



January 27, 2015

SENATE BILL No. 412

DIGEST OF SB 412 (Updated January 22, 2015 1:31 pm - DI 101)

Citations Affected: IC 8-1.

Synopsis: Integrated resource plans and energy efficiency. Requires a public utility to submit an integrated resource plan to the utility regulatory commission (IURC). Requires certain electricity suppliers to submit an energy efficiency plan to the IURC at least one time every three years. Provides that evaluation, measurement, and verification procedures required to be included in an electricity supplier's energy efficiency plan must include independent evaluation, measurement, and verification. Provides that the IURC may not require a third party administrator to implement an electricity supplier's energy efficiency program or plan. Provides that if the IURC finds an electricity supplier's energy efficiency plan to be reasonable, the IURC shall allow the electricity supplier to recover or receive certain energy efficiency program costs.

Effective: Upon passage.

Merritt

January 12, 2015, read first time and referred to Committee on Utilities.
January 26, 2015, amended, reported favorably — Do Pass.

SB 412—LS 7354/DI 103



January 27, 2015

First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 412

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 8-1-8.5-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The
3 commission shall develop, publicize, and keep current an analysis of
4 the long-range needs for expansion of facilities for the generation of
5 electricity.
6 (b) This analysis must include an estimate of:
7 (1) the probable future growth of the use of electricity;
8 (2) the probable needed generating reserves;
9 (3) in the judgment of the commission, the optimal extent, size,
10 mix, and general location of generating plants;
11 (4) in the judgment of the commission, the optimal arrangements
12 for statewide or regional pooling of power and arrangements with
13 other utilities and energy suppliers to achieve maximum
14 efficiencies for the benefit of the people of Indiana; and
15 (5) the comparative costs of meeting future growth by other
16 means of providing reliable, efficient, and economic electric

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1 service, including purchase of power, joint ownership of facilities,
 2 refurbishment of existing facilities, conservation (**including**
 3 **energy efficiency**), load management, **distributed generation**,
 4 and cogeneration.

5 (c) The commission shall consider the analysis in acting upon any
 6 petition by any utility for construction.

7 (d) In developing the analysis, the commission:

8 (1) shall confer and consult with:

9 (A) the public utilities in Indiana;

10 (B) the utility commissions or comparable agencies of
 11 neighboring states;

12 (C) the Federal Energy Regulatory Commission; and

13 (D) other agencies having relevant information; and

14 (2) may participate as it considers useful in any joint boards
 15 investigating generating plant sites or the probable needs for
 16 future generating facilities.

17 (e) In addition to such reports as public utilities may be required by
 18 statute or rule of the commission to file with the commission, a utility:

19 (1) may submit to the commission ~~its~~ **a current or updated**
 20 **integrated resource plan as part of a** utility specific ~~proposals~~
 21 **proposal** as to the future needs for electricity to serve the people
 22 of the state or the area served by the utility; **and**

23 **(2) shall submit to the commission an integrated resource plan**
 24 **that assesses a variety of demand side management and**
 25 **supply side resources to meet future customer electricity**
 26 **service needs in a cost effective and reliable manner.**

27 **The commission shall adopt rules under IC 4-22-2 concerning the**
 28 **submission of an integrated resource plan under subdivision (2).**

29 (f) Insofar as practicable, each utility, the utility consumer
 30 counselor, and any intervenor may attend or be represented at any
 31 formal conference conducted by the commission in developing a ~~plan~~
 32 **an analysis** for the future requirements of electricity for Indiana or this
 33 region.

34 (g) In the course of making the analysis ~~and developing the plan~~
 35 required by ~~this section~~ **subsection (a) and, if applicable, developing**
 36 **an analysis described in subsection (f)**, the commission ~~shall~~ **may**
 37 conduct one (1) or more public hearings.

38 (h) Each year, the commission shall submit to the governor and to
 39 the appropriate committees of the general assembly a report of its
 40 analysis ~~and plan; the progress to date in carrying out such plan; and~~
 41 ~~the program of the commission for the ensuing year in connection with~~
 42 ~~such plan; regarding the future requirements of electricity for~~



1 **Indiana or this region.**

2 SECTION 2. IC 8-1-8.5-5, AS AMENDED BY P.L.210-2014,
3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 UPON PASSAGE]: Sec. 5. (a) As a condition for receiving the
5 certificate required under section 2 of this chapter, the applicant shall
6 file an estimate of construction, purchase, or lease costs in such detail
7 as the commission may require.

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

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

14 (2) made a finding that either:

15 (A) the construction, purchase, or lease will be consistent with
16 the commission's ~~plan~~ **analysis** (or such part of the ~~plan~~
17 **analysis** as may then be developed, if any) for expansion of
18 electric generating capacity; or

19 (B) the construction, purchase, or lease is consistent with a
20 utility specific proposal submitted under section ~~3(e)~~ **3(e)(1)**
21 of this chapter and approved under subsection (d). However,
22 if the commission has developed, in whole or in part, a ~~plan~~
23 **an analysis** for the expansion of electric generating capacity
24 and the applicant has filed and the commission has approved
25 under subsection (d) a utility specific proposal submitted
26 under section ~~3(e)~~ **3(e)(1)** of this chapter, the commission shall
27 make a finding under this clause that the construction,
28 purchase, or lease is consistent with the commission's ~~plan~~;
29 **analysis**, to the extent developed, and that the construction,
30 purchase, or lease is consistent with the applicant's plan under
31 section ~~3(e)~~ **3(e)(1)** of this chapter, to the extent the plan was
32 approved by the commission;

33 (3) made a finding that the public convenience and necessity
34 require or will require the construction, purchase, or lease of the
35 facility;

36 (4) made a finding that the facility, if it is a coal-consuming
37 facility, utilizes Indiana coal or is justified, because of economic
38 considerations or governmental requirements, in using
39 non-Indiana coal; and

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

41 (c) If:

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



1 upon a finding under subsection (b)(2) that the construction,
 2 purchase, or lease of a generating facility is consistent with the
 3 commission's ~~plan~~ **analysis** for the expansion of electric
 4 generating capacity; and

5 (2) a court finally determines that the commission ~~plan~~ **analysis**
 6 is invalid;

7 the certificate shall remain in full force and effect if the certificate was
 8 also based upon a finding under subsection (b)(2) that the construction,
 9 purchase, or lease of the facility was consistent with a utility specific
 10 plan submitted under section ~~3(e)~~ **3(e)(1)** of this chapter and approved
 11 under subsection (d).

12 (d) The commission shall consider and approve, in whole or in part,
 13 or disapprove a utility specific proposal or an amendment thereto
 14 jointly with an application for a certificate under this chapter. However,
 15 such an approval or disapproval shall be solely for the purpose of
 16 acting upon the pending certificate for the construction, purchase, or
 17 lease of a facility for the generation of electricity.

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

21 (1) must, in addition to the findings required under subsection (b),
 22 find that the estimated costs of the proposed facility are, to the
 23 extent commercially practicable, the result of competitively bid
 24 engineering, procurement, or construction contracts, as
 25 applicable; and

26 (2) shall also consider the following factors:

27 (A) Reliability.

28 (B) Solicitation by the applicant of competitive bids to obtain
 29 purchased power capacity and energy from alternative
 30 suppliers.

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

33 SECTION 3. IC 8-1-8.5-10 IS ADDED TO THE INDIANA CODE
 34 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
 35 **UPON PASSAGE]: Sec. 10. (a) For purposes of this section,**
 36 **"electricity supplier" means a public utility (as defined in**
 37 **IC 8-1-2-1) that furnishes retail electric service to customers in**
 38 **Indiana. The term does not include a utility that is:**

39 (1) a municipally owned utility (as defined in IC 8-1-2-1(h));

40 (2) a corporation organized under IC 8-1-13;

41 (3) a corporation organized under IC 23-17 that is an electric
 42 cooperative and that has at least one (1) member that is a



1 corporation organized under IC 8-1-13; or

2 (4) a joint agency created under IC 8-1-2.2-8.

3 (b) For purposes of this section, "energy efficiency goals" means
4 the amount of energy and demand savings produced by cost
5 effective programs that are reasonably achievable and consistent
6 with an electricity supplier's integrated resource plan.

7 (c) For purposes of this section, "energy efficiency program" or
8 "program" means a program that is:

9 (1) sponsored by an electricity supplier; and

10 (2) designed to implement energy efficiency improvements (as
11 defined in 170 IAC 4-8-1(j)) that reduce energy use for a
12 comparable level of energy service.

13 (d) For purposes of this section, "lost revenues" means the
14 difference, if any, between:

15 (1) revenues lost; and

16 (2) the variable operating and maintenance costs saved;
17 by an electricity supplier as a result of implementing energy
18 efficiency programs.

19 (e) For purposes of this section, "plan" refers to the goals,
20 programs, program budgets, program costs, and procedures
21 submitted by an electricity supplier to the commission under
22 subsection (g).

23 (f) For purposes of this section, "program costs" include the
24 following:

25 (1) Direct and indirect costs of energy efficiency programs.

26 (2) Costs associated with the evaluation, measurement, and
27 verification of program results.

28 (3) Other recoveries or incentives approved by the
29 commission, including lost revenues and financial incentives
30 approved by the commission under subsection (n).

31 (g) Beginning not later than calendar year 2017, and not less
32 than one (1) time every three (3) years, an electricity supplier shall
33 petition the commission for approval of a plan that includes:

34 (1) energy efficiency goals;

35 (2) energy efficiency programs to achieve the energy
36 efficiency goals;

37 (3) program budgets and program costs; and

38 (4) evaluation, measurement, and verification procedures that
39 must include independent evaluation, measurement, and
40 verification.

41 An electricity supplier may submit a plan required under this
42 subsection to the commission for a determination of the overall



1 reasonableness of the plan either as part of a general basic rate
2 proceeding or as an independent proceeding. A petition submitted
3 under this subsection may include a home energy efficiency
4 assistance program for qualified customers of the electricity
5 supplier whether or not the program is cost effective. The
6 commission shall make the petition and its disclosable contents
7 available through the commission's Internet web site.

8 (h) At the same time an electricity supplier petitions the
9 commission under subsection (g), the electricity supplier shall:

10 (1) provide a copy of the petition and plan to the office of
11 utility consumer counselor; and

12 (2) post an electronic copy of the petition and plan on the
13 electricity supplier's Internet web site. The electricity supplier
14 may redact confidential or proprietary information.

15 (i) In making a determination of the overall reasonableness of
16 a plan submitted under subsection (g), the commission shall
17 consider the following:

18 (1) Projected changes in customer consumption of electricity
19 resulting from the implementation of the plan.

20 (2) A cost and benefit analysis of the plan, including the
21 likelihood of achieving the goals of the energy efficiency
22 programs included in the plan.

23 (3) Whether the plan is consistent with the electricity
24 supplier's most recent long range integrated resource plan
25 submitted to the commission.

26 (4) The inclusion and reasonableness of procedures to
27 evaluate, measure, and verify the results of the energy
28 efficiency programs included in the plan, including the
29 alignment of the procedures with applicable environmental
30 regulations, including federal regulations concerning credits
31 for emission reductions.

32 (5) Any undue or unreasonable preference to any customer
33 class resulting, or potentially resulting, from the
34 implementation of an energy efficiency program.

35 (6) Opportunities for customer representatives and the office
36 of utility consumer counselor to review and provide public
37 comment on the plan.

38 (7) The effect, or potential effect, of the plan on the electric
39 rates and bills of customers that participate in energy
40 efficiency programs compared to the electric rates and bills of
41 customers that do not participate in energy efficiency
42 programs.



- 1 **(8) The lost revenues and financial incentives associated with**
2 **the plan and sought to be recovered or received by the**
3 **electricity supplier.**
- 4 **(9) Any other information the commission considers**
5 **necessary.**
- 6 **(j) If, after notice and hearing, the commission determines that**
7 **an electricity supplier's plan is reasonable in its entirety, the**
8 **commission shall:**
- 9 **(1) approve the plan in its entirety;**
10 **(2) allow the electricity supplier to recover all associated**
11 **program costs on a timely basis through a periodic rate**
12 **adjustment mechanism; and**
13 **(3) allocate and assign costs associated with a program to the**
14 **class or classes of customers that are eligible to participate in**
15 **the program.**
- 16 **(k) If, after notice and hearing, the commission determines that**
17 **an electricity supplier's plan is not reasonable because the costs**
18 **associated with one (1) or more programs included in the plan**
19 **exceed the projected benefits of the program or programs, the**
20 **commission:**
- 21 **(1) may exclude the program or programs and approve the**
22 **remainder of the plan; and**
23 **(2) shall allow the electricity supplier to recover only those**
24 **program costs associated with the portion of the plan**
25 **approved under subdivision (1) on a timely basis through a**
26 **periodic rate adjustment mechanism.**
- 27 **(l) If, after notice and hearing, the commission determines that**
28 **an electricity supplier's plan is not reasonable in its entirety, the**
29 **commission shall issue an order setting forth the reasons**
30 **supporting its determination. The electricity supplier shall submit**
31 **a modified plan within a reasonable time. After notice and hearing,**
32 **the commission shall issue an order approving or denying the**
33 **modified plan. If the commission approves the modified plan, the**
34 **commission shall allow the electricity supplier to recover program**
35 **costs associated with the modified plan on a timely basis through**
36 **a periodic rate adjustment mechanism.**
- 37 **(m) The commission may not:**
- 38 **(1) require an energy efficiency program to be implemented**
39 **by a third party administrator; or**
40 **(2) in making a determination of reasonableness under**
41 **subsection (i), consider whether a third party administrator**
42 **implements an energy efficiency program.**



1 **(n) If the commission finds a plan submitted by an electricity**
2 **supplier under subsection (g) to be reasonable, the commission**
3 **shall allow the electricity supplier to recover or receive the**
4 **following:**

5 **(1) Reasonable financial incentives that:**

6 **(A) encourage implementation of cost effective energy**
7 **efficiency programs; or**

8 **(B) eliminate or offset regulatory or financial bias:**

9 **(i) against energy efficiency programs; or**

10 **(ii) in favor of supply side resources.**

11 **(2) Reasonable lost revenues.**

12 **(o) An industrial customer (as defined in section 9(e) of this**
13 **chapter) may opt out of an electricity supplier's plan under this**
14 **section by following the procedure set forth in section 9(f) and 9(g)**
15 **of this chapter.**

16 **(p) The commission shall adopt:**

17 **(1) rules under IC 4-22-2; or**

18 **(2) guidelines;**

19 **to assist electricity suppliers and industrial customers in complying**
20 **with this section.**

21 **SECTION 4. An emergency is declared for this act.**



COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred Senate Bill No. 412, 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 "conservation," and insert "conservation **(including energy efficiency)**,".

Page 2, line 3, after "management," insert "**distributed generation**,".

Page 3, line 15, after "commission's" strike "plan" and insert "**analysis**".

Page 3, line 15, after "of the" strike "plan" and insert "**analysis**".

Page 3, line 21, strike "a plan" and insert "**an analysis**".

Page 3, line 27, strike "plan," and insert "**analysis**,".

Page 4, line 2, strike "plan" and insert "**analysis**".

Page 4, line 4, strike "plan" and insert "**analysis**".

Page 5, line 18, after "budgets," insert "**program costs**,".

Page 5, line 25, after "recoveries" insert "**or incentives**".

Page 5, line 30, delete "of:" and insert "**of a plan that includes**".

Page 5, line 33, delete "and".

Page 5, between lines 33 and 34, begin a new line block indented and insert:

"(3) program budgets and program costs; and

(4) evaluation, measurement, and verification procedures that must include independent evaluation, measurement, and verification."

Page 5, delete line 34.

Page 5, line 35, before "A" insert "**An electricity supplier may submit a plan required under this subsection to the commission for a determination of the overall reasonableness of the plan either as part of a general basic rate proceeding or as an independent proceeding**".

Page 6, line 5, delete "An electricity supplier may submit a plan under subsection".

Page 6, delete lines 6 through 8.

Page 6, line 9, delete "determination of reasonableness," and insert "**In making a determination of the overall reasonableness of a plan submitted under subsection (g)**".

Page 6, between lines 35 and 36, begin a new line block indented and insert:

"(8) The lost revenues and financial incentives associated with



the plan and sought to be recovered or received by the electricity supplier."

Page 6, line 36, delete "(8)" and insert "(9)".

Page 7, line 33, delete "The commission may approve recovery of the following with" and insert "**If the commission finds a plan submitted by an electricity supplier under subsection (g) to be reasonable, the commission shall allow the electricity supplier to recover or receive the following:**".

Page 7, delete line 34.

Page 7, line 41, delete "**Lost**" and insert "**Reasonable lost**".

and when so amended that said bill do pass.

(Reference is to SB 412 as introduced.)

MERRITT, Chairperson

Committee Vote: Yeas 7, Nays 3.

