

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1007

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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 8-1-2-0.6 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2023]: **Sec. 0.6. The general assembly declares that it is the continuing policy of the state that decisions concerning Indiana's electric generation resource mix, energy infrastructure, and electric service ratemaking constructs must consider each of the following attributes of electric utility service:**

**(1) Reliability, including:**

**(A) the adequacy of electric utility service, including the ability of the electric system to supply the aggregate electrical demand and energy requirements of end use customers at all times, taking into account:**

**(i) scheduled; and**

**(ii) reasonably expected unscheduled; outages of system elements; and**

**(B) the operating reliability of the electric system, including the ability of the electric system to withstand sudden disturbances such as electric short circuits or unanticipated loss of system components.**

**(2) Affordability, including ratemaking constructs that result in retail electric utility service that is affordable and competitive across residential, commercial, and industrial**

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customer classes.

**(3) Resiliency, including the ability of the electric system or its components to:**

- (A) adapt to changing conditions; and**
- (B) withstand and rapidly recover from disruptions or off-nominal events.**

**(4) Stability, including the ability of the electric system to:**

- (A) maintain a state of equilibrium during:**
  - (i) normal and abnormal conditions; or**
  - (ii) disturbances; and**
- (B) deliver a stable source of electricity, in which frequency and voltage are maintained within defined parameters, consistent with industry standards.**

**(5) Environmental sustainability, including:**

- (A) the impact of environmental regulations on the cost of providing electric utility service; and**
- (B) demand from consumers for environmentally sustainable sources of electric generation.**

SECTION 2. IC 8-1-2.5-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 6.5. (a) As used in this section, "electricity supplier" means a public utility (as defined in IC 8-1-2-1(a)) 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; or**
- (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.**

**(b) Before September 1, 2023, the commission shall commence a comprehensive study to consider the appropriate:**

- (1) design and framework for; and**
- (2) requirements with respect to;**

**performance based ratemaking (as described in section 6(a)(2) of this chapter) for electricity suppliers.**

**(c) In conducting the study required by this section, the commission shall evaluate the following:**

- (1) Multi-year rate plans with incremental rate increases.**
- (2) Index-driven revenue formulas.**
- (3) Performance incentive mechanisms, including both rewards and penalties, for meeting, or failing to meet, metrics related to service or infrastructure investments.**



**(4) The use of performance incentive mechanisms in conjunction with traditional cost-of-service ratemaking, to provide regulatory oversight and ensure that rewards and penalties are equitably balanced and do not:**

**(A) over-compensate electricity suppliers for benefits provided; or**

**(B) under-compensate electricity suppliers for costs and risks incurred;**

**as applicable.**

**(5) Best practices for allocating the costs, benefits, and risks associated with performance incentive mechanisms between:**

**(A) customers and customer classes; and**

**(B) shareholders;**

**with affordability of service prioritized.**

**(6) Best practices for establishing quantifiable, verifiable, and clearly defined performance metrics in connection with performance incentive mechanisms.**

**(7) Best practices for the collection and protection of data from electricity suppliers as needed to justify or evaluate proposed or approved performance incentive mechanisms.**

**(8) Any other aspect of performance based ratemaking that the commission determines to be appropriate to incentivize electricity suppliers to provide value to ratepayers.**

**(d) In conducting the study required by this section, the commission may invite comments from:**

**(1) electricity suppliers;**

**(2) the office of utility consumer counselor;**

**(3) associations or organizations representing utility ratepayers;**

**(4) regulatory commissions or agencies in other states that have experience with performance based ratemaking;**

**(5) rate design experts; or**

**(6) other stakeholders.**

**The commission may incorporate any comments received under this subsection in its report under subsection (e).**

**(e) The commission shall include in the annual report that the commission is required to submit under IC 8-1-1-14 before October 1, 2025, a report that includes the commission's analysis and recommendations on the topics outlined in subsection (c). The report required by this subsection must contain recommendations, supported by sufficient data and analysis from the commission's study under this section, with respect to the appropriate:**



(1) design and framework for; and  
 (2) requirements with respect to;  
 performance based ratemaking (as described in section 6(a)(2) of this chapter) for electricity suppliers, so as to enable the general assembly to fully evaluate the impact of performance based ratemaking on all classes of ratepayers, while considering the attributes of electric utility service set forth in IC 8-1-2-0.6, including reliability, affordability, resiliency, stability, and environmental sustainability.

SECTION 3. IC 8-1-8.5-3.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3.3. (a) Except as otherwise provided in this section, the definitions in 170 IAC 4-7 apply throughout this section.

(b) As used in this section, "electric utility" refers to an electric utility listed in 170 IAC 4-7-2(a).

(c) In reviewing an integrated resource plan that is submitted to the commission by an electric utility under section 3(e)(2) of this chapter after June 30, 2023, the director of the commission's research, policy, and planning division shall evaluate and comment in the commission's final director's report for the plan as to whether the electric utility's preferred resource portfolio takes into account the attributes of electric utility service set forth in IC 8-1-2-0.6, including:

- (1) reliability;
- (2) affordability;
- (3) resiliency;
- (4) stability; and
- (5) environmental sustainability;

as described in IC 8-1-2-0.6.

SECTION 4. IC 8-1-8.5-4, AS AMENDED BY P.L.180-2021, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. (a) As used in this section, "federal phaseout mandate" means any federal statutory or regulatory requirement that:

- (1) is established after April 20, 2021, by the Congress of the United States, a federal regulatory agency, or a federal executive order; and
- (2) requires the phaseout or discontinuance of a particular type of electric generating facility, technology, or fuel source.

(b) 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 the following:

- (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.
- (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.
- (3) With respect to a petition that:
- (A) is for the construction of a new generating facility; and
  - (B) is submitted to the commission after June 30, 2021, and before January 1, 2025;

the impact of federal phaseout mandates on the estimated useful life of each proposed generating facility included in the petition, including depreciation expense associated with each facility.

**(4) With respect to a petition that is submitted to the commission after June 30, 2023, whether the proposed construction, purchase, or lease of the facility will result in the provision of electric utility service with the attributes set forth in IC 8-1-2-0.6, including:**

- (A) reliability;**
- (B) affordability;**
- (C) resiliency;**
- (D) stability; and**
- (E) environmental sustainability;**

**as described in IC 8-1-2-0.6.**

SECTION 5. IC 8-1-8.5-5.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: 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. **In conducting a review under this section, the commission shall consider whether the completion of the facility under construction will result in the provision of electric utility service with the attributes set forth in IC 8-1-2-0.6, including:**

- (1) reliability;**
- (2) affordability;**

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- (3) resiliency;**
- (4) stability; and**
- (5) environmental sustainability;**

**as described in IC 8-1-2-0.6, in making a determination as to whether the public convenience and necessity continues to require the facility under construction.**

SECTION 6. IC 8-1-8.5-13, AS ADDED BY P.L.60-2021, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 13. (a) The general assembly finds that it is in the public interest to support the reliability, availability, and diversity of electric generating capacity in Indiana for the purpose of providing reliable and stable electric service to customers of public utilities.

(b) As used in this section, "appropriate regional transmission organization", with respect to a public utility, refers to the regional transmission organization approved by the Federal Energy Regulatory Commission for the control area that includes the public utility's assigned service area (as defined in IC 8-1-2.3-2).

**(c) As used in this section, "capacity market" means an auction conducted by an appropriate regional transmission organization to determine a market clearing price for capacity based on the planning reserve margin requirements established by the appropriate regional transmission organization for a planning year with respect to which an auction has not yet been conducted.**

**(d) As used in this section, "fall unforced capacity", or "fall UCAP", with respect to an electric generating facility, means:**

- (1) the capacity value of the electric generating facility's installed capacity rate adjusted for the electric generating facility's average forced outage rate for the fall period, calculated as required by the appropriate regional transmission organization or by the Federal Energy Regulatory Commission;**
- (2) a metric that is similar to the metric described in subdivision (1) and that is required by the appropriate regional transmission organization; or**
- (3) if the appropriate regional transmission organization does not require a metric described in subdivision (1) or (2), a metric that:**

**(A) can be used to demonstrate that a public utility has sufficient capacity to:**

- (i) provide reliable electric service to Indiana customers for the fall period; and**
- (ii) meet its planning reserve margin requirement and**



**other federal reliability requirements described in subsection (l)(4); and**

**(B) is acceptable to the commission.**

(e) (e) As used in this section, "MISO" refers to the regional transmission organization known as the Midcontinent Independent System Operator that operates the bulk power transmission system serving most of the geographic territory in Indiana.

(f) (f) As used in this section, "planning reserve margin requirement", with respect to a public utility for a particular resource planning year, means the planning reserve margin requirement for that planning year that the public utility is obligated to meet in accordance with the public utility's membership in the appropriate regional transmission organization.

(g) (g) As used in this section, "reliability adequacy metrics", with respect to a public utility, means calculations used to demonstrate ~~both~~ **all** of the following:

(1) **Subject to subsection (q)(2)(B)**, that the public utility:

(A) has in place sufficient summer UCAP; or

(B) can reasonably acquire not more than:

(i) thirty percent (30%) of its total summer UCAP from capacity markets, **with respect to a report filed with the commission under subsection (l) before July 1, 2023; or**

(ii) **fifteen percent (15%) of its total summer UCAP from capacity markets, with respect to a report filed with the commission under subsection (l) after June 30, 2023;**

such that it will have sufficient summer UCAP;

to provide reliable electric service to Indiana customers, and to meet its planning reserve margin requirement and other federal reliability requirements described in subsection ~~(i)(4):~~ **(l)(4)**.

(2) **Subject to subsection (q)(2)(B)**, that the public utility:

(A) has in place sufficient winter UCAP; or

(B) can reasonably acquire not more than:

(i) thirty percent (30%) of its total winter UCAP from capacity markets, **with respect to a report filed with the commission under subsection (l) before July 1, 2023; or**

(ii) **fifteen percent (15%) of its total winter UCAP from capacity markets, with respect to a report filed with the commission under subsection (l) after June 30, 2023;**

such that it will have sufficient winter UCAP;

to provide reliable electric service to Indiana customers, and to meet its planning reserve margin requirement and other federal reliability requirements described in subsection ~~(i)(4):~~ **(l)(4)**.



**(3) Subject to subsection (q)(2)(B), with respect to a report filed with the commission under subsection (l) after June 30, 2026, that the public utility:**

**(A) has in place sufficient spring UCAP; or**

**(B) can reasonably acquire not more than fifteen percent (15%) of its total spring UCAP from capacity markets, such that it will have sufficient spring UCAP;**

**to provide reliable electric service to Indiana customers, and to meet its planning reserve margin requirement and other federal reliability requirements described in subsection (l)(4).**

**(4) Subject to subsection (q)(2)(B), with respect to a report filed with the commission under subsection (l) after June 30, 2026, that the public utility:**

**(A) has in place sufficient fall UCAP; or**

**(B) can reasonably acquire not more than fifteen percent (15%) of its total fall UCAP from capacity markets, such that it will have sufficient fall UCAP;**

**to provide reliable electric service to Indiana customers, and to meet its planning reserve margin requirement and other federal reliability requirements described in subsection (l)(4).**

For purposes of this subsection, "capacity markets" means the auctions conducted by an appropriate regional transmission organization to determine a market clearing price for capacity based on the planning reserve margin requirements established by the appropriate regional transmission organization.

**(h) As used in this section, "spring unforced capacity", or "spring UCAP", with respect to an electric generating facility, means:**

**(1) the capacity value of the electric generating facility's installed capacity rate adjusted for the electric generating facility's average forced outage rate for the spring period, calculated as required by the appropriate regional transmission organization or by the Federal Energy Regulatory Commission;**

**(2) a metric that is similar to the metric described in subdivision (1) and that is required by the appropriate regional transmission organization; or**

**(3) if the appropriate regional transmission organization does not require a metric described in subdivision (1) or (2), a metric that:**

**(A) can be used to demonstrate that a public utility has sufficient capacity to:**





- (i) provide reliable electric service to Indiana customers for the spring period; and**
- (ii) meet its planning reserve margin requirement and other federal reliability requirements described in subsection (l)(4); and**

**(B) is acceptable to the commission.**

~~(f)~~ **(i)** As used in this section, "summer unforced capacity", or "summer UCAP", with respect to an electric generating facility, means:

- (1) the capacity value of the electric generating facility's installed capacity rate adjusted for the electric generating facility's average forced outage rate for the summer period, calculated as required by the appropriate regional transmission organization or by the Federal Energy Regulatory Commission; or
- (2) a metric that is similar to the metric described in subdivision (1) and that is required by the appropriate regional transmission organization.

~~(g)~~ **(j)** As used in this section, "winter unforced capacity", or "winter UCAP", with respect to an electric generating facility, means:

- (1) the capacity value of the electric generating facility's installed capacity rate adjusted for the electric generating facility's average forced outage rate for the winter period, calculated as required by the appropriate regional transmission organization or by the Federal Energy Regulatory Commission;
- (2) a metric that is similar to the metric described in subdivision (1) and that is required by the appropriate regional transmission organization; or
- (3) if the appropriate regional transmission organization does not require a metric described in subdivision (1) or (2), a metric that:

(A) can be used to demonstrate that a public utility has sufficient capacity to:

- (i) provide reliable electric service to Indiana customers for the winter period; and
- (ii) meet its planning reserve margin requirement and other federal reliability requirements described in subsection ~~(i)(4); (l)(4); and~~

**(B) is acceptable to the commission.**

~~(h)~~ **(k)** A public utility that owns and operates an electric generating facility serving customers in Indiana shall operate and maintain the facility using good utility practices and in a manner:

- (1) reasonably intended to support the provision of reliable and economic electric service to customers of the public utility; and
- (2) reasonably consistent with the resource reliability



requirements of MISO or any other appropriate regional transmission organization.

(†) (I) Not later than thirty (30) days after the deadline for submitting an annual planning reserve margin report to MISO, each public utility providing electric service to Indiana customers shall, regardless of whether the public utility is required to submit an annual planning reserve margin report to MISO, file with the commission a report, in a form specified by the commission, that provides the following information for each of the next three (3) resource planning years, beginning with the planning year covered by the planning reserve margin report to MISO described in this subsection:

(1) The:

- (A) capacity;
- (B) location; and
- (C) fuel source;

for each electric generating facility that is owned and operated by the electric utility and that will be used to provide electric service to Indiana customers.

(2) The amount of generating resource capacity or energy, or both, that the public utility has procured under contract and that will be used to provide electric service to Indiana customers, including the:

- (A) capacity;
- (B) location; and
- (C) fuel source;

for each electric generating facility that will supply capacity or energy under the contract, to the extent known by the public utility.

(3) The amount of demand response resources available to the public utility under contracts and tariffs.

(4) The following:

(A) The planning reserve margin requirements established by MISO for the planning years covered by the report, to the extent known by the public utility with respect to any particular planning year covered by the report.

(B) If applicable, any other planning reserve margin requirement that:

- (i) applies to the planning years covered by the report; and
- (ii) the public utility is obligated to meet in accordance with the public utility's membership in an appropriate regional transmission organization;

to the extent known by the public utility with respect to any



particular planning year covered by the report.

(C) Other federal reliability requirements that the public utility is obligated to meet in accordance with its membership in an appropriate regional transmission organization with respect to the planning years covered by the report, to the extent known by the public utility with respect to any particular planning year covered by the report.

For each planning reserve margin requirement reported under clause (A) or (B), the public utility shall include a comparison of that planning reserve margin requirement to the planning reserve margin requirement established by the same regional transmission organization for the 2021-2022 planning year.

(5) The reliability adequacy metrics of the public utility, as forecasted for the three (3) planning years covered by the report.

~~(j)~~ **(m)** Upon request by a public utility, the commission shall determine whether information provided in a report filed by the public utility under subsection ~~(j)~~ **(l)**:

(1) is confidential under IC 5-14-3-4 or is a trade secret under IC 24-2-3;

(2) is exempt from public access and disclosure by Indiana law; and

(3) shall be treated as confidential and protected from public access and disclosure by the commission.

~~(k)~~ **(n)** A joint agency created under IC 8-1-2.2 may file the report required under subsection ~~(j)~~ **(l)** as a consolidated report on behalf of any or all of the municipally owned utilities that make up its membership.

~~(l)~~ **(o)** A:

(1) 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

(2) general district corporation within the meaning of IC 8-1-13-23;

may file the report required under subsection ~~(j)~~ **(l)** as a consolidated report on behalf of any or all of the cooperatively owned electric utilities that it serves.

~~(m)~~ **(p)** In reviewing a report filed by a public utility under subsection ~~(j)~~ **(l)**, the commission may request technical assistance from MISO or any other appropriate regional transmission organization in determining:

(1) the planning reserve margin requirements or other federal reliability ~~requirement~~ **requirements** that the public utility is



obligated to meet, as described in subsection ~~(i)(4)~~; **(l)(4)**; and (2) whether the resources available to the public utility under subsections ~~(i)(1)~~ **(l)(1)** through ~~(i)(3)~~ **(l)(3)** will be adequate to support the provision of reliable electric service to the public utility's Indiana customers.

~~(n)~~ **(q)** If, after reviewing a report filed by a public utility under subsection ~~(i)~~; **(l)**, the commission is not satisfied that the public utility can:

(1) provide reliable electric service to the public utility's Indiana customers; or

(2) **either:**

**(A) meet satisfy both:**

**(i)** its planning reserve margin requirement or other federal reliability requirements that the public utility is obligated to meet, as described in subsection ~~(i)(4)~~; **(l)(4)**; and

**(ii) the reliability adequacy metrics set forth in subsection (g); or**

**(B) provide sufficient reason as to why the public utility is unable to satisfy both:**

**(i) its planning reserve margin requirement or other federal reliability requirements that the public utility is obligated to meet, as described in subsection (l)(4); and**

**(ii) the reliability adequacy metrics set forth in subsection (g);**

during one (1) more of the planning years covered by the report, the commission may conduct an investigation under IC 8-1-2-58 ~~and IC 8-1-2-59~~ **through IC 8-1-2-60** as to the reasons for the public utility's potential inability to meet the requirements described in subdivision (1) or (2), or both.

~~(o)~~ **(r)** If, upon investigation under IC 8-1-2-58 ~~and IC 8-1-2-59~~; **through IC 8-1-2-60**, and after notice and hearing, as required by IC 8-1-2-59, the commission determines that the capacity resources available to the public utility under subsections ~~(i)(1)~~ **(l)(1)** through ~~(i)(3)~~ **(l)(3)** will not be adequate to support the provision of reliable electric service to the public utility's Indiana customers, or to allow the public utility to **meet satisfy both** its planning reserve margin requirements or other federal reliability requirements that the public utility is obligated to meet (as described in subsection ~~(i)(4)~~; **(l)(4)**) **and the reliability adequacy metrics set forth in subsection (g)**, the commission shall issue an order directing the public utility to acquire or construct such capacity resources that are reasonable and necessary to enable the public utility to provide reliable electric service to its



Indiana customers, and to ~~meet~~ **satisfy both** its planning reserve margin requirements or other federal reliability requirements described in subsection ~~(f)(4)~~: **(l)(4) and the reliability adequacy metrics set forth in subsection (g)**. Not later than ninety (90) days after the date of the commission's order under this subsection, the public utility shall file for approval with the commission a plan to comply with the commission's order. The public utility's plan may include:

- (1) a request for a certificate of public convenience and necessity under this chapter; or
- (2) an application under IC 8-1-8.8;

or both.

~~(p)~~ **(s)** Beginning in 2022, the commission shall ~~before November 1 of each year submit to the governor and to the interim study committee on energy, utilities, and telecommunications established by IC 2-5-1.3-4(8)~~ a report that ~~includes~~ **include in its annual report under IC 8-1-1-14 the following information:**

- (1) The commission's analysis regarding the ability of public utilities to:
  - (A) provide reliable electric service to Indiana customers; and
  - (B) **meet satisfy both:**
    - (i) their planning reserve margin requirements or other federal reliability requirements; **and**
    - (ii) **the reliability adequacy metrics set forth in subsection (g);**

for the next three (3) utility resource planning years, based on the most recent reports filed by public utilities under subsection ~~(f)~~:

- (l).**
- (2) A summary of:
  - (A) the projected demand for retail electricity in Indiana over the next calendar year; and
  - (B) the amount and type of capacity resources committed to meeting the projected demand.

In preparing the summary required under this subdivision, the commission may consult with the forecasting group established under section 3.5 of this chapter.

**(3) Beginning with the commission's annual report filed under IC 8-1-1-14 in 2025, the commission's analysis regarding the appropriate percentage or portion of:**

- (A) **total spring UCAP that public utilities should be authorized to acquire from capacity markets under subsection (g)(3)(B); and**
- (B) **total fall UCAP that public utilities should be**



**authorized to acquire from capacity markets under subsection (g)(4)(B).**

A report under this subsection to the interim study committee on energy, utilities, and telecommunications established by IC 2-5-1.3-4(8) must be in an electronic format under IC 5-14-6.

(t) The commission may adopt rules under IC 4-22-2 to implement this section. In adopting rules to implement this section, the commission may adopt emergency rules in the manner provided by IC 4-22-2-37.1. Notwithstanding IC 4-22-2-37.1(g), an emergency rule adopted by the commission under this subsection and in the manner provided by IC 4-22-2-37.1 expires on the date on which a rule that supersedes the emergency rule is adopted by the commission under IC 4-22-2-24 through IC 4-22-2-36.



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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

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

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