



Sen. Donne E. Trotter

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09900SB1585sam001

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1 AMENDMENT TO SENATE BILL 1585

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1585 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Low carbon portfolio standard legislative  
5 findings. The General Assembly finds and declares the  
6 following:

7 (1) Reducing emissions of carbon dioxide and other  
8 pollutants and preserving existing low-emission  
9 electricity generation in Illinois and adjoining states is  
10 critical to improving air quality in Illinois for Illinois  
11 residents.

12 (2) The existing renewable portfolio standard has been  
13 successful in promoting the growth of renewable energy  
14 generation to reduce air pollution in Illinois. However, to  
15 achieve its environmental goals, Illinois must expand its  
16 commitment to low-emission energy generation and value the  
17 environmental attributes of low-carbon generation that

1           currently falls outside the scope of the existing renewable  
2           portfolio standard, including, but not limited to, nuclear  
3           power.

4           (3) Preserving existing low-emission energy generation  
5           and promoting new low-emission energy generation is  
6           critical to placing the State on a glide path to meeting  
7           anticipated regulatory requirements that have been  
8           proposed by the U.S. Environmental Protection Agency under  
9           Section 111(d) of the federal Clean Air Act.

10          (4) The Illinois Commerce Commission, the Illinois  
11          Power Agency, the Illinois Environmental Protection  
12          Agency, and the Department of Commerce and Economic  
13          Opportunity issued a report dated January 5, 2015 titled  
14          "Potential Nuclear Power Plant Closings in Illinois" (the  
15          Report), which addressed the issues identified by Illinois  
16          House Resolution 1146 of the 98th General Assembly, which,  
17          among other things, urged the Illinois Environmental  
18          Protection Agency to prepare a report showing how the  
19          premature closure of existing nuclear power plants in  
20          Illinois will affect the societal cost of increased  
21          greenhouse gas emissions based upon the EPA's published  
22          societal cost of greenhouse gases.

23          (5) The Report also identified significant adverse  
24          consequences for electric reliability in Illinois,  
25          including significant voltage and thermal violations in  
26          the interstate transmission network, in the event that

1 Illinois' existing nuclear facilities close prematurely.  
2 The Report also found that nuclear power plants are among  
3 the most reliable sources of energy, which means that  
4 electricity from nuclear power plants is available on the  
5 electric grid all hours of the day and when needed, thereby  
6 always reducing carbon emissions.

7 (6) The Report also found that the premature closure of  
8 existing nuclear power plants in Illinois will negatively  
9 affect the economic climate in the region.

10 (7) Illinois House Resolution 1146 further urged that  
11 the Report make findings concerning potential market-based  
12 solutions that will ensure that the premature closure of  
13 these nuclear power plants does not occur and that the  
14 associated dire consequences to the environment, electric  
15 reliability, and the regional economy are averted.

16 (8) The Report identified potential market-based  
17 solutions that will ensure that the premature closure of  
18 these nuclear power plants does not occur and that the  
19 associated dire consequences to the environment, electric  
20 reliability, and the regional economy are averted.

21 The General Assembly therefore finds that it is necessary  
22 to establish and implement a low carbon portfolio standard,  
23 which will increase the State's reliance on low carbon energy  
24 through the procurement of low carbon energy credits from low  
25 carbon energy resources.

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

3 (20 ILCS 3855/1-5)

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

6 (1) The health, welfare, and prosperity of all Illinois  
7 citizens require the provision of adequate, reliable,  
8 affordable, efficient, and environmentally sustainable  
9 electric service at the lowest total cost over time, taking  
10 into account any benefits of price stability.

11 (2) (Blank). ~~The transition to retail competition is~~  
12 ~~not complete. Some customers, especially residential and~~  
13 ~~small commercial customers, have failed to benefit from~~  
14 ~~lower electricity costs from retail and wholesale~~  
15 ~~competition.~~

16 (3) (Blank). ~~Escalating prices for electricity in~~  
17 ~~Illinois pose a serious threat to the economic well being,~~  
18 ~~health, and safety of the residents of and the commerce and~~  
19 ~~industry of the State.~~

20 (4) It ~~To protect against this threat to economic~~  
21 ~~well-being, health, and safety it~~ is necessary to improve  
22 the process of procuring electricity to serve Illinois  
23 residents, to promote investment in energy efficiency and  
24 demand-response measures, and to maintain and support  
25 development of clean coal technologies, generation

1       resources that operate at all hours of the day and under  
2       all weather conditions, low carbon energy resources, and  
3       renewable resources.

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

8           (6) Including cost-effective renewable resources and  
9       low carbon energy credits from low carbon energy resources  
10       in that portfolio will reduce long-term direct and indirect  
11       costs to consumers by decreasing environmental impacts and  
12       by avoiding or delaying the need for new generation,  
13       transmission, and distribution infrastructure.

14          (7) Energy efficiency, demand-response measures, low  
15       carbon energy, and renewable energy are resources  
16       currently underused in Illinois.

17          (8) The State should encourage the use of advanced  
18       clean coal technologies that capture and sequester carbon  
19       dioxide emissions to advance environmental protection  
20       goals and to demonstrate the viability of coal and  
21       coal-derived fuels in a carbon-constrained economy.

22          (9) The General Assembly enacted Public Act 96-0795 to  
23       reform the State's purchasing processes, recognizing that  
24       government procurement is susceptible to abuse if  
25       structural and procedural safeguards are not in place to  
26       ensure independence, insulation, oversight, and

1 transparency.

2 (10) The principles that underlie the procurement  
3 reform legislation apply also in the context of power  
4 purchasing.

5 The General Assembly therefore finds that it is necessary  
6 to create the Illinois Power Agency and that the goals and  
7 objectives of that Agency are to accomplish each of the  
8 following:

9 (A) Develop electricity procurement plans to ensure  
10 adequate, reliable, affordable, efficient, and  
11 environmentally sustainable electric service at the lowest  
12 total cost over time, taking into account any benefits of  
13 price stability, for electric utilities that on December  
14 31, 2005 provided electric service to at least 100,000  
15 customers in Illinois and for small multi-jurisdictional  
16 electric utilities that (i) on December 31, 2005 served  
17 less than 100,000 customers in Illinois and (ii) request a  
18 procurement plan for their Illinois jurisdictional load.  
19 The procurement plan shall be updated on an annual basis  
20 and shall include renewable energy resources and,  
21 beginning with the partial planning year commencing  
22 January 1, 2016, low carbon energy credits from low carbon  
23 energy resources sufficient to achieve the standards  
24 specified in this Act.

25 (B) Conduct competitive procurement processes to  
26 procure the supply resources identified in the procurement

1 plan.

2 (C) Develop electric generation and co-generation  
3 facilities that use indigenous coal or renewable  
4 resources, or both, financed with bonds issued by the  
5 Illinois Finance Authority.

6 (D) Supply electricity from the Agency's facilities at  
7 cost to one or more of the following: municipal electric  
8 systems, governmental aggregators, or rural electric  
9 cooperatives in Illinois.

10 (E) Ensure that the process of power procurement is  
11 conducted in an ethical and transparent fashion, immune  
12 from improper influence.

13 (F) Continue to review its policies and practices to  
14 determine how best to meet its mission of providing the  
15 lowest cost power to the greatest number of people, at any  
16 given point in time, in accordance with applicable law.

17 (G) Operate in a structurally insulated, independent,  
18 and transparent fashion so that nothing impedes the  
19 Agency's mission to secure power at the best prices the  
20 market will bear, provided that the Agency meets all  
21 applicable legal requirements.

22 (Source: P.A. 97-325, eff. 8-12-11; 97-618, eff. 10-26-11;  
23 97-813, eff. 7-13-12.)

24 (20 ILCS 3855/1-10)  
25 Sec. 1-10. Definitions.

1 "Agency" means the Illinois Power Agency.

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

10 "Authority" means the Illinois Finance Authority.

11 "Clean coal facility" means an electric generating  
12 facility that uses primarily coal as a feedstock and that  
13 captures and sequesters carbon dioxide emissions at the  
14 following levels: at least 50% of the total carbon dioxide  
15 emissions that the facility would otherwise emit if, at the  
16 time construction commences, the facility is scheduled to  
17 commence operation before 2016, at least 70% of the total  
18 carbon dioxide emissions that the facility would otherwise emit  
19 if, at the time construction commences, the facility is  
20 scheduled to commence operation during 2016 or 2017, and at  
21 least 90% of the total carbon dioxide emissions that the  
22 facility would otherwise emit if, at the time construction  
23 commences, the facility is scheduled to commence operation  
24 after 2017. The power block of the clean coal facility shall  
25 not exceed allowable emission rates for sulfur dioxide,  
26 nitrogen oxides, carbon monoxide, particulates and mercury for

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

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

26 "Clean coal SNG facility" means a facility that uses a

1 gasification process to produce substitute natural gas, that  
2 sequesters at least 90% of the total carbon dioxide emissions  
3 that the facility would otherwise emit, that uses at least 90%  
4 coal as a feedstock, with all such coal having a high  
5 bituminous rank and greater than 1.7 pounds of sulfur per  
6 million btu content, and that has a valid and effective permit  
7 to construct emission sources and air pollution control  
8 equipment and approval with respect to the federal regulations  
9 for Prevention of Significant Deterioration of Air Quality  
10 (PSD) for the plant pursuant to the federal Clean Air Act;  
11 provided, however, a clean coal SNG brownfield facility shall  
12 not be a clean coal SNG facility.

13 "Commission" means the Illinois Commerce Commission.

14 "Costs incurred in connection with the development and  
15 construction of a facility" means:

16 (1) the cost of acquisition of all real property,  
17 fixtures, and improvements in connection therewith and  
18 equipment, personal property, and other property, rights,  
19 and easements acquired that are deemed necessary for the  
20 operation and maintenance of the facility;

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

23 (3) all origination, commitment, utilization,  
24 facility, placement, underwriting, syndication, credit  
25 enhancement, and rating agency fees;

26 (4) engineering, design, procurement, consulting,

1 legal, accounting, title insurance, survey, appraisal,  
2 escrow, trustee, collateral agency, interest rate hedging,  
3 interest rate swap, capitalized interest, contingency, as  
4 required by lenders, and other financing costs, and other  
5 expenses for professional services; and

6 (5) the costs of plans, specifications, site study and  
7 investigation, installation, surveys, other Agency costs  
8 and estimates of costs, and other expenses necessary or  
9 incidental to determining the feasibility of any project,  
10 together with such other expenses as may be necessary or  
11 incidental to the financing, insuring, acquisition, and  
12 construction of a specific project and starting up,  
13 commissioning, and placing that project in operation.

14 "Department" means the Department of Commerce and Economic  
15 Opportunity.

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

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

20 "Distributed renewable energy generation device" means a  
21 device that is:

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

1           (2) interconnected at the distribution system level of  
2           either an electric utility as defined in this Section, an  
3           alternative retail electric supplier as defined in Section  
4           16-102 of the Public Utilities Act, a municipal utility as  
5           defined in Section 3-105 of the Public Utilities Act, or a  
6           rural electric cooperative as defined in Section 3-119 of  
7           the Public Utilities Act;

8           (3) located on the customer side of the customer's  
9           electric meter and is primarily used to offset that  
10          customer's electricity load; and

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

13          "Energy efficiency" means measures that reduce the amount  
14          of electricity or natural gas required to achieve a given end  
15          use. "Energy efficiency" also includes measures that reduce the  
16          total Btus of electricity and natural gas needed to meet the  
17          end use or uses.

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

20          "Facility" means an electric generating unit or a  
21          co-generating unit that produces electricity along with  
22          related equipment necessary to connect the facility to an  
23          electric transmission or distribution system.

24          "Governmental aggregator" means one or more units of local  
25          government that individually or collectively procure  
26          electricity to serve residential retail electrical loads

1 located within its or their jurisdiction.

2 "Local government" means a unit of local government as  
3 defined in Section 1 of Article VII of the Illinois  
4 Constitution.

5 "Low carbon energy credit" or "LCE credit" means a tradable  
6 credit that represents the environmental attributes of one  
7 megawatthour of energy produced from a low carbon energy  
8 resource.

9 "Low carbon energy resources" or "LCE resources" means  
10 energy and its associated low carbon energy credit or low  
11 carbon energy credits from a generating unit that does not emit  
12 any air pollution, including sulfur dioxide, nitrogen oxide, or  
13 carbon dioxide, as reported in the Generation Attribute  
14 Tracking System. "Low carbon energy resources" or "LCE  
15 resources" includes technology fueled by new and existing solar  
16 photovoltaic, solar thermal, wind, hydro, nuclear, tidal  
17 energy, wave energy, and clean coal. Notwithstanding the  
18 provisions of this definition, generating resources fueled by  
19 hydro or clean coal are low carbon energy resources if they  
20 satisfy the following criteria:

21 (1) Hydro: the hydro facility or unit must have a total  
22 nameplate generating capacity that does not exceed 3  
23 megawatts.

24 (2) Clean coal: the electric generating facility must  
25 use primarily coal as a feedstock and capture and sequester  
26 at least 70% of the total carbon dioxide emissions that the

1 facility would otherwise emit during the period June 1,  
2 2016 through May 31, 2018 and at least 90% of the total  
3 carbon dioxide emissions that the facility would otherwise  
4 emit during the period June 1, 2018 through May 31, 2021.

5 The power block of such a facility shall not exceed the  
6 allowable emission rates for sulfur dioxide, nitrogen  
7 oxides, carbon monoxide, particulates, and mercury for a  
8 natural gas-fired combined cycle facility the same size as  
9 and in the same location of such a facility at the time it  
10 obtains an approved air permit.

11 "Low carbon energy resources" or "LCE resources" does not  
12 include (i) any generating unit whose costs were being  
13 recovered through State-regulated rates as of January 1, 2015  
14 or (ii) any generating unit for which the energy and capacity  
15 is subject to a power purchase agreement with a term of greater  
16 than 5 years.

17 "Municipality" means a city, village, or incorporated  
18 town.

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

24 "Project" means the planning, bidding, and construction of  
25 a facility.

26 "Public utility" has the same definition as found in

1 Section 3-105 of the Public Utilities Act.

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

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

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

1       "Retail customer" has the same definition as found in  
2       Section 16-102 of the Public Utilities Act.

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

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

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

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

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

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

1 be included of financial costs likely to be imposed by future  
2 regulations and legislation on emissions of greenhouse gases.

3 (Source: P.A. 97-96, eff. 7-13-11; 97-239, eff. 8-2-11; 97-491,  
4 eff. 8-22-11; 97-616, eff. 10-26-11; 97-813, eff. 7-13-12;  
5 98-90, eff. 7-15-13.)

6 (20 ILCS 3855/1-75)

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

10 (a) The Planning and Procurement Bureau shall each year,  
11 beginning in 2008, develop procurement plans and conduct  
12 competitive procurement processes in accordance with the  
13 requirements of Section 16-111.5 of the Public Utilities Act  
14 for the eligible retail customers of electric utilities that on  
15 December 31, 2005 provided electric service to at least 100,000  
16 customers in Illinois, and, beginning with the partial planning  
17 year commencing on January 1, 2016, the Planning and  
18 Procurement Bureau shall include in such plans and processes  
19 the procurement of low carbon energy credits pursuant to  
20 subsection (d-5) of this Section for all of the utilities'  
21 retail customers. The Planning and Procurement Bureau shall  
22 also develop procurement plans and conduct competitive  
23 procurement processes in accordance with the requirements of  
24 Section 16-111.5 of the Public Utilities Act for the eligible  
25 retail customers of small multi-jurisdictional electric

1 utilities that (i) on December 31, 2005 served less than  
2 100,000 customers in Illinois and (ii) request a procurement  
3 plan for their Illinois jurisdictional load. This Section shall  
4 not apply to a small multi-jurisdictional utility until such  
5 time as a small multi-jurisdictional utility requests the  
6 Agency to prepare a procurement plan for their Illinois  
7 jurisdictional load. For the purposes of this Section, the term  
8 "eligible retail customers" has the same definition as found in  
9 Section 16-111.5(a) of the Public Utilities Act.

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

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

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

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

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

1 organizations;

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

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

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

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

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

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

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

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

25 (E) expertise in credit and contract protocols;

26 (F) adequate resources to perform and fulfill the

1 required functions and responsibilities; and

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

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

20 (A) failure to satisfy qualification criteria;

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

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

24 The Agency shall remove experts or expert consulting  
25 firms from the lists within 10 days if there is a  
26 reasonable basis for an objection and provide the updated

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

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

12 (5) The Agency shall select an expert or expert  
13 consulting firm to develop procurement plans based on the  
14 proposals submitted and shall award contracts of up to 5  
15 years to those selected.

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

25 (b) The experts or expert consulting firms retained by the  
26 Agency shall, as appropriate, prepare procurement plans, and

1 conduct a competitive procurement process as prescribed in  
2 Section 16-111.5 of the Public Utilities Act, to ensure  
3 adequate, 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, for  
6 eligible retail customers of electric utilities that on  
7 December 31, 2005 provided electric service to at least 100,000  
8 customers in the State of Illinois, and for eligible Illinois  
9 retail customers of small multi-jurisdictional electric  
10 utilities that (i) on December 31, 2005 served less than  
11 100,000 customers in Illinois and (ii) request a procurement  
12 plan for their Illinois jurisdictional load.

13 (c) Renewable portfolio standard.

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

1 used to meet these standards shall come from wind  
2 generation and, beginning on June 1, 2011, at least the  
3 following percentages of the renewable energy resources  
4 used to meet these standards shall come from photovoltaics  
5 on the following schedule: 0.5% by June 1, 2012, 1.5% by  
6 June 1, 2013; 3% by June 1, 2014; and 6% by June 1, 2015 and  
7 thereafter. Of the renewable energy resources procured  
8 pursuant to this Section, at least the following  
9 percentages shall come from distributed renewable energy  
10 generation devices: 0.5% by June 1, 2013, 0.75% by June 1,  
11 2014, and 1% by June 1, 2015 and thereafter. To the extent  
12 available, half of the renewable energy resources procured  
13 from distributed renewable energy generation shall come  
14 from devices of less than 25 kilowatts in nameplate  
15 capacity. Renewable energy resources procured from  
16 distributed generation devices may also count towards the  
17 required percentages for wind and solar photovoltaics.  
18 Procurement of renewable energy resources from distributed  
19 renewable energy generation devices shall be done on an  
20 annual basis through multi-year contracts of no less than 5  
21 years, and shall consist solely of renewable energy  
22 credits.

23 The Agency shall create credit requirements for  
24 suppliers of distributed renewable energy. In order to  
25 minimize the administrative burden on contracting  
26 entities, the Agency shall solicit the use of third-party

1 organizations to aggregate distributed renewable energy  
2 into groups of no less than one megawatt in installed  
3 capacity. These third-party organizations shall administer  
4 contracts with individual distributed renewable energy  
5 generation device owners. An individual distributed  
6 renewable energy generation device owner shall have the  
7 ability to measure the output of his or her distributed  
8 renewable energy generation device.

9 For purposes of this subsection (c), "cost-effective"  
10 means that the costs of procuring renewable energy  
11 resources do not cause the limit stated in paragraph (2) of  
12 this subsection (c) to be exceeded and do not exceed  
13 benchmarks based on market prices for renewable energy  
14 resources in the region, which shall be developed by the  
15 procurement administrator, in consultation with the  
16 Commission staff, Agency staff, and the procurement  
17 monitor and shall be subject to Commission review and  
18 approval.

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

1 service expressed on a per kilowatthour basis. For purposes  
2 of this subsection (c), the total amount paid for electric  
3 service includes without limitation amounts paid for  
4 supply, transmission, distribution, surcharges, and add-on  
5 taxes.

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

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

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

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

26 (D) in 2011, the greater of an additional 0.5% of

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

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

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

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

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

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

19 (5) Beginning with the year commencing June 1, 2010, an  
20 electric utility subject to this subsection (c) shall apply  
21 the lesser of the maximum alternative compliance payment  
22 rate or the most recent estimated alternative compliance  
23 payment rate for its service territory for the  
24 corresponding compliance period, established pursuant to  
25 subsection (d) of Section 16-115D of the Public Utilities  
26 Act to its retail customers that take service pursuant to

1 the electric utility's hourly pricing tariff or tariffs.  
2 The electric utility shall retain all amounts collected as  
3 a result of the application of the alternative compliance  
4 payment rate or rates to such customers, and, beginning in  
5 2011, the utility shall include in the information provided  
6 under item (1) of subsection (d) of Section 16-111.5 of the  
7 Public Utilities Act the amounts collected under the  
8 alternative compliance payment rate or rates for the prior  
9 year ending May 31. Notwithstanding any limitation on the  
10 procurement of renewable energy resources imposed by item  
11 (2) of this subsection (c), the Agency shall increase its  
12 spending on the purchase of renewable energy resources to  
13 be procured by the electric utility for the next plan year  
14 by an amount equal to the amounts collected by the utility  
15 under the alternative compliance payment rate or rates in  
16 the prior year ending May 31. Beginning April 1, 2012, and  
17 each year thereafter, the Agency shall prepare a public  
18 report for the General Assembly and Illinois Commerce  
19 Commission that shall include, but not necessarily be  
20 limited to:

21 (A) a comparison of the costs associated with the  
22 Agency's procurement of renewable energy resources to  
23 (1) the Agency's costs associated with electricity  
24 generated by other types of generation facilities and  
25 (2) the benefits associated with the Agency's  
26 procurement of renewable energy resources; and

1 (B) an analysis of the rate impacts associated with  
2 the Illinois Power Agency's procurement of renewable  
3 resources, including, but not limited to, any  
4 long-term contracts, on the eligible retail customers  
5 of electric utilities.

6 The analysis shall include the Agency's estimate of the  
7 total dollar impact that the Agency's procurement of  
8 renewable resources has had on the annual electricity bills  
9 of the customer classes that comprise each eligible retail  
10 customer class taking service from an electric utility. The  
11 Agency's report shall also analyze how the operation of the  
12 alternative compliance payment mechanism, any long-term  
13 contracts, or other aspects of the applicable renewable  
14 portfolio standards impacts the rates of customers of  
15 alternative retail electric suppliers.

16 (d) Clean coal portfolio standard.

17 (1) The procurement plans shall include electricity  
18 generated using clean coal. Each utility shall enter into  
19 one or more sourcing agreements with the initial clean coal  
20 facility, as provided in paragraph (3) of this subsection  
21 (d), covering electricity generated by the initial clean  
22 coal facility representing at least 5% of each utility's  
23 total supply to serve the load of eligible retail customers  
24 in 2015 and each year thereafter, as described in paragraph  
25 (3) of this subsection (d), subject to the limits specified  
26 in paragraph (2) of this subsection (d). It is the goal of

1 the State that by January 1, 2025, 25% of the electricity  
2 used in the State shall be generated by cost-effective  
3 clean coal facilities. For purposes of this subsection (d),  
4 "cost-effective" means that the expenditures pursuant to  
5 such sourcing agreements do not cause the limit stated in  
6 paragraph (2) of this subsection (d) to be exceeded and do  
7 not exceed cost-based benchmarks, which shall be developed  
8 to assess all expenditures pursuant to such sourcing  
9 agreements covering electricity generated by clean coal  
10 facilities, other than the initial clean coal facility, by  
11 the procurement administrator, in consultation with the  
12 Commission staff, Agency staff, and the procurement  
13 monitor and shall be subject to Commission review and  
14 approval.

15 A utility party to a sourcing agreement shall  
16 immediately retire any emission credits that it receives in  
17 connection with the electricity covered by such agreement.

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

24 A utility shall be deemed to have complied with the  
25 clean coal portfolio standard specified in this subsection  
26 (d) if the utility enters into a sourcing agreement as

1 required by this subsection (d).

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

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

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

1 (B) in 2011, the greater of an additional 0.5% of  
2 the amount paid per kilowatthour by those customers  
3 during the year ending May 31, 2010 or 1% of the amount  
4 paid per kilowatthour by those customers during the  
5 year ending May 31, 2009;

6 (C) in 2012, the greater of an additional 0.5% of  
7 the amount paid per kilowatthour by those customers  
8 during the year ending May 31, 2011 or 1.5% of the  
9 amount paid per kilowatthour by those customers during  
10 the year ending May 31, 2009;

11 (D) in 2013, the greater of an additional 0.5% of  
12 the amount paid per kilowatthour by those customers  
13 during the year ending May 31, 2012 or 2% of the amount  
14 paid per kilowatthour by those customers during the  
15 year ending May 31, 2009; and

16 (E) thereafter, the total amount paid under  
17 sourcing agreements with clean coal facilities  
18 pursuant to the procurement plan for any single year  
19 shall be reduced by an amount necessary to limit the  
20 estimated average net increase due to the cost of these  
21 resources included in the amounts paid by eligible  
22 retail customers in connection with electric service  
23 to no more than the greater of (i) 2.015% of the amount  
24 paid per kilowatthour by those customers during the  
25 year ending May 31, 2009 or (ii) the incremental amount  
26 per kilowatthour paid for these resources in 2013.

1           These requirements may be altered only as provided by  
2           statute.

3           No later than June 30, 2015, the Commission shall  
4           review the limitation on the total amount paid under  
5           sourcing agreements, if any, with clean coal facilities  
6           pursuant to this subsection (d) and report to the General  
7           Assembly its findings as to whether that limitation unduly  
8           constrains the amount of electricity generated by  
9           cost-effective clean coal facilities that is covered by  
10          sourcing agreements.

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

1 the General Assembly. The Agency and the Commission shall  
2 have authority to inspect all books and records associated  
3 with the initial clean coal facility during the term of  
4 such a sourcing agreement. A utility's sourcing agreement  
5 for electricity produced by the initial clean coal facility  
6 shall include:

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

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

20 (ii) provide that all miscellaneous net  
21 revenue, including but not limited to net revenue  
22 from the sale of emission allowances, if any,  
23 substitute natural gas, if any, grants or other  
24 support provided by the State of Illinois or the  
25 United States Government, firm transmission  
26 rights, if any, by-products produced by the

1 facility, energy or capacity derived from the  
2 facility and not covered by a sourcing agreement  
3 pursuant to paragraph (3) of this subsection (d) or  
4 item (5) of subsection (d) of Section 16-115 of the  
5 Public Utilities Act, whether generated from the  
6 synthesis gas derived from coal, from SNG, or from  
7 natural gas, shall be credited against the revenue  
8 requirement for this initial clean coal facility;

9 (B) power purchase provisions, which shall:

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

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

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

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

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

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

17 (i) require the utility party to such sourcing  
18 agreement to contract with the initial clean coal  
19 facility in each hour with respect to an amount of  
20 energy equal to all clean coal energy made  
21 available from the initial clean coal facility  
22 during such hour times a fraction, the numerator of  
23 which is such utility's retail market sales of  
24 electricity (expressed in kilowatthours sold) in  
25 the utility's service territory in the State  
26 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 paid by the utility in any  
11 year will be limited by paragraph (2) of this  
12 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) shall be limited to an amount equal to  
17 (1) the difference between the contract price  
18 determined pursuant to subparagraph (A) of  
19 paragraph (3) of this subsection (d) and the  
20 day-ahead price for electricity delivered to the  
21 regional transmission organization market of the  
22 utility that is party to such sourcing agreement  
23 (or any successor delivery point at which such  
24 utility's supply obligations are financially  
25 settled on an hourly basis) (the "reference  
26 price") on the day preceding the day on which the

1 electricity is delivered to the initial clean coal  
2 facility busbar, multiplied by (2) the quantity of  
3 electricity determined pursuant to the preceding  
4 clause (i); and

5 (iii) not require the utility to take physical  
6 delivery of the electricity produced by the  
7 facility;

8 (D) general provisions, which shall:

9 (i) specify a term of no more than 30 years,  
10 commencing on the commercial operation date of the  
11 facility;

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

20 (iii) provide that all costs associated with  
21 the initial clean coal facility will be  
22 periodically reported to the Federal Energy  
23 Regulatory Commission and to purchasers in  
24 accordance with applicable laws governing  
25 cost-based wholesale power contracts;

26 (iv) permit the Illinois Power Agency to

1           assume ownership of the initial clean coal  
2           facility, without monetary consideration and  
3           otherwise on reasonable terms acceptable to the  
4           Agency, if the Agency so requests no less than 3  
5           years prior to the end of the stated contract term;

6           (v) require the owner of the initial clean coal  
7           facility to provide documentation to the  
8           Commission each year, starting in the facility's  
9           first year of commercial operation, accurately  
10          reporting the quantity of carbon emissions from  
11          the facility that have been captured and  
12          sequestered and report any quantities of carbon  
13          released from the site or sites at which carbon  
14          emissions were sequestered in prior years, based  
15          on continuous monitoring of such sites. If, in any  
16          year after the first year of commercial operation,  
17          the owner of the facility fails to demonstrate that  
18          the initial clean coal facility captured and  
19          sequestered at least 50% of the total carbon  
20          emissions that the facility would otherwise emit  
21          or that sequestration of emissions from prior  
22          years has failed, resulting in the release of  
23          carbon dioxide into the atmosphere, the owner of  
24          the facility must offset excess emissions. Any  
25          such carbon offsets must be permanent, additional,  
26          verifiable, real, located within the State of

1 Illinois, and legally and practicably enforceable.  
2 The cost of such offsets for the facility that are  
3 not recoverable shall not exceed \$15 million in any  
4 given year. No costs of any such purchases of  
5 carbon offsets may be recovered from a utility or  
6 its customers. All carbon offsets purchased for  
7 this purpose and any carbon emission credits  
8 associated with sequestration of carbon from the  
9 facility must be permanently retired. The initial  
10 clean coal facility shall not forfeit its  
11 designation as a clean coal facility if the  
12 facility fails to fully comply with the applicable  
13 carbon sequestration requirements in any given  
14 year, provided the requisite offsets are  
15 purchased. However, the Attorney General, on  
16 behalf of the People of the State of Illinois, may  
17 specifically enforce the facility's sequestration  
18 requirement and the other terms of this contract  
19 provision. Compliance with the sequestration  
20 requirements and offset purchase requirements  
21 specified in paragraph (3) of this subsection (d)  
22 shall be reviewed annually by an independent  
23 expert retained by the owner of the initial clean  
24 coal facility, with the advance written approval  
25 of the Attorney General. The Commission may, in the  
26 course of the review specified in item (vii),

1           reduce the allowable return on equity for the  
2           facility if the facility wilfully fails to comply  
3           with the carbon capture and sequestration  
4           requirements set forth in this item (v);

5           (vi) include limits on, and accordingly  
6           provide for modification of, the amount the  
7           utility is required to source under the sourcing  
8           agreement consistent with paragraph (2) of this  
9           subsection (d);

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

25          (viii) limit the utility's obligation to such  
26          amount as the utility is allowed to recover through

1 tariffs filed with the Commission, provided that  
2 neither the clean coal facility nor the utility  
3 waives any right to assert federal pre-emption or  
4 any other argument in response to a purported  
5 disallowance of recovery costs;

6 (ix) limit the utility's or alternative retail  
7 electric supplier's obligation to incur any  
8 liability until such time as the facility is in  
9 commercial operation and generating power and  
10 energy and such power and energy is being delivered  
11 to the facility busbar;

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

19 (xi) append documentation showing that the  
20 formula rate and contract, insofar as they relate  
21 to the power purchase provisions, have been  
22 approved by the Federal Energy Regulatory  
23 Commission pursuant to Section 205 of the Federal  
24 Power Act;

25 (xii) provide that any changes to the terms of  
26 the contract, insofar as such changes relate to the

1 power purchase provisions, are subject to review  
2 under the public interest standard applied by the  
3 Federal Energy Regulatory Commission pursuant to  
4 Sections 205 and 206 of the Federal Power Act; and

5 (xiii) conform with customary lender  
6 requirements in power purchase agreements used as  
7 the basis for financing non-utility generators.

8 (4) Effective date of sourcing agreements with the  
9 initial clean coal facility.

10 Any proposed sourcing agreement with the initial clean  
11 coal facility shall not become effective unless the  
12 following reports are prepared and submitted and  
13 authorizations and approvals obtained:

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

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

23           (iii) General Assembly approval. The proposed  
24 sourcing agreements shall not take effect unless,  
25 based on the facility cost report and the Commission's  
26 report, the General Assembly enacts authorizing

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

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

19          The facility cost report shall be prepared as follows:

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

1 facility. The facility cost report shall include:

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

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

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

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

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

7           (C) The facility cost report shall also include an  
8           operating and maintenance cost quote that will provide  
9           the estimated cost of delivered fuel, personnel,  
10          maintenance contracts, chemicals, catalysts,  
11          consumables, spares, and other fixed and variable  
12          operations and maintenance costs. The delivered fuel  
13          cost estimate will be provided by a recognized third  
14          party expert or experts in the fuel and transportation  
15          industries. The balance of the operating and  
16          maintenance cost quote, excluding delivered fuel  
17          costs, will be developed based on the inputs provided  
18          by duly licensed engineering and construction firms  
19          performing the construction cost quote, potential  
20          vendors under long-term service agreements and plant  
21          operating agreements, or recognized third party plant  
22          operator or operators.

23          The operating and maintenance cost quote  
24          (including the cost of the front end engineering and  
25          design study) shall be expressed in nominal dollars as  
26          of the date that the quote is prepared and shall

1 include taxes, insurance, and other owner's costs, and  
2 an assumed escalation in materials and labor beyond the  
3 date as of which the operating and maintenance cost  
4 quote is expressed.

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

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

17 (5) Re-powering and retrofitting coal-fired power  
18 plants previously owned by Illinois utilities to qualify as  
19 clean coal facilities. During the 2009 procurement  
20 planning process and thereafter, the Agency and the  
21 Commission shall consider sourcing agreements covering  
22 electricity generated by power plants that were previously  
23 owned by Illinois utilities and that have been or will be  
24 converted into clean coal facilities, as defined by Section  
25 1-10 of this Act. Pursuant to such procurement planning  
26 process, the owners of such facilities may propose to the

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

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

26 (d-5) Low carbon portfolio standard.

1           (1) Beginning with the partial planning year  
2 commencing on January 1, 2016, the procurement plans shall  
3 include cost-effective low carbon energy credits from low  
4 carbon energy resources in an amount equal to 70% of each  
5 electric utility's annual retail sales of electricity to  
6 retail customers in the State during the planning year  
7 immediately prior to the development of the procurement  
8 plan. Provided, however, that the LCE credits must be  
9 procured from generating units consistent with the Minimum  
10 Internal Resource Requirements for capacity established by  
11 the applicable regional transmission organization.

12           The initial procurement described in this paragraph  
13 (1) shall procure the LCE credits needed during the time  
14 period January 1, 2016 through May 31, 2021 by entering  
15 into contracts between one and 5 years in length.  
16 Notwithstanding whether a procurement event is conducted  
17 pursuant to Section 16-111.5 of the Public Utilities Act,  
18 the Agency and Commission shall immediately initiate an  
19 initial procurement process upon the effective date of this  
20 amendatory Act of the 99th General Assembly, which shall  
21 procure cost-effective LCE credits from LCE resources for  
22 the period January 1, 2016 through May 31, 2021, in an  
23 amount equal to, for each planning year, 70% of each  
24 electric utility's annual retail sales of electricity to  
25 retail customers in the State during those same months in  
26 the planning year immediately prior to the procurement.

1 Provided, however, that for the partial planning year  
2 commencing January 1, 2016, the procurement process shall  
3 procure cost-effective LCE credits from LCE resources for  
4 the period January 1, 2016 through May 31, 2016, in an  
5 amount equal to 70% of each electric utility's annual  
6 retail sales of electricity to retail customers in the  
7 State during those same months in the planning year  
8 immediately prior to the procurement. No later than October  
9 1, 2015, the Agency shall submit to the Commission a  
10 proposed initial procurement plan for the period January 1,  
11 2016 through May 31, 2021 consistent with the provisions of  
12 this paragraph (1). The Commission shall, after notice and  
13 hearing, but no later than November 1, 2015, approve the  
14 plan or approve with modification. The Agency shall conduct  
15 the request for proposals process no later than December 1,  
16 2015, and each utility shall enter into binding contractual  
17 arrangements with the winning suppliers. The procurement  
18 shall be completed no later than January 1, 2016.

19 Following the initial procurement event described in  
20 this paragraph (1), the Agency and Commission shall  
21 initiate additional procurement processes, as necessary,  
22 to replace any LCE credits that were not delivered due to a  
23 supplier default or in the event that additional LCE  
24 credits must be procured for a time period commencing after  
25 May 31, 2021. In the event that LCE credits must be  
26 procured for a period after May 31, 2021, such credits

1       shall be procured in planning year increments. Any such  
2       processes shall be conducted regardless of whether a  
3       procurement event is conducted pursuant to Section  
4       16-111.5 of the Public Utilities Act. Each utility shall  
5       enter into binding contractual arrangements with the  
6       winning suppliers.

7       For the purposes of this subsection (d-5),  
8       "cost-effective" means that the costs of procuring LCE  
9       credits do not cause the limit stated in paragraph (2) of  
10       this subsection (d-5) to be exceeded and do not exceed  
11       benchmarks based on market prices for renewable energy  
12       resources in the region, which shall be developed by the  
13       procurement administrator, in consultation with the  
14       Commission staff, the Agency, and the procurement monitor  
15       and shall be subject to Commission review and approval.

16       To further ensure that customers benefit from the  
17       procurement of LCE credits, winning suppliers must commit  
18       to reimburse the cost of LCE credits for each planning year  
19       that the forecasted average revenue for the LCE resource or  
20       resources that produced such credits exceeds a set a price  
21       per megawatthour. For the purposes of this paragraph (1),  
22       revenue shall be based on actual forward market prices. If  
23       a winning supplier's LCE credits are produced from more  
24       than one LCE resource, the computation required by this  
25       paragraph shall be performed by aggregating all of the LCE  
26       resources that produced the winning supplier's LCE credits

1       and calculating a single value. The electric utilities  
2       shall credit such amounts to customers through the  
3       automatic adjustment clause authorized by subsection (k)  
4       of Section 16-108 of the Public Utilities Act. Such credits  
5       shall appear as a separate line item on customers' bills.

6       (2) For the purposes of this subsection (d-5), the  
7       required procurement of cost-effective LCE credits for a  
8       particular period shall be measured as a percentage of the  
9       actual amount of electricity (megawatthours) delivered by  
10       the electric utility to all retail customers in the  
11       planning year ending immediately prior to the procurement,  
12       as incorporated in the procurement plan approved by the  
13       Commission. For the purposes of this subsection (d-5), the  
14       amount paid per kilowatthour means the total amount paid  
15       for electric service expressed on a per kilowatthour basis.  
16       For the purposes of this subsection (d-5), the total amount  
17       paid for electric service includes without limitation  
18       amounts paid for supply, transmission, distribution,  
19       surcharges, and add-on taxes.

20       Notwithstanding the requirements of this subsection  
21       (d-5), the total of LCE credits procured pursuant to the  
22       procurement plan for any single year shall be subject to  
23       the limitations of this paragraph (2). Such procurement  
24       shall be reduced for all retail customers based on the  
25       amount necessary to limit the annual estimated average net  
26       increase due to the costs of these credits included in the

1 amounts paid by eligible retail customers in connection  
2 with electric service to no more than 2.015% of the amount  
3 paid per kilowatthour by eligible retail customers during  
4 the year ending May 31, 2009. The result of this  
5 computation shall apply to and reduce the procurement for  
6 all retail customers, and all such customers shall pay the  
7 same single, uniform cents per kilowatthour charge  
8 pursuant to subsection (k) of Section 16-108 of the Public  
9 Utilities Act.

10 The calculations required by this paragraph (2) shall  
11 be made only once for each procurement plan year at the  
12 time that the LCE credits are procured. Once the  
13 determination as to the amount of LCE credits to procure is  
14 made based on the calculations set forth in this paragraph  
15 (2) and the utility executes contracts procuring those  
16 amounts, no subsequent rate impact determinations shall be  
17 made and no adjustments to those contract amounts shall be  
18 allowed. All costs incurred under such contracts and in  
19 implementing this subsection (d-5) shall be recovered by  
20 the electric utility as provided in this Section.

21 No later than June 30, 2018, the Commission shall  
22 review the limitation on the amount of LCE credits procured  
23 pursuant to this subsection (d-5) and report to the General  
24 Assembly its findings as to whether that limitation unduly  
25 constrains the procurement of cost-effective LCE credits.

26 (3) Cost-effective LCE credits procured from LCE

1 resources located in Illinois and in states that adjoin  
2 Illinois may be counted towards compliance with the  
3 standards set forth in paragraph (1) of this subsection  
4 (d-5). If those cost-effective resources are not available  
5 in Illinois or in states that adjoin Illinois, they shall  
6 be purchased elsewhere and shall be counted towards  
7 compliance. Notwithstanding the location from which  
8 cost-effective LCE credits are purchased or procured, such  
9 credits shall satisfy the applicable definitions set forth  
10 in Section 1-10 of this Act.

11 (4) The electric utility shall retire all LCE credits  
12 used to comply with the requirements of this subsection  
13 (d-5).

14 (5) Beginning April 1, 2018, and each year thereafter,  
15 the Agency shall prepare a public report for the General  
16 Assembly and Illinois Commerce Commission that shall  
17 include, but not necessarily be limited to:

18 (A) a comparison of the costs associated with the  
19 Agency's procurement of LCE credits to (1) the Agency's  
20 costs associated with electricity generated by other  
21 types of generation facilities and (2) the benefits  
22 associated with the Agency's procurement of LCE  
23 credits; and

24 (B) an analysis of the rate impacts associated with  
25 the Illinois Power Agency's procurement of LCE  
26 credits, including, but not limited to, any long-term

1           contracts, on the retail customers of electric  
2           utilities.

3           (6) Electric utilities shall be entitled to recover all  
4           of the costs associated with the procurement of LCE credits  
5           through an automatic adjustment clause tariff in  
6           accordance with subsection (k) of Section 16-108 of the  
7           Public Utilities Act.

8           (7) This subsection (d-5) is inoperative after  
9           December 31, 2021 so long as the State has adopted and  
10           implemented a plan pursuant to the provisions of Section  
11           111(d) of the federal Clean Air Act, 42 U.S.C. 7411(d), as  
12           amended. If such a plan has not been adopted and  
13           implemented by December 31, 2021, this Section is  
14           inoperative after December 31 of the year in which the  
15           State adopts and implements such a plan.

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

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

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

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

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

3 (i) A renewable energy credit, carbon emission credit, or  
4 LCE credit can only be used once to comply with a single  
5 portfolio standard as set forth in subsection (c), subsection  
6 (d), or subsection (d-5) of this Section, respectively. A  
7 renewable energy credit, carbon emission credit, or LCE credit  
8 cannot be used to satisfy the requirements of more than one  
9 portfolio standard. In the event more than one type of credit  
10 is issued for the same megawatthour of energy, only one credit  
11 can be used to satisfy the requirements of a single portfolio  
12 standard. After such use, the credit must be retired together  
13 with any other credits issued for the same megawatthour of  
14 energy.

15 (Source: P.A. 97-325, eff. 8-12-11; 97-616, eff. 10-26-11;  
16 97-618, eff. 10-26-11; 97-658, eff. 1-13-12; 97-813, eff.  
17 7-13-12; 98-463, eff. 8-16-13.)

18 Section 10. The Public Utilities Act is amended by changing  
19 Sections 16-108, 16-111.5, and 16-127 as follows:

20 (220 ILCS 5/16-108)

21 Sec. 16-108. Recovery of costs associated with the  
22 provision of delivery and other services.

23 (a) An electric utility shall file a delivery services  
24 tariff with the Commission at least 210 days prior to the date

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

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

23 (c) The electric utility's tariffs shall define the classes  
24 of its customers for purposes of delivery services charges.  
25 Delivery services shall be priced and made available to all  
26 retail customers electing delivery services in each such class

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

1 services rates to any particular customer group or geographic  
2 area in setting delivery services rates.

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

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

1 (c) and (d) of this Section.

2 (f) An electric utility shall be entitled but not required  
3 to implement transition charges in conjunction with the  
4 offering of delivery services pursuant to Section 16-104. If an  
5 electric utility implements transition charges, it shall  
6 implement such charges for all delivery services customers and  
7 for all customers described in subsection (h), but shall not  
8 implement transition charges for power and energy that a retail  
9 customer takes from cogeneration or self-generation facilities  
10 located on that retail customer's premises, if such facilities  
11 meet the following criteria:

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

23 (ii) the cogeneration or self-generation facilities  
24 either (A) are sized pursuant to generally accepted  
25 engineering standards for the retail customer's electrical  
26 load at that premises (taking into account standby or other

1 reliability considerations related to that retail  
2 customer's operations at that site) or (B) if the facility  
3 is a cogeneration facility located on the retail customer's  
4 premises, the retail customer is the thermal host for that  
5 facility and the facility has been designed to meet that  
6 retail customer's thermal energy requirements resulting in  
7 electrical output beyond that retail customer's electrical  
8 demand at that premises, comply with the operating and  
9 efficiency standards applicable to "qualifying facilities"  
10 specified in title 18 Code of Federal Regulations Section  
11 292.205 as in effect on the effective date of this  
12 amendatory Act of 1999;

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

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

1 subsection (f).

2 If a generation facility located at a retail customer's  
3 premises does not meet the above criteria, an electric utility  
4 implementing transition charges shall implement a transition  
5 charge until December 31, 2006 for any power and energy taken  
6 by such retail customer from such facility as if such power and  
7 energy had been delivered by the electric utility. Provided,  
8 however, that an industrial retail customer that is taking  
9 power from a generation facility that does not meet the above  
10 criteria but that is located on such customer's premises will  
11 not be subject to a transition charge for the power and energy  
12 taken by such retail customer from such generation facility if  
13 the facility does not serve any other retail customer and  
14 either was installed on behalf of the customer and for its own  
15 use prior to January 1, 1997, or is both predominantly fueled  
16 by byproducts of such customer's manufacturing process at such  
17 premises and sells or offers an average of 300 megawatts or  
18 more of electricity produced from such generation facility into  
19 the wholesale market. Such charges shall be calculated as  
20 provided in Section 16-102, and shall be collected on each  
21 kilowatt-hour delivered under a delivery services tariff to a  
22 retail customer from the date the customer first takes delivery  
23 services until December 31, 2006 except as provided in  
24 subsection (h) of this Section. Provided, however, that an  
25 electric utility, other than an electric utility providing  
26 service to at least 1,000,000 customers in this State on

1 January 1, 1999, shall be entitled to petition for entry of an  
2 order by the Commission authorizing the electric utility to  
3 implement transition charges for an additional period ending no  
4 later than December 31, 2008. The electric utility shall file  
5 its petition with supporting evidence no earlier than 16  
6 months, and no later than 12 months, prior to December 31,  
7 2006. The Commission shall hold a hearing on the electric  
8 utility's petition and shall enter its order no later than 8  
9 months after the petition is filed. The Commission shall  
10 determine whether and to what extent the electric utility shall  
11 be authorized to implement transition charges for an additional  
12 period. The Commission may authorize the electric utility to  
13 implement transition charges for some or all of the additional  
14 period, and shall determine the mitigation factors to be used  
15 in implementing such transition charges; provided, that the  
16 Commission shall not authorize mitigation factors less than  
17 110% of those in effect during the 12 months ended December 31,  
18 2006. In making its determination, the Commission shall  
19 consider the following factors: the necessity to implement  
20 transition charges for an additional period in order to  
21 maintain the financial integrity of the electric utility; the  
22 prudence of the electric utility's actions in reducing its  
23 costs since the effective date of this amendatory Act of 1997;  
24 the ability of the electric utility to provide safe, adequate  
25 and reliable service to retail customers in its service area;  
26 and the impact on competition of allowing the electric utility

1 to implement transition charges for the additional period.

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

1 transition charges to be paid by the customer to the electric  
2 utility pursuant to the tariff.

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

25 (i) An electric utility shall be entitled to add to the  
26 bills of delivery services customers charges pursuant to

1 Sections 9-221, 9-222 (except as provided in Section 9-222.1),  
2 and Section 16-114 of this Act, Section 5-5 of the Electricity  
3 Infrastructure Maintenance Fee Law, Section 6-5 of the  
4 Renewable Energy, Energy Efficiency, and Coal Resources  
5 Development Law of 1997, and Section 13 of the Energy  
6 Assistance Act.

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

1 delivery services, except as provided in subsection (f) of  
2 Section 16-110.

3 (k) The electric utility shall be entitled to recover  
4 through tariffed charges all of the costs associated with the  
5 purchase of low carbon energy credits from low carbon energy  
6 resources to meet the requirements of subsection (d-5) of  
7 Section 1-75 of the Illinois Power Agency Act. Such costs shall  
8 be allocated across all retail customers through a single,  
9 uniform cents per kilowatt-hour charge applicable to all retail  
10 customers, which shall appear as a separate line item on each  
11 customer's bill.

12 The electric utility shall be entitled to recover all costs  
13 associated with the purchase of low carbon energy credits from  
14 low carbon energy resources through an automatic adjustment  
15 clause tariff applicable to all of the utility's retail  
16 customers that allows the electric utility to adjust its  
17 tariffed charges on a quarterly basis for changes in its costs  
18 incurred to purchase such resources and credits, if any,  
19 without the need to file a general delivery services rate case.  
20 The electric utility's collections pursuant to such an  
21 automatic adjustment clause tariff shall be subject to annual  
22 review, reconciliation, and true-up against actual costs by the  
23 Commission pursuant to a procedure that shall be specified in  
24 the electric utility's automatic adjustment clause tariff and  
25 that shall be approved by the Commission in connection with its  
26 approval of such tariff. The procedure shall provide that any

1 difference between the electric utility's collection pursuant  
2 to the automatic adjustment charge for an annual period and the  
3 electric utility's actual costs of renewable energy resources  
4 and low carbon energy credits from low carbon energy resources  
5 for that same annual period shall be refunded to or collected  
6 from, as applicable, the electric utility's delivery services  
7 customers in subsequent periods.

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

9 (220 ILCS 5/16-111.5)

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

11 (a) An electric utility that on December 31, 2005 served at  
12 least 100,000 customers in Illinois shall procure power and  
13 energy for its eligible retail customers in accordance with the  
14 applicable provisions set forth in Section 1-75 of the Illinois  
15 Power Agency Act and this Section and, beginning with the  
16 partial planning year commencing on January 1, 2016, shall  
17 procure low carbon energy credits from low carbon energy  
18 resources for all retail customers in its service area in  
19 accordance with the applicable provisions set forth in Section  
20 1-75 of the Illinois Power Agency Act and this Section. A small  
21 multi-jurisdictional electric utility that on December 31,  
22 2005 served less than 100,000 customers in Illinois may elect  
23 to procure power and energy for all or a portion of its  
24 eligible Illinois retail customers in accordance with the  
25 applicable provisions set forth in this Section and Section

1 1-75 of the Illinois Power Agency Act. This Section shall not  
2 apply to a small multi-jurisdictional utility until such time  
3 as a small multi-jurisdictional utility requests the Illinois  
4 Power Agency to prepare a procurement plan for its eligible  
5 retail customers. "Eligible retail customers" for the purposes  
6 of this Section means those retail customers that purchase  
7 power and energy from the electric utility under fixed-price  
8 bundled service tariffs, other than those retail customers  
9 whose service is declared or deemed competitive under Section  
10 16-113 and those other customer groups specified in this  
11 Section, including self-generating customers, customers  
12 electing hourly pricing, or those customers who are otherwise  
13 ineligible for fixed-price bundled tariff service. Those  
14 customers that are excluded from the definition of "eligible  
15 retail customers" shall not be included in the procurement  
16 plan's electric supply service plan ~~plan load~~ requirements, and the  
17 utility shall procure any supply requirements, including  
18 capacity, ancillary services, and hourly priced energy, in the  
19 applicable markets as needed to serve those customers, provided  
20 that the utility may include in its procurement plan load  
21 requirements for the load that is associated with those retail  
22 customers whose service has been declared or deemed competitive  
23 pursuant to Section 16-113 of this Act to the extent that those  
24 customers are purchasing power and energy during one of the  
25 transition periods identified in subsection (b) of Section  
26 16-113 of this Act.

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

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

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

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

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

8 (iv) growth forecasts by customer class.

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

11 (i) the impact of demand response programs and  
12 energy efficiency programs, both current and  
13 projected; for small multi-jurisdictional utilities,  
14 the impact of demand response and energy efficiency  
15 programs approved pursuant to Section 8-408 of this  
16 Act, both current and projected; and

17 (ii) supply side needs that are projected to be  
18 offset by purchases of renewable energy resources, if  
19 any.

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

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

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

1 year. For small multi-jurisdictional electric  
2 utilities that on December 31, 2005 served fewer than  
3 100,000 customers in Illinois, these shall be defined  
4 as demand-response products offered in an energy  
5 efficiency plan approved pursuant to Section 8-408 of  
6 this Act. The cost-effective demand-response measures  
7 shall be procured whenever the cost is lower than  
8 procuring comparable capacity products, provided that  
9 such products shall:

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

12 (B) at least satisfy the demand-response  
13 requirements of the regional transmission  
14 organization market in which the utility's service  
15 territory is located, including, but not limited  
16 to, any applicable capacity or dispatch  
17 requirements;

18 (C) provide for customers' participation in  
19 the stream of benefits produced by the  
20 demand-response products;

21 (D) provide for reimbursement by the  
22 demand-response provider of the utility for any  
23 costs incurred as a result of the failure of the  
24 supplier of such products to perform its  
25 obligations thereunder; and

26 (E) meet the same credit requirements as apply

1 to suppliers of capacity, in the applicable  
2 regional transmission organization market;

3 (iii) monthly forecasted system supply  
4 requirements, including expected minimum, maximum, and  
5 average values for the planning period;

6 (iv) the proposed mix and selection of standard  
7 wholesale products for which contracts will be  
8 executed during the next year, separately or in  
9 combination, to meet that portion of its load  
10 requirements not met through pre-existing contracts,  
11 including but not limited to monthly 5 x 16 peak period  
12 block energy, monthly off-peak wrap energy, monthly 7 x  
13 24 energy, annual 5 x 16 energy, annual off-peak wrap  
14 energy, annual 7 x 24 energy, monthly capacity, annual  
15 capacity, peak load capacity obligations, capacity  
16 purchase plan, and ancillary services;

17 (v) proposed term structures for each wholesale  
18 product type included in the proposed procurement plan  
19 portfolio of products; and

20 (vi) an assessment of the price risk, load  
21 uncertainty, and other factors that are associated  
22 with the proposed procurement plan; this assessment,  
23 to the extent possible, shall include an analysis of  
24 the following factors: contract terms, time frames for  
25 securing products or services, fuel costs, weather  
26 patterns, transmission costs, market conditions, and

1           the governmental regulatory environment; the proposed  
2           procurement plan shall also identify alternatives for  
3           those portfolio measures that are identified as having  
4           significant price risk.

5           (4) Proposed procedures for balancing loads. The  
6           procurement plan shall include, for load requirements  
7           included in the procurement plan, the process for (i)  
8           hourly balancing of supply and demand and (ii) the criteria  
9           for portfolio re-balancing in the event of significant  
10          shifts in load.

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

15           (1) The procurement administrator shall:

16           (i) design the final procurement process in  
17           accordance with Section 1-75 of the Illinois Power  
18           Agency Act and subsection (e) of this Section following  
19           Commission approval of the procurement plan;

20           (ii) develop benchmarks in accordance with  
21           subsection (e)(3) to be used to evaluate bids; these  
22           benchmarks shall be submitted to the Commission for  
23           review and approval on a confidential basis prior to  
24           the procurement event;

25           (iii) serve as the interface between the electric  
26           utility and suppliers;

1           (iv) manage the bidder pre-qualification and  
2 registration process;

3           (v) obtain the electric utilities' agreement to  
4 the final form of all supply contracts and credit  
5 collateral agreements;

6           (vi) administer the request for proposals process;

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

19           (viii) maintain confidentiality of supplier and  
20 bidding information in a manner consistent with all  
21 applicable laws, rules, regulations, and tariffs;

22           (ix) submit a confidential report to the  
23 Commission recommending acceptance or rejection of  
24 bids;

25           (x) notify the utility of contract counterparties  
26 and contract specifics; and

1           (xi) administer related contingency procurement  
2 events.

3           (2) The procurement monitor, who shall be retained by  
4 the Commission, shall:

5           (i) monitor interactions among the procurement  
6 administrator, suppliers, and utility;

7           (ii) monitor and report to the Commission on the  
8 progress of the procurement process;

9           (iii) provide an independent confidential report  
10 to the Commission regarding the results of the  
11 procurement event;

12           (iv) assess compliance with the procurement plans  
13 approved by the Commission for each utility that on  
14 December 31, 2005 provided electric service to a least  
15 100,000 customers in Illinois and for each small  
16 multi-jurisdictional utility that on December 31, 2005  
17 served less than 100,000 customers in Illinois;

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

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

25           (vii) consult with the procurement administrator  
26 regarding the development and use of benchmark

1 criteria, standard form contracts, credit policies,  
2 and bid documents.

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

5 (1) Beginning in 2008, each Illinois utility procuring  
6 power pursuant to this Section shall annually provide a  
7 range of load forecasts to the Illinois Power Agency by  
8 July 15 of each year, or such other date as may be required  
9 by the Commission or Agency. The load forecasts shall cover  
10 the 5-year procurement planning period for the next  
11 procurement plan and shall include hourly data  
12 representing a high-load, low-load and expected-load  
13 scenario for the load of the eligible retail customers. The  
14 utility shall provide supporting data and assumptions for  
15 each of the scenarios.

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

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

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

25 (4) The Commission shall approve the procurement plan,  
26 including expressly the forecast used in the procurement

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

6 (e) The procurement process shall include each of the  
7 following components:

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

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

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

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

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

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

26 (i) Event of supplier default: In the event of

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

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

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

19 (iii) In all cases where there is insufficient  
20 supply provided under contracts awarded through the  
21 procurement process to fully meet the electric  
22 utility's load requirement, the utility shall meet the  
23 load requirement by procuring power and energy from the  
24 applicable regional transmission organization market,  
25 including ancillary services, capacity, and day-ahead  
26 or real time energy or both; provided, however, that if

1           a needed product is not available through the regional  
2           transmission organization market it shall be purchased  
3           from the wholesale market.

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

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

24          (g) Within 3 business days after the Commission decision  
25          approving the results of a procurement event, the utility shall  
26          enter into binding contractual arrangements with the winning

1 suppliers using the standard form contracts; except that the  
2 utility shall not be required either directly or indirectly to  
3 execute the contracts if a tariff that is consistent with  
4 subsection (l) of this Section has not been approved and placed  
5 into effect for that utility.

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

23 (i) Within 2 business days after a Commission decision  
24 approving the results of a procurement event or such other date  
25 as may be required by the Commission from time to time, the  
26 utility shall file for informational purposes with the

1 Commission its actual or estimated retail supply charges, as  
2 applicable, by customer supply group reflecting the costs  
3 associated with the procurement and computed in accordance with  
4 the tariffs filed pursuant to subsection (l) of this Section  
5 and approved by the Commission.

6 (j) Within 60 days following the effective date of this  
7 amendatory Act, each electric utility that on December 31, 2005  
8 provided electric service to at least 100,000 customers in  
9 Illinois shall prepare and file with the Commission an initial  
10 procurement plan, which shall conform in all material respects  
11 to the requirements of the procurement plan set forth in  
12 subsection (b); provided, however, that the Illinois Power  
13 Agency Act shall not apply to the initial procurement plan  
14 prepared pursuant to this subsection. The initial procurement  
15 plan shall identify the portfolio of power and energy products  
16 to be procured and delivered for the period June 2008 through  
17 May 2009, and shall identify the proposed procurement  
18 administrator, who shall have the same experience and expertise  
19 as is required of a procurement administrator hired pursuant to  
20 Section 1-75 of the Illinois Power Agency Act. Copies of the  
21 procurement plan shall be posted and made publicly available on  
22 the Commission's website. The initial procurement plan may  
23 include contracts for renewable resources that extend beyond  
24 May 2009.

25 (i) Within 14 days following filing of the initial  
26 procurement plan, any person may file a detailed objection

1 with the Commission contesting the procurement plan  
2 submitted by the electric utility. All objections to the  
3 electric utility's plan shall be specific, supported by  
4 data or other detailed analyses. The electric utility may  
5 file a response to any objections to its procurement plan  
6 within 7 days after the date objections are due to be  
7 filed. Within 7 days after the date the utility's response  
8 is due, the Commission shall determine whether a hearing is  
9 necessary. If it determines that a hearing is necessary, it  
10 shall require the hearing to be completed and issue an  
11 order on the procurement plan within 60 days after the  
12 filing of the procurement plan by the electric utility.

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

22 (k) In order to promote price stability for residential and  
23 small commercial customers during the transition to  
24 competition in Illinois, and notwithstanding any other  
25 provision of this Act, each electric utility subject to this  
26 Section shall enter into one or more multi-year financial swap

1 contracts that become effective on the effective date of this  
2 amendatory Act. These contracts may be executed with generators  
3 and power marketers, including affiliated interests of the  
4 electric utility. These contracts shall be for a term of no  
5 more than 5 years and shall, for each respective utility or for  
6 any Illinois electric utilities that are affiliated by virtue  
7 of a common parent company and that are thereby considered a  
8 single electric utility for purposes of this subsection (k),  
9 not exceed in the aggregate 3,000 megawatts for any hour of the  
10 year. The contracts shall be financial contracts and not energy  
11 sales contracts. The contracts shall be executed as  
12 transactions under a negotiated master agreement based on the  
13 form of master agreement for financial swap contracts sponsored  
14 by the International Swaps and Derivatives Association, Inc.  
15 and shall be considered pre-existing contracts in the  
16 utilities' procurement plans for residential and small  
17 commercial customers. Costs incurred pursuant to a contract  
18 authorized by this subsection (k) shall be deemed prudently  
19 incurred and reasonable in amount and the electric utility  
20 shall be entitled to full cost recovery pursuant to the tariffs  
21 filed with the Commission.

22 (k-5) In order to promote price stability for residential  
23 and small commercial customers during the infrastructure  
24 investment program described in subsection (b) of Section  
25 16-108.5 of this Act, and notwithstanding any other provision  
26 of this Act or the Illinois Power Agency Act, for each electric

1 utility that serves more than one million retail customers in  
2 Illinois, the Illinois Power Agency shall conduct a procurement  
3 event within 120 days after October 26, 2011 (the effective  
4 date of Public Act 97-616) and may procure contracts for energy  
5 and renewable energy credits for the period June 1, 2013  
6 through December 31, 2017 that satisfy the requirements of this  
7 subsection (k-5), including the benchmarks described in this  
8 subsection. These contracts shall be entered into as the result  
9 of a competitive procurement event, and, to the extent that any  
10 provisions of this Section or the Illinois Power Agency Act do  
11 not conflict with this subsection (k-5), such provisions shall  
12 apply to the procurement event. The energy contracts shall be  
13 for 24 hour by 7 day supply over a term that runs from the first  
14 delivery year through December 31, 2017. For a utility that  
15 serves over 2 million customers, the energy contracts shall be  
16 multi-year with pricing escalating at 2.5% per annum. The  
17 energy contracts may be designed as financial swaps or may  
18 require physical delivery.

19 Within 30 days of October 26, 2011 (the effective date of  
20 Public Act 97-616), each such utility shall submit to the  
21 Agency updated load forecasts for the period June 1, 2013  
22 through December 31, 2017. The megawatt volume of the contracts  
23 shall be based on the updated load forecasts of the minimum  
24 monthly on-peak or off-peak average load requirements shown in  
25 the forecasts, taking into account any existing energy  
26 contracts in effect as well as the expected migration of the

1 utility's customers to alternative retail electric suppliers.  
2 The renewable energy credit volume shall be based on the number  
3 of credits that would satisfy the requirements of subsection  
4 (c) of Section 1-75 of the Illinois Power Agency Act, subject  
5 to the rate impact caps and other provisions of subsection (c)  
6 of Section 1-75 of the Illinois Power Agency Act. The  
7 evaluation of contract bids in the competitive procurement  
8 events for energy and for renewable energy credits shall  
9 incorporate price benchmarks set collaboratively by the  
10 Agency, the procurement administrator, the staff of the  
11 Commission, and the procurement monitor. If the contracts are  
12 swap contracts, then they shall be executed as transactions  
13 under a negotiated master agreement based on the form of master  
14 agreement for financial swap contracts sponsored by the  
15 International Swaps and Derivatives Association, Inc. Costs  
16 incurred pursuant to a contract authorized by this subsection  
17 (k-5) shall be deemed prudently incurred and reasonable in  
18 amount and the electric utility shall be entitled to full cost  
19 recovery pursuant to the tariffs filed with the Commission.

20 The cost of administering the procurement event described  
21 in this subsection (k-5) shall be paid by the winning supplier  
22 or suppliers to the procurement administrator through a  
23 supplier fee. In the event that there is no winning supplier  
24 for a particular utility, such utility will pay the procurement  
25 administrator for the costs associated with the procurement  
26 event, and those costs shall not be a recoverable expense.

1 Nothing in this subsection (k-5) is intended to alter the  
2 recovery of costs for any other procurement event.

3 (1) An electric utility shall recover its costs incurred  
4 under this Section, including, but not limited to, the costs of  
5 procuring power and energy demand-response resources under  
6 this Section. The utility shall file with the initial  
7 procurement plan its proposed tariffs through which its costs  
8 of procuring power that are incurred pursuant to a  
9 Commission-approved procurement plan and those other costs  
10 identified in this subsection (1), will be recovered. The  
11 tariffs shall include a formula rate or charge designed to pass  
12 through both the costs incurred by the utility in procuring a  
13 supply of electric power and energy for the applicable customer  
14 classes with no mark-up or return on the price paid by the  
15 utility for that supply, plus any just and reasonable costs  
16 that the utility incurs in arranging and providing for the  
17 supply of electric power and energy. The formula rate or charge  
18 shall also contain provisions that ensure that its application  
19 does not result in over or under recovery due to changes in  
20 customer usage and demand patterns, and that provide for the  
21 correction, on at least an annual basis, of any accounting  
22 errors that may occur. A utility shall recover through the  
23 tariff all reasonable costs incurred to implement or comply  
24 with any procurement plan that is developed and put into effect  
25 pursuant to Section 1-75 of the Illinois Power Agency Act and  
26 this Section, including any fees assessed by the Illinois Power

1 Agency, costs associated with load balancing, and contingency  
2 plan costs. The electric utility shall also recover its full  
3 costs of procuring electric supply for which it contracted  
4 before the effective date of this Section in conjunction with  
5 the provision of full requirements service under fixed-price  
6 bundled service tariffs subsequent to December 31, 2006. All  
7 such costs shall be deemed to have been prudently incurred. The  
8 pass-through tariffs that are filed and approved pursuant to  
9 this Section shall not be subject to review under, or in any  
10 way limited by, Section 16-111(i) of this Act. All of the costs  
11 incurred by the electric utility associated with the purchase  
12 of low carbon energy credits in accordance with subsection  
13 (d-5) of Section 1-75 of the Illinois Power Agency Act shall be  
14 recovered through a tariff or tariffs applicable to all of the  
15 retail customers in the utility's service area pursuant to  
16 subsection (k) of Section 16-108 of this Act and shall not be  
17 recovered through the electric utility's tariffed charges for  
18 electric power and energy supply to its eligible retail  
19 customers.

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

26 (n) Notwithstanding any other provision of this Act, any

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

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

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

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

11 (Source: P.A. 97-325, eff. 8-12-11; 97-616, eff. 10-26-11;  
12 97-813, eff. 7-13-12.)

13 (220 ILCS 5/16-127)

14 Sec. 16-127. Environmental disclosure.

15 (a) Effective January 1, 2013, every electric utility and  
16 alternative retail electric supplier shall provide the  
17 following information, to the maximum extent practicable, to  
18 its customers on a quarterly basis:

19 (i) the known sources of electricity supplied,  
20 broken-out by percentages, of biomass power, coal-fired  
21 power, hydro power, natural gas-fired power, nuclear  
22 power, oil-fired power, solar power, wind power and other  
23 resources, respectively;

24 (ii) a pie-chart that graphically depicts the  
25 percentages of the sources of the electricity supplied as

1 set forth in subparagraph (i) of this subsection; ~~and~~

2 (iii) a pie-chart that graphically depicts the  
3 quantity of renewable energy resources procured pursuant  
4 to Section 1-75 of the Illinois Power Agency Act as a  
5 percentage of electricity supplied to serve eligible  
6 retail customers as defined in Section 16-111.5(a) of this  
7 Act; ~~and~~.

8 (iv) after May 31, 2016, a pie-chart that graphically  
9 depicts the quantity of low carbon energy credits from low  
10 carbon energy resources procured pursuant to Section 1-75  
11 of the Illinois Power Agency Act as a percentage of the  
12 actual load of retail customers within its service area.

13 (b) In addition, every electric utility and alternative  
14 retail electric supplier shall provide, to the maximum extent  
15 practicable, to its customers on a quarterly basis, a  
16 standardized chart in a format to be determined by the  
17 Commission in a rule following notice and hearings which  
18 provides the amounts of carbon dioxide, nitrogen oxides and  
19 sulfur dioxide emissions and nuclear waste attributable to the  
20 known sources of electricity supplied as set forth in  
21 subparagraph (i) of subsection (a) of this Section.

22 (c) The electric utilities and alternative retail electric  
23 suppliers may provide their customers with such other  
24 information as they believe relevant to the information  
25 required in subsections (a) and (b) of this Section. All of the  
26 information required in subsections (a) and (b) of this Section

1 shall be made available by the electric utilities or  
2 alternative retail electric suppliers either in an electronic  
3 medium, such as on a website or by electronic mail, or through  
4 the U.S. Postal Service.

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

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

11 (Source: P.A. 97-1092, eff. 1-1-13.)

12 Section 97. Severability. The provisions of this Act are  
13 severable under Section 1.31 of the Statute on Statutes.

14 Section 99. Effective date. This Act takes effect upon  
15 becoming law."