



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3686

Introduced 2/11/2010, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

20 ILCS 3855/1-10
20 ILCS 3855/1-56
20 ILCS 3855/1-75

Amends the Illinois Power Agency Act. In provisions concerning the procurement of renewable energy resources, provides that at least 75% of the renewable energy resources shall come from wind generation and, in specified amounts by specified dates, of the renewable energy resources that must be derived from photovoltaics, at least 20% must come from large-scale distributed solar and at least 10% must come from small-scale distributed solar (rather than starting June 1, 2015, at least 6% of the renewable energy resources used to meet these standards shall come from solar photovoltaics). Provides that through June 1, 2016 (rather than June 1, 2011), renewable energy resources shall be counted for the purpose of meeting the renewable energy standards only if they are generated from facilities located in the State, provided that cost-effective renewable energy resources are available from those facilities. Provides that after June 1, 2016 (rather than June 1, 2011), cost-effective renewable energy resources located in Illinois and in states that adjoin Illinois may be counted towards compliance with specified standards. Effective immediately.

LRB096 20770 MJR 36521 b

1 AN ACT concerning State government.

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

4 Section 5. The Illinois Power Agency Act is amended by
5 changing Sections 1-10, 1-56, and 1-75 as follows:

6 (20 ILCS 3855/1-10)

7 Sec. 1-10. Definitions.

8 "Agency" means the Illinois Power Agency.

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

17 "Authority" means the Illinois Finance Authority.

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

1 before 2016, at least 70% of the total carbon emissions that
2 the facility would otherwise emit if, at the time construction
3 commences, the facility is scheduled to commence operation
4 during 2016 or 2017, and at least 90% of the total carbon
5 emissions that the facility would otherwise emit if, at the
6 time construction commences, the facility is scheduled to
7 commence operation after 2017. The power block of the clean
8 coal facility shall not exceed allowable emission rates for
9 sulfur dioxide, nitrogen oxides, carbon monoxide, particulates
10 and mercury for a natural gas-fired combined-cycle facility the
11 same size as and in the same location as the clean coal
12 facility at the time the clean coal facility obtains an
13 approved air permit. All coal used by a clean coal facility
14 shall have high volatile bituminous rank and greater than 1.7
15 pounds of sulfur per million btu content, unless the clean coal
16 facility does not use gasification technology and was operating
17 as a conventional coal-fired electric generating facility on
18 June 1, 2009 (the effective date of Public Act 95-1027).

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

26 "Commission" means the Illinois Commerce Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 "Large-scale distributed solar" means photovoltaic systems
24 that (i) have a generation capacity greater than 10 kilowatts
25 and (ii) are located on the customer's side of customer's
26 electric meter.

1 "Municipality" means a city, village, or incorporated
2 town.

3 "Person" means any natural person, firm, partnership,
4 corporation, either domestic or foreign, company, association,
5 limited liability company, joint stock company, or association
6 and includes any trustee, receiver, assignee, or personal
7 representative thereof.

8 "Project" means the planning, bidding, and construction of
9 a facility.

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

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

18 "Renewable energy credit" means a tradable credit that
19 represents the environmental attributes of a certain amount of
20 energy produced from a renewable energy resource.

21 "Renewable energy resources" includes energy and its
22 associated renewable energy credit or renewable energy credits
23 from wind, solar thermal energy, photovoltaic cells and panels,
24 biodiesel, crops and untreated and unadulterated organic waste
25 biomass, tree waste, hydropower that does not involve new
26 construction or significant expansion of hydropower dams, and

1 other alternative sources of environmentally preferable
2 energy. For purposes of this Act, landfill gas produced in the
3 State is considered a renewable energy resource. "Renewable
4 energy resources" does not include the incineration or burning
5 of tires, garbage, general household, institutional, and
6 commercial waste, industrial lunchroom or office waste,
7 landscape waste other than tree waste, railroad crossties,
8 utility poles, or construction or demolition debris, other than
9 untreated and unadulterated waste wood.

10 "Small-scale distributed solar" means photovoltaic systems
11 that (i) have a generation capacity of 10 kilowatts or less and
12 (ii) are located on the customer's side of customer's electric
13 meter.

14 "Revenue bond" means any bond, note, or other evidence of
15 indebtedness issued by the Authority, the principal and
16 interest of which is payable solely from revenues or income
17 derived from any project or activity of the Agency.

18 "Sequester" means permanent storage of carbon dioxide by
19 injecting it into a saline aquifer, a depleted gas reservoir,
20 or an oil reservoir, directly or through an enhanced oil
21 recovery process that may involve intermediate storage in a
22 salt dome.

23 "Servicing agreement" means (i) in the case of an electric
24 utility, an agreement between the owner of a clean coal
25 facility and such electric utility, which agreement shall have
26 terms and conditions meeting the requirements of paragraph (3)

1 of subsection (d) of Section 1-75, and (ii) in the case of an
2 alternative retail electric supplier, an agreement between the
3 owner of a clean coal facility and such alternative retail
4 electric supplier, which agreement shall have terms and
5 conditions meeting the requirements of Section 16-115(d) (5) of
6 the Public Utilities Act.

7 "Substitute natural gas" or "SNG" means a gas manufactured
8 by gasification of hydrocarbon feedstock, which is
9 substantially interchangeable in use and distribution with
10 conventional natural gas.

11 "Total resource cost test" or "TRC test" means a standard
12 that is met if, for an investment in energy efficiency or
13 demand-response measures, the benefit-cost ratio is greater
14 than one. The benefit-cost ratio is the ratio of the net
15 present value of the total benefits of the program to the net
16 present value of the total costs as calculated over the
17 lifetime of the measures. A total resource cost test compares
18 the sum of avoided electric utility costs, representing the
19 benefits that accrue to the system and the participant in the
20 delivery of those efficiency measures, as well as other
21 quantifiable societal benefits, including avoided natural gas
22 utility costs, to the sum of all incremental costs of end-use
23 measures that are implemented due to the program (including
24 both utility and participant contributions), plus costs to
25 administer, deliver, and evaluate each demand-side program, to
26 quantify the net savings obtained by substituting the

1 demand-side program for supply resources. In calculating
2 avoided costs of power and energy that an electric utility
3 would otherwise have had to acquire, reasonable estimates shall
4 be included of financial costs likely to be imposed by future
5 regulations and legislation on emissions of greenhouse gases.

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

9 (20 ILCS 3855/1-56)

10 Sec. 1-56. Illinois Power Agency Renewable Energy
11 Resources Fund.

12 (a) The Illinois Power Agency Renewable Energy Resources
13 Fund is created as a special fund in the State treasury.

14 (b) The Illinois Power Agency Renewable Energy Resources
15 Fund shall be administered by the Agency to procure renewable
16 energy resources. Prior to June 1, 2016 ~~2011~~, resources
17 procured pursuant to this Section shall be procured from
18 facilities located in Illinois, provided the resources are
19 available from those facilities. If resources are not available
20 in Illinois, then they shall be procured in states that adjoin
21 Illinois. If resources are not available in Illinois or in
22 states that adjoin Illinois, then they may be purchased
23 elsewhere. Beginning June 1, 2016 ~~2011~~, resources procured
24 pursuant to this Section shall be procured from facilities
25 located in Illinois or states that adjoin Illinois. If

1 resources are not available in Illinois or in states that
2 adjoin Illinois, then they may be procured elsewhere. To the
3 extent available, at least 75% of these renewable energy
4 resources shall come from wind generation. ~~and, Of the~~
5 renewable energy resources that must be derived from
6 photovoltaics under this subsection (b), (0.5% by June 1, 2012,
7 1.5% by June 1, 2013, 3% by June 1, 2014, and 6% by June 15 and
8 each year thereafter) at least 20% must come from large-scale
9 distributed solar and at least 10% must come from small-scale
10 distributed solar ~~starting June 1, 2015, at least 6% of the~~
11 ~~renewable energy resources used to meet these standards shall~~
12 ~~come from solar photovoltaics.~~

13 (c) The Agency shall procure renewable energy resources at
14 least once each year in conjunction with a procurement event
15 for electric utilities required to comply with Section 1-75 of
16 the Act and shall, whenever possible, enter into long-term
17 contracts.

18 (d) The price paid to procure renewable energy credits
19 using monies from the Illinois Power Agency Renewable Energy
20 Resources Fund shall not exceed the winning bid prices paid for
21 like resources procured for electric utilities required to
22 comply with Section 1-75 of this Act.

23 (e) All renewable energy credits procured using monies from
24 the Illinois Power Agency Renewable Energy Resources Fund shall
25 be permanently retired.

26 (f) The procurement process described in this Section is

1 exempt from the requirements of the Illinois Procurement Code,
2 pursuant to Section 20-10 of that Code.

3 (g) All disbursements from the Illinois Power Agency
4 Renewable Energy Resources Fund shall be made only upon
5 warrants of the Comptroller drawn upon the Treasurer as
6 custodian of the Fund upon vouchers signed by the Director or
7 by the person or persons designated by the Director for that
8 purpose. The Comptroller is authorized to draw the warrant upon
9 vouchers so signed. The Treasurer shall accept all warrants so
10 signed and shall be released from liability for all payments
11 made on those warrants.

12 (h) The Illinois Power Agency Renewable Energy Resources
13 Fund shall not be subject to sweeps, administrative charges, or
14 chargebacks, including, but not limited to, those authorized
15 under Section 8h of the State Finance Act, that would in any
16 way result in the transfer of any funds from this Fund to any
17 other fund of this State or in having any such funds utilized
18 for any purpose other than the express purposes set forth in
19 this Section.

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

21 (20 ILCS 3855/1-75)

22 Sec. 1-75. Planning and Procurement Bureau. The Planning
23 and Procurement Bureau has the following duties and
24 responsibilities:

25 (a) The Planning and Procurement Bureau shall each

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

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

16 (A) direct previous experience assembling
17 large-scale power supply plans or portfolios for
18 end-use customers;

19 (B) an advanced degree in economics,
20 mathematics, engineering, risk management, or a
21 related area of study;

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

24 (D) expertise in wholesale electricity market
25 rules, including those established by the Federal
26 Energy Regulatory Commission and regional

1 transmission organizations;

2 (E) expertise in credit protocols and
3 familiarity with contract protocols;

4 (F) adequate resources to perform and fulfill
5 the required functions and responsibilities; and

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

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

15 (A) direct previous experience administering a
16 large-scale competitive procurement process;

17 (B) an advanced degree in economics,
18 mathematics, engineering, or a related area of
19 study;

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

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

26 (E) expertise in credit and contract

1 protocols;

2 (F) adequate resources to perform and fulfill
3 the required functions and responsibilities; and

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

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

24 (A) failure to satisfy qualification criteria;

25 (B) identification of a conflict of interest;

26 or

1 (C) evidence of inappropriate bias for or
2 against potential bidders or the affected
3 utilities.

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

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

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

24 (6) The Agency shall select an expert or expert
25 consulting firm, with approval of the Commission, to
26 serve as procurement administrator based on the

1 proposals submitted. If the Commission rejects, within
2 5 days, the Agency's selection, the Agency shall submit
3 another recommendation within 3 days based on the
4 proposals submitted. The Agency shall award a one-year
5 contract to the expert or expert consulting firm so
6 selected with Commission approval with an option for
7 the Agency for a one-year renewal.

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

19 (c) Renewable portfolio standard.

20 (1) The procurement plans shall include
21 cost-effective renewable energy resources. A minimum
22 percentage of each utility's total supply to serve the
23 load of eligible retail customers, as defined in
24 Section 16-111.5(a) of the Public Utilities Act,
25 procured for each of the following years shall be
26 generated from cost-effective renewable energy

1 resources: at least 2% by June 1, 2008; at least 4% by
2 June 1, 2009; at least 5% by June 1, 2010; at least 6%
3 by June 1, 2011; at least 7% by June 1, 2012; at least
4 8% by June 1, 2013; at least 9% by June 1, 2014; at
5 least 10% by June 1, 2015; and increasing by at least
6 1.5% each year thereafter to at least 25% by June 1,
7 2025. To the extent that it is available, at least 75%
8 of the renewable energy resources used to meet these
9 standards shall come from wind generation and,
10 beginning on June 1, ~~2011~~ 2015, at least the following
11 percentages ~~6%~~ of the renewable energy resources used
12 to meet these standards shall come from photovoltaics:
13 0.5% by June 1, 2012, 1.5% by June 1, 2013, 3% by June
14 1, 2014, and 6% by June 1, 2015 and each year
15 thereafter. Of the renewable energy resources that
16 must be derived from photovoltaics under this
17 subsection (c), at least 20% must come from large-scale
18 distributed solar and at least 10% must come from
19 small-scale distributed solar. For purposes of this
20 subsection (c), "cost-effective" means that the costs
21 of procuring renewable energy resources do not cause
22 the limit stated in paragraph (2) of this subsection
23 (c) to be exceeded and do not exceed benchmarks based
24 on market prices for renewable energy resources in the
25 region, which shall be developed by the procurement
26 administrator, in consultation with the Commission

1 staff, Agency staff, and the procurement monitor and
2 shall be subject to Commission review and approval.

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

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

25 (A) in 2008, no more than 0.5% of the amount
26 paid per kilowatthour by those customers during

1 the year ending May 31, 2007;

2 (B) in 2009, the greater of an additional 0.5%
3 of the amount paid per kilowatthour by those
4 customers during the year ending May 31, 2008 or 1%
5 of the amount paid per kilowatthour by those
6 customers during the year ending May 31, 2007;

7 (C) in 2010, the greater of an additional 0.5%
8 of the amount paid per kilowatthour by those
9 customers during the year ending May 31, 2009 or
10 1.5% of the amount paid per kilowatthour by those
11 customers during the year ending May 31, 2007;

12 (D) in 2011, the greater of an additional 0.5%
13 of the amount paid per kilowatthour by those
14 customers during the year ending May 31, 2010 or 2%
15 of the amount paid per kilowatthour by those
16 customers during the year ending May 31, 2007; and

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

1 amount per kilowatthour paid for these resources
2 in 2011.

3 No later than June 30, 2011, the Commission shall
4 review the limitation on the amount of renewable energy
5 resources procured pursuant to this subsection (c) and
6 report to the General Assembly its findings as to
7 whether that limitation unduly constrains the
8 procurement of cost-effective renewable energy
9 resources.

10 (3) Through June 1, 2016 ~~2011~~, renewable energy
11 resources shall be counted for the purpose of meeting
12 the renewable energy standards set forth in paragraph
13 (1) of this subsection (c) only if they are generated
14 from facilities located in the State, provided that
15 cost-effective renewable energy resources are
16 available from those facilities. If those
17 cost-effective resources are not available in
18 Illinois, they shall be procured in states that adjoin
19 Illinois and may be counted towards compliance. If
20 those cost-effective resources are not available in
21 Illinois or in states that adjoin Illinois, they shall
22 be purchased elsewhere and shall be counted towards
23 compliance. After June 1, 2016 ~~2011~~, cost-effective
24 renewable energy resources located in Illinois and in
25 states that adjoin Illinois may be counted towards
26 compliance with the standards set forth in paragraph

1 (1) of this subsection (c). If those cost-effective
2 resources are not available in Illinois or in states
3 that adjoin Illinois, they shall be purchased
4 elsewhere and shall be counted towards compliance.

5 (4) The electric utility shall retire all
6 renewable energy credits used to comply with the
7 standard.

8 (5) Beginning with the year commencing June 1,
9 2010, an electric utility subject to this subsection
10 (c) shall apply the lesser of the maximum alternative
11 compliance payment rate or the most recent estimated
12 alternative compliance payment rate for its service
13 territory for the corresponding compliance period,
14 established pursuant to subsection (d) of Section
15 16-115D of the Public Utilities Act to its retail
16 customers that take service pursuant to the electric
17 utility's hourly pricing tariff or tariffs. The
18 electric utility shall retain all amounts collected as
19 a result of the application of the alternative
20 compliance payment rate or rates to such customers,
21 and, beginning in 2011, the utility shall include in
22 the information provided under item (1) of subsection
23 (d) of Section 16-111.5 of the Public Utilities Act the
24 amounts collected under the alternative compliance
25 payment rate or rates for the prior year ending May 31.
26 Notwithstanding any limitation on the procurement of

1 renewable energy resources imposed by item (2) of this
2 subsection (c), the Agency shall increase its spending
3 on the purchase of renewable energy resources to be
4 procured by the electric utility for the next plan year
5 by an amount equal to the amounts collected by the
6 utility under the alternative compliance payment rate
7 or rates in the prior year ending May 31.

8 (d) Clean coal portfolio standard.

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

1 agreements covering electricity generated by clean coal
2 facilities, other than the initial clean coal facility, by
3 the procurement administrator, in consultation with the
4 Commission staff, Agency staff, and the procurement
5 monitor and shall be subject to Commission review and
6 approval.

7 (A) A utility party to a sourcing agreement shall
8 immediately retire any emission credits that it
9 receives in connection with the electricity covered by
10 such agreement.

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

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

22 (2) For purposes of this subsection (d), the required
23 execution of sourcing agreements with the initial clean
24 coal facility for a particular year shall be measured as a
25 percentage of the actual amount of electricity
26 (megawatt-hours) supplied by the electric utility to

1 eligible retail customers in the planning year ending
2 immediately prior to the agreement's execution. For
3 purposes of this subsection (d), the amount paid per
4 kilowatthour means the total amount paid for electric
5 service expressed on a per kilowatthour basis. For purposes
6 of this subsection (d), the total amount paid for electric
7 service includes without limitation amounts paid for
8 supply, transmission, distribution, surcharges and add-on
9 taxes.

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

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

21 (B) in 2011, the greater of an additional 0.5%
22 of the amount paid per kilowatthour by those
23 customers during the year ending May 31, 2010 or 1%
24 of the amount paid per kilowatthour by those
25 customers during the year ending May 31, 2009;

26 (C) in 2012, the greater of an additional 0.5%

1 of the amount paid per kilowatthour by those
2 customers during the year ending May 31, 2011 or
3 1.5% of the amount paid per kilowatthour by those
4 customers during the year ending May 31, 2009;

5 (D) in 2013, the greater of an additional 0.5%
6 of the amount paid per kilowatthour by those
7 customers during the year ending May 31, 2012 or 2%
8 of the amount paid per kilowatthour by those
9 customers during the year ending May 31, 2009; and

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

1 subsection (d) and report to the General Assembly
2 its findings as to whether that limitation unduly
3 constrains the amount of electricity generated by
4 cost-effective clean coal facilities that is
5 covered by sourcing agreements.

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

1 shall include:

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

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

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

1 synthesis gas derived from coal, from SNG, or from
2 natural gas, shall be credited against the revenue
3 requirement for this initial clean coal facility;

4 (B) power purchase provisions, which shall:

5 (i) provide that the utility party to such
6 sourcing agreement shall pay the contract price
7 for electricity delivered under such sourcing
8 agreement;

9 (ii) require delivery of electricity to the
10 regional transmission organization market of the
11 utility that is party to such sourcing agreement;

12 (iii) require the utility party to such
13 sourcing agreement to buy from the initial clean
14 coal facility in each hour an amount of energy
15 equal to all clean coal energy made available from
16 the initial clean coal facility during such hour
17 times a fraction, the numerator of which is such
18 utility's retail market sales of electricity
19 (expressed in kilowatthours sold) in the State
20 during the prior calendar month and the
21 denominator of which is the total retail market
22 sales of electricity (expressed in kilowatthours
23 sold) in the State by utilities during such prior
24 month and the sales of electricity (expressed in
25 kilowatthours sold) in the State by alternative
26 retail electric suppliers during such prior month

1 that are subject to the requirements of this
2 subsection (d) and paragraph (5) of subsection (d)
3 of Section 16-115 of the Public Utilities Act,
4 provided that the amount purchased by the utility
5 in any year will be limited by paragraph (2) of
6 this subsection (d); and

7 (iv) be considered pre-existing contracts in
8 such utility's procurement plans for eligible
9 retail customers;

10 (C) contract for differences provisions, which
11 shall:

12 (i) require the utility party to such sourcing
13 agreement to contract with the initial clean coal
14 facility in each hour with respect to an amount of
15 energy equal to all clean coal energy made
16 available from the initial clean coal facility
17 during such hour times a fraction, the numerator of
18 which is such utility's retail market sales of
19 electricity (expressed in kilowatthours sold) in
20 the utility's service territory in the State
21 during the prior calendar month and the
22 denominator of which is the total retail market
23 sales of electricity (expressed in kilowatthours
24 sold) in the State by utilities during such prior
25 month and the sales of electricity (expressed in
26 kilowatthours sold) in the State by alternative

1 retail electric suppliers during such prior month
2 that are subject to the requirements of this
3 subsection (d) and paragraph (5) of subsection (d)
4 of Section 16-115 of the Public Utilities Act,
5 provided that the amount paid by the utility in any
6 year will be limited by paragraph (2) of this
7 subsection (d);

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

26 (iii) not require the utility to take physical

1 delivery of the electricity produced by the
2 facility;

3 (D) general provisions, which shall:

4 (i) specify a term of no more than 30 years,
5 commencing on the commercial operation date of the
6 facility;

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

15 (iii) provide that all costs associated with
16 the initial clean coal facility will be
17 periodically reported to the Federal Energy
18 Regulatory Commission and to purchasers in
19 accordance with applicable laws governing
20 cost-based wholesale power contracts;

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

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

1 its customers. All carbon offsets purchased for
2 this purpose and any carbon emission credits
3 associated with sequestration of carbon from the
4 facility must be permanently retired. The initial
5 clean coal facility shall not forfeit its
6 designation as a clean coal facility if the
7 facility fails to fully comply with the applicable
8 carbon sequestration requirements in any given
9 year, provided the requisite offsets are
10 purchased. However, the Attorney General, on
11 behalf of the People of the State of Illinois, may
12 specifically enforce the facility's sequestration
13 requirement and the other terms of this contract
14 provision. Compliance with the sequestration
15 requirements and offset purchase requirements
16 specified in paragraph (3) of this subsection (d)
17 shall be reviewed annually by an independent
18 expert retained by the owner of the initial clean
19 coal facility, with the advance written approval
20 of the Attorney General. The Commission may, in the
21 course of the review specified in item (vii),
22 reduce the allowable return on equity for the
23 facility if the facility wilfully fails to comply
24 with the carbon capture and sequestration
25 requirements set forth in this item (v);

26 (vi) include limits on, and accordingly

1 provide for modification of, the amount the
2 utility is required to source under the sourcing
3 agreement consistent with paragraph (2) of this
4 subsection (d);

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

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

1 (ix) limit the utility's or alternative retail
2 electric supplier's obligation to incur any
3 liability until such time as the facility is in
4 commercial operation and generating power and
5 energy and such power and energy is being delivered
6 to the facility busbar;

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

14 (xi) append documentation showing that the
15 formula rate and contract, insofar as they relate
16 to the power purchase provisions, have been
17 approved by the Federal Energy Regulatory
18 Commission pursuant to Section 205 of the Federal
19 Power Act;

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

26 (xiii) conform with customary lender

1 requirements in power purchase agreements used as
2 the basis for financing non-utility generators.

3 (4) Effective date of sourcing agreements with the
4 initial clean coal facility. Any proposed sourcing
5 agreement with the initial clean coal facility shall not
6 become effective unless the following reports are prepared
7 and submitted and authorizations and approvals obtained:

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

23 (ii) Commission report. Within 6 months
24 following receipt of the facility cost report, the
25 Commission, in consultation with the Agency, shall
26 submit a report to the General Assembly setting

1 forth its analysis of the facility cost report.
2 Such report shall include, but not be limited to, a
3 comparison of the costs associated with
4 electricity generated by the initial clean coal
5 facility to the costs associated with electricity
6 generated by other types of generation facilities,
7 an analysis of the rate impacts on residential and
8 small business customers over the life of the
9 sourcing agreements, and an analysis of the
10 likelihood that the initial clean coal facility
11 will commence commercial operation by and be
12 delivering power to the facility's busbar by 2016.
13 To assist in the preparation of its report, the
14 Commission, in consultation with the Agency, may
15 hire one or more experts or consultants, the costs
16 of which shall be paid for by the owner of the
17 initial clean coal facility. The Commission and
18 Agency may begin the process of selecting such
19 experts or consultants prior to receipt of the
20 facility cost report.

21 (iii) General Assembly approval. The proposed
22 sourcing agreements shall not take effect unless,
23 based on the facility cost report and the
24 Commission's report, the General Assembly enacts
25 authorizing legislation approving (A) the
26 projected price, stated in cents per kilowatthour,

1 to be charged for electricity generated by the
2 initial clean coal facility, (B) the projected
3 impact on residential and small business
4 customers' bills over the life of the sourcing
5 agreements, and (C) the maximum allowable return
6 on equity for the project; and

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

19 The facility cost report shall be prepared as follows:

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

1 facility. The facility cost report shall include:

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

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

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

26 (B) The front end engineering and design study for

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

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

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

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

25 The operating and maintenance cost quote
26 (including the cost of the front end engineering

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

7 (D) The facility cost report shall also include (i)
8 an analysis of the initial clean coal facility's
9 ability to deliver power and energy into the applicable
10 regional transmission organization markets and (ii) an
11 analysis of the expected capacity factor for the
12 initial clean coal facility.

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

19 (5) Re-powering and retrofitting coal-fired power
20 plants previously owned by Illinois utilities to qualify as
21 clean coal facilities. During the 2009 procurement
22 planning process and thereafter, the Agency and the
23 Commission shall consider sourcing agreements covering
24 electricity generated by power plants that were previously
25 owned by Illinois utilities and that have been or will be
26 converted into clean coal facilities, as defined by Section

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

22 (6) Costs incurred under this subsection (d) or
23 pursuant to a contract entered into under this subsection
24 (d) shall be deemed prudently incurred and reasonable in
25 amount and the electric utility shall be entitled to full
26 cost recovery pursuant to the tariffs filed with the

1 Commission.

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

5 (f) The Agency shall submit the final procurement plan
6 to the Commission. The Agency shall revise a procurement
7 plan if the Commission determines that it does not meet the
8 standards set forth in Section 16-111.5 of the Public
9 Utilities Act.

10 (g) The Agency shall assess fees to each affected
11 utility to recover the costs incurred in preparation of the
12 annual procurement plan for the utility.

13 (h) The Agency shall assess fees to each bidder to
14 recover the costs incurred in connection with a competitive
15 procurement process.

16 (Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09;
17 96-159, eff. 8-10-09.)

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