

First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## SENATE ENROLLED ACT No. 412

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AN ACT to amend the Indiana Code concerning utilities.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 8-1-8.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The commission shall develop, publicize, and keep current an analysis of the long-range needs for expansion of facilities for the generation of electricity.

- (b) This analysis must include an estimate of:
- (1) the probable future growth of the use of electricity;
  - (2) the probable needed generating reserves;
  - (3) in the judgment of the commission, the optimal extent, size, mix, and general location of generating plants;
  - (4) in the judgment of the commission, the optimal arrangements for statewide or regional pooling of power and arrangements with other utilities and energy suppliers to achieve maximum efficiencies for the benefit of the people of Indiana; and
  - (5) the comparative costs of meeting future growth by other means of providing reliable, efficient, and economic electric service, including purchase of power, joint ownership of facilities, refurbishment of existing facilities, conservation (**including energy efficiency**), load management, **distributed generation**, and cogeneration.
- (c) The commission shall consider the analysis in acting upon any

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petition by any utility for construction.

(d) In developing the analysis, the commission:

(1) shall confer and consult with:

(A) the public utilities in Indiana;

(B) the utility commissions or comparable agencies of neighboring states;

(C) the Federal Energy Regulatory Commission; and

(D) other agencies having relevant information; and

(2) may participate as it considers useful in any joint boards investigating generating plant sites or the probable needs for future generating facilities.

(e) In addition to such reports as public utilities may be required by statute or rule of the commission to file with the commission, a utility:

**(1) may submit to the commission ~~its~~ a current or updated integrated resource plan as part of a utility specific proposals proposal as to the future needs for electricity to serve the people of the state or the area served by the utility; and**

**(2) shall submit to the commission an integrated resource plan that assesses a variety of demand side management and supply side resources to meet future customer electricity service needs in a cost effective and reliable manner.**

**The commission shall adopt rules under IC 4-22-2 concerning the submission of an integrated resource plan under subdivision (2).**

(f) Insofar as practicable, each utility, the utility consumer counselor, and any intervenor may attend or be represented at any formal conference conducted by the commission in developing ~~a plan~~ **an analysis** for the future requirements of electricity for Indiana or this region.

(g) In the course of making the analysis ~~and developing the plan~~ required by ~~this section~~ **subsection (a) and, if applicable, developing an analysis described in subsection (f)**, the commission shall conduct one (1) or more public hearings.

(h) Each year, the commission shall submit to the governor and to the appropriate committees of the general assembly a report of its analysis ~~and plan~~, ~~the progress to date in carrying out such plan~~, ~~and the program of the commission for the ensuing year in connection with such plan~~. **regarding the future requirements of electricity for Indiana or this region.**

SECTION 2. IC 8-1-8.5-5, AS AMENDED BY P.L.210-2014, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) As a condition for receiving the certificate required under section 2 of this chapter, the applicant shall

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file an estimate of construction, purchase, or lease costs in such detail as the commission may require.

(b) The commission shall hold a public hearing on each such application. The commission may consider all relevant information related to construction, purchase, or lease costs. A certificate shall be granted only if the commission has:

(1) made a finding as to the best estimate of construction, purchase, or lease costs based on the evidence of record;

(2) made a finding that either:

(A) the construction, purchase, or lease will be consistent with the commission's ~~plan~~ **analysis** (or such part of the ~~plan~~ **analysis** as may then be developed, if any) for expansion of electric generating capacity; or

(B) the construction, purchase, or lease is consistent with a utility specific proposal submitted under section ~~3(e)~~ **3(e)(1)** of this chapter and approved under subsection (d). However, if the commission has developed, in whole or in part, a ~~plan~~ **an analysis** for the expansion of electric generating capacity and the applicant has filed and the commission has approved under subsection (d) a utility specific proposal submitted under section ~~3(e)~~ **3(e)(1)** of this chapter, the commission shall make a finding under this clause that the construction, purchase, or lease is consistent with the commission's ~~plan~~ **analysis**, to the extent developed, and that the construction, purchase, or lease is consistent with the applicant's plan under section ~~3(e)~~ **3(e)(1)** of this chapter, to the extent the plan was approved by the commission;

(3) made a finding that the public convenience and necessity require or will require the construction, purchase, or lease of the facility;

(4) made a finding that the facility, if it is a coal-consuming facility, utilizes Indiana coal or is justified, because of economic considerations or governmental requirements, in using non-Indiana coal; and

(5) made the findings under subsection (e), if applicable.

(c) If:

(1) the commission grants a certificate under this chapter based upon a finding under subsection (b)(2) that the construction, purchase, or lease of a generating facility is consistent with the commission's ~~plan~~ **analysis** for the expansion of electric generating capacity; and

(2) a court finally determines that the commission ~~plan~~ **analysis**



is invalid;

the certificate shall remain in full force and effect if the certificate was also based upon a finding under subsection (b)(2) that the construction, purchase, or lease of the facility was consistent with a utility specific plan submitted under section ~~3(e)~~ **3(e)(1)** of this chapter and approved under subsection (d).

(d) The commission shall consider and approve, in whole or in part, or disapprove a utility specific proposal or an amendment thereto jointly with an application for a certificate under this chapter. However, such an approval or disapproval shall be solely for the purpose of acting upon the pending certificate for the construction, purchase, or lease of a facility for the generation of electricity.

(e) This subsection applies if an applicant proposes to construct a facility with a generating capacity of more than eighty (80) megawatts. Before granting a certificate to the applicant, the commission:

(1) must, in addition to the findings required under subsection (b), find that the estimated costs of the proposed facility are, to the extent commercially practicable, the result of competitively bid engineering, procurement, or construction contracts, as applicable; and

(2) shall also consider the following factors:

(A) Reliability.

(B) Solicitation by the applicant of competitive bids to obtain purchased power capacity and energy from alternative suppliers.

The applicant, including an affiliate of the applicant, may participate in competitive bidding described in this subsection.

SECTION 3. IC 8-1-8.5-9, AS ADDED BY P.L.223-2014, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) For purposes of this section, "DSM order" refers to an order of the commission that establishes or approves:

(1) energy efficiency targets or goals for electricity suppliers; or

(2) an energy efficiency program sponsored by an electricity supplier.

The term includes the December 9, 2009, order of the commission concerning demand side management programs.

(b) For purposes of this section, "electricity supplier" has the meaning set forth in IC 8-1-2.3-2(b).

(c) For purposes of this section, "energy efficiency program" means a program that is:

(1) sponsored by an electricity supplier or a third party

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administrator; and

(2) designed to implement energy efficiency improvements (as defined in 170 IAC 4-8-1(j)) for customers.

The term does not include a program designed primarily to reduce demand.

(d) For purposes of this section, "energy efficiency program costs" include:

- (1) program costs;
- (2) lost revenues; and
- (3) incentives approved by the commission.

(e) For purposes of this section, "industrial customer" means a person that receives services at a single site constituting more than one (1) megawatt of electric capacity from an electricity supplier.

(f) An industrial customer may ~~before July 1, 2019,~~ opt out of participating in an energy efficiency program that is established by an electricity supplier ~~in response to a DSM order~~ by providing notice to the electricity supplier. ~~An industrial customer may not opt out of participating in an energy efficiency program after June 30, 2019.~~ Except as provided in subsection (g), an electricity supplier may not charge an industrial customer that opts out rates that include energy efficiency program costs that accrue or are incurred after the date on which the industrial customer opts out. However, an industrial customer remains liable for rates that include energy efficiency program costs that accrued or were incurred, or related to investments made, before the date on which the industrial customer opts out, regardless of the date on which the rates are actually assessed against the industrial customer.

(g) An industrial customer that opts out of participating in an energy efficiency program may subsequently opt to participate in the same or a different energy efficiency program. The industrial customer must participate in the subsequent energy efficiency program for at least three (3) years after the date on which the industrial customer opts in. If the industrial customer terminates participation in the subsequent energy efficiency program during the three (3) year period described in this subsection, the industrial customer shall continue paying energy efficiency program rates, including costs described in subsection (f), for the remainder of the three (3) year period.

(h) Energy efficiency targets or goals that are approved or mandated by the commission in a DSM order must be calculated to exclude all load from an industrial customer that opts out under subsection (f).

- (i) The commission may adopt:
  - (1) rules under IC 4-22-2; or

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(2) guidelines;

to assist electricity suppliers and industrial customers in complying with this section.

(j) Not later than August 15, 2014, the commission shall prepare a status report on all energy efficiency programs implemented under the DSM order issued by the commission on December 9, 2009. The commission shall provide the status report in an electronic format under IC 5-14-6 to the ~~regulatory flexibility~~ **interim study committee on energy, utilities, and telecommunications established by IC 2-5-1.3-4** and to the legislative council. The status report must consider the following:

- (1) The status and effectiveness of all energy efficiency programs, including whether efficiency gains attributable to a federal conservation program are being measured as part of an energy efficiency program implemented under the 2009 DSM order.
- (2) The degree to which energy efficiency program costs are shifted among customer classes.
- (3) Program costs to date.
- (4) Program costs projected to be incurred in complying with all DSM orders.
- (5) The actual impact of program costs on all customer rates and the projected impact of program costs on all customer rates upon full implementation of the 2009 DSM order.
- (6) Current and projected costs and benefits of current and anticipated energy efficiency programs, including costs and benefits associated with third party administrators and evaluation, measurement, and verification contractors.
- (7) The effectiveness of energy efficiency programs in reducing energy consumption and demand.
- (8) Methods by which the cost effectiveness and long term resource value of energy efficiency programs may be measured to assess the effect on rates and charges for all customers.
- (9) Methods by which the interests of customers and electricity suppliers may be better aligned.
- (10) Any additional information or recommendations the commission determines is necessary.

This subsection expires December 31, 2014.

(k) The commission may not:

- (1) extend, renew, or require the establishment of an energy efficiency program under; or
- (2) after December 31, 2014, require an electricity supplier to meet a goal or target established in;

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the DSM order issued by the commission on December 9, 2009. An electricity supplier may not renew or extend an existing contract or enter into a new contract with a statewide third party administrator for an energy efficiency program established or approved by the DSM order issued by the commission on December 9, 2009.

(l) After December 31, 2014, an electricity supplier may continue to timely recover energy efficiency program costs that:

- (1) accrued or were incurred under or relate to an energy efficiency program implemented under the DSM order issued by the commission on December 9, 2009; and
- (2) are approved by the commission for recovery.

(m) After December 31, 2014, an electricity supplier may offer a cost effective portfolio of energy efficiency programs to customers. An electricity supplier may submit a proposed energy efficiency program to the commission for review. If an electricity supplier submits a proposed energy efficiency program for review and the commission determines that the portfolio included in the proposed energy efficiency program is reasonable and cost effective, the electricity supplier may recover energy efficiency program costs in the same manner as energy efficiency program costs were recoverable under the DSM order issued by the commission on December 9, 2009. The commission may not:

- (1) require an energy efficiency program to be implemented by a third party administrator; or
- (2) in making its determination, consider whether a third party administrator implements the energy efficiency program.

(n) This section does not affect:

- (1) an energy efficiency program offered by an energy utility (as defined in IC 8-1-2.5-2) that is not an electricity supplier; or
- (2) the manner in or means by which an energy utility described in subdivision (1) may recover costs associated with an energy efficiency program described in subdivision (1).

SECTION 4. IC 8-1-8.5-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 10. (a) For purposes of this section, "electricity supplier" means a public utility (as defined in IC 8-1-2-1) that furnishes retail electric service to customers in Indiana. The term does not include a utility that is:**

- (1) a municipally owned utility (as defined in IC 8-1-2-1(h));**
- (2) a corporation organized under IC 8-1-13;**
- (3) a corporation organized under IC 23-17 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13; or**

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(4) a joint agency created under IC 8-1-2.2-8.

(b) For purposes of this section, "energy efficiency" means a reduction in electricity use for a comparable level of electricity service.

(c) For purposes of this section, "energy efficiency goals" means all energy efficiency produced by cost effective plans that are:

- (1) reasonably achievable;
- (2) consistent with an electricity supplier's integrated resource plan; and
- (3) designed to achieve an optimal balance of energy resources in an electricity supplier's service territory.

(d) For purposes of this section, "energy efficiency program" or "program" means a program that is:

- (1) sponsored by an electricity supplier; and
- (2) designed to implement energy efficiency improvements.

The term does not include a program designed primarily to reduce demand for limited intervals of time, such as during peak electricity usage or emergency conditions.

(e) For purposes of this section, "lost revenues" means the difference, if any, between:

- (1) revenues lost; and
- (2) the variable operating and maintenance costs saved;

by an electricity supplier as a result of implementing energy efficiency programs.

(f) For purposes of this section, "plan" refers to the goals, programs, program budgets, program costs, and procedures submitted by an electricity supplier to the commission under subsection (h).

(g) For purposes of this section, "program costs" include the following:

- (1) Direct and indirect costs of energy efficiency programs.
- (2) Costs associated with the evaluation, measurement, and verification of program results.
- (3) Other recoveries or incentives approved by the commission, including lost revenues and financial incentives approved by the commission under subsection (o).

(h) Beginning not later than calendar year 2017, and not less than one (1) time every three (3) years, an electricity supplier shall petition the commission for approval of a plan that includes:

- (1) energy efficiency goals;
- (2) energy efficiency programs to achieve the energy efficiency goals;



- (3) program budgets and program costs; and**
- (4) evaluation, measurement, and verification procedures that must include independent evaluation, measurement, and verification.**

An electricity supplier may submit a plan required under this subsection to the commission for a determination of the overall reasonableness of the plan either as part of a general basic rate proceeding or as an independent proceeding. A petition submitted under this subsection may include a home energy efficiency assistance program for qualified customers of the electricity supplier whether or not the program is cost effective. The commission shall make the petition and its disclosable contents available through the commission's Internet web site.

**(i) At the same time an electricity supplier petitions the commission under subsection (h), the electricity supplier shall:**

- (1) provide a copy of the petition and plan to the office of utility consumer counselor; and**
- (2) post an electronic copy of the petition and plan on the electricity supplier's Internet web site. The electricity supplier may redact confidential or proprietary information.**

**(j) In making a determination of the overall reasonableness of a plan submitted under subsection (h), the commission shall consider the following:**

- (1) Projected changes in customer consumption of electricity resulting from the implementation of the plan.**
- (2) A cost and benefit analysis of the plan, including the likelihood of achieving the goals of the energy efficiency programs included in the plan.**
- (3) Whether the plan is consistent with the following:**
  - (A) The state energy analysis developed by the commission under section 3 of this chapter.**
  - (B) The electricity supplier's most recent long range integrated resource plan submitted to the commission.**
- (4) The inclusion and reasonableness of procedures to evaluate, measure, and verify the results of the energy efficiency programs included in the plan, including the alignment of the procedures with applicable environmental regulations, including federal regulations concerning credits for emission reductions.**
- (5) Any undue or unreasonable preference to any customer class resulting, or potentially resulting, from the implementation of an energy efficiency program or from the**



overall design of a plan.

(6) Comments provided by customers, customer representatives, the office of utility consumer counselor, and other stakeholders concerning the adequacy and reasonableness of the plan, including alternative or additional means to achieve energy efficiency in the electricity supplier's service territory.

(7) The effect, or potential effect, in both the long term and the short term, of the plan on the electric rates and bills of customers that participate in energy efficiency programs compared to the electric rates and bills of customers that do not participate in energy efficiency programs.

(8) The lost revenues and financial incentives associated with the plan and sought to be recovered or received by the electricity supplier.

(9) The electricity supplier's current integrated resource plan and the underlying resource assessment.

(10) Any other information the commission considers necessary.

(k) If, after notice and hearing, the commission determines that an electricity supplier's plan is reasonable in its entirety, the commission shall:

(1) approve the plan in its entirety;

(2) allow the electricity supplier to recover all associated program costs on a timely basis through a periodic rate adjustment mechanism; and

(3) allocate and assign costs associated with a program to the class or classes of customers that are eligible to participate in the program.

(l) If, after notice and hearing, the commission determines that an electricity supplier's plan is not reasonable because the costs associated with one (1) or more programs included in the plan exceed the projected benefits of the program or programs, the commission:

(1) may exclude the program or programs and approve the remainder of the plan; and

(2) shall allow the electricity supplier to recover only those program costs associated with the portion of the plan approved under subdivision (1) on a timely basis through a periodic rate adjustment mechanism.

(m) If, after notice and hearing, the commission determines that an electricity supplier's plan is not reasonable in its entirety, the



commission shall issue an order setting forth the reasons supporting its determination. The electricity supplier shall submit a modified plan within a reasonable time. After notice and hearing, the commission shall issue an order approving or denying the modified plan. If the commission approves the modified plan, the commission shall allow the electricity supplier to recover program costs associated with the modified plan on a timely basis through a periodic rate adjustment mechanism.

(n) The commission may not:

- (1) require an energy efficiency program to be implemented by a third party administrator; or
- (2) in making a determination of reasonableness under subsection (j), consider whether a third party administrator implements an energy efficiency program.

(o) If the commission finds a plan submitted by an electricity supplier under subsection (h) to be reasonable, the commission shall allow the electricity supplier to recover or receive the following:

- (1) Reasonable financial incentives that:
  - (A) encourage implementation of cost effective energy efficiency programs; or
  - (B) eliminate or offset regulatory or financial bias:
    - (i) against energy efficiency programs; or
    - (ii) in favor of supply side resources.
- (2) Reasonable lost revenues.

A retail rate adjustment mechanism proposed by an electricity supplier under this section to implement the timely recovery of program costs (including reasonable lost revenues) may be based on a reasonable forecast, with consideration given to the electricity supplier's historical lost revenue forecasting accuracy. If forecasted data is used, the retail rate adjustment mechanism must include a reconciliation mechanism to correct for any variance between the forecasted program costs (including reasonable lost revenues and financial incentives) and the actual program costs (including reasonable lost revenues and financial incentives based on the evaluation, measurement, and verification of the energy efficiency programs under the plan).

(p) An industrial customer (as defined in section 9(e) of this chapter) may opt out of an electricity supplier's plan under this section by following the procedure set forth in section 9(f) and 9(g) of this chapter. The opt out of an industrial customer who has previously complied with the procedure set forth in section 9(f) of



**this chapter constitutes an opt out of an electricity supplier's plan under this section. An industrial customer may follow the procedure set forth in section 9(g) of this chapter to opt back in.**

**(q) The commission shall adopt:**

**(1) rules under IC 4-22-2; or**

**(2) guidelines;**

**to assist electricity suppliers and industrial customers in complying with this section.**

**SECTION 5. An emergency is declared for this act.**



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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