

SENATE BILL No. 412

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-8.5.

Synopsis: Demand side management. Requires a public utility to submit an integrated resource plan to the utility regulatory commission (IURC). Requires certain electric utilities to submit an energy efficiency plan to the IURC at least one time every three years. Provides that the IURC may allow an electric utility to recover certain energy efficiency program costs through a periodic rate adjustment mechanism. Provides that the IURC may not require a third party administrator to implement an energy efficiency program or plan.

Effective: Upon passage.

Merritt

January 12, 2015, read first time and referred to Committee on Utilities.



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 BILL No. 412



A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

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

1 SECTION 1. IC 8-1-8.5-3 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The
 3 commission shall develop, publicize, and keep current an analysis of
 4 the long-range needs for expansion of facilities for the generation of
 5 electricity.
 6 (b) This analysis must include an estimate of:
 7 (1) the probable future growth of the use of electricity;
 8 (2) the probable needed generating reserves;
 9 (3) in the judgment of the commission, the optimal extent, size,
 10 mix, and general location of generating plants;
 11 (4) in the judgment of the commission, the optimal arrangements
 12 for statewide or regional pooling of power and arrangements with
 13 other utilities and energy suppliers to achieve maximum
 14 efficiencies for the benefit of the people of Indiana; and
 15 (5) the comparative costs of meeting future growth by other
 16 means of providing reliable, efficient, and economic electric



- 1 service, including purchase of power, joint ownership of facilities,
 2 refurbishment of existing facilities, conservation, load
 3 management, and cogeneration.
- 4 (c) The commission shall consider the analysis in acting upon any
 5 petition by any utility for construction.
- 6 (d) In developing the analysis, the commission:
- 7 (1) shall confer and consult with:
- 8 (A) the public utilities in Indiana;
- 9 (B) the utility commissions or comparable agencies of
 10 neighboring states;
- 11 (C) the Federal Energy Regulatory Commission; and
- 12 (D) other agencies having relevant information; and
- 13 (2) may participate as it considers useful in any joint boards
 14 investigating generating plant sites or the probable needs for
 15 future generating facilities.
- 16 (e) In addition to such reports as public utilities may be required by
 17 statute or rule of the commission to file with the commission, a utility:
- 18 **(1) may submit to the commission ~~its~~ a current or updated**
 19 **integrated resource plan as part of a utility specific proposals**
 20 **proposal as to the future needs for electricity to serve the people**
 21 **of the state or the area served by the utility; and**
- 22 **(2) shall submit to the commission an integrated resource plan**
 23 **that assesses a variety of demand side management and**
 24 **supply side resources to meet future customer electricity**
 25 **service needs in a cost effective and reliable manner.**
- 26 **The commission shall adopt rules under IC 4-22-2 concerning the**
 27 **submission of an integrated resource plan under subdivision (2).**
- 28 (f) Insofar as practicable, each utility, the utility consumer
 29 counselor, and any intervenor may attend or be represented at any
 30 formal conference conducted by the commission in developing a ~~plan~~
 31 **an analysis** for the future requirements of electricity for Indiana or this
 32 region.
- 33 (g) In the course of making the analysis ~~and developing the plan~~
 34 required by ~~this section~~ **subsection (a) and, if applicable, developing**
 35 **an analysis described in subsection (f)**, the commission ~~shall~~ **may**
 36 conduct one (1) or more public hearings.
- 37 (h) Each year, the commission shall submit to the governor and to
 38 the appropriate committees of the general assembly a report of its
 39 analysis ~~and plan; the progress to date in carrying out such plan; and~~
 40 ~~the program of the commission for the ensuing year in connection with~~
 41 ~~such plan; regarding the future requirements of electricity for~~
 42 **Indiana or this region.**



1 SECTION 2. IC 8-1-8.5-5, AS AMENDED BY P.L.210-2014,
 2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 UPON PASSAGE]: Sec. 5. (a) As a condition for receiving the
 4 certificate required under section 2 of this chapter, the applicant shall
 5 file an estimate of construction, purchase, or lease costs in such detail
 6 as the commission may require.

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

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

13 (2) made a finding that either:

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

18 (B) the construction, purchase, or lease is consistent with a
 19 utility specific proposal submitted under section ~~3(e)~~ **3(e)(1)**
 20 of this chapter and approved under subsection (d). However,
 21 if the commission has developed, in whole or in part, a plan
 22 for the expansion of electric generating capacity and the
 23 applicant has filed and the commission has approved under
 24 subsection (d) a utility specific proposal submitted under
 25 section ~~3(e)~~ **3(e)(1)** of this chapter, the commission shall make
 26 a finding under this clause that the construction, purchase, or
 27 lease is consistent with the commission's plan, to the extent
 28 developed, and that the construction, purchase, or lease is
 29 consistent with the applicant's plan under section ~~3(e)~~ **3(e)(1)**
 30 of this chapter, to the extent the plan was approved by the
 31 commission;

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

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

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

40 (c) If:

41 (1) the commission grants a certificate under this chapter based
 42 upon a finding under subsection (b)(2) that the construction,



1 purchase, or lease of a generating facility is consistent with the
 2 commission's plan for the expansion of electric generating
 3 capacity; and

4 (2) a court finally determines that the commission plan is invalid;
 5 the certificate shall remain in full force and effect if the certificate was
 6 also based upon a finding under subsection (b)(2) that the construction,
 7 purchase, or lease of the facility was consistent with a utility specific
 8 plan submitted under section ~~3(e)~~ **3(e)(1)** of this chapter and approved
 9 under subsection (d).

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

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

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

24 (2) shall also consider the following factors:

25 (A) Reliability.

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

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

31 SECTION 3. IC 8-1-8.5-10 IS ADDED TO THE INDIANA CODE
 32 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
 33 **UPON PASSAGE]: Sec. 10. (a) For purposes of this section,**
 34 **"electricity supplier" means a public utility (as defined in**
 35 **IC 8-1-2-1) that furnishes retail electric service to customers in**
 36 **Indiana. The term does not include a utility that is:**

37 (1) a municipally owned utility (as defined in IC 8-1-2-1(h));

38 (2) a corporation organized under IC 8-1-13;

39 (3) a corporation organized under IC 23-17 that is an electric
 40 cooperative and that has at least one (1) member that is a
 41 corporation organized under IC 8-1-13; or

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



1 (b) For purposes of this section, "energy efficiency goals" means
 2 the amount of energy and demand savings produced by cost
 3 effective programs that are reasonably achievable and consistent
 4 with an electricity supplier's integrated resource plan.

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

- 7 (1) sponsored by an electricity supplier; and
 8 (2) designed to implement energy efficiency improvements (as
 9 defined in 170 IAC 4-8-1(j)) that reduce energy use for a
 10 comparable level of energy service.

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

- 13 (1) revenues lost; and
 14 (2) the variable operating and maintenance costs saved;
 15 by an electricity supplier as a result of implementing energy
 16 efficiency programs.

17 (e) For purposes of this section, "plan" refers to the goals,
 18 programs, program budgets, and procedures submitted by an
 19 electricity supplier to the commission under subsection (g).

20 (f) For purposes of this section, "program costs" include the
 21 following:

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

28 (g) Beginning not later than calendar year 2017, and not less
 29 than one (1) time every three (3) years, an electricity supplier shall
 30 petition the commission for approval of:

- 31 (1) energy efficiency goals;
 32 (2) energy efficiency programs to achieve the energy
 33 efficiency goals; and
 34 (3) evaluation, measurement, and verification procedures.

35 A petition submitted under this subsection may include a home
 36 energy efficiency assistance program for qualified customers of the
 37 electricity supplier whether or not the program is cost effective.
 38 The commission shall make the petition and its disclosable contents
 39 available through the commission's Internet web site.

40 (h) At the same time an electricity supplier petitions the
 41 commission under subsection (g), the electricity supplier shall:

- 42 (1) provide a copy of the petition and plan to the office of



1 utility consumer counselor; and

2 (2) post an electronic copy of the petition and plan on the
3 electricity supplier's Internet web site. The electricity supplier
4 may redact confidential or proprietary information.

5 (i) An electricity supplier may submit a plan under subsection
6 (g) to the commission for a determination of the overall
7 reasonableness of the plan as part of a general basic rate
8 proceeding or as an independent proceeding. In making its
9 determination of reasonableness, the commission shall consider the
10 following:

11 (1) Projected changes in customer consumption of electricity
12 resulting from the implementation of the plan.

13 (2) A cost and benefit analysis of the plan, including the
14 likelihood of achieving the goals of the energy efficiency
15 programs included in the plan.

16 (3) Whether the plan is consistent with the electricity
17 supplier's most recent long range integrated resource plan
18 submitted to the commission.

19 (4) The inclusion and reasonableness of procedures to
20 evaluate, measure, and verify the results of the energy
21 efficiency programs included in the plan, including the
22 alignment of the procedures with applicable environmental
23 regulations, including federal regulations concerning credits
24 for emission reductions.

25 (5) Any undue or unreasonable preference to any customer
26 class resulting, or potentially resulting, from the
27 implementation of an energy efficiency program.

28 (6) Opportunities for customer representatives and the office
29 of utility consumer counselor to review and provide public
30 comment on the plan.

31 (7) The effect, or potential effect, of the plan on the electric
32 rates and bills of customers that participate in energy
33 efficiency programs compared to the electric rates and bills of
34 customers that do not participate in energy efficiency
35 programs.

36 (8) Any other information the commission considers
37 necessary.

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

41 (1) approve the plan in its entirety;

42 (2) allow the electricity supplier to recover all associated



1 program costs on a timely basis through a periodic rate
2 adjustment mechanism; and

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

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

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

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

17 (l) If, after notice and hearing, the commission determines that
18 an electricity supplier's plan is not reasonable in its entirety, the
19 commission shall issue an order setting forth the reasons
20 supporting its determination. The electricity supplier shall submit
21 a modified plan within a reasonable time. After notice and hearing,
22 the commission shall issue an order approving or denying the
23 modified plan. If the commission approves the modified plan, the
24 commission shall allow the electricity supplier to recover program
25 costs associated with the modified plan on a timely basis through
26 a periodic rate adjustment mechanism.

27 (m) The commission may not:

28 (1) require an energy efficiency program to be implemented
29 by a third party administrator; or

30 (2) in making a determination of reasonableness under
31 subsection (i), consider whether a third party administrator
32 implements an energy efficiency program.

33 (n) The commission may approve recovery of the following with
34 respect to a plan submitted by an electricity supplier:

35 (1) Reasonable financial incentives that:

36 (A) encourage implementation of cost effective energy
37 efficiency programs; or

38 (B) eliminate or offset regulatory or financial bias:

39 (i) against energy efficiency programs; or

40 (ii) in favor of supply side resources.

41 (2) Lost revenues.

42 (o) An industrial customer (as defined in section 9(e) of this



1 **chapter) may opt out of an electricity supplier's plan under this**
2 **section by following the procedure set forth in section 9(f) and 9(g)**
3 **of this chapter.**

4 **(p) The commission shall adopt:**
5 **(1) rules under IC 4-22-2; or**
6 **(2) guidelines;**
7 **to assist electricity suppliers and industrial customers in complying**
8 **with this section.**

9 **SECTION 4. An emergency is declared for this act.**

