



Sen. Don Harmon

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1 AMENDMENT TO SENATE BILL 2365

2 AMENDMENT NO. _____. Amend Senate Bill 2365 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Finance Authority Act is amended
5 by changing Section 825-65 as follows:

6 (20 ILCS 3501/825-65)

7 Sec. 825-65. Clean Coal, Coal, Energy Efficiency, and
8 Renewable Energy Project Financing.

9 (a) Findings and declaration of policy.

10 (i) It is hereby found and declared that Illinois has
11 abundant coal resources and, in some areas of Illinois, the
12 demand for power exceeds the generating capacity.
13 Incentives to encourage the construction of coal-fueled
14 electric generating plants in Illinois to ensure power
15 generating capacity into the future and to advance clean
16 coal technology and the use of Illinois coal are in the

1 best interests of all of the citizens of Illinois.

2 (ii) It is further found and declared that Illinois has
3 abundant potential and resources to develop renewable
4 energy resource projects and that there are many
5 opportunities to invest in cost-effective energy
6 efficiency projects throughout the State. The development
7 of those projects will create jobs and investment as well
8 as decrease environmental impacts and promote energy
9 independence in Illinois. Accordingly, the development of
10 those projects is in the best interests of all of the
11 citizens of Illinois.

12 (iii) The Authority is authorized to issue bonds to
13 help finance Clean Coal, Coal, Energy Efficiency, and
14 Renewable Energy projects pursuant to this Section.

15 (b) Definitions.

16 (i) "Clean Coal Project" means (A) "clean coal
17 facility", as defined in Section 1-10 of the Illinois Power
18 Agency Act; (B) "clean coal SNG facility", as defined in
19 Section 1-10 of the Illinois Power Agency Act; (C)
20 transmission lines and associated equipment that transfer
21 electricity from points of supply to points of delivery for
22 projects described in this subsection (b); (D) pipelines or
23 other methods to transfer carbon dioxide from the point of
24 production to the point of storage or sequestration for
25 projects described in this subsection (b); or (E) projects
26 to provide carbon abatement technology for existing

1 generating facilities.

2 (ii) "Coal Project" means new electric generating
3 facilities or new gasification facilities, as defined in
4 Section 605-332 of the Department of Commerce and Economic
5 Opportunity Law of the Civil Administrative Code of
6 Illinois, which may include mine-mouth power plants,
7 projects that employ the use of clean coal technology,
8 projects to provide scrubber technology for existing
9 energy generating plants, or projects to provide electric
10 transmission facilities or new gasification facilities.

11 (iii) "Energy Efficiency Project" means measures that
12 reduce the amount of electricity or natural gas required to
13 achieve a given end use, consistent with Section 1-10 of
14 the Illinois Power Agency Act. "Energy Efficiency Project"
15 also includes measures that reduce the total Btus of
16 electricity and natural gas needed to meet the end use or
17 uses consistent with Section 1-10 of the Illinois Power
18 Agency Act.

19 (iv) "Renewable Energy Project" means (A) a project
20 that uses renewable energy resources, as defined in Section
21 1-10 of the Illinois Power Agency Act; (B) a project that
22 uses environmentally preferable technologies and practices
23 that result in improvements to the production of renewable
24 fuels, including but not limited to, cellulosic
25 conversion, water and energy conservation, fractionation,
26 alternative feedstocks, or reduced green house gas

1 emissions; (C) transmission lines and associated equipment
2 that transfer electricity from points of supply to points
3 of delivery for projects described in this subsection (b);
4 or (D) projects that use technology for the storage of
5 renewable energy, including, without limitation, the use
6 of battery or electrochemical storage technology for
7 mobile or stationary applications.

8 (c) Creation of reserve funds. The Authority may establish
9 and maintain one or more reserve funds to enhance bonds issued
10 by the Authority for a Clean Coal Project, a Coal Project, an
11 Energy Efficiency Project, or a Renewable Energy Project. There
12 may be one or more accounts in these reserve funds in which
13 there may be deposited:

14 (1) any proceeds of the bonds issued by the Authority
15 required to be deposited therein by the terms of any
16 contract between the Authority and its bondholders or any
17 resolution of the Authority;

18 (2) any other moneys or funds of the Authority that it
19 may determine to deposit therein from any other source; and

20 (3) any other moneys or funds made available to the
21 Authority. Subject to the terms of any pledge to the owners
22 of any bonds, moneys in any reserve fund may be held and
23 applied to the payment of principal, premium, if any, and
24 interest of such bonds.

25 (d) Powers and duties. The Authority has the power:

26 (1) To issue bonds in one or more series pursuant to

1 one or more resolutions of the Authority for any Clean Coal
2 Project, Coal Project, Energy Efficiency Project, or
3 Renewable Energy Project authorized under this Section,
4 within the authorization set forth in subsection (e).

5 (2) To provide for the funding of any reserves or other
6 funds or accounts deemed necessary by the Authority in
7 connection with any bonds issued by the Authority.

8 (3) To pledge any funds of the Authority or funds made
9 available to the Authority that may be applied to such
10 purpose as security for any bonds or any guarantees,
11 letters of credit, insurance contracts or similar credit
12 support or liquidity instruments securing the bonds.

13 (4) To enter into agreements or contracts with third
14 parties, whether public or private, including, without
15 limitation, the United States of America, the State or any
16 department or agency thereof, to obtain any
17 appropriations, grants, loans or guarantees that are
18 deemed necessary or desirable by the Authority. Any such
19 guarantee, agreement or contract may contain terms and
20 provisions necessary or desirable in connection with the
21 program, subject to the requirements established by the
22 Act.

23 (5) To exercise such other powers as are necessary or
24 incidental to the foregoing.

25 (e) Clean Coal Project, Coal Project, Energy Efficiency
26 Project, and Renewable Energy Project bond authorization and

1 financing limits. In addition to any other bonds authorized to
2 be issued under Sections 801-40(w), 825-60, 830-25 and 845-5,
3 the Authority may have outstanding, at any time, bonds for the
4 purpose enumerated in this Section 825-65 in an aggregate
5 principal amount that shall not exceed \$3,000,000,000, subject
6 to the following limitations: (i) up to \$300,000,000 may be
7 issued to finance projects, as described in clause (C) of
8 subsection (b)(i) and clause (C) of subsection (b)(iv) of this
9 Section 825-65; (ii) up to \$500,000,000 may be issued to
10 finance projects, as described in clauses (D) and (E) of
11 subsection (b)(i) of this Section 825-65; (iii) up to
12 \$2,000,000,000 may be issued to finance Clean Coal Projects, as
13 described in clauses (A) and (B) of subsection (b)(i) of this
14 Section 825-65 and Coal Projects, as described in subsection
15 (b)(ii) of this Section 825-65; and (iv) up to \$2,000,000,000
16 may be issued to finance Energy Efficiency Projects, as
17 described in subsection (b)(iii) of this Section 825-65 and
18 Renewable Energy Projects, as described in clauses (A), (B),
19 and (D) of subsection (b)(iii) of this Section 825-65. An
20 application for a loan financed from bond proceeds from a
21 borrower or its affiliates for a Clean Coal Project, a Coal
22 Project, Energy Efficiency Project, or a Renewable Energy
23 Project may not be approved by the Authority for an amount in
24 excess of \$450,000,000 for any borrower or its affiliates.
25 These bonds shall not constitute an indebtedness or obligation
26 of the State of Illinois and it shall be plainly stated on the

1 face of each bond that it does not constitute an indebtedness
2 or obligation of the State of Illinois, but is payable solely
3 from the revenues, income or other assets of the Authority
4 pledged therefor.

5 (f) The bonding authority granted under this Section is in
6 addition to and not limited by the provisions of Section 845-5.
7 (Source: P.A. 95-470, eff. 8-27-07; 96-103, eff. 1-1-10;
8 96-817, eff. 1-1-10.)

9 Section 10. The Illinois Power Agency Act is amended by
10 changing Section 1-10 as follows:

11 (20 ILCS 3855/1-10)

12 Sec. 1-10. Definitions.

13 "Agency" means the Illinois Power Agency.

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

22 "Authority" means the Illinois Finance Authority.

23 "Clean coal facility" means an electric generating
24 facility that uses primarily coal as a feedstock and that

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

24 "Clean coal SNG brownfield facility" means a facility that
25 (1) has commenced construction by July 1, 2015 on an urban
26 brownfield site in a municipality with at least 1,000,000

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

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

1 "Commission" means the Illinois Commerce Commission.

2 "Costs incurred in connection with the development and
3 construction of a facility" means:

4 (1) the cost of acquisition of all real property,
5 fixtures, and improvements in connection therewith and
6 equipment, personal property, and other property, rights,
7 and easements acquired that are deemed necessary for the
8 operation and maintenance of the facility;

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

11 (3) all origination, commitment, utilization,
12 facility, placement, underwriting, syndication, credit
13 enhancement, and rating agency fees;

14 (4) engineering, design, procurement, consulting,
15 legal, accounting, title insurance, survey, appraisal,
16 escrow, trustee, collateral agency, interest rate hedging,
17 interest rate swap, capitalized interest, contingency, as
18 required by lenders, and other financing costs, and other
19 expenses for professional services; and

20 (5) the costs of plans, specifications, site study and
21 investigation, installation, surveys, other Agency costs
22 and estimates of costs, and other expenses necessary or
23 incidental to determining the feasibility of any project,
24 together with such other expenses as may be necessary or
25 incidental to the financing, insuring, acquisition, and
26 construction of a specific project and starting up,

1 commissioning, and placing that project in operation.

2 "Department" means the Department of Commerce and Economic
3 Opportunity.

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

5 "Demand-response" means measures that decrease peak
6 electricity demand or shift demand from peak to off-peak
7 periods.

8 "Distributed renewable energy generation device" means a
9 device that is:

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

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

22 (3) located on the customer side of the customer's
23 electric meter and is primarily used to offset that
24 customer's electricity load; and

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

1 "Energy efficiency" means measures that reduce the amount
2 of electricity or natural gas required to achieve a given end
3 use. "Energy efficiency" also includes measures that reduce the
4 total Btus of electricity and natural gas needed to meet the
5 end use or uses.

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

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

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

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

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

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

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

1 a facility.

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

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

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

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

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

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

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

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

1 facility and the gas utility, which agreement shall have the
2 terms and conditions meeting the requirements of subsection
3 (h-1) of Section 9-220 of the Public Utilities Act.

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

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

1 be included of financial costs likely to be imposed by future
2 regulations and legislation on emissions of greenhouse gases.

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

7 Section 15. The Public Utilities Act is amended by changing
8 Sections 8-103 and 8-104 as follows:

9 (220 ILCS 5/8-103)

10 Sec. 8-103. Energy efficiency and demand-response
11 measures.

12 (a) It is the policy of the State that electric utilities
13 are required to use cost-effective energy efficiency and
14 demand-response measures to reduce delivery load. Requiring
15 investment in cost-effective energy efficiency and
16 demand-response measures will reduce direct and indirect costs
17 to consumers by decreasing environmental impacts and by
18 avoiding or delaying the need for new generation, transmission,
19 and distribution infrastructure. It serves the public interest
20 to allow electric utilities to recover costs for reasonably and
21 prudently incurred expenses for energy efficiency and
22 demand-response measures. As used in this Section,
23 "cost-effective" means that the measures satisfy the total
24 resource cost test. The low-income measures described in

1 subsection (f)(4) of this Section shall not be required to meet
2 the total resource cost test. For purposes of this Section, the
3 terms "energy-efficiency", "demand-response", "electric
4 utility", and "total resource cost test" shall have the
5 meanings set forth in the Illinois Power Agency Act. For
6 purposes of this Section, the amount per kilowatthour means the
7 total amount paid for electric service expressed on a per
8 kilowatthour basis. For purposes of this Section, the total
9 amount paid for electric service includes without limitation
10 estimated amounts paid for supply, transmission, distribution,
11 surcharges, and add-on-taxes.

12 (b) Electric utilities shall implement cost-effective
13 energy efficiency measures to meet the following incremental
14 annual energy savings goals:

15 (1) 0.2% of energy delivered in the year commencing
16 June 1, 2008;

17 (2) 0.4% of energy delivered in the year commencing
18 June 1, 2009;

19 (3) 0.6% of energy delivered in the year commencing
20 June 1, 2010;

21 (4) 0.8% of energy delivered in the year commencing
22 June 1, 2011;

23 (5) 1% of energy delivered in the year commencing June
24 1, 2012;

25 (6) 1.4% of energy delivered in the year commencing
26 June 1, 2013;

1 (7) 1.8% of energy delivered in the year commencing
2 June 1, 2014; and

3 (8) 2% of energy delivered in the year commencing June
4 1, 2015 and each year thereafter.

5 Electric utilities may comply with this subsection (b) by
6 meeting the annual incremental savings goal in the applicable
7 year or by showing that total savings associated with measures
8 implemented on or after May 31, 2014 were equal to the sum of
9 each annual incremental savings requirement on or after June 1,
10 2014 through the end of the applicable year.

11 (c) Electric utilities shall implement cost-effective
12 demand-response measures to reduce peak demand by 0.1% over the
13 prior year for eligible retail customers, as defined in Section
14 16-111.5 of this Act, and for customers that elect hourly
15 service from the utility pursuant to Section 16-107 of this
16 Act, provided those customers have not been declared
17 competitive. This requirement commences June 1, 2008 and
18 continues for 10 years.

19 (d) Notwithstanding the requirements of subsections (b)
20 and (c) of this Section, an electric utility shall reduce the
21 amount of energy efficiency and demand-response measures
22 implemented over ~~in~~ any 3-year period ~~single year~~ by an amount
23 necessary to limit the estimated average annual increase in the
24 amounts paid by retail customers in connection with electric
25 service due to the cost of those measures to:

26 (1) in 2008, no more than 0.5% of the amount paid per

1 kilowatthour by those customers during the year ending May
2 31, 2007;

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

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

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

18 (5) thereafter, the amount of energy efficiency and
19 demand-response measures implemented for any single year
20 shall be reduced by an amount necessary to limit the
21 estimated average net increase due to the cost of these
22 measures included in the amounts paid by eligible retail
23 customers in connection with electric service to no more
24 than the greater of 2.015% of the amount paid per
25 kilowatthour by those customers during the year ending May
26 31, 2007 or the incremental amount per kilowatthour paid

1 for these measures in 2011.

2 No later than June 30, 2011, the Commission shall review
3 the limitation on the amount of energy efficiency and
4 demand-response measures implemented pursuant to this Section
5 and report to the General Assembly its findings as to whether
6 that limitation unduly constrains the procurement of energy
7 efficiency and demand-response measures.

8 (e) Electric utilities shall be responsible for overseeing
9 the design, development, and filing of energy efficiency and
10 demand-response plans with the Commission. Electric utilities
11 shall implement 100% of the demand-response measures in the
12 plans. Electric utilities shall implement 75% of the energy
13 efficiency measures approved by the Commission, and may, as
14 part of that implementation, outsource various aspects of
15 program development and implementation. The remaining 25% of
16 those energy efficiency measures approved by the Commission
17 shall be implemented by the Department of Commerce and Economic
18 Opportunity, and must be designed in conjunction with the
19 utility and the filing process. The Department may outsource
20 development and implementation of energy efficiency measures.
21 A minimum of 10% of the entire portfolio of cost-effective
22 energy efficiency measures shall be procured from units of
23 local government, municipal corporations, school districts,
24 and community college districts. The Department shall
25 coordinate the implementation of these measures.

26 The apportionment of the dollars to cover the costs to

1 implement the Department's share of the portfolio of energy
2 efficiency measures shall be made to the Department once the
3 Department has executed rebate agreements, grants, or
4 contracts for energy efficiency measures and provided
5 supporting documentation for those rebate agreements, grants,
6 and contracts to the utility. The Department is authorized to
7 adopt any rules necessary and prescribe procedures in order to
8 ensure compliance by applicants in carrying out the purposes of
9 rebate agreements for energy efficiency measures implemented
10 by the Department made under this Section.

11 The details of the measures implemented by the Department
12 shall be submitted by the Department to the Commission in
13 connection with the utility's filing regarding the energy
14 efficiency and demand-response measures that the utility
15 implements.

16 A utility providing approved energy efficiency and
17 demand-response measures in the State shall be permitted to
18 recover costs of those measures through an automatic adjustment
19 clause tariff filed with and approved by the Commission. The
20 tariff shall be established outside the context of a general
21 rate case. Each year the Commission shall initiate a review to
22 reconcile any amounts collected with the actual costs and to
23 determine the required adjustment to the annual tariff factor
24 to match annual expenditures.

25 Each utility shall include, in its recovery of costs, the
26 costs estimated for both the utility's and the Department's

1 implementation of energy efficiency and demand-response
2 measures. Costs collected by the utility for measures
3 implemented by the Department shall be submitted to the
4 Department pursuant to Section 605-323 of the Civil
5 Administrative Code of Illinois, shall be deposited into the
6 Energy Efficiency Portfolio Standards Fund, and shall be used
7 by the Department solely for the purpose of implementing these
8 measures. A utility shall not be required to advance any moneys
9 to the Department but only to forward such funds as it has
10 collected. The Department shall report to the Commission on an
11 annual basis regarding the costs actually incurred by the
12 Department in the implementation of the measures. Any changes
13 to the costs of energy efficiency measures as a result of plan
14 modifications shall be appropriately reflected in amounts
15 recovered by the utility and turned over to the Department.

16 The portfolio of measures, administered by both the
17 utilities and the Department, shall, in combination, be
18 designed to achieve the annual savings targets described in
19 subsections (b) and (c) of this Section, as modified by
20 subsection (d) of this Section.

21 The utility and the Department shall agree upon a
22 reasonable portfolio of measures and determine the measurable
23 corresponding percentage of the savings goals associated with
24 measures implemented by the utility or Department.

25 No utility shall be assessed a penalty under subsection (f)
26 of this Section for failure to make a timely filing if that

1 failure is the result of a lack of agreement with the
2 Department with respect to the allocation of responsibilities
3 or related costs or target assignments. In that case, the
4 Department and the utility shall file their respective plans
5 with the Commission and the Commission shall determine an
6 appropriate division of measures and programs that meets the
7 requirements of this Section.

8 If the Department is unable to meet incremental annual
9 performance goals for the portion of the portfolio implemented
10 by the Department, then the utility and the Department shall
11 jointly submit a modified filing to the Commission explaining
12 the performance shortfall and recommending an appropriate
13 course going forward, including any program modifications that
14 may be appropriate in light of the evaluations conducted under
15 item (7) of subsection (f) of this Section. In this case, the
16 utility obligation to collect the Department's costs and turn
17 over those funds to the Department under this subsection (e)
18 shall continue only if the Commission approves the
19 modifications to the plan proposed by the Department.

20 (f) No later than November 15, 2007, each electric utility
21 shall file an energy efficiency and demand-response plan with
22 the Commission to meet the energy efficiency and
23 demand-response standards for 2008 through 2010. No later than
24 October 1, 2010, each electric utility shall file an energy
25 efficiency and demand-response plan with the Commission to meet
26 the energy efficiency and demand-response standards for 2011

1 through 2013. Every 3 years thereafter, each electric utility
2 shall file, no later than September 1, an energy efficiency and
3 demand-response plan with the Commission. If a utility does not
4 file such a plan by September 1 of an applicable year, it shall
5 face a penalty of \$100,000 per day until the plan is filed.
6 Each utility's plan shall set forth the utility's proposals to
7 meet the utility's portion of the energy efficiency standards
8 identified in subsection (b) and the demand-response standards
9 identified in subsection (c) of this Section as modified by
10 subsections (d) and (e), taking into account the unique
11 circumstances of the utility's service territory. The
12 Commission shall seek public comment on the utility's plan and
13 shall issue an order approving or disapproving each plan within
14 5 months after its submission. If the Commission disapproves a
15 plan, the Commission shall, within 30 days, describe in detail
16 the reasons for the disapproval and describe a path by which
17 the utility may file a revised draft of the plan to address the
18 Commission's concerns satisfactorily. If the utility does not
19 refile with the Commission within 60 days, the utility shall be
20 subject to penalties at a rate of \$100,000 per day until the
21 plan is filed. This process shall continue, and penalties shall
22 accrue, until the utility has successfully filed a portfolio of
23 energy efficiency and demand-response measures. Penalties
24 shall be deposited into the Energy Efficiency Trust Fund. In
25 submitting proposed energy efficiency and demand-response
26 plans and funding levels to meet the savings goals adopted by

1 this Act the utility shall:

2 (1) Demonstrate that its proposed energy efficiency
3 and demand-response measures will achieve the requirements
4 that are identified in subsections (b) and (c) of this
5 Section, as modified by subsections (d) and (e).

6 (2) Present specific proposals to implement new
7 building and appliance standards that have been placed into
8 effect.

9 (3) Present estimates of the total amount paid for
10 electric service expressed on a per kilowatthour basis
11 associated with the proposed portfolio of measures
12 designed to meet the requirements that are identified in
13 subsections (b) and (c) of this Section, as modified by
14 subsections (d) and (e).

15 (4) Coordinate with the Department to present a
16 portfolio of energy efficiency measures proportionate to
17 the share of total annual utility revenues in Illinois from
18 households at or below 150% of the poverty level. The
19 energy efficiency programs shall be targeted to households
20 with incomes at or below 80% of area median income.

21 (5) Demonstrate that its overall portfolio of energy
22 efficiency and demand-response measures, not including
23 programs covered by item (4) of this subsection (f), are
24 cost-effective using the total resource cost test and
25 represent a diverse cross-section of opportunities for
26 customers of all rate classes to participate in the

1 programs.

2 (6) Include a proposed cost-recovery tariff mechanism
3 to fund the proposed energy efficiency and demand-response
4 measures and to ensure the recovery of the prudently and
5 reasonably incurred costs of Commission-approved programs.

6 (7) Provide for an annual independent evaluation of the
7 performance of the cost-effectiveness of the utility's
8 portfolio of measures and the Department's portfolio of
9 measures, as well as a full review of the 3-year results of
10 the broader net program impacts and, to the extent
11 practical, for adjustment of the measures on a
12 going-forward basis as a result of the evaluations. The
13 resources dedicated to evaluation shall not exceed 3% of
14 portfolio resources in any given year.

15 (g) No more than 3% of energy efficiency and
16 demand-response program revenue may be allocated for
17 demonstration of breakthrough equipment and devices.

18 (h) This Section does not apply to an electric utility that
19 on December 31, 2005 provided electric service to fewer than
20 100,000 customers in Illinois.

21 (i) If, after 2 years, an electric utility fails to meet
22 the efficiency standard specified in subsection (b) of this
23 Section, as modified by subsections (d) and (e), it shall make
24 a contribution to the Low-Income Home Energy Assistance
25 Program. The combined total liability for failure to meet the
26 goal shall be \$1,000,000, which shall be assessed as follows: a

1 large electric utility shall pay \$665,000, and a medium
2 electric utility shall pay \$335,000. If, after 3 years, an
3 electric utility fails to meet the efficiency standard
4 specified in subsection (b) of this Section, as modified by
5 subsections (d) and (e), it shall make a contribution to the
6 Low-Income Home Energy Assistance Program. The combined total
7 liability for failure to meet the goal shall be \$1,000,000,
8 which shall be assessed as follows: a large electric utility
9 shall pay \$665,000, and a medium electric utility shall pay
10 \$335,000. In addition, the responsibility for implementing the
11 energy efficiency measures of the utility making the payment
12 shall be transferred to the Illinois Power Agency if, after 3
13 years, or in any subsequent 3-year period, the utility fails to
14 meet the efficiency standard specified in subsection (b) of
15 this Section, as modified by subsections (d) and (e). The
16 Agency shall implement a competitive procurement program to
17 procure resources necessary to meet the standards specified in
18 this Section as modified by subsections (d) and (e), with costs
19 for those resources to be recovered in the same manner as
20 products purchased through the procurement plan as provided in
21 Section 16-111.5. The Director shall implement this
22 requirement in connection with the procurement plan as provided
23 in Section 16-111.5.

24 For purposes of this Section, (i) a "large electric
25 utility" is an electric utility that, on December 31, 2005,
26 served more than 2,000,000 electric customers in Illinois; (ii)

1 a "medium electric utility" is an electric utility that, on
2 December 31, 2005, served 2,000,000 or fewer but more than
3 100,000 electric customers in Illinois; and (iii) Illinois
4 electric utilities that are affiliated by virtue of a common
5 parent company are considered a single electric utility.

6 (j) If, after 3 years, or any subsequent 3-year period, the
7 Department fails to implement the Department's share of energy
8 efficiency measures required by the standards in subsection
9 (b), then the Illinois Power Agency may assume responsibility
10 for and control of the Department's share of the required
11 energy efficiency measures. The Agency shall implement a
12 competitive procurement program to procure resources necessary
13 to meet the standards specified in this Section, with the costs
14 of these resources to be recovered in the same manner as
15 provided for the Department in this Section.

16 (k) No electric utility shall be deemed to have failed to
17 meet the energy efficiency standards to the extent any such
18 failure is due to a failure of the Department or the Agency.

19 (Source: P.A. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09;
20 96-1000, eff. 7-2-10; 97-616, eff. 10-26-11; 97-841, eff.
21 7-20-12.)

22 (220 ILCS 5/8-104)

23 Sec. 8-104. Natural gas energy efficiency programs.

24 (a) It is the policy of the State that natural gas
25 utilities and the Department of Commerce and Economic

1 Opportunity are required to use cost-effective energy
2 efficiency to reduce direct and indirect costs to consumers. It
3 serves the public interest to allow natural gas utilities to
4 recover costs for reasonably and prudently incurred expenses
5 for cost-effective energy efficiency measures.

6 (b) For purposes of this Section, "energy efficiency" means
7 measures that reduce the amount of energy required to achieve a
8 given end use. "Energy efficiency" also includes measures that
9 reduce the total Btus of electricity and natural gas needed to
10 meet the end use or uses. "Cost-effective" and ~~"cost-effective"~~
11 means that the measures satisfy the total resource cost test
12 which, for purposes of this Section, means a standard that is
13 met if, for an investment in energy efficiency, the
14 benefit-cost ratio is greater than one. The benefit-cost ratio
15 is the ratio of the net present value of the total benefits of
16 the measures to the net present value of the total costs as
17 calculated over the lifetime of the measures. The total
18 resource cost test compares the sum of avoided natural gas
19 utility costs, representing the benefits that accrue to the
20 system and the participant in the delivery of those efficiency
21 measures, as well as other quantifiable societal benefits,
22 including avoided electric utility costs, to the sum of all
23 incremental costs of end use measures (including both utility
24 and participant contributions), plus costs to administer,
25 deliver, and evaluate each demand-side measure, to quantify the
26 net savings obtained by substituting demand-side measures for

1 supply resources. In calculating avoided costs, reasonable
2 estimates shall be included for financial costs likely to be
3 imposed by future regulation of emissions of greenhouse gases.
4 The low-income programs described in item (4) of subsection (f)
5 of this Section shall not be required to meet the total
6 resource cost test.

7 (c) Natural gas utilities shall implement cost-effective
8 energy efficiency measures to meet at least the following
9 natural gas savings requirements, which shall be based upon the
10 total amount of gas delivered to retail customers, other than
11 the customers described in subsection (m) of this Section,
12 during calendar year 2009 multiplied by the applicable
13 percentage. Natural gas utilities may comply with this Section
14 by meeting the annual incremental savings goal in the
15 applicable year or by showing that total savings associated
16 with measures implemented after May 31, 2011 were equal to the
17 sum of each annual incremental savings requirement from May 31,
18 2011 through the end of the applicable year:

19 (1) 0.2% by May 31, 2012;

20 (2) an additional 0.4% by May 31, 2013, increasing
21 total savings to .6%;

22 (3) an additional 0.6% by May 31, 2014, increasing
23 total savings to 1.2%;

24 (4) an additional 0.8% by May 31, 2015, increasing
25 total savings to 2.0%;

26 (5) an additional 1% by May 31, 2016, increasing total

1 savings to 3.0%;

2 (6) an additional 1.2% by May 31, 2017, increasing
3 total savings to 4.2%;

4 (7) an additional 1.4% by May 31, 2018, increasing
5 total savings to 5.6%;

6 (8) an additional 1.5% by May 31, 2019, increasing
7 total savings to 7.1%; and

8 (9) an additional 1.5% in each 12-month period
9 thereafter.

10 (d) Notwithstanding the requirements of subsection (c) of
11 this Section, a natural gas utility shall limit the amount of
12 energy efficiency implemented in any 3-year reporting period
13 established by subsection (f) of Section 8-104 of this Act, by
14 an amount necessary to limit the estimated average increase in
15 the amounts paid by retail customers in connection with natural
16 gas service to no more than 2% in the applicable 3-year
17 reporting period. The energy savings requirements in
18 subsection (c) of this Section may be reduced by the Commission
19 for the subject plan, if the utility demonstrates by
20 substantial evidence that it is highly unlikely that the
21 requirements could be achieved without exceeding the
22 applicable spending limits in any 3-year reporting period. No
23 later than September 1, 2013, the Commission shall review the
24 limitation on the amount of energy efficiency measures
25 implemented pursuant to this Section and report to the General
26 Assembly, in the report required by subsection (k) of this

1 Section, its findings as to whether that limitation unduly
2 constrains the procurement of energy efficiency measures.

3 (e) Natural gas utilities shall be responsible for
4 overseeing the design, development, and filing of their
5 efficiency plans with the Commission. The utility shall utilize
6 75% of the available funding associated with energy efficiency
7 programs approved by the Commission, and may outsource various
8 aspects of program development and implementation. The
9 remaining 25% of available funding shall be used by the
10 Department of Commerce and Economic Opportunity to implement
11 energy efficiency measures that achieve no less than 20% of the
12 requirements of subsection (c) of this Section. Such measures
13 shall be designed in conjunction with the utility and approved
14 by the Commission. The Department may outsource development and
15 implementation of energy efficiency measures. A minimum of 10%
16 of the entire portfolio of cost-effective energy efficiency
17 measures shall be procured from local government, municipal
18 corporations, school districts, and community college
19 districts. Five percent of the entire portfolio of
20 cost-effective energy efficiency measures may be granted to
21 local government and municipal corporations for market
22 transformation initiatives. The Department shall coordinate
23 the implementation of these measures and shall integrate
24 delivery of natural gas efficiency programs with electric
25 efficiency programs delivered pursuant to Section 8-103 of this
26 Act, unless the Department can show that integration is not

1 feasible.

2 The apportionment of the dollars to cover the costs to
3 implement the Department's share of the portfolio of energy
4 efficiency measures shall be made to the Department once the
5 Department has executed rebate agreements, grants, or
6 contracts for energy efficiency measures and provided
7 supporting documentation for those rebate agreements, grants,
8 and contracts to the utility. The Department is authorized to
9 adopt any rules necessary and prescribe procedures in order to
10 ensure compliance by applicants in carrying out the purposes of
11 rebate agreements for energy efficiency measures implemented
12 by the Department made under this Section.

13 The details of the measures implemented by the Department
14 shall be submitted by the Department to the Commission in
15 connection with the utility's filing regarding the energy
16 efficiency measures that the utility implements.

17 A utility providing approved energy efficiency measures in
18 this State shall be permitted to recover costs of those
19 measures through an automatic adjustment clause tariff filed
20 with and approved by the Commission. The tariff shall be
21 established outside the context of a general rate case and
22 shall be applicable to the utility's customers other than the
23 customers described in subsection (m) of this Section. Each
24 year the Commission shall initiate a review to reconcile any
25 amounts collected with the actual costs and to determine the
26 required adjustment to the annual tariff factor to match annual

1 expenditures.

2 Each utility shall include, in its recovery of costs, the
3 costs estimated for both the utility's and the Department's
4 implementation of energy efficiency measures. Costs collected
5 by the utility for measures implemented by the Department shall
6 be submitted to the Department pursuant to Section 605-323 of
7 the Civil Administrative Code of Illinois, shall be deposited
8 into the Energy Efficiency Portfolio Standards Fund, and shall
9 be used by the Department solely for the purpose of
10 implementing these measures. A utility shall not be required to
11 advance any moneys to the Department but only to forward such
12 funds as it has collected. The Department shall report to the
13 Commission on an annual basis regarding the costs actually
14 incurred by the Department in the implementation of the
15 measures. Any changes to the costs of energy efficiency
16 measures as a result of plan modifications shall be
17 appropriately reflected in amounts recovered by the utility and
18 turned over to the Department.

19 The portfolio of measures, administered by both the
20 utilities and the Department, shall, in combination, be
21 designed to achieve the annual energy savings requirements set
22 forth in subsection (c) of this Section, as modified by
23 subsection (d) of this Section.

24 The utility and the Department shall agree upon a
25 reasonable portfolio of measures and determine the measurable
26 corresponding percentage of the savings goals associated with

1 measures implemented by the Department.

2 No utility shall be assessed a penalty under subsection (f)
3 of this Section for failure to make a timely filing if that
4 failure is the result of a lack of agreement with the
5 Department with respect to the allocation of responsibilities
6 or related costs or target assignments. In that case, the
7 Department and the utility shall file their respective plans
8 with the Commission and the Commission shall determine an
9 appropriate division of measures and programs that meets the
10 requirements of this Section.

11 If the Department is unable to meet performance
12 requirements for the portion of the portfolio implemented by
13 the Department, then the utility and the Department shall
14 jointly submit a modified filing to the Commission explaining
15 the performance shortfall and recommending an appropriate
16 course going forward, including any program modifications that
17 may be appropriate in light of the evaluations conducted under
18 item (8) of subsection (f) of this Section. In this case, the
19 utility obligation to collect the Department's costs and turn
20 over those funds to the Department under this subsection (e)
21 shall continue only if the Commission approves the
22 modifications to the plan proposed by the Department.

23 (f) No later than October 1, 2010, each gas utility shall
24 file an energy efficiency plan with the Commission to meet the
25 energy efficiency standards through May 31, 2014. Every 3 years
26 thereafter, each utility shall file, no later than October 1,

1 an energy efficiency plan with the Commission. If a utility
2 does not file such a plan by October 1 of the applicable year,
3 then it shall face a penalty of \$100,000 per day until the plan
4 is filed. Each utility's plan shall set forth the utility's
5 proposals to meet the utility's portion of the energy
6 efficiency standards identified in subsection (c) of this
7 Section, as modified by subsection (d) of this Section, taking
8 into account the unique circumstances of the utility's service
9 territory. The Commission shall seek public comment on the
10 utility's plan and shall issue an order approving or
11 disapproving each plan. If the Commission disapproves a plan,
12 the Commission shall, within 30 days, describe in detail the
13 reasons for the disapproval and describe a path by which the
14 utility may file a revised draft of the plan to address the
15 Commission's concerns satisfactorily. If the utility does not
16 refile with the Commission within 60 days after the
17 disapproval, the utility shall be subject to penalties at a
18 rate of \$100,000 per day until the plan is filed. This process
19 shall continue, and penalties shall accrue, until the utility
20 has successfully filed a portfolio of energy efficiency
21 measures. Penalties shall be deposited into the Energy
22 Efficiency Trust Fund and the cost of any such penalties may
23 not be recovered from ratepayers. In submitting proposed energy
24 efficiency plans and funding levels to meet the savings goals
25 adopted by this Act the utility shall:

- 26 (1) Demonstrate that its proposed energy efficiency

1 measures will achieve the requirements that are identified
2 in subsection (c) of this Section, as modified by
3 subsection (d) of this Section.

4 (2) Present specific proposals to implement new
5 building and appliance standards that have been placed into
6 effect.

7 (3) Present estimates of the total amount paid for gas
8 service expressed on a per therm basis associated with the
9 proposed portfolio of measures designed to meet the
10 requirements that are identified in subsection (c) of this
11 Section, as modified by subsection (d) of this Section.

12 (4) Coordinate with the Department to present a
13 portfolio of energy efficiency measures proportionate to
14 the share of total annual utility revenues in Illinois from
15 households at or below 150% of the poverty level. Such
16 programs shall be targeted to households with incomes at or
17 below 80% of area median income.

18 (5) Demonstrate that its overall portfolio of energy
19 efficiency measures, not including programs covered by
20 item (4) of this subsection (f), are cost-effective using
21 the total resource cost test and represent a diverse cross
22 section of opportunities for customers of all rate classes
23 to participate in the programs.

24 (6) Demonstrate that a gas utility affiliated with an
25 electric utility that is required to comply with Section
26 8-103 of this Act has integrated gas and electric

1 efficiency measures into a single program that reduces
2 program or participant costs and appropriately allocates
3 costs to gas and electric ratepayers. The Department shall
4 integrate all gas and electric programs it delivers in any
5 such utilities' service territories, unless the Department
6 can show that integration is not feasible or appropriate.

7 (7) Include a proposed cost recovery tariff mechanism
8 to fund the proposed energy efficiency measures and to
9 ensure the recovery of the prudently and reasonably
10 incurred costs of Commission-approved programs.

11 (8) Provide for quarterly status reports tracking
12 implementation of and expenditures for the utility's
13 portfolio of measures and the Department's portfolio of
14 measures, an annual independent review, and a full
15 independent evaluation of the 3-year results of the
16 performance and the cost-effectiveness of the utility's
17 and Department's portfolios of measures and broader net
18 program impacts and, to the extent practical, for
19 adjustment of the measures on a going forward basis as a
20 result of the evaluations. The resources dedicated to
21 evaluation shall not exceed 3% of portfolio resources in
22 any given 3-year period.

23 (g) No more than 3% of expenditures on energy efficiency
24 measures may be allocated for demonstration of breakthrough
25 equipment and devices.

26 (h) Illinois natural gas utilities that are affiliated by

1 virtue of a common parent company may, at the utilities'
2 request, be considered a single natural gas utility for
3 purposes of complying with this Section.

4 (i) If, after 3 years, a gas utility fails to meet the
5 efficiency standard specified in subsection (c) of this Section
6 as modified by subsection (d), then it shall make a
7 contribution to the Low-Income Home Energy Assistance Program.
8 The total liability for failure to meet the goal shall be
9 assessed as follows:

10 (1) a large gas utility shall pay \$600,000;

11 (2) a medium gas utility shall pay \$400,000; and

12 (3) a small gas utility shall pay \$200,000.

13 For purposes of this Section, (i) a "large gas utility" is
14 a gas utility that on December 31, 2008, served more than
15 1,500,000 gas customers in Illinois; (ii) a "medium gas
16 utility" is a gas utility that on December 31, 2008, served
17 fewer than 1,500,000, but more than 500,000 gas customers in
18 Illinois; and (iii) a "small gas utility" is a gas utility that
19 on December 31, 2008, served fewer than 500,000 and more than
20 100,000 gas customers in Illinois. The costs of this
21 contribution may not be recovered from ratepayers.

22 If a gas utility fails to meet the efficiency standard
23 specified in subsection (c) of this Section, as modified by
24 subsection (d) of this Section, in any 2 consecutive 3-year
25 planning periods, then the responsibility for implementing the
26 utility's energy efficiency measures shall be transferred to an

1 independent program administrator selected by the Commission.
2 Reasonable and prudent costs incurred by the independent
3 program administrator to meet the efficiency standard
4 specified in subsection (c) of this Section, as modified by
5 subsection (d) of this Section, may be recovered from the
6 customers of the affected gas utilities, other than customers
7 described in subsection (m) of this Section. The utility shall
8 provide the independent program administrator with all
9 information and assistance necessary to perform the program
10 administrator's duties including but not limited to customer,
11 account, and energy usage data, and shall allow the program
12 administrator to include inserts in customer bills. The utility
13 may recover reasonable costs associated with any such
14 assistance.

15 (j) No utility shall be deemed to have failed to meet the
16 energy efficiency standards to the extent any such failure is
17 due to a failure of the Department.

18 (k) Not later than January 1, 2012, the Commission shall
19 develop and solicit public comment on a plan to foster
20 statewide coordination and consistency between statutorily
21 mandated natural gas and electric energy efficiency programs to
22 reduce program or participant costs or to improve program
23 performance. Not later than September 1, 2013, the Commission
24 shall issue a report to the General Assembly containing its
25 findings and recommendations.

26 (l) This Section does not apply to a gas utility that on

1 January 1, 2009, provided gas service to fewer than 100,000
2 customers in Illinois.

3 (m) Subsections (a) through (k) of this Section do not
4 apply to customers of a natural gas utility that have a North
5 American Industry Classification System code number that is
6 22111 or any such code number beginning with the digits 31, 32,
7 or 33 and (i) annual usage in the aggregate of 4 million therms
8 or more within the service territory of the affected gas
9 utility or with aggregate usage of 8 million therms or more in
10 this State and complying with the provisions of item (l) of
11 this subsection (m); or (ii) using natural gas as feedstock and
12 meeting the usage requirements described in item (i) of this
13 subsection (m), to the extent such annual feedstock usage is
14 greater than 60% of the customer's total annual usage of
15 natural gas.

16 (1) Customers described in this subsection (m) of this
17 Section shall apply, on a form approved on or before
18 October 1, 2009 by the Department, to the Department to be
19 designated as a self-directing customer ("SDC") or as an
20 exempt customer using natural gas as a feedstock from which
21 other products are made, including, but not limited to,
22 feedstock for a hydrogen plant, on or before the 1st day of
23 February, 2010. Thereafter, application may be made not
24 less than 6 months before the filing date of the gas
25 utility energy efficiency plan described in subsection (f)
26 of this Section; however, a new customer that commences

1 taking service from a natural gas utility after February 1,
2 2010 may apply to become a SDC or exempt customer up to 30
3 days after beginning service. Such application shall
4 contain the following:

5 (A) the customer's certification that, at the time
6 of its application, it qualifies to be a SDC or exempt
7 customer described in this subsection (m) of this
8 Section;

9 (B) in the case of a SDC, the customer's
10 certification that it has established or will
11 establish by the beginning of the utility's 3-year
12 planning period commencing subsequent to the
13 application, and will maintain for accounting
14 purposes, an energy efficiency reserve account and
15 that the customer will accrue funds in said account to
16 be held for the purpose of funding, in whole or in
17 part, energy efficiency measures of the customer's
18 choosing, which may include, but are not limited to,
19 projects involving combined heat and power systems
20 that use the same energy source both for the generation
21 of electrical or mechanical power and the production of
22 steam or another form of useful thermal energy or the
23 use of combustible gas produced from biomass, or both;

24 (C) in the case of a SDC, the customer's
25 certification that annual funding levels for the
26 energy efficiency reserve account will be equal to 2%

1 of the customer's cost of natural gas, composed of the
2 customer's commodity cost and the delivery service
3 charges paid to the gas utility, or \$150,000, whichever
4 is less;

5 (D) in the case of a SDC, the customer's
6 certification that the required reserve account
7 balance will be capped at 3 years' worth of accruals
8 and that the customer may, at its option, make further
9 deposits to the account to the extent such deposit
10 would increase the reserve account balance above the
11 designated cap level;

12 (E) in the case of a SDC, the customer's
13 certification that by October 1 of each year, beginning
14 no sooner than October 1, 2012, the customer will
15 report to the Department information, for the 12-month
16 period ending May 31 of the same year, on all deposits
17 and reductions, if any, to the reserve account during
18 the reporting year, and to the extent deposits to the
19 reserve account in any year are in an amount less than
20 \$150,000, the basis for such reduced deposits; reserve
21 account balances by month; a description of energy
22 efficiency measures undertaken by the customer and
23 paid for in whole or in part with funds from the
24 reserve account; an estimate of the energy saved, or to
25 be saved, by the measure; and that the report shall
26 include a verification by an officer or plant manager

1 of the customer or by a registered professional
2 engineer or certified energy efficiency trade
3 professional that the funds withdrawn from the reserve
4 account were used for the energy efficiency measures;

5 (F) in the case of an exempt customer, the
6 customer's certification of the level of gas usage as
7 feedstock in the customer's operation in a typical year
8 and that it will provide information establishing this
9 level, upon request of the Department;

10 (G) in the case of either an exempt customer or a
11 SDC, the customer's certification that it has provided
12 the gas utility or utilities serving the customer with
13 a copy of the application as filed with the Department;

14 (H) in the case of either an exempt customer or a
15 SDC, certification of the natural gas utility or
16 utilities serving the customer in Illinois including
17 the natural gas utility accounts that are the subject
18 of the application; and

19 (I) in the case of either an exempt customer or a
20 SDC, a verification signed by a plant manager or an
21 authorized corporate officer attesting to the
22 truthfulness and accuracy of the information contained
23 in the application.

24 (2) The Department shall review the application to
25 determine that it contains the information described in
26 provisions (A) through (I) of item (1) of this subsection

1 (m), as applicable. The review shall be completed within 30
2 days after the date the application is filed with the
3 Department. Absent a determination by the Department
4 within the 30-day period, the applicant shall be considered
5 to be a SDC or exempt customer, as applicable, for all
6 subsequent 3-year planning periods, as of the date of
7 filing the application described in this subsection (m). If
8 the Department determines that the application does not
9 contain the applicable information described in provisions
10 (A) through (I) of item (1) of this subsection (m), it
11 shall notify the customer, in writing, of its determination
12 that the application does not contain the required
13 information and identify the information that is missing,
14 and the customer shall provide the missing information
15 within 15 working days after the date of receipt of the
16 Department's notification.

17 (3) The Department shall have the right to audit the
18 information provided in the customer's application and
19 annual reports to ensure continued compliance with the
20 requirements of this subsection. Based on the audit, if the
21 Department determines the customer is no longer in
22 compliance with the requirements of items (A) through (I)
23 of item (1) of this subsection (m), as applicable, the
24 Department shall notify the customer in writing of the
25 noncompliance. The customer shall have 30 days to establish
26 its compliance, and failing to do so, may have its status

1 as a SDC or exempt customer revoked by the Department. The
2 Department shall treat all information provided by any
3 customer seeking SDC status or exemption from the
4 provisions of this Section as strictly confidential.

5 (4) Upon request, or on its own motion, the Commission
6 may open an investigation, no more than once every 3 years
7 and not before October 1, 2014, to evaluate the
8 effectiveness of the self-directing program described in
9 this subsection (m).

10 (n) The applicability of this Section to customers
11 described in subsection (m) of this Section is conditioned on
12 the existence of the SDC program. In no event will any
13 provision of this Section apply to such customers after January
14 1, 2020.

15 (Source: P.A. 96-33, eff. 7-10-09; 97-813, eff. 7-13-12;
16 97-841, eff. 7-20-12.)

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