



HR0755

LRB097 20129 CEL 65516 r

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HOUSE RESOLUTION

2 WHEREAS, The 97th Illinois General Assembly passed Senate
3 Bill 1533 and House Bill 691 with super-majority votes in both
4 legislative chambers; Senate Bill 1533 became law on July 13,
5 2011 as Public Act 97-96, and House Bill 691 became law on
6 December 8, 2011 as Public Act 97-630; and

7 WHEREAS, Public Act 97-96 set forth a detailed framework
8 for the development of a clean coal brownfield facility,
9 commonly known as the Chicago Clean Energy project, that
10 included a provision requiring the Illinois Commerce
11 Commission to approve the final sourcing agreements between the
12 Chicago Clean Energy project and gas utilities for the purchase
13 of substitute natural gas; and

14 WHEREAS, Public Act 97-630 was enacted as "trailer
15 legislation" to Public Act 97-96 with the intent to: (1)
16 address statutorily unauthorized early termination provisions
17 that had been included in the final draft sourcing agreements
18 transmitted to the Illinois Commerce Commission by the Illinois
19 Power Agency; and (2) clarify the limited role of the Illinois
20 Commerce Commission in approving the final sourcing agreements
21 between the Chicago Clean Energy project and gas utilities; and

22 WHEREAS, Pursuant to Public Act 97-630, the Illinois

1 Commerce Commission, in reviewing and approving sourcing
2 agreements, was only to: (1) fill in the blanks in the final
3 draft sourcing agreement based upon the previously established
4 capital costs, operations and maintenance costs, and the rate
5 of return for the Chicago Clean Energy project; (2) remove 2
6 statutorily unauthorized early termination provisions from the
7 final draft sourcing agreement; and (3) correct typographical
8 and scrivener's errors; and

9 WHEREAS, No statutory authority was given to the Illinois
10 Commerce Commission to modify the terms of the final draft
11 sourcing agreement or impose other obligations upon the Chicago
12 Clean Energy project beyond the limitations set forth in Public
13 Acts 97-96 and 97-630; and

14 WHEREAS, The Illinois Appellate and Supreme Courts have
15 consistently held that, because administrative agencies are
16 creatures of statute, they possess only those powers expressly
17 delegated by law, and they may not act beyond their statutorily
18 delegated authority; and

19 WHEREAS, The Illinois Appellate and Supreme Courts have
20 consistently held that public policy in Illinois is expressed
21 by the General Assembly, and it is not the province of an
22 administrative agency to inquire into the wisdom and propriety
23 of the legislature's act or to substitute its own judgment for

1 that of the legislature; therefore, be it

2 RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE
3 NINETY-SEVENTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, that
4 we express serious concerns that the Illinois Commerce
5 Commission Order entered on January 10, 2012 in Docket No.
6 11-0710: (1) modifies the final draft sourcing agreement with
7 respect to recovery of costs despite the Commission lacking
8 statutory authority to do so and despite the statutory language
9 and legislative intent of Public Act 97-96 to provide full cost
10 recovery to the Chicago Clean Energy project; (2) fails to
11 delete one of the 2 provisions for early termination that were
12 contained in the final draft sourcing agreements submitted to
13 the Commission by the Illinois Power Agency; and (3) imposes an
14 obligation to secure a third-party guarantee that is
15 contemplated nowhere in statute, that exceeds the limited role
16 envisioned for the Commission, and that is in addition to the
17 substantial consumer protections already set forth in the
18 statutory framework for the Chicago Clean Energy project; and
19 be it further

20 RESOLVED, That we urge that the Illinois Commerce
21 Commission rehear the matter and, upon rehearing, the
22 Commissioners of the Illinois Commerce Commission reach a
23 decision that reflects statutory directives and the intent of
24 the Illinois General Assembly in passing Public Acts 97-96 and

1 97-630; and be it further

2 RESOLVED, That suitable copies of this resolution be
3 delivered to the Commissioners of the Illinois Commerce
4 Commission, the Director of the Illinois Power Agency, and the
5 Governor.