

IC 8-1-8.5

Chapter 8.5. Electric Utility Resource Planning and Certification

IC 8-1-8.5-1

Definitions

Sec. 1. (a) As used in this chapter, "public utility" means a:

- (1) public, municipally owned, or cooperatively owned utility;
- or
- (2) joint agency created under IC 8-1-2.2.

(b) As used in this chapter, "public utility service" means the service rendered by a public utility.

As added by P.L.43-1983, SEC.12. Amended by P.L.23-1988, SEC.40; P.L.54-1992, SEC.4.

IC 8-1-8.5-2

Necessity for certification

Sec. 2. Except as provided in section 7 of this chapter, a public utility may not begin the construction, purchase, or lease of any steam, water, or other facility for the generation of electricity to be directly or indirectly used for the furnishing of public utility service, even though the facility is for furnishing the service already being rendered, without first obtaining from the commission a certificate that public convenience and necessity requires, or will require, such construction, purchase, or lease.

As added by P.L.43-1983, SEC.12. Amended by P.L.88-1985, SEC.6; P.L.11-1987, SEC.14.

IC 8-1-8.5-3

Analysis of needs; integrated resource plans; hearings; report

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 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 a current or updated integrated resource plan as part of a utility specific 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 an analysis for the future requirements of electricity for Indiana or this region.

(g) In the course of making the analysis required by 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 regarding the future requirements of electricity for Indiana or this region.

As added by P.L.43-1983, SEC.12. Amended by P.L.88-1985, SEC.7; P.L.53-1992, SEC.2; P.L.246-2015, SEC.1.

IC 8-1-8.5-3.5

Forecasting group

Sec. 3.5. (a) To arrive at estimates of the probable future growth of the use of electricity required by section 3(b)(1) of this chapter, the commission shall establish a permanent forecasting group to be located at a state supported college or university within Indiana. The commission shall financially support the group, which shall consist

of a director and such staff as mutually agreed upon by the commission and college or university, from funds appropriated to the commission.

(b) The forecasting group shall develop and keep current a methodology for forecasting the probable future growth of the use of electricity within Indiana and within this region of the nation. To do this, the group shall solicit the input of residential, commercial, and industrial consumers and the electric industry.

(c) The commission shall use the methodology that the forecasting group devises as the commission's primary methodology in developing and keeping current the commission's:

- (1) analysis of the long range needs for expansion of facilities for the generation of electricity required by section 3(a) of this chapter; and
- (2) plan for meeting the future requirements of electricity required by sections 3(e), 3(f), and 3(g) of this chapter.

As added by P.L.88-1985, SEC.8. Amended by P.L.53-1992, SEC.3.

IC 8-1-8.5-4

Consideration of petition

Sec. 4. In acting upon any petition for the construction, purchase, or lease of any facility for the generation of electricity, the commission shall take into account:

- (1) the applicant's current and potential arrangement with other electric utilities for:
 - (A) the interchange of power;
 - (B) the pooling of facilities;
 - (C) the purchase of power; and
 - (D) joint ownership of facilities; and
- (2) other methods for providing reliable, efficient, and economical electric service, including the refurbishment of existing facilities, conservation, load management, cogeneration and renewable energy sources.

As added by P.L.43-1983, SEC.12. Amended by P.L.88-1985, SEC.9.

IC 8-1-8.5-5

Estimate of costs; hearing on application; granting certificate; findings; force and effect of certificate; approval or disapproval of utility specific proposals

Sec. 5. (a) As a condition for receiving the certificate required under section 2 of this chapter, the applicant shall 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 analysis (or such part of the 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)(1) of this chapter and approved under subsection (d). However, if the commission has developed, in whole or in part, 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)(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 analysis, to the extent developed, and that the construction, purchase, or lease is consistent with the applicant's plan under section 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 analysis for the expansion of electric generating capacity; and

(2) a court finally determines that the commission 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)(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.

As added by P.L.43-1983, SEC.12. Amended by P.L.88-1985, SEC.10; P.L.53-1992, SEC.4; P.L.210-2014, SEC.1; P.L.246-2015, SEC.2.

IC 8-1-8.5-5.5

Review of continuing need; modification or revocation of certificate

Sec. 5.5. When, in the opinion of the commission, changes in the estimate of the probable future growth of the use of electricity so indicate, the commission shall commence a review of any certificate granted under this chapter to determine whether the public convenience and necessity continues to require the facility under construction. If the commission finds that completion of the facility under construction is no longer in the public interest, the commission may modify or revoke the certificate.

As added by P.L.88-1985, SEC.11. Amended by P.L.53-1992, SEC.5.

IC 8-1-8.5-6

Review of construction; force and effect of certificate approved under review; election to defer review

Sec. 6. (a) In addition to the review of the continuing need for the facility under construction prescribed in section 5.5 of this chapter, the commission shall, at the request of the public utility, maintain an ongoing review of such construction as it proceeds. The applicant shall submit each year during construction, or at such other periods as the commission and the public utility mutually agree, a progress report and any revisions in the cost estimates for the construction.

(b) If the commission approves the construction and the cost of the portion of the facility under review, the certificate shall remain in full force and effect.

(c) If the commission disapproves of all or part of the construction or cost of the portion of the facility under review, the commission may modify or revoke the certificate.

(d) Alternatively, the public utility may elect to forego commission review under subsection (a) and defer the review of the construction and cost until completion or cancellation of the facility. *As added by P.L.43-1983, SEC.12. Amended by P.L.88-1985, SEC.12; P.L.53-1992, SEC.6.*

IC 8-1-8.5-6.5

Rates; recovery of costs

Sec. 6.5. Absent fraud, concealment, or gross mismanagement, a utility shall recover through rates the actual costs the utility has incurred in reliance on a certificate issued under this chapter, and as modified under sections 5.5 and 6 of this chapter as follows:

(1) If a facility has been found to be completed and the facility's construction has been subject to ongoing review under section 6(a) of this chapter, the costs of construction approved by the commission during the ongoing review shall be included in the utility's rate base without further commission review.

(2) If a facility has been found to be completed and the facility's construction is subject to subsequent review under section 6(d) of this chapter, the costs of construction that do not exceed the estimate found under section 5(b)(1) of this chapter shall be included in the utility's rate base, except for costs that are shown to result from inadequate quality controls. However, inclusion of costs in excess of the estimate found by the commission under section 5(b)(1) of this chapter in the utility's rate base is not permitted unless shown by the utility in construction of that facility to be necessary and prudent.

(3) If a facility has been canceled as a result of the modification or revocation of the certificate under section 5.5 or 6 of this chapter and the facility's construction has been subject to ongoing review under section 6(a) of this chapter (including reviews after cancellation), the costs of construction approved by the commission during the review shall be recovered by the utility by inclusion in rates and amortization over a reasonable time to be determined by the commission. The utility shall be permitted to earn a return, computed using the utility's authorized rate of return, on the unamortized balance.

(4) If a facility has been canceled as a result of the modification or revocation of the certificate under section 5.5 or 6 of this chapter and the facility's construction is subject to subsequent review under section 6(d) of this chapter, the costs of construction incurred before cancellation that were included in the estimate found under section 5(b)(1) of this chapter and that have not been shown to result from inadequate quality controls shall be recovered by the utility by inclusion in rates and amortization over a reasonable time to be determined by the commission. The utility shall be permitted to earn a return, computed using the utility's authorized rate of return, on the

unamortized balance. However, costs that were not included in the estimate found by the commission under section 5(b)(1) of this chapter may not be included in rates unless shown by the utility in construction of that facility to be necessary and prudent.

As added by P.L.53-1992, SEC.7.

IC 8-1-8.5-7

Certification requirements; exemptions; report

Sec. 7. The certification requirements of this chapter do not apply to persons who:

- (1) construct an electric generating facility primarily for that person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation;
- (2) construct an alternate energy production facility, cogeneration facility, or a small hydro facility that complies with the limitations set forth in IC 8-1-2.4-5; or
- (3) are a municipal utility, including a joint agency created under IC 8-1-2.2-8, and install an electric generating facility that has a capacity of ten thousand (10,000) kilowatts or less.

However, those persons shall, nevertheless, be required to report to the commission the proposed construction of such a facility before beginning construction of the facility.

As added by P.L.43-1983, SEC.12. Amended by P.L.168-2013, SEC.2.

IC 8-1-8.5-8

Construction of chapter; valuation of property

Sec. 8. Except as otherwise provided in this chapter, nothing in this chapter limits the commission's responsibility regarding valuation of utility property under IC 8-1-2-6.

As added by P.L.5-1988, SEC.47. Amended by P.L.53-1992, SEC.8.

IC 8-1-8.5-9

Energy efficiency programs; opt out by industrial customers; prohibition against extending or renewing energy efficiency programs established under DSM order

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 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 opt out of participating in an energy efficiency program that is established by an electricity supplier by providing notice to the electricity supplier. 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
- (2) guidelines;

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

(j) 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;

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.

(k) 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.

(l) 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.

(m) 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).

As added by P.L.223-2014, SEC.1. Amended by P.L.246-2015, SEC.3; P.L.149-2016, SEC.35.

IC 8-1-8.5-10

Energy efficiency goals and programs; evaluation, measurement, and verification; recovery of program costs; opt out by industrial customers

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
- (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.

As added by P.L.246-2015, SEC.4.