



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3293

by Rep. Lawrence M. Walsh, Jr. - Michael W. Tryon, John D. Anthony, Tom Demmer, Brian W. Stewart, et al.

SYNOPSIS AS INTRODUCED:

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Amends the Illinois Power Agency Act. Requires the Planning and Procurement Bureau to include in procurement plans and competitive procurement processes the procurement of low carbon energy credits (LCE credits) for all of the utilities' retail customers. Sets forth a low carbon portfolio standard. Provides that the procurement plans shall include cost-effective low carbon energy credits from low carbon energy resources in an amount equal to 70% of each electric utility's annual retail sales of electricity to retail customers in the State during the planning year immediately prior to the development of the procurement plan. Specifies that a renewable energy credit, carbon emission credit, or LCE credit can only be used once to comply with a single portfolio standard and cannot be used to satisfy the requirements of more than one portfolio standard. Amends the Public Utilities Act. Allows the electric utility to recover through tariffed charges all of the costs associated with the purchase of low carbon energy credits from low carbon energy resources. Requires electric utilities to procure low carbon energy credits from low carbon energy resources for all retail customers in its service area in accordance with provisions concerning the low carbon energy portfolio. Requires electric utilities and alternative retail electric suppliers to provide to its customers on a quarterly basis a pie-chart that graphically depicts the quantity of low carbon energy credits from low carbon energy resources procured as a percentage of the actual load of retail customers within its service area. Effective immediately.

LRB099 11088 AMC 31490 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

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

4 Section 1. Low carbon portfolio standard legislative
5 findings. The General Assembly finds and declares the
6 following:

7 (1) Reducing emissions of carbon dioxide and other
8 pollutants and preserving existing low-emission
9 electricity generation in Illinois and adjoining states is
10 critical to improving air quality in Illinois for Illinois
11 residents.

12 (2) The existing renewable portfolio standard has been
13 successful in promoting the growth of renewable energy
14 generation to reduce air pollution in Illinois. However, to
15 achieve its environmental goals, Illinois must expand its
16 commitment to low-emission energy generation and value the
17 environmental attributes of low-carbon generation that
18 currently falls outside the scope of the existing renewable
19 portfolio standard, including, but not limited to, nuclear
20 power.

21 (3) Preserving existing low-emission energy generation
22 and promoting new low-emission energy generation is
23 critical to placing the State on a glide path to meeting
24 anticipated regulatory requirements that have been

1 proposed by the U.S. Environmental Protection Agency under
2 Section 111(d) of the federal Clean Air Act.

3 (4) The Illinois Commerce Commission, the Illinois
4 Power Agency, the Illinois Environmental Protection
5 Agency, and the Department of Commerce and Economic
6 Opportunity issued a report dated January 5, 2015 titled
7 "Potential Nuclear Power Plant Closings in Illinois" (the
8 Report), which addressed the issues identified by Illinois
9 House Resolution 1146 of the 98th General Assembly, which,
10 among other things, urged the Illinois Environmental
11 Protection Agency to prepare a report showing how the
12 premature closure of existing nuclear power plants in
13 Illinois will affect the societal cost of increased
14 greenhouse gas emissions based upon the EPA's published
15 societal cost of greenhouse gases.

16 (5) The Report also identified significant adverse
17 consequences for electric reliability in Illinois,
18 including significant voltage and thermal violations in
19 the interstate transmission network, in the event that
20 Illinois' existing nuclear facilities close prematurely.
21 The Report also found that nuclear power plants are among
22 the most reliable sources of energy, which means that
23 electricity from nuclear power plants is available on the
24 electric grid all hours of the day and when needed, thereby
25 always reducing carbon emissions.

26 (6) The Report also found that the premature closure of

1 existing nuclear power plants in Illinois will negatively
2 affect the economic climate in the region.

3 (7) Illinois House Resolution 1146 further urged that
4 the Report make findings concerning potential market-based
5 solutions that will ensure that the premature closure of
6 these nuclear power plants does not occur and that the
7 associated dire consequences to the environment, electric
8 reliability, and the regional economy are averted.

9 (8) The Report identified potential market-based
10 solutions that will ensure that the premature closure of
11 these nuclear power plants does not occur and that the
12 associated dire consequences to the environment, electric
13 reliability, and the regional economy are averted.

14 The General Assembly therefore finds that it is necessary
15 to establish and implement a low carbon portfolio standard,
16 which will increase the State's reliance on low carbon energy
17 through the procurement of low carbon energy credits from low
18 carbon energy resources.

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

21 (20 ILCS 3855/1-5)

22 Sec. 1-5. Legislative declarations and findings. The
23 General Assembly finds and declares:

24 (1) The health, welfare, and prosperity of all Illinois

1 citizens require the provision of adequate, reliable,
2 affordable, efficient, and environmentally sustainable
3 electric service at the lowest total cost over time, taking
4 into account any benefits of price stability.

5 (2) (Blank). ~~The transition to retail competition is~~
6 ~~not complete. Some customers, especially residential and~~
7 ~~small commercial customers, have failed to benefit from~~
8 ~~lower electricity costs from retail and wholesale~~
9 ~~competition.~~

10 (3) (Blank). ~~Escalating prices for electricity in~~
11 ~~Illinois pose a serious threat to the economic well-being,~~
12 ~~health, and safety of the residents of and the commerce and~~
13 ~~industry of the State.~~

14 (4) It ~~To protect against this threat to economic~~
15 ~~well-being, health, and safety it is necessary to improve~~
16 the process of procuring electricity to serve Illinois
17 residents, to promote investment in energy efficiency and
18 demand-response measures, and to maintain and support
19 development of clean coal technologies, generation
20 resources that operate at all hours of the day and under
21 all weather conditions, low carbon energy resources, and
22 renewable resources.

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

1 (6) Including cost-effective renewable resources and
2 low carbon energy credits from low carbon energy resources
3 in that portfolio will reduce long-term direct and indirect
4 costs to consumers by decreasing environmental impacts and
5 by avoiding or delaying the need for new generation,
6 transmission, and distribution infrastructure.

7 (7) Energy efficiency, demand-response measures, low
8 carbon energy, and renewable energy are resources
9 currently underused in Illinois.

10 (8) The State should encourage the use of advanced
11 clean coal technologies that capture and sequester carbon
12 dioxide emissions to advance environmental protection
13 goals and to demonstrate the viability of coal and
14 coal-derived fuels in a carbon-constrained economy.

15 (9) The General Assembly enacted Public Act 96-0795 to
16 reform the State's purchasing processes, recognizing that
17 government procurement is susceptible to abuse if
18 structural and procedural safeguards are not in place to
19 ensure independence, insulation, oversight, and
20 transparency.

21 (10) The principles that underlie the procurement
22 reform legislation apply also in the context of power
23 purchasing.

24 The General Assembly therefore finds that it is necessary
25 to create the Illinois Power Agency and that the goals and
26 objectives of that Agency are to accomplish each of the

1 following:

2 (A) Develop electricity procurement plans to ensure
3 adequate, reliable, affordable, efficient, and
4 environmentally sustainable electric service at the lowest
5 total cost over time, taking into account any benefits of
6 price stability, for electric utilities that on December
7 31, 2005 provided electric service to at least 100,000
8 customers in Illinois and for small multi-jurisdictional
9 electric utilities that (i) on December 31, 2005 served
10 less than 100,000 customers in Illinois and (ii) request a
11 procurement plan for their Illinois jurisdictional load.
12 The procurement plan shall be updated on an annual basis
13 and shall include renewable energy resources and,
14 beginning with the partial planning year commencing
15 January 1, 2016, low carbon energy credits from low carbon
16 energy resources sufficient to achieve the standards
17 specified in this Act.

18 (B) Conduct competitive procurement processes to
19 procure the supply resources identified in the procurement
20 plan.

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

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

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

3 (E) Ensure that the process of power procurement is
4 conducted in an ethical and transparent fashion, immune
5 from improper influence.

6 (F) Continue to review its policies and practices to
7 determine how best to meet its mission of providing the
8 lowest cost power to the greatest number of people, at any
9 given point in time, in accordance with applicable law.

10 (G) Operate in a structurally insulated, independent,
11 and transparent fashion so that nothing impedes the
12 Agency's mission to secure power at the best prices the
13 market will bear, provided that the Agency meets all
14 applicable legal requirements.

15 (Source: P.A. 97-325, eff. 8-12-11; 97-618, eff. 10-26-11;
16 97-813, eff. 7-13-12.)

17 (20 ILCS 3855/1-10)

18 Sec. 1-10. Definitions.

19 "Agency" means the Illinois Power Agency.

20 "Agency loan agreement" means any agreement pursuant to
21 which the Illinois Finance Authority agrees to loan the
22 proceeds of revenue bonds issued with respect to a project to
23 the Agency upon terms providing for loan repayment installments
24 at least sufficient to pay when due all principal of, interest
25 and premium, if any, on those revenue bonds, and providing for

1 maintenance, insurance, and other matters in respect of the
2 project.

3 "Authority" means the Illinois Finance Authority.

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

1 coal-fired electric generating facility on June 1, 2009 (the
2 effective date of Public Act 95-1027).

3 "Clean coal SNG brownfield facility" means a facility that
4 (1) has commenced construction by July 1, 2015 on an urban
5 brownfield site in a municipality with at least 1,000,000
6 residents; (2) uses a gasification process to produce
7 substitute natural gas; (3) uses coal as at least 50% of the
8 total feedstock over the term of any sourcing agreement with a
9 utility and the remainder of the feedstock may be either
10 petroleum coke or coal, with all such coal having a high
11 bituminous rank and greater than 1.7 pounds of sulfur per
12 million Btu content unless the facility reasonably determines
13 that it is necessary to use additional petroleum coke to
14 deliver additional consumer savings, in which case the facility
15 shall use coal for at least 35% of the total feedstock over the
16 term of any sourcing agreement; and (4) captures and sequesters
17 at least 85% of the total carbon dioxide emissions that the
18 facility would otherwise emit.

19 "Clean coal SNG facility" means a facility that uses a
20 gasification process to produce substitute natural gas, that
21 sequesters at least 90% of the total carbon dioxide emissions
22 that the facility would otherwise emit, that uses at least 90%
23 coal as a feedstock, with all such coal having a high
24 bituminous rank and greater than 1.7 pounds of sulfur per
25 million btu content, and that has a valid and effective permit
26 to construct emission sources and air pollution control

1 equipment and approval with respect to the federal regulations
2 for Prevention of Significant Deterioration of Air Quality
3 (PSD) for the plant pursuant to the federal Clean Air Act;
4 provided, however, a clean coal SNG brownfield facility shall
5 not be a clean coal SNG facility.

6 "Commission" means the Illinois Commerce Commission.

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 "Department" means the Department of Commerce and Economic
8 Opportunity.

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

10 "Demand-response" means measures that decrease peak
11 electricity demand or shift demand from peak to off-peak
12 periods.

13 "Distributed renewable energy generation device" means a
14 device that is:

15 (1) powered by wind, solar thermal energy,
16 photovoltaic cells and panels, biodiesel, crops and
17 untreated and unadulterated organic waste biomass, tree
18 waste, and hydropower that does not involve new
19 construction or significant expansion of hydropower dams;

20 (2) interconnected at the distribution system level of
21 either an electric utility as defined in this Section, an
22 alternative retail electric supplier as defined in Section
23 16-102 of the Public Utilities Act, a municipal utility as
24 defined in Section 3-105 of the Public Utilities Act, or a
25 rural electric cooperative as defined in Section 3-119 of
26 the Public Utilities Act;

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

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

6 "Energy efficiency" means measures that reduce the amount
7 of electricity or natural gas required to achieve a given end
8 use. "Energy efficiency" also includes measures that reduce the
9 total Btus of electricity and natural gas needed to meet the
10 end use or uses.

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

13 "Facility" means an electric generating unit or a
14 co-generating unit that produces electricity along with
15 related equipment necessary to connect the facility to an
16 electric transmission or distribution system.

17 "Governmental aggregator" means one or more units of local
18 government that individually or collectively procure
19 electricity to serve residential retail electrical loads
20 located within its or their jurisdiction.

21 "Local government" means a unit of local government as
22 defined in Section 1 of Article VII of the Illinois
23 Constitution.

24 "Low carbon energy credit" or "LCE credit" means a tradable
25 credit that represents the environmental attributes of one
26 megawatthour of energy produced from a low carbon energy

1 resource.

2 "Low carbon energy resources" or "LCE resources" means
3 energy and its associated low carbon energy credit or low
4 carbon energy credits from a generating unit that does not emit
5 any air pollution, including sulfur dioxide, nitrogen oxide, or
6 carbon dioxide, as reported in the Generation Attribute
7 Tracking System. "Low carbon energy resources" or "LCE
8 resources" includes technology fueled by new and existing solar
9 photovoltaic, solar thermal, wind, hydro, nuclear, tidal
10 energy, wave energy, and clean coal. Notwithstanding the
11 provisions of this definition, generating resources fueled by
12 hydro or clean coal are low carbon energy resources if they
13 satisfy the following criteria:

14 (1) Hydro: the hydro facility or unit must have a total
15 nameplate generating capacity that does not exceed 3
16 megawatts.

17 (2) Clean coal: the electric generating facility must
18 use primarily coal as a feedstock and capture and sequester
19 at least 70% of the total carbon dioxide emissions that the
20 facility would otherwise emit during the period June 1,
21 2016 through May 31, 2018 and at least 90% of the total
22 carbon dioxide emissions that the facility would otherwise
23 emit during the period June 1, 2018 through May 31, 2021.
24 The power block of such a facility shall not exceed the
25 allowable emission rates for sulfur dioxide, nitrogen
26 oxides, carbon monoxide, particulates, and mercury for a

1 natural gas-fired combined cycle facility the same size as
2 and in the same location of such a facility at the time it
3 obtains an approved air permit.

4 "Low carbon energy resources" or "LCE resources" does not
5 include (i) any generating unit whose costs were being
6 recovered through State-regulated rates as of January 1, 2015
7 or (ii) any generating unit for which the energy and capacity
8 is subject to a power purchase agreement with a term of greater
9 than 5 years.

10 "Municipality" means a city, village, or incorporated
11 town.

12 "Person" means any natural person, firm, partnership,
13 corporation, either domestic or foreign, company, association,
14 limited liability company, joint stock company, or association
15 and includes any trustee, receiver, assignee, or personal
16 representative thereof.

17 "Project" means the planning, bidding, and construction of
18 a facility.

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

21 "Real property" means any interest in land together with
22 all structures, fixtures, and improvements thereon, including
23 lands under water and riparian rights, any easements,
24 covenants, licenses, leases, rights-of-way, uses, and other
25 interests, together with any liens, judgments, mortgages, or
26 other claims or security interests related to real property.

1 "Renewable energy credit" means a tradable credit that
2 represents the environmental attributes of a certain amount of
3 energy produced from a renewable energy resource.

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

20 "Retail customer" has the same definition as found in
21 Section 16-102 of the Public Utilities Act.

22 "Revenue bond" means any bond, note, or other evidence of
23 indebtedness issued by the Authority, the principal and
24 interest of which is payable solely from revenues or income
25 derived from any project or activity of the Agency.

26 "Sequester" means permanent storage of carbon dioxide by

1 injecting it into a saline aquifer, a depleted gas reservoir,
2 or an oil reservoir, directly or through an enhanced oil
3 recovery process that may involve intermediate storage,
4 regardless of whether these activities are conducted by a clean
5 coal facility, a clean coal SNG facility, a clean coal SNG
6 brownfield facility, or a party with which a clean coal
7 facility, clean coal SNG facility, or clean coal SNG brownfield
8 facility has contracted for such purposes.

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

23 "Substitute natural gas" or "SNG" means a gas manufactured
24 by gasification of hydrocarbon feedstock, which is
25 substantially interchangeable in use and distribution with
26 conventional natural gas.

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

22 (Source: P.A. 97-96, eff. 7-13-11; 97-239, eff. 8-2-11; 97-491,
23 eff. 8-22-11; 97-616, eff. 10-26-11; 97-813, eff. 7-13-12;
24 98-90, eff. 7-15-13.)

1 Sec. 1-75. Planning and Procurement Bureau. The Planning
2 and Procurement Bureau has the following duties and
3 responsibilities:

4 (a) The Planning and Procurement Bureau shall each year,
5 beginning in 2008, develop procurement plans and conduct
6 competitive procurement processes in accordance with the
7 requirements of Section 16-111.5 of the Public Utilities Act
8 for the eligible retail customers of electric utilities that on
9 December 31, 2005 provided electric service to at least 100,000
10 customers in Illinois, and, beginning with the partial planning
11 year commencing on January 1, 2016, the Planning and
12 Procurement Bureau shall include in such plans and processes
13 the procurement of low carbon energy credits pursuant to
14 subsection (d-5) of this Section for all of the utilities'
15 retail customers. The Planning and Procurement Bureau shall
16 also develop procurement plans and conduct competitive
17 procurement processes in accordance with the requirements of
18 Section 16-111.5 of the Public Utilities Act for the eligible
19 retail customers of small multi-jurisdictional electric
20 utilities that (i) on December 31, 2005 served less than
21 100,000 customers in Illinois and (ii) request a procurement
22 plan for their Illinois jurisdictional load. This Section shall
23 not apply to a small multi-jurisdictional utility until such
24 time as a small multi-jurisdictional utility requests the
25 Agency to prepare a procurement plan for their Illinois
26 jurisdictional load. For the purposes of this Section, the term

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

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

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

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

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

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

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

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

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

1 the affected electric utilities.

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

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

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

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

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

18 (E) expertise in credit and contract protocols;

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

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

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

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

13 (A) failure to satisfy qualification criteria;

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

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

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

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

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

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

18 (b) The experts or expert consulting firms retained by the
19 Agency shall, as appropriate, prepare procurement plans, and
20 conduct a competitive procurement process as prescribed in
21 Section 16-111.5 of the Public Utilities Act, to ensure
22 adequate, reliable, affordable, efficient, and environmentally
23 sustainable electric service at the lowest total cost over
24 time, taking into account any benefits of price stability, for
25 eligible retail customers of electric utilities that on
26 December 31, 2005 provided electric service to at least 100,000

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

6 (c) Renewable portfolio standard.

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

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

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

1 renewable energy generation device.

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

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

25 Notwithstanding the requirements of this subsection
26 (c), the total of renewable energy resources procured

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

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

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

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

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

24 (E) thereafter, the amount of renewable energy
25 resources procured pursuant to the procurement plan
26 for any single year shall be reduced by an amount

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

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

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

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

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

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

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

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

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

25 The analysis shall include the Agency's estimate of the
26 total dollar impact that the Agency's procurement of

1 renewable resources has had on the annual electricity bills
2 of the customer classes that comprise each eligible retail
3 customer class taking service from an electric utility. The
4 Agency's report shall also analyze how the operation of the
5 alternative compliance payment mechanism, any long-term
6 contracts, or other aspects of the applicable renewable
7 portfolio standards impacts the rates of customers of
8 alternative retail electric suppliers.

9 (d) Clean coal portfolio standard.

10 (1) The procurement plans shall include electricity
11 generated using clean coal. Each utility shall enter into
12 one or more sourcing agreements with the initial clean coal
13 facility, as provided in paragraph (3) of this subsection
14 (d), covering electricity generated by the initial clean
15 coal facility representing at least 5% of each utility's
16 total supply to serve the load of eligible retail customers
17 in 2015 and each year thereafter, as described in paragraph
18 (3) of this subsection (d), subject to the limits specified
19 in paragraph (2) of this subsection (d). It is the goal of
20 the State that by January 1, 2025, 25% of the electricity
21 used in the State shall be generated by cost-effective
22 clean coal facilities. For purposes of this subsection (d),
23 "cost-effective" means that the expenditures pursuant to
24 such sourcing agreements do not cause the limit stated in
25 paragraph (2) of this subsection (d) to be exceeded and do
26 not exceed cost-based benchmarks, which shall be developed

1 to assess all expenditures pursuant to such sourcing
2 agreements covering electricity generated by clean coal
3 facilities, other than the initial clean coal facility, by
4 the procurement administrator, in consultation with the
5 Commission staff, Agency staff, and the procurement
6 monitor and shall be subject to Commission review and
7 approval.

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

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

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

21 (2) For purposes of this subsection (d), the required
22 execution of sourcing agreements with the initial clean
23 coal facility for a particular year shall be measured as a
24 percentage of the actual amount of electricity
25 (megawatt-hours) supplied by the electric utility to
26 eligible retail customers in the planning year ending

1 immediately prior to the agreement's execution. For
2 purposes of this subsection (d), the amount paid per
3 kilowatthour means the total amount paid for electric
4 service expressed on a per kilowatthour basis. For purposes
5 of this subsection (d), the total amount paid for electric
6 service includes without limitation amounts paid for
7 supply, transmission, distribution, surcharges and add-on
8 taxes.

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

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

20 (B) in 2011, the greater of an additional 0.5% of
21 the amount paid per kilowatthour by those customers
22 during the year ending May 31, 2010 or 1% of the amount
23 paid per kilowatthour by those customers during the
24 year ending May 31, 2009;

25 (C) in 2012, the greater of an additional 0.5% of
26 the amount paid per kilowatthour by those customers

1 during the year ending May 31, 2011 or 1.5% of the
2 amount paid per kilowatthour by those customers during
3 the year ending May 31, 2009;

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

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

22 No later than June 30, 2015, the Commission shall
23 review the limitation on the total amount paid under
24 sourcing agreements, if any, with clean coal facilities
25 pursuant to this subsection (d) and report to the General
26 Assembly its findings as to whether that limitation unduly

1 constrains the amount of electricity generated by
2 cost-effective clean coal facilities that is covered by
3 sourcing agreements.

4 (3) Initial clean coal facility. In order to promote
5 development of clean coal facilities in Illinois, each
6 electric utility subject to this Section shall execute a
7 sourcing agreement to source electricity from a proposed
8 clean coal facility in Illinois (the "initial clean coal
9 facility") that will have a nameplate capacity of at least
10 500 MW when commercial operation commences, that has a
11 final Clean Air Act permit on the effective date of this
12 amendatory Act of the 95th General Assembly, and that will
13 meet the definition of clean coal facility in Section 1-10
14 of this Act when commercial operation commences. The
15 sourcing agreements with this initial clean coal facility
16 shall be subject to both approval of the initial clean coal
17 facility by the General Assembly and satisfaction of the
18 requirements of paragraph (4) of this subsection (d) and
19 shall be executed within 90 days after any such approval by
20 the General Assembly. The Agency and the Commission shall
21 have authority to inspect all books and records associated
22 with the initial clean coal facility during the term of
23 such a sourcing agreement. A utility's sourcing agreement
24 for electricity produced by the initial clean coal facility
25 shall include:

26 (A) a formula contractual price (the "contract

1 price") approved pursuant to paragraph (4) of this
2 subsection (d), which shall:

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

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

1 requirement for this initial clean coal facility;

2 (B) power purchase provisions, which shall:

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

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

10 (iii) require the utility party to such
11 sourcing agreement to buy from the initial clean
12 coal facility in each hour an amount of energy
13 equal to all clean coal energy made available from
14 the initial clean coal facility during such hour
15 times a fraction, the numerator of which is such
16 utility's retail market sales of electricity
17 (expressed in kilowatthours sold) in the State
18 during the prior calendar month and the
19 denominator of which is the total retail market
20 sales of electricity (expressed in kilowatthours
21 sold) in the State by utilities during such prior
22 month and the sales of electricity (expressed in
23 kilowatthours sold) in the State by alternative
24 retail electric suppliers during such prior month
25 that are subject to the requirements of this
26 subsection (d) and paragraph (5) of subsection (d)

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

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

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

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

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

6 (ii) provide that the utility's payment
7 obligation in respect of the quantity of
8 electricity determined pursuant to the preceding
9 clause (i) shall be limited to an amount equal to
10 (1) the difference between the contract price
11 determined pursuant to subparagraph (A) of
12 paragraph (3) of this subsection (d) and the
13 day-ahead price for electricity delivered to the
14 regional transmission organization market of the
15 utility that is party to such sourcing agreement
16 (or any successor delivery point at which such
17 utility's supply obligations are financially
18 settled on an hourly basis) (the "reference
19 price") on the day preceding the day on which the
20 electricity is delivered to the initial clean coal
21 facility busbar, multiplied by (2) the quantity of
22 electricity determined pursuant to the preceding
23 clause (i); and

24 (iii) not require the utility to take physical
25 delivery of the electricity produced by the
26 facility;

1 (D) general provisions, which shall:

2 (i) specify a term of no more than 30 years,
3 commencing on the commercial operation date of the
4 facility;

5 (ii) provide that utilities shall maintain
6 adequate records documenting purchases under the
7 sourcing agreements entered into to comply with
8 this subsection (d) and shall file an accounting
9 with the load forecast that must be filed with the
10 Agency by July 15 of each year, in accordance with
11 subsection (d) of Section 16-111.5 of the Public
12 Utilities Act;

13 (iii) provide that all costs associated with
14 the initial clean coal facility will be
15 periodically reported to the Federal Energy
16 Regulatory Commission and to purchasers in
17 accordance with applicable laws governing
18 cost-based wholesale power contracts;

19 (iv) permit the Illinois Power Agency to
20 assume ownership of the initial clean coal
21 facility, without monetary consideration and
22 otherwise on reasonable terms acceptable to the
23 Agency, if the Agency so requests no less than 3
24 years prior to the end of the stated contract term;

25 (v) require the owner of the initial clean coal
26 facility to provide documentation to the

1 Commission each year, starting in the facility's
2 first year of commercial operation, accurately
3 reporting the quantity of carbon emissions from
4 the facility that have been captured and
5 sequestered and report any quantities of carbon
6 released from the site or sites at which carbon
7 emissions were sequestered in prior years, based
8 on continuous monitoring of such sites. If, in any
9 year after the first year of commercial operation,
10 the owner of the facility fails to demonstrate that
11 the initial clean coal facility captured and
12 sequestered at least 50% of the total carbon
13 emissions that the facility would otherwise emit
14 or that sequestration of emissions from prior
15 years has failed, resulting in the release of
16 carbon dioxide into the atmosphere, the owner of
17 the facility must offset excess emissions. Any
18 such carbon offsets must be permanent, additional,
19 verifiable, real, located within the State of
20 Illinois, and legally and practicably enforceable.
21 The cost of such offsets for the facility that are
22 not recoverable shall not exceed \$15 million in any
23 given year. No costs of any such purchases of
24 carbon offsets may be recovered from a utility or
25 its customers. All carbon offsets purchased for
26 this purpose and any carbon emission credits

1 associated with sequestration of carbon from the
2 facility must be permanently retired. The initial
3 clean coal facility shall not forfeit its
4 designation as a clean coal facility if the
5 facility fails to fully comply with the applicable
6 carbon sequestration requirements in any given
7 year, provided the requisite offsets are
8 purchased. However, the Attorney General, on
9 behalf of the People of the State of Illinois, may
10 specifically enforce the facility's sequestration
11 requirement and the other terms of this contract
12 provision. Compliance with the sequestration
13 requirements and offset purchase requirements
14 specified in paragraph (3) of this subsection (d)
15 shall be reviewed annually by an independent
16 expert retained by the owner of the initial clean
17 coal facility, with the advance written approval
18 of the Attorney General. The Commission may, in the
19 course of the review specified in item (vii),
20 reduce the allowable return on equity for the
21 facility if the facility wilfully fails to comply
22 with the carbon capture and sequestration
23 requirements set forth in this item (v);

24 (vi) include limits on, and accordingly
25 provide for modification of, the amount the
26 utility is required to source under the sourcing

1 agreement consistent with paragraph (2) of this
2 subsection (d);

3 (vii) require Commission review: (1) to
4 determine the justness, reasonableness, and
5 prudence of the inputs to the formula referenced in
6 subparagraphs (A) (i) through (A) (iii) of paragraph
7 (3) of this subsection (d), prior to an adjustment
8 in those inputs including, without limitation, the
9 capital structure and return on equity, fuel
10 costs, and other operations and maintenance costs
11 and (2) to approve the costs to be passed through
12 to customers under the sourcing agreement by which
13 the utility satisfies its statutory obligations.
14 Commission review shall occur no less than every 3
15 years, regardless of whether any adjustments have
16 been proposed, and shall be completed within 9
17 months;

18 (viii) limit the utility's obligation to such
19 amount as the utility is allowed to recover through
20 tariffs filed with the Commission, provided that
21 neither the clean coal facility nor the utility
22 waives any right to assert federal pre-emption or
23 any other argument in response to a purported
24 disallowance of recovery costs;

25 (ix) limit the utility's or alternative retail
26 electric supplier's obligation to incur any

1 liability until such time as the facility is in
2 commercial operation and generating power and
3 energy and such power and energy is being delivered
4 to the facility busbar;

5 (x) provide that the owner or owners of the
6 initial clean coal facility, which is the
7 counterparty to such sourcing agreement, shall
8 have the right from time to time to elect whether
9 the obligations of the utility party thereto shall
10 be governed by the power purchase provisions or the
11 contract for differences provisions;

12 (xi) append documentation showing that the
13 formula rate and contract, insofar as they relate
14 to the power purchase provisions, have been
15 approved by the Federal Energy Regulatory
16 Commission pursuant to Section 205 of the Federal
17 Power Act;

18 (xii) provide that any changes to the terms of
19 the contract, insofar as such changes relate to the
20 power purchase provisions, are subject to review
21 under the public interest standard applied by the
22 Federal Energy Regulatory Commission pursuant to
23 Sections 205 and 206 of the Federal Power Act; and

24 (xiii) conform with customary lender
25 requirements in power purchase agreements used as
26 the basis for financing non-utility generators.

1 (4) Effective date of sourcing agreements with the
2 initial clean coal facility.

3 Any proposed sourcing agreement with the initial clean
4 coal facility shall not become effective unless the
5 following reports are prepared and submitted and
6 authorizations and approvals obtained:

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

20 (ii) Commission report. Within 6 months following
21 receipt of the facility cost report, the Commission, in
22 consultation with the Agency, shall submit a report to
23 the General Assembly setting forth its analysis of the
24 facility cost report. Such report shall include, but
25 not be limited to, a comparison of the costs associated
26 with electricity generated by the initial clean coal

1 facility to the costs associated with electricity
2 generated by other types of generation facilities, an
3 analysis of the rate impacts on residential and small
4 business customers over the life of the sourcing
5 agreements, and an analysis of the likelihood that the
6 initial clean coal facility will commence commercial
7 operation by and be delivering power to the facility's
8 busbar by 2016. To assist in the preparation of its
9 report, the Commission, in consultation with the
10 Agency, may hire one or more experts or consultants,
11 the costs of which shall be paid for by the owner of
12 the initial clean coal facility. The Commission and
13 Agency may begin the process of selecting such experts
14 or consultants prior to receipt of the facility cost
15 report.

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

1 (iv) Commission review. If the General Assembly
2 enacts authorizing legislation pursuant to
3 subparagraph (iii) approving a sourcing agreement, the
4 Commission shall, within 90 days of such enactment,
5 complete a review of such sourcing agreement. During
6 such time period, the Commission shall implement any
7 directive of the General Assembly, resolve any
8 disputes between the parties to the sourcing agreement
9 concerning the terms of such agreement, approve the
10 form of such agreement, and issue an order finding that
11 the sourcing agreement is prudent and reasonable.

12 The facility cost report shall be prepared as follows:

13 (A) The facility cost report shall be prepared by
14 duly licensed engineering and construction firms
15 detailing the estimated capital costs payable to one or
16 more contractors or suppliers for the engineering,
17 procurement and construction of the components
18 comprising the initial clean coal facility and the
19 estimated costs of operation and maintenance of the
20 facility. The facility cost report shall include:

21 (i) an estimate of the capital cost of the core
22 plant based on one or more front end engineering
23 and design studies for the gasification island and
24 related facilities. The core plant shall include
25 all civil, structural, mechanical, electrical,
26 control, and safety systems.

1 (ii) an estimate of the capital cost of the
2 balance of the plant, including any capital costs
3 associated with sequestration of carbon dioxide
4 emissions and all interconnects and interfaces
5 required to operate the facility, such as
6 transmission of electricity, construction or
7 backfeed power supply, pipelines to transport
8 substitute natural gas or carbon dioxide, potable
9 water supply, natural gas supply, water supply,
10 water discharge, landfill, access roads, and coal
11 delivery.

12 The quoted construction costs shall be expressed
13 in nominal dollars as of the date that the quote is
14 prepared and shall include capitalized financing costs
15 during construction, taxes, insurance, and other
16 owner's costs, and an assumed escalation in materials
17 and labor beyond the date as of which the construction
18 cost quote is expressed.

19 (B) The front end engineering and design study for
20 the gasification island and the cost study for the
21 balance of plant shall include sufficient design work
22 to permit quantification of major categories of
23 materials, commodities and labor hours, and receipt of
24 quotes from vendors of major equipment required to
25 construct and operate the clean coal facility.

26 (C) The facility cost report shall also include an

1 operating and maintenance cost quote that will provide
2 the estimated cost of delivered fuel, personnel,
3 maintenance contracts, chemicals, catalysts,
4 consumables, spares, and other fixed and variable
5 operations and maintenance costs. The delivered fuel
6 cost estimate will be provided by a recognized third
7 party expert or experts in the fuel and transportation
8 industries. The balance of the operating and
9 maintenance cost quote, excluding delivered fuel
10 costs, will be developed based on the inputs provided
11 by duly licensed engineering and construction firms
12 performing the construction cost quote, potential
13 vendors under long-term service agreements and plant
14 operating agreements, or recognized third party plant
15 operator or operators.

16 The operating and maintenance cost quote
17 (including the cost of the front end engineering and
18 design study) shall be expressed in nominal dollars as
19 of the date that the quote is prepared and shall
20 include taxes, insurance, and other owner's costs, and
21 an assumed escalation in materials and labor beyond the
22 date as of which the operating and maintenance cost
23 quote is expressed.

24 (D) The facility cost report shall also include an
25 analysis of the initial clean coal facility's ability
26 to deliver power and energy into the applicable

1 regional transmission organization markets and an
2 analysis of the expected capacity factor for the
3 initial clean coal facility.

4 (E) Amounts paid to third parties unrelated to the
5 owner or owners of the initial clean coal facility to
6 prepare the core plant construction cost quote,
7 including the front end engineering and design study,
8 and the operating and maintenance cost quote will be
9 reimbursed through Coal Development Bonds.

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

1 established on a cost of service basis. In the case of
2 sourcing agreements that are contracts for differences,
3 the contract price from which the reference price is
4 subtracted shall be established on a cost of service basis.
5 The Agency and the Commission may approve any such utility
6 sourcing agreements that do not exceed cost-based
7 benchmarks developed by the procurement administrator, in
8 consultation with the Commission staff, Agency staff and
9 the procurement monitor, subject to Commission review and
10 approval. The Commission shall have authority to inspect
11 all books and records associated with these clean coal
12 facilities during the term of any such contract.

13 (6) Costs incurred under this subsection (d) or
14 pursuant to a contract entered into under this subsection
15 (d) shall be deemed prudently incurred and reasonable in
16 amount and the electric utility shall be entitled to full
17 cost recovery pursuant to the tariffs filed with the
18 Commission.

19 (d-5) Low carbon portfolio standard.

20 (1) Beginning with the partial planning year
21 commencing on January 1, 2016, the procurement plans shall
22 include cost-effective low carbon energy credits from low
23 carbon energy resources in an amount equal to 70% of each
24 electric utility's annual retail sales of electricity to
25 retail customers in the State during the planning year
26 immediately prior to the development of the procurement

1 plan. Provided, however, that the LCE credits must be
2 procured from generating units consistent with the Minimum
3 Internal Resource Requirements for capacity established by
4 the applicable regional transmission organization.

5 The initial procurement described in this paragraph
6 (1) shall procure the LCE credits needed during the time
7 period January 1, 2016 through May 31, 2021 by entering
8 into contracts between one and 5 years in length.
9 Notwithstanding whether a procurement event is conducted
10 pursuant to Section 16-111.5 of the Public Utilities Act,
11 the Agency and Commission shall immediately initiate an
12 initial procurement process upon the effective date of this
13 amendatory Act of the 99th General Assembly, which shall
14 procure cost-effective LCE credits from LCE resources for
15 the period January 1, 2016 through May 31, 2021, in an
16 amount equal to, for each planning year, 70% of each
17 electric utility's annual retail sales of electricity to
18 retail customers in the State during those same months in
19 the planning year immediately prior to the procurement.
20 Provided, however, that for the partial planning year
21 commencing January 1, 2016, the procurement process shall
22 procure cost-effective LCE credits from LCE resources for
23 the period January 1, 2016 through May 31, 2016, in an
24 amount equal to 70% of each electric utility's annual
25 retail sales of electricity to retail customers in the
26 State during those same months in the planning year

1 immediately prior to the procurement. No later than October
2 1, 2015, the Agency shall submit to the Commission a
3 proposed initial procurement plan for the period January 1,
4 2016 through May 31, 2021 consistent with the provisions of
5 this paragraph (1). The Commission shall, after notice and
6 hearing, but no later than November 1, 2015, approve the
7 plan or approve with modification. The Agency shall conduct
8 the request for proposals process no later than December 1,
9 2015, and each utility shall enter into binding contractual
10 arrangements with the winning suppliers. The procurement
11 shall be completed no later than January 1, 2016.

12 Following the initial procurement event described in
13 this paragraph (1), the Agency and Commission shall
14 initiate additional procurement processes, as necessary,
15 to replace any LCE credits that were not delivered due to a
16 supplier default or in the event that additional LCE
17 credits must be procured for a time period commencing after
18 May 31, 2021. In the event that LCE credits must be
19 procured for a period after May 31, 2021, such credits
20 shall be procured in planning year increments. Any such
21 processes shall be conducted regardless of whether a
22 procurement event is conducted pursuant to Section
23 16-111.5 of the Public Utilities Act. Each utility shall
24 enter into binding contractual arrangements with the
25 winning suppliers.

26 For the purposes of this subsection (d-5),

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

9 To further ensure that customers benefit from the
10 procurement of LCE credits, winning suppliers must commit
11 to reimburse the cost of LCE credits for each planning year
12 that the forecasted average revenue for the LCE resource or
13 resources that produced such credits exceeds a set a price
14 per megawatthour. For the purposes of this paragraph (1),
15 revenue shall be based on actual forward market prices. If
16 a winning supplier's LCE credits are produced from more
17 than one LCE resource, the computation required by this
18 paragraph shall be performed by aggregating all of the LCE
19 resources that produced the winning supplier's LCE credits
20 and calculating a single value. The electric utilities
21 shall credit such amounts to customers through the
22 automatic adjustment clause authorized by subsection (k)
23 of Section 16-108 of the Public Utilities Act. Such credits
24 shall appear as a separate line item on customers' bills.

25 (2) For the purposes of this subsection (d-5), the
26 required procurement of cost-effective LCE credits for a

1 particular period shall be measured as a percentage of the
2 actual amount of electricity (megawatthours) delivered by
3 the electric utility to all retail customers in the
4 planning year ending immediately prior to the procurement,
5 as incorporated in the procurement plan approved by the
6 Commission. For the purposes of this subsection (d-5), the
7 amount paid per kilowatthour means the total amount paid
8 for electric service expressed on a per kilowatthour basis.
9 For the purposes of this subsection (d-5), the total amount
10 paid for electric service includes without limitation
11 amounts paid for supply, transmission, distribution,
12 surcharges, and add-on taxes.

13 Notwithstanding the requirements of this subsection
14 (d-5), the total of LCE credits procured pursuant to the
15 procurement plan for any single year shall be subject to
16 the limitations of this paragraph (2). Such procurement
17 shall be reduced for all retail customers based on the
18 amount necessary to limit the annual estimated average net
19 increase due to the costs of these credits included in the
20 amounts paid by eligible retail customers in connection
21 with electric service to no more than 2.015% of the amount
22 paid per kilowatthour by eligible retail customers during
23 the year ending May 31, 2009. The result of this
24 computation shall apply to and reduce the procurement for
25 all retail customers, and all such customers shall pay the
26 same single, uniform cents per kilowatthour charge

1 pursuant to subsection (k) of Section 16-108 of the Public
2 Utilities Act.

3 The calculations required by this paragraph (2) shall
4 be made only once for each procurement plan year at the
5 time that the LCE credits are procured. Once the
6 determination as to the amount of LCE credits to procure is
7 made based on the calculations set forth in this paragraph
8 (2) and the utility executes contracts procuring those
9 amounts, no subsequent rate impact determinations shall be
10 made and no adjustments to those contract amounts shall be
11 allowed. All costs incurred under such contracts and in
12 implementing this subsection (d-5) shall be recovered by
13 the electric utility as provided in this Section.

14 No later than June 30, 2018, the Commission shall
15 review the limitation on the amount of LCE credits procured
16 pursuant to this subsection (d-5) and report to the General
17 Assembly its findings as to whether that limitation unduly
18 constrains the procurement of cost-effective LCE credits.

19 (3) Cost-effective LCE credits procured from LCE
20 resources located in Illinois and in states that adjoin
21 Illinois may be counted towards compliance with the
22 standards set forth in paragraph (1) of this subsection
23 (d-5). If those cost-effective resources are not available
24 in Illinois or in states that adjoin Illinois, they shall
25 be purchased elsewhere and shall be counted towards
26 compliance. Notwithstanding the location from which

1 cost-effective LCE credits are purchased or procured, such
2 credits shall satisfy the applicable definitions set forth
3 in Section 1-10 of this Act.

4 (4) The electric utility shall retire all LCE credits
5 used to comply with the requirements of this subsection
6 (d-5).

7 (5) Beginning April 1, 2018, and each year thereafter,
8 the Agency shall prepare a public report for the General
9 Assembly and Illinois Commerce Commission that shall
10 include, but not necessarily be limited to:

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

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

22 (6) Electric utilities shall be entitled to recover all
23 of the costs associated with the procurement of LCE credits
24 through an automatic adjustment clause tariff in
25 accordance with subsection (k) of Section 16-108 of the
26 Public Utilities Act.

1 (7) This subsection (d-5) is inoperative after
2 December 31, 2021 so long as the State has adopted and
3 implemented a plan pursuant to the provisions of Section
4 111(d) of the federal Clean Air Act, 42 U.S.C. 7411(d), as
5 amended. If such a plan has not been adopted and
6 implemented by December 31, 2021, this Section is
7 inoperative after December 31 of the year in which the
8 State adopts and implements such a plan.

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

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

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

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

22 (i) A renewable energy credit, carbon emission credit, or
23 LCE credit can only be used once to comply with a single
24 portfolio standard as set forth in subsection (c), subsection
25 (d), or subsection (d-5) of this Section, respectively. A
26 renewable energy credit, carbon emission credit, or LCE credit

1 cannot be used to satisfy the requirements of more than one
2 portfolio standard. In the event more than one type of credit
3 is issued for the same megawatthour of energy, only one credit
4 can be used to satisfy the requirements of a single portfolio
5 standard. After such use, the credit must be retired together
6 with any other credits issued for the same megawatthour of
7 energy.

8 (Source: P.A. 97-325, eff. 8-12-11; 97-616, eff. 10-26-11;
9 97-618, eff. 10-26-11; 97-658, eff. 1-13-12; 97-813, eff.
10 7-13-12; 98-463, eff. 8-16-13.)

11 Section 10. The Public Utilities Act is amended by changing
12 Sections 16-108, 16-111.5, and 16-127 as follows:

13 (220 ILCS 5/16-108)

14 Sec. 16-108. Recovery of costs associated with the
15 provision of delivery and other services.

16 (a) An electric utility shall file a delivery services
17 tariff with the Commission at least 210 days prior to the date
18 that it is required to begin offering such services pursuant to
19 this Act. An electric utility shall provide the components of
20 delivery services that are subject to the jurisdiction of the
21 Federal Energy Regulatory Commission at the same prices, terms
22 and conditions set forth in its applicable tariff as approved
23 or allowed into effect by that Commission. The Commission shall
24 otherwise have the authority pursuant to Article IX to review,

1 approve, and modify the prices, terms and conditions of those
2 components of delivery services not subject to the jurisdiction
3 of the Federal Energy Regulatory Commission, including the
4 authority to determine the extent to which such delivery
5 services should be offered on an unbundled basis. In making any
6 such determination the Commission shall consider, at a minimum,
7 the effect of additional unbundling on (i) the objective of
8 just and reasonable rates, (ii) electric utility employees, and
9 (iii) the development of competitive markets for electric
10 energy services in Illinois.

11 (b) The Commission shall enter an order approving, or
12 approving as modified, the delivery services tariff no later
13 than 30 days prior to the date on which the electric utility
14 must commence offering such services. The Commission may
15 subsequently modify such tariff pursuant to this Act.

16 (c) The electric utility's tariffs shall define the classes
17 of its customers for purposes of delivery services charges.
18 Delivery services shall be priced and made available to all
19 retail customers electing delivery services in each such class
20 on a nondiscriminatory basis regardless of whether the retail
21 customer chooses the electric utility, an affiliate of the
22 electric utility, or another entity as its supplier of electric
23 power and energy. Charges for delivery services shall be cost
24 based, and shall allow the electric utility to recover the
25 costs of providing delivery services through its charges to its
26 delivery service customers that use the facilities and services

1 associated with such costs. Such costs shall include the costs
2 of owning, operating and maintaining transmission and
3 distribution facilities. The Commission shall also be
4 authorized to consider whether, and if so to what extent, the
5 following costs are appropriately included in the electric
6 utility's delivery services rates: (i) the costs of that
7 portion of generation facilities used for the production and
8 absorption of reactive power in order that retail customers
9 located in the electric utility's service area can receive
10 electric power and energy from suppliers other than the
11 electric utility, and (ii) the costs associated with the use
12 and redispatch of generation facilities to mitigate
13 constraints on the transmission or distribution system in order
14 that retail customers located in the electric utility's service
15 area can receive electric power and energy from suppliers other
16 than the electric utility. Nothing in this subsection shall be
17 construed as directing the Commission to allocate any of the
18 costs described in (i) or (ii) that are found to be
19 appropriately included in the electric utility's delivery
20 services rates to any particular customer group or geographic
21 area in setting delivery services rates.

22 (d) The Commission shall establish charges, terms and
23 conditions for delivery services that are just and reasonable
24 and shall take into account customer impacts when establishing
25 such charges. In establishing charges, terms and conditions for
26 delivery services, the Commission shall take into account

1 voltage level differences. A retail customer shall have the
2 option to request to purchase electric service at any delivery
3 service voltage reasonably and technically feasible from the
4 electric facilities serving that customer's premises provided
5 that there are no significant adverse impacts upon system
6 reliability or system efficiency. A retail customer shall also
7 have the option to request to purchase electric service at any
8 point of delivery that is reasonably and technically feasible
9 provided that there are no significant adverse impacts on
10 system reliability or efficiency. Such requests shall not be
11 unreasonably denied.

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

21 (f) An electric utility shall be entitled but not required
22 to implement transition charges in conjunction with the
23 offering of delivery services pursuant to Section 16-104. If an
24 electric utility implements transition charges, it shall
25 implement such charges for all delivery services customers and
26 for all customers described in subsection (h), but shall not

1 implement transition charges for power and energy that a retail
2 customer takes from cogeneration or self-generation facilities
3 located on that retail customer's premises, if such facilities
4 meet the following criteria:

5 (i) the cogeneration or self-generation facilities
6 serve a single retail customer and are located on that
7 retail customer's premises (for purposes of this
8 subparagraph and subparagraph (ii), an industrial or
9 manufacturing retail customer and a third party contractor
10 that is served by such industrial or manufacturing customer
11 through such retail customer's own electrical distribution
12 facilities under the circumstances described in subsection
13 (vi) of the definition of "alternative retail electric
14 supplier" set forth in Section 16-102, shall be considered
15 a single retail customer);

16 (ii) the cogeneration or self-generation facilities
17 either (A) are sized pursuant to generally accepted
18 engineering standards for the retail customer's electrical
19 load at that premises (taking into account standby or other
20 reliability considerations related to that retail
21 customer's operations at that site) or (B) if the facility
22 is a cogeneration facility located on the retail customer's
23 premises, the retail customer is the thermal host for that
24 facility and the facility has been designed to meet that
25 retail customer's thermal energy requirements resulting in
26 electrical output beyond that retail customer's electrical

1 demand at that premises, comply with the operating and
2 efficiency standards applicable to "qualifying facilities"
3 specified in title 18 Code of Federal Regulations Section
4 292.205 as in effect on the effective date of this
5 amendatory Act of 1999;

6 (iii) the retail customer on whose premises the
7 facilities are located either has an exclusive right to
8 receive, and corresponding obligation to pay for, all of
9 the electrical capacity of the facility, or in the case of
10 a cogeneration facility that has been designed to meet the
11 retail customer's thermal energy requirements at that
12 premises, an identified amount of the electrical capacity
13 of the facility, over a minimum 5-year period; and

14 (iv) if the cogeneration facility is sized for the
15 retail customer's thermal load at that premises but exceeds
16 the electrical load, any sales of excess power or energy
17 are made only at wholesale, are subject to the jurisdiction
18 of the Federal Energy Regulatory Commission, and are not
19 for the purpose of circumventing the provisions of this
20 subsection (f).

21 If a generation facility located at a retail customer's
22 premises does not meet the above criteria, an electric utility
23 implementing transition charges shall implement a transition
24 charge until December 31, 2006 for any power and energy taken
25 by such retail customer from such facility as if such power and
26 energy had been delivered by the electric utility. Provided,

1 however, that an industrial retail customer that is taking
2 power from a generation facility that does not meet the above
3 criteria but that is located on such customer's premises will
4 not be subject to a transition charge for the power and energy
5 taken by such retail customer from such generation facility if
6 the facility does not serve any other retail customer and
7 either was installed on behalf of the customer and for its own
8 use prior to January 1, 1997, or is both predominantly fueled
9 by byproducts of such customer's manufacturing process at such
10 premises and sells or offers an average of 300 megawatts or
11 more of electricity produced from such generation facility into
12 the wholesale market. Such charges shall be calculated as
13 provided in Section 16-102, and shall be collected on each
14 kilowatt-hour delivered under a delivery services tariff to a
15 retail customer from the date the customer first takes delivery
16 services until December 31, 2006 except as provided in
17 subsection (h) of this Section. Provided, however, that an
18 electric utility, other than an electric utility providing
19 service to at least 1,000,000 customers in this State on
20 January 1, 1999, shall be entitled to petition for entry of an
21 order by the Commission authorizing the electric utility to
22 implement transition charges for an additional period ending no
23 later than December 31, 2008. The electric utility shall file
24 its petition with supporting evidence no earlier than 16
25 months, and no later than 12 months, prior to December 31,
26 2006. The Commission shall hold a hearing on the electric

1 utility's petition and shall enter its order no later than 8
2 months after the petition is filed. The Commission shall
3 determine whether and to what extent the electric utility shall
4 be authorized to implement transition charges for an additional
5 period. The Commission may authorize the electric utility to
6 implement transition charges for some or all of the additional
7 period, and shall determine the mitigation factors to be used
8 in implementing such transition charges; provided, that the
9 Commission shall not authorize mitigation factors less than
10 110% of those in effect during the 12 months ended December 31,
11 2006. In making its determination, the Commission shall
12 consider the following factors: the necessity to implement
13 transition charges for an additional period in order to
14 maintain the financial integrity of the electric utility; the
15 prudence of the electric utility's actions in reducing its
16 costs since the effective date of this amendatory Act of 1997;
17 the ability of the electric utility to provide safe, adequate
18 and reliable service to retail customers in its service area;
19 and the impact on competition of allowing the electric utility
20 to implement transition charges for the additional period.

21 (g) The electric utility shall file tariffs that establish
22 the transition charges to be paid by each class of customers to
23 the electric utility in conjunction with the provision of
24 delivery services. The electric utility's tariffs shall define
25 the classes of its customers for purposes of calculating
26 transition charges. The electric utility's tariffs shall

1 provide for the calculation of transition charges on a
2 customer-specific basis for any retail customer whose average
3 monthly maximum electrical demand on the electric utility's
4 system during the 6 months with the customer's highest monthly
5 maximum electrical demands equals or exceeds 3.0 megawatts for
6 electric utilities having more than 1,000,000 customers, and
7 for other electric utilities for any customer that has an
8 average monthly maximum electrical demand on the electric
9 utility's system of one megawatt or more, and (A) for which
10 there exists data on the customer's usage during the 3 years
11 preceding the date that the customer became eligible to take
12 delivery services, or (B) for which there does not exist data
13 on the customer's usage during the 3 years preceding the date
14 that the customer became eligible to take delivery services, if
15 in the electric utility's reasonable judgment there exists
16 comparable usage information or a sufficient basis to develop
17 such information, and further provided that the electric
18 utility can require customers for which an individual
19 calculation is made to sign contracts that set forth the
20 transition charges to be paid by the customer to the electric
21 utility pursuant to the tariff.

22 (h) An electric utility shall also be entitled to file
23 tariffs that allow it to collect transition charges from retail
24 customers in the electric utility's service area that do not
25 take delivery services but that take electric power or energy
26 from an alternative retail electric supplier or from an

1 electric utility other than the electric utility in whose
2 service area the customer is located. Such charges shall be
3 calculated, in accordance with the definition of transition
4 charges in Section 16-102, for the period of time that the
5 customer would be obligated to pay transition charges if it
6 were taking delivery services, except that no deduction for
7 delivery services revenues shall be made in such calculation,
8 and usage data from the customer's class shall be used where
9 historical usage data is not available for the individual
10 customer. The customer shall be obligated to pay such charges
11 on a lump sum basis on or before the date on which the customer
12 commences to take service from the alternative retail electric
13 supplier or other electric utility, provided, that the electric
14 utility in whose service area the customer is located shall
15 offer the customer the option of signing a contract pursuant to
16 which the customer pays such charges ratably over the period in
17 which the charges would otherwise have applied.

18 (i) An electric utility shall be entitled to add to the
19 bills of delivery services customers charges pursuant to
20 Sections 9-221, 9-222 (except as provided in Section 9-222.1),
21 and Section 16-114 of this Act, Section 5-5 of the Electricity
22 Infrastructure Maintenance Fee Law, Section 6-5 of the
23 Renewable Energy, Energy Efficiency, and Coal Resources
24 Development Law of 1997, and Section 13 of the Energy
25 Assistance Act.

26 (j) If a retail customer that obtains electric power and

1 energy from cogeneration or self-generation facilities
2 installed for its own use on or before January 1, 1997,
3 subsequently takes service from an alternative retail electric
4 supplier or an electric utility other than the electric utility
5 in whose service area the customer is located for any portion
6 of the customer's electric power and energy requirements
7 formerly obtained from those facilities (including that amount
8 purchased from the utility in lieu of such generation and not
9 as standby power purchases, under a cogeneration displacement
10 tariff in effect as of the effective date of this amendatory
11 Act of 1997), the transition charges otherwise applicable
12 pursuant to subsections (f), (g), or (h) of this Section shall
13 not be applicable in any year to that portion of the customer's
14 electric power and energy requirements formerly obtained from
15 those facilities, provided, that for purposes of this
16 subsection (j), such portion shall not exceed the average
17 number of kilowatt-hours per year obtained from the
18 cogeneration or self-generation facilities during the 3 years
19 prior to the date on which the customer became eligible for
20 delivery services, except as provided in subsection (f) of
21 Section 16-110.

22 (k) The electric utility shall be entitled to recover
23 through tariffed charges all of the costs associated with the
24 purchase of low carbon energy credits from low carbon energy
25 resources to meet the requirements of subsection (d-5) of
26 Section 1-75 of the Illinois Power Agency Act. Such costs shall

1 be allocated across all retail customers through a single,
2 uniform cents per kilowatt-hour charge applicable to all retail
3 customers, which shall appear as a separate line item on each
4 customer's bill.

5 The electric utility shall be entitled to recover all costs
6 associated with the purchase of low carbon energy credits from
7 low carbon energy resources through an automatic adjustment
8 clause tariff applicable to all of the utility's retail
9 customers that allows the electric utility to adjust its
10 tariffed charges on a quarterly basis for changes in its costs
11 incurred to purchase such resources and credits, if any,
12 without the need to file a general delivery services rate case.
13 The electric utility's collections pursuant to such an
14 automatic adjustment clause tariff shall be subject to annual
15 review, reconciliation, and true-up against actual costs by the
16 Commission pursuant to a procedure that shall be specified in
17 the electric utility's automatic adjustment clause tariff and
18 that shall be approved by the Commission in connection with its
19 approval of such tariff. The procedure shall provide that any
20 difference between the electric utility's collection pursuant
21 to the automatic adjustment charge for an annual period and the
22 electric utility's actual costs of renewable energy resources
23 and low carbon energy credits from low carbon energy resources
24 for that same annual period shall be refunded to or collected
25 from, as applicable, the electric utility's delivery services
26 customers in subsequent periods.

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

2 (220 ILCS 5/16-111.5)

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

4 (a) An electric utility that on December 31, 2005 served at
5 least 100,000 customers in Illinois shall procure power and
6 energy for its eligible retail customers in accordance with the
7 applicable provisions set forth in Section 1-75 of the Illinois
8 Power Agency Act and this Section and, beginning with the
9 partial planning year commencing on January 1, 2016, shall
10 procure low carbon energy credits from low carbon energy
11 resources for all retail customers in its service area in
12 accordance with the applicable provisions set forth in Section
13 1-75 of the Illinois Power Agency Act and this Section. A small
14 multi-jurisdictional electric utility that on December 31,
15 2005 served less than 100,000 customers in Illinois may elect
16 to procure power and energy for all or a portion of its
17 eligible Illinois retail customers in accordance with the
18 applicable provisions set forth in this Section and Section
19 1-75 of the Illinois Power Agency Act. This Section shall not
20 apply to a small multi-jurisdictional utility until such time
21 as a small multi-jurisdictional utility requests the Illinois
22 Power Agency to prepare a procurement plan for its eligible
23 retail customers. "Eligible retail customers" for the purposes
24 of this Section means those retail customers that purchase
25 power and energy from the electric utility under fixed-price

1 bundled service tariffs, other than those retail customers
2 whose service is declared or deemed competitive under Section
3 16-113 and those other customer groups specified in this
4 Section, including self-generating customers, customers
5 electing hourly pricing, or those customers who are otherwise
6 ineligible for fixed-price bundled tariff service. Those
7 customers that are excluded from the definition of "eligible
8 retail customers" shall not be included in the procurement
9 plan's electric supply service ~~plan load~~ requirements, and the
10 utility shall procure any supply requirements, including
11 capacity, ancillary services, and hourly priced energy, in the
12 applicable markets as needed to serve those customers, provided
13 that the utility may include in its procurement plan load
14 requirements for the load that is associated with those retail
15 customers whose service has been declared or deemed competitive
16 pursuant to Section 16-113 of this Act to the extent that those
17 customers are purchasing power and energy during one of the
18 transition periods identified in subsection (b) of Section
19 16-113 of this Act.

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

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

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

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

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

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

26 and

1 (iv) growth forecasts by customer class.

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

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

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

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

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

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

1 procuring comparable capacity products, provided that
2 such products shall:

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

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

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

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

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

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

25 (iv) the proposed mix and selection of standard
26 wholesale products for which contracts will be

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

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

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

24 (4) Proposed procedures for balancing loads. The
25 procurement plan shall include, for load requirements
26 included in the procurement plan, the process for (i)

1 hourly balancing of supply and demand and (ii) the criteria
2 for portfolio re-balancing in the event of significant
3 shifts in load.

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

8 (1) The procurement administrator shall:

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

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

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

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

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

25 (vi) administer the request for proposals process;

26 (vii) have the discretion to negotiate to

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

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

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

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

20 (xi) administer related contingency procurement
21 events.

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

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

26 (ii) monitor and report to the Commission on the

1 progress of the procurement process;

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

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

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

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

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

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

24 (1) Beginning in 2008, each Illinois utility procuring
25 power pursuant to this Section shall annually provide a
26 range of load forecasts to the Illinois Power Agency by

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

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

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

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

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

25 (e) The procurement process shall include each of the
26 following components:

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (f) Within 2 business days after opening the sealed bids,

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

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

25 (h) The names of the successful bidders and the load
26 weighted average of the winning bid prices for each contract

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

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

25 (j) Within 60 days following the effective date of this
26 amendatory Act, each electric utility that on December 31, 2005

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

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

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

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

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

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

15 (k-5) In order to promote price stability for residential
16 and small commercial customers during the infrastructure
17 investment program described in subsection (b) of Section
18 16-108.5 of this Act, and notwithstanding any other provision
19 of this Act or the Illinois Power Agency Act, for each electric
20 utility that serves more than one million retail customers in
21 Illinois, the Illinois Power Agency shall conduct a procurement
22 event within 120 days after October 26, 2011 (the effective
23 date of Public Act 97-616) and may procure contracts for energy
24 and renewable energy credits for the period June 1, 2013
25 through December 31, 2017 that satisfy the requirements of this
26 subsection (k-5), including the benchmarks described in this

1 subsection. These contracts shall be entered into as the result
2 of a competitive procurement event, and, to the extent that any
3 provisions of this Section or the Illinois Power Agency Act do
4 not conflict with this subsection (k-5), such provisions shall
5 apply to the procurement event. The energy contracts shall be
6 for 24 hour by 7 day supply over a term that runs from the first
7 delivery year through December 31, 2017. For a utility that
8 serves over 2 million customers, the energy contracts shall be
9 multi-year with pricing escalating at 2.5% per annum. The
10 energy contracts may be designed as financial swaps or may
11 require physical delivery.

12 Within 30 days of October 26, 2011 (the effective date of
13 Public Act 97-616), each such utility shall submit to the
14 Agency updated load forecasts for the period June 1, 2013
15 through December 31, 2017. The megawatt volume of the contracts
16 shall be based on the updated load forecasts of the minimum
17 monthly on-peak or off-peak average load requirements shown in
18 the forecasts, taking into account any existing energy
19 contracts in effect as well as the expected migration of the
20 utility's customers to alternative retail electric suppliers.
21 The renewable energy credit volume shall be based on the number
22 of credits that would satisfy the requirements of subsection
23 (c) of Section 1-75 of the Illinois Power Agency Act, subject
24 to the rate impact caps and other provisions of subsection (c)
25 of Section 1-75 of the Illinois Power Agency Act. The
26 evaluation of contract bids in the competitive procurement

1 events for energy and for renewable energy credits shall
2 incorporate price benchmarks set collaboratively by the
3 Agency, the procurement administrator, the staff of the
4 Commission, and the procurement monitor. If the contracts are
5 swap contracts, then they shall be executed as transactions
6 under a negotiated master agreement based on the form of master
7 agreement for financial swap contracts sponsored by the
8 International Swaps and Derivatives Association, Inc. Costs
9 incurred pursuant to a contract authorized by this subsection
10 (k-5) shall be deemed prudently incurred and reasonable in
11 amount and the electric utility shall be entitled to full cost
12 recovery pursuant to the tariffs filed with the Commission.

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

22 (1) An electric utility shall recover its costs incurred
23 under this Section, including, but not limited to, the costs of
24 procuring power and energy demand-response resources under
25 this Section. The utility shall file with the initial
26 procurement plan its proposed tariffs through which its costs

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

1 pass-through tariffs that are filed and approved pursuant to
2 this Section shall not be subject to review under, or in any
3 way limited by, Section 16-111(i) of this Act. All of the costs
4 incurred by the electric utility associated with the purchase
5 of low carbon energy credits in accordance with subsection
6 (d-5) of Section 1-75 of the Illinois Power Agency Act shall be
7 recovered through a tariff or tariffs applicable to all of the
8 retail customers in the utility's service area pursuant to
9 subsection (k) of Section 16-108 of this Act and shall not be
10 recovered through the electric utility's tariffed charges for
11 electric power and energy supply to its eligible retail
12 customers.

13 (m) The Commission has the authority to adopt rules to
14 carry out the provisions of this Section. For the public
15 interest, safety, and welfare, the Commission also has
16 authority to adopt rules to carry out the provisions of this
17 Section on an emergency basis immediately following the
18 effective date of this amendatory Act.

19 (n) Notwithstanding any other provision of this Act, any
20 affiliated electric utilities that submit a single procurement
21 plan covering their combined needs may procure for those
22 combined needs in conjunction with that plan, and may enter
23 jointly into power supply contracts, purchases, and other
24 procurement arrangements, and allocate capacity and energy and
25 cost responsibility therefor among themselves in proportion to
26 their requirements.

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

5 (p) An electric utility subject to this Section may propose
6 to invest, lease, own, or operate an electric generation
7 facility as part of its procurement plan, provided the utility
8 demonstrates that such facility is the least-cost option to
9 provide electric service to eligible retail customers. If the
10 facility is shown to be the least-cost option and is included
11 in a procurement plan prepared in accordance with Section 1-75
12 of the Illinois Power Agency Act and this Section, then the
13 electric utility shall make a filing pursuant to Section 8-406
14 of this Act, and may request of the Commission any statutory
15 relief required thereunder. If the Commission grants all of the
16 necessary approvals for the proposed facility, such supply
17 shall thereafter be considered as a pre-existing contract under
18 subsection (b) of this Section. The Commission shall in any
19 order approving a proposal under this subsection specify how
20 the utility will recover the prudently incurred costs of
21 investing in, leasing, owning, or operating such generation
22 facility through just and reasonable rates charged to eligible
23 retail customers. Cost recovery for facilities included in the
24 utility's procurement plan pursuant to this subsection shall
25 not be subject to review under or in any way limited by the
26 provisions of Section 16-111(i) of this Act. Nothing in this

1 Section is intended to prohibit a utility from filing for a
2 fuel adjustment clause as is otherwise permitted under Section
3 9-220 of this Act.

4 (Source: P.A. 97-325, eff. 8-12-11; 97-616, eff. 10-26-11;
5 97-813, eff. 7-13-12.)

6 (220 ILCS 5/16-127)

7 Sec. 16-127. Environmental disclosure.

8 (a) Effective January 1, 2013, every electric utility and
9 alternative retail electric supplier shall provide the
10 following information, to the maximum extent practicable, to
11 its customers on a quarterly basis:

12 (i) the known sources of electricity supplied,
13 broken-out by percentages, of biomass power, coal-fired
14 power, hydro power, natural gas-fired power, nuclear
15 power, oil-fired power, solar power, wind power and other
16 resources, respectively;

17 (ii) a pie-chart that graphically depicts the
18 percentages of the sources of the electricity supplied as
19 set forth in subparagraph (i) of this subsection; ~~and~~

20 (iii) a pie-chart that graphically depicts the
21 quantity of renewable energy resources procured pursuant
22 to Section 1-75 of the Illinois Power Agency Act as a
23 percentage of electricity supplied to serve eligible
24 retail customers as defined in Section 16-111.5(a) of this
25 Act; and.

1 (iv) after May 31, 2016, a pie-chart that graphically
2 depicts the quantity of low carbon energy credits from low
3 carbon energy resources procured pursuant to Section 1-75
4 of the Illinois Power Agency Act as a percentage of the
5 actual load of retail customers within its service area.

6 (b) In addition, every electric utility and alternative
7 retail electric supplier shall provide, to the maximum extent
8 practicable, to its customers on a quarterly basis, a
9 standardized chart in a format to be determined by the
10 Commission in a rule following notice and hearings which
11 provides the amounts of carbon dioxide, nitrogen oxides and
12 sulfur dioxide emissions and nuclear waste attributable to the
13 known sources of electricity supplied as set forth in
14 subparagraph (i) of subsection (a) of this Section.

15 (c) The electric utilities and alternative retail electric
16 suppliers may provide their customers with such other
17 information as they believe relevant to the information
18 required in subsections (a) and (b) of this Section. All of the
19 information required in subsections (a) and (b) of this Section
20 shall be made available by the electric utilities or
21 alternative retail electric suppliers either in an electronic
22 medium, such as on a website or by electronic mail, or through
23 the U.S. Postal Service.

24 (d) For the purposes of subsection (a) of this Section,
25 "biomass" means dedicated crops grown for energy production and
26 organic wastes.

1 (e) All of the information provided in subsections (a) and
2 (b) of this Section shall be presented to the Commission for
3 inclusion in its World Wide Web Site.

4 (Source: P.A. 97-1092, eff. 1-1-13.)

5 Section 97. Severability. The provisions of this Act are
6 severable under Section 1.31 of the Statute on Statutes.

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.

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Statutes amended in order of appearance

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20 ILCS 3855/1-5

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20 ILCS 3855/1-10

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20 ILCS 3855/1-75

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220 ILCS 5/16-108

7

220 ILCS 5/16-111.5

8

220 ILCS 5/16-127