

1 AN ACT concerning regulation.

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

4 ARTICLE 1

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

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

9 (20 ILCS 3855/1-5)

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

12 (1) The health, welfare, and prosperity of all Illinois  
13 citizens require the provision of adequate, reliable,  
14 affordable, efficient, and environmentally sustainable  
15 electric service at the lowest total cost over time, taking  
16 into account any benefits of price stability.

17 (2) The transition to retail competition is not  
18 complete. Some customers, especially residential and small  
19 commercial customers, have failed to benefit from lower  
20 electricity costs from retail and wholesale competition.

21 (3) Escalating prices for electricity in Illinois pose

1 a serious threat to the economic well-being, health, and  
2 safety of the residents of and the commerce and industry of  
3 the State.

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

10 (5) Procuring a diverse electricity supply portfolio  
11 will ensure the lowest total cost over time for adequate,  
12 reliable, efficient, and environmentally sustainable  
13 electric service.

14 (6) Including cost-effective renewable resources in  
15 that portfolio will reduce long-term direct and indirect  
16 costs to consumers by decreasing environmental impacts and  
17 by avoiding or delaying the need for new generation,  
18 transmission, and distribution infrastructure.

19 (7) Energy efficiency, demand-response measures, and  
20 renewable energy are resources currently underused in  
21 Illinois.

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

1           The General Assembly therefore finds that it is necessary  
2 to create the Illinois Power Agency and that the goals and  
3 objectives of that Agency are to accomplish each of the  
4 following:

5           (A) Develop electricity procurement plans to 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, for electric utilities that on December  
10 31, 2005 provided electric service to at least 100,000  
11 customers in Illinois. The procurement plan shall be  
12 updated on an annual basis and shall include renewable  
13 energy resources sufficient to achieve the standards  
14 specified in this Act.

15           (B) Conduct competitive procurement processes to  
16 procure the supply resources identified in the procurement  
17 plan.

18           (C) Develop electric generation and co-generation  
19 facilities that use indigenous coal or renewable  
20 resources, or both, financed with bonds issued by the  
21 Illinois Finance Authority.

22           (D) Supply electricity from the Agency's facilities at  
23 cost to one or more of the following: municipal electric  
24 systems, governmental aggregators, or rural electric  
25 cooperatives in Illinois.

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

1 (20 ILCS 3855/1-10)

2 Sec. 1-10. Definitions.

3 "Agency" means the Illinois Power Agency.

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

12 "Authority" means the Illinois Finance Authority.

13 "Clean coal facility" means an electric generating  
14 facility that uses primarily coal as a feedstock and that  
15 captures and sequesters carbon emissions at the following  
16 levels: at least 50% of the total carbon emissions that the  
17 facility would otherwise emit if, at the time construction  
18 commences, the facility is scheduled to commence operation  
19 before 2016, at least 70% of the total carbon emissions that  
20 the facility would otherwise emit if, at the time construction  
21 commences, the facility is scheduled to commence operation  
22 during 2016 or 2017, and at least 90% of the total carbon  
23 emissions that the facility would otherwise emit if, at the  
24 time construction commences, the facility is scheduled to  
25 commence operation after 2017. The power block of the clean

1 coal facility shall not exceed allowable emission rates for  
2 sulfur dioxide, nitrogen oxides, carbon monoxide, particulates  
3 and mercury for a natural gas-fired combined-cycle facility the  
4 same size as and in the same location as the clean coal  
5 facility at the time the clean coal facility obtains an  
6 approved air permit. All coal used by a clean coal facility  
7 shall have high volatile bituminous rank and greater than 1.7  
8 pounds of sulfur per million btu content, unless the clean coal  
9 facility does not use gasification technology and was operating  
10 as a conventional coal-fired electric generating facility on  
11 the effective date of this amendatory Act of the 95th General  
12 Assembly.

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

19 "Commission" means the Illinois Commerce Commission.

20 "Costs incurred in connection with the development and  
21 construction of a facility" means:

22 (1) the cost of acquisition of all real property and  
23 improvements in connection therewith and equipment and  
24 other property, rights, and easements acquired that are  
25 deemed necessary for the operation and maintenance of the  
26 facility;

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

3           (3) all origination, commitment, utilization,  
4 facility, placement, underwriting, syndication, credit  
5 enhancement, and rating agency fees;

6           (4) engineering, design, procurement, consulting,  
7 legal, accounting, title insurance, survey, appraisal,  
8 escrow, trustee, collateral agency, interest rate hedging,  
9 interest rate swap, capitalized interest and other  
10 financing costs, and other expenses for professional  
11 services; and

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

20           "Department" means the Department of Commerce and Economic  
21 Opportunity.

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

23           "Demand-response" means measures that decrease peak  
24 electricity demand or shift demand from peak to off-peak  
25 periods.

26           "Energy efficiency" means measures that reduce the amount

1 of electricity required to achieve a given end use.

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

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

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

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

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

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

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

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

26 "Real property" means any interest in land together with

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

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

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

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



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

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

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

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

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

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

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

17 (20 ILCS 3855/1-75)

18 Sec. 1-75. Planning and Procurement Bureau. The Planning  
19 and Procurement Bureau has the following duties and  
20 responsibilities:

21 (a) The Planning and Procurement Bureau shall each  
22 year, beginning in 2008, develop procurement plans and  
23 conduct competitive procurement processes in accordance  
24 with the requirements of Section 16-111.5 of the Public  
25 Utilities Act for the eligible retail customers of electric

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

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

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

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

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

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

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

26 (F) adequate resources to perform and fulfill

1 the required functions and responsibilities; and

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

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

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

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

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

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

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

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

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

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

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

20                   (A) failure to satisfy qualification criteria;

21                   (B) identification of a conflict of interest;

22                   or

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

26           The Agency shall remove experts or expert

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

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

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

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

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

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

15 (c) Renewable portfolio standard.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

21 (d) Clean coal portfolio standard.

22 (1) The procurement plans shall include electricity  
23 generated using clean coal. Each utility shall enter into  
24 one or more sourcing agreements with the initial clean coal  
25 facility, as provided in paragraph (3) of this subsection  
26 (d), covering electricity generated by the initial clean

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

20 (A) A utility party to a sourcing agreement shall  
21 immediately retire any emission credits that it  
22 receives in connection with the electricity covered by  
23 such agreement.

24 (B) Utilities shall maintain adequate records  
25 documenting the purchases under the sourcing agreement  
26 to comply with this subsection (d) and shall file an

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

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

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

23          Notwithstanding the requirements of this subsection  
24          (d), the total amount paid under sourcing agreements with  
25          clean coal facilities pursuant to the procurement plan for  
26          any given year shall be reduced by an amount necessary to

1 limit the annual estimated average net increase due to the  
2 costs of these resources included in the amounts paid by  
3 eligible retail customers in connection with electric  
4 service to:

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

8 (B) in 2011, the greater of an additional 0.5%  
9 of the amount paid per kilowatthour by those  
10 customers during the year ending May 31, 2010 or 1%  
11 of the amount paid per kilowatthour by those  
12 customers during the year ending May 31, 2009;

13 (C) in 2012, the greater of an additional 0.5%  
14 of the amount paid per kilowatthour by those  
15 customers during the year ending May 31, 2011 or  
16 1.5% of the amount paid per kilowatthour by those  
17 customers during the year ending May 31, 2009;

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

23 (E) thereafter, the total amount paid under  
24 sourcing agreements with clean coal facilities  
25 pursuant to the procurement plan for any single  
26 year shall be reduced by an amount necessary to

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

19 (3) Initial clean coal facility. In order to promote  
20 development of clean coal facilities in Illinois, each  
21 electric utility subject to this Section shall execute a  
22 sourcing agreement to source electricity from a proposed  
23 clean coal facility in Illinois (the "initial clean coal  
24 facility") that will have a nameplate capacity of at least  
25 500 MW when commercial operation commences, that has a  
26 final Clean Air Act permit on the effective date of this

1 amendatory Act of the 95th General Assembly, and that will  
2 meet the definition of clean coal facility in Section 1-10  
3 of this Act when commercial operation commences. The  
4 sourcing agreements with this initial clean coal facility  
5 shall be subject to both approval of the initial clean coal  
6 facility by the General Assembly and satisfaction of the  
7 requirements of paragraph (4) of this subsection (d) and  
8 shall be executed within 90 days after any such approval by  
9 the General Assembly. The Agency and the Commission shall  
10 have authority to inspect all books and records associated  
11 with the initial clean coal facility during the term of  
12 such a sourcing agreement. A utility's sourcing agreement  
13 for electricity produced by the initial clean coal facility  
14 shall include:

15 (A) a formula contractual price (the "contract  
16 price") approved pursuant to paragraph (4) of this  
17 subsection (d), which shall:

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



1           and

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

17           (B) power purchase provisions, which shall:

18                   (i) provide that the utility party to such  
19 sourcing agreement shall pay the contract price  
20 for electricity delivered under such sourcing  
21 agreement;

22                   (ii) require delivery of electricity to the  
23 regional transmission organization market of the  
24 utility that is party to such sourcing agreement;

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

1           coal facility in each hour an amount of energy  
2           equal to all clean coal energy made available from  
3           the initial clean coal facility during such hour  
4           times a fraction, the numerator of which is such  
5           utility's retail market sales of electricity  
6           (expressed in kilowatthours sold) in the State  
7           during the prior calendar month and the  
8           denominator of which is the total retail market  
9           sales of electricity (expressed in kilowatthours  
10           sold) in the State by utilities during such prior  
11           month and the sales of electricity (expressed in  
12           kilowatthours sold) in the State by alternative  
13           retail electric suppliers during such prior month  
14           that are subject to the requirements of this  
15           subsection (d) and paragraph (5) of subsection (d)  
16           of Section 16-115 of the Public Utilities Act,  
17           provided that the amount purchased by the utility  
18           in any year will be limited by paragraph (2) of  
19           this subsection (d); and  
20           (iv) be considered pre-existing contracts in  
21           such utility's procurement plans for eligible  
22           retail customers;  
23           (C) contract for differences provisions, which  
24           shall:  
25           (i) require the utility party to such sourcing  
26           agreement to contract with the initial clean coal

1 facility in each hour with respect to an amount of  
2 energy equal to all clean coal energy made  
3 available from the initial clean coal facility  
4 during such hour times a fraction, the numerator of  
5 which is such utility's retail market sales of  
6 electricity (expressed in kilowatthours sold) in  
7 the utility's service territory in the State  
8 during the prior calendar month and the  
9 denominator of which is the total retail market  
10 sales of electricity (expressed in kilowatthours  
11 sold) in the State by utilities during such prior  
12 month and the sales of electricity (expressed in  
13 kilowatthours sold) in the State by alternative  
14 retail electric suppliers during such prior month  
15 that are subject to the requirements of this  
16 subsection (d) and paragraph (5) of subsection (d)  
17 of Section 16-115 of the Public Utilities Act,  
18 provided that the amount paid by the utility in any  
19 year will be limited by paragraph (2) of this  
20 subsection (d);

21 (ii) provide that the utility's payment  
22 obligation in respect of the quantity of  
23 electricity determined pursuant to the preceding  
24 clause (i) shall be limited to an amount equal to  
25 (1) the difference between the contract price  
26 determined pursuant to subparagraph (A) of

1           paragraph (3) of this subsection (d) and the  
2           day-ahead price for electricity delivered to the  
3           regional transmission organization market of the  
4           utility that is party to such sourcing agreement  
5           (or any successor delivery point at which such  
6           utility's supply obligations are financially  
7           settled on an hourly basis) (the "reference  
8           price") on the day preceding the day on which the  
9           electricity is delivered to the initial clean coal  
10          facility busbar, multiplied by (2) the quantity of  
11          electricity determined pursuant to the preceding  
12          clause (i); and

13           (iii) not require the utility to take physical  
14          delivery of the electricity produced by the  
15          facility;

16          (D) general provisions, which shall:

17           (i) specify a term of no more than 30 years,  
18          commencing on the commercial operation date of the  
19          facility;

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

1           Utilities Act.

2           (iii) provide that all costs associated with  
3           the initial clean coal facility will be  
4           periodically reported to the Federal Energy  
5           Regulatory Commission and to purchasers in  
6           accordance with applicable laws governing  
7           cost-based wholesale power contracts;

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

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

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

1 provision. Compliance with the sequestration  
2 requirements and offset purchase requirements  
3 specified in paragraph (3) of this subsection (d)  
4 shall be reviewed annually by an independent  
5 expert retained by the owner of the initial clean  
6 coal facility, with the advance written approval  
7 of the Attorney General. The Commission may, in the  
8 course of the review specified in item (vii),  
9 reduce the allowable return on equity for the  
10 facility if the facility wilfully fails to comply  
11 with the carbon capture and sequestration  
12 requirements set forth in this item (v);

13 (vi) include limits on, and accordingly  
14 provide for modification of, the amount the  
15 utility is required to source under the sourcing  
16 agreement consistent with paragraph (2) of this  
17 subsection (d);

18 (vii) require Commission review: (1) to  
19 determine the justness, reasonableness, and  
20 prudence of the inputs to the formula referenced in  
21 subparagraphs (A) (i) through (A) (iii) of paragraph  
22 (3) of this subsection (d), prior to an adjustment  
23 in those inputs including, without limitation, the  
24 capital structure and return on equity, fuel  
25 costs, and other operations and maintenance costs  
26 and (2) to approve the costs to be passed through

1 to customers under the sourcing agreement by which  
2 the utility satisfies its statutory obligations.  
3 Commission review shall occur no less than every 3  
4 years, regardless of whether any adjustments have  
5 been proposed, and shall be completed within 9  
6 months;

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

14 (ix) limit the utility's or alternative retail  
15 electric supplier's obligation to incur any  
16 liability until such time as the facility is in  
17 commercial operation and generating power and  
18 energy and such power and energy is being delivered  
19 to the facility busbar;

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



1           (xi) append documentation showing that the  
2           formula rate and contract, insofar as they relate  
3           to the power purchase provisions, have been  
4           approved by the Federal Energy Regulatory  
5           Commission pursuant to Section 205 of the Federal  
6           Power Act;

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

13           (xiii) conform with customary lender  
14           requirements in power purchase agreements used as  
15           the basis for financing non-utility generators.

16           (4) Effective date of sourcing agreements with the  
17           initial clean coal facility. Any proposed sourcing  
18           agreement with the initial clean coal facility shall not  
19           become effective unless the following reports are prepared  
20           and submitted and authorizations and approvals obtained:

21           (i) Facility cost report. The owner of the  
22           initial clean coal facility shall submit to the  
23           Commission, the Agency, and the General Assembly a  
24           front-end engineering and design study, a facility  
25           cost report, method of financing (including but  
26           not limited to structure and associated costs),

1 and an operating and maintenance cost quote for the  
2 facility (collectively "facility cost report"),  
3 which shall be prepared in accordance with the  
4 requirements of this paragraph (4) of subsection  
5 (d) of this Section, and shall provide the  
6 Commission and the Agency access to the work  
7 papers, relied upon documents, and any other  
8 backup documentation related to the facility cost  
9 report.

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

1           Commission, in consultation with the Agency, may  
2           hire one or more experts or consultants, the costs  
3           of which shall be paid for by the owner of the  
4           initial clean coal facility. The Commission and  
5           Agency may begin the process of selecting such  
6           experts or consultants prior to receipt of the  
7           facility cost report.

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

20          (iv) Commission review. If the General  
21          Assembly enacts authorizing legislation pursuant  
22          to subparagraph (iii) approving a sourcing  
23          agreement, the Commission shall, within 90 days of  
24          such enactment, complete a review of such sourcing  
25          agreement. During such time period, the Commission  
26          shall implement any directive of the General

1           Assembly, resolve any disputes between the parties  
2           to the sourcing agreement concerning the terms of  
3           such agreement, approve the form of such  
4           agreement, and issue an order finding that the  
5           sourcing agreement is prudent and reasonable.

6           The facility cost report shall be prepared as follows:

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

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

21           (ii) an estimate of the capital cost of the  
22           balance of the plant, including any capital costs  
23           associated with sequestration of carbon dioxide  
24           emissions and all interconnects and interfaces  
25           required to operate the facility, such as  
26           transmission of electricity, construction or

1           backfeed power supply, pipelines to transport  
2           substitute natural gas or carbon dioxide, potable  
3           water supply, natural gas supply, water supply,  
4           water discharge, landfill, access roads, and coal  
5           delivery.

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

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

20           (C) The facility cost report shall also include an  
21           operating and maintenance cost quote that will provide  
22           the estimated cost of delivered fuel, personnel,  
23           maintenance contracts, chemicals, catalysts,  
24           consumables, spares, and other fixed and variable  
25           operations and maintenance costs.

26           (a) The delivered fuel cost estimate will be

1 provided by a recognized third party expert or  
2 experts in the fuel and transportation industries.

3 (b) The balance of the operating and  
4 maintenance cost quote, excluding delivered fuel  
5 costs will be developed based on the inputs  
6 provided by duly licensed engineering and  
7 construction firms performing the construction  
8 cost quote, potential vendors under long-term  
9 service agreements and plant operating agreements,  
10 or recognized third party plant operator or  
11 operators.

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

20 (D) The facility cost report shall also include (i)  
21 an analysis of the initial clean coal facility's  
22 ability to deliver power and energy into the applicable  
23 regional transmission organization markets and (ii) an  
24 analysis of the expected capacity factor for the  
25 initial clean coal facility.

26 (E) Amounts paid to third parties unrelated to the

1           owner or owners of the initial clean coal facility to  
2           prepare the core plant construction cost quote,  
3           including the front end engineering and design study,  
4           and the operating and maintenance cost quote will be  
5           reimbursed through Coal Development Bonds.

6           (5) Re-powering and retrofitting coal-fired power  
7           plants previously owned by Illinois utilities to qualify as  
8           clean coal facilities. During the 2009 procurement  
9           planning process and thereafter, the Agency and the  
10           Commission shall consider sourcing agreements covering  
11           electricity generated by power plants that were previously  
12           owned by Illinois utilities and that have been or will be  
13           converted into clean coal facilities, as defined by Section  
14           1-10 of this Act. Pursuant to such procurement planning  
15           process, the owners of such facilities may propose to the  
16           Agency sourcing agreements with utilities and alternative  
17           retail electric suppliers required to comply with  
18           subsection (d) of this Section and item (5) of subsection  
19           (d) of Section 16-115 of the Public Utilities Act, covering  
20           electricity generated by such facilities. In the case of  
21           sourcing agreements that are power purchase agreements,  
22           the contract price for electricity sales shall be  
23           established on a cost of service basis. In the case of  
24           sourcing agreements that are contracts for differences,  
25           the contract price from which the reference price is  
26           subtracted shall be established on a cost of service basis.

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

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

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

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

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

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



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

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

4 (20 ILCS 3855/1-80)

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

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

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

15 (ii) an appropriation from the General Assembly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (220 ILCS 5/9-220) (from Ch. 111 2/3, par. 9-220)

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

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

1 Amendments of 1990, through such fuel adjustment clauses, as a  
2 cost of fuel. For the purposes of this paragraph, cost of fuel  
3 used in the generation or production of electric power shall  
4 include the amount of any fees paid by the utility for the  
5 implementation and operation of a process for the  
6 desulfurization of the flue gas when burning high sulfur coal  
7 at any location within the State of Illinois irrespective of  
8 the attainment status designation of such location; but shall  
9 not include transportation costs of coal (i) except to the  
10 extent that for contracts entered into on and after the  
11 effective date of this amendatory Act of 1997, the cost of the  
12 coal, including transportation costs, constitutes the lowest  
13 cost for adequate and reliable fuel supply reasonably available  
14 to the public utility in comparison to the cost, including  
15 transportation costs, of other adequate and reliable sources of  
16 fuel supply reasonably available to the public utility, or (ii)  
17 except as otherwise provided in the next 3 sentences of this  
18 paragraph. Such costs of fuel shall, when requested by a  
19 utility or at the conclusion of the utility's next general  
20 electric rate proceeding, whichever shall first occur, include  
21 transportation costs of coal purchased under existing coal  
22 purchase contracts. For purposes of this paragraph "existing  
23 coal purchase contracts" means contracts for the purchase of  
24 coal in effect on the effective date of this amendatory Act of  
25 1991, as such contracts may thereafter be amended, but only to  
26 the extent that any such amendment does not increase the

1 aggregate quantity of coal to be purchased under such contract.  
2 Nothing herein shall authorize an electric utility to recover  
3 through its fuel adjustment clause any amounts of  
4 transportation costs of coal that were included in the revenue  
5 requirement used to set base rates in its most recent general  
6 rate proceeding. Cost shall be based upon uniformly applied  
7 accounting principles. Annually, the Commission shall initiate  
8 public hearings to determine whether the clauses reflect actual  
9 costs of fuel, gas, power, or coal transportation purchased to  
10 determine whether such purchases were prudent, and to reconcile  
11 any amounts collected with the actual costs of fuel, power,  
12 gas, or coal transportation prudently purchased. In each such  
13 proceeding, the burden of proof shall be upon the utility to  
14 establish the prudence of its cost of fuel, power, gas, or coal  
15 transportation purchases and costs. The Commission shall issue  
16 its final order in each such annual proceeding for an electric  
17 utility by December 31 of the year immediately following the  
18 year to which the proceeding pertains, provided, that the  
19 Commission shall issue its final order with respect to such  
20 annual proceeding for the years 1996 and earlier by December  
21 31, 1998.

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

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

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

26           (d) A public utility providing electric service, or a



1 public utility providing gas service may file with the  
2 Commission proposed tariff sheets that eliminate the public  
3 utility's fuel or purchased gas adjustment clause and adjust  
4 the public utility's base rate tariffs to provide for recovery  
5 of power supply costs or gas supply costs that would have been  
6 recovered through such clause; provided, that the provisions of  
7 this subsection (d) shall not be available to a public utility  
8 described in subsections (e) or (f) of this Section to  
9 eliminate its fuel adjustment clause. Notwithstanding any  
10 contrary or inconsistent provisions in Section 9-201 of this  
11 Act, in subsection (a) of this Section, or in any rules or  
12 regulations promulgated by the Commission pursuant to  
13 subsection (g) of this Section, the Commission shall review and  
14 shall by order approve, or approve as modified in the  
15 Commission's order, the proposed tariff sheets within 240 days  
16 after the date of the public utility's filing. The Commission's  
17 order shall approve rates and charges that the Commission,  
18 based on information in the public utility's filing or on the  
19 record if a hearing is held by the Commission, finds will  
20 recover the reasonable, prudent and necessary jurisdictional  
21 power supply costs or gas supply costs incurred or to be  
22 incurred by the public utility during a 12 month period found  
23 by the Commission to be appropriate for these purposes,  
24 provided, that such period shall be either (i) a 12 month  
25 historical period occurring during the 15 months ending on the  
26 date of the public utility's filing, or (ii) a 12 month future

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

1 applicable provisions of this Act.

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

1 after December 31, 1996 and prior to any reinstatement of such  
2 clause. A public utility whose fuel adjustment clause has been  
3 eliminated pursuant to this subsection shall not file a  
4 proposed tariff sheet seeking, or otherwise petition the  
5 Commission for, reinstatement of the fuel adjustment clause  
6 prior to January 1, 2007.

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

1 provided, that such tariff sheets shall be effective upon  
2 filing. To the extent the application of the fuel adjustment  
3 clause had resulted in net charges to customers after January  
4 1, 1997, the utility shall also file a tariff sheet that  
5 provides for a refund stated on a per kilowatt-hour basis of  
6 such charges over a period not to exceed 6 months. Provided  
7 however, that such refund shall not include the proportional  
8 amounts of taxes paid under the Use Tax Act, Service Use Tax  
9 Act, Service Occupation Tax Act, and Retailers' Occupation Tax  
10 Act on fuel used in generation. The Commission shall issue an  
11 order within 45 days after the date of the public utility's  
12 filing approving or approving as modified such tariff sheet. If  
13 the fuel adjustment clause is eliminated pursuant to this  
14 subsection, the Commission shall not conduct the annual  
15 hearings specified in the last 3 sentences of subsection (a) of  
16 this Section for the utility for any period after December 31,  
17 1996 and prior to any reinstatement of such clause. A public  
18 utility whose fuel adjustment clause has been eliminated  
19 pursuant to this subsection shall not file a proposed tariff  
20 sheet seeking, or otherwise petition the Commission for,  
21 reinstatement of the fuel adjustment clause prior to January 1,  
22 2007.

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

25 (h) Any gas utility may enter into a contract for up to 20  
26 years of supply with any company for the purchase of substitute

1 natural gas (SNG) produced from coal through the gasification  
2 process if the company has commenced construction of a coal  
3 gasification facility by July 1, 2010. The cost for the SNG is  
4 reasonable and prudent and recoverable through the purchased  
5 gas adjustment clause for years one through 10 of the contract  
6 if: (i) the only coal used in the gasification process has high  
7 volatile bituminous rank and greater than 1.7 pounds of sulfur  
8 per million Btu content; (ii) at the time the contract term  
9 commences, the price per million Btu does not exceed \$7.95 in  
10 2008 dollars, adjusted annually based on the change in the  
11 Annual Consumer Price Index for All Urban Consumers for the  
12 Midwest Region as published in April by the United States  
13 Department of Labor, Bureau of Labor Statistics (or a suitable  
14 Consumer Price Index calculation if this Consumer Price Index  
15 is not available) for the previous calendar year; provided that  
16 the price per million Btu shall not exceed \$9.95 at any time  
17 during the contract; (iii) the utility's aggregate long-term  
18 supply contracts for the purchase of SNG does not exceed 25% of  
19 the annual system supply requirements of the utility at the  
20 time the contract is entered into and the quantity of SNG  
21 supplied to a utility by any one producer may not exceed 20  
22 billion cubic feet per year; and (iv) the contract is entered  
23 into within 120 days after the effective date of this  
24 amendatory Act of the 95th General Assembly and terminates no  
25 more than 20 years after the commencement of the commercial  
26 production of SNG at the facility. Contracts greater than 10

1 years shall provide that if, at any time during supply years 11  
2 through 20 of the contract, the Commission determines that the  
3 cost for the synthetic natural gas purchased under the contract  
4 during supply years 11 through 20 is not reasonable and  
5 prudent, then the company shall reimburse the utility for the  
6 difference between the cost deemed reasonable and prudent by  
7 the Commission and the cost imposed under the contract. All  
8 such contracts, regardless of duration, shall require the owner  
9 of any facility supplying SNG under the contract to provide  
10 documentation to the Commission each year, starting in the  
11 facility's first year of commercial operation, accurately  
12 reporting the quantity of carbon dioxide emissions from the  
13 facility that have been captured and sequestered and reporting  
14 any quantities of carbon dioxide released from the site or  
15 sites at which carbon dioxide emissions were sequestered in  
16 prior years, based on continuous monitoring of those sites. If,  
17 in any year, the owner of the facility fails to demonstrate  
18 that the SNG facility captured and sequestered at least 90% of  
19 the total carbon dioxide emissions that the facility would  
20 otherwise emit or that sequestration of emissions from prior  
21 years has failed, resulting in the release of carbon dioxide  
22 into the atmosphere, then the owner of the facility must offset  
23 excess emissions. Any such carbon dioxide offsets must be  
24 permanent, additional, verifiable, real, located within the  
25 State of Illinois, and legally and practicably enforceable. The  
26 costs of such offsets shall not exceed \$40 million in any given

1 year. No costs of any purchases of carbon offsets may be  
2 recovered from a utility or its customers. All carbon offsets  
3 purchased for this purpose must be permanently retired. In  
4 addition, carbon dioxide emission credits equivalent to 50% of  
5 the amount of credits associated with the required  
6 sequestration of carbon dioxide from the facility must be  
7 permanently retired. Compliance with the sequestration  
8 requirements and the offset purchase requirements specified in  
9 this subsection (h) shall be assessed annually by an  
10 independent expert retained by the owner of the SNG facility,  
11 with the advance written approval of the Attorney General. An  
12 SNG facility operating pursuant to this subsection (h) shall  
13 not forfeit its designation as a clean coal SNG facility if the  
14 facility fails to fully comply with the applicable carbon  
15 sequestration requirements in any given year, provided the  
16 requisite offsets are purchased. However, the Attorney  
17 General, on behalf of the People of the State of Illinois, may  
18 specifically enforce the facility's sequestration  
19 requirements. Any gas utility may enter into a 20 year supply  
20 contract with any company for synthetic natural gas produced  
21 from coal through the gasification process if the company has  
22 commenced construction of a coal gasification facility by July  
23 1, 2008. The cost for the synthetic natural gas is reasonable  
24 and prudent and recoverable through the purchased gas  
25 adjustment clause for years one through 10 of the contract if:  
26 (i) the only coal used in the gasification process has high



1 ~~volatile bituminous rank and greater than 1.7 pounds of sulfur~~  
2 ~~per million Btu content; (ii) at the time the contract term~~  
3 ~~commences, the price per million Btu does not exceed \$5 in 2004~~  
4 ~~dollars, adjusted annually based on the change in the Annual~~  
5 ~~Consumer Price Index for All Urban Consumers for the Midwest~~  
6 ~~Region as published in April by the United States Department of~~  
7 ~~Labor, Bureau of Labor Statistics (or a suitable Consumer Price~~  
8 ~~Index calculation if this Consumer Price Index is not~~  
9 ~~available) for the previous calendar year; provided that the~~  
10 ~~price per million Btu shall not exceed \$5.50 at any time during~~  
11 ~~the contract; (iii) the utility's aggregate long term supply~~  
12 ~~contracts for the purchase of synthetic natural gas produced~~  
13 ~~from coal through the gasification process does not exceed 25%~~  
14 ~~of the annual system supply requirements of the utility at the~~  
15 ~~time the contract is entered into; and (iv) the contract is~~  
16 ~~entered into within one year after the effective date of this~~  
17 ~~amendatory Act of the 94th General Assembly and terminates 20~~  
18 ~~years after the commencement of the production of synthetic~~  
19 ~~natural gas. The contract shall provide that if, at any time~~  
20 ~~during years 11 through 20 of the contract, the Commission~~  
21 ~~determines that the cost for the synthetic natural gas under~~  
22 ~~the contract is not reasonable and prudent, then the company~~  
23 ~~shall reimburse the utility for the difference between the cost~~  
24 ~~deemed reasonable and prudent by the Commission and the cost~~  
25 ~~imposed under the contract.~~

26 (i) If a gas utility or an affiliate of a gas utility has

1 an ownership interest in any entity that produces or sells  
2 synthetic natural gas, Article VII of this Act shall apply.

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

4 (220 ILCS 5/16-101A)

5 Sec. 16-101A. Legislative findings.

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

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

23 (c) With the advent of increasing competition in this  
24 industry, the State has a continued interest in assuring that  
25 the safety, reliability, and affordability of electrical power

1 is not sacrificed to competitive pressures, and to that end,  
2 intends to implement safeguards to assure that the industry  
3 continues to operate the electrical system in a manner that  
4 will serve the public's interest. Under the existing regulatory  
5 framework, the industry has been encouraged to undertake  
6 certain investments in its physical plant and personnel to  
7 enhance its efficient operation, the cost of which it has been  
8 permitted to pass on to consumers. The State has an interest in  
9 providing the existing utilities a reasonable opportunity to  
10 obtain a return on certain investments on which they depended  
11 in undertaking those commitments in the first instance while,  
12 at the same time, not permitting new entrants into the industry  
13 to take unreasonable advantage of the investments made by the  
14 formerly regulated industry.

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

22 (e) All consumers must benefit in an equitable and timely  
23 fashion from the lower costs for electricity that result from  
24 retail and wholesale competition and receive sufficient  
25 information to make informed choices among suppliers and  
26 services. The use of renewable resources and energy efficiency

1 resources should be encouraged in competitive markets.

2 (f) The efficiency of electric markets depends both upon  
3 the competitiveness of supply and upon the  
4 price-responsiveness of the demand for service. Therefore, to  
5 ensure the lowest total cost of service and to enhance the  
6 reliability of service, all classes of the electricity  
7 customers of electric utilities should have access to and be  
8 able to voluntarily use real-time pricing and other  
9 price-response and demand-response mechanisms.

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

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

1 coal facilities.

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

3 (220 ILCS 5/16-111.5)

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

5 (a) An electric utility that on December 31, 2005 served at  
6 least 100,000 customers in Illinois shall procure power and  
7 energy for its eligible retail customers in accordance with the  
8 applicable provisions set forth in Section 1-75 of the Illinois  
9 Power Agency Act and this Section. "Eligible retail customers"  
10 for the purposes of this Section means those retail customers  
11 that purchase power and energy from the electric utility under  
12 fixed-price bundled service tariffs, other than those retail  
13 customers whose service is declared or deemed competitive under  
14 Section 16-113 and those other customer groups specified in  
15 this Section, including self-generating customers, customers  
16 electing hourly pricing, or those customers who are otherwise  
17 ineligible for fixed-price bundled tariff service. Those  
18 customers that are excluded from the definition of "eligible  
19 retail customers" shall not be included in the procurement plan  
20 load requirements, and the utility shall procure any supply  
21 requirements, including capacity, ancillary services, and  
22 hourly priced energy, in the applicable markets as needed to  
23 serve those customers, provided that the utility may include in  
24 its procurement plan load requirements for the load that is  
25 associated with those retail customers whose service has been

1 declared or deemed competitive pursuant to Section 16-113 of  
2 this Act to the extent that those customers are purchasing  
3 power and energy during one of the transition periods  
4 identified in subsection (b) of Section 16-113 of this Act.

5 (b) A procurement plan shall be prepared for each electric  
6 utility consistent with the applicable requirements of the  
7 Illinois Power Agency Act and this Section. For purposes of  
8 this Section, Illinois electric utilities that are affiliated  
9 by virtue of a common parent company are considered to be a  
10 single electric utility. Each procurement plan shall analyze  
11 the projected balance of supply and demand for eligible retail  
12 customers over a 5-year period with the first planning year  
13 beginning on June 1 of the year following the year in which the  
14 plan is filed. The plan shall specifically identify the  
15 wholesale products to be procured following plan approval, and  
16 shall follow all the requirements set forth in the Public  
17 Utilities Act and all applicable State and federal laws,  
18 statutes, rules, or regulations, as well as Commission orders.  
19 Nothing in this Section precludes consideration of contracts  
20 longer than 5 years and related forecast data. Unless specified  
21 otherwise in this Section, in the procurement plan or in the  
22 implementing tariff, any procurement occurring in accordance  
23 with this plan shall be competitively bid through a request for  
24 proposals process. Approval and implementation of the  
25 procurement plan shall be subject to review and approval by the  
26 Commission according to the provisions set forth in this

1 Section. A procurement plan shall include each of the following  
2 components:

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

4 (i) multi-year historical analysis of hourly  
5 loads;

6 (ii) switching trends and competitive retail  
7 market analysis;

8 (iii) known or projected changes to future loads;  
9 and

10 (iv) growth forecasts by customer class.

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

13 (i) the impact of demand response programs, both  
14 current and projected;

15 (ii) supply side needs that are projected to be  
16 offset by purchases of renewable energy resources, if  
17 any; and

18 (iii) the impact of energy efficiency programs,  
19 both current and projected.

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

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

25 (ii) the proposed mix of demand-response products  
26 for which contracts will be executed during the next

1           year. The cost-effective demand-response measures  
2           shall be procured whenever the cost is lower than  
3           procuring comparable capacity products, provided that  
4           such products shall:

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

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

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

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

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

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



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

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

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

26          (4) Proposed procedures for balancing loads. The

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

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

10 (1) The procurement administrator shall:

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

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

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

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

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

- 1           (vi) administer the request for proposals process;
- 2           (vii) have the discretion to negotiate to  
3 determine whether bidders are willing to lower the  
4 price of bids that meet the benchmarks approved by the  
5 Commission; any post-bid negotiations with bidders  
6 shall be limited to price only and shall be completed  
7 within 24 hours after opening the sealed bids and shall  
8 be conducted in a fair and unbiased manner; in  
9 conducting the negotiations, there shall be no  
10 disclosure of any information derived from proposals  
11 submitted by competing bidders; if information is  
12 disclosed to any bidder, it shall be provided to all  
13 competing bidders;
- 14           (viii) maintain confidentiality of supplier and  
15 bidding information in a manner consistent with all  
16 applicable laws, rules, regulations, and tariffs;
- 17           (ix) submit a confidential report to the  
18 Commission recommending acceptance or rejection of  
19 bids;
- 20           (x) notify the utility of contract counterparties  
21 and contract specifics; and
- 22           (xi) administer related contingency procurement  
23 events.
- 24           (2) The procurement monitor, who shall be retained by  
25 the Commission, shall:
- 26           (i) monitor interactions among the procurement

1 administrator, suppliers, and utility;

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

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

7 (iv) assess compliance with the procurement plans  
8 approved by the Commission for each utility that on  
9 December 31, 2005 provided electric service to a least  
10 100,000 customers in Illinois;

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

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

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

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

24 (1) Beginning in 2008, each Illinois utility procuring  
25 power pursuant to this Section shall annually provide a  
26 range of load forecasts to the Illinois Power Agency by

1 July 15 of each year, or such other date as may be required  
2 by the Commission or Agency. The load forecasts shall cover  
3 the 5-year procurement planning period for the next  
4 procurement plan and shall include hourly data  
5 representing a high-load, low-load and expected-load  
6 scenario for the load of the eligible retail customers. The  
7 utility shall provide supporting data and assumptions for  
8 each of the scenarios.

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

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

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

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

25 (e) The procurement process shall include each of the  
26 following components:

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

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

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

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



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

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

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

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

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

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

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

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

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

26 (f) Within 2 business days after opening the sealed bids,

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

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

25 (h) The names of the successful bidders and the load  
26 weighted average of the winning bid prices for each contract

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

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

25 (j) Within 60 days following the effective date of this  
26 amendatory Act, each electric utility that on December 31, 2005

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

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

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

6 (ii) The order shall approve or modify the procurement  
7 plan, approve an independent procurement administrator,  
8 and approve or modify the electric utility's tariffs that  
9 are proposed with the initial procurement plan. The  
10 Commission shall approve the procurement plan if the  
11 Commission determines that it will ensure adequate,  
12 reliable, affordable, efficient, and environmentally  
13 sustainable electric service at the lowest total cost over  
14 time, taking into account any benefits of price stability.

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

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

15 (1) An electric utility shall recover its costs incurred  
16 under this Section, including, but not limited to, the costs of  
17 procuring power and energy demand-response resources under  
18 this Section. The utility shall file with the initial  
19 procurement plan its proposed tariffs through which its costs  
20 of procuring power that are incurred pursuant to a  
21 Commission-approved procurement plan and those other costs  
22 identified in this subsection (1), will be recovered. The  
23 tariffs shall include a formula rate or charge designed to pass  
24 through both the costs incurred by the utility in procuring a  
25 supply of electric power and energy for the applicable customer  
26 classes with no mark-up or return on the price paid by the



1 utility for that supply, plus any just and reasonable costs  
2 that the utility incurs in arranging and providing for the  
3 supply of electric power and energy. The formula rate or charge  
4 shall also contain provisions that ensure that its application  
5 does not result in over or under recovery due to changes in  
6 customer usage and demand patterns, and that provide for the  
7 correction, on at least an annual basis, of any accounting  
8 errors that may occur. A utility shall recover through the  
9 tariff all reasonable costs incurred to implement or comply  
10 with any procurement plan that is developed and put into effect  
11 pursuant to Section 1-75 of the Illinois Power Agency Act and  
12 this Section, including any fees assessed by the Illinois Power  
13 Agency, costs associated with load balancing, and contingency  
14 plan costs. The electric utility shall also recover its full  
15 costs of procuring electric supply for which it contracted  
16 before the effective date of this Section in conjunction with  
17 the provision of full requirements service under fixed-price  
18 bundled service tariffs subsequent to December 31, 2006. All  
19 such costs shall be deemed to have been prudently incurred. The  
20 pass-through tariffs that are filed and approved pursuant to  
21 this Section shall not be subject to review under, or in any  
22 way limited by, Section 16-111(i) of this Act.

23 (m) The Commission has the authority to adopt rules to  
24 carry out the provisions of this Section. For the public  
25 interest, safety, and welfare, the Commission also has  
26 authority to adopt rules to carry out the provisions of this

1 Section on an emergency basis immediately following the  
2 effective date of this amendatory Act.

3 (n) Notwithstanding any other provision of this Act, any  
4 affiliated electric utilities that submit a single procurement  
5 plan covering their combined needs may procure for those  
6 combined needs in conjunction with that plan, and may enter  
7 jointly into power supply contracts, purchases, and other  
8 procurement arrangements, and allocate capacity and energy and  
9 cost responsibility therefor among themselves in proportion to  
10 their requirements.

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

15 (p) An electric utility subject to this Section may propose  
16 to invest, lease, own, or operate an electric generation  
17 facility as part of its procurement plan, provided the utility  
18 demonstrates that such facility is the least-cost option to  
19 provide electric service to eligible retail customers. If the  
20 facility is shown to be the least-cost option and is included  
21 in a procurement plan prepared in accordance with Section 1-75  
22 of the Illinois Power Agency Act and this Section, then the  
23 electric utility shall make a filing pursuant to Section 8-406  
24 of the Act, and may request of the Commission any statutory  
25 relief required thereunder. If the Commission grants all of the  
26 necessary approvals for the proposed facility, such supply

1 shall thereafter be considered as a pre-existing contract under  
2 subsection (b) of this Section. The Commission shall in any  
3 order approving a proposal under this subsection specify how  
4 the utility will recover the prudently incurred costs of  
5 investing in, leasing, owning, or operating such generation  
6 facility through just and reasonable rates charged to eligible  
7 retail customers. Cost recovery for facilities included in the  
8 utility's procurement plan pursuant to this subsection shall  
9 not be subject to review under or in any way limited by the  
10 provisions of Section 16-111(i) of this Act. Nothing in this  
11 Section is intended to prohibit a utility from filing for a  
12 fuel adjustment clause as is otherwise permitted under Section  
13 9-220 of this Act.

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

15 (220 ILCS 5/16-115)

16 Sec. 16-115. Certification of alternative retail electric  
17 suppliers.

18 (a) Any alternative retail electric supplier must obtain a  
19 certificate of service authority from the Commission in  
20 accordance with this Section before serving any retail customer  
21 or other user located in this State. An alternative retail  
22 electric supplier may request, and the Commission may grant, a  
23 certificate of service authority for the entire State or for a  
24 specified geographic area of the State.

25 (b) An alternative retail electric supplier seeking a

1 certificate of service authority shall file with the Commission  
2 a verified application containing information showing that the  
3 applicant meets the requirements of this Section. The  
4 alternative retail electric supplier shall publish notice of  
5 its application in the official State newspaper within 10 days  
6 following the date of its filing. No later than 45 days after  
7 the application is properly filed with the Commission, and such  
8 notice is published, the Commission shall issue its order  
9 granting or denying the application.

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

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

26 (1) That the applicant possesses sufficient technical,

1 financial and managerial resources and abilities to  
2 provide the service for which it seeks a certificate of  
3 service authority. In determining the level of technical,  
4 financial and managerial resources and abilities which the  
5 applicant must demonstrate, the Commission shall consider  
6 (i) the characteristics, including the size and financial  
7 sophistication, of the customers that the applicant seeks  
8 to serve, and (ii) whether the applicant seeks to provide  
9 electric power and energy using property, plant and  
10 equipment which it owns, controls or operates;

11 (2) That the applicant will comply with all applicable  
12 federal, State, regional and industry rules, policies,  
13 practices and procedures for the use, operation, and  
14 maintenance of the safety, integrity and reliability, of  
15 the interconnected electric transmission system;

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

19 (4) That the applicant will comply with such  
20 informational or reporting requirements as the Commission  
21 may by rule establish and provide the information required  
22 by Section 16-112. Any data related to contracts for the  
23 purchase and sale of electric power and energy shall be  
24 made available for review by the Staff of the Commission on  
25 a confidential and proprietary basis and only to the extent  
26 and for the purposes which the Commission determines are

1 reasonably necessary in order to carry out the purposes of  
2 this Act;

3 (5) That the applicant will procure renewable energy  
4 resources and will source electricity from clean coal  
5 facilities, as defined in Section 1-10 of the Illinois  
6 Power Agency Act, in amounts at least equal to the  
7 percentages set forth in subsections (c) and (d) of Section  
8 1-75 of the Illinois Power Agency Act. For purposes of this  
9 Section:

10 (i) the required procurement of renewable energy  
11 resources shall be measured as a percentage of the  
12 actual amount of electricity (megawatt-hours) supplied  
13 by the alternative retail electric supplier in the  
14 prior calendar year, as reported for that year to the  
15 Commission. This obligation applies to all electricity  
16 supplied pursuant to retail contracts executed,  
17 extended, or otherwise revised after the effective  
18 date of this amendatory Act, provided the alternative  
19 retail electric supplier submits all documentation  
20 needed by the Commission to determine the actual amount  
21 of electricity supplied under contracts that may be  
22 excluded under this limitation;

23 (ii) an alternative retail electric supplier need  
24 not actually deliver electricity to its customers to  
25 comply with this Section, provided that if the  
26 alternative retail electric supplier claims credit for

1 such purpose, subsequent purchasers shall not receive  
2 any emission credits or renewable energy credits in  
3 connection with the purchase of such electricity.  
4 Alternative retail electric suppliers shall maintain  
5 adequate records documenting the contractual  
6 disposition of all electricity procured to comply with  
7 this Section and shall file an accounting in the report  
8 which must be filed with the Commission on April 1 of  
9 each year, starting in 2010, in accordance with  
10 subsection (d-5) of this Section;

11 (iii) the required procurement of renewable energy  
12 resources and sourcing of electricity generated by  
13 clean coal facilities, other than the initial clean  
14 coal facility, shall be limited to the amount of  
15 electricity that can be procured or sourced at a price  
16 at or below the benchmarks approved by the Commission  
17 each year in accordance with item (1) of subsection (c)  
18 and items (1) and (5) of subsection (d) of Section 1-75  
19 of the Illinois Power Agency Act;

20 (iv) all alternative retail electric suppliers  
21 shall execute a sourcing agreement to source  
22 electricity from the initial clean coal facility, on  
23 the terms set forth in paragraphs (3) and (4) of  
24 subsection (d) of Section 1-75 of the Illinois Power  
25 Agency Act, except that in lieu of the requirements in  
26 subparagraphs (A) (v), (B) (i), (C) (v), and (C) (vi) of

1           paragraph (3) of that subsection (d), the applicant  
2           shall execute one or more of the following:

3                   (1) if the sourcing agreement is a power  
4                   purchase agreement, a contract with the initial  
5                   clean coal facility to purchase in each hour an  
6                   amount of electricity equal to all clean coal  
7                   energy made available from the initial clean coal  
8                   facility during such hour, which the utilities are  
9                   not required to procure under the terms of  
10                   subsection (d) of Section 1-75 of the Illinois  
11                   Power Agency Act, multiplied by a fraction, the  
12                   numerator of which is the alternative retail  
13                   electric supplier's retail market sales of  
14                   electricity (expressed in kilowatthours sold) in  
15                   the State during the prior calendar month and the  
16                   denominator of which is the total sales of  
17                   electricity (expressed in kilowatthours sold) in  
18                   the State by alternative retail electric suppliers  
19                   during such prior month that are subject to the  
20                   requirements of this paragraph (5) of subsection  
21                   (d) of this Section and subsection (d) of Section  
22                   1-75 of the Illinois Power Agency Act plus the  
23                   total sales of electricity (expressed in  
24                   kilowatthours sold) by utilities outside of their  
25                   service areas during such prior month, pursuant to  
26                   subsection (c) of Section 16-116 of this Act; or



1           (2) if the sourcing agreement is a contract for  
2           differences, a contract with the initial clean  
3           coal facility in each hour with respect to an  
4           amount of electricity equal to all clean coal  
5           energy made available from the initial clean coal  
6           facility during such hour, which the utilities are  
7           not required to procure under the terms of  
8           subsection (d) of Section 1-75 of the Illinois  
9           Power Agency Act, multiplied by a fraction, the  
10           numerator of which is the alternative retail  
11           electric supplier's retail market sales of  
12           electricity (expressed in kilowatthours sold) in  
13           the State during the prior calendar month and the  
14           denominator of which is the total sales of  
15           electricity (expressed in kilowatthours sold) in  
16           the State by alternative retail electric suppliers  
17           during such prior month that are subject to the  
18           requirements of this paragraph (5) of subsection  
19           (d) of this Section and subsection (d) of Section  
20           1-75 of the Illinois Power Agency Act plus the  
21           total sales of electricity (expressed in  
22           kilowatthours sold) by utilities outside of their  
23           service areas during such prior month, pursuant to  
24           subsection (c) of Section 16-116 of this Act;  
25           (v) if, in any year after the first year of  
26           commercial operation, the owner of the clean coal

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

1           contract provision. Compliance with the sequestration  
2           requirements and offset purchase requirements that  
3           apply to the initial clean coal facility shall be  
4           reviewed annually by an independent expert retained by  
5           the owner of the initial clean coal facility, with the  
6           advance written approval of the Attorney General  
7           ~~(Blank);~~

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

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

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

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

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

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

1 to Section 16-118. Provided, however, that if the retail  
2 customer owning such cogeneration or self-generation facility  
3 would not be charged a transition charge due to the exemption  
4 provided under subsection (f) of Section 16-108 prior to the  
5 certification, and the retail customers at separate locations  
6 are taking delivery services in conjunction with purchasing  
7 power and energy from the facility, the retail customer on  
8 whose premises the facility is located shall not thereafter be  
9 required to pay transition charges on the power and energy that  
10 such retail customer takes from the facility.

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

1 demonstration of adequate insurance for the scope and nature of  
2 the services to be provided; and experience in providing  
3 similar services in other jurisdictions.

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

5 (220 ILCS 5/16-116)

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

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

24 (b) An electric utility may offer any competitive service  
25 to any customer or group of customers without filing contracts

1 with or seeking approval of the Commission, notwithstanding any  
2 rule or regulation that would require such approval. The  
3 Commission shall not increase or decrease the prices, and may  
4 not alter or add to the terms and conditions for the utility's  
5 competitive services, from those agreed to by the electric  
6 utility and the customer or customers. Non-tariffed,  
7 competitive services shall not be subject to the provisions of  
8 the Electric Supplier Act or to Articles V, VII, VIII or IX of  
9 the Act, except to the extent that any provisions of such  
10 Articles are made applicable to alternative retail electric  
11 suppliers pursuant to Sections 16-115 and 16-115A, but shall be  
12 subject to the provisions of subsections (b) through (g) of  
13 Section 16-115A, and Section 16-115B to the same extent such  
14 provisions are applicable to the services provided by  
15 alternative retail electric suppliers.

16 (c) Electric utilities serving retail customers outside  
17 their service areas shall be subject to the requirements of  
18 paragraph (5) of subsection (d) of Section 16-115 of the Public  
19 Utilities Act, except that the numerators referred to in that  
20 subsection (d) shall be the utility's retail market sales of  
21 electricity (expressed in kilowatthours sold) in the State  
22 outside of the utility's service territory in the prior month.

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

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.