

## SENATE BILL No. 309

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-1.

**Synopsis:** Distributed generation. Requires: (1) the utility regulatory commission (IURC) to post a summary of the results of the IURC's most recent periodic review of the basic rates and charges of an electricity supplier on the IURC's Internet web site; and (2) the electricity supplier subject to the review to provide a link on the electricity supplier's Internet web site to the IURC's posted summary. Amends the statute concerning alternate energy production, cogeneration, and small hydro facilities to: (1) include in the definition of a "private generation project" certain cogeneration facilities that: (A) are located on the same site as the host operation; or (B) are located on or contiguous to the site of the host operation and are directly integrated with the host operation; and (2) define an "eligible facility" for purposes of the statute. Specifies that an electric utility or a steam utility is not required to distribute, transmit, deliver, or wheel electricity from a private generation project. Requires the IURC to: (1) review the rates charged by electric utilities for backup power to eligible facilities and for purchases of power from eligible facilities; (2) identify the extent to which the rates meet specified criteria; and (3) report the IURC's findings to the interim study committee on energy, utilities, and telecommunications; not later than November 1, 2018. Provides that a public utility that: (1) installs a wind or solar project with a nameplate capacity of not more than 50,000 kilowatts; and (2) uses for the project a contractor that is: (A) subject to Indiana unemployment taxes; and (B) selected by the public utility through a competitive procurement process; is not required to obtain a certificate of public convenience and necessity for the project from the IURC. Provides that a net  
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**Effective:** July 1, 2017.

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## Hershman

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January 9, 2017, read first time and referred to Committee on Utilities.

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metering tariff of an electricity supplier must remain available to the electricity supplier's customers until the first calendar year after the aggregate amount of net metering facility nameplate capacity under the tariff equals at least 1% of the electricity supplier's most recent summer peak load. Provides that after June 30, 2027: (1) an electricity supplier may not make a net metering tariff available to customers; and (2) the terms and conditions of any net metering tariff offered by an electricity supplier before July 1, 2027, expire and are unenforceable. Provides that not later than March 1, 2026, an electricity supplier shall file with the IURC a petition requesting a rate for the electricity supplier's purchase of distributed generation from customers. Provides that the IURC shall approve a rate submitted by an electricity supplier if the rate equals either: (1) the average marginal price of electricity paid by the electricity supplier during the most recent calendar year; or (2) the direct costs of generating or purchasing electricity that the electricity supplier will avoid by purchasing distributed generation. Establishes protections for customers producing distributed generation.



Introduced

First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

## SENATE BILL No. 309

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 8-1-2-42.5 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 42.5. **(a)** The  
3       commission shall by rule or order, consistent with the resources of the  
4       commission and the office of the utility consumer counselor, require  
5       that the basic rates and charges of all public, municipally owned, and  
6       cooperatively owned utilities (except those utilities described in  
7       ~~IC 8-1-2-61.5~~ **section 61.5 of this chapter**) are subject to a regularly  
8       scheduled periodic review and revision by the commission. However,  
9       the commission shall conduct the periodic review at least once every  
10      four (4) years and may not authorize a filing for an increase in basic  
11      rates and charges more frequently than is permitted by operation of  
12      section 42(a) of this chapter.  
13      **(b) The commission shall make the results of the commission's**  
14      **most recent periodic review of the basic rates and charges of an**  
15      **electricity supplier (as defined in IC 8-1-2.3-2(b)) available for**



1 **public inspection by posting a summary of the results on the**  
 2 **commission's Internet web site. An electricity supplier whose basic**  
 3 **rates and charges are reviewed under this section shall provide a**  
 4 **link on the electricity supplier's Internet web site to the summary**  
 5 **of the results posted on the commission's Internet web site.**

6 SECTION 2. IC 8-1-2.4-2, AS AMENDED BY P.L.222-2014,  
 7 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 8 JULY 1, 2017]: Sec. 2. (a) The definitions in this section apply  
 9 throughout this chapter.

10 (b) "Alternate energy production facility" means:

- 11 (1) a solar, wind turbine, waste management, resource recovery,  
 12 refuse-derived fuel, or wood burning facility;
- 13 (2) any land, system, building, or improvement that is located at  
 14 the project site and is necessary or convenient to the construction,  
 15 completion, or operation of the facility; and
- 16 (3) the transmission or distribution facilities necessary to conduct  
 17 the energy produced by the facility to users located at or near the  
 18 project site.

19 (c) "Cogeneration facility" means:

- 20 (1) a facility that:  
 21 (A) simultaneously generates electricity and useful thermal  
 22 energy; and  
 23 (B) meets the energy efficiency standards established for  
 24 cogeneration facilities by the Federal Energy Regulatory  
 25 Commission under 16 U.S.C. 824a-3;
- 26 (2) any land, system, building, or improvement that is located at  
 27 the project site and is necessary or convenient to the construction,  
 28 completion, or operation of the facility; and
- 29 (3) the transmission or distribution facilities necessary to conduct  
 30 the energy produced by the facility to users located at or near the  
 31 project site.

32 (d) "Electric utility" means any public utility or municipally owned  
 33 utility that owns, operates, or manages any electric plant.

34 (e) "Small hydro facility" means:

- 35 (1) a hydroelectric facility at a dam;
- 36 (2) any land, system, building, or improvement that is located at  
 37 the project site and is necessary or convenient to the construction,  
 38 completion, or operation of the facility; and
- 39 (3) the transmission or distribution facilities necessary to conduct  
 40 the energy produced by the facility to users located at or near the  
 41 project site.

42 (f) "Steam utility" means any public utility or municipally owned



utility that owns, operates, or manages a steam plant.

(g) "Private generation project" means a cogeneration facility that has an electric generating capacity of eighty (80) megawatts or more and is:

(1) primarily used by its owner for the owner's industrial, commercial, heating, or cooling purposes; or

(2) a qualifying facility for purposes of the Public Utility Regulatory Policies Act of 1978 that ~~(A) is in existence on July 1, 2014; and (B)~~ produces electricity and useful thermal energy that is primarily used by a **single** host operation for industrial, commercial, heating, or cooling purposes **and is:**

**(A) located on the same site as the host operation; or**

**(B) determined by the commission to be a facility that:**

**(i) satisfies the requirements of this chapter;**

**(ii) is located on or contiguous to the property on which the host operation is sited; and**

**(iii) is directly integrated with the host operation.**

**(h) "Eligible facility" means an alternate energy production facility, a cogeneration facility, or a small hydro facility that is:**

**(1) described in section 5 of this chapter; and**

**(2) either:**

**(A) located on the same site as a single host operation; or**

**(B) determined by the commission to be a facility that:**

**(i) satisfies the requirements of this chapter;**

**(ii) is located on or contiguous to the property on which the host operation is sited; and**

**(iii) is directly integrated with the host operation.**

**The term includes the consuming elements of a host operation using the associated energy output for industrial, commercial, heating, or cooling purposes.**

SECTION 3. IC 8-1-2.4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 4. (a) Subject to section 5 of this chapter, the commission shall require electric utilities and steam utilities to enter into long term contracts to:

(1) purchase or wheel electricity or useful thermal energy from ~~alternate energy production facilities, cogeneration facilities, or small hydro~~ **eligible** facilities located in the utility's service territory, under the terms and conditions that the commission finds:

(A) are just and economically reasonable to the corporation's ratepayers;

(B) are nondiscriminatory to alternate energy producers,



cogenerators, and small hydro producers; and

(C) will further the policy stated in section 1 of this chapter;  
and

(2) provide for the availability of supplemental or backup power to ~~alternate energy production facilities; cogeneration facilities; or small hydro eligible~~ facilities on a nondiscriminatory basis and at just and reasonable rates.

(b) Upon application by the owner or operator of any ~~alternate energy production facility; cogeneration facility; or small hydro eligible~~ facility or any interested party, the commission shall establish for the affected utility just and economically reasonable rates for electricity purchased under subsection (a)(1). The rates shall be established at levels sufficient to stimulate the development of ~~alternate energy production; cogeneration; and small hydro eligible~~ facilities in Indiana, and to encourage the continuation of existing capacity from those facilities.

(c) The commission shall base the rates for new facilities or new capacity from existing facilities on the following factors:

(1) The estimated capital cost of the next generating plant, including related transmission facilities, to be placed in service by the utility.

(2) The term of the contract between the utility and the seller.

(3) A levelized annual carrying charge based upon the term of the contract and determined in a manner consistent with both the methods and the current interest or return requirements associated with the utility's new construction program.

(4) The utility's annual energy costs, including current fuel costs, related operation and maintenance costs, and any other energy-related costs considered appropriate by the commission.

~~Until July 1, 1986, the rate for a new facility may not exceed eight cents (\$.08) per kilowatt hour.~~

(d) The commission shall base the rates for existing facilities on the factors listed in subsection (c). However, the commission shall also consider the original cost less depreciation of existing facilities and may establish a rate for existing facilities that is less than the rate established for new facilities.

(e) In the case of a utility that purchases all or substantially all of its electricity requirements, the rates established under this section must be equal to the current cost to the utility of similar types and quantities of electrical service.

(f) In lieu of the other procedures provided by this section, a utility and an owner or operator of an ~~alternate energy production facility;~~



~~cogeneration facility, or small hydro eligible~~ facility may enter into a long term contract in accordance with subsection (a) and may agree to rates for purchase and sale transactions. A contract entered into under this subsection must be filed with the commission in the manner provided by IC 8-1-2-42.

(g) This section does not require an electric utility or steam utility to:

(1) construct any additional facilities unless those facilities are paid for by the owner or operator of the affected ~~alternate energy production facility, cogeneration facility, or small hydro eligible~~ facility; or

(2) distribute, transmit, deliver, or wheel electricity from a private generation project.

(h) The commission shall do the following not later than November 1, 2018:

(1) Review the rates charged by electric utilities under subsections (a)(2) and (e).

(2) Identify the extent to which the rates offered by electric utilities under subsections (a)(2) and (e):

(A) are cost based;

(B) are nondiscriminatory; and

(C) do not result in the subsidization of costs within or among customer classes.

(3) Report the commission's findings under subdivisions (1) and (2) to the interim study committee on energy, utilities, and telecommunications established by IC 2-5-1.3-4(8).

**This subsection expires November 2, 2018.**

SECTION 4. IC 8-1-8.5-7, AS AMENDED BY P.L.168-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 7. The certification requirements of this chapter do not apply to ~~persons who:~~ **a person that:**

(1) ~~construct~~ **constructs** 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~~ **constructs** an ~~alternate energy production facility, cogeneration facility, or a small hydro eligible~~ facility that complies with the limitations set forth in IC 8-1-2.4-5; ~~or~~

(3) ~~are~~ **is** a municipal utility, including a joint agency created under IC 8-1-2.2-8, and ~~install~~ **installs** an electric generating facility that has a capacity of ten thousand (10,000) kilowatts or less; **or**



(4) is a public utility and:

(A) installs a clean energy project described in IC 8-1-8.8-2(2) that is approved by the commission and that:

(i) uses a clean energy resource described in IC 8-1-37-4(a)(1) or IC 8-1-37-4(a)(2); and

(ii) has a nameplate capacity of not more than fifty thousand (50,000) kilowatts; and

(B) uses a contractor that:

(i) is subject to Indiana unemployment taxes; and

(ii) is selected by the public utility through bids solicited in a competitive procurement process;

in the engineering, procurement, or construction of the project.

However, ~~those persons~~ a person described in this section shall, nevertheless, be required to report to the commission the proposed construction of such a facility before beginning construction of the facility.

SECTION 5. IC 8-1-40 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]:

#### **Chapter 40. Distributed Generation**

**Sec. 1.** As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

**Sec. 2.** As used in this chapter, "customer" means a person that receives retail electric service from an electricity supplier.

**Sec. 3. (a)** As used in this chapter, "distributed generation" means electricity produced by a generator or other device that is:

(1) located on the customer's premises;

(2) owned by the customer;

(3) sized at a nameplate capacity of the lesser of:

(A) not more than one (1) megawatt; or

(B) the customer's average annual consumption of energy on the premises; and

(4) interconnected and operated in parallel with the electricity supplier's facilities in accordance with the commission's approved interconnection standards.

**(b)** The term does not include electricity produced by the following:

(1) An electric generator used exclusively for emergency purposes.

(2) A net metering facility (as defined in 170 IAC 4-4.2-1(k))





operating under a net metering tariff.

Sec. 4. As used in this chapter, "electricity supplier" has the meaning set forth in IC 8-1-2.3-2(b).

Sec. 5. As used in this chapter, "marginal price of electricity" means the hourly market price for electricity as determined by a regional transmission organization of which the electricity supplier serving a customer is a member.

Sec. 6. As used in this chapter, "net metering tariff" means a tariff that:

- (1) an electricity supplier offers for net metering under 170 IAC 4-4.2; and
- (2) is in effect on January 1, 2017.

Sec. 7. As used in this chapter, "premises" means a single tract of land on which a customer consumes electricity for residential, business, or other purposes.

Sec. 8. As used in this chapter, "regional transmission organization" has the meaning set forth in IC 8-1-37-9.

Sec. 9. Subject to section 10 of this chapter, a net metering tariff of an electricity supplier must remain available to the electricity supplier's customers until January 1 of the first calendar year after the calendar year in which the aggregate amount of net metering facility nameplate capacity under the electricity supplier's net metering tariff equals at least one percent (1%) of the most recent summer peak load of the electricity supplier. If, at any point in a calendar year, an electricity supplier reasonably anticipates that the aggregate amount of net metering facility nameplate capacity under the electricity supplier's net metering tariff will equal at least one percent (1%) of the most recent summer peak load of the electricity supplier, the electricity supplier shall, in accordance with section 12 of this chapter, petition the commission for approval of a rate for the purchase of distributed generation.

Sec. 10. (a) Before July 1, 2027:

- (1) an electricity supplier may not seek to change the terms and conditions of the electricity supplier's net metering tariff; and
- (2) the commission may not approve changes to an electricity supplier's net metering tariff.

(b) After June 30, 2027:

- (1) an electricity supplier may not make a net metering tariff available to customers; and
- (2) the terms and conditions of a net metering tariff offered by an electricity supplier before July 1, 2027, expire and are



unenforceable.

Sec. 11. An electricity supplier shall purchase the distributed generation produced by a customer at a rate approved by the commission under section 13 of this chapter. Amounts paid by an electricity supplier for distributed generation shall be recognized in the electricity supplier's fuel adjustment proceedings under IC 8-1-2-42.

Sec. 12. Not later than March 1, 2026, an electricity supplier shall file with the commission a petition requesting a rate for the purchase of distributed generation by the electricity supplier. After an electricity supplier's initial rate for distributed generation is approved by the commission under section 13 of this chapter, the electricity supplier shall submit on an annual basis, not later than March 1 of each year, an updated rate for distributed generation in accordance with the methodology set forth in section 13 of this chapter.

Sec. 13. The commission shall review a petition filed under section 12 of this chapter by an electricity supplier and, after notice and a public hearing, shall approve a rate to be paid by the electricity supplier for distributed generation. The rate to be paid by the electricity supplier must equal one (1) of the following, as submitted by the electricity supplier in the electricity supplier's petition, and as approved by the commission:

- (1) The average marginal price of electricity paid by the electricity supplier during the most recent calendar year.
- (2) The direct costs of generating or purchasing electricity that the electricity supplier will avoid by purchasing distributed generation.

Sec. 14. An electricity supplier shall compensate a customer from whom the electricity supplier purchases distributed generation (at the rate approved by the commission under section 13 of this chapter) through either of the following means:

- (1) A credit on the customer's monthly bill.
- (2) A direct payment to the customer for the amount owed.

If the electricity supplier elects to provide a credit on the customer's monthly bill as described in subdivision (1), any credit that exceeds the amount that is billed to the customer in accordance with section 15 of this chapter shall be carried forward and credited against future charges to the customer for as long as the customer receives retail electric service from the electricity supplier at the premises.

Sec. 15. To ensure that a customer is properly charged for the



costs of the electricity delivery system through which an electricity supplier provides retail electric service to the customer:

- (1) all distributed generation produced by the customer shall be purchased by the electricity supplier at the rate approved by the commission under section 13 of this chapter; and
- (2) all electricity consumed by the customer at the premises shall be considered electricity supplied by the electricity supplier and is subject to the applicable retail rate schedule.

Sec. 16. (a) An electricity supplier shall provide and maintain the metering equipment necessary to carry out the purchase of distributed generation from customers in accordance with this chapter.

(b) The commission shall recognize in the electricity supplier's basic rates and charges an electricity supplier's reasonable costs for the metering equipment required under subsection (a).

Sec. 17. (a) Subject to subsection (b) and sections 9 and 10 of this chapter, after June 30, 2017, the commission's rules and standards:

- (1) concerning interconnection; and
- (2) set forth in 170 IAC 4-4.2 (concerning net metering) and 170 IAC 4-4.3 (concerning interconnection);

remain in effect and apply to net metering under an electricity supplier's net metering tariff and to distributed generation under this chapter.

(b) After June 30, 2017, the commission may adopt changes under IC 4-22-2, including emergency rules in the manner provided by IC 4-22-2-37.1, to the rules and standards described in subsection (a) only as necessary to:

- (1) update fees or charges;
- (2) adopt revisions necessitated by new technologies; or
- (3) reflect changes in safety, performance, or reliability standards.

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.

Sec. 18. A customer that produces distributed generation shall comply with applicable safety, performance, and reliability standards established by the following:

- (1) The commission.
- (2) An electricity supplier, subject to approval by the commission.



- (3) The National Electric Code.
- (4) The National Electrical Safety Code.
- (5) The Institute of Electrical and Electronics Engineers.
- (6) Underwriters Laboratories.
- (7) The Federal Energy Regulatory Commission.
- (8) Local regulatory authorities.

**Sec. 19. (a) A customer that produces distributed generation has the following rights regarding the installation and ownership of distributed generation equipment:**

- (1) The right to know that the attorney general is authorized to enforce this section, including by receiving complaints concerning the installation and ownership of distributed generation equipment.
- (2) The right to know the expected amount of electricity that will be produced by the distributed generation equipment that the customer is purchasing.
- (3) The right to know all costs associated with installing distributed generation equipment, including any taxes for which the customer is liable.
- (4) The right to know the value of all federal, state, or local tax credits, electricity supplier rate credits, or other incentives or rebates that the customer may receive.
- (5) The right to know the rate at which the customer will be credited for electricity produced by the customer's distributed generation equipment and delivered to an electricity supplier.
- (6) The right to know if a provider of distributed generation equipment insures the distributed generation equipment against damage or loss and, if applicable, any circumstances under which the provider does not insure against or otherwise cover damage to or loss of the distributed generation equipment.
- (7) The right to know the responsibilities of a provider of distributed generation equipment with respect to installing or removing distributed generation equipment.

**(b) The attorney general, in consultation with the commission, shall adopt rules under IC 4-22-2 that the attorney general considers necessary to implement and enforce this section, including a rule requiring written disclosure of the rights set forth in subsection (a) by a provider of distributed generation to a customer. In adopting the rules required by this subsection, the attorney general may adopt emergency rules in the manner provided by IC 4-22-2-37.1. Notwithstanding IC 4-22-2-37.1(g), an**



1     **emergency rule adopted by the attorney general under this**  
2     **subsection and in the manner provided by IC 4-22-2-37.1 expires**  
3     **on the date on which a rule that supersedes the emergency rule is**  
4     **adopted by the attorney general under IC 4-22-2-24 through**  
5     **IC 4-22-2-36.**

