



Sen. Don Harmon

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1 AMENDMENT TO HOUSE BILL 6202

2 AMENDMENT NO. _____. Amend House Bill 6202, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

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

7 (20 ILCS 3855/1-56)

8 Sec. 1-56. Illinois Power Agency Renewable Energy
9 Resources Fund.

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

12 (b) The Illinois Power Agency Renewable Energy Resources
13 Fund shall be administered by the Agency to procure renewable
14 energy resources. Prior to June 1, 2011, resources procured
15 pursuant to this Section shall be procured from facilities
16 located in Illinois, provided the resources are available from

1 those facilities. If resources are not available in Illinois,
2 then they shall be procured in states that adjoin Illinois. If
3 resources are not available in Illinois or in states that
4 adjoin Illinois, then they may be purchased elsewhere.
5 Beginning June 1, 2011, resources procured pursuant to this
6 Section shall be procured from facilities located in Illinois
7 or states that adjoin Illinois. If resources are not available
8 in Illinois or in states that adjoin Illinois, then they may be
9 procured elsewhere. To the extent available, at least 75% of
10 these renewable energy resources shall come from wind
11 generation. Of the renewable energy resources procured
12 pursuant to this Section at least the following specified
13 percentages shall come from photovoltaics on the following
14 schedule: 0.5% by June 1, 2012; 1.5% by June 1, 2013; 3% by
15 June 1, 2014; and 6% by June 1, 2015 and thereafter ~~and,~~
16 ~~starting June 1, 2015, at least 6% of the renewable energy~~
17 ~~resources used to meet these standards shall come from solar~~
18 ~~photovoltaics.~~

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

24 (d) The price paid to procure renewable energy credits
25 using monies from the Illinois Power Agency Renewable Energy
26 Resources Fund shall not exceed the winning bid prices paid for

1 like resources procured for electric utilities required to
2 comply with Section 1-75 of this Act.

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

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

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

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

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

1 (20 ILCS 3855/1-75)

2 Sec. 1-75. Planning and Procurement Bureau. The Planning
3 and Procurement Bureau has the following duties and
4 responsibilities:

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

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

21 (A) direct previous experience assembling
22 large-scale power supply plans or portfolios for
23 end-use customers;

24 (B) an advanced degree in economics,
25 mathematics, engineering, risk management, or a

1 related area of study;

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

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

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

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

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

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

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

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

26 (C) 10 years of experience in the electricity

1 sector, including risk management experience;

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

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

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

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

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

1 Agency in writing if they object to any experts or
2 expert consulting firms on the lists. Objections shall
3 be based on:

4 (A) failure to satisfy qualification criteria;

5 (B) identification of a conflict of interest;

6 or

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

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

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

25 (5) The Agency shall select an expert or expert
26 consulting firm to develop procurement plans based on

1 the proposals submitted and shall award one-year
2 contracts to those selected with an option for the
3 Agency for a one-year renewal.

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

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

25 (c) Renewable portfolio standard.

26 (1) The procurement plans shall include

1 cost-effective renewable energy resources. A minimum
2 percentage of each utility's total supply to serve the
3 load of eligible retail customers, as defined in
4 Section 16-111.5(a) of the Public Utilities Act,
5 procured for each of the following years shall be
6 generated from cost-effective renewable energy
7 resources: at least 2% by June 1, 2008; at least 4% by
8 June 1, 2009; at least 5% by June 1, 2010; at least 6%
9 by June 1, 2011; at least 7% by June 1, 2012; at least
10 8% by June 1, 2013; at least 9% by June 1, 2014; at
11 least 10% by June 1, 2015; and increasing by at least
12 1.5% each year thereafter to at least 25% by June 1,
13 2025. To the extent that it is available, at least 75%
14 of the renewable energy resources used to meet these
15 standards shall come from wind generation and,
16 beginning on June 1, 2011 ~~2015~~, at least the following
17 percentages ~~6%~~ of the renewable energy resources used
18 to meet these standards shall come from photovoltaics
19 on the following schedule: 0.5% by June 1, 2012, 1.5%
20 by June 1, 2013; 3% by June 1, 2014; and 6% by June 1,
21 2015 and thereafter. For purposes of this subsection
22 (c), "cost-effective" means that the costs of
23 procuring renewable energy resources do not cause the
24 limit stated in paragraph (2) of this subsection (c) to
25 be exceeded and do not exceed benchmarks based on
26 market prices for renewable energy resources in the

1 region, which shall be developed by the procurement
2 administrator, in consultation with the Commission
3 staff, Agency staff, and the procurement monitor and
4 shall be subject to Commission review and approval.

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

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

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

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

9 (C) in 2010, the greater of an additional 0.5%
10 of the amount paid per kilowatthour by those
11 customers during the year ending May 31, 2009 or
12 1.5% of the amount paid per kilowatthour by those
13 customers during the year ending May 31, 2007;

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

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

1 paid per kilowatthour by those customers during
2 the year ending May 31, 2007 or the incremental
3 amount per kilowatthour paid for these resources
4 in 2011.

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

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

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

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

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

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

10 (d) Clean coal portfolio standard.

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

1 not exceed cost-based benchmarks, which shall be developed
2 to assess all expenditures pursuant to such sourcing
3 agreements covering electricity generated by clean coal
4 facilities, other than the initial clean coal facility, by
5 the procurement administrator, in consultation with the
6 Commission staff, Agency staff, and the procurement
7 monitor and shall be subject to Commission review and
8 approval.

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

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

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

24 (2) For purposes of this subsection (d), the required
25 execution of sourcing agreements with the initial clean
26 coal facility for a particular year shall be measured as a

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

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

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

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

1 customers during the year ending May 31, 2009;

2 (C) in 2012, the greater of an additional 0.5%
3 of the amount paid per kilowatthour by those
4 customers during the year ending May 31, 2011 or
5 1.5% of the amount paid per kilowatthour by those
6 customers during the year ending May 31, 2009;

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

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

1 total amount paid under sourcing agreements, if
2 any, with clean coal facilities pursuant to this
3 subsection (d) and report to the General Assembly
4 its findings as to whether that limitation unduly
5 constrains the amount of electricity generated by
6 cost-effective clean coal facilities that is
7 covered by sourcing agreements.

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

1 such a sourcing agreement. A utility's sourcing agreement
2 for electricity produced by the initial clean coal facility
3 shall include:

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

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

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

1 item (5) of subsection (d) of Section 16-115 of the
2 Public Utilities Act, whether generated from the
3 synthesis gas derived from coal, from SNG, or from
4 natural gas, shall be credited against the revenue
5 requirement for this initial clean coal facility;

6 (B) power purchase provisions, which shall:

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

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

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

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

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

12 (C) contract for differences provisions, which
13 shall:

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

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

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

1 clause (i); and

2 (iii) not require the utility to take physical
3 delivery of the electricity produced by the
4 facility;

5 (D) general provisions, which shall:

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

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

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

23 (iv) permit the Illinois Power Agency to
24 assume ownership of the initial clean coal
25 facility, without monetary consideration and
26 otherwise on reasonable terms acceptable to the

1 Agency, if the Agency so requests no less than 3
2 years prior to the end of the stated contract term;

3 (v) require the owner of the initial clean coal
4 facility to provide documentation to the
5 Commission each year, starting in the facility's
6 first year of commercial operation, accurately
7 reporting the quantity of carbon emissions from
8 the facility that have been captured and
9 sequestered and report any quantities of carbon
10 released from the site or sites at which carbon
11 emissions were sequestered in prior years, based
12 on continuous monitoring of such sites. If, in any
13 year after the first year of commercial operation,
14 the owner of the facility fails to demonstrate that
15 the initial clean coal facility captured and
16 sequestered at least 50% of the total carbon
17 emissions that the facility would otherwise emit
18 or that sequestration of emissions from prior
19 years has failed, resulting in the release of
20 carbon dioxide into the atmosphere, the owner of
21 the facility must offset excess emissions. Any
22 such carbon offsets must be permanent, additional,
23 verifiable, real, located within the State of
24 Illinois, and legally and practicably enforceable.
25 The cost of such offsets for the facility that are
26 not recoverable shall not exceed \$15 million in any

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

1 requirements set forth in this item (v);

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

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

22 (viii) limit the utility's obligation to such
23 amount as the utility is allowed to recover through
24 tariffs filed with the Commission, provided that
25 neither the clean coal facility nor the utility
26 waives any right to assert federal pre-emption or

1 any other argument in response to a purported
2 disallowance of recovery costs;

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

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

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

22 (xii) provide that any changes to the terms of
23 the contract, insofar as such changes relate to the
24 power purchase provisions, are subject to review
25 under the public interest standard applied by the
26 Federal Energy Regulatory Commission pursuant to

1 Sections 205 and 206 of the Federal Power Act; and

2 (xiii) conform with customary lender
3 requirements in power purchase agreements used as
4 the basis for financing non-utility generators.

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

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

25 (ii) Commission report. Within 6 months
26 following receipt of the facility cost report, the

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

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

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

21 The facility cost report shall be prepared as follows:

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

1 comprising the initial clean coal facility and the
2 estimated costs of operation and maintenance of the
3 facility. The facility cost report shall include:

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

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

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

1 construction cost quote is expressed.

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

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

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

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

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

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

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

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

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

24 (6) Costs incurred under this subsection (d) or
25 pursuant to a contract entered into under this subsection
26 (d) shall be deemed prudently incurred and reasonable in

1 amount and the electric utility shall be entitled to full
2 cost recovery pursuant to the tariffs filed with the
3 Commission.

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

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

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

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

18 (Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09;
19 96-159, eff. 8-10-09.)

20 Section 10. The Public Utilities Act is amended by changing
21 Section 16-115D as follows:

22 (220 ILCS 5/16-115D)

23 Sec. 16-115D. Renewable portfolio standard for alternative
24 retail electric suppliers and electric utilities operating

1 outside their service territories.

2 (a) An alternative retail electric supplier shall be
3 responsible for procuring cost-effective renewable energy
4 resources as required under item (5) of subsection (d) of
5 Section 16-115 of this Act as outlined herein:

6 (1) The definition of renewable energy resources
7 contained in Section 1-10 of the Illinois Power Agency Act
8 applies to all renewable energy resources required to be
9 procured by alternative retail electric suppliers.

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

18 (3) The quantity of renewable energy resources shall be
19 in amounts at least equal to the annual percentages set
20 forth in item (1) of subsection (c) of Section 1-75 of the
21 Illinois Power Agency Act. At least 60% of the renewable
22 energy resources procured pursuant to items (1) through (3)
23 of subsection (b) of this Section shall come from wind
24 generation and, starting June 1, 2015, at least 6% of the
25 renewable energy resources procured pursuant to items (1)
26 through (3) of subsection (b) of this Section shall come

1 from solar photovoltaics. If, in any given year, an
2 alternative retail electric supplier does not purchase at
3 least these levels of renewable energy resources, then the
4 alternative retail electric supplier shall make
5 alternative compliance payments, as described in
6 subsection (d) of this Section.

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

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

3 (6) The required procurement of renewable energy
4 resources by an alternative retail electric supplier shall
5 apply to all metered electricity delivered to Illinois
6 retail customers by the alternative retail electric
7 supplier pursuant to contracts executed or extended after
8 March 15, 2009.

9 (b) An alternative retail electric supplier shall comply
10 with the renewable energy portfolio standards by making an
11 alternative compliance payment, as described in subsection (d)
12 of this Section, to cover at least one-half of the alternative
13 retail electric supplier's compliance obligation and any one or
14 combination of the following means to cover the remainder of
15 the alternative retail electric supplier's compliance
16 obligation:

17 (1) Generating electricity using renewable energy
18 resources identified pursuant to item (4) of subsection (a)
19 of this Section.

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

23 (3) Purchasing renewable energy credits from renewable
24 energy resources identified pursuant to item (4) of
25 subsection (a) of this Section.

26 (4) Making an alternative compliance payment as

1 described in subsection (d) of this Section.

2 (c) Use of renewable energy credits.

3 (1) Renewable energy credits that are not used by an
4 alternative retail electric supplier to comply with a
5 renewable portfolio standard in a compliance year may be
6 banked and carried forward up to 2 12-month compliance
7 periods after the compliance period in which the credit was
8 generated for the purpose of complying with a renewable
9 portfolio standard in those 2 subsequent compliance
10 periods. For the 2009-2010 and 2010-2011 compliance
11 periods, an alternative retail electric supplier may use
12 renewable credits generated after December 31, 2008 and
13 before June 1, 2009 to comply with this Section.

14 (2) An alternative retail electric supplier is
15 responsible for demonstrating that a renewable energy
16 credit used to comply with a renewable portfolio standard
17 is derived from a renewable energy resource and that the
18 alternative retail electric supplier has not used, traded,
19 sold, or otherwise transferred the credit.

20 (3) The same renewable energy credit may be used by an
21 alternative retail electric supplier to comply with a
22 federal renewable portfolio standard and a renewable
23 portfolio standard established under this Act. An
24 alternative retail electric supplier that uses a renewable
25 energy credit to comply with a renewable portfolio standard
26 imposed by any other state may not use the same credit to

1 comply with a renewable portfolio standard established
2 under this Act.

3 (d) Alternative compliance payments.

4 (1) The Commission shall establish and post on its
5 website, within 5 business days after entering an order
6 approving a procurement plan pursuant to Section 1-75 of
7 the Illinois Power Agency Act, maximum alternative
8 compliance payment rates, expressed on a per kilowatt-hour
9 basis, that will be applicable in the first compliance
10 period following the plan approval. A separate maximum
11 alternative compliance payment rate shall be established
12 for the service territory of each electric utility that is
13 subject to subsection (c) of Section 1-75 of the Illinois
14 Power Agency Act. Each maximum alternative compliance
15 payment rate shall be equal to the maximum allowable annual
16 estimated average net increase due to the costs of the
17 utility's purchase of renewable energy resources included
18 in the amounts paid by eligible retail customers in
19 connection with electric service, as described in item (2)
20 of subsection (c) of Section 1-75 of the Illinois Power
21 Agency Act for the compliance period, and as established in
22 the approved procurement plan. Following each procurement
23 event through which renewable energy resources are
24 purchased for one or more of these utilities for the
25 compliance period, the Commission shall establish and post
26 on its website estimates of the alternative compliance

1 payment rates, expressed on a per kilowatt-hour basis, that
2 shall apply for that compliance period. Posting of the
3 estimates shall occur no later than 10 business days
4 following the procurement event, however, the Commission
5 shall not be required to establish and post such estimates
6 more often than once per calendar month. By July 1 of each
7 year, the Commission shall establish and post on its
8 website the actual alternative compliance payment rates
9 for the preceding compliance year. For compliance years
10 beginning prior to June 1, 2014, each ~~Each~~ alternative
11 compliance payment rate shall be equal to the total amount
12 of dollars ~~that for which~~ the utility contracted to spend
13 on renewable resources, ~~excepting the additional~~
14 incremental cost attributable to solar resources, for the
15 compliance period divided by the forecasted load of
16 eligible retail customers, at the customers' meters, as
17 previously established in the Commission-approved
18 procurement plan for that compliance year. For compliance
19 years commencing on or after June 1, 2014, each alternative
20 compliance payment rate shall be equal to the total amount
21 of dollars that the utility contracted to spend on all
22 renewable resources for the compliance period divided by
23 the forecasted load of eligible retail customers, at the
24 customers' meters, as previously established in the
25 Commission-approved procurement plan for that compliance
26 year. The actual alternative compliance payment rates may

1 not exceed the maximum alternative compliance payment
2 rates established for the compliance period. For purposes
3 of this subsection (d), the term "eligible retail
4 customers" has the same meaning as found in Section
5 16-111.5 of this Act.

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

20 (3) An alternative retail electric supplier's
21 alternative compliance payments shall be computed
22 separately for each electric utility's service territory
23 within which the alternative retail electric supplier
24 provided retail service during the compliance period,
25 provided that the electric utility was subject to
26 subsection (c) of Section 1-75 of the Illinois Power Agency

1 Act. For each service territory, the alternative retail
2 electric supplier's alternative compliance payment shall
3 be equal to (i) the actual alternative compliance payment
4 rate established in item (1) of this subsection (d),
5 multiplied by (ii) the actual amount of metered electricity
6 delivered by the alternative retail electric supplier to
7 retail customers within the service territory during the
8 compliance period, multiplied by (iii) the result of one
9 minus the ratios of the quantity of renewable energy
10 resources used by the alternative retail electric supplier
11 to comply with the requirements of this Section within the
12 service territory to the product of the percentage of
13 renewable energy resources required under item (3) of
14 subsection (a) of this Section and the actual amount of
15 metered electricity delivered by the alternative retail
16 electric supplier to retail customers within the service
17 territory during the compliance period.

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

23 (5) The Commission, in consultation with the Illinois
24 Power Agency, shall establish a process or proceeding to
25 consider the impact of a federal renewable portfolio
26 standard, if enacted, on the operation of the alternative

1 compliance mechanism, which shall include, but not be
2 limited to, developing, to the extent permitted by the
3 applicable federal statute, an appropriate methodology to
4 apportion renewable energy credits retired as a result of
5 alternative compliance payments made in accordance with
6 this Section. The Commission shall commence any such
7 process or proceeding within 35 days after enactment of a
8 federal renewable portfolio standard.

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

25 (f) The Commission may initiate a contested case to review
26 allegations that the alternative retail electric supplier has

1 violated this Section, including an order issued or rule
2 promulgated under this Section. In any such proceeding, the
3 alternative retail electric supplier shall have the burden of
4 proof. If the Commission finds, after notice and hearing, that
5 an alternative retail electric supplier has violated this
6 Section, then the Commission shall issue an order requiring the
7 alternative retail electric supplier to:

8 (1) immediately comply with this Section; and

9 (2) if the violation involves a failure to procure the
10 requisite quantity of renewable energy resources or pay the
11 applicable alternative compliance payment by the annual
12 deadline, the Commission shall require the alternative
13 retail electric supplier to double the applicable
14 alternative compliance payment that would otherwise be
15 required to bring the alternative retail electric supplier
16 into compliance with this Section.

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

1 (g) All of the provisions of this Section apply to electric
2 utilities operating outside their service area except under
3 item (2) of subsection (a) of this Section the quantity of
4 renewable energy resources shall be measured as a percentage of
5 the actual amount of electricity (megawatt-hours) supplied in
6 the State outside of the utility's service territory during the
7 12-month period June 1 through May 31, commencing June 1, 2009,
8 and the comparable 12-month period in each year thereafter
9 except as provided in item (6) of subsection (a) of this
10 Section.

11 If any such utility fails to procure the requisite quantity
12 of renewable energy resources by the annual deadline, then the
13 Commission shall require the utility to double the alternative
14 compliance payment that would otherwise be required to bring
15 the utility into compliance with this Section.

16 If any such utility fails to comply with the renewable
17 energy resource portfolio requirement in this Section more than
18 once in a 5-year period, then the Commission shall order the
19 utility to cease all sales outside of the utility's service
20 territory for a period of at least one year.

21 (h) The provisions of this Section and the provisions of
22 subsection (d) of Section 16-115 of this Act relating to
23 procurement of renewable energy resources shall not apply to an
24 alternative retail electric supplier that operates a combined
25 heat and power system in this State or that has a corporate
26 affiliate that operates such a combined heat and power system

1 in this State that supplies electricity primarily to or for the
2 benefit of: (i) facilities owned by the supplier, its
3 subsidiary, or other corporate affiliate; (ii) facilities
4 electrically integrated with the electrical system of
5 facilities owned by the supplier, its subsidiary, or other
6 corporate affiliate; or (iii) facilities that are adjacent to
7 the site on which the combined heat and power system is
8 located.

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

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