

HOUSE BILL No. 1327

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-8.5.

Synopsis: Power charge indifference adjustment. Provides that in acting upon a petition for public convenience and necessity for the construction, purchase, or lease of an electric generation facility, the utility regulatory commission (IURC) shall consider the following: (1) The amount, ownership, current and potential uses, and current and potential assessed value of any land required for the facility. (2) The outstanding costs associated with any of the applicant's existing facilities or infrastructure that will be retired or replaced, in whole or in part, in connection with the facility. Requires the IURC to adopt rules not later than July 1, 2020, to implement a power charge indifference adjustment (PCIA) with respect to a reduced load customer of an electric utility. Defines a "reduced load customer" of an electric utility as a customer with respect to whom the amount of electricity or retail electric service delivered by the electric utility is reduced because of: (1) the customer's use of a cogeneration facility; or (2) the termination of a requirements contract or another contract under which the customer has agreed to purchase a designated amount or percentage of electricity from the electric utility to meet the customer's demand for electricity. Provides that a PCIA is to be based on the reduced load customer's proportionate share of the electric utility's costs outstanding in connection with: (1) existing facilities or infrastructure; and (2) existing power purchase agreements; as of the in service date of the customer's cogeneration facility or the date of termination of the requirements contract or other similar contract. Provides that for each calendar year in which a PCIA is in effect, the PCIA is to be calculated based on the difference between: (1) the
(Continued next page)

Effective: Upon passage.

Soliday

January 14, 2020, read first time and referred to Committee on Utilities, Energy and Telecommunications.



Digest Continued

electric utility's actual portfolio cost, as determined by the IURC, as of the in service date of the reduced load customer's cogeneration facility or the date of termination of the requirements contract or other similar contract, as applicable; minus (2) the market value of the electric utility's supply side portfolio for the particular calendar year, as determined by the IURC.



Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

HOUSE BILL No. 1327



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 8-1-8.5-4 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. In acting upon
3 any petition for the construction, purchase, or lease of any facility for
4 the generation of electricity, the commission shall take into account **the**
5 **following:**
6 (1) The applicant's current and potential arrangement with other
7 electric utilities for:
8 (A) the interchange of power;
9 (B) the pooling of facilities;
10 (C) the purchase of power; and
11 (D) joint ownership of facilities. ~~and~~
12 (2) Other methods for providing reliable, efficient, and
13 economical electric service, including the refurbishment of
14 existing facilities, conservation, load management, cogeneration,
15 and renewable energy sources.



1 **(3) The:**

2 **(A) amount;**

3 **(B) ownership;**

4 **(C) current and potential uses; and**

5 **(D) current and potential assessed value;**

6 **of any land required for the facility.**

7 **(4) The costs associated with any of the applicant's existing**
 8 **facilities or infrastructure that will be retired or replaced, in**
 9 **whole or in part, in connection with the facility, including any:**

10 **(A) outstanding debt;**

11 **(B) depreciation costs; or**

12 **(C) other stranded costs;**

13 **with respect to the existing facilities or infrastructure.**

14 SECTION 2. IC 8-1-8.5-5, AS AMENDED BY P.L.264-2017,
 15 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 UPON PASSAGE]: Sec. 5. (a) As a condition for receiving the
 17 certificate required under section 2 of this chapter, the applicant shall
 18 file an estimate of construction, purchase, or lease costs in such detail
 19 as the commission may require.

20 (b) The commission shall hold a public hearing on each such
 21 application. The commission **shall consider the factors set forth in**
 22 **section 4 of this chapter and** may consider all **other** relevant
 23 information related to construction, purchase, or lease costs. A
 24 certificate shall be granted only if the commission has:

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

27 (2) made a finding that either:

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

32 (B) the construction, purchase, or lease is consistent with a
 33 utility specific proposal submitted under section 3(e)(1) of this
 34 chapter and approved under subsection (d). However, if the
 35 commission has developed, in whole or in part, an analysis for
 36 the expansion of electric generating capacity and the applicant
 37 has filed and the commission has approved under subsection
 38 (d) a utility specific proposal submitted under section 3(e)(1)
 39 of this chapter, the commission shall make a finding under this
 40 clause that the construction, purchase, or lease is consistent
 41 with the commission's analysis, to the extent developed, and
 42 that the construction, purchase, or lease is consistent with the



- 1 applicant's plan under section 3(e)(1) of this chapter, to the
 2 extent the plan was approved by the commission;
- 3 (3) made a finding that the public convenience and necessity
 4 require or will require the construction, purchase, or lease of the
 5 facility;
- 6 (4) made a finding that the facility, if it is a coal-consuming
 7 facility, utilizes Indiana coal or is justified, because of economic
 8 considerations or governmental requirements, in using
 9 non-Indiana coal; and
- 10 (5) made the findings under subsection (e), if applicable.
- 11 (c) If:
- 12 (1) the commission grants a certificate under this chapter based
 13 upon a finding under subsection (b)(2) that the construction,
 14 purchase, or lease of a generating facility is consistent with the
 15 commission's analysis for the expansion of electric generating
 16 capacity; and
- 17 (2) a court finally determines that the commission analysis is
 18 invalid;
- 19 the certificate shall remain in full force and effect if the certificate was
 20 also based upon a finding under subsection (b)(2) that the construction,
 21 purchase, or lease of the facility was consistent with a utility specific
 22 plan submitted under section 3(e)(1) of this chapter and approved
 23 under subsection (d).
- 24 (d) The commission shall consider and approve, in whole or in part,
 25 or disapprove a utility specific proposal or an amendment thereto
 26 jointly with an application for a certificate under this chapter. However,
 27 such an approval or disapproval shall be solely for the purpose of
 28 acting upon the pending certificate for the construction, purchase, or
 29 lease of a facility for the generation of electricity.
- 30 (e) This subsection applies if an applicant proposes to construct a
 31 facility with a generating capacity of more than eighty (80) megawatts.
 32 Before granting a certificate to the applicant, the commission:
- 33 (1) must, in addition to the findings required under subsection (b),
 34 find that:
- 35 (A) the estimated costs of the proposed facility are, to the
 36 extent commercially practicable, the result of competitively
 37 bid engineering, procurement, or construction contracts, as
 38 applicable; and
- 39 (B) if the applicant is an electricity supplier (as defined in
 40 IC 8-1-37-6), the applicant allowed or will allow third parties
 41 to submit firm and binding bids for the construction of the
 42 proposed facility on behalf of the applicant that met or meet all



- 1 of the technical, commercial, and other specifications required
 2 by the applicant for the proposed facility so as to enable
 3 ownership of the proposed facility to vest with the applicant
 4 not later than the date on which the proposed facility becomes
 5 commercially available; and
 6 (2) shall also consider the following factors:
 7 (A) Reliability.
 8 (B) Solicitation by the applicant of competitive bids to obtain
 9 purchased power capacity and energy from alternative
 10 suppliers.

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

13 SECTION 3. IC 8-1-8.5-6.7 IS ADDED TO THE INDIANA CODE
 14 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
 15 **UPON PASSAGE]: Sec. 6.7. (a) As used in this section, "actual**
 16 **portfolio cost", with respect to an electric utility, means the actual**
 17 **costs, as determined by the commission, related to:**

- 18 (1) electric generation facilities owned by the electric utility;
 19 and
 20 (2) power purchase agreements under which the electric
 21 utility is obligated;
 22 as of the in service date of a reduced load customer's cogeneration
 23 facility or the date on which a reduced load customer terminates
 24 a requirements contract or other contract described in subsection
 25 (f)(2), as applicable.

26 (b) As used in this section, "cogeneration facility" has the
 27 meaning set forth in IC 8-1-2.4-2(c). The term includes a private
 28 generation project (as defined in IC 8-1-2.4-2(g)).

29 (c) As used in this section, "electric utility" means a public
 30 utility (as defined in IC 8-1-2-1) that:

- 31 (1) provides retail electric service to Indiana customers; and
 32 (2) is under the jurisdiction of the commission for the
 33 approval of rates and charges.

34 (d) As used in this section, "market value", with respect to an
 35 electric utility's supply side portfolio, means the market value of
 36 the electric utility's supply side portfolio for a particular calendar
 37 year in which a power charge indifference adjustment is in effect
 38 for a reduced load customer.

39 (e) As used in this section, "power charge indifference
 40 adjustment", or "PCIA", means a nonbypassable charge or credit
 41 that is:

- 42 (1) determined by the commission;



- 1 (2) paid by or credited to a reduced load customer;
 2 (3) based on the reduced load customer's proportionate share
 3 of the electric utility's costs outstanding in connection with:
 4 (A) existing facilities or infrastructure, including any:
 5 (i) outstanding debt;
 6 (ii) financing costs; or
 7 (iii) other stranded costs; and
 8 (B) existing power purchase agreements;
 9 as of the in service date of the reduced load customer's
 10 cogeneration facility or the date of termination of the
 11 requirements contract or other contract described in
 12 subsection (f)(2), as applicable;
 13 (4) net of the value of any benefits that the reduced load
 14 customer's decreased use of electricity or retail electric
 15 service provides to the electric utility;
 16 (5) payable by, or creditable to, the reduced load customer for
 17 the period commencing with:
 18 (A) the in service date of the reduced load customer's
 19 cogeneration facility; or
 20 (B) the date of termination of the requirements contract or
 21 other contract described in subsection (f)(2);
 22 as applicable, and ending upon the satisfaction of the reduced
 23 load customer's proportionate share of the electric utility's
 24 costs outstanding as of the date described in clause (A) or (B),
 25 as applicable; and
 26 (6) for each calendar year in which it is in effect under
 27 subdivision (5), calculated based on the difference between:
 28 (A) the electric utility's actual portfolio cost, as determined
 29 by the commission, for the date described in subdivision
 30 (5)(A) or (5)(B), as applicable; minus
 31 (B) the market value of the electric utility's supply side
 32 portfolio for the particular calendar year, as determined
 33 by the commission.
 34 (f) As used in this section, "reduced load customer" means a
 35 customer of an electric utility with respect to whom the amount of
 36 electricity or retail electric service delivered by the electric utility
 37 is reduced because of:
 38 (1) the customer's use of a cogeneration facility; or
 39 (2) the termination of a requirements contract or another
 40 contract under which the customer has agreed to purchase a
 41 designated amount or percentage of electricity or retail
 42 electric service from the electric utility to meet the customer's



1 demand for electricity or retail electric service.
 2 (g) Not later than July 1, 2020, the commission shall adopt rules
 3 to do the following:

4 (1) Implement a power charge indifference adjustment to be:

5 (A) imposed on any person that:

6 (i) is a customer of an electric utility after June 30, 2020;
 7 and

8 (ii) either is a reduced load customer of the electric
 9 utility as of July 1, 2020, or becomes a reduced load
 10 customer of the electric utility at any time after June 30,
 11 2020;

12 (B) effective as of the:

13 (i) in service date of the reduced load customer's
 14 cogeneration facility; or

15 (ii) the date of termination of the requirements contract
 16 or other contract described in subsection (f)(2);

17 as applicable, regardless of whether the date described in
 18 item (i) or (ii) occurs before July 1, 2020, or after June 30,
 19 2020; and

20 (C) effective until the satisfaction of the reduced load
 21 customer's proportionate share of the electric utility's costs
 22 outstanding as of the date described in clause (B)(i) or
 23 (B)(ii), as applicable; and

24 (2) Ensure that a reduced load customer's:

25 (A) use of a cogeneration facility; or

26 (B) termination of a requirements contract or another
 27 contract described in subsection (f)(2);

28 does not result in a shifting of costs to other customers, or
 29 classes of customers, of the electric utility.

30 In adopting the rules required by this subsection, the commission
 31 may adopt emergency rules in the manner provided by
 32 IC 4-22-2-37.1. Notwithstanding IC 4-22-2-37.1(g), an emergency
 33 rule adopted by the commission under this subsection and in the
 34 manner provided by IC 4-22-2-37.1 expires on the date on which
 35 a rule that supersedes the emergency rule is adopted by the
 36 commission under IC 4-22-2-24 through IC 4-22-2-36.

37 SECTION 4. An emergency is declared for this act.

