

1 AN ACT concerning regulation.

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

4 Section 5. The Illinois Power Agency Act is amended by
5 changing Sections 1-5, 1-20, and 1-75 as follows:

6 (20 ILCS 3855/1-5)

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

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

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

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

22 (4) To protect against this threat to economic
23 well-being, health, and safety it is necessary to improve

1 the process of procuring electricity to serve Illinois
2 residents, to promote investment in energy efficiency and
3 demand-response measures, and to support development of
4 clean coal technologies and renewable resources.

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

9 (6) Including cost-effective renewable resources in
10 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, and
15 renewable energy are resources currently underused in
16 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 The General Assembly therefore finds that it is necessary
23 to create the Illinois Power Agency and that the goals and
24 objectives of that Agency are to accomplish each of the
25 following:

26 (A) Develop electricity procurement plans to ensure

1 adequate, reliable, affordable, efficient, and
2 environmentally sustainable electric service at the lowest
3 total cost over time, taking into account any benefits of
4 price stability, for electric utilities that on December
5 31, 2005 provided electric service to at least 100,000
6 customers in Illinois and for small multi-jurisdictional
7 electric utilities that (i) on December 31, 2005 served
8 less than 100,000 customers in Illinois and (ii) request a
9 procurement plan for their Illinois jurisdictional load.

10 The procurement plan shall be updated on an annual basis
11 and shall include renewable energy resources sufficient to
12 achieve the standards specified in this Act.

13 (B) Conduct competitive procurement processes to
14 procure the supply resources identified in the procurement
15 plan.

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

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

24 (Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09.)

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

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

3 (1) Develop electricity procurement plans to ensure
4 adequate, reliable, affordable, efficient, and
5 environmentally sustainable electric service at the lowest
6 total cost over time, taking into account any benefits of
7 price stability, for electric utilities that on December
8 31, 2005 provided electric service to at least 100,000
9 customers in Illinois and for small multi-jurisdictional
10 electric utilities that (A) on December 31, 2005 served
11 less than 100,000 customers in Illinois and (B) request a
12 procurement plan for their Illinois jurisdictional load.

13 The procurement plans shall be updated on an annual basis
14 and shall include electricity generated from renewable
15 resources sufficient to achieve the standards specified in
16 this Act.

17 (2) Conduct competitive procurement processes to
18 procure the supply resources identified in the procurement
19 plan, pursuant to Section 16-111.5 of the Public Utilities
20 Act.

21 (3) Develop electric generation and co-generation
22 facilities that use indigenous coal or renewable
23 resources, or both, financed with bonds issued by the
24 Illinois Finance Authority.

25 (4) Supply electricity from the Agency's facilities at
26 cost to one or more of the following: municipal electric

1 systems, governmental aggregators, or rural electric
2 cooperatives in Illinois.

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

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

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

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

14 (4) To obtain and employ personnel and hire consultants
15 that are necessary to fulfill the Agency's purposes, and to
16 make expenditures for that purpose within the
17 appropriations for that purpose.

18 (5) To purchase, receive, take by grant, gift, devise,
19 bequest, or otherwise, lease, or otherwise acquire, own,
20 hold, improve, employ, use, and otherwise deal in and with,
21 real or personal property whether tangible or intangible,
22 or any interest therein, within the State.

23 (6) To acquire real or personal property, whether
24 tangible or intangible, including without limitation
25 property rights, interests in property, franchises,
26 obligations, contracts, and debt and equity securities,

1 and to do so by the exercise of the power of eminent domain
2 in accordance with Section 1-21; except that any real
3 property acquired by the exercise of the power of eminent
4 domain must be located within the State.

5 (7) To sell, convey, lease, exchange, transfer,
6 abandon, or otherwise dispose of, or mortgage, pledge, or
7 create a security interest in, any of its assets,
8 properties, or any interest therein, wherever situated.

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

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

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

5 (11) To borrow money at such rate or rates of interest
6 as the Agency may determine, issue its notes, bonds, or
7 other obligations to evidence that indebtedness, and
8 secure any of its obligations by mortgage or pledge of its
9 real or personal property, machinery, equipment,
10 structures, fixtures, inventories, revenues, grants, and
11 other funds as provided or any interest therein, wherever
12 situated.

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

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

21 (14) To negotiate and enter into agreements with
22 trustees or receivers appointed by United States
23 bankruptcy courts or federal district courts or in other
24 proceedings involving adjustment of debts and authorize
25 proceedings involving adjustment of debts and authorize
26 legal counsel for the Agency to appear in any such

1 proceedings.

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

5 (16) To enter into management agreements for the
6 operation of any of the property or facilities owned by the
7 Agency.

8 (17) To enter into an agreement to transfer and to
9 transfer any land, facilities, fixtures, or equipment of
10 the Agency to one or more municipal electric systems,
11 governmental aggregators, or rural electric agencies or
12 cooperatives, for such consideration and upon such terms as
13 the Agency may determine to be in the best interest of the
14 citizens of Illinois.

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

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

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

25 (21) To accept and expend appropriations.

26 (22) To engage in any activity or operation that is

1 incidental to and in furtherance of efficient operation to
2 accomplish the Agency's purposes.

3 (23) To adopt, revise, amend, and repeal rules with
4 respect to its operations, properties, and facilities as
5 may be necessary or convenient to carry out the purposes of
6 this Act, subject to the provisions of the Illinois
7 Administrative Procedure Act and Sections 1-22 and 1-35 of
8 this Act.

9 (24) To establish and collect charges and fees as
10 described in this Act.

11 (25) To manage procurement of substitute natural gas
12 from a facility that meets the criteria specified in
13 subsection (a) of Section 1-58 of this Act, on terms and
14 conditions that may be approved by the Agency pursuant to
15 subsection (d) of Section 1-58 of this Act, to support the
16 operations of State agencies and local governments that
17 agree to such terms and conditions. This procurement
18 process is not subject to the Procurement Code.

19 (Source: P.A. 95-481, eff. 8-28-07; 96-784, eff. 8-28-09;
20 96-1000, eff. 7-2-10.)

21 (20 ILCS 3855/1-75)

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

25 (a) The Planning and Procurement Bureau shall each

1 year, beginning in 2008, develop procurement plans and
2 conduct competitive procurement processes in accordance
3 with the requirements of Section 16-111.5 of the Public
4 Utilities Act for the eligible retail customers of electric
5 utilities that on December 31, 2005 provided electric
6 service to at least 100,000 customers in Illinois. The
7 Planning and Procurement Bureau shall also develop
8 procurement plans and conduct competitive procurement
9 processes in accordance with the requirements of Section
10 16-111.5 of the Public Utilities Act for the eligible
11 retail customers of small multi-jurisdictional electric
12 utilities that (i) on December 31, 2005 served less than
13 100,000 customers in Illinois and (ii) request a
14 procurement plan for their Illinois jurisdictional load.
15 This Section shall not apply to a small
16 multi-jurisdictional utility until such time as a small
17 multi-jurisdictional utility requests the Agency to
18 prepare a procurement plan for their Illinois
19 jurisdictional load. For the purposes of this Section, the
20 term "eligible retail customers" has the same definition as
21 found in Section 16-111.5(a) of the Public Utilities Act.

22 (1) The Agency shall each year, beginning in 2008,
23 as needed, issue a request for qualifications for
24 experts or expert consulting firms to develop the
25 procurement plans in accordance with Section 16-111.5
26 of the Public Utilities Act. In order to qualify an

1 expert or expert consulting firm must have:

2 (A) direct previous experience assembling
3 large-scale power supply plans or portfolios for
4 end-use customers;

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

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

10 (D) expertise in wholesale electricity market
11 rules, including those established by the Federal
12 Energy Regulatory Commission and regional
13 transmission organizations;

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

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

18 (G) the absence of a conflict of interest and
19 inappropriate bias for or against potential
20 bidders or the affected electric utilities.

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

1 (A) direct previous experience administering a
2 large-scale competitive procurement process;

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

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

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

12 (E) expertise in credit and contract
13 protocols;

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

16 (G) the absence of a conflict of interest and
17 inappropriate bias for or against potential
18 bidders or the affected electric utilities.

19 (3) The Agency shall provide affected utilities
20 and other interested parties with the lists of
21 qualified experts or expert consulting firms
22 identified through the request for qualifications
23 processes that are under consideration to develop the
24 procurement plans and to serve as the procurement
25 administrator. The Agency shall also provide each
26 qualified expert's or expert consulting firm's

1 response to the request for qualifications. All
2 information provided under this subparagraph shall
3 also be provided to the Commission. The Agency may
4 provide by rule for fees associated with supplying the
5 information to utilities and other interested parties.
6 These parties shall, within 5 business days, notify the
7 Agency in writing if they object to any experts or
8 expert consulting firms on the lists. Objections shall
9 be based on:

10 (A) failure to satisfy qualification criteria;

11 (B) identification of a conflict of interest;

12 or

13 (C) evidence of inappropriate bias for or
14 against potential bidders or the affected
15 utilities.

16 The Agency shall remove experts or expert
17 consulting firms from the lists within 10 days if there
18 is a reasonable basis for an objection and provide the
19 updated lists to the affected utilities and other
20 interested parties. If the Agency fails to remove an
21 expert or expert consulting firm from a list, an
22 objecting party may seek review by the Commission
23 within 5 days thereafter by filing a petition, and the
24 Commission shall render a ruling on the petition within
25 10 days. There is no right of appeal of the
26 Commission's ruling.

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

5 (5) The Agency shall select an expert or expert
6 consulting firm to develop procurement plans based on
7 the proposals submitted and shall award one-year
8 contracts to those selected with an option for the
9 Agency for a one-year renewal.

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

20 (b) The experts or expert consulting firms retained by
21 the Agency shall, as appropriate, prepare procurement
22 plans, and conduct a competitive procurement process as
23 prescribed in Section 16-111.5 of the Public Utilities Act,
24 to ensure adequate, reliable, affordable, efficient, and
25 environmentally sustainable electric service at the lowest
26 total cost over time, taking into account any benefits of

1 price stability, for eligible retail customers of electric
2 utilities that on December 31, 2005 provided electric
3 service to at least 100,000 customers in the State of
4 Illinois, and for eligible Illinois retail customers of
5 small multi-jurisdictional electric utilities that (i) on
6 December 31, 2005 served less than 100,000 customers in
7 Illinois and (ii) request a procurement plan for their
8 Illinois jurisdictional load.

9 (c) Renewable portfolio standard.

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

1 percentages of the renewable energy resources used to
2 meet these standards shall come from photovoltaics on
3 the following schedule: 0.5% by June 1, 2012, 1.5% by
4 June 1, 2013; 3% by June 1, 2014; and 6% by June 1,
5 2015 and thereafter. For purposes of this subsection
6 (c), "cost-effective" means that the costs of
7 procuring renewable energy resources do not cause the
8 limit stated in paragraph (2) of this subsection (c) to
9 be exceeded and do not exceed benchmarks based on
10 market prices for renewable energy resources in the
11 region, which shall be developed by the procurement
12 administrator, in consultation with the Commission
13 staff, Agency staff, and the procurement monitor and
14 shall be subject to Commission review and approval.

15 (2) For purposes of this subsection (c), the
16 required procurement of cost-effective renewable
17 energy resources for a particular year shall be
18 measured as a percentage of the actual amount of
19 electricity (megawatt-hours) supplied by the electric
20 utility to eligible retail customers in the planning
21 year ending immediately prior to the procurement. For
22 purposes of this subsection (c), the amount paid per
23 kilowatthour means the total amount paid for electric
24 service expressed on a per kilowatthour basis. For
25 purposes of this subsection (c), the total amount paid
26 for electric service includes without limitation

1 amounts paid for supply, transmission, distribution,
2 surcharges, and add-on taxes.

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

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

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

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

24 (D) in 2011, the greater of an additional 0.5%
25 of the amount paid per kilowatthour by those
26 customers during the year ending May 31, 2010 or 2%

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

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

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

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

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

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

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

1 16-115D of the Public Utilities Act to its retail
2 customers that take service pursuant to the electric
3 utility's hourly pricing tariff or tariffs. The
4 electric utility shall retain all amounts collected as
5 a result of the application of the alternative
6 compliance payment rate or rates to such customers,
7 and, beginning in 2011, the utility shall include in
8 the information provided under item (1) of subsection
9 (d) of Section 16-111.5 of the Public Utilities Act the
10 amounts collected under the alternative compliance
11 payment rate or rates for the prior year ending May 31.
12 Notwithstanding any limitation on the procurement of
13 renewable energy resources imposed by item (2) of this
14 subsection (c), the Agency shall increase its spending
15 on the purchase of renewable energy resources to be
16 procured by the electric utility for the next plan year
17 by an amount equal to the amounts collected by the
18 utility under the alternative compliance payment rate
19 or rates in the prior year ending May 31.

20 (d) Clean coal portfolio standard.

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

1 total supply to serve the load of eligible retail customers
2 in 2015 and each year thereafter, as described in paragraph
3 (3) of this subsection (d), subject to the limits specified
4 in paragraph (2) of this subsection (d). It is the goal of
5 the State that by January 1, 2025, 25% of the electricity
6 used in the State shall be generated by cost-effective
7 clean coal facilities. For purposes of this subsection (d),
8 "cost-effective" means that the expenditures pursuant to
9 such sourcing agreements do not cause the limit stated in
10 paragraph (2) of this subsection (d) to be exceeded and do
11 not exceed cost-based benchmarks, which shall be developed
12 to assess all expenditures pursuant to such sourcing
13 agreements covering electricity generated by clean coal
14 facilities, other than the initial clean coal facility, by
15 the 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 (A) A utility party to a sourcing agreement shall
20 immediately retire any emission credits that it
21 receives in connection with the electricity covered by
22 such agreement.

23 (B) Utilities shall maintain adequate records
24 documenting the purchases under the sourcing agreement
25 to comply with this subsection (d) and shall file an
26 accounting with the load forecast that must be filed

1 with the Agency by July 15 of each year, in accordance
2 with subsection (d) of Section 16-111.5 of the Public
3 Utilities Act.

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

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

22 Notwithstanding the requirements of this subsection
23 (d), the total amount paid under sourcing agreements with
24 clean coal facilities pursuant to the procurement plan for
25 any given year shall be reduced by an amount necessary to
26 limit the annual estimated average net increase due to the

1 costs of these resources included in the amounts paid by
2 eligible retail customers in connection with electric
3 service to:

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

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

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

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

22 (E) thereafter, the total amount paid under
23 sourcing agreements with clean coal facilities
24 pursuant to the procurement plan for any single
25 year shall be reduced by an amount necessary to
26 limit the estimated average net increase due to the

1 cost of these resources included in the amounts
2 paid by eligible retail customers in connection
3 with electric service to no more than the greater
4 of (i) 2.015% of the amount paid per kilowatthour
5 by those customers during the year ending May 31,
6 2009 or (ii) the incremental amount per
7 kilowatthour paid for these resources in 2013.
8 These requirements may be altered only as provided
9 by statute. No later than June 30, 2015, the
10 Commission shall review the limitation on the
11 total amount paid under sourcing agreements, if
12 any, with clean coal facilities pursuant to this
13 subsection (d) and report to the General Assembly
14 its findings as to whether that limitation unduly
15 constrains the amount of electricity generated by
16 cost-effective clean coal facilities that is
17 covered by sourcing agreements.

18 (3) Initial clean coal facility. In order to promote
19 development of clean coal facilities in Illinois, each
20 electric utility subject to this Section shall execute a
21 sourcing agreement to source electricity from a proposed
22 clean coal facility in Illinois (the "initial clean coal
23 facility") that will have a nameplate capacity of at least
24 500 MW when commercial operation commences, that has a
25 final Clean Air Act permit on the effective date of this
26 amendatory Act of the 95th General Assembly, and that will

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

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

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

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

16 (B) power purchase provisions, which shall:

17 (i) provide that the utility party to such
18 sourcing agreement shall pay the contract price
19 for electricity delivered under such sourcing
20 agreement;

21 (ii) require delivery of electricity to the
22 regional transmission organization market of the
23 utility that is party to such sourcing agreement;

24 (iii) require the utility party to such
25 sourcing agreement to buy from the initial clean
26 coal facility in each hour an amount of energy

1 equal to all clean coal energy made available from
2 the initial clean coal facility during such hour
3 times a fraction, the numerator of which is such
4 utility's retail market sales of electricity
5 (expressed in kilowatthours sold) in the State
6 during the prior calendar month and the
7 denominator of which is the total retail market
8 sales of electricity (expressed in kilowatthours
9 sold) in the State by utilities during such prior
10 month and the sales of electricity (expressed in
11 kilowatthours sold) in the State by alternative
12 retail electric suppliers during such prior month
13 that are subject to the requirements of this
14 subsection (d) and paragraph (5) of subsection (d)
15 of Section 16-115 of the Public Utilities Act,
16 provided that the amount purchased by the utility
17 in any year will be limited by paragraph (2) of
18 this subsection (d); and

19 (iv) be considered pre-existing contracts in
20 such utility's procurement plans for eligible
21 retail customers;

22 (C) contract for differences provisions, which
23 shall:

24 (i) require the utility party to such sourcing
25 agreement to contract with the initial clean coal
26 facility in each hour with respect to an amount of

1 energy equal to all clean coal energy made
2 available from the initial clean coal facility
3 during such hour times a fraction, the numerator of
4 which is such utility's retail market sales of
5 electricity (expressed in kilowatthours sold) in
6 the utility's service territory in the State
7 during the prior calendar month and the
8 denominator of which is the total retail market
9 sales of electricity (expressed in kilowatthours
10 sold) in the State by utilities during such prior
11 month and the sales of electricity (expressed in
12 kilowatthours sold) in the State by alternative
13 retail electric suppliers during such prior month
14 that are subject to the requirements of this
15 subsection (d) and paragraph (5) of subsection (d)
16 of Section 16-115 of the Public Utilities Act,
17 provided that the amount paid by the utility in any
18 year will be limited by paragraph (2) of this
19 subsection (d);

20 (ii) provide that the utility's payment
21 obligation in respect of the quantity of
22 electricity determined pursuant to the preceding
23 clause (i) shall be limited to an amount equal to
24 (1) the difference between the contract price
25 determined pursuant to subparagraph (A) of
26 paragraph (3) of this subsection (d) and the

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

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

15 (D) general provisions, which shall:

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

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

1 (iii) provide that all costs associated with
2 the initial clean coal facility will be
3 periodically reported to the Federal Energy
4 Regulatory Commission and to purchasers in
5 accordance with applicable laws governing
6 cost-based wholesale power contracts;

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

13 (v) require the owner of the initial clean coal
14 facility to provide documentation to the
15 Commission each year, starting in the facility's
16 first year of commercial operation, accurately
17 reporting the quantity of carbon emissions from
18 the facility that have been captured and
19 sequestered and report any quantities of carbon
20 released from the site or sites at which carbon
21 emissions were sequestered in prior years, based
22 on continuous monitoring of such sites. If, in any
23 year after the first year of commercial operation,
24 the owner of the facility fails to demonstrate that
25 the initial clean coal facility captured and
26 sequestered at least 50% of the total carbon

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

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

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

17 (vii) require Commission review: (1) to
18 determine the justness, reasonableness, and
19 prudence of the inputs to the formula referenced in
20 subparagraphs (A)(i) through (A)(iii) of paragraph
21 (3) of this subsection (d), prior to an adjustment
22 in those inputs including, without limitation, the
23 capital structure and return on equity, fuel
24 costs, and other operations and maintenance costs
25 and (2) to approve the costs to be passed through
26 to customers under the sourcing agreement by which

1 the utility satisfies its statutory obligations.
2 Commission review shall occur no less than every 3
3 years, regardless of whether any adjustments have
4 been proposed, and shall be completed within 9
5 months;

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

13 (ix) limit the utility's or alternative retail
14 electric supplier's obligation to incur any
15 liability until such time as the facility is in
16 commercial operation and generating power and
17 energy and such power and energy is being delivered
18 to the facility busbar;

19 (x) provide that the owner or owners of the
20 initial clean coal facility, which is the
21 counterparty to such sourcing agreement, shall
22 have the right from time to time to elect whether
23 the obligations of the utility party thereto shall
24 be governed by the power purchase provisions or the
25 contract for differences provisions;

26 (xi) append documentation showing that the

1 formula rate and contract, insofar as they relate
2 to the power purchase provisions, have been
3 approved by the Federal Energy Regulatory
4 Commission pursuant to Section 205 of the Federal
5 Power Act;

6 (xii) provide that any changes to the terms of
7 the contract, insofar as such changes relate to the
8 power purchase provisions, are subject to review
9 under the public interest standard applied by the
10 Federal Energy Regulatory Commission pursuant to
11 Sections 205 and 206 of the Federal Power Act; and

12 (xiii) conform with customary lender
13 requirements in power purchase agreements used as
14 the basis for financing non-utility generators.

15 (4) Effective date of sourcing agreements with the
16 initial clean coal facility. Any proposed sourcing
17 agreement with the initial clean coal facility shall not
18 become effective unless the following reports are prepared
19 and submitted and authorizations and approvals obtained:

20 (i) Facility cost report. The owner of the
21 initial clean coal facility shall submit to the
22 Commission, the Agency, and the General Assembly a
23 front-end engineering and design study, a facility
24 cost report, method of financing (including but
25 not limited to structure and associated costs),
26 and an operating and maintenance cost quote for the

1 facility (collectively "facility cost report"),
2 which shall be prepared in accordance with the
3 requirements of this paragraph (4) of subsection
4 (d) of this Section, and shall provide the
5 Commission and the Agency access to the work
6 papers, relied upon documents, and any other
7 backup documentation related to the facility cost
8 report.

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

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

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

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

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

5 The facility cost report shall be prepared as follows:

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

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

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

1 substitute natural gas or carbon dioxide, potable
2 water supply, natural gas supply, water supply,
3 water discharge, landfill, access roads, and coal
4 delivery.

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

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

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

25 (a) The delivered fuel cost estimate will be
26 provided by a recognized third party expert or

1 experts in the fuel and transportation industries.

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

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

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

25 (E) Amounts paid to third parties unrelated to the
26 owner or owners of the initial clean coal facility to

1 prepare the core plant construction cost quote,
2 including the front end engineering and design study,
3 and the operating and maintenance cost quote will be
4 reimbursed through Coal Development Bonds.

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

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

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

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

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

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

25 (h) The Agency shall assess fees to each bidder to
26 recover the costs incurred in connection with a competitive

1 procurement process.

2 (Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09;
3 96-159, eff. 8-10-09; 96-1437, eff. 8-17-10.)

4 Section 10. The Public Utilities Act is amended by changing
5 Section 16-111.5 as follows:

6 (220 ILCS 5/16-111.5)

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

8 (a) An electric utility that on December 31, 2005 served at
9 least 100,000 customers in Illinois shall procure power and
10 energy for its eligible retail customers in accordance with the
11 applicable provisions set forth in Section 1-75 of the Illinois
12 Power Agency Act and this Section. A small multi-jurisdictional
13 electric utility that on December 31, 2005 served less than
14 100,000 customers in Illinois may elect to procure power and
15 energy for all or a portion of its eligible Illinois retail
16 customers in accordance with the applicable provisions set
17 forth in this Section and Section 1-75 of the Illinois Power
18 Agency Act. This Section shall not apply to a small
19 multi-jurisdictional utility until such time as a small
20 multi-jurisdictional utility requests the Illinois Power
21 Agency to prepare a procurement plan for its eligible retail
22 customers. "Eligible retail customers" for the purposes of this
23 Section means those retail customers that purchase power and
24 energy from the electric utility under fixed-price bundled

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

19 (b) A procurement plan shall be prepared for each electric
20 utility consistent with the applicable requirements of the
21 Illinois Power Agency Act and this Section. For purposes of
22 this Section, Illinois electric utilities that are affiliated
23 by virtue of a common parent company are considered to be a
24 single electric utility. Small multi-jurisdictional utilities
25 may request a procurement plan for a portion of or all of its
26 Illinois load. Each procurement plan shall analyze the

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

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

20 (i) multi-year historical analysis of hourly
21 loads;

22 (ii) switching trends and competitive retail
23 market analysis;

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

25 and

26 (iv) growth forecasts by customer class.

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

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

9 (ii) supply side needs that are projected to be
10 offset by purchases of renewable energy resources, if
11 any. ~~and~~

12 ~~(iii) the impact of energy efficiency programs,~~
13 ~~both current and projected.~~

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

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

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

1 shall be procured whenever the cost is lower than
2 procuring comparable capacity products, provided that
3 such products shall:

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

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

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

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

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

23 (iii) monthly forecasted system supply
24 requirements, including expected minimum, maximum, and
25 average values for the planning period;

26 (iv) the proposed mix and selection of standard

1 wholesale products for which contracts will be
2 executed during the next year, separately or in
3 combination, to meet that portion of its load
4 requirements not met through pre-existing contracts,
5 including but not limited to monthly 5 x 16 peak period
6 block energy, monthly off-peak wrap energy, monthly 7 x
7 24 energy, annual 5 x 16 energy, annual off-peak wrap
8 energy, annual 7 x 24 energy, monthly capacity, annual
9 capacity, peak load capacity obligations, capacity
10 purchase plan, and ancillary services;

11 (v) proposed term structures for each wholesale
12 product type included in the proposed procurement plan
13 portfolio of products; and

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

25 (4) Proposed procedures for balancing loads. The
26 procurement plan shall include, for load requirements

1 included in the procurement plan, the process for (i)
2 hourly balancing of supply and demand and (ii) the criteria
3 for portfolio re-balancing in the event of significant
4 shifts in load.

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

9 (1) The procurement administrator shall:

10 (i) design the final procurement process in
11 accordance with Section 1-75 of the Illinois Power
12 Agency Act and subsection (e) of this Section following
13 Commission approval of the procurement plan;

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

19 (iii) serve as the interface between the electric
20 utility and suppliers;

21 (iv) manage the bidder pre-qualification and
22 registration process;

23 (v) obtain the electric utilities' agreement to
24 the final form of all supply contracts and credit
25 collateral agreements;

26 (vi) administer the request for proposals process;

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

13 (viii) maintain confidentiality of supplier and
14 bidding information in a manner consistent with all
15 applicable laws, rules, regulations, and tariffs;

16 (ix) submit a confidential report to the
17 Commission recommending acceptance or rejection of
18 bids;

19 (x) notify the utility of contract counterparties
20 and contract specifics; and

21 (xi) administer related contingency procurement
22 events.

23 (2) The procurement monitor, who shall be retained by
24 the Commission, shall:

25 (i) monitor interactions among the procurement
26 administrator, suppliers, and utility;

1 (ii) monitor and report to the Commission on the
2 progress of the procurement process;

3 (iii) provide an independent confidential report
4 to the Commission regarding the results of the
5 procurement event;

6 (iv) assess compliance with the procurement plans
7 approved by the Commission for each utility that on
8 December 31, 2005 provided electric service to a least
9 100,000 customers in Illinois and for each small
10 multi-jurisdictional utility that on December 31, 2005
11 served less than 100,000 customers in Illinois;

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

15 (vi) provide expert advice to the Commission and
16 consult with the procurement administrator regarding
17 issues related to procurement process design, rules,
18 protocols, and policy-related matters; and

19 (vii) consult with the procurement administrator
20 regarding the development and use of benchmark
21 criteria, standard form contracts, credit policies,
22 and bid documents.

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

25 (1) Beginning in 2008, each Illinois utility procuring
26 power pursuant to this Section shall annually provide a

1 range of load forecasts to the Illinois Power Agency by
2 July 15 of each year, or such other date as may be required
3 by the Commission or Agency. The load forecasts shall cover
4 the 5-year procurement planning period for the next
5 procurement plan and shall include hourly data
6 representing a high-load, low-load and expected-load
7 scenario for the load of the eligible retail customers. The
8 utility shall provide supporting data and assumptions for
9 each of the scenarios.

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

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

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

19 (4) The Commission shall approve the procurement plan,
20 including expressly the forecast used in the procurement
21 plan, if the Commission determines that it will ensure
22 adequate, reliable, affordable, efficient, and
23 environmentally sustainable electric service at the lowest
24 total cost over time, taking into account any benefits of
25 price stability.

26 (e) The procurement process shall include each of the

1 following components:

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

21 (2) Standard contract forms and credit terms and
22 instruments. The procurement administrator, in
23 consultation with the utilities, the Commission, and other
24 interested parties and subject to Commission oversight,
25 shall develop and provide standard contract forms for the
26 supplier contracts that meet generally accepted industry

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

15 (3) Establishment of a market-based price benchmark.
16 As part of the development of the procurement process, the
17 procurement administrator, in consultation with the
18 Commission staff, Agency staff, and the procurement
19 monitor, shall establish benchmarks for evaluating the
20 final prices in the contracts for each of the products that
21 will be procured through the procurement process. The
22 benchmarks shall be based on price data for similar
23 products for the same delivery period and same delivery
24 hub, or other delivery hubs after adjusting for that
25 difference. The price benchmarks may also be adjusted to
26 take into account differences between the information

1 reflected in the underlying data sources and the specific
2 products and procurement process being used to procure
3 power for the Illinois utilities. The benchmarks shall be
4 confidential but shall be provided to, and will be subject
5 to Commission review and approval, prior to a procurement
6 event.

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

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

20 (i) Event of supplier default: In the event of
21 supplier default, the utility shall review the
22 contract of the defaulting supplier to determine if the
23 amount of supply is 200 megawatts or greater, and if
24 there are more than 60 days remaining of the contract
25 term. If both of these conditions are met, and the
26 default results in termination of the contract, the

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

17 (ii) Failure of the procurement process to fully
18 meet the expected load requirement: If the procurement
19 process fails to fully meet the expected load
20 requirement due to insufficient supplier participation
21 or due to a Commission rejection of the procurement
22 results, the procurement administrator, the
23 procurement monitor, and the Commission staff shall
24 meet within 10 days to analyze potential causes of low
25 supplier interest or causes for the Commission
26 decision. If changes are identified that would likely

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

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

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

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

18 (g) Within 3 business days after the Commission decision
19 approving the results of a procurement event, the utility shall
20 enter into binding contractual arrangements with the winning
21 suppliers using the standard form contracts; except that the
22 utility shall not be required either directly or indirectly to
23 execute the contracts if a tariff that is consistent with
24 subsection (1) of this Section has not been approved and placed
25 into effect for that utility.

26 (h) The names of the successful bidders and the load

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

17 (i) Within 2 business days after a Commission decision
18 approving the results of a procurement event or such other date
19 as may be required by the Commission from time to time, the
20 utility shall file for informational purposes with the
21 Commission its actual or estimated retail supply charges, as
22 applicable, by customer supply group reflecting the costs
23 associated with the procurement and computed in accordance with
24 the tariffs filed pursuant to subsection (l) of this Section
25 and approved by the Commission.

26 (j) Within 60 days following the effective date of this

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

19 (i) Within 14 days following filing of the initial
20 procurement plan, any person may file a detailed objection
21 with the Commission contesting the procurement plan
22 submitted by the electric utility. All objections to the
23 electric utility's plan shall be specific, supported by
24 data or other detailed analyses. The electric utility may
25 file a response to any objections to its procurement plan
26 within 7 days after the date objections are due to be

1 filed. Within 7 days after the date the utility's response
2 is due, the Commission shall determine whether a hearing is
3 necessary. If it determines that a hearing is necessary, it
4 shall require the hearing to be completed and issue an
5 order on the procurement plan within 60 days after the
6 filing of the procurement plan by the electric utility.

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

16 (k) In order to promote price stability for residential and
17 small commercial customers during the transition to
18 competition in Illinois, and notwithstanding any other
19 provision of this Act, each electric utility subject to this
20 Section shall enter into one or more multi-year financial swap
21 contracts that become effective on the effective date of this
22 amendatory Act. These contracts may be executed with generators
23 and power marketers, including affiliated interests of the
24 electric utility. These contracts shall be for a term of no
25 more than 5 years and shall, for each respective utility or for
26 any Illinois electric utilities that are affiliated by virtue

1 of a common parent company and that are thereby considered a
2 single electric utility for purposes of this subsection (k),
3 not exceed in the aggregate 3,000 megawatts for any hour of the
4 year. The contracts shall be financial contracts and not energy
5 sales contracts. The contracts shall be executed as
6 transactions under a negotiated master agreement based on the
7 form of master agreement for financial swap contracts sponsored
8 by the International Swaps and Derivatives Association, Inc.
9 and shall be considered pre-existing contracts in the
10 utilities' procurement plans for residential and small
11 commercial customers. Costs incurred pursuant to a contract
12 authorized by this subsection (k) shall be deemed prudently
13 incurred and reasonable in amount and the electric utility
14 shall be entitled to full cost recovery pursuant to the tariffs
15 filed with the Commission.

16 (l) An electric utility shall recover its costs incurred
17 under this Section, including, but not limited to, the costs of
18 procuring power and energy demand-response resources under
19 this Section. The utility shall file with the initial
20 procurement plan its proposed tariffs through which its costs
21 of procuring power that are incurred pursuant to a
22 Commission-approved procurement plan and those other costs
23 identified in this subsection (l), will be recovered. The
24 tariffs shall include a formula rate or charge designed to pass
25 through both the costs incurred by the utility in procuring a
26 supply of electric power and energy for the applicable customer

1 classes with no mark-up or return on the price paid by the
2 utility for that supply, plus any just and reasonable costs
3 that the utility incurs in arranging and providing for the
4 supply of electric power and energy. The formula rate or charge
5 shall also contain provisions that ensure that its application
6 does not result in over or under recovery due to changes in
7 customer usage and demand patterns, and that provide for the
8 correction, on at least an annual basis, of any accounting
9 errors that may occur. A utility shall recover through the
10 tariff all reasonable costs incurred to implement or comply
11 with any procurement plan that is developed and put into effect
12 pursuant to Section 1-75 of the Illinois Power Agency Act and
13 this Section, including any fees assessed by the Illinois Power
14 Agency, costs associated with load balancing, and contingency
15 plan costs. The electric utility shall also recover its full
16 costs of procuring electric supply for which it contracted
17 before the effective date of this Section in conjunction with
18 the provision of full requirements service under fixed-price
19 bundled service tariffs subsequent to December 31, 2006. All
20 such costs shall be deemed to have been prudently incurred. The
21 pass-through tariffs that are filed and approved pursuant to
22 this Section shall not be subject to review under, or in any
23 way limited by, Section 16-111(i) of this Act.

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

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

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

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

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

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

15 (Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09.)

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.