initial clean coal facility, with the  
9           advance written approval of the Attorney General  
10          ~~(Blank);~~

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

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

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

23          (d-5) The Commission shall, after notice and hearing,  
24          revoke the certification of any alternative retail electric  
25          supplier that fails to execute a sourcing agreement with the  
26          initial clean coal facility, as required by item (5) of

1 subsection (d) of this Section. The sourcing agreements with  
2 this initial clean coal facility shall be subject to both  
3 approval of the initial clean coal facility by the General  
4 Assembly and satisfaction of the requirements of paragraph (4)  
5 of subsection (d) of Section 1-75 of the Illinois Power Agency  
6 Act, and shall be executed within 90 days after any such  
7 approval by the General Assembly. The Commission shall also  
8 revoke the certification of any alternative retail electric  
9 supplier that, on April 1, 2010 or on April 1 of any year  
10 thereafter, fails to demonstrate that the electricity provided  
11 to the alternative retail electricity supplier's Illinois  
12 customers during the previous year was generated by renewable  
13 energy resources and clean coal facilities in amounts at least  
14 equal to the percentages set forth in subsections (c) and (d)  
15 of Section 1-75 of the Illinois Power Agency Act, as limited by  
16 subsection (d)(5)(iii) of this Section. The Commission shall  
17 not accept an application for certification from an alternative  
18 retail electric supplier that has lost certification under this  
19 subsection (d-5), or any corporate affiliate thereof, for at  
20 least one year from the date of revocation.

21 (e) A retail customer that owns a cogeneration or  
22 self-generation facility and that seeks certification only to  
23 provide electric power and energy from such facility to retail  
24 customers at separate locations which customers are both (i)  
25 owned by, or a subsidiary or other corporate affiliate of, such  
26 applicant and (ii) eligible for delivery services, shall be

1 granted a certificate of service authority upon filing an  
2 application and notifying the Commission that it has entered  
3 into an agreement with the relevant electric utilities pursuant  
4 to Section 16-118. Provided, however, that if the retail  
5 customer owning such cogeneration or self-generation facility  
6 would not be charged a transition charge due to the exemption  
7 provided under subsection (f) of Section 16-108 prior to the  
8 certification, and the retail customers at separate locations  
9 are taking delivery services in conjunction with purchasing  
10 power and energy from the facility, the retail customer on  
11 whose premises the facility is located shall not thereafter be  
12 required to pay transition charges on the power and energy that  
13 such retail customer takes from the facility.

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

1 a requirement to post a bond or letter of credit, from a  
2 responsible surety or financial institution, of sufficient  
3 size for the nature and scope of the services to be provided;  
4 demonstration of adequate insurance for the scope and nature of  
5 the services to be provided; and experience in providing  
6 similar services in other jurisdictions.

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

8 (220 ILCS 5/16-116)

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

12 (a) An electric utility that has a tariff on file for  
13 delivery services may, without regard to any otherwise  
14 applicable tariffs on file, provide electric power and energy  
15 to one or more retail customers located outside its service  
16 area, but only to the extent (i) such retail customer (A) is  
17 eligible for delivery services under any delivery services  
18 tariff filed with the Commission by the electric utility in  
19 whose service area the retail customer is located and (B) has  
20 either elected to take such delivery services or has paid or  
21 contracted to pay the charges specified in Sections 16-108 and  
22 16-114, or (ii) if such retail customer is served by a  
23 municipal system or electric cooperative, the customer is  
24 eligible for delivery services under the terms and conditions  
25 for such service established by the municipal system or

1 electric cooperative serving that customer.

2 (b) An electric utility may offer any competitive service  
3 to any customer or group of customers without filing contracts  
4 with or seeking approval of the Commission, notwithstanding any  
5 rule or regulation that would require such approval. The  
6 Commission shall not increase or decrease the prices, and may  
7 not alter or add to the terms and conditions for the utility's  
8 competitive services, from those agreed to by the electric  
9 utility and the customer or customers. Non-tariffed,  
10 competitive services shall not be subject to the provisions of  
11 the Electric Supplier Act or to Articles V, VII, VIII or IX of  
12 the Act, except to the extent that any provisions of such  
13 Articles are made applicable to alternative retail electric  
14 suppliers pursuant to Sections 16-115 and 16-115A, but shall be  
15 subject to the provisions of subsections (b) through (g) of  
16 Section 16-115A, and Section 16-115B to the same extent such  
17 provisions are applicable to the services provided by  
18 alternative retail electric suppliers.

19 (c) Electric utilities serving retail customers outside  
20 their service areas shall be subject to the requirements of  
21 paragraph (5) of subsection (d) of Section 16-115 of the Public  
22 Utilities Act.

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

24

ARTICLE 5

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

3 (220 ILCS 5/2-203)

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

5 Sec. 2-203. Public Utility Fund base maintenance  
6 contribution. Each ~~For each of the years 2003 through 2008,~~  
7 ~~each~~ electric utility as defined in Section 16-102 of this Act  
8 providing service to more than 12,500 customers in this State  
9 on January 1, 1995 shall contribute annually a pro rata share  
10 of a total amount of \$5,500,000 based upon the number of  
11 kilowatt-hours delivered to retail customers within this State  
12 by each such electric utility in the 12 months preceding the  
13 year of contribution. On or before May 1 of each year, the  
14 Illinois Commerce Commission shall determine and notify the  
15 Illinois Department of Revenue of the pro rata share owed by  
16 each electric utility based upon information supplied annually  
17 to the Commission. On or before June 1 of each year, the  
18 Department of Revenue shall send written notification to each  
19 electric utility of the amount of pro rata share they owe.  
20 These contributions shall be remitted to the Department of  
21 Revenue no earlier than July 1 and no later than July 31 of  
22 each year the contribution is due on a return prescribed and  
23 furnished by the Department of Revenue showing such information  
24 as the Department of Revenue may reasonably require. The  
25 Department of Revenue shall place the funds remitted under this



1 Section in the Public Utility Fund in the State treasury. The  
2 funds received pursuant to this Section shall be subject to  
3 appropriation by the General Assembly. If an electric utility  
4 does not remit its pro rata share to the Department of Revenue,  
5 the Department of Revenue must inform the Illinois Commerce  
6 Commission of such failure. The Illinois Commerce Commission  
7 may then revoke the certification of that electric utility.  
8 This Section is repealed on January 1, 2014 ~~2009~~.

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

10 ARTICLE 10.

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

13 (220 ILCS 5/16-125)

14 Sec. 16-125. Transmission and distribution reliability  
15 requirements.

16 (a) To assure the reliable delivery of electricity to all  
17 customers in this State and the effective implementation of the  
18 provisions of this Article, the Commission shall, within 180  
19 days of the effective date of this Article, adopt rules and  
20 regulations for assessing and assuring the reliability of the  
21 transmission and distribution systems and facilities that are  
22 under the Commission's jurisdiction.

23 (b) These rules and regulations shall require each electric

1 utility or alternative retail electric supplier owning,  
2 controlling, or operating transmission and distribution  
3 facilities and equipment subject to the Commission's  
4 jurisdiction, referred to in this Section as "jurisdictional  
5 entities", to adopt and implement procedures for restoring  
6 transmission and distribution services to customers after  
7 transmission or distribution outages on a nondiscriminatory  
8 basis without regard to whether a customer has chosen the  
9 electric utility, an affiliate of the electric utility, or  
10 another entity as its provider of electric power and energy.  
11 These rules and regulations shall also, at a minimum,  
12 specifically require each jurisdictional entity to submit  
13 annually to the Commission.

14 (1) the number and duration of planned and unplanned  
15 outages during the prior year and their impacts on  
16 customers;

17 (2) outages that were controllable and outages that  
18 were exacerbated in scope or duration by the condition of  
19 facilities, equipment or premises or by the actions or  
20 inactions of operating personnel or agents;

21 (3) customer service interruptions that were due  
22 solely to the actions or inactions of an alternative retail  
23 electric supplier or a public utility in supplying power or  
24 energy;

25 (4) a detailed report of the age, current condition,  
26 reliability and performance of the jurisdictional entity's

1 existing transmission and distribution facilities, which  
2 shall include, without limitation, the following data:

3 (i) a summary of the jurisdictional entity's  
4 outages and voltage variances reportable under the  
5 Commission's rules;

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

13 (iii) the jurisdictional entity's expenditures for  
14 distribution construction and maintenance, the ratio  
15 of those expenditures to the jurisdictional entity's  
16 distribution investment, and the average remaining  
17 depreciation lives of the entity's distribution  
18 facilities, expressed as a percentage of total  
19 depreciation lives;

20 (iv) a customer satisfaction survey covering,  
21 among other areas identified in Commission rules,  
22 reliability, customer service, and understandability  
23 of the jurisdictional entity's services and prices;  
24 and

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

1           (5) a plan for future investment and reliability  
2 improvements for the jurisdictional entity's transmission  
3 and distribution facilities that will ensure continued  
4 reliable delivery of energy to customers and provide the  
5 delivery reliability needed for fair and open competition;  
6 and

7           (6) a report of the jurisdictional entity's  
8 implementation of its plan filed pursuant to subparagraph  
9 (5) for the previous reporting period.

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

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

1 result of its evaluation.

2 (e) In the event that more than either (i) 30,000 (or some  
3 other number, but only as provided by statute) of the total  
4 customers or (ii) 0.8% (or some other percentage, but only as  
5 provided by statute) of the total customers, whichever is less,  
6 of an electric utility are subjected to a continuous power  
7 interruption of 4 hours or more that results in the  
8 transmission of power at less than 50% of the standard voltage,  
9 or that results in the total loss of power transmission, the  
10 utility shall be responsible for compensating customers  
11 affected by that interruption for 4 hours or more for all  
12 actual damages, which shall not include consequential damages,  
13 suffered as a result of the power interruption. The utility  
14 shall also reimburse the affected municipality, county, or  
15 other unit of local government in which the power interruption  
16 has taken place for all emergency and contingency expenses  
17 incurred by the unit of local government as a result of the  
18 interruption. A waiver of the requirements of this subsection  
19 may be granted by the Commission in instances in which the  
20 utility can show that the power interruption was a result of  
21 any one or more of the following causes:

22 (1) Unpreventable damage due to weather events or  
23 conditions.

24 (2) Customer tampering.

25 (3) Unpreventable damage due to civil or international  
26 unrest or animals.

1           (4) Damage to utility equipment or other actions by a  
2           party other than the utility, its employees, agents, or  
3           contractors.

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

6           (f) In the event of a power surge or other fluctuation that  
7           causes damage and affects more than either (i) 30,000 (or some  
8           other number, but only as provided by statute) of the total  
9           customers or (ii) 0.8% (or some other percentage, but only as  
10           provided by statute) of the total customers, whichever is less,  
11           the electric utility shall pay to affected customers the  
12           replacement value of all goods damaged as a result of the power  
13           surge or other fluctuation unless the utility can show that the  
14           power surge or other fluctuation was due to one or more of the  
15           following causes:

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

18           (2) Customer tampering.

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

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

24           Loss of revenue and expenses incurred in complying with this  
25           subsection may not be recovered from ratepayers. Customers with  
26           respect to whom a waiver has been granted by the Commission

1 pursuant to subparagraphs (1)-(4) of subsections (e) and (f)  
2 shall not count toward the either (i) 30,000 (or some other  
3 number, but only as provided by statute) of the total customers  
4 or (ii) 0.8% (or some other percentage, but only as provided by  
5 statute) of the total customers required therein.

6 (g) Whenever an electric utility must perform planned or  
7 routine maintenance or repairs on its equipment that will  
8 result in transmission of power at less than 50% of the  
9 standard voltage, loss of power, or power fluctuation (as  
10 defined in subsection (f)), the utility shall make reasonable  
11 efforts to notify potentially affected customers no less than  
12 24 hours in advance of performance of the repairs or  
13 maintenance.

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

26 (i) The provisions of this Section shall not in any way

1 diminish or replace other civil or administrative remedies  
2 available to a customer or a class of customers.

3 (j) The Commission shall by rule require an electric  
4 utility to maintain service records detailing information on  
5 each instance of transmission of power at less than 50% of the  
6 standard voltage, loss of power, or power fluctuation (as  
7 defined in subsection (f)), that affects 10 or more customers.  
8 Occurrences that are momentary shall not be required to be  
9 recorded or reported. The service record shall include, for  
10 each occurrence, the following information:

11 (1) The date.

12 (2) The time of occurrence.

13 (3) The duration of the incident.

14 (4) The number of customers affected.

15 (5) A description of the cause.

16 (6) The geographic area affected.

17 (7) The specific equipment involved in the fluctuation  
18 or interruption.

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

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

22 (10) A description of measures taken to prevent future  
23 occurrence.

24 (11) The amount of remuneration, if any, paid to  
25 affected customers.

26 (12) A statement of whether the fixed charge was waived



1 for affected customers.

2 Copies of the records containing this information shall be  
3 available for public inspection at the utility's offices, and  
4 copies thereof may be obtained upon payment of a fee not  
5 exceeding the reasonable cost of reproduction. A copy of each  
6 record shall be filed with the Commission and shall be  
7 available for public inspection. Copies of the records may be  
8 obtained upon payment of a fee not exceeding the reasonable  
9 cost of reproduction.

10 (k) The requirements of subsections (e) through (j) of this  
11 Section shall apply only to an electric public utility having  
12 100,000 ~~1,000,000~~ or more customers.

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

14 ARTICLE 15

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

17 (220 ILCS 5/2-202) (from Ch. 111 2/3, par. 2-202)

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

19 (a) It is declared to be the public policy of this State  
20 that in order to maintain and foster the effective regulation  
21 of public utilities under this Act in the interests of the  
22 People of the State of Illinois and the public utilities as  
23 well, the public utilities subject to regulation under this Act

1 and which enjoy the privilege of operating as public utilities  
2 in this State, shall bear the expense of administering this Act  
3 by means of a tax on such privilege measured by the annual  
4 gross revenue of such public utilities in the manner provided  
5 in this Section. For purposes of this Section, "expense of  
6 administering this Act" includes any costs incident to studies,  
7 whether made by the Commission or under contract entered into  
8 by the Commission, concerning environmental pollution problems  
9 caused or contributed to by public utilities and the means for  
10 eliminating or abating those problems. Such proceeds shall be  
11 deposited in the Public Utility Fund in the State treasury.

12 (b) All of the ordinary and contingent expenses of the  
13 Commission incident to the administration of this Act shall be  
14 paid out of the Public Utility Fund except the compensation of  
15 the members of the Commission which shall be paid from the  
16 General Revenue Fund. Notwithstanding other provisions of this  
17 Act to the contrary, the ordinary and contingent expenses of  
18 the Commission incident to the administration of the Illinois  
19 Commercial Transportation Law may be paid from appropriations  
20 from the Public Utility Fund through the end of fiscal year  
21 1986.

22 (c) A tax is imposed upon each public utility subject to  
23 the provisions of this Act equal to .08% of its gross revenue  
24 for each calendar year commencing with the calendar year  
25 beginning January 1, 1982, except that the Commission may, by  
26 rule, establish a different rate no greater than 0.1%. For

1 purposes of this Section, "gross revenue" shall not include  
2 revenue from the production, transmission, distribution, sale,  
3 delivery, or furnishing of electricity. "Gross revenue" shall  
4 not include amounts paid by telecommunications retailers under  
5 the Telecommunications Infrastructure Maintenance Fee Act.

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

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

1           (2) Beginning with returns due after January 1, 2002,  
2           the requirements of paragraph (1) of this subsection (d)  
3           shall not apply to any public utility in any calendar year  
4           for which the total tax the public utility owes under this  
5           Section is less than \$10,000. For such public utilities  
6           with respect to such years, the public utility shall file  
7           with the Commission, on or before March 31 of the following  
8           year, an annual gross revenue return for the year and a  
9           statement of the amount of tax due for that year on the  
10          basis of such a return. Forms and instructions for such  
11          returns and corrected returns shall be devised and supplied  
12          by the Commission.

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

1           (f) (1) For all public utilities subject to paragraph (1)  
2 of subsection (d), at least one quarter of the annual amount of  
3 tax due under subsection (c) shall be paid to the Commission on  
4 or before the tenth day of January, April, July, and October of  
5 the calendar year subject to tax. In the event that an  
6 adjustment in the amount of tax due should be necessary as a  
7 result of the filing of an amended or corrected return under  
8 subsection (d) or subsection (e) of this Section, the amount of  
9 any deficiency shall be paid by the public utility together  
10 with the amended or corrected return and the amount of any  
11 excess shall, after the filing of a claim for credit by the  
12 public utility, be returned to the public utility in the form  
13 of a credit memorandum in the amount of such excess or be  
14 refunded to the public utility in accordance with the  
15 provisions of subsection (k) of this Section. However, if such  
16 deficiency or excess is less than \$1, then the public utility  
17 need not pay the deficiency and may not claim a credit.

18           (2) Any public utility subject to paragraph (2) of  
19 subsection (d) shall pay the amount of tax due under subsection  
20 (c) on or before March 31 next following the end of the  
21 calendar year subject to tax. In the event that an adjustment  
22 in the amount of tax due should be necessary as a result of the  
23 filing of a corrected return under subsection (e), the amount  
24 of any deficiency shall be paid by the public utility at the  
25 time the corrected return is filed. Any excess tax payment by  
26 the public utility shall be returned to it after the filing of

1 a claim for credit, in the form of a credit memorandum in the  
2 amount of the excess. However, if such deficiency or excess is  
3 less than \$1, the public utility need not pay the deficiency  
4 and may not claim a credit.

5 (g) Each installment or required payment of the tax imposed  
6 by subsection (c) becomes delinquent at midnight of the date  
7 that it is due. Failure to make a payment as required by this  
8 Section shall result in the imposition of a late payment  
9 penalty, an underestimation penalty, or both, as provided by  
10 this subsection. The late payment penalty shall be the greater  
11 of:

12 (1) \$25 for each month or portion of a month that the  
13 installment or required payment is unpaid or

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

21 The underestimation penalty shall apply to those public  
22 utilities subject to paragraph (1) of subsection (d) and shall  
23 be calculated after the filing of the amended return. It shall  
24 be imposed if the amount actually paid on any of the dates  
25 specified in subsection (f) is not equal to at least one-fourth  
26 of the amount actually due for the year, and shall equal the

1 greater of:

2 (1) \$25 for each month or portion of a month that the  
3 amount due is unpaid or

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

25 (h) All sums collected by the Commission under the  
26 provisions of this Section shall be paid promptly after the

1 receipt of the same, accompanied by a detailed statement  
2 thereof, into the Public Utility Fund in the State treasury.

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

5 (1) determine the amount of all moneys deposited in the  
6 Public Utility Fund during the preceding fiscal biennium  
7 plus the balance, if any, in that fund at the beginning of  
8 that biennium;

9 (2) determine the sum total of the following items: (A)  
10 all moneys expended or obligated against appropriations  
11 made from the Public Utility Fund during the preceding  
12 fiscal biennium, plus (B) the sum of the credit memoranda  
13 then outstanding against the Public Utility Fund, if any;  
14 and

15 (3) determine the amount, if any, by which the sum  
16 determined as provided in item (1) exceeds the amount  
17 determined as provided in item (2).

18 If the amount determined as provided in item (3) of this  
19 subsection exceeds 50% of the previous fiscal year's  
20 appropriation level ~~\$5,000,000~~, the Commission shall then  
21 compute the proportionate amount, if any, which (x) the tax  
22 paid hereunder by each utility during the preceding biennium,  
23 and (y) the amount paid into the Public Utility Fund during the  
24 preceding biennium by the Department of Revenue pursuant to  
25 Sections 2-9 and 2-11 of the Electricity Excise Tax Law, bears  
26 to the difference between the amount determined as provided in



1 item (3) of this subsection (i) and 50% of the previous fiscal  
2 year's appropriation level ~~\$5,000,000~~. The Commission shall  
3 cause the proportionate amount determined with respect to  
4 payments made under the Electricity Excise Tax Law to be  
5 transferred into the General Revenue Fund in the State  
6 Treasury, and notify each public utility that it may file  
7 during the 3 month period after the date of notification a  
8 claim for credit for the proportionate amount determined with  
9 respect to payments made hereunder by the public utility. If  
10 the proportionate amount is less than \$10, no notification will  
11 be sent by the Commission, and no right to a claim exists as to  
12 that amount. Upon the filing of a claim for credit within the  
13 period provided, the Commission shall issue a credit memorandum  
14 in such amount to such public utility. Any claim for credit  
15 filed after the period provided for in this Section is void.

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

26 (k) The chairman or executive director may make refund of

1 fees, taxes or other charges whenever he shall determine that  
2 the person or public utility will not be liable for payment of  
3 such fees, taxes or charges during the next 24 months and he  
4 determines that the issuance of a credit memorandum would be  
5 unjust.

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

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

10 (625 ILCS 5/18c-1503) (from Ch. 95 1/2, par. 18c-1503)

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

1 provision.

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

3 ARTICLE 99

4 Section 99-97. Severability. The provisions of this Act are  
5 severable under Section 1.31 of the Statute on Statutes."