



Sen. Sue Rezin

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1 AMENDMENT TO SENATE BILL 1446

2 AMENDMENT NO. _____. Amend Senate Bill 1446, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Public Utilities Act is amended by changing
6 Sections 16-115 and 19-110 as follows:

7 (220 ILCS 5/16-115)

8 Sec. 16-115. Certification of alternative retail electric
9 suppliers.

10 (a) Any alternative retail electric supplier must obtain a
11 certificate of service authority from the Commission in
12 accordance with this Section before serving any retail customer
13 or other user located in this State. An alternative retail
14 electric supplier may request, and the Commission may grant, a
15 certificate of service authority for the entire State or for a
16 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 percentages set forth in
9 subsections (c) and (d) of Section 1-75 of the Illinois
10 Power Agency Act. For purposes of this Section:

11 (i) (Blank);

12 (ii) (Blank);

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

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

1 subparagraphs (A) (v), (B) (i), (C) (v), and (C) (vi) of
2 paragraph (3) of that subsection (d), the applicant
3 shall execute one or more of the following:

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

1 subsection (c) of Section 16-116 of this Act; or

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

26 (v) if, in any year after the first year of

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

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

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

26 (6) With respect to an applicant that seeks to serve

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

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

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

12 (d-5) (Blank).

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

1 are taking delivery services in conjunction with purchasing
2 power and energy from the facility, the retail customer on
3 whose premises the facility is located shall not thereafter be
4 required to pay transition charges on the power and energy that
5 such retail customer takes from the facility.

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

25 (g) An alternative retail electric supplier may seek
26 confidential treatment for the following information by filing

1 an affidavit with the Commission so long as the affidavit meets
2 the requirements in this subsection (g):

3 (1) the total annual kilowatt-hours delivered and sold
4 by an alternative retail electric supplier to retail
5 customers within each utility service territory and the
6 total annual kilowatt-hours delivered and sold by an
7 alternative retail electric supplier to retail customers
8 in all utility service territories in the preceding
9 calendar year as required by 83 Ill. Adm. Code 451.770;

10 (2) the total peak demand supplied by an alternative
11 retail electric supplier during the previous year in each
12 utility service territory as required by 83 Ill. Adm. Code
13 465.40;

14 (3) a good faith estimate of the amount an alternative
15 retail electric supplier expects to be obliged to pay the
16 utility under single billing tariffs during the next 12
17 months and the amount of any bond or letter of credit used
18 to demonstrate an alternative retail electric supplier's
19 credit worthiness to provide single billing services
20 pursuant to 83 Ill. Adm. Code 451.510(a) and (b).

21 The affidavit must be filed contemporaneously with the
22 information for which confidential treatment is sought and must
23 clearly state that the affiant seeks confidential treatment
24 pursuant to this subsection (g) and the information for which
25 confidential treatment is sought must be clearly identified on
26 the confidential version of the document filed with the

1 Commission. The affidavit must be accompanied by a
2 "confidential" and a "public" version of the document or
3 documents containing the information for which confidential
4 treatment is sought.

5 If the alternative retail electric supplier has met the
6 affidavit requirements of this subsection (g), then the
7 Commission shall afford confidential treatment to the
8 information identified in the affidavit for a period of 2 years
9 after the date the affidavit is received by the Commission.

10 Nothing in this subsection (g) prevents an alternative
11 retail electric supplier from filing a petition with the
12 Commission seeking confidential treatment for information
13 beyond that identified in this subsection (g) or for
14 information contained in other reports or documents filed with
15 the Commission.

16 Nothing in this subsection (g) prevents the Commission, on
17 its own motion, or any party from filing a formal petition with
18 the Commission seeking to reconsider the conferring of
19 confidential status on an item of information afforded
20 confidential treatment pursuant to this subsection (g).

21 The Commission, on its own motion, may at any time initiate
22 a docketed proceeding to investigate the continued
23 applicability of this subsection (g) to the information
24 contained in items (i), (ii), and (iii) of this subsection (g).
25 If, at the end of such investigation, the Commission determines
26 that a particular item of information should no longer be

1 eligible for the affidavit-based process outlined in this
2 subsection (g), the Commission may enter an order to remove
3 that item from the list of items eligible for the process set
4 forth in this subsection (g). Notwithstanding any such order,
5 in the event the Commission makes such a determination, nothing
6 in this subsection (g) prevents an alternative retail electric
7 supplier desiring confidential treatment for such information
8 from filing a formal petition with the Commission seeking
9 confidential treatment for such information.

10 (Source: P.A. 95-130, eff. 1-1-08; 95-1027, eff. 6-1-09;
11 96-159, eff. 8-10-09.)

12 (220 ILCS 5/19-110)

13 Sec. 19-110. Certification of alternative gas suppliers.

14 (a) The provisions of this Section shall apply only to
15 alternative gas suppliers serving or seeking to serve
16 residential or small commercial customers and only to the
17 extent such alternative gas suppliers provide services to
18 residential or small commercial customers.

19 (b) An alternative gas supplier must obtain a certificate
20 of service authority from the Commission in accordance with
21 this Section before serving any customer or other user located
22 in this State. An alternative gas supplier may request, and the
23 Commission may grant, a certificate of service authority for
24 the entire State or for a specified geographic area of the
25 State. A person, corporation, or other entity acting as an

1 alternative gas supplier on the effective date of this
2 amendatory Act of the 92nd General Assembly shall have 180 days
3 from the effective date of this amendatory Act of the 92nd
4 General Assembly to comply with the requirements of this
5 Section in order to continue to operate as an alternative gas
6 supplier.

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

17 (d) An application for a certificate of service authority
18 shall identify the area or areas in which the applicant intends
19 to offer service and the types of services it intends to offer.
20 Applicants that seek to serve residential or small commercial
21 customers within a geographic area that is smaller than a gas
22 utility's service area shall submit evidence demonstrating
23 that the designation of this smaller area does not violate
24 Section 19-115. An applicant may state in its application for
25 certification any limitations that will be imposed on the
26 number of customers or maximum load to be served. The applicant

1 shall submit as part of its application a statement indicating:

2 (1) Whether the applicant has been denied a natural gas
3 supplier license in any state in the United States.

4 (2) Whether the applicant has had a natural gas
5 supplier license suspended or revoked by any state in the
6 United States.

7 (3) Where, if any, other natural gas supplier license
8 applications are pending in the United States.

9 (4) Whether the applicant is the subject of any
10 lawsuits filed in a court of law or formal complaints filed
11 with a regulatory agency alleging fraud, deception or
12 unfair marketing practices, or other similar allegations,
13 identifying the name, case number, and jurisdiction of each
14 such lawsuit or complaint.

15 For the purposes of this subsection (d), formal complaints
16 include only those complaints that seek a binding determination
17 from a state or federal regulatory body.

18 (e) The Commission shall grant the application for a
19 certificate of service authority if it makes the findings set
20 forth in this subsection based on the verified application and
21 such other information as the applicant may submit.

22 (1) That the applicant possesses sufficient technical,
23 financial, and managerial resources and abilities to
24 provide the service for which it seeks a certificate of
25 service authority. In determining the level of technical,
26 financial, and managerial resources and abilities which

1 the applicant must demonstrate, the Commission shall
2 consider:

3 (A) the characteristics, including the size and
4 financial sophistication of the customers that the
5 applicant seeks to serve;

6 (B) whether the applicant seeks to provide gas
7 using property, plant, and equipment that it owns,
8 controls, or operates; and

9 (C) the applicant's commitment of resources to the
10 management of sales and marketing staff, through
11 affirmative managerial policies, independent audits,
12 technology, hands-on field monitoring and training,
13 and, in the case of applicants who will have sales
14 personnel or sales agents within the State of Illinois,
15 the applicant's managerial presence within the State.

16 (2) That the applicant will comply with all applicable
17 federal, State, regional, and industry rules, policies,
18 practices, and procedures for the use, operation, and
19 maintenance of the safety, integrity, and reliability of
20 the gas transmission system.

21 (3) That the applicant will comply with such
22 informational or reporting requirements as the Commission
23 may by rule establish.

24 (4) That the area to be served by the applicant and any
25 limitations it proposes on the number of customers or
26 maximum amount of load to be served meet the provisions of

1 Section 19-115, provided, that if the applicant seeks to
2 serve an area smaller than the service area of a gas
3 utility or proposes other limitations on the number of
4 customers or maximum amount of load to be served, the
5 Commission can extend the time for considering such a
6 certificate request by up to 90 days, and can schedule
7 hearings on such a request.

8 (5) That the applicant and the applicant's sales agents
9 will comply with all other applicable laws and rules.

10 (f) The Commission can extend the time for considering such
11 a certificate request by up to 90 days, and can schedule
12 hearings on such a request if:

13 (1) a party to the application proceeding has formally
14 requested that the Commission hold hearings in a pleading
15 that alleges that one or more of the allegations or
16 certifications in the application is false or misleading;
17 or

18 (2) other facts or circumstances exist that will
19 necessitate additional time or evidence in order to
20 determine whether a certificate should be issued.

21 (g) The Commission shall have the authority to promulgate
22 rules to carry out the provisions of this Section. Within 30
23 days after the effective date of this amendatory Act of the
24 92nd General Assembly, the Commission shall adopt an emergency
25 rule or rules applicable to the certification of those gas
26 suppliers that seek to serve residential customers. Within 180

1 days of the effective date of this amendatory Act of the 92nd
2 General Assembly, the Commission shall adopt rules that specify
3 criteria which, if met by any such alternative gas supplier,
4 shall constitute the demonstration of technical, financial,
5 and managerial resources and abilities to provide service
6 required by item (1) of subsection (e) of this Section, such as
7 a requirement to post a bond or letter of credit, from a
8 responsible surety or financial institution, of sufficient
9 size for the nature and scope of the services to be provided,
10 demonstration of adequate insurance for the scope and nature of
11 the services to be provided, and experience in providing
12 similar services in other jurisdictions.

13 (h) The Commission may deny with prejudice any application
14 that repeatedly fails to include the attachments,
15 documentation, and affidavits required by the application form
16 or that repeatedly fails to provide any other information
17 required by this Section.

18 (i) An alternative gas supplier may seek confidential
19 treatment for the reporting to the Commission of its total
20 annual dekatherms delivered and sold by it to residential and
21 small commercial customers by utility service territory during
22 the preceding year via the filing of an affidavit with the
23 Commission so long as the affidavit meets the requirements of
24 this subsection (i). The affidavit must be filed
25 contemporaneously with the information for which confidential
26 treatment is sought and must clearly state that the affiant

1 seeks confidential treatment pursuant to this subsection (i)
2 and the information for which confidential treatment is sought
3 must be clearly identified on the confidential version of the
4 document filed with the Commission. The affidavit must be
5 accompanied by both a "confidential" and a "public" version of
6 the document or documents containing the information for which
7 confidential treatment is sought.

8 If the alternative gas supplier has met the affidavit
9 requirements of this subsection (i), then the Commission shall
10 afford confidential treatment to the information identified in
11 the affidavit for a period of 2 years after the date the
12 affidavit is received by the Commission.

13 Nothing in this subsection (i) prevents an alternative gas
14 supplier from filing a petition with the Commission seeking
15 confidential treatment for information beyond that identified
16 in this subsection (i) or for information contained in other
17 reports or documents filed with the Commission.

18 Nothing in this subsection (i) prevents the Commission, on
19 its own motion, or any party from filing a formal petition with
20 the Commission seeking to reconsider the conferring of
21 confidential status pursuant to this subsection (i).

22 The Commission, on its own motion, may at any time initiate
23 a docketed proceeding to investigate the continued
24 applicability of this affidavit-based process for seeking
25 confidential treatment. If, at the end of such investigation,
26 the Commission determines that this affidavit-based process

1 for seeking confidential treatment for the information is no
2 longer necessary, the Commission may enter an order to that
3 effect. Notwithstanding any such order, in the event the
4 Commission makes such a determination, nothing in this
5 subsection (i) prevents an alternative gas supplier desiring
6 confidential treatment for such information from filing a
7 formal petition with the Commission seeking confidential
8 treatment for such information.

9 (Source: P.A. 95-1051, eff. 4-10-09.)

10 Section 99. Effective date. This Act takes effect upon
11 becoming law."