

AN ACT concerning public utilities.

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

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

(20 ILCS 3855/1-10)

Sec. 1-10. Definitions.

"Agency" means the Illinois Power Agency.

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

"Authority" means the Illinois Finance Authority.

"Clean coal facility" means an electric generating facility that uses primarily coal as a feedstock and that captures and sequesters carbon emissions at the following levels: at least 50% of the total carbon emissions that the facility would otherwise emit if, at the time construction commences, the facility is scheduled to commence operation

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

"Clean coal SNG facility" means a facility that uses a gasification process to produce substitute natural gas, that sequesters at least 90% of the total carbon emissions that the facility would otherwise emit and that uses petroleum coke or coal as a feedstock, with all such coal having a high bituminous rank and greater than 1.7 pounds of sulfur per million btu content.

"Commission" means the Illinois Commerce Commission.

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

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

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

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

(4) engineering, design, procurement, consulting, legal, accounting, title insurance, survey, appraisal, escrow, trustee, collateral agency, interest rate hedging, interest rate swap, capitalized interest and other financing costs, and other expenses for professional services; and

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

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

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

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

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

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

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

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

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

"Energy efficiency" means measures that reduce the amount

of electricity or natural gas required to achieve a given end use.

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

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

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

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

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

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

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

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

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

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

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

"Revenue bond" means any bond, note, or other evidence of indebtedness issued by the Authority, the principal and

interest of which is payable solely from revenues or income derived from any project or activity of the Agency.

"Sequester" means permanent storage of carbon dioxide by injecting it into a saline aquifer, a depleted gas reservoir, or an oil reservoir, directly or through an enhanced oil recovery process that may involve intermediate storage in a salt dome.

"Servicing agreement" means (i) in the case of an electric utility, an agreement between the owner of a clean coal facility and such electric utility, which agreement shall have terms and conditions meeting the requirements of paragraph (3) of subsection (d) of Section 1-75, and (ii) in the case of an alternative retail electric supplier, an agreement between the owner of a clean coal facility and such alternative retail electric supplier, which agreement shall have terms and conditions meeting the requirements of Section 16-115(d)(5) of the Public Utilities Act.

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

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

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

(Source: P.A. 95-481, eff. 8-28-07; 95-913, eff. 1-1-09; 95-1027, eff. 6-1-09; 96-33, eff. 7-10-09; 96-159, eff. 8-10-09; 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10.)

(20 ILCS 3855/1-56)

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

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

(b) The Illinois Power Agency Renewable Energy Resources

Fund shall be administered by the Agency to procure renewable energy resources. Prior to June 1, 2011, resources procured pursuant to this Section shall be procured from facilities located in Illinois, provided the resources are available from those facilities. If resources are not available in Illinois, then they shall be procured in states that adjoin Illinois. If resources are not available in Illinois or in states that adjoin Illinois, then they may be purchased elsewhere. Beginning June 1, 2011, resources procured pursuant to this Section shall be procured from facilities located in Illinois or states that adjoin Illinois. If resources are not available in Illinois or in states that adjoin Illinois, then they may be procured elsewhere. To the extent available, at least 75% of these renewable energy resources shall come from wind generation. Of the renewable energy resources procured pursuant to this Section at least the following specified percentages shall come from photovoltaics on the following schedule: 0.5% by June 1, 2012; 1.5% by June 1, 2013; 3% by June 1, 2014; and 6% by June 1, 2015 and thereafter. Of the renewable energy resources procured pursuant to this Section, at least the following percentages shall come from distributed renewable energy generation devices: 0.5% by June 1, 2013, 0.75% by June 1, 2014, and 1% by June 1, 2015 and thereafter. To the extent available, half of the renewable energy resources procured from distributed renewable energy generation shall come from devices of less than 25 kilowatts in nameplate

capacity. Renewable energy resources procured from distributed generation devices may also count towards the required percentages for wind and solar photovoltaics. Procurement of renewable energy resources from distributed renewable energy generation devices shall be done on an annual basis through multi-year contracts of no less than 5 years, and shall consist solely of renewable energy credits.

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

(c) The Agency shall procure renewable energy resources at least once each year in conjunction with a procurement event for electric utilities required to comply with Section 1-75 of the Act and shall, whenever possible, enter into long-term contracts on an annual basis for a portion of the incremental requirement for the given procurement year.

(d) The price paid to procure renewable energy credits using monies from the Illinois Power Agency Renewable Energy

Resources Fund shall not exceed the winning bid prices paid for like resources procured for electric utilities required to comply with Section 1-75 of this Act.

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

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

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

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

(Source: P.A. 96-159, eff. 8-10-09; 96-1000, eff. 7-2-10; 96-1437, eff. 8-17-10.)

(20 ILCS 3855/1-75)

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

(a) The Planning and Procurement Bureau shall each year, beginning in 2008, develop procurement plans and conduct competitive procurement processes in accordance with the requirements of Section 16-111.5 of the Public Utilities Act for the eligible retail customers of electric utilities that on December 31, 2005 provided electric service to at least 100,000 customers in Illinois. For the purposes of this Section, the term "eligible retail customers" has the same definition as found in Section 16-111.5(a) of the Public Utilities Act.

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

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

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

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

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

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

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

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

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

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

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

study;

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

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

(E) expertise in credit and contract protocols;

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

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

(3) The Agency shall provide affected utilities and other interested parties with the lists of qualified experts or expert consulting firms identified through the request for qualifications processes that are under consideration to develop the procurement plans and to serve as the procurement administrator. The Agency shall also provide each qualified expert's or expert consulting firm's response to the request for qualifications. All information provided under this subparagraph shall also be provided to the Commission. The Agency may provide by rule for fees associated with supplying the

information to utilities and other interested parties. These parties shall, within 5 business days, notify the Agency in writing if they object to any experts or expert consulting firms on the lists. Objections shall be based on:

(A) failure to satisfy qualification criteria;

(B) identification of a conflict of interest;

or

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

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

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

(5) The Agency shall select an expert or expert consulting firm to develop procurement plans based on the proposals submitted and shall award one-year contracts to those selected with an option for the Agency for a one-year renewal.

(6) The Agency shall select an expert or expert consulting firm, with approval of the Commission, to serve as procurement administrator based on the proposals submitted. If the Commission rejects, within 5 days, the Agency's selection, the Agency shall submit another recommendation within 3 days based on the proposals submitted. The Agency shall award a one-year contract to the expert or expert consulting firm so selected with Commission approval with an option for the Agency for a one-year renewal.

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

(c) Renewable portfolio standard.

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

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

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

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

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

Notwithstanding the requirements of this subsection (c), the total of renewable energy

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

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

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

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

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

(E) thereafter, the amount of renewable energy resources procured pursuant to the procurement

plan for any single year shall be reduced by an amount necessary to limit the estimated average net increase due to the cost of these resources included in the amounts paid by eligible retail customers in connection with electric service to no more than the greater of 2.015% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007 or the incremental amount per kilowatthour paid for these resources in 2011.

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

(3) Through June 1, 2011, renewable energy resources shall be counted for the purpose of meeting the renewable energy standards set forth in paragraph (1) of this subsection (c) only if they are generated from facilities located in the State, provided that cost-effective renewable energy resources are available from those facilities. If those cost-effective resources are not available in Illinois, they shall be procured in states that adjoin

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

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

(5) Beginning with the year commencing June 1, 2010, an electric utility subject to this subsection (c) shall apply the lesser of the maximum alternative compliance payment rate or the most recent estimated alternative compliance payment rate for its service territory for the corresponding compliance period, established pursuant to subsection (d) of Section 16-115D of the Public Utilities Act to its retail customers that take service pursuant to the electric utility's hourly pricing tariff or tariffs. The electric utility shall retain all amounts collected as

a result of the application of the alternative compliance payment rate or rates to such customers, and, beginning in 2011, the utility shall include in the information provided under item (1) of subsection (d) of Section 16-111.5 of the Public Utilities Act the amounts collected under the alternative compliance payment rate or rates for the prior year ending May 31. Notwithstanding any limitation on the procurement of renewable energy resources imposed by item (2) of this subsection (c), the Agency shall increase its spending on the purchase of renewable energy resources to be procured by the electric utility for the next plan year by an amount equal to the amounts collected by the utility under the alternative compliance payment rate or rates in the prior year ending May 31.

(d) Clean coal portfolio standard.

(1) The procurement plans shall include electricity generated using clean coal. Each utility shall enter into one or more sourcing agreements with the initial clean coal facility, as provided in paragraph (3) of this subsection (d), covering electricity generated by the initial clean coal facility representing at least 5% of each utility's total supply to serve the load of eligible retail customers in 2015 and each year thereafter, as described in paragraph (3) of this subsection (d), subject to the limits specified in paragraph (2) of this subsection (d). It is the goal of

the State that by January 1, 2025, 25% of the electricity used in the State shall be generated by cost-effective clean coal facilities. For purposes of this subsection (d), "cost-effective" means that the expenditures pursuant to such sourcing agreements do not cause the limit stated in paragraph (2) of this subsection (d) to be exceeded and do not exceed cost-based benchmarks, which shall be developed to assess all expenditures pursuant to such sourcing agreements covering electricity generated by clean coal facilities, other than the initial clean coal facility, by the procurement administrator, in consultation with the Commission staff, Agency staff, and the procurement monitor and shall be subject to Commission review and approval.

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

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

(C) A utility shall be deemed to have complied with

the clean coal portfolio standard specified in this subsection (d) if the utility enters into a sourcing agreement as required by this subsection (d).

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

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

(A) in 2010, no more than 0.5% of the amount

paid per kilowatthour by those customers during the year ending May 31, 2009;

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

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

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

(E) thereafter, the total amount paid under sourcing agreements with clean coal facilities pursuant to the procurement plan for any single year shall be reduced by an amount necessary to limit the estimated average net increase due to the cost of these resources included in the amounts paid by eligible retail customers in connection with electric service to no more than the greater of (i) 2.015% of the amount paid per kilowatthour

by those customers during the year ending May 31, 2009 or (ii) the incremental amount per kilowatthour paid for these resources in 2013. These requirements may be altered only as provided by statute. No later than June 30, 2015, the Commission shall review the limitation on the total amount paid under sourcing agreements, if any, with clean coal facilities pursuant to this subsection (d) and report to the General Assembly its findings as to whether that limitation unduly constrains the amount of electricity generated by cost-effective clean coal facilities that is covered by sourcing agreements.

(3) Initial clean coal facility. In order to promote development of clean coal facilities in Illinois, each electric utility subject to this Section shall execute a sourcing agreement to source electricity from a proposed clean coal facility in Illinois (the "initial clean coal facility") that will have a nameplate capacity of at least 500 MW when commercial operation commences, that has a final Clean Air Act permit on the effective date of this amendatory Act of the 95th General Assembly, and that will meet the definition of clean coal facility in Section 1-10 of this Act when commercial operation commences. The sourcing agreements with this initial clean coal facility shall be subject to both approval of the initial clean coal

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

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

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

(ii) provide that all miscellaneous net revenue, including but not limited to net revenue from the sale of emission allowances, if any, substitute natural gas, if any, grants or other

support provided by the State of Illinois or the United States Government, firm transmission rights, if any, by-products produced by the facility, energy or capacity derived from the facility and not covered by a sourcing agreement pursuant to paragraph (3) of this subsection (d) or item (5) of subsection (d) of Section 16-115 of the Public Utilities Act, whether generated from the synthesis gas derived from coal, from SNG, or from natural gas, shall be credited against the revenue requirement for this initial clean coal facility;

(B) power purchase provisions, which shall:

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

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

(iii) require the utility party to such sourcing agreement to buy from the initial clean coal facility in each hour an amount of energy equal to all clean coal energy made available from the initial clean coal facility during such hour times a fraction, the numerator of which is such utility's retail market sales of electricity

(expressed in kilowatthours sold) in the State during the prior calendar month and the denominator of which is the total retail market sales of electricity (expressed in kilowatthours sold) in the State by utilities during such prior month and the sales of electricity (expressed in kilowatthours sold) in the State by alternative retail electric suppliers during such prior month that are subject to the requirements of this subsection (d) and paragraph (5) of subsection (d) of Section 16-115 of the Public Utilities Act, provided that the amount purchased by the utility in any year will be limited by paragraph (2) of this subsection (d); and

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

(C) contract for differences provisions, which shall:

(i) require the utility party to such sourcing agreement to contract with the initial clean coal facility in each hour with respect to an amount of energy equal to all clean coal energy made available from the initial clean coal facility during such hour times a fraction, the numerator of which is such utility's retail market sales of

electricity (expressed in kilowatthours sold) in the utility's service territory in the State during the prior calendar month and the denominator of which is the total retail market sales of electricity (expressed in kilowatthours sold) in the State by utilities during such prior month and the sales of electricity (expressed in kilowatthours sold) in the State by alternative retail electric suppliers during such prior month that are subject to the requirements of this subsection (d) and paragraph (5) of subsection (d) of Section 16-115 of the Public Utilities Act, provided that the amount paid by the utility in any year will be limited by paragraph (2) of this subsection (d);

(ii) provide that the utility's payment obligation in respect of the quantity of electricity determined pursuant to the preceding clause (i) shall be limited to an amount equal to (1) the difference between the contract price determined pursuant to subparagraph (A) of paragraph (3) of this subsection (d) and the day-ahead price for electricity delivered to the regional transmission organization market of the utility that is party to such sourcing agreement (or any successor delivery point at which such

utility's supply obligations are financially settled on an hourly basis) (the "reference price") on the day preceding the day on which the electricity is delivered to the initial clean coal facility busbar, multiplied by (2) the quantity of electricity determined pursuant to the preceding clause (i); and

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

(D) general provisions, which shall:

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

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

(iii) provide that all costs associated with the initial clean coal facility will be periodically reported to the Federal Energy Regulatory Commission and to purchasers in

accordance with applicable laws governing cost-based wholesale power contracts;

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

(v) require the owner of the initial clean coal facility to provide documentation to the Commission each year, starting in the facility's first year of commercial operation, accurately reporting the quantity of carbon emissions from the facility that have been captured and sequestered and report any quantities of carbon released from the site or sites at which carbon emissions were sequestered in prior years, based on continuous monitoring of such sites. If, in any year after the first year of commercial operation, the owner of the facility fails to demonstrate that the initial clean coal facility captured and sequestered at least 50% of the total carbon emissions that the facility would otherwise emit or that sequestration of emissions from prior years has failed, resulting in the release of carbon dioxide into the atmosphere, the owner of

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

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

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

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

months;

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

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

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

(xi) append documentation showing that the formula rate and contract, insofar as they relate to the power purchase provisions, have been approved by the Federal Energy Regulatory Commission pursuant to Section 205 of the Federal

Power Act;

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

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

(4) Effective date of sourcing agreements with the initial clean coal facility. Any proposed sourcing agreement with the initial clean coal facility shall not become effective unless the following reports are prepared and submitted and authorizations and approvals obtained:

(i) Facility cost report. The owner of the initial clean coal facility shall submit to the Commission, the Agency, and the General Assembly a front-end engineering and design study, a facility cost report, method of financing (including but not limited to structure and associated costs), and an operating and maintenance cost quote for the facility (collectively "facility cost report"), which shall be prepared in accordance with the requirements of this paragraph (4) of subsection (d) of this Section, and shall provide the

Commission and the Agency access to the work papers, relied upon documents, and any other backup documentation related to the facility cost report.

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

experts or consultants prior to receipt of the facility cost report.

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

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

The facility cost report shall be prepared as follows:

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

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

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

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

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

(C) The facility cost report shall also include an operating and maintenance cost quote that will provide the estimated cost of delivered fuel, personnel, maintenance contracts, chemicals, catalysts, consumables, spares, and other fixed and variable operations and maintenance costs.

(a) The delivered fuel cost estimate will be provided by a recognized third party expert or experts in the fuel and transportation industries.

(b) The balance of the operating and maintenance cost quote, excluding delivered fuel costs will be developed based on the inputs

provided by duly licensed engineering and construction firms performing the construction cost quote, potential vendors under long-term service agreements and plant operating agreements, or recognized third party plant operator or operators.

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

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

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

(5) Re-powering and retrofitting coal-fired power plants previously owned by Illinois utilities to qualify as clean coal facilities. During the 2009 procurement planning process and thereafter, the Agency and the Commission shall consider sourcing agreements covering electricity generated by power plants that were previously owned by Illinois utilities and that have been or will be converted into clean coal facilities, as defined by Section 1-10 of this Act. Pursuant to such procurement planning process, the owners of such facilities may propose to the Agency sourcing agreements with utilities and alternative retail electric suppliers required to comply with subsection (d) of this Section and item (5) of subsection (d) of Section 16-115 of the Public Utilities Act, covering electricity generated by such facilities. In the case of sourcing agreements that are power purchase agreements, the contract price for electricity sales shall be established on a cost of service basis. In the case of sourcing agreements that are contracts for differences, the contract price from which the reference price is subtracted shall be established on a cost of service basis. The Agency and the Commission may approve any such utility sourcing agreements that do not exceed cost-based benchmarks developed by the procurement administrator, in consultation with the Commission staff, Agency staff and the procurement monitor, subject to Commission review and

approval. The Commission shall have authority to inspect all books and records associated with these clean coal facilities during the term of any such contract.

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

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

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

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

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

(Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09; 96-159, eff. 8-10-09; 96-1437, eff. 8-17-10.)

Section 10. The Public Utilities Act is amended by changing Sections 8-103, 16-107.5, 16-111.5, 16-111.7, and 16-128 and by adding Sections 8-103A, 16-108.5, 16-108.6, 16-108.7, 16-108.8, 16-111.5B, and 16-128A as follows:

(220 ILCS 5/8-103)

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

(a) It is the policy of the State that electric utilities are required to use cost-effective energy efficiency and demand-response measures to reduce delivery load. Requiring investment in cost-effective energy efficiency and demand-response measures will reduce direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure. It serves the public interest to allow electric utilities to recover costs for reasonably and prudently incurred expenses for energy efficiency and demand-response measures. As used in this Section, "cost-effective" means that the measures satisfy the total resource cost test. The low-income measures described in subsection (f)(4) of this Section shall not be required to meet the total resource cost test. For purposes of this Section, the terms "energy-efficiency", "demand-response", "electric utility", and "total resource cost test" shall have the meanings set forth in the Illinois Power Agency Act. For

purposes of this Section, the amount per kilowatthour means the total amount paid for electric service expressed on a per kilowatthour basis. For purposes of this Section, the total amount paid for electric service includes without limitation estimated amounts paid for supply, transmission, distribution, surcharges, and add-on-taxes.

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

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

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

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

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

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

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

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

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

(c) Electric utilities shall implement cost-effective

demand-response measures to reduce peak demand by 0.1% over the prior year for eligible retail customers, as defined in Section 16-111.5 of this Act, and for customers that elect hourly service from the utility pursuant to Section 16-107 of this Act, provided those customers have not been declared competitive. This requirement commences June 1, 2008 and continues for 10 years.

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

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

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

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

31, 2007;

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

(5) thereafter, the amount of energy efficiency and demand-response measures implemented for any single year shall be reduced by an amount necessary to limit the estimated average net increase due to the cost of these measures included in the amounts paid by eligible retail customers in connection with electric service to no more than the greater of 2.015% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007 or the incremental amount per kilowatthour paid for these measures in 2011.

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

(e) Electric utilities shall be responsible for overseeing the design, development, and filing of energy efficiency and demand-response plans with the Commission. Electric utilities shall implement 100% of the demand-response measures in the

plans. Electric utilities shall implement 75% of the energy efficiency measures approved by the Commission, and may, as part of that implementation, outsource various aspects of program development and implementation. The remaining 25% of those energy efficiency measures approved by the Commission shall be implemented by the Department of Commerce and Economic Opportunity, and must be designed in conjunction with the utility and the filing process. The Department may outsource development and implementation of energy efficiency measures. A minimum of 10% of the entire portfolio of cost-effective energy efficiency measures shall be procured from units of local government, municipal corporations, school districts, and community college districts. The Department shall coordinate the implementation of these measures.

The apportionment of the dollars to cover the costs to implement the Department's share of the portfolio of energy efficiency measures shall be made to the Department once the Department has executed grants or contracts for energy efficiency measures and provided supporting documentation for those grants and the contracts to the utility.

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

A utility providing approved energy efficiency and

demand-response measures in the State shall be permitted to recover costs of those measures through an automatic adjustment clause tariff filed with and approved by the Commission. The tariff shall be established outside the context of a general rate case. Each year the Commission shall initiate a review to reconcile any amounts collected with the actual costs and to determine the required adjustment to the annual tariff factor to match annual expenditures.

Each utility shall include, in its recovery of costs, the costs estimated for both the utility's and the Department's implementation of energy efficiency and demand-response measures. Costs collected by the utility for measures implemented by the Department shall be submitted to the Department pursuant to Section 605-323 of the Civil Administrative Code of Illinois and shall be used by the Department solely for the purpose of implementing these measures. A utility shall not be required to advance any moneys to the Department but only to forward such funds as it has collected. The Department shall report to the Commission on an annual basis regarding the costs actually incurred by the Department in the implementation of the measures. Any changes to the costs of energy efficiency measures as a result of plan modifications shall be appropriately reflected in amounts recovered by the utility and turned over to the Department.

The portfolio of measures, administered by both the utilities and the Department, shall, in combination, be

designed to achieve the annual savings targets described in subsections (b) and (c) of this Section, as modified by subsection (d) of this Section.

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

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

If the Department is unable to meet incremental annual performance goals for the portion of the portfolio implemented by the Department, then the utility and the Department shall jointly submit a modified filing to the Commission explaining the performance shortfall and recommending an appropriate course going forward, including any program modifications that may be appropriate in light of the evaluations conducted under item (7) of subsection (f) of this Section. In this case, the utility obligation to collect the Department's costs and turn over those funds to the Department under this subsection (e)

shall continue only if the Commission approves the modifications to the plan proposed by the Department.

(f) No later than November 15, 2007, each electric utility shall file an energy efficiency and demand-response plan with the Commission to meet the energy efficiency and demand-response standards for 2008 through 2010. No later than October 1, 2010, each electric utility shall file an energy efficiency and demand-response plan with the Commission to meet the energy efficiency and demand-response standards for 2011 through 2013. Every 3 years thereafter, each electric utility shall file, no later than September ~~October~~ 1, an energy efficiency and demand-response plan with the Commission. If a utility does not file such a plan by September ~~October~~ 1 of an applicable year, it shall face a penalty of \$100,000 per day until the plan is filed. Each utility's plan shall set forth the utility's proposals to meet the utility's portion of the energy efficiency standards identified in subsection (b) and the demand-response standards identified in subsection (c) of this Section as modified by subsections (d) and (e), taking into account the unique circumstances of the utility's service territory. The Commission shall seek public comment on the utility's plan and shall issue an order approving or disapproving each plan within 5 ~~3~~ months after its submission. If the Commission disapproves a plan, the Commission shall, within 30 days, describe in detail the reasons for the disapproval and describe a path by which the utility may file a

revised draft of the plan to address the Commission's concerns satisfactorily. If the utility does not refile with the Commission within 60 days, the utility shall be subject to penalties at a rate of \$100,000 per day until the plan is filed. This process shall continue, and penalties shall accrue, until the utility has successfully filed a portfolio of energy efficiency and demand-response measures. Penalties shall be deposited into the Energy Efficiency Trust Fund. In submitting proposed energy efficiency and demand-response plans and funding levels to meet the savings goals adopted by this Act the utility shall:

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

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

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

(4) Coordinate with the Department to present a portfolio of energy efficiency measures proportionate to

the share of total annual utility revenues in Illinois from households at or below 150% of the poverty level. The energy efficiency programs shall be targeted to households with incomes at or below 80% of area median income.

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

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

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

(g) No more than 3% of energy efficiency and demand-response program revenue may be allocated for

demonstration of breakthrough equipment and devices.

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

(i) If, after 2 years, an electric utility fails to meet the efficiency standard specified in subsection (b) of this Section, as modified by subsections (d) and (e), it shall make a contribution to the Low-Income Home Energy Assistance Program. The combined total liability for failure to meet the goal shall be \$1,000,000, which shall be assessed as follows: a large electric utility shall pay \$665,000, and a medium electric utility shall pay \$335,000. If, after 3 years, an electric utility fails to meet the efficiency standard specified in subsection (b) of this Section, as modified by subsections (d) and (e), it shall make a contribution to the Low-Income Home Energy Assistance Program. The combined total liability for failure to meet the goal shall be \$1,000,000, which shall be assessed as follows: a large electric utility shall pay \$665,000, and a medium electric utility shall pay \$335,000. In addition, the responsibility for implementing the energy efficiency measures of the utility making the payment shall be transferred to the Illinois Power Agency if, after 3 years, or in any subsequent 3-year period, the utility fails to meet the efficiency standard specified in subsection (b) of this Section, as modified by subsections (d) and (e). The Agency shall implement a competitive procurement program to

procure resources necessary to meet the standards specified in this Section as modified by subsections (d) and (e), with costs for those resources to be recovered in the same manner as products purchased through the procurement plan as provided in Section 16-111.5. The Director shall implement this requirement in connection with the procurement plan as provided in Section 16-111.5.

For purposes of this Section, (i) a "large electric utility" is an electric utility that, on December 31, 2005, served more than 2,000,000 electric customers in Illinois; (ii) a "medium electric utility" is an electric utility that, on December 31, 2005, served 2,000,000 or fewer but more than 100,000 electric customers in Illinois; and (iii) Illinois electric utilities that are affiliated by virtue of a common parent company are considered a single electric utility.

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

(k) No electric utility shall be deemed to have failed to

meet the energy efficiency standards to the extent any such failure is due to a failure of the Department or the Agency.

(Source: P.A. 95-481, eff. 8-28-07; 95-876, eff. 8-21-08; 96-33, eff. 7-10-09; 96-159, eff. 8-10-09; 96-1000, eff. 7-2-10.)

(220 ILCS 5/8-103A new)

Sec. 8-103A. Energy efficiency analysis. Beginning in 2013, an electric utility subject to the requirements of Section 8-103 of this Act shall include in its energy efficiency and demand-response plan submitted pursuant to subsection (f) of Section 8-103 an analysis of additional cost-effective energy efficiency measures that could be implemented, by customer class, absent the limitations set forth in subsection (d) of Section 8-103. In seeking public comment on the electric utility's plan pursuant to subsection (f) of Section 8-103, the Commission shall include, beginning in 2013, the assessment of additional cost-effective energy efficiency measures submitted pursuant to this Section. For purposes of this Section, the term "energy efficiency" shall have the meaning set forth in Section 1-10 of the Illinois Power Agency Act, and the term "cost-effective" shall have the meaning set forth in subsection (a) of Section 8-103 of this Act.

(220 ILCS 5/16-107.5)

Sec. 16-107.5. Net electricity metering.

(a) The Legislature finds and declares that a program to provide net electricity metering, as defined in this Section, for eligible customers can encourage private investment in renewable energy resources, stimulate economic growth, enhance the continued diversification of Illinois' energy resource mix, and protect the Illinois environment.

(b) As used in this Section, (i) "eligible customer" means a retail customer that owns or operates a solar, wind, or other eligible renewable electrical generating facility with a rated capacity of not more than 2,000 kilowatts that is located on the customer's premises and is intended primarily to offset the customer's own electrical requirements; (ii) "electricity provider" means an electric utility or alternative retail electric supplier; (iii) "eligible renewable electrical generating facility" means a generator powered by solar electric energy, wind, dedicated crops grown for electricity generation, agricultural residues, untreated and unadulterated wood waste, landscape trimmings, livestock manure, anaerobic digestion of livestock or food processing waste, fuel cells or microturbines powered by renewable fuels, or hydroelectric energy; and (iv) "net electricity metering" (or "net metering") means the measurement, during the billing period applicable to an eligible customer, of the net amount of electricity supplied by an electricity provider to the customer's premises or provided to the electricity provider by the customer.

(c) A net metering facility shall be equipped with metering equipment that can measure the flow of electricity in both directions at the same rate.

(1) For eligible ~~residential~~ customers whose electric service has not been declared competitive pursuant to Section 16-113 of this Act and whose electric delivery service is provided and measured on a kilowatt-hour basis and electric supply service is not provided based on hourly pricing, this shall typically be accomplished through use of a single, bi-directional meter. If the eligible customer's existing electric revenue meter does not meet this requirement, the electricity provider shall arrange for the local electric utility or a meter service provider to install and maintain a new revenue meter at the electricity provider's expense.

(2) For eligible customers whose electric service has not been declared competitive pursuant to Section 16-113 of this Act and whose electric delivery service is provided and measured on a kilowatt demand basis and electric supply service is not provided based on hourly pricing, this shall typically be accomplished through use of a dual channel meter capable of measuring the flow of electricity both into and out of the customer's facility at the same rate and ratio. If such customer's existing electric revenue meter does not meet this requirement, then the electricity provider shall arrange for the local electric utility or a

meter service provider to install and maintain a new revenue meter at the electricity provider's expense.

(3) For all other eligible customers, ~~For non-residential customers,~~ the electricity provider may arrange for the local electric utility or a meter service provider to install and maintain metering equipment capable of measuring the flow of electricity both into and out of the customer's facility at the same rate and ratio, typically through the use of a dual channel meter. If the eligible customer's existing electric revenue meter does not meet this requirement, then the costs of installing such equipment shall be paid for by the customer. ~~For generators with a nameplate rating of 40 kilowatts and below, the costs of installing such equipment shall be paid for by the electricity provider. For generators with a nameplate rating over 40 kilowatts and up to 2,000 kilowatts capacity, the costs of installing such equipment shall be paid for by the customer. Any subsequent revenue meter change necessitated by any eligible customer shall be paid for by the customer.~~

(d) An electricity provider shall measure and charge or credit for the net electricity supplied to eligible customers or provided by eligible customers whose electric service has not been declared competitive pursuant to Section 16-113 of the Act and whose electric delivery service is provided and measured on a kilowatt-hour basis and electric supply service

is not provided based on hourly pricing in the following manner:

(1) If the amount of electricity used by the customer during the billing period exceeds the amount of electricity produced by the customer, the electricity provider shall charge the customer for the net electricity supplied to and used by the customer as provided in subsection (e-5) ~~(e)~~ of this Section.

(2) If the amount of electricity produced by a customer during the billing period exceeds the amount of electricity used by the customer during that billing period, the electricity provider supplying that customer shall apply a 1:1 kilowatt-hour credit to a subsequent bill for service to the customer for the net electricity supplied to the electricity provider. The electricity provider shall continue to carry over any excess kilowatt-hour credits earned and apply those credits to subsequent billing periods to offset any customer-generator consumption in those billing periods until all credits are used or until the end of the annualized period.

(3) At the end of the year or annualized over the period that service is supplied by means of net metering, or in the event that the retail customer terminates service with the electricity provider prior to the end of the year or the annualized period, any remaining credits in the customer's account shall expire.

(e) An electricity provider shall measure and charge or credit for the net electricity supplied to eligible customers whose electric service has not been declared competitive pursuant to Section 16-113 of this Act and whose electric delivery service is provided and measured on a kilowatt demand basis and electric supply service is not provided based on hourly pricing in the following manner:

(1) If the amount of electricity used by the customer during the billing period exceeds the amount of electricity produced by the customer, then the electricity provider shall charge the customer for the net electricity supplied to and used by the customer as provided in subsection (e-5) of this Section, provided that the electricity provider shall assess and the customer remains responsible for all taxes, fees, and utility delivery charges that would otherwise be applicable to the gross amount of kilowatt-hours supplied to the eligible customer by the electricity provider.

(2) If the amount of electricity produced by a customer during the billing period exceeds the amount of electricity used by the customer during that billing period, then the electricity provider supplying that customer shall apply a 1:1 kilowatt-hour credit that reflects the kilowatt-hour based charges in the customer's electric service rate to a subsequent bill for service to the customer for the net electricity supplied to the electricity provider. The

electricity provider shall continue to carry over any excess kilowatt-hour credits earned and apply those credits to subsequent billing periods to offset any customer-generator consumption in those billing periods until all credits are used or until the end of the annualized period.

(3) At the end of the year or annualized over the period that service is supplied by means of net metering, or in the event that the retail customer terminates service with the electricity provider prior to the end of the year or the annualized period, any remaining credits in the customer's account shall expire.

(e-5) An electricity provider shall provide electric service to eligible ~~net metering~~ customers whose electric service has not been declared competitive pursuant to Section 16-113 of this Act and whose electric supply service is not provided based on hourly pricing who utilize net metering ~~electric service~~ at non-discriminatory rates that are identical, with respect to rate structure, retail rate components, and any monthly charges, to the rates that the customer would be charged if not a net metering customer. An electricity provider shall not charge net metering customers any fee or charge or require additional equipment, insurance, or any other requirements not specifically authorized by interconnection standards authorized by the Commission, unless the fee, charge, or other requirement would apply to other

similarly situated customers who are not net metering customers. The customer will remain responsible for all taxes, fees, and utility delivery charges that would otherwise be applicable to the net amount of electricity used by the customer. Subsections (c) through (e) of this Section shall not be construed to prevent an arms-length agreement between an electricity provider and an eligible customer that sets forth different prices, terms, and conditions for the provision of net metering service, including, but not limited to, the provision of the appropriate metering equipment for non-residential customers.

(f) Notwithstanding the requirements of subsections (c) through (e-5) ~~(e)~~ of this Section, an electricity provider must require dual-channel metering for customers operating eligible renewable electrical generating facilities with a nameplate rating up to 2,000 kilowatts and to whom the provisions of neither subsection (d) nor (e) of this Section apply ~~non residential customers operating eligible renewable electrical generating facilities with a nameplate rating over 40 kilowatts and up to 2,000 kilowatts~~. In such cases, electricity charges and credits shall be determined as follows:

(1) The electricity provider shall assess and the customer remains responsible for all taxes, fees, and utility delivery charges that would otherwise be applicable to the gross amount of kilowatt-hours supplied to the eligible customer by the electricity provider.

(2) Each month that service is supplied by means of dual-channel metering, the electricity provider shall compensate the eligible customer for any excess kilowatt-hour credits at the electricity provider's avoided cost of electricity supply over the monthly period or as otherwise specified by the terms of a power-purchase agreement negotiated between the customer and electricity provider.

(3) For all eligible net metering customers taking service from an electricity provider under contracts or tariffs employing time of use rates, any monthly consumption of electricity shall be calculated according to the terms of the contract or tariff to which the same customer would be assigned to or be eligible for if the customer was not a net metering customer. When those same customer-generators are net generators during any discrete time of use period, the net kilowatt-hours produced shall be valued at the same price per kilowatt-hour as the electric service provider would charge for retail kilowatt-hour sales during that same time of use period.

(g) For purposes of federal and State laws providing renewable energy credits or greenhouse gas credits, the eligible customer shall be treated as owning and having title to the renewable energy attributes, renewable energy credits, and greenhouse gas emission credits related to any electricity produced by the qualified generating unit. The electricity

provider may not condition participation in a net metering program on the signing over of a customer's renewable energy credits; provided, however, this subsection (g) shall not be construed to prevent an arms-length agreement between an electricity provider and an eligible customer that sets forth the ownership or title of the credits.

(h) Within 120 days after the effective date of this amendatory Act of the 95th General Assembly, the Commission shall establish standards for net metering and, if the Commission has not already acted on its own initiative, standards for the interconnection of eligible renewable generating equipment to the utility system. The interconnection standards shall address any procedural barriers, delays, and administrative costs associated with the interconnection of customer-generation while ensuring the safety and reliability of the units and the electric utility system. The Commission shall consider the Institute of Electrical and Electronics Engineers (IEEE) Standard 1547 and the issues of (i) reasonable and fair fees and costs, (ii) clear timelines for major milestones in the interconnection process, (iii) nondiscriminatory terms of agreement, and (iv) any best practices for interconnection of distributed generation.

(i) All electricity providers shall begin to offer net metering no later than April 1, 2008.

(j) An electricity provider shall provide net metering to

eligible customers until the load of its net metering customers equals 5% ~~1%~~ of the total peak demand supplied by that electricity provider during the previous year. Electricity providers are authorized to offer net metering beyond the 5% ~~1%~~ level if they so choose. ~~The number of new eligible customers with generators that have a nameplate rating of 40 kilowatts and below will be limited to 200 total new billing accounts for the utilities (Ameren Companies, ComEd, and MidAmerican) for the period of April 1, 2008 through March 31, 2009.~~

(k) Each electricity provider shall maintain records and report annually to the Commission the total number of net metering customers served by the provider, as well as the type, capacity, and energy sources of the generating systems used by the net metering customers. Nothing in this Section shall limit the ability of an electricity provider to request the redaction of information deemed by the Commission to be confidential business information. Each electricity provider shall notify the Commission when the total generating capacity of its net metering customers is equal to or in excess of the 5% ~~1%~~ cap specified in subsection (j) of this Section.

(l) Notwithstanding the definition of "eligible customer" in item (i) of subsection (b) of this Section, each electricity provider shall consider whether to allow meter aggregation for the purposes of net metering on:

- (1) properties owned or leased by multiple customers that contribute to the operation of an eligible renewable

electrical generating facility, such as a community-owned wind project, a community-owned biomass project, a community-owned solar project, or a community methane digester processing livestock waste from multiple sources; and

(2) individual units, apartments, or properties owned or leased by multiple customers and collectively served by a common eligible renewable electrical generating facility, such as an apartment building served by photovoltaic panels on the roof.

For the purposes of this subsection (1), "meter aggregation" means the combination of reading and billing on a pro rata basis for the types of eligible customers described in this Section.

(m) Nothing in this Section shall affect the right of an electricity provider to continue to provide, or the right of a retail customer to continue to receive service pursuant to a contract for electric service between the electricity provider and the retail customer in accordance with the prices, terms, and conditions provided for in that contract. Either the electricity provider or the customer may require compliance with the prices, terms, and conditions of the contract.

(Source: P.A. 95-420, eff. 8-24-07.)

(220 ILCS 5/16-108.5 new)

Sec. 16-108.5. Infrastructure investment and

modernization; regulatory reform.

(a) The General Assembly recognizes that for well over a century Illinois residents and businesses have been well-served by and have benefitted from a comprehensive electric utility system. The General Assembly finds that electric utilities are now entering a new construction cycle that is needed to refurbish, rebuild, modernize, and expand systems to continue to provide safe, reliable, and affordable service to the State's current and future utility customers in this newly digitized age. In particular, the General Assembly finds that it is the policy of this State that significant investments must be made in the State's electric grid over the next decade to modernize and upgrade transmission and distribution facilities in the State. These investments will ensure that the State's electric utility infrastructure will promote future economic development in the State and that the State's electric utilities will be able to continue to provide quality electric service to their customers, including innovative technological offerings that will enhance customer experience and choice such as smart meters that are dependent on a modernized or Smart Grid. These investments, including programs to reinforce the safety and security of high voltage transmission lines, will also ensure that the State's electric utility infrastructure continues to be safe and reliable. The introduction of performance metrics will further ensure that reliability and other indicators are not just maintained but

improved over the next decade.

The General Assembly further recognizes that, in addition to attracting capital and businesses to the State, these investments will create training opportunities for the citizens of this State, all of which will create new employment opportunities for Illinoisans at a time when they are most needed, especially for minority-owned and female-owned business enterprises. The General Assembly further finds that regulatory reform measures that increase predictability, stability, and transparency in the ratemaking process are needed to promote prudent, long-term infrastructure investment and to mutually benefit the State's electric utilities and their customers, regulators, and investors.

(b) For purposes of this Section, "participating utility" means an electric utility or a combination utility serving more than 1,000,000 customers in Illinois that voluntarily elects and commits to undertake the infrastructure investment program consisting of the commitments and obligations described in this subsection (b), notwithstanding any other provisions of this Act and without obtaining any approvals from the Commission or any other agency other than as set forth in this Section, regardless of whether any such approval would otherwise be required. "Combination utility" means a utility that, as of January 1, 2011, provided electric service to at least one million retail customers in Illinois and gas service to at least 500,000 retail customers in Illinois. A participating

utility shall recover the expenditures made under the infrastructure investment program through the ratemaking process, including, but not limited to, the performance-based formula rate and process set forth in this Section.

During the infrastructure investment program's peak program year, a participating utility other than a combination utility shall create 2,000 full-time equivalent jobs in Illinois, and a participating utility that is a combination utility shall create 450 full-time equivalent jobs in Illinois related to the provision of electric service, including direct jobs, contractor positions, and induced jobs. For purposes of this Section, "peak program year" means the consecutive 12-month period with the highest number of full-time equivalent jobs that occurs between the beginning of investment year 2 and the end of investment year 4.

A participating utility shall meet one of the following commitments, as applicable:

(1) Beginning no later than 180 days after a participating utility other than a combination utility files a performance-based formula rate tariff pursuant to subsection (c) of this Section, or, beginning no later than January 1, 2012 if such utility files such performance-based formula rate tariff within 14 days of the effective date of this amendatory Act of the 97th General Assembly, the participating utility shall, except as provided in subsection (b-5):

(A) over a 5-year period, invest an estimated \$1,100,000,000 in electric system upgrades, modernization projects, and training facilities, including, but not limited to:

(i) distribution infrastructure improvements totaling an estimated \$1,000,000,000, including underground residential distribution cable injection and replacement and mainline cable system refurbishment and replacement projects;

(ii) training facility construction or upgrade projects totaling an estimated \$10,000,000, provided that, at a minimum, one such facility shall be located in a municipality having a population of more than 2 million residents and one such facility shall be located in a municipality having a population of more than 150,000 residents but fewer than 170,000 residents; any such new facility located in a municipality having a population of more than 2 million residents must be designed for the purpose of obtaining, and the owner of the facility shall apply for, certification under the United States Green Building Council's Leadership in Energy Efficiency Design Green Building Rating System; and

(iii) wood pole inspection, treatment, and replacement programs; and

(B) over a 10-year period, invest an estimated \$1,500,000,000 to upgrade and modernize its transmission and distribution infrastructure and in Smart Grid electric system upgrades, including, but not limited to:

- (i) additional smart meters;
- (ii) distribution automation;
- (iii) associated cyber secure data communication network; and
- (iv) substation micro-processor relay upgrades.

(2) Beginning no later than 180 days after a participating utility that is a combination utility files a performance-based formula rate tariff pursuant to subsection (c) of this Section, or, beginning no later than January 1, 2012 if such utility files such performance-based formula rate tariff within 14 days of the effective date of this amendatory Act of the 97th General Assembly, the participating utility shall, except as provided in subsection (b-5):

(A) over a 10-year period, invest an estimated \$265,000,000 in electric system upgrades, modernization projects, and training facilities, including, but not limited to:

- (i) distribution infrastructure improvements totaling an estimated \$245,000,000, which may

include bulk supply substations, transformers, reconductoring, and rebuilding overhead distribution and sub-transmission lines, underground residential distribution cable injection and replacement and mainline cable system refurbishment and replacement projects;

(ii) training facility construction or upgrade projects totaling an estimated \$1,000,000; any such new facility must be designed for the purpose of obtaining, and the owner of the facility shall apply for, certification under the United States Green Building Council's Leadership in Energy Efficiency Design Green Building Rating System; and

(iii) wood pole inspection, treatment, and replacement programs; and

(B) over a 10-year period, invest an estimated \$360,000,000 to upgrade and modernize its transmission and distribution infrastructure and in Smart Grid electric system upgrades, including, but not limited to:

(i) additional smart meters;

(ii) distribution automation;

(iii) associated cyber secure data communication network; and

(iv) substation micro-processor relay

upgrades.

For purposes of this Section, "Smart Grid electric system upgrades" shall have the meaning set forth in subsection (a) of Section 16-108.6 of this Act.

The investments in the infrastructure investment program described in this subsection (b) shall be incremental to the participating utility's annual capital investment program, as defined by, for purposes of this subsection (b), the participating utility's average capital spend for calendar years 2008, 2009, and 2010 as reported in the applicable Federal Energy Regulatory Commission (FERC) Form 1; provided that where one or more utilities have merged, the average capital spend shall be determined using the aggregate of the merged utilities' capital spend reported in FERC Form 1 for the years 2008, 2009, and 2010.

Within 60 days after filing a tariff under subsection (c) of this Section, a participating utility shall submit to the Commission its plan, including scope, schedule, and staffing, for satisfying its infrastructure investment program commitments pursuant to this subsection (b). The submitted plan shall include a schedule and staffing plan for the next calendar year. The plan shall also include a plan for the creation, operation, and administration of a Smart Grid test bed as described in subsection (c) of Section 16-108.8. The plan need not allocate the work equally over the respective periods, but should allocate material increments throughout

such periods commensurate with the work to be undertaken. No later than April 1 of each subsequent year, the utility shall submit to the Commission a report that includes any updates to the plan, a schedule for the next calendar year, the expenditures made for the prior calendar year and cumulatively, and the number of full-time equivalent jobs created for the prior calendar year and cumulatively. If the utility is materially deficient in satisfying a schedule or staffing plan, then the report must also include a corrective action plan to address the deficiency. The fact that the plan, implementation of the plan, or a schedule changes shall not imply the imprudence or unreasonableness of the infrastructure investment program, plan, or schedule.

With respect to the participating utility's peak job commitment, if, after considering the utility's corrective action plan and compliance thereunder, the Commission enters an order finding, after notice and hearing, that a participating utility did not satisfy its peak job commitment described in this subsection (b) for reasons that are reasonably within its control, then the Commission shall also determine, after consideration of the evidence, including, but not limited to, evidence submitted by the Department of Commerce and Economic Opportunity and the utility, the deficiency in the number of full-time equivalent jobs during the peak program year due to such failure. The Commission shall notify the Department of any proceeding that is initiated pursuant to this paragraph. For

each full-time equivalent job deficiency during the peak program year that the Commission finds as set forth in this paragraph, the participating utility shall, within 30 days after the entry of the Commission's order, pay \$3,000 to a fund for training grants administered under Section 605-800 of The Department of Commerce and Economic Opportunity Law, which shall not be a recoverable expense.

With respect to the participating utility's investment amount commitments, if, after considering the utility's corrective action plan and compliance thereunder, the Commission enters an order finding, after notice and hearing, that a participating utility is not satisfying its investment amount commitments described in this subsection (b), then the utility shall no longer be eligible to annually update the performance-based formula rate tariff pursuant to subsection (d) of this Section. In such event, the then current rates shall remain in effect until such time as new rates are set pursuant to Article IX of this Act, subject to retroactive adjustment, with interest, to reconcile rates charged with actual costs.

If the Commission finds that a participating utility is no longer eligible to update the performance-based formula rate tariff pursuant to subsection (d) of this Section, or the performance-based formula rate is otherwise terminated, then the participating utility's voluntary commitments and obligations under this subsection (b) shall immediately

terminate, except for the utility's obligation to pay an amount already owed to the fund for training grants pursuant to a Commission order.

In meeting the obligations of this subsection (b), to the extent feasible and consistent with State and federal law, the investments under the infrastructure investment program should provide employment opportunities for all segments of the population and workforce, including minority-owned and female-owned business enterprises, and shall not, consistent with State and federal law, discriminate based on race or socioeconomic status.

(b-5) Nothing in this Section shall prohibit the Commission from investigating the prudence and reasonableness of the expenditures made under the infrastructure investment program during the annual review required by subsection (d) of this Section and shall, as part of such investigation, determine whether the utility's actual costs under the program are prudent and reasonable. The fact that a participating utility invests more than the minimum amounts specified in subsection (b) of this Section or its plan shall not imply imprudence or unreasonableness.

If the participating utility finds that it is implementing its plan for satisfying the infrastructure investment program commitments described in subsection (b) of this Section at a cost below the estimated amounts specified in subsection (b) of this Section, then the utility may file a petition with the

Commission requesting that it be permitted to satisfy its commitments by spending less than the estimated amounts specified in subsection (b) of this Section. The Commission shall, after notice and hearing, enter its order approving, or approving as modified, or denying each such petition within 150 days after the filing of the petition.

In no event, absent General Assembly approval, shall the capital investment costs incurred by a participating utility other than a combination utility in satisfying its infrastructure investment program commitments described in subsection (b) of this Section exceed \$3,000,000,000 or, for a participating utility that is a combination utility, \$720,000,000. If the participating utility's updated cost estimates for satisfying its infrastructure investment program commitments described in subsection (b) of this Section exceed the limitation imposed by this subsection (b-5), then it shall submit a report to the Commission that identifies the increased costs and explains the reason or reasons for the increased costs no later than the year in which the utility estimates it will exceed the limitation. The Commission shall review the report and shall, within 90 days after the participating utility files the report, report to the General Assembly its findings regarding the participating utility's report. If the General Assembly does not amend the limitation imposed by this subsection (b-5), then the utility may modify its plan so as not to exceed the limitation imposed by this subsection (b-5)

and may propose corresponding changes to the metrics established pursuant to subparagraphs (5) through (8) of subsection (f) of this Section, and the Commission may modify the metrics and incremental savings goals established pursuant to subsection (f) of this Section accordingly.

(c) A participating utility may elect to recover its delivery services costs through a performance-based formula rate approved by the Commission, which shall specify the cost components that form the basis of the rate charged to customers with sufficient specificity to operate in a standardized manner and be updated annually with transparent information that reflects the utility's actual costs to be recovered during the applicable rate year, which is the period beginning with the first billing day of January and extending through the last billing day of the following December. In the event the utility recovers a portion of its costs through automatic adjustment clause tariffs on the effective date of this amendatory Act of the 97th General Assembly, the utility may elect to continue to recover these costs through such tariffs, but then these costs shall not be recovered through the performance-based formula rate.

The performance-based formula rate shall be implemented through a tariff filed with the Commission consistent with the provisions of this subsection (c) that shall be applicable to all delivery services customers. The Commission shall initiate and conduct an investigation of the tariff in a manner

consistent with the provisions of this subsection (c) and the provisions of Article IX of this Act to the extent they do not conflict with this subsection (c). Except in the case where the Commission finds, after notice and hearing, that a participating utility is not satisfying its investment amount commitments under subsection (b) of this Section, the performance-based formula rate shall remain in effect at the discretion of the utility. The performance-based formula rate approved by the Commission shall do the following:

(1) Provide for the recovery of the utility's actual costs of delivery services that are prudently incurred and reasonable in amount consistent with Commission practice and law. The sole fact that a cost differs from that incurred in a prior calendar year or that an investment is different from that made in a prior calendar year shall not imply the imprudence or unreasonableness of that cost or investment.

(2) Reflect the utility's actual capital structure for the applicable calendar year, excluding goodwill, subject to a determination of prudence and reasonableness consistent with Commission practice and law.

(3) Include a cost of equity, which shall be calculated as the sum of the following:

(A) the average for the applicable calendar year of the monthly average yields of 30-year U.S. Treasury bonds published by the Board of Governors of the

Federal Reserve System in its weekly H.15 Statistical Release or successor publication; and

(B) 600 basis points.

At such time as the Board of Governors of the Federal Reserve System ceases to include the monthly average yields of 30-year U.S. Treasury bonds in its weekly H.15 Statistical Release or successor publication, the monthly average yields of the U.S. Treasury bonds then having the longest duration published by the Board of Governors in its weekly H.15 Statistical Release or successor publication shall instead be used for purposes of this paragraph (3).

(4) Permit and set forth protocols, subject to a determination of prudence and reasonableness consistent with Commission practice and law, for the following:

(A) recovery of incentive compensation expense that is based on the achievement of operational metrics, including metrics related to budget controls, outage duration and frequency, safety, customer service, efficiency and productivity, and environmental compliance. Incentive compensation expense that is based on net income or an affiliate's earnings per share shall not be recoverable under the performance-based formula rate;

(B) recovery of pension and other post-employment benefits expense, provided that such costs are supported by an actuarial study;

(C) recovery of severance costs, provided that if the amount is over \$3,700,000 for a participating utility that is a combination utility or \$10,000,000 for a participating utility that serves more than 3 million retail customers, then the full amount shall be amortized consistent with subparagraph (F) of this paragraph (4);

(D) investment return on pension assets net of deferred tax benefits equal to the utility's long-term debt cost of capital as of the end of the applicable calendar year;

(E) recovery of the expenses related to the Commission proceeding under this subsection (c) to approve this performance-based formula rate and initial rates or to subsequent proceedings related to the formula, provided that the recovery shall be amortized over a 3-year period; recovery of expenses related to the annual Commission proceedings under subsection (d) of this Section to review the inputs to the performance-based formula rate shall be expensed and recovered through the performance-based formula rate;

(F) amortization over a 5-year period of the full amount of each charge or credit that exceeds \$3,700,000 for a participating utility that is a combination utility or \$10,000,000 for a participating utility

that serves more than 3 million retail customers in the applicable calendar year and that relates to a workforce reduction program's severance costs, changes in accounting rules, changes in law, compliance with any Commission-initiated audit, or a single storm or other similar expense, provided that any unamortized balance shall be reflected in rate base. For purposes of this subparagraph (F), changes in law includes any enactment, repeal, or amendment in a law, ordinance, rule, regulation, interpretation, permit, license, consent, or order, including those relating to taxes, accounting, or to environmental matters, or in the interpretation or application thereof by any governmental authority occurring after the effective date of this amendatory Act of the 97th General Assembly;

(G) recovery of existing regulatory assets over the periods previously authorized by the Commission;

(H) historical weather normalized billing determinants; and

(I) allocation methods for common costs.

(5) Provide that if the participating utility's earned rate of return on common equity related to the provision of delivery services for the prior rate year (calculated using costs and capital structure approved by the Commission as provided in subparagraph (2) of this subsection (c),

consistent with this Section, in accordance with Commission rules and orders, including, but not limited to, adjustments for goodwill, and after any Commission-ordered disallowances and taxes) is more than 50 basis points higher than the rate of return on common equity calculated pursuant to paragraph (3) of this subsection (c) (after adjusting for any penalties to the rate of return on common equity applied pursuant to the performance metrics provision of subsection (f) of this Section), then the participating utility shall apply a credit through the performance-based formula rate that reflects an amount equal to the value of that portion of the earned rate of return on common equity that is more than 50 basis points higher than the rate of return on common equity calculated pursuant to paragraph (3) of this subsection (c) (after adjusting for any penalties to the rate of return on common equity applied pursuant to the performance metrics provision of subsection (f) of this Section) for the prior rate year, adjusted for taxes. If the participating utility's earned rate of return on common equity related to the provision of delivery services for the prior rate year (calculated using costs and capital structure approved by the Commission as provided in subparagraph (2) of this subsection (c), consistent with this Section, in accordance with Commission rules and orders, including, but not limited to, adjustments for goodwill, and after any

Commission-ordered disallowances and taxes) is more than 50 basis points less than the return on common equity calculated pursuant to paragraph (3) of this subsection (c) (after adjusting for any penalties to the rate of return on common equity applied pursuant to the performance metrics provision of subsection (f) of this Section), then the participating utility shall apply a charge through the performance-based formula rate that reflects an amount equal to the value of that portion of the earned rate of return on common equity that is more than 50 basis points less than the rate of return on common equity calculated pursuant to paragraph (3) of this subsection (c) (after adjusting for any penalties to the rate of return on common equity applied pursuant to the performance metrics provision of subsection (f) of this Section) for the prior rate year, adjusted for taxes.

(6) Provide for an annual reconciliation, with interest as described in subsection (d) of this Section, of the revenue requirement reflected in rates for each calendar year, beginning with the calendar year in which the utility files its performance-based formula rate tariff pursuant to subsection (c) of this Section, with what the revenue requirement would have been had the actual cost information for the applicable calendar year been available at the filing date.

The utility shall file, together with its tariff, final

data based on its most recently filed FERC Form 1, plus projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the tariff and data are filed, that shall populate the performance-based formula rate and set the initial delivery services rates under the formula. For purposes of this Section, "FERC Form 1" means the Annual Report of Major Electric Utilities, Licensees and Others that electric utilities are required to file with the Federal Energy Regulatory Commission under the Federal Power Act, Sections 3, 4(a), 304 and 209, modified as necessary to be consistent with 83 Ill. Admin. Code Part 415 as of May 1, 2011. Nothing in this Section is intended to allow costs that are not otherwise recoverable to be recoverable by virtue of inclusion in FERC Form 1.

After the utility files its proposed performance-based formula rate structure and protocols and initial rates, the Commission shall initiate a docket to review the filing. The Commission shall enter an order approving, or approving as modified, the performance-based formula rate, including the initial rates, as just and reasonable within 270 days after the date on which the tariff was filed, or, if the tariff is filed within 14 days after the effective date of this amendatory Act of the 97th General Assembly, then by May 31, 2012. Such review shall be based on the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility, the

Commission applies in a hearing to review a filing for a general increase in rates under Article IX of this Act. The initial rates shall take effect within 30 days after the Commission's order approving the performance-based formula rate tariff.

Until such time as the Commission approves a different rate design and cost allocation pursuant to subsection (e) of this Section, rate design and cost allocation across customer classes shall be consistent with the Commission's most recent order regarding the participating utility's request for a general increase in its delivery services rates.

Subsequent changes to the performance-based formula rate structure or protocols shall be made as set forth in Section 9-201 of this Act, but nothing in this subsection (c) is intended to limit the Commission's authority under Article IX and other provisions of this Act to initiate an investigation of a participating utility's performance-based formula rate tariff, provided that any such changes shall be consistent with paragraphs (1) through (6) of this subsection (c). Any change ordered by the Commission shall be made at the same time new rates take effect following the Commission's next order pursuant to subsection (d) of this Section, provided that the new rates take effect no less than 30 days after the date on which the Commission issues an order adopting the change.

A participating utility that files a tariff pursuant to this subsection (c) must submit a one-time \$200,000 filing fee

at the time the Chief Clerk of the Commission accepts the filing, which shall be a recoverable expense.

In the event the performance-based formula rate is terminated, the then current rates shall remain in effect until such time as new rates are set pursuant to Article IX of this Act, subject to retroactive rate adjustment, with interest, to reconcile rates charged with actual costs. At such time that the performance-based formula rate is terminated, the participating utility's voluntary commitments and obligations under subsection (b) of this Section shall immediately terminate, except for the utility's obligation to pay an amount already owed to the fund for training grants pursuant to a Commission order issued under subsection (b) of this Section.

(d) Subsequent to the Commission's issuance of an order approving the utility's performance-based formula rate structure and protocols, and initial rates under subsection (c) of this Section, the utility shall file, on or before May 1 of each year, with the Chief Clerk of the Commission its updated cost inputs to the performance-based formula rate for the applicable rate year and the corresponding new charges. Each such filing shall conform to the following requirements and include the following information:

(1) The inputs to the performance-based formula rate for the applicable rate year shall be based on final historical data reflected in the utility's most recently filed annual FERC Form 1 plus projected plant additions and

correspondingly updated depreciation reserve and expense for the calendar year in which the inputs are filed. The filing shall also include a reconciliation of the revenue requirement that was in effect for the prior rate year (as set by the cost inputs for the prior rate year) with the actual revenue requirement for the prior rate year (as reflected in the applicable FERC Form 1 that reports the actual costs for the prior rate year). Any over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with interest, the charges for the applicable rate year. Provided, however, that the first such reconciliation shall be for the calendar year in which the utility files its performance-based formula rate tariff pursuant to subsection (c) of this Section and shall reconcile (i) the revenue requirement or requirements established by the rate order or orders in effect from time to time during such calendar year (weighted, as applicable) with (ii) the revenue requirement for that calendar year calculated pursuant to the performance-based formula rate using (A) actual costs for that year as reflected in the applicable FERC Form 1, and (B) for the first such reconciliation only, the cost of equity approved by the Commission in such order or orders in effect during that year (weighted, as applicable). The first such reconciliation is not intended

to provide for the recovery of costs previously excluded from rates based on a prior Commission order finding of imprudence or unreasonableness. Each reconciliation shall be certified by the participating utility in the same manner that FERC Form 1 is certified. The filing shall also include the charge or credit, if any, resulting from the calculation required by paragraph (6) of subsection (c) of this Section.

Notwithstanding anything that may be to the contrary, the intent of the reconciliation is to ultimately reconcile the revenue requirement reflected in rates for each calendar year, beginning with the calendar year in which the utility files its performance-based formula rate tariff pursuant to subsection (c) of this Section, with what the revenue requirement would have been had the actual cost information for the applicable calendar year been available at the filing date.

(2) The new charges shall take effect beginning on the first billing day of the following January billing period and remain in effect through the last billing day of the next December billing period regardless of whether the Commission enters upon a hearing pursuant to this subsection (d).

(3) The filing shall include relevant and necessary data and documentation for the applicable rate year that is consistent with the Commission's rules applicable to a

filing for a general increase in rates or any rules adopted by the Commission to implement this Section. Normalization adjustments shall not be required. Notwithstanding any other provision of this Section or Act or any rule or other requirement adopted by the Commission, a participating utility that is a combination utility with more than one rate zone shall not be required to file a separate set of such data and documentation for each rate zone and may combine such data and documentation into a single set of schedules.

Within 45 days after the utility files its annual update of cost inputs to the performance-based formula rate, the Commission shall have the authority, either upon complaint or its own initiative, but with reasonable notice, to enter upon a hearing concerning the prudence and reasonableness of the costs incurred by the utility to be recovered during the applicable rate year that are reflected in the inputs to the performance-based formula rate derived from the utility's FERC Form 1. During the course of the hearing, each objection shall be stated with particularity and evidence provided in support thereof, after which the utility shall have the opportunity to rebut the evidence. Discovery shall be allowed consistent with the Commission's Rules of Practice, which Rules shall be enforced by the Commission or the assigned hearing examiner. The Commission shall apply the same evidentiary standards, including, but not limited to, those concerning the prudence

and reasonableness of the costs incurred by the utility, in the hearing as it would apply in a hearing to review a filing for a general increase in rates under Article IX of this Act. The Commission shall not, however, have the authority in a proceeding under this subsection (d) to consider or order any changes to the structure or protocols of the performance-based formula rate approved pursuant to subsection (c) of this Section. In a proceeding under this subsection (d), the Commission shall enter its order no later than the earlier of 240 days after the utility's filing of its annual update of cost inputs to the performance-based formula rate or December 31. The Commission's determinations of the prudence and reasonableness of the costs incurred for the applicable calendar year shall be final upon entry of the Commission's order and shall not be subject to reopening, reexamination, or collateral attack in any other Commission proceeding, case, docket, order, rule or regulation, provided, however, that nothing in this subsection (d) shall prohibit a party from petitioning the Commission to rehear or appeal to the courts the order pursuant to the provisions of this Act.

In the event the Commission does not, either upon complaint or its own initiative, enter upon a hearing within 45 days after the utility files the annual update of cost inputs to its performance-based formula rate, then the costs incurred for the applicable calendar year shall be deemed prudent and reasonable, and the filed charges shall not be subject to

reopening, reexamination, or collateral attack in any other proceeding, case, docket, order, rule, or regulation.

A participating utility's first filing of the updated cost inputs, and any Commission investigation of such inputs pursuant to this subsection (d) shall proceed notwithstanding the fact that the Commission's investigation under subsection (c) of this Section is still pending and notwithstanding any other law, order, rule, or Commission practice to the contrary.

(e) Nothing in subsections (c) or (d) of this Section shall prohibit the Commission from investigating, or a participating utility from filing, revenue-neutral tariff changes related to rate design of a performance-based formula rate that has been placed into effect for the utility. Following approval of a participating utility's performance-based formula rate tariff pursuant to subsection (c) of this Section, the utility shall make a filing with the Commission within one year after the effective date of the performance-based formula rate tariff that proposes changes to the tariff to incorporate the findings of any final rate design orders of the Commission applicable to the participating utility and entered subsequent to the Commission's approval of the tariff. The Commission shall, after notice and hearing, enter its order approving, or approving with modification, the proposed changes to the performance-based formula rate tariff within 240 days after the utility's filing. Following such approval, the utility shall make a filing with the Commission during each subsequent 3-year

period that either proposes revenue-neutral tariff changes or re-files the existing tariffs without change, which shall present the Commission with an opportunity to suspend the tariffs and consider revenue-neutral tariff changes related to rate design.

(f) Within 30 days after the filing of a tariff pursuant to subsection (c) of this Section, each participating utility shall develop and file with the Commission multi-year metrics designed to achieve, ratably over a 10-year period, improvement over baseline performance values as follows:

(1) Twenty percent improvement in the System Average Interruption Frequency Index, using a baseline of the average of the data from 2001 through 2010.

(2) Fifteen percent improvement in the system Customer Average Interruption Duration Index, using a baseline of the average of the data from 2001 through 2010.

(3) For a participating utility other than a combination utility, 20% improvement in the System Average Interruption Frequency Index for its Southern Region, using a baseline of the average of the data from 2001 through 2010. For purposes of this paragraph (C), Southern Region shall have the meaning set forth in the participating utility's most recent report filed pursuant to Section 16-125 of this Act.

(4) Seventy-five percent improvement in the total number of customers who exceed the service reliability

targets as set forth in subparagraphs (A) through (C) of paragraph (4) of subsection (b) of 83 Ill. Admin. Code Part 411.140 as of May 1, 2011, using 2010 as the baseline year.

(5) Reduction in issuance of estimated electric bills: 90% improvement for a participating utility other than a combination utility, and 56% improvement for a participating utility that is a combination utility, using a baseline of the average number of estimated bills for the years 2008 through 2010.

(6) Consumption on inactive meters: 90% improvement for a participating utility other than a combination utility, and 56% improvement for a participating utility that is a combination utility, using a baseline of the average unbilled kilowatthours for the years 2009 and 2010.

(7) Unaccounted for energy: 50% improvement for a participating utility other than a combination utility using a baseline of the non-technical line loss unaccounted for energy kilowatthours for the year 2009.

(8) Uncollectible expense: reduce uncollectible expense by at least \$30,000,000 for a participating utility other than a combination utility and by at least \$3,500,000 for a participating utility that is a combination utility, using a baseline of the average uncollectible expense for the years 2008 through 2010.

(9) Opportunities for minority-owned and female-owned business enterprises: design a performance metric

regarding the creation of opportunities for minority-owned and female-owned business enterprises consistent with State and federal law using a base performance value of the percentage of the participating utility's capital expenditures that were paid to minority-owned and female-owned business enterprises in 2010.

The definitions set forth in 83 Ill. Admin. Code Part 411.20 as of May 1, 2011 shall be used for purposes of calculating performance under paragraphs (1) through (3) of this subsection (f), provided, however, that the participating utility may exclude up to 9 extreme weather event days from such calculation for each year. For purposes of this Section, an extreme weather event day is a 24-hour calendar day (beginning at 12:00 a.m. and ending at 11:59 p.m.) during which any weather event (e.g., storm, tornado) caused interruptions for 10,000 or more of the participating utility's customers for 3 hours or more. If there are more than 9 extreme weather event days in a year, then the utility may choose no more than 9 extreme weather event days to exclude, provided that the same extreme weather event days are excluded from each of the calculations performed under paragraphs (1) through (3) of this subsection (f).

The metrics shall include incremental performance goals for each year of the 10-year period, which shall be designed to demonstrate that the utility is on track to achieve the performance goal in each category at the end of the 10-year

period. The utility shall elect when the 10-year period shall commence, provided that it begins no later than 14 months following the date on which the utility begins investing pursuant to subsection (b) of this Section.

The metrics and performance goals set forth in subparagraphs (5) through (8) of this subsection (f) are based on the assumptions that the participating utility may fully implement the technology described in subsection (b) of this Section, including utilizing the full functionality of such technology and that there is no requirement for personal on-site notification. If the utility is unable to meet the metrics and performance goals set forth in subparagraphs (5) through (8) of this subsection (f) for such reasons, and the Commission so finds after notice and hearing, then the utility shall be excused from compliance, but only to the limited extent achievement of the affected metrics and performance goals was hindered by the less than full implementation.

(f-5) The financial penalties applicable to the metrics described in subparagraphs (1) through (8) of subsection (f) of this Section, as applicable, shall be applied through an adjustment to the participating utility's return on equity as follows:

(1) With respect to each of the incremental annual performance goals established pursuant to paragraph (1) of subsection (f) of this Section, for each year that a participating utility other than a combination utility

does not achieve the annual goal, the participating utility's return on equity shall be reduced by 5 basis points for such unachieved goal for the following 12-month period, and for each year that a participating utility that is a combination utility does not achieve the annual goal, the participating utility's return on equity shall be reduced by 10 basis points for each such unachieved goal for the following 12-month period.

(2) With respect to each of the incremental annual performance goals established pursuant to subparagraphs (2), (3), and (4) of subsection (f) of this Section, as applicable, for each year that the participating utility does not achieve each such goal, the participating utility's return on equity shall be reduced by 5 basis points for each such unachieved goal for the following 12-month period. With respect to each of the incremental annual performance goals established pursuant to subparagraph (5) of subsection (f) of this Section, for each year that the participating utility does not achieve at least 95% of each such goal, the participating utility's return on equity shall be reduced by 5 basis points for each such unachieved goal for the following 12-month period.

(3) With respect to each of the incremental annual performance goals established pursuant to paragraphs (6), (7), and (8) of subsection (f) of this Section, as

applicable, the performance under each such goal shall be calculated in terms of the percentage of the goal achieved. The percentage of goal achieved for each of the goals shall be aggregated, and an average percentage value calculated, for each year of the 10-year period. If the utility does not achieve an average percentage value in a given year of at least 95%, the participating utility's return on equity shall be reduced by 5 basis points for the following 12-month period.

The financial penalties shall be applied as described in this subsection (f-5) through a separate tariff mechanism, which shall be filed by the utility together with its metrics. In the event the formula rate tariff established pursuant to subsection (c) of this Section terminates, the utility's obligations under subsection (f) of this Section and this subsection (f-5) shall also terminate, provided, however, that the tariff mechanism established pursuant to subsection (f) of this Section and this subsection (f-5) shall remain in effect until any penalties due and owing at the time of such termination are applied.

The Commission shall, after notice and hearing, enter an order within 120 days after the metrics are filed approving, or approving with modification, a participating utility's tariff or mechanism to satisfy the metrics set forth in subsection (f) of this Section. On June 1 of each subsequent year, each participating utility shall file a report with the Commission

that includes, among other things, a description of how the participating utility performed under each metric and an identification of any extraordinary events that adversely impacted the utility's performance. Whenever a participating utility does not satisfy the metrics required pursuant to subsection (f) of this Section, the Commission shall, after notice and hearing, enter an order approving financial penalties in accordance with this subsection (f-5). The Commission-approved financial penalties shall be applied beginning with the next rate year. Nothing in this Section shall authorize the Commission to reduce or otherwise obviate the imposition of financial penalties for failing to achieve one or more of the metrics established pursuant to subparagraph (1) through (4) of subsection (f) of this Section.

(g) On or before July 31, 2014, each participating utility shall file a report with the Commission that sets forth the average annual increase in the average amount paid per kilowatthour for residential eligible retail customers, exclusive of the effects of energy efficiency programs, comparing the 12-month period ending May 31, 2012; the 12-month period ending May 31, 2013; and the 12-month period ending May 31, 2014. For a participating utility that is a combination utility with more than one rate zone, the weighted average aggregate increase shall be provided. The report shall be filed together with a statement from an independent auditor attesting to the accuracy of the report. The cost of the independent

auditor shall be borne by the participating utility and shall not be a recoverable expense.

In the event that the average annual increase exceeds 2.5% as calculated pursuant to this subsection (g), then Sections 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act, other than this subsection, shall be inoperative as they relate to the utility and its service area as of the date of the report due to be submitted pursuant to this subsection and the utility shall no longer be eligible to annually update the performance-based formula rate tariff pursuant to subsection (d) of this Section. In such event, the then current rates shall remain in effect until such time as new rates are set pursuant to Article IX of this Act, subject to retroactive adjustment, with interest, to reconcile rates charged with actual costs, and the participating utility's voluntary commitments and obligations under subsection (b) of this Section shall immediately terminate, except for the utility's obligation to pay an amount already owed to the fund for training grants pursuant to a Commission order issued under subsection (b) of this Section.

In the event that the average annual increase is 2.5% or less as calculated pursuant to this subsection (g), then the performance-based formula rate shall remain in effect as set forth in this Section.

For purposes of this Section, the amount per kilowatthour means the total amount paid for electric service expressed on a

per kilowatthour basis, and the total amount paid for electric service includes without limitation amounts paid for supply, transmission, distribution, surcharges, and add-on taxes exclusive of any increases in taxes or new taxes imposed after the effective date of this amendatory Act of the 97th General Assembly. For purposes of this Section, "eligible retail customers" shall have the meaning set forth in Section 16-111.5 of this Act.

The fact that this Section becomes inoperative as set forth in this subsection shall not be construed to mean that the Commission may reexamine or otherwise reopen prudence or reasonableness determinations already made.

(h) Sections 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act, other than this subsection, are inoperative after December 31, 2017 for every participating utility, after which time a participating utility shall no longer be eligible to annually update the performance-based formula rate tariff pursuant to subsection (d) of this Section. At such time, the then current rates shall remain in effect until such time as new rates are set pursuant to Article IX of this Act, subject to retroactive adjustment, with interest, to reconcile rates charged with actual costs.

By December 31, 2017, the Commission shall prepare and file with the General Assembly a report on the infrastructure program and the performance-based formula rate. The report shall include the change in the average amount per kilowatthour

paid by residential customers between June 1, 2011 and May 31, 2017. If the change in the total average rate paid exceeds 2.5% compounded annually, the Commission shall include in the report an analysis that shows the portion of the change due to the delivery services component and the portion of the change due to the supply component of the rate. The report shall include separate sections for each participating utility.

In the event Sections 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act do not become inoperative after December 31, 2017, then these Sections are inoperative after December 31, 2022 for every participating utility, after which time a participating utility shall no longer be eligible to annually update the performance-based formula rate tariff pursuant to subsection (d) of this Section. At such time, the then current rates shall remain in effect until such time as new rates are set pursuant to Article IX of this Act, subject to retroactive adjustment, with interest, to reconcile rates charged with actual costs.

The fact that this Section becomes inoperative as set forth in this subsection shall not be construed to mean that the Commission may reexamine or otherwise reopen prudence or reasonableness determinations already made.

(i) While a participating utility may use, develop, and maintain broadband systems and the delivery of broadband services, voice-over-internet-protocol services, telecommunications services, and cable and video programming

services for use in providing delivery services and Smart Grid functionality or application to its retail customers, including, but not limited to, the installation, implementation and maintenance of Smart Grid electric system upgrades as defined in Section 16-108.6 of this Act, a participating utility is prohibited from offering to its retail customers broadband services or the delivery of broadband services, voice-over-internet-protocol services, telecommunications services, or cable or video programming services, unless they are part of a service directly related to delivery services or Smart Grid functionality or applications as defined in Section 16-108.6 of this Act, and from recovering the costs of such offerings from retail customers.

(j) Nothing in this Section is intended to legislatively overturn the opinion issued in Commonwealth Edison Co. v. Ill. Commerce Comm'n, Nos. 2-08-0959, 2-08-1037, 2-08-1137, 1-08-3008, 1-08-3030, 1-08-3054, 1-08-3313 cons. (Ill. App. Ct. 2d Dist. Sept. 30, 2010). This amendatory Act of the 97th General Assembly shall not be construed as creating a contract between the General Assembly and the participating utility, and shall not establish a property right in the participating utility.

(220 ILCS 5/16-108.6 new)

Sec. 16-108.6. Provisions relating to Smart Grid Advanced Metering Infrastructure Deployment Plan.

(a) For purposes of this Section and Sections 16-108.7 and 16-108.8 of this Act:

"Advanced Metering Infrastructure" or "AMI" means the communications hardware and software and associated system software that enables Smart Grid functions by creating a network between advanced meters and utility business systems and allowing collection and distribution of information to customers and other parties in addition to providing information to the utility itself.

"Cost-beneficial" means a determination that the benefits of a participating utility's Smart Grid AMI Deployment Plan exceed the costs of the Smart Grid AMI Deployment Plan as initially filed with the Commission or as subsequently modified by the Commission. This standard is met if the present value of the total benefits of the Smart Grid AMI Deployment Plan exceeds the present value of the total costs of the Smart Grid AMI Deployment Plan. The total cost shall include all utility costs reasonably associated with the Smart Grid AMI Deployment Plan. The total benefits shall include the sum of avoided electricity costs, including avoided utility operational costs, avoided consumer power, capacity, and energy costs, and avoided societal costs associated with the production and consumption of electricity, as well as other societal benefits, including the greater integration of renewable and distributed power resources, reductions in the emissions of harmful pollutants and associated avoided health-related costs, other

benefits associated with energy efficiency measures, demand-response activities, and the enabling of greater penetration of alternative fuel vehicles.

"Participating utility" has the meaning set forth in Section 16-108.5 of this Act.

"Smart Grid" means investments and policies that together promote one or more of the following goals:

(1) Increased use of digital information and controls technology to improve reliability, security, and efficiency of the electric grid.

(2) Dynamic optimization of grid operations and resources, with full cyber security.

(3) Deployment and integration of distributed resources and generation, including renewable resources.

(4) Development and incorporation of demand-response, demand-side resources, and energy efficiency resources.

(5) Deployment of "smart" technologies (real-time, automated, interactive technologies that optimize the physical operation of appliances and consumer devices) for metering, communications concerning grid operations and status, and distribution automation.

(6) Integration of "smart" appliances and consumer devices.

(7) Deployment and integration of advanced electricity storage and peak-shaving technologies, including plug-in electric and hybrid electric vehicles, thermal-storage air

conditioning and renewable energy generation.

(8) Provision to consumers of timely information and control options.

(9) Development of open access standards for communication and interoperability of appliances and equipment connected to the electric grid, including the infrastructure serving the grid.

(10) Identification and lowering of unreasonable or unnecessary barriers to adoption of Smart Grid technologies, practices, services, and business models that support energy efficiency, demand-response, and distributed generation.

"Smart Grid Advisory Council" means the group of stakeholders formed pursuant to subsection (b) of this Section for the purposes of advising and working with participating utilities on the development and implementation of a Smart Grid Advanced Metering Infrastructure Deployment Plan.

"Smart Grid electric system upgrades" means any of the following:

(1) metering devices, sensors, control devices, and other devices integrated with and attached to an electric utility system that are capable of engaging in Smart Grid functions;

(2) other monitoring and communications devices that enable Smart Grid functions, including, but not limited to, distribution automation;

(3) software that enables devices or computers to engage in Smart Grid functions;

(4) associated cyber secure data communication network, including enhancements to cyber-security technologies and measures;

(5) substation micro-processor relay upgrades;

(6) devices that allow electric or hybrid-electric vehicles to engage in Smart Grid functions; or

(7) devices that enable individual consumers to incorporate distributed and micro-generation.

"Smart Grid electric system upgrades" does not include expenditures for: (1) electricity generation, transmission, or distribution infrastructure or equipment that does not directly relate to or support installing, implementing or enabling Smart Grid functions; (2) physical interconnection of generators or other devices to the grid except those that are directly related to enabling Smart Grid functions; or (3) ongoing or routine operation, billing, customer relations, security, and maintenance.

"Smart Grid functions" means:

(1) the ability to develop, store, send, and receive digital information concerning or enabling grid operations, electricity use, costs, prices, time of use, nature of use, storage, or other information relevant to device, grid, or utility operations, to or from or by means of the electric utility system through one or a combination

of devices and technologies;

(2) the ability to develop, store, send, and receive digital information concerning electricity use, costs, prices, time of use, nature of use, storage, or other information relevant to device, grid, or utility operations to or from a computer or other control device;

(3) the ability to measure or monitor electricity use as a function of time of day, power quality characteristics such as voltage level, current, cycles per second, or source or type of generation and to store, synthesize, or report that information by digital means;

(4) the ability to sense and localize disruptions or changes in power flows on the grid and communicate such information instantaneously and automatically for purposes of enabling automatic protective responses to sustain reliability and security of grid operations;

(5) the ability to detect, prevent, communicate with regard to, respond to, or recover from system security threats, including cyber-security threats and terrorism, using digital information, media, and devices;

(6) the ability of any device or machine to respond to signals, measurements, or communications automatically or in a manner programmed by its owner or operator without independent human intervention;

(7) the ability to use digital information to operate functionalities on the electric utility grid that were

previously electro-mechanical or manual;

(8) the ability to use digital controls to manage and modify electricity demand, enable congestion management, assist in voltage control, provide operating reserves, and provide frequency regulation; or

(9) the ability to integrate electric plug-in vehicles, distributed generation, and storage in a safe and cost-effective manner on the electric grid.

(b) Within 30 days after the effective date of this amendatory Act of the 97th General Assembly, the Smart Grid Advisory Council shall be established, which shall consist of 7 total voting members with each member possessing either technical, business or consumer expertise in Smart Grid issues and each having been the single appointment of one of the following: the Governor, the Speaker of the House, the Minority Leader of the House, the President of the Senate, the Minority Leader of the Senate, the Illinois Science and Technology Coalition, and the Citizens Utility Board. The Governor shall designate one of the members of the Council to serve as chairman, and that person shall serve as the chairman at the pleasure of the Governor. The members shall not be compensated for serving on the Smart Grid Advisory Council. The Smart Grid Advisory Council shall have the following duties:

(1) Serve as an advisor to participating utilities subject to this Section and in the manner described in this Section, and the recommendations provided by the Council,

although non-binding, shall be considered by the utilities.

(2) Serve as trustees of the trust or foundation established pursuant to Section 16-108.7 of this Act with the duties enumerated thereunder.

(c) After consultation with the Smart Grid Advisory Council, each participating utility shall file a Smart Grid Advanced Metering Infrastructure Deployment Plan ("AMI Plan") with the Commission within 180 days after the effective date of this amendatory Act of the 97th General Assembly or by November 1, 2011, whichever is later, or in the case of a combination utility as defined in Section 16-108.5, by April 1, 2012, provided that a participating utility shall not file its plan until the evaluation report on the Pilot Program described in this subsection (c) is issued. The AMI Plan shall provide for investment over a 10-year period that is sufficient to implement the AMI Plan across its entire service territory in a manner that is consistent with subsection (b) of Section 16-108.5 of this Act. The AMI Plan shall contain:

(1) the participating utility's Smart Grid AMI vision statement that is consistent with the goal of developing a cost-beneficial Smart Grid;

(2) a statement of Smart Grid AMI strategy that includes a description of how the utility evaluates and prioritizes technology choices to create customer value, including a plan to enhance and enable customers' ability

to take advantage of Smart Grid functions beginning at the time an account has billed successfully on the AMI network;

(3) a deployment schedule and plan that includes deployment of AMI to all customers for a participating utility other than a combination utility, and to 62% of all customers for a participating utility that is a combination utility;

(4) annual milestones and metrics for the purposes of measuring the success of the AMI Plan in enabling Smart Grid functions; and enhancing consumer benefits from Smart Grid AMI; and

(5) a plan for the consumer education to be implemented by the participating utility.

The AMI Plan shall be fully consistent with the standards of the National Institute of Standard and Technology (NIST) for Smart Grid interoperability that are in effect at the time the participating utility files its AMI Plan, shall include open standards and internet protocol to the maximum extent possible consistent with cyber security, and shall maximize, to the extent possible, a flexible smart meter platform that can accept remote device upgrades and contain sufficient internal memory capacity for additional storage capabilities, functions and services without the need for physical access to the meter.

The AMI Plan shall secure the privacy of personal information and establish the right of consumers to consent to the disclosure of personal energy information to third parties

through electronic, web-based, and other means in accordance with State and federal law and regulations regarding consumer privacy and protection of consumer data.

After notice and hearing, the Commission shall, within 60 days of the filing of an AMI Plan, issue its order approving, or approving with modification, the AMI Plan if the Commission finds that the AMI Plan contains the information required in paragraphs (1) through (5) of this subsection (c) and further finds that the implementation of the AMI Plan will be cost-beneficial consistent with the principles established through the Illinois Smart Grid Collaborative, giving weight to the results of any Commission-approved pilot designed to examine the benefits and costs of AMI deployment. A participating utility's decision to invest pursuant to an AMI Plan approved by the Commission shall not be subject to prudence reviews in subsequent Commission proceedings. Nothing in this subsection (c) is intended to limit the Commission's ability to review the reasonableness of the costs incurred under the AMI Plan. A participating utility shall be allowed to recover the reasonable costs it incurs in implementing a Commission-approved AMI Plan, including the costs of retired meters, and may recover such costs through its tariffs, including the performance-based formula rate tariff approved pursuant to subsection (c) of Section 16-108.5 of this Act.

(d) The AMI Plan shall secure the privacy of the customer's personal information. "Personal information" for this purpose

consists of the customer's name, address, telephone number, and other personally identifying information, as well as information about the customer's electric usage. Electric utilities, their contractors or agents, and any third party who comes into possession of such personal information by virtue of working on Smart Grid technology shall not disclose such personal information to be used in mailing lists or to be used for other commercial purposes not reasonably related to the conduct of the utility's business. Electric utilities shall comply with the consumer privacy requirements of the Personal Information Protection Act. In the event a participating utility receives revenues from the sale of information obtained through Smart Grid technology that is not personal information, the participating utility shall use such revenues to offset the revenue requirement.

(e) On April 1 of each year beginning in 2013 and after consultation with the Smart Grid Advisory Council, each participating utility shall submit a report regarding the progress it has made toward completing implementation of its AMI Plan. This report shall:

(1) describe the AMI investments made during the prior 12 months and the AMI investments planned to be made in the following 12 months;

(2) provide sufficient detail to determine the utility's progress in meeting the metrics and milestones identified by the utility in its AMI Plan; and

(3) identify any updates to the AMI Plan.

Within 21 days after the utility files its annual report, the Commission shall have authority, either upon complaint or its own initiative, but with reasonable notice, to enter upon an investigation regarding the utility's progress in implementing the AMI Plan as described in paragraph (1) of this subsection (e). If the Commission finds, after notice and hearing, that the participating utility's progress in implementing the AMI Plan is materially deficient for the given plan year, then the Commission shall issue an order requiring the participating utility to devise a corrective action plan, subject to Commission approval and oversight, to bring implementation back on schedule consistent with the AMI Plan. The Commission's order must be entered within 90 days after the utility files its annual report. If the Commission does not initiate an investigation within 21 days after the utility files its annual report, then the filing shall be deemed accepted by the Commission. The utility shall not be required to suspend implementation of its AMI Plan during any Commission investigation.

The participating utility's annual report regarding AMI Plan year 10 shall contain a statement verifying that the implementation of its AMI Plan is complete, provided, however, that if the utility is subject to a corrective action plan that extends the implementation period beyond 10 years, the utility shall include the verification statement in its final annual

report. Following the date of a Commission order approving the final annual report or the date on which the final report is deemed accepted by the Commission, the utility's annual reporting obligations under this subsection (d) shall terminate, provided, however, that the utility shall have a continuing obligation to provide information, upon request, to the Commission and Smart Grid Advisory Council regarding the AMI Plan.

(f) Each participating utility shall pay a pro rata share, based on number of customers, of \$5,000,000 per year to the trust or foundation established pursuant to Section 16-108.7 of this Act for each plan year of the AMI Plan, which shall be used for purposes of providing customer education regarding smart meters and related consumer-facing technologies and services and 70% of which shall be a recoverable expense; provided that other reasonable amounts expended by the utility for such consumer education shall not be subject to the 70% limitation of this subsection.

(g) Within 60 days after the Commission approves a participating utility's AMI Plan pursuant to subsection (c) of this Section, the participating utility, after consultation with the Smart Grid Advisory Council, shall file a proposed tariff with the Commission that offers an opt-in market-based peak time rebate program to all residential retail customers with smart meters that is designed to provide, in a competitively neutral manner, rebates to those residential

retail customers that curtail their use of electricity during specific periods that are identified as peak usage periods. The total amount of rebates shall be the amount of compensation the utility obtains through markets or programs at the applicable regional transmission organization. The utility shall make all reasonable attempts to secure funding for the peak time rebate program through markets or programs at the applicable regional transmission organization. The rules and procedures for consumers to opt-in to the peak time rebate program shall include electronic sign-up, be designed to maximize participation, and be included on the utility's website. The Commission shall monitor the performance of programs established pursuant to this subsection (g) and shall order the termination or modification of a program if it determines that the program is not, after a reasonable period of time for development of at least 4 years, resulting in net benefits to the residential customers of the participating utility.

(h) If Section 16-108.5 of this Act becomes inoperative with respect to one or more participating utilities as set forth in subsection (g) or (h) of that Section, then Sections 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act shall become inoperative as to each affected utility and its service area on the same date as Section 16-108.5 becomes inoperative.

(220 ILCS 5/16-108.7 new)

Sec. 16-108.7. Illinois Science and Energy Innovation

Trust.

(a) Within 90 days of the effective date of this amendatory Act of the 97th General Assembly, the members of the Smart Grid Advisory Council established pursuant to Section 16-108.6 of this Act, or a majority of the members thereof, shall cause to be established an Illinois science and energy innovation trust or foundation for the purposes of providing financial and technical support and assistance to entities, public or private, within the State of Illinois including, but not limited to, units of State and local government, educational and research institutions, corporations, and charitable, educational, environmental and community organizations, for programs and projects that support, encourage or utilize innovative technologies or other methods of modernizing the State's electric grid that will benefit the public by promoting economic development in Illinois. Such activities shall be supported through grants, loans, contracts, or other programs designed to assist and further benefit technological advances in the area of electric grid modernization and operation. The trust or foundation shall also be eligible for receipt of other energy and environmental grant opportunities, from public or private sources. The trust or foundation shall not be a governmental entity.

(b) Funds received by the trust or foundation pursuant to subsection (f) of Section 16-108.6 of this Act shall be used solely for the purpose of providing consumer education

regarding smart meters and related consumer-facing technologies and services and the peak time rebate program described in subsection (g) of Section 16-108.6 of this Act. Thirty percent of such funds received from each participating utility shall be used by the trust or foundation for purposes of providing such education to each participating utility's low-income retail customers, including low-income senior citizens.

The trust or foundation shall use all funds received pursuant to subsection (f) of Section 16-108.6 of this Act in a manner that reflects the unique needs and characteristics of each participating utility's service territory and in proportion to each participating utility's payment.

(c) Such trust or foundation shall be governed by a declaration of trust or articles of incorporation and bylaws which shall, at a minimum, provide the following:

(1) There shall initially be 7 trustees of the trust or foundation, which shall consist of the members of the Smart Grid Advisory Council established pursuant to Section 16-108.6 of this Act. Subsequently, the participating utilities shall appoint one trustee and the Clean Energy Trust shall appoint one non-voting trustee who shall provide expertise regarding early stage investment in Smart Grid projects.

(2) All trustees shall be entitled to reimbursement for reasonable expenses incurred on behalf of the trust in the

performance of their duties as trustees. All such reimbursements shall be paid out of the trust.

(3) Trustees shall be appointed within 60 days after the creation of the trust or foundation and shall serve for a term of 5 years commencing upon the date of their respective appointments, until their respective successors are appointed and qualified.

(4) A vacancy in the office of trustee shall be filled by the person holding the office responsible for appointing the trustee whose death or resignation creates the vacancy, and a trustee appointed to fill a vacancy shall serve the remainder of the term of the trustee whose resignation or death created the vacancy.

(5) The trust or foundation shall have an indefinite term and shall terminate at such time as no trust assets remain.

(6) The allocation and disbursement of funds for the various purposes for which the trust or foundation is established shall be determined by the trustees in accordance with the declaration of trust or the articles of incorporation and bylaws.

(7) The trust or foundation shall be authorized to employ an executive director and other employees, or contract management of the trust or foundation in its entirety to an outside organization found suitable by the trustees, to enter into leases, contracts and other

obligations on behalf of the trust or foundation, and to incur expenses that the trustees deem necessary or appropriate for the fulfillment of the purposes for which the trust or foundation is established, provided, however, that salaries and administrative expenses incurred on behalf of the trust or foundation shall not exceed 3% of the trust's principal value, or \$750,000, whichever is greater, in any given year. The trustees shall not be compensated by the trust or foundation.

(8) The trustees may create and appoint advisory boards or committees to assist them with the administration of the trust or foundation, and to advise and make recommendations to them regarding the contribution and disbursement of the trust or foundation funds.

(9) All funds dispersed by the trust or foundation for programs and projects to meet the objectives of the trust or foundation as enumerated in this Section shall be subject to a peer-review process as determined by the trustees. This process shall be designed to determine, in an objective and unbiased manner, those programs and projects that best fit the objectives of the trust or foundation. In each fiscal year the trustees shall determine, based solely on the information provided through the peer-review process, a budget for programs and projects for that fiscal year.

(10) The trustees shall administer a Smart Grid

education fund from which it shall make grants to qualified not-for-profit organizations for the purpose of educating customers with regard to smart meters and related consumer-facing technologies and services. In making such grants the trust or foundation shall strongly encourage grantees to coordinate to the extent practicable and consider recommendations from the participating utilities regarding the development and implementation of customer education plans.

(11) One of the objectives of the trust or foundation is to remain self-funding. In order to meet this objective, the trustees may sign agreements with those entities receiving funding that provide for license fees, royalties, or other payments to the trust or foundation from such entities that receive support for their product development from the trust or foundation. Such payments, however, shall be contingent on the commercialization of such products, services, or technologies enabled by the funding provided by the trust or foundation.

(d) The trustees shall notify each participating utility as defined in Section 16-108.5 of this Act of the formation of the trust or foundation. Within 90 days after receipt of the notification, each participating utility that is not a combination utility as defined in Section 16-108.5 of this Act shall contribute \$15,000,000 to the trust or foundation, and each participating utility that is a combination utility, as

defined in Section 16-108.5 of this Act, shall contribute \$7,500,000 to the trust or foundation established pursuant to this Section. Such contributions shall not be a recoverable expense.

(e) If Section 16-108.5 of this Act becomes inoperative with respect to one or more participating utilities as set forth in subsection (g) or (h) of that Section, then Sections 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act shall become inoperative as to each affected utility and its service area on the same date as Section 16-108.5 becomes inoperative.

(220 ILCS 5/16-108.8 new)

Sec. 16-108.8. Illinois Smart Grid test bed.

(a) Within 180 days after the effective date of this amendatory Act of the 97th General Assembly, each participating utility, as defined by Section 16-108.5 of this Act, shall create or otherwise designate a Smart Grid test bed, which may be located at one or more places within the utility's system, for the purposes of allowing for the testing of Smart Grid technologies. The objectives of this test bed shall be to:

(1) provide an open, unbiased opportunity for testing programs, technologies, business models, and other Smart Grid-related activities;

(2) provide on-grid locations for the testing of potentially innovative Smart Grid-related technologies and services, including but not limited to those funded by the

trust or foundation established pursuant to Section 16-108.7 of this Act;

(3) facilitate testing of business models or services that help integrate Smart Grid-related technologies into the electric grid, especially those business models that may help promote new products and services for retail customers;

(4) offer opportunities to test and showcase Smart Grid technologies and services, especially those likely to support the economic development goals of the State of Illinois.

(b) The test bed shall reside in one or more locations on the participating utility's network. Such locations shall be chosen by the utility to maximize the opportunity for real-time and real-world testing of Smart Grid technologies and services taking into account the safety and security of the participating utility's grid and grid operations.

(c) The participating utility, with input from the Smart Grid Advisory Council established pursuant to Section 16-108.6 of this Act, shall, as part of its filing under subsection (b) of Section 16-108.5, include a plan for the creation, operation, and administration of the test bed. This plan shall address the following:

(1) how the utility proposes to comply with each of the objectives set forth in subsection (a) of this Section;

(2) the proposed location or locations of the test bed;

(3) the process by which the utility will receive, review, and qualify proposals to use the test bed;

(4) the criteria by which the utility proposes to qualify proposals to use the test bed, including, but not limited to, safety, reliability, security, customer data security, privacy, and economic development considerations;

(5) the engineering and operations support that the utility will provide to test bed users, including provision of customer data; and

(6) the estimated costs to establish, administer and promote the availability of the test bed.

(d) The test bed should be open to all qualified entities wishing to test programs, technologies, business models, and other Smart Grid-related activities, provided that the utility retains control of its grid and operations and may reject any programs, technologies, business models, and other Smart Grid-related activities that threaten the reliability, safety, security, or operations of its network, or that would threaten the security of customer-identifiable data in the judgment of the utility. The number of technologies and entities participating in the test bed at any time may be limited by the utility based on its determination of its ability to maintain a secure, safe, and reliable grid.

(e) At a minimum, the test bed shall have the ability to receive live signals from PJM Interconnection LLC or other

applicable regional transmission organization, the ability to test new applications in a utility scale environment (to include ramp rate regulations for distributed wind and solar resources), critical peak price response, and market-based power dispatch.

(f) At the end of the fourth year of operation the test bed shall be subject to an independent evaluation to determine if the test bed is meeting the objectives of this Section or is likely to meet the objectives in the future. The evaluation shall include the performance of the utility as test bed operator. Subject to the findings, the utility and the trust or foundation established pursuant to Section 16-108.7 of this Act may choose to continue operating the test bed.

(g) The utility shall be entitled to recover all prudently incurred and reasonable costs associated with evaluation of proposals, engineering, construction, operation, and administration of the test bed through the performance-based formula rate tariff established pursuant to Section 16-108.5 of this Act.

(h) The utility is authorized to charge fees to users of the test bed that shall recover the costs associated with the incremental costs to the utility associated with administration of the test bed, provided, however, that any such fees collected by the utility shall be used to offset the costs to be recovered pursuant to subsection (g) of this Section.

(i) On a quarterly basis, the utility shall provide the trust or foundation established pursuant to Section 16-108.7 of this Act with a report summarizing test bed activities, customers, discoveries, and other information as shall be mutually deemed relevant.

(j) To the extent practicable, the utility and trust or foundation established pursuant to Section 16-108.7 of this Act shall jointly pursue resources that enhance the capabilities and capacity of the test bed.

(k) If Section 16-108.5 of this Act becomes inoperative with respect to one or more participating utilities as set forth in subsection (g) or (h) of that Section, then Sections 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act shall become inoperative as to each affected utility and its service area on the same date as Section 16-108.5 become inoperative.

(220 ILCS 5/16-111.5)

Sec. 16-111.5. Provisions relating to procurement.

(a) An electric utility that on December 31, 2005 served at least 100,000 customers in Illinois shall procure power and energy for its eligible retail customers in accordance with the applicable provisions set forth in Section 1-75 of the Illinois Power Agency Act and this Section. "Eligible retail customers" for the purposes of this Section means those retail customers that purchase power and energy from the electric utility under fixed-price bundled service tariffs, other than those retail

customers whose service is declared or deemed competitive under Section 16-113 and those other customer groups specified in this Section, including self-generating customers, customers electing hourly pricing, or those customers who are otherwise ineligible for fixed-price bundled tariff service. Those customers that are excluded from the definition of "eligible retail customers" shall not be included in the procurement plan load requirements, and the utility shall procure any supply requirements, including capacity, ancillary services, and hourly priced energy, in the applicable markets as needed to serve those customers, provided that the utility may include in its procurement plan load requirements for the load that is associated with those retail customers whose service has been declared or deemed competitive pursuant to Section 16-113 of this Act to the extent that those customers are purchasing power and energy during one of the transition periods identified in subsection (b) of Section 16-113 of this Act.

(b) A procurement plan shall be prepared for each electric utility consistent with the applicable requirements of the Illinois Power Agency Act and this Section. For purposes of this Section, Illinois electric utilities that are affiliated by virtue of a common parent company are considered to be a single electric utility. Each procurement plan shall analyze the projected balance of supply and demand for eligible retail customers over a 5-year period with the first planning year beginning on June 1 of the year following the year in which the

plan is filed. The plan shall specifically identify the wholesale products to be procured following plan approval, and shall follow all the requirements set forth in the Public Utilities Act and all applicable State and federal laws, statutes, rules, or regulations, as well as Commission orders. Nothing in this Section precludes consideration of contracts longer than 5 years and related forecast data. Unless specified otherwise in this Section, in the procurement plan or in the implementing tariff, any procurement occurring in accordance with this plan shall be competitively bid through a request for proposals process. Approval and implementation of the procurement plan shall be subject to review and approval by the Commission according to the provisions set forth in this Section. A procurement plan shall include each of the following components:

- (1) Hourly load analysis. This analysis shall include:
 - (i) multi-year historical analysis of hourly loads;
 - (ii) switching trends and competitive retail market analysis;
 - (iii) known or projected changes to future loads;and
 - (iv) growth forecasts by customer class.

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

- (i) the impact of demand response programs, both

current and projected;

(ii) supply side needs that are projected to be offset by purchases of renewable energy resources, if any; and

(iii) the impact of energy efficiency programs, both current and projected.

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

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

(ii) the proposed mix of demand-response products for which contracts will be executed during the next year. The cost-effective demand-response measures shall be procured whenever the cost is lower than procuring comparable capacity products, provided that such products shall:

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

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

(C) provide for customers' participation in

the stream of benefits produced by the demand-response products;

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

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

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

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

(v) proposed term structures for each wholesale product type included in the proposed procurement plan

portfolio of products; and

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

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

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

(1) The procurement administrator shall:

(i) design the final procurement process in accordance with Section 1-75 of the Illinois Power Agency Act and subsection (e) of this Section following

Commission approval of the procurement plan;

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

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

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

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

(vi) administer the request for proposals process;

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

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

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

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

(xi) administer related contingency procurement events.

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

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

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

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

(iv) assess compliance with the procurement plans approved by the Commission for each utility that on December 31, 2005 provided electric service to a least 100,000 customers in Illinois;

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

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

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

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

(1) Beginning in 2008, each Illinois utility procuring power pursuant to this Section shall annually provide a range of load forecasts to the Illinois Power Agency by July 15 of each year, or such other date as may be required by the Commission or Agency. The load forecasts shall cover the 5-year procurement planning period for the next procurement plan and shall include hourly data representing a high-load, low-load and expected-load scenario for the load of the eligible retail customers. The utility shall provide supporting data and assumptions for each of the scenarios.

(2) Beginning in 2008, the Illinois Power Agency shall prepare a procurement plan by August 15th of each year, or such other date as may be required by the Commission. The procurement plan shall identify the portfolio of demand-response and power and energy products to be

procured. Cost-effective demand-response measures shall be procured as set forth in item (iii) of subsection (b) of this Section. Copies of the procurement plan shall be posted and made publicly available on the Agency's and Commission's websites, and copies shall also be provided to each affected electric utility. An affected utility shall have 30 days following the date of posting to provide comment to the Agency on the procurement plan. Other interested entities also may comment on the procurement plan. All comments submitted to the Agency shall be specific, supported by data or other detailed analyses, and, if objecting to all or a portion of the procurement plan, accompanied by specific alternative wording or proposals. All comments shall be posted on the Agency's and Commission's websites. During this 30-day comment period, the Agency shall hold at least one public hearing within each utility's service area for the purpose of receiving public comment on the procurement plan. Within 14 days following the end of the 30-day review period, the Agency shall revise the procurement plan as necessary based on the comments received and file the procurement plan with the Commission and post the procurement plan on the websites.

(3) Within 5 days after the filing of the procurement plan, any person objecting to the procurement plan shall file an objection with the Commission. Within 10 days after the filing, the Commission shall determine whether a

hearing is necessary. The Commission shall enter its order confirming or modifying the procurement plan within 90 days after the filing of the procurement plan by the Illinois Power Agency.

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

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

(1) Solicitation, pre-qualification, and registration of bidders. The procurement administrator shall disseminate information to potential bidders to promote a procurement event, notify potential bidders that the procurement administrator may enter into a post-bid price negotiation with bidders that meet the applicable benchmarks, provide supply requirements, and otherwise explain the competitive procurement process. In addition to such other publication as the procurement administrator determines is appropriate, this information shall be posted on the Illinois Power Agency's and the Commission's websites. The procurement administrator shall also administer the prequalification process, including

evaluation of credit worthiness, compliance with procurement rules, and agreement to the standard form contract developed pursuant to paragraph (2) of this subsection (e). The procurement administrator shall then identify and register bidders to participate in the procurement event.

(2) Standard contract forms and credit terms and instruments. The procurement administrator, in consultation with the utilities, the Commission, and other interested parties and subject to Commission oversight, shall develop and provide standard contract forms for the supplier contracts that meet generally accepted industry practices. Standard credit terms and instruments that meet generally accepted industry practices shall be similarly developed. The procurement administrator shall make available to the Commission all written comments it receives on the contract forms, credit terms, or instruments. If the procurement administrator cannot reach agreement with the applicable electric utility as to the contract terms and conditions, the procurement administrator must notify the Commission of any disputed terms and the Commission shall resolve the dispute. The terms of the contracts shall not be subject to negotiation by winning bidders, and the bidders must agree to the terms of the contract in advance so that winning bids are selected solely on the basis of price.

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

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

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

(i) Event of supplier default: In the event of supplier default, the utility shall review the contract of the defaulting supplier to determine if the amount of supply is 200 megawatts or greater, and if there are more than 60 days remaining of the contract term. If both of these conditions are met, and the default results in termination of the contract, the utility shall immediately notify the Illinois Power Agency that a request for proposals must be issued to procure replacement power, and the procurement administrator shall run an additional procurement event. If the contracted supply of the defaulting supplier is less than 200 megawatts or there are less than 60 days remaining of the contract term, the utility shall procure power and energy from the applicable regional transmission organization market, including ancillary services, capacity, and day-ahead or real time energy, or both, for the duration of the contract term to replace the contracted supply; provided, however, that if a needed product is not available through the regional transmission

organization market it shall be purchased from the wholesale market.

(ii) Failure of the procurement process to fully meet the expected load requirement: If the procurement process fails to fully meet the expected load requirement due to insufficient supplier participation or due to a Commission rejection of the procurement results, the procurement administrator, the procurement monitor, and the Commission staff shall meet within 10 days to analyze potential causes of low supplier interest or causes for the Commission decision. If changes are identified that would likely result in increased supplier participation, or that would address concerns causing the Commission to reject the results of the prior procurement event, the procurement administrator may implement those changes and rerun the request for proposals process according to a schedule determined by those parties and consistent with Section 1-75 of the Illinois Power Agency Act and this subsection. In any event, a new request for proposals process shall be implemented by the procurement administrator within 90 days after the determination that the procurement process has failed to fully meet the expected load requirement.

(iii) In all cases where there is insufficient supply provided under contracts awarded through the

procurement process to fully meet the electric utility's load requirement, the utility shall meet the load requirement by procuring power and energy from the applicable regional transmission organization market, including ancillary services, capacity, and day-ahead or real time energy or both; provided, however, that if a needed product is not available through the regional transmission organization market it shall be purchased from the wholesale market.

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

(f) Within 2 business days after opening the sealed bids, the procurement administrator shall submit a confidential report to the Commission. The report shall contain the results of the bidding for each of the products along with the procurement administrator's recommendation for the acceptance and rejection of bids based on the price benchmark criteria and other factors observed in the process. The procurement monitor also shall submit a confidential report to the Commission within 2 business days after opening the sealed bids. The report shall contain the procurement monitor's assessment of bidder behavior in the process as well as an assessment of the procurement administrator's compliance with the procurement process and rules. The Commission shall review the confidential reports submitted by the procurement administrator and

procurement monitor, and shall accept or reject the recommendations of the procurement administrator within 2 business days after receipt of the reports.

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

(h) The names of the successful bidders and the load weighted average of the winning bid prices for each contract type and for each contract term shall be made available to the public at the time of Commission approval of a procurement event. The Commission, the procurement monitor, the procurement administrator, the Illinois Power Agency, and all participants in the procurement process shall maintain the confidentiality of all other supplier and bidding information in a manner consistent with all applicable laws, rules, regulations, and tariffs. Confidential information, including the confidential reports submitted by the procurement administrator and procurement monitor pursuant to subsection (f) of this Section, shall not be made publicly available and shall not be discoverable by any party in any proceeding, absent a compelling demonstration of need, nor shall those

reports be admissible in any proceeding other than one for law enforcement purposes.

(i) Within 2 business days after a Commission decision approving the results of a procurement event or such other date as may be required by the Commission from time to time, the utility shall file for informational purposes with the Commission its actual or estimated retail supply charges, as applicable, by customer supply group reflecting the costs associated with the procurement and computed in accordance with the tariffs filed pursuant to subsection (1) of this Section and approved by the Commission.

(j) Within 60 days following the effective date of this amendatory Act, each electric utility that on December 31, 2005 provided electric service to at least 100,000 customers in Illinois shall prepare and file with the Commission an initial procurement plan, which shall conform in all material respects to the requirements of the procurement plan set forth in subsection (b); provided, however, that the Illinois Power Agency Act shall not apply to the initial procurement plan prepared pursuant to this subsection. The initial procurement plan shall identify the portfolio of power and energy products to be procured and delivered for the period June 2008 through May 2009, and shall identify the proposed procurement administrator, who shall have the same experience and expertise as is required of a procurement administrator hired pursuant to Section 1-75 of the Illinois Power Agency Act. Copies of the

procurement plan shall be posted and made publicly available on the Commission's website. The initial procurement plan may include contracts for renewable resources that extend beyond May 2009.

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

(ii) The order shall approve or modify the procurement plan, approve an independent procurement administrator, and approve or modify the electric utility's tariffs that are proposed with the initial procurement plan. The Commission shall approve the procurement plan if the Commission determines that it will ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over

time, taking into account any benefits of price stability.

(k) In order to promote price stability for residential and small commercial customers during the transition to competition in Illinois, and notwithstanding any other provision of this Act, each electric utility subject to this Section shall enter into one or more multi-year financial swap contracts that become effective on the effective date of this amendatory Act. These contracts may be executed with generators and power marketers, including affiliated interests of the electric utility. These contracts shall be for a term of no more than 5 years and shall, for each respective utility or for any Illinois electric utilities that are affiliated by virtue of a common parent company and that are thereby considered a single electric utility for purposes of this subsection (k), not exceed in the aggregate 3,000 megawatts for any hour of the year. The contracts shall be financial contracts and not energy sales contracts. The contracts shall be executed as transactions under a negotiated master agreement based on the form of master agreement for financial swap contracts sponsored by the International Swaps and Derivatives Association, Inc. and shall be considered pre-existing contracts in the utilities' procurement plans for residential and small commercial customers. Costs incurred pursuant to a contract authorized by this subsection (k) shall be deemed prudently incurred and reasonable in amount and the electric utility shall be entitled to full cost recovery pursuant to the tariffs

filed with the Commission.

(k-5) In order to promote price stability for residential and small commercial customers during the infrastructure investment program described in subsection (b) of Section 16-108.5 of this Act, and notwithstanding any other provision of this Act or the Illinois Power Agency Act, for each electric utility that serves more than one million retail customers in Illinois, the Illinois Power Agency shall conduct a procurement event within 120 days after the effective date of this amendatory Act of the 97th General Assembly and may procure contracts for energy and renewable energy credits for the period June 1, 2013 through December 31, 2017 that satisfy the requirements of this subsection (k-5), including the benchmarks described in this subsection. These contracts shall be entered into as the result of a competitive procurement event, and, to the extent that any provisions of this Section or the Illinois Power Agency Act do not conflict with this subsection (k-5), such provisions shall apply to the procurement event. The energy contracts shall be for 24 hour by 7 day supply over a term that runs from the first delivery year through December 31, 2017. For a utility that serves over 2 million customers, the energy contracts shall be multi-year with pricing escalating at 2.5% per annum. The energy contracts may be designed as financial swaps or may require physical delivery.

Within 30 days of the effective date of this amendatory Act

of the 97th General Assembly, each such utility shall submit to the Agency updated load forecasts for the period June 1, 2013 through December 31, 2017. The megawatt volume of the contracts shall be based on the updated load forecasts of the minimum monthly on-peak or off-peak average load requirements shown in the forecasts, taking into account any existing energy contracts in effect as well as the expected migration of the utility's customers to alternative retail electric suppliers. The renewable energy credit volume shall be based on the number of credits that would satisfy the requirements of subsection (c) of Section 1-75 of the Illinois Power Agency Act, subject to the rate impact caps and other provisions of subsection (c) of Section 1-75 of the Illinois Power Agency Act. The evaluation of contract bids in the competitive procurement events for energy and for renewable energy credits shall incorporate price benchmarks set collaboratively by the Agency, the procurement administrator, the staff of the Commission, and the procurement monitor. If the contracts are swap contracts, then they shall be executed as transactions under a negotiated master agreement based on the form of master agreement for financial swap contracts sponsored by the International Swaps and Derivatives Association, Inc. Costs incurred pursuant to a contract authorized by this subsection (k-5) shall be deemed prudently incurred and reasonable in amount and the electric utility shall be entitled to full cost recovery pursuant to the tariffs filed with the Commission.

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

(1) An electric utility shall recover its costs incurred under this Section, including, but not limited to, the costs of procuring power and energy demand-response resources under this Section. The utility shall file with the initial procurement plan its proposed tariffs through which its costs of procuring power that are incurred pursuant to a Commission-approved procurement plan and those other costs identified in this subsection (1), will be recovered. The tariffs shall include a formula rate or charge designed to pass through both the costs incurred by the utility in procuring a supply of electric power and energy for the applicable customer classes with no mark-up or return on the price paid by the utility for that supply, plus any just and reasonable costs that the utility incurs in arranging and providing for the supply of electric power and energy. The formula rate or charge shall also contain provisions that ensure that its application does not result in over or under recovery due to changes in

customer usage and demand patterns, and that provide for the correction, on at least an annual basis, of any accounting errors that may occur. A utility shall recover through the tariff all reasonable costs incurred to implement or comply with any procurement plan that is developed and put into effect pursuant to Section 1-75 of the Illinois Power Agency Act and this Section, including any fees assessed by the Illinois Power Agency, costs associated with load balancing, and contingency plan costs. The electric utility shall also recover its full costs of procuring electric supply for which it contracted before the effective date of this Section in conjunction with the provision of full requirements service under fixed-price bundled service tariffs subsequent to December 31, 2006. All such costs shall be deemed to have been prudently incurred. The pass-through tariffs that are filed and approved pursuant to this Section shall not be subject to review under, or in any way limited by, Section 16-111(i) of this Act.

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

(n) Notwithstanding any other provision of this Act, any affiliated electric utilities that submit a single procurement plan covering their combined needs may procure for those

combined needs in conjunction with that plan, and may enter jointly into power supply contracts, purchases, and other procurement arrangements, and allocate capacity and energy and cost responsibility therefor among themselves in proportion to their requirements.

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

(p) An electric utility subject to this Section may propose to invest, lease, own, or operate an electric generation facility as part of its procurement plan, provided the utility demonstrates that such facility is the least-cost option to provide electric service to eligible retail customers. If the facility is shown to be the least-cost option and is included in a procurement plan prepared in accordance with Section 1-75 of the Illinois Power Agency Act and this Section, then the electric utility shall make a filing pursuant to Section 8-406 of this ~~the~~ Act, and may request of the Commission any statutory relief required thereunder. If the Commission grants all of the necessary approvals for the proposed facility, such supply shall thereafter be considered as a pre-existing contract under subsection (b) of this Section. The Commission shall in any order approving a proposal under this subsection specify how the utility will recover the prudently incurred costs of investing in, leasing, owning, or operating such

generation facility through just and reasonable rates charged to eligible retail customers. Cost recovery for facilities included in the utility's procurement plan pursuant to this subsection shall not be subject to review under or in any way limited by the provisions of Section 16-111(i) of this Act. Nothing in this Section is intended to prohibit a utility from filing for a fuel adjustment clause as is otherwise permitted under Section 9-220 of this Act.

(Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09.)

(220 ILCS 5/16-111.5B new)

Sec. 16-111.5B. Provisions relating to energy efficiency procurement.

(a) Beginning in 2012, procurement plans prepared pursuant to Section 16-111.5 of this Act shall be subject to the following additional requirements:

(1) The analysis included pursuant to paragraph (2) of subsection (b) of Section 16-111.5 shall also include the impact of energy efficiency building codes or appliance standards, both current and projected.

(2) The procurement plan components described in subsection (b) of Section 16-111.5 shall also include an assessment of opportunities to expand the programs promoting energy efficiency measures that have been offered under plans approved pursuant to Section 8-103 of this Act or to implement additional cost-effective energy

efficiency programs or measures.

(3) In addition to the information provided pursuant to paragraph (1) of subsection (d) of Section 16-111.5 of this Act, each Illinois utility procuring power pursuant to that Section shall annually provide to the Illinois Power Agency by July 15 of each year, or such other date as may be required by the Commission or Agency, an assessment of cost-effective energy efficiency programs or measures that could be included in the procurement plan. The assessment shall include the following:

(A) A comprehensive energy efficiency potential study for the utility's service territory that was completed within the past 3 years.

(B) Beginning in 2014, the most recent analysis submitted pursuant to Section 8-103A of this Act and approved by the Commission under subsection (f) of Section 8-103 of this Act.

(C) Identification of new or expanded cost-effective energy efficiency programs or measures that are incremental to those included in energy efficiency and demand-response plans approved by the Commission pursuant to Section 8-103 of this Act and that would be offered to eligible retail customers.

(D) Analysis showing that the new or expanded cost-effective energy efficiency programs or measures would lead to a reduction in the overall cost of

electric service.

(E) Analysis of how the cost of procuring additional cost-effective energy efficiency measures compares over the life of the measures to the prevailing cost of comparable supply.

(F) An energy savings goal, expressed in megawatt-hours, for the year in which the measures will be implemented.

In preparing such assessments, a utility shall conduct an annual solicitation process for purposes of requesting proposals from third-party vendors, the results of which shall be provided to the Agency as part of the assessment, including documentation of all bids received. The utility shall develop requests for proposals consistent with the manner in which it develops requests for proposals under plans approved pursuant to Section 8-103 of this Act, which considers input from the Agency and interested stakeholders.

(4) The Illinois Power Agency shall include in the procurement plan prepared pursuant to paragraph (2) of subsection (d) of Section 16-111.5 of this Act energy efficiency programs and measures it determines are cost-effective and the associated annual energy savings goal included in the annual solicitation process and assessment submitted pursuant to paragraph (3) of this subsection (a).

(5) Pursuant to paragraph (4) of subsection (d) of Section 16-111.5 of this Act, the Commission shall also approve the energy efficiency programs and measures included in the procurement plan, including the annual energy savings goal, if the Commission determines they fully capture the potential for all achievable cost-effective savings, to the extent practicable, and otherwise satisfy the requirements of Section 8-103 of this Act.

In the event the Commission approves the procurement of additional energy efficiency, it shall reduce the amount of power to be procured under the procurement plan to reflect the additional energy efficiency and shall direct the utility to undertake the procurement of such energy efficiency, which shall not be subject to the requirements of subsection (e) of Section 16-111.5 of this Act. The utility shall consider input from the Agency and interested stakeholders on the procurement and administration process.

(6) An electric utility shall recover its costs incurred under this Section related to the implementation of energy efficiency programs and measures approved by the Commission in its order approving the procurement plan under Section 16-111.5 of this Act, including, but not limited to, all costs associated with complying with this Section and all start-up and administrative costs and the

costs for any evaluation, measurement, and verification of the measures, from eligible retail customers through the automatic adjustment clause tariff established pursuant to Section 8-103 of this Act, provided, however, that the limitations described in subsection (d) of that Section shall not apply to the costs incurred pursuant to this Section or Section 16-111.7 of this Act.

(b) For purposes of this Section, the term "energy efficiency" shall have the meaning set forth in Section 1-10 of the Illinois Power Agency Act, and the term "cost-effective" shall have the meaning set forth in subsection (a) of Section 8-103 of this Act. In addition, the estimated costs to acquire an additional energy efficiency measure, when divided by the number of kilowatt-hours expected to be saved over the life of the measure, shall be less than or equal to the electricity costs that would be avoided as a result of the energy efficiency measure.

(220 ILCS 5/16-111.7)

Sec. 16-111.7. On-bill financing program; electric utilities.

(a) The Illinois General Assembly finds that Illinois homes and businesses have the potential to save energy through conservation and cost-effective energy efficiency measures. Programs created pursuant to this Section will allow utility customers to purchase cost-effective energy efficiency

measures, including measures set forth in a Commission-approved energy efficiency and demand-response plan under Section 8-103 of this Act and that are cost-effective as that term is defined by that Section, with no required initial upfront payment, and to pay the cost of those products and services over time on their utility bill.

(b) Notwithstanding any other provision of this Act, an electric utility serving more than 100,000 customers on January 1, 2009 shall offer a Commission-approved on-bill financing program ("program") that allows its eligible retail customers, as that term is defined in Section 16-111.5 of this Act, who own a residential single family home, duplex, or other residential building with 4 or less units, or condominium at which the electric service is being provided (i) to borrow funds from a third party lender in order to purchase electric energy efficiency measures approved under the program for installation in such home or condominium without any required upfront payment and (ii) to pay back such funds over time through the electric utility's bill. Based upon the process described in subsection (b-5) of this Section, small commercial retail customers, as that term is defined in Section 16-102 of this Act, who own the premises at which electric service is being provided may be included in such program. After receiving a request from an electric utility for approval of a proposed program and tariffs pursuant to this Section, the Commission shall render its decision within 120 days. If no decision is

rendered within 120 days, then the request shall be deemed to be approved.

(b-5) Within 30 days after the effective date of this amendatory Act of the 96th General Assembly, the Commission shall convene a workshop process during which interested participants may discuss issues related to the program, including program design, eligible electric energy efficiency measures, vendor qualifications, and a methodology for ensuring ongoing compliance with such qualifications, financing, sample documents such as request for proposals, contracts and agreements, dispute resolution, pre-installment and post-installment verification, and evaluation. The workshop process shall be completed within 150 days after the effective date of this amendatory Act of the 96th General Assembly.

(c) Not later than 60 days following completion of the workshop process described in subsection (b-5) of this Section, each electric utility subject to subsection (b) of this Section shall submit a proposed program to the Commission that contains the following components:

(1) A list of recommended electric energy efficiency measures that will be eligible for on-bill financing. An eligible electric energy efficiency measure ("measure") shall be defined by the following:

(A) the measure would be applied to or replace electric energy-using equipment; and either

(B) application of the measure to equipment and systems will have estimated electricity savings (determined by rates in effect at the time of purchase), that are sufficient to cover the costs of implementing the measures, including finance charges and any program fees not recovered pursuant to subsection (f) of this Section; to ~~to~~ assist the electric utility in identifying or approving measures, the utility may consult with the Department of Commerce and Economic Opportunity, as well as with retailers, technicians, and installers of electric energy efficiency measures and energy auditors (collectively "vendors"); or.

(C) the measure is included in a Commission-approved energy efficiency and demand-response plan under Section 8-103 of this Act and is cost-effective as that term is defined by that Section.

(2) The electric utility shall issue a request for proposals ("RFP") to lenders for purposes of providing financing to participants to pay for approved measures. The RFP criteria shall include, but not be limited to, the interest rate, origination fees, and credit terms. The utility shall select the winning bidders based on its evaluation of these criteria, with a preference for those bids containing the rates, fees, and terms most favorable

to participants;

(3) The utility shall work with the lenders selected pursuant to the RFP process, and with vendors, to establish the terms and processes pursuant to which a participant can purchase eligible electric energy efficiency measures using the financing obtained from the lender. The vendor shall explain and offer the approved financing packaging to those customers identified in subsection (b) of this Section and shall assist customers in applying for financing. As part of the process, vendors shall also provide to participants information about any other incentives that may be available for the measures.

(4) The lender shall conduct credit checks or undertake other appropriate measures to limit credit risk, and shall review and approve or deny financing applications submitted by customers identified in subsection (b) of this Section. Following the lender's approval of financing and the participant's purchase of the measure or measures, the lender shall forward payment information to the electric utility, and the utility shall add as a separate line item on the participant's utility bill a charge showing the amount due under the program each month.

(5) A loan issued to a participant pursuant to the program shall be the sole responsibility of the participant, and any dispute that may arise concerning the loan's terms, conditions, or charges shall be resolved

between the participant and lender. Upon transfer of the property title for the premises at which the participant receives electric service from the utility or the participant's request to terminate service at such premises, the participant shall pay in full its electric utility bill, including all amounts due under the program, provided that this obligation may be modified as provided in subsection (g) of this Section. Amounts due under the program shall be deemed amounts owed for residential and, as appropriate, small commercial electric service.

(6) The electric utility shall remit payment in full to the lender each month on behalf of the participant. In the event a participant defaults on payment of its electric utility bill, the electric utility shall continue to remit all payments due under the program to the lender, and the utility shall be entitled to recover all costs related to a participant's nonpayment through the automatic adjustment clause tariff established pursuant to Section 16-111.8 of this Act. In addition, the electric utility shall retain a security interest in the measure or measures purchased under the program, and the utility retains its right to disconnect a participant that defaults on the payment of its utility bill.

(7) The total outstanding amount financed under the program shall not exceed \$2.5 million for an electric utility or electric utilities under a single holding

company, provided that the electric utility or electric utilities may petition the Commission for an increase in such amount.

(d) A program approved by the Commission shall also include the following criteria and guidelines for such program:

(1) guidelines for financing of measures installed under a program, including, but not limited to, RFP criteria and limits on both individual loan amounts and the duration of the loans;

(2) criteria and standards for identifying and approving measures;

(3) qualifications of vendors that will market or install measures, as well as a methodology for ensuring ongoing compliance with such qualifications;

(4) sample contracts and agreements necessary to implement the measures and program; and

(5) the types of data and information that utilities and vendors participating in the program shall collect for purposes of preparing the reports required under subsection (g) of this Section.

(e) The proposed program submitted by each electric utility shall be consistent with the provisions of this Section that define operational, financial and billing arrangements between and among program participants, vendors, lenders, and the electric utility.

(f) An electric utility shall recover all of the prudently

incurred costs of offering a program approved by the Commission pursuant to this Section, including, but not limited to, all start-up and administrative costs and the costs for program evaluation. All prudently incurred costs under this Section shall be recovered from the residential and small commercial retail customer classes eligible to participate in the program through the automatic adjustment clause tariff established pursuant to Section 8-103 of this Act.

(g) An independent evaluation of a program shall be conducted after 3 years of the program's operation. The electric utility shall retain an independent evaluator who shall evaluate the effects of the measures installed under the program and the overall operation of the program, including but not limited to customer eligibility criteria and whether the payment obligation for permanent electric energy efficiency measures that will continue to provide benefits of energy savings should attach to the meter location. As part of the evaluation process, the evaluator shall also solicit feedback from participants and interested stakeholders. The evaluator shall issue a report to the Commission on its findings no later than 4 years after the date on which the program commenced, and the Commission shall issue a report to the Governor and General Assembly including a summary of the information described in this Section as well as its recommendations as to whether the program should be discontinued, continued with modification or modifications or continued without modification, provided that

any recommended modifications shall only apply prospectively and to measures not yet installed or financed.

(h) An electric utility offering a Commission-approved program pursuant to this Section shall not be required to comply with any other statute, order, rule, or regulation of this State that may relate to the offering of such program, provided that nothing in this Section is intended to limit the electric utility's obligation to comply with this Act and the Commission's orders, rules, and regulations, including Part 280 of Title 83 of the Illinois Administrative Code.

(i) The source of a utility customer's electric supply shall not disqualify a customer from participation in the utility's on-bill financing program. Customers of alternative retail electric suppliers may participate in the program under the same terms and conditions applicable to the utility's supply customers.

(Source: P.A. 96-33, eff. 7-10-09.)

(220 ILCS 5/16-128)

Sec. 16-128. Provisions related to utility employees during the mandatory transition period.

(a) The General Assembly finds:

(1) The reliability and safety of the electric system has depended and depends on a workforce of skilled and dedicated employees, equipped with technical training and experience.

(2) The integrity and reliability of the system ~~has~~ also requires ~~depended on~~ the industry's commitment to invest in regular inspection and maintenance, to assure that it can withstand the demands of heavy service requirements and emergency situations.

(3) It is in the State's interest to protect the interests of utility employees who have and continue to dedicate ~~dedicated~~ themselves to assuring reliable service to the citizens of this State, and who might otherwise be economically displaced in a restructured industry.

The General Assembly further finds that it is necessary to assure that employees of electric utilities and employees of contractors or subcontractors performing work on behalf of an electric utility operating in the deregulated industry have the requisite skills, knowledge, training, experience, and competence to provide reliable and safe electrical service under this Act ~~and therefore that alternative retail electric suppliers shall be required to demonstrate the competence of their employees to work in the industry.~~

The General Assembly also finds that it is necessary to assure that employees of alternative retail electric suppliers and employees of contractors or subcontractors performing work on behalf of an alternative retail electric supplier operating in the deregulated industry have the requisite skills, knowledge, training, experience, and competence to provide reliable and safe electrical service under this Act.

To ensure that these findings and prerequisites for reliable and safe electrical service continue to prevail, each alternative retail electric supplier, electric utility, and contractors and subcontractors performing work on behalf of an electric utility or alternative retail electric supplier must demonstrate the competence of their respective employees to work on the distribution system.

The knowledge, skill, training, experience, and competence levels to be demonstrated shall be consistent with those ~~generally~~ required of or by the electric utilities in this State as of January 1, 2007, with respect to their employees and employees of contractors or subcontractors performing work on their behalf. Nothing in this Section shall prohibit an electric utility from establishing knowledge, skill, training, experience, and competence levels greater than those required as of January 1, 2007.

An adequate ~~Adequate~~ demonstration of requisite knowledge, skill, training, experience, and competence shall include, at a minimum, such factors as completion or current participation and ultimate completion by the employee of an accredited or otherwise recognized apprenticeship program for the particular craft, trade or skill, or specified and several years of employment ~~with an electric utility~~ performing a particular work function that is utilized by an electric utility.

Notwithstanding any law, tariff, Commission rule, order, or decision to the contrary, the Commission shall have an

affirmative statutory obligation to ensure that an electric utility is employing employees, contractors, and subcontractors with employees who meet the requirements of subsection (a) of this Section when installing, constructing, operating, and maintaining generation, transmission, or distribution facilities and equipment within this State pursuant to any provision in this Act or any Commission order, rule, or decision.

For purposes of this Section, "distribution facilities and equipment" means any and all of the facilities and equipment, including, but not limited to, substations, distribution feeder circuits, switches, meters, protective equipment, primary circuits, distribution transformers, line extensions and service extensions both above or below ground, conduit, risers, elbows, transformer pads, junction boxes, manholes, pedestals, conductors, and all associated fittings that connect the transmission or distribution system to either the weatherhead on the retail customer's building or other structure for above ground service or to the terminals on the meter base of the retail customer's building or other structure for below ground service.

To implement this requirement for alternative retail electric suppliers, the Commission, in determining that an applicant meets the standards for certification as an alternative retail electric supplier, shall require the applicant to demonstrate (i) that the applicant is licensed to

do business, and bonded, in the State of Illinois; and (ii) that the employees of the applicant that will be installing, operating, and maintaining generation, transmission, or distribution facilities within this State, or any entity with which the applicant has contracted to perform those functions within this State, have the requisite knowledge, skills, training, experience, and competence to perform those functions in a safe and responsible manner in order to provide safe and reliable service, in accordance with the criteria stated above.

(b) The General Assembly finds, based on experience in other industries that have undergone similar transitions, that the introduction of competition into the State's electric utility industry may result in workforce reductions by electric utilities which may adversely affect persons who have been employed by this State's electric utilities in functions important to the public convenience and welfare. The General Assembly further finds that the impacts on employees and their communities of any necessary reductions in the utility workforce directly caused by this restructuring of the electric industry shall be mitigated to the extent practicable through such means as offers of voluntary severance, retraining, early retirement, outplacement and related benefits. Therefore, before any such reduction in the workforce during the transition period, an electric utility shall present to its employees or their representatives a workforce reduction plan

outlining the means by which the electric utility intends to mitigate the impact of such workforce reduction on its employees.

(c) In the event of a sale, purchase, or any other transfer of ownership during the mandatory transition period of one or more Illinois divisions or business units, and/or generating stations or generating units, of an electric utility, the electric utility's contract and/or agreements with the acquiring entity or persons shall require that the entity or persons hire a sufficient number of non-supervisory employees to operate and maintain the station, division or unit by initially making offers of employment to the non-supervisory workforce of the electric utility's division, business unit, generating station and/or generating unit at no less than the wage rates, and substantially equivalent fringe benefits and terms and conditions of employment that are in effect at the time of transfer of ownership of said division, business unit, generating station, and/or generating units; and said wage rates and substantially equivalent fringe benefits and terms and conditions of employment shall continue for at least 30 months from the time of said transfer of ownership unless the parties mutually agree to different terms and conditions of employment within that 30-month period. The utility shall offer a transition plan to those employees who are not offered jobs by the acquiring entity because that entity has a need for fewer workers. If there is litigation concerning the sale, or

other transfer of ownership of the electric utility's divisions, business units, generating station, or generating units, the 30-month period will begin on the date the acquiring entity or persons take control or management of the divisions, business units, generating station or generating units of the electric utility.

(d) If a utility transfers ownership during the mandatory transition period of one or more Illinois divisions, business units, generating stations or generating units of an electric utility to a majority-owned subsidiary, that subsidiary shall continue to employ the utility's employees who were employed by the utility at such division, business unit or generating station at the time of the transfer under the same terms and conditions of employment as those employees enjoyed at the time of the transfer. If ownership of the subsidiary is subsequently sold or transferred to a third party during the transition period, the transition provisions outlined in subsection (c) shall apply.

(e) The plant transfer provisions set forth above shall not apply to any generating station which was the subject of a sales agreement entered into before January 1, 1997.

(Source: P.A. 90-561, eff. 12-16-97.)

(220 ILCS 5/16-128A new)

Sec. 16-128A. Certification of installers.

(a) Within 18 months of the effective date of this

amendatory Act of the 97th General Assembly, the Commission shall adopt rules, including emergency rules, establishing certification requirements ensuring that entities installing distributed generation facilities are in compliance with the requirements of subsection (a) of Section 16-128 of this Act.

For purposes of this Section, the phrase "entities installing distributed generation facilities" shall include, but not be limited to, all entities that are exempt from the definition of "alternative retail electric supplier" under item (v) of Section 16-102 of this Act. For purposes of this Section, the phrase "self-installer" means an individual who (i) leases or purchases a cogeneration facility for his or her own personal use and (ii) installs such cogeneration or self-generation facility on his or her own premises without the assistance of any other person.

(b) In addition to any authority granted to the Commission under this Act, the Commission is also authorized to: (1) determine which entities are subject to certification under this Section; (2) impose reasonable certification fees and penalties; (3) adopt disciplinary procedures; (4) investigate any and all activities subject to this Section, including violations thereof; (5) adopt procedures to issue or renew, or to refuse to issue or renew, a certification or to revoke, suspend, place on probation, reprimand, or otherwise discipline a certified entity under this Act or take other enforcement action against an entity subject to this Section;

and (6) prescribe forms to be issued for the administration and enforcement of this Section.

(c) No electric utility shall provide a retail customer with net metering service related to interconnection of that customer's distributed generation facility unless the customer provides the electric utility with (i) a certification that the customer installing the distributed generation facility was a self-installer or (ii) evidence that the distributed generation facility was installed by an entity certified under this Section that is also in good standing with the Commission. For purposes of this subsection, a retail customer includes that customer's employees, officers, and agents. An electric utility shall file a tariff or tariffs with the Commission setting forth the documentation that a retail customer must provide to an electric utility. The provisions of this subsection (c) shall apply on or after the effective date of the Commission's rules prescribed pursuant to subsection (a) of this Section.

(d) Within 180 days after the effective date of this amendatory Act of the 97th General Assembly, the Commission shall initiate a rulemaking proceeding to establish certification requirements that shall be applicable to vendors that install electric vehicle charging stations.

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