



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB2864

by Rep. Frank J. Mautino

SYNOPSIS AS INTRODUCED:

20 ILCS 3855/1-10
20 ILCS 3855/1-20
20 ILCS 3855/1-56
20 ILCS 3855/1-75
220 ILCS 5/16-108
220 ILCS 5/16-111.5
220 ILCS 5/16-115D

Amends the Illinois Power Agency Act. Provides that, for periods beginning on and after June 1, 2014, the Agency's procurement plans shall include procurement of renewable energy credits in amounts projected to be sufficient to meet certain renewable energy resources portfolio standards. Requires the Agency to use the Illinois Power Agency Renewable Energy Resources Fund, until depleted, to procure renewable energy credits for specified purposes, and terminates the Fund upon depletion of all its funds. Provides that the Planning and Procurement Bureau shall develop procurement plans and conduct competitive procurement processes for the procurement of renewable energy credits with respect to the kilowatthour usage of delivery services non-eligible retail customers in such electric utilities' service areas. Makes changes with regard to the renewable portfolio standard. Amends the Public Utilities Act. Provides that charges for delivery services shall also include the recovery of the electric utility's costs of renewable energy credits and excluded renewable energy resources contract costs. Requires certain electric utilities to procure renewable energy credits with respect to the kilowatthour usage of delivery services non-eligible retail customers in the electric utility's service area. Provides that the obligations of alternative retail electric suppliers and electric utilities operating outside their service territories to procure renewable energy resources, make alternative compliance payments, and file annual reports, and the obligations of the Commission to determine and post alternative compliance payment rates, shall terminate effective May 31, 2014. Makes other changes. Effective immediately.

LRB098 09853 JLS 40009 b

1 AN ACT concerning renewable energy.

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

4 Section 5. The Illinois Power Agency Act is amended by
5 changing Sections 1-10, 1-20, 1-56, and 1-75 as follows:

6 (20 ILCS 3855/1-10)

7 Sec. 1-10. Definitions.

8 "Agency" means the Illinois Power Agency.

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

17 "Bundled renewable energy resources" means electricity
18 generated by a renewable energy resource and its associated
19 renewable energy credit.

20 "Authority" means the Illinois Finance Authority.

21 "Clean coal facility" means an electric generating
22 facility that uses primarily coal as a feedstock and that
23 captures and sequesters carbon dioxide emissions at the

1 following levels: at least 50% of the total carbon dioxide
2 emissions that the facility would otherwise emit if, at the
3 time construction commences, the facility is scheduled to
4 commence operation before 2016, at least 70% of the total
5 carbon dioxide emissions that the facility would otherwise emit
6 if, at the time construction commences, the facility is
7 scheduled to commence operation during 2016 or 2017, and at
8 least 90% of the total carbon dioxide emissions that the
9 facility would otherwise emit if, at the time construction
10 commences, the facility is scheduled to commence operation
11 after 2017. The power block of the clean coal facility shall
12 not exceed allowable emission rates for sulfur dioxide,
13 nitrogen oxides, carbon monoxide, particulates and mercury for
14 a natural gas-fired combined-cycle facility the same size as
15 and in the same location as the clean coal facility at the time
16 the clean coal facility obtains an approved air permit. All
17 coal used by a clean coal facility shall have high volatile
18 bituminous rank and greater than 1.7 pounds of sulfur per
19 million btu content, unless the clean coal facility does not
20 use gasification technology and was operating as a conventional
21 coal-fired electric generating facility on June 1, 2009 (the
22 effective date of Public Act 95-1027).

23 "Clean coal SNG brownfield facility" means a facility that
24 (1) has commenced construction by July 1, 2015 on an urban
25 brownfield site in a municipality with at least 1,000,000
26 residents; (2) uses a gasification process to produce

1 substitute natural gas; (3) uses coal as at least 50% of the
2 total feedstock over the term of any sourcing agreement with a
3 utility and the remainder of the feedstock may be either
4 petroleum coke or coal, with all such coal having a high
5 bituminous rank and greater than 1.7 pounds of sulfur per
6 million Btu content unless the facility reasonably determines
7 that it is necessary to use additional petroleum coke to
8 deliver additional consumer savings, in which case the facility
9 shall use coal for at least 35% of the total feedstock over the
10 term of any sourcing agreement; and (4) captures and sequesters
11 at least 85% of the total carbon dioxide emissions that the
12 facility would otherwise emit.

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

26 "Commission" means the Illinois Commerce Commission.

1 "Cost of renewable energy credits included in the cost of
2 bundled renewable energy resources" means the difference
3 between the contract price for the bundled renewable energy
4 resources and the day-ahead locational marginal price at the
5 load zone at which the contract is settled times the megawatt
6 hours of electricity generated in each hour.

7 "Costs incurred in connection with the development and
8 construction of a facility" means:

9 (1) the cost of acquisition of all real property,
10 fixtures, and improvements in connection therewith and
11 equipment, personal property, and other property, rights,
12 and easements acquired that are deemed necessary for the
13 operation and maintenance of the facility;

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

16 (3) all origination, commitment, utilization,
17 facility, placement, underwriting, syndication, credit
18 enhancement, and rating agency fees;

19 (4) engineering, design, procurement, consulting,
20 legal, accounting, title insurance, survey, appraisal,
21 escrow, trustee, collateral agency, interest rate hedging,
22 interest rate swap, capitalized interest, contingency, as
23 required by lenders, and other financing costs, and other
24 expenses for professional services; and

25 (5) the costs of plans, specifications, site study and
26 investigation, installation, surveys, other Agency costs

1 and estimates of costs, and other expenses necessary or
2 incidental to determining the feasibility of any project,
3 together with such other expenses as may be necessary or
4 incidental to the financing, insuring, acquisition, and
5 construction of a specific project and starting up,
6 commissioning, and placing that project in operation.

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

9 "Delivery services non-eligible retail customers" means
10 the retail customers in an electric utility's service area for
11 which the electric utility provides delivery services but which
12 are not eligible retail customers as defined in subsection (a)
13 of Section 1-75 of this Act.

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

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

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

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

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

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

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

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

13 "Energy efficiency" means measures that reduce the amount
14 of electricity or natural gas required to achieve a given end
15 use.

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

18 "Excluded renewable energy resources contract costs" means
19 the amount by which the cost of renewable energy credits
20 included in the cost of bundled renewable energy resources,
21 purchased for a particular year to meet the renewable energy
22 resources portfolio standards of paragraph (1) of subsection
23 (c) of Section 1-75 of this Act applicable to the load of an
24 electric utility's eligible retail customers pursuant to a
25 contract with a term greater than one year that the electric
26 utility entered into in a previous year in accordance with a

1 procurement approved by the Commission pursuant to Section
2 16-111.5 of the Public Utilities Act, exceeds the limitations
3 imposed by paragraph (2) of subsection (c) of Section 1-75 of
4 this Act for the particular year.

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

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

13 "Local government" means a unit of local government as
14 defined in Section 1 of Article VII of the Illinois
15 Constitution.

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

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

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

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

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

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

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

26 "Revenue bond" means any bond, note, or other evidence of

1 indebtedness issued by the Authority, the principal and
2 interest of which is payable solely from revenues or income
3 derived from any project or activity of the Agency.

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

13 "Service area" has the same definition as found in Section
14 16-102 of the Public Utilities Act.

15 "Small commercial retail customer" has the same definition
16 as found in Section 16-102 of the Public Utilities Act.

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

1 an agreement between the owner of a clean coal SNG brownfield
2 facility and the gas utility, which agreement shall have the
3 terms and conditions meeting the requirements of subsection
4 (h-1) of Section 9-220 of the Public Utilities Act.

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

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

1 would otherwise have had to acquire, reasonable estimates shall
2 be included of financial costs likely to be imposed by future
3 regulations and legislation on emissions of greenhouse gases.

4 (Source: P.A. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09;
5 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10; 97-96, eff.
6 7-13-11; 97-239, eff. 8-2-11; 97-491, eff. 8-22-11; 97-616,
7 eff. 10-26-11; 97-813, eff. 7-13-12.)

8 (20 ILCS 3855/1-20)

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

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

11 (1) Develop electricity procurement plans to ensure
12 adequate, reliable, affordable, efficient, and
13 environmentally sustainable electric service at the lowest
14 total cost over time, taking into account any benefits of
15 price stability, for electric utilities that on December
16 31, 2005 provided electric service to at least 100,000
17 customers in Illinois and for small multi-jurisdictional
18 electric utilities that (A) on December 31, 2005 served
19 less than 100,000 customers in Illinois and (B) request a
20 procurement plan for their Illinois jurisdictional load.
21 The procurement plans shall be updated on an annual basis
22 and shall include electricity generated from renewable
23 resources sufficient to achieve the standards specified in
24 this Act. For periods beginning on and after June 1, 2014,
25 the procurement plans shall also include procurement of

1 renewable energy credits, in accordance with subsection
2 (c) of Section 1-75 of this Act, in amounts projected to be
3 sufficient to meet the renewable energy resources
4 portfolio standard specified in subsection (c) of Section
5 1-75 of this Act with respect to the kilowatthour usage of
6 delivery services non-eligible retail customers in such
7 electric utilities' service areas.

8 (2) Conduct competitive procurement processes to
9 procure the supply resources identified in the procurement
10 plan, pursuant to Section 16-111.5 of the Public Utilities
11 Act.

12 (3) Develop electric generation and co-generation
13 facilities that use indigenous coal or renewable
14 resources, or both, financed with bonds issued by the
15 Illinois Finance Authority.

16 (4) Supply electricity from the Agency's facilities at
17 cost to one or more of the following: municipal electric
18 systems, governmental aggregators, or rural electric
19 cooperatives in Illinois.

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

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

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

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

5 (4) To obtain and employ personnel and hire consultants
6 that are necessary to fulfill the Agency's purposes, and to
7 make expenditures for that purpose within the
8 appropriations for that purpose.

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

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

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

26 (8) To purchase, take, receive, subscribe for, or

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

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

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

22 (11) To borrow money at such rate or rates of interest
23 as the Agency may determine, issue its notes, bonds, or
24 other obligations to evidence that indebtedness, and
25 secure any of its obligations by mortgage or pledge of its
26 real or personal property, machinery, equipment,

1 structures, fixtures, inventories, revenues, grants, and
2 other funds as provided or any interest therein, wherever
3 situated.

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

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

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

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

22 (16) To enter into management agreements for the
23 operation of any of the property or facilities owned by the
24 Agency.

25 (17) To enter into an agreement to transfer and to
26 transfer any land, facilities, fixtures, or equipment of

1 the Agency to one or more municipal electric systems,
2 governmental aggregators, or rural electric agencies or
3 cooperatives, for such consideration and upon such terms as
4 the Agency may determine to be in the best interest of the
5 citizens of Illinois.

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

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

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

16 (21) To accept and expend appropriations.

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

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

1 this Act.

2 (24) To establish and collect charges and fees as
3 described in this Act.

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

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

13 (Source: P.A. 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10;
14 97-96, eff. 7-13-11; 97-325, eff. 8-12-11; 97-618, eff.
15 10-26-11; 97-813, eff. 7-13-12.)

16 (20 ILCS 3855/1-56)

17 Sec. 1-56. Illinois Power Agency Renewable Energy
18 Resources Fund.

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

21 (b) The Illinois Power Agency Renewable Energy Resources
22 Fund shall be administered by the Agency to procure renewable
23 energy resources. Prior to June 1, 2011, resources procured
24 pursuant to this Section shall be procured from facilities
25 located in Illinois, provided the resources are available from

1 those facilities. If resources are not available in Illinois,
2 then they shall be procured in states that adjoin Illinois. If
3 resources are not available in Illinois or in states that
4 adjoin Illinois, then they may be purchased elsewhere.
5 Beginning June 1, 2011, resources procured pursuant to this
6 Section shall be procured from facilities located in Illinois
7 or states that adjoin Illinois. If resources are not available
8 in Illinois or in states that adjoin Illinois, then they may be
9 procured elsewhere. To the extent available, at least 75% of
10 these renewable energy resources shall come from wind
11 generation. Of the renewable energy resources procured
12 pursuant to this Section at least the following specified
13 percentages shall come from photovoltaics on the following
14 schedule: 0.5% by June 1, 2012; 1.5% by June 1, 2013; 3% by
15 June 1, 2014; and 6% by June 1, 2015 and thereafter. Of the
16 renewable energy resources procured pursuant to this Section,
17 at least the following percentages shall come from distributed
18 renewable energy generation devices: 0.5% by June 1, 2013,
19 0.75% by June 1, 2014, and 1% by June 1, 2015 and thereafter.
20 To the extent available, half of the renewable energy resources
21 procured from distributed renewable energy generation shall
22 come from devices of less than 25 kilowatts in nameplate
23 capacity. Renewable energy resources procured from distributed
24 generation devices may also count towards the required
25 percentages for wind and solar photovoltaics. Procurement of
26 renewable energy resources from distributed renewable energy

1 generation devices shall be done on an annual basis through
2 multi-year contracts of no less than 5 years, and shall consist
3 solely of renewable energy credits.

4 The Agency shall create credit requirements for suppliers
5 of distributed renewable energy. In order to minimize the
6 administrative burden on contracting entities, the Agency
7 shall solicit the use of third-party organizations to aggregate
8 distributed renewable energy into groups of no less than one
9 megawatt in installed capacity. These third-party
10 organizations shall administer contracts with individual
11 distributed renewable energy generation device owners. An
12 individual distributed renewable energy generation device
13 owner shall have the ability to measure the output of his or
14 her distributed renewable energy generation device.

15 (c) The Agency shall procure renewable energy resources at
16 least once each year ~~in conjunction with a procurement event~~
17 ~~for electric utilities required to comply with Section 1-75 of~~
18 ~~the Act~~ and shall, whenever possible, enter into long-term
19 contracts on an annual basis for a portion of the incremental
20 requirement for the given procurement year. The Agency may
21 purchase, from an electric utility or from an entity that has
22 entered into a contract pursuant to Section 16-111.5 of the
23 Public Utilities Act to sell renewable energy resources to an
24 electric utility, renewable energy credits that are excluded
25 renewable energy resources contract costs. For periods
26 beginning on and after June 1, 2014, the Agency shall use the

1 Illinois Power Agency Renewable Energy Resources Fund, until
2 depleted, to procure renewable energy credits for the purposes
3 specified in items (2) and (6) of subsection (c) of Section
4 1-75 of this Act. For each procurement of renewable energy
5 credits pursuant to this Section for periods beginning on and
6 after June 1, 2014, the Agency shall designate an electric
7 utility service area to which the procurement pertains.

8 (d) The price paid to procure renewable energy credits
9 using monies from the Illinois Power Agency Renewable Energy
10 Resources Fund shall not exceed the winning bid prices paid for
11 like resources procured for electric utilities required to
12 comply with Section 1-75 of this Act.

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

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

19 (g) All disbursements from the Illinois Power Agency
20 Renewable Energy Resources Fund shall be made only upon
21 warrants of the Comptroller drawn upon the Treasurer as
22 custodian of the Fund upon vouchers signed by the Director or
23 by the person or persons designated by the Director for that
24 purpose. The Comptroller is authorized to draw the warrant upon
25 vouchers so signed. The Treasurer shall accept all warrants so
26 signed and shall be released from liability for all payments

1 made on those warrants.

2 (h) The Illinois Power Agency Renewable Energy Resources
3 Fund shall not be subject to sweeps, administrative charges, or
4 chargebacks, including, but not limited to, those authorized
5 under Section 8h of the State Finance Act, that would in any
6 way result in the transfer of any funds from this Fund to any
7 other fund of this State or in having any such funds utilized
8 for any purpose other than the express purposes set forth in
9 this Section.

10 (i) The Illinois Power Agency Renewable Energy Resources
11 Fund shall be terminated upon depletion of all funds therein
12 through the purchase of renewable energy credits.

13 (Source: P.A. 96-159, eff. 8-10-09; 96-1000, eff. 7-2-10;
14 96-1437, eff. 8-17-10; 97-616, eff. 10-26-11.)

15 (20 ILCS 3855/1-75)

16 Sec. 1-75. Planning and Procurement Bureau. The Planning
17 and Procurement Bureau has the following duties and
18 responsibilities:

19 (a) The Planning and Procurement Bureau shall each year,
20 beginning in 2008, develop procurement plans and conduct
21 competitive procurement processes in accordance with the
22 requirements of Section 16-111.5 of the Public Utilities Act
23 for the eligible retail customers of electric utilities that on
24 December 31, 2005 provided electric service to at least 100,000
25 customers in Illinois, and for years beginning on and after

1 June 1, 2014, develop procurement plans and conduct competitive
2 procurement processes for the procurement of renewable energy
3 credits with respect to the kilowatthour usage of delivery
4 services non-eligible retail customers in such electric
5 utilities' service areas. The Planning and Procurement Bureau
6 shall also develop procurement plans and conduct competitive
7 procurement processes in accordance with the requirements of
8 Section 16-111.5 of the Public Utilities Act for the eligible
9 retail customers of small multi-jurisdictional electric
10 utilities that (i) on December 31, 2005 served less than
11 100,000 customers in Illinois and (ii) request a procurement
12 plan for their Illinois jurisdictional load. This Section shall
13 not apply to a small multi-jurisdictional utility until such
14 time as a small multi-jurisdictional utility requests the
15 Agency to prepare a procurement plan for their Illinois
16 jurisdictional load. For the purposes of this Section, the term
17 "eligible retail customers" has the same definition as found in
18 Section 16-111.5(a) of the Public Utilities Act.

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

25 (A) direct previous experience assembling
26 large-scale power supply plans or portfolios for

1 end-use customers;

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

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

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

11 (E) expertise in credit protocols and familiarity
12 with contract protocols;

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

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

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

24 (A) direct previous experience administering a
25 large-scale competitive procurement process;

26 (B) an advanced degree in economics, mathematics,

1 engineering, or a related area of study;

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

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

8 (E) expertise in credit and contract protocols;

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

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

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

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

3 (A) failure to satisfy qualification criteria;

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

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

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

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

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

25 (6) The Agency shall select an expert or expert
26 consulting firm, with approval of the Commission, to serve

1 as procurement administrator based on the proposals
2 submitted. If the Commission rejects, within 5 days, the
3 Agency's selection, the Agency shall submit another
4 recommendation within 3 days based on the proposals
5 submitted. The Agency shall award a 5-year contract to the
6 expert or expert consulting firm so selected with
7 Commission approval.

8 (b) The experts or expert consulting firms retained by the
9 Agency shall, as appropriate, prepare procurement plans, and
10 conduct a competitive procurement process as prescribed in
11 Section 16-111.5 of the Public Utilities Act, to ensure
12 adequate, 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 (c) Renewable portfolio standard.

23 (1) The procurement plans shall include cost-effective
24 renewable energy resources. A minimum percentage of each
25 utility's total supply to serve the load of eligible retail
26 customers, as defined in Section 16-111.5(a) of the Public

1 Utilities Act, procured for each of the following years
2 shall be generated from cost-effective renewable energy
3 resources: at least 2% by June 1, 2008; at least 4% by June
4 1, 2009; at least 5% by June 1, 2010; at least 6% by June 1,
5 2011; at least 7% by June 1, 2012; at least 8% by June 1,
6 2013; at least 9% by June 1, 2014; at least 10% by June 1,
7 2015; and increasing by at least 1.5% each year thereafter
8 to at least 25% by June 1, 2025. For periods beginning on
9 and after June 1, 2014, the procurement plans shall also
10 include the procurement of cost-effective renewable energy
11 credits equal to the projected kilowatthour usage of the
12 delivery services non-eligible retail customers within the
13 service area of the electric utility multiplied by the
14 applicable renewable energy resource percentage for that
15 year as set forth in the immediately preceding sentence. To
16 the extent that it is available, at least 75% of the
17 renewable energy resources used to meet these standards
18 shall come from wind generation and, beginning on June 1,
19 2011, at least the following percentages of the renewable
20 energy resources used to meet these standards shall come
21 from photovoltaics on the following schedule: 0.5% by June
22 1, 2012, 1.5% by June 1, 2013; 3% by June 1, 2014; and 6% by
23 June 1, 2015 and thereafter. Of the renewable energy
24 resources procured pursuant to this Section, at least the
25 following percentages shall come from distributed
26 renewable energy generation devices: 0.5% by June 1, 2013,

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

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

25 For purposes of this subsection (c), "cost-effective"
26 means that the costs of procuring renewable energy

1 resources to serve the load of the electric utility's
2 eligible retail customers and the costs of procuring
3 renewable energy credits with respect to the kilowatthour
4 usage of the delivery services non-eligible retail
5 customers within the electric utility's service area do not
6 cause the applicable limits ~~limit~~ stated in paragraph (2)
7 of this subsection (c) to be exceeded and do not exceed
8 benchmarks based on market prices for renewable energy
9 resources in the region, which shall be developed by the
10 procurement administrator, in consultation with the
11 Commission staff, Agency staff, and the procurement
12 monitor and shall be subject to Commission review and
13 approval.

14 (2) For purposes of this subsection (c), the required
15 procurement of cost-effective renewable energy resources
16 to serve the load of the electric utility's eligible retail
17 customers for a particular year shall be measured as a
18 percentage of the actual amount of electricity
19 (megawatt-hours) supplied by the electric utility to
20 eligible retail customers in the planning year ending
21 immediately prior to the procurement and, for periods
22 beginning on and after June 1, 2014, the required
23 procurement of renewable energy credits with respect to the
24 delivery services non-eligible retail customers of the
25 electric utility shall be based on the actual amount of
26 electricity (megawatt-hours) delivered by the electric

1 utility to delivery services non-eligible retail customers
2 in its service area in the planning year ending immediately
3 prior to the procurement. For purposes of this subsection
4 (c), the amount paid per kilowatthour means the total
5 amount paid for electric service expressed on a per
6 kilowatthour basis. For purposes of this subsection (c),
7 the total amount paid for electric service includes without
8 limitation amounts paid for supply, transmission,
9 distribution, surcharges, and add-on taxes.

10 Notwithstanding the requirements of this subsection
11 (c), the total of renewable energy resources procured
12 pursuant to the procurement plan with respect to the load
13 of the electric utility's eligible retail customers for any
14 single year shall be reduced by an amount necessary to
15 limit the annual estimated average net increase due to the
16 costs of these resources included in the amounts paid by
17 eligible retail customers in connection with electric
18 service to:

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

22 (B) in 2009, the greater of an additional 0.5% of
23 the amount paid per kilowatthour by those customers
24 during the year ending May 31, 2008 or 1% of the amount
25 paid per kilowatthour by those customers during the
26 year ending May 31, 2007;

1 (C) in 2010, the greater of an additional 0.5% of
2 the amount paid per kilowatthour by those customers
3 during the year ending May 31, 2009 or 1.5% of the
4 amount paid per kilowatthour by those customers during
5 the year ending May 31, 2007;

6 (D) in 2011, the greater of an additional 0.5% of
7 the amount paid per kilowatthour by those customers
8 during the year ending May 31, 2010 or 2% of the amount
9 paid per kilowatthour by those customers during the
10 year ending May 31, 2007; and

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

22 For periods beginning on and after June 1, 2014,
23 any excluded renewable energy resources contract costs
24 shall be recoverable by the electric utility through
25 its tariffed charges for delivery services pursuant to
26 Section 16-108 of the Public Utilities Act to its

1 delivery services non-eligible retail customers in the
2 residential and small commercial retail customer
3 classes.

4 Notwithstanding the requirements of this
5 subsection (c), for years beginning on and after June
6 1, 2014, the total amount of renewable energy credits
7 procured pursuant to the procurement plan with respect
8 to the kilowatthour usage of the delivery services
9 non-eligible retail customers in the electric
10 utility's service area shall be reduced by an amount
11 necessary to limit the cost of renewable energy credits
12 and excluded renewable energy resources contract costs
13 included in the electric utility's charges per
14 kilowatthour for delivery services to its delivery
15 services non-eligible retail customers to an amount
16 equal to no more than 2.015% of the amount paid by the
17 electric utility's eligible retail customers per
18 kilowatthour for electric service during the year that
19 ended May 31, 2007.

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

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

21 (4) The electric utility shall retire all renewable
22 energy credits used to comply with the standard. The
23 electric utility may sell to the Agency any renewable
24 energy credits it has purchased under a contract entered
25 into pursuant to Section 16-111.5 of the Public Utilities
26 Act that are excluded renewable energy resources contract

1 costs.

2 (5) Beginning with the year commencing June 1, 2010,
3 and ending May 31, 2014, an electric utility subject to
4 this subsection (c) shall apply the lesser of the maximum
5 alternative compliance payment rate or the most recent
6 estimated alternative compliance payment rate for its
7 service territory for the corresponding compliance period,
8 established pursuant to subsection (d) of Section 16-115D
9 of the Public Utilities Act to its retail customers that
10 take service pursuant to the electric utility's hourly
11 pricing tariff or tariffs. The electric utility shall
12 retain all amounts collected as a result of the application
13 of the alternative compliance payment rate or rates to such
14 customers, and, beginning in 2011, the utility shall
15 include in the information provided under item (1) of
16 subsection (d) of Section 16-111.5 of the Public Utilities
17 Act the amounts collected under the alternative compliance
18 payment rate or rates for the prior year ending May 31.
19 Notwithstanding any limitation on the procurement of
20 renewable energy resources imposed by item (2) of this
21 subsection (c), the Agency shall increase its spending on
22 the purchase of renewable energy resources to be procured
23 by the electric utility for the next plan year by an amount
24 equal to the amounts collected by the utility under the
25 alternative compliance payment rate or rates in the prior
26 year ending May 31. For years commencing on and after June

1 1, 2014, the kilowatthours supplied by the electric utility
2 to its retail customers that take service pursuant to the
3 electric utility's hourly pricing tariff or tariffs shall
4 be considered usage of delivery services non-eligible
5 retail customers. Beginning April 1, 2012, and each year
6 thereafter, the Agency shall prepare a public report for
7 the General Assembly and Illinois Commerce Commission that
8 shall include, but not necessarily be limited to:

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

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

20 The analysis shall include the Agency's estimate of the
21 total dollar impact that the Agency's procurement of
22 renewable resources has had on the annual electricity bills
23 of the customer classes that comprise each eligible retail
24 customer class taking service from an electric utility. The
25 Agency's report shall also analyze how the operation of the
26 alternative compliance payment mechanism, any long-term

1 contracts, or other aspects of the applicable renewable
2 portfolio standards impacts the rates of customers of
3 alternative retail electric suppliers.

4 (6) Each annual procurement plan for periods beginning
5 on and after June 1, 2014 shall include the procurement of
6 renewable energy credits to meet the renewable energy
7 resource requirements specified in item (2) of this
8 subsection (c) with respect to the kilowatthour usage of
9 the electric utility's eligible retail customers and the
10 electric utility's delivery services non-eligible retail
11 customers; provided that the electric utility's obligation
12 to purchase renewable energy credits with respect to the
13 kilowatthour usage of delivery services non-eligible
14 retail customers shall be reduced by the amount of any
15 purchases of renewable energy credits by the Agency for the
16 year in respect of the electric utility's service area
17 pursuant to Section 1-56 of this Act using the Illinois
18 Power Agency Renewable Energy Resources Fund. All
19 procurements of renewable energy credits in the
20 procurement plans of the electric utilities shall be
21 pursuant to competitive bidding processes and shall be
22 approved by the Commission pursuant to Section 16-111.5 of
23 the Public Utilities Act.

24 (d) Clean coal portfolio standard.

25 (1) The procurement plans shall include electricity
26 generated using clean coal. Each utility shall enter into

1 one or more sourcing agreements with the initial clean coal
2 facility, as provided in paragraph (3) of this subsection
3 (d), covering electricity generated by the initial clean
4 coal facility representing at least 5% of each utility's
5 total supply to serve the load of eligible retail customers
6 in 2015 and each year thereafter, as described in paragraph
7 (3) of this subsection (d), subject to the limits specified
8 in paragraph (2) of this subsection (d). It is the goal of
9 the State that by January 1, 2025, 25% of the electricity
10 used in the State shall be generated by cost-effective
11 clean coal facilities. For purposes of this subsection (d),
12 "cost-effective" means that the expenditures pursuant to
13 such sourcing agreements do not cause the limit stated in
14 paragraph (2) of this subsection (d) to be exceeded and do
15 not exceed cost-based benchmarks, which shall be developed
16 to assess all expenditures pursuant to such sourcing
17 agreements covering electricity generated by clean coal
18 facilities, other than the initial clean coal facility, by
19 the procurement administrator, in consultation with the
20 Commission staff, Agency staff, and the procurement
21 monitor and shall be subject to Commission review and
22 approval.

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

26 Utilities shall maintain adequate records documenting

1 the purchases under the sourcing agreement to comply with
2 this subsection (d) and shall file an accounting with the
3 load forecast that must be filed with the Agency by July 15
4 of each year, in accordance with subsection (d) of Section
5 16-111.5 of the Public Utilities Act.

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

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

24 Notwithstanding the requirements of this subsection
25 (d), the total amount paid under sourcing agreements with
26 clean coal facilities pursuant to the procurement plan for

1 any given year shall be reduced by an amount necessary to
2 limit the annual estimated average net increase due to the
3 costs of these resources included in the amounts paid by
4 eligible retail customers in connection with electric
5 service to:

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

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

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

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

24 (E) thereafter, the total amount paid under
25 sourcing agreements with clean coal facilities
26 pursuant to the procurement plan for any single year

1 shall be reduced by an amount necessary to limit the
2 estimated average net increase due to the cost of these
3 resources included in the amounts paid by eligible
4 retail customers in connection with electric service
5 to no more than the greater of (i) 2.015% of the amount
6 paid per kilowatthour by those customers during the
7 year ending May 31, 2009 or (ii) the incremental amount
8 per kilowatthour paid for these resources in 2013.
9 These requirements may be altered only as provided by
10 statute.

11 No later than June 30, 2015, the Commission shall
12 review the limitation on the total amount paid under
13 sourcing agreements, if any, with clean coal facilities
14 pursuant to this subsection (d) and report to the General
15 Assembly its findings as to whether that limitation unduly
16 constrains the amount of electricity generated by
17 cost-effective clean coal facilities that is covered by
18 sourcing agreements.

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

1 amendatory Act of the 95th General Assembly, and that will
2 meet the definition of clean coal facility in Section 1-10
3 of this Act when commercial operation commences. The
4 sourcing agreements with this initial clean coal facility
5 shall be subject to both approval of the initial clean coal
6 facility by the General Assembly and satisfaction of the
7 requirements of paragraph (4) of this subsection (d) and
8 shall be executed within 90 days after any such approval by
9 the General Assembly. The Agency and the Commission shall
10 have authority to inspect all books and records associated
11 with the initial clean coal facility during the term of
12 such a sourcing agreement. A utility's sourcing agreement
13 for electricity produced by the initial clean coal facility
14 shall include:

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

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

1 and

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

17 (B) power purchase provisions, which shall:

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

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

25 (iii) require the utility party to such
26 sourcing agreement to buy from the initial clean

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

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

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

25 (i) require the utility party to such sourcing
26 agreement to contract with the initial clean coal

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

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

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

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

16 (D) general provisions, which shall:

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

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

1 Utilities Act; -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (4) Effective date of sourcing agreements with the
17 initial clean coal facility.

18 Any proposed sourcing agreement with the initial clean
19 coal facility shall not become effective unless the
20 following reports are prepared and submitted and
21 authorizations and approvals obtained:

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

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

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

1 the initial clean coal facility. The Commission and
2 Agency may begin the process of selecting such experts
3 or consultants prior to receipt of the facility cost
4 report.

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

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

1 The facility cost report shall be prepared as follows:

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

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

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

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

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

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

1 performing the construction cost quote, potential
2 vendors under long-term service agreements and plant
3 operating agreements, or recognized third party plant
4 operator or operators.

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

13 (D) The facility cost report shall also include an
14 analysis of the initial clean coal facility's ability
15 to deliver power and energy into the applicable
16 regional transmission organization markets and an
17 analysis of the expected capacity factor for the
18 initial clean coal facility.

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

25 (5) Re-powering and retrofitting coal-fired power
26 plants previously owned by Illinois utilities to qualify as

1 clean coal facilities. During the 2009 procurement
2 planning process and thereafter, the Agency and the
3 Commission shall consider sourcing agreements covering
4 electricity generated by power plants that were previously
5 owned by Illinois utilities and that have been or will be
6 converted into clean coal facilities, as defined by Section
7 1-10 of this Act. Pursuant to such procurement planning
8 process, the owners of such facilities may propose to the
9 Agency sourcing agreements with utilities and alternative
10 retail electric suppliers required to comply with
11 subsection (d) of this Section and item (5) of subsection
12 (d) of Section 16-115 of the Public Utilities Act, covering
13 electricity generated by such facilities. In the case of
14 sourcing agreements that are power purchase agreements,
15 the contract price for electricity sales shall be
16 established on a cost of service basis. In the case of
17 sourcing agreements that are contracts for differences,
18 the contract price from which the reference price is
19 subtracted shall be established on a cost of service basis.
20 The Agency and the Commission may approve any such utility
21 sourcing agreements that do not exceed cost-based
22 benchmarks developed by the procurement administrator, in
23 consultation with the Commission staff, Agency staff and
24 the procurement monitor, subject to Commission review and
25 approval. The Commission shall have authority to inspect
26 all books and records associated with these clean coal

1 facilities during the term of any such contract.

2 (6) Costs incurred under this subsection (d) or
3 pursuant to a contract entered into under this subsection
4 (d) shall be deemed prudently incurred and reasonable in
5 amount and the electric utility shall be entitled to full
6 cost recovery pursuant to the tariffs filed with the
7 Commission.

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

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

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

18 (h) The Agency shall assess fees to each bidder to recover
19 the costs incurred in connection with a competitive procurement
20 process.

21 (Source: P.A. 96-159, eff. 8-10-09; 96-1437, eff. 8-17-10;
22 97-325, eff. 8-12-11; 97-616, eff. 10-26-11; 97-618, eff.
23 10-26-11; 97-658, eff. 1-13-12; 97-813, eff. 7-13-12; revised
24 7-25-12.)

25 Section 10. The Public Utilities Act is amended by changing

1 Sections 16-108, 16-111.5, and 16-115D as follows:

2 (220 ILCS 5/16-108)

3 Sec. 16-108. Recovery of costs associated with the
4 provision of delivery services.

5 (a) An electric utility shall file a delivery services
6 tariff with the Commission at least 210 days prior to the date
7 that it is required to begin offering such services pursuant to
8 this Act. An electric utility shall provide the components of
9 delivery services that are subject to the jurisdiction of the
10 Federal Energy Regulatory Commission at the same prices, terms
11 and conditions set forth in its applicable tariff as approved
12 or allowed into effect by that Commission. The Commission shall
13 otherwise have the authority pursuant to Article IX to review,
14 approve, and modify the prices, terms and conditions of those
15 components of delivery services not subject to the jurisdiction
16 of the Federal Energy Regulatory Commission, including the
17 authority to determine the extent to which such delivery
18 services should be offered on an unbundled basis. In making any
19 such determination the Commission shall consider, at a minimum,
20 the effect of additional unbundling on (i) the objective of
21 just and reasonable rates, (ii) electric utility employees, and
22 (iii) the development of competitive markets for electric
23 energy services in Illinois.

24 (b) The Commission shall enter an order approving, or
25 approving as modified, the delivery services tariff no later

1 than 30 days prior to the date on which the electric utility
2 must commence offering such services. The Commission may
3 subsequently modify such tariff pursuant to this Act.

4 (c) The electric utility's tariffs shall define the classes
5 of its customers for purposes of delivery services charges.
6 Delivery services shall be priced and made available to all
7 retail customers electing delivery services in each such class
8 on a nondiscriminatory basis regardless of whether the retail
9 customer chooses the electric utility, an affiliate of the
10 electric utility, or another entity as its supplier of electric
11 power and energy. Charges for delivery services shall be cost
12 based, and shall allow the electric utility to recover the
13 costs of providing delivery services through its charges to its
14 delivery service customers that use the facilities and services
15 associated with such costs. Such costs shall include the costs
16 of owning, operating and maintaining transmission and
17 distribution facilities. Beginning June 1, 2014, charges for
18 delivery services shall also include the recovery of the
19 electric utility's costs of renewable energy credits and
20 excluded renewable energy resources contract costs in
21 accordance with subsection (k) of this Section. The Commission
22 shall also be authorized to consider whether, and if so to what
23 extent, the following costs are appropriately included in the
24 electric utility's delivery services rates: (i) the costs of
25 that portion of generation facilities used for the production
26 and absorption of reactive power in order that retail customers

1 located in the electric utility's service area can receive
2 electric power and energy from suppliers other than the
3 electric utility, and (ii) the costs associated with the use
4 and redispatch of generation facilities to mitigate
5 constraints on the transmission or distribution system in order
6 that retail customers located in the electric utility's service
7 area can receive electric power and energy from suppliers other
8 than the electric utility. Nothing in this subsection shall be
9 construed as directing the Commission to allocate any of the
10 costs described in (i) or (ii) that are found to be
11 appropriately included in the electric utility's delivery
12 services rates to any particular customer group or geographic
13 area in setting delivery services rates.

14 (d) The Commission shall establish charges, terms and
15 conditions for delivery services that are just and reasonable
16 and shall take into account customer impacts when establishing
17 such charges. In establishing charges, terms and conditions for
18 delivery services, the Commission shall take into account
19 voltage level differences. A retail customer shall have the
20 option to request to purchase electric service at any delivery
21 service voltage reasonably and technically feasible from the
22 electric facilities serving that customer's premises provided
23 that there are no significant adverse impacts upon system
24 reliability or system efficiency. A retail customer shall also
25 have the option to request to purchase electric service at any
26 point of delivery that is reasonably and technically feasible

1 provided that there are no significant adverse impacts on
2 system reliability or efficiency. Such requests shall not be
3 unreasonably denied.

4 (e) Electric utilities shall recover the costs of
5 installing, operating or maintaining facilities for the
6 particular benefit of one or more delivery services customers,
7 including without limitation any costs incurred in complying
8 with a customer's request to be served at a different voltage
9 level, directly from the retail customer or customers for whose
10 benefit the costs were incurred, to the extent such costs are
11 not recovered through the charges referred to in subsections
12 (c) and (d) of this Section.

13 (f) An electric utility shall be entitled but not required
14 to implement transition charges in conjunction with the
15 offering of delivery services pursuant to Section 16-104. If an
16 electric utility implements transition charges, it shall
17 implement such charges for all delivery services customers and
18 for all customers described in subsection (h), but shall not
19 implement transition charges for power and energy that a retail
20 customer takes from cogeneration or self-generation facilities
21 located on that retail customer's premises, if such facilities
22 meet the following criteria:

23 (i) the cogeneration or self-generation facilities
24 serve a single retail customer and are located on that
25 retail customer's premises (for purposes of this
26 subparagraph and subparagraph (ii), an industrial or

1 manufacturing retail customer and a third party contractor
2 that is served by such industrial or manufacturing customer
3 through such retail customer's own electrical distribution
4 facilities under the circumstances described in subsection
5 (vi) of the definition of "alternative retail electric
6 supplier" set forth in Section 16-102, shall be considered
7 a single retail customer);

8 (ii) the cogeneration or self-generation facilities
9 either (A) are sized pursuant to generally accepted
10 engineering standards for the retail customer's electrical
11 load at that premises (taking into account standby or other
12 reliability considerations related to that retail
13 customer's operations at that site) or (B) if the facility
14 is a cogeneration facility located on the retail customer's
15 premises, the retail customer is the thermal host for that
16 facility and the facility has been designed to meet that
17 retail customer's thermal energy requirements resulting in
18 electrical output beyond that retail customer's electrical
19 demand at that premises, comply with the operating and
20 efficiency standards applicable to "qualifying facilities"
21 specified in title 18 Code of Federal Regulations Section
22 292.205 as in effect on the effective date of this
23 amendatory Act of 1999;

24 (iii) the retail customer on whose premises the
25 facilities are located either has an exclusive right to
26 receive, and corresponding obligation to pay for, all of

1 the electrical capacity of the facility, or in the case of
2 a cogeneration facility that has been designed to meet the
3 retail customer's thermal energy requirements at that
4 premises, an identified amount of the electrical capacity
5 of the facility, over a minimum 5-year period; and

6 (iv) if the cogeneration facility is sized for the
7 retail customer's thermal load at that premises but exceeds
8 the electrical load, any sales of excess power or energy
9 are made only at wholesale, are subject to the jurisdiction
10 of the Federal Energy Regulatory Commission, and are not
11 for the purpose of circumventing the provisions of this
12 subsection (f).

13 If a generation facility located at a retail customer's
14 premises does not meet the above criteria, an electric utility
15 implementing transition charges shall implement a transition
16 charge until December 31, 2006 for any power and energy taken
17 by such retail customer from such facility as if such power and
18 energy had been delivered by the electric utility. Provided,
19 however, that an industrial retail customer that is taking
20 power from a generation facility that does not meet the above
21 criteria but that is located on such customer's premises will
22 not be subject to a transition charge for the power and energy
23 taken by such retail customer from such generation facility if
24 the facility does not serve any other retail customer and
25 either was installed on behalf of the customer and for its own
26 use prior to January 1, 1997, or is both predominantly fueled

1 by byproducts of such customer's manufacturing process at such
2 premises and sells or offers an average of 300 megawatts or
3 more of electricity produced from such generation facility into
4 the wholesale market. Such charges shall be calculated as
5 provided in Section 16-102, and shall be collected on each
6 kilowatt-hour delivered under a delivery services tariff to a
7 retail customer from the date the customer first takes delivery
8 services until December 31, 2006 except as provided in
9 subsection (h) of this Section. Provided, however, that an
10 electric utility, other than an electric utility providing
11 service to at least 1,000,000 customers in this State on
12 January 1, 1999, shall be entitled to petition for entry of an
13 order by the Commission authorizing the electric utility to
14 implement transition charges for an additional period ending no
15 later than December 31, 2008. The electric utility shall file
16 its petition with supporting evidence no earlier than 16
17 months, and no later than 12 months, prior to December 31,
18 2006. The Commission shall hold a hearing on the electric
19 utility's petition and shall enter its order no later than 8
20 months after the petition is filed. The Commission shall
21 determine whether and to what extent the electric utility shall
22 be authorized to implement transition charges for an additional
23 period. The Commission may authorize the electric utility to
24 implement transition charges for some or all of the additional
25 period, and shall determine the mitigation factors to be used
26 in implementing such transition charges; provided, that the

1 Commission shall not authorize mitigation factors less than
2 110% of those in effect during the 12 months ended December 31,
3 2006. In making its determination, the Commission shall
4 consider the following factors: the necessity to implement
5 transition charges for an additional period in order to
6 maintain the financial integrity of the electric utility; the
7 prudence of the electric utility's actions in reducing its
8 costs since the effective date of this amendatory Act of 1997;
9 the ability of the electric utility to provide safe, adequate
10 and reliable service to retail customers in its service area;
11 and the impact on competition of allowing the electric utility
12 to implement transition charges for the additional period.

13 (g) The electric utility shall file tariffs that establish
14 the transition charges to be paid by each class of customers to
15 the electric utility in conjunction with the provision of
16 delivery services. The electric utility's tariffs shall define
17 the classes of its customers for purposes of calculating
18 transition charges. The electric utility's tariffs shall
19 provide for the calculation of transition charges on a
20 customer-specific basis for any retail customer whose average
21 monthly maximum electrical demand on the electric utility's
22 system during the 6 months with the customer's highest monthly
23 maximum electrical demands equals or exceeds 3.0 megawatts for
24 electric utilities having more than 1,000,000 customers, and
25 for other electric utilities for any customer that has an
26 average monthly maximum electrical demand on the electric

1 utility's system of one megawatt or more, and (A) for which
2 there exists data on the customer's usage during the 3 years
3 preceding the date that the customer became eligible to take
4 delivery services, or (B) for which there does not exist data
5 on the customer's usage during the 3 years preceding the date
6 that the customer became eligible to take delivery services, if
7 in the electric utility's reasonable judgment there exists
8 comparable usage information or a sufficient basis to develop
9 such information, and further provided that the electric
10 utility can require customers for which an individual
11 calculation is made to sign contracts that set forth the
12 transition charges to be paid by the customer to the electric
13 utility pursuant to the tariff.

14 (h) An electric utility shall also be entitled to file
15 tariffs that allow it to collect transition charges from retail
16 customers in the electric utility's service area that do not
17 take delivery services but that take electric power or energy
18 from an alternative retail electric supplier or from an
19 electric utility other than the electric utility in whose
20 service area the customer is located. Such charges shall be
21 calculated, in accordance with the definition of transition
22 charges in Section 16-102, for the period of time that the
23 customer would be obligated to pay transition charges if it
24 were taking delivery services, except that no deduction for
25 delivery services revenues shall be made in such calculation,
26 and usage data from the customer's class shall be used where

1 historical usage data is not available for the individual
2 customer. The customer shall be obligated to pay such charges
3 on a lump sum basis on or before the date on which the customer
4 commences to take service from the alternative retail electric
5 supplier or other electric utility, provided, that the electric
6 utility in whose service area the customer is located shall
7 offer the customer the option of signing a contract pursuant to
8 which the customer pays such charges ratably over the period in
9 which the charges would otherwise have applied.

10 (i) An electric utility shall be entitled to add to the
11 bills of delivery services customers charges pursuant to
12 Sections 9-221, 9-222 (except as provided in Section 9-222.1),
13 and Section 16-114 of this Act, Section 5-5 of the Electricity
14 Infrastructure Maintenance Fee Law, Section 6-5 of the
15 Renewable Energy, Energy Efficiency, and Coal Resources
16 Development Law of 1997, and Section 13 of the Energy
17 Assistance Act.

18 (j) If a retail customer that obtains electric power and
19 energy from cogeneration or self-generation facilities
20 installed for its own use on or before January 1, 1997,
21 subsequently takes service from an alternative retail electric
22 supplier or an electric utility other than the electric utility
23 in whose service area the customer is located for any portion
24 of the customer's electric power and energy requirements
25 formerly obtained from those facilities (including that amount
26 purchased from the utility in lieu of such generation and not

1 as standby power purchases, under a cogeneration displacement
2 tariff in effect as of the effective date of this amendatory
3 Act of 1997), the transition charges otherwise applicable
4 pursuant to subsections (f), (g), or (h) of this Section shall
5 not be applicable in any year to that portion of the customer's
6 electric power and energy requirements formerly obtained from
7 those facilities, provided, that for purposes of this
8 subsection (j), such portion shall not exceed the average
9 number of kilowatt-hours per year obtained from the
10 cogeneration or self-generation facilities during the 3 years
11 prior to the date on which the customer became eligible for
12 delivery services, except as provided in subsection (f) of
13 Section 16-110.

14 (k) Beginning June 1, 2014, the electric utility shall be
15 entitled to recover through its tariffed charges for delivery
16 services (i) the costs of any renewable energy credits
17 purchased to meet the renewable energy resource standards of
18 subsection (c) of Section 1-75 of the Illinois Power Agency Act
19 pursuant to the electric utility's procurement plan as approved
20 in accordance with Section 16-111.5 of this Act, including the
21 cost of renewable energy credits included in the cost of
22 bundled renewable energy resources, and (ii) any excluded
23 renewable energy resources contract costs. For purposes of this
24 Section, the terms "bundled renewable energy resources", "cost
25 of renewable energy credits included in the cost of bundled
26 renewable energy resources", "excluded renewable energy

1 resources contract costs", and "renewable energy credits"
2 shall have the same meanings as defined in Section 1-10 of the
3 Illinois Power Agency Act. The Commission shall determine a
4 just and reasonable allocation of such costs to the various
5 classes of customers taking delivery services from the electric
6 utility, taking into account the provisions of paragraphs (2)
7 and (6) of subsection (c) of Section 1-75 of the Illinois Power
8 Agency Act, provided that any excluded renewable energy
9 resources contract costs shall be allocated to the electric
10 utility's residential and small commercial retail customer
11 classes. In no event shall the Commission allocate the costs of
12 renewable energy credits and excluded renewable energy
13 resources contract costs in a manner that causes the rate
14 limitations specified in paragraph (2) of subsection (c) of
15 Section 1-75 of the Illinois Power Agency Act to be exceeded
16 for any class of customers.

17 The electric utility shall be entitled to recover the cost
18 of such renewable energy credits and excluded renewable energy
19 resources contract costs through an automatic adjustment
20 charge provision in the electric utility's delivery services
21 tariffs that allows the electric utility to adjust its tariffed
22 charges on a quarterly basis for changes in its costs incurred
23 to purchase renewable energy credits and its excluded renewable
24 energy resources contract costs, if any, without the need to
25 file a general delivery services rate case. The electric
26 utility's collections pursuant to such an automatic adjustment

1 charge tariff shall be subject to annual review, reconciliation
2 and true-up against actual costs by the Commission pursuant to
3 a procedure that shall be specified in the electric utility's
4 tariff and approved by the Commission in connection with its
5 approval of the tariff. The procedure shall provide that any
6 difference between the electric utility's collections pursuant
7 to the automatic adjustment charge for an annual period and the
8 electric utility's actual costs of renewable energy credits and
9 actual excluded renewable energy resources contract costs for
10 the annual period shall be refunded to or collected from, as
11 applicable, the electric utility's delivery services customers
12 in subsequent periods.

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

14 (220 ILCS 5/16-111.5)

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

16 (a) An electric utility that on December 31, 2005 served at
17 least 100,000 customers in Illinois shall procure power and
18 energy for its eligible retail customers in accordance with the
19 applicable provisions set forth in Section 1-75 of the Illinois
20 Power Agency Act and this Section and, for years beginning on
21 and after June 1, 2014, shall procure renewable energy credits
22 with respect to the kilowatthour usage of delivery services
23 non-eligible retail customers in the electric utility's
24 service area in accordance with the applicable provisions set
25 forth in Section 1-75 of the Illinois Power Agency Act and this

1 Section. A small multi-jurisdictional electric utility that on
2 December 31, 2005 served less than 100,000 customers in
3 Illinois may elect to procure power and energy for all or a
4 portion of its eligible Illinois retail customers in accordance
5 with the applicable provisions set forth in this Section and
6 Section 1-75 of the Illinois Power Agency Act. This Section
7 shall not apply to a small multi-jurisdictional utility until
8 such time as a small multi-jurisdictional utility requests the
9 Illinois Power Agency to prepare a procurement plan for its
10 eligible retail customers. "Eligible retail customers" for the
11 purposes of this Section means those retail customers that
12 purchase power and energy from the electric utility under
13 fixed-price bundled service tariffs, other than those retail
14 customers whose service is declared or deemed competitive under
15 Section 16-113 and those other customer groups specified in
16 this Section, including self-generating customers, customers
17 electing hourly pricing, or those customers who are otherwise
18 ineligible for fixed-price bundled tariff service. "Delivery
19 services non-eligible retail customers" for the purposes of
20 this Section has the meaning set forth in Section 1-10 of the
21 Illinois Power Agency Act. Those customers that are excluded
22 from the definition of "eligible retail customers" shall not be
23 included in the procurement plan electric supply service load
24 requirements, and the utility shall procure any supply
25 requirements, including capacity, ancillary services, and
26 hourly priced energy, in the applicable markets as needed to

1 serve those customers, provided that the utility may include in
2 its procurement plan load requirements for the load that is
3 associated with those retail customers whose service has been
4 declared or deemed competitive pursuant to Section 16-113 of
5 this Act to the extent that those customers are purchasing
6 power and energy during one of the transition periods
7 identified in subsection (b) of Section 16-113 of this Act.

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

1 implementing tariff, any procurement occurring in accordance
2 with this plan shall be competitively bid through a request for
3 proposals process. Approval and implementation of the
4 procurement plan shall be subject to review and approval by the
5 Commission according to the provisions set forth in this
6 Section. A procurement plan shall include each of the following
7 components:

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

9 (i) multi-year historical analysis of hourly
10 loads;

11 (ii) switching trends and competitive retail
12 market analysis;

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

14 and

15 (iv) growth forecasts by customer class.

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

18 (i) the impact of demand response programs and
19 energy efficiency programs, both current and
20 projected; for small multi-jurisdictional utilities,
21 the impact of demand response and energy efficiency
22 programs approved pursuant to Section 8-408 of this
23 Act, both current and projected; and

24 (ii) supply side needs that are projected to be
25 offset by purchases of renewable energy resources, if
26 any.

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

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

6 (ii) the proposed mix of demand-response products
7 for which contracts will be executed during the next
8 year. For small multi-jurisdictional electric
9 utilities that on December 31, 2005 served fewer than
10 100,000 customers in Illinois, these shall be defined
11 as demand-response products offered in an energy
12 efficiency plan approved pursuant to Section 8-408 of
13 this Act. The cost-effective demand-response measures
14 shall be procured whenever the cost is lower than
15 procuring comparable capacity products, provided that
16 such products shall:

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

19 (B) at least satisfy the demand-response
20 requirements of the regional transmission
21 organization market in which the utility's service
22 territory is located, including, but not limited
23 to, any applicable capacity or dispatch
24 requirements;

25 (C) provide for customers' participation in
26 the stream of benefits produced by the

1 demand-response products;

2 (D) provide for reimbursement by the
3 demand-response provider of the utility for any
4 costs incurred as a result of the failure of the
5 supplier of such products to perform its
6 obligations thereunder; and

7 (E) meet the same credit requirements as apply
8 to suppliers of capacity, in the applicable
9 regional transmission organization market;

10 (iii) monthly forecasted system supply
11 requirements, including expected minimum, maximum, and
12 average values for the planning period;

13 (iv) the proposed mix and selection of standard
14 wholesale products for which contracts will be
15 executed during the next year, separately or in
16 combination, to meet that portion of its load
17 requirements not met through pre-existing contracts,
18 including but not limited to monthly 5 x 16 peak period
19 block energy, monthly off-peak wrap energy, monthly 7 x
20 24 energy, annual 5 x 16 energy, annual off-peak wrap
21 energy, annual 7 x 24 energy, monthly capacity, annual
22 capacity, peak load capacity obligations, capacity
23 purchase plan, and ancillary services;

24 (v) proposed term structures for each wholesale
25 product type included in the proposed procurement plan
26 portfolio of products; and

1 (vi) an assessment of the price risk, load
2 uncertainty, and other factors that are associated
3 with the proposed procurement plan; this assessment,
4 to the extent possible, shall include an analysis of
5 the following factors: contract terms, time frames for
6 securing products or services, fuel costs, weather
7 patterns, transmission costs, market conditions, and
8 the governmental regulatory environment; the proposed
9 procurement plan shall also identify alternatives for
10 those portfolio measures that are identified as having
11 significant price risk.

12 (4) Proposed procedures for balancing loads. The
13 procurement plan shall include, for load requirements
14 included in the procurement plan, the process for (i)
15 hourly balancing of supply and demand and (ii) the criteria
16 for portfolio re-balancing in the event of significant
17 shifts in load.

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

22 (1) The procurement administrator shall:

23 (i) design the final procurement process in
24 accordance with Section 1-75 of the Illinois Power
25 Agency Act and subsection (e) of this Section following
26 Commission approval of the procurement plan;

1 (ii) develop benchmarks in accordance with
2 subsection (e)(3) to be used to evaluate bids; these
3 benchmarks shall be submitted to the Commission for
4 review and approval on a confidential basis prior to
5 the procurement event;

6 (iii) serve as the interface between the electric
7 utility and suppliers;

8 (iv) manage the bidder pre-qualification and
9 registration process;

10 (v) obtain the electric utilities' agreement to
11 the final form of all supply contracts and credit
12 collateral agreements;

13 (vi) administer the request for proposals process;

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

26 (viii) maintain confidentiality of supplier and

1 bidding information in a manner consistent with all
2 applicable laws, rules, regulations, and tariffs;

3 (ix) submit a confidential report to the
4 Commission recommending acceptance or rejection of
5 bids;

6 (x) notify the utility of contract counterparties
7 and contract specifics; and

8 (xi) administer related contingency procurement
9 events.

10 (2) The procurement monitor, who shall be retained by
11 the Commission, shall:

12 (i) monitor interactions among the procurement
13 administrator, suppliers, and utility;

14 (ii) monitor and report to the Commission on the
15 progress of the procurement process;

16 (iii) provide an independent confidential report
17 to the Commission regarding the results of the
18 procurement event;

19 (iv) assess compliance with the procurement plans
20 approved by the Commission for each utility that on
21 December 31, 2005 provided electric service to a least
22 100,000 customers in Illinois and for each small
23 multi-jurisdictional utility that on December 31, 2005
24 served less than 100,000 customers in Illinois;

25 (v) preserve the confidentiality of supplier and
26 bidding information in a manner consistent with all

1 applicable laws, rules, regulations, and tariffs;

2 (vi) provide expert advice to the Commission and
3 consult with the procurement administrator regarding
4 issues related to procurement process design, rules,
5 protocols, and policy-related matters; and

6 (vii) consult with the procurement administrator
7 regarding the development and use of benchmark
8 criteria, standard form contracts, credit policies,
9 and bid documents.

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

12 (1) Beginning in 2008, each Illinois utility procuring
13 power pursuant to this Section shall annually provide a
14 range of load forecasts to the Illinois Power Agency by
15 July 15 of each year, or such other date as may be required
16 by the Commission or Agency. The load forecasts shall cover
17 the 5-year procurement planning period for the next
18 procurement plan and shall include hourly data
19 representing a high-load, low-load and expected-load
20 scenario for the load of the eligible retail customers. For
21 procurement planning periods beginning on and after June 1,
22 2014, the electric utility shall provide a range of annual
23 forecasts for the 5-year procurement planning period of the
24 total annual kilowatthour usage of eligible retail
25 customers and the total annual kilowatthour usage of
26 delivery services non-eligible retail customers in its

1 service area. The utility shall provide supporting data and
2 assumptions for each of the scenarios.

3 (2) Beginning in 2008, the Illinois Power Agency shall
4 prepare a procurement plan by August 15th of each year, or
5 such other date as may be required by the Commission. The
6 procurement plan shall identify the portfolio of
7 demand-response and power and energy products to be
8 procured. Cost-effective demand-response measures shall be
9 procured as set forth in item (iii) of subsection (b) of
10 this Section. Copies of the procurement plan shall be
11 posted and made publicly available on the Agency's and
12 Commission's websites, and copies shall also be provided to
13 each affected electric utility. An affected utility shall
14 have 30 days following the date of posting to provide
15 comment to the Agency on the procurement plan. Other
16 interested entities also may comment on the procurement
17 plan. All comments submitted to the Agency shall be
18 specific, supported by data or other detailed analyses,
19 and, if objecting to all or a portion of the procurement
20 plan, accompanied by specific alternative wording or
21 proposals. All comments shall be posted on the Agency's and
22 Commission's websites. During this 30-day comment period,
23 the Agency shall hold at least one public hearing within
24 each utility's service area for the purpose of receiving
25 public comment on the procurement plan. Within 14 days
26 following the end of the 30-day review period, the Agency

1 shall revise the procurement plan as necessary based on the
2 comments received and file the procurement plan with the
3 Commission and post the procurement plan on the websites.

4 (3) Within 5 days after the filing of the procurement
5 plan, any person objecting to the procurement plan shall
6 file an objection with the Commission. Within 10 days after
7 the filing, the Commission shall determine whether a
8 hearing is necessary. The Commission shall enter its order
9 confirming or modifying the procurement plan within 90 days
10 after the filing of the procurement plan by the Illinois
11 Power Agency.

12 (4) The Commission shall approve the procurement plan,
13 including expressly the forecast used in the procurement
14 plan, if the Commission determines that it will ensure
15 adequate, reliable, affordable, efficient, and
16 environmentally sustainable electric service at the lowest
17 total cost over time, taking into account any benefits of
18 price stability.

19 (e) The procurement process shall include each of the
20 following components:

21 (1) Solicitation, pre-qualification, and registration
22 of bidders. The procurement administrator shall
23 disseminate information to potential bidders to promote a
24 procurement event, notify potential bidders that the
25 procurement administrator may enter into a post-bid price
26 negotiation with bidders that meet the applicable

1 benchmarks, provide supply requirements, and otherwise
2 explain the competitive procurement process. In addition
3 to such other publication as the procurement administrator
4 determines is appropriate, this information shall be
5 posted on the Illinois Power Agency's and the Commission's
6 websites. The procurement administrator shall also
7 administer the prequalification process, including
8 evaluation of credit worthiness, compliance with
9 procurement rules, and agreement to the standard form
10 contract developed pursuant to paragraph (2) of this
11 subsection (e). The procurement administrator shall then
12 identify and register bidders to participate in the
13 procurement event.

14 (2) Standard contract forms and credit terms and
15 instruments. The procurement administrator, in
16 consultation with the utilities, the Commission, and other
17 interested parties and subject to Commission oversight,
18 shall develop and provide standard contract forms for the
19 supplier contracts that meet generally accepted industry
20 practices. Standard credit terms and instruments that meet
21 generally accepted industry practices shall be similarly
22 developed. The procurement administrator shall make
23 available to the Commission all written comments it
24 receives on the contract forms, credit terms, or
25 instruments. If the procurement administrator cannot reach
26 agreement with the applicable electric utility as to the

1 contract terms and conditions, the procurement
2 administrator must notify the Commission of any disputed
3 terms and the Commission shall resolve the dispute. The
4 terms of the contracts shall not be subject to negotiation
5 by winning bidders, and the bidders must agree to the terms
6 of the contract in advance so that winning bids are
7 selected solely on the basis of price.

8 (3) Establishment of a market-based price benchmark.
9 As part of the development of the procurement process, the
10 procurement administrator, in consultation with the
11 Commission staff, Agency staff, and the procurement
12 monitor, shall establish benchmarks for evaluating the
13 final prices in the contracts for each of the products that
14 will be procured through the procurement process. The
15 benchmarks shall be based on price data for similar
16 products for the same delivery period and same delivery
17 hub, or other delivery hubs after adjusting for that
18 difference. The price benchmarks may also be adjusted to
19 take into account differences between the information
20 reflected in the underlying data sources and the specific
21 products and procurement process being used to procure
22 power for the Illinois utilities. The benchmarks shall be
23 confidential but shall be provided to, and will be subject
24 to Commission review and approval, prior to a procurement
25 event.

26 (4) Request for proposals competitive procurement

1 process. The procurement administrator shall design and
2 issue a request for proposals to supply electricity in
3 accordance with each utility's procurement plan, as
4 approved by the Commission. The request for proposals shall
5 set forth a procedure for sealed, binding commitment
6 bidding with pay-as-bid settlement, and provision for
7 selection of bids on the basis of price.

8 (5) A plan for implementing contingencies in the event
9 of supplier default or failure of the procurement process
10 to fully meet the expected load requirement due to
11 insufficient supplier participation, Commission rejection
12 of results, or any other cause.

13 (i) Event of supplier default: In the event of
14 supplier default, the utility shall review the
15 contract of the defaulting supplier to determine if the
16 amount of supply is 200 megawatts or greater, and if
17 there are more than 60 days remaining of the contract
18 term. If both of these conditions are met, and the
19 default results in termination of the contract, the
20 utility shall immediately notify the Illinois Power
21 Agency that a request for proposals must be issued to
22 procure replacement power, and the procurement
23 administrator shall run an additional procurement
24 event. If the contracted supply of the defaulting
25 supplier is less than 200 megawatts or there are less
26 than 60 days remaining of the contract term, the

1 utility shall procure power and energy from the
2 applicable regional transmission organization market,
3 including ancillary services, capacity, and day-ahead
4 or real time energy, or both, for the duration of the
5 contract term to replace the contracted supply;
6 provided, however, that if a needed product is not
7 available through the regional transmission
8 organization market it shall be purchased from the
9 wholesale market.

10 (ii) Failure of the procurement process to fully
11 meet the expected load requirement: If the procurement
12 process fails to fully meet the expected load
13 requirement due to insufficient supplier participation
14 or due to a Commission rejection of the procurement
15 results, the procurement administrator, the
16 procurement monitor, and the Commission staff shall
17 meet within 10 days to analyze potential causes of low
18 supplier interest or causes for the Commission
19 decision. If changes are identified that would likely
20 result in increased supplier participation, or that
21 would address concerns causing the Commission to
22 reject the results of the prior procurement event, the
23 procurement administrator may implement those changes
24 and rerun the request for proposals process according
25 to a schedule determined by those parties and
26 consistent with Section 1-75 of the Illinois Power

1 Agency Act and this subsection. In any event, a new
2 request for proposals process shall be implemented by
3 the procurement administrator within 90 days after the
4 determination that the procurement process has failed
5 to fully meet the expected load requirement.

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

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

20 (f) Within 2 business days after opening the sealed bids,
21 the procurement administrator shall submit a confidential
22 report to the Commission. The report shall contain the results
23 of the bidding for each of the products along with the
24 procurement administrator's recommendation for the acceptance
25 and rejection of bids based on the price benchmark criteria and
26 other factors observed in the process. The procurement monitor

1 also shall submit a confidential report to the Commission
2 within 2 business days after opening the sealed bids. The
3 report shall contain the procurement monitor's assessment of
4 bidder behavior in the process as well as an assessment of the
5 procurement administrator's compliance with the procurement
6 process and rules. The Commission shall review the confidential
7 reports submitted by the procurement administrator and
8 procurement monitor, and shall accept or reject the
9 recommendations of the procurement administrator within 2
10 business days after receipt of the reports.

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

19 (h) The names of the successful bidders and the load
20 weighted average of the winning bid prices for each contract
21 type and for each contract term shall be made available to the
22 public at the time of Commission approval of a procurement
23 event. The Commission, the procurement monitor, the
24 procurement administrator, the Illinois Power Agency, and all
25 participants in the procurement process shall maintain the
26 confidentiality of all other supplier and bidding information

1 in a manner consistent with all applicable laws, rules,
2 regulations, and tariffs. Confidential information, including
3 the confidential reports submitted by the procurement
4 administrator and procurement monitor pursuant to subsection
5 (f) of this Section, shall not be made publicly available and
6 shall not be discoverable by any party in any proceeding,
7 absent a compelling demonstration of need, nor shall those
8 reports be admissible in any proceeding other than one for law
9 enforcement purposes.

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

19 (j) Within 60 days following the effective date of this
20 amendatory Act, each electric utility that on December 31, 2005
21 provided electric service to at least 100,000 customers in
22 Illinois shall prepare and file with the Commission an initial
23 procurement plan, which shall conform in all material respects
24 to the requirements of the procurement plan set forth in
25 subsection (b); provided, however, that the Illinois Power
26 Agency Act shall not apply to the initial procurement plan

1 prepared pursuant to this subsection. The initial procurement
2 plan shall identify the portfolio of power and energy products
3 to be procured and delivered for the period June 2008 through
4 May 2009, and shall identify the proposed procurement
5 administrator, who shall have the same experience and expertise
6 as is required of a procurement administrator hired pursuant to
7 Section 1-75 of the Illinois Power Agency Act. Copies of the
8 procurement plan shall be posted and made publicly available on
9 the Commission's website. The initial procurement plan may
10 include contracts for renewable resources that extend beyond
11 May 2009.

12 (i) Within 14 days following filing of the initial
13 procurement plan, any person may file a detailed objection
14 with the Commission contesting the procurement plan
15 submitted by the electric utility. All objections to the
16 electric utility's plan shall be specific, supported by
17 data or other detailed analyses. The electric utility may
18 file a response to any objections to its procurement plan
19 within 7 days after the date objections are due to be
20 filed. Within 7 days after the date the utility's response
21 is due, the Commission shall determine whether a hearing is
22 necessary. If it determines that a hearing is necessary, it
23 shall require the hearing to be completed and issue an
24 order on the procurement plan within 60 days after the
25 filing of the procurement plan by the electric utility.

26 (ii) The order shall approve or modify the procurement

1 plan, approve an independent procurement administrator,
2 and approve or modify the electric utility's tariffs that
3 are proposed with the initial procurement plan. The
4 Commission shall approve the procurement plan if the
5 Commission determines that it will ensure adequate,
6 reliable, affordable, efficient, and environmentally
7 sustainable electric service at the lowest total cost over
8 time, taking into account any benefits of price stability.

9 (k) In order to promote price stability for residential and
10 small commercial customers during the transition to
11 competition in Illinois, and notwithstanding any other
12 provision of this Act, each electric utility subject to this
13 Section shall enter into one or more multi-year financial swap
14 contracts that become effective on the effective date of this
15 amendatory Act. These contracts may be executed with generators
16 and power marketers, including affiliated interests of the
17 electric utility. These contracts shall be for a term of no
18 more than 5 years and shall, for each respective utility or for
19 any Illinois electric utilities that are affiliated by virtue
20 of a common parent company and that are thereby considered a
21 single electric utility for purposes of this subsection (k),
22 not exceed in the aggregate 3,000 megawatts for any hour of the
23 year. The contracts shall be financial contracts and not energy
24 sales contracts. The contracts shall be executed as
25 transactions under a negotiated master agreement based on the
26 form of master agreement for financial swap contracts sponsored

1 by the International Swaps and Derivatives Association, Inc.
2 and shall be considered pre-existing contracts in the
3 utilities' procurement plans for residential and small
4 commercial customers. Costs incurred pursuant to a contract
5 authorized by this subsection (k) shall be deemed prudently
6 incurred and reasonable in amount and the electric utility
7 shall be entitled to full cost recovery pursuant to the tariffs
8 filed with the Commission.

9 (k-5) In order to promote price stability for residential
10 and small commercial customers during the infrastructure
11 investment program described in subsection (b) of Section
12 16-108.5 of this Act, and notwithstanding any other provision
13 of this Act or the Illinois Power Agency Act, for each electric
14 utility that serves more than one million retail customers in
15 Illinois, the Illinois Power Agency shall conduct a procurement
16 event within 120 days after October 26, 2011 (the effective
17 date of Public Act 97-616) and may procure contracts for energy
18 and renewable energy credits for the period June 1, 2013
19 through December 31, 2017 that satisfy the requirements of this
20 subsection (k-5), including the benchmarks described in this
21 subsection. These contracts shall be entered into as the result
22 of a competitive procurement event, and, to the extent that any
23 provisions of this Section or the Illinois Power Agency Act do
24 not conflict with this subsection (k-5), such provisions shall
25 apply to the procurement event. The energy contracts shall be
26 for 24 hour by 7 day supply over a term that runs from the first

1 delivery year through December 31, 2017. For a utility that
2 serves over 2 million customers, the energy contracts shall be
3 multi-year with pricing escalating at 2.5% per annum. The
4 energy contracts may be designed as financial swaps or may
5 require physical delivery.

6 Within 30 days of October 26, 2011 (the effective date of
7 Public Act 97-616), each such utility shall submit to the
8 Agency updated load forecasts for the period June 1, 2013
9 through December 31, 2017. The megawatt volume of the contracts
10 shall be based on the updated load forecasts of the minimum
11 monthly on-peak or off-peak average load requirements shown in
12 the forecasts, taking into account any existing energy
13 contracts in effect as well as the expected migration of the
14 utility's customers to alternative retail electric suppliers.
15 The renewable energy credit volume shall be based on the number
16 of credits that would satisfy the requirements of subsection
17 (c) of Section 1-75 of the Illinois Power Agency Act, subject
18 to the rate impact caps and other provisions of subsection (c)
19 of Section 1-75 of the Illinois Power Agency Act. The
20 evaluation of contract bids in the competitive procurement
21 events for energy and for renewable energy credits shall
22 incorporate price benchmarks set collaboratively by the
23 Agency, the procurement administrator, the staff of the
24 Commission, and the procurement monitor. If the contracts are
25 swap contracts, then they shall be executed as transactions
26 under a negotiated master agreement based on the form of master

1 agreement for financial swap contracts sponsored by the
2 International Swaps and Derivatives Association, Inc. Costs
3 incurred pursuant to a contract authorized by this subsection
4 (k-5) shall be deemed prudently incurred and reasonable in
5 amount and the electric utility shall be entitled to full cost
6 recovery pursuant to the tariffs filed with the Commission.

7 The cost of administering the procurement event described
8 in this subsection (k-5) shall be paid by the winning supplier
9 or suppliers to the procurement administrator through a
10 supplier fee. In the event that there is no winning supplier
11 for a particular utility, such utility will pay the procurement
12 administrator for the costs associated with the procurement
13 event, and those costs shall not be a recoverable expense.
14 Nothing in this subsection (k-5) is intended to alter the
15 recovery of costs for any other procurement event.

16 (1) An electric utility shall recover its costs incurred
17 under this Section, including, but not limited to, the costs of
18 procuring power and energy demand-response resources under
19 this Section. The utility shall file with the initial
20 procurement plan its proposed tariffs through which its costs
21 of procuring power that are incurred pursuant to a
22 Commission-approved procurement plan and those other costs
23 identified in this subsection (1), will be recovered. The
24 tariffs shall include a formula rate or charge designed to pass
25 through both the costs incurred by the utility in procuring a
26 supply of electric power and energy for the applicable customer

1 classes with no mark-up or return on the price paid by the
2 utility for that supply, plus any just and reasonable costs
3 that the utility incurs in arranging and providing for the
4 supply of electric power and energy. The formula rate or charge
5 shall also contain provisions that ensure that its application
6 does not result in over or under recovery due to changes in
7 customer usage and demand patterns, and that provide for the
8 correction, on at least an annual basis, of any accounting
9 errors that may occur. A utility shall recover through the
10 tariff all reasonable costs incurred to implement or comply
11 with any procurement plan that is developed and put into effect
12 pursuant to Section 1-75 of the Illinois Power Agency Act and
13 this Section, including any fees assessed by the Illinois Power
14 Agency, costs associated with load balancing, and contingency
15 plan costs. The electric utility shall also recover its full
16 costs of procuring electric supply for which it contracted
17 before the effective date of this Section in conjunction with
18 the provision of full requirements service under fixed-price
19 bundled service tariffs subsequent to December 31, 2006. All
20 such costs shall be deemed to have been prudently incurred. The
21 pass-through tariffs that are filed and approved pursuant to
22 this Section shall not be subject to review under, or in any
23 way limited by, Section 16-111(i) of this Act. Beginning June
24 1, 2014, the costs incurred by the electric utility to purchase
25 renewable energy credits in accordance with subsection (c) of
26 Section 1-75 of the Illinois Power Agency Act, and any excluded

1 renewable energy resources contract costs, as defined in
2 Section 1-10 of the Illinois Power Agency Act, shall be
3 recovered through the electric utility's tariffed charges for
4 delivery services pursuant to Section 16-108 of this Act and
5 shall not be recovered through the electric utility's tariffed
6 charges for electric power and energy supply to its eligible
7 retail customers.

8 (1-5) At the request of the Illinois Power Agency, of an
9 electric utility, or of a supplier of renewable energy
10 resources that has entered into a contract to sell renewable
11 energy resources to an electric utility as the result of being
12 a winning supplier in a procurement event pursuant to this
13 Section, the Commission may issue orders finding that there are
14 excluded renewable energy resources contract costs under such
15 contract for a particular year or years. Any order of the
16 Commission finding that there are excluded renewable energy
17 resources contract costs shall include a finding that the
18 excluded renewable energy resources contract costs shall be
19 recovered by the electric utility through its tariffed charges
20 for delivery services in accordance with Section 16-108 of this
21 Act.

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

1 effective date of this amendatory Act.

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

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

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

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

13 (Source: P.A. 97-325, eff. 8-12-11; 97-616, eff. 10-26-11;
14 97-813, eff. 7-13-12.)

15 (220 ILCS 5/16-115D)

16 Sec. 16-115D. Renewable portfolio standard for alternative
17 retail electric suppliers and electric utilities operating
18 outside their service territories.

19 (a) Until May 31, 2014, an ~~An~~ alternative retail electric
20 supplier shall be responsible for procuring cost-effective
21 renewable energy resources as required under item (5) of
22 subsection (d) of Section 16-115 of this Act as outlined
23 herein:

24 (1) The definition of renewable energy resources
25 contained in Section 1-10 of the Illinois Power Agency Act

1 applies to all renewable energy resources required to be
2 procured by alternative retail electric suppliers.

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

11 (3) The quantity of renewable energy resources shall be
12 in amounts at least equal to the annual percentages set
13 forth in item (1) of subsection (c) of Section 1-75 of the
14 Illinois Power Agency Act. At least 60% of the renewable
15 energy resources procured pursuant to items (1) through (3)
16 of subsection (b) of this Section shall come from wind
17 generation and, starting June 1, 2015, at least 6% of the
18 renewable energy resources procured pursuant to items (1)
19 through (3) of subsection (b) of this Section shall come
20 from solar photovoltaics. If, in any given year, an
21 alternative retail electric supplier does not purchase at
22 least these levels of renewable energy resources, then the
23 alternative retail electric supplier shall make
24 alternative compliance payments, as described in
25 subsection (d) of this Section.

26 (4) The quantity and source of renewable energy

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

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

22 (6) The required procurement of renewable energy
23 resources by an alternative retail electric supplier shall
24 apply to all metered electricity delivered to Illinois
25 retail customers by the alternative retail electric
26 supplier pursuant to contracts executed or extended after

1 March 15, 2009.

2 (b) Until May 31, 2014, an ~~An~~ alternative retail electric
3 supplier shall comply with the renewable energy portfolio
4 standards by making an alternative compliance payment, as
5 described in subsection (d) of this Section, to cover at least
6 one-half of the alternative retail electric supplier's
7 compliance obligation and any one or combination of the
8 following means to cover the remainder of the alternative
9 retail electric supplier's compliance obligation:

10 (1) Generating electricity using renewable energy
11 resources identified pursuant to item (4) of subsection (a)
12 of this Section.

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

16 (3) Purchasing renewable energy credits from renewable
17 energy resources identified pursuant to item (4) of
18 subsection (a) of this Section.

19 (4) Making an alternative compliance payment as
20 described in subsection (d) of this Section.

21 (c) Use of renewable energy credits.

22 (1) Renewable energy credits that are not used by an
23 alternative retail electric supplier to comply with a
24 renewable portfolio standard in a compliance year may be
25 banked and carried forward up to 2 12-month compliance
26 periods after the compliance period in which the credit was

1 generated for the purpose of complying with a renewable
2 portfolio standard in those 2 subsequent compliance
3 periods. For the 2009-2010 and 2010-2011 compliance
4 periods, an alternative retail electric supplier may use
5 renewable credits generated after December 31, 2008 and
6 before June 1, 2009 to comply with this Section.

7 (2) An alternative retail electric supplier is
8 responsible for demonstrating that a renewable energy
9 credit used to comply with a renewable portfolio standard
10 is derived from a renewable energy resource and that the
11 alternative retail electric supplier has not used, traded,
12 sold, or otherwise transferred the credit.

13 (3) The same renewable energy credit may be used by an
14 alternative retail electric supplier to comply with a
15 federal renewable portfolio standard and a renewable
16 portfolio standard established under this Act. An
17 alternative retail electric supplier that uses a renewable
18 energy credit to comply with a renewable portfolio standard
19 imposed by any other state may not use the same credit to
20 comply with a renewable portfolio standard established
21 under this Act.

22 (d) Alternative compliance payments.

23 (1) The Commission shall establish and post on its
24 website, within 5 business days after entering an order
25 approving a procurement plan pursuant to Section 1-75 of
26 the Illinois Power Agency Act, maximum alternative

1 compliance payment rates, expressed on a per kilowatt-hour
2 basis, that will be applicable in the first compliance
3 period following the plan approval. A separate maximum
4 alternative compliance payment rate shall be established
5 for the service territory of each electric utility that is
6 subject to subsection (c) of Section 1-75 of the Illinois
7 Power Agency Act. Each maximum alternative compliance
8 payment rate shall be equal to the maximum allowable annual
9 estimated average net increase due to the costs of the
10 utility's purchase of renewable energy resources included
11 in the amounts paid by eligible retail customers in
12 connection with electric service, as described in item (2)
13 of subsection (c) of Section 1-75 of the Illinois Power
14 Agency Act for the compliance period, and as established in
15 the approved procurement plan. Following each procurement
16 event through which renewable energy resources are
17 purchased for one or more of these utilities for the
18 compliance period, the Commission shall establish and post
19 on its website estimates of the alternative compliance
20 payment rates, expressed on a per kilowatt-hour basis, that
21 shall apply for that compliance period. Posting of the
22 estimates shall occur no later than 10 business days
23 following the procurement event, however, the Commission
24 shall not be required to establish and post such estimates
25 more often than once per calendar month. By July 1 of each
26 year, the Commission shall establish and post on its

1 website the actual alternative compliance payment rates
2 for the preceding compliance year. For compliance years
3 beginning prior to June 1, 2014, each alternative
4 compliance payment rate shall be equal to the total amount
5 of dollars that the utility contracted to spend on
6 renewable resources, excepting the additional incremental
7 cost attributable to solar resources, for the compliance
8 period divided by the forecasted load of eligible retail
9 customers, at the customers' meters, as previously
10 established in the Commission-approved procurement plan
11 for that compliance year. ~~For compliance years commencing
12 on or after June 1, 2014, each alternative compliance
13 payment rate shall be equal to the total amount of dollars
14 that the utility contracted to spend on all renewable
15 resources for the compliance period divided by the
16 forecasted load of eligible retail customers, at the
17 customers' meters, as previously established in the
18 Commission approved procurement plan for that compliance
19 year.~~ The actual alternative compliance payment rates may
20 not exceed the maximum alternative compliance payment
21 rates established for the compliance period. For purposes
22 of this subsection (d), the term "eligible retail
23 customers" has the same meaning as found in Section
24 16-111.5 of this Act.

25 (2) In any given compliance year, an alternative retail
26 electric supplier may elect to use alternative compliance

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

13 (3) An alternative retail electric supplier's
14 alternative compliance payments shall be computed
15 separately for each electric utility's service territory
16 within which the alternative retail electric supplier
17 provided retail service during the compliance period,
18 provided that the electric utility was subject to
19 subsection (c) of Section 1-75 of the Illinois Power Agency
20 Act. For each service territory, the alternative retail
21 electric supplier's alternative compliance payment shall
22 be equal to (i) the actual alternative compliance payment
23 rate established in item (1) of this subsection (d),
24 multiplied by (ii) the actual amount of metered electricity
25 delivered by the alternative retail electric supplier to
26 retail customers within the service territory during the

1 compliance period, multiplied by (iii) the result of one
2 minus the ratios of the quantity of renewable energy
3 resources used by the alternative retail electric supplier
4 to comply with the requirements of this Section within the
5 service territory to the product of the percentage of
6 renewable energy resources required under item (3) of
7 subsection (a) of this Section and the actual amount of
8 metered electricity delivered by the alternative retail
9 electric supplier to retail customers within the service
10 territory during the compliance period.

11 (4) All alternative compliance payments by alternative
12 retail electric suppliers shall be deposited in the
13 Illinois Power Agency Renewable Energy Resources Fund and
14 used to purchase renewable energy credits, in accordance
15 with Section 1-56 of the Illinois Power Agency Act.
16 Beginning April 1, 2012 and by April 1 of each year
17 thereafter, the Illinois Power Agency shall submit an
18 annual report to the General Assembly, the Commission, and
19 alternative retail electric suppliers that shall include,
20 but not be limited to:

21 (A) the total amount of alternative compliance
22 payments received in aggregate from alternative retail
23 electric suppliers by planning year for all previous
24 planning years in which the alternative compliance
25 payment was in effect;

26 (B) the amount of those payments utilized to

1 purchased renewable energy credits itemized by the
2 date of each procurement in which the payments were
3 utilized; and

4 (C) the unused and remaining balance in the Agency
5 Renewable Energy Resources Fund attributable to those
6 payments.

7 (5) The Commission, in consultation with the Illinois
8 Power Agency, shall establish a process or proceeding to
9 consider the impact of a federal renewable portfolio
10 standard, if enacted, on the operation of the alternative
11 compliance mechanism, which shall include, but not be
12 limited to, developing, to the extent permitted by the
13 applicable federal statute, an appropriate methodology to
14 apportion renewable energy credits retired as a result of
15 alternative compliance payments made in accordance with
16 this Section. The Commission shall commence any such
17 process or proceeding within 35 days after enactment of a
18 federal renewable portfolio standard.

19 (e) Each alternative retail electric supplier shall, by
20 September 1, 2010 and by September 1 of each year thereafter,
21 prepare and submit to the Commission a report, in a format to
22 be specified by the Commission on or before December 31, 2009,
23 that provides information certifying compliance by the
24 alternative retail electric supplier with this Section,
25 including copies of all PJM-GATS and M-RETS reports, and
26 documentation relating to banking, retiring renewable energy

1 credits, and any other information that the Commission
2 determines necessary to ensure compliance with this Section. An
3 alternative retail electric supplier may file commercially or
4 financially sensitive information or trade secrets with the
5 Commission as provided under the rules of the Commission. To be
6 filed confidentially, the information shall be accompanied by
7 an affidavit that sets forth both the reasons for the
8 confidentiality and a public synopsis of the information.

9 (f) The Commission may initiate a contested case to review
10 allegations that the alternative retail electric supplier has
11 violated this Section, including an order issued or rule
12 promulgated under this Section. In any such proceeding, the
13 alternative retail electric supplier shall have the burden of
14 proof. If the Commission finds, after notice and hearing, that
15 an alternative retail electric supplier has violated this
16 Section, then the Commission shall issue an order requiring the
17 alternative retail electric supplier to:

18 (1) immediately comply with this Section; and

19 (2) if the violation involves a failure to procure the
20 requisite quantity of renewable energy resources or pay the
21 applicable alternative compliance payment by the annual
22 deadline, the Commission shall require the alternative
23 retail electric supplier to double the applicable
24 alternative compliance payment that would otherwise be
25 required to bring the alternative retail electric supplier
26 into compliance with this Section.

1 If an alternative retail electric supplier fails to comply
2 with the renewable energy resource portfolio requirement in
3 this Section more than once in a 5-year period, then the
4 Commission shall revoke the alternative electric supplier's
5 certificate of service authority. The Commission shall not
6 accept an application for a certificate of service authority
7 from an alternative retail electric supplier that has lost
8 certification under this subsection (f), or any corporate
9 affiliate thereof, for at least one year after the date of
10 revocation.

11 (g) All of the provisions of this Section apply to electric
12 utilities operating outside their service area except under
13 item (2) of subsection (a) of this Section the quantity of
14 renewable energy resources shall be measured as a percentage of
15 the actual amount of electricity (megawatt-hours) supplied in
16 the State outside of the utility's service territory during the
17 12-month period June 1 through May 31, commencing June 1, 2009,
18 and the comparable 12-month period in each year thereafter
19 except as provided in item (6) of subsection (a) of this
20 Section.

21 If any such utility fails to procure the requisite quantity
22 of renewable energy resources by the annual deadline, then the
23 Commission shall require the utility to double the alternative
24 compliance payment that would otherwise be required to bring
25 the utility into compliance with this Section.

26 If any such utility fails to comply with the renewable

1 energy resource portfolio requirement in this Section more than
2 once in a 5-year period, then the Commission shall order the
3 utility to cease all sales outside of the utility's service
4 territory for a period of at least one year.

5 (h) The provisions of this Section and the provisions of
6 subsection (d) of Section 16-115 of this Act relating to
7 procurement of renewable energy resources shall not apply to an
8 alternative retail electric supplier that operates a combined
9 heat and power system in this State or that has a corporate
10 affiliate that operates such a combined heat and power system
11 in this State that supplies electricity primarily to or for the
12 benefit of: (i) facilities owned by the supplier, its
13 subsidiary, or other corporate affiliate; (ii) facilities
14 electrically integrated with the electrical system of
15 facilities owned by the supplier, its subsidiary, or other
16 corporate affiliate; or (iii) facilities that are adjacent to
17 the site on which the combined heat and power system is
18 located.

19 (i) The obligations specified in this Section of
20 alternative retail electric suppliers and electric utilities
21 operating outside their service territories to procure
22 renewable energy resources, make alternative compliance
23 payments, and file annual reports, and the obligations of the
24 Commission to determine and post alternative compliance
25 payment rates, shall terminate effective May 31, 2014, provided
26 that alternative retail electric suppliers and electric

1 utilities operating outside their service territories shall be
2 obligated to make all alternative compliance payments that they
3 were obligated to pay for periods through and including May 31,
4 2014 but were not paid as of that date and to file all required
5 reports for periods prior to June 1, 2014. The Commission shall
6 continue to enforce the payment of unpaid alternative
7 compliance payments after May 31, 2014 in accordance with
8 subsections (f) and (g) of this Section. All alternative
9 compliance payments made after May 31, 2014 shall be deposited
10 in the Illinois Power Agency Renewable Energy Resources Fund
11 and used to purchase renewable energy credits, in accordance
12 with Section 1-56 of the Illinois Power Agency Act.

13 (Source: P.A. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09;
14 96-1437, eff. 8-17-10; 97-658, eff. 1-13-12.)

15 Section 99. Effective date. This Act takes effect January
16 1, 2014.