



February 21, 2017

SENATE BILL No. 309

DIGEST OF SB 309 (Updated February 16, 2017 1:22 pm - DI 101)

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; (2) define an "eligible facility" for purposes of the statute; and (3) include organic waste biomass facilities within the definition of an "alternative energy production facility". 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.

(Continued next page)

Effective: July 1, 2017.

Hershman

January 9, 2017, read first time and referred to Committee on Utilities.
February 20, 2017, amended, reported favorably — Do Pass.

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Digest Continued

Provides that before granting a certificate of public convenience and necessity for the construction of an electric facility with a generating capacity of more than 80 megawatts, the utility regulatory commission (IURC) must find that the applicant allowed third parties to submit firm and binding bids for the construction of the proposed facility. Provides that a public utility that: (1) installs a wind, a solar, or an organic waste biomass 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 metering tariff of an electricity supplier (other than a municipally owned utility or a rural electric membership corporation) must remain available to the electricity supplier's customers until: (1) the aggregate amount of net metering facility nameplate capacity under the tariff equals at least 1.5% of the electricity supplier's most recent summer peak load; or (2) July 1, 2022; whichever occurs earlier. Requires the IURC to amend its net metering rule, and an electricity supplier to amend its net metering tariff, to: (1) increase the limit on the aggregate amount of net metering capacity under the tariff to 1.5% of the electricity supplier's most recent summer peak load; and (2) reserve 40% of the capacity under the tariff for residential customers and 15% of the capacity for customers that install an organic waste biomass facility. Provides that a customer that installs a net metering facility on the customer's premises after June 30, 2017, and before the date on which the net metering tariff of the customer's electricity supplier terminates under the bill, shall continue to be served under the net metering tariff until: (1) the customer no longer owns, occupies, or resides at the premises on which the net metering facility is located; or (2) July 1, 2032; whichever occurs earlier. Provides that a customer that installs a net metering facility on the customer's premises before July 1, 2017, and that is participating in an electricity supplier's net metering tariff on July 1, 2017, shall continue to be served under the terms and conditions of the net metering tariff until: (1) the customer no longer owns, occupies, or resides at the premises on which the net metering facility is located; or (2) July 1, 2047; whichever occurs earlier. Provides that an electricity supplier shall procure only the excess distributed generation produced by a customer. Provides that the rate for excess distributed generation procured by an electricity supplier must equal the product of: (1) the average marginal price of electricity paid by the electricity supplier during the most recent calendar year; multiplied by (2) 1.25. Provides that: (1) an electricity supplier may request that the rate for excess distributed generation be set by the IURC at a rate equal to the average marginal price of electricity during the most recent calendar year; and (2) the IURC shall approve such a rate if the IURC determines that the breakeven cost of distributed generation effectively competes with the cost of generation produced by the electricity supplier. Provides that an electricity supplier shall compensate a customer for excess distributed generation through a credit on the customer's monthly bill. Provides that the IURC may approve an electricity supplier's request to recover energy delivery costs from customers producing distributed generation if the IURC finds that the request: (1) is reasonable; and (2) does not result in a double recovery of energy delivery costs from customers producing distributed generation.



February 21, 2017

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**

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

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

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

13 (1) **a any** solar, wind turbine, waste management, resource
14 recovery, refuse-derived fuel, **organic waste biomass**, or wood
15 burning facility;

16 (2) any land, system, building, or improvement that is located at
17 the project site and is necessary or convenient to the construction,
18 completion, or operation of the facility; and

19 (3) the transmission or distribution facilities necessary to conduct
20 the energy produced by the facility to users located at or near the
21 project site.

22 (c) "Cogeneration facility" means:

23 (1) a facility that:

24 (A) simultaneously generates electricity and useful thermal
25 energy; and

26 (B) meets the energy efficiency standards established for
27 cogeneration facilities by the Federal Energy Regulatory
28 Commission under 16 U.S.C. 824a-3;

29 (2) any land, system, building, or improvement that is located at
30 the project site and is necessary or convenient to the construction,
31 completion, or operation of the facility; and

32 (3) the transmission or distribution facilities necessary to conduct
33 the energy produced by the facility to users located at or near the
34 project site.

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

37 (e) "Small hydro facility" means:

38 (1) a hydroelectric facility at a dam;

39 (2) any land, system, building, or improvement that is located at
40 the project site and is necessary or convenient to the construction,
41 completion, or operation of the facility; and

42 (3) the transmission or distribution facilities necessary to conduct



the energy produced by the facility to users located at or near the project site.

(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;

- (i) satisfies the requirements of this chapter;
- (ii) is located on or contiguous to the property on which the best 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

(1) describes
(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



1 of electrical service.

2 (f) In lieu of the other procedures provided by this section, a utility
3 and an owner or operator of an ~~alternate energy production facility~~,
4 ~~cogeneration facility, or small hydro eligible~~ facility may enter into a
5 long term contract in accordance with subsection (a) and may agree to
6 rates for purchase and sale transactions. A contract entered into under
7 this subsection must be filed with the commission in the manner
8 provided by IC 8-1-2-42.

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

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

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

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

19 (1) **Review the rates charged by electric utilities under**
20 **subsection (a)(2) and section 6(e) of this chapter.**

21 (2) **Identify the extent to which the rates offered by electric**
22 **utilities under subsection (a)(2) and section 6(e) of this**
23 **chapter:**

24 (A) **are cost based;**

25 (B) **are nondiscriminatory; and**

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

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

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

32 SECTION 4. IC 8-1-8.5-5, AS AMENDED BY P.L.246-2015,
33 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2017]: Sec. 5. (a) As a condition for receiving the certificate
35 required under section 2 of this chapter, the applicant shall file an
36 estimate of construction, purchase, or lease costs in such detail as the
37 commission may require.

38 (b) The commission shall hold a public hearing on each such
39 application. The commission may consider all relevant information
40 related to construction, purchase, or lease costs. A certificate shall be
41 granted only if the commission has:

42 (1) made a finding as to the best estimate of construction,



1 purchase, or lease costs based on the evidence of record;

2 (2) made a finding that either:

3 (A) the construction, purchase, or lease will be consistent with

4 the commission's analysis (or such part of the analysis as may

5 then be developed, if any) for expansion of electric generating

6 capacity; or

7 (B) the construction, purchase, or lease is consistent with a

8 utility specific proposal submitted under section 3(e)(1) of this

9 chapter and approved under subsection (d). However, if the

10 commission has developed, in whole or in part, an analysis for

11 the expansion of electric generating capacity and the applicant

12 has filed and the commission has approved under subsection

13 (d) a utility specific proposal submitted under section 3(e)(1)

14 of this chapter, the commission shall make a finding under this

15 clause that the construction, purchase, or lease is consistent

16 with the commission's analysis, to the extent developed, and

17 that the construction, purchase, or lease is consistent with the

18 applicant's plan under section 3(e)(1) of this chapter, to the

19 extent the plan was approved by the commission;

20 (3) made a finding that the public convenience and necessity

21 require or will require the construction, purchase, or lease of the

22 facility;

23 (4) made a finding that the facility, if it is a coal-consuming

24 facility, utilizes Indiana coal or is justified, because of economic

25 considerations or governmental requirements, in using

26 non-Indiana coal; and

27 (5) made the findings under subsection (e), if applicable.

28 (c) If:

29 (1) the commission grants a certificate under this chapter based

30 upon a finding under subsection (b)(2) that the construction,

31 purchase, or lease of a generating facility is consistent with the

32 commission's analysis for the expansion of electric generating

33 capacity; and

34 (2) a court finally determines that the commission analysis is

35 invalid;

36 the certificate shall remain in full force and effect if the certificate was

37 also based upon a finding under subsection (b)(2) that the construction,

38 purchase, or lease of the facility was consistent with a utility specific

39 plan submitted under section 3(e)(1) of this chapter and approved

40 under subsection (d).

41 (d) The commission shall consider and approve, in whole or in part,

42 or disapprove a utility specific proposal or an amendment thereto



1 jointly with an application for a certificate under this chapter. However,
 2 such an approval or disapproval shall be solely for the purpose of
 3 acting upon the pending certificate for the construction, purchase, or
 4 lease of a facility for the generation of electricity.

5 (e) This subsection applies if an applicant proposes to construct a
 6 facility with a generating capacity of more than eighty (80) megawatts.
 7 Before granting a certificate to the applicant, the commission:

8 (1) must, in addition to the findings required under subsection (b),
 9 find that:

10 (A) the estimated costs of the proposed facility are, to the
 11 extent commercially practicable, the result of competitively
 12 bid engineering, procurement, or construction contracts, as
 13 applicable; and

14 (B) **the applicant allowed third parties to submit firm and**
 15 **binding bids for the construction of the proposed facility**
 16 **on behalf of the applicant that met all of the technical,**
 17 **commercial, and other specifications required by the**
 18 **applicant for the proposed facility so as to enable**
 19 **ownership of the proposed facility to vest with the**
 20 **applicant not later than the date on which the proposed**
 21 **facility becomes commercially available; and**

22 (2) shall also consider the following factors:

23 (A) Reliability.

24 (B) Solicitation by the applicant of competitive bids to obtain
 25 purchased power capacity and energy from alternative
 26 suppliers.

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

29 SECTION 5. IC 8-1-8.5-7, AS AMENDED BY P.L.168-2013,
 30 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2017]: Sec. 7. The certification requirements of this chapter
 32 do not apply to **persons who: a person that:**

33 (1) **construct constructs** an electric generating facility primarily
 34 for that person's own use and not for the primary purpose of
 35 producing electricity, heat, or steam for sale to or for the public
 36 for compensation;

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

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



1

less; or

2

(4) is a public utility and:

3

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

6

(i) uses a clean energy resource described in
7 IC 8-1-37-4(a)(1), IC 8-1-37-4(a)(2), or IC 8-1-37-4(a)(5);
8 and

9

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

11

(B) uses a contractor that:

12

(i) is subject to Indiana unemployment taxes; and
13 (ii) is selected by the public utility through bids solicited
14 in a competitive procurement process;

15

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

17

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.

21

SECTION 6. IC 8-1-40 IS ADDED TO THE INDIANA CODE AS
22 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
23 1, 2017]:

24

Chapter 40. Distributed Generation

25

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

27

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

29

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

31

(1) located on the customer's premises;

32

(2) owned by the customer;

33

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

34

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

35

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

37

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

40

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

42

(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. (a) As used in this chapter, "electricity supplier" means a public utility (as defined in IC 8-1-2-1) that furnishes retail electric service to customers in Indiana.

(b) 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.

Sec. 5. As used in this chapter, "excess distributed generation" means the difference between:

- (1) the electricity that is supplied by an electricity supplier to a customer that produces distributed generation; and
- (2) the electricity that is supplied back to the electricity supplier by the customer.

Sec. 6. 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. 7. 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. 8. 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. 9. As used in this chapter, "regional transmission organization" has the meaning set forth in IC 8-1-37-9.

Sec. 10. Subject to sections 13 and 14 of this chapter, a net metering tariff of an electricity supplier must remain available to the electricity supplier's customers until the earlier of the following:

(1) 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 and one-half percent (1.5%) of the most recent summer peak load of the electricity supplier.



(2) July 1, 2022.

Before July 1, 2022, if an electricity supplier reasonably anticipates, at any point in a calendar year, that the aggregate amount of net metering facility nameplate capacity under the electricity supplier's net metering tariff will equal at least one and one-half percent (1.5%) of the most recent summer peak load of the electricity supplier, the electricity supplier shall, in accordance with section 16 of this chapter, petition the commission for approval of a rate for the procurement of excess distributed generation.

Sec. 11. (a) Except as provided in sections 12 and 21(b) of this chapter, before July 1, 2047:

(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) Except as provided in sections 13 and 14 of this chapter, after June 30, 2022:

(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, 2022, expire and are unenforceable.

Sec. 12. (a) Before January 1, 2018, the commission shall amend 170 IAC 4-4.2-4, and an electricity supplier shall amend the electricity supplier's net metering tariff, to do the following:

(1) Increase the allowed limit on the aggregate amount of net metering facility nameplate capacity under the net metering tariff to one and one-half percent (1.5%) of the most recent summer peak load of the electricity supplier.

(2) Modify the required reservation of capacity under the limit described in subdivision (1) to require the reservation of:

(A) forty percent (40%) of the capacity for participation by residential customers; and

(B) fifteen percent (15%) of the capacity for participation by customers that install a net metering facility that uses a renewable energy resource described in IC 8-1-37-4(a)(5).

(b) In amending 170 IAC 4-4.2-4, as required by subsection (a), 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



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

5 **Sec. 13. (a) This section applies to a customer that installs a net**
6 **metering facility (as defined in 170 IAC 4-4.2-1(k)) on the**
7 **customer's premises:**

- 8 **(1) after June 30, 2017; and**
- 9 **(2) before the date on which the net metering tariff of the**
10 **customer's electricity supplier terminates under section 10(1)**
11 **or 10(2) of this chapter.**

12 **(b) A customer that is participating in an electricity supplier's**
13 **net metering tariff on the date on which the electricity supplier's**
14 **net metering tariff terminates under section 10(1) or 10(2) of this**
15 **chapter shall continue to be served under the terms and conditions**
16 **of the net metering tariff until:**

- 17 **(1) the customer no longer owns, occupies, or resides at the**
18 **premises on which the net metering facility (as defined in 170**
19 **IAC 4-4.2-1(k)) is located; or**
- 20 **(2) July 1, 2032;**

21 **whichever occurs earlier.**

22 **Sec. 14. (a) This section applies to a customer that installs a net**
23 **metering facility (as defined in 170 IAC 4-4.2-1(k)) on the**
24 **customer's premises before July 1, 2017.**

25 **(b) A customer that is participating in an electricity supplier's**
26 **net metering tariff on July 1, 2017, shall continue to be served**
27 **under the terms and conditions of the net metering tariff until:**

- 28 **(1) the customer no longer owns, occupies, or resides at the**
29 **premises on which the net metering facility (as defined in 170**
30 **IAC 4-4.2-1(k)) is located; or**
- 31 **(2) July 1, 2047;**

32 **whichever occurs earlier.**

33 **Sec. 15. An electricity supplier shall procure the excess**
34 **distributed generation produced by a customer at a rate approved**
35 **by the commission under section 17 of this chapter. Amounts**
36 **credited to a customer by an electricity supplier for excess**
37 **distributed generation shall be recognized in the electricity**
38 **supplier's fuel adjustment proceedings under IC 8-1-2-42.**

39 **Sec. 16. Not later than March 1, 2021, an electricity supplier**
40 **shall file with the commission a petition requesting a rate for the**
41 **procurement of excess distributed generation by the electricity**
42 **supplier. After an electricity supplier's initial rate for excess**



1 **distributed generation is approved by the commission under**
 2 **section 17 of this chapter, the electricity supplier shall submit on an**
 3 **annual basis, not later than March 1 of each year, an updated rate**
 4 **for excess distributed generation in accordance with the**
 5 **methodology set forth in section 17 of this chapter.**

6 **Sec. 17. (a) Subject to subsection (b), the commission shall**
 7 **review a petition filed under section 16 of this chapter by an**
 8 **electricity supplier and, after notice and a public hearing, shall**
 9 **approve a rate to be credited to participating customers by the**
 10 **electricity supplier for excess distributed generation if the**
 11 **commission finds that the rate requested by the electricity supplier**
 12 **was accurately calculated and equals the product of:**

13 **(1) the average marginal price of electricity paid by the**
 14 **electricity supplier during the most recent calendar year;**
 15 **multiplied by**

16 **(2) one and twenty-five hundredths (1.25).**

17 **(b) In a petition filed under section 16 of this chapter, an**
 18 **electricity supplier may request that the rate to be credited to a**
 19 **customer for excess distributed generation be set by the**
 20 **commission at a rate equal to the average marginal price of**
 21 **electricity during the most recent calendar year. The commission**
 22 **shall approve a rate requested under this subsection if the**
 23 **commission determines that the break even cost of excess**
 24 **distributed generation effectively competes with the cost of**
 25 **generation produced by the electricity supplier.**

26 **Sec. 18. An electricity supplier shall compensate a customer**
 27 **from whom the electricity supplier procures excess distributed**
 28 **generation (at the rate approved by the commission under section**
 29 **17 of this chapter) through a credit on the customer's monthly bill.**
 30 **Any excess credit shall be carried forward and applied against**
 31 **future charges to the customer for as long as the customer receives**
 32 **retail electric service from the electricity supplier at the premises.**

33 **Sec. 19. (a) To ensure that customers that produce distributed**
 34 **generation are properly charged for the costs of the electricity**
 35 **delivery system through which an electricity supplier:**

36 **(1) provides retail electric service to those customers; and**

37 **(2) procures excess distributed generation from those**
 38 **customers;**

39 **the electricity supplier may request approval by the commission of**
 40 **the recovery of energy delivery costs attributable to serving**
 41 **customers that produce distributed generation.**

42 **(b) The commission may approve a request for cost recovery**



1 submitted by an electricity supplier under subsection (a) if the
 2 commission finds that the request:

3 (1) is reasonable; and

4 (2) does not result in a double recovery of energy delivery
 5 costs from customers that produce distributed generation.

6 Sec. 20. (a) An electricity supplier shall provide and maintain
 7 the metering equipment necessary to carry out the procurement of
 8 excess distributed generation from customers in accordance with
 9 this chapter.

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

13 Sec. 21. (a) Subject to subsection (b) and sections 10 and 11 of
 14 this chapter, after June 30, 2017, the commission's rules and
 15 standards set forth in:

16 (1) 170 IAC 4-4.2 (concerning net metering); and

17 (2) 170 IAC 4-4.3 (concerning interconnection);

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

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

25 (1) update fees or charges;

26 (2) adopt revisions necessitated by new technologies; or

27 (3) reflect changes in safety, performance, or reliability
 28 standards.

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

34 Sec. 22. A customer that produces distributed generation shall
 35 comply with applicable safety, performance, and reliability
 36 standards established by the following:

37 (1) The commission.

38 (2) An electricity supplier, subject to approval by the
 39 commission.

40 (3) The National Electric Code.

41 (4) The National Electrical Safety Code.

42 (5) The Institute of Electrical and Electronics Engineers.



- (6) Underwriters Laboratories.
- (7) The Federal Energy Regulatory Commission.
- (8) Local regulatory authorities.

Sec. 23. (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 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 a public utility (as defined in IC 8-1-2-1).
- (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 equipment 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 emergency rule adopted by the attorney general under this subsection and in the manner provided by IC 4-22-2-37.1 expires



1 **on the date on which a rule that supersedes the emergency rule is**
2 **adopted by the attorney general under IC 4-22-2-24 through**
3 **IC 4-22-2-36.**



COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred Senate Bill No. 309, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 2, delete "An" and insert "**If an**".

Page 2, line 3, after "section" insert "**maintains a publicly accessible Internet web site, the electricity supplier**".

Page 2, line 11, strike "a" and insert "**any**".

Page 2, line 12, after "fuel," insert "**organic waste biomass**,".

Page 5, line 17, delete "subsections (a)(2) and (e)." and insert "**subsection (a)(2) and section 6(e) of this chapter**".

Page 5, line 19, delete "subsections (a)(2) and (e):" and insert "**subsection (a)(2) and section 6(e) of this chapter**:".

Page 5, between lines 27 and 28, begin a new paragraph and insert:

"SECTION 4. IC 8-1-8.5-5, AS AMENDED BY P.L.246-2015, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: 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:

(A) 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

(B) the applicant allowed third parties to submit firm and binding bids for the construction of the proposed facility



on behalf of the applicant that met all of the technical, commercial, and other specifications required by the applicant for the proposed facility so as to enable ownership of the proposed facility to vest with the applicant not later than the date on which the proposed facility becomes commercially available; 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.".

Page 6, line 6, delete "IC 8-1-37-4(a)(1) or IC 8-1-37-4(a)(2); and insert "**IC 8-1-37-4(a)(1), IC 8-1-37-4(a)(2), or IC 8-1-37-4(a)(5);**".

Page 6, delete lines 19 through 42, begin a new paragraph and insert:

"SECTION 6. 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 electricity 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. (a) As used in this chapter, "electricity supplier" means a public utility (as defined in IC 8-1-2-1) that furnishes retail electric service to customers in Indiana.

(b) 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.

Sec. 5. As used in this chapter, "excess distributed generation" means the difference between:

- (1) the electricity that is supplied by an electricity supplier to a customer that produces distributed generation; and
- (2) the electricity that is supplied back to the electricity supplier by the customer.

Sec. 6. 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. 7. 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. 8. 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. 9. As used in this chapter, "regional transmission organization" has the meaning set forth in IC 8-1-37-9.

Sec. 10. Subject to sections 13 and 14 of this chapter, a net metering tariff of an electricity supplier must remain available to the electricity supplier's customers until the earlier of the following:

- (1) 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 and one-half percent (1.5%) of the most recent summer peak load of the electricity supplier.

(2) July 1, 2022.

Before July 1, 2022, if an electricity supplier reasonably anticipates, at any point in a calendar year, that the aggregate



amount of net metering facility nameplate capacity under the electricity supplier's net metering tariff will equal at least one and one-half percent (1.5%) of the most recent summer peak load of the electricity supplier, the electricity supplier shall, in accordance with section 16 of this chapter, petition the commission for approval of a rate for the procurement of excess distributed generation.

Sec. 11. (a) Except as provided in sections 12 and 21(b) of this chapter, before July 1, 2047:

- (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) Except as provided in sections 13 and 14 of this chapter, after June 30, 2022:

- (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, 2022, expire and are unenforceable.

Sec. 12. (a) Before January 1, 2018, the commission shall amend 170 IAC 4-4.2-4, and an electricity supplier shall amend the electricity supplier's net metering tariff, to do the following:

- (1) Increase the allowed limit on the aggregate amount of net metering facility nameplate capacity under the net metering tariff to one and one-half percent (1.5%) of the most recent summer peak load of the electricity supplier.
- (2) Modify the required reservation of capacity under the limit described in subdivision (1) to require the reservation of:
 - (A) forty percent (40%) of the capacity for participation by residential customers; and
 - (B) fifteen percent (15%) of the capacity for participation by customers that install a net metering facility that uses a renewable energy resource described in IC 8-1-37-4(a)(5).

(b) In amending 170 IAC 4-4.2-4, as required by subsection (a), 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 section 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. 13. (a) This section applies to a customer that installs a net metering facility (as defined in 170 IAC 4-4.2-1(k)) on the customer's premises:

- (1) after June 30, 2017; and**
- (2) before the date on which the net metering tariff of the customer's electricity supplier terminates under section 10(1) or 10(2) of this chapter.**

(b) A customer that is participating in an electricity supplier's net metering tariff on the date on which the electricity supplier's net metering tariff terminates under section 10(1) or 10(2) of this chapter shall continue to be served under the terms and conditions of the net metering tariff until:

- (1) the customer no longer owns, occupies, or resides at the premises on which the net metering facility (as defined in 170 IAC 4-4.2-1(k)) is located; or**
- (2) July 1, 2032;**

whichever occurs earlier.

Sec. 14. (a) This section applies to a customer that installs a net metering facility (as defined in 170 IAC 4-4.2-1(k)) on the customer's premises before July 1, 2017.

(b) A customer that is participating in an electricity supplier's net metering tariff on July 1, 2017, shall continue to be served under the terms and conditions of the net metering tariff until:

- (1) the customer no longer owns, occupies, or resides at the premises on which the net metering facility (as defined in 170 IAC 4-4.2-1(k)) is located; or**
- (2) July 1, 2047;**

whichever occurs earlier.

Sec. 15. An electricity supplier shall procure the excess distributed generation produced by a customer at a rate approved by the commission under section 17 of this chapter. Amounts credited to a customer by an electricity supplier for excess distributed generation shall be recognized in the electricity supplier's fuel adjustment proceedings under IC 8-1-2-42.

Sec. 16. Not later than March 1, 2021, an electricity supplier shall file with the commission a petition requesting a rate for the procurement of excess distributed generation by the electricity supplier. After an electricity supplier's initial rate for excess distributed generation is approved by the commission under section 17 of this chapter, the electricity supplier shall submit on an annual basis, not later than March 1 of each year, an updated rate



for excess distributed generation in accordance with the methodology set forth in section 17 of this chapter.

Sec. 17. (a) Subject to subsection (b), the commission shall review a petition filed under section 16 of this chapter by an electricity supplier and, after notice and a public hearing, shall approve a rate to be credited to participating customers by the electricity supplier for excess distributed generation if the commission finds that the rate requested by the electricity supplier was accurately calculated and equals the product of:

- (1) the average marginal price of electricity paid by the electricity supplier during the most recent calendar year; multiplied by
- (2) one and twenty-five hundredths (1.25).

(b) In a petition filed under section 16 of this chapter, an electricity supplier may request that the rate to be credited to a customer for excess distributed generation be set by the commission at a rate equal to the average marginal price of electricity during the most recent calendar year. The commission shall approve a rate requested under this subsection if the commission determines that the break even cost of excess distributed generation effectively competes with the cost of generation produced by the electricity supplier.

Sec. 18. An electricity supplier shall compensate a customer from whom the electricity supplier procures excess distributed generation (at the rate approved by the commission under section 17 of this chapter) through a credit on the customer's monthly bill. Any excess credit shall be carried forward and applied against future charges to the customer for as long as the customer receives retail electric service from the electricity supplier at the premises.

Sec. 19. (a) To ensure that customers that produce distributed generation are properly charged for the costs of the electricity delivery system through which an electricity supplier:

- (1) provides retail electric service to those customers; and
- (2) procures excess distributed generation from those customers;

the electricity supplier may request approval by the commission of the recovery of energy delivery costs attributable to serving customers that produce distributed generation.

(b) The commission may approve a request for cost recovery submitted by an electricity supplier under subsection (a) if the commission finds that the request:

- (1) is reasonable; and



(2) does not result in a double recovery of energy delivery costs from customers that produce distributed generation.

Sec. 20. (a) An electricity supplier shall provide and maintain the metering equipment necessary to carry out the procurement of excess 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. 21. (a) Subject to subsection (b) and sections 10 and 11 of this chapter, after June 30, 2017, the commission's rules and standards set forth in:

(1) 170 IAC 4-4.2 (concerning net metering); and

(2) 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. 22. 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. 23. (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 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 a public utility (as defined in IC 8-1-2-1).
- (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 equipment 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 emergency rule adopted by the attorney general 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 attorney general under IC 4-22-2-24 through IC 4-22-2-36.".



Delete pages 7 through 11.
Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.
(Reference is to SB 309 as introduced.)

MERRITT, Chairperson

Committee Vote: Yeas 8, Nays 2.

SB 309—LS 7072/DI 101

