



Rep. William Davis

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1 AMENDMENT TO SENATE BILL 380

2 AMENDMENT NO. _____. Amend Senate Bill 380 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Renewable Energy, Energy Efficiency, and
5 Coal Resources Development Law of 1997 is amended by changing
6 Sections 6-1, 6-2, 6-3, 6-4, and 6-5 as follows:

7 (20 ILCS 687/6-1)

8 (Section scheduled to be repealed on December 12, 2015)

9 Sec. 6-1. Short title. This Article may be cited as the
10 Renewable Energy, Reusable Energy, Energy Efficiency, and Coal
11 Resources Development Law of 1997.

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

13 (20 ILCS 687/6-2)

14 (Section scheduled to be repealed on December 12, 2015)

15 Sec. 6-2. Findings and intent. The General Assembly finds

1 and declares that it is desirable to obtain the environmental
2 quality, public health, and fuel diversity benefits of
3 developing reusable energy resources, new renewable energy
4 resources, and clean coal technologies for use in Illinois and
5 to lower the cost of reusable energy resources, renewable
6 energy resources, and clean coal resources provided to utility
7 consumers. The General Assembly finds and declares that the
8 benefits of electricity from reusable energy resources,
9 renewable energy resources, and clean coal technologies accrue
10 to the public at large, thus consumers and electric utilities
11 and alternative retail electric suppliers share an interest in
12 developing and using a significant level of these
13 environmentally preferable resources in the State's
14 electricity supply portfolio. The General Assembly finds and
15 declares that encouraging energy efficiency will improve the
16 environmental quality and public health in the State of
17 Illinois.

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

19 (20 ILCS 687/6-3)

20 (Section scheduled to be repealed on December 12, 2015)

21 Sec. 6-3. Renewable and reusable energy resources program.

22 (a) The Department of Commerce and Economic Opportunity, to
23 be called the "Department" hereinafter in this Law, shall
24 administer the Renewable and Reusable Energy Resources Program
25 to provide grants, loans, and other incentives to foster

1 investment in and the development and use of renewable energy
2 resources or reusable energy resources, or both.

3 (b) The Department shall establish eligibility criteria
4 for grants, loans, and other incentives to foster investment in
5 and the development and use of renewable energy resources or
6 reusable energy resources, or both. These criteria shall be
7 reviewed annually and adjusted as necessary. The criteria
8 should promote the goal of fostering investment in and the
9 development and use, in Illinois, of renewable energy resources
10 or reusable energy resources, or both.

11 (c) The Department shall accept applications for grants,
12 loans, and other incentives to foster investment in and the
13 development and use of renewable energy resources or reusable
14 energy resources, or both.

15 (d) To the extent that funds are available and
16 appropriated, the Department shall provide grants, loans, and
17 other incentives to applicants that meet the criteria specified
18 by the Department.

19 (e) The Department shall conduct an annual study on the use
20 and availability of renewable and reusable energy resources in
21 Illinois. Each year, the Department shall submit a report on
22 the study to the General Assembly. This report shall include
23 suggestions for legislation which will encourage the
24 development and use of renewable energy resources or reusable
25 energy resources, or both.

26 (f) As used in this Law: 7

1 "Renewable ~~renewable~~ energy resources" include ~~includes~~
2 energy from wind, solar thermal energy, photovoltaic cells and
3 panels, dedicated crops grown for energy production and organic
4 waste biomass, hydropower that does not involve new
5 construction or significant expansion of hydropower dams, and
6 other such alternative sources of environmentally preferable
7 energy. "Renewable energy resources" does not include,
8 however, energy from the incineration or burning of waste wood,
9 ~~tires~~, garbage, general household, institutional and
10 commercial waste, industrial lunchroom or office waste,
11 landscape waste, or construction or demolition debris.

12 "Reusable energy credit" means a tradable credit that
13 represents the environmental attributes of a certain amount of
14 energy produced from a reusable energy resource.

15 "Reusable energy resources" include energy and its
16 associated reusable energy credit or reusable energy credits
17 derived from tires containing rubber that are used for the
18 production or generation of electricity.

19 (g) There is created the Energy Efficiency Investment Fund
20 as a special fund in the State Treasury, to be administered by
21 the Department to support the development of renewable and
22 reusable energy resources, including, but not limited to,
23 technologies for wind, biomass, tires, and solar power in
24 Illinois. The Department may accept private and public funds,
25 including federal funds, for deposit into the Fund.

26 (Source: P.A. 94-793, eff. 5-19-06; 95-913, eff. 1-1-09.)

1 (20 ILCS 687/6-4)

2 (Section scheduled to be repealed on December 12, 2015)

3 Sec. 6-4. Renewable and Reusable Energy Resources Trust
4 Fund.

5 (a) A fund to be called the Renewable and Reusable Energy
6 Resources Trust Fund is hereby established in the State
7 Treasury.

8 (b) The Renewable and Reusable Energy Resources Trust Fund
9 shall be administered by the Department to provide grants,
10 loans, and other incentives to foster investment in and the
11 development and use of renewable energy resources or reusable
12 energy resources, or both, as provided in Section 6-3 of this
13 Law or pursuant to the Illinois Renewable Fuels Development
14 Program Act.

15 (c) All funds used by the Department for the Renewable and
16 Reusable Energy Resources Program shall be subject to
17 appropriation by the General Assembly.

18 (Source: P.A. 94-839, eff. 6-6-06.)

19 (20 ILCS 687/6-5)

20 (Section scheduled to be repealed on December 12, 2015)

21 Sec. 6-5. Renewable Energy Resources and Coal Technology
22 Development Assistance Charge.

23 (a) Notwithstanding the provisions of Section 16-111 of the
24 Public Utilities Act but subject to subsection (e) of this

1 Section, each public utility, electric cooperative, as defined
2 in Section 3.4 of the Electric Supplier Act, and municipal
3 utility, as referenced in Section 3-105 of the Public Utilities
4 Act, that is engaged in the delivery of electricity or the
5 distribution of natural gas within the State of Illinois shall,
6 effective January 1, 1998, assess each of its customer accounts
7 a monthly Renewable and Reusable Energy Resources and Coal
8 Technology Development Assistance Charge. The delivering
9 public utility, municipal electric or gas utility, or electric
10 or gas cooperative for a self-assessing purchaser remains
11 subject to the collection of the fee imposed by this Section.
12 The monthly charge shall be as follows:

13 (1) \$0.05 per month on each account for residential
14 electric service as defined in Section 13 of the Energy
15 Assistance Act;

16 (2) \$0.05 per month on each account for residential gas
17 service as defined in Section 13 of the Energy Assistance
18 Act;

19 (3) \$0.50 per month on each account for nonresidential
20 electric service, as defined in Section 13 of the Energy
21 Assistance Act, which had less than 10 megawatts of peak
22 demand during the previous calendar year;

23 (4) \$0.50 per month on each account for nonresidential
24 gas service, as defined in Section 13 of the Energy
25 Assistance Act, which had distributed to it less than
26 4,000,000 therms of gas during the previous calendar year;

1 (5) \$37.50 per month on each account for nonresidential
2 electric service, as defined in Section 13 of the Energy
3 Assistance Act, which had 10 megawatts or greater of peak
4 demand during the previous calendar year; and

5 (6) \$37.50 per month on each account for nonresidential
6 gas service, as defined in Section 13 of the Energy
7 Assistance Act, which had 4,000,000 or more therms of gas
8 distributed to it during the previous calendar year.

9 (b) The Renewable and Reusable Energy Resources and Coal
10 Technology Development Assistance Charge assessed by electric
11 and gas public utilities shall be considered a charge for
12 public utility service.

13 (c) Fifty percent of the moneys collected pursuant to this
14 Section shall be deposited in the Renewable and Reusable Energy
15 Resources Trust Fund by the Department of Revenue. The
16 remaining 50 percent of the moneys collected pursuant to this
17 Section shall be deposited in the Coal Technology Development
18 Assistance Fund by the Department of Revenue for the exclusive
19 purposes of (1) capturing or sequestering carbon emissions
20 produced by coal combustion; (2) supporting research on the
21 capture and sequestration of carbon emissions produced by coal
22 combustion; and (3) improving coal miner safety.

23 (d) By the 20th day of the month following the month in
24 which the charges imposed by this Section were collected, each
25 utility and alternative retail electric supplier collecting
26 charges pursuant to this Section shall remit to the Department

1 of Revenue for deposit into ~~in~~ the Renewable and Reusable
2 Energy Resources Trust Fund and the Coal Technology Development
3 Assistance Fund all moneys received as payment of the charge
4 provided for in this Section on a return prescribed and
5 furnished by the Department of Revenue showing such information
6 as the Department of Revenue may reasonably require.

7 (e) The charges imposed by this Section shall only apply to
8 customers of municipal electric or gas utilities and electric
9 or gas cooperatives if the municipal electric or gas utility or
10 electric or gas cooperative makes an affirmative decision to
11 impose the charge. If a municipal electric or gas utility or an
12 electric or gas cooperative makes an affirmative decision to
13 impose the charge provided by this Section, the municipal
14 electric or gas utility or electric or gas cooperative shall
15 inform the Department of Revenue in writing of such decision
16 when it begins to impose the charge. If a municipal electric or
17 gas utility or electric or gas cooperative does not assess this
18 charge, its customers shall not be eligible for the Renewable
19 and Reusable Energy Resources Program.

20 (f) The Department of Revenue may establish such rules as
21 it deems necessary to implement this Section.

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

23 Section 10. The Illinois Power Agency Act is amended by
24 changing Sections 1-10, 1-20, 1-56, 1-75, and 1-125 as follows:

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
26 coal facility shall not exceed allowable emission rates for

1 sulfur dioxide, nitrogen oxides, carbon monoxide, particulates
2 and mercury for a natural gas-fired combined-cycle facility the
3 same size as and in the same location as the clean coal
4 facility at the time the clean coal facility obtains an
5 approved air permit. All coal used by a clean coal facility
6 shall have high volatile bituminous rank and greater than 1.7
7 pounds of sulfur per million btu content, unless the clean coal
8 facility does not use gasification technology and was operating
9 as a conventional coal-fired electric generating facility on
10 June 1, 2009 (the effective date of Public Act 95-1027).

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

18 "Commission" means the Illinois Commerce Commission.

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

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

26 (2) financing costs with respect to bonds, notes, and

1 other evidences of indebtedness of the Agency;

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

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

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

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

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

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

25 "Energy efficiency" means measures that reduce the amount
26 of electricity or natural gas required to achieve a given end

1 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" include ~~includes~~ energy and
10 its associated renewable energy credit or renewable energy
11 credits from wind, solar thermal energy, photovoltaic cells and
12 panels, biodiesel, crops and untreated and unadulterated
13 organic waste biomass, tree waste, 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 or burning of ~~tires,~~ garbage, general
20 household, institutional, and commercial waste, industrial
21 lunchroom or office waste, landscape waste other than tree
22 waste, railroad crossties, utility poles, or construction or
23 demolition debris, other than untreated and unadulterated
24 waste wood.

25 "Reusable energy credit" means a tradable credit that
26 represents the environmental attributes of a certain amount of

1 energy produced from a reusable energy resource.

2 "Reusable energy resources" include energy and its
3 associated reusable energy credit or reusable energy credits
4 derived from tires containing rubber that are used for the
5 production or generation of electricity.

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

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

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

25 "Substitute natural gas" or "SNG" means a gas manufactured
26 by gasification of hydrocarbon feedstock, which is

1 substantially interchangeable in use and distribution with
2 conventional natural gas.

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

24 (Source: P.A. 95-481, eff. 8-28-07; 95-913, eff. 1-1-09;
25 95-1027, eff. 6-1-09; 96-33, eff. 7-10-09; 96-159, eff.
26 8-10-09; 96-784, eff. 8-28-09; revised 9-15-09.)

1 (20 ILCS 3855/1-20)

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

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

4 (1) Develop electricity procurement plans to ensure
5 adequate, reliable, affordable, efficient, and
6 environmentally sustainable electric service at the lowest
7 total cost over time, taking into account any benefits of
8 price stability, for electric utilities that on December
9 31, 2005 provided electric service to at least 100,000
10 customers in Illinois. The procurement plans shall be
11 updated on an annual basis and shall include electricity
12 generated from renewable energy resources or reusable
13 energy resources, or both, sufficient to achieve the
14 standards specified in this Act.

15 (2) Conduct competitive procurement processes to
16 procure the supply resources identified in the procurement
17 plan, pursuant to Section 16-111.5 of the Public Utilities
18 Act.

19 (3) Develop electric generation and co-generation
20 facilities that use indigenous coal, ~~or~~ renewable energy
21 resources, reusable energy resources, or any combination
22 of these energy sources both, financed with bonds issued by
23 the Illinois Finance Authority.

24 (4) Supply electricity from the Agency's facilities at
25 cost to one or more of the following: municipal electric

1 systems, governmental aggregators, or rural electric
2 cooperatives in Illinois.

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

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

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

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

14 (4) To obtain and employ personnel and hire consultants
15 that are necessary to fulfill the Agency's purposes, and to
16 make expenditures for that purpose within the
17 appropriations for that purpose.

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

23 (6) To acquire real or personal property, whether
24 tangible or intangible, including without limitation
25 property rights, interests in property, franchises,
26 obligations, contracts, and debt and equity securities,

1 and to do so by the exercise of the power of eminent domain
2 in accordance with Section 1-21; except that any real
3 property acquired by the exercise of the power of eminent
4 domain must be located within the State.

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

9 (8) To purchase, take, receive, subscribe for, or
10 otherwise acquire, hold, make a tender offer for, vote,
11 employ, sell, lend, lease, exchange, transfer, or
12 otherwise dispose of, mortgage, pledge, or grant a security
13 interest in, use, and otherwise deal in and with, bonds and
14 other obligations, shares, or other securities (or
15 interests therein) issued by others, whether engaged in a
16 similar or different business or activity.

17 (9) To make and execute agreements, contracts, and
18 other instruments necessary or convenient in the exercise
19 of the powers and functions of the Agency under this Act,
20 including contracts with any person, local government,
21 State agency, or other entity; and all State agencies and
22 all local governments are authorized to enter into and do
23 all things necessary to perform any such agreement,
24 contract, or other instrument with the Agency. No such
25 agreement, contract, or other instrument shall exceed 40
26 years.

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

5 (11) To borrow money at such rate or rates of interest
6 as the Agency may determine, issue its notes, bonds, or
7 other obligations to evidence that indebtedness, and
8 secure any of its obligations by mortgage or pledge of its
9 real or personal property, machinery, equipment,
10 structures, fixtures, inventories, revenues, grants, and
11 other funds as provided or any interest therein, wherever
12 situated.

13 (12) To enter into agreements with the Illinois Finance
14 Authority to issue bonds whether or not the income
15 therefrom is exempt from federal taxation.

16 (13) To procure insurance against any loss in
17 connection with its properties or operations in such amount
18 or amounts and from such insurers, including the federal
19 government, as it may deem necessary or desirable, and to
20 pay any premiums therefor.

21 (14) To negotiate and enter into agreements with
22 trustees or receivers appointed by United States
23 bankruptcy courts or federal district courts or in other
24 proceedings involving adjustment of debts and authorize
25 proceedings involving adjustment of debts and authorize
26 legal counsel for the Agency to appear in any such

1 proceedings.

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

5 (16) To enter into management agreements for the
6 operation of any of the property or facilities owned by the
7 Agency.

8 (17) To enter into an agreement to transfer and to
9 transfer any land, facilities, fixtures, or equipment of
10 the Agency to one or more municipal electric systems,
11 governmental aggregators, or rural electric agencies or
12 cooperatives, for such consideration and upon such terms as
13 the Agency may determine to be in the best interest of the
14 citizens of Illinois.

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

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

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

25 (21) To accept and expend appropriations.

26 (22) To engage in any activity or operation that is

1 incidental to and in furtherance of efficient operation to
2 accomplish the Agency's purposes.

3 (23) To adopt, revise, amend, and repeal rules with
4 respect to its operations, properties, and facilities as
5 may be necessary or convenient to carry out the purposes of
6 this Act, subject to the provisions of the Illinois
7 Administrative Procedure Act and Sections 1-22 and 1-35 of
8 this Act.

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

11 (25) To manage procurement of substitute natural gas
12 from a facility that meets the criteria specified in
13 subsection (a) of Section 1-58 ~~1-56~~ of this Act, on terms
14 and conditions that may be approved by the Agency pursuant
15 to subsection (d) of Section 1-58 ~~1-56~~ of this Act, to
16 support the operations of State agencies and local
17 governments that agree to such terms and conditions. This
18 procurement process is not subject to the Procurement Code.
19 (Source: P.A. 95-481, eff. 8-28-07; 96-784, eff. 8-28-09;
20 revised 10-13-09.)

21 (20 ILCS 3855/1-56)

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

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

1 treasury.

2 (b) The Illinois Power Agency Renewable and Reusable Energy
3 Resources Fund shall be administered by the Agency to procure
4 renewable energy resources or reusable energy resources, or
5 both. Prior to June 1, 2011, resources procured pursuant to
6 this Section shall be procured from facilities located in
7 Illinois, provided the resources are available from those
8 facilities. If resources are not available in Illinois, then
9 they shall be procured in states that adjoin Illinois. If
10 resources are not available in Illinois or in states that
11 adjoin Illinois, then they may be purchased elsewhere.
12 Beginning June 1, 2011, resources procured pursuant to this
13 Section shall be procured from facilities located in Illinois
14 or states that adjoin Illinois. If resources are not available
15 in Illinois or in states that adjoin Illinois, then they may be
16 procured elsewhere. To the extent available, at least 75% of
17 these renewable energy resources shall come from wind
18 generation and, starting June 1, 2015, at least 6% of the
19 renewable energy resources used to meet these standards shall
20 come from solar photovoltaics.

21 (c) The Agency shall procure, at least once each year in
22 conjunction with a procurement event for electric utilities
23 required to comply with Section 1-75 of the Act, renewable
24 energy resources or reusable energy resources, or both, ~~at~~
25 ~~least once each year in conjunction with a procurement event~~
26 ~~for electric utilities required to comply with Section 1-75 of~~

1 ~~the Act~~ and shall, whenever possible, enter into long-term
2 contracts.

3 (d) The price paid to procure renewable energy credits or
4 reusable energy credits, or both, using monies from the
5 Illinois Power Agency Renewable and Reusable Energy Resources
6 Fund shall not exceed the winning bid prices paid for like
7 resources procured for electric utilities required to comply
8 with Section 1-75 of this Act.

9 (e) All renewable energy credits or reusable energy
10 credits, or both, procured using monies from the Illinois Power
11 Agency Renewable and Reusable Energy Resources Fund shall be
12 permanently retired.

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

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

25 (h) The Illinois Power Agency Renewable and Reusable Energy
26 Resources Fund shall not be subject to sweeps, administrative

1 charges, or chargebacks, including, but not limited to, those
2 authorized under Section 8h of the State Finance Act, that
3 would in any way result in the transfer of any funds from this
4 Fund to any other fund of this State or in having any such
5 funds utilized for any purpose other than the express purposes
6 set forth in this Section.

7 (Source: P.A. 96-159, eff. 8-10-09.)

8 (20 ILCS 3855/1-75)

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

12 (a) The Planning and Procurement Bureau shall each
13 year, beginning in 2008, develop procurement plans and
14 conduct competitive procurement processes in accordance
15 with the requirements of Section 16-111.5 of the Public
16 Utilities Act for the eligible retail customers of electric
17 utilities that on December 31, 2005 provided electric
18 service to at least 100,000 customers in Illinois. For the
19 purposes of this Section, the term "eligible retail
20 customers" has the same definition as found in Section
21 16-111.5(a) of the Public Utilities Act.

22 (1) The Agency shall each year, beginning in 2008,
23 as needed, issue a request for qualifications for
24 experts or expert consulting firms to develop the
25 procurement plans in accordance with Section 16-111.5

1 of the Public Utilities Act. In order to qualify an
2 expert or expert consulting firm must have:

3 (A) direct previous experience assembling
4 large-scale power supply plans or portfolios for
5 end-use customers;

6 (B) an advanced degree in economics,
7 mathematics, engineering, risk management, or a
8 related area of study;

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

11 (D) expertise in wholesale electricity market
12 rules, including those established by the Federal
13 Energy Regulatory Commission and regional
14 transmission organizations;

15 (E) expertise in credit protocols and
16 familiarity with contract protocols;

17 (F) adequate resources to perform and fulfill
18 the required functions and responsibilities; and

19 (G) the absence of a conflict of interest and
20 inappropriate bias for or against potential
21 bidders or the affected electric utilities.

22 (2) The Agency shall each year, as needed, issue a
23 request for qualifications for a procurement
24 administrator to conduct the competitive procurement
25 processes in accordance with Section 16-111.5 of the
26 Public Utilities Act. In order to qualify an expert or

1 expert consulting firm must have:

2 (A) direct previous experience administering a
3 large-scale competitive procurement process;

4 (B) an advanced degree in economics,
5 mathematics, engineering, or a related area of
6 study;

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

9 (D) expertise in wholesale electricity market
10 rules, including those established by the Federal
11 Energy Regulatory Commission and regional
12 transmission organizations;

13 (E) expertise in credit and contract
14 protocols;

15 (F) adequate resources to perform and fulfill
16 the required functions and responsibilities; and

17 (G) the absence of a conflict of interest and
18 inappropriate bias for or against potential
19 bidders or the affected electric utilities.

20 (3) The Agency shall provide affected utilities
21 and other interested parties with the lists of
22 qualified experts or expert consulting firms
23 identified through the request for qualifications
24 processes that are under consideration to develop the
25 procurement plans and to serve as the procurement
26 administrator. The Agency shall also provide each

1 qualified expert's or expert consulting firm's
2 response to the request for qualifications. All
3 information provided under this subparagraph shall
4 also be provided to the Commission. The Agency may
5 provide by rule for fees associated with supplying the
6 information to utilities and other interested parties.
7 These parties shall, within 5 business days, notify the
8 Agency in writing if they object to any experts or
9 expert consulting firms on the lists. Objections shall
10 be based on:

11 (A) failure to satisfy qualification criteria;

12 (B) identification of a conflict of interest;

13 or

14 (C) evidence of inappropriate bias for or
15 against potential bidders or the affected
16 utilities.

17 The Agency shall remove experts or expert
18 consulting firms from the lists within 10 days if there
19 is a reasonable basis for an objection and provide the
20 updated lists to the affected utilities and other
21 interested parties. If the Agency fails to remove an
22 expert or expert consulting firm from a list, an
23 objecting party may seek review by the Commission
24 within 5 days thereafter by filing a petition, and the
25 Commission shall render a ruling on the petition within
26 10 days. There is no right of appeal of the

1 Commission's ruling.

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

6 (5) The Agency shall select an expert or expert
7 consulting firm to develop procurement plans based on
8 the proposals submitted and shall award one-year
9 contracts to those selected with an option for the
10 Agency for a one-year renewal.

11 (6) The Agency shall select an expert or expert
12 consulting firm, with approval of the Commission, to
13 serve as procurement administrator based on the
14 proposals submitted. If the Commission rejects, within
15 5 days, the Agency's selection, the Agency shall submit
16 another recommendation within 3 days based on the
17 proposals submitted. The Agency shall award a one-year
18 contract to the expert or expert consulting firm so
19 selected with Commission approval with an option for
20 the Agency for a one-year renewal.

21 (b) The experts or expert consulting firms retained by
22 the Agency shall, as appropriate, prepare procurement
23 plans, and conduct a competitive procurement process as
24 prescribed in Section 16-111.5 of the Public Utilities Act,
25 to ensure adequate, reliable, affordable, efficient, and
26 environmentally sustainable electric service at the lowest

1 total cost over time, taking into account any benefits of
2 price stability, for eligible retail customers of electric
3 utilities that on December 31, 2005 provided electric
4 service to at least 100,000 customers in the State of
5 Illinois.

6 (c) Renewable and reusable portfolio standard.

7 (1) The procurement plans shall include
8 cost-effective renewable energy resources or reusable
9 energy resources, or both. A minimum percentage of each
10 utility's total supply to serve the load of eligible
11 retail customers, as defined in Section 16-111.5(a) of
12 the Public Utilities Act, procured for each of the
13 following years shall be generated from cost-effective
14 renewable energy resources or reusable energy
15 resources, or both: at least 2% by June 1, 2008; at
16 least 4% by June 1, 2009; at least 5% by June 1, 2010;
17 at least 6% by June 1, 2011; at least 7% by June 1,
18 2012; at least 8% by June 1, 2013; at least 9% by June
19 1, 2014; at least 10% by June 1, 2015; and increasing
20 by at least 1.5% each year thereafter to at least 25%
21 by June 1, 2025. To the extent that it is available, at
22 least 75% of the renewable energy resources used to
23 meet these standards shall come from wind generation
24 and, beginning on June 1, 2015, at least 6% of the
25 renewable energy resources used to meet these
26 standards shall come from photovoltaics. For purposes

1 of this subsection (c), "cost-effective" means that
2 the costs of procuring renewable energy resources or
3 reusable energy resources, or both, do not cause the
4 limit stated in paragraph (2) of this subsection (c) to
5 be exceeded and do not exceed benchmarks based on
6 market prices for renewable energy resources or
7 reusable energy resources, or both, in the region,
8 which shall be developed by the procurement
9 administrator, in consultation with the Commission
10 staff, Agency staff, and the procurement monitor and
11 shall be subject to Commission review and approval.

12 (2) For purposes of this subsection (c), the
13 required procurement of cost-effective renewable
14 energy resources or reusable energy resources, or
15 both, for a particular year shall be measured as a
16 percentage of the actual amount of electricity
17 (megawatt-hours) supplied by the electric utility to
18 eligible retail customers in the planning year ending
19 immediately prior to the procurement. For purposes of
20 this subsection (c), the amount paid per kilowatthour
21 means the total amount paid for electric service
22 expressed on a per kilowatthour basis. For purposes of
23 this subsection (c), the total amount paid for electric
24 service includes without limitation amounts paid for
25 supply, transmission, distribution, surcharges, and
26 add-on taxes.

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

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

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

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

23 (D) in 2011, the greater of an additional 0.5%
24 of the amount paid per kilowatthour by those
25 customers during the year ending May 31, 2010 or 2%
26 of the amount paid per kilowatthour by those

1 customers during the year ending May 31, 2007; and

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

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

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

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

19 (4) The electric utility shall retire all
20 renewable energy credits or reusable energy credits,
21 or both, used to comply with the standard.

22 (5) Beginning with the year commencing June 1,
23 2010, an electric utility subject to this subsection
24 (c) shall apply the lesser of the maximum alternative
25 compliance payment rate or the most recent estimated
26 alternative compliance payment rate for its service

1 territory for the corresponding compliance period,
2 established pursuant to subsection (d) of Section
3 16-115D of the Public Utilities Act to its retail
4 customers that take service pursuant to the electric
5 utility's hourly pricing tariff or tariffs. The
6 electric utility shall retain all amounts collected as
7 a result of the application of the alternative
8 compliance payment rate or rates to such customers,
9 and, beginning in 2011, the utility shall include in
10 the information provided under item (1) of subsection
11 (d) of Section 16-111.5 of the Public Utilities Act the
12 amounts collected under the alternative compliance
13 payment rate or rates for the prior year ending May 31.
14 Notwithstanding any limitation on the procurement of
15 renewable energy resources or reusable energy
16 resources, or both, imposed by item (2) of this
17 subsection (c), the Agency shall increase its spending
18 on the purchase of renewable energy resources or
19 reusable energy resources, or both, to be procured by
20 the electric utility for the next plan year by an
21 amount equal to the amounts collected by the utility
22 under the alternative compliance payment rate or rates
23 in the prior year ending May 31.

24 (d) Clean coal portfolio standard.

25 (1) The procurement plans shall include electricity
26 generated using clean coal. Each utility shall enter into

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

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

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

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

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

26 Notwithstanding the requirements of this subsection

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

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

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

16 (C) in 2012, the greater of an additional 0.5%
17 of the amount paid per kilowatthour by those
18 customers during the year ending May 31, 2011 or
19 1.5% of the amount paid per kilowatthour by those
20 customers during the year ending May 31, 2009;

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

26 (E) thereafter, the total amount paid under

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

22 (3) Initial clean coal facility. In order to promote
23 development of clean coal facilities in Illinois, each
24 electric utility subject to this Section shall execute a
25 sourcing agreement to source electricity from a proposed
26 clean coal facility in Illinois (the "initial clean coal

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

18 (A) a formula contractual price (the "contract
19 price") approved pursuant to paragraph (4) of this
20 subsection (d), which shall:

21 (i) be determined using a cost of service
22 methodology employing either a level or deferred
23 capital recovery component, based on a capital
24 structure consisting of 45% equity and 55% debt,
25 and a return on equity as may be approved by the
26 Federal Energy Regulatory Commission, which in any

1 case may not exceed the lower of 11.5% or the rate
2 of return approved by the General Assembly
3 pursuant to paragraph (4) of this subsection (d);
4 and

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

20 (B) power purchase provisions, which shall:

21 (i) provide that the utility party to such
22 sourcing agreement shall pay the contract price
23 for electricity delivered under such sourcing
24 agreement;

25 (ii) require delivery of electricity to the
26 regional transmission organization market of the

1 utility that is party to such sourcing agreement;

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

23 (iv) be considered pre-existing contracts in
24 such utility's procurement plans for eligible
25 retail customers;

26 (C) contract for differences provisions, which

1 shall:

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

24 (ii) provide that the utility's payment
25 obligation in respect of the quantity of
26 electricity determined pursuant to the preceding

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

16 (iii) not require the utility to take physical
17 delivery of the electricity produced by the
18 facility;

19 (D) general provisions, which shall:

20 (i) specify a term of no more than 30 years,
21 commencing on the commercial operation date of the
22 facility;

23 (ii) provide that utilities shall maintain
24 adequate records documenting purchases under the
25 sourcing agreements entered into to comply with
26 this subsection (d) and shall file an accounting

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

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

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

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

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

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

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

21 (vii) require Commission review: (1) to
22 determine the justness, reasonableness, and
23 prudence of the inputs to the formula referenced in
24 subparagraphs (A) (i) through (A) (iii) of paragraph
25 (3) of this subsection (d), prior to an adjustment
26 in those inputs including, without limitation, the

1 capital structure and return on equity, fuel
2 costs, and other operations and maintenance costs
3 and (2) to approve the costs to be passed through
4 to customers under the sourcing agreement by which
5 the utility satisfies its statutory obligations.
6 Commission review shall occur no less than every 3
7 years, regardless of whether any adjustments have
8 been proposed, and shall be completed within 9
9 months;

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

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

23 (x) provide that the owner or owners of the
24 initial clean coal facility, which is the
25 counterparty to such sourcing agreement, shall
26 have the right from time to time to elect whether

1 the obligations of the utility party thereto shall
2 be governed by the power purchase provisions or the
3 contract for differences provisions;

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

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

16 (xiii) conform with customary lender
17 requirements in power purchase agreements used as
18 the basis for financing non-utility generators.

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

24 (i) Facility cost report. The owner of the
25 initial clean coal facility shall submit to the
26 Commission, the Agency, and the General Assembly a

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

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

1 will commence commercial operation by and be
2 delivering power to the facility's busbar by 2016.
3 To assist in the preparation of its report, the
4 Commission, in consultation with the Agency, may
5 hire one or more experts or consultants, the costs
6 of which shall be paid for by the owner of the
7 initial clean coal facility. The Commission and
8 Agency may begin the process of selecting such
9 experts or consultants prior to receipt of the
10 facility cost report.

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

23 (iv) Commission review. If the General
24 Assembly enacts authorizing legislation pursuant
25 to subparagraph (iii) approving a sourcing
26 agreement, the Commission shall, within 90 days of

1 such enactment, complete a review of such sourcing
2 agreement. During such time period, the Commission
3 shall implement any directive of the General
4 Assembly, resolve any disputes between the parties
5 to the sourcing agreement concerning the terms of
6 such agreement, approve the form of such
7 agreement, and issue an order finding that the
8 sourcing agreement is prudent and reasonable.

9 The facility cost report shall be prepared as follows:

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

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

24 (ii) an estimate of the capital cost of the
25 balance of the plant, including any capital costs
26 associated with sequestration of carbon dioxide

1 emissions and all interconnects and interfaces
2 required to operate the facility, such as
3 transmission of electricity, construction or
4 backfeed power supply, pipelines to transport
5 substitute natural gas or carbon dioxide, potable
6 water supply, natural gas supply, water supply,
7 water discharge, landfill, access roads, and coal
8 delivery.

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

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

23 (C) The facility cost report shall also include an
24 operating and maintenance cost quote that will provide
25 the estimated cost of delivered fuel, personnel,
26 maintenance contracts, chemicals, catalysts,

1 consumables, spares, and other fixed and variable
2 operations and maintenance costs.

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

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

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

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

1 analysis of the expected capacity factor for the
2 initial clean coal facility.

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

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

1 sourcing agreements that are contracts for differences,
2 the contract price from which the reference price is
3 subtracted shall be established on a cost of service basis.
4 The Agency and the Commission may approve any such utility
5 sourcing agreements that do not exceed cost-based
6 benchmarks developed by the procurement administrator, in
7 consultation with the Commission staff, Agency staff and
8 the procurement monitor, subject to Commission review and
9 approval. The Commission shall have authority to inspect
10 all books and records associated with these clean coal
11 facilities during the term of any such contract.

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

18 (e) The draft procurement plans are subject to public
19 comment, as required by Section 16-111.5 of the Public
20 Utilities Act.

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

26 (g) The Agency shall assess fees to each affected

1 utility to recover the costs incurred in preparation of the
2 annual procurement plan for the utility.

3 (h) The Agency shall assess fees to each bidder to
4 recover the costs incurred in connection with a competitive
5 procurement process.

6 (Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09;
7 96-159, eff. 8-10-09.)

8 (20 ILCS 3855/1-125)

9 Sec. 1-125. Agency annual reports. The Agency shall report
10 annually to the Governor and the General Assembly on the
11 operations and transactions of the Agency. The annual report
12 shall include, but not be limited to, each of the following:

13 (1) The quantity, price, and term of all contracts for
14 electricity procured under the procurement plans for
15 electric utilities.

16 (2) The quantity, price, and rate impact of all
17 renewable energy resources or reusable energy resources,
18 or both, purchased under the electricity procurement plans
19 for electric utilities.

20 (3) The quantity, price, and rate impact of all energy
21 efficiency and demand response measures purchased for
22 electric utilities.

23 (4) The amount of power and energy produced by each
24 Agency facility.

25 (5) The quantity of electricity supplied by each Agency

1 facility to municipal electric systems, governmental
2 aggregators, or rural electric cooperatives in Illinois.

3 (6) The revenues as allocated by the Agency to each
4 facility.

5 (7) The costs as allocated by the Agency to each
6 facility.

7 (8) The accumulated depreciation for each facility.

8 (9) The status of any projects under development.

9 (10) Basic financial and operating information
10 specifically detailed for the reporting year and
11 including, but not limited to, income and expense
12 statements, balance sheets, and changes in financial
13 position, all in accordance with generally accepted
14 accounting principles, debt structure, and a summary of
15 funds on a cash basis.

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

17 Section 15. The State Finance Act is amended by changing
18 Sections 5.475 and 5.729 as follows:

19 (30 ILCS 105/5.475)

20 Sec. 5.475. The Renewable and Reusable Energy Resources
21 Trust Fund.

22 (Source: P.A. 90-561, eff. 12-16-97; 90-655, eff. 7-30-98.)

23 (30 ILCS 105/5.729)

1 Sec. 5.729 ~~5.719~~. The Illinois Power Agency Renewable and
2 Reusable Energy Resources Fund.

3 (Source: P.A. 96-159, eff. 8-10-09; revised 10-20-09.)

4 Section 20. The Illinois Procurement Code is amended by
5 changing Section 20-10 as follows:

6 (30 ILCS 500/20-10)

7 (Text of Section from P.A. 96-159 and 96-588)

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

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

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

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

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

1 contract, the winning bid and the record of each unsuccessful
2 bid shall be open to public inspection.

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

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

24 (g) Award. The contract shall be awarded with reasonable
25 promptness by written notice to the lowest responsible and
26 responsive bidder whose bid meets the requirements and criteria

1 set forth in the invitation for bids, except when a State
2 purchasing officer determines it is not in the best interest of
3 the State and by written explanation determines another bidder
4 shall receive the award. The explanation shall appear in the
5 appropriate volume of the Illinois Procurement Bulletin.

6 (h) Multi-step sealed bidding. When it is considered
7 impracticable to initially prepare a purchase description to
8 support an award based on price, an invitation for bids may be
9 issued requesting the submission of unpriced offers to be
10 followed by an invitation for bids limited to those bidders
11 whose offers have been qualified under the criteria set forth
12 in the first solicitation.

13 (i) Alternative procedures. Notwithstanding any other
14 provision of this Act to the contrary, the Director of the
15 Illinois Power Agency may create alternative bidding
16 procedures to be used in procuring professional services under
17 Section 1-75(a) of the Illinois Power Agency Act and Section
18 16-111.5(c) of the Public Utilities Act and to procure
19 renewable energy resources or reusable energy resources, or
20 both, under Section 1-56 of the Illinois Power Agency Act.
21 These alternative procedures shall be set forth together with
22 the other criteria contained in the invitation for bids, and
23 shall appear in the appropriate volume of the Illinois
24 Procurement Bulletin.

25 (j) Reverse auction. Notwithstanding any other provision
26 of this Section and in accordance with rules adopted by the

1 Director of Central Management Services as chief procurement
2 officer, a State purchasing officer under that chief
3 procurement officer's jurisdiction may procure supplies or
4 services through a competitive electronic auction bidding
5 process after the purchasing officer explains in writing to the
6 chief procurement officer his or her determination that the use
7 of such a process will be in the best interest of the State.
8 The chief procurement officer shall publish that determination
9 in his or her next volume of the Illinois Procurement Bulletin.

10 An invitation for bids shall be issued and shall include
11 (i) a procurement description, (ii) all contractual terms,
12 whenever practical, and (iii) conditions applicable to the
13 procurement, including a notice that bids will be received in
14 an electronic auction manner.

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

17 Bids shall be accepted electronically at the time and in
18 the manner designated in the invitation for bids. During the
19 auction, a bidder's price shall be disclosed to other bidders.
20 Bidders shall have the opportunity to reduce their bid prices
21 during the auction. At the conclusion of the auction, the
22 record of the bid prices received and the name of each bidder
23 shall be open to public inspection.

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

26 The contract shall be awarded within 60 days after the

1 auction by written notice to the lowest responsible bidder, or
2 all bids shall be rejected except as otherwise provided in this
3 Code. Extensions of the date for the award may be made by
4 mutual written consent of the State purchasing officer and the
5 lowest responsible bidder.

6 This subsection does not apply to (i) procurements of
7 professional and artistic services, including but not limited
8 to telecommunications services, communications services,
9 Internet services, and information services, and (ii)
10 contracts for construction projects.

11 (Source: P.A. 95-481, eff. 8-28-07; 96-159, eff. 8-10-09;
12 96-588, eff. 8-18-09; revised 11-4-09.)

13 (Text of Section from P.A. 96-159 and 96-795)

14 (This Section may contain text from a Public Act with a
15 delayed effective date)

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

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

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

24 (c) Public notice. Public notice of the invitation for bids
25 shall be published in the Illinois Procurement Bulletin at

1 least 14 days before the date set in the invitation for the
2 opening of bids.

3 (d) Bid opening. Bids shall be opened publicly in the
4 presence of one or more witnesses at the time and place
5 designated in the invitation for bids. The name of each bidder,
6 the amount of each bid, and other relevant information as may
7 be specified by rule shall be recorded. After the award of the
8 contract, the winning bid and the record of each unsuccessful
9 bid shall be open to public inspection.

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

21 (f) Correction or withdrawal of bids. Correction or
22 withdrawal of inadvertently erroneous bids before or after
23 award, or cancellation of awards of contracts based on bid
24 mistakes, shall be permitted in accordance with rules. After
25 bid opening, no changes in bid prices or other provisions of
26 bids prejudicial to the interest of the State or fair

1 competition shall be permitted. All decisions to permit the
2 correction or withdrawal of bids based on bid mistakes shall be
3 supported by written determination made by a State purchasing
4 officer.

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

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

15 (2) a determination that the anticipated cost will be
16 fair and reasonable;

17 (3) a listing of all responsible and responsive
18 bidders; and

19 (4) the name of the bidder selected, pricing, and the
20 reasons for selecting that bidder.

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

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

1 (h) Multi-step sealed bidding. When it is considered
2 impracticable to initially prepare a purchase description to
3 support an award based on price, an invitation for bids may be
4 issued requesting the submission of unpriced offers to be
5 followed by an invitation for bids limited to those bidders
6 whose offers have been qualified under the criteria set forth
7 in the first solicitation.

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

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

1 publish that determination in his or her next volume of the
2 Illinois Procurement Bulletin.

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

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

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

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

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

25 This subsection does not apply to (i) procurements of
26 professional and artistic services, (ii) telecommunications

1 services, communication services, and information services,
2 and (iii) contracts for construction projects.

3 (Source: P.A. 95-481, eff. 8-28-07; 96-159, eff. 8-10-09;
4 96-795, eff. 7-1-10 (see Section 5 of P.A. 96-793 for the
5 effective date of changes made by P.A. 96-795); revised
6 11-4-09.)

7 Section 25. The Public Utilities Act is amended by changing
8 Sections 16-107.5, 16-108, 16-111, 16-111.1, 16-111.5, 16-115,
9 16-115D, and 16-127 as follows:

10 (220 ILCS 5/16-107.5)

11 Sec. 16-107.5. Net electricity metering.

12 (a) The Legislature finds and declares that a program to
13 provide net electricity metering, as defined in this Section,
14 for eligible customers can encourage private investment in
15 renewable energy resources or reusable energy resources, or
16 both, stimulate economic growth, enhance the continued
17 diversification of Illinois' energy resource mix, and protect
18 the Illinois environment.

19 (b) As used in this Section, (i) "eligible customer" means
20 a retail customer that owns or operates a solar, wind, or other
21 eligible renewable or reusable electrical generating facility
22 with a rated capacity of not more than 2,000 kilowatts that is
23 located on the customer's premises and is intended primarily to
24 offset the customer's own electrical requirements; (ii)

1 "electricity provider" means an electric utility or
2 alternative retail electric supplier; (iii) "eligible
3 renewable electrical generating facility" means a generator
4 powered by solar electric energy, wind, dedicated crops grown
5 for electricity generation, anaerobic digestion of livestock
6 or food processing waste, fuel cells or microturbines powered
7 by renewable fuels, or hydroelectric energy; (iv) "eligible
8 reusable electrical generating facility" means a generator
9 powered by reusable energy resources as defined under Section
10 1-10 of the Illinois Power Agency Act; and (v) ~~(iv)~~ "net
11 electricity metering" (or "net metering") means the
12 measurement, during the billing period applicable to an
13 eligible customer, of the net amount of electricity supplied by
14 an electricity provider to the customer's premises or provided
15 to the electricity provider by the customer.

16 (c) A net metering facility shall be equipped with metering
17 equipment that can measure the flow of electricity in both
18 directions at the same rate. For eligible residential
19 customers, this shall typically be accomplished through use of
20 a single, bi-directional meter. If the eligible customer's
21 existing electric revenue meter does not meet this requirement,
22 the electricity provider shall arrange for the local electric
23 utility or a meter service provider to install and maintain a
24 new revenue meter at the electricity provider's expense. For
25 non-residential customers, the electricity provider may
26 arrange for the local electric utility or a meter service

1 provider to install and maintain metering equipment capable of
2 measuring the flow of electricity both into and out of the
3 customer's facility at the same rate and ratio, typically
4 through the use of a dual channel meter. For generators with a
5 nameplate rating of 40 kilowatts and below, the costs of
6 installing such equipment shall be paid for by the electricity
7 provider. For generators with a nameplate rating over 40
8 kilowatts and up to 2,000 kilowatts capacity, the costs of
9 installing such equipment shall be paid for by the customer.
10 Any subsequent revenue meter change necessitated by any
11 eligible customer shall be paid for by the customer.

12 (d) An electricity provider shall measure and charge or
13 credit for the net electricity supplied to eligible customers
14 or provided by eligible customers in the following manner:

15 (1) If the amount of electricity used by the customer
16 during the billing period exceeds the amount of electricity
17 produced by the customer, the electricity provider shall
18 charge the customer for the net electricity supplied to and
19 used by the customer as provided in subsection (e) of this
20 Section.

21 (2) If the amount of electricity produced by a customer
22 during the billing period exceeds the amount of electricity
23 used by the customer during that billing period, the
24 electricity provider supplying that customer shall apply a
25 1:1 kilowatt-hour credit to a subsequent bill for service
26 to the customer for the net electricity supplied to the

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

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

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

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

8 (f) Notwithstanding the requirements of subsections (c)
9 through (e) of this Section, an electricity provider must
10 require dual-channel metering for non-residential customers
11 operating eligible renewable electrical generating facilities
12 with a nameplate rating over 40 kilowatts and up to 2,000
13 kilowatts. In such cases, electricity charges and credits shall
14 be determined as follows:

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

20 (2) Each month that service is supplied by means of
21 dual-channel metering, the electricity provider shall
22 compensate the eligible customer for any excess
23 kilowatt-hour credits at the electricity provider's
24 avoided cost of electricity supply over the monthly period
25 or as otherwise specified by the terms of a power-purchase
26 agreement negotiated between the customer and electricity

1 provider.

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

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

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

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

20 (j) An electricity provider shall provide net metering to
21 eligible customers until the load of its net metering customers
22 equals 1% of the total peak demand supplied by that electricity
23 provider during the previous year. Electricity providers are
24 authorized to offer net metering beyond the 1% level if they so
25 choose. The number of new eligible customers with generators
26 that have a nameplate rating of 40 kilowatts and below will be

1 limited to 200 total new billing accounts for the utilities
2 (Ameren Companies, ComEd, and MidAmerican) for the period of
3 April 1, 2008 through March 31, 2009.

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

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

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

25 (2) individual units, apartments, or properties owned
26 or leased by multiple customers and collectively served by

1 a common eligible renewable electrical generating
2 facility, such as an apartment building served by
3 photovoltaic panels on the roof.

4 For the purposes of this subsection (l), "meter
5 aggregation" means the combination of reading and billing on a
6 pro rata basis for the types of eligible customers described in
7 this Section.

8 (m) Nothing in this Section shall affect the right of an
9 electricity provider to continue to provide, or the right of a
10 retail customer to continue to receive service pursuant to a
11 contract for electric service between the electricity provider
12 and the retail customer in accordance with the prices, terms,
13 and conditions provided for in that contract. Either the
14 electricity provider or the customer may require compliance
15 with the prices, terms, and conditions of the contract.

16 (Source: P.A. 95-420, eff. 8-24-07.)

17 (220 ILCS 5/16-108)

18 Sec. 16-108. Recovery of costs associated with the
19 provision of delivery services.

20 (a) An electric utility shall file a delivery services
21 tariff with the Commission at least 210 days prior to the date
22 that it is required to begin offering such services pursuant to
23 this Act. An electric utility shall provide the components of
24 delivery services that are subject to the jurisdiction of the
25 Federal Energy Regulatory Commission at the same prices, terms

1 and conditions set forth in its applicable tariff as approved
2 or allowed into effect by that Commission. The Commission shall
3 otherwise have the authority pursuant to Article IX to review,
4 approve, and modify the prices, terms and conditions of those
5 components of delivery services not subject to the jurisdiction
6 of the Federal Energy Regulatory Commission, including the
7 authority to determine the extent to which such delivery
8 services should be offered on an unbundled basis. In making any
9 such determination the Commission shall consider, at a minimum,
10 the effect of additional unbundling on (i) the objective of
11 just and reasonable rates, (ii) electric utility employees, and
12 (iii) the development of competitive markets for electric
13 energy services in Illinois.

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

19 (c) The electric utility's tariffs shall define the classes
20 of its customers for purposes of delivery services charges.
21 Delivery services shall be priced and made available to all
22 retail customers electing delivery services in each such class
23 on a nondiscriminatory basis regardless of whether the retail
24 customer chooses the electric utility, an affiliate of the
25 electric utility, or another entity as its supplier of electric
26 power and energy. Charges for delivery services shall be cost

1 based, and shall allow the electric utility to recover the
2 costs of providing delivery services through its charges to its
3 delivery service customers that use the facilities and services
4 associated with such costs. Such costs shall include the costs
5 of owning, operating and maintaining transmission and
6 distribution facilities. The Commission shall also be
7 authorized to consider whether, and if so to what extent, the
8 following costs are appropriately included in the electric
9 utility's delivery services rates: (i) the costs of that
10 portion of generation facilities used for the production and
11 absorption of reactive power in order that retail customers
12 located in the electric utility's service area can receive
13 electric power and energy from suppliers other than the
14 electric utility, and (ii) the costs associated with the use
15 and redispatch of generation facilities to mitigate
16 constraints on the transmission or distribution system in order
17 that retail customers located in the electric utility's service
18 area can receive electric power and energy from suppliers other
19 than the electric utility. Nothing in this subsection shall be
20 construed as directing the Commission to allocate any of the
21 costs described in (i) or (ii) that are found to be
22 appropriately included in the electric utility's delivery
23 services rates to any particular customer group or geographic
24 area in setting delivery services rates.

25 (d) The Commission shall establish charges, terms and
26 conditions for delivery services that are just and reasonable

1 and shall take into account customer impacts when establishing
2 such charges. In establishing charges, terms and conditions for
3 delivery services, the Commission shall take into account
4 voltage level differences. A retail customer shall have the
5 option to request to purchase electric service at any delivery
6 service voltage reasonably and technically feasible from the
7 electric facilities serving that customer's premises provided
8 that there are no significant adverse impacts upon system
9 reliability or system efficiency. A retail customer shall also
10 have the option to request to purchase electric service at any
11 point of delivery that is reasonably and technically feasible
12 provided that there are no significant adverse impacts on
13 system reliability or efficiency. Such requests shall not be
14 unreasonably denied.

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

24 (f) An electric utility shall be entitled but not required
25 to implement transition charges in conjunction with the
26 offering of delivery services pursuant to Section 16-104. If an

1 electric utility implements transition charges, it shall
2 implement such charges for all delivery services customers and
3 for all customers described in subsection (h), but shall not
4 implement transition charges for power and energy that a retail
5 customer takes from cogeneration or self-generation facilities
6 located on that retail customer's premises, if such facilities
7 meet the following criteria:

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

19 (ii) the cogeneration or self-generation facilities
20 either (A) are sized pursuant to generally accepted
21 engineering standards for the retail customer's electrical
22 load at that premises (taking into account standby or other
23 reliability considerations related to that retail
24 customer's operations at that site) or (B) if the facility
25 is a cogeneration facility located on the retail customer's
26 premises, the retail customer is the thermal host for that

1 facility and the facility has been designed to meet that
2 retail customer's thermal energy requirements resulting in
3 electrical output beyond that retail customer's electrical
4 demand at that premises, comply with the operating and
5 efficiency standards applicable to "qualifying facilities"
6 specified in title 18 Code of Federal Regulations Section
7 292.205 as in effect on the effective date of this
8 amendatory Act of 1999;

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

17 (iv) if the cogeneration facility is sized for the
18 retail customer's thermal load at that premises but exceeds
19 the electrical load, any sales of excess power or energy
20 are made only at wholesale, are subject to the jurisdiction
21 of the Federal Energy Regulatory Commission, and are not
22 for the purpose of circumventing the provisions of this
23 subsection (f).

24 If a generation facility located at a retail customer's
25 premises does not meet the above criteria, an electric utility
26 implementing transition charges shall implement a transition

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

1 its petition with supporting evidence no earlier than 16
2 months, and no later than 12 months, prior to December 31,
3 2006. The Commission shall hold a hearing on the electric
4 utility's petition and shall enter its order no later than 8
5 months after the petition is filed. The Commission shall
6 determine whether and to what extent the electric utility shall
7 be authorized to implement transition charges for an additional
8 period. The Commission may authorize the electric utility to
9 implement transition charges for some or all of the additional
10 period, and shall determine the mitigation factors to be used
11 in implementing such transition charges; provided, that the
12 Commission shall not authorize mitigation factors less than
13 110% of those in effect during the 12 months ended December 31,
14 2006. In making its determination, the Commission shall
15 consider the following factors: the necessity to implement
16 transition charges for an additional period in order to
17 maintain the financial integrity of the electric utility; the
18 prudence of the electric utility's actions in reducing its
19 costs since the effective date of this amendatory Act of 1997;
20 the ability of the electric utility to provide safe, adequate
21 and reliable service to retail customers in its service area;
22 and the impact on competition of allowing the electric utility
23 to implement transition charges for the additional period.

24 (g) The electric utility shall file tariffs that establish
25 the transition charges to be paid by each class of customers to
26 the electric utility in conjunction with the provision of

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

25 (h) An electric utility shall also be entitled to file
26 tariffs that allow it to collect transition charges from retail

1 customers in the electric utility's service area that do not
2 take delivery services but that take electric power or energy
3 from an alternative retail electric supplier or from an
4 electric utility other than the electric utility in whose
5 service area the customer is located. Such charges shall be
6 calculated, in accordance with the definition of transition
7 charges in Section 16-102, for the period of time that the
8 customer would be obligated to pay transition charges if it
9 were taking delivery services, except that no deduction for
10 delivery services revenues shall be made in such calculation,
11 and usage data from the customer's class shall be used where
12 historical usage data is not available for the individual
13 customer. The customer shall be obligated to pay such charges
14 on a lump sum basis on or before the date on which the customer
15 commences to take service from the alternative retail electric
16 supplier or other electric utility, provided, that the electric
17 utility in whose service area the customer is located shall
18 offer the customer the option of signing a contract pursuant to
19 which the customer pays such charges ratably over the period in
20 which the charges would otherwise have applied.

21 (i) An electric utility shall be entitled to add to the
22 bills of delivery services customers charges pursuant to
23 Sections 9-221, 9-222 (except as provided in Section 9-222.1),
24 and Section 16-114 of this Act, Section 5-5 of the Electricity
25 Infrastructure Maintenance Fee Law, Section 6-5 of the
26 Renewable Energy, Reusable Energy, Energy Efficiency, and Coal

1 Resources Development Law of 1997, and Section 13 of the Energy
2 Assistance Act.

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

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

1 (220 ILCS 5/16-111)

2 Sec. 16-111. Rates and restructuring transactions during
3 mandatory transition period; restructuring and other
4 transactions.

5 (a) During the mandatory transition period,
6 notwithstanding any provision of Article IX of this Act, and
7 except as provided in subsections (b) and (f) of this Section,
8 the Commission shall not (i) initiate, authorize or order any
9 change by way of increase (other than in connection with a
10 request for rate increase which was filed after September 1,
11 1997 but prior to October 15, 1997, by an electric utility
12 serving less than 12,500 customers in this State), (ii)
13 initiate or, unless requested by the electric utility,
14 authorize or order any change by way of decrease, restructuring
15 or unbundling (except as provided in Section 16-109A), in the
16 rates of any electric utility that were in effect on October 1,
17 1996, or (iii) in any order approving any application for a
18 merger pursuant to Section 7-204 that was pending as of May 16,
19 1997, impose any condition requiring any filing for an
20 increase, decrease, or change in, or other review of, an
21 electric utility's rates or enforce any such condition of any
22 such order; provided, however, that this subsection shall not
23 prohibit the Commission from:

24 (1) approving the application of an electric utility to
25 implement an alternative to rate of return regulation or a
26 regulatory mechanism that rewards or penalizes the

1 electric utility through adjustment of rates based on
2 utility performance, pursuant to Section 9-244;

3 (2) authorizing an electric utility to eliminate its
4 fuel adjustment clause and adjust its base rate tariffs in
5 accordance with subsection (b), (d), or (f) of Section
6 9-220 of this Act, to fix its fuel adjustment factor in
7 accordance with subsection (c) of Section 9-220 of this
8 Act, or to eliminate its fuel adjustment clause in
9 accordance with subsection (e) of Section 9-220 of this
10 Act;

11 (3) ordering into effect tariffs for delivery services
12 and transition charges in accordance with Sections 16-104
13 and 16-108, for real-time pricing in accordance with
14 Section 16-107, or the options required by Section 16-110
15 and subsection (n) of 16-112, allowing a billing experiment
16 in accordance with Section 16-106, or modifying delivery
17 services tariffs in accordance with Section 16-109; or

18 (4) ordering or allowing into effect any tariff to
19 recover charges pursuant to Sections 9-201.5, 9-220.1,
20 9-221, 9-222 (except as provided in Section 9-222.1),
21 16-108, and 16-114 of this Act, Section 5-5 of the
22 Electricity Infrastructure Maintenance Fee Law, Section
23 6-5 of the Renewable Energy, Reusable Energy, Energy
24 Efficiency, and Coal Resources Development Law of 1997, and
25 Section 13 of the Energy Assistance Act.

26 After December 31, 2004, the provisions of this subsection

1 (a) shall not apply to an electric utility whose average
2 residential retail rate was less than or equal to 90% of the
3 average residential retail rate for the "Midwest Utilities", as
4 that term is defined in subsection (b) of this Section, based
5 on data reported on Form 1 to the Federal Energy Regulatory
6 Commission for calendar year 1995, and which served between
7 150,000 and 250,000 retail customers in this State on January
8 1, 1995 unless the electric utility or its holding company has
9 been acquired by or merged with an affiliate of another
10 electric utility subsequent to January 1, 2002. This exemption
11 shall be limited to this subsection (a) and shall not extend to
12 any other provisions of this Act.

13 (b) Notwithstanding the provisions of subsection (a), each
14 Illinois electric utility serving more than 12,500 customers in
15 Illinois shall file tariffs (i) reducing, effective August 1,
16 1998, each component of its base rates to residential retail
17 customers by 15% from the base rates in effect immediately
18 prior to January 1, 1998 and (ii) if the public utility
19 provides electric service to (A) more than 500,000 customers
20 but less than 1,000,000 customers in this State on January 1,
21 1999, reducing, effective May 1, 2002, each component of its
22 base rates to residential retail customers by an additional 5%
23 from the base rates in effect immediately prior to January 1,
24 1998, or (B) at least 1,000,000 customers in this State on
25 January 1, 1999, reducing, effective October 1, 2001, each
26 component of its base rates to residential retail customers by

1 an additional 5% from the base rates in effect immediately
2 prior to January 1, 1998. Provided, however, that (A) if an
3 electric utility's average residential retail rate is less than
4 or equal to the average residential retail rate for a group of
5 Midwest Utilities (consisting of all investor-owned electric
6 utilities with annual system peaks in excess of 1000 megawatts
7 in the States of Illinois, Indiana, Iowa, Kentucky, Michigan,
8 Missouri, Ohio, and Wisconsin), based on data reported on Form
9 1 to the Federal Energy Regulatory Commission for calendar year
10 1995, then it shall only be required to file tariffs (i)
11 reducing, effective August 1, 1998, each component of its base
12 rates to residential retail customers by 5% from the base rates
13 in effect immediately prior to January 1, 1998, (ii) reducing,
14 effective October 1, 2000, each component of its base rates to
15 residential retail customers by the lesser of 5% of the base
16 rates in effect immediately prior to January 1, 1998 or the
17 percentage by which the electric utility's average residential
18 retail rate exceeds the average residential retail rate of the
19 Midwest Utilities, based on data reported on Form 1 to the
20 Federal Energy Regulatory Commission for calendar year 1999,
21 and (iii) reducing, effective October 1, 2002, each component
22 of its base rates to residential retail customers by an
23 additional amount equal to the lesser of 5% of the base rates
24 in effect immediately prior to January 1, 1998 or the
25 percentage by which the electric utility's average residential
26 retail rate exceeds the average residential retail rate of the

1 Midwest Utilities, based on data reported on Form 1 to the
2 Federal Energy Regulatory Commission for calendar year 2001;
3 and (B) if the average residential retail rate of an electric
4 utility serving between 150,000 and 250,000 retail customers in
5 this State on January 1, 1995 is less than or equal to 90% of
6 the average residential retail rate for the Midwest Utilities,
7 based on data reported on Form 1 to the Federal Energy
8 Regulatory Commission for calendar year 1995, then it shall
9 only be required to file tariffs (i) reducing, effective August
10 1, 1998, each component of its base rates to residential retail
11 customers by 2% from the base rates in effect immediately prior
12 to January 1, 1998; (ii) reducing, effective October 1, 2000,
13 each component of its base rates to residential retail
14 customers by 2% from the base rate in effect immediately prior
15 to January 1, 1998; and (iii) reducing, effective October 1,
16 2002, each component of its base rates to residential retail
17 customers by 1% from the base rates in effect immediately prior
18 to January 1, 1998. Provided, further, that any electric
19 utility for which a decrease in base rates has been or is
20 placed into effect between October 1, 1996 and the dates
21 specified in the preceding sentences of this subsection, other
22 than pursuant to the requirements of this subsection, shall be
23 entitled to reduce the amount of any reduction or reductions in
24 its base rates required by this subsection by the amount of
25 such other decrease. The tariffs required under this subsection
26 shall be filed 45 days in advance of the effective date.

1 Notwithstanding anything to the contrary in Section 9-220 of
2 this Act, no restatement of base rates in conjunction with the
3 elimination of a fuel adjustment clause under that Section
4 shall result in a lesser decrease in base rates than customers
5 would otherwise receive under this subsection had the electric
6 utility's fuel adjustment clause not been eliminated.

7 (c) Any utility reducing its base rates by 15% on August 1,
8 1998 pursuant to subsection (b) shall include the following
9 statement on its bills for residential customers from August 1
10 through December 31, 1998: "Effective August 1, 1998, your
11 rates have been reduced by 15% by the Electric Service Customer
12 Choice and Rate Relief Law of 1997 passed by the Illinois
13 General Assembly.". Any utility reducing its base rates by 5%
14 on August 1, 1998, pursuant to subsection (b) shall include the
15 following statement on its bills for residential customers from
16 August 1 through December 31, 1998: "Effective August 1, 1998,
17 your rates have been reduced by 5% by the Electric Service
18 Customer Choice and Rate Relief Law of 1997 passed by the
19 Illinois General Assembly.".

20 Any utility reducing its base rates by 2% on August 1, 1998
21 pursuant to subsection (b) shall include the following
22 statement on its bills for residential customers from August 1
23 through December 31, 1998: "Effective August 1, 1998, your
24 rates have been reduced by 2% by the Electric Service Customer
25 Choice and Rate Relief Law of 1997 passed by the Illinois
26 General Assembly.".

1 (d) (Blank.)

2 (e) (Blank.)

3 (f) During the mandatory transition period, an electric
4 utility may file revised tariffs reducing the price of any
5 tariffed service offered by the electric utility for all
6 customers taking that tariffed service, which shall be
7 effective 7 days after filing.

8 (g) Until all classes of tariffed services are declared
9 competitive, an electric utility may, without obtaining any
10 approval of the Commission other than that provided for in this
11 subsection and notwithstanding any other provision of this Act
12 or any rule or regulation of the Commission that would require
13 such approval:

14 (1) implement a reorganization, other than a merger of
15 2 or more public utilities as defined in Section 3-105 or
16 their holding companies;

17 (2) retire generating plants from service;

18 (3) sell, assign, lease or otherwise transfer assets to
19 an affiliated or unaffiliated entity and as part of such
20 transaction enter into service agreements, power purchase
21 agreements, or other agreements with the transferee;
22 provided, however, that the prices, terms and conditions of
23 any power purchase agreement must be approved or allowed
24 into effect by the Federal Energy Regulatory Commission; or

25 (4) use any accelerated cost recovery method including
26 accelerated depreciation, accelerated amortization or

1 other capital recovery methods, or record reductions to the
2 original cost of its assets.

3 In order to implement a reorganization, retire generating
4 plants from service, or sell, assign, lease or otherwise
5 transfer assets pursuant to this Section, the electric utility
6 shall comply with subsections (c) and (d) of Section 16-128, if
7 applicable, and subsection (k) of this Section, if applicable,
8 and provide the Commission with at least 30 days notice of the
9 proposed reorganization or transaction, which notice shall
10 include the following information:

11 (i) a complete statement of the entries that the
12 electric utility will make on its books and records of
13 account to implement the proposed reorganization or
14 transaction together with a certification from an
15 independent certified public accountant that such entries
16 are in accord with generally accepted accounting
17 principles and, if the Commission has previously approved
18 guidelines for cost allocations between the utility and its
19 affiliates, a certification from the chief accounting
20 officer of the utility that such entries are in accord with
21 those cost allocation guidelines;

22 (ii) a description of how the electric utility will
23 use proceeds of any sale, assignment, lease or transfer to
24 retire debt or otherwise reduce or recover the costs of
25 services provided by such electric utility;

26 (iii) a list of all federal approvals or approvals

1 required from departments and agencies of this State, other
2 than the Commission, that the electric utility has or will
3 obtain before implementing the reorganization or
4 transaction;

5 (iv) an irrevocable commitment by the electric utility
6 that it will not, as a result of the transaction, impose
7 any stranded cost charges that it might otherwise be
8 allowed to charge retail customers under federal law or
9 increase the transition charges that it is otherwise
10 entitled to collect under this Article XVI;

11 (v) if the electric utility proposes to sell, assign,
12 lease or otherwise transfer a generating plant that brings
13 the amount of net dependable generating capacity
14 transferred pursuant to this subsection to an amount equal
15 to or greater than 15% of the electric utility's net
16 dependable capacity as of the effective date of this
17 amendatory Act of 1997, and enters into a power purchase
18 agreement with the entity to which such generating plant is
19 sold, assigned, leased, or otherwise transferred, the
20 electric utility also agrees, if its fuel adjustment clause
21 has not already been eliminated, to eliminate its fuel
22 adjustment clause in accordance with subsection (b) of
23 Section 9-220 for a period of time equal to the length of
24 any such power purchase agreement or successor agreement,
25 or until January 1, 2005, whichever is longer; if the
26 capacity of the generating plant so transferred and related

1 power purchase agreement does not result in the elimination
2 of the fuel adjustment clause under this subsection, and
3 the fuel adjustment clause has not already been eliminated,
4 the electric utility shall agree that the costs associated
5 with the transferred plant that are included in the
6 calculation of the rate per kilowatt-hour to be applied
7 pursuant to the electric utility's fuel adjustment clause
8 during such period shall not exceed the per kilowatt-hour
9 cost associated with such generating plant included in the
10 electric utility's fuel adjustment clause during the full
11 calendar year preceding the transfer, with such limit to be
12 adjusted each year thereafter by the Gross Domestic Product
13 Implicit Price Deflator; and

14 (vi) in addition, if the electric utility proposes to
15 sell, assign, or lease, (A) either (1) an amount of
16 generating plant that brings the amount of net dependable
17 generating capacity transferred pursuant to this
18 subsection to an amount equal to or greater than 15% of its
19 net dependable capacity on the effective date of this
20 amendatory Act of 1997, or (2) one or more generating
21 plants with a total net dependable capacity of 1100
22 megawatts, or (B) transmission and distribution facilities
23 that either (1) bring the amount of transmission and
24 distribution facilities transferred pursuant to this
25 subsection to an amount equal to or greater than 15% of the
26 electric utility's total depreciated original cost

1 investment in such facilities, or (2) represent an
2 investment of \$25,000,000 in terms of total depreciated
3 original cost, the electric utility shall provide, in
4 addition to the information listed in subparagraphs (i)
5 through (v), the following information: (A) a description
6 of how the electric utility will meet its service
7 obligations under this Act in a safe and reliable manner
8 and (B) the electric utility's projected earned rate of
9 return on common equity for each year from the date of the
10 notice through December 31, 2006 both with and without the
11 proposed transaction. If the Commission has not issued an
12 order initiating a hearing on the proposed transaction
13 within 30 days after the date the electric utility's notice
14 is filed, the transaction shall be deemed approved. The
15 Commission may, after notice and hearing, prohibit the
16 proposed transaction if it makes either or both of the
17 following findings: (1) that the proposed transaction will
18 render the electric utility unable to provide its tariffed
19 services in a safe and reliable manner, or (2) that there
20 is a strong likelihood that consummation of the proposed
21 transaction will result in the electric utility being
22 entitled to request an increase in its base rates. Any
23 hearing initiated by the Commission into the proposed
24 transaction shall be completed, and the Commission's final
25 order approving or prohibiting the proposed transaction
26 shall be entered, within 90 days after the date the

1 electric utility's notice was filed. Provided, however,
2 that a sale, assignment, or lease of transmission
3 facilities to an independent system operator that meets the
4 requirements of Section 16-126 shall not be subject to
5 Commission approval under this Section.

6 In any proceeding conducted by the Commission pursuant
7 to this subparagraph (vi), intervention shall be limited to
8 parties with a direct interest in the transaction which is
9 the subject of the hearing and any statutory consumer
10 protection agency as defined in subsection (d) of Section
11 9-102.1. Notwithstanding the provisions of Section 10-113
12 of this Act, any application seeking rehearing of an order
13 issued under this subparagraph (vi), whether filed by the
14 electric utility or by an intervening party, shall be filed
15 within 10 days after service of the order.

16 The Commission shall not in any subsequent proceeding or
17 otherwise, review such a reorganization or other transaction
18 authorized by this Section, but shall retain the authority to
19 allocate costs as stated in Section 16-111(i). An entity to
20 which an electric utility sells, assigns, leases or transfers
21 assets pursuant to this subsection (g) shall not, as a result
22 of the transactions specified in this subsection (g), be deemed
23 a public utility as defined in Section 3-105. Nothing in this
24 subsection (g) shall change any requirement under the
25 jurisdiction of the Illinois Department of Nuclear Safety
26 including, but not limited to, the payment of fees. Nothing in

1 this subsection (g) shall exempt a utility from obtaining a
2 certificate pursuant to Section 8-406 of this Act for the
3 construction of a new electric generating facility. Nothing in
4 this subsection (g) is intended to exempt the transactions
5 hereunder from the operation of the federal or State antitrust
6 laws. Nothing in this subsection (g) shall require an electric
7 utility to use the procedures specified in this subsection for
8 any of the transactions specified herein. Any other procedure
9 available under this Act may, at the electric utility's
10 election, be used for any such transaction.

11 (h) During the mandatory transition period, the Commission
12 shall not establish or use any rates of depreciation, which for
13 purposes of this subsection shall include amortization, for any
14 electric utility other than those established pursuant to
15 subsection (c) of Section 5-104 of this Act or utilized
16 pursuant to subsection (g) of this Section. Provided, however,
17 that in any proceeding to review an electric utility's rates
18 for tariffed services pursuant to Section 9-201, 9-202, 9-250
19 or 16-111(d) of this Act, the Commission may establish new
20 rates of depreciation for the electric utility in the same
21 manner provided in subsection (d) of Section 5-104 of this Act.
22 An electric utility implementing an accelerated cost recovery
23 method including accelerated depreciation, accelerated
24 amortization or other capital recovery methods, or recording
25 reductions to the original cost of its assets, pursuant to
26 subsection (g) of this Section, shall file a statement with the

1 Commission describing the accelerated cost recovery method to
2 be implemented or the reduction in the original cost of its
3 assets to be recorded. Upon the filing of such statement, the
4 accelerated cost recovery method or the reduction in the
5 original cost of assets shall be deemed to be approved by the
6 Commission as though an order had been entered by the
7 Commission.

8 (i) Subsequent to the mandatory transition period, the
9 Commission, in any proceeding to establish rates and charges
10 for tariffed services offered by an electric utility, shall
11 consider only (1) the then current or projected revenues,
12 costs, investments and cost of capital directly or indirectly
13 associated with the provision of such tariffed services; (2)
14 collection of transition charges in accordance with Sections
15 16-102 and 16-108 of this Act; (3) recovery of any employee
16 transition costs as described in Section 16-128 which the
17 electric utility is continuing to incur, including recovery of
18 any unamortized portion of such costs previously incurred or
19 committed, with such costs to be equitably allocated among
20 bundled services, delivery services, and contracts with
21 alternative retail electric suppliers; and (4) recovery of the
22 costs associated with the electric utility's compliance with
23 decommissioning funding requirements; and shall not consider
24 any other revenues, costs, investments or cost of capital of
25 either the electric utility or of any affiliate of the electric
26 utility that are not associated with the provision of tariffed

1 services. In setting rates for tariffed services, the
2 Commission shall equitably allocate joint and common costs and
3 investments between the electric utility's competitive and
4 tariffed services. In determining the justness and
5 reasonableness of the electric power and energy component of an
6 electric utility's rates for tariffed services subsequent to
7 the mandatory transition period and prior to the time that the
8 provision of such electric power and energy is declared
9 competitive, the Commission shall consider the extent to which
10 the electric utility's tariffed rates for such component for
11 each customer class exceed the market value determined pursuant
12 to Section 16-112, and, if the electric power and energy
13 component of such tariffed rate exceeds the market value by
14 more than 10% for any customer class, may establish such
15 electric power and energy component at a rate equal to the
16 market value plus 10%.

17 (j) During the mandatory transition period, an electric
18 utility may elect to transfer to a non-operating income account
19 under the Commission's Uniform System of Accounts either or
20 both of (i) an amount of unamortized investment tax credit that
21 is in addition to the ratable amount which is credited to the
22 electric utility's operating income account for the year in
23 accordance with Section 46(f)(2) of the federal Internal
24 Revenue Code of 1986, as in effect prior to P.L. 101-508, or
25 (ii) "excess tax reserves", as that term is defined in Section
26 203(e)(2)(A) of the federal Tax Reform Act of 1986, provided

1 that (A) the amount transferred may not exceed the amount of
2 the electric utility's assets that were created pursuant to
3 Statement of Financial Accounting Standards No. 71 which the
4 electric utility has written off during the mandatory
5 transition period, and (B) the transfer shall not be effective
6 until approved by the Internal Revenue Service. An electric
7 utility electing to make such a transfer shall file a statement
8 with the Commission stating the amount and timing of the
9 transfer for which it intends to request approval of the
10 Internal Revenue Service, along with a copy of its proposed
11 request to the Internal Revenue Service for a ruling. The
12 Commission shall issue an order within 14 days after the
13 electric utility's filing approving, subject to receipt of
14 approval from the Internal Revenue Service, the proposed
15 transfer.

16 (k) If an electric utility is selling or transferring to a
17 single buyer 5 or more generating plants located in this State
18 with a total net dependable capacity of 5000 megawatts or more
19 pursuant to subsection (g) of this Section and has obtained a
20 sale price or consideration that exceeds 200% of the book value
21 of such plants, the electric utility must provide to the
22 Governor, the President of the Illinois Senate, the Minority
23 Leader of the Illinois Senate, the Speaker of the Illinois
24 House of Representatives, and the Minority Leader of the
25 Illinois House of Representatives no later than 15 days after
26 filing its notice under subsection (g) of this Section or 5

1 days after the date on which this subsection (k) becomes law,
2 whichever is later, a written commitment in which such electric
3 utility agrees to expend \$2 billion outside the corporate
4 limits of any municipality with 1,000,000 or more inhabitants
5 within such electric utility's service area, over a 6-year
6 period beginning with the calendar year in which the notice is
7 filed, on projects, programs, and improvements within its
8 service area relating to transmission and distribution
9 including, without limitation, infrastructure expansion,
10 repair and replacement, capital investments, operations and
11 maintenance, and vegetation management.

12 (l) Notwithstanding any other provision of this Act or any
13 rule, regulation, or prior order of the Commission, a public
14 utility providing electric and gas service may do any one or
15 more of the following: transfer assets to, reorganize with, or
16 merge with one or more public utilities under common holding
17 company ownership or control in the manner prescribed in
18 subsection (g) of this Section. No merger transaction costs,
19 such as fees paid to attorneys, investment bankers, and other
20 consultants, incurred in connection with a merger pursuant to
21 this subsection (l) shall be recoverable in any subsequent rate
22 proceeding. Approval of a merger pursuant to this subsection
23 (l) shall not constitute approval of, or otherwise require,
24 rate recovery of other costs incurred in connection with, or to
25 implement the merger, such as the cost of restructuring,
26 combining, or integrating debt, assets, or systems. Such other

1 costs may be recovered only to the extent that the surviving
2 utility can demonstrate that the cost savings produced by such
3 restructuring, combination, or integration exceed the
4 associated costs. Nothing in this subsection (l) shall impair
5 the terms or conditions of employment or the collective
6 bargaining rights of any employees of the utilities that are
7 transferring assets, reorganizing, or merging.

8 (m) If an electric utility that on December 31, 2005
9 provided electric service to at least 100,000 customers in
10 Illinois transfers assets, reorganizes, or merges under this
11 Section, then the same provisions apply that applied during the
12 mandatory transition period under Section 16-128.

13 (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;
14 95-876, eff. 8-21-08.)

15 (220 ILCS 5/16-111.1)

16 Sec. 16-111.1. Illinois Clean Energy Community Trust.

17 (a) An electric utility which has sold or transferred
18 generating facilities in a transaction to which subsection (k)
19 of Section 16-111 applies is authorized to establish an
20 Illinois clean energy community trust or foundation for the
21 purposes of providing financial support and assistance to
22 entities, public or private, within the State of Illinois
23 including, but not limited to, units of State and local
24 government, educational institutions, corporations, and
25 charitable, educational, environmental and community

1 organizations, for programs and projects that benefit the
2 public by improving energy efficiency, developing renewable or
3 reusable energy resources, supporting other energy related
4 projects that improve the State's environmental quality, and
5 supporting projects and programs intended to preserve or
6 enhance the natural habitats and wildlife areas of the State.
7 Provided, however, that the trust or foundation funds shall not
8 be used for the remediation of environmentally impaired
9 property. The trust or foundation may also assist in
10 identifying other energy and environmental grant
11 opportunities.

12 (b) Such trust or foundation shall be governed by a
13 declaration of trust or articles of incorporation and bylaws
14 which shall, at a minimum, provide that:

15 (1) There shall be 6 voting trustees of the trust or
16 foundation, one of whom shall be appointed by the Governor,
17 one of whom shall be appointed by the President of the
18 Illinois Senate, one of whom shall be appointed by the
19 Minority Leader of the Illinois Senate, one of whom shall
20 be appointed by the Speaker of the Illinois House of
21 Representatives, one of whom shall be appointed by the
22 Minority Leader of the Illinois House of Representatives,
23 and one of whom shall be appointed by the electric utility
24 establishing the trust or foundation, provided that the
25 voting trustee appointed by the utility shall be a
26 representative of a recognized environmental action group

1 selected by the utility. The Governor shall designate one
2 of the 6 voting trustees to serve as chairman of the trust
3 or foundation, who shall serve as chairman of the trust or
4 foundation at the pleasure of the Governor. In addition,
5 there shall be 4 non-voting trustees, one of whom shall be
6 appointed by the Director of Commerce and Economic
7 Opportunity, one of whom shall be appointed by the Director
8 of the Illinois Environmental Protection Agency, one of
9 whom shall be appointed by the Director of Natural
10 Resources, and one of whom shall be appointed by the
11 electric utility establishing the trust or foundation,
12 provided that the non-voting trustee appointed by the
13 utility shall bring financial expertise to the trust or
14 foundation and shall have appropriate credentials
15 therefor.

16 (2) All voting trustees and the non-voting trustee with
17 financial expertise shall be entitled to compensation for
18 their services as trustees, provided, however, that no
19 member of the General Assembly and no employee of the
20 electric utility establishing the trust or foundation
21 serving as a voting trustee shall receive any compensation
22 for his or her services as a trustee, and provided further
23 that the compensation to the chairman of the trust shall
24 not exceed \$25,000 annually and the compensation to any
25 other trustee shall not exceed \$20,000 annually. All
26 trustees shall be entitled to reimbursement for reasonable

1 expenses incurred on behalf of the trust in the performance
2 of their duties as trustees. All such compensation and
3 reimbursements shall be paid out of the trust.

4 (3) Trustees shall be appointed within 30 days after
5 the creation of the trust or foundation and shall serve for
6 a term of 5 years commencing upon the date of their
7 respective appointments, until their respective successors
8 are appointed and qualified.

9 (4) A vacancy in the office of trustee shall be filled
10 by the person holding the office responsible for appointing
11 the trustee whose death or resignation creates the vacancy,
12 and a trustee appointed to fill a vacancy shall serve the
13 remainder of the term of the trustee whose resignation or
14 death created the vacancy.

15 (5) The trust or foundation shall have an indefinite
16 term, and shall terminate at such time as no trust assets
17 remain.

18 (6) The trust or foundation shall be funded in the
19 minimum amount of \$250,000,000, with the allocation and
20 disbursement of funds for the various purposes for which
21 the trust or foundation is established to be determined by
22 the trustees in accordance with the declaration of trust or
23 the articles of incorporation and bylaws; provided,
24 however, that this amount may be reduced by up to
25 \$25,000,000 if, at the time the trust or foundation is
26 funded, a corresponding amount is contributed by the

1 electric utility establishing the trust or foundation to
2 the Board of Trustees of Southern Illinois University for
3 the purpose of funding programs or projects related to
4 clean coal and provided further that \$25,000,000 of the
5 amount contributed to the trust or foundation shall be
6 available to fund programs or projects related to clean
7 coal.

8 (7) The trust or foundation shall be authorized to
9 employ an executive director and other employees, to enter
10 into leases, contracts and other obligations on behalf of
11 the trust or foundation, and to incur expenses that the
12 trustees deem necessary or appropriate for the fulfillment
13 of the purposes for which the trust or foundation is
14 established, provided, however, that salaries and
15 administrative expenses incurred on behalf of the trust or
16 foundation shall not exceed \$500,000 in the first fiscal
17 year after the trust or foundation is established and shall
18 not exceed \$1,000,000 in each subsequent fiscal year.

19 (8) The trustees may create and appoint advisory boards
20 or committees to assist them with the administration of the
21 trust or foundation, and to advise and make recommendations
22 to them regarding the contribution and disbursement of the
23 trust or foundation funds.

24 (c)(1) In addition to the allocation and disbursement of
25 funds for the purposes set forth in subsection (a) of this
26 Section, the trustees of the trust or foundation shall

1 annually contribute funds in amounts set forth in
2 subparagraph (2) of this subsection to the Citizens Utility
3 Board created by the Citizens Utility Board Act; provided,
4 however, that any such funds shall be used solely for the
5 representation of the interests of utility consumers
6 before the Illinois Commerce Commission, the Federal
7 Energy Regulatory Commission, and the Federal
8 Communications Commission and for the provision of
9 consumer education on utility service and prices and on
10 benefits and methods of energy conservation. Provided,
11 however, that no part of such funds shall be used to
12 support (i) any lobbying activity, (ii) activities related
13 to fundraising, (iii) advertising or other marketing
14 efforts regarding a particular utility, or (iv)
15 solicitation of support for, or advocacy of, a particular
16 position regarding any specific utility or a utility's
17 docketed proceeding.

18 (2) In the calendar year in which the trust or
19 foundation is first funded, the trustees shall contribute
20 \$1,000,000 to the Citizens Utility Board within 60 days
21 after such trust or foundation is established; provided,
22 however, that such contribution shall be made after
23 December 31, 1999. In each of the 6 calendar years
24 subsequent to the first contribution, if the trust or
25 foundation is in existence, the trustees shall contribute
26 to the Citizens Utility Board an amount equal to the total

1 expenditures by such organization in the prior calendar
2 year, as set forth in the report filed by the Citizens
3 Utility Board with the chairman of such trust or foundation
4 as required by subparagraph (3) of this subsection. Such
5 subsequent contributions shall be made within 30 days of
6 submission by the Citizens Utility Board of such report to
7 the Chairman of the trust or foundation, but in no event
8 shall any annual contribution by the trustees to the
9 Citizens Utility Board exceed \$1,000,000. Following such
10 7-year period, an Illinois statutory consumer protection
11 agency may petition the trust or foundation for
12 contributions to fund expenditures of the type identified
13 in paragraph (1), but in no event shall annual
14 contributions by the trust or foundation for such
15 expenditures exceed \$1,000,000.

16 (3) The Citizens Utility Board shall file a report with
17 the chairman of such trust or foundation for each year in
18 which it expends any funds received from the trust or
19 foundation setting forth the amount of any expenditures
20 (regardless of the source of funds for such expenditures)
21 for: (i) the representation of the interests of utility
22 consumers before the Illinois Commerce Commission, the
23 Federal Energy Regulatory Commission, and the Federal
24 Communications Commission, and (ii) the provision of
25 consumer education on utility service and prices and on
26 benefits and methods of energy conservation. Such report

1 shall separately state the total amount of expenditures for
2 the purposes or activities identified by items (i) and (ii)
3 of this paragraph, the name and address of the external
4 recipient of any such expenditure, if applicable, and the
5 specific purposes or activities (including internal
6 purposes or activities) for which each expenditure was
7 made. Any report required by this subsection shall be filed
8 with the chairman of such trust or foundation no later than
9 March 31 of the year immediately following the year for
10 which the report is required.

11 (d) In addition to any other allocation and disbursement of
12 funds in this Section, the trustees of the trust or foundation
13 shall contribute an amount up to \$125,000,000 (1) for deposit
14 into the General Obligation Bond Retirement and Interest Fund
15 held in the State treasury to assist in the repayment on
16 general obligation bonds issued under subsection (d) of Section
17 7 of the General Obligation Bond Act, and (2) for deposit into
18 funds administered by agencies with responsibility for
19 environmental activities to assist in payment for
20 environmental programs. The amount required to be contributed
21 shall be provided to the trustees in a certification letter
22 from the Director of the Bureau of the Budget that shall be
23 provided no later than August 1, 2003. The payment from the
24 trustees shall be paid to the State no later than December 31st
25 following the receipt of the letter.

26 (Source: P.A. 93-32, eff. 6-20-03; 94-793, eff. 5-19-06.)

1 (220 ILCS 5/16-111.5)

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

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

1 power and energy during one of the transition periods
2 identified in subsection (b) of Section 16-113 of this Act.

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

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

2 (i) multi-year historical analysis of hourly
3 loads;

4 (ii) switching trends and competitive retail
5 market analysis;

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

7 and

8 (iv) growth forecasts by customer class.

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

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

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

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

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

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

24 (ii) the proposed mix of demand-response products
25 for which contracts will be executed during the next
26 year. The cost-effective demand-response measures

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

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

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

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

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

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

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

26 (iv) the proposed mix and selection of standard

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

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

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

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

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

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

9 (1) The procurement administrator shall:

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

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

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

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

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

26 (vi) administer the request for proposals process;

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

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

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

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

21 (xi) administer related contingency procurement
22 events.

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

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

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

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

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

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

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

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

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

23 (1) Beginning in 2008, each Illinois utility procuring
24 power pursuant to this Section shall annually provide a
25 range of load forecasts to the Illinois Power Agency by
26 July 15 of each year, or such other date as may be required

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

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

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

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

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

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

26 (1) Solicitation, pre-qualification, and registration

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (f) Within 2 business days after opening the sealed bids,
26 the procurement administrator shall submit a confidential

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

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

24 (h) The names of the successful bidders and the load
25 weighted average of the winning bid prices for each contract
26 type and for each contract term shall be made available to the

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

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

24 (j) Within 60 days following the effective date of this
25 amendatory Act, each electric utility that on December 31, 2005
26 provided electric service to at least 100,000 customers in

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

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

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

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

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

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

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

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

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

1 effective date of this amendatory Act.

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

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

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

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

13 (Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09.)

14 (220 ILCS 5/16-115)

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

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

24 (b) An alternative retail electric supplier seeking a
25 certificate of service authority shall file with the Commission

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

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

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

25 (1) That the applicant possesses sufficient technical,
26 financial and managerial resources and abilities to

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

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

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

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

1 this Act;

2 (5) That the applicant will procure renewable energy
3 resources or reusable energy resources, or both, in
4 accordance with Section 16-115D of this Act, and will
5 source electricity from clean coal facilities, as defined
6 in Section 1-10 of the Illinois Power Agency Act, in
7 amounts at least equal to the percentages set forth in
8 subsections (c) and (d) of Section 1-75 of the Illinois
9 Power Agency Act. For purposes of this Section:

10 (i) (Blank);

11 (ii) (Blank);

12 (iii) the required sourcing of electricity
13 generated by clean coal facilities, other than the
14 initial clean coal facility, shall be limited to the
15 amount of electricity that can be procured or sourced
16 at a price at or below the benchmarks approved by the
17 Commission each year in accordance with item (1) of
18 subsection (c) and items (1) and (5) of subsection (d)
19 of Section 1-75 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 (vi) The Commission shall, after notice and
8 hearing, revoke the certification of any alternative
9 retail electric supplier that fails to execute a
10 sourcing agreement with the initial clean coal
11 facility as required by item (5) of subsection (d) of
12 this Section. The sourcing agreements with this
13 initial clean coal facility shall be subject to both
14 approval of the initial clean coal facility by the
15 General Assembly and satisfaction of the requirements
16 of item (4) of subsection (d) of Section 1-75 of the
17 Illinois Power Agency Act, and shall be executed within
18 90 days after any such approval by the General
19 Assembly. The Commission shall not accept an
20 application for certification from an alternative
21 retail electric supplier that has lost certification
22 under this subsection (d), or any corporate affiliate
23 thereof, for at least one year from the date of
24 revocation;

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

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

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

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

11 (d-5) (Blank).

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

1 power and energy from the facility, the retail customer on
2 whose premises the facility is located shall not thereafter be
3 required to pay transition charges on the power and energy that
4 such retail customer takes from the facility.

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

24 (Source: P.A. 95-130, eff. 1-1-08; 95-1027, eff. 6-1-09;
25 96-159, eff. 8-10-09.)

1 (220 ILCS 5/16-115D)

2 Sec. 16-115D. Renewable and reusable portfolio standard
3 for alternative retail electric suppliers and electric
4 utilities operating outside their service territories.

5 (a) An alternative retail electric supplier shall be
6 responsible for procuring cost-effective renewable energy
7 resources or reusable energy resources, or both, as required
8 under item (5) of subsection (d) of Section 16-115 of this Act
9 as outlined herein:

10 (1) The definition of renewable energy resources
11 contained in Section 1-10 of the Illinois Power Agency Act
12 applies to all renewable energy resources required to be
13 procured by alternative retail electric suppliers. The
14 definition of reusable energy resources contained in
15 Section 1-10 of the Illinois Power Agency Act applies to
16 all reusable energy resources required to be procured by
17 alternative retail electric suppliers.

18 (2) The quantity of renewable energy resources or
19 reusable energy resources, or both, shall be measured as a
20 percentage of the actual amount of metered electricity
21 (megawatt-hours) delivered by the alternative retail
22 electric supplier to Illinois retail customers during the
23 12-month period June 1 through May 31, commencing June 1,
24 2009, and the comparable 12-month period in each year
25 thereafter except as provided in item (6) of this
26 subsection (a).

1 (3) The quantity of renewable energy resources or
2 reusable energy resources, or both, shall be in amounts at
3 least equal to the annual percentages set forth in item (1)
4 of subsection (c) of Section 1-75 of the Illinois Power
5 Agency Act. At least 60% of the renewable energy resources
6 procured pursuant to items (1) through (3) of subsection
7 (b) of this Section shall come from wind generation and,
8 starting June 1, 2015, at least 6% of the renewable energy
9 resources procured pursuant to items (1) through (3) of
10 subsection (b) of this Section shall come from solar
11 photovoltaics. If, in any given year, an alternative retail
12 electric supplier does not purchase at least these levels
13 of renewable energy resources or reusable energy
14 resources, or both, then the alternative retail electric
15 supplier shall make alternative compliance payments, as
16 described in subsection (d) of this Section.

17 (4) The quantity and source of renewable energy
18 resources or reusable energy resources, or both, shall be
19 independently verified through the PJM Environmental
20 Information System Generation Attribute Tracking System
21 (PJM-GATS) or the Midwest Renewable Energy Tracking System
22 (M-RETS), which shall document the location of generation,
23 resource type, month, and year of generation for all
24 qualifying renewable energy resources or reusable energy
25 resources, or both, that an alternative retail electric
26 supplier uses to comply with this Section. No later than

1 June 1, 2009, the Illinois Power Agency shall provide
2 PJM-GATS, M-RETS, and alternative retail electric
3 suppliers with all information necessary to identify
4 resources located in Illinois, within states that adjoin
5 Illinois or within portions of the PJM and MISO footprint
6 in the United States that qualify under the definition of
7 renewable energy resources or reusable energy resources in
8 Section 1-10 of the Illinois Power Agency Act for
9 compliance with this Section 16-115D. Alternative retail
10 electric suppliers shall not be subject to the requirements
11 in item (3) of subsection (c) of Section 1-75 of the
12 Illinois Power Agency Act.

13 (5) All renewable energy credits or reusable energy
14 credits, or both, used to comply with this Section shall be
15 permanently retired.

16 (6) The required procurement of renewable energy
17 resources or reusable energy resources, or both, by an
18 alternative retail electric supplier shall apply to all
19 metered electricity delivered to Illinois retail customers
20 by the alternative retail electric supplier pursuant to
21 contracts executed or extended after March 15, 2009.

22 (b) An alternative retail electric supplier shall comply
23 with the renewable energy portfolio standards by making an
24 alternative compliance payment, as described in subsection (d)
25 of this Section, to cover at least one-half of the alternative
26 retail electric supplier's compliance obligation and any one or

1 combination of the following means to cover the remainder of
2 the alternative retail electric supplier's compliance
3 obligation:

4 (1) Generating electricity using renewable energy
5 resources or reusable energy resources, or both,
6 identified pursuant to item (4) of subsection (a) of this
7 Section.

8 (2) Purchasing electricity generated using renewable
9 energy resources or reusable energy resources, or both,
10 identified pursuant to item (4) of subsection (a) of this
11 Section through an energy contract.

12 (3) Purchasing renewable energy credits or reusable
13 energy credits, or both, from renewable energy resources or
14 reusable energy resources, or both, identified pursuant to
15 item (4) of subsection (a) of this Section.

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

18 (c) Use of renewable or reusable energy credits.

19 (1) Renewable energy credits or reusable energy
20 credits, or both, that are not used by an alternative
21 retail electric supplier to comply with a renewable and
22 reusable portfolio standard in a compliance year may be
23 banked and carried forward up to 2 12-month compliance
24 periods after the compliance period in which the credit was
25 generated for the purpose of complying with a renewable and
26 reusable portfolio standard in those 2 subsequent

1 compliance periods. For the 2009-2010 and 2010-2011
2 compliance periods, an alternative retail electric
3 supplier may use renewable credits generated after
4 December 31, 2008 and before June 1, 2009 to comply with
5 this Section.

6 (2) An alternative retail electric supplier is
7 responsible for demonstrating that a renewable energy
8 credit or reusable energy credit, or both, used to comply
9 with a renewable and reusable portfolio standard is derived
10 from a renewable energy resource or reusable energy
11 resources, or both, and that the alternative retail
12 electric supplier has not used, traded, sold, or otherwise
13 transferred the credit.

14 (3) The same renewable or reusable energy credit may be
15 used by an alternative retail electric supplier to comply
16 with a federal renewable portfolio standard and a renewable
17 and reusable portfolio standard established under this
18 Act. An alternative retail electric supplier that uses a
19 renewable energy credit or reusable energy credit, or both,
20 to comply with a renewable portfolio standard imposed by
21 any other state may not use the same credit to comply with
22 a renewable and reusable portfolio standard established
23 under this Act.

24 (d) Alternative compliance payments.

25 (1) The Commission shall establish and post on its
26 website, within 5 business days after entering an order

1 approving a procurement plan pursuant to Section 1-75 of
2 the Illinois Power Agency Act, maximum alternative
3 compliance payment rates, expressed on a per kilowatt-hour
4 basis, that will be applicable in the first compliance
5 period following the plan approval. A separate maximum
6 alternative compliance payment rate shall be established
7 for the service territory of each electric utility that is
8 subject to subsection (c) of Section 1-75 of the Illinois
9 Power Agency Act. Each maximum alternative compliance
10 payment rate shall be equal to the maximum allowable annual
11 estimated average net increase due to the costs of the
12 utility's purchase of renewable energy resources or
13 reusable energy resources, or both, included in the amounts
14 paid by eligible retail customers in connection with
15 electric service, as described in item (2) of subsection
16 (c) of Section 1-75 of the Illinois Power Agency Act for
17 the compliance period, and as established in the approved
18 procurement plan. Following each procurement event through
19 which renewable energy resources or reusable energy
20 resources, or both, are purchased for one or more of these
21 utilities for the compliance period, the Commission shall
22 establish and post on its website estimates of the
23 alternative compliance payment rates, expressed on a per
24 kilowatt-hour basis, that shall apply for that compliance
25 period. Posting of the estimates shall occur no later than
26 10 business days following the procurement event, however,

1 the Commission shall not be required to establish and post
2 such estimates more often than once per calendar month. By
3 July 1 of each year, the Commission shall establish and
4 post on its website the actual alternative compliance
5 payment rates for the preceding compliance year. Each
6 alternative compliance payment rate shall be equal to the
7 total amount of dollars for which the utility contracted to
8 spend on renewable energy resources or reusable energy
9 resources, or both, for the compliance period divided by
10 the forecasted load of eligible retail customers, at the
11 customers' meters, as previously established in the
12 Commission-approved procurement plan for that compliance
13 year. The actual alternative compliance payment rates may
14 not exceed the maximum alternative compliance payment
15 rates established for the compliance period. For purposes
16 of this subsection (d), the term "eligible retail
17 customers" has the same meaning as found in Section
18 16-111.5 of this Act.

19 (2) In any given compliance year, an alternative retail
20 electric supplier may elect to use alternative compliance
21 payments to comply with all or a part of the applicable
22 renewable and reusable portfolio standard. In the event
23 that an alternative retail electric supplier elects to make
24 alternative compliance payments to comply with all or a
25 part of the applicable renewable and reusable portfolio
26 standard, such payments shall be made by September 1, 2010

1 for the period of June 1, 2009 to May 1, 2010 and by
2 September 1 of each year thereafter for the subsequent
3 compliance period, in the manner and form as determined by
4 the Commission. Any election by an alternative retail
5 electric supplier to use alternative compliance payments
6 is subject to review by the Commission under subsection (e)
7 of this Section.

8 (3) An alternative retail electric supplier's
9 alternative compliance payments shall be computed
10 separately for each electric utility's service territory
11 within which the alternative retail electric supplier
12 provided retail service during the compliance period,
13 provided that the electric utility was subject to
14 subsection (c) of Section 1-75 of the Illinois Power Agency
15 Act. For each service territory, the alternative retail
16 electric supplier's alternative compliance payment shall
17 be equal to (i) the actual alternative compliance payment
18 rate established in item (1) of this subsection (d),
19 multiplied by (ii) the actual amount of metered electricity
20 delivered by the alternative retail electric supplier to
21 retail customers within the service territory during the
22 compliance period, multiplied by (iii) the result of one
23 minus the ratios of the quantity of renewable energy
24 resources or reusable energy resources, or both, used by
25 the alternative retail electric supplier to comply with the
26 requirements of this Section within the service territory

1 to the product of the percentage of renewable energy
2 resources or reusable energy resources, or both, required
3 under item (3) of subsection (a) of this Section and the
4 actual amount of metered electricity delivered by the
5 alternative retail electric supplier to retail customers
6 within the service territory during the compliance period.

7 (4) All alternative compliance payments by alternative
8 retail electric suppliers shall be deposited in the
9 Illinois Power Agency Renewable and Reusable Energy
10 Resources Fund and used to purchase renewable energy
11 credits or reusable energy credits, or both, in accordance
12 with Section 1-56 of the Illinois Power Agency Act.

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

26 (e) Each alternative retail electric supplier shall, by

1 September 1, 2010 and by September 1 of each year thereafter,
2 prepare and submit to the Commission a report, in a format to
3 be specified by the Commission on or before December 31, 2009,
4 that provides information certifying compliance by the
5 alternative retail electric supplier with this Section,
6 including copies of all PJM-GATS and M-RETS reports, and
7 documentation relating to banking, retiring renewable energy
8 credits, and any other information that the Commission
9 determines necessary to ensure compliance with this Section. An
10 alternative retail electric supplier may file commercially or
11 financially sensitive information or trade secrets with the
12 Commission as provided under the rules of the Commission. To be
13 filed confidentially, the information shall be accompanied by
14 an affidavit that sets forth both the reasons for the
15 confidentiality and a public synopsis of the information.

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

25 (1) immediately comply with this Section; and

26 (2) if the violation involves a failure to procure the

1 requisite quantity of renewable energy resources or
2 reusable energy resources, or both, or pay the applicable
3 alternative compliance payment by the annual deadline, the
4 Commission shall require the alternative retail electric
5 supplier to double the applicable alternative compliance
6 payment that would otherwise be required to bring the
7 alternative retail electric supplier into compliance with
8 this Section.

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

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

1 12-month period in each year thereafter except as provided in
2 item (6) of subsection (a) of this Section.

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

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

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

1 heat and power system is located.

2 (Source: P.A. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09.)

3 (220 ILCS 5/16-127)

4 Sec. 16-127. Environmental disclosure.

5 (a) Effective January 1, 1999, every electric utility and
6 alternative retail electric supplier shall provide the
7 following information, to the maximum extent practicable, with
8 its bills to its customers on a quarterly basis:

9 (i) the known sources of electricity supplied,
10 broken-out by percentages, of biomass power, coal-fired
11 power, hydro power, natural gas-fired power, nuclear
12 power, oil-fired power, solar power, wind power and other
13 resources, respectively;

14 (ii) a pie-chart that graphically depicts the
15 percentages of the sources of the electricity supplied as
16 set forth in subparagraph (i) of this subsection; and

17 (iii) a pie-chart that graphically depicts the
18 quantity of renewable energy resources or reusable energy
19 resources, or both, procured pursuant to Section 1-75 of
20 the Illinois Power Agency Act as a percentage of
21 electricity supplied to serve eligible retail customers as
22 defined in Section 16-111.5(a) of this Act.

23 (b) In addition, every electric utility and alternative
24 retail electric supplier shall provide, to the maximum extent
25 practicable, with its bills to its customers on a quarterly

1 basis, a standardized chart in a format to be determined by the
2 Commission in a rule following notice and hearings which
3 provides the amounts of carbon dioxide, nitrogen oxides and
4 sulfur dioxide emissions and nuclear waste attributable to the
5 known sources of electricity supplied as set forth in
6 subparagraph (i) of subsection (a) of this Section.

7 (c) The electric utilities and alternative retail electric
8 suppliers may provide their customers with such other
9 information as they believe relevant to the information
10 required in subsections (a) and (b) of this Section.

11 (d) For the purposes of subsection (a) of this Section,
12 "biomass" means dedicated crops grown for energy production and
13 organic wastes.

14 (e) All of the information provided in subsections (a) and
15 (b) of this Section shall be presented to the Commission for
16 inclusion in its World Wide Web Site.

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

18 Section 99. Effective date. This Act takes effect upon
19 becoming law."