



Sen. John J. Cullerton

Filed: 10/25/2011

09700SB0678sam001

LRB097 04938 CEL 58983 a

1 AMENDMENT TO SENATE BILL 678

2 AMENDMENT NO. _____. Amend Senate Bill 678 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This amendatory Act may be
5 referred to as the Illinois Renewable Electricity Resources
6 Act.

7 Section 5. The Illinois Power Agency Act is amended by
8 changing Sections 1-10, 1-20, 1-56, and 1-75 by adding Sections
9 1-76, 1-76.5, 1-77.5, 1-79, and 1-81 as follows:

10 (20 ILCS 3855/1-10)

11 Sec. 1-10. Definitions.

12 "Agency" means the Illinois Power Agency.

13 "Agency loan agreement" means any agreement pursuant to
14 which the Illinois Finance Authority agrees to loan the
15 proceeds of revenue bonds issued with respect to a project to

1 the Agency upon terms providing for loan repayment installments
2 at least sufficient to pay when due all principal of, interest
3 and premium, if any, on those revenue bonds, and providing for
4 maintenance, insurance, and other matters in respect of the
5 project.

6 "Authority" means the Illinois Finance Authority.

7 "Bundled renewable energy resources" means electricity
8 generated by a renewable energy resource and its associated
9 renewable energy credit.

10 "Clean coal electricity buyer" means (1) each electric
11 utility and (2) each alternative electric retail supplier that
12 is subject to the requirements of subsection (d) of Section
13 1-75 of this Act and paragraph (5) of subsection (d) of Section
14 16-115 of the Public Utilities Act.

15 "Clean coal energy" means all energy produced by the
16 initial clean coal facility.

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

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

16 "Clean coal fraction" means, with respect to a clean coal
17 electricity buyer for a month, a fraction, the numerator of
18 which is such clean coal electricity buyer's retail market
19 sales of electricity (expressed in kilowatthours sold) in the
20 State during the third month preceding the applicable month and
21 the denominator of which is the total retail market sales of
22 electricity (expressed in kilowatthours sold) in the State by
23 all clean coal electricity buyers during such third month
24 preceding the applicable month, as such fraction may be
25 adjusted pursuant to subparagraph (E) of paragraph (2) of
26 subsection (d) of Section 1-75 of this Act.

1 "Clean coal SNG brownfield facility" means a facility that
2 (1) has commenced construction by July 1, 2015 on an urban
3 brownfield site in a municipality with at least 1,000,000
4 residents; (2) uses a gasification process to produce
5 substitute natural gas; (3) uses coal as at least 50% of the
6 total feedstock over the term of any sourcing agreement with a
7 utility and the remainder of the feedstock may be either
8 petroleum coke or coal, with all such coal having a high
9 bituminous rank and greater than 1.7 pounds of sulfur per
10 million Btu content unless the facility reasonably determines
11 that it is necessary to use additional petroleum coke to
12 deliver additional consumer savings, in which case the facility
13 shall use coal for at least 35% of the total feedstock over the
14 term of any sourcing agreement; and (4) captures and sequesters
15 at least 85% of the total carbon dioxide emissions that the
16 facility would otherwise emit.

17 "Clean coal SNG facility" means a facility that uses a
18 gasification process to produce substitute natural gas, that
19 sequesters at least 90% of the total carbon dioxide emissions
20 that the facility would otherwise emit, that uses at least 90%
21 coal as a feedstock, with all such coal having a high
22 bituminous rank and greater than 1.7 pounds of sulfur per
23 million btu content, and that has a valid and effective permit
24 to construct emission sources and air pollution control
25 equipment and approval with respect to the federal regulations
26 for Prevention of Significant Deterioration of Air Quality

1 (PSD) for the plant pursuant to the federal Clean Air Act;
2 provided, however, a clean coal SNG brownfield facility shall
3 not be a clean coal SNG facility.

4 "Commission" means the Illinois Commerce Commission.

5 "Costs incurred in connection with the development and
6 construction of a facility" means:

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

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

14 (3) all origination, commitment, utilization,
15 facility, placement, underwriting, syndication, credit
16 enhancement, and rating agency fees;

17 (4) engineering, design, procurement, consulting,
18 legal, accounting, title insurance, survey, appraisal,
19 escrow, trustee, collateral agency, interest rate hedging,
20 interest rate swap, capitalized interest, contingency, as
21 required by lenders, and other financing costs, and other
22 expenses for professional services; and

23 (5) the costs of plans, specifications, site study and
24 investigation, installation, surveys, other Agency costs
25 and estimates of costs, and other expenses necessary or
26 incidental to determining the feasibility of any project,

1 together with such other expenses as may be necessary or
2 incidental to the financing, insuring, acquisition, and
3 construction of a specific project and starting up,
4 commissioning, and placing that project in operation.

5 "Delivery services" has the same definition as found in
6 Section 16-102 of the Public Utilities Act.

7 "Delivery services non-eligible retail customers" means
8 the retail customers in an electric utility's service area for
9 which the electric utility provides delivery services, but
10 which are not eligible retail customers as defined in
11 subsection (a) of Section 1-75 of this Act.

12 "Department" means the Department of Commerce and Economic
13 Opportunity.

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

15 "Demand-response" means measures that decrease peak
16 electricity demand or shift demand from peak to off-peak
17 periods.

18 "Distributed renewable energy generation device" means a
19 device that is:

20 (1) powered by wind, solar thermal energy,
21 photovoltaic cells and panels, biodiesel, crops and
22 untreated and unadulterated organic waste biomass, tree
23 waste, and hydropower that does not involve new
24 construction or significant expansion of hydropower dams;

25 (2) interconnected at the distribution system level of
26 either an electric utility as defined in this Section, an

1 alternative retail electric supplier as defined in Section
2 16-102 of the Public Utilities Act, a municipal utility as
3 defined in Section 3-105 of the Public Utilities Act, or a
4 rural electric cooperative as defined in Section 3-119 of
5 the Public Utilities Act;

6 (3) located on the customer side of the customer's
7 electric meter and is generally used to offset that
8 customer's electricity load; and

9 (4) limited in nameplate capacity to no more than 2,000
10 kilowatts.

11 "Energy efficiency" means measures that reduce the amount
12 of electricity or natural gas required to achieve a given end
13 use.

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

16 "Excluded renewable energy resources contract costs" means
17 the amount by which the costs of renewable energy resources,
18 purchased for a particular year to meet the renewable energy
19 resources standards of paragraph (1) of subsection (c) of
20 Section 1-75 of this Act applicable to the load of an electric
21 utility's eligible retail customers pursuant to a contract with
22 a term greater than one year that the electric utility entered
23 into in a previous year in accordance with a procurement
24 approved by the Commission pursuant to Section 16-111.5 of the
25 Public Utilities Act, exceed the limitations imposed by
26 paragraph (2) of subsection (c) of Section 1-75 of this Act for

1 the particular year.

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

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

10 "Initial clean coal facility" means an electric generating
11 facility using gasification technology that: (1) has a
12 nameplate capacity of at least 500 MW; (2) irrevocably commits
13 in its proposed sourcing agreement to use coal for at least 50%
14 of the total feedstock over the term of a sourcing agreement,
15 with all coal having high volatile bituminous rank and greater
16 than 1.7 pounds of sulfur per million btu content; (3) is
17 designed to capture and sequester at least 90% of the carbon
18 dioxide emissions that the portion of the facility, if any,
19 that produces SNG would otherwise emit and at least 50% of the
20 total carbon dioxide emissions that the facility as a whole
21 would otherwise emit; (4) absent an appeal of a permit or
22 regulatory order, is reasonably capable of achieving
23 commercial operation by no later than 5 years after the
24 execution of the sourcing agreements; (5) has a feasible
25 financing plan; (6) has a reliable and cost-effective
26 transmission plan to deliver energy to Commonwealth Edison

1 Company and Ameren Illinois; and (7) has a power block designed
2 not to exceed allowable emission rates for sulfur dioxide,
3 nitrogen oxides, carbon monoxide, particulates, and mercury
4 for a natural gas-fired combined-cycle facility the same size
5 as and in the same location as the electric generating facility
6 at the time the electric generating facility obtains an
7 approved air permit.

8 "Large electric customer" means a customer that (1) obtains
9 retail electric service in the State from an electric utility
10 or an alternative retail electric supplier and (2) is not a
11 small electric customer.

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

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

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

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

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

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

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

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

9 "Renewable energy resources" includes energy and its
10 associated renewable energy credit or renewable energy credits
11 from wind, solar thermal energy, photovoltaic cells and panels,
12 biodiesel, anaerobic digestion, crops and untreated and
13 unadulterated organic waste biomass, tree waste, hydropower
14 that does not involve new construction or significant expansion
15 of 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 "Revenue bond" means any bond, note, or other evidence of
26 indebtedness issued by the Authority, the principal and

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

3 "Sequester" means permanent storage of carbon dioxide by
4 injecting it into a saline aquifer, a depleted gas reservoir,
5 or an oil reservoir, directly or through an enhanced oil
6 recovery process that may involve intermediate storage,
7 regardless of whether these activities are conducted by a clean
8 coal facility, the initial clean coal facility, a clean coal
9 SNG facility, a clean coal SNG brownfield facility, or a party
10 with which a clean coal facility, initial clean coal facility,
11 ~~or~~ clean coal SNG facility, or clean coal SNG brownfield
12 facility has contracted for such purposes.

13 "Service area" has the same definition as found in Section
14 16-102 of the Public Utilities Act.

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

1 SNG brownfield facility and the gas utility, which agreement
2 shall have the terms and conditions meeting the requirements of
3 subsection (h-1) of Section 9-220 of the Public Utilities Act.

4 "Small electric customer" means a residential retail
5 electric customer that obtains electric service in the State
6 from an electric utility or an alternative retail electric
7 supplier.

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

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

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

7 (Source: P.A. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09;
8 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10; 97-96, eff.
9 7-13-11; 97-239, eff. 8-2-11; 97-491, eff. 8-22-11; revised
10 9-7-11.)

11 (20 ILCS 3855/1-20)

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

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

14 (1) Develop electricity procurement plans to ensure
15 adequate, reliable, affordable, efficient, and
16 environmentally sustainable electric service at the lowest
17 total cost over time, taking into account any benefits of
18 price stability, for electric utilities that on December
19 31, 2005 provided electric service to at least 100,000
20 customers in Illinois and for small multi-jurisdictional
21 electric utilities that (A) on December 31, 2005 served
22 less than 100,000 customers in Illinois and (B) request a
23 procurement plan for their Illinois jurisdictional load.
24 The procurement plans shall be updated on an annual basis
25 and shall include electricity generated from renewable

1 resources sufficient to achieve the standards specified in
2 this Act. For periods beginning on and after June 1, 2012,
3 the procurement plans shall also include procurement of
4 renewable energy credits, in accordance with subsection
5 (c) of Section 1-75 of this Act, in amounts projected to be
6 sufficient to meet the renewable energy resources standard
7 specified in subsection (c) of Section 1-75 of this Act
8 with respect to the kilowatthour usage of delivery services
9 non-eligible retail customers in such electric utilities'
10 service areas.

11 (2) Conduct competitive procurement processes to
12 procure the supply resources identified in the procurement
13 plan, pursuant to Section 16-111.5 of the Public Utilities
14 Act.

15 (3) Develop electric generation and co-generation
16 facilities that use indigenous coal or renewable
17 resources, or both, financed with bonds issued by the
18 Illinois Finance Authority.

19 (4) Supply electricity from the Agency's facilities at
20 cost to one or more of the following: municipal electric
21 systems, governmental aggregators, or rural electric
22 cooperatives in Illinois.

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

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

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

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

8 (4) To obtain and employ personnel and hire consultants
9 that are necessary to fulfill the Agency's purposes, and to
10 make expenditures for that purpose within the
11 appropriations for that purpose.

12 (5) To purchase, receive, take by grant, gift, devise,
13 bequest, or otherwise, lease, or otherwise acquire, own,
14 hold, improve, employ, use, and otherwise deal in and with,
15 real or personal property whether tangible or intangible,
16 or any interest therein, within the State.

17 (6) To acquire real or personal property, whether
18 tangible or intangible, including without limitation
19 property rights, interests in property, franchises,
20 obligations, contracts, and debt and equity securities,
21 and to do so by the exercise of the power of eminent domain
22 in accordance with Section 1-21; except that any real
23 property acquired by the exercise of the power of eminent
24 domain must be located within the State.

25 (7) To sell, convey, lease, exchange, transfer,
26 abandon, or otherwise dispose of, or mortgage, pledge, or

1 create a security interest in, any of its assets,
2 properties, or any interest therein, wherever situated.

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

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

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

25 (11) To borrow money at such rate or rates of interest
26 as the Agency may determine, issue its notes, bonds, or

1 other obligations to evidence that indebtedness, and
2 secure any of its obligations by mortgage or pledge of its
3 real or personal property, machinery, equipment,
4 structures, fixtures, inventories, revenues, grants, and
5 other funds as provided or any interest therein, wherever
6 situated.

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

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

15 (14) To negotiate and enter into agreements with
16 trustees or receivers appointed by United States
17 bankruptcy courts or federal district courts or in other
18 proceedings involving adjustment of debts and authorize
19 proceedings involving adjustment of debts and authorize
20 legal counsel for the Agency to appear in any such
21 proceedings.

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

25 (16) To enter into management agreements for the
26 operation of any of the property or facilities owned by the

1 Agency.

2 (17) To enter into an agreement to transfer and to
3 transfer any land, facilities, fixtures, or equipment of
4 the Agency to one or more municipal electric systems,
5 governmental aggregators, or rural electric agencies or
6 cooperatives, for such consideration and upon such terms as
7 the Agency may determine to be in the best interest of the
8 citizens of Illinois.

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

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

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

19 (21) To accept and expend appropriations.

20 (22) To engage in any activity or operation that is
21 incidental to and in furtherance of efficient operation to
22 accomplish the Agency's purposes.

23 (23) To adopt, revise, amend, and repeal rules with
24 respect to its operations, properties, and facilities as
25 may be necessary or convenient to carry out the purposes of
26 this Act, subject to the provisions of the Illinois

1 Administrative Procedure Act and Sections 1-22 and 1-35 of
2 this Act.

3 (24) To establish and collect charges and fees as
4 described in this Act.

5 (25) To conduct competitive gasification feedstock
6 procurement processes to procure the feedstocks for the
7 clean coal SNG brownfield facility in accordance with the
8 requirements of Section 1-78 of this Act.

9 (26) To review, revise, and approve sourcing
10 agreements and mediate and resolve disputes between gas
11 utilities and the clean coal SNG brownfield facility
12 pursuant to subsection (h-1) of Section 9-220 of the Public
13 Utilities Act.

14 (27) To review, revise, and approve sourcing
15 agreements and mediate and resolve disputes between
16 electric utilities or alternative retail electric
17 suppliers and the initial clean coal facility pursuant to
18 paragraph (4) of subsection (d) of Section 1-75 of this
19 Act.

20 (28) To conduct competitive gasification feedstock
21 procurement processes to procure the feedstocks for the
22 initial clean coal facility in accordance with the
23 requirements of Section 1-79 of this Act.

24 (Source: P.A. 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10;
25 97-96, eff. 7-13-11; 97-325, eff. 8-12-11; revised 9-7-11.)

1 (20 ILCS 3855/1-56)

2 Sec. 1-56. Illinois Power Agency Renewable Energy
3 Resources Fund.

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

6 (b) The Illinois Power Agency Renewable Energy Resources
7 Fund shall be administered by the Agency to procure renewable
8 energy resources. Prior to June 1, 2011, resources procured
9 pursuant to this Section shall be procured from facilities
10 located in Illinois, provided the resources are available from
11 those facilities. If resources are not available in Illinois,
12 then they shall be procured in states that adjoin Illinois. If
13 resources are not available in Illinois or in states that
14 adjoin Illinois, then they may be purchased elsewhere.
15 Beginning June 1, 2011, resources procured pursuant to this
16 Section shall be procured from facilities located in Illinois
17 or states that adjoin Illinois. If resources are not available
18 in Illinois or in states that adjoin Illinois, then they may be
19 procured elsewhere. To the extent available, at least 75% of
20 these renewable energy resources shall come from wind
21 generation. Of the renewable energy resources procured
22 pursuant to this Section at least the following specified
23 percentages shall come from photovoltaics on the following
24 schedule: 0.5% by June 1, 2012; 1.5% by June 1, 2013; 3% by
25 June 1, 2014; and 6% by June 1, 2015 and thereafter. Of the
26 renewable energy resources procured pursuant to this Section at

1 least the following percentages shall come from distributed
2 renewable energy generation devices: 0.5% by June 1, 2013,
3 0.75% by June 1, 2014, and 1% by June 1, 2015 and thereafter.
4 To the extent available, half of the renewable energy resources
5 procured from distributed renewable energy generation shall
6 come from devices of less than 25 kilowatts in nameplate
7 capacity. Renewable energy resources procured from distributed
8 generation devices may also count towards the required
9 percentages for wind and solar photovoltaics. Procurement of
10 renewable energy resources from distributed renewable energy
11 generation devices shall be done on an annual basis through
12 multi-year contracts of no less than 5 years, and shall consist
13 solely of renewable energy credits.

14 The Agency shall create credit requirements for suppliers
15 of distributed renewable energy. In order to minimize the
16 administrative burden on contracting entities, the Agency
17 shall solicit the use of third-party organizations to aggregate
18 distributed renewable energy into groups of no less than one
19 megawatt in installed capacity. These third-party
20 organizations shall administer contracts with individual
21 distributed renewable energy generation device owners. An
22 individual distributed renewable energy generation device
23 owner shall have the ability to measure the output of his or
24 her distributed renewable energy generation device.

25 (c) The Agency shall procure renewable energy resources at
26 least once each year in conjunction with a procurement event

1 for electric utilities required to comply with Section 1-75 of
2 the Act and shall, whenever possible, enter into long-term
3 contracts on an annual basis for a portion of the incremental
4 requirement for the given procurement year.

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

10 (e) All renewable energy credits procured using monies from
11 the Illinois Power Agency Renewable Energy Resources Fund shall
12 be 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 Energy Resources Fund shall be made only upon
18 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 Energy Resources
26 Fund shall not be subject to sweeps, administrative charges, or

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

7 (i) The Illinois Power Agency Renewable Energy Resources
8 Fund shall be terminated upon depletion of all funds therein
9 through the purchase of renewable energy credits.

10 (Source: P.A. 96-159, eff. 8-10-09; 96-1000, eff. 7-2-10;
11 96-1437, eff. 8-17-10.)

12 (20 ILCS 3855/1-75)

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

16 (a) The Planning and Procurement Bureau shall each
17 year, beginning in 2008, develop procurement plans and
18 conduct competitive procurement processes in accordance
19 with the requirements of Section 16-111.5 of the Public
20 Utilities Act for the eligible retail customers of electric
21 utilities that on December 31, 2005 provided electric
22 service to at least 100,000 customers in Illinois, and for
23 years beginning on and after June 1, 2012, for the
24 procurement of renewable energy credits in respect of the
25 kilowatthour usage of delivery services non-eligible

1 mathematics, engineering, risk management, or a
2 related area of study;

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

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

9 (E) expertise in credit protocols and
10 familiarity with contract protocols;

11 (F) adequate resources to perform and fulfill
12 the required functions and responsibilities; and

13 (G) the absence of a conflict of interest and
14 inappropriate bias for or against potential
15 bidders or the affected electric utilities.

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

22 (A) direct previous experience administering a
23 large-scale competitive procurement process;

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

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

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

7 (E) expertise in credit and contract
8 protocols;

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

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

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

1 These parties shall, within 5 business days, notify the
2 Agency in writing if they object to any experts or
3 expert consulting firms on the lists. Objections shall
4 be based on:

5 (A) failure to satisfy qualification criteria;

6 (B) identification of a conflict of interest;

7 or

8 (C) evidence of inappropriate bias for or
9 against potential bidders or the affected
10 utilities.

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

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

26 (5) The Agency shall select an expert or expert

1 consulting firm to develop procurement plans based on
2 the proposals submitted and shall award one-year
3 contracts to those selected with an option for the
4 Agency for a one-year renewal.

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

15 (a-5) The Planning and Procurement Bureau shall at least
16 every 5 years beginning in 2012 develop feedstock procurement
17 plans and conduct competitive feedstock procurement processes
18 in accordance with the requirements of Section 1-79 of this
19 Act.

20 (1) The Agency shall, at least once every 5 years
21 beginning in 2012, issue a request for qualifications for
22 experts or expert consulting firms to develop the feedstock
23 procurement plans in accordance with Section 1-79 of this
24 Act. In order to qualify, an expert or, in the case of an
25 expert consulting firm, the individual who shall be
26 directly responsible for the work, must have:

1 (A) direct previous experience assembling large
2 scale feedstock supply plans or portfolios involving
3 coal and natural gas for industrial customers;

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

7 (C) ten years of experience in the energy sector,
8 including coal and gas procurement and managing fuel
9 supply risk;

10 (D) expertise in the feedstock markets, which may
11 be particularized to the specific type of feedstock to
12 be purchased in that procurement event;

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

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

17 (G) the absence of a conflict of interest and
18 inappropriate bias for or against potential bidders or
19 the initial clean coal facility.

20 (2) The Agency shall at least every 5 years beginning
21 in 2012, as needed, issue a request for qualifications for
22 a feedstock procurement administrator to conduct the
23 competitive feedstock procurement processes in accordance
24 with Section 1-79 of this Act. In order to qualify, an
25 expert or, in the case of an expert consulting firm, the
26 individual who shall be directly responsible for the work,

1 must have:

2 (A) direct previous experience administering a
3 large scale competitive feedstock procurement process
4 involving coal and natural gas;

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

7 (C) ten years of experience in the energy sector,
8 including coal and gas procurement and managing fuel
9 supply risk;

10 (D) expertise in feedstock market rules and
11 practices, which may be particularized to the specific
12 type of feedstock to be purchased in that procurement
13 event;

14 (E) expertise in credit and contract protocols;

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

17 (G) the absence of a conflict of interest and
18 inappropriate bias for or against potential bidders or
19 the initial clean coal facility.

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

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

12 Objections shall be based on:

13 (A) failure to satisfy qualification criteria;

14 (B) identification of a conflict of interest; or

15 (C) evidence of inappropriate bias for or against
16 potential bidders or the initial clean coal facility.

17 The Agency shall remove experts or expert consulting
18 firms from the lists within 10 days after receiving the
19 objections if there is a reasonable basis for an objection
20 and provide the updated lists to the initial clean coal
21 facility and other interested parties. If the Agency fails
22 to remove an expert or expert consulting firm from a list,
23 then an 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 10
26 days. There is no right of appeal of the Commission's

1 ruling.

2 (4) The Agency shall issue requests for proposals to
3 the qualified experts or expert consulting firms to develop
4 a feedstock procurement plan for the initial clean coal
5 facility and to serve as feedstock procurement
6 administrator.

7 (5) The Agency shall select an expert or expert
8 consulting firm to develop feedstock procurement plans
9 based on the proposals submitted and shall award at least
10 one-year contracts to those selected with an option for the
11 Agency for renewal for an additional length of time equal
12 to the term of the contract.

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

24 (b) The experts or expert consulting firms retained by
25 the Agency under subsection (a) of this Section shall, as
26 appropriate, prepare procurement plans, and conduct a

1 competitive procurement process as prescribed in Section
2 16-111.5 of the Public Utilities Act, to ensure adequate,
3 reliable, affordable, efficient, and environmentally
4 sustainable electric service at the lowest total cost over
5 time, taking into account any benefits of price stability,
6 for eligible retail customers of electric utilities that on
7 December 31, 2005 provided electric service to at least
8 100,000 customers in the State of Illinois, and for
9 eligible Illinois retail customers of small
10 multi-jurisdictional electric utilities that (i) on
11 December 31, 2005 served less than 100,000 customers in
12 Illinois and (ii) request a procurement plan for their
13 Illinois jurisdictional load.

14 (b-5) The experts or expert consulting firms retained by
15 the Agency pursuant to subsection (a-5) of this Section shall,
16 as appropriate, prepare feedstock procurement plans and
17 conduct a competitive feedstock procurement process as
18 prescribed in Section 1-79 of this Act to ensure adequate,
19 reliable, affordable feedstocks, taking into account any
20 benefits of price stability, for the initial clean coal
21 facility.

22 (c) Renewable portfolio standard.

23 (1) The procurement plans under subsection (a) of
24 this Section shall include cost-effective renewable
25 energy resources. A minimum percentage of each
26 utility's total supply to serve the load of eligible

1 retail customers, as defined in Section 16-111.5(a) of
2 the Public Utilities Act, procured for each of the
3 following years shall be generated from cost-effective
4 renewable energy resources: at least 2% by June 1,
5 2008; at least 4% by June 1, 2009; at least 5% by June
6 1, 2010; at least 6% by June 1, 2011; at least 7% by
7 June 1, 2012; at least 8% by June 1, 2013; at least 9%
8 by June 1, 2014; at least 10% by June 1, 2015; and
9 increasing by at least 1.5% each year thereafter to at
10 least 25% by June 1, 2025. For periods beginning on and
11 after June 1, 2012, the procurement plans shall include
12 the procurement of cost-effective renewable energy
13 credits equal to the projected kilowatthour usage of
14 the delivery services non-eligible retail customers
15 within the service area of the electric utility times
16 the applicable renewable energy resource percentage
17 for that year as set forth under this paragraph (1). To
18 the extent that it is available, at least 75% of the
19 renewable energy resources used to meet these
20 standards shall come from wind generation and,
21 beginning on June 1, 2011, at least the following
22 percentages of the renewable energy resources used to
23 meet these standards shall come from photovoltaics on
24 the following schedule: 0.5% by June 1, 2012, 1.5% by
25 June 1, 2013; 3% by June 1, 2014; and 6% by June 1,
26 2015 and thereafter. Of the renewable energy resources

1 procured pursuant to this Section at least the
2 following percentages shall come from distributed
3 renewable energy generation devices: 0.5% by June 1,
4 2013, 0.75% by June 1, 2014, and 1% by June 1, 2015 and
5 thereafter. To the extent available, half of the
6 renewable energy resources procured from distributed
7 renewable energy generation shall come from devices of
8 less than 25 kilowatts in nameplate capacity.
9 Renewable energy resources procured from distributed
10 generation devices may also count towards the required
11 percentages for wind and solar photovoltaics.
12 Procurement of renewable energy resources from
13 distributed renewable energy generation devices shall
14 be done on an annual basis through multi-year contracts
15 of no less than 5 years, and shall consist solely of
16 renewable energy credits.

17 The Agency shall create credit requirements for
18 suppliers of distributed renewable energy. In order to
19 minimize the administrative burden on contracting
20 entities, the Agency shall solicit the use of third-party
21 organizations to aggregate distributed renewable energy
22 into groups of no less than one megawatt in installed
23 capacity. These third-party organizations shall administer
24 contracts with individual distributed renewable energy
25 generation device owners. An individual distributed
26 renewable energy generation device owner shall have the

1 ability to measure the output of his or her distributed
2 renewable energy generation device. For purposes of this
3 subsection (c), "cost-effective" means that the costs of
4 procuring renewable energy resources to serve the load of
5 the electric utility's eligible retail customers and the
6 costs of procuring renewable energy credits with respect to
7 the kilowatthour usage of the delivery services
8 non-eligible retail customers within the electric
9 utility's service area do not cause the applicable limits
10 ~~limit~~ stated in paragraph (2) of this subsection (c) to be
11 exceeded and do not exceed benchmarks based on market
12 prices for renewable energy resources in the region, which
13 shall be developed by the procurement administrator, in
14 consultation with the Commission staff, Agency staff, and
15 the procurement monitor and shall be subject to Commission
16 review and approval.

17 (2) For purposes of this subsection (c), the
18 required procurement of cost-effective renewable
19 energy resources to serve the load of the electric
20 utility's eligible retail customers for a particular
21 year shall be measured as a percentage of the actual
22 amount of electricity (megawatt-hours) supplied by the
23 electric utility to eligible retail customers in the
24 planning year ending immediately prior to the
25 procurement and, for periods beginning on and after
26 June 1, 2012, the required procurement of cost

1 effective renewable energy credits with respect to the
2 delivery services non-eligible retail customers of the
3 electric utility shall be based on the actual amount of
4 electricity (megawatt-hours) delivered by the electric
5 utility to delivery services non-eligible retail
6 customers in its service area in the planning year
7 ending immediately prior to the procurement. For
8 purposes of this subsection (c), the amount paid per
9 kilowatthour means the total amount paid for electric
10 service expressed on a per kilowatthour basis. For
11 purposes of this subsection (c), the total amount paid
12 for electric service includes without limitation
13 amounts paid for supply, transmission, distribution,
14 surcharges, and add-on taxes.

15 Notwithstanding the requirements of this
16 subsection (c), the total of renewable energy
17 resources procured pursuant to the procurement plan
18 with respect to the load of the electric utility's
19 eligible retail customers for any single year shall be
20 reduced by an amount necessary to limit the annual
21 estimated average net increase due to the costs of
22 these resources included in the amounts paid by
23 eligible retail customers in connection with electric
24 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 For periods beginning on and after June 1, 2012,
4 any excluded renewable energy resources contract costs
5 shall be recoverable by the electric utility through
6 its tariffed charges for delivery services pursuant to
7 Section 16-108 of the Public Utilities Act to its
8 residential class delivery services non-eligible
9 retail customers.

10 Notwithstanding the requirements of this
11 subsection (c), for years beginning on and after June
12 1, 2012, the total amount of renewable energy credits
13 procured pursuant to the procurement plan with respect
14 to the kilowatthour usage of the delivery services
15 non-eligible retail customers in the electric
16 utility's service area shall be reduced by an amount
17 necessary to limit the cost of renewable energy credits
18 and excluded renewable energy resources costs included
19 in the electric utility's charges per kilowatthour for
20 delivery services to its delivery services
21 non-eligible retail customers to an amount equal to no
22 more than 2.015% of the amount paid by the electric
23 utility's eligible retail customers per kilowatthour
24 for electric service during the year ended May 31,
25 2007.

26 No later than June 30, 2011, the Commission shall

1 review the limitation on the amount of renewable energy
2 resources procured pursuant to this subsection (c) and
3 report to the General Assembly its findings as to
4 whether that limitation unduly constrains the
5 procurement of cost-effective renewable energy
6 resources.

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

1 ~~elsewhere and shall be counted towards compliance.~~

2 (4) The electric utility shall retire all
3 renewable energy credits used to comply with the
4 standard.

5 (5) Beginning with the year commencing June 1,
6 2010, and ending with the year commencing June 1, 2011,
7 an electric utility subject to this subsection (c)
8 shall apply the lesser of the maximum alternative
9 compliance payment rate or the most recent estimated
10 alternative compliance payment rate for its service
11 territory for the corresponding compliance period,
12 established pursuant to subsection (d) of Section
13 16-115D of the Public Utilities Act to its retail
14 customers that take service pursuant to the electric
15 utility's hourly pricing tariff or tariffs. The
16 electric utility shall retain all amounts collected as
17 a result of the application of the alternative
18 compliance payment rate or rates to such customers,
19 and, beginning in 2011, the utility shall include in
20 the information provided under item (1) of subsection
21 (d) of Section 16-111.5 of the Public Utilities Act the
22 amounts collected under the alternative compliance
23 payment rate or rates for the prior year ending May 31.
24 Notwithstanding any limitation on the procurement of
25 renewable energy resources imposed by item (2) of this
26 subsection (c), the Agency shall increase its spending

1 on the purchase of renewable energy resources to be
2 procured by the electric utility for the next plan year
3 by an amount equal to the amounts collected by the
4 utility under the alternative compliance payment rate
5 or rates in the prior year ending May 31. For years
6 commencing on and after June 1, 2012, the kilowatthours
7 supplied by the electric utility to its retail
8 customers that take service pursuant to the electric
9 utility's hourly pricing tariff or tariffs shall be
10 considered usage of delivery services non-eligible
11 retail customers.

12 (6) Each annual procurement plan for periods beginning
13 on and after June 1, 2012 shall include (i) the procurement
14 of electricity from cost-effective renewable energy
15 resources to meet the renewable energy resource
16 requirements specified in paragraph (2) of this subsection
17 (c) with respect to the load of the electric utility's
18 eligible retail customers and (ii) the procurement of
19 renewable energy credits to meet the renewable energy
20 resource requirements specified in paragraph (2) of this
21 subsection (c) with respect to the kilowatthour usage of
22 the electric utility's delivery services non-eligible
23 retail customers; provided that the electric utility's
24 obligation to purchase renewable energy credits with
25 respect to the kilowatthour usage of delivery services
26 non-eligible retail customers shall be reduced by the

1 amount of any purchases of renewable energy credits by the
2 Agency for the year in respect of the electric utility's
3 service area pursuant to Section 1-56 of this Act using the
4 Illinois Power Agency Renewable Energy Resources Fund. All
5 procurements of bundled renewable energy resources and
6 renewable energy credits in the procurement plans of the
7 electric utilities shall be pursuant to competitive
8 bidding processes and shall be approved by the Commission
9 pursuant to Section 16-111.5 of the Public Utilities Act.
10 Procurements of bundled renewable energy resources shall
11 used to secure supply from renewable energy assets that can
12 provide monthly energy quantity guarantees for peak and
13 off-peak wrap periods. Projects shall be chosen based on
14 the value of the energy procured. The value of the energy
15 shall be determined by the Agency by utilizing a "time of
16 day" methodology to evaluate the energy profile of each
17 project.

18 (d) Clean coal portfolio standard.

19 (1) The General Assembly finds that there are abundant
20 and cost-effective supplies of high volatile rank
21 bituminous coal with a sulfur content of at least 1.7
22 pounds per million btu energy content, and that it is
23 technologically feasible to produce electric energy using
24 such coal supplies reliably. The General Assembly further
25 finds that state-of-the-art gasification systems are
26 available to convert coal supplies with the foregoing

1 characteristics into gas and that it is feasible to use
2 such gas to generate electric energy without exceeding
3 allowable emission rates for sulfur dioxide, nitrogen
4 oxides, carbon monoxide, particulates, and mercury for a
5 natural gas-fired combined-cycle facility of the same size
6 as and in the same location as a clean coal facility
7 incorporating a gasification system and a combined cycle
8 power block. The General Assembly also finds that it is
9 feasible to engineer and construct systems designed to
10 capture and sequester the percentages of the carbon dioxide
11 emissions from clean coal facilities as specified in this
12 Act. Accordingly, the General Assembly finds it necessary
13 for the health, safety, welfare, and prosperity of Illinois
14 citizens to require Illinois electric utilities and
15 alternative retail electric suppliers to contract with the
16 initial clean coal facility to meet a portion of the needs
17 of each such electric utility's and alternative retail
18 electric supplier's retail load on the terms and conditions
19 described under this Act.

20 The procurement plans under subsection (a) of this
21 Section shall include electricity generated using clean
22 coal. Each electric utility shall enter into one or more
23 sourcing agreements with the initial clean coal facility,
24 as provided in paragraph (3) of this subsection (d),
25 covering electricity generated by the initial clean coal
26 facility representing (A) at least 5% of that ~~each~~

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

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

26 (B) Utilities shall maintain adequate records

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

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

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

25 Notwithstanding the requirements of this subsection
26 (d), the total amount purchased ~~paid~~ under sourcing

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

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

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

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

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

25 (E) thereafter;

26 (i) A calculation shall be made for each year to determine

1 ~~whether , the total amount paid under sourcing~~
2 ~~agreements with clean coal facilities pursuant to~~
3 ~~the procurement plan for any single year shall be~~
4 ~~reduced by an amount necessary to limit the~~
5 estimated average net per kilowatthour increase
6 due to the cost of electric power purchased under
7 sourcing agreements and these resources included
8 in the amounts paid by small electric eligible
9 ~~retail~~ customers in connection with electric
10 service exceeds ~~to no more than~~ the greater of (i)
11 2.015% of the amount paid per kilowatthour by
12 eligible retail ~~these~~ customers during the year
13 ending May 31, 2009 or (ii) the incremental amount
14 per kilowatthour paid for these resources in 2013.
15 These requirements may be altered only as provided
16 by statute. For purposes of such calculation, such
17 average net per kilowatthour increase in rates of
18 small electric customers that are not eligible
19 retail customers shall be deemed to be equal to
20 such average net per kilowatthour increase in
21 rates of eligible retail customers.

22 (ii) If for any year the small customer rate
23 impact would exceed the limitation described in
24 item (i) of this subparagraph (E), the clean coal
25 fraction for each clean coal electricity buyer
26 shall be adjusted for such year in a manner that

1 will result in (a) the quantity of electric power
2 projected to be purchased by each clean coal
3 electricity buyer being reduced by an amount
4 sufficient to result in such deemed rate impact on
5 all small electric customers (whether served by
6 electric utilities or alternative retail electric
7 suppliers) being equal to such limitation for such
8 year and (b) any such reductions in amounts
9 allocated to the clean coal electricity buyers in
10 order to achieve the objective described in clause
11 (a) of this item (ii) being allocated to, and
12 purchased and paid for by, the clean coal
13 electricity buyers in proportion to their retail
14 sales to large electric customers.

15 (iii) Each year, after taking account of the
16 adjustment, if any, provided for in item (ii) of
17 this subparagraph (E), a calculation shall be made
18 to determine whether the large customer deemed
19 rate impact for such year exceeds \$0.005 per
20 kilowatthour. The "large customer deemed rate
21 impact" for any year is the projected increase in
22 electric rates of large electric customers
23 (whether served by electric utilities or
24 alternative retail electric suppliers) due to the
25 cost of electric power purchased under sourcing
26 agreements to the extent it is based on each clean

1 coal electricity buyer's retail sales to large
2 electric customers, which shall be calculated in
3 substantially the same manner as the calculation
4 of rate impact on small electric customers, and
5 shall assume that such cost of purchases under
6 sourcing agreements is passed through
7 proportionally by the clean coal electricity
8 buyers to their large electric customers. The
9 calculation of the large customer deemed rate
10 impact shall (a) assume that the total retail sales
11 (expressed in kilowatthours sold) to large
12 electric customers by all clean coal electricity
13 buyers for any year is the greater of the actual
14 amount of such sales in such year and the amount of
15 such sales in 2009 and (b) exclude from the
16 calculation any actual costs for such year
17 incurred by the initial clean coal facility to the
18 extent such costs exceed the corresponding amount
19 assumed in the "reference case" of the facility
20 cost report for the initial clean coal facility for
21 such year and are not principally within the
22 reasonable control of the initial clean coal
23 facility.

24 Any operating costs or revenues deviating from
25 the corresponding costs assumed in the "reference
26 case" of the facility cost report for the initial

1 clean coal facility as a result of changes in
2 market prices, including, but not limited to,
3 prices of coal, natural gas, electricity,
4 by-products, and emissions allowances, shall be
5 deemed to be outside of the reasonable control of
6 the initial clean coal facility and excluded from
7 the calculation.

8 Any costs exceeding the corresponding costs
9 assumed in the "reference case" of the facility
10 cost report for the initial clean coal facility as
11 a result of changes in capital costs, fixed
12 operating costs, variable operating costs,
13 operating efficiency, and availability, except in
14 each case to the extent resulting from a change in
15 market prices, as described in the immediately
16 preceding paragraph, or from a change in law, as
17 defined in subsection (b) of Section 1-76 of this
18 Act, shall be deemed to be within the reasonable
19 control of the initial clean coal facility and
20 included in the calculation.

21 (iv) If for any year the large customer deemed
22 rate impact would exceed the limitation described
23 in item (iii) of this subparagraph (E), the
24 quantity of electric power required to be
25 purchased by each clean coal electricity buyer
26 that serves large electric customers under its

1 sourcing agreement for such year shall be reduced
2 by such amount as will result in the large customer
3 deemed rate impact being equal to such limitation
4 for such year, and the clean coal fractions of each
5 clean coal electricity buyer that serves large
6 electric customers shall be adjusted for such year
7 to reflect this reduction; provided, however, that
8 the reduction under this item (iv) shall not exceed
9 in any year an amount that would result in revenues
10 under the sourcing agreements being reduced by
11 more than \$50,000,000 in the aggregate for such
12 year. Any quantities of electric power not
13 required to be purchased pursuant to the operation
14 of the immediately preceding sentence may be
15 disposed of by the initial clean coal facility for
16 its own account, and the proceeds of any sales of
17 such electric power shall not be included in the
18 formula rate.

19 (v) The details of the calculations
20 contemplated by this subparagraph (E) shall be set
21 forth in the sourcing agreements.

22 (vi) No later than June 30, ~~2016~~ 2015, the
23 Commission shall review the limitation on the
24 total amount purchased ~~paid~~ under sourcing
25 agreements, if any, with the initial clean coal
26 facility ~~facilities~~ pursuant to this subsection

1 (d) and report to the General Assembly its findings
2 as to the effect of the ~~whether that~~ limitation on
3 the initial clean coal facility, electric
4 utilities, alternative retail electric suppliers,
5 and customers of the electric utilities and the
6 alternative retail electric suppliers ~~unduly~~
7 ~~constrains the amount of electricity generated by~~
8 ~~cost effective clean coal facilities that is~~
9 ~~covered by sourcing agreements.~~

10 (3) Initial clean coal facility. In order to promote
11 the use development of clean coal electric power facilities
12 in Illinois, each electric utility subject to this Section
13 shall execute a sourcing agreement to source electricity
14 from the initial clean coal facility. The Agency shall
15 accept applications to be designated the initial clean coal
16 facility for a period of 30 days after the effective date
17 of this amendatory Act of the 97th General Assembly. Each
18 application shall include a proposed sourcing agreement in
19 accordance with the requirements of this paragraph (3) and
20 information showing that the applicant meets the other
21 criteria set out in the definition of initial clean coal
22 facility provided in Section 1-10 of this Act. In the event
23 that only one proposed initial clean coal facility that
24 meets each of the requirements submits a proposed sourcing
25 agreement to the Agency within that time period, the Agency
26 shall select such proposed initial clean coal facility as

1 the initial clean coal facility. In the event that more
2 than one proposed initial clean coal facility that meets
3 each of the requirements submit a proposed sourcing
4 agreement to the Agency within that time period, the Agency
5 shall select as the initial clean coal facility the
6 electric generating facility that the Agency determines
7 best promotes the needs and interests of the citizens of
8 the State of Illinois. In making such determination, the
9 Agency shall take into account for each proposed initial
10 clean coal facility the technical and economic feasibility
11 of such facility, including access to capital and the
12 financeability of the facility based upon the proposed
13 sourcing agreement, the projected environmental
14 performance of such facility, the ability of such facility
15 to be dispatched to support the transmission grid's
16 capability to integrate with wind, solar, and other
17 intermittent resources, and the reliability and cost of
18 electric transmission service from the facility to the
19 electric utilities. The Agency shall announce the
20 designation of the initial clean coal facility within 45
21 days after the effective date of this amendatory Act of the
22 97th General Assembly. a proposed clean coal facility in
23 Illinois (the "initial clean coal facility") that will have
24 a nameplate capacity of at least 500 MW when commercial
25 operation commences, that has a final Clean Air Act permit
26 on the effective date of this amendatory Act of the 95th

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

15 (A) provisions governing the price paid for
16 electricity generated by the initial clean coal
17 facility, which shall be determined according to
18 clause (iv) of subparagraph (B) of this paragraph (3);
19 ~~a formula contractual price (the "contract price")~~
20 ~~approved pursuant to paragraph (4) of this subsection~~
21 ~~(d), which shall:~~

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

1 ~~Federal Energy Regulatory Commission, which in any~~
2 ~~case may not exceed the lower of 11.5% or the rate~~
3 ~~of return approved by the General Assembly~~
4 ~~pursuant to paragraph (4) of this subsection (d);~~
5 ~~and~~

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

21 (B) power purchase provisions, which shall:

22 (i) provide that the utility party to the
23 sourcing agreement shall pay the contract price
24 under such sourcing agreement determined pursuant
25 to subparagraph (A);

26 (ii) require delivery of electricity by the

1 initial clean coal facility to the regional
2 transmission organization market of the utility
3 party to the sourcing agreement;

4 (iii) require the utility party to the
5 sourcing agreement to buy from the initial clean
6 coal facility in each hour an amount of energy
7 equal to all clean coal energy made available from
8 the initial clean coal facility during such hour
9 times the clean coal fraction for such utility for
10 the applicable month, provided that the amount
11 purchased by the utility in any year will be
12 limited by paragraph (2) of this subsection (d);

13 (iv) require the utility party to the sourcing
14 agreement to pay to the initial clean coal facility
15 for each month the following: the electric
16 generation variable charge multiplied by the
17 quantity of energy required to be purchased by such
18 utility in such month plus the product of the sum
19 of the fuel charge plus the fixed monthly charge,
20 based on the MW of nameplate capacity of the
21 initial clean coal facility's power block, for
22 such month, multiplied by the fraction determined
23 for the utility for such month according to clause
24 (iii) of this subparagraph (B); for purposes of
25 this clause (iv), "electric generation variable
26 charge", "fuel charge", and "fixed monthly charge"

1 shall each have the meaning ascribed to the term in
2 subsection (a) of Section 1-76 of this Act; and

3 (v) be considered pre-existing contracts in
4 the utility's procurement plans for eligible
5 retail customers; The provisions of this
6 subparagraph (B) are severable under Section 1.31
7 of the Statute on Statutes.

8 ~~(B) power purchase provisions, which shall:~~

9 ~~(i) provide that the utility party to such~~
10 ~~sourcing agreement shall pay the contract price~~
11 ~~for electricity delivered under such sourcing~~
12 ~~agreement;~~

13 ~~(ii) require delivery of electricity to the~~
14 ~~regional transmission organization market of the~~
15 ~~utility that is party to such sourcing agreement;~~

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

1 ~~sold) in the State by utilities during such prior~~
2 ~~month and the sales of electricity (expressed in~~
3 ~~kilowatthours sold) in the State by alternative~~
4 ~~retail electric suppliers during such prior month~~
5 ~~that are subject to the requirements of this~~
6 ~~subsection (d) and paragraph (5) of subsection (d)~~
7 ~~of Section 16 115 of the Public Utilities Act,~~
8 ~~provided that the amount purchased by the utility~~
9 ~~in any year will be limited by paragraph (2) of~~
10 ~~this subsection (d); and~~

11 ~~(iv) be considered pre-existing contracts in~~
12 ~~such utility's procurement plans for eligible~~
13 ~~retail customers;~~

14 (C) contract for differences provisions, which
15 shall:

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

1 ~~denominator of which is the total retail market~~
2 ~~sales of electricity (expressed in kilowatthours~~
3 ~~sold) in the State by utilities during such prior~~
4 ~~month and the sales of electricity (expressed in~~
5 ~~kilowatthours sold) in the State by alternative~~
6 ~~retail electric suppliers during such prior month~~
7 ~~that are subject to the requirements of this~~
8 ~~subsection (d) and paragraph (5) of subsection (d)~~
9 ~~of Section 16-115 of the Public Utilities Act,~~
10 provided that the amount purchased ~~paid~~ by the
11 utility in any year will be limited by paragraph
12 (2) of this subsection (d);

13 (ii) provide that the utility's payment
14 obligation in respect of the quantity of
15 electricity determined pursuant to the preceding
16 clause (i) for any month shall be ~~limited to an~~
17 ~~amount~~ equal to ~~(1)~~ the difference of the electric
18 generation variable charge, the fuel charge, and
19 the fixed monthly charge, that would be payable by
20 the utility for such month based on such quantity
21 of electricity between the contract price
22 ~~determined~~ pursuant to clause (iv) of subparagraph
23 (B) (A) of this paragraph (3), minus the product of
24 (1) of this subsection (d) and the day-ahead price
25 for electricity delivered to the regional
26 transmission organization market of the electric

1 utility that is party to such sourcing agreement
2 (or any successor delivery point at which such
3 utility's supply obligations are financially
4 settled on an hourly basis) (the "reference
5 price") on the day preceding the day on which the
6 electricity is delivered to the initial clean coal
7 facility busbar, multiplied by (2) the quantity of
8 electricity determined pursuant to the preceding
9 clause (i), calculated for each hour in such month;
10 and

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

14 (D) general provisions, which shall:

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

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

26 (iii) provide that all costs associated with

1 the initial clean coal facility will be
2 periodically reported to the Federal Energy
3 Regulatory Commission and to purchasers in
4 accordance with applicable laws governing
5 cost-based wholesale power contracts;

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

13 (v) require the owner of the initial clean coal
14 facility to comply with provisions reflecting
15 those set forth in Section 1-76.5 of this Act;
16 ~~provide documentation to the Commission each year,~~
17 ~~starting in the facility's first year of~~
18 ~~commercial operation, accurately reporting the~~
19 ~~quantity of carbon emissions from the facility~~
20 ~~that have been captured and sequestered and report~~
21 ~~any quantities of carbon released from the site or~~
22 ~~sites at which carbon emissions were sequestered~~
23 ~~in prior years, based on continuous monitoring of~~
24 ~~such sites. If, in any year after the first year of~~
25 ~~commercial operation, the owner of the facility~~
26 ~~fails to demonstrate that the initial clean coal~~

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

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

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

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

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

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

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

21 (ix) provide that each electric utility shall
22 have the right to determine whether the
23 obligations of the utility party under the
24 sourcing agreement shall be governed by the power
25 purchase provisions or the contract for
26 differences provisions before entering into the

1 sourcing agreements; the provisions of this item
2 (ix) are severable under Section 1.31 of the
3 Statute on Statutes;

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

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

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

24 (xii) ~~(xiii)~~ conform with customary lender
25 requirements in power purchase agreements used as
26 the basis for financing non-utility generators; ~~and~~

1 (xiii) provide for performance incentives
2 regarding availability, efficiency, and by-product
3 quantities, with premium performance and
4 shortfalls in performance to result in positive
5 and negative adjustments, respectively, to the
6 rate of return approved by the Commission,
7 provided that such rate of return in any year shall
8 not be decreased by more than \$25,000,000 or
9 increased by more than \$12,500,000 as a result of
10 such performance incentives. Such performance
11 incentives shall be structured so that any
12 increases in the rate of return as a result of such
13 performance incentives are designed not to exceed
14 the projected benefits to the buyers resulting
15 from the initial clean coal facility's achievement
16 of that performance incentive;

17 (xiv) include forecasting and scheduling
18 obligations that take account of the requirements
19 of the applicable regional transmission
20 organizations;

21 (xv) include operating guidelines relating to
22 the operating configuration and dispatch of the
23 initial clean coal facility, which guidelines
24 shall be subject to change from time to time with
25 input from a committee consisting of
26 representatives of the electric utilities and

1 alternative retail electric suppliers that are
2 parties to sourcing agreements with the initial
3 clean coal facility; such operating guidelines
4 shall take account the initial clean coal
5 facility's obligations under any agreement for the
6 purchase of SNG entered into pursuant to item (xvi)
7 of this subparagraph (D) and shall be based on
8 principles of economic dispatch and the assumption
9 that the variable cost of SNG purchased pursuant to
10 such agreement is equal to the market price of
11 natural gas delivered to the initial clean coal
12 facility; any actions taken or not taken by the
13 owner of the initial clean coal facility in
14 compliance with such operating guidelines shall be
15 deemed to be prudent, and the prudence of the costs
16 resulting from the action shall be evaluated in
17 light of the fact that the initial clean coal
18 facility is required to comply with such operating
19 guidelines; and

20 (xvi) authorize the initial clean coal
21 facility to enter into an agreement with a clean
22 coal SNG facility or a clean coal SNG brownfield
23 facility for the purchase by the initial clean coal
24 facility during all or part of the term of the
25 sourcing agreement a quantity of SNG produced by
26 such clean coal SNG facility or clean coal SNG

1 brownfield facility each year up to the lesser of
2 (x) the initial clean coal facility's requirements
3 for imported methane in such year and (y) 16% of
4 the SNG produced by such clean coal SNG facility or
5 clean coal SNG brownfield facility during such
6 year at a delivered price to be set forth in such
7 agreement; such agreement shall provide for the
8 timing of gas deliveries in a manner that
9 reasonably accommodates the initial clean coal
10 facility's fuel requirements and generation
11 schedule; the parties to such agreement may, if
12 they mutually agree, structure such agreement as a
13 financial settlement arrangement for the
14 quantities of SNG set forth above, and such
15 arrangement shall be deemed to be an agreement
16 contemplated by this item (xvi); the form for such
17 agreement shall be subject to approval by the
18 Agency pursuant to a procedure substantially the
19 same as that provided in paragraph (4) of this
20 subsection (d) for the sourcing agreements, with
21 the clean coal SNG facility or clean coal SNG
22 brownfield facility participating in place of each
23 electric utility, and pursuant to a schedule to be
24 proposed by the initial clean coal facility and
25 approved by the Agency.

26 (4) Effective date of sourcing agreements with the

1 initial clean coal facility. No later than 30 days after
2 the effective date of this amendatory Act of the 97th
3 General Assembly, the initial clean coal facility shall
4 submit a draft sourcing agreement to the Agency and each
5 electric utility required to enter into such agreements
6 pursuant to paragraph (3) of this subsection and the
7 initial clean coal facility and each such electric utility
8 shall promptly and diligently negotiate in good faith over
9 the terms of the sourcing agreement. Within 30 days after
10 receipt of the draft sourcing agreement, each such electric
11 utility shall provide the Agency and the owner of the
12 initial clean coal facility with its comments and
13 recommended revisions to the draft sourcing agreement.
14 Within 15 days after the receipt of the electric utility's
15 comments and recommended revisions, the owner of the
16 initial clean coal facility shall submit its responsive
17 comments and a further revised draft of the sourcing
18 agreement to the Agency. The Agency shall review the draft
19 sourcing agreement and comments and retain an independent,
20 qualified, and experienced mediator to mediate disputes
21 over the draft sourcing agreement's terms. The mediator
22 shall not own or control any direct or indirect interest in
23 the initial clean coal facility and shall have no
24 contractual relationship with the initial clean coal
25 facility. The mediator shall have knowledge of the energy
26 industry.

1 If the parties to the sourcing agreement do not agree
2 on the terms in the sourcing agreement within 15 days after
3 receiving the owner's responsive comments and further
4 revised draft, then the mediator retained by the Agency
5 shall mediate the dispute between the parties. If the
6 parties are in agreement on the terms of the sourcing
7 agreement, then the Agency shall approve the final draft
8 sourcing agreement within 30 days after the parties reach
9 agreement and notify the Commission of that agreement. If,
10 within 30 days after the commencement of mediation, the
11 parties have failed to come to agreement, then the Agency
12 shall, with assistance, as appropriate, from the mediator
13 retained pursuant to this paragraph (4), review and revise
14 the draft sourcing agreement as necessary.

15 The Agency may approve a sourcing agreement only after
16 it finds the sourcing agreement is consistent with the
17 provisions of this Act and contains only terms that are
18 balanced and equitable and fairly protect the interests of
19 the parties to the sourcing agreement, with such approval
20 to occur no later than 60 days after the commencement of
21 the mediation. The Agency shall not withhold or condition
22 its approval of the sourcing agreement based upon least
23 cost resource principles or whether or not it would be
24 prudent for buyers to enter into such an agreement if there
25 were no legal requirement to do so, nor shall the
26 resolution of open issues be based on these principles.

1 If the sourcing agreement is approved, then each
2 electric utility required to enter into a sourcing
3 agreement shall have 30 days after either the Agency's
4 approval or the issuance of any necessary approval by the
5 Federal Energy Regulatory Commission, whichever is later,
6 to enter into the sourcing agreement. The Agency shall
7 submit the approved sourcing agreement to the Commission
8 within 15 days after approval. Each electric utility and
9 the initial clean coal facility shall pay a reasonable fee
10 as required by the Agency for its services under this
11 paragraph (4) and shall pay the mediator's reasonable fees,
12 if any. The Agency shall adopt and make public a policy
13 detailing the process for retaining a mediator under this
14 paragraph (4).

15 ~~(4) Effective date of sourcing agreements with the~~
16 ~~initial clean coal facility.~~ Any proposed sourcing
17 agreement with the initial clean coal facility shall not
18 become effective unless a facility cost report and
19 Commission report, as described in this paragraph (4), the
20 ~~following reports~~ are prepared and submitted, whether
21 prepared and submitted before or after the effective date
22 of this amendatory Act of the 97th General Assembly.~~and~~
23 ~~authorizations and approvals obtained:~~

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

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

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

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

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

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

1 ~~such agreement, approve the form of such~~
2 ~~agreement, and issue an order finding that the~~
3 ~~sourcing agreement is prudent and reasonable.~~

4 ~~The facility cost report shall be prepared as follows:~~

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

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

19 (ii) an estimate of the capital cost of the
20 balance of the plant, including any capital costs
21 associated with sequestration of carbon dioxide
22 emissions and all interconnects and interfaces
23 required to operate the facility, such as
24 transmission of electricity, construction or
25 backfeed power supply, pipelines to transport
26 substitute natural gas or carbon dioxide, potable

1 water supply, natural gas supply, water supply,
2 water discharge, landfill, access roads, and coal
3 delivery.

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

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

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

26 ~~(a)~~ The delivered fuel cost estimate will be

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

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

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

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

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

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

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

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

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

15 (e) The draft procurement plans are subject to public
16 comment, as required by Section 16-111.5 of the Public
17 Utilities Act and Section 1-78 of this Act.

18 (f) The Agency shall submit the final procurement plan
19 to the Commission. The Agency shall revise a procurement
20 plan if the Commission determines that it does not meet the
21 standards set forth in Section 16-111.5 of the Public
22 Utilities Act and Section 1-78 of this Act.

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

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

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

3 (i) The Agency shall assess fees to the initial clean coal
4 facility to recover the costs incurred in preparation of each
5 procurement plan for the initial clean coal facility.

6 (j) The General Assembly finds that enterprises owned by
7 minorities, women, and persons with disabilities are
8 under-represented in sales of goods and services used in the
9 construction of energy projects and accordingly deems it a
10 prudent business practice that is in the interests of the
11 people of the State of Illinois to develop and promote economic
12 opportunities for enterprises owned by minorities, women, and
13 persons with disabilities in the energy production industry.

14 The initial clean coal facility, any clean coal facility,
15 any clean coal SNG brownfield facility, and any clean coal SNG
16 facility shall include in any agreement to sell electric power
17 or SNG entered into pursuant to this Act provisions that
18 require the owner of the facility to make a good faith effort
19 to ensure that an amount equal to not less than 15% of the
20 value of its prime construction contract for the facility shall
21 be established as a goal to be awarded to minority owned
22 businesses, female owned businesses, and businesses owned by a
23 person with a disability; provided that at least 75% of the
24 amount of such total goal shall be for minority owned
25 businesses.

26 "Minority owned business", "female owned business", and

1 "business owned by a person with a disability" shall have the
2 meanings ascribed to them in Section 2 of the Business
3 Enterprise for Minorities, Females, and Persons with
4 Disabilities Act.

5 (k) Any clean coal SNG facility or clean coal SNG
6 brownfield facility shall be authorized to enter into an SNG
7 purchase agreement with the initial clean coal facility as
8 described in item (xvi) of subparagraph (D) of paragraph (3) of
9 subsection (d) of this Section.

10 (Source: P.A. 96-159, eff. 8-10-09; 96-1437, eff. 8-17-10;
11 97-325, eff. 8-12-11.)

12 (20 ILCS 3855/1-76 new)

13 Sec. 1-76. Costs and revenue recoverable by the initial
14 clean coal facility.

15 (a) The price paid for electricity generated by the initial
16 clean coal facility shall be based on a formula rate using a
17 cost of service methodology applicable to wholesale electric
18 power contracts employing a level or deferred capital component
19 and in accordance with the Uniform System of Accounts, subject
20 to and as specifically limited by the provisions set forth in
21 this Section.

22 The formula rate shall determine 3 components of the price
23 under the sourcing agreements: (1) a fuel charge, (2) an
24 electric generation variable charge, and (3) a fixed monthly
25 charge. The fuel charge for any month shall be stated in

1 dollars per month and shall consist of the total actual fuel
2 costs incurred, after taking account of the subtraction of
3 miscellaneous net revenue as provided in subsection (d) of this
4 Section. The electric generation variable charge for any period
5 shall be stated in dollars per MWh and shall consist of all
6 costs incurred by the initial clean coal facility, other than
7 fuel costs, associated with production of electric energy by
8 the initial clean coal facility's power block, which costs vary
9 directly with the level of production of electric energy. The
10 fixed monthly charge shall be stated in dollars per month per
11 MW of nameplate capacity of the initial clean coal facility's
12 power block and shall consist of all costs incurred by the
13 initial clean coal facility that are described in, and as
14 limited by the provisions of, subsections (b), (c), (d), (e),
15 (f), and (g) of this Section, other than the costs incorporated
16 into the calculation of the fuel charge and the electric
17 generation variable charge.

18 No later than 30 days after the approval of the sourcing
19 agreement by the Agency pursuant to paragraph (4) of subsection
20 (d) of Section 1-75 of this Act, the initial clean coal
21 facility shall provide to the Commission projections of its
22 costs for the term of the sourcing agreements. Within 90 days
23 thereafter, the Commission shall, based upon such projections
24 and the provisions of this Section, determine the projected
25 components of the price for each year for the initial clean
26 coal facility. No later than 6 months before the expected

1 commencement of commercial operation of the initial clean coal
2 facility and the commencement of each operating year
3 thereafter, the initial clean coal facility shall submit to the
4 Commission projections of its costs and dispatch levels for the
5 upcoming year. Within 120 days after the receipt of the initial
6 clean coal facility's projections of its costs and dispatch
7 levels for the upcoming year, the Commission shall calculate a
8 fixed monthly charge and an electric generation variable charge
9 for the upcoming year using the inputs to the formula rate
10 under the provisions of this Section. If the Commission does
11 not calculate such components of the price for any year as of
12 the beginning of such year, then the initial clean coal
13 facility shall calculate such components of the price based
14 upon its projections and the provisions of this Section, with
15 any subsequent cost disallowance by the Commission to be
16 reflected through a true-up of costs in the next year. If at
17 any time the Commission, acting in accordance with this
18 Section, disallows any cost, then the amount of such
19 disallowance shall be incorporated as a deduction into the
20 calculation of the fixed monthly charge and the electric
21 generation variable charge, as applicable, for the next year.

22 (b) Capital costs set by the Commission according to this
23 subsection (b) shall be included in the formula rate. "Capital
24 costs" means costs for the purchase of land, buildings,
25 construction, and equipment to be used in the production of
26 electricity, and other costs recorded in the Electric Plant

1 Accounts and other applicable Balance Sheet Accounts of the
2 Uniform System of Accounts for the initial clean coal facility.
3 The Capital Development Board shall calculate a range of
4 capital costs that it believes would be a reasonable cost for
5 the initial clean coal facility. The Capital Development Board
6 shall commence performing its responsibilities under this
7 subsection (b) within 30 days after the effective date of this
8 amendatory Act of the 97th General Assembly. In determining a
9 range of capital costs, the Capital Development Board shall
10 base its evaluation and judgment on professional engineering
11 and regulatory accounting principles and include any cost
12 information and update on costs that may be provided by the
13 initial clean coal facility and shall not employ least cost
14 resource principles. In addition, the Capital Development
15 Board may:

16 (1) include in its consideration the information in a
17 facility cost report, if any, that was prepared and
18 submitted by the initial clean coal facility to the
19 Commission in accordance with paragraph (4) of subsection
20 (d) of Section 1-75 of this Act;

21 (2) consult as much as it deems necessary with the
22 initial clean coal facility;

23 (3) conduct whatever research and investigation it
24 deems necessary; and

25 (4) retain third parties to assist in its
26 determination, provided that such third parties shall not

1 own or control any direct or indirect interest in the
2 initial clean coal facility and shall have no contractual
3 relationship with the initial clean coal facility.

4 The initial clean coal facility shall cooperate with the
5 Capital Development Board in any investigation it deems
6 necessary.

7 The Capital Development Board shall make its final
8 determination of the range of capital costs confidentially and
9 shall submit that range to the Commission in a confidential
10 filing no later than 90 days after the Capital Development
11 Board is required to commence performing its responsibilities
12 under this subsection (b). The initial clean coal facility
13 shall submit to the Commission its estimate of the capital
14 costs to be included in the formula rate. Only after the
15 initial clean coal facility has submitted this estimate shall
16 the Commission publicly announce the range of capital costs
17 submitted by the Capital Development Board. In the event that
18 the estimate submitted by the initial clean coal facility is
19 within or below the range submitted by the Capital Development
20 Board, the initial clean coal facility's estimate shall be
21 approved by the Commission as the amount of pre-approved
22 capital costs.

23 In the event that the estimate submitted by the initial
24 clean coal facility is above the range submitted by the Capital
25 Development Board, the amount of capital costs at the lowest
26 end of the range submitted by the Capital Development Board

1 shall be approved by the Commission as the amount of
2 pre-approved capital costs. "Pre-approved capital costs" means
3 the amount of capital costs that will be included in the
4 formula rate to the extent such costs are actually incurred,
5 with no further review or approval with respect to whether they
6 are prudently incurred. The Commission's determination of
7 pre-approved capital costs shall be made within 15 days after
8 the initial clean coal facility submits its capital cost
9 estimate. The Commission's decision regarding pre-approved
10 capital costs shall be final and shall not be subject to
11 judicial or administrative review.

12 Once made, the Commission's determination of the amount of
13 pre-approved capital costs may not be increased unless the
14 Commission determines that the incremental costs are
15 reasonable, in which case one-third of such reasonable
16 incremental costs shall be included in the formula rate and
17 recoverable by the initial clean coal facility and two-thirds
18 of such costs shall be borne by the initial clean coal facility
19 and its contractors, provided that to the extent such
20 reasonable incremental costs are the result of change in law or
21 non-insurable force majeure, all of such costs shall be
22 included in the formula rate and recoverable by the initial
23 clean coal facility.

24 "Change in law" means any change, including any enactment,
25 repeal, or amendment, in a law, ordinance, rule, regulation,
26 interpretation, permit, license, consent or order, including

1 those relating to taxes or to environmental matters, or in the
2 interpretation or application thereof by any governmental
3 authority occurring after May 31, 2011.

4 "Non-insurable force majeure" means events outside of the
5 reasonable control of the owner of the initial clean coal
6 facility and its contractors, subcontractors, and agents that
7 are not included on a list, to be attached to the sourcing
8 agreement and subject to the procedures set forth in paragraph
9 (4) of subsection (d) of Section 1-75 of this Act, of events
10 that are customarily covered by builder's risk insurance
11 policies for the construction of electric generating plants and
12 other large process plants in the United States. "Non-insurable
13 force majeure" shall not include changes in prices or other
14 changes in market conditions.

15 Any rebates, refunds, or other payments received by the
16 owner of the initial clean coal facility from any of its
17 contractors with respect to the contractor bearing risk for
18 capital cost overruns shall be excluded from miscellaneous net
19 revenue and shall not otherwise reduce the costs of the owner
20 of the initial clean coal facility for purposes of the formula
21 rate. For purposes of this subsection (b), "reasonable" means
22 that the decisions, construction, and supervision of
23 construction by the owner of the initial clean coal facility
24 and its contractors underlying the initial capital cost and
25 significant additions to the initial capital cost of the
26 initial clean coal facility resulted in efficient, economical,

1 and timely construction. In determining the reasonableness of
2 the capital costs of the initial clean coal facility, the
3 Commission shall consider the knowledge and circumstances
4 prevailing at the time of each relevant decision or action of
5 the owner of the initial clean coal facility and its
6 contractors.

7 The Commission may determine that the amount of
8 pre-approved capital costs may be increased only after notice
9 and a hearing. At that hearing, the Capital Development Board
10 shall submit a report recommending whether the incremental
11 costs should be approved in full or in part or rejected. The
12 Commission may approve in whole or in part or reject the
13 incremental capital costs based on whether they are reasonable.
14 At the request of the owner of the initial clean coal facility
15 made not more often than once every 12 months during the
16 construction period of the initial clean coal facility, the
17 Commission shall conduct interim reviews to determine whether
18 capital costs specified in such request and incurred or to be
19 incurred by the owner of the initial clean coal facility, are
20 reasonable.

21 The Capital Development Board shall monitor the
22 construction of the initial clean coal facility for the full
23 duration of construction. The Capital Development Board, in its
24 discretion, may retain third parties to facilitate such
25 monitoring, provided that such third parties shall not own or
26 control any direct or indirect interest in the initial clean

1 coal facility and shall have no contractual relationship with
2 the initial clean coal facility. The initial clean coal
3 facility shall pay a reasonable fee as required by the Capital
4 Development Board for the Capital Development Board's services
5 under this subsection (b), and such fee shall not be passed
6 through to a utility or its customers. If a third party is
7 retained by the Capital Development Board for the determination
8 of a range of capital costs or monitoring of construction, the
9 initial clean coal facility must pay for the third party's
10 reasonable fees, and such costs may not be passed through to a
11 utility or its customers.

12 The provisions of this subsection (b) shall apply to the
13 capital costs for the initial construction of the initial clean
14 coal facility and not to capital costs incurred beyond the
15 initial construction, including costs for replacement of
16 equipment and capital improvements, which capital costs shall
17 be subject to review by the Commission and included in the
18 formula rate to the extent they are determined to be prudently
19 incurred.

20 (c) Operations and maintenance costs set by the Commission
21 according to this subsection (c) shall be included in the
22 formula rate. Operations and maintenance costs mean costs
23 incurred for the administration, supervision, operation,
24 maintenance, preservation, and protection of the initial clean
25 coal facility's physical plant and other costs recorded in the
26 Operation and Maintenance Expense Accounts and other

1 applicable Income Statement Accounts of the Uniform System of
2 Accounts for the initial clean coal facility. The Commission
3 shall assess the prudence of the operations and maintenance
4 costs for the initial clean coal facility and shall allow the
5 initial clean coal facility to include in the formula rate only
6 those costs the Commission deems to be prudent. The Commission
7 may in its discretion retain an expert to assist in its review
8 of operations and maintenance costs. The initial clean coal
9 facility shall pay for the expert's fees if an expert is
10 retained by the Commission, and such costs may not be passed
11 through to a utility or its customers. The Commission's
12 determination regarding the amount of operations and
13 maintenance costs that may be included in the formula rate for
14 each year shall be made in accordance with this Section.

15 (d) Actual fuel costs shall be set by the Agency through a
16 SNG feedstock procurement, pursuant to Section 1-79 of this
17 Act, to be performed at least every 5 years, and purchased by
18 the initial clean coal facility pursuant to a reasonable fuel
19 supply plan, with coal comprising at least 50% of the total
20 feedstock over the term of a sourcing agreement with all coal
21 having high volatile bituminous rank and greater than 1.7
22 pounds of sulfur per million btu content, SNG derived from coal
23 comprising at least 50% of the fuel to generate electricity,
24 SNG derived from biomass comprising up to 10% of the fuel to
25 generate electricity with the approval of the Commission, and
26 natural gas comprising the remainder of the fuel to generate

1 electricity. Actual fuel costs shall consist of all costs
2 associated with the procurement of fuel, including, but not
3 limited to, commodity costs, transportation costs,
4 administrative costs, and costs relating to the procurement
5 process. Actual fuel costs, as so determined, shall be reduced
6 by miscellaneous net revenue received by the owner of the
7 initial clean coal facility, including, but not limited to, net
8 revenue from the sale of emission allowances, if any,
9 substitute natural gas, if any, grants or other support
10 provided by the State of Illinois or the United States
11 Government, firm transmission rights, if any, by-products
12 produced by the facility, any capacity derived from the
13 facility and bid into the capacity markets or otherwise sold
14 and any energy generated as a result of such capacity being
15 called, whether generated from synthesis gas derived from coal,
16 from SNG, or from natural gas, less non-generation variable
17 costs. "Non-generation variable costs" means all costs, other
18 than fuel costs, associated with the production of SNG that is
19 not consumed by the initial clean coal facility's power block,
20 which costs vary directly with the level of production of SNG.
21 Actual fuel costs shall be calculated pursuant to this
22 subsection (d) and included in the formula rate without any
23 determination by the Commission as to prudence.

24 (e) Sequestration costs set by the Commission according to
25 this subsection (e) shall be included in the formula rate.

26 "Sequestration costs" means costs incurred to (1) capture

1 carbon dioxide; (2) compress carbon dioxide; (3) build,
2 operate, and maintain a sequestration site in which carbon
3 dioxide may be injected; (4) build, operate, and maintain a
4 carbon dioxide pipeline, which is owned by the initial clean
5 coal facility; (5) transport the carbon dioxide to a
6 sequestration site or a pipeline; and (6) perform monitoring,
7 verification and other activities associated with carbon
8 capture and sequestration.

9 "Sequestration capital costs" means sequestration costs
10 recorded in the Electric Plant Accounts and other applicable
11 Balance Sheet Accounts of the Uniform System of Accounts for
12 the initial clean coal facility.

13 "Sequestration operations and maintenance costs" means
14 sequestration costs that are recorded in the Operation and
15 Maintenance Expense Accounts and other applicable Income
16 Statement Accounts of the Uniform System of Accounts for the
17 initial clean coal facility and shall include maintenance,
18 monitoring, and verification costs.

19 The Capital Development Board shall calculate an estimate
20 of sequestration capital costs that it believes would be a
21 reasonable cost for the initial clean coal facility's
22 sequestration facilities and an estimate of average annual
23 sequestration operations and maintenance costs that it
24 believes would be a reasonable average annual operation and
25 maintenance cost for the initial clean coal facility's carbon
26 capture and sequestration activities. The Capital Development

1 Board shall commence performing its responsibilities under
2 this subsection (e) within 30 days after the effective date of
3 this amendatory Act of the 97th General Assembly. In
4 determining sequestration capital costs and sequestration
5 operations and maintenance costs, the Capital Development
6 Board shall base its evaluation and judgment on professional
7 engineering and regulatory accounting principles and include
8 any cost information and update on costs that may be provided
9 by the initial clean coal facility and shall not employ least
10 cost resource principles. In addition the Capital Development
11 Board may: (A) include in its consideration cost estimate
12 information in a facility cost report, if any, that was
13 prepared and submitted by the initial clean coal facility to
14 the Commission in accordance with paragraph (4) of subsection
15 (d) of Section 1-75 of this Act; (B) consult as much as it
16 deems necessary with the initial clean coal facility; (C)
17 conduct whatever research and investigation it deems
18 necessary; and (D) retain third parties to assist in its
19 determination, provided that such third parties shall not own
20 or control any direct or indirect interest in the initial clean
21 coal facility and shall have no contractual relationship with
22 the initial clean coal facility. The initial clean coal
23 facility shall cooperate with the Capital Development Board in
24 any investigation it deems necessary.

25 The Capital Development Board shall make its final
26 determination of sequestration capital costs and sequestration

1 operations and maintenance costs and submit such determination
2 to the Commission no later than 90 days after the Capital
3 Development Board is required to commence performing its
4 responsibilities under this subsection (e). The Capital
5 Development Board shall monitor construction of the
6 sequestration facilities in the same manner, and with the same
7 rights to retain an expert and recover the costs thereof, as
8 set forth in subsection (b) of this Section.

9 "Actual sequestration costs" means for any year the sum of:
10 (i) the annual amortized portion of sequestration capital
11 costs, based on level amortization from the later of the date
12 such costs are incurred and the commercial operation date until
13 the end of the term of the sourcing agreements; (ii) the rate
14 of return approved by the Commission pursuant to subsection (f)
15 of this Section applied to sequestration capital costs; and
16 (iii) the sequestration operations and maintenance costs
17 incurred in such year.

18 "Target sequestration costs" means the sum of: (i) the
19 annual amortized portion of the estimated sequestration
20 capital costs determined by the Capital Development Board,
21 based on level amortization from the later of the date such
22 costs are incurred and the commercial operation date until the
23 end of the term of the sourcing agreements; (ii) the rate of
24 return approved by the Commission pursuant to subsection (f) of
25 this Section applied to the estimated sequestration capital
26 costs determined by the Capital Development Board; (iii) the

1 estimate of average annual sequestration operations and
2 maintenance costs determined by the Capital Development Board,
3 escalated in accordance with an escalation factor to be
4 provided in the sourcing agreement from the date of the Capital
5 Development Board's determination to the mid-point of the
6 applicable year; (iv) the sequestration cost underrun, if any,
7 for the immediately preceding year, except to the extent
8 applied to allow recovery of a sequestration cost overrun from
9 a prior year; and (v) any sequestration costs that are the
10 result of a change in law or non-insurable force majeure.

11 "Sequestration cost underrun" means for any year the
12 excess, if any, of target sequestration costs for such year
13 over actual sequestration costs for such year.

14 "Sequestration cost overrun" means for any year the excess,
15 if any, of actual sequestration costs for such year over target
16 sequestration costs for such year.

17 For any year in which there is a sequestration cost
18 underrun, all actual sequestration costs shall be conclusively
19 deemed to be prudent and shall be included in the formula rate
20 with no further review or approval in respect of whether they
21 are prudently incurred. The Commission shall review the costs
22 to ensure they are mathematically correct.

23 For any year in which there is a sequestration cost
24 overrun, the Commission shall determine whether all or a
25 portion of such sequestration cost overrun was prudently
26 incurred, except that the rate of return shall not be subject

1 to review. If the Commission determines that the sequestration
2 cost overrun was prudently incurred, one-third of such
3 sequestration cost overrun shall be included in the formula
4 rate and recoverable by the initial clean coal facility and
5 two-thirds of such sequestration cost overrun shall be borne by
6 the initial clean coal facility and not passed through to a
7 utility, an alternative retail electric supplier, or the
8 customers of a utility unless and until there is a
9 sequestration cost underrun for a subsequent year, in which
10 event the sequestration cost overrun will be included in the
11 formula rate and recoverable by the initial clean coal facility
12 up to the amount of the sequestration cost underrun; provided,
13 however, that if for any year two-thirds of such sequestration
14 cost overrun exceeds the difference of \$20,000,000 minus the
15 amount of penalty, if any, payable by the initial clean coal
16 facility pursuant to Section 1-76.5 with respect to that year,
17 the amount of such excess shall also be included in the formula
18 rate and recoverable by the initial clean coal facility. The
19 detailed procedures for implementing this provision shall be
20 set forth in the sourcing agreements, which procedures shall
21 include a mechanism for equitably adjusting target
22 sequestration costs for any year in which the quantity of
23 carbon dioxide actually captured and sequestered by the initial
24 clean coal facility is greater than the quantity assumed in
25 calculating the estimated costs for such year.

26 "Change in law" means any change, including any enactment,

1 repeal, or amendment, in a law, ordinance, rule, regulation,
2 interpretation, permit, license, consent or order, including
3 those relating to taxes or to environmental matters, or in the
4 interpretation or application thereof by any governmental
5 authority occurring after May 31, 2011.

6 "Non-insurable force majeure" means events outside of the
7 reasonable control of the owner of the initial clean coal
8 facility and its contractors, subcontractors, and agents that
9 are not included on a list, to be attached to the sourcing
10 agreement and subject to the procedures set forth in paragraph
11 (4) of subsection (d) of Section 1-75 of this Act, of events
12 that are customarily covered by builder's risk insurance
13 policies for the construction of electric generating plants and
14 other large process plants in the United States. "Non-insurable
15 force majeure" shall not include changes in prices or other
16 changes in market conditions.

17 (f) The Commission shall determine within 120 days after
18 the effective date of this amendatory Act of the 97th General
19 Assembly or 120 days after the owner of the initial clean coal
20 facility files initial direct testimony regarding rate of
21 return with the Commission, whichever is later, the total rate
22 of return on invested capital for the initial clean coal
23 facility following notice and a public hearing. At the hearing,
24 all interested parties, including utilities, alternative
25 retail electric suppliers, the Attorney General, the Agency,
26 and customers, shall be given an opportunity to be heard. In

1 determining the rate of return, the Commission shall select a
2 sufficient return on investment so as to enable the initial
3 clean coal facility to attract capital in financial markets at
4 competitive rates. The Commission shall consider the rates of
5 return received by developers of facilities similar to the
6 initial clean coal facility inside or outside Illinois, the
7 need to balance an incentive for clean-coal technology with the
8 need to protect Illinois ratepayers from high electricity
9 costs, and any other information the Commission deems relevant.

10 The Agency shall recommend a rate of return to the
11 Commission utilizing the criteria in this subsection (f). The
12 Commission shall further take into account the recommendation
13 of the Agency, but shall not be bound by it. The rate of return
14 shall be no lower than 75 basis points lower than the weighted
15 average authorized total rates of return of the electric
16 utilities in accordance with original cost rate base for their
17 electric distribution assets as of January 1, 2011.
18 Notwithstanding the minimum rate of return established in the
19 preceding sentence, the rate of return shall be no greater than
20 the total rate of return on invested capital that the initial
21 clean coal facility would achieve based on an assumed 55% debt
22 and 45% equity capital structure, with the cost of debt being
23 the actual average cost, including all associated costs and
24 fees, of the initial clean coal facility's debt and the cost of
25 equity being 11.5%. The Commission's determination of the rate
26 of return shall include a mechanism providing for a one-time

1 adjustment at or about the commencement of commercial operation
2 of the initial clean coal facility to adjust for changes in
3 applicable Treasury yield rates between the date of its
4 provisional determination of the rate of return and the dates
5 of construction period borrowing by the initial clean coal
6 facility, which adjustment shall apply to 55% of total capital.

7 The Commission's decision shall be final and not subject to
8 any rehearing or administrative or judicial review. The rate of
9 return determined by the Commission pursuant to this subsection
10 (f) shall apply for the term of the sourcing agreements and
11 shall not be subject to change, except for the one-time
12 adjustment to reflect Treasury yield rate changes as expressly
13 contemplated by this subsection (f) and as otherwise expressly
14 provided in subsection (b) of Section 1-76.5 of this Act.

15 (g) The following shall not be included in determining the
16 formula rate: advertising expenses that do not meet the
17 requirements of Sections 9-225 and 9-226 of the Public
18 Utilities Act, political activity or lobbying expenses as
19 defined by Section 9-224 of the Public Utilities Act, social
20 club dues, or charitable contributions, to the extent, in each
21 case, that a utility would not be permitted to recover such
22 costs.

23 (h) Except as otherwise provided in subsections (b) and (f)
24 of this Section 1-76, within 30 days after a decision of the
25 Commission on recoverable costs under this Section, any
26 interested party to the Commission's decision may apply for a

1 rehearing with respect to the decision. The Commission shall
2 receive and consider such application for rehearing and shall
3 grant or deny the application in whole or in part within 20
4 days from the date of the receipt thereof by the Commission. If
5 no rehearing is applied for within the required 30 days or an
6 application for rehearing is denied, the Commission decision
7 shall be final.

8 If an application for rehearing is granted, the Commission
9 shall hold a rehearing within 30 days after granting the
10 application. The decision of the Commission upon rehearing
11 shall be final. Except as otherwise provided in subsections (b)
12 and (f) of this Section 1-76, any person affected by a decision
13 of the Commission under this Section 1-76 may have the decision
14 reviewed only under and in accordance with the Administrative
15 Review Law. Except as otherwise provided in subsections (b) and
16 (f) of this Section 1-76, the provisions of the Administrative
17 Review Law, all amendments and modifications thereof and the
18 rules adopted pursuant thereto, shall apply to and govern all
19 proceedings for the judicial review of final administrative
20 decisions of the Commission under this subsection (h). The term
21 "administrative decision" is defined as in Section 3-101 of the
22 Code of Civil Procedure.

23 (i) The Capital Development Board shall adopt and make
24 public a policy detailing the process for retaining third
25 parties under this Section. Any third parties retained to
26 assist with calculating the capital costs or sequestration

1 costs shall be retained no later than 45 days after the
2 effective date of this amendatory Act of the 97th General
3 Assembly.

4 (20 ILCS 3855/1-76.5 new)

5 Sec. 1-76.5. Capture and sequestration requirements for
6 initial clean coal facility.

7 (a) The initial clean coal facility shall provide
8 documentation to the Commission each year of commercial
9 operation accurately reporting the quantity of carbon
10 emissions from the facility that have been captured and
11 sequestered and report any quantities of carbon released from
12 the site or sites at which carbon emissions were sequestered in
13 prior years, based on continuous monitoring of such sites. If,
14 in any year, the owner of the facility fails to demonstrate
15 that (1) the portion of the facility that produces SNG captured
16 and sequestered at least 90% of the carbon dioxide it would
17 otherwise emit and (2) the initial clean coal facility as a
18 whole captured and sequestered at least 50% of the total carbon
19 emissions that the facility would otherwise emit or if the
20 sequestration of emissions from prior years has failed,
21 resulting in the release of carbon dioxide into the atmosphere,
22 or both, then the owner of the initial clean coal facility must
23 pay a penalty of \$20,000,000, which shall be deposited into the
24 Energy Efficiency Trust Fund and distributed pursuant to
25 subsection (b) of Section 6-6 of the Renewable Energy, Energy

1 Efficiency, and Coal Resources Development Law of 1997.

2 If during the first 12 months of commercial operation of
3 the initial clean coal facility, there are more than 4 stops
4 and starts of the portion of the facility that produces SNG,
5 with each stop and start of an individual unit constituting one
6 stop and start, then the calculation of the quantities
7 described in this subsection (a) shall not take into account
8 any carbon dioxide emissions from the portion of the facility
9 that produces SNG occurring during the stop and start-up
10 periods, including related periods of non-steady state
11 operation, associated with such excess stops and starts. The
12 penalty resulting from the failure to capture and sequester at
13 least the minimum amount of carbon dioxide shall not be passed
14 through to a utility, an alternative retail electric supplier,
15 or the customers of a utility. The initial clean coal facility
16 shall not forfeit its designation as the initial clean coal
17 facility if the facility fails to fully comply with the
18 applicable carbon sequestration requirements in any given
19 year, provided the requisite penalties are complied with.

20 (b) In addition to any penalty for the initial clean coal
21 facility's failure to capture and sequester at least its
22 minimum sequestration requirement, the Attorney General, on
23 behalf of the People of the State of Illinois, shall
24 specifically enforce the facility's sequestration requirement
25 and the other terms of this contract provision. Such action may
26 be filed in any circuit court in Illinois. By entering into a

1 sourcing agreement pursuant to subsection (d) of Section 1-75
2 of this Act, the initial clean coal facility agrees to waive
3 any objections to venue or to the jurisdiction of the court
4 with regard to the Attorney General's action for specific
5 performance under this Section. The Commission may reduce the
6 recoverable rate of return approved pursuant to Section 1-76 of
7 this Act for the facility if the facility willfully fails to
8 comply with the carbon capture and sequestration requirements
9 set forth in this Section.

10 (c) Compliance with the capture and sequestration
11 requirements of this Section shall be assessed annually by the
12 Commission, which may in its discretion retain an expert to
13 facilitate its assessment. The initial clean coal facility
14 shall pay for the expert's reasonable fees if an expert is
15 retained by the Commission, and such costs shall not be passed
16 through to a utility, an alternative retail electric supplier,
17 or the customers of a utility. The Commission shall adopt and
18 make public a policy detailing the process for retaining an
19 expert under this Section.

20 (d) Responsibility for compliance with the capture and
21 sequestration requirements specified in this Section for the
22 initial clean coal facility shall reside solely with the
23 initial clean coal facility regardless of whether the facility
24 has contracted with another party to capture, transport, or
25 sequester carbon dioxide.

1 (20 ILCS 3855/1-77.5 new)

2 Sec. 1-77.5 Sequestration permitting, oversight, and
3 investigations.

4 (a) No clean coal facility, initial clean coal facility,
5 clean coal SNG brownfield facility, or clean coal SNG facility
6 may transport or sequester carbon dioxide unless the Commission
7 approves the method of carbon dioxide transportation or
8 sequestration as provided in this Section. Approval shall be
9 required regardless of whether the facility has contracted with
10 another party to transport or sequester the carbon dioxide.
11 Nothing in this subsection (a) shall release the owner or
12 operator of a carbon dioxide sequestration site or carbon
13 dioxide pipeline from any other permitting requirements under
14 applicable State and federal laws, statutes, rules, or
15 regulations.

16 (b) No later than 3 months prior to the date upon which the
17 company intends to commence construction of the facility, the
18 owner of the facility shall file with the Commission a carbon
19 dioxide transportation or sequestration plan. The Commission
20 shall review proposed carbon dioxide transportation and
21 sequestration methods and shall approve those methods it deems
22 reasonable and cost-effective. For purposes of this review,
23 "cost-effective" means a commercially reasonable price for
24 similar carbon dioxide transportation or sequestration
25 techniques. In determining whether sequestration through
26 injection is reasonable and cost-effective, the Commission may

1 consult with the Illinois State Geological Survey.

2 The Commission shall hold a public hearing within 30 days
3 after receipt of the facility's carbon dioxide transportation
4 or sequestration plan. The Commission shall post notice of the
5 review on its website upon submission of a carbon dioxide
6 transportation or sequestration method and shall accept
7 written public comments. The Commission shall take the comments
8 into account when making its decision. However, the Commission
9 shall not approve a carbon dioxide sequestration method if the
10 owner or operator of the sequestration site has not received
11 (1) an Underground Injection Control permit from the Illinois
12 Environmental Protection Agency or the United States
13 Environmental Protection Agency pursuant to the Environmental
14 Protection Act, (2) an Underground Injection Control permit
15 from the Illinois Department of Natural Resources pursuant to
16 the Illinois Oil and Gas Act, or (3) any applicable permit from
17 the state in which the sequestration site is located if the
18 sequestration shall take place outside of Illinois. The
19 Commission shall approve or deny the carbon dioxide
20 transportation or sequestration method within 90 days after the
21 receipt of all required information.

22 (c) At least annually, the Illinois Environmental
23 Protection Agency shall inspect all carbon dioxide
24 sequestration sites in Illinois to ensure the safety and
25 feasibility of those sequestration sites. However, the
26 Illinois Environmental Protection Agency may, as often as

1 deemed necessary, monitor and conduct investigations of those
2 sites. The owner or operator of the sequestration site must
3 cooperate with the Illinois Environmental Protection Agency
4 investigations of carbon dioxide sequestration sites. If the
5 Illinois Environmental Protection Agency determines at any
6 time a site creates conditions that warrant the issuance of a
7 seal order under Section 34 of the Environmental Protection
8 Act, then the Illinois Environmental Protection Agency shall
9 seal the site pursuant to the Environmental Protection Act. If
10 the Illinois Environmental Protection Agency determines at any
11 time a carbon dioxide sequestration site creates conditions
12 that warrant the institution of a civil action for an
13 injunction under Section 43 of the Environmental Protection
14 Act, then the Illinois Environmental Protection Agency shall
15 request the State's Attorney or the Attorney General to
16 institute such action. The Illinois Environmental Protection
17 Agency shall provide notice of any such actions as soon as
18 possible on its website.

19 (d) At least annually, the Commission shall inspect all
20 carbon dioxide pipelines in Illinois that transport carbon
21 dioxide to ensure the safety and feasibility of those
22 pipelines. However, the Commission may, as often as deemed
23 necessary, monitor and conduct investigations of those
24 pipelines. The owner or operator of the pipeline must cooperate
25 with the Commission investigations of the carbon dioxide
26 pipelines. If the Commission determines at any time that a

1 carbon dioxide pipeline creates conditions that warrant the
2 issuance of a seal order under Section 34 of the Environmental
3 Protection Act, then the Commission shall notify the Illinois
4 Environmental Protection Agency of such conditions. In
5 circumstances in which the carbon dioxide pipeline creates a
6 substantial danger to the environment or public health or to
7 the welfare of persons when the danger is to the livelihood of
8 those persons, the State's Attorney or Attorney General may,
9 upon the request of the Commission or on his or her own motion,
10 institute a civil action for an immediate injunction to halt
11 any discharge or other activity causing or contributing to the
12 danger or require any other action as may be necessary. The
13 Court may issue an ex parte order and shall schedule a hearing
14 on the matter no later than 3 business days after the date of
15 the injunction. The Commission shall provide notice of any such
16 actions as soon as possible on its website.

17 (20 ILCS 3855/1-79 new)

18 Sec. 1-79. Feedstock procurement.

19 (a) A feedstock procurement plan shall, every 5 years, or
20 more frequently with respect to feedstock that cannot
21 reasonably be procured for a 5-year period on acceptable terms,
22 be prepared for the initial clean coal facility based on the
23 initial clean coal facility's projection of feedstock usage and
24 ratios, and consistent with the applicable requirements of this
25 Act. The plan shall specifically identify the feedstock

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

14 (1) Daily generation analysis. This analysis shall
15 include:

16 (A) multi-year historical analysis of hourly
17 generation; and

18 (B) known or projected changes to future
19 generation.

20 (2) Determination of the fuel specifications required
21 for the initial clean coal facility, including:

22 (A) feedstock mix, as set by the initial clean coal
23 facility with coal having high volatile bituminous
24 rank and greater than 1.7 pounds of sulfur per million
25 btu content and comprising at least 50% of the total
26 feedstock over the term of the sourcing agreement;

1 (B) volume of each feedstock required;

2 (C) quality standards of each feedstock;

3 (D) transportation and delivery requirements and
4 associated costs and impacts on the performance,
5 availability, and reliability of the initial clean
6 coal facility;

7 (E) technical specifications of the initial clean
8 coal facility for its feedstocks; and

9 (F) appropriate testing of any proposed feedstock
10 before it is incorporated into the feedstock
11 procurement plan or process to determine the effect of
12 such feedstock on the performance, availability, and
13 reliability of the initial clean coal facility.

14 (b) The feedstock procurement process shall be
15 administered by a feedstock procurement administrator and
16 monitored by a feedstock procurement monitor.

17 (1) The feedstock procurement administrator shall:

18 (A) design the final feedstock procurement process
19 in accordance with subsection (d) of this Section
20 following Commission approval of the feedstock
21 procurement plan;

22 (B) develop feedstock benchmarks in accordance
23 with paragraph (3) of subsection (d) of this Section to
24 be used to evaluate bids; these benchmarks shall be
25 submitted to the Commission for review and approval on
26 a confidential basis prior to the feedstock

1 procurement event;

2 (C) serve as the interface between the initial
3 clean coal facility and feedstock suppliers regarding
4 bidding and contract negotiations;

5 (D) manage the bidder pre-qualification and
6 registration process;

7 (E) obtain the initial clean coal facility's
8 agreement to the final form of all supply contracts and
9 credit collateral agreements;

10 (F) administer the request for feedstock proposals
11 process;

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

23 (H) maintain confidentiality of supplier and
24 bidding information in a manner consistent with all
25 applicable laws, rules, regulations, and tariffs;

26 (I) submit a confidential report to the Commission

1 recommending acceptance or rejection of bids;

2 (J) notify the facility of contract counterparties
3 and contract specifics; and

4 (K) administer related contingency feedstock
5 procurement events.

6 (2) The feedstock procurement monitor, who shall be
7 retained by the Commission, shall:

8 (A) monitor interactions among the feedstock
9 procurement administrator, suppliers, and the initial
10 clean coal facility;

11 (B) monitor and report to the Commission on the
12 progress of the feedstock procurement process;

13 (C) provide an independent confidential report to
14 the Commission regarding the results of the feedstock
15 procurement event;

16 (D) preserve the confidentiality of supplier and
17 bidding information in a manner consistent with all
18 applicable laws, rules, regulations, and tariffs;

19 (E) provide expert advice to the Commission and
20 consult with the feedstock procurement administrator
21 regarding issues related to feedstock procurement
22 process design, rules, protocols, and policy-related
23 matters;

24 (F) consult with the feedstock procurement
25 administrator regarding the development and use of
26 benchmark criteria, standard form contracts, credit

1 policies, and bid documents; and

2 (G) assess compliance with the procurement plans
3 approved by the Commission.

4 (c) The feedstock procurement process shall be conducted as
5 follows:

6 (1) Beginning in 2012, the initial clean coal facility
7 shall annually provide a range of feedstock requirement
8 forecasts to the Agency by July 15 of each year, or such
9 other date as may be required by the Commission or Agency.
10 The feedstock requirement forecasts shall cover the 5-year
11 feedstock procurement planning period for the next
12 feedstock procurement plan, or such other longer period
13 that the Agency or the Commission may require, and shall
14 include daily data representing a high generation, low
15 generation and expected generation scenario for the
16 initial clean coal facility. The initial clean coal
17 facility shall provide supporting data and assumptions for
18 each of the scenarios.

19 (2) Beginning in 2012, the Agency shall at least every
20 5 years prepare a feedstock procurement plan by August 15th
21 of the applicable year, or such other date as may be
22 required by the Commission. The feedstock procurement plan
23 shall identify the portfolio of feedstocks to be procured.
24 Copies of the feedstock procurement plan shall be posted
25 and made publicly available on the Agency's and
26 Commission's websites, and copies shall also be provided to

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

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

1 (4) The Commission shall approve the feedstock
2 procurement plan, including expressly the forecast used in
3 the feedstock procurement plan, if the Commission
4 determines that it shall ensure adequate, reliable,
5 affordable, and environmentally sustainable feedstocks to
6 the initial clean coal facility at the lowest total cost
7 over time, taking into account any benefits of price
8 stability and other criteria set forth in this Section.

9 (d) The feedstock procurement process shall include each of
10 the following components:

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

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

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

1 (3) Establishment of a market-based price benchmark.
2 As part of the development of the feedstock procurement
3 process, the feedstock procurement administrator, in
4 consultation with the Commission staff, Agency staff, and
5 the feedstock procurement monitor, shall establish
6 benchmarks for evaluating the final prices in the contracts
7 for each of the feedstocks that shall be procured through
8 the feedstock procurement process. The benchmarks shall be
9 based on price data for similar feedstocks for the same
10 delivery period and similar delivery points, or other
11 delivery points after adjusting for that difference. The
12 price benchmarks may also be adjusted to take into account
13 differences between the information reflected in the
14 underlying data sources and the specific feedstocks and
15 gasification feedstock procurement process being used to
16 procure for the initial clean coal facility. The benchmarks
17 shall be confidential but shall be provided to the
18 Commission, and shall be subject to Commission review and
19 approval, prior to a feedstock procurement event.

20 (4) Request for proposals. The feedstock procurement
21 administrator shall design and issue a request for
22 proposals to supply coal or natural gas in accordance with
23 the initial clean coal facility's usage plan, as approved
24 by the Commission. The request for proposals shall set
25 forth a procedure for sealed, binding commitment bidding
26 with pay-as-bid settlement, and provision for selection of

1 bids on the basis of price.

2 (5) A plan for implementing contingencies in the event
3 of supplier default or failure of the feedstock procurement
4 process to fully meet the expected generation requirement
5 due to insufficient supplier participation, Commission
6 rejection of results, or any other cause. The plan must be
7 specific to the initial clean coal facility's feedstock
8 specifications and requirements.

9 The feedstock procurement process described in this
10 subsection (d) is exempt from the requirements of the Illinois
11 Procurement Code pursuant to Section 20-10 of the Illinois
12 Procurement Code.

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

1 review the confidential reports submitted by the feedstock
2 procurement administrator and feedstock procurement monitor
3 and shall accept or reject the recommendations of the feedstock
4 procurement administrator within 2 business days after receipt
5 of the reports.

6 (f) Within 3 business days after the Commission decision
7 approving the results of a feedstock procurement event, the
8 initial clean coal facility shall enter into binding
9 contractual arrangements with the winning suppliers using
10 standard form contracts.

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

1 than one for law enforcement purposes.

2 (h) Within 2 business days after a Commission decision
3 approving the results of a feedstock procurement event or such
4 other date as may be required by the Commission from time to
5 time, the initial clean coal facility shall file for
6 informational purposes with the Commission its actual or
7 estimated feedstock costs reflecting the costs associated with
8 the feedstock procurement.

9 (i) The initial clean coal facility shall pay for
10 reasonable costs incurred by the Agency in administering the
11 feedstock procurement events. The Agency shall determine the
12 amount owed for each feedstock procurement event, and the
13 initial clean coal facility shall pay that amount to the Agency
14 within 30 days after being informed by the Agency of the amount
15 owed. Those funds shall be deposited into the Agency Operations
16 Fund, pursuant to Section 1-55 of this Act, to be used to
17 reimburse expenses related to the feedstock procurement.

18 (j) The Commission has the authority to adopt rules to
19 carry out the provisions of this Section. For the public
20 interest, safety, and welfare, the Commission also has the
21 authority to adopt rules to carry out the provisions of this
22 Section on an emergency basis.

23 (k) On or before April 1 of each year, the Commission may,
24 hold an informal hearing for the purpose of receiving comments
25 on the prior year's feedstock procurement process and any
26 recommendations for change.

1 (l) For all purposes of this Section 1-79 and subsection
2 (a-5) of Section 1-75 of this Act, (i) feedstock procurement
3 shall be deemed to include transportation of the feedstock
4 products to the initial clean coal facility (including the
5 acquisition by the initial clean coal facility, as appropriate,
6 of trucks, railcars or other transportation equipment), (ii)
7 feedstock procurement shall not be deemed to include day-to-day
8 performance and administration of feedstock procurement and
9 transportation arrangements, including scheduling, weighing,
10 quality determination, acceptance or rejection of shipments,
11 price adjustments, documentation and related activities, all
12 of which shall be performed by the owner of the initial clean
13 coal facility, and (iii) feedstock supplier shall be deemed to
14 include feedstock transporters and providers of feedstock
15 transportation equipment.

16 (m) Any agreement for the purchase of SNG entered into by
17 the initial clean coal facility pursuant to item (xvi) of
18 subparagraph (D) of paragraph (3) of subsection (d) of Section
19 1-75 of this Act shall be deemed for all purposes, including,
20 but not limited to, the inclusion of costs under such agreement
21 being included as part of the initial clean coal facility's
22 actual fuel costs pursuant to subsection (d) of Section 1-76 of
23 this Act, to have been entered into pursuant to the procurement
24 process set forth in this Section 1-79, even though such
25 agreement shall not be subject to competitive bidding. The
26 Agency, the feedstock procurement administrator, and the

1 feedstock procurement monitor shall take account of the initial
2 clean coal facility's obligations under any such agreement in
3 determining the feedstock procurement arrangements that may be
4 entered into by the initial clean coal facility pursuant to
5 this Section 1-79, as well as the implementation and
6 administration of such feedstock procurement arrangements.

7 (20 ILCS 3855/1-81 new)

8 Sec. 1-81. Limited non-impairment.

9 (a) The State of Illinois pledges that the State shall not
10 enact any law or take any action to:

11 (1) break, or repeal the authority for, sourcing
12 agreements in a form approved by the Agency and entered
13 into between electric utilities and the initial clean coal
14 facility pursuant to subsection (d) of Section 1-75 of this
15 Act;

16 (2) break, or repeal the authority for, sourcing
17 agreements in a form approved by the Agency and entered
18 into between alternative retail electric suppliers and the
19 initial clean coal facility;

20 (3) deny electric utilities full cost recovery for
21 their costs incurred under those sourcing agreements;

22 (4) deny the initial clean coal facility full cost
23 recovery under those sourcing agreements for costs that are
24 recoverable under Section 1-76 of this Act.

25 (5) repeal or remove the requirement that electric

1 utilities shall enter into sourcing agreements with the
2 initial clean coal facility under paragraph (3) of
3 subsection (d) of Section 1-75 of this Act or subsection
4 (c) of Section 16-116 of the Public Utilities Act; or

5 (6) repeal or remove the requirement that alternative
6 retail electric suppliers shall enter into sourcing
7 agreements with the initial clean coal facility under item
8 (iv) of paragraph (5) of subsection (d) of Section 16-115
9 of the Public Utilities Act.

10 These pledges are for the benefit of the parties to those
11 sourcing agreements and the issuers and holders of bonds or
12 other obligations issued or incurred to finance or refinance
13 the initial clean coal facility. The initial clean coal
14 facility is authorized to include and refer to these pledges in
15 any financing agreement into which it may enter in regard to
16 those sourcing agreements.

17 (b) The State of Illinois retains and reserves all other
18 rights to enact new or amendatory legislation or take any other
19 action, without impairment of the right of the initial clean
20 coal facility to recover prudently incurred costs resulting
21 from the new or amendatory legislation or other action as
22 approved by the Commission, including, but not limited to,
23 legislation or other action that would: (1) directly or
24 indirectly raise the costs that the initial clean coal facility
25 must incur; (2) directly or indirectly place additional
26 restrictions, regulations, or requirements on the initial

1 clean coal facility; (3) prohibit sequestration in general or
2 prohibit a specific sequestration method or project; or (4)
3 increase minimum sequestration requirements for the initial
4 clean coal facility to a technically feasible extent.

5 Section 10. The Illinois Procurement Code is amended by
6 changing Sections 1-10 and 20-10 as follows:

7 (30 ILCS 500/1-10)

8 Sec. 1-10. Application.

9 (a) This Code applies only to procurements for which
10 contractors were first solicited on or after July 1, 1998. This
11 Code shall not be construed to affect or impair any contract,
12 or any provision of a contract, entered into based on a
13 solicitation prior to the implementation date of this Code as
14 described in Article 99, including but not limited to any
15 covenant entered into with respect to any revenue bonds or
16 similar instruments. All procurements for which contracts are
17 solicited between the effective date of Articles 50 and 99 and
18 July 1, 1998 shall be substantially in accordance with this
19 Code and its intent.

20 (b) This Code shall apply regardless of the source of the
21 funds with which the contracts are paid, including federal
22 assistance moneys. This Code shall not apply to:

23 (1) Contracts between the State and its political
24 subdivisions or other governments, or between State

1 governmental bodies except as specifically provided in
2 this Code.

3 (2) Grants, except for the filing requirements of
4 Section 20-80.

5 (3) Purchase of care.

6 (4) Hiring of an individual as employee and not as an
7 independent contractor, whether pursuant to an employment
8 code or policy or by contract directly with that
9 individual.

10 (5) Collective bargaining contracts.

11 (6) Purchase of real estate, except that notice of this
12 type of contract with a value of more than \$25,000 must be
13 published in the Procurement Bulletin within 7 days after
14 the deed is recorded in the county of jurisdiction. The
15 notice shall identify the real estate purchased, the names
16 of all parties to the contract, the value of the contract,
17 and the effective date of the contract.

18 (7) Contracts necessary to prepare for anticipated
19 litigation, enforcement actions, or investigations,
20 provided that the chief legal counsel to the Governor shall
21 give his or her prior approval when the procuring agency is
22 one subject to the jurisdiction of the Governor, and
23 provided that the chief legal counsel of any other
24 procuring entity subject to this Code shall give his or her
25 prior approval when the procuring entity is not one subject
26 to the jurisdiction of the Governor.

1 (8) Contracts for services to Northern Illinois
2 University by a person, acting as an independent
3 contractor, who is qualified by education, experience, and
4 technical ability and is selected by negotiation for the
5 purpose of providing non-credit educational service
6 activities or products by means of specialized programs
7 offered by the university.

8 (9) Procurement expenditures by the Illinois
9 Conservation Foundation when only private funds are used.

10 (10) Procurement expenditures by the Illinois Health
11 Information Exchange Authority involving private funds
12 from the Health Information Exchange Fund. "Private funds"
13 means gifts, donations, and private grants.

14 (11) Public-private agreements entered into according
15 to the procurement requirements of Section 20 of the
16 Public-Private Partnerships for Transportation Act and
17 design-build agreements entered into according to the
18 procurement requirements of Section 25 of the
19 Public-Private Partnerships for Transportation Act.

20 (c) This Code does not apply to the electric power
21 procurement process provided for under Section 1-75 of the
22 Illinois Power Agency Act and Section 16-111.5 of the Public
23 Utilities Act.

24 (d) Except for Section 20-160 and Article 50 of this Code,
25 and as expressly required by Section 9.1 of the Illinois
26 Lottery Law, the provisions of this Code do not apply to the

1 procurement process provided for under Section 9.1 of the
2 Illinois Lottery Law.

3 (e) This Code does not apply to the process used by the
4 Capital Development Board to retain a person or entity to
5 assist the Capital Development Board with its duties related to
6 the determination of costs of a clean coal SNG brownfield
7 facility, as defined by Section 1-10 of the Illinois Power
8 Agency Act, as required in subsection (h-3) of Section 9-220 of
9 the Public Utilities Act, including calculating the range of
10 capital costs, the range of operating and maintenance costs, or
11 the sequestration costs or monitoring the construction of clean
12 coal SNG brownfield facility for the full duration of
13 construction.

14 (f) This Code does not apply to the process used by the
15 Illinois Power Agency to retain a mediator to mediate sourcing
16 agreement disputes between gas utilities and the clean coal SNG
17 brownfield facility, as defined in Section 1-10 of the Illinois
18 Power Agency Act, as required under subsection (h-1) of Section
19 9-220 of the Public Utilities Act.

20 (g) ~~(e)~~ This Code does not apply to the processes used by
21 the Illinois Power Agency to retain a mediator to mediate
22 contract disputes between gas utilities and the clean coal SNG
23 facility and to retain an expert to assist in the review of
24 contracts under subsection (h) of Section 9-220 of the Public
25 Utilities Act. This Code does not apply to the process used by
26 the Illinois Commerce Commission to retain an expert to assist

1 in determining the actual incurred costs of the clean coal SNG
2 facility and the reasonableness of those costs as required
3 under subsection (h) of Section 9-220 of the Public Utilities
4 Act.

5 (h) This Code does not apply to the process used by the
6 Capital Development Board to retain a person or entity to
7 assist the Capital Development Board with its duties related to
8 the determination of costs of an initial clean coal facility,
9 as defined under Section 1-10 of the Illinois Power Agency Act,
10 as required under Section 1-76 of the Illinois Power Agency
11 Act, including calculating the range of capital costs or the
12 sequestration costs or monitoring the construction of initial
13 clean coal facility for the full duration of construction.

14 (i) This Code does not apply to the process used by the
15 Illinois Power Agency to retain a mediator to mediate sourcing
16 agreement disputes between electric utilities or alternative
17 retail electric suppliers and the initial clean coal facility,
18 as defined under Section 1-10 of the Illinois Power Agency Act,
19 as required under paragraph (4) of subsection (d) of Section
20 1-75 of the Illinois Power Agency Act. This Code does not apply
21 to the process used by the Illinois Commerce Commission to
22 retain an expert to assist the Commission with its duties
23 related to the determination of the costs of an initial clean
24 coal facility, as defined under Section 1-10 of the Illinois
25 Power Agency Act, as required under Section 1-76 of the
26 Illinois Power Agency Act, including determining the initial

1 clean coal facility's operations and maintenance costs, or
2 compliance with capture and sequestration requirements.

3 (Source: P.A. 96-840, eff. 12-23-09; 96-1331, eff. 7-27-10;
4 97-96, eff. 7-13-11; 97-239, eff. 8-2-11; 97-502, eff. 8-23-11;
5 revised 9-7-11.)

6 (30 ILCS 500/20-10)

7 (Text of Section from P.A. 96-159, 96-588, 97-96, and
8 97-198)

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

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

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

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

21 (d) Bid opening. Bids shall be opened publicly in the
22 presence of one or more witnesses at the time and place
23 designated in the invitation for bids. The name of each bidder,
24 the amount of each bid, and other relevant information as may
25 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 subsections ~~subsection~~ (a) and (a-5) of Section 1-75 and
18 subsection (d) of Section 1-78 and subsection (d) of Section
19 1-79 of the Illinois Power Agency Act and Section 16-111.5(c)
20 of the Public Utilities Act and to procure renewable energy
21 resources under Section 1-56 of the Illinois Power Agency Act.
22 These alternative procedures shall be set forth together with
23 the other criteria contained in the invitation for bids, and
24 shall appear in the appropriate volume of the Illinois
25 Procurement Bulletin.

26 (j) Reverse auction. Notwithstanding any other provision

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

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

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

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

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

1 The contract shall be awarded within 60 days after the
2 auction by written notice to the lowest responsible bidder, or
3 all bids shall be rejected except as otherwise provided in this
4 Code. Extensions of the date for the award may be made by
5 mutual written consent of the State purchasing officer and the
6 lowest responsible bidder.

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

12 (Source: P.A. 95-481, eff. 8-28-07; 96-159, eff. 8-10-09;
13 96-588, eff. 8-18-09; 97-96, eff. 7-13-11.)

14 (Text of Section from P.A. 96-159, 96-795, 97-96, and
15 97-198)

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 subsections ~~subsection~~ (a) and (a-5) of Section 1-75, ~~and~~
13 subsection (d) of Section 1-78, and subsection (d) of Section
14 1-79 of the Illinois Power Agency Act and Section 16-111.5(c)
15 of the Public Utilities Act and to procure renewable energy
16 resources under Section 1-56 of the Illinois Power Agency Act.
17 These alternative procedures shall be set forth together with
18 the other criteria contained in the invitation for bids, and
19 shall appear in the appropriate volume of the Illinois
20 Procurement Bulletin.

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

1 interest of the State. The chief procurement officer shall
2 publish that determination in his or her next volume of the
3 Illinois Procurement Bulletin.

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

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

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

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

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

26 This subsection does not apply to (i) procurements of

1 professional and artistic services, (ii) telecommunications
2 services, communication services, and information services,
3 and (iii) contracts for construction projects.

4 (Source: P.A. 96-159, eff. 8-10-09; 96-795, eff. 7-1-10 (see
5 Section 5 of P.A. 96-793 for the effective date of changes made
6 by P.A. 96-795); 97-96, eff. 7-13-11.)

7 Section 15. The Public Utilities Act is amended by changing
8 Sections 16-107.5, 16-108, 16-111.5, 16-115, 16-115D, and
9 16-116 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, stimulate economic growth, enhance
16 the continued diversification of Illinois' energy resource
17 mix, and protect the Illinois environment.

18 (b) As used in this Section, (i) "eligible customer" means
19 a retail customer that owns or operates a solar, wind, or other
20 eligible renewable electrical generating facility with a rated
21 capacity of not more than 2,000 kilowatts that is located on
22 the customer's premises or is interconnected to the
23 distribution grid of the customer's electricity provider or
24 alternative retail electric supplier and is intended primarily

1 to offset the customer's own electrical requirements; (ii)
2 "electricity provider" means an electric utility or
3 alternative retail electric supplier; (iii) "eligible
4 renewable electrical generating facility" means a generator
5 powered by solar electric energy, wind, dedicated crops grown
6 for electricity generation, agricultural residues, untreated
7 and unadulterated wood waste, landscape trimmings, livestock
8 manure, anaerobic digestion of livestock or food processing
9 waste, fuel cells or microturbines powered by renewable fuels,
10 or hydroelectric energy; and (iv) "net electricity metering"
11 (or "net metering") means the measurement, during the billing
12 period applicable to an eligible customer, of the net amount of
13 electricity supplied by an electricity provider to the
14 customer's premises or provided to the electricity provider by
15 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 service is terminated ~~or until the end of the annualized~~
7 ~~period.~~

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

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

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

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

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

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

1 ~~agreement negotiated between the customer and electricity~~
2 ~~provider.~~

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

15 (g) For purposes of federal and State laws providing
16 renewable energy credits or greenhouse gas credits, the
17 eligible customer shall be treated as owning and having title
18 to the renewable energy attributes, renewable energy credits,
19 and 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 energy
23 credits; provided, however, this subsection (g) shall not be
24 construed to prevent an arms-length agreement between an
25 electricity provider and an eligible customer that sets forth
26 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 5% ~~1%~~ of the total peak demand supplied by that
23 electricity provider during the previous year. Electricity
24 providers are authorized to offer net metering beyond the 5% ~~1%~~
25 level if they so choose. ~~The number of new eligible customers~~
26 ~~with generators that have a nameplate rating of 40 kilowatts~~

1 ~~and below will be limited to 200 total new billing accounts for~~
2 ~~the utilities (Ameren Companies, ComEd, and MidAmerican) for~~
3 ~~the period of 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 electrical generating facility, such as a community-owned
22 wind project, a community-owned biomass project, a
23 community-owned solar project, or a community methane
24 digester processing livestock waste from multiple sources;
25 ~~and~~

26 (2) individual units, apartments, or properties owned

1 or leased by multiple customers and collectively served by
2 a common eligible renewable electrical generating
3 facility, such as an apartment building served by
4 photovoltaic panels on the roof; and -

5 (3) multiple meters that are located on an eligible
6 customer's contiguous property and are used to measure only
7 electricity used for the eligible customer's requirements.

8 For the purposes of this subsection (1), "meter
9 aggregation" means the combination of reading and billing on a
10 pro rata basis for the types of eligible customers described in
11 this Section such as to allocate benefits of participation onto
12 the customers' monthly electric bills. Meter aggregation shall
13 be allowed whether the eligible renewable energy generating
14 device is located on the premises of the eligible customer or
15 is interconnected to the distribution grid of the eligible
16 customer's electricity provider or alternative retail electric
17 supplier. Such meter aggregation shall be subject to the terms
18 and conditions approved by the Commission in a proceeding
19 establishing the rules applicable to meter aggregation under
20 this subsection (1), which shall commence no less than 180 days
21 after the effective date of this amendatory Act of the 97th
22 General Assembly and be completed within 365 days after the
23 effective date of this amendatory Act of the 97th General
24 Assembly.

25 (m) Nothing in this Section shall affect the right of an
26 electricity provider to continue to provide, or the right of a

1 retail customer to continue to receive service pursuant to a
2 contract for electric service between the electricity provider
3 and the retail customer in accordance with the prices, terms,
4 and conditions provided for in that contract. Either the
5 electricity provider or the customer may require compliance
6 with the prices, terms, and conditions of the contract.

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

8 (220 ILCS 5/16-108)

9 Sec. 16-108. Recovery of costs associated with the
10 provision of delivery services.

11 (a) An electric utility shall file a delivery services
12 tariff with the Commission at least 210 days prior to the date
13 that it is required to begin offering such services pursuant to
14 this Act. An electric utility shall provide the components of
15 delivery services that are subject to the jurisdiction of the
16 Federal Energy Regulatory Commission at the same prices, terms
17 and conditions set forth in its applicable tariff as approved
18 or allowed into effect by that Commission. The Commission shall
19 otherwise have the authority pursuant to Article IX to review,
20 approve, and modify the prices, terms and conditions of those
21 components of delivery services not subject to the jurisdiction
22 of the Federal Energy Regulatory Commission, including the
23 authority to determine the extent to which such delivery
24 services should be offered on an unbundled basis. In making any
25 such determination the Commission shall consider, at a minimum,

1 the effect of additional unbundling on (i) the objective of
2 just and reasonable rates, (ii) electric utility employees, and
3 (iii) the development of competitive markets for electric
4 energy services in Illinois.

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

10 (c) The electric utility's tariffs shall define the classes
11 of its customers for purposes of delivery services charges.
12 Delivery services shall be priced and made available to all
13 retail customers electing delivery services in each such class
14 on a nondiscriminatory basis regardless of whether the retail
15 customer chooses the electric utility, an affiliate of the
16 electric utility, or another entity as its supplier of electric
17 power and energy. Charges for delivery services shall be cost
18 based, and shall allow the electric utility to recover the
19 costs of providing delivery services through its charges to its
20 delivery service customers that use the facilities and services
21 associated with such costs. Such costs shall include the costs
22 of owning, operating and maintaining transmission and
23 distribution facilities. Beginning June 1, 2012, charges for
24 delivery services shall also include the recovery of the
25 electric utility's costs of renewable energy credits and
26 excluded renewable energy resources contract costs in

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

20 (d) The Commission shall establish charges, terms and
21 conditions for delivery services that are just and reasonable
22 and shall take into account customer impacts when establishing
23 such charges. In establishing charges, terms and conditions for
24 delivery services, the Commission shall take into account
25 voltage level differences. A retail customer shall have the
26 option to request to purchase electric service at any delivery

1 service voltage reasonably and technically feasible from the
2 electric facilities serving that customer's premises provided
3 that there are no significant adverse impacts upon system
4 reliability or system efficiency. A retail customer shall also
5 have the option to request to purchase electric service at any
6 point of delivery that is reasonably and technically feasible
7 provided that there are no significant adverse impacts on
8 system reliability or efficiency. Such requests shall not be
9 unreasonably denied.

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

19 (f) An electric utility shall be entitled but not required
20 to implement transition charges in conjunction with the
21 offering of delivery services pursuant to Section 16-104. If an
22 electric utility implements transition charges, it shall
23 implement such charges for all delivery services customers and
24 for all customers described in subsection (h), but shall not
25 implement transition charges for power and energy that a retail
26 customer takes from cogeneration or self-generation facilities

1 located on that retail customer's premises, if such facilities
2 meet the following criteria:

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

14 (ii) the cogeneration or self-generation facilities
15 either (A) are sized pursuant to generally accepted
16 engineering standards for the retail customer's electrical
17 load at that premises (taking into account standby or other
18 reliability considerations related to that retail
19 customer's operations at that site) or (B) if the facility
20 is a cogeneration facility located on the retail customer's
21 premises, the retail customer is the thermal host for that
22 facility and the facility has been designed to meet that
23 retail customer's thermal energy requirements resulting in
24 electrical output beyond that retail customer's electrical
25 demand at that premises, comply with the operating and
26 efficiency standards applicable to "qualifying facilities"

1 specified in title 18 Code of Federal Regulations Section
2 292.205 as in effect on the effective date of this
3 amendatory Act of 1999;

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

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

19 If a generation facility located at a retail customer's
20 premises does not meet the above criteria, an electric utility
21 implementing transition charges shall implement a transition
22 charge until December 31, 2006 for any power and energy taken
23 by such retail customer from such facility as if such power and
24 energy had been delivered by the electric utility. Provided,
25 however, that an industrial retail customer that is taking
26 power from a generation facility that does not meet the above

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

1 determine whether and to what extent the electric utility shall
2 be authorized to implement transition charges for an additional
3 period. The Commission may authorize the electric utility to
4 implement transition charges for some or all of the additional
5 period, and shall determine the mitigation factors to be used
6 in implementing such transition charges; provided, that the
7 Commission shall not authorize mitigation factors less than
8 110% of those in effect during the 12 months ended December 31,
9 2006. In making its determination, the Commission shall
10 consider the following factors: the necessity to implement
11 transition charges for an additional period in order to
12 maintain the financial integrity of the electric utility; the
13 prudence of the electric utility's actions in reducing its
14 costs since the effective date of this amendatory Act of 1997;
15 the ability of the electric utility to provide safe, adequate
16 and reliable service to retail customers in its service area;
17 and the impact on competition of allowing the electric utility
18 to implement transition charges for the additional period.

19 (g) The electric utility shall file tariffs that establish
20 the transition charges to be paid by each class of customers to
21 the electric utility in conjunction with the provision of
22 delivery services. The electric utility's tariffs shall define
23 the classes of its customers for purposes of calculating
24 transition charges. The electric utility's tariffs shall
25 provide for the calculation of transition charges on a
26 customer-specific basis for any retail customer whose average

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

20 (h) An electric utility shall also be entitled to file
21 tariffs that allow it to collect transition charges from retail
22 customers in the electric utility's service area that do not
23 take delivery services but that take electric power or energy
24 from an alternative retail electric supplier or from an
25 electric utility other than the electric utility in whose
26 service area the customer is located. Such charges shall be

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

16 (i) An electric utility shall be entitled to add to the
17 bills of delivery services customers charges pursuant to
18 Sections 9-221, 9-222 (except as provided in Section 9-222.1),
19 and Section 16-114 of this Act, Section 5-5 of the Electricity
20 Infrastructure Maintenance Fee Law, Section 6-5 of the
21 Renewable Energy, Energy Efficiency, and Coal Resources
22 Development Law of 1997, and Section 13 of the Energy
23 Assistance Act.

24 (j) If a retail customer that obtains electric power and
25 energy from cogeneration or self-generation facilities
26 installed for its own use on or before January 1, 1997,

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

20 (k) Beginning June 1, 2012, the electric utility shall be
21 entitled to recover through its tariffed charges for delivery
22 services (1) the costs of any renewable energy credits
23 purchased to meet the renewable energy resource standards of
24 subsection (c) of Section 1-75 of the Illinois Power Agency
25 Act, pursuant to the electric utility's procurement plan as
26 approved in accordance with Section 16-111.5 of this Act, and

1 (2) any excluded renewable energy resources contract costs as
2 defined in Section 1-10 of the Illinois Power Agency Act. The
3 Commission shall determine a just and reasonable allocation of
4 such costs to the various classes of customers taking delivery
5 services from the electric utility, taking into account the
6 provisions of paragraphs (2) and (6) of subsection (c) of
7 Section 1-75 of the Illinois Power Agency Act and, with respect
8 to excluded renewable energy resources contract costs, the
9 extent to which the electric utility's eligible retail
10 customers have become delivery services non-eligible retail
11 customers subsequent to the year that the contracts giving rise
12 to the excluded renewable energy resources costs were entered
13 into. Provided, that in no event shall the Commission allocate
14 the costs of renewable energy credits and excluded renewable
15 energy resources contract costs in a manner that causes the
16 rate limitations specified in paragraph (2) of subsection (c)
17 of Section 1-75 of the Illinois Power Agency Act to be exceeded
18 for any class of customers.

19 For purposes of recovery through the electric utility's
20 tariffed charges for delivery services, the cost of the
21 renewable energy credits included in purchases of bundled
22 renewable energy resources, as defined in Section 1-10 of the
23 Illinois Power Agency Act, to meet the renewable energy
24 resource standards applicable to the load of the electric
25 utility's eligible retail customers, as defined in subsection
26 (a) of Section 16-111.5 of this Act, shall be the allocated

1 renewable energy credit prices approved by the Commission in
2 accordance with subsection (f) of Section 16-111.5 of this Act.

3 The electric utility shall be entitled to recover the cost
4 of such renewable energy credits and excluded renewable energy
5 resources contract costs through an automatic adjustment
6 charge provision in the electric utility's delivery services
7 tariffs that allows the electric utility to adjust its tariffed
8 charges on an quarterly basis for changes in its costs incurred
9 to purchase renewable energy credits and its excluded renewable
10 energy resources contract costs, if any, without the need to
11 file a general delivery services rate case. The electric
12 utility's collections pursuant to such an automatic adjustment
13 charge tariff shall be subject to annual review,
14 reconciliation, and true-up against actual costs by the
15 Commission pursuant to a procedure that shall be specified in
16 the electric utility's tariff and approved by the Commission in
17 connection with its approval of the tariff. The procedure shall
18 provide that any difference between the electric utility's
19 collections pursuant to the automatic adjustment charge for an
20 annual period and the electric utility's actual costs of
21 renewable energy credits and actual excluded renewable energy
22 resources contract costs for the annual period shall be
23 refunded to or collected from, as applicable, the electric
24 utility's delivery services customers in subsequent periods.

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

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, energy
5 efficiency products, and energy for its eligible retail
6 customers in accordance with the applicable provisions set
7 forth in Section 1-75 of the Illinois Power Agency Act and this
8 Section and, for years beginning on and after June 1, 2012,
9 shall procure renewable energy credits with respect to the
10 kilowatthour usage of delivery services non-eligible retail
11 customers in the electric utility's service area in accordance
12 with the applicable provisions set forth in Section 1-75 of the
13 Illinois Power Agency Act and this Section. A small
14 multi-jurisdictional electric utility that on December 31,
15 2005 served less than 100,000 customers in Illinois may elect
16 to procure power and energy for all or a portion of its
17 eligible Illinois retail customers in accordance with the
18 applicable provisions set forth in this Section and Section
19 1-75 of the Illinois Power Agency Act. This Section shall not
20 apply to a small multi-jurisdictional utility until such time
21 as a small multi-jurisdictional utility requests the Illinois
22 Power Agency to prepare a procurement plan for its eligible
23 retail customers. "Eligible retail customers" for the purposes
24 of this Section means those retail customers that purchase
25 power and energy from the electric utility under fixed-price
26 bundled service tariffs, other than those retail customers

1 whose service is declared or deemed competitive under Section
2 16-113 and those other customer groups specified in this
3 Section, including self-generating customers, customers
4 electing hourly pricing, or those customers who are otherwise
5 ineligible for fixed-price bundled tariff service. "Delivery
6 services non-eligible retail customers" for the purposes of
7 this Section has the meaning set forth in Section 1-10 of the
8 Illinois Power Agency Act. Those customers that are excluded
9 from the definition of "eligible retail customers" shall not be
10 included in the procurement plan electric supply service load
11 requirements, and the utility shall procure any supply
12 requirements, including capacity, ancillary services, energy
13 efficiency products, and hourly priced energy, in the
14 applicable markets as needed to serve those customers, provided
15 that the utility may include in its procurement plan load
16 requirements for the load that is associated with those retail
17 customers whose service has been declared or deemed competitive
18 pursuant to Section 16-113 of this Act to the extent that those
19 customers are purchasing power and energy during one of the
20 transition periods identified in subsection (b) of Section
21 16-113 of this Act.

22 (b) A procurement plan shall be prepared for each electric
23 utility consistent with the applicable requirements of the
24 Illinois Power Agency Act and this Section. For purposes of
25 this Section, Illinois electric utilities that are affiliated
26 by virtue of a common parent company are considered to be a

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

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

23 (i) multi-year historical analysis of hourly
24 loads;

25 (ii) switching trends and competitive retail
26 market analysis;

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

2 and

3 (iv) growth forecasts by customer class.

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

6 (i) the impact of demand response programs and
7 energy efficiency programs, both current and
8 projected; for small multi-jurisdictional utilities,
9 the impact of demand response and energy efficiency
10 programs approved pursuant to Section 8-408 of this
11 Act, both current and projected; and

12 (ii) supply side needs that are projected to be
13 offset by purchases of renewable energy resources, if
14 any.

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

18 (i) definitions of the different Illinois retail
19 customer classes for which supply is being purchased;

20 (ii) the proposed mix of demand-response products
21 for which contracts will be executed during the next
22 year. For small multi-jurisdictional electric
23 utilities that on December 31, 2005 served fewer than
24 100,000 customers in Illinois, these shall be defined
25 as demand-response products offered in an energy
26 efficiency plan approved pursuant to Section 8-408 of

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

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

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

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

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

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

24 (iii) the proposed energy efficiency products for
25 which contracts will be executed during the next year.
26 The cost effective energy efficiency measures shall be

1 procured whenever the cost is lower than the combined
2 avoided costs of energy, capacity, transmission, and
3 the renewable portfolio standard for a comparable
4 volume of energy provided that the energy efficiency
5 products shall:

6 (A) be procured by a energy efficiency
7 provider from eligible retail customers;

8 (B) at least satisfy evaluation, measurement,
9 and verification standards established pursuant to
10 Section 8-103 of this Act;

11 (C) provide for reimbursement by the energy
12 efficiency provider of the utility for any costs
13 incurred as a result of the failure of the supplier
14 of such products to perform its obligations
15 thereunder; and

16 (D) meet the same credit requirements as apply
17 to suppliers of capacity, in the applicable
18 regional transmission organization market;

19 (iv) ~~(iii)~~ monthly forecasted system supply
20 requirements, including expected minimum, maximum, and
21 average values for the planning period;

22 (v) ~~(iv)~~ the proposed mix and selection of standard
23 wholesale products for which contracts will be
24 executed during the next year, separately or in
25 combination, to meet that portion of its load
26 requirements not met through pre-existing contracts,

1 including but not limited to monthly 5 x 16 peak period
2 block energy, monthly off-peak wrap energy, monthly 7 x
3 24 energy, annual 5 x 16 energy, annual off-peak wrap
4 energy, annual 7 x 24 energy, monthly capacity, annual
5 capacity, peak load capacity obligations, capacity
6 purchase plan, and ancillary services;

7 (vi) ~~(v)~~ proposed term structures for each
8 wholesale product type included in the proposed
9 procurement plan portfolio of products; and

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

21 (4) Proposed procedures for balancing loads. The
22 procurement plan shall include, for load requirements
23 included in the procurement plan, the process for (i)
24 hourly balancing of supply and demand and (ii) the criteria
25 for portfolio re-balancing in the event of significant
26 shifts in load.

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

5 (1) The procurement administrator shall:

6 (i) design the final procurement process in
7 accordance with Section 1-75 of the Illinois Power
8 Agency Act and subsection (e) of this Section following
9 Commission approval of the procurement plan;

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

15 (iii) serve as the interface between the electric
16 utility and suppliers;

17 (iv) manage the bidder pre-qualification and
18 registration process;

19 (v) obtain the electric utilities' agreement to
20 the final form of all supply contracts and credit
21 collateral agreements;

22 (vi) administer the request for proposals process;

23 (vii) have the discretion to negotiate to
24 determine whether bidders are willing to lower the
25 price of bids that meet the benchmarks approved by the
26 Commission; any post-bid negotiations with bidders

1 shall be limited to price only and shall be completed
2 within 24 hours after opening the sealed bids and shall
3 be conducted in a fair and unbiased manner; in
4 conducting the negotiations, there shall be no
5 disclosure of any information derived from proposals
6 submitted by competing bidders; if information is
7 disclosed to any bidder, it shall be provided to all
8 competing bidders;

9 (viii) maintain confidentiality of supplier and
10 bidding information in a manner consistent with all
11 applicable laws, rules, regulations, and tariffs;

12 (ix) submit a confidential report to the
13 Commission recommending acceptance or rejection of
14 bids;

15 (x) notify the utility of contract counterparties
16 and contract specifics; and

17 (xi) administer related contingency procurement
18 events.

19 (2) The procurement monitor, who shall be retained by
20 the Commission, shall:

21 (i) monitor interactions among the procurement
22 administrator, suppliers, and utility;

23 (ii) monitor and report to the Commission on the
24 progress of the procurement process;

25 (iii) provide an independent confidential report
26 to the Commission regarding the results of the

1 procurement event;

2 (iv) assess compliance with the procurement plans
3 approved by the Commission for each utility that on
4 December 31, 2005 provided electric service to a least
5 100,000 customers in Illinois and for each small
6 multi-jurisdictional utility that on December 31, 2005
7 served less than 100,000 customers in Illinois;

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

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

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

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

21 (1) Beginning in 2008, each Illinois utility procuring
22 power pursuant to this Section shall annually provide a
23 range of load forecasts to the Illinois Power Agency by
24 July 15 of each year, or such other date as may be required
25 by the Commission or Agency. The load forecasts shall cover
26 the 5-year procurement planning period for the next

1 procurement plan and shall include hourly data
2 representing a high-load, low-load and expected-load
3 scenario for the load of the eligible retail customers. For
4 procurement planning periods beginning on and after June 1,
5 2012, the electric utility shall provide a range of annual
6 forecasts for the 5-year procurement planning period of the
7 total kilowatthour usage of eligible retail customers and
8 the total annual kilowatthour usage of delivery services
9 non-eligible retail customers in its service area. The
10 utility shall provide supporting data and assumptions for
11 each of the scenarios.

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

1 comment on the procurement plan. All comments submitted to
2 the Agency shall be specific, supported by data or other
3 detailed analyses, and, if objecting to all or a portion of
4 the procurement plan, accompanied by specific alternative
5 wording or proposals. All comments shall be posted on the
6 Agency's and Commission's websites. During this 30-day
7 comment period, the Agency shall hold at least one public
8 hearing within each utility's service area for the purpose
9 of receiving public comment on the procurement plan. Within
10 14 days following the end of the 30-day review period, the
11 Agency shall revise the procurement plan as necessary based
12 on the comments received and file the procurement plan with
13 the Commission and post the procurement plan on the
14 websites.

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

23 (4) The Commission shall approve the procurement plan,
24 including expressly the forecast used in the procurement
25 plan, if the Commission determines that it will ensure
26 adequate, reliable, affordable, efficient, and

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

4 (e) The procurement process shall include each of the
5 following components:

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

25 (2) Standard contract forms and credit terms and
26 instruments. The procurement administrator, in

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

19 (3) Establishment of a market-based price benchmark.
20 As part of the development of the procurement process, the
21 procurement administrator, in consultation with the
22 Commission staff, Agency staff, and the procurement
23 monitor, shall establish benchmarks for evaluating the
24 final prices in the contracts for each of the products that
25 will be procured through the procurement process. The
26 benchmarks shall be based on price data for similar

1 products for the same delivery period and same delivery
2 hub, or other delivery hubs after adjusting for that
3 difference. The price benchmarks may also be adjusted to
4 take into account differences between the information
5 reflected in the underlying data sources and the specific
6 products and procurement process being used to procure
7 power for the Illinois utilities. The benchmarks shall be
8 confidential but shall be provided to, and will be subject
9 to Commission review and approval, prior to a procurement
10 event.

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

19 (5) A plan for implementing contingencies in the event
20 of supplier default or failure of the procurement process
21 to fully meet the expected load requirement due to
22 insufficient supplier participation, Commission rejection
23 of results, or any other cause.

24 (i) Event of supplier default: In the event of
25 supplier default, the utility shall review the
26 contract of the defaulting supplier to determine if the

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

22 (ii) Failure of the procurement process to fully
23 meet the expected load requirement: If the procurement
24 process fails to fully meet the expected load
25 requirement due to insufficient supplier participation
26 or due to a Commission rejection of the procurement

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

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

1 transmission organization market it shall be purchased
2 from the wholesale market.

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

6 (f) Within 2 business days after opening the sealed bids,
7 the procurement administrator shall submit a confidential
8 report to the Commission. The report shall contain the results
9 of the bidding for each of the products along with the
10 procurement administrator's recommendation for the acceptance
11 and rejection of bids based on the price benchmark criteria and
12 other factors observed in the process. For procurements
13 applicable to periods beginning on and after June 1, 2012, the
14 report shall also include, with respect to each recommended
15 purchase of bundled renewable energy resources as defined in
16 Section 1-10 of the Illinois Power Agency Act, an allocation of
17 the price between the price of the electricity generated by
18 renewable energy resources and the price of the associated
19 renewable energy credits. The procurement monitor also shall
20 submit a confidential report to the Commission within 2
21 business days after opening the sealed bids. The report shall
22 contain the procurement monitor's assessment of bidder
23 behavior in the process as well as an assessment of the
24 procurement administrator's compliance with the procurement
25 process and rules. The Commission shall review the confidential
26 reports submitted by the procurement administrator and

1 procurement monitor, and shall accept or reject the
2 recommendations of the procurement administrator, including
3 the recommended allocation of the price of each purchase of
4 bundled renewable energy resources between the price of the
5 electricity and the price of the associated renewable energy
6 credits, within 2 business days after receipt of the reports.

7 (g) Within 3 business days after the Commission decision
8 approving the results of a procurement event, the utility shall
9 enter into binding contractual arrangements with the winning
10 suppliers using the standard form contracts; except that the
11 utility shall not be required either directly or indirectly to
12 execute the contracts if a tariff that is consistent with
13 subsection (1) of this Section has not been approved and placed
14 into effect for that utility.

15 (h) The names of the successful bidders and the load
16 weighted average of the winning bid prices for each contract
17 type and for each contract term shall be made available to the
18 public at the time of Commission approval of a procurement
19 event. The Commission, the procurement monitor, the
20 procurement administrator, the Illinois Power Agency, and all
21 participants in the procurement process shall maintain the
22 confidentiality of all other supplier and bidding information
23 in a manner consistent with all applicable laws, rules,
24 regulations, and tariffs. Confidential information, including
25 the confidential reports submitted by the procurement
26 administrator and procurement monitor pursuant to subsection

1 (f) of this Section, shall not be made publicly available and
2 shall not be discoverable by any party in any proceeding,
3 absent a compelling demonstration of need, nor shall those
4 reports be admissible in any proceeding other than one for law
5 enforcement purposes.

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

15 (j) Within 60 days following the effective date of this
16 amendatory Act, each electric utility that on December 31, 2005
17 provided electric service to at least 100,000 customers in
18 Illinois shall prepare and file with the Commission an initial
19 procurement plan, which shall conform in all material respects
20 to the requirements of the procurement plan set forth in
21 subsection (b); provided, however, that the Illinois Power
22 Agency Act shall not apply to the initial procurement plan
23 prepared pursuant to this subsection. The initial procurement
24 plan shall identify the portfolio of power and energy products
25 to be procured and delivered for the period June 2008 through
26 May 2009, and shall identify the proposed procurement

1 administrator, who shall have the same experience and expertise
2 as is required of a procurement administrator hired pursuant to
3 Section 1-75 of the Illinois Power Agency Act. Copies of the
4 procurement plan shall be posted and made publicly available on
5 the Commission's website. The initial procurement plan may
6 include contracts for renewable resources that extend beyond
7 May 2009.

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

22 (ii) The order shall approve or modify the procurement
23 plan, approve an independent procurement administrator,
24 and approve or modify the electric utility's tariffs that
25 are proposed with the initial procurement plan. The
26 Commission shall approve the procurement plan if the

1 Commission determines that it will ensure adequate,
2 reliable, affordable, efficient, and environmentally
3 sustainable electric service at the lowest total cost over
4 time, taking into account any benefits of price stability.

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

1 authorized by this subsection (k) shall be deemed prudently
2 incurred and reasonable in amount and the electric utility
3 shall be entitled to full cost recovery pursuant to the tariffs
4 filed with the Commission.

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

1 and put into effect pursuant to Section 1-75 of the Illinois
2 Power Agency Act and this Section, including any fees assessed
3 by the Illinois Power Agency, costs associated with load
4 balancing, and contingency plan costs. The electric utility
5 shall also recover its full costs of procuring electric supply
6 for which it contracted before the effective date of this
7 Section in conjunction with the provision of full requirements
8 service under fixed-price bundled service tariffs subsequent
9 to December 31, 2006. All such costs shall be deemed to have
10 been prudently incurred. The pass-through tariffs that are
11 filed and approved pursuant to this Section shall not be
12 subject to review under, or in any way limited by, Section
13 16-111(i) of this Act. Beginning June 1, 2012, the costs
14 incurred by the electric utility to purchase renewable energy
15 credits in accordance with subsection (c) of Section 1-75 of
16 the Illinois Power Agency Act, and any excluded renewable
17 energy resources contract costs as defined in Section 1-10 of
18 the Illinois Power Agency Act, shall be recovered through the
19 electric utility's tariffed charges for delivery services
20 pursuant to Section 16-108 of this Act and shall not be
21 recovered through the electric utility's tariffed charges for
22 electric power and energy supply to its eligible retail
23 customers.

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

1 authority to adopt rules to carry out the provisions of this
2 Section on an emergency basis immediately following the
3 effective date of this amendatory Act.

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

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

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

1 necessary approvals for the proposed facility, such supply
2 shall thereafter be considered as a pre-existing contract under
3 subsection (b) of this Section. The Commission shall in any
4 order approving a proposal under this subsection specify how
5 the utility will recover the prudently incurred costs of
6 investing in, leasing, owning, or operating such generation
7 facility through just and reasonable rates charged to eligible
8 retail customers. Cost recovery for facilities included in the
9 utility's procurement plan pursuant to this subsection shall
10 not be subject to review under or in any way limited by the
11 provisions of Section 16-111(i) of this Act. Nothing in this
12 Section is intended to prohibit a utility from filing for a
13 fuel adjustment clause as is otherwise permitted under Section
14 9-220 of this Act.

15 (Source: P.A. 97-325, eff. 8-12-11.)

16 (220 ILCS 5/16-115)

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

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

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

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

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

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

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

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

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

1 and for the purposes which the Commission determines are
2 reasonably necessary in order to carry out the purposes of
3 this Act;

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

11 (i) (blank) ~~(Blank)~~;

12 (ii) (blank) ~~(Blank)~~;

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

21 (iv) all alternative retail electric suppliers, whether certified before or after the effective date of
22 this amendatory Act of the 97th General Assembly, shall
23 execute a sourcing agreement to source electricity
24 from the initial clean coal facility, on the terms set
25 forth in paragraphs (3) and (4) of subsection (d) of
26

1 Section 1-75 of the Illinois Power Agency Act, with
2 each reference therein to "utility" being deemed to be
3 a reference to an alternative retail electric
4 supplier, except that ~~in lieu of~~ the requirements in
5 subparagraphs (B)(v), (D)(ii), and (D)(vii) ~~(A)(v),~~
6 ~~(B)(i), (C)(v), and (C)(vi)~~ of paragraph (3) of that
7 subsection (d), shall not apply; ~~the applicant shall~~
8 ~~execute one or more of the following:~~

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

1 ~~(d) of this Section and subsection (d) of Section~~
2 ~~1-75 of the Illinois Power Agency Act plus the~~
3 ~~total sales of electricity (expressed in~~
4 ~~kilowatthours sold) by utilities outside of their~~
5 ~~service areas during such prior month, pursuant to~~
6 ~~subsection (c) of Section 16-116 of this Act; or~~

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

1 ~~total sales of electricity (expressed in~~
2 ~~kilowatthours sold) by utilities outside of their~~
3 ~~service areas during such prior month, pursuant to~~
4 ~~subsection (c) of Section 16-116 of this Act;~~

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

1 ~~fails to fully comply with the applicable carbon~~
2 ~~sequestration requirements in any given year, provided~~
3 ~~the requisite offsets are purchased. However, the~~
4 ~~Attorney General, on behalf of the People of the State~~
5 ~~of Illinois, may specifically enforce the facility's~~
6 ~~sequestration requirement and the other terms of this~~
7 ~~contract provision. Compliance with the sequestration~~
8 ~~requirements and offset purchase requirements that~~
9 ~~apply to the initial clean coal facility shall be~~
10 ~~reviewed annually by an independent expert retained by~~
11 ~~the owner of the initial clean coal facility, with the~~
12 ~~advance written approval of the Attorney General;~~

13 (vi) the ~~The Commission shall, after notice and~~
14 ~~hearing, revoke the certification of any alternative~~
15 ~~retail electric supplier that fails to execute a~~
16 ~~sourcing agreement with the initial clean coal~~
17 ~~facility as required by item (5) of subsection (d) of~~
18 ~~this Section. The sourcing agreements with the ~~this~~~~
19 ~~initial clean coal facility shall be subject to~~
20 ~~approval both approval of the initial clean coal~~
21 ~~facility by the Illinois Power Agency pursuant to~~
22 ~~paragraph (4) of subsection (d) of Section 1-75 of the~~
23 ~~Illinois Power Agency Act ~~General Assembly and~~~~
24 ~~satisfaction of the requirements of item (4) of~~
25 ~~subsection (d) of Section 1-75 of the Illinois Power~~
26 ~~Agency Act, and shall be executed within 30 ~~90~~ days~~

1 after any such approval by the Illinois Power Agency or
2 the issuance of any necessary approval by the Federal
3 Energy Regulatory Commission, whichever is later;

4 (vii) The Commission shall have jurisdiction over
5 disciplinary proceedings and complaints for violations
6 of this Section. If, upon complaint, the Commission
7 determines an alternative retail electric supplier has
8 failed to execute a sourcing agreement with the initial
9 clean coal facility, then the Commission shall issue
10 notice of the finding to the alternative retail
11 electric supplier. The alternative retail electric
12 supplier shall have 30 days after the receipt of notice
13 to enter into a sourcing agreement. If, after the
14 notice period, the Commission finds an alternative
15 retail electric supplier has failed to comply, then the
16 Commission shall revoke the alternative retail
17 electric supplier's certificate for 6 months ~~General~~
18 ~~Assembly. The Commission shall not accept an~~
19 ~~application for certification from an alternative~~
20 ~~retail electric supplier that has lost certification~~
21 ~~under this subsection (d), or any corporate affiliate~~
22 ~~thereof, for at least one year from the date of~~
23 ~~revocation;~~

24 (6) With respect to an applicant that seeks to serve
25 residential or small commercial retail customers, that the
26 area to be served by the applicant and any limitations it

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

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

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

10 (d-5) (Blank).

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

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

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

23 (g) In any proceeding initiated by a public utility
24 pursuant to Section 8-406 or Section 8-406.1 of this Act for a
25 certificate of public convenience and necessity to construct
26 and operate any utility plant, equipment, or facility required

1 to provide service to the initial clean coal facility, it shall
2 be conclusively presumed that the public convenience and
3 necessary require the construction of such utility plant,
4 equipment, or facility. In any proceeding initiated by a public
5 utility pursuant to Section 8-503 of this Act for an order
6 directing the addition, extension, or improvement of any
7 utility plant, equipment, facilities, or other property or the
8 erection of any new utility plant, equipment, or facilities to
9 provide service to the initial clean coal facility, it shall be
10 conclusively presumed that such additional, extended, improved
11 or new utility plant, equipment, facility, or other property is
12 necessary and should be added, extended, or erected.

13 (Source: P.A. 95-130, eff. 1-1-08; 95-1027, eff. 6-1-09;
14 96-159, eff. 8-10-09.)

15 (220 ILCS 5/16-115D)

16 Sec. 16-115D. Renewable portfolio standard for alternative
17 retail electric suppliers and electric utilities operating
18 outside their service territories.

19 (a) Until May 31, 2012, an ~~An~~ alternative retail electric
20 supplier shall be responsible for procuring cost-effective
21 renewable energy resources as required under item (5) of
22 subsection (d) of Section 16-115 of this Act as outlined
23 herein:

24 (1) The definition of renewable energy resources
25 contained in Section 1-10 of the Illinois Power Agency Act

1 applies to all renewable energy resources required to be
2 procured by alternative retail electric suppliers.

3 (2) The quantity of renewable energy resources shall be
4 measured as a percentage of the actual amount of metered
5 electricity (megawatt-hours) delivered by the alternative
6 retail electric supplier to Illinois retail customers
7 during the 12-month period June 1 through May 31,
8 commencing June 1, 2009, and the comparable 12-month period
9 in each year thereafter except as provided in item (6) of
10 this subsection (a).

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

26 (4) The quantity and source of renewable energy

1 resources shall be independently verified through the PJM
2 Environmental Information System Generation Attribute
3 Tracking System (PJM-GATS) or the Midwest Renewable Energy
4 Tracking System (M-RETS), which shall document the
5 location of generation, resource type, month, and year of
6 generation for all qualifying renewable energy resources
7 that an alternative retail electric supplier uses to comply
8 with this Section. No later than June 1, 2009, the Illinois
9 Power Agency shall provide PJM-GATS, M-RETS, and
10 alternative retail electric suppliers with all information
11 necessary to identify resources located in Illinois,
12 within states that adjoin Illinois or within portions of
13 the PJM and MISO footprint in the United States that
14 qualify under the definition of renewable energy resources
15 in Section 1-10 of the Illinois Power Agency Act for
16 compliance with this Section 16-115D. Alternative retail
17 electric suppliers shall not be subject to the requirements
18 in item (3) of subsection (c) of Section 1-75 of the
19 Illinois Power Agency Act.

20 (5) All renewable energy credits used to comply with
21 this Section shall be permanently retired.

22 (6) The required procurement of renewable energy
23 resources by an alternative retail electric supplier shall
24 apply to all metered electricity delivered to Illinois
25 retail customers by the alternative retail electric
26 supplier pursuant to contracts executed or extended after

1 March 15, 2009.

2 (b) Until May 31, 2012, an ~~An~~ alternative retail electric
3 supplier shall comply with the renewable energy portfolio
4 standards by making an alternative compliance payment, as
5 described in subsection (d) of this Section, to cover at least
6 one-half of the alternative retail electric supplier's
7 compliance obligation and any one or combination of the
8 following means to cover the remainder of the alternative
9 retail electric supplier's compliance obligation:

10 (1) Generating electricity using renewable energy
11 resources identified pursuant to item (4) of subsection (a)
12 of this Section.

13 (2) Purchasing electricity generated using renewable
14 energy resources identified pursuant to item (4) of
15 subsection (a) of this Section through an energy contract.

16 (3) Purchasing renewable energy credits from renewable
17 energy resources identified pursuant to item (4) of
18 subsection (a) of this Section.

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

21 (c) Use of renewable energy credits.

22 (1) Renewable energy credits that are not used by an
23 alternative retail electric supplier to comply with a
24 renewable portfolio standard in a compliance year may be
25 banked and carried forward up to 2 12-month compliance
26 periods after the compliance period in which the credit was

1 generated for the purpose of complying with a renewable
2 portfolio standard in those 2 subsequent compliance
3 periods. For the 2009-2010 and 2010-2011 compliance
4 periods, an alternative retail electric supplier may use
5 renewable credits generated after December 31, 2008 and
6 before June 1, 2009 to comply with this Section.

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

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

22 (d) Alternative compliance payments.

23 (1) The Commission shall establish and post on its
24 website, within 5 business days after entering an order
25 approving a procurement plan pursuant to Section 1-75 of
26 the Illinois Power Agency Act, maximum alternative

1 compliance payment rates, expressed on a per kilowatt-hour
2 basis, that will be applicable in the first compliance
3 period following the plan approval. A separate maximum
4 alternative compliance payment rate shall be established
5 for the service territory of each electric utility that is
6 subject to subsection (c) of Section 1-75 of the Illinois
7 Power Agency Act. Each maximum alternative compliance
8 payment rate shall be equal to the maximum allowable annual
9 estimated average net increase due to the costs of the
10 utility's purchase of renewable energy resources included
11 in the amounts paid by eligible retail customers in
12 connection with electric service, as described in item (2)
13 of subsection (c) of Section 1-75 of the Illinois Power
14 Agency Act for the compliance period, and as established in
15 the approved procurement plan. Following each procurement
16 event through which renewable energy resources are
17 purchased for one or more of these utilities for the
18 compliance period, the Commission shall establish and post
19 on its website estimates of the alternative compliance
20 payment rates, expressed on a per kilowatt-hour basis, that
21 shall apply for that compliance period. Posting of the
22 estimates shall occur no later than 10 business days
23 following the procurement event, however, the Commission
24 shall not be required to establish and post such estimates
25 more often than once per calendar month. By July 1 of each
26 year, the Commission shall establish and post on its

1 website the actual alternative compliance payment rates
2 for the preceding compliance year. For compliance years
3 beginning prior to June 1, 2014, each alternative
4 compliance payment rate shall be equal to the total amount
5 of dollars that the utility contracted to spend on
6 renewable resources, excepting the additional incremental
7 cost attributable to solar resources, for the compliance
8 period divided by the forecasted load of eligible retail
9 customers, at the customers' meters, as previously
10 established in the Commission-approved procurement plan
11 for that compliance year. For compliance years commencing
12 on or after June 1, 2014, each alternative compliance
13 payment rate shall be equal to the total amount of dollars
14 that the utility contracted to spend on all renewable
15 resources for the compliance period divided by the
16 forecasted load of eligible retail customers, at the
17 customers' meters, as previously established in the
18 Commission-approved procurement plan for that compliance
19 year. The actual alternative compliance payment rates may
20 not exceed the maximum alternative compliance payment
21 rates established for the compliance period. For purposes
22 of this subsection (d), the term "eligible retail
23 customers" has the same meaning as found in Section
24 16-111.5 of this Act.

25 (2) In any given compliance year, an alternative retail
26 electric supplier may elect to use alternative compliance

1 payments to comply with all or a part of the applicable
2 renewable portfolio standard. In the event that an
3 alternative retail electric supplier elects to make
4 alternative compliance payments to comply with all or a
5 part of the applicable renewable portfolio standard, such
6 payments shall be made by September 1, 2010 for the period
7 of June 1, 2009 to May 1, 2010 and by September 1 of each
8 year thereafter for the subsequent compliance period, in
9 the manner and form as determined by the Commission. Any
10 election by an alternative retail electric supplier to use
11 alternative compliance payments is subject to review by the
12 Commission under subsection (e) of this Section.

13 (3) An alternative retail electric supplier's
14 alternative compliance payments shall be computed
15 separately for each electric utility's service territory
16 within which the alternative retail electric supplier
17 provided retail service during the compliance period,
18 provided that the electric utility was subject to
19 subsection (c) of Section 1-75 of the Illinois Power Agency
20 Act. For each service territory, the alternative retail
21 electric supplier's alternative compliance payment shall
22 be equal to (i) the actual alternative compliance payment
23 rate established in item (1) of this subsection (d),
24 multiplied by (ii) the actual amount of metered electricity
25 delivered by the alternative retail electric supplier to
26 retail customers within the service territory during the

1 compliance period, multiplied by (iii) the result of one
2 minus the ratios of the quantity of renewable energy
3 resources used by the alternative retail electric supplier
4 to comply with the requirements of this Section within the
5 service territory to the product of the percentage of
6 renewable energy resources required under item (3) of
7 subsection (a) of this Section and the actual amount of
8 metered electricity delivered by the alternative retail
9 electric supplier to retail customers within the service
10 territory during the compliance period.

11 (4) All alternative compliance payments by alternative
12 retail electric suppliers shall be deposited in the
13 Illinois Power Agency Renewable Energy Resources Fund and
14 used to purchase renewable energy credits, in accordance
15 with Section 1-56 of the Illinois Power Agency Act.

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

1 federal renewable portfolio standard.

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

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

1 (1) immediately comply with this Section; and

2 (2) if the violation involves a failure to procure the
3 requisite quantity of renewable energy resources or pay the
4 applicable alternative compliance payment by the annual
5 deadline, the Commission shall require the alternative
6 retail electric supplier to double the applicable
7 alternative compliance payment that would otherwise be
8 required to bring the alternative retail electric supplier
9 into compliance with this Section.

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

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

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

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

9 If any such utility fails to comply with the renewable
10 energy resource portfolio requirement in this Section more than
11 once in a 5-year period, then the Commission shall order the
12 utility to cease all sales outside of the utility's service
13 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 shall not apply to an
17 alternative retail electric supplier that operates a combined
18 heat and power system in this State or that has a corporate
19 affiliate that operates such a combined heat and power system
20 in this State that supplies electricity primarily to or for the
21 benefit of: (i) facilities owned by the supplier, its
22 subsidiary, or other corporate affiliate; (ii) facilities
23 electrically integrated with the electrical system of
24 facilities owned by the supplier, its subsidiary, or other
25 corporate affiliate; or (iii) facilities that are adjacent to
26 the site on which the combined heat and power system is

1 located.

2 (i) The obligations specified in this Section of
3 alternative retail electric suppliers and electric utilities
4 operating outside their service territories to procure
5 renewable energy resources, make alternative compliance
6 payments, and file annual reports, and the obligations of the
7 Commission to determine and post alternative compliance
8 payment rates, shall terminate effective May 31, 2012, provided
9 that alternative retail electric suppliers and electric
10 utilities operating outside their service territories shall be
11 obligated to make all alternative compliance payments that they
12 were obligated to pay for periods through and including May 31,
13 2012, but were not paid as of that date and to file all
14 required reports for periods prior to June 1, 2012. The
15 Commission shall continue to enforce the payment of unpaid
16 alternative compliance payments after May 31, 2012 in
17 accordance with subsections (f) and (g) of this Section. All
18 alternative compliance payments made after May 31, 2012 shall
19 be deposited in the Illinois Power Agency Renewable Energy
20 Resources Fund and used to purchase renewable energy credits,
21 in accordance with Section 1-56 of the Illinois Power Agency
22 Act.

23 (Source: P.A. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09;
24 96-1437, eff. 8-17-10.)

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

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

19 (b) An electric utility may offer any competitive service
20 to any customer or group of customers without filing contracts
21 with or seeking approval of the Commission, notwithstanding any
22 rule or regulation that would require such approval. The
23 Commission shall not increase or decrease the prices, and may
24 not alter or add to the terms and conditions for the utility's
25 competitive services, from those agreed to by the electric
26 utility and the customer or customers. Non-tariffed,

1 competitive services shall not be subject to the provisions of
2 the Electric Supplier Act or to Articles V, VII, VIII or IX of
3 the Act, except to the extent that any provisions of such
4 Articles are made applicable to alternative retail electric
5 suppliers pursuant to Sections 16-115 and 16-115A, but shall be
6 subject to the provisions of subsections (b) through (g) of
7 Section 16-115A, and Section 16-115B to the same extent such
8 provisions are applicable to the services provided by
9 alternative retail electric suppliers.

10 (c) Electric utilities serving retail customers outside
11 their service areas shall be subject to the requirements of
12 paragraph (5) of subsection (d) of Section 16-115 of the Public
13 Utilities Act, ~~except that the numerators referred to in that~~
14 ~~subsection (d) shall be the utility's retail market sales of~~
15 ~~electricity (expressed in kilowatthours sold) in the State~~
16 ~~outside of the utility's service territory in the prior month.~~

17 (Source: P.A. 95-1027, eff. 6-1-09.)

18 Section 900. Severability. The provisions of this Act are
19 severable under Section 1.31 of the Statute on Statutes."