



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB0103

Introduced 1/10/2013, by Rep. Robert Rita

SYNOPSIS AS INTRODUCED:

20 ILCS 3855/1-10
20 ILCS 3855/1-20
20 ILCS 3855/1-75
20 ILCS 3855/1-76 new
20 ILCS 3855/1-76.5 new
20 ILCS 3855/1-77.5 new
20 ILCS 3855/1-79 new
20 ILCS 3855/1-81 new
30 ILCS 500/1-10
30 ILCS 500/20-10
220 ILCS 5/16-115
220 ILCS 5/16-116

Amends the Illinois Power Agency Act and the Public Utilities Act to provide for the procurement of renewable energy resources from a clean coal facility, initial clean coal facility, and clean coal SNG facility, including amending provisions concerning Agency powers, aggregate distributed renewable energy, the renewable portfolio standard, and procurement of energy efficiency products and adding provisions concerning the development of feedstock procurement plans and feedstock procurement processes; makes corresponding changes in the Illinois Procurement Code. Allows certain facilities to recover certain costs and revenue associated with the generation of electricity and sequestration. Contains provisions concerning the permitting, oversight, and investigation for capture, transport, and sequestration of carbon dioxide. Makes other changes. Contains a severability provision. Effective immediately.

LRB098 04222 AMC 34247 b

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 1. Short title. This amendatory Act may be referred
5 to as the Illinois Renewable Electricity Resources Act.

6 Section 5. The Illinois Power Agency Act is amended by
7 changing Sections 1-10, 1-20, and 1-75 and by adding Sections
8 1-76, 1-76.5, 1-77.5, 1-79, and 1-81 as follows:

9 (20 ILCS 3855/1-10)

10 Sec. 1-10. Definitions.

11 "Agency" means the Illinois Power Agency.

12 "Agency loan agreement" means any agreement pursuant to
13 which the Illinois Finance Authority agrees to loan the
14 proceeds of revenue bonds issued with respect to a project to
15 the Agency upon terms providing for loan repayment installments
16 at least sufficient to pay when due all principal of, interest
17 and premium, if any, on those revenue bonds, and providing for
18 maintenance, insurance, and other matters in respect of the
19 project.

20 "Authority" means the Illinois Finance Authority.

21 "Clean coal electricity buyer" means (1) each electric
22 utility and (2) each alternative electric retail supplier that

1 is subject to the requirements of subsection (d) of Section
2 1-75 of this Act and paragraph (5) of subsection (d) of Section
3 16-115 of the Public Utilities Act.

4 "Clean coal energy" means all energy produced by the
5 initial clean coal facility.

6 "Clean coal facility" means an electric generating
7 facility that uses primarily coal as a feedstock and that
8 captures and sequesters carbon dioxide emissions at the
9 following levels: at least 50% of the total carbon dioxide
10 emissions that the facility would otherwise emit if, at the
11 time construction commences, the facility is scheduled to
12 commence operation before 2016, at least 70% of the total
13 carbon dioxide emissions that the facility would otherwise emit
14 if, at the time construction commences, the facility is
15 scheduled to commence operation during 2016 or 2017, and at
16 least 90% of the total carbon dioxide emissions that the
17 facility would otherwise emit if, at the time construction
18 commences, the facility is scheduled to commence operation
19 after 2017. The power block of the clean coal facility shall
20 not exceed allowable emission rates for sulfur dioxide,
21 nitrogen oxides, carbon monoxide, particulates and mercury for
22 a natural gas-fired combined-cycle facility the same size as
23 and in the same location as the clean coal facility at the time
24 the clean coal facility obtains an approved air permit. All
25 coal used by a clean coal facility shall have high volatile
26 bituminous rank and greater than 1.7 pounds of sulfur per

1 million btu content, unless the clean coal facility does not
2 use gasification technology and was operating as a conventional
3 coal-fired electric generating facility on June 1, 2009 (the
4 effective date of Public Act 95-1027).

5 "Clean coal fraction" means, with respect to a clean coal
6 electricity buyer for a month, a fraction, the numerator of
7 which is such clean coal electricity buyer's retail market
8 sales of electricity (expressed in kilowatthours sold) in the
9 State during the third month preceding the applicable month and
10 the denominator of which is the total retail market sales of
11 electricity (expressed in kilowatthours sold) in the State by
12 all clean coal electricity buyers during such third month
13 preceding the applicable month, as such fraction may be
14 adjusted pursuant to subparagraph (E) of paragraph (2) of
15 subsection (d) of Section 1-75 of this Act.

16 "Clean coal SNG brownfield facility" means a facility that
17 (1) has commenced construction by July 1, 2015 on an urban
18 brownfield site in a municipality with at least 1,000,000
19 residents; (2) uses a gasification process to produce
20 substitute natural gas; (3) uses coal as at least 50% of the
21 total feedstock over the term of any sourcing agreement with a
22 utility and the remainder of the feedstock may be either
23 petroleum coke or coal, with all such coal having a high
24 bituminous rank and greater than 1.7 pounds of sulfur per
25 million Btu content unless the facility reasonably determines
26 that it is necessary to use additional petroleum coke to

1 deliver additional consumer savings, in which case the facility
2 shall use coal for at least 35% of the total feedstock over the
3 term of any sourcing agreement; and (4) captures and sequesters
4 at least 85% of the total carbon dioxide emissions that the
5 facility would otherwise emit.

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

19 "Coal gasification unit" means equipment that is designed
20 to process coal and convert the energy content of coal into
21 SNG.

22 "Commission" means the Illinois Commerce Commission.

23 "Costs incurred in connection with the development and
24 construction of a facility" means:

25 (1) the cost of acquisition of all real property,
26 fixtures, and improvements in connection therewith and

1 equipment, personal property, and other property, rights,
2 and easements acquired that are deemed necessary for the
3 operation and maintenance of the facility;

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

6 (3) all origination, commitment, utilization,
7 facility, placement, underwriting, syndication, credit
8 enhancement, and rating agency fees;

9 (4) engineering, design, procurement, consulting,
10 legal, accounting, title insurance, survey, appraisal,
11 escrow, trustee, collateral agency, interest rate hedging,
12 interest rate swap, capitalized interest, contingency, as
13 required by lenders, and other financing costs, and other
14 expenses for professional services; and

15 (5) the costs of plans, specifications, site study and
16 investigation, installation, surveys, other Agency costs
17 and estimates of costs, and other expenses necessary or
18 incidental to determining the feasibility of any project,
19 together with such other expenses as may be necessary or
20 incidental to the financing, insuring, acquisition, and
21 construction of a specific project and starting up,
22 commissioning, and placing that project in operation.

23 "Delivery services" has the same definition as found in
24 Section 16-102 of the Public Utilities Act.

25 "Department" means the Department of Commerce and Economic
26 Opportunity.

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

2 "Demand-response" means measures that decrease peak
3 electricity demand or shift demand from peak to off-peak
4 periods.

5 "Distributed renewable energy generation device" means a
6 device that is:

7 (1) powered by wind, solar thermal energy,
8 photovoltaic cells and panels, biodiesel, crops and
9 untreated and unadulterated organic waste biomass, tree
10 waste, and hydropower that does not involve new
11 construction or significant expansion of hydropower dams;

12 (2) interconnected at the distribution system level of
13 either an electric utility as defined in this Section, an
14 alternative retail electric supplier as defined in Section
15 16-102 of the Public Utilities Act, a municipal utility as
16 defined in Section 3-105 of the Public Utilities Act, or a
17 rural electric cooperative as defined in Section 3-119 of
18 the Public Utilities Act;

19 (3) located on the customer side of the customer's
20 electric meter and is primarily used to offset that
21 customer's electricity load; and

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

24 "Energy efficiency" means measures that reduce the amount
25 of electricity or natural gas required to achieve a given end
26 use.

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

3 "Facility" means an electric generating unit or a
4 co-generating unit that produces electricity along with
5 related equipment necessary to connect the facility to an
6 electric transmission or distribution system.

7 "Governmental aggregator" means one or more units of local
8 government that individually or collectively procure
9 electricity to serve residential retail electrical loads
10 located within its or their jurisdiction.

11 "Initial clean coal facility" means an electric generating
12 facility using gasification technology or an SNG-ready
13 generating facility that: (1) has a nameplate capacity of at
14 least 500 MW; (2) irrevocably commits in its proposed sourcing
15 agreement to use coal for at least 50% of the total feedstock
16 over the term of a sourcing agreement, with all coal having
17 high volatile bituminous rank and greater than 1.7 pounds of
18 sulfur per million btu content, but this clause (2) shall not
19 apply if the facility is an SNG-ready generating facility; (3)
20 is designed to capture and sequester at least 90% of the carbon
21 dioxide emissions that the portion of the facility, if any,
22 that produces SNG would otherwise emit and at least 50% of the
23 total carbon dioxide emissions that the facility as a whole
24 would otherwise emit, but this clause (3) shall not apply if
25 the facility is an SNG-ready generating facility; (4) absent an
26 appeal of a permit or regulatory order, is reasonably capable

1 of achieving commercial operation by no later than 5 years
2 after the execution of the sourcing agreements; (5) has a
3 feasible financing plan; (6) has a reliable and cost-effective
4 transmission plan to deliver energy to Commonwealth Edison
5 Company and Ameren Illinois; and (7) has a power block designed
6 not to exceed allowable emission rates for sulfur dioxide,
7 nitrogen oxides, carbon monoxide, particulates, and mercury
8 for a natural gas-fired combined-cycle facility the same size
9 as and in the same location as the electric generating facility
10 at the time the electric generating facility obtains an
11 approved air permit.

12 "Large electric customer" means a customer that (1) obtains
13 retail electric service in the State from an electric utility
14 or an alternative retail electric supplier and (2) is not a
15 small electric customer.

16 "Local government" means a unit of local government as
17 defined in Section 1 of Article VII of the Illinois
18 Constitution.

19 "Municipality" means a city, village, or incorporated
20 town.

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

26 "Project" means the planning, bidding, and construction of

1 a facility.

2 "Public utility" has the same definition as found in
3 Section 3-105 of the Public Utilities Act.

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

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

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

1 demolition debris, other than untreated and unadulterated
2 waste wood.

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

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

17 "Service area" has the same definition as found in Section
18 16-102 of the Public Utilities Act.

19 "Small electric customer" means a residential retail
20 electric customer that obtains electric service in the State
21 from an electric utility or an alternative retail electric
22 supplier.

23 "SNG-ready capital costs" means the portion of the capital
24 costs of an SNG-ready generating facility that are necessary to
25 accommodate future integrated operation of such generating
26 facility with one or more coal gasification units, but only to

1 the extent such capital costs would not have been part of the
2 capital costs of a similar electric generating facility that is
3 not designed to accommodate future integrated operation with
4 one or more coal gasification units.

5 "SNG-ready capital rate component" means, for any year, the
6 portion of the amounts paid under sourcing agreements with the
7 initial clean coal facility that is attributable to SNG-ready
8 capital costs being included in the return of capital and
9 return on capital components of the formula rate.

10 "SNG-ready generating facility" means an electric
11 generating facility that is capable of using SNG as a fuel and
12 is designed to accommodate future integrated operation with one
13 or more coal gasification units located on or adjacent to the
14 generating facility site, but with no gasification units
15 constructed as part of the initial construction of such
16 facility. An SNG-ready generating facility shall be designed to
17 accommodate such future integrated operation if its steam
18 turbine, steam piping, air cooled condenser, condensate and
19 feedwater systems, and certain heat recovery steam generator
20 sections (high pressure superheater, low pressure superheater
21 and reheater) are designed to accommodate the steam and water
22 flows expected from the coal gasification units and if the
23 overall plant layout includes reservation of an adjacent plot
24 space (over which such generating facility holds and shall
25 maintain site control) for efficient installation of the future
26 coal gasification units and related equipment, including fuel

1 handling equipment.

2 "Sourcing agreement" means (i) in the case of an electric
3 utility, an agreement between the owner of a clean coal
4 facility or initial clean coal facility and such electric
5 utility, which agreement shall have terms and conditions
6 meeting the requirements of paragraph (3) of subsection (d) of
7 Section 1-75, (ii) in the case of an alternative retail
8 electric supplier, an agreement between the owner of a clean
9 coal facility or initial clean coal facility and such
10 alternative retail electric supplier, which agreement shall
11 have terms and conditions meeting the requirements of Section
12 16-115(d) (5) of the Public Utilities Act, and (iii) in case of
13 a gas utility, an agreement between the owner of a clean coal
14 SNG brownfield facility and the gas utility, which agreement
15 shall have the terms and conditions meeting the requirements of
16 subsection (h-1) of Section 9-220 of the Public Utilities Act.

17 "Substitute natural gas" or "SNG" means a gas manufactured
18 by gasification of hydrocarbon feedstock, which is
19 substantially interchangeable in use and distribution with
20 conventional natural gas.

21 "Total resource cost test" or "TRC test" means a standard
22 that is met if, for an investment in energy efficiency or
23 demand-response measures, the benefit-cost ratio is greater
24 than one. The benefit-cost ratio is the ratio of the net
25 present value of the total benefits of the program to the net
26 present value of the total costs as calculated over the

1 lifetime of the measures. A total resource cost test compares
2 the sum of avoided electric utility costs, representing the
3 benefits that accrue to the system and the participant in the
4 delivery of those efficiency measures, as well as other
5 quantifiable societal benefits, including avoided natural gas
6 utility costs, to the sum of all incremental costs of end-use
7 measures that are implemented due to the program (including
8 both utility and participant contributions), plus costs to
9 administer, deliver, and evaluate each demand-side program, to
10 quantify the net savings obtained by substituting the
11 demand-side program for supply resources. In calculating
12 avoided costs of power and energy that an electric utility
13 would otherwise have had to acquire, reasonable estimates shall
14 be included of financial costs likely to be imposed by future
15 regulations and legislation on emissions of greenhouse gases.

16 (Source: P.A. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09;
17 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10; 97-96, eff.
18 7-13-11; 97-239, eff. 8-2-11; 97-491, eff. 8-22-11; 97-616,
19 eff. 10-26-11; 97-813, eff. 7-13-12.)

20 (20 ILCS 3855/1-20)

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

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

23 (1) Develop electricity procurement plans to ensure
24 adequate, reliable, affordable, efficient, and
25 environmentally sustainable electric service at the lowest

1 total cost over time, taking into account any benefits of
2 price stability, for electric utilities that on December
3 31, 2005 provided electric service to at least 100,000
4 customers in Illinois and for small multi-jurisdictional
5 electric utilities that (A) on December 31, 2005 served
6 less than 100,000 customers in Illinois and (B) request a
7 procurement plan for their Illinois jurisdictional load.
8 The procurement plans shall be updated on an annual basis
9 and shall include electricity generated from renewable
10 resources sufficient to achieve the standards specified in
11 this Act.

12 (2) Conduct competitive procurement processes to
13 procure the supply resources identified in the procurement
14 plan, pursuant to Section 16-111.5 of the Public Utilities
15 Act.

16 (3) 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 (4) 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 (b) Except as otherwise limited by this Act, the Agency has
25 all of the powers necessary or convenient to carry out the
26 purposes and provisions of this Act, including without

1 limitation, each of the following:

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

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

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

9 (4) To obtain and employ personnel and hire consultants
10 that are necessary to fulfill the Agency's purposes, and to
11 make expenditures for that purpose within the
12 appropriations for that purpose.

13 (5) To purchase, receive, take by grant, gift, devise,
14 bequest, or otherwise, lease, or otherwise acquire, own,
15 hold, improve, employ, use, and otherwise deal in and with,
16 real or personal property whether tangible or intangible,
17 or any interest therein, within the State.

18 (6) To acquire real or personal property, whether
19 tangible or intangible, including without limitation
20 property rights, interests in property, franchises,
21 obligations, contracts, and debt and equity securities,
22 and to do so by the exercise of the power of eminent domain
23 in accordance with Section 1-21; except that any real
24 property acquired by the exercise of the power of eminent
25 domain must be located within the State.

26 (7) To sell, convey, lease, exchange, transfer,

1 abandon, or otherwise dispose of, or mortgage, pledge, or
2 create a security interest in, any of its assets,
3 properties, or any interest therein, wherever situated.

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

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

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

26 (11) To borrow money at such rate or rates of interest

1 as the Agency may determine, issue its notes, bonds, or
2 other obligations to evidence that indebtedness, and
3 secure any of its obligations by mortgage or pledge of its
4 real or personal property, machinery, equipment,
5 structures, fixtures, inventories, revenues, grants, and
6 other funds as provided or any interest therein, wherever
7 situated.

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

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

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

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

26 (16) To enter into management agreements for the

1 operation of any of the property or facilities owned by the
2 Agency.

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

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

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

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

20 (21) To accept and expend appropriations.

21 (22) To engage in any activity or operation that is
22 incidental to and in furtherance of efficient operation to
23 accomplish the Agency's purposes, including hiring
24 employees that the Director deems essential for the
25 operations of the Agency.

26 (23) To adopt, revise, amend, and repeal rules with

1 respect to its operations, properties, and facilities as
2 may be necessary or convenient to carry out the purposes of
3 this Act, subject to the provisions of the Illinois
4 Administrative Procedure Act and Sections 1-22 and 1-35 of
5 this Act.

6 (24) To establish and collect charges and fees as
7 described in this Act.

8 (25) To conduct competitive gasification feedstock
9 procurement processes to procure the feedstocks for the
10 clean coal SNG brownfield facility in accordance with the
11 requirements of Section 1-78 of this Act.

12 (26) To review, revise, and approve sourcing
13 agreements and mediate and resolve disputes between gas
14 utilities and the clean coal SNG brownfield facility
15 pursuant to subsection (h-1) of Section 9-220 of the Public
16 Utilities Act.

17 (27) To review, revise, and approve sourcing
18 agreements and mediate and resolve disputes between
19 electric utilities or alternative retail electric
20 suppliers and the initial clean coal facility pursuant to
21 paragraph (4) of subsection (d) of Section 1-75 of this
22 Act.

23 (28) To conduct competitive gasification feedstock
24 procurement processes to procure the feedstocks for the
25 initial clean coal facility in accordance with the
26 requirements of Section 1-79 of this Act.

1 (Source: P.A. 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10;
2 97-96, eff. 7-13-11; 97-325, eff. 8-12-11; 97-618, eff.
3 10-26-11; 97-813, eff. 7-13-12.)

4 (20 ILCS 3855/1-75)

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

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

1 "eligible retail customers" has the same definition as found in
2 Section 16-111.5(a) of the Public Utilities Act.

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

9 (A) direct previous experience assembling
10 large-scale power supply plans or portfolios for
11 end-use customers;

12 (B) an advanced degree in economics, mathematics,
13 engineering, risk management, or a related area of
14 study;

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

17 (D) expertise in wholesale electricity market
18 rules, including those established by the Federal
19 Energy Regulatory Commission and regional transmission
20 organizations;

21 (E) expertise in credit protocols and familiarity
22 with contract protocols;

23 (F) adequate resources to perform and fulfill the
24 required functions and responsibilities; and

25 (G) the absence of a conflict of interest and
26 inappropriate bias for or against potential bidders or

1 the affected electric utilities.

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

8 (A) direct previous experience administering a
9 large-scale competitive procurement process;

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

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

14 (D) expertise in wholesale electricity market
15 rules, including those established by the Federal
16 Energy Regulatory Commission and regional transmission
17 organizations;

18 (E) expertise in credit and contract protocols;

19 (F) adequate resources to perform and fulfill the
20 required functions and responsibilities; and

21 (G) the absence of a conflict of interest and
22 inappropriate bias for or against potential bidders or
23 the affected electric utilities.

24 (3) The Agency shall provide affected utilities and
25 other interested parties with the lists of qualified
26 experts or expert consulting firms identified through the

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

13 (A) failure to satisfy qualification criteria;

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

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

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

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

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

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

18 (a-5) The Planning and Procurement Bureau shall at least
19 every 5 years beginning in 2014 develop feedstock procurement
20 plans and conduct competitive feedstock procurement processes
21 in accordance with the requirements of Section 1-79 of this
22 Act.

23 (1) The Agency shall, at least once every 5 years
24 beginning in 2014, issue a request for qualifications for
25 experts or expert consulting firms to develop the feedstock
26 procurement plans in accordance with Section 1-79 of this

1 Act. In order to qualify, an expert or, in the case of an
2 expert consulting firm, the individual who shall be
3 directly responsible for the work, must have:

4 (A) direct previous experience assembling large
5 scale feedstock supply plans or portfolios involving
6 coal and natural gas for industrial customers;

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

10 (C) ten years of experience in the energy sector,
11 including coal and gas procurement and managing fuel
12 supply risk;

13 (D) expertise in the feedstock markets, which may
14 be particularized to the specific type of feedstock to
15 be purchased in that procurement event;

16 (E) expertise in credit protocols and familiarity
17 with contract protocols;

18 (F) adequate resources to perform and fulfill the
19 required functions and responsibilities; and

20 (G) the absence of a conflict of interest and
21 inappropriate bias for or against potential bidders or
22 the initial clean coal facility.

23 (2) The Agency shall at least every 5 years beginning
24 in 2014, as needed, issue a request for qualifications for
25 a feedstock procurement administrator to conduct the
26 competitive feedstock procurement processes in accordance

1 with Section 1-79 of this Act. In order to qualify, an
2 expert or, in the case of an expert consulting firm, the
3 individual who shall be directly responsible for the work,
4 must have:

5 (A) direct previous experience administering a
6 large scale competitive feedstock procurement process
7 involving coal and natural gas;

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

10 (C) ten years of experience in the energy sector,
11 including coal and gas procurement and managing fuel
12 supply risk;

13 (D) expertise in feedstock market rules and
14 practices, which may be particularized to the specific
15 type of feedstock to be purchased in that procurement
16 event;

17 (E) expertise in credit and contract protocols;

18 (F) adequate resources to perform and fulfill the
19 required functions and responsibilities; and

20 (G) the absence of a conflict of interest and
21 inappropriate bias for or against potential bidders or
22 the initial clean coal facility.

23 (3) The Agency shall provide the initial clean coal
24 facility and other interested parties with the lists of
25 qualified experts or expert consulting firms identified
26 through the request for qualifications processes that are

1 under consideration to develop the feedstock procurement
2 plans and to serve as the feedstock procurement
3 administrator. The Agency shall also provide the initial
4 clean coal facility and other interested parties with each
5 qualified expert's or expert consulting firm's response to
6 the request for qualifications. All information provided
7 under this subparagraph (3) shall also be provided to the
8 Commission. The Agency may provide by rule for fees
9 associated with supplying the information to the initial
10 clean coal facility and other interested parties. The
11 initial clean coal facility and other interested parties
12 shall, within 5 business days after receiving the lists and
13 information, notify the Agency in writing if they object to
14 any experts or expert consulting firms on the lists.
15 Objections shall be based on:

16 (A) failure to satisfy qualification criteria;

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

18 (C) evidence of inappropriate bias for or against
19 potential bidders or the initial clean coal facility.

20 The Agency shall remove experts or expert consulting
21 firms from the lists within 10 days after receiving the
22 objections if there is a reasonable basis for an objection
23 and provide the updated lists to the initial clean coal
24 facility and other interested parties. If the Agency fails
25 to remove an expert or expert consulting firm from a list,
26 then an objecting party may seek review by the Commission

1 within 5 days thereafter by filing a petition, and the
2 Commission shall render a ruling on the petition within 10
3 days. There is no right of appeal of the Commission's
4 ruling.

5 (4) The Agency shall issue requests for proposals to
6 the qualified experts or expert consulting firms to develop
7 a feedstock procurement plan for the initial clean coal
8 facility and to serve as feedstock procurement
9 administrator.

10 (5) The Agency shall select an expert or expert
11 consulting firm to develop feedstock procurement plans
12 based on the proposals submitted and shall award at least
13 one-year contracts to those selected with an option for the
14 Agency for renewal for an additional length of time equal
15 to the term of the contract.

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

1 (7) If and for so long as the initial clean coal
2 facility is an SNG-ready generating facility, the expert or
3 consultant that shall develop the feedstock procurement
4 plan and the feedstock procurement administrator, each as
5 selected pursuant to this subsection (a-5), shall not be
6 required to have experience in coal procurement.

7 (b) The experts or expert consulting firms retained by the
8 Agency under subsection (a) of this Section shall, as
9 appropriate, prepare procurement plans, and conduct a
10 competitive procurement process as prescribed in Section
11 16-111.5 of the Public Utilities Act, to ensure adequate,
12 reliable, affordable, efficient, and environmentally
13 sustainable electric service at the lowest total cost over
14 time, taking into account any benefits of price stability, for
15 eligible retail customers of electric utilities that on
16 December 31, 2005 provided electric service to at least 100,000
17 customers in the State of Illinois, and for eligible Illinois
18 retail customers of small multi-jurisdictional electric
19 utilities that (i) on December 31, 2005 served less than
20 100,000 customers in Illinois and (ii) request a procurement
21 plan for their Illinois jurisdictional load.

22 (b-5) The experts or expert consulting firms retained by
23 the Agency pursuant to subsection (a-5) of this Section shall,
24 as appropriate, prepare feedstock procurement plans and
25 conduct a competitive feedstock procurement process as
26 prescribed in Section 1-79 of this Act to ensure adequate,

1 reliable, affordable feedstocks, taking into account any
2 benefits of price stability, for the initial clean coal
3 facility.

4 (c) Renewable portfolio standard.

5 (1) The procurement plans under subsection (a) of this
6 Section shall include cost-effective renewable energy
7 resources. A minimum percentage of each utility's total
8 supply to serve the load of eligible retail customers, as
9 defined in Section 16-111.5(a) of the Public Utilities Act,
10 procured for each of the following years shall be generated
11 from cost-effective renewable energy resources: at least
12 2% by June 1, 2008; at least 4% by June 1, 2009; at least 5%
13 by June 1, 2010; at least 6% by June 1, 2011; at least 7% by
14 June 1, 2012; at least 8% by June 1, 2013; at least 9% by
15 June 1, 2014; at least 10% by June 1, 2015; and increasing
16 by at least 1.5% each year thereafter to at least 25% by
17 June 1, 2025. To the extent that it is available, at least
18 75% of the renewable energy resources used to meet these
19 standards shall come from wind generation and, beginning on
20 June 1, 2011, at least the following percentages of the
21 renewable energy resources used to meet these standards
22 shall come from photovoltaics on the following schedule:
23 0.5% by June 1, 2012, 1.5% by June 1, 2013; 3% by June 1,
24 2014; and 6% by June 1, 2015 and thereafter. Of the
25 renewable energy resources procured pursuant to this
26 Section, at least the following percentages shall come from

1 distributed renewable energy generation devices: 0.5% by
2 June 1, 2013, 0.75% by June 1, 2014, and 1% by June 1, 2015
3 and thereafter. To the extent available, half of the
4 renewable energy resources procured from distributed
5 renewable energy generation shall come from devices of less
6 than 25 kilowatts in nameplate capacity. Renewable energy
7 resources procured from distributed generation devices may
8 also count towards the required percentages for wind and
9 solar photovoltaics. Procurement of renewable energy
10 resources from distributed renewable energy generation
11 devices shall be done on an annual basis through multi-year
12 contracts of no less than 5 years, and shall consist solely
13 of renewable energy credits.

14 The Agency shall create credit requirements for
15 suppliers of distributed renewable energy. In order to
16 minimize the administrative burden on contracting
17 entities, the Agency shall solicit the use of third-party
18 organizations to aggregate distributed renewable energy
19 into groups of no less than one megawatt in installed
20 capacity. These third-party organizations shall administer
21 contracts with individual distributed renewable energy
22 generation device owners. An individual distributed
23 renewable energy generation device owner shall have the
24 ability to measure the output of his or her distributed
25 renewable energy generation device.

26 For purposes of this subsection (c), "cost-effective"

1 means that the costs of procuring renewable energy
2 resources do not cause the limit stated in paragraph (2) of
3 this subsection (c) to be exceeded and do not exceed
4 benchmarks based on market prices for renewable energy
5 resources in the region, which shall be developed by the
6 procurement administrator, in consultation with the
7 Commission staff, Agency staff, and the procurement
8 monitor and shall be subject to Commission review and
9 approval.

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

23 Notwithstanding the requirements of this subsection
24 (c), the total of renewable energy resources procured
25 pursuant to the procurement plan for any single year shall
26 be reduced by an amount necessary to limit the annual

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

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

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

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

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

22 (E) thereafter, the amount of renewable energy
23 resources procured pursuant to the procurement plan
24 for any single year shall be reduced by an amount
25 necessary to limit the estimated average net increase
26 due to the cost of these resources included in the

1 amounts paid by eligible retail customers in
2 connection with electric service to no more than the
3 greater of 2.015% of the amount paid per kilowatthour
4 by those customers during the year ending May 31, 2007
5 or the incremental amount per kilowatthour paid for
6 these resources in 2011.

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

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

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

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

10 (5) Beginning with the year commencing June 1, 2010, an
11 electric utility subject to this subsection (c) shall apply
12 the lesser of the maximum alternative compliance payment
13 rate or the most recent estimated alternative compliance
14 payment rate for its service territory for the
15 corresponding compliance period, established pursuant to
16 subsection (d) of Section 16-115D of the Public Utilities
17 Act to its retail customers that take service pursuant to
18 the electric utility's hourly pricing tariff or tariffs.
19 The electric utility shall retain all amounts collected as
20 a result of the application of the alternative compliance
21 payment rate or rates to such customers, and, beginning in
22 2011, the utility shall include in the information provided
23 under item (1) of subsection (d) of Section 16-111.5 of the
24 Public Utilities Act the amounts collected under the
25 alternative compliance payment rate or rates for the prior
26 year ending May 31. Notwithstanding any limitation on the

1 procurement of renewable energy resources imposed by item
2 (2) of this subsection (c), the Agency shall increase its
3 spending on the purchase of renewable energy resources to
4 be procured by the electric utility for the next plan year
5 by an amount equal to the amounts collected by the utility
6 under the alternative compliance payment rate or rates in
7 the prior year ending May 31. Beginning April 1, 2012, and
8 each year thereafter, the Agency shall prepare a public
9 report for the General Assembly and Illinois Commerce
10 Commission that shall include, but not necessarily be
11 limited to:

12 (A) a comparison of the costs associated with the
13 Agency's procurement of renewable energy resources to
14 (1) the Agency's costs associated with electricity
15 generated by other types of generation facilities and
16 (2) the benefits associated with the Agency's
17 procurement of renewable energy resources; and

18 (B) an analysis of the rate impacts associated with
19 the Illinois Power Agency's procurement of renewable
20 resources, including, but not limited to, any
21 long-term contracts, on the eligible retail customers
22 of electric utilities.

23 The analysis shall include the Agency's estimate of the
24 total dollar impact that the Agency's procurement of
25 renewable resources has had on the annual electricity bills
26 of the customer classes that comprise each eligible retail

1 customer class taking service from an electric utility. The
2 Agency's report shall also analyze how the operation of the
3 alternative compliance payment mechanism, any long-term
4 contracts, or other aspects of the applicable renewable
5 portfolio standards impacts the rates of customers of
6 alternative retail electric suppliers.

7 (d) Clean coal portfolio standard.

8 (1) The General Assembly finds that there are abundant
9 and cost-effective supplies of high volatile rank
10 bituminous coal with a sulfur content of at least 1.7
11 pounds per million btu energy content, and that it is
12 technologically feasible to produce electric energy using
13 such coal supplies reliably. The General Assembly further
14 finds that state-of-the-art gasification systems are
15 available to convert coal supplies with the foregoing
16 characteristics into gas and that it is feasible to use
17 such gas to generate electric energy without exceeding
18 allowable emission rates for sulfur dioxide, nitrogen
19 oxides, carbon monoxide, particulates, and mercury for a
20 natural gas-fired combined-cycle facility of the same size
21 as and in the same location as a clean coal facility
22 incorporating a gasification system and a combined cycle
23 power block. The General Assembly also finds that it is
24 feasible to engineer and construct systems designed to
25 capture and sequester the percentages of the carbon dioxide
26 emissions from clean coal facilities as specified in this

1 Act. Accordingly, the General Assembly finds it necessary
2 for the health, safety, welfare, and prosperity of Illinois
3 citizens to require Illinois electric utilities and
4 alternative retail electric suppliers to contract with the
5 initial clean coal facility to meet a portion of the needs
6 of each such electric utility's and alternative retail
7 electric supplier's retail load on the terms and conditions
8 described under this Act.

9 The procurement plans under subsection (a) of this
10 Section shall include electricity generated using clean
11 coal. Each electric utility shall enter into one or more
12 sourcing agreements with the initial clean coal facility,
13 as provided in paragraph (3) of this subsection (d),
14 covering electricity generated by the initial clean coal
15 facility representing (A) at least 5% of that ~~each~~
16 utility's ~~total supply to serve the~~ load of eligible retail
17 customers in the immediately preceding year 2015 and each
18 ~~year thereafter~~, as described in paragraph (3) of this
19 subsection (d), or (B) such lesser amount as may be
20 available from the initial clean coal facility, reduced by
21 ~~subject to~~ the limits on the amount of power to be
22 purchased specified in paragraph (2) of this subsection
23 (d). It is the goal of the State that by January 1, 2025,
24 25% of the electricity used in the State shall be generated
25 by cost-effective clean coal facilities. For purposes of
26 this subsection (d), "cost-effective" means that the

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

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

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

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

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

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

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

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

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

1 year ending May 31, 2009;

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

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

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

25 No later than June 30, 2015, the Commission shall
26 review the limitation on the total amount paid under

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

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

15 (A) in 2013, no more than 0.5% of the amount paid
16 per kilowatthour by those customers during the year
17 ending May 31, 2009;

18 (B) in 2014, the greater of an additional 0.5% of
19 the amount paid per kilowatthour by those customers
20 during the year ending May 31, 2013 or 1% of the amount
21 paid per kilowatthour by those customers during the
22 year ending May 31, 2009;

23 (C) in 2015, the greater of an additional 0.5% of
24 the amount paid per kilowatthour by those customers
25 during the year ending May 31, 2014 or 1.5% of the
26 amount paid per kilowatthour by those customers during

1 the year ending May 31, 2009;

2 (D) in 2016, the greater of an additional 0.5% of
3 the amount paid per kilowatthour by those customers
4 during the year ending May 31, 2015 or 2% of the amount
5 paid per kilowatthour by those customers during the
6 year ending May 31, 2009; and

7 (E) thereafter:

8 (i) A calculation shall be made for each year
9 to determine whether the estimated average net per
10 killowatthour increase due to the cost of electric
11 power purchased under sourcing agreements and
12 included in the amounts paid by small electric
13 customers in connection with electric service
14 exceeds the greater of (1) 2.015% of the amount
15 paid per kilowatthour by eligible retail customers
16 during the year ending May 31, 2009 or (2) the
17 incremental amount per kilowatthour paid for these
18 resources in 2016. If and for so long as the
19 initial clean coal facility is an SNG-ready
20 generating facility, the percentage in the
21 immediately preceding sentence shall be 0.75% and
22 not 2.015%. These requirements may be altered only
23 as provided by statute. For purposes of such
24 calculation, such average net per kilowatthour
25 increase in rates of small electric customers that
26 are not eligible retail customers shall be deemed

1 to be equal to such average net per kilowatthour
2 increase in rates of eligible retail customers.

3 (ii) If, for any year, the small customer rate
4 impact would exceed the limitation described in
5 item (i) of this subparagraph (E), the clean coal
6 fraction for each clean coal electricity buyer
7 shall be adjusted for such year in a manner that
8 shall result in (1) the quantity of electric power
9 projected to be purchased by each clean coal
10 electricity buyer being reduced by an amount
11 sufficient to result in such deemed rate impact on
12 all small electric customers (whether served by
13 electric utilities or alternative retail electric
14 suppliers) being equal to such limitation for such
15 year and (2) any such reductions in amounts
16 allocated to the clean coal electricity buyers in
17 order to achieve the objective described in clause
18 (1) of this item (ii) being allocated to, and
19 purchased and paid for by, the clean coal
20 electricity buyers in proportion to their retail
21 sales to large electric customers.

22 (iii) Each year, after taking account of the
23 adjustment, if any, provided for in item (ii) of
24 this subparagraph (E), a calculation shall be made
25 to determine whether the large customer deemed
26 rate impact for such year exceeds \$0.005 per

1 kilowatthour. If and for so long as the initial
2 clean coal facility is an SNG-ready generating
3 facility, the amount in the immediately preceding
4 sentence shall be \$0.00085, and not \$0.005. The
5 "large customer deemed rate impact" for any year is
6 the projected increase in electric rates of large
7 electric customers (whether served by electric
8 utilities or alternative retail electric
9 suppliers) due to the cost of electric power
10 purchased under sourcing agreements to the extent
11 it is based on each clean coal electricity buyer's
12 retail sales to large electric customers, which
13 shall be calculated in substantially the same
14 manner as the calculation of rate impact on small
15 electric customers, and shall assume that such
16 cost of purchases under sourcing agreements is
17 passed through proportionally by the clean coal
18 electricity buyers to their large electric
19 customers. The calculation of the large customer
20 deemed rate impact shall (1) assume that the total
21 retail sales (expressed in kilowatthours sold) to
22 large electric customers by all clean coal
23 electricity buyers for any year is the greater of
24 the actual amount of such sales in such year and
25 the amount of such sales in 2009 and (2) exclude
26 from the calculation any actual costs for such year

1 incurred by the initial clean coal facility to the
2 extent such costs exceed the corresponding amount
3 assumed in the "reference case" of the facility
4 cost report for the initial clean coal facility for
5 such year and are not principally within the
6 reasonable control of the initial clean coal
7 facility.

8 Any operating costs or revenues deviating from
9 the corresponding costs assumed in the "reference
10 case" of the facility cost report for the initial
11 clean coal facility as a result of changes in
12 market prices, including, but not limited to,
13 prices of coal, natural gas, electricity,
14 by-products, and emissions allowances, shall be
15 deemed to be outside of the reasonable control of
16 the initial clean coal facility and excluded from
17 the calculation.

18 Any costs exceeding the corresponding costs
19 assumed in the "reference case" of the facility
20 cost report for the initial clean coal facility as
21 a result of changes in capital costs, fixed
22 operating costs, variable operating costs,
23 operating efficiency, and availability, except in
24 each case to the extent resulting from a change in
25 market prices, as described in the immediately
26 preceding paragraph, or from a change in law, as

1 defined in subsection (b) of Section 1-76 of this
2 Act, shall be deemed to be within the reasonable
3 control of the initial clean coal facility and
4 included in the calculation.

5 If and for so long as the initial clean coal
6 facility is an SNG-ready generating facility,
7 clause (2) of the fourth sentence and all of the
8 second and third paragraphs of this item (iii)
9 shall not apply.

10 (iv) If, for any year, the large customer
11 deemed rate impact would exceed the limitation
12 described in item (iii) of this subparagraph (E),
13 the quantity of electric power required to be
14 purchased by each clean coal electricity buyer
15 that serves large electric customers under its
16 sourcing agreement for such year shall be reduced
17 by such amount as will result in the large customer
18 deemed rate impact being equal to such limitation
19 for such year, and the clean coal fractions of each
20 clean coal electricity buyer that serves large
21 electric customers shall be adjusted for such year
22 to reflect this reduction; provided, however, that
23 the reduction under this item (iv) shall not exceed
24 in any year an amount that would result in revenues
25 under the sourcing agreements being reduced by
26 more than \$50,000,000 in the aggregate for such

1 year, but this provision shall not apply if and for
2 so long as the initial clean coal facility is an
3 SNG-ready generating facility. Any quantities of
4 electric power not required to be purchased
5 pursuant to the operation of the immediately
6 preceding sentence may be disposed of by the
7 initial clean coal facility for its own account,
8 and the proceeds of any sales of such electric
9 power shall not be included in the formula rate.

10 (v) The details of the calculations
11 contemplated by this subparagraph (E) shall be set
12 forth in the sourcing agreements.

13 (vi) No later than June 30, 2016, the
14 Commission shall review the limitation on the
15 total amount paid under sourcing agreements, if
16 any, with the initial clean coal facility pursuant
17 to this subsection (d) and report to the General
18 Assembly its findings as to the effect of the
19 limitation on the initial clean coal facility,
20 electric utilities, alternative retail electric
21 suppliers, and customers of the electric utilities
22 and the alternative retail electric suppliers.

23 (3) Initial clean coal facility. In order to promote
24 the use development of clean coal electric power facilities
25 in Illinois, each electric utility subject to this Section
26 shall execute a sourcing agreement to source electricity

1 from the initial clean coal facility. The Agency shall
2 accept applications to be designated the initial clean coal
3 facility for a period of 30 days after the effective date
4 of this amendatory Act of the 98th General Assembly. Each
5 application shall include a proposed sourcing agreement in
6 accordance with the requirements of this paragraph (3) and
7 information showing that the applicant meets the other
8 criteria set out in the definition of initial clean coal
9 facility provided in Section 1-10 of this Act. In the event
10 that only one proposed initial clean coal facility that
11 meets each of the requirements submits a proposed sourcing
12 agreement to the Agency within that time period, the Agency
13 shall select such proposed initial clean coal facility as
14 the initial clean coal facility. In the event that more
15 than one proposed initial clean coal facility that meets
16 each of the requirements submit a proposed sourcing
17 agreement to the Agency within that time period, the Agency
18 shall select as the initial clean coal facility the
19 electric generating facility that the Agency determines
20 best promotes the needs and interests of the citizens of
21 the State of Illinois. In making such determination, the
22 Agency shall take into account for each proposed initial
23 clean coal facility the technical and economic feasibility
24 of such facility as established by engineering and design
25 studies, including access to capital and the
26 financeability of the facility based upon the proposed

1 sourcing agreement, the projected environmental
2 performance of such facility, the ability of such facility
3 to be dispatched to support the transmission grid's
4 capability to integrate with wind, solar, and other
5 intermittent resources, the reliability and cost of
6 electric transmission service from the facility to the
7 electric utilities, the amount of engineering and design
8 work that has been done for the facility, including, in the
9 case of an SNG-ready generating facility, the engineering
10 and design work relating to features that would accommodate
11 future integrated operation with one or more coal
12 gasification units, the facility's water use and overall
13 environmental attributes, and the schedule for
14 commencement of construction and operation of the
15 facility. The Agency shall announce the designation of the
16 initial clean coal facility within 45 days after the
17 effective date of this amendatory Act of the 98th General
18 Assembly. The facility designated as the initial clean coal
19 facility under this Section shall operate as an SNG-ready
20 generating facility unless and until it becomes an electric
21 generating facility using gasification technology by
22 adding one or more coal gasification units. The initial
23 clean coal facility may add one or more coal gasification
24 units only after:

25 (A) the General Assembly, by enactment of a law,
26 authorizes the addition; provided that, within 2 years

1 preceding the effective date of such enactment, the
2 initial clean coal facility shall have submitted a
3 facility cost report for the coal gasification unit or
4 units otherwise meeting the requirements of paragraph
5 (4) of subsection (d) of this Section;

6 (B) a determination is made by the Commission
7 either that a carbon dioxide pipeline capable of
8 transporting the carbon dioxide captured from such
9 gasification unit or units may be constructed, which
10 shall be deemed to have been made if the Commission
11 issued a certificate of authority of the construction
12 of such a carbon dioxide pipeline, or that the initial
13 clean coal facility has obtained a Class VI injection
14 permit from the United States Environmental Protection
15 Agency or the Illinois Environmental Protection Agency
16 and has completed the other material elements
17 necessary for it to sequester carbon dioxide captured
18 from such gasification unit or units;

19 (C) a determination of capital costs associated
20 with the addition is made by the Capital Development
21 Board and the Commission according to the process in
22 subsection (b) of Section 1-76 of this Act; and

23 (D) a determination of sequestration capital costs
24 and sequestration operation and maintenance costs
25 associated with the addition is made by the Capital
26 Development Board according to the process in

1 subsection (e) of Section 1-76 of this Act.

2 The initial clean coal facility may accomplish the
3 addition of the coal gasification unit or units either (i)
4 by having the coal gasification unit or units owned by the
5 same entity that owns the SNG-ready generating facility and
6 the costs associated with the coal gasification unit or
7 units included in the formula rate under sourcing
8 agreements between the clean coal electricity buyers and
9 the initial clean coal facility or (ii) by having the coal
10 gasification unit or units be owned by a different entity
11 that would sell the SNG produced by such gasification unit
12 or units to the SNG-ready generating facility under a
13 separate formula rate with the SNG-ready generating
14 facility incorporating the costs of the SNG into the
15 formula rate under its sourcing agreement with the clean
16 coal electricity buyers. ~~a proposed clean coal facility in~~
17 ~~Illinois (the "initial clean coal facility") that will have~~
18 ~~a nameplate capacity of at least 500 MW when commercial~~
19 ~~operation commences, that has a final Clean Air Act permit~~
20 ~~on the effective date of this amendatory Act of the 95th~~
21 ~~General Assembly, and that will meet the definition of~~
22 ~~clean coal facility in Section 1-10 of this Act when~~
23 ~~commercial operation commences. The sourcing agreements~~
24 ~~with this initial clean coal facility shall be subject to~~
25 ~~both approval of the initial clean coal facility by the~~
26 ~~General Assembly and satisfaction of the requirements of~~

1 ~~paragraph (4) of this subsection (d) and shall be executed~~
2 ~~within 90 days after any such approval by the General~~
3 ~~Assembly.~~ The Agency and the Commission shall have
4 authority to inspect all books and records associated with
5 the initial clean coal facility during the term of such a
6 sourcing agreement. A utility's sourcing agreement for
7 electricity produced by the initial clean coal facility
8 shall include:

9 (A) provisions governing the price paid for
10 electricity generated by the initial clean coal
11 facility, which shall be determined according to
12 clause (iv) of subparagraph (B) of this paragraph (3);

13 (B) power purchase provisions, which shall:

14 (i) provide that the utility party to the
15 sourcing agreement shall pay the contract price
16 under such sourcing agreement determined pursuant
17 to subparagraph (A);

18 (ii) require delivery of electricity by the
19 initial clean coal facility to the regional
20 transmission organization market of the utility
21 party to the sourcing agreement;

22 (iii) require the utility party to the
23 sourcing agreement to buy from the initial clean
24 coal facility in each hour an amount of energy
25 equal to all clean coal energy made available from
26 the initial clean coal facility during such hour

1 times the clean coal fraction for such utility for
2 the applicable month, provided that the amount
3 purchased by the utility in any year will be
4 limited by paragraph (2) of this subsection (d);

5 (iv) require the utility party to the sourcing
6 agreement to pay to the initial clean coal facility
7 for each month the following: the electric
8 generation variable charge multiplied by the
9 quantity of energy required to be purchased by such
10 utility in such month plus the product of the sum
11 of the fuel charge plus the fixed monthly charge,
12 based on the MW of nameplate capacity of the
13 initial clean coal facility's power block, for
14 such month, multiplied by the fraction determined
15 for the utility for such month according to clause
16 (iii) of this subparagraph (B); for purposes of
17 this clause (iv), "electric generation variable
18 charge", "fuel charge", and "fixed monthly charge"
19 shall each have the meaning ascribed to the term in
20 subsection (a) of Section 1-76 of this Act; and

21 (v) be considered pre-existing contracts in
22 the utility's procurement plans for eligible
23 retail customers.

24 The provisions of this subparagraph (B) are
25 severable under Section 1.31 of the Statute on
26 Statutes.

1 ~~(A) a formula contractual price (the "contract~~
2 ~~price") approved pursuant to paragraph (4) of this~~
3 ~~subsection (d), which shall:~~

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

14 ~~(ii) provide that all miscellaneous net~~
15 ~~revenue, including but not limited to net revenue~~
16 ~~from the sale of emission allowances, if any,~~
17 ~~substitute natural gas, if any, grants or other~~
18 ~~support provided by the State of Illinois or the~~
19 ~~United States Government, firm transmission~~
20 ~~rights, if any, by products produced by the~~
21 ~~facility, energy or capacity derived from the~~
22 ~~facility and not covered by a sourcing agreement~~
23 ~~pursuant to paragraph (3) of this subsection (d) or~~
24 ~~item (5) of subsection (d) of Section 16-115 of the~~
25 ~~Public Utilities Act, whether generated from the~~
26 ~~synthesis gas derived from coal, from SNG, or from~~

1 ~~natural gas, shall be credited against the revenue~~
2 ~~requirement for this initial clean coal facility;~~

3 ~~(B) power purchase provisions, which shall:~~

4 ~~(i) provide that the utility party to such~~
5 ~~sourcing agreement shall pay the contract price~~
6 ~~for electricity delivered under such sourcing~~
7 ~~agreement;~~

8 ~~(ii) require delivery of electricity to the~~
9 ~~regional transmission organization market of the~~
10 ~~utility that is party to such sourcing agreement;~~

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

1 ~~subsection (d) and paragraph (5) of subsection (d)~~
2 ~~of Section 16-115 of the Public Utilities Act,~~
3 ~~provided that the amount purchased by the utility~~
4 ~~in any year will be limited by paragraph (2) of~~
5 ~~this subsection (d); and~~

6 ~~(iv) be considered pre existing contracts in~~
7 ~~such utility's procurement plans for eligible~~
8 ~~retail customers;~~

9 (C) contract for differences provisions, which
10 shall:

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

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

8 (ii) provide that the utility's payment
9 obligation in respect of the quantity of
10 electricity determined pursuant to the preceding
11 clause (i) for any month shall be ~~limited to an~~
12 ~~amount~~ equal to ~~(1)~~ the difference of the electric
13 generation variable charge, the fuel charge, and
14 the fixed monthly charge, that would be payable by
15 the utility for such month based on such quantity
16 of electricity between the contract price
17 ~~determined~~ pursuant to clause (iv) of subparagraph
18 (B) (A) of this paragraph (3), minus the product of
19 (1) of this subsection (d) and the day-ahead price
20 for electricity delivered to the regional
21 transmission organization market of the electric
22 utility that is party to such sourcing agreement
23 (or any successor delivery point at which such
24 utility's supply obligations are financially
25 settled on an hourly basis) (the "reference
26 price") on the day preceding the day on which the

1 electricity is delivered to the initial clean coal
2 facility busbar, multiplied by (2) the quantity of
3 electricity determined pursuant to the preceding
4 clause (i), calculated for each hour in such month;
5 and

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

9 (D) general provisions, which shall:

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

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

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

1 (iv) permit the Illinois Power Agency, if it is
2 so authorized by law, to assume ownership of the
3 initial clean coal facility, without monetary
4 consideration and otherwise on reasonable terms
5 acceptable to the Agency, if the Agency so requests
6 no less than 3 years prior to the end of the stated
7 contract term;

8 (v) require the owner of the initial clean coal
9 facility to comply with provisions reflecting
10 those set forth in Section 1-76.5 of this Act;
11 ~~provide documentation to the Commission each year,~~
12 ~~starting in the facility's first year of~~
13 ~~commercial operation, accurately reporting the~~
14 ~~quantity of carbon emissions from the facility~~
15 ~~that have been captured and sequestered and report~~
16 ~~any quantities of carbon released from the site or~~
17 ~~sites at which carbon emissions were sequestered~~
18 ~~in prior years, based on continuous monitoring of~~
19 ~~such sites. If, in any year after the first year of~~
20 ~~commercial operation, the owner of the facility~~
21 ~~fails to demonstrate that the initial clean coal~~
22 ~~facility captured and sequestered at least 50% of~~
23 ~~the total carbon emissions that the facility would~~
24 ~~otherwise emit or that sequestration of emissions~~
25 ~~from prior years has failed, resulting in the~~
26 ~~release of carbon dioxide into the atmosphere, the~~

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

1 ~~initial clean coal facility, with the advance~~
2 ~~written approval of the Attorney General. The~~
3 ~~Commission may, in the course of the review~~
4 ~~specified in item (vii), reduce the allowable~~
5 ~~return on equity for the facility if the facility~~
6 ~~wilfully fails to comply with the carbon capture~~
7 ~~and sequestration requirements set forth in this~~
8 ~~item (v);~~

9 (vi) ~~include limits on, and accordingly~~
10 provide for a reduction ~~modification of,~~ the
11 amount the utility is required to source under the
12 sourcing agreement consistent with paragraph (2)
13 of this subsection (d);

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

1 ~~been proposed, and shall be completed within 9~~
2 ~~months;~~

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

10 (viii) ~~(ix)~~ limit the utility's or alternative
11 retail electric supplier's obligation to incur any
12 liability to only those times after ~~until such time~~
13 ~~as~~ the facility is in commercial operation and
14 generating power and energy and such power and
15 energy is being delivered to the facility busbar;

16 (ix) provide that each electric utility shall
17 have the right to determine whether the
18 obligations of the utility party under the
19 sourcing agreement shall be governed by the power
20 purchase provisions or the contract for
21 differences provisions before entering into the
22 sourcing agreements; the provisions of this item
23 (ix) are severable under Section 1.31 of the
24 Statute on Statutes;

25 ~~(x) provide that the owner or owners of the~~
26 ~~initial clean coal facility, which is the~~

1 ~~counterparty to such sourcing agreement, shall~~
2 ~~have the right from time to time to elect whether~~
3 ~~the obligations of the utility party thereto shall~~
4 ~~be governed by the power purchase provisions or the~~
5 ~~contract for differences provisions;~~

6 (x) ~~(xi)~~ append documentation showing that the
7 formula rate and contract, insofar as they relate
8 to the power purchase provisions, have been
9 approved by the Federal Energy Regulatory
10 Commission pursuant to Section 205 of the Federal
11 Power Act;

12 (xi) ~~(xii)~~ provide that any changes to the
13 terms of the contract, insofar as such changes
14 relate to the power purchase provisions, are
15 subject to review under the public interest
16 standard applied by the Federal Energy Regulatory
17 Commission pursuant to Sections 205 and 206 of the
18 Federal Power Act; ~~and~~

19 (xii) ~~(xiii)~~ conform with customary lender
20 requirements in power purchase agreements used as
21 the basis for financing non-utility generators; ~~and~~

22 (xiii) provide for performance incentives
23 regarding availability, efficiency, and by-product
24 quantities, with premium performance and
25 shortfalls in performance to result in positive
26 and negative adjustments, respectively, to the

1 rate of return approved by the Commission,
2 provided that such rate of return in any year shall
3 not be decreased by more than \$25,000,000 or
4 increased by more than \$12,500,000 as a result of
5 such performance incentives. Such performance
6 incentives shall be structured so that any
7 increases in the rate of return as a result of such
8 performance incentives are designed not to exceed
9 the projected benefits to the buyers resulting
10 from the initial clean coal facility's achievement
11 of that performance incentive;

12 (xiv) include forecasting and scheduling
13 obligations that take account of the requirements
14 of the applicable regional transmission
15 organizations;

16 (xv) include operating guidelines relating to
17 the operating configuration and dispatch of the
18 initial clean coal facility, which guidelines
19 shall be subject to change from time to time with
20 input from a committee consisting of
21 representatives of the electric utilities and
22 alternative retail electric suppliers that are
23 parties to sourcing agreements with the initial
24 clean coal facility; such operating guidelines
25 shall take account the initial clean coal
26 facility's obligations under any agreement for the

1 purchase of SNG entered into pursuant to item (xvi)
2 of this subparagraph (D) and shall be based on
3 principles of economic dispatch and the assumption
4 that the variable cost of SNG purchased pursuant to
5 such agreement is equal to the market price of
6 natural gas delivered to the initial clean coal
7 facility; any actions taken or not taken by the
8 owner of the initial clean coal facility in
9 compliance with such operating guidelines shall be
10 deemed to be prudent, and the prudence of the costs
11 resulting from the action shall be evaluated in
12 light of the fact that the initial clean coal
13 facility is required to comply with such operating
14 guidelines;

15 (xvi) authorize the initial clean coal
16 facility to enter into an agreement with a clean
17 coal SNG facility or a clean coal SNG brownfield
18 facility for the purchase by the initial clean coal
19 facility during all or part of the term of the
20 sourcing agreement a quantity of SNG produced by
21 such clean coal SNG facility or clean coal SNG
22 brownfield facility each year up to the lesser of
23 (x) the initial clean coal facility's requirements
24 for imported methane in such year and (y) 16% of
25 the SNG produced by such clean coal SNG facility or
26 clean coal SNG brownfield facility during such

1 year at a delivered price to be set forth in such
2 agreement; such agreement shall provide for the
3 timing of gas deliveries in a manner that
4 reasonably accommodates the initial clean coal
5 facility's fuel requirements and generation
6 schedule; the parties to such agreement may, if
7 they mutually agree, structure such agreement as a
8 financial settlement arrangement for the
9 quantities of SNG set forth above, and such
10 arrangement shall be deemed to be an agreement
11 contemplated by this item (xvi); the form for such
12 agreement shall be subject to approval by the
13 Agency pursuant to a procedure substantially the
14 same as that provided in paragraph (4) of this
15 subsection (d) for the sourcing agreements, with
16 the clean coal SNG facility or clean coal SNG
17 brownfield facility participating in place of each
18 electric utility, and pursuant to a schedule to be
19 proposed by the initial clean coal facility and
20 approved by the Agency; and

21 (xvii) if the initial clean coal facility is an
22 SNG-ready generating facility, set out a mechanism
23 for adjusting the quantity of electric power
24 purchased by each clean coal electricity buyer so
25 that the small customer rate impact would not
26 exceed 0.375% of the amount paid per kilowatthour

1 by eligible retail customers during the year
2 ending May 31, 2009 and the large customer deemed
3 rate impact would not exceed \$0.000425 per
4 kilowatthour, in each case due to the SNG-ready
5 capital rate component; such mechanism shall
6 include a carryforward to subsequent years for any
7 reduced revenues suffered by the initial clean
8 coal facility as a result of such adjustments, but
9 subject to the application of these limitations in
10 subsequent years; such mechanism shall be
11 effective for so long as the initial clean coal
12 facility is an SNG-ready generating facility and
13 shall be compatible with the provisions of
14 subparagraph (E) of paragraph (2) of this
15 subsection.

16 (4) Effective date of sourcing agreements with the
17 initial clean coal facility. No later than 30 days after
18 the effective date of this amendatory Act of the 98th
19 General Assembly, the initial clean coal facility shall
20 submit a draft sourcing agreement to the Agency and each
21 electric utility required to enter into such agreements
22 pursuant to paragraph (3) of this subsection and the
23 initial clean coal facility and each such electric utility
24 shall promptly and diligently negotiate in good faith over
25 the terms of the sourcing agreement. Within 30 days after
26 receipt of the draft sourcing agreement, each such electric

1 utility shall provide the Agency and the owner of the
2 initial clean coal facility with its comments and
3 recommended revisions to the draft sourcing agreement.
4 Within 15 days after the receipt of the electric utility's
5 comments and recommended revisions, the owner of the
6 initial clean coal facility shall submit its responsive
7 comments and a further revised draft of the sourcing
8 agreement to the Agency. The Agency shall review the draft
9 sourcing agreement and comments and retain an independent,
10 qualified, and experienced mediator to mediate disputes
11 over the draft sourcing agreement's terms. The mediator
12 shall not own or control any direct or indirect interest in
13 the initial clean coal facility and shall have no
14 contractual relationship with the initial clean coal
15 facility. The mediator shall have knowledge of the energy
16 industry.

17 If the parties to the sourcing agreement do not agree
18 on the terms in the sourcing agreement within 15 days after
19 receiving the owner's responsive comments and further
20 revised draft, then the mediator retained by the Agency
21 shall mediate the dispute between the parties. If the
22 parties are in agreement on the terms of the sourcing
23 agreement, then the Agency shall approve the final draft
24 sourcing agreement within 30 days after the parties reach
25 agreement and notify the Commission of that agreement. If,
26 within 30 days after the commencement of mediation, the

1 parties have failed to come to agreement, then the Agency
2 shall, with assistance, as appropriate, from the mediator
3 retained pursuant to this paragraph (4), review and revise
4 the draft sourcing agreement as necessary.

5 The Agency may approve a sourcing agreement only after
6 it finds the sourcing agreement is consistent with the
7 provisions of this Act and contains only terms that are
8 balanced and equitable and fairly protect the interests of
9 the parties to the sourcing agreement, with such approval
10 to occur no later than 60 days after the commencement of
11 the mediation. The Agency shall not withhold or condition
12 its approval of the sourcing agreement based upon least
13 cost resource principles or whether or not it would be
14 prudent for buyers to enter into such an agreement if there
15 were no legal requirement to do so, nor shall the
16 resolution of open issues be based on these principles.

17 If the sourcing agreement is approved, then each
18 electric utility required to enter into a sourcing
19 agreement shall have 30 days after either the Agency's
20 approval or the issuance of any necessary approval by the
21 Federal Energy Regulatory Commission, whichever is later,
22 to enter into the sourcing agreement. The Agency shall
23 submit the approved sourcing agreement to the Commission
24 within 15 days after approval. Each electric utility and
25 the initial clean coal facility shall pay a reasonable fee
26 as required by the Agency for its services under this

1 paragraph (4) and shall pay the mediator's reasonable fees,
2 if any. The Agency shall adopt and make public a policy
3 detailing the process for retaining a mediator under this
4 paragraph (4).

5 ~~(4) Effective date of sourcing agreements with the~~
6 ~~initial clean coal facility.~~

7 Any proposed sourcing agreement with the initial clean
8 coal facility shall not become effective unless a facility
9 cost report and Commission report, as described in this
10 paragraph (4), the following reports are prepared and
11 submitted, whether prepared and submitted before or after
12 the effective date of this amendatory Act of the 98th
13 General Assembly. and authorizations and approvals
14 obtained:

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

1 documentation related to the facility cost report.

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

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

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

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

20 ~~The facility cost report shall be prepared as follows:~~

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

1 estimated costs of operation and maintenance of the
2 facility. The facility cost report shall include:

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

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

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

1 is expressed.

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

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

26 The operating and maintenance cost quote

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

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

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

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

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

23 (6) Costs incurred by a utility under this subsection
24 (d) or pursuant to a contract or sourcing agreement entered
25 into under this subsection (d) shall be deemed prudently
26 incurred and reasonable in amount and the electric utility

1 shall be entitled to full cost recovery pursuant to the
2 tariffs filed with the Commission.

3 (e) The draft procurement plans are subject to public
4 comment, as required by Section 16-111.5 of the Public
5 Utilities Act and Section 1-78 of this Act.

6 (f) The Agency shall submit the final procurement plan to
7 the Commission. The Agency shall revise a procurement plan if
8 the Commission determines that it does not meet the standards
9 set forth in Section 16-111.5 of the Public Utilities Act and
10 Section 1-78 of this Act.

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

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

17 (i) The Agency shall assess fees to the initial clean coal
18 facility to recover the costs incurred in preparation of each
19 procurement plan for the initial clean coal facility.

20 (j) The General Assembly finds that enterprises owned by
21 minorities, women, and persons with disabilities are
22 under-represented in sales of goods and services used in the
23 construction of energy projects and accordingly deems it a
24 prudent business practice that is in the interests of the
25 People of the State of Illinois to develop and promote economic
26 opportunities for enterprises owned by minorities, women, and

1 persons with disabilities in the energy production industry.

2 The initial clean coal facility, any clean coal facility,
3 any clean coal SNG brownfield facility, and any clean coal SNG
4 facility shall include in any agreement to sell electric power
5 or SNG entered into pursuant to this Act provisions that
6 require the owner of the facility to make a good faith effort
7 to ensure that an amount equal to not less than 15% of the
8 value of its prime construction contract for the facility shall
9 be established as a goal to be awarded to minority owned
10 businesses, female owned businesses, and businesses owned by a
11 person with a disability; provided that at least 75% of the
12 amount of such total goal shall be for minority owned
13 businesses.

14 "Minority owned business", "female owned business", and
15 "business owned by a person with a disability" shall have the
16 meanings ascribed to them in Section 2 of the Business
17 Enterprise for Minorities, Females, and Persons with
18 Disabilities Act.

19 (k) Any clean coal SNG facility or clean coal SNG
20 brownfield facility shall be authorized to enter into an SNG
21 purchase agreement with the initial clean coal facility as
22 described in item (xvi) of subparagraph (D) of paragraph (3) of
23 subsection (d) of this Section.

24 (l) If the initial clean coal facility is an SNG-ready
25 generating facility, then the initial clean coal facility shall
26 continue with its efforts to obtain permits for carbon capture

1 and sequestration facilities that could be used in connection
2 with the portion of the facility that produces SNG if such
3 portion of the facility were to be constructed.

4 (Source: P.A. 96-159, eff. 8-10-09; 96-1437, eff. 8-17-10;
5 97-325, eff. 8-12-11; 97-616, eff. 10-26-11; 97-618, eff.
6 10-26-11; 97-658, eff. 1-13-12; 97-813, eff. 7-13-12; revised
7 7-25-12.)

8 (20 ILCS 3855/1-76 new)

9 Sec. 1-76. Costs and revenue recoverable by the initial
10 clean coal facility.

11 (a) The price paid for electricity generated by the initial
12 clean coal facility shall be based on a formula rate using a
13 cost of service methodology applicable to wholesale electric
14 power contracts employing a level or deferred capital component
15 and in accordance with the Uniform System of Accounts, subject
16 to and as specifically limited by the provisions set forth in
17 this Section.

18 The formula rate shall determine 3 components of the price
19 under the sourcing agreements: (1) a fuel charge, (2) an
20 electric generation variable charge, and (3) a fixed monthly
21 charge. The fuel charge for any month shall be stated in
22 dollars per month and shall consist of the total actual fuel
23 costs incurred, after taking account of the subtraction of
24 miscellaneous net revenue as provided in subsection (d) of this
25 Section. The electric generation variable charge for any period

1 shall be stated in dollars per MWh and shall consist of all
2 costs incurred by the initial clean coal facility, other than
3 fuel costs, associated with production of electric energy by
4 the initial clean coal facility's power block, which costs vary
5 directly with the level of production of electric energy. The
6 fixed monthly charge shall be stated in dollars per month per
7 MW of nameplate capacity of the initial clean coal facility's
8 power block and shall consist of all costs incurred by the
9 initial clean coal facility that are described in, and as
10 limited by the provisions of, subsections (b), (c), (d), (e),
11 (f), and (g) of this Section, other than the costs incorporated
12 into the calculation of the fuel charge and the electric
13 generation variable charge.

14 No later than 30 days after the approval of the sourcing
15 agreement by the Agency pursuant to paragraph (4) of subsection
16 (d) of Section 1-75 of this Act, the initial clean coal
17 facility shall provide to the Commission projections of its
18 costs for the term of the sourcing agreements. Within 90 days
19 thereafter, the Commission shall, based upon such projections
20 and the provisions of this Section, determine the projected
21 components of the price for each year for the initial clean
22 coal facility. No later than 6 months before the expected
23 commencement of commercial operation of the initial clean coal
24 facility and the commencement of each operating year
25 thereafter, the initial clean coal facility shall submit to the
26 Commission projections of its costs and dispatch levels for the

1 upcoming year. Within 120 days after the receipt of the initial
2 clean coal facility's projections of its costs and dispatch
3 levels for the upcoming year, the Commission shall calculate a
4 fixed monthly charge and an electric generation variable charge
5 for the upcoming year using the inputs to the formula rate
6 under the provisions of this Section. If the Commission does
7 not calculate such components of the price for any year as of
8 the beginning of such year, then the initial clean coal
9 facility shall calculate such components of the price based
10 upon its projections and the provisions of this Section, with
11 any subsequent cost disallowance by the Commission to be
12 reflected through a true-up of costs in the next year. If at
13 any time the Commission, acting in accordance with this
14 Section, disallows any cost, then the amount of such
15 disallowance shall be incorporated as a deduction into the
16 calculation of the fixed monthly charge and the electric
17 generation variable charge, as applicable, for the next year.

18 (b) Capital costs set by the Commission according to this
19 subsection (b) shall be included in the formula rate. "Capital
20 costs" means costs for the purchase of land, buildings,
21 construction, and equipment to be used in the production of
22 electricity, and other costs recorded in the Electric Plant
23 Accounts and other applicable Balance Sheet Accounts of the
24 Uniform System of Accounts for the initial clean coal facility.
25 The Capital Development Board shall calculate a range of
26 capital costs that it believes would be a reasonable cost for

1 the initial clean coal facility. If the initial clean coal
2 facility is an SNG-ready generating facility, the capital costs
3 of the SNG-ready generating facility shall include reasonable
4 development costs relating to the initial clean coal facility
5 without regard to whether such costs relate to the power block
6 or the proposed portion of the facility that produces SNG and
7 without regard to whether the proposed portion of the facility
8 that produces SNG is to be constructed. If the initial clean
9 coal facility is an SNG-ready generating facility, the Capital
10 Development Board shall include in its calculation of capital
11 costs an identification of which capital costs constitute
12 SNG-ready capital costs and shall not include in the range of
13 capital costs any SNG-ready capital costs that exceed 10% of
14 the total of all capital costs. The Capital Development Board
15 shall commence performing its responsibilities under this
16 subsection (b) within 30 days after the effective date of this
17 amendatory Act of the 98th General Assembly. In determining a
18 range of capital costs, the Capital Development Board shall
19 base its evaluation and judgment on professional engineering
20 and regulatory accounting principles and include any cost
21 information and update on costs that may be provided by the
22 initial clean coal facility and shall not employ least cost
23 resource principles. In addition, the Capital Development
24 Board may:

25 (1) include in its consideration the information in a
26 facility cost report, if any, that was prepared and

1 submitted by the initial clean coal facility to the
2 Commission in accordance with paragraph (4) of subsection
3 (d) of Section 1-75 of this Act;

4 (2) consult as much as it deems necessary with the
5 initial clean coal facility;

6 (3) conduct whatever research and investigation it
7 deems necessary; and

8 (4) retain third parties to assist in its
9 determination, provided that such third parties shall not
10 own or control any direct or indirect interest in the
11 initial clean coal facility and shall have no contractual
12 relationship with the initial clean coal facility.

13 The initial clean coal facility shall cooperate with the
14 Capital Development Board in any investigation it deems
15 necessary.

16 The Capital Development Board shall make its final
17 determination of the range of capital costs confidentially and
18 shall submit that range to the Commission in a confidential
19 filing no later than 90 days after the Capital Development
20 Board is required to commence performing its responsibilities
21 under this subsection (b). The initial clean coal facility
22 shall submit to the Commission its estimate of the capital
23 costs to be included in the formula rate. Only after the
24 initial clean coal facility has submitted this estimate shall
25 the Commission publicly announce the range of capital costs
26 submitted by the Capital Development Board. In the event that

1 the estimate submitted by the initial clean coal facility is
2 within or below the range submitted by the Capital Development
3 Board, the initial clean coal facility's estimate shall be
4 approved by the Commission as the amount of pre-approved
5 capital costs.

6 In the event that the estimate submitted by the initial
7 clean coal facility is above the range submitted by the Capital
8 Development Board, the amount of capital costs at the lowest
9 end of the range submitted by the Capital Development Board
10 shall be approved by the Commission as the amount of
11 pre-approved capital costs. "Pre-approved capital costs" means
12 the amount of capital costs that will be included in the
13 formula rate to the extent such costs are actually incurred,
14 with no further review or approval with respect to whether they
15 are prudently incurred. The Commission's determination of
16 pre-approved capital costs shall be made within 15 days after
17 the initial clean coal facility submits its capital cost
18 estimate. The Commission's decision regarding pre-approved
19 capital costs shall be final and shall not be subject to
20 judicial or administrative review.

21 Once made, the Commission's determination of the amount of
22 pre-approved capital costs may not be increased unless the
23 Commission determines that the incremental costs are
24 reasonable, in which case one-third of such reasonable
25 incremental costs shall be included in the formula rate and
26 recoverable by the initial clean coal facility and two-thirds

1 of such costs shall be borne by the initial clean coal facility
2 and its contractors, provided that to the extent such
3 reasonable incremental costs are the result of change in law or
4 non-insurable force majeure, all of such costs shall be
5 included in the formula rate and recoverable by the initial
6 clean coal facility. If the initial clean coal facility is an
7 SNG-ready generating facility, any capital costs of the
8 SNG-ready generating facility that exceed the pre-approved
9 capital costs and any SNG-ready capital costs that exceed 10%
10 of the pre-approved capital costs shall not be included in the
11 formula rate and shall be borne by the initial clean coal
12 facility and its contractors, provided that, to the extent any
13 of such incremental costs are the result of change in law or
14 non-insurable force majeure, all of such costs shall be
15 included in the formula rate and recoverable by the initial
16 clean coal facility.

17 "Change in law" means any change, including any enactment,
18 repeal, or amendment, in a law, ordinance, rule, regulation,
19 interpretation, permit, license, consent or order, including
20 those relating to taxes or to environmental matters, or in the
21 interpretation or application thereof by any governmental
22 authority occurring after the Commission determines the amount
23 of pre-approved capital costs.

24 "Non-insurable force majeure" means events outside of the
25 reasonable control of the owner of the initial clean coal
26 facility and its contractors, subcontractors, and agents that

1 are not included on a list, to be attached to the sourcing
2 agreement and subject to the procedures set forth in paragraph
3 (4) of subsection (d) of Section 1-75 of this Act, of events
4 that are customarily covered by builder's risk insurance
5 policies for the construction of electric generating plants and
6 other large process plants in the United States. "Non-insurable
7 force majeure" shall not include changes in prices or other
8 changes in market conditions.

9 Any rebates, refunds, or other payments received by the
10 owner of the initial clean coal facility from any of its
11 contractors with respect to the contractor bearing risk for
12 capital cost overruns shall be excluded from miscellaneous net
13 revenue and shall not otherwise reduce the costs of the owner
14 of the initial clean coal facility for purposes of the formula
15 rate. For purposes of this subsection (b), "reasonable" means
16 that the decisions, construction, and supervision of
17 construction by the owner of the initial clean coal facility
18 and its contractors underlying the initial capital cost and
19 significant additions to the initial capital cost of the
20 initial clean coal facility resulted in efficient, economical,
21 and timely construction. In determining the reasonableness of
22 the capital costs of the initial clean coal facility, the
23 Commission shall consider the knowledge and circumstances
24 prevailing at the time of each relevant decision or action of
25 the owner of the initial clean coal facility and its
26 contractors.

1 The Commission may determine that the amount of
2 pre-approved capital costs may be increased only after notice
3 and a hearing. At that hearing, the Capital Development Board
4 shall submit a report recommending whether the incremental
5 costs should be approved in full or in part or rejected. The
6 Commission may approve in whole or in part or reject the
7 incremental capital costs based on whether they are reasonable.
8 At the request of the owner of the initial clean coal facility
9 made not more often than once every 12 months during the
10 construction period of the initial clean coal facility, the
11 Commission shall conduct interim reviews to determine whether
12 capital costs specified in such request and incurred or to be
13 incurred by the owner of the initial clean coal facility are
14 reasonable.

15 The Capital Development Board shall monitor the
16 construction of the initial clean coal facility for the full
17 duration of construction. The Capital Development Board, in its
18 discretion, may retain third parties to facilitate such
19 monitoring, provided that such third parties shall not own or
20 control any direct or indirect interest in the initial clean
21 coal facility and shall have no contractual relationship with
22 the initial clean coal facility. The initial clean coal
23 facility shall pay a reasonable fee as required by the Capital
24 Development Board for the Capital Development Board's services
25 under this subsection (b), and such fee shall not be passed
26 through to a utility or its customers. If a third party is

1 retained by the Capital Development Board for the determination
2 of a range of capital costs or monitoring of construction, the
3 initial clean coal facility must pay for the third party's
4 reasonable fees, and such costs may not be passed through to a
5 utility or its customers.

6 The provisions of this subsection (b) shall apply to the
7 capital costs for the initial construction of the initial clean
8 coal facility and, if the initial clean coal facility is an
9 SNG-ready generating facility, for the initial construction of
10 any coal gasification unit or units that may be added following
11 authorization thereof pursuant to subparagraph (A) of
12 paragraph (3) of subsection (d) of Section 1-75 of this Act,
13 and not to capital costs incurred beyond the initial
14 construction, including costs for replacement of equipment and
15 capital improvements, which capital costs shall be subject to
16 review by the Commission and included in the formula rate to
17 the extent they are determined to be prudently incurred.

18 (c) Operations and maintenance costs set by the Commission
19 according to this subsection (c) shall be included in the
20 formula rate. Operations and maintenance costs mean costs
21 incurred for the administration, supervision, operation,
22 maintenance, preservation, and protection of the initial clean
23 coal facility's physical plant and other costs recorded in the
24 Operation and Maintenance Expense Accounts and other
25 applicable Income Statement Accounts of the Uniform System of
26 Accounts for the initial clean coal facility. The Commission

1 shall assess the prudence of the operations and maintenance
2 costs for the initial clean coal facility and shall allow the
3 initial clean coal facility to include in the formula rate only
4 those costs the Commission deems to be prudent. The Commission
5 may in its discretion retain an expert to assist in its review
6 of operations and maintenance costs. The initial clean coal
7 facility shall pay for the expert's fees if an expert is
8 retained by the Commission, and such costs may not be passed
9 through to a utility or its customers. The Commission's
10 determination regarding the amount of operations and
11 maintenance costs that may be included in the formula rate for
12 each year shall be made in accordance with this Section.

13 (d) Actual fuel costs shall be set by the Agency through a
14 SNG feedstock procurement, pursuant to Section 1-79 of this
15 Act, to be performed at least every 5 years, and purchased by
16 the initial clean coal facility pursuant to a reasonable fuel
17 supply plan, with coal comprising at least 50% of the total
18 feedstock over the term of a sourcing agreement with all coal
19 having high volatile bituminous rank and greater than 1.7
20 pounds of sulfur per million btu content, SNG derived from coal
21 comprising at least 50% of the fuel to generate electricity,
22 SNG derived from biomass comprising up to 10% of the fuel to
23 generate electricity with the approval of the Commission, and
24 natural gas comprising the remainder of the fuel to generate
25 electricity, provided that, if and for so long as the initial
26 clean coal facility is an SNG-ready generating facility, the

1 minimum feedstock procurement requirements in this sentence
2 shall be inapplicable and the reference in this sentence to the
3 term of a sourcing agreement shall be deemed to refer only to
4 the portion, if any, of such term occurring after such
5 SNG-ready generating facility adds one or more coal
6 gasification units following authorization thereof pursuant to
7 subparagraph (A) of paragraph (3) of subsection (d) of Section
8 1-75 of this Act. Actual fuel costs shall consist of all costs
9 associated with the procurement of fuel, including, but not
10 limited to, commodity costs, transportation costs,
11 administrative costs, and costs relating to the procurement
12 process. Actual fuel costs, as so determined, shall be reduced
13 by miscellaneous net revenue received by the owner of the
14 initial clean coal facility, including, but not limited to, net
15 revenue from the sale of emission allowances, if any,
16 substitute natural gas, if any, grants or other support
17 provided by the State of Illinois or the United States
18 Government, firm transmission rights, if any, by-products
19 produced by the facility, any capacity derived from the
20 facility and bid into the capacity markets or otherwise sold
21 and any energy generated as a result of such capacity being
22 called, whether generated from synthesis gas derived from coal,
23 from SNG, or from natural gas, less non-generation variable
24 costs. "Non-generation variable costs" means all costs, other
25 than fuel costs, associated with the production of SNG that is
26 not consumed by the initial clean coal facility's power block,

1 which costs vary directly with the level of production of SNG.
2 Actual fuel costs shall be calculated pursuant to this
3 subsection (d) and included in the formula rate without any
4 determination by the Commission as to prudence.

5 (e) Sequestration costs set by the Commission according to
6 this subsection (e) shall be included in the formula rate. If
7 and for so long as the initial clean coal facility is an
8 SNG-ready generating facility, the provisions of this
9 subsection (e) shall be inapplicable.

10 "Sequestration costs" means costs incurred to (1) capture
11 carbon dioxide; (2) compress carbon dioxide; (3) build,
12 operate, and maintain a sequestration site in which carbon
13 dioxide may be injected; (4) build, operate, and maintain a
14 carbon dioxide pipeline, which is owned by the initial clean
15 coal facility; (5) transport the carbon dioxide to a
16 sequestration site or a pipeline; and (6) perform monitoring,
17 verification and other activities associated with carbon
18 capture and sequestration.

19 "Sequestration capital costs" means sequestration costs
20 recorded in the Electric Plant Accounts and other applicable
21 Balance Sheet Accounts of the Uniform System of Accounts for
22 the initial clean coal facility.

23 "Sequestration operations and maintenance costs" means
24 sequestration costs that are recorded in the Operation and
25 Maintenance Expense Accounts and other applicable Income
26 Statement Accounts of the Uniform System of Accounts for the

1 initial clean coal facility and shall include maintenance,
2 monitoring, and verification costs.

3 The Capital Development Board shall calculate an estimate
4 of sequestration capital costs that it believes would be a
5 reasonable cost for the initial clean coal facility's
6 sequestration facilities and an estimate of average annual
7 sequestration operations and maintenance costs that it
8 believes would be a reasonable average annual operation and
9 maintenance cost for the initial clean coal facility's carbon
10 capture and sequestration activities. The Capital Development
11 Board shall commence performing its responsibilities under
12 this subsection (e) within 30 days after the effective date of
13 this amendatory Act of the 98th General Assembly. In
14 determining sequestration capital costs and sequestration
15 operations and maintenance costs, the Capital Development
16 Board shall base its evaluation and judgment on professional
17 engineering and regulatory accounting principles and include
18 any cost information and update on costs that may be provided
19 by the initial clean coal facility and shall not employ least
20 cost resource principles. In addition, the Capital Development
21 Board may: (A) include in its consideration cost estimate
22 information in a facility cost report, if any, that was
23 prepared and submitted by the initial clean coal facility to
24 the Commission in accordance with paragraph (4) of subsection
25 (d) of Section 1-75 of this Act; (B) consult as much as it
26 deems necessary with the initial clean coal facility; (C)

1 conduct whatever research and investigation it deems
2 necessary; and (D) retain third parties to assist in its
3 determination, provided that such third parties shall not own
4 or control any direct or indirect interest in the initial clean
5 coal facility and shall have no contractual relationship with
6 the initial clean coal facility. The initial clean coal
7 facility shall cooperate with the Capital Development Board in
8 any investigation it deems necessary.

9 The Capital Development Board shall make its final
10 determination of sequestration capital costs and sequestration
11 operations and maintenance costs and submit such determination
12 to the Commission no later than 90 days after the Capital
13 Development Board is required to commence performing its
14 responsibilities under this subsection (e). The Capital
15 Development Board shall monitor construction of the
16 sequestration facilities in the same manner, and with the same
17 rights to retain an expert and recover the costs thereof, as
18 set forth in subsection (b) of this Section.

19 "Actual sequestration costs" means for any year the sum of:
20 (i) the annual amortized portion of sequestration capital
21 costs, based on level amortization from the later of the date
22 such costs are incurred and the commercial operation date until
23 the end of the term of the sourcing agreements; (ii) the rate
24 of return approved by the Commission pursuant to subsection (f)
25 of this Section applied to sequestration capital costs; and
26 (iii) the sequestration operations and maintenance costs

1 incurred in such year.

2 "Target sequestration costs" means the sum of: (i) the
3 annual amortized portion of the estimated sequestration
4 capital costs determined by the Capital Development Board,
5 based on level amortization from the later of the date such
6 costs are incurred and the commercial operation date until the
7 end of the term of the sourcing agreements; (ii) the rate of
8 return approved by the Commission pursuant to subsection (f) of
9 this Section applied to the estimated sequestration capital
10 costs determined by the Capital Development Board; (iii) the
11 estimate of average annual sequestration operations and
12 maintenance costs determined by the Capital Development Board,
13 escalated in accordance with an escalation factor to be
14 provided in the sourcing agreement from the date of the Capital
15 Development Board's determination to the mid-point of the
16 applicable year; (iv) the sequestration cost underrun, if any,
17 for the immediately preceding year, except to the extent
18 applied to allow recovery of a sequestration cost overrun from
19 a prior year; and (v) any sequestration costs that are the
20 result of a change in law or non-insurable force majeure.

21 "Sequestration cost underrun" means for any year the
22 excess, if any, of target sequestration costs for such year
23 over actual sequestration costs for such year.

24 "Sequestration cost overrun" means for any year the excess,
25 if any, of actual sequestration costs for such year over target
26 sequestration costs for such year.

1 For any year in which there is a sequestration cost
2 underrun, all actual sequestration costs shall be conclusively
3 deemed to be prudent and shall be included in the formula rate
4 with no further review or approval in respect of whether they
5 are prudently incurred. The Commission shall review the costs
6 to ensure they are mathematically correct.

7 For any year in which there is a sequestration cost
8 overrun, the Commission shall determine whether all or a
9 portion of such sequestration cost overrun was prudently
10 incurred, except that the rate of return shall not be subject
11 to review. If the Commission determines that the sequestration
12 cost overrun was prudently incurred, one-third of such
13 sequestration cost overrun shall be included in the formula
14 rate and recoverable by the initial clean coal facility and
15 two-thirds of such sequestration cost overrun shall be borne by
16 the initial clean coal facility and not passed through to a
17 utility, an alternative retail electric supplier, or the
18 customers of a utility unless and until there is a
19 sequestration cost underrun for a subsequent year, in which
20 event the sequestration cost overrun will be included in the
21 formula rate and recoverable by the initial clean coal facility
22 up to the amount of the sequestration cost underrun; provided,
23 however, that if for any year two-thirds of such sequestration
24 cost overrun exceeds the difference of \$20,000,000 minus the
25 amount of penalty, if any, payable by the initial clean coal
26 facility pursuant to Section 1-76.5 with respect to that year,

1 the amount of such excess shall also be included in the formula
2 rate and recoverable by the initial clean coal facility. The
3 detailed procedures for implementing this provision shall be
4 set forth in the sourcing agreements, which procedures shall
5 include a mechanism for equitably adjusting target
6 sequestration costs for any year in which the quantity of
7 carbon dioxide actually captured and sequestered by the initial
8 clean coal facility is greater than the quantity assumed in
9 calculating the estimated costs for such year.

10 "Change in law" means any change, including any enactment,
11 repeal, or amendment, in a law, ordinance, rule, regulation,
12 interpretation, permit, license, consent or order, including
13 those relating to taxes or to environmental matters, or in the
14 interpretation or application thereof by any governmental
15 authority occurring after the Capital Development Board makes
16 its final determination of sequestration capital costs and
17 sequestration operations and maintenance costs.

18 "Non-insurable force majeure" means events outside of the
19 reasonable control of the owner of the initial clean coal
20 facility and its contractors, subcontractors, and agents that
21 are not included on a list, to be attached to the sourcing
22 agreement and subject to the procedures set forth in paragraph
23 (4) of subsection (d) of Section 1-75 of this Act, of events
24 that are customarily covered by builder's risk insurance
25 policies for the construction of electric generating plants and
26 other large process plants in the United States. "Non-insurable

1 force majeure" shall not include changes in prices or other
2 changes in market conditions.

3 (f) The Commission shall determine within 120 days after
4 the effective date of this amendatory Act of the 98th General
5 Assembly or 120 days after the owner of the initial clean coal
6 facility files initial direct testimony regarding rate of
7 return with the Commission, whichever is later, the total rate
8 of return on invested capital for the initial clean coal
9 facility following notice and a public hearing. At the hearing,
10 all interested parties, including utilities, alternative
11 retail electric suppliers, the Attorney General, the Agency,
12 and customers, shall be given an opportunity to be heard. In
13 determining the rate of return, the Commission shall select a
14 sufficient return on investment so as to enable the initial
15 clean coal facility to attract capital in financial markets at
16 competitive rates. The Commission shall consider the rates of
17 return received by developers of facilities similar to the
18 initial clean coal facility inside or outside Illinois, the
19 need to balance an incentive for clean-coal technology with the
20 need to protect Illinois ratepayers from high electricity
21 costs, and any other information the Commission deems relevant.

22 The Agency shall recommend a rate of return to the
23 Commission utilizing the criteria in this subsection (f). The
24 Commission shall further take into account the recommendation
25 of the Agency, but shall not be bound by it. The rate of return
26 shall be no lower than the weighted average authorized total

1 rates of return of the electric utilities in accordance with
2 original cost rate base for their electric distribution assets
3 as of the effective date of this amendatory Act of the 98th
4 General Assembly. Notwithstanding the minimum rate of return
5 established in the preceding sentence, the rate of return shall
6 be no greater than the total rate of return on invested capital
7 that the initial clean coal facility would achieve based on an
8 assumed 55% debt and 45% equity capital structure, with the
9 cost of debt being the actual average cost, including all
10 associated costs and fees, of the initial clean coal facility's
11 debt and the cost of equity being 11.5%. The Commission's
12 determination of the rate of return shall include a mechanism
13 providing for a one-time adjustment at or about the
14 commencement of commercial operation of the initial clean coal
15 facility to adjust for changes in applicable Treasury yield
16 rates between the date of its provisional determination of the
17 rate of return and the dates of construction period borrowing
18 by the initial clean coal facility, which adjustment shall
19 apply to 55% of total capital.

20 The Commission's decision shall be final and not subject to
21 any rehearing or administrative or judicial review. The rate of
22 return determined by the Commission pursuant to this subsection
23 (f) shall apply for the term of the sourcing agreements and
24 shall not be subject to change, except for the one-time
25 adjustment to reflect Treasury yield rate changes as expressly
26 contemplated by this subsection (f) and as otherwise expressly

1 provided in subsection (b) of Section 1-76.5 of this Act.

2 (g) The following shall not be included in determining the
3 formula rate: advertising expenses that do not meet the
4 requirements of Sections 9-225 and 9-226 of the Public
5 Utilities Act, political activity or lobbying expenses as
6 defined by Section 9-224 of the Public Utilities Act, social
7 club dues, or charitable contributions, to the extent, in each
8 case, that a utility would not be permitted to recover such
9 costs.

10 (h) Except as otherwise provided in subsections (b) and (f)
11 of this Section 1-76, within 30 days after a decision of the
12 Commission on recoverable costs under this Section, any
13 interested party to the Commission's decision may apply for a
14 rehearing with respect to the decision. The Commission shall
15 receive and consider such application for rehearing and shall
16 grant or deny the application in whole or in part within 20
17 days from the date of the receipt thereof by the Commission. If
18 no rehearing is applied for within the required 30 days or an
19 application for rehearing is denied, the Commission decision
20 shall be final.

21 If an application for rehearing is granted, the Commission
22 shall hold a rehearing within 30 days after granting the
23 application. The decision of the Commission upon rehearing
24 shall be final. Except as otherwise provided in subsections (b)
25 and (f) of this Section 1-76, any person affected by a decision
26 of the Commission under this Section 1-76 may have the decision

1 reviewed only under and in accordance with the Administrative
2 Review Law. Except as otherwise provided in subsections (b) and
3 (f) of this Section 1-76, the provisions of the Administrative
4 Review Law, all amendments and modifications thereof and the
5 rules adopted pursuant thereto, shall apply to and govern all
6 proceedings for the judicial review of final administrative
7 decisions of the Commission under this subsection (h). The term
8 "administrative decision" is defined as in Section 3-101 of the
9 Code of Civil Procedure.

10 (i) The Capital Development Board shall adopt and make
11 public a policy detailing the process for retaining third
12 parties under this Section. Any third parties retained to
13 assist with calculating the capital costs or sequestration
14 costs shall be retained no later than 45 days after the
15 effective date of this amendatory Act of the 98th General
16 Assembly.

17 (20 ILCS 3855/1-76.5 new)

18 Sec. 1-76.5. Capture and sequestration requirements for
19 initial clean coal facility.

20 (a) The initial clean coal facility shall provide
21 documentation to the Commission each year of commercial
22 operation accurately reporting the quantity of carbon
23 emissions from the facility that have been captured and
24 sequestered and report any quantities of carbon released from
25 the site or sites at which carbon emissions were sequestered in

1 prior years, based on continuous monitoring of such sites. If,
2 in any year, the owner of the facility fails to demonstrate
3 that (1) the portion of the facility that produces SNG captured
4 and sequestered at least 90% of the carbon dioxide it would
5 otherwise emit and (2) the initial clean coal facility as a
6 whole captured and sequestered at least 50% of the total carbon
7 emissions that the facility would otherwise emit or if the
8 sequestration of emissions from prior years has failed,
9 resulting in the release of carbon dioxide into the atmosphere,
10 or both, then the owner of the initial clean coal facility must
11 pay a penalty of \$20,000,000, which shall be deposited into the
12 Energy Efficiency Trust Fund and distributed pursuant to
13 subsection (b) of Section 6-6 of the Renewable Energy, Energy
14 Efficiency, and Coal Resources Development Law of 1997.

15 If during the first 12 months of commercial operation of
16 the initial clean coal facility, there are more than 4 stops
17 and starts of the portion of the facility that produces SNG,
18 with each stop and start of an individual unit constituting one
19 stop and start, then the calculation of the quantities
20 described in this subsection (a) shall not take into account
21 any carbon dioxide emissions from the portion of the facility
22 that produces SNG occurring during the stop and start-up
23 periods, including related periods of non-steady state
24 operation, associated with such excess stops and starts. The
25 penalty resulting from the failure to capture and sequester at
26 least the minimum amount of carbon dioxide shall not be passed

1 through to a utility, an alternative retail electric supplier,
2 or the customers of a utility. The initial clean coal facility
3 shall not forfeit its designation as the initial clean coal
4 facility if the facility fails to fully comply with the
5 applicable carbon sequestration requirements in any given
6 year, provided the requisite penalties are complied with.

7 (b) In addition to any penalty for the initial clean coal
8 facility's failure to capture and sequester at least its
9 minimum sequestration requirement, the Attorney General, on
10 behalf of the People of the State of Illinois, shall
11 specifically enforce the facility's sequestration requirement
12 and the other terms of this contract provision. Such action may
13 be filed in any circuit court in Illinois. By entering into a
14 sourcing agreement pursuant to subsection (d) of Section 1-75
15 of this Act, the initial clean coal facility agrees to waive
16 any objections to venue or to the jurisdiction of the court
17 with regard to the Attorney General's action for specific
18 performance under this Section. The Commission may reduce the
19 recoverable rate of return approved pursuant to Section 1-76 of
20 this Act for the facility if the facility willfully fails to
21 comply with the carbon capture and sequestration requirements
22 set forth in this Section.

23 (c) Compliance with the capture and sequestration
24 requirements of this Section shall be assessed annually by the
25 Commission, which may in its discretion retain an expert to
26 facilitate its assessment. The initial clean coal facility

1 shall pay for the expert's reasonable fees if an expert is
2 retained by the Commission, and such costs shall not be passed
3 through to a utility, an alternative retail electric supplier,
4 or the customers of a utility. The Commission shall adopt and
5 make public a policy detailing the process for retaining an
6 expert under this Section.

7 (d) Responsibility for compliance with the capture and
8 sequestration requirements specified in this Section for the
9 initial clean coal facility shall reside solely with the
10 initial clean coal facility regardless of whether the facility
11 has contracted with another party to capture, transport, or
12 sequester carbon dioxide.

13 (e) If and for so long as the initial clean coal facility
14 is an SNG-ready generating facility, all requirements of this
15 Section relating to carbon capture and sequestration shall be
16 deemed to be satisfied if the carbon dioxide emissions from the
17 SNG-ready generating facility are less than 1,000 pounds per
18 megawatt-hour of electricity generated by the SNG-ready
19 generating facility on an average annual basis; the initial
20 clean coal facility shall submit to the Commission on an annual
21 basis information demonstrating compliance with such emissions
22 limit.

23 (20 ILCS 3855/1-77.5 new)

24 Sec. 1-77.5. Sequestration permitting.

25 (a) No initial clean coal facility may transport or

1 sequester carbon dioxide unless the Commission approves the
2 method of carbon dioxide transportation or sequestration as
3 provided in this Section. Approval shall be required regardless
4 of whether the facility has contracted with another party to
5 transport or sequester the carbon dioxide. Nothing in this
6 subsection (a) shall release the owner or operator of a carbon
7 dioxide sequestration site or carbon dioxide pipeline from any
8 other permitting requirements under applicable State and
9 federal laws, statutes, rules, or regulations.

10 (b) No later than 6 months prior to the date upon which the
11 owner of the initial clean coal facility intends to commence
12 construction of any coal gasification unit or units, the owner
13 of such facility shall file with the Commission a carbon
14 dioxide transportation or sequestration plan. The Commission
15 shall review proposed carbon dioxide transportation and
16 sequestration methods and shall approve those methods it deems
17 reasonable and cost-effective. For purposes of this review,
18 "cost-effective" means a commercially reasonable price for
19 similar carbon dioxide transportation or sequestration
20 techniques. In determining whether sequestration through
21 injection is reasonable and cost-effective, the Commission may
22 consult with the Illinois State Geological Survey.

23 The Commission shall hold a public hearing within 30 days
24 after receipt of the facility's carbon dioxide transportation
25 or sequestration plan. The Commission shall post notice of the
26 review on its website upon submission of a carbon dioxide

1 transportation or sequestration method and shall accept
2 written public comments. The Commission shall take the comments
3 into account when making its decision. However, the Commission
4 shall not approve a carbon dioxide sequestration method if the
5 owner or operator of the sequestration site has not received
6 (1) an Underground Injection Control permit from the Illinois
7 Environmental Protection Agency or the United States
8 Environmental Protection Agency pursuant to the Environmental
9 Protection Act, (2) an Underground Injection Control permit
10 from the Illinois Department of Natural Resources pursuant to
11 the Illinois Oil and Gas Act, or (3) any applicable permit from
12 the state in which the sequestration site is located if the
13 sequestration shall take place outside of Illinois. The
14 Commission shall approve or deny the carbon dioxide
15 transportation or sequestration method within 90 days after the
16 receipt of all required information.

17 (20 ILCS 3855/1-79 new)

18 Sec. 1-79. Feedstock procurement.

19 (a) A feedstock procurement plan shall, every 5 years, or
20 more frequently with respect to feedstock that cannot
21 reasonably be procured for a 5-year period on acceptable terms,
22 be prepared for the initial clean coal facility based on the
23 initial clean coal facility's projection of feedstock usage and
24 ratios, and consistent with the applicable requirements of this
25 Act. The plan shall specifically identify the feedstock

1 products to be procured following plan approval and shall
2 follow all the requirements set forth in this Act and all
3 applicable State and federal laws, statutes, rules, or
4 regulations, as well as Commission orders. Nothing in this
5 Section precludes consideration of contracts longer than 5
6 years and related forecast data. Any feedstock procurement
7 occurring in accordance with this plan shall be competitively
8 bid through a request for proposals process. Approval and
9 implementation of the feedstock procurement plan shall be
10 subject to review and approval by the Commission according to
11 the provisions set forth in this Section. A feedstock
12 procurement plan shall include each of the following
13 components:

14 (1) Daily generation analysis. This analysis shall
15 include:

16 (A) multi-year historical analysis of hourly
17 generation; and

18 (B) known or projected changes to future
19 generation.

20 (2) Determination of the fuel specifications required
21 for the initial clean coal facility, including:

22 (A) feedstock mix, as set by the initial clean coal
23 facility with coal having high volatile bituminous
24 rank and greater than 1.7 pounds of sulfur per million
25 btu content and comprising at least 50% of the total
26 feedstock over the term of the sourcing agreement;

- 1 (B) volume of each feedstock required;
2 (C) quality standards of each feedstock;
3 (D) transportation and delivery requirements and
4 associated costs and impacts on the performance,
5 availability, and reliability of the initial clean
6 coal facility;
7 (E) technical specifications of the initial clean
8 coal facility for its feedstocks; and
9 (F) appropriate testing of any proposed feedstock
10 before it is incorporated into the feedstock
11 procurement plan or process to determine the effect of
12 such feedstock on the performance, availability, and
13 reliability of the initial clean coal facility.

14 (b) The feedstock procurement process shall be
15 administered by a feedstock procurement administrator and
16 monitored by a feedstock procurement monitor.

17 (1) The feedstock procurement administrator shall:

18 (A) design the final feedstock procurement process
19 in accordance with subsection (d) of this Section
20 following Commission approval of the feedstock
21 procurement plan;

22 (B) develop feedstock benchmarks in accordance
23 with paragraph (3) of subsection (d) of this Section to
24 be used to evaluate bids; these benchmarks shall be
25 submitted to the Commission for review and approval on
26 a confidential basis prior to the feedstock

1 procurement event;

2 (C) serve as the interface between the initial
3 clean coal facility and feedstock suppliers regarding
4 bidding and contract negotiations;

5 (D) manage the bidder pre-qualification and
6 registration process;

7 (E) obtain the initial clean coal facility's
8 agreement to the final form of all supply contracts and
9 credit collateral agreements;

10 (F) administer the request for feedstock proposals
11 process;

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

23 (H) maintain confidentiality of supplier and
24 bidding information in a manner consistent with all
25 applicable laws, rules, regulations, and tariffs;

26 (I) submit a confidential report to the Commission

1 recommending acceptance or rejection of bids;

2 (J) notify the facility of contract counterparties
3 and contract specifics; and

4 (K) administer related contingency feedstock
5 procurement events.

6 (2) The feedstock procurement monitor, who shall be
7 retained by the Commission, shall:

8 (A) monitor interactions among the feedstock
9 procurement administrator, suppliers, and the initial
10 clean coal facility;

11 (B) monitor and report to the Commission on the
12 progress of the feedstock procurement process;

13 (C) provide an independent confidential report to
14 the Commission regarding the results of the feedstock
15 procurement event;

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

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

24 (F) consult with the feedstock procurement
25 administrator regarding the development and use of
26 benchmark criteria, standard form contracts, credit

1 policies, and bid documents; and

2 (G) assess compliance with the procurement plans
3 approved by the Commission.

4 (c) The feedstock procurement process shall be conducted as
5 follows:

6 (1) Beginning in 2014, the initial clean coal facility
7 shall annually provide a range of feedstock requirement
8 forecasts to the Agency by July 15 of each year, or such
9 other date as may be required by the Commission or Agency.
10 The feedstock requirement forecasts shall cover the 5-year
11 feedstock procurement planning period for the next
12 feedstock procurement plan, or such other longer period
13 that the Agency or the Commission may require, and shall
14 include daily data representing a high generation, low
15 generation and expected generation scenario for the
16 initial clean coal facility. The initial clean coal
17 facility shall provide supporting data and assumptions for
18 each of the scenarios.

19 (2) Beginning in 2014, the Agency shall at least every
20 5 years prepare a feedstock procurement plan by August 15th
21 of the applicable year, or such other date as may be
22 required by the Commission. The feedstock procurement plan
23 shall identify the portfolio of feedstocks to be procured.
24 Copies of the feedstock procurement plan shall be posted
25 and made publicly available on the Agency's and
26 Commission's websites, and copies shall also be provided to

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

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

1 (4) The Commission shall approve the feedstock
2 procurement plan, including expressly the forecast used in
3 the feedstock procurement plan, if the Commission
4 determines that it shall ensure adequate, reliable,
5 affordable, and environmentally sustainable feedstocks to
6 the initial clean coal facility at the lowest total cost
7 over time, taking into account any benefits of price
8 stability and other criteria set forth in this Section.

9 (d) The feedstock procurement process shall include each of
10 the following components:

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

1 developed pursuant to paragraph (2) of this subsection (d).
2 The feedstock procurement administrator shall then
3 identify and register bidders to participate in the
4 feedstock procurement event.

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

1 (3) Establishment of a market-based price benchmark.

2 As part of the development of the feedstock procurement
3 process, the feedstock procurement administrator, in
4 consultation with the Commission staff, Agency staff, and
5 the feedstock procurement monitor, shall establish
6 benchmarks for evaluating the final prices in the contracts
7 for each of the feedstocks that shall be procured through
8 the feedstock procurement process. The benchmarks shall be
9 based on price data for similar feedstocks for the same
10 delivery period and similar delivery points, or other
11 delivery points after adjusting for that difference. The
12 price benchmarks may also be adjusted to take into account
13 differences between the information reflected in the
14 underlying data sources and the specific feedstocks and
15 gasification feedstock procurement process being used to
16 procure for the initial clean coal facility. The benchmarks
17 shall be confidential but shall be provided to the
18 Commission, and shall be subject to Commission review and
19 approval, prior to a feedstock procurement event.

20 (4) Request for proposals. The feedstock procurement
21 administrator shall design and issue a request for
22 proposals to supply coal or natural gas in accordance with
23 the initial clean coal facility's usage plan, as approved
24 by the Commission. The request for proposals shall set
25 forth a procedure for sealed, binding commitment bidding
26 with pay-as-bid settlement, and provision for selection of

1 bids on the basis of price.

2 (5) A plan for implementing contingencies in the event
3 of supplier default or failure of the feedstock procurement
4 process to fully meet the expected generation requirement
5 due to insufficient supplier participation, Commission
6 rejection of results, or any other cause. The plan must be
7 specific to the initial clean coal facility's feedstock
8 specifications and requirements.

9 The feedstock procurement process described in this
10 subsection (d) is exempt from the requirements of the Illinois
11 Procurement Code pursuant to Section 20-10 of the Illinois
12 Procurement Code.

13 (e) Within 2 business days after opening the sealed bids,
14 the feedstock procurement administrator shall submit a
15 confidential report to the Commission. The report shall contain
16 the results of the bidding for each of the feedstock types
17 along with the feedstock procurement administrator's
18 recommendation for the acceptance and rejection of bids based
19 on the price benchmark criteria and other factors observed in
20 the process. The feedstock procurement monitor also shall
21 submit a confidential report to the Commission within 2
22 business days after opening the sealed bids. The report shall
23 contain the feedstock procurement monitor's assessment of
24 bidder behavior in the process, as well as an assessment of the
25 feedstock procurement administrator's compliance with the
26 feedstock procurement process and rules. The Commission shall

1 review the confidential reports submitted by the feedstock
2 procurement administrator and feedstock procurement monitor
3 and shall accept or reject the recommendations of the feedstock
4 procurement administrator within 2 business days after receipt
5 of the reports.

6 (f) Within 3 business days after the Commission decision
7 approving the results of a feedstock procurement event, the
8 initial clean coal facility shall enter into binding
9 contractual arrangements with the winning suppliers using
10 standard form contracts.

11 (g) The names of the successful bidders and the amount of
12 feedstock to be delivered for each contract type and for each
13 contract term shall be made available to the public at the time
14 of Commission approval of a feedstock procurement event. The
15 Commission, the feedstock procurement monitor, the feedstock
16 procurement administrator, the Agency, and all participants in
17 the feedstock procurement process shall maintain the
18 confidentiality of all other supplier and bidding information
19 in a manner consistent with all applicable laws, rules,
20 regulations, and tariffs. Confidential information, including
21 the confidential reports submitted by the feedstock
22 procurement administrator and feedstock procurement monitor
23 pursuant to subsection (e) of this Section, shall not be made
24 publicly available and shall not be discoverable by any party
25 in any proceeding, absent a compelling demonstration of need,
26 nor shall those reports be admissible in any proceeding other

1 than one for law enforcement purposes.

2 (h) Within 2 business days after a Commission decision
3 approving the results of a feedstock procurement event or such
4 other date as may be required by the Commission from time to
5 time, the initial clean coal facility shall file for
6 informational purposes with the Commission its actual or
7 estimated feedstock costs reflecting the costs associated with
8 the feedstock procurement.

9 (i) The initial clean coal facility shall pay for
10 reasonable costs incurred by the Agency in administering the
11 feedstock procurement events. The Agency shall determine the
12 amount owed for each feedstock procurement event, and the
13 initial clean coal facility shall pay that amount to the Agency
14 within 30 days after being informed by the Agency of the amount
15 owed. Those funds shall be deposited into the Agency Operations
16 Fund, pursuant to Section 1-55 of this Act, to be used to
17 reimburse expenses related to the feedstock procurement.

18 (j) The Commission has the authority to adopt rules to
19 carry out the provisions of this Section. For the public
20 interest, safety, and welfare, the Commission also has the
21 authority to adopt rules to carry out the provisions of this
22 Section on an emergency basis.

23 (k) On or before April 1 of each year, the Commission may
24 hold an informal hearing for the purpose of receiving comments
25 on the prior year's feedstock procurement process and any
26 recommendations for change.

1 (l) For all purposes of this Section 1-79 and subsection
2 (a-5) of Section 1-75 of this Act, (i) feedstock procurement
3 shall be deemed to include transportation of the feedstock
4 products to the initial clean coal facility (including the
5 acquisition by the initial clean coal facility, as appropriate,
6 of trucks, railcars or other transportation equipment), (ii)
7 feedstock procurement shall not be deemed to include day-to-day
8 performance and administration of feedstock procurement and
9 transportation arrangements, including scheduling, weighing,
10 quality determination, acceptance or rejection of shipments,
11 price adjustments, documentation and related activities, all
12 of which shall be performed by the owner of the initial clean
13 coal facility, and (iii) feedstock supplier shall be deemed to
14 include feedstock transporters and providers of feedstock
15 transportation equipment.

16 (m) Any agreement for the purchase of SNG entered into by
17 the initial clean coal facility pursuant to item (xvi) of
18 subparagraph (D) of paragraph (3) of subsection (d) of Section
19 1-75 of this Act shall be deemed for all purposes, including,
20 but not limited to, the inclusion of costs under such agreement
21 being included as part of the initial clean coal facility's
22 actual fuel costs pursuant to subsection (d) of Section 1-76 of
23 this Act, to have been entered into pursuant to the procurement
24 process set forth in this Section 1-79, even though such
25 agreement shall not be subject to competitive bidding. The
26 Agency, the feedstock procurement administrator, and the

1 feedstock procurement monitor shall take account of the initial
2 clean coal facility's obligations under any such agreement in
3 determining the feedstock procurement arrangements that may be
4 entered into by the initial clean coal facility pursuant to
5 this Section 1-79, as well as the implementation and
6 administration of such feedstock procurement arrangements.

7 (n) If and for so long as the initial clean coal facility
8 is an SNG-ready generating facility, the provisions of this
9 Section relating to the procurement of coal or other feedstock
10 that would be used by coal gasification units or relating to
11 any minimum feedstock procurement or minimum feedstock usage
12 shall not be applicable.

13 (20 ILCS 3855/1-81 new)

14 Sec. 1-81. Limited non-impairment.

15 (a) The State of Illinois pledges that the State shall not
16 enact any law or take any action to:

17 (1) break, or repeal the authority for, sourcing
18 agreements in a form approved by the Agency and entered
19 into between electric utilities and the initial clean coal
20 facility pursuant to subsection (d) of Section 1-75 of this
21 Act;

22 (2) break, or repeal the authority for, sourcing
23 agreements in a form approved by the Agency and entered
24 into between alternative retail electric suppliers and the
25 initial clean coal facility;

1 (3) deny electric utilities full cost recovery for
2 their costs incurred under those sourcing agreements;

3 (4) deny the initial clean coal facility full cost
4 recovery under those sourcing agreements for costs that are
5 recoverable under Section 1-76 of this Act;

6 (5) repeal or remove the requirement that electric
7 utilities shall enter into sourcing agreements with the
8 initial clean coal facility under paragraph (3) of
9 subsection (d) of Section 1-75 of this Act or subsection
10 (c) of Section 16-116 of the Public Utilities Act; or

11 (6) repeal or remove the requirement that alternative
12 retail electric suppliers shall enter into sourcing
13 agreements with the initial clean coal facility under item
14 (iv) of paragraph (5) of subsection (d) of Section 16-115
15 of the Public Utilities Act.

16 These pledges are for the benefit of the parties to those
17 sourcing agreements and the issuers and holders of bonds or
18 other obligations issued or incurred to finance or refinance
19 the initial clean coal facility. The initial clean coal
20 facility is authorized to include and refer to these pledges in
21 any financing agreement into which it may enter in regard to
22 those sourcing agreements.

23 (b) The State of Illinois retains and reserves all other
24 rights to enact new or amendatory legislation or take any other
25 action, without impairment of the right of the initial clean
26 coal facility to recover prudently incurred costs resulting

1 from the new or amendatory legislation or other action as
2 approved by the Commission, including, but not limited to,
3 legislation or other action that would: (1) directly or
4 indirectly raise the costs that the initial clean coal facility
5 must incur; (2) directly or indirectly place additional
6 restrictions, regulations, or requirements on the initial
7 clean coal facility; (3) prohibit sequestration in general or
8 prohibit a specific sequestration method or project; or (4)
9 increase minimum sequestration requirements for the initial
10 clean coal facility to a technically feasible extent.

11 Section 10. The Illinois Procurement Code is amended by
12 changing Sections 1-10 and 20-10 as follows:

13 (30 ILCS 500/1-10)

14 Sec. 1-10. Application.

15 (a) This Code applies only to procurements for which
16 contractors were first solicited on or after July 1, 1998. This
17 Code shall not be construed to affect or impair any contract,
18 or any provision of a contract, entered into based on a
19 solicitation prior to the implementation date of this Code as
20 described in Article 99, including but not limited to any
21 covenant entered into with respect to any revenue bonds or
22 similar instruments. All procurements for which contracts are
23 solicited between the effective date of Articles 50 and 99 and
24 July 1, 1998 shall be substantially in accordance with this

1 Code and its intent.

2 (b) This Code shall apply regardless of the source of the
3 funds with which the contracts are paid, including federal
4 assistance moneys. This Code shall not apply to:

5 (1) Contracts between the State and its political
6 subdivisions or other governments, or between State
7 governmental bodies except as specifically provided in
8 this Code.

9 (2) Grants, except for the filing requirements of
10 Section 20-80.

11 (3) Purchase of care.

12 (4) Hiring of an individual as employee and not as an
13 independent contractor, whether pursuant to an employment
14 code or policy or by contract directly with that
15 individual.

16 (5) Collective bargaining contracts.

17 (6) Purchase of real estate, except that notice of this
18 type of contract with a value of more than \$25,000 must be
19 published in the Procurement Bulletin within 7 days after
20 the deed is recorded in the county of jurisdiction. The
21 notice shall identify the real estate purchased, the names
22 of all parties to the contract, the value of the contract,
23 and the effective date of the contract.

24 (7) Contracts necessary to prepare for anticipated
25 litigation, enforcement actions, or investigations,
26 provided that the chief legal counsel to the Governor shall

1 give his or her prior approval when the procuring agency is
2 one subject to the jurisdiction of the Governor, and
3 provided that the chief legal counsel of any other
4 procuring entity subject to this Code shall give his or her
5 prior approval when the procuring entity is not one subject
6 to the jurisdiction of the Governor.

7 (8) Contracts for services to Northern Illinois
8 University by a person, acting as an independent
9 contractor, who is qualified by education, experience, and
10 technical ability and is selected by negotiation for the
11 purpose of providing non-credit educational service
12 activities or products by means of specialized programs
13 offered by the university.

14 (9) Procurement expenditures by the Illinois
15 Conservation Foundation when only private funds are used.

16 (10) Procurement expenditures by the Illinois Health
17 Information Exchange Authority involving private funds
18 from the Health Information Exchange Fund. "Private funds"
19 means gifts, donations, and private grants.

20 (11) Public-private agreements entered into according
21 to the procurement requirements of Section 20 of the
22 Public-Private Partnerships for Transportation Act and
23 design-build agreements entered into according to the
24 procurement requirements of Section 25 of the
25 Public-Private Partnerships for Transportation Act.

26 (c) This Code does not apply to the electric power

1 procurement process provided for under Section 1-75 of the
2 Illinois Power Agency Act and Section 16-111.5 of the Public
3 Utilities Act.

4 (d) Except for Section 20-160 and Article 50 of this Code,
5 and as expressly required by Section 9.1 of the Illinois
6 Lottery Law, the provisions of this Code do not apply to the
7 procurement process provided for under Section 9.1 of the
8 Illinois Lottery Law.

9 (e) This Code does not apply to the process used by the
10 Capital Development Board to retain a person or entity to
11 assist the Capital Development Board with its duties related to
12 the determination of costs of a clean coal SNG brownfield
13 facility, as defined by Section 1-10 of the Illinois Power
14 Agency Act, as required in subsection (h-3) of Section 9-220 of
15 the Public Utilities Act, including calculating the range of
16 capital costs, the range of operating and maintenance costs, or
17 the sequestration costs or monitoring the construction of clean
18 coal SNG brownfield facility for the full duration of
19 construction.

20 (f) This Code does not apply to the process used by the
21 Illinois Power Agency to retain a mediator to mediate sourcing
22 agreement disputes between gas utilities and the clean coal SNG
23 brownfield facility, as defined in Section 1-10 of the Illinois
24 Power Agency Act, as required under subsection (h-1) of Section
25 9-220 of the Public Utilities Act.

26 (g) This Code does not apply to the processes used by the

1 Illinois Power Agency to retain a mediator to mediate contract
2 disputes between gas utilities and the clean coal SNG facility
3 and to retain an expert to assist in the review of contracts
4 under subsection (h) of Section 9-220 of the Public Utilities
5 Act. This Code does not apply to the process used by the
6 Illinois Commerce Commission to retain an expert to assist in
7 determining the actual incurred costs of the clean coal SNG
8 facility and the reasonableness of those costs as required
9 under subsection (h) of Section 9-220 of the Public Utilities
10 Act.

11 (h) This Code does not apply to the process to procure or
12 contracts entered into in accordance with Sections 11-5.2 and
13 11-5.3 of the Illinois Public Aid Code.

14 (i) ~~(h)~~ Each chief procurement officer may access records
15 necessary to review whether a contract, purchase, or other
16 expenditure is or is not subject to the provisions of this
17 Code, unless such records would be subject to attorney-client
18 privilege.

19 (j) This Code does not apply to the process used by the
20 Capital Development Board to retain a person or entity to
21 assist the Capital Development Board with its duties related to
22 the determination of costs of an initial clean coal facility,
23 as defined under Section 1-10 of the Illinois Power Agency Act,
24 as required under Section 1-76 of the Illinois Power Agency
25 Act, including calculating the range of capital costs or the
26 sequestration costs or monitoring the construction of initial

1 clean coal facility for the full duration of construction.

2 (k) This Code does not apply to the process used by the
3 Illinois Power Agency to retain a mediator to mediate sourcing
4 agreement disputes between electric utilities or alternative
5 retail electric suppliers and the initial clean coal facility,
6 as defined under Section 1-10 of the Illinois Power Agency Act,
7 as required under paragraph (4) of subsection (d) of Section
8 1-75 of the Illinois Power Agency Act. This Code does not apply
9 to the process used by the Illinois Commerce Commission to
10 retain an expert to assist the Commission with its duties
11 related to the determination of the costs of an initial clean
12 coal facility, as defined under Section 1-10 of the Illinois
13 Power Agency Act, as required under Section 1-76 of the
14 Illinois Power Agency Act, including determining the initial
15 clean coal facility's operations and maintenance costs, or
16 compliance with capture and sequestration requirements.

17 (Source: P.A. 96-840, eff. 12-23-09; 96-1331, eff. 7-27-10;
18 97-96, eff. 7-13-11; 97-239, eff. 8-2-11; 97-502, eff. 8-23-11;
19 97-689, eff. 6-14-12; 97-813, eff. 7-13-12; 97-895, eff.
20 8-3-12; revised 8-23-12.)

21 (30 ILCS 500/20-10)

22 (Text of Section from P.A. 96-159, 96-588, 97-96, and
23 97-895)

24 Sec. 20-10. Competitive sealed bidding; reverse auction.

25 (a) Conditions for use. All contracts shall be awarded by

1 competitive sealed bidding except as otherwise provided in
2 Section 20-5.

3 (b) Invitation for bids. An invitation for bids shall be
4 issued and shall include a purchase description and the
5 material contractual terms and conditions applicable to the
6 procurement.

7 (c) Public notice. Public notice of the invitation for bids
8 shall be published in the Illinois Procurement Bulletin at
9 least 14 days before the date set in the invitation for the
10 opening of bids.

11 (d) Bid opening. Bids shall be opened publicly in the
12 presence of one or more witnesses at the time and place
13 designated in the invitation for bids. The name of each bidder,
14 the amount of each bid, and other relevant information as may
15 be specified by rule shall be recorded. After the award of the
16 contract, the winning bid and the record of each unsuccessful
17 bid shall be open to public inspection.

18 (e) Bid acceptance and bid evaluation. Bids shall be
19 unconditionally accepted without alteration or correction,
20 except as authorized in this Code. Bids shall be evaluated
21 based on the requirements set forth in the invitation for bids,
22 which may include criteria to determine acceptability such as
23 inspection, testing, quality, workmanship, delivery, and
24 suitability for a particular purpose. Those criteria that will
25 affect the bid price and be considered in evaluation for award,
26 such as discounts, transportation costs, and total or life

1 cycle costs, shall be objectively measurable. The invitation
2 for bids shall set forth the evaluation criteria to be used.

3 (f) Correction or withdrawal of bids. Correction or
4 withdrawal of inadvertently erroneous bids before or after
5 award, or cancellation of awards of contracts based on bid
6 mistakes, shall be permitted in accordance with rules. After
7 bid opening, no changes in bid prices or other provisions of
8 bids prejudicial to the interest of the State or fair
9 competition shall be permitted. All decisions to permit the
10 correction or withdrawal of bids based on bid mistakes shall be
11 supported by written determination made by a State purchasing
12 officer.

13 (g) Award. The contract shall be awarded with reasonable
14 promptness by written notice to the lowest responsible and
15 responsive bidder whose bid meets the requirements and criteria
16 set forth in the invitation for bids, except when a State
17 purchasing officer determines it is not in the best interest of
18 the State and by written explanation determines another bidder
19 shall receive the award. The explanation shall appear in the
20 appropriate volume of the Illinois Procurement Bulletin. The
21 written explanation must include:

- 22 (1) a description of the agency's needs;
- 23 (2) a determination that the anticipated cost will be
24 fair and reasonable;
- 25 (3) a listing of all responsible and responsive
26 bidders; and

1 (4) the name of the bidder selected, the total contract
2 price, and the reasons for selecting that bidder.

3 Each chief procurement officer may adopt guidelines to
4 implement the requirements of this subsection (g).

5 The written explanation shall be filed with the Legislative
6 Audit Commission and the Procurement Policy Board, and be made
7 available for inspection by the public, within 30 days after
8 the agency's decision to award the contract.

9 (h) Multi-step sealed bidding. When it is considered
10 impracticable to initially prepare a purchase description to
11 support an award based on price, an invitation for bids may be
12 issued requesting the submission of unpriced offers to be
13 followed by an invitation for bids limited to those bidders
14 whose offers have been qualified under the criteria set forth
15 in the first solicitation.

16 (i) Alternative procedures. Notwithstanding any other
17 provision of this Act to the contrary, the Director of the
18 Illinois Power Agency may create alternative bidding
19 procedures to be used in procuring professional services under
20 subsections ~~subsection~~ (a) and (a-5) of Section 1-75, ~~and~~
21 subsection (d) of Section 1-78, and subsection (d) of Section
22 1-79 of the Illinois Power Agency Act and Section 16-111.5(c)
23 of the Public Utilities Act and to procure renewable energy
24 resources under Section 1-56 of the Illinois Power Agency Act.
25 These alternative procedures shall be set forth together with
26 the other criteria contained in the invitation for bids, and

1 shall appear in the appropriate volume of the Illinois
2 Procurement Bulletin.

3 (j) Reverse auction. Notwithstanding any other provision
4 of this Section and in accordance with rules adopted by the
5 chief procurement officer, that chief procurement officer may
6 procure supplies or services through a competitive electronic
7 auction bidding process after the chief procurement officer
8 determines that the use of such a process will be in the best
9 interest of the State. The chief procurement officer shall
10 publish that determination in his or her next volume of the
11 Illinois Procurement Bulletin.

12 An invitation for bids shall be issued and shall include
13 (i) a procurement description, (ii) all contractual terms,
14 whenever practical, and (iii) conditions applicable to the
15 procurement, including a notice that bids will be received in
16 an electronic auction manner.

17 Public notice of the invitation for bids shall be given in
18 the same manner as provided in subsection (c).

19 Bids shall be accepted electronically at the time and in
20 the manner designated in the invitation for bids. During the
21 auction, a bidder's price shall be disclosed to other bidders.
22 Bidders shall have the opportunity to reduce their bid prices
23 during the auction. At the conclusion of the auction, the
24 record of the bid prices received and the name of each bidder
25 shall be open to public inspection.

26 After the auction period has terminated, withdrawal of bids

1 shall be permitted as provided in subsection (f).

2 The contract shall be awarded within 60 days after the
3 auction by written notice to the lowest responsible bidder, or
4 all bids shall be rejected except as otherwise provided in this
5 Code. Extensions of the date for the award may be made by
6 mutual written consent of the State purchasing officer and the
7 lowest responsible bidder.

8 This subsection does not apply to (i) procurements of
9 professional and artistic services, (ii) telecommunications
10 services, communication services, and information services,
11 and (iii) contracts for construction projects, including
12 design professional services.

13 (Source: P.A. 96-159, eff. 8-10-09; 96-588, eff. 8-18-09;
14 97-96, eff. 7-13-11; 97-895, eff. 8-3-12.)

15 (Text of Section from P.A. 96-159, 96-795, 97-96, and
16 97-895)

17 Sec. 20-10. Competitive sealed bidding; reverse auction.

18 (a) Conditions for use. All contracts shall be awarded by
19 competitive sealed bidding except as otherwise provided in
20 Section 20-5.

21 (b) Invitation for bids. An invitation for bids shall be
22 issued and shall include a purchase description and the
23 material contractual terms and conditions applicable to the
24 procurement.

25 (c) Public notice. Public notice of the invitation for bids

1 shall be published in the Illinois Procurement Bulletin at
2 least 14 days before the date set in the invitation for the
3 opening of bids.

4 (d) Bid opening. Bids shall be opened publicly in the
5 presence of one or more witnesses at the time and place
6 designated in the invitation for bids. The name of each bidder,
7 the amount of each bid, and other relevant information as may
8 be specified by rule shall be recorded. After the award of the
9 contract, the winning bid and the record of each unsuccessful
10 bid shall be open to public inspection.

11 (e) Bid acceptance and bid evaluation. Bids shall be
12 unconditionally accepted without alteration or correction,
13 except as authorized in this Code. Bids shall be evaluated
14 based on the requirements set forth in the invitation for bids,
15 which may include criteria to determine acceptability such as
16 inspection, testing, quality, workmanship, delivery, and
17 suitability for a particular purpose. Those criteria that will
18 affect the bid price and be considered in evaluation for award,
19 such as discounts, transportation costs, and total or life
20 cycle costs, shall be objectively measurable. The invitation
21 for bids shall set forth the evaluation criteria to be used.

22 (f) Correction or withdrawal of bids. Correction or
23 withdrawal of inadvertently erroneous bids before or after
24 award, or cancellation of awards of contracts based on bid
25 mistakes, shall be permitted in accordance with rules. After
26 bid opening, no changes in bid prices or other provisions of

1 bids prejudicial to the interest of the State or fair
2 competition shall be permitted. All decisions to permit the
3 correction or withdrawal of bids based on bid mistakes shall be
4 supported by written determination made by a State purchasing
5 officer.

6 (g) Award. The contract shall be awarded with reasonable
7 promptness by written notice to the lowest responsible and
8 responsive bidder whose bid meets the requirements and criteria
9 set forth in the invitation for bids, except when a State
10 purchasing officer determines it is not in the best interest of
11 the State and by written explanation determines another bidder
12 shall receive the award. The explanation shall appear in the
13 appropriate volume of the Illinois Procurement Bulletin. The
14 written explanation must include:

- 15 (1) a description of the agency's needs;
- 16 (2) a determination that the anticipated cost will be
17 fair and reasonable;
- 18 (3) a listing of all responsible and responsive
19 bidders; and
- 20 (4) the name of the bidder selected, the total contract
21 price, and the reasons for selecting that bidder.

22 Each chief procurement officer may adopt guidelines to
23 implement the requirements of this subsection (g).

24 The written explanation shall be filed with the Legislative
25 Audit Commission and the Procurement Policy Board, and be made
26 available for inspection by the public, within 30 days after

1 the agency's decision to award the contract.

2 (h) Multi-step sealed bidding. When it is considered
3 impracticable to initially prepare a purchase description to
4 support an award based on price, an invitation for bids may be
5 issued requesting the submission of unpriced offers to be
6 followed by an invitation for bids limited to those bidders
7 whose offers have been qualified under the criteria set forth
8 in the first solicitation.

9 (i) Alternative procedures. Notwithstanding any other
10 provision of this Act to the contrary, the Director of the
11 Illinois Power Agency may create alternative bidding
12 procedures to be used in procuring professional services under
13 subsections ~~subsection~~ (a) and (a-5) of Section 1-75, ~~and~~
14 subsection (d) of Section 1-78, and subsection (d) of Section
15 1-79 of the Illinois Power Agency Act and Section 16-111.5(c)
16 of the Public Utilities Act and to procure renewable energy
17 resources under Section 1-56 of the Illinois Power Agency Act.
18 These alternative procedures shall be set forth together with
19 the other criteria contained in the invitation for bids, and
20 shall appear in the appropriate volume of the Illinois
21 Procurement Bulletin.

22 (j) Reverse auction. Notwithstanding any other provision
23 of this Section and in accordance with rules adopted by the
24 chief procurement officer, that chief procurement officer may
25 procure supplies or services through a competitive electronic
26 auction bidding process after the chief procurement officer

1 determines that the use of such a process will be in the best
2 interest of the State. The chief procurement officer shall
3 publish that determination in his or her next volume of the
4 Illinois Procurement Bulletin.

5 An invitation for bids shall be issued and shall include
6 (i) a procurement description, (ii) all contractual terms,
7 whenever practical, and (iii) conditions applicable to the
8 procurement, including a notice that bids will be received in
9 an electronic auction manner.

10 Public notice of the invitation for bids shall be given in
11 the same manner as provided in subsection (c).

12 Bids shall be accepted electronically at the time and in
13 the manner designated in the invitation for bids. During the
14 auction, a bidder's price shall be disclosed to other bidders.
15 Bidders shall have the opportunity to reduce their bid prices
16 during the auction. At the conclusion of the auction, the
17 record of the bid prices received and the name of each bidder
18 shall be open to public inspection.

19 After the auction period has terminated, withdrawal of bids
20 shall be permitted as provided in subsection (f).

21 The contract shall be awarded within 60 days after the
22 auction by written notice to the lowest responsible bidder, or
23 all bids shall be rejected except as otherwise provided in this
24 Code. Extensions of the date for the award may be made by
25 mutual written consent of the State purchasing officer and the
26 lowest responsible bidder.

1 This subsection does not apply to (i) procurements of
2 professional and artistic services, (ii) telecommunications
3 services, communication services, and information services,
4 and (iii) contracts for construction projects, including
5 design professional services.

6 (Source: P.A. 96-159, eff. 8-10-09; 96-795, eff. 7-1-10 (see
7 Section 5 of P.A. 96-793 for the effective date of changes made
8 by P.A. 96-795); 97-96, eff. 7-13-11; 97-895, eff. 8-3-12.)

9 Section 15. The Public Utilities Act is amended by changing
10 Sections 16-115 and 16-116 as follows:

11 (220 ILCS 5/16-115)

12 Sec. 16-115. Certification of alternative retail electric
13 suppliers.

14 (a) Any alternative retail electric supplier must obtain a
15 certificate of service authority from the Commission in
16 accordance with this Section before serving any retail customer
17 or other user located in this State. An alternative retail
18 electric supplier may request, and the Commission may grant, a
19 certificate of service authority for the entire State or for a
20 specified geographic area of the State.

21 (b) An alternative retail electric supplier seeking a
22 certificate of service authority shall file with the Commission
23 a verified application containing information showing that the
24 applicant meets the requirements of this Section. The

1 alternative retail electric supplier shall publish notice of
2 its application in the official State newspaper within 10 days
3 following the date of its filing. No later than 45 days after
4 the application is properly filed with the Commission, and such
5 notice is published, the Commission shall issue its order
6 granting or denying the application.

7 (c) An application for a certificate of service authority
8 shall identify the area or areas in which the applicant intends
9 to offer service and the types of services it intends to offer.
10 Applicants that seek to serve residential or small commercial
11 retail customers within a geographic area that is smaller than
12 an electric utility's service area shall submit evidence
13 demonstrating that the designation of this smaller area does
14 not violate Section 16-115A. An applicant that seeks to serve
15 residential or small commercial retail customers may state in
16 its application for certification any limitations that will be
17 imposed on the number of customers or maximum load to be
18 served.

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

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

1 financial and managerial resources and abilities which the
2 applicant must demonstrate, the Commission shall consider
3 (i) the characteristics, including the size and financial
4 sophistication, of the customers that the applicant seeks
5 to serve, and (ii) whether the applicant seeks to provide
6 electric power and energy using property, plant and
7 equipment which it owns, controls or operates;

8 (2) That the applicant will comply with all applicable
9 federal, State, regional and industry rules, policies,
10 practices and procedures for the use, operation, and
11 maintenance of the safety, integrity and reliability, of
12 the interconnected electric transmission system;

13 (3) That the applicant will only provide service to
14 retail customers in an electric utility's service area that
15 are eligible to take delivery services under this Act;

16 (4) That the applicant will comply with such
17 informational or reporting requirements as the Commission
18 may by rule establish and provide the information required
19 by Section 16-112. Any data related to contracts for the
20 purchase and sale of electric power and energy shall be
21 made available for review by the Staff of the Commission on
22 a confidential and proprietary basis and only to the extent
23 and for the purposes which the Commission determines are
24 reasonably necessary in order to carry out the purposes of
25 this Act;

26 (5) That the applicant will procure renewable energy

1 resources in accordance with Section 16-115D of this Act,
2 and will source electricity from clean coal facilities, as
3 defined in Section 1-10 of the Illinois Power Agency Act,
4 in amounts ~~at least~~ equal to the amounts ~~percentages~~ set
5 forth in subsections (c) and (d) of Section 1-75 of the
6 Illinois Power Agency Act. For purposes of this Section:

7 (i) (blank) ~~(Blank)~~;

8 (ii) (blank) ~~(Blank)~~;

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

17 (iv) all alternative retail electric suppliers,
18 whether certified before or after the effective date of
19 this amendatory Act of the 98th General Assembly, shall
20 execute a sourcing agreement to source electricity
21 from the initial clean coal facility, on the terms set
22 forth in paragraphs (3) and (4) of subsection (d) of
23 Section 1-75 of the Illinois Power Agency Act, with
24 each reference therein to "utility" being deemed to be
25 a reference to an alternative retail electric
26 supplier, except that ~~in lieu of~~ the requirements in

1 subparagraphs (B) (v), (D) (ii), and (D) (vii) ~~(A) (v),~~
2 ~~(B) (i), (C) (v), and (C) (vi)~~ of paragraph (3) of that
3 subsection (d) shall not apply; ~~the applicant shall~~
4 ~~execute one or more of the following:~~

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

1 ~~service areas during such prior month, pursuant to~~
2 ~~subsection (c) of Section 16-116 of this Act; or~~

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

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

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

9 (vi) ~~the~~ The Commission shall, after notice and
10 ~~hearing, revoke the certification of any alternative~~
11 ~~retail electric supplier that fails to execute a~~
12 ~~sourcing agreement with the initial clean coal~~
13 ~~facility as required by item (5) of subsection (d) of~~
14 ~~this Section. The sourcing agreements with the ~~this~~~~
15 ~~initial clean coal facility shall be subject to~~
16 ~~approval both approval of the initial clean coal~~
17 ~~facility by the Illinois Power Agency pursuant to~~
18 ~~paragraph (4) of subsection (d) of Section 1-75 of the~~
19 ~~Illinois Power Agency Act General Assembly and~~
20 ~~satisfaction of the requirements of item (4) of~~
21 ~~subsection (d) of Section 1-75 of the Illinois Power~~
22 ~~Agency Act, and shall be executed within 30 ~~90~~ days~~
23 ~~after any such approval by the Illinois Power Agency or~~
24 ~~the issuance of any necessary approval by the Federal~~
25 ~~Energy Regulatory Commission, whichever is later;~~

26 (vii) The Commission shall have jurisdiction over

1 disciplinary proceedings and complaints for violations
2 of this Section. If, upon complaint, the Commission
3 determines an alternative retail electric supplier has
4 failed to execute a sourcing agreement with the initial
5 clean coal facility, then the Commission shall issue
6 notice of the finding to the alternative retail
7 electric supplier. The alternative retail electric
8 supplier shall have 30 days after the receipt of notice
9 to enter into a sourcing agreement. If, after the
10 notice period, the Commission finds an alternative
11 retail electric supplier has failed to comply, then the
12 Commission shall revoke the alternative retail
13 electric supplier's certificate for 6 months ~~General~~
14 ~~Assembly. The Commission shall not accept an~~
15 ~~application for certification from an alternative~~
16 ~~retail electric supplier that has lost certification~~
17 ~~under this subsection (d), or any corporate affiliate~~
18 ~~thereof, for at least one year from the date of~~
19 ~~revocation;~~

20 (6) With respect to an applicant that seeks to serve
21 residential or small commercial retail customers, that the
22 area to be served by the applicant and any limitations it
23 proposes on the number of customers or maximum amount of
24 load to be served meet the provisions of Section 16-115A,
25 provided, that the Commission can extend the time for
26 considering such a certificate request by up to 90 days,

1 and can schedule hearings on such a request;

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

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

6 (d-5) (Blank).

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

26 (f) The Commission shall have the authority to promulgate

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

19 (g) In any proceeding initiated by a public utility
20 pursuant to Section 8-406 or Section 8-406.1 of this Act for a
21 certificate of public convenience and necessity to construct
22 and operate any utility plant, equipment, or facility required
23 to provide service to the initial clean coal facility, it shall
24 be conclusively presumed that the public convenience and
25 necessity require the construction of such utility plant,
26 equipment, or facility. In any proceeding initiated by a public

1 utility pursuant to Section 8-503 of this Act for an order
2 directing the addition, extension, or improvement of any
3 utility plant, equipment, facilities, or other property or the
4 erection of any new utility plant, equipment, or facilities to
5 provide service to the initial clean coal facility, it shall be
6 conclusively presumed that such additional, extended, improved
7 or new utility plant, equipment, facility, or other property is
8 necessary and should be added, extended, or erected.

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

11 (220 ILCS 5/16-116)

12 Sec. 16-116. Commission oversight of electric utilities
13 serving retail customers outside their service areas or
14 providing competitive, non-tariffed services.

15 (a) An electric utility that has a tariff on file for
16 delivery services may, without regard to any otherwise
17 applicable tariffs on file, provide electric power and energy
18 to one or more retail customers located outside its service
19 area, but only to the extent (i) such retail customer (A) is
20 eligible for delivery services under any delivery services
21 tariff filed with the Commission by the electric utility in
22 whose service area the retail customer is located and (B) has
23 either elected to take such delivery services or has paid or
24 contracted to pay the charges specified in Sections 16-108 and
25 16-114, or (ii) if such retail customer is served by a

1 municipal system or electric cooperative, the customer is
2 eligible for delivery services under the terms and conditions
3 for such service established by the municipal system or
4 electric cooperative serving that customer.

5 (b) An electric utility may offer any competitive service
6 to any customer or group of customers without filing contracts
7 with or seeking approval of the Commission, notwithstanding any
8 rule or regulation that would require such approval. The
9 Commission shall not increase or decrease the prices, and may
10 not alter or add to the terms and conditions for the utility's
11 competitive services, from those agreed to by the electric
12 utility and the customer or customers. Non-tariffed,
13 competitive services shall not be subject to the provisions of
14 the Electric Supplier Act or to Articles V, VII, VIII or IX of
15 the Act, except to the extent that any provisions of such
16 Articles are made applicable to alternative retail electric
17 suppliers pursuant to Sections 16-115 and 16-115A, but shall be
18 subject to the provisions of subsections (b) through (g) of
19 Section 16-115A, and Section 16-115B to the same extent such
20 provisions are applicable to the services provided by
21 alternative retail electric suppliers.

22 (c) Electric utilities serving retail customers outside
23 their service areas shall be subject to the requirements of
24 paragraph (5) of subsection (d) of Section 16-115 of the Public
25 Utilities Act, ~~except that the numerators referred to in that~~
26 ~~subsection (d) shall be the utility's retail market sales of~~

1 ~~electricity (expressed in kilowatthours sold) in the State~~
2 ~~outside of the utility's service territory in the prior month.~~

3 (Source: P.A. 95-1027, eff. 6-1-09.)

4 Section 900. Severability. The provisions of this Act are
5 severable under Section 1.31 of the Statute on Statutes.

6 Section 999. Effective date. This Act takes effect upon
7 becoming law.