

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## SENATE ENROLLED ACT No. 340

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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 8-1-8.5-9 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION 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 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.**

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(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
- (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 committee and 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;

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 2. 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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