1-1-2021

Energy Law in Indiana

Indiana Continuing Legal Education Forum (ICLEF)

Energy Law in Indiana
April 8, 2021
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August 2020

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ENERGY LAW IN INDIANA

April 8, 2021

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ENERGY LAW IN INDIANA

Presentation Topics

Alternative Fuel / Electric Vehicles

This will be a panel featuring the following types of discussion leaders: a provider that works to fuel nationwide fleet vehicles with natural gas; a provider of commercial-scale electric vehicle charging stations; and a representative of an Indianapolis entity that has electrified its shuttle bus fleet and installed electric vehicle charging stations.

Hot Topics from Local, State, and Federal Government

This will cover developments in energy law and regulation at the local level, a review of the Indiana General Assembly's issues, and the next chapter in federal energy regulation under the Biden Administration.

Virtual Power Purchase Agreements

This session will discuss the growing practice by corporations to enter into power purchase agreements to meet renewable sustainability goals.

ENERGY LAW IN INDIANA

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April 8, 2021

Nikki Gray Shoultz
Bose McKinney & Evans LLP, Indianapolis

Nikki Shoultz is a partner in the Utility Group and a member of the Renewable Energy Group. Ms. Shoultz represents utilities, municipalities, large industrial and commercial energy consumers, landowners, and developers in state and federal regulatory proceedings, litigation, and private business transactions. She has more than twenty years of experience representing clients with energy, telecommunications, technology, wind, solar, water and sewer matters. Prior to entering private practice, Ms. Shoultz served for four years with the Indiana Utility Regulatory Commission as Chief Administrative Law Judge, General Counsel, and Assistant General Counsel.

Todd Cavender
Indianapolis Airport Authority

Todd Cavender is Director, Environment and Sustainability with the Indianapolis Airport Authority.

Casey M. Holsapple
Kinetrex Energy, Indianapolis

Casey Holsapple is the General Counsel and Vice President of Governmental Affairs for Kinetrex Energy. In addition to his legal duties, Holsapple manages the company's renewable natural gas portfolio, leads the company's federal and state government relations strategy, and oversees human resources. Holsapple has worked in the energy industry for more than a decade. He previously worked for Duke Energy Corporation as an Associate General Counsel and with Bingham McHale LLP (now Bingham Greenebaum Doll LLP) in its energy and utilities practice group. Holsapple graduated with a J.D. from Indiana University Maurer School of Law and from Indiana University-Bloomington with a degree in journalism.

Jeffery A. Earl
Bose McKinney & Evans LLP, Indianapolis

Jeff Earl represents utility, municipal and consumer clients before the Indiana Utility Regulatory Commission. He also works with cities, towns and counties on matters of municipal law. Jeff is the town attorney for Stilesville, IN.

Jeff graduated *magna cum laude* from Valparaiso University Law School where he was an associate editor of the *Valparaiso University Law Review*. During law school, Jeff was a legal writing teaching assistant and completed externships with Judge Robert Miller and Magistrate Judge Andrew Rodovich, both in the United States District Court for the Northern District of Indiana. He also clerked at a law firm in Valparaiso.

Jeff earned a Bachelor of Science degree in liberal studies from the University of Central Florida. He also earned a Master of Theological Studies degree from the University of Notre Dame in 2001, and a Master of Arts in liberal studies with an emphasis on government and public policy from Valparaiso University in 2008.

Jeff is a fellow of the Indiana Bar Foundation and is active in the Indiana Bar Association and the We the People civics education program.

EDUCATION
Valparaiso University School of Law (J.D. *magna cum laude*, 2008)
Valparaiso University (Master of Arts in liberal studies with an emphasis on government and public policy, with highest honors, 2008)
University of Notre Dame (Master of Theological Studies, 2001)
University of Central Florida (B.S. in liberal studies, 1993)

Emilie Wangerman
Lightsource bp, San Francisco

Emilie Wangerman is Vice President, Business Development at Lightsource bp. She brings broad energy industry experience to Lightsource bp. Emilie has over 8 years of experience in power markets and energy policy, on both the buy and sell side of solar, storage, and distributed energy resources (DERs), as well as experience with generation and electric system operations and utility rate design, which is complemented by her background in technology development and process engineering. Prior to Lightsource bp, Emilie worked at Pacific Gas and Electric ("PG&E"), GE Renewable Energy, Corning, and Intel Corporation. Emilie has received a Bachelor of Science in Chemical Engineering and a Bachelor of Science in Psychology from Rensselaer Polytechnic Institute, as well as a Master of Business Administration and a Master of Environmental Management from Duke University.

Kristina Kern Wheeler
Bose McKinney & Evans LLP, Indianapolis

Kristina Kern Wheeler is a partner in the Utilities Group of Bose McKinney & Evans LLP. Kristina represents utilities, energy industry stakeholders, municipalities, executives, and government officials in utility, municipal, business, bond, administrative, and environmental issues.

Prior to joining the firm, Kristina served as vice president and staff counsel for Indiana Municipal Power Agency, a nonprofit public power agency that serves 60 municipalities with significant generation, transmission and distribution assets across the Midwest. Her experience also includes eight years as general counsel for the Indiana Utility Regulatory Commission (IURC), leading the legal department for the state utility regulatory agency. At the IURC, she focused on public utilities, municipal and administrative laws, including Utility Regulatory Commission jurisdiction and procedures. Kristina also drafted numerous state laws (Indiana Code Title 8) and promulgated administrative rules (170 IAC) that remain in effect. She has experience helping determine women-owned and minority-owned business goals for state and local governments, as well as reviewing women-owned or minority-owned businesses certification applications for compliance.

Kristina has practiced before state and federal courts and numerous regulatory bodies, including the Federal Communications Commission, the Federal Energy Regulatory Commission and the Securities and Exchange Commission. She is licensed to practice in the state of Indiana, the United States District Court for the Northern District of Indiana and the United States District Court for the Southern District of Indiana.

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Casey M. Holsapple
Todd Cavender

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PowerPoint – Vehicle Electrification @IND

Section Two

Section Three

Section One

Reducing Emissions with RNG Alternative Fuels for Fleet Vehicles / Vehicle Electrification @ IND

Panel Discussion

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Bose McKinney & Evans LLP
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Indianapolis Airport Authority
Indianapolis, Indiana

Section One

Reducing Emissions with RNG
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PowerPoint – Vehicle Electrification @IND

KinetrexEnergy

Reducing Emissions with RNG

Alternative Fuels for Fleet Vehicles

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April 8, 2021

Increased Corporate Initiatives and ESG Focus

KinetrexEnergy

Increased Corporate Initiatives Focused on Net-Zero Carbon Emissions Are Driving Renewable Natural Gas Popularity

Duke Energy's gas utilities targeting net-zero methane emissions by 2030

- New technology for leak detection
- Crucial role seen for responsible gas

The 5 Biggest US Utilities Committing to Zero Carbon Emissions by 2050

12th October 2020 Jon Hughes

US national grid targets net zero by 2050 – and calls for RNG to receive the same support as electricity

Hygo Energy Transition Pursues $450 Million IPO For LNG Infrastructure Growth

Sep. 17, 2020 6:34 PM ET | About: Hygo Energy Transition Ltd. (HYGO), Includes: ENEVY, ENGIY, ENGGF, NFE, R...

UPS Continues To Build On Renewable Natural Gas Momentum

France's Total to focus on LNG, renewables in major clean energy drive

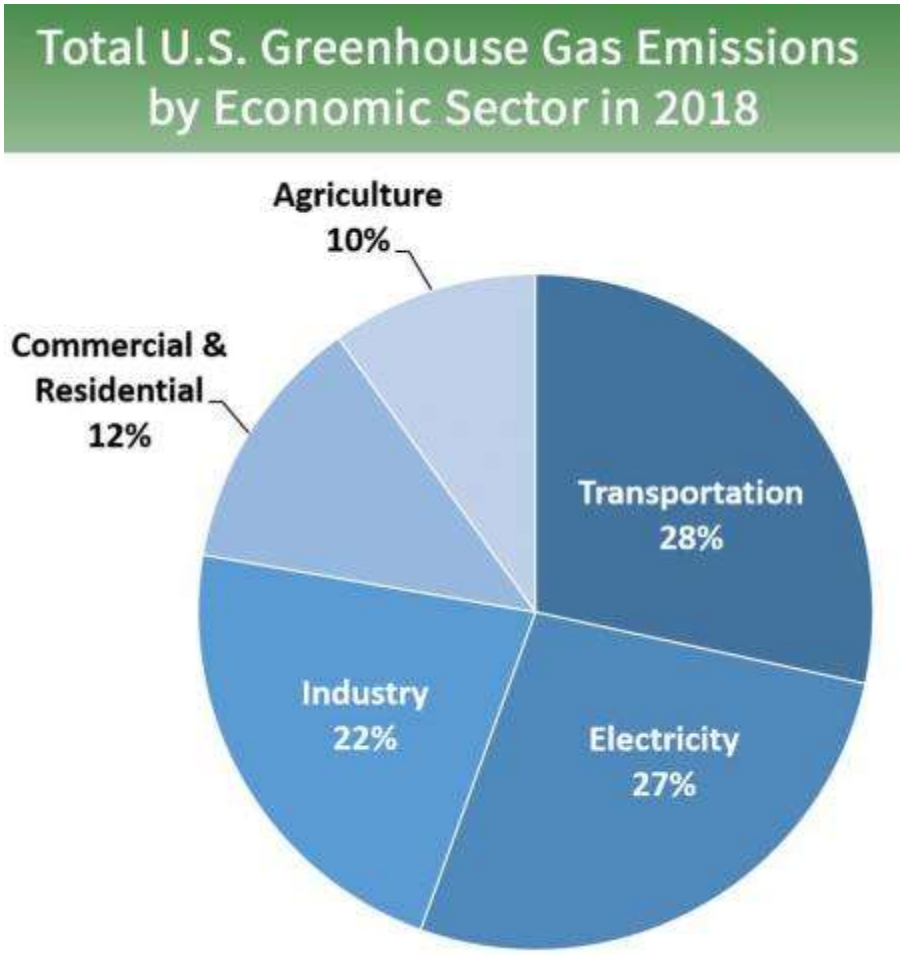
- LNG sales to reach 50 million mt/year by 2025
- Renewables to be main contributor to power growth
- Oil, gas remain 'engine' of energy transition: CEO

RNG heats up with slurry of 2020 deals, big players involved, Chevron, BP, Brightmark, Aemetis, Verbio, Greenlane Renewables

October 11, 2020 | Helena Tavares Kennedy

Greenhouse Gas Emissions by Sector

- Transportation now largest source of GHG emissions in U.S.
- Combined with industrial emissions, represent more than half of all GHG emissions.
- Methane 86x more potent than CO2 as greenhouse gas.

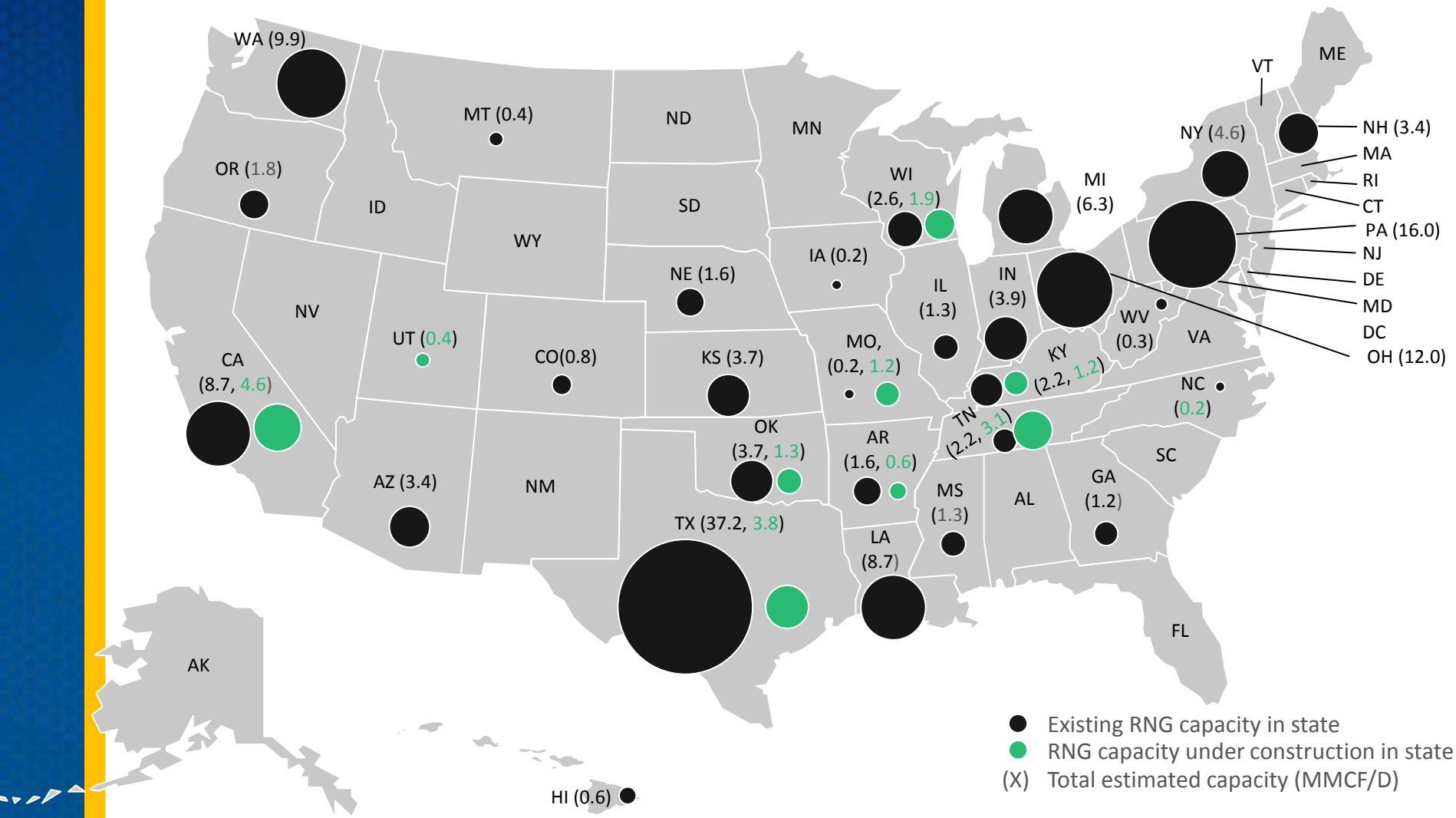


What is Renewable Natural Gas?

- Made from the naturally-occurring biological breakdown of organic waste at facilities such as wastewater treatment plants, dairies and landfills.
- Biogas cleaned and conditioned to remove or reduce non-methane elements in order to produce RNG. Interchangeable with traditional pipeline-quality natural gas to ensure the safe and reliable operation of the pipeline network and customer equipment. Uses existing pipeline infrastructure.
- Replacing 20 percent of the traditional gas supply with RNG equivalent to converting 100 percent of buildings to electric only energy by 2030.
- RNG has even greater benefits when it's produced from organic waste that would otherwise decay and create methane emissions. By capturing more greenhouses gases than it emits, this RNG is actually considered carbon-negative!

KinetrexEnergy

RNG is Produced in More than 30 States



Includes LFG to RNG, agriculture sourced RNG, and wastewater sourced RNG; Projects without reported capacity estimated using benchmarks
Source: IEA, EPA, Argonne National Laboratory, MJB&A, Brightmark Energy, California Bioenergy, BCG analysis

Renewable Natural Gas Primer

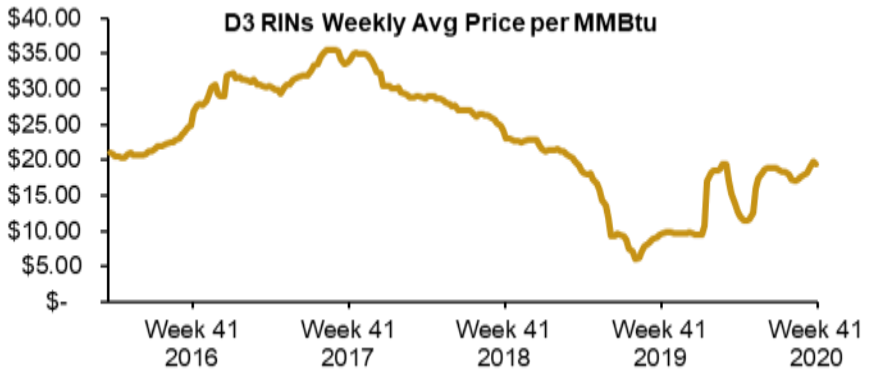
The Renewable Fuel Standard

- The U.S. Renewable Fuel Standard (“RFS”) program was established as part of the Energy Policy Act of 2005, and set mandated biofuel volumes on an annual basis
- In 2007, these biofuel mandate volumes were expanded and extended through 2022 through RFS2
- The RFS program has no expiration date. Starting in 2023, the EPA will set mandated biofuel volumes each year under statutory guidelines
- RFS2 segments the renewable fuel requirements into four separate categories, based on greenhouse gas emissions:
  1. Total renewable fuels (D6 RINs)
  2. Advanced biofuels (D5 RINs)
  3. Biomass-based diesel (D4 RINs)
  4. Cellulosic biofuels (D3/D7 RINs)

Renewable Identification Numbers (RINs)

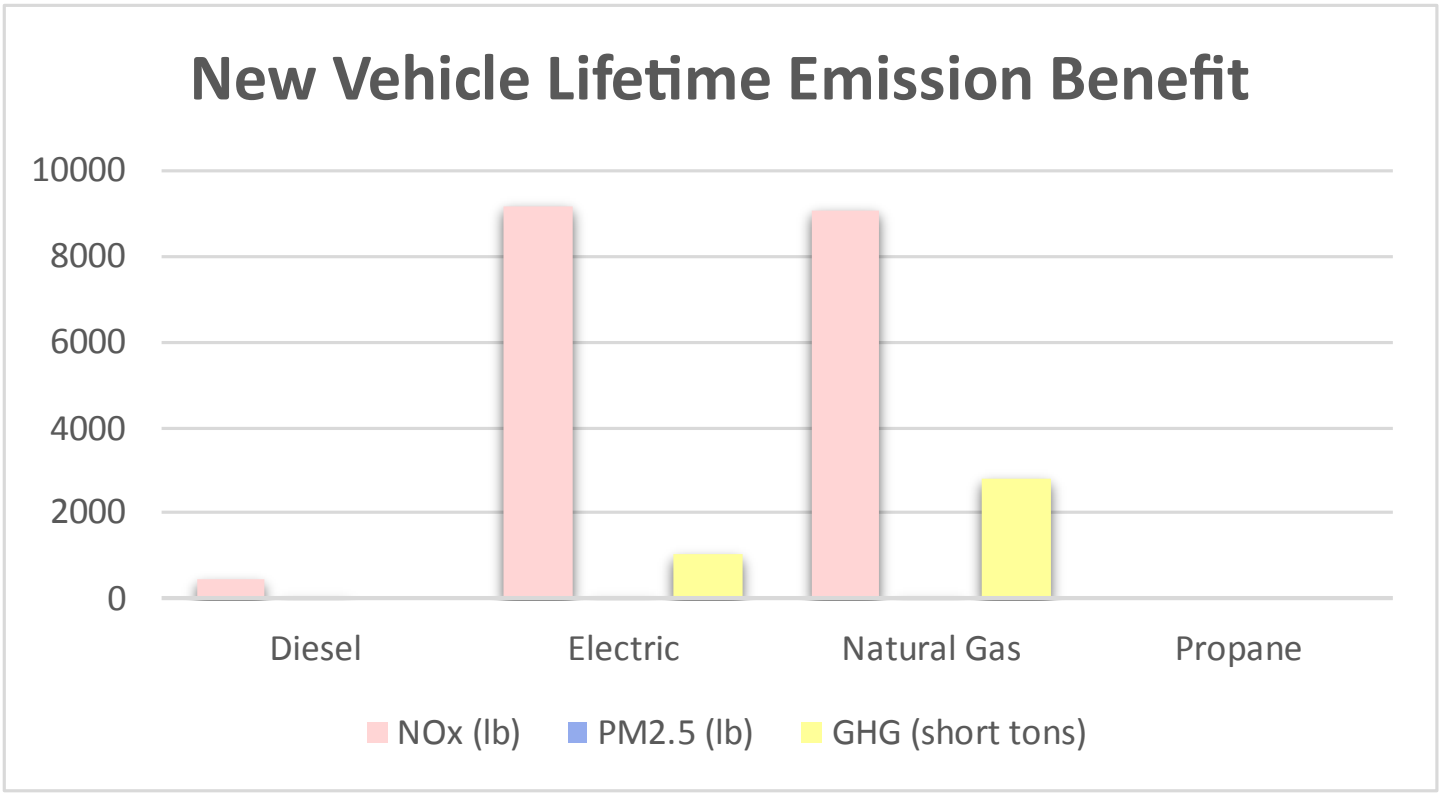
- RNG sold into the transportation market creates RINs (renewable identification numbers)
- RINs are generated when biofuels (“RNG”) are produced and assigned to a batch of fuel
- An active market exists for RINs. Parties such as nonrenewable fuel refiners and importers are obligated to purchase these RIN credits to fulfill the Renewable Volume Obligation requirements, retiring the RINs upon purchase
- RINs function like renewable energy credits
  - Tradeable commodities; each RIN is proof that the equivalent of a gallon of RNG has been injected into a shared pipeline

\ Indy HBTU Plant



Source: Boston Consulting Group, January 2018

Emissions Reductions Calculator



New Vehicle Lifetime Emission Benefits				
Pollutant	**Diesel**	**Electric**	**Natural Gas**	**Propane**
NOx (lb)	464.73	9172.31	9063.46	N/A
PM2.5 (lb)	2.43	42.99	2.43	N/A
GHG (short tons)	0	1064.91	2800.51	N/A

Source: Argonne National Laboratory

Kinetrex Core Offerings

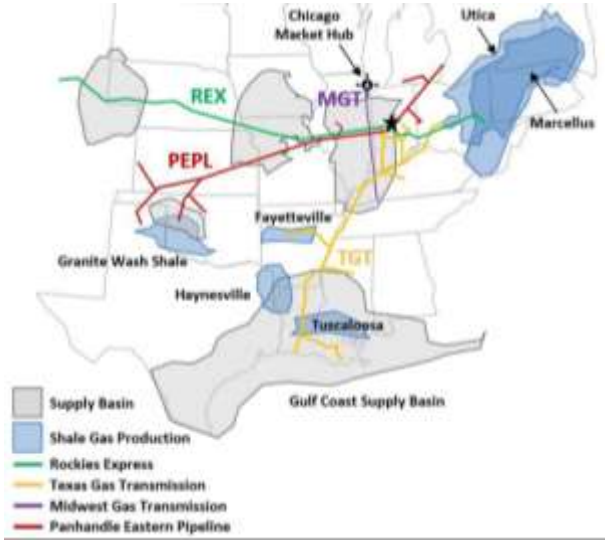
Liquefied Natural Gas (LNG)

- The leading supplier of LNG in the Midwest
- Kinetrex buys natural gas at the wellhead and converts the gas to liquid, which makes it easy to transport and store
- Supplies the following markets:
  - Transport
  - Agriculture
  - Industrial
  - Utilities

Renewable Natural Gas (RNG)

- The largest provider of RNG in the Midwest
- Kinetrex upgrades medium BTU landfill gas to high BTU gas ("HBTU") that can be liquefied or compressed and used as a transportation or industrial fuel
- 10% of 2020 D3 Renewable Volume Obligation ("RVO") under the Renewable Fuel Standard ("RFS") secured by long-term contract

Pipeline Natural Gas (PNG)

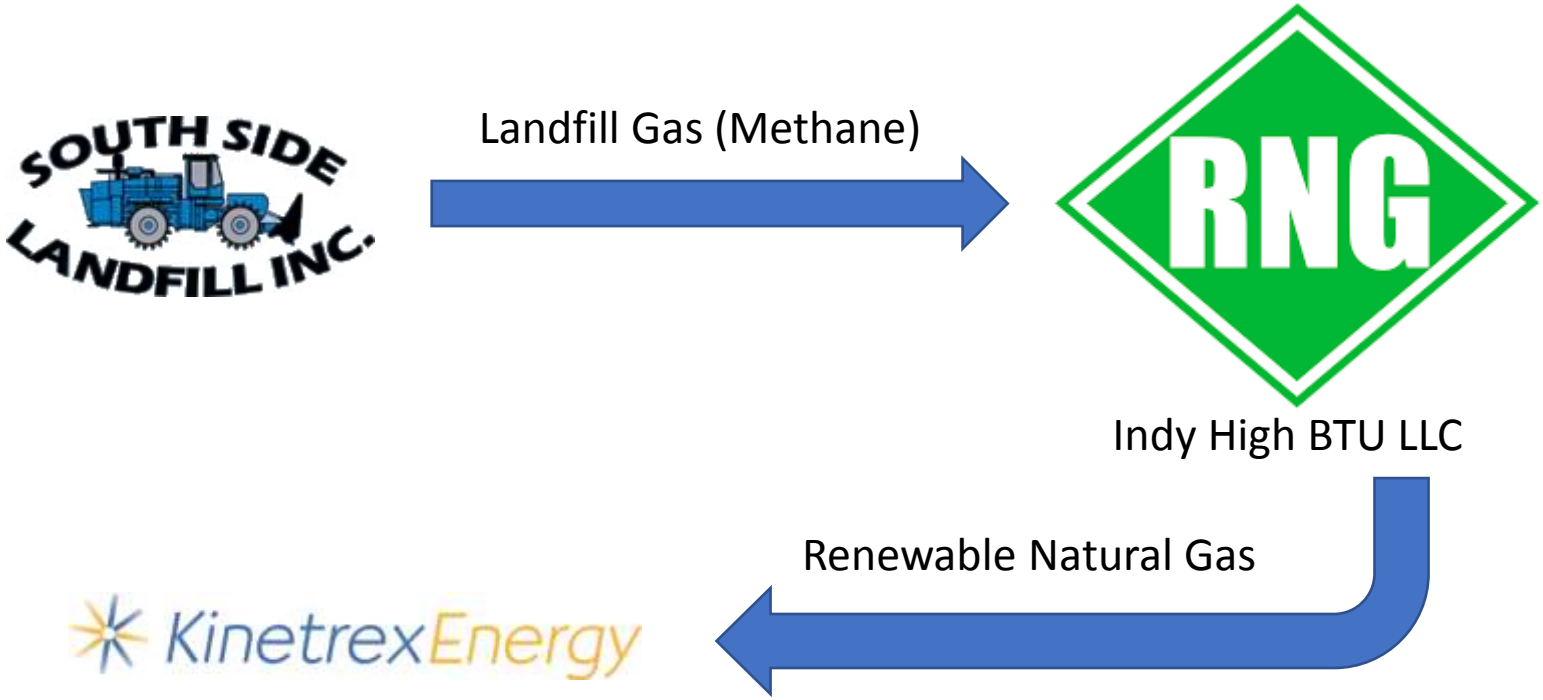


- Geographic location provides competitive advantage with access to 4 pipelines at the crossroads of the interstate gas network – and within one day's drive of 76% of the U.S. population
- Kinetrex sells PNG to commercial, industrial, transportation, utility and power customers using the interstate pipeline
- Significant operational synergies with LNG and RNG operations

Indy High BTU LLC – Joint Venture

- Joint venture with South Side Landfill and EDL Energy.
- Upgrading landfill gas to 98% methane.
- Largest facility in Indiana. Displaces GHG emissions from 20,000 passenger vehicles each year.

Landfill Gas to Class 8 Trucks

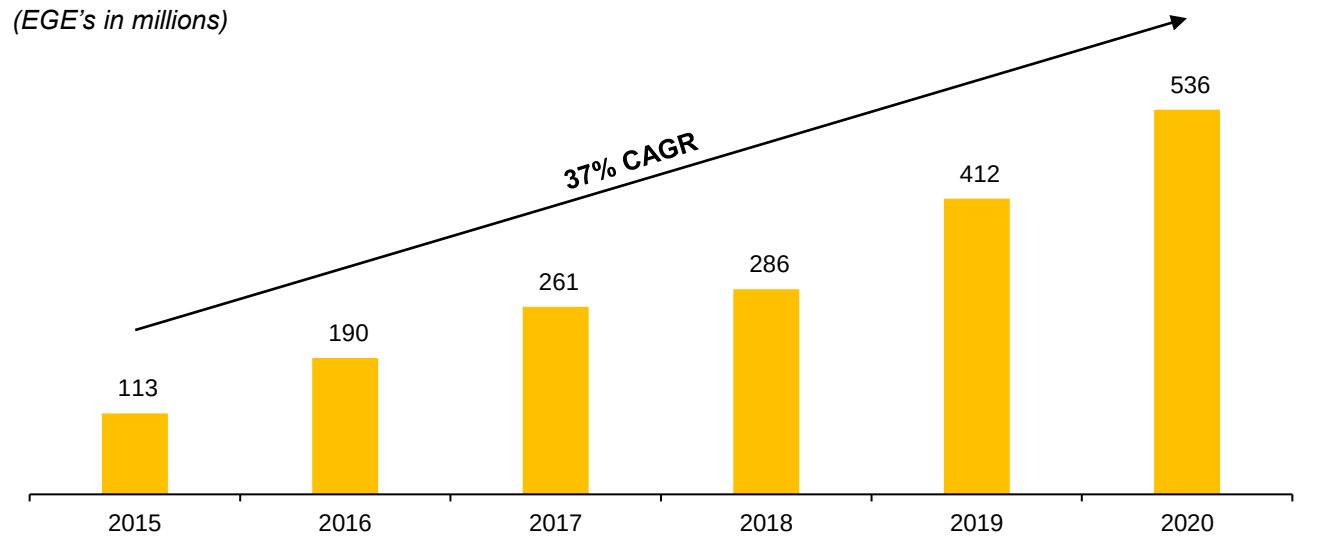


Creation of EPA-certified renewable natural gas.

Extraordinary Growth in RNG Demand

- RNG market “seeded” by Renewable Fuel Standard legislation, but seeing increased demand from ESG
  - Ability to lock in premium prices in long term offtake agreements, divorced from RINs prices
- RNG provides a superior green solution to electric production and transportation fuel needs that wind and solar cannot meet
- Green House Gas cost-effectiveness of RNG as a mitigation strategy is lower than costs per ton of other strategies, including electrification

Cellulosic Biofuels (D3/D7 RINs) Renewable Volume Obligations



Source: EPA

RNG for Transportation Fuel

- Kinetrex owns two LNG fueling facilities in Indianapolis.
- Indy High BTU will produce enough fuel for approximately 300 Class 8 trucks.
- Displace up to 8,000,000 gallons of diesel fuel each year.

60-100% reduction in greenhouse gas emissions vs diesel.

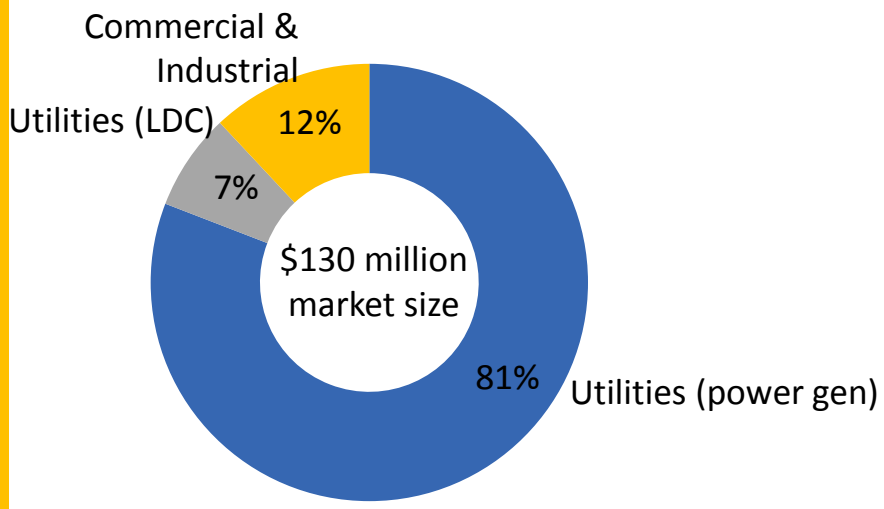
90% reduction in NOx emissions vs diesel.

Cost/Benefit of Transition to RNG

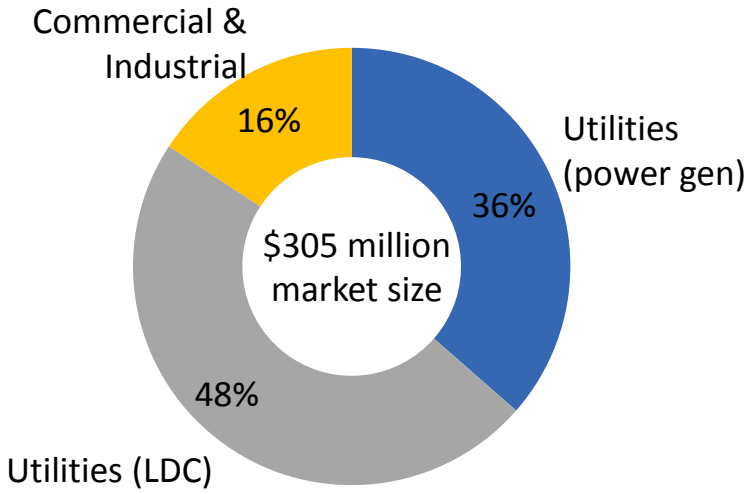
- Natural Gas as vehicle fuel approximately $1-$2 per diesel gallon.
- Customers using natural gas as vehicle fuel entitled to alternative fuels tax credit ($.50 per gallon)
- Customers also receive share of RINs revenue depending on the size of fleet if they use RNG.
- Natural gas vehicles generally have 10-20% price premium over diesel. 30-50% less than all electric counterparts.
- Generally 2-4 year payback for fleet conversion depending on mileage and vehicle type required.

Non-Transportation Markets

2020



2025



The voluntary RNG market is a driver of significant additional growth beyond transportation, expected to grow by 2-3x by 2025 using RNG to reduce Scope 1 emissions

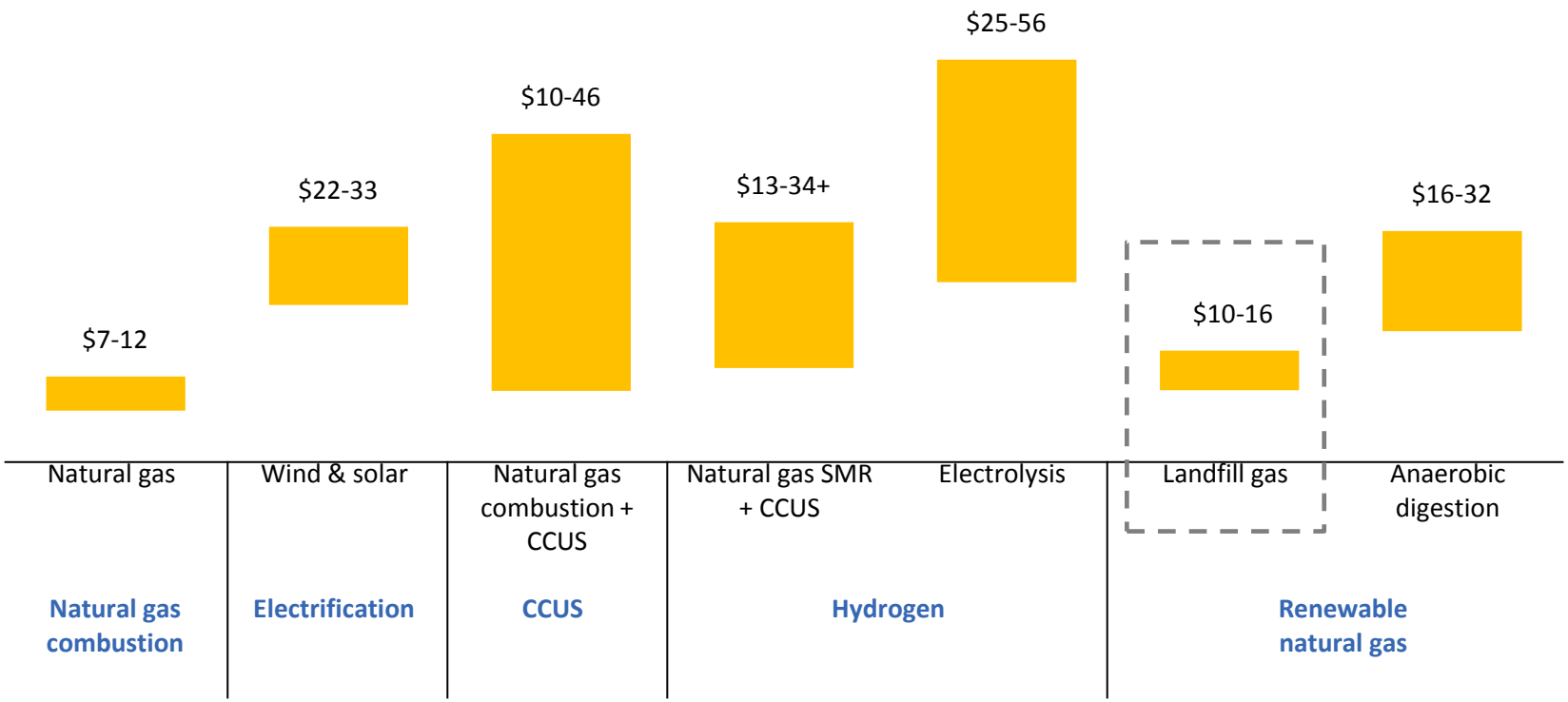
Source: BCG analysis

Landfill RNG's Role in the Renewable Landscape

Landfill Gas RNG is Available Today and is Competitive Relative to Other Decarbonization Options

Average Estimated Price to U.S. Residential and Commercial on a Heat Basis (Non-Transportation Market)

($ per DTH)



Source: Lazard, EIA, Imperial College London, CCUS estimates compiled from published academic and research papers, BCG analysis

Who is Kinetrex Energy?

Revolutionizing Delivery of Natural Gas with LNG and RNG

Steps to Success

- Environmental
- Simple
- Cost Effective
- Reliable
- Safe

Integrated Products

We Make Sustainability Simple

Legislative Priorities

- Maintain status quo while ensuring parity with other technologies.
- Renewable Fuel Standard – automatic volume adjustments end after 2022.
- Customer-friendly tax credits – ensure AFTC is regularly extended. Municipalities can also use the AFTC.
- Biden administration favorable to RNG. EPA staff supportive of expanding volumes and reducing waivers.
- CLEAN / GREEN / LIFT Acts

Future RNG Markets

Utility RNG Tariffs

Direct use for Scope 1 Emissions

Electric pathway for RFS

Leadership Team Has a Century of Energy and Utility Experience

Aaron Johnson, CPA
President and Chief Executive Officer

- Founded Kinetrex in 2013
- 30 years of diverse leadership experience in the energy and utility industries
- B.S. in Accounting and an MBA from Indiana's Kelley School of Business and J.D. from Indiana's McKinney School of Law
- Significant M&A experience, including leading largest water and wastewater utility acquisition in U.S. history
- Prior to Kinetrex, Aaron held several executive positions at Citizens Energy Group and was an associate at Ice Miller

Craig Moore
Senior VP and Chief Revenue Officer

- Co-founded Kinetrex in 2013
- Over 15 years of experience in the transportation and energy industries
- B.S. in Finance from the Ball State University Miller College of Business and MBA from the DePaul University Kellstadt Graduate School of Business
- Prior to Kinetrex, Craig held several positions at Citizens Energy Group and Cummins, Inc. focusing on internal start-up, strategy, M&A, capital markets and six sigma

Terry Peak
Senior VP and Chief Operating Officer

- Over 40 years of experience in the energy industry
- B.S. in Chemical Engineering from the Rose-Hulman Institute of Technology, MBA from the University of Indianapolis and J.D. from Indiana's McKinney School of Law
- Prior to Kinetrex, Terry was President and COO of ProLiance Energy, one of the largest gas marketing companies in the Midwest, and spent 18 years with Citizens Energy Group in various operations and engineering roles

Brian Paplaski
Senior VP and Chief Financial Officer

- Over 10 years of senior finance and CFO experience supporting high growth, operations centric companies
- B.S. in Accounting from Purdue University's Krannert School of Management and MBA from the University of Chicago's Booth School of Business
- Prior to Kinetrex, Brian was the CFO of private equity owned Endurance Warranty Services

Casey Holsapple
General Counsel and VP of Governmental Affairs

- 13 years of energy and utility experience
- B.A. from Indiana University and J.D. from Indiana University Maurer School of Law
- Prior to Kinetrex, Casey was associate general counsel for Duke Energy and an attorney with Bingham McHale where he focused on utility matters
- Management member of Indy HBTU and prior board experience with Pioneer Transmission (joint venture with Duke Energy and American Electric Power)

Contact Info

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Indianapolis Airport Authority

Vehicle Electrification @ IND

Todd Cavender
Director, Environment & Sustainability

Sustainability Evolution

Indianapolis Airport Authority

Demonstrated Leadership & Airport industry "Firsts"

Award-Winning Integration into Design & Construction

Strategic Partnerships & Project Pursuits

Sustainability Management & Master Plans

Economic Viability

Social Responsibility

Indianapolis Airport Authority Sustainability

Operational Efficiency

Natural Resource Conservation

ENVISION™

airport carbon accreditation

Indianapolis Airport Authority

Electric Shuttle Fleet - Overview

IND is home to one of the largest airport electric bus fleet in the US!

- 9 electric shuttle buses
- 6 hour charge =120 miles of range
- Financial Benefits
  - $3.7 million ZEV grant
  - $2 million savings in operating & maintenance costs
- Environmental Benefits
  - 66,000 gallon reduction of diesel annually
  - 15 million pound reduction in GHGs

Indianapolis Airport Authority

Electric Shuttle Fleet – Lessons Learned

- ✈ Driver Training
- ✈ Fleet Maintenance
- ✈ Route/Charging Optimization
- ✈ Unanticipated Challenges
- ✈ Lessons Learned
  - Conversion can be cost effective

Electric Vehicle Charging

Indianapolis Airport Authority

- IND has 14 EV charging spaces in the Terminal Garage and 4 in the Premium Self Park area
- Charging Options
  - Hourly fast chargers for < than 8 hour stays
  - Daily chargers for extended stays
  - Tesla Destination Charging stations
- Complimentary use, first come first served
- On-site compressed natural gas (CNG) also available

Indianapolis Airport Authority

On the Horizon

- IND Sustainability Management Plan
- MQJ Sustainable Master Plan
- Sustainable runway projects
- Hydrogen research for hard-to-electrify heavy duty equipment and vehicles
- Sustainable aircraft fuels
- Evaluation of local carbon offset projects

Section Two

Hot Topics from Local, State, and Federal Government

Jeffery A. Earl
Bose McKinney & Evans LLP
Indianapolis, Indiana

Section Two

Hot Topics from
Local, State, and Federal Government

April 8, 2021

Jeffery Earl, of Counsel
Bose McKinney & Evans, LLP

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ATTORNEYS AT LAW

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Bio

Of Counsel at BME

- Representing clients in cases before the Indiana Utility Regulatory Commission
- Advising clients on matters of energy, water/sewer, and general utility regulatory law

Administrative Law Judge

- Indiana Utility Regulatory Commission

Editor of the Indiana Utility Report

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Overview of Session

- Local attempts to control renewable energy development
- State energy/utility legislation in the 2021 Session
- Federal legislative and regulatory developments
- Recent energy crises.
- Where are we heading – Emerging Issues

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Local Energy Issues

NIMBY

"Not In My Back Yard"

34 Indiana counties restrict wind, solar projects.
Indy Star – Mar. 10, 2021

Wind farms banned in rural Tippecanoe County
Journal & Courier – May 6, 2019

Opposition grows in rural counties against once-heralded wind farms
Tribune-Star – Jun. 18, 2016

Ind. County tried to kill $175M wind farm, developer says
Law 360

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Tippecanoe County

- 2018-2019 – Solar developer, Invenergy considering Tippecanoe County as a site for a large windmill farm.
- May 2019 – Tippecanoe County passed a zoning ordinance prohibiting wind turbines taller than 140 feet
- (Commercial wind turbines range from 300-600 feet)
- Commissioners cited population growth, large size of wind farms, and the need to preserve land for other types of development.
- Invenergy has since ceased considering Indiana for wind projects.

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Montgomery County

- Sugar Creek Wind planned a 250-MW wind farm in Montgomery County at an estimated cost of $175M.
- In 2019, Montgomery County amended its zoning ordinances to set a maximum decibel level for wind turbines that effectively banned commercial scale turbines.
- In 2020, Sugar Creek sued Montgomery County in federal court.
- The parties eventually reached a settlement.
- Sugar Creek abandoned the wind project and is now planning a solar project in the county.

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Competing Concerns

Blow Baby, Blow

- Environmental Lobby
- Land owners (farmers) who want to lease land
- Tax revenue benefits

No Baby, No

- Environmental harm
- Shadow flicker
- Visual blight
- Noise levels
- Safety risks
- Loss of property values

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State Legislature Responds

HB 1381

- Establishes default standards and permitting procedures
  - Height, glare, sound levels
  - Ground cover, fencing, decommissioning
  - Cables, signal interference
- Prohibits a local unit of government from imposing regulations more restrictive than default

Majority of Indiana Counties have passed resolutions or sent letters opposing HB 1381 as a violation of the Home Rule Act.

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Ind. Gen. Assembly Energy Bills

- **SB 349 - A whole new bill**
  - Started out as a technical correction bill.
  - IC 8-1.5-2 (Transfer, Acquisition, and Improvement of Utilities by Municipalities) applied only to water and wastewater. The original bill added municipal electric utilities.
  - 2 additional provisions added that address water/wastewater utilities.
    - Subsidization of certain wastewater utility costs with water utility revenues
    - Creation of an income tax rate surcharge

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Ind. Gen. Assembly Energy Bills

- **SB 386 - Cost securitization of retired assets**
  - Pilot program applies only to CenterPoint (Vectren).
  - If costs associated with retirement of an electric generation facility (coal plant) are ≥ 5% of utility's total rate base.
  - Utility may issue securitization bonds with terms of up to 20 years
  - Utility may recover securitization charges from customers through rates.

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Ind. Gen. Assembly Energy Bills

- **HB 1164 – Placement of utility facilities**
  - Primarily a communications utility bill
  - Requires REMC's and municipal electric utilities to permit attachments by CSPs to poles owned or controlled by the electric utility.
  - Requires attachment fees and leases to be reasonable and nondiscriminatory.
  - Allows CSPs to complain to IURC about denial of attachment or unreasonable fees.
  - **Also limits ability of counties and municipalities to interfere with public utilities placing facilities in the right of way.**

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Ind. Gen. Assembly Energy Bills

- **HB 1191 – Save the gas**
  - Another state vs. local control bill
  - Prohibits local government from banning natural gas utility service
  - Seeks to head off a nationwide trend that started in CA, and has spread to CO and WA
  - IN is just one of many states considering similar legislation
  - Bill also prohibits state universities and colleges from making "Green" fuel, building material, and vehicle policy decisions unless there is a corresponding net savings within 10 years.

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Ind. Gen. Assembly Energy Bills

- **HB 1220 – 21st Century Task Force – Part Deux**
  - Renews the 21st Century Task Force for another 2 years.
  - Changes makeup of the task force – 6 House and 6 Senate (2-1 ratio of Rep. to Dem.) + 3 industry representatives appointed by Gov.
  - Sets agenda for next 2 years:
    - Renewables, energy efficiency, and demand response
    - Rate structures and low-income/minority issues
    - EV deployment and charging
    - Storage technology
    - Stranded utility assets and coal mine and plant closures

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Ind. Gen. Assembly Energy Bills

- **HB 1348 – Solar project tax assessments**
  - Establishes a "solar land base rate" for each of three regions (North, Central, South) in Ind.
  - Base rate equals the median true tax value per acre of all land in the region classified under the utility property class of codes.
  - Solar project tax assessment is subject to the 3% cap on nonresidential real property.

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Ind. Gen. Assembly Energy Bills

- **HB 1520 – Electric Utility Reliability Metrics**
  - Requires electric utilities to maintain and operate generation facilities in a manner reasonably intended to support provision of reliable and economic electric service to customers and consistent with ISO/RTO resource reliability requirements.
  - Requires electric utilities to submit a report to the IURC regarding its generating facilities.
  - Allows IURC to investigate utilities if it is concerned that they cannot provide reliable service and require utility to acquire or construct additional facilities.

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Distributed Generation Rates

- **Ind. Code § 8-1-40-16** requires electric utilities to request IURC approval of an excess distributed generation (EDG) rate. IPL, NIPSCO, I&M, Duke, and Vectren have all filed for rate approval.
- **Ind. Code § 8-1-40-17** defines the calculation of the rate as 1.25 x the average marginal price of electricity paid by the utility during the most recent calendar year.
- This rate replaces the utility's net metering rate for new connections.

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Distributed Generation Rates

Ind. Code § 8-1-40-5

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.

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Distributed Generation Rates

Vectren DER Case – filed May 8, 2020

- Parties dispute how to calculate amount of excess distributed generation.

- Vectren proposes to calculate excess distributed generation based on instantaneous metering of **power inflow** (electricity the customer receives from Vectren) and **power outflow** (excess customer-generated electricity the customer sends to Vectren).

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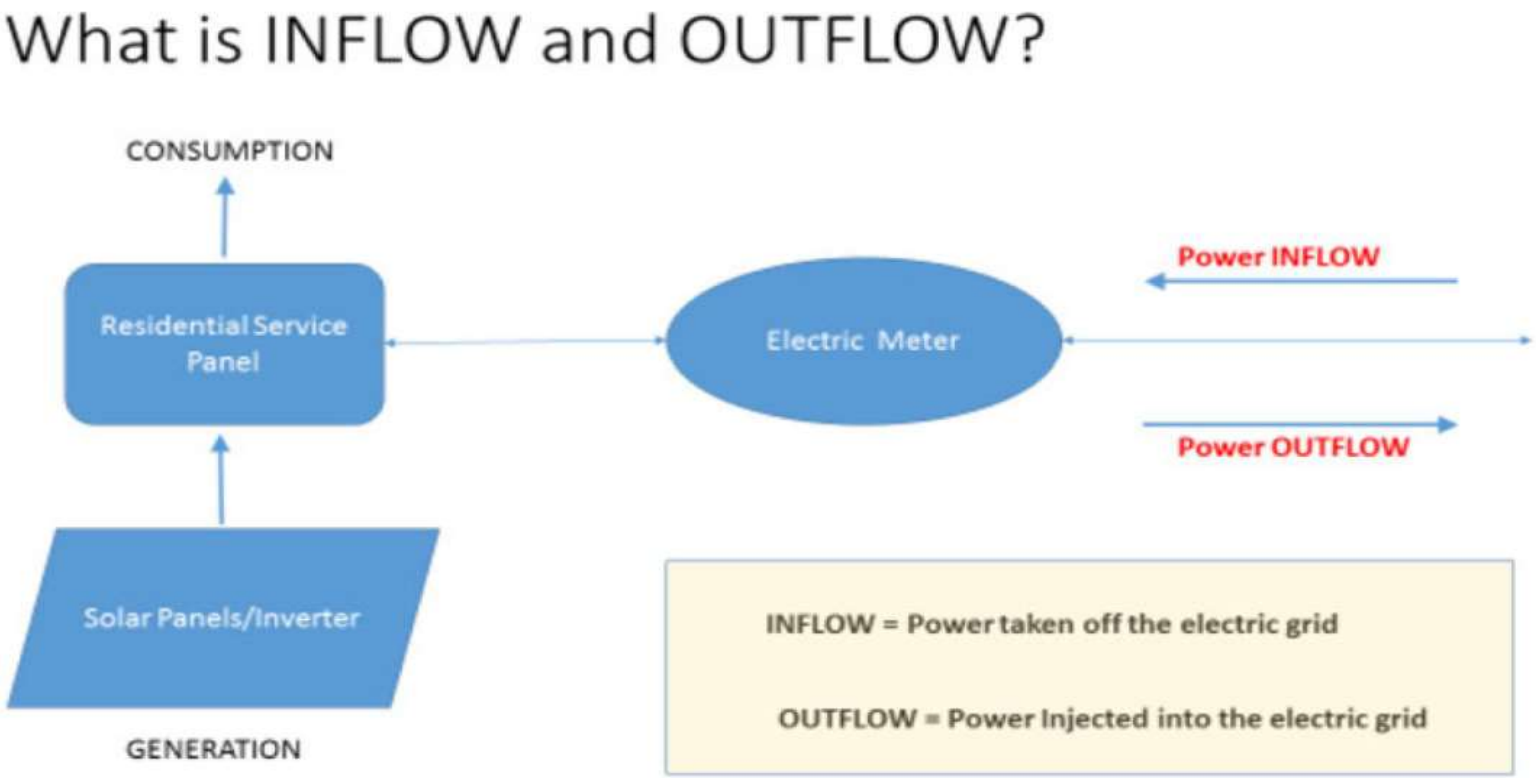
Distributed Generation Rates



Source: Cause No. 45378, Rice Rebuttal Testimony.

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Distributed Generation Rates

- Vectren would bill customer at standard rate for inflow and pay customer at EDG rate for outflow in real time.
- If more inflow charges than outflow credits in a month, customer receives a bill for the difference.
- If more outflow credits than inflow charges, customer receives a credit toward future bills.

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Distributed Generation Rates

- Responding parties argue statute requires Vectren to calculate monthly difference between inflow and outflow.
- If more inflow than outflow during month, customer charged for net inflow at standard rate.
- If more outflow during month, customer credited for net outflow at DER Rate toward future bills.

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Distributed Generation Rates

Exhibit 1: Financial Recap: (No Federal Tax Credit)

	No Solar	Net Metering	SEA 309 Compliant EDG Estimate	Vectren's Proposal EDG Estimate
Annual Electricity Bill (Year 1)	$1,832	$ 1	$ 167	$ 904
Savings (Year 1)		$ 1,832	$ 1,665	$ 928
Net Present Value (@5%)		$ 6,020	$ 4,084	$ (7,595)
Simple Payback		12	13	22

Source: Cause No. 45378, Joint Parties Proposed Order

IPL - mimics Vectren's calculation
NIPSCO - adopts the monthly netting method
Duke/I&M – waiting for IURC decision in Vectren case and will comply with approved method.

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FERC Orders

2222 – Distributed Energy Resources (DERs)

- 1 kW to 10 MW systems
- Renewables, storage, demand response, energy efficiency, EVs, etc.
- Rule would allow aggregation of DERs to participate alongside traditional resources in wholesale energy markets.
- ISO/RTOs must submit proposed tariffs to implement the rule.
- States cannot prohibit aggregation of demand response resources.

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FERC Orders

841 – Energy Storage in wholesale markets

- Directs RTOs/ISOs to remove barriers to the participation of electricity storage in wholesale markets.
- Requires RTOs/ISOs to establish rules to open capacity, energy, and ancillary services markets to energy storage.
- Compliance plans were due in December 2018.
- MISO requested an initial extension to June 6, 2022 to implement new rules.
- MISO has requested a second extension until March 1, 2025.

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What happens when the energy runs out?

- California – rolling blackouts
  - Around 500,00 customers without electricity for about an hour at a time.
  - No deaths
- Texas
  - Millions without electricity or heat for several days
  - Over 100 deaths
  - Up to $16 billion in losses
  - At least two electric companies have filed for bankruptcy

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What happens when the energy runs out?

- CA blackouts – Summer 2020
  - Wildfires + unusually high temperatures
  - CA has its own ISO - CAISO
  - CA relies heavily on solar and wind generation
  - Wind was not blowing and solar gave out in the evening and nighttime hours.
  - Fossil fuel plants were shut down and energy from outside the state was not available or too expensive.

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What happens when the energy runs out?

- TX grid failure – Winter 2021
  - Ice Storm and unusually low temperatures
  - TX has its own "ISO" – ERCOT
  - Power plants and renewable generation were not properly weatherized for cold temperatures
  - Gas wells froze stopping supply of natural gas
  - Power plant and wind turbines seized up.
  - Could not call on electricity from other states because TX grid is isolated.

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What happens when the energy runs out?

- Could it happen in Indiana?
  - MISO electric grid covers 15 states and Manitoba, Canada
  - PJM electric grid covers 13 states and D.C.
  - Both ISOs can move electricity between states
  - Indiana generation resources are weatherized for cold weather.
  - Indiana has a diverse generation portfolio – coal, gas, wind, solar, nuclear, hydro
  - Indiana has redundant fossil fuel supplies
  - Indiana has a robust resource planning process

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Where are we headed?

- Continued development of wind and solar generation
- Development of energy storage technologies
- Renewable energy production tax credits (PTCs) and investment tax credits (ITCs) extended.
  - PTCs for one year
  - ITCs for two years
  - Offshore wind ITCs extended for five years
  - Carbon capture tax credit extended for two years

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Where are we headed?

- President Biden's energy policy goals
  - Rejoin Paris Climate Agreement
  - Reduction of GHG emissions
  - Focus on "social costs" of GHG emissions.
  - Encouraging investment in clean energy
  - Encouraging investment in storage technology
  - Encouraging deployment of electric vehicles
  - Support transition of communities that rely on fossil fuel industry

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Thank you

Questions?

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Reprinted
February 17, 2021

HOUSE BILL No. 1381

DIGEST OF HB 1381 (Updated February 16, 2021 6:08 pm - DI 101)

Citations Affected: IC 8-1; IC 36-1; IC 36-7.

Synopsis: Commercial wind and solar standards and siting. Establishes default standards concerning the following with respect to developments to install or locate wind power devices in local units: (1) Setback requirements. (2) Height restrictions. (3) Shadow flicker limitations. (4) Signal interference. (5) Sound level limitations. (6) Project decommissioning. Provides that a permit authority for a local unit may not restrict, or impose conditions or limitations on, the construction, installation, siting, modification, operation, or decommissioning of wind power devices in the unit unless the unit first adopts a wind power regulation. Provides that a permit authority may not impose standards that: (1) concern wind power devices in the unit; and (2) are more restrictive than the default standards. Specifies that a unit may do the following: (1) Adopt and enforce a wind power regulation that includes standards that are less restrictive than the default wind power standards set forth in the bill. (2) Waive or make less restrictive any standard set forth in: (A) the bill's default wind power standards; or (B) a wind power regulation adopted by the unit; with respect to any one wind power device, subject to the consent of each owner of property on which, or adjacent to where, the particular wind power device will be located. Establishes procedures for the permitting or approval process for the siting of wind power devices in

(Continued next page)

Effective: Upon passage; July 1, 2021.

Soliday, Negele

January 14, 2021, read first time and referred to Committee on Utilities, Energy and Telecommunications.
February 11, 2021, amended, reported — Do Pass.
February 16, 2021, read second time, amended, ordered engrossed.

a local unit. Sets forth various elements of the required procedures. Specifies that the bill's default standards and permitting procedures for wind power devices do not: (1) apply to proposals, requests, or applications that: (A) concern wind power devices; (B) are submitted to a unit before July 1, 2021; and (C) are pending as of July 1, 2021; (2) affect the construction, installation, siting, modification, operation, or decommissioning of a wind power device in a unit that has approved such an activity before July 1, 2021; or (3) affect any: (A) economic development agreement; or (B) other agreement; entered before July 1, 2021, with respect to one or more wind power devices in one or more units. Establishes default standards concerning the following with respect to projects to install or locate commercial solar energy systems (CSE systems) in a unit: (1) Setback requirements. (2) Height restrictions. (3) Ground cover. (4) Fencing. (5) Cables. (6) Glare. (7) Signal interference. (8) Sound level limitations. (9) Project decommissioning. Provides that a permit authority for a local unit may not restrict, or impose conditions or limitations on, the construction, installation, siting, modification, operation, or decommissioning of CSE systems in the unit unless the unit first adopts a commercial solar regulation. Provides that a permit authority may not impose standards that: (1) concern CSE systems in the unit; and (2) are more restrictive than the default standards. Specifies that a unit may do the following: (1) Adopt and enforce a commercial solar regulation that includes standards that are less restrictive than the default CSE system standards set forth in the bill. (2) Waive or make less restrictive any standard set forth in: (A) the bill's default CSE system standards; or (B) a commercial solar regulation adopted by the unit; with respect to any one CSE system, subject to the consent of each owner of property on which, or adjacent to where, the particular CSE system will be located. Establishes procedures for the permitting or approval process for the siting of CSE systems in a local unit. Sets forth various elements of the required procedures. Specifies that the bill's default standards and permitting procedures for CSE systems do not: (1) apply to proposals, requests, or applications that: (A) concern CSE systems; (B) are submitted to a unit before July 1, 2021; and (C) are pending as of July 1, 2021; (2) affect the construction, installation, siting, modification, operation, or decommissioning of a CSE system in a unit that has approved such an activity before July 1, 2021; or (3) affect any: (A) economic development agreement; or (B) other agreement; entered before July 1, 2021, with respect to one or more CSE systems in one or more units. Makes conforming amendments to Indiana's home rule statute.

Reprinted
February 17, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1381

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 8-1-41 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 41. Default Standards for Wind Power Devices

Sec. 1. (a) Except as provided in subsections (b) and (c), this chapter applies to a project owner that, after June 30, 2021, files an initial application under IC 36-7-5.3-9 to install or locate one (1) or more wind power devices in a unit that:

(1) has not adopted a wind power regulation; or

(2) has:

(A) adopted a wind power regulation that includes standards that are more restrictive, directly or indirectly, than the standards set forth in this chapter; and

(B) failed to amend the wind power regulation as required by IC 36-1-3-8.7(g).

(b) Subject to a unit's planning and zoning powers under IC 36-7, this chapter does not apply to a property owner who seeks

to install a wind power device on the property owner's premises for the purpose of generating electricity to meet or offset all or part of the need for electricity on the premises, whether through distributed generation, participation in a net metering or feed-in tariff program offered by an electricity supplier (as defined in IC 8-1-40-4), or otherwise.

(c) This chapter does not:

(1) apply to any proposal, request, or application that:

(A) concerns the construction, installation, siting, modification, operation, or decommissioning of one (1) or more wind power devices in a unit;

(B) is submitted by a project owner to a unit before July 1, 2021; and

(C) is pending as of July 1, 2021;

as set forth in IC 36-7-4-1109, regardless of whether the unit is a unit described in subsection (a);

(2) affect the:

(A) construction;

(B) installation;

(C) siting;

(D) modification;

(E) operation; or

(F) decommissioning;

of one (1) or more wind power devices in a unit that before July 1, 2021, has approved such construction, installation, siting, modification, operation, or decommissioning, regardless of whether the unit is a unit described in subsection (a); or

(3) affect any:

(A) economic development agreement; or

(B) other agreement;

entered before July 1, 2021, with respect to the construction, installation, siting, modification, operation, or decommissioning of one (1) or more wind power devices in one (1) or more units.

Sec. 2. As used in this chapter, "dwelling" means any building, structure, or part of a building or structure that is occupied as, or is designed or intended for occupancy as, a residence by one (1) or more families or individuals.

Sec. 3. (a) As used in this chapter, "nonparticipating property" means a lot or parcel of real property:

(1) that is not owned by a project owner; and

(2) with respect to which:

(A) the project owner does not seek:

(i) to install or locate one (1) or more wind power devices or other facilities related to a wind power project (including power lines, temporary or permanent access roads, or other temporary or permanent infrastructure); or

(ii) to otherwise enter into a lease or any other agreement with the owner of the property for use of all or part of the property in connection with a wind power project; or

(B) the owner of the property does not consent:

(i) to having one (1) or more wind power devices or other facilities related to a wind power project (including power lines, temporary or permanent access roads, or other temporary or permanent infrastructure) installed or located; or

(ii) to otherwise enter into a lease or any other agreement with the project owner for use of all or part of the property in connection with a wind power project.

(b) The term does not include a lot or parcel of real property otherwise described in subsection (a) if the owner of the lot or parcel consents to participate in a wind power project through a neighbor agreement, a participation agreement, or another similar arrangement or agreement with a project owner.

Sec. 4. (a) As used in this chapter, "permit authority" means:

(1) a unit; or

(2) a board, a commission, or any other governing body of a unit;

that makes legislative or administrative decisions concerning the construction, installation, siting, modification, operation, or decommissioning of wind power devices in the unit.

(b) The term does not include:

(1) the state or any of its agencies, departments, boards, commissions, authorities, or instrumentalities; or

(2) a court or other judicial body that reviews decisions or rulings made by a permit authority.

Sec. 5. (a) As used in this chapter, "project owner" means a person that:

(1) will own one (1) or more wind power devices proposed to be located in a unit; or

(2) owns one (1) or more wind power devices located in a unit.

(b) The term includes an agent or a representative of a person described in subsection (a).

Sec. 6. (a) As used in this chapter, "unit" refers to:

(1) a county, if a project owner, as part of a single wind power project or development, seeks to locate one (1) or more wind power devices:

(A) entirely within unincorporated areas of the county;

(B) within both unincorporated areas of the county and one (1) or more municipalities within the county; or

(C) entirely within two (2) or more municipalities within the county; or

(2) a municipality, if:

(A) a project owner, as part of a single wind power project or development, seeks to locate one (1) or more wind power devices entirely within the boundaries of the municipality; and

(B) subdivision (1)(B) or (1)(C) does not apply.

(b) The term refers to:

(1) each county described in subsection (a)(1) in which a project owner seeks to locate one (1) or more wind power devices, if the project owner seeks to locate wind power devices in more than one (1) county as part of a single wind power project or development; and

(2) each municipality described in subsection (a)(2) in which a project owner seeks to locate one (1) or more wind power devices, if the project owner seeks to locate wind power devices in two (2) or more municipalities, each of which is located in a different county.

Sec. 7. As used in this chapter, "wind power device" means a device, including a windmill or a wind turbine, that is designed to use the kinetic energy of moving air to provide mechanical energy or to produce electricity.

Sec. 8. As used in this chapter, "wind power regulation" refers to any ordinance or regulation, including any:

(1) zoning or land use ordinance or regulation; or

(2) general or specific planning ordinance or regulation;

that is adopted by a unit and that concerns the construction, installation, siting, modification, operation, or decommissioning of wind power devices in the unit.

Sec. 9. (a) Except as provided in subsection (d) and section 1(b) and 1(c) of this chapter, the standards set forth in sections 10 through 14 of this chapter apply with respect to any proposal by a

project owner to install or locate one (1) or more wind power devices in a unit described in section 1(a) of this chapter after June 30, 2021. The permit authority for a unit described in section 1(a)(1) of this chapter may not, directly or indirectly, restrict, or impose conditions or limitations on, the construction, installation, siting, modification, operation, or decommissioning of one (1) or more wind power devices in the unit unless the unit first adopts a wind power regulation, as required by IC 36-1-3-8.7(f)(1). However, in no case may any unit impose standards, whether by regulation or otherwise, that:

(1) concern the construction, installation, siting, modification, operation, or decommissioning of wind power devices in the unit; and

(2) are more restrictive, directly or indirectly, than the standards set forth in this chapter;

as provided in IC 36-1-3-8.7(f)(3).

(b) Except as provided in:

(1) subsection (a);

(2) IC 36-1-3-8.7; and

(3) IC 36-7-5.3;

this chapter does not otherwise affect a unit's planning and zoning powers under IC 36-7 with respect to the installation or siting of one (1) or more wind power devices in the unit.

(c) A permit authority for a unit described in section 1(a) of this chapter is responsible for enforcing compliance with:

(1) this chapter;

(2) IC 36-7-5.3; and

(3) in the case of a unit described in section 1(a)(2) of this chapter, any part of the unit's wind power regulation, to the extent such part is not:

(A) more restrictive than this chapter; or

(B) inconsistent with IC 36-7-5.3.

(d) A unit may:

(1) adopt and enforce a wind power regulation that includes standards that:

(A) concern the construction, installation, siting, modification, operation, or decommissioning of wind power devices in the unit; and

(B) are less restrictive than the standards set forth in this chapter; or

(2) waive or make less restrictive any standard set forth in:

(A) this chapter; or

(B) a wind power regulation adopted by the unit in compliance with IC 36-1-3-8.7(f)(3);

with respect to any one (1) wind power device, subject to the consent of each owner of property on which, or adjacent to where, the particular wind power device will be located.

Sec. 10. (a) Subject to subsection (f), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device on property in a unit unless the distance, measured as a straight line, from the vertical centerline of the base of the wind power device to:

(1) the centerline of any:

(A) runway located on a public use airport, private use airport, or municipal airport;

(B) public use highway, street, or road; or

(C) railroad easement or right-of-way; or

(2) the property line of any nonparticipating property;

is equal to a distance that is at least one and one-tenth (1.1) times the wind power device's blade tip height, as measured from the ground to the tip of the blade.

(b) Subject to subsection (f), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device on property in a unit unless the distance, measured as a straight line, from the vertical centerline of the base of the wind power device to the nearest point on the outer wall of a dwelling located on a nonparticipating property is equal to a distance that is at least three (3) times the wind power device's blade tip height, as measured from the ground to the tip of the blade.

(c) Except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device on property in a unit unless the distance, measured as a straight line, from the vertical centerline of the base of the wind power device to the nearest edge of the right-of-way for any utility transmission or distribution line is equal to a distance that is at least one and two-tenths (1.2) times the wind power device's blade tip height, as measured from the ground to the tip of the blade.

(d) Except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device on property in a unit unless the distance, measured as a straight line, from the vertical centerline of the base of the wind power device to the property line of any undeveloped land within the unit that is zoned or platted for residential use is equal to a distance that is at least

two (2) times the wind power device's blade tip height, as measured from the ground to the tip of the blade.

(e) Except as otherwise allowed by IC 36-7-4-1109, a permit authority, with respect to the siting or construction of any wind power device within the unit, may not set a blade tip height limitation, through a wind power regulation or otherwise, that is more restrictive than the standards of the Federal Aviation Administration under 14 CFR Part 77 concerning the safe, efficient use and preservation of the navigable airspace.

(f) The distance requirements set forth in subsections (a)(2) and (b) may be waived with respect to the siting of any one (1) wind power device, subject to the written consent of the owner of each affected nonparticipating property.

Sec. 11. (a) Subject to subsection (c), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate one (1) or more wind power devices in a unit unless the project owner demonstrates to the permit authority that with respect to each wind power device that the project owner seeks to install or locate in the unit:

(1) the project owner has used shadow flicker computer modeling to estimate the amount of shadow flicker anticipated to be caused by the wind power device; and

(2) the wind power device has been designed such that industry standard computer modeling indicates that any dwelling on a nonparticipating property within the unit will not experience more than thirty (30) hours per year of shadow flicker under planned operating conditions for the wind power device.

(b) After a project owner installs or locates a wind power device in a unit, as authorized by the permit authority in accordance with this chapter and IC 36-7-5.3, the project owner shall work with the owner of any affected dwelling on a nonparticipating property to mitigate the effects of shadow flicker to the extent reasonably practicable.

(c) The requirement set forth in subsection (a)(2) may be waived with respect to any one (1) wind power device, subject to the written consent of the owner of each affected nonparticipating property.

Sec. 12. Except as otherwise allowed by IC 36-7-4-1109, a wind power device installed in a unit must be installed in a manner so as to minimize and mitigate impacts to:

(1) television signals;

(2) microwave signals;

(3) agricultural global positioning systems;

(4) military defense radar;

(5) radio reception; or

(6) weather and doppler radar.

Sec. 13. (a) Subject to subsection (b), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device in a unit unless the project owner demonstrates to the permit authority that the wind power device will operate in a manner such that the sound attributable to the wind power device will not exceed an hourly average sound level of fifty (50) A-weighted decibels, as modeled at the outer wall of an affected dwelling.

(b) The requirement set forth in subsection (a) may be waived with respect to any one (1) wind power device, subject to the written consent of the owner of each affected property.

Sec. 14. (a) Subject to subsection (b), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device in a unit unless the project owner submits to the permit authority the decommissioning and site restoration plan required by IC 36-7-5.3-9(a)(9), and posts a surety bond, or an equivalent means of security acceptable to the permit authority, including a parent company guarantee or an irrevocable letter of credit, in an amount equal to the estimated cost of decommissioning the wind power device, as calculated by a third party licensed or registered engineer, or by another person with suitable experience in the decommissioning of wind power devices, as agreed upon by the project owner and the permit authority. The required bond or other security shall be posted in increments such that the total amount of the bond or security posted is as follows:

(1) An amount equal to twenty-five percent (25%) of the total estimated decommissioning costs not later than the start date of the wind power device's full commercial operation. For purposes of this subdivision, the total estimated decommissioning costs shall be reevaluated by a third party licensed or registered engineer (or by another person with suitable experience in the decommissioning of wind power devices, as agreed upon by the project owner and the permit authority) before the:

(A) fifth anniversary; and

(B) tenth anniversary;

of the start date of the wind power device's full commercial

operation, and the total amount of the bond or security posted under this subdivision shall be adjusted as necessary after each reevaluation.

(2) An amount equal to fifty percent (50%) of the total estimated decommissioning costs not later than the fifteenth anniversary of the start date of the wind power device's full commercial operation. For purposes of this subdivision, the total estimated decommissioning costs shall be reevaluated by a third party licensed or registered engineer (or by another person with suitable experience in the decommissioning of wind power devices, as agreed upon by the project owner and the permit authority) before the fifteenth anniversary of the start date of the wind power device's full commercial operation, and the total amount of the bond or security posted under this subdivision shall be adjusted as necessary after the reevaluation.

(3) An amount equal to one hundred percent (100%) of the total estimated decommissioning costs not later than the twentieth anniversary of the start date of the wind power device's full commercial operation. For purposes of this subdivision, the total estimated decommissioning costs shall be reevaluated by a third party licensed or registered engineer (or by another person with suitable experience in the decommissioning of wind power devices, as agreed upon by the project owner and the permit authority):

(A) before the twentieth anniversary of the start date of the wind power device's full commercial operation; and

(B) upon every succeeding five (5) year period after the twentieth anniversary of the start date of the wind power device's full commercial operation;

and the total amount of the bond or security posted under this subdivision shall be adjusted as necessary after each reevaluation.

(b) For purposes of this section, the estimated cost of decommissioning a wind power device, as calculated by a licensed or registered professional engineer (or by another person with suitable experience in the decommissioning of wind power devices, as agreed upon by the project owner and the permit authority), shall be the net of any estimated salvage value attributable to the wind power device at the time of decommissioning, unless the unit and the project owner agree to include any such value in the estimated cost.

SECTION 2. IC 8-1-42 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 42. Default Standards for Commercial Solar Energy Systems

Sec. 1. (a) Except as provided in subsections (b) and (c), this chapter applies to a project owner that, after June 30, 2021, files an initial application under IC 36-7-5.4-9 to install or locate one (1) or more commercial solar energy systems in a unit that:

(1) has not adopted a commercial solar regulation; or

(2) has:

(A) adopted a commercial solar regulation that includes standards that are more restrictive, directly or indirectly, than the standards set forth in this chapter; and

(B) failed to amend the commercial solar regulation as required by IC 36-1-3-8.8(g).

(b) Subject to a unit's planning and zoning powers under IC 36-7, this chapter does not apply to a property owner who seeks to install a solar energy device (as defined in IC 32-23-4-3) on the property owner's premises for the purpose of generating electricity to meet or offset all or part of the need for electricity on the premises, whether through distributed generation, participation in a net metering or feed-in tariff program offered by an electricity supplier (as defined in IC 8-1-40-4), or otherwise.

(c) This chapter does not:

(1) apply to any proposal, request, or application that:

(A) concerns the construction, installation, siting, modification, operation, or decommissioning of one (1) or more CSE systems in a unit;

(B) is submitted by a project owner to a unit before July 1, 2021; and

(C) is pending as of July 1, 2021;

as set forth in IC 36-7-4-1109, regardless of whether the unit is a unit described in subsection (a);

(2) affect the:

(A) construction;

(B) installation;

(C) siting;

(D) modification;

(E) operation; or

(F) decommissioning;

of one (1) or more CSE systems in a unit that before July 1,

2021, has approved such construction, installation, siting, modification, operation, or decommissioning, regardless of whether the unit is a unit described in subsection (a); or

(3) affect any:

(A) economic development agreement; or

(B) other agreement;

entered before July 1, 2021, with respect to the construction, installation, siting, modification, operation, or decommissioning of one (1) or more CSE systems in one (1) or more units.

Sec. 2. (a) As used in this chapter, "commercial solar energy system", or "CSE system", means a system that:

(1) has a nameplate capacity of at least ten (10) megawatts; and

(2) captures and converts solar energy into electricity:

(A) for the purpose of selling the electricity at wholesale; and

(B) for use in locations other than where it is generated.

(b) The term includes collection and feeder lines, generation tie lines, substations, ancillary buildings, solar monitoring stations, and accessory equipment or structures.

Sec. 3. As used in this chapter, "commercial solar regulation" refers to any ordinance or regulation, including any:

(1) zoning or land use ordinance or regulation; or

(2) general or specific planning ordinance or regulation;

that is adopted by a unit and that concerns the construction, installation, siting, modification, operation, or decommissioning of CSE systems in the unit.

Sec. 4. As used in this chapter, "dwelling" means any building, structure, or part of a building or structure that is occupied as, or is designed or intended for occupancy as, a residence by one (1) or more families or individuals.

Sec. 5. (a) As used in this chapter, "nonparticipating property" means a lot or parcel of real property:

(1) that is not owned by a project owner; and

(2) with respect to which:

(A) the project owner does not seek:

(i) to install or locate one (1) or more CSE systems or other facilities related to a CSE system project (including power lines, temporary or permanent access roads, or other temporary or permanent infrastructure); or

(ii) to otherwise enter into a lease or any other

agreement with the owner of the property for use of all or part of the property in connection with a CSE system project; or

(B) the owner of the property does not consent:

(i) to having one (1) or more CSE systems or other facilities related to a CSE system project (including power lines, temporary or permanent access roads, or other temporary or permanent infrastructure) installed or located; or

(ii) to otherwise enter into a lease or any other agreement with the project owner for use of all or part of the property in connection with a CSE system project.

(b) The term does not include a lot or parcel of real property otherwise described in subsection (a) if the owner of the lot or parcel consents to participate in a CSE system project through a neighbor agreement, a participation agreement, or another similar arrangement or agreement with a project owner.

Sec. 6. (a) As used in this chapter, "permit authority" means:

(1) a unit; or

(2) a board, a commission, or any other governing body of a unit;

that makes legislative or administrative decisions concerning the construction, installation, siting, modification, operation, or decommissioning of CSE systems in the unit.

(b) The term does not include:

(1) the state or any of its agencies, departments, boards, commissions, authorities, or instrumentalities; or

(2) a court or other judicial body that reviews decisions or rulings made by a permit authority.

Sec. 7. (a) As used in this chapter, "project owner" means a person that:

(1) will own one (1) or more CSE systems proposed to be located in a unit; or

(2) owns one (1) or more CSE systems located in a unit.

(b) The term includes an agent or a representative of a person described in subsection (a).

Sec. 8. (a) As used in this chapter, "unit" refers to:

(1) a county, if a project owner, as part of a single CSE system project or development, seeks to locate one (1) or more CSE systems:

(A) entirely within unincorporated areas of the county;

(B) within both unincorporated areas of the county and

one (1) or more municipalities within the county; or

(C) entirely within two (2) or more municipalities within the county; or

(2) a municipality, if:

(A) a project owner, as part of a single CSE system project or development, seeks to locate one (1) or more CSE systems entirely within the boundaries of the municipality; and

(B) subdivision (1)(B) or (1)(C) does not apply.

(b) The term refers to:

(1) each county described in subsection (a)(1) in which a project owner seeks to locate one (1) or more CSE systems, if the project owner seeks to locate CSE systems in more than one (1) county as part of a single CSE system project or development; and

(2) each municipality described in subsection (a)(2) in which a project owner seeks to locate one (1) or more CSE systems, if the project owner seeks to locate CSE systems in two (2) or more municipalities, each of which is located in a different county.

Sec. 9. (a) Except as provided in subsection (d) and section 1(b) and 1(c) of this chapter, the standards set forth in sections 10 through 19 of this chapter apply with respect to any proposal by a project owner to install or locate one (1) or more CSE systems in a unit described in section 1(a) of this chapter after June 30, 2021. The permit authority for a unit described in section 1(a)(1) of this chapter may not, directly or indirectly, restrict, or impose conditions or limitations on, the construction, installation, siting, modification, operation, or decommissioning of one (1) or more CSE systems in the unit unless the unit first adopts a commercial solar regulation, as required by IC 36-1-3-8.8(f)(1). However, in no case may any unit impose standards, whether by regulation or otherwise, that:

(1) concern the construction, installation, siting, modification, operation, or decommissioning of CSE systems in the unit; and

(2) are more restrictive, directly or indirectly, than the standards set forth in this chapter;

as provided in IC 36-1-3-8.8(f)(3).

(b) Except as provided in:

(1) subsection (a);

(2) IC 36-1-3-8.8; and

(3) IC 36-7-5.4;

this chapter does not otherwise affect a unit's planning and zoning powers under IC 36-7 with respect to the installation or siting of one (1) or more CSE systems in the unit.

(c) A permit authority for a unit described in section 1(a) of this chapter is responsible for enforcing compliance with:

(1) this chapter;

(2) IC 36-7-5.4; and

(3) in the case of a unit described in section 1(a)(2) of this chapter, any part of the unit's commercial solar regulation, to the extent such part is not:

(A) more restrictive than this chapter; or

(B) inconsistent with IC 36-7-5.4.

(d) A unit may:

(1) adopt and enforce a commercial solar regulation that includes standards that:

(A) concern the construction, installation, siting, modification, operation, or decommissioning of CSE systems in the unit; and

(B) are less restrictive than the standards set forth in this chapter; or

(2) waive or make less restrictive any standard set forth in:

(A) this chapter; or

(B) a commercial solar regulation adopted by the unit in compliance with IC 36-1-3-8.8(f)(3);

with respect to any one (1) CSE system, subject to the consent of each owner of property on which, or adjacent to where, the particular CSE system will be located.

Sec. 10. (a) Subject to subsection (d), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a CSE system on property in a unit unless the distance, measured as a straight line, from the nearest outer edge of the CSE system to:

(1) the nearest edge of the right-of-way for any:

(A) federal interstate highway, federal highway, state highway, or county highway is at least forty (40) feet;

(B) collector road is at least thirty (30) feet; or

(C) local road is at least ten (10) feet; or

(2) the property line of any nonparticipating property is at least fifty (50) feet.

(b) Subject to subsection (d), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a CSE

system on property in a unit unless the distance, measured as a straight line, from the nearest outer edge of the CSE system to the nearest point on the outer wall of a dwelling located on a nonparticipating property is at least one hundred fifty (150) feet.

(c) Subject to subsection (d), and except as otherwise allowed by IC 36-7-4-1109, if a project owner installs a CSE system within a distance of two hundred fifty (250) feet, measured as a straight line, from the nearest outer edge of the CSE system to the nearest point on the outer wall of a dwelling located on a nonparticipating property, the project owner shall install a landscape buffer in the area between the nearest outer edge of the CSE system and the outer wall of the dwelling located on the nonparticipating property:

(1) in a location; and

(2) constructed from such materials;

as set forth in a plan submitted to the unit in the application required under IC 36-7-5.4-9 during the permitting and approval process for the CSE system.

(d) Except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a CSE system on property in a unit unless the height of the CSE system solar panels are not more than twenty-five (25) feet above ground level when the CSE system's arrays are at full tilt. However, a permit authority or a unit may not impose a clearance requirement between the ground and the bottom edge of a CSE system's solar panels.

(e) The:

(1) distance requirements set forth in subsection (a)(2) and subsection (b); and

(2) requirement for the installation of a landscape buffer set forth in subsection (c);

may be waived with respect to the siting of any one (1) CSE system, subject to the written consent of the owner of each affected nonparticipating property.

Sec. 11. Except as otherwise allowed by IC 36-7-4-1109, if a project owner installs a CSE system in a unit, the project owner shall plant, establish, and maintain for the life of the CSE system perennial vegetated ground cover on the ground around and under solar panels, and in project site buffer areas. The use of pollinator seed mixes in the planting of ground cover required by this section is encouraged. A unit or permit authority may require a project owner to prepare for a project site a vegetation plan that:

(1) is compatible with each CSE system on the project site;

(2) provides for the planting of noninvasive species and the use of native or naturalized species if the planting and use of noninvasive and native or naturalized species are:

(A) appropriate to the region;

(B) economically feasible; and

(C) agreed to by the landowner;

in order to reduce storm water runoff and erosion at the site and to provide habitat for wildlife and insects; and

(3) provides for site preparation and maintenance practices designed to control invasive species and noxious weeds (as defined in IC 15-16-7-2).

Sec. 12. Except as otherwise allowed by IC 36-7-4-1109, if a project owner installs a CSE system in a unit, the project owner shall completely enclose the CSE system with fencing that is at least six (6) feet high.

Sec. 13. Except as otherwise allowed by IC 36-7-4-1109, if a project owner installs a CSE system in a unit, all cables of up to thirty-four and one-half (34.5) kilovolts that are located between inverter locations and project substations shall be located and maintained underground. Other solar infrastructure, such as module-to-module collection cables, transmission lines, substations, junction boxes, and other typical aboveground infrastructure may be located and maintained above ground. Buried cables shall be at a depth of at least thirty-six (36) inches below grade or, if necessitated by onsite conditions, at a greater depth. Cables and lines located outside of the CSE system project site may:

(1) be located above ground; or

(2) in the case of cables or lines of up to thirty-four and one-half (34.5) kilovolts, be buried underground at:

(A) a depth of at least forty-eight (48) inches below grade, so as to not interfere with drainage tile or ditch repairs; or

(B) another depth, as necessitated by conditions;

as determined in consultation with the landowner.

Sec. 14. Except as otherwise allowed by IC 36-7-4-1109, a CSE system installed by a project owner must be designed and constructed to:

(1) minimize glare on adjacent properties and roadways; and

(2) not interfere with vehicular traffic, including air traffic.

Sec. 15. Except as otherwise allowed by IC 36-7-4-1109, a CSE system installed in a unit must be installed in a manner so as to minimize and mitigate impacts to:

(1) television signals;

(2) microwave signals;

(3) agricultural global positioning systems;

(4) military defense radar;

(5) radio reception; or

(6) weather and doppler radar.

Sec. 16. (a) Subject to subsection (b), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a CSE system in a unit unless the project owner demonstrates to the permit authority that the CSE system will operate in a manner such that the sound attributable to the CSE system will not exceed an hourly average sound level of sixty (60) A-weighted decibels, as modeled at the outer wall of a dwelling located on an adjacent nonparticipating property.

(b) The requirement set forth in subsection (a) may be waived with respect to any one (1) CSE system, subject to the written consent of the owner of each adjacent nonparticipating property.

Sec. 17. (a) Subject to subsection (b), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a CSE system in a unit unless the project owner submits to the permit authority the decommissioning and site restoration plan required by IC 36-7-5.4-9(a)(9), and posts a surety bond, or an equivalent means of security acceptable to the permit authority, including a parent company guarantee or an irrevocable letter of credit, in an amount equal to the estimated cost of decommissioning the CSE system, as calculated by a third party licensed or registered engineer or by another person with suitable experience in the decommissioning of CSE systems, as agreed upon by the project owner and the permit authority. The required bond or other security shall be posted in increments such that the total amount of the bond or security posted is as follows:

(1) An amount equal to twenty-five percent (25%) of the total estimated decommissioning costs not later than the start date of the CSE system's full commercial operation.

(2) An amount equal to fifty percent (50%) of the total estimated decommissioning costs not later than the fifth anniversary of the start date of the CSE system's full commercial operation.

(3) An amount equal to one hundred percent (100%) of the total estimated decommissioning costs not later than the tenth anniversary of the start date of the CSE system's full commercial operation. For purposes of this subdivision, the total estimated decommissioning costs shall be reevaluated by

a third party licensed or registered engineer (or by another person with suitable experience in the decommissioning of CSE systems, as agreed upon by the project owner and the permit authority):

(A) before the tenth anniversary of the start date of the CSE system's full commercial operation; and

(B) upon every succeeding five (5) year period after the tenth anniversary of the start date of the CSE system's full commercial operation;

and the total amount of the bond or security posted under this subdivision shall be adjusted as necessary after each reevaluation.

(b) For purposes of this section, the estimated cost of decommissioning a CSE system, as calculated by a licensed or registered professional engineer (or by another person with suitable experience in the decommissioning of CSE systems, as agreed upon by the project owner and the permit authority), shall be the net of any estimated salvage value attributable to the CSE system at the time of decommissioning, unless the unit and the project owner agree to include any such value in the estimated cost.

(c) A project owner shall provide to the permit authority written notice of the project owner's intent to decommission a CSE system not later than sixty (60) days before the discontinuation of commercial operation by the CSE system. Except as provided in subsection (e), after the discontinuation of commercial operation by the CSE system, and as part of the decommissioning process:

(1) all structures, foundations, roads, gravel areas, and cables associated with the project shall be removed to a depth of at least thirty-six (36) inches below grade; and

(2) the ground shall be restored to a condition reasonably similar to its condition before the start of construction activities in connection with the CSE system project.

(d) Except as provided in subsection (e), if the project owner fails to remove all CSE system project assets not later than one (1) year after the proposed date of final decommissioning, as set forth in the notice to the permit authority under subsection (c), the permit authority may engage qualified contractors to:

(1) enter the project site;

(2) remove the CSE system project assets;

(3) sell any assets removed; and

(4) remediate the site;

and may initiate proceedings to recover any costs incurred.

(e) Project assets may remain in place after decommissioning is complete if:

(1) the location and condition of the assets are in conformance with local regulations at the time of decommissioning; and

(2) the written consent of the landowner is obtained.

Sec. 18. (a) If a CSE system installed in a unit does not generate electricity for eighteen (18) consecutive months:

(1) the CSE system is considered abandoned as of the date that is five hundred forty (540) days after the date on which the CSE system last generated electricity; and

(2) all CSE system project assets shall be removed in accordance with section 17(c) of this chapter not later than one (1) year after the date of abandonment specified in subdivision (1).

(b) In the case of abandonment, as described in subsection (a), if the project owner fails to remove the CSE system project assets not later than one (1) year after the date of abandonment, as required by subsection (a)(2), the permit authority may engage qualified contractors to:

(1) enter the project site;

(2) remove the CSE system project assets;

(3) sell any assets removed; and

(4) remediate the site;

and may initiate proceedings to recover any costs incurred.

Sec. 19. (a) As used in this section, "force majeure event" includes the following:

(1) Fire, flood, tornado, or other natural disasters or acts of God.

(2) War, civil strife, a terrorist attack, or other similar acts of violence.

(3) Other unforeseen events or events over which a project owner has no control.

(b) If a force majeure event results in a CSE system not generating electricity, the project owner shall:

(1) as soon as practicable after the occurrence of the force majeure event, provide notice to the permit authority of the event and of the resulting cessation of generating operations; and

(2) demonstrate to the permit authority that the CSE system will be substantially operational and generating electricity not later than twelve (12) months after the occurrence of the force majeure event.

(c) If the CSE system does not become substantially operational and resume generating electricity within the time set forth in subdivision (2):

(1) the CSE system is considered abandoned as of the date that is three hundred sixty-five (365) days after the date on which the CSE system last generated electricity; and

(2) all CSE system project assets shall be removed in accordance with section 17(c) of this chapter not later than one (1) year after the date of abandonment specified in subdivision (1).

(d) In the case of presumed abandonment, as described in subsection (c), if the project owner fails to remove the CSE system project assets not later than one (1) year after the date of abandonment, as required by subsection (c)(2), the permit authority may engage qualified contractors to:

(1) enter the project site;

(2) remove the CSE system project assets;

(3) sell any assets removed; and

(4) remediate the site;

and may initiate proceedings to recover any costs incurred.

SECTION 3. IC 36-1-3-8, AS AMENDED BY P.L.19-2019, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) Subject to subsection (b), a unit does not have the following:

(1) The power to condition or limit its civil liability, except as expressly granted by statute.

(2) The power to prescribe the law governing civil actions between private persons.

(3) The power to impose duties on another political subdivision, except as expressly granted by statute.

(4) The power to impose a tax, except as expressly granted by statute.

(5) The power to impose a license fee greater than that reasonably related to the administrative cost of exercising a regulatory power.

(6) The power to impose a service charge or user fee greater than that reasonably related to reasonable and just rates and charges for services.

(7) The power to regulate conduct that is regulated by a state agency, except as expressly granted by statute.

(8) The power to prescribe a penalty for conduct constituting a crime or infraction under statute.

(9) The power to prescribe a penalty of imprisonment for an

ordinance violation.

(10) The power to prescribe a penalty of a fine as follows:

(A) More than ten thousand dollars ($10,000) for the violation of an ordinance or a regulation concerning air emissions adopted by a county that has received approval to establish an air permit program under IC 13-17-12-6.

(B) For a violation of any other ordinance:

(i) more than two thousand five hundred dollars ($2,500) for a first violation of the ordinance; and

(ii) except as provided in subsection (c), more than seven thousand five hundred dollars ($7,500) for a second or subsequent violation of the ordinance.

(11) The power to invest money, except as expressly granted by statute.

(12) The power to order or conduct an election, except as expressly granted by statute.

(13) The power to adopt or enforce an ordinance described in section 8.5 of this chapter.

(14) The power to take any action prohibited by section 8.6 of this chapter.

(15) The power to directly or indirectly restrict, or impose conditions or limitations on, the construction, installation, siting, modification, operation, or decommissioning of one (1) or more wind power devices in the unit, except as allowed under section 8.7 of this chapter.

(16) The power to directly or indirectly restrict, or impose conditions or limitations on, the construction, installation, siting, modification, operation, or decommissioning of one (1) or more commercial solar energy systems in the unit, except as allowed under section 8.8 of this chapter.

~~(15)~~ **(17)** The power to dissolve a political subdivision, except:

(A) as expressly granted by statute; or

(B) if IC 36-1-8-17.7 applies to the political subdivision, in accordance with the procedure set forth in IC 36-1-8-17.7.

~~(16)~~ **(18)** After June 30, 2019, the power to enact an ordinance requiring a solid waste hauler or a person who operates a vehicle in which recyclable material is transported for recycling to collect fees authorized by IC 13-21 and remit the fees to:

(A) a unit; or

(B) the board of a solid waste management district established under IC 13-21.

(b) A township does not have the following, except as expressly

granted by statute:

(1) The power to require a license or impose a license fee.

(2) The power to impose a service charge or user fee.

(3) The power to prescribe a penalty.

(c) Subsection (a)(10)(B)(ii) does not apply to the violation of an ordinance that regulates traffic or parking.

SECTION 4. IC 36-1-3-8.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 8.7. (a) Subject to a unit's planning and zoning powers under IC 36-7, this section does not apply to a property owner who seeks to install a wind power device on the property owner's premises for the purpose of generating electricity to meet or offset all or part of the need for electricity on the premises, whether through distributed generation, participation in a net metering or feed-in tariff program offered by an electricity supplier (as defined in IC 8-1-40-4), or otherwise.**

(b) As used in this section, "permit authority", with respect to a unit, has the meaning set forth in IC 8-1-41-4.

(c) As used in this section, "unit" has the meaning set forth in IC 8-1-41-6.

(d) As used in this section, "wind power device" means a device, including a windmill or a wind turbine, that is designed to use the kinetic energy of moving air to provide mechanical energy or to produce electricity.

(e) As used in this section, "wind power regulation" refers to any ordinance or regulation, including any:

(1) zoning or land use ordinance or regulation; or

(2) general or specific planning ordinance or regulation;

that is adopted by a unit and that concerns the construction, installation, siting, modification, operation, or decommissioning of wind power devices in the unit.

(f) Except as provided in IC 8-1-41-1(c), after June 30, 2021, a permit authority may not, directly or indirectly, restrict, or impose conditions or limitations on, the construction, installation, siting, modification, operation, or decommissioning of one (1) or more wind power devices in the unit unless:

(1) the unit has first adopted a wind power regulation;

(2) any procedures set forth in the wind power regulation with respect to the permitting or approval process for the siting or installation of wind power devices in the unit comply with IC 36-7-5.3; and

(3) any standards included in the wind power regulation are

not more restrictive, directly or indirectly, than the default standards set forth in IC 8-1-41.

(g) Subject to IC 36-7-4-1109, a wind power regulation that:

(1) is in effect in a unit on or after July 1, 2021; and

(2) sets forth or includes:

(A) procedures with respect to the permitting or approval process for the siting or installation of wind power devices in the unit that do not comply with IC 36-7-5.3;

(B) standards that are more restrictive, directly or indirectly, than the default standards set forth in IC 8-1-41; or

(C) procedures and standards described in both clauses (A) and (B);

shall be amended by the legislative body of the unit so that the wind power regulation complies with the requirements set forth in subsection (f)(2) and (f)(3). Except as provided in IC 8-1-41-1(c), until such time as the legislative body of the unit amends the wind power regulation as required by this subsection, the procedures set forth in IC 36-7-5.3 or the default standards set forth in IC 8-1-41, as applicable, apply to the construction, installation, siting, modification, operation, or decommissioning of any wind power device in the unit after June 30, 2021. However, until such time as the legislative body of the unit amends the wind power regulation as required by this subsection, the unit may continue to enforce compliance with any part of the unit's wind power regulation that complies with, or is otherwise consistent with, the requirements set forth in subsection (f)(2) and (f)(3).

(h) After June 30, 2021, a unit may not amend:

(1) a wind power regulation; or

(2) any other regulation of the unit, regardless of the subject matter of the regulation;

to address any matter concerning the construction, installation, siting, modification, operation, or decommissioning of wind power devices in the unit unless the wind power regulation or other regulation, as amended, meets the requirements set forth in subsection (f), regardless of when the wind power regulation or other regulation was originally adopted.

SECTION 5. IC 36-1-3-8.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 8.8. (a) Subject to a unit's planning and zoning powers under IC 36-7, this section does not apply to a property owner who seeks to install a solar energy device (as**

defined in IC 32-23-4-3) on the property owner's premises for the purpose of generating electricity to meet or offset all or part of the need for electricity on the premises, whether through distributed generation, participation in a net metering or feed-in tariff program offered by an electricity supplier (as defined in IC 8-1-40-4), or otherwise.

(b) As used in this section, "commercial solar energy system", or "CSE system", means a system that:

(1) has a nameplate capacity of at least ten (10) megawatts; and

(2) captures and converts solar energy into electricity:

(A) for the purpose of selling the electricity at wholesale; and

(B) for use in locations other than where it is generated.

The term includes collection and feeder lines, generation tie lines, substations, ancillary buildings, solar monitoring stations, and accessory equipment or structures.

(c) As used in this section, "commercial solar regulation" refers to any ordinance or regulation, including any:

(1) zoning or land use ordinance or regulation; or

(2) general or specific planning ordinance or regulation;

that is adopted by a unit and that concerns the construction, installation, siting, modification, operation, or decommissioning of CSE systems in the unit.

(d) As used in this section, "permit authority", with respect to a unit, has the meaning set forth in IC 8-1-42-6.

(e) As used in this section, "unit" has the meaning set forth in IC 8-1-42-8.

(f) Except as provided in IC 8-1-42-1(c), after June 30, 2021, a permit authority may not, directly or indirectly, restrict, or impose conditions or limitations on, the construction, installation, siting, modification, operation, or decommissioning of one (1) or more CSE systems in the unit unless:

(1) the unit has first adopted a commercial solar regulation;

(2) any procedures set forth in the commercial solar regulation with respect to the permitting or approval process for the siting or installation of CSE systems in the unit comply with IC 36-7-5.4; and

(3) any standards included in the commercial solar regulation are not more restrictive, directly or indirectly, than the default standards set forth in IC 8-1-42.

(g) Subject to IC 36-7-4-1109, a commercial solar regulation

that:

(1) is in effect in a unit on or after July 1, 2021; and

(2) sets forth or includes:

(A) procedures with respect to the permitting or approval process for the siting or installation of CSE systems in the unit that do not comply with IC 36-7-5.4;

(B) standards that are more restrictive, directly or indirectly, than the default standards set forth in IC 8-1-42; or

(C) procedures and standards described in both clauses (A) and (B);

shall be amended by the legislative body of the unit so that the commercial solar regulation complies with the requirements set forth in subsection (f)(2) and (f)(3). Except as provided in IC 8-1-42-1(c), until such time as the legislative body of the unit amends the commercial solar regulation as required by this subsection, the procedures set forth in IC 36-7-5.4 or the default standards set forth in IC 8-1-42, as applicable, apply to the construction, installation, siting, modification, operation, or decommissioning of any CSE system in the unit after June 30, 2021. However, until such time as the legislative body of the unit amends the commercial solar regulation as required by this subsection, the unit may continue to enforce compliance with any part of the unit's commercial solar regulation that complies with, or is otherwise consistent with, the requirements set forth in subsection (f)(2) and (f)(3).

(h) After June 30, 2021, a unit may not amend:

(1) a commercial solar regulation; or

(2) any other regulation of the unit, regardless of the subject matter of the regulation;

to address any matter concerning the construction, installation, siting, modification, operation, or decommissioning of CSE systems in the unit unless the commercial solar regulation or other regulation, as amended, meets the requirements set forth in subsection (f), regardless of when the commercial solar regulation or other regulation was originally adopted.

SECTION 6. IC 36-7-5.3 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

Chapter 5.3. Siting of Wind Power Devices in a Unit

Sec. 1. (a) Except as provided in subsections (c) and (d), this chapter applies to the following:

(1) The exercising by any unit of zoning, land use, planning, or permitting authority as authorized by this article, or by any other law, with respect to the construction, installation, siting, modification, operation, or decommissioning of one (1) or more wind power devices within the unit after June 30, 2021.

(2) The consideration by any unit, whether under a regulation of the unit or otherwise, of a proposal for the construction, installation, siting, modification, operation, or decommissioning of one (1) or more wind power devices in the unit after June 30, 2021.

(b) This chapter applies to a situation described in subsection (a) in a unit that:

(1) has not adopted a wind power regulation; or

(2) has:

(A) adopted a wind power regulation that sets forth procedures with respect to the permitting or approval process for the siting or installation of wind power devices in the unit that does not comply with this chapter; and

(B) failed to amend the wind power regulation as required by IC 36-1-3-8.7(g).

(c) Subject to a unit's planning and zoning powers under this article, this chapter does not apply to a property owner who seeks to install a wind power device on the property owner's premises for the purpose of generating electricity to meet or offset all or part of the need for electricity on the premises, whether through distributed generation, participation in a net metering or feed-in tariff program offered by an electricity supplier (as defined in IC 8-1-40-4), or otherwise.

(d) This chapter does not:

(1) apply to any proposal, request, or application that:

(A) concerns the construction, installation, siting, modification, operation, or decommissioning of one (1) or more wind power devices in a unit;

(B) is submitted by a project owner to a unit before July 1, 2021; and

(C) is pending as of July 1, 2021;

as set forth in IC 36-7-4-1109, regardless of whether the unit is a unit described in subsection (b);

(2) affect the:

(A) construction;

(B) installation;

(C) siting;

(D) modification;

(E) operation; or

(F) decommissioning;

of one (1) or more wind power devices in a unit that before July 1, 2021, has approved such construction, installation, siting, modification, operation, or decommissioning, regardless of whether the unit is a unit described in subsection (b); or

(3) affect any:

(A) economic development agreement; or

(B) other agreement;

entered before July 1, 2021, with respect to the construction, installation, siting, modification, operation, or decommissioning of one (1) or more wind power devices in one (1) or more units.

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

Sec. 3. (a) As used in this chapter, "permit authority" means:

(1) a unit; or

(2) a board, a commission, or any other governing body of a unit;

that makes legislative or administrative decisions concerning the construction, installation, siting, modification, operation, or decommissioning of wind power devices in the unit.

(b) The term does not include:

(1) the state or any of its agencies, departments, boards, commissions, authorities, or instrumentalities; or

(2) a court or other judicial body that reviews decisions or rulings made by a permit authority.

Sec. 4. (a) As used in this chapter, "project owner" means a person that:

(1) will own one (1) or more wind power devices proposed to be located in a unit; or

(2) owns one (1) or more wind power devices located in a unit.

(b) The term includes an agent or a representative of a person described in subsection (a).

Sec. 5. (a) As used in this chapter, "unit" refers to:

(1) a county, if a project owner, as part of a single wind power project or development, seeks to locate one (1) or more wind power devices:

(A) entirely within unincorporated areas of the county;

(B) within both unincorporated areas of the county and

one (1) or more municipalities within the county; or

(C) entirely within two (2) or more municipalities within the county; or

(2) a municipality, if:

(A) a project owner, as part of a single wind power project or development, seeks to locate one (1) or more wind power devices entirely within the boundaries of the municipality; and

(B) subdivision (1)(B) or (1)(C) does not apply.

(b) The term refers to:

(1) each county described in subsection (a)(1) in which a project owner seeks to locate one (1) or more wind power devices, if the project owner seeks to locate wind power devices in more than one (1) county as part of a single wind power project or development; and

(2) each municipality described in subsection (a)(2) in which a project owner seeks to locate one (1) or more wind power devices, if the project owner seeks to locate wind power devices in two (2) more municipalities, each of which is located in a different county.

Sec. 6. As used in this chapter, "wind power device" means a device, including a windmill or a wind turbine, that is designed to use the kinetic energy of moving air to provide mechanical energy or to produce electricity.

Sec. 7. As used in this chapter, "wind power regulation" refers to any ordinance or regulation, including any:

(1) zoning or land use ordinance or regulation; or

(2) general or specific planning ordinance or regulation;

that is adopted by a unit and that concerns the construction, installation, siting, modification, operation, or decommissioning of wind power devices in the unit.

Sec. 8. (a) A wind power device may not be installed or located in a unit without the approval of the permit authority for the unit.

(b) Except as provided in section 1(c) and 1(d) of this chapter, the procedures set forth in this chapter apply with respect to any proposal by a project owner to install or locate one (1) or more wind power devices in a unit described in section 1(b) of this chapter after June 30, 2021. The permit authority for a unit described in section 1(b)(1) of this chapter may not, directly or indirectly, restrict, or impose conditions or limitations on, the construction, installation, siting, modification, operation, or decommissioning of one (1) or more wind power devices in the unit

unless the unit first adopts a wind power regulation, as required by IC 36-1-3-8.7(f)(1). However, in no case may any unit use procedures, whether by regulation or otherwise, that:

(1) govern the permitting or approval process for the siting or installation of wind power devices in the unit; and

(2) do not comply with this chapter;

as provided in IC 36-1-3-8.7(f)(2).

(c) Except as provided in:

(1) subsection (b);

(2) IC 36-1-3-8.7; and

(3) IC 8-1-41;

this chapter does not otherwise affect a unit's planning and zoning powers under this article with respect to the installation or siting of one (1) or more wind power devices in the unit.

(d) A permit authority for a unit described in section 1(b) of this chapter is responsible for enforcing compliance with:

(1) this chapter;

(2) the default standards set forth in IC 8-1-41, if applicable under IC 8-1-41-1(a); and

(3) in the case of a unit described in section 1(b)(2) of this chapter, any part of the unit's wind power regulation, to the extent such part:

(A) is not inconsistent with this chapter; and

(B) does not include standards that are more restrictive, directly or indirectly, than the default standards set forth in IC 8-1-41.

Sec. 9. (a) A project owner that seeks to install or locate one (1) or more wind power devices in a unit after June 30, 2021, shall file with the permit authority for the unit an application in the form and manner prescribed by the permit authority. An application filed under this section must include the following, provided with as much detail or specificity as the permit authority may reasonably require, and so far as ascertainable at the time of the application:

(1) A physical and technical description of all wind power devices proposed to be installed or located in the unit.

(2) A physical and technical description of all sites in the unit on which one (1) or more wind power devices are sought to be installed or located, including maps showing the location of the sites.

(3) The project owner's anticipated timeline and process for constructing and installing all wind power devices proposed

in the application.

(4) Information regarding the sound:

(A) expressed as an hourly average sound level or by any other measure reasonably required by the permit authority; and

(B) as modeled at the outer wall of an affected dwelling;

anticipated to be attributable to the operation of each wind power device included in the application.

(5) Information regarding the amount of anticipated shadow flicker, expressed as hours per year under planned operating conditions or by any other measure reasonably required by the permit authority, expected to be attributable to the operation of each wind power device included in the application.

(6) Information regarding the status of all permits required by the Federal Aviation Administration with respect to each wind power device included in the application.

(7) Information regarding the planned use and modification of any highways, streets, and roads in the unit during the construction and installation of all wind power devices included in the application, including a process for:

(A) assessing road damage caused by activities involved in such construction and installation; and

(B) conducting road repairs at the project owner's expense.

(8) A copy of all emergency response plans applicable to the construction, installation, siting, modification, operation, and decommissioning of all wind power devices included in the application, including a process for sharing the plans with, and providing safety training to, all potential first responders.

(9) A decommissioning and site restoration plan for each wind power device included in the application, including both a timeline for decommissioning and a timeline for posting any required:

(A) surety bond;

(B) parent company guarantee;

(C) irrevocable letter of credit; or

(D) other equivalent means of security or financial assurance acceptable to the permit authority;

in an amount reflecting the estimated cost of decommissioning the wind power device.

(10) A copy of all representative notices to:

(A) the permit authority;

(B) residents of the unit;

(C) political subdivisions in which, or adjacent to where, the project will be located; and

(D) owners of property on which, or adjacent to where, the project will be located;

to be issued by the project owner with respect to the construction, installation, siting, modification, operation, and decommissioning of all wind power devices included in the application, including any preconstruction and postconstruction activities.

(11) A description of a dispute resolution process that:

(A) will be used by the project owner in resolving complaints under section 12 of this chapter; and

(B) complies with the requirements set forth in section 12(b) of this chapter.

(12) Any other information reasonably necessary to understand the construction, installation, siting, modification, operation, and decommissioning of all wind power devices included in the application.

(13) A statement, signed by an officer or another person authorized to bind the project owner, that affirms the accuracy of the information provided in the application.

(b) A project owner that submits an application under this section shall notify the permit authority in writing when all required documents and information described in subsection (a) have been submitted. An application under this section is considered filed as of the date of the project owner's notice under this subsection.

(c) Not later than thirty (30) days after the date of a project owner's notice under subsection (b), the permit authority shall determine whether the project owner's application is complete and shall notify the project owner in writing of the determination. Subject to subsection (f), if the permit authority determines that the application is complete, the permit authority shall proceed to make a determination as to whether to grant or deny the application under section 10 of this chapter. Subject to subsections (d) and (e), if the permit authority determines that the application is incomplete, the permit authority shall state the reasons for the determination in the permit authority's notice to the project owner under this subsection. A permit authority shall not make a determination of incompleteness based on grounds that are arbitrary, capricious, an abuse of discretion, or not in accordance

with law. If the permit authority does not make a determination as to the completeness of the application within the time prescribed by this subsection, the application is considered complete.

(d) A project owner may file supplemental information to an application that a permit authority has determined to be incomplete under subsection (c). A project owner that intends to file supplemental information under this subsection shall notify the permit authority of the project owner's intention not later than fourteen (14) days after the date of the permit authority's notice of incompleteness under subsection (c). The project owner's notice of intention to file supplemental information under this subsection stays the start of the period set forth in section 10 of this chapter in which the permit authority must approve or deny the application until such time as the application is finally determined to be or is considered complete under this section. The project owner shall provide any reasonably requested additional information identified in the permit authority's notice under subsection (c), to the extent ascertainable. A permit authority may not impose a limit on the number of times a project owner may supplement an application under this subsection.

(e) A project owner that submits a supplemented application under subsection (d) shall notify the permit authority in writing when all information and documents provided in connection with the supplemented application have been submitted. A thirty (30) day period for a completeness determination by the permit authority with respect to the supplemented application begins as of the date of the project owner's notice under this subsection, in accordance with the procedures set forth in subsection (c) for an initial application. If the permit authority does not make a determination as to the completeness of the supplemented application within the time prescribed by this subsection, the supplemented application is considered complete.

(f) After:

(1) an initial application is determined to be or is considered complete under subsection (c); or

(2) a supplemented application is determined to be or is considered complete under subsection (e);

a permit authority may nevertheless request additional information reasonably necessary to understand the construction, installation, siting, modification, operation, and decommissioning of any of the wind power devices included in a project owner's initial or supplemented application. A project owner shall provide

additional information in response to all reasonable inquiries made by the permit authority, and shall respond in a timely, complete, and accurate manner.

Sec. 10. (a) Subject to subsection (b) and section 11 of this chapter, a permit authority shall issue a written decision to grant or deny an application or a supplemented application under this chapter not later than ninety (90) days after the application or supplemented application is finally determined to be or is considered complete. The permit authority's written decision must include all findings of fact upon which the decision is based. The permit authority shall provide a copy of the permit authority's decision to:

(1) the project owner; and

(2) the commission.

(b) A permit authority may not:

(1) unreasonably deny an application or a supplemented application under this chapter;

(2) condition approval of an application or a supplemented application upon a project owner's agreement to fulfill unreasonable requirements, including:

(A) property value guarantees;

(B) onerous road upgrades; or

(C) other requirements that are intended to prevent or impede (or would have the effect of preventing or impeding) the construction, installation, siting, modification, operation, or decommissioning of wind power devices in the unit; or

(3) after approving an application or a supplemented application, impose unreasonable requirements upon a project owner, including any of the requirements set forth in subdivision (2), at any point during the project owner's construction, installation, siting, modification, operation, or decommissioning of wind power devices in the unit.

Sec. 11. (a) Not later than thirty (30) days after the date of a permit authority's decision under section 10 of this chapter to approve or deny an application or a supplemented application:

(1) the project owner;

(2) an interested party described in section 9(a)(10)(C) through 9(a)(10)(D) of this chapter; or

(3) at least twenty-five (25) residents of the unit represented by an attorney licensed to practice law in Indiana;

may file with the commission a petition requesting a review of the

permit authority's decision.

(b) Upon receiving a petition under subsection (a), the commission shall, in writing:

(1) provide notice of the filing of a petition to:

(A) the permit authority; and

(B) the project owner, if the project owner is not the petitioner; and

(2) request from:

(A) the permit authority;

(B) the petitioner;

(C) the project owner; and

(D) an interested party described in section 9(a)(10)(C) through 9(a)(10)(D) of this chapter that is a party to the petition;

any information required by the commission to make a determination on the petition.

Any information requested by the commission under subdivision (2) shall be submitted to the commission not later than thirty (30) days after the date of the commission's written request.

(c) Not later than one hundred fifty (150) days after receiving all information requested under subsection (b)(2), the commission shall:

(1) after notice and an opportunity for hearing; and

(2) consistent with the policy set forth in IC 8-1-2-0.5;

issue an order with respect to the permit authority's decision under section 10 of this chapter.

(d) The commission's order under subsection (c) must include the commission's findings as to:

(1) the reasonableness of the permit authority's decision under section 10 of this chapter; and

(2) the parties' compliance with:

(A) this chapter;

(B) the default standards set forth in IC 8-1-41, if applicable under IC 8-1-41-1(a); and

(C) in the case of a unit described in section 1(b)(2) of this chapter, any part of the unit's wind power regulation, to the extent such part:

(i) is not inconsistent with this chapter; and

(ii) does not include standards that are more restrictive, directly or indirectly, than the default standards set forth in IC 8-1-41.

(e) In the commission's order under subsection (c), the

commission may affirm, vacate, or modify the permit authority's decision as the public convenience and necessity may require.

(f) In the commission's order under subsection (c), the commission shall not consider:

(1) the reasonableness of the default standards set forth in IC 8-1-41; or

(2) relief regarding:

(A) asserted effects on health;

(B) asserted effects on aesthetics;

(C) asserted effects on property values; or

(D) any other requested relief distinct from the factors set forth in subsection (d).

(g) The order of the commission under subsection (c) is considered a final order, subject to appeal under IC 8-1-3.

Sec. 12. (a) At any time after a permit authority issues a decision under section 10 of this chapter with respect to the construction, installation, siting, modification, operation, or decommissioning of one (1) or more wind power devices in the unit, an interested party described in section 9(a)(10)(C) through 9(a)(10)(D) of this chapter may file a complaint with the project owner alleging that the project owner has failed to comply with:

(1) this chapter;

(2) the default standards set forth in IC 8-1-41, if applicable under IC 8-1-41-1(a); or

(3) in a unit described in section 1(b)(2) of this chapter, any part of the unit's wind power regulation, to the extent such part:

(A) is not inconsistent with this chapter; and

(B) does not include standards that are more restrictive, directly or indirectly, than the default standards set forth in IC 8-1-41.

(b) An interested party that files a complaint under this section shall do so in accordance with the project owner's dispute resolution process, as set forth in the project owner's application under section 9(a)(11) of this chapter. The following apply with respect to a complaint filed under this section:

(1) The project owner shall:

(A) make a good faith effort to resolve the complaint; and

(B) conduct any investigation required to resolve the complaint at the project owner's expense.

(2) Not later than thirty (30) days after receiving the complaint, the project owner shall provide an initial response

to the complainant.

(3) The project owner shall:

(A) make a good faith effort to resolve the complaint not later than forty-five (45) days after receiving the complaint; and

(B) notify the permit authority if the complaint is not resolved within the forty-five (45) day period set forth in clause (A).

(c) If a complaint under this section:

(1) is filed by a party described in section 11(a)(2) or 11(a)(3) of this chapter; and

(2) is not resolved within the forty-five (45) day period set forth in subsection (b)(3)(A);

the complainant may file with the commission a petition requesting a review of the complaint. A petition for review under this subsection must be filed not later than sixty (60) days after the date of the filing of the complaint with the project owner under this section.

(d) Upon receiving a petition under subsection (c), the commission shall, in writing:

(1) notify the project owner of the filing of petition; and

(2) request from:

(A) the project owner;

(B) the petitioner; and

(C) the permit authority;

any information required by the commission to make a determination on the petition.

Any information requested by the commission under subdivision (2) shall be submitted to the commission not later than thirty (30) days after the date of the commission's written request.

(e) Not later than ninety (90) days after receiving all information requested under subsection (d)(2), the commission shall issue an order with respect to the complaint. The commission may issue an order under this subsection without a hearing. The commission's resolution of the complaint is limited to the scope of the complaint regarding the project owner's compliance with:

(1) this chapter;

(2) the default standards set forth in IC 8-1-41, if applicable under IC 8-1-41-1(a); or

(3) in the case of a unit described in section 1(b)(2) of this chapter, any part of the unit's wind power regulation, to the extent such part:

(A) is not inconsistent with this chapter; and

(B) does not include standards that are more restrictive, directly or indirectly, than the default standards set forth in IC 8-1-41;

as applicable.

(f) In the commission's order under subsection (e), the commission may order such relief as the public convenience and necessity may require.

(g) In the commission's order under subsection (e), the commission shall not consider:

(1) the reasonableness of the default standards set forth in IC 8-1-41; or

(2) relief regarding:

(A) asserted effects on health;

(B) asserted effects on aesthetics;

(C) asserted effects on property values; or

(D) any other requested relief distinct from the factors set forth in subsection (e).

(h) The commission's order under subsection (e) is considered a final order, subject to appeal under IC 8-1-3.

SECTION 7. IC 36-7-5.4 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

Chapter 5.4. Siting of Commercial Solar Energy Systems in a Unit

Sec. 1. (a) Except as provided in subsections (c) and (d), this chapter applies to the following:

(1) The exercising by any unit of zoning, land use, planning, or permitting authority as authorized by this article, or by any other law, with respect to the construction, installation, siting, modification, operation, or decommissioning of one (1) or more CSE systems within the unit after June 30, 2021.

(2) The consideration by any unit, whether under a regulation of the unit or otherwise, of a proposal for the construction, installation, siting, modification, operation, or decommissioning of one (1) or more CSE systems in the unit after June 30, 2021.

(b) This chapter applies to a situation described in subsection (a) in a unit that:

(1) has not adopted a commercial solar regulation; or

(2) has:

(A) adopted a commercial solar regulation that sets forth

procedures with respect to the permitting or approval process for the siting or installation of CSE systems in the unit that does not comply with this chapter; and

(B) failed to amend the commercial solar regulation as required by IC 36-1-3-8.8(g).

(c) Subject to a unit's planning and zoning powers under this article, this chapter does not apply to a property owner who seeks to install a solar energy device (as defined in IC 32-23-4-3) on the property owner's premises for the purpose of generating electricity to meet or offset all or part of the need for electricity on the premises, whether through distributed generation, participation in a net metering or feed-in tariff program offered by an electricity supplier (as defined in IC 8-1-40-4), or otherwise.

(d) This chapter does not:

(1) apply to any proposal, request, or application that:

(A) concerns the construction, installation, siting, modification, operation, or decommissioning of one (1) or more CSE systems in a unit;

(B) is submitted by a project owner to a unit before July 1, 2021; and

(C) is pending as of July 1, 2021;

as set forth in IC 36-7-4-1109, regardless of whether the unit is a unit described in subsection (b);

(2) affect the:

(A) construction;

(B) installation;

(C) siting;

(D) modification;

(E) operation; or

(F) decommissioning;

of one (1) or more CSE systems in a unit that before July 1, 2021, has approved such construction, installation, siting, modification, operation, or decommissioning, regardless of whether the unit is a unit described in subsection (b); or

(3) affect any:

(A) economic development agreement; or

(B) other agreement;

entered before July 1, 2021, with respect to the construction, installation, siting, modification, operation, or decommissioning of one (1) or more CSE systems in one (1) or more units.

Sec. 2. (a) As used in this chapter, "commercial solar energy

system", or "CSE system", means a system that:

(1) has a nameplate capacity of at least ten (10) megawatts; and

(2) captures and converts solar energy into electricity:

(A) for the purpose of selling the electricity at wholesale; and

(B) for use in locations other than where it is generated.

(b) The term includes collection and feeder lines, generation tie lines, substations, ancillary buildings, solar monitoring stations, and accessory equipment or structures.

Sec. 3. As used in this chapter, "commercial solar regulation" refers to any ordinance or regulation, including any:

(1) zoning or land use ordinance or regulation; or

(2) general or specific planning ordinance or regulation;

that is adopted by a unit and that concerns the construction, installation, siting, modification, operation, or decommissioning of CSE systems in the unit.

Sec. 4. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

Sec. 5. (a) As used in this chapter, "permit authority" means:

(1) a unit; or

(2) a board, a commission, or any other governing body of a unit;

that makes legislative or administrative decisions concerning the construction, installation, siting, modification, operation, or decommissioning of CSE systems in the unit.

(b) The term does not include:

(1) the state or any of its agencies, departments, boards, commissions, authorities, or instrumentalities; or

(2) a court or other judicial body that reviews decisions or rulings made by a permit authority.

Sec. 6. (a) As used in this chapter, "project owner" means a person that:

(1) will own one (1) or more CSE systems proposed to be located in a unit; or

(2) owns one (1) or more CSE systems located in a unit.

(b) The term includes an agent or a representative of a person described in subsection (a).

Sec. 7. (a) As used in this chapter, "unit" refers to:

(1) a county, if a project owner, as part of a single CSE system project or development, seeks to locate one (1) or more CSE systems:

(A) entirely within unincorporated areas of the county;

(B) within both unincorporated areas of the county and one (1) or more municipalities within the county; or

(C) entirely within two (2) or more municipalities within the county; or

(2) a municipality, if:

(A) a project owner, as part of a single CSE system project or development, seeks to locate one (1) or more CSE systems entirely within the boundaries of the municipality; and

(B) subdivision (1)(B) or (1)(C) does not apply.

(b) The term refers to:

(1) each county described in subsection (a)(1) in which a project owner seeks to locate one (1) or more CSE systems, if the project owner seeks to locate CSE systems in more than one (1) county as part of a single CSE system project or development; and

(2) each municipality described in subsection (a)(2) in which a project owner seeks to locate one (1) or more CSE systems, if the project owner seeks to locate CSE systems in two (2) more municipalities, each of which is located in a different county.

Sec. 8. (a) A CSE system may not be installed or located in a unit without the approval of the permit authority for the unit.

(b) Except as provided in section 1(c) and 1(d) of this chapter, the procedures set forth in this chapter apply with respect to any proposal by a project owner to install or locate one (1) or more CSE systems in a unit described in section 1(b) of this chapter after June 30, 2021. The permit authority for a unit described in section 1(b)(1) of this chapter may not, directly or indirectly, restrict, or impose conditions or limitations on, the construction, installation, siting, modification, operation, or decommissioning of one (1) or more CSE systems in the unit unless the unit first adopts a commercial solar regulation, as required by IC 36-1-3-8.8(f)(1). However, in no case may any unit use procedures, whether by regulation or otherwise, that:

(1) govern the permitting or approval process for the siting or installation CSE systems in the unit; and

(2) do not comply with this chapter;

as provided in IC 36-1-3-8.8(f)(2).

(c) Except as provided in:

(1) subsection (b);

(2) IC 36-1-3-8.8; and

(3) IC 8-1-42;

this chapter does not otherwise affect a unit's planning and zoning powers under this article with respect to the installation or siting of one (1) or more CSE systems in the unit.

(d) A permit authority for a unit described in section 1(b) of this chapter is responsible for enforcing compliance with:

(1) this chapter;

(2) the default standards set forth in IC 8-1-42, if applicable under IC 8-1-42-1(a); and

(3) in the case of a unit described in section 1(b)(2) of this chapter, any part of the unit's commercial solar regulation, to the extent such part:

(A) is not inconsistent with this chapter; and

(B) does not include standards that are more restrictive, directly or indirectly, than the default standards set forth in IC 8-1-42.

Sec. 9. (a) A project owner that seeks to install or locate one (1) or more CSE systems in a unit after June 30, 2021, shall file with the permit authority for the unit an application in the form and manner prescribed by the permit authority. An application filed under this section must include the following, provided with as much detail or specificity as the permit authority may reasonably require, and so far as ascertainable at the time of the application:

(1) A physical and technical description of all CSE systems proposed to be installed or located in the unit.

(2) A physical and technical description of all sites in the unit on which one (1) or more CSE systems are sought to be installed or located, including maps showing the location of the sites.

(3) The project owner's anticipated timeline and process for constructing and installing all CSE systems proposed in the application.

(4) Information regarding the sound:

(A) expressed as an hourly average sound level or by any other measure reasonably required by the permit authority; and

(B) as modeled at the outer wall of a dwelling located on an adjacent nonparticipating property (as defined in IC 8-1-42-5);

anticipated to be attributable to the operation of each CSE system included in the application.

(5) To the extent applicable, information regarding the planned use and modification of any highways, streets, and roads in the unit during the construction and installation of all CSE systems included in the application, including a process for:

(A) assessing road damage caused by activities involved in such construction and installation; and

(B) conducting road repairs at the project owner's expense.

(6) A copy of all emergency response plans applicable to the construction, installation, siting, modification, operation, and decommissioning of all CSE systems included in the application, including a process for sharing the plans with, and providing safety training to, all potential first responders.

(7) A decommissioning and site restoration plan for each CSE system included in the application, including both a timeline for decommissioning and a timeline for posting any required:

(A) surety bond;

(B) parent company guarantee;

(C) irrevocable letter of credit; or

(D) other equivalent means of security or financial assurance acceptable to the permit authority;

in an amount reflecting the estimated cost of decommissioning the CSE system.

(8) A copy of all representative notices to:

(A) the permit authority;

(B) residents of the unit;

(C) political subdivisions in which, or adjacent to where, the project will be located; and

(D) owners of property on which, or adjacent to where, the project will be located;

to be issued by the project owner with respect to the construction, installation, siting, modification, operation, and decommissioning of all CSE systems included in the application, including any preconstruction and postconstruction activities.

(9) A description of a dispute resolution process that:

(A) will be used by the project owner in resolving complaints under section 12 of this chapter; and

(B) complies with the requirements set forth in section 12(b) of this chapter.

(10) A copy of any vegetation plan required by the permit authority or the unit under IC 8-1-42-11.

(11) Any other information reasonably necessary to understand the construction, installation, siting, modification, operation, and decommissioning of all CSE systems included in the application.

(12) A statement, signed by an officer or another person authorized to bind the project owner, that affirms the accuracy of the information provided in the application.

(b) A project owner that submits an application under this section shall notify the permit authority in writing when all required documents and information described in subsection (a) have been submitted. An application under this section is considered filed as of the date of the project owner's notice under this subsection.

(c) Not later than thirty (30) days after the date of a project owner's notice under subsection (b), the permit authority shall determine whether the project owner's application is complete and shall notify the project owner in writing of the determination. Subject to subsection (f), if the permit authority determines that the application is complete, the permit authority shall proceed to make a determination as to whether to grant or deny the application under section 10 of this chapter. Subject to subsections (d) and (e), if the permit authority determines that the application is incomplete, the permit authority shall state the reasons for the determination in the permit authority's notice to the project owner under this subsection. A permit authority shall not make a determination of incompleteness based on grounds that are arbitrary, capricious, an abuse of discretion, or not in accordance with law. If the permit authority does not make a determination as to the completeness of the application within the time prescribed by this subsection, the application is considered complete.

(d) A project owner may file supplemental information to an application that a permit authority has determined to be incomplete under subsection (c). A project owner that intends to file supplemental information under this subsection shall notify the permit authority of the project owner's intention not later than fourteen (14) days after the date of the permit authority's notice of incompleteness under subsection (c). The project owner's notice of intention to file supplemental information under this subsection stays the start of the period set forth in section 10 of this chapter in which the permit authority must approve or deny the application until such time as the application is finally determined to be or is considered complete under this section. The project

owner shall provide any reasonably requested additional information identified in the permit authority's notice under subsection (c), to the extent ascertainable. A permit authority may not impose a limit on the number of times a project owner may supplement an application under this subsection.

(e) A project owner that submits a supplemented application under subsection (d) shall notify the permit authority in writing when all information and documents provided in connection with the supplemented application have been submitted. A thirty (30) day period for a completeness determination by the permit authority with respect to the supplemented application begins as of the date of the project owner's notice under this subsection, in accordance with the procedures set forth in subsection (c) for an initial application. If the permit authority does not make a determination as to the completeness of the supplemented application within the time prescribed by this subsection, the supplemented application is considered complete.

(f) After:

(1) an initial application is determined to be or is considered complete under subsection (c); or

(2) a supplemented application is determined to be or is considered complete under subsection (e);

a permit authority may nevertheless request additional information reasonably necessary to understand the construction, installation, siting, modification, operation, and decommissioning of any of the CSE systems included in a project owner's initial or supplemented application. A project owner shall provide additional information in response to all reasonable inquiries made by the permit authority, and shall respond in a timely, complete, and accurate manner.

Sec. 10. (a) Subject to subsection (b) and section 11 of this chapter, a permit authority shall issue a written decision to grant or deny an application or a supplemented application under this chapter not later than ninety (90) days after the application or supplemented application is finally determined to be or is considered complete. The permit authority's written decision must include all findings of fact upon which the decision is based. The permit authority shall provide a copy of the permit authority's decision to:

(1) the project owner; and

(2) the commission.

(b) A permit authority may not:

(1) unreasonably deny an application or a supplemented application under this chapter;

(2) condition approval of an application or a supplemented application upon a project owner's agreement to fulfill unreasonable requirements, including:

(A) property value guarantees;

(B) onerous road upgrades; or

(C) other requirements that are intended to prevent or impede (or would have the effect of preventing or impeding) the construction, installation, siting, modification, operation, or decommissioning of CSE systems in the unit; or

(3) after approving an application or a supplemented application, impose unreasonable requirements upon a project owner, including any of the requirements set forth in subdivision (2), at any point during the project owner's construction, installation, siting, modification, operation, or decommissioning of CSE systems in the unit.

Sec. 11. (a) Not later than thirty (30) days after the date of a permit authority's decision under section 10 of this chapter to approve or deny an application or a supplemented application:

(1) the project owner;

(2) an interested party described in section 9(a)(8)(C) through 9(a)(8)(D) of this chapter; or

(3) at least twenty-five (25) residents of the unit represented by an attorney licensed to practice law in Indiana;

may file with the commission a petition requesting a review of the permit authority's decision.

(b) Upon receiving a petition under subsection (a), the commission shall, in writing:

(1) provide notice of the filing of a petition to:

(A) the permit authority; and

(B) the project owner, if the project owner is not the petitioner; and

(2) request from:

(A) the permit authority;

(B) the petitioner;

(C) the project owner; and

(D) an interested party described in section 9(a)(8)(C) through 9(a)(8)(D) of this chapter that is a party to the petition;

any information required by the commission to make a

determination on the petition.

Any information requested by the commission under subdivision (2) shall be submitted to the commission not later than thirty (30) days after the date of the commission's written request.

(c) Not later than one hundred fifty (150) days after receiving all information requested under subsection (b)(2), the commission shall:

(1) after notice and an opportunity for hearing; and

(2) consistent with the policy set forth in IC 8-1-2-0.5;

issue an order with respect to the permit authority's decision under section 10 of this chapter.

(d) The commission's order under subsection (c) must include the commission's findings as to:

(1) the reasonableness of the permit authority's decision under section 10 of this chapter; and

(2) the parties' compliance with:

(A) this chapter;

(B) the default standards set forth in IC 8-1-42, if applicable under IC 8-1-42-1(a); and

(C) in the case of a unit described in section 1(b)(2) of this chapter, any part of the unit's commercial solar regulation, to the extent such part:

(i) is not inconsistent with this chapter; and

(ii) does not include standards that are more restrictive, directly or indirectly, than the default standards set forth in IC 8-1-42.

(e) In the commission's order under subsection (c), the commission may affirm, vacate, or modify the permit authority's decision as the public convenience and necessity may require.

(f) In the commission's order under subsection (c), the commission shall not consider:

(1) the reasonableness of the default standards set forth in IC 8-1-42; or

(2) relief regarding:

(A) asserted effects on health;

(B) asserted effects on aesthetics;

(C) asserted effects on property values; or

(D) any other requested relief distinct from the factors set forth in subsection (d).

(g) The order of the commission under subsection (c) is considered a final order, subject to appeal under IC 8-1-3.

Sec. 12. (a) At any time after a permit authority issues a decision

under section 10 of this chapter with respect to the construction, installation, siting, modification, operation, or decommissioning of one (1) or more CSE systems in the unit, an interested party described in section 9(a)(8)(C) through 9(a)(8)(D) of this chapter may file a complaint with the project owner alleging that the project owner has failed to comply with:

(1) this chapter;

(2) the default standards set forth in IC 8-1-42, if applicable under IC 8-1-42-1(a); or

(3) in a unit described in section 1(b)(2) of this chapter, any part of the unit's commercial solar regulation, to the extent such part:

(A) is not inconsistent with this chapter; and

(B) does not include standards that are more restrictive, directly or indirectly, than the default standards set forth in IC 8-1-42.

(b) An interested party that files a complaint under this section shall do so in accordance with the project owner's dispute resolution process, as set forth in the project owner's application under section 9(a)(9) of this chapter. The following apply with respect to a complaint filed under this section:

(1) The project owner shall:

(A) make a good faith effort to resolve the complaint; and

(B) conduct any investigation required to resolve the complaint at the project owner's expense.

(2) Not later than thirty (30) days after receiving the complaint, the project owner shall provide an initial response to the complainant.

(3) The project owner shall:

(A) make a good faith effort to resolve the complaint not later than forty-five (45) days after receiving the complaint; and

(B) notify the permit authority if the complaint is not resolved within the forty-five (45) day period set forth in clause (A).

(c) If a complaint under this section:

(1) is filed by a party described in section 11(a)(2) or 11(a)(3) of this chapter; and

(2) is not resolved within the forty-five (45) day period set forth in subsection (b)(3)(A);

the complainant may file with the commission a petition requesting a review of the complaint. A petition for review under this

subsection must be filed not later than sixty (60) days after the date of the filing of the complaint with the project owner under this section.

(d) Upon receiving a petition under subsection (c), the commission shall, in writing:

(1) notify the project owner of the filing of petition; and

(2) request from:

(A) the project owner;

(B) the petitioner; and

(C) the permit authority;

any information required by the commission to make a determination on the petition.

Any information requested by the commission under subdivision (2) shall be submitted to the commission not later than thirty (30) days after the date of the commission's written request.

(e) Not later than ninety (90) days after receiving all information requested under subsection (d)(2), the commission shall issue an order with respect to the complaint. The commission may issue an order under this subsection without a hearing. The commission's resolution of the complaint is limited to the scope of the complaint regarding the project owner's compliance with:

(1) this chapter;

(2) the default standards set forth in IC 8-1-42, if applicable under IC 8-1-42-1(a); or

(3) in the case of a unit described in section 1(b)(2) of this chapter, any part of the unit's commercial solar regulation, to the extent such part:

(A) is not inconsistent with this chapter; and

(B) does not include standards that are more restrictive, directly or indirectly, than the default standards set forth in IC 8-1-42;

as applicable.

(f) In the commission's order under subsection (e), the commission may order such relief as the public convenience and necessity may require.

(g) In the commission's order under subsection (e), the commission shall not consider:

(1) the reasonableness of the default standards set forth in IC 8-1-42; or

(2) relief regarding:

(A) asserted effects on health;

(B) asserted effects on aesthetics;

(C) asserted effects on property values; or

(D) any other requested relief distinct from the factors set forth in subsection (e).

(h) The commission's order under subsection (e) is considered a final order, subject to appeal under IC 8-1-3.

SECTION 8. **An emergency is declared for this act.**

COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities, Energy and Telecommunications, to which was referred House Bill 1381, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 10, delete "The standards set forth in sections 10 through 13" and insert "**Except as provided in subsection (d), the standards set forth in sections 10 through 14**".

Page 4, line 40, delete "not inconsistent with:" and insert "**not:**

(A) more restrictive than this chapter; or

(B) inconsistent with IC 36-7-5.3.".

Page 4, delete lines 41 through 42, begin a new paragraph and insert:

"**(d) A unit may:**

(1) adopt and enforce a wind power regulation that includes standards that:

(A) concern the construction, installation, siting, modification, operation, or decommissioning of wind power devices in the unit; and

(B) are less restrictive than the standards set forth in this chapter; or

(2) waive or make less restrictive any standard set forth in:

(A) this chapter; or

(B) a wind power regulation adopted by the unit in compliance with IC 36-1-3-8.7(f)(3);

with respect to any one (1) wind power device, subject to the consent of each owner of property on which, or adjacent to where, the particular wind power device will be located.".

Page 5, line 1, delete "(d)," and insert "**(f),**".

Page 5, line 9, after "road;" insert "**or**".

Page 5, delete lines 11 through 13.

Page 5, line 18, delete "(d)," and insert "**(f),**".

Page 5, line 24, delete "two (2)" and insert "**three (3)**".

Page 5, between lines 25 and 26, begin a new paragraph and insert:

"**(c) Except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device on property in a unit unless the distance, measured as a straight line, from the vertical centerline of the base of the wind power device to the nearest edge of the right-of-way for any utility transmission or distribution line is equal to a distance that is at least one and two-tenths (1.2) times the wind power device's blade tip height, as**

measured from the ground to the tip of the blade.

(d) Except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device on property in a unit unless the distance, measured as a straight line, from the vertical centerline of the base of the wind power device to the property line of any undeveloped land within the unit that is zoned or platted for residential use is equal to a distance that is at least two (2) times the wind power device's blade tip height, as measured from the ground to the tip of the blade.".

Page 5, line 26, delete "(c)" and insert "**(e)**".

Page 5, line 33, delete "(d)" and insert "**(f)**".

Page 5, line 33, delete "(a)" and insert "**(a)(2)**".

Page 6, line 5, after "any" insert "**dwelling on a**".

Page 6, line 12, after "affected" insert "**dwelling on a**".

Page 6, between lines 17 and 18, begin a new paragraph and insert:

"**Sec. 12. Except as otherwise allowed by IC 36-7-4-1109, a wind power device installed in a unit must not interfere with:**

(1) television signals;

(2) microwave signals;

(3) agricultural global positioning systems;

(4) military defense radar; or

(5) radio reception.".

Page 6, line 18, delete "12." and insert "**13.**".

Page 6, line 29, delete "13." and insert "**14.**".

Page 8, line 37, delete "that captures and" and insert "**that:**

(1) has a nameplate capacity of at least ten (10) megawatts; and

(2) captures and converts solar energy into electricity:

(A) for the purpose of selling the electricity at wholesale; and

(B) for use in locations other than where it is generated.".

Page 8, delete lines 38 through 40.

Page 11, line 1, delete "The" and insert "**Except as provided in subsection (d), the**".

Page 11, line 31, delete "not inconsistent with:" and insert "**not:**

(A) more restrictive than this chapter; or

(B) inconsistent with IC 36-7-5.4.".

Page 11, delete lines 32 through 33, begin a new paragraph and insert:

"**(d) A unit may:**

(1) adopt and enforce a commercial solar regulation that includes standards that:

(A) concern the construction, installation, siting, modification, operation, or decommissioning of CSE systems in the unit; and

(B) are less restrictive than the standards set forth in this chapter; or

(2) waive or make less restrictive any standard set forth in:

(A) this chapter; or

(B) a commercial solar regulation adopted by the unit in compliance with IC 36-1-3-8.8(f)(3);

with respect to any one (1) CSE system, subject to the consent of each owner of property on which, or adjacent to where, the particular CSE system will be located.".

Page 11, line 39, delete "centerline of" and insert "**nearest edge of the right-of-way for**".

Page 12, line 26, delete "twenty (20)" and insert "**twenty-five (25)**".

Page 13, line 6, delete "encouraged but is not required." and insert "**encouraged.**".

Page 13, line 13, delete "cables between banks" and insert "**all cables of up to thirty-four and one-half (34.5) kilovolts that are located between inverter locations and project substations shall be located and maintained underground. Other solar infrastructure, such as module-to-module collection cables, transmission lines, substations, junction boxes, and other typical aboveground infrastructure may be located and maintained above ground. Buried cables shall be**".

Page 13, delete lines 14 through 16.

Page 13, line 17, delete "shall be buried underground".

Page 13, run in lines 13 through 17.

Page 20, line 37, delete "that captures and converts solar" and insert "**that:**

(1) has a nameplate capacity of at least ten (10) megawatts; and

(2) captures and converts solar energy into electricity:

(A) for the purpose of selling the electricity at wholesale; and

(B) for use in locations other than where it is generated.".

Page 20, delete lines 38 through 40.

Page 21, line 23, delete "CSE system" and insert "**commercial solar**".

Page 26, delete lines 38 through 40, begin a new line double block indented and insert:

"**(C) political subdivisions in which, or adjacent to where,**

the project will be located; and

(D) owners of property on which, or adjacent to where, the project will be located;".

Page 29, line 30, delete "or".

Page 29, delete lines 31 through 32, begin a new line block indented and insert:

"**(2) an interested party described in section 9(a)(10)(C) through 9(a)(10)(D) of this chapter; or**

(3) at least twenty-five (25) residents of the unit represented by an attorney licensed to practice law in Indiana;".

Page 29, line 37, delete "notify the permit authority of the filing of a petition; and" and insert "**provide notice of the filing of a petition to:**

(A) the permit authority; and

(B) the project owner, if the project owner is not the petitioner; and".

Page 29, line 41, delete "owner, if the project owner is not the" and insert "**owner; and**".

Page 29, delete line 42.

Page 30, line 1, delete "any other" and insert "**an**".

Page 30, line 2, delete "9(a)(10)(B)" and insert "**9(a)(10)(C)**".

Page 30, line 9, delete "ninety (90)" and insert "**one hundred fifty (150)**".

Page 30, line 32, delete "may:" and insert "**may affirm, vacate, or modify the permit authority's decision as the public convenience and necessity may require.**

(f) In the commission's order under subsection (c), the commission shall not consider:

(1) the reasonableness of the default standards set forth in IC 8-1-41; or

(2) relief regarding:

(A) asserted effects on health;

(B) asserted effects on aesthetics;

(C) asserted effects on property values; or

(D) any other requested relief distinct from the factors set forth in subsection (d).".

Page 30, delete lines 33 through 36.

Page 30, line 37, delete "(f)" and insert "**(g)**".

Page 30, line 39, delete "before or".

Page 31, line 1, delete "9(a)(10)(B)" and insert "**9(a)(10)(C)**".

Page 31, line 33, delete "section is not resolved within the" and insert "**section:**

(1) is filed by a party described in section 11(a)(2) or 11(a)(3) of this chapter; and

(2) is not resolved within the forty-five (45) day period set forth in subsection (b)(3)(A);

the complainant may file with the commission a petition requesting a review of the complaint. A petition for review under this subsection must be filed not later than sixty (60) days after the date of the filing of the complaint with the project owner under this section.".

Page 31, delete lines 34 through 36.

Page 32, line 9, after "complaint." insert "**The commission may issue an order under this subsection without a hearing.**".

Page 32, line 10, delete "order must include the commission's findings as to" and insert "**resolution of the complaint is limited to the scope of the complaint regarding**".

Page 32, between lines 25 and 26, begin a new paragraph and insert:

"**(g) In the commission's order under subsection (e), the commission shall not consider:**

(1) the reasonableness of the default standards set forth in IC 8-1-41; or

(2) relief regarding:

(A) asserted effects on health;

(B) asserted effects on aesthetics;

(C) asserted effects on property values; or

(D) any other requested relief distinct from the factors set forth in subsection (e).".

Page 32, line 26, delete "(g)" and insert "**(h)**".

Page 33, line 21, delete "that captures and" and insert "**that:**

(1) has a nameplate capacity of at least ten (10) megawatts; and

(2) captures and converts solar energy into electricity:

(A) for the purpose of selling the electricity at wholesale; and

(B) for use in locations other than where it is generated.".

Page 33, delete lines 22 through 24.

Page 37, delete lines 1 through 3, begin a new line double block indented and insert:

"**(C) political subdivisions in which, or adjacent to where, the project will be located; and**

(D) owners of property on which, or adjacent to where, the project will be located;".

Page 39, line 35, delete "or".

Page 39, delete lines 36 through 37, begin a new line block indented and insert:

"**(2) an interested party described in section 9(a)(8)(C) through 9(a)(8)(D) of this chapter; or**

(3) at least twenty-five (25) residents of the unit represented by an attorney licensed to practice law in Indiana;".

Page 39, line 42, delete "notify the permit authority of the filing of a petition; and" and insert "**provide notice of the filing of a petition to:**

(A) the permit authority; and

(B) the project owner, if the project owner is not the petitioner; and".

Page 40, line 4, delete "owner, if the project owner is not the" and insert "**owner; and**".

Page 40, delete line 5.

Page 40, line 6, delete "any other" and insert "**an**".

Page 40, line 7, delete "9(a)(8)(B)" and insert "**9(a)(8)(C)**".

Page 40, line 14, delete "ninety (90)" and insert "**one hundred fifty (150)**".

Page 40, line 37, delete "may:" and insert "**may affirm, vacate, or modify the permit authority's decision as the public convenience and necessity may require.**

(f) In the commission's order under subsection (c), the commission shall not consider:

(1) the reasonableness of the default standards set forth in IC 8-1-42; or

(2) relief regarding:

(A) asserted effects on health;

(B) asserted effects on aesthetics;

(C) asserted effects on property values; or

(D) any other requested relief distinct from the factors set forth in subsection (d).".

Page 40, delete lines 38 through 41.

Page 40, line 42, delete "(f)" and insert "**(g)**".

Page 41, line 2, delete "before or".

Page 41, line 6, delete "9(a)(8)(B)" and insert "**9(a)(8)(C)**".

Page 41, line 38, delete "section is not resolved within the" and insert "**section:**

(1) is filed by a party described in section 11(a)(2) or 11(a)(3) of this chapter; and

(2) is not resolved within the forty-five (45) day period set forth in subsection (b)(3)(A);

the complainant may file with the commission a petition requesting a review of the complaint. A petition for review under this subsection must be filed not later than sixty (60) days after the date of the filing of the complaint with the project owner under this section.".

Page 41, delete lines 39 through 41.

Page 42, line 14, after "complaint." insert "**The commission may issue an order under this subsection without a hearing.**".

Page 42, line 15, delete "order must include the commission's findings as to" and insert "**resolution of the complaint is limited to the scope of the complaint regarding**".

Page 42, between lines 30 and 31, begin a new paragraph and insert:

"**(g) In the commission's order under subsection (e), the commission shall not consider:**

(1) the reasonableness of the default standards set forth in IC 8-1-42; or

(2) relief regarding:

(A) asserted effects on health;

(B) asserted effects on aesthetics;

(C) asserted effects on property values; or

(D) any other requested relief distinct from the factors set forth in subsection (e).".

Page 42, line 31, delete "(g)" and insert "**(h)**".

and when so amended that said bill do pass.

(Reference is to HB 1381 as introduced.)

SOLIDAY

Committee Vote: yeas 12, nays 1.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1381 be amended to read as follows:

Page 1, line 5, delete "This" and insert "**Except as provided in subsections (b) and (c), this**".

Page 1, line 6, delete "seeks" and insert "**files an initial application under IC 36-7-5.3-9**".

Page 2, between lines 5 and 6, begin a new paragraph and insert:

"**(c) This chapter does not:**

(1) apply to any proposal, request, or application that:

(A) concerns the construction, installation, siting, modification, operation, or decommissioning of one (1) or more wind power devices in a unit;

(B) is submitted by a project owner to a unit before July 1, 2021; and

(C) is pending as of July 1, 2021;

as set forth in IC 36-7-4-1109, regardless of whether the unit is a unit described in subsection (a);

(2) affect the:

(A) construction;

(B) installation;

(C) siting;

(D) modification;

(E) operation; or

(F) decommissioning;

of one (1) or more wind power devices in a unit that before July 1, 2021, has approved such construction, installation, siting, modification, operation, or decommissioning, regardless of whether the unit is a unit described in subsection (a); or

(3) affect any:

(A) economic development agreement; or

(B) other agreement;

entered before July 1, 2021, with respect to the construction, installation, siting, modification, operation, or decommissioning of one (1) or more wind power devices in one (1) or more units.".

Page 4, line 10, delete "(d)," and insert "**(d) and section 1(b) and 1(c) of this chapter,**".

Page 4, line 14, delete "chapter." and insert "**chapter after June 30, 2021.**".

Page 7, line 9, delete "not interfere with:" and insert "**be installed in a manner so as to minimize and mitigate impacts to:**".

Page 7, line 13, delete "or".

Page 7, line 14, delete "reception." and insert "**reception; or**".

Page 7, between lines 14 and 15, begin a new line block indented and insert:

"**(6) weather and doppler radar.**".

Page 9, line 15, delete "This" and insert "**Except as provided in subsections (b) and (c), this**".

Page 9, line 16, delete "seeks" and insert "**files an initial application under IC 36-7-5.4-9**".

Page 9, between lines 32 and 33, begin a new paragraph and insert:

"**(c) This chapter does not:**

(1) apply to any proposal, request, or application that:

(A) concerns the construction, installation, siting, modification, operation, or decommissioning of one (1) or more CSE systems in a unit;

(B) is submitted by a project owner to a unit before July 1, 2021; and

(C) is pending as of July 1, 2021;

as set forth in IC 36-7-4-1109, regardless of whether the unit is a unit described in subsection (a);

(2) affect the:

(A) construction;

(B) installation;

(C) siting;

(D) modification;

(E) operation; or

(F) decommissioning;

of one (1) or more CSE systems in a unit that before July 1, 2021, has approved such construction, installation, siting, modification, operation, or decommissioning, regardless of whether the unit is a unit described in subsection (a); or

(3) affect any:

(A) economic development agreement; or

(B) other agreement;

entered before July 1, 2021, with respect to the construction, installation, siting, modification, operation, or decommissioning of one (1) or more CSE systems in one (1) or more units.".

Page 9, line 41, after "lines," insert "**generation tie lines,**".

Page 12, line 1, delete "(d)," and insert "**(d) and section 1(b) and 1(c) of this chapter,**".

Page 12, line 5, delete "chapter." and insert "**chapter after June 30, 2021.**".

Page 13, line 42, delete "is" and insert "**solar panels are**".

Page 14, line 15, delete "shall:" and insert "**shall plant, establish, and maintain for the life of the CSE system perennial vegetated ground cover on the ground around and under solar panels, and in project site buffer areas. The use of pollinator seed mixes in the planting of ground cover required by this section is encouraged. A**

unit or permit authority may require a project owner to prepare for a project site a vegetation plan that:

(1) is compatible with each CSE system on the project site;

(2) provides for the planting of noninvasive species and the use of native or naturalized species if the planting and use of noninvasive and native or naturalized species are:

(A) appropriate to the region;

(B) economically feasible; and

(C) agreed to by the landowner;

in order to reduce storm water runoff and erosion at the site and to provide habitat for wildlife and insects; and

(3) provides for site preparation and maintenance practices designed to control invasive species and noxious weeds (as defined in IC 15-16-7-2).".

Page 14, delete lines 16 through 23.

Page 14, line 38, delete "may be located" and insert "**may:**

(1) be located above ground; or

(2) in the case of cables or lines of up to thirty-four and one-half (34.5) kilovolts, be buried underground at:

(A) a depth of at least forty-eight (48) inches below grade, so as to not interfere with drainage tile or ditch repairs; or

(B) another depth, as necessitated by conditions;

as determined in consultation with the landowner.".

Page 14, delete lines 39 through 40.

Page 15, line 5, delete "not interfere with:" and insert "**be installed in a manner so as to minimize and mitigate impacts to:**".

Page 15, line 9, delete "or".

Page 15, line 10, delete "reception." and insert "**reception; or**".

Page 15, between lines 10 and 11, begin a new line block indented and insert:

"**(6) weather and doppler radar.**".

Page 20, line 37, delete "After" and insert "**Except as provided in IC 8-1-41-1(c), after**".

Page 21, line 21, delete "Until" and insert "**Except as provided in IC 8-1-41-1(c), until**".

Page 22, line 20, after "lines," insert "**generation tie lines,**".

Page 22, line 34, delete "After" and insert "**Except as provided in IC 8-1-42-1(c), after**".

Page 23, line 19, delete "Until" and insert "**Except as provided in IC 8-1-42-1(c), until**".

Page 24, line 3, delete "This" and insert "**Except as provided in subsections (c) and (d), this**".

Page 24, between lines 31 and 32, begin a new paragraph and insert:

"**(d) This chapter does not:**

(1) apply to any proposal, request, or application that:

(A) concerns the construction, installation, siting, modification, operation, or decommissioning of one (1) or more wind power devices in a unit;

(B) is submitted by a project owner to a unit before July 1, 2021; and

(C) is pending as of July 1, 2021;

as set forth in IC 36-7-4-1109, regardless of whether the unit is a unit described in subsection (b);

(2) affect the:

(A) construction;

(B) installation;

(C) siting;

(D) modification;

(E) operation; or

(F) decommissioning;

of one (1) or more wind power devices in a unit that before July 1, 2021, has approved such construction, installation, siting, modification, operation, or decommissioning, regardless of whether the unit is a unit described in subsection (b); or

(3) affect any:

(A) economic development agreement; or

(B) other agreement;

entered before July 1, 2021, with respect to the construction, installation, siting, modification, operation, or decommissioning of one (1) or more wind power devices in one (1) or more units.".

Page 26, line 8, delete "The" and insert "**Except as provided in section 1(c) and 1(d) of this chapter, the**".

Page 26, line 11, delete "chapter." and insert "**chapter after June 30, 2021.**".

Page 34, line 41, delete "This" and insert "**Except as provided in subsections (c) and (d), this**".

Page 35, between lines 27 and 28, begin a new paragraph and insert:

"**(d) This chapter does not:**

(1) apply to any proposal, request, or application that:

(A) concerns the construction, installation, siting, modification, operation, or decommissioning of one (1) or more CSE systems in a unit;

(B) is submitted by a project owner to a unit before July 1, 2021; and

(C) is pending as of July 1, 2021;

as set forth in IC 36-7-4-1109, regardless of whether the unit is a unit described in subsection (b);

(2) affect the:

(A) construction;

(B) installation;

(C) siting;

(D) modification;

(E) operation; or

(F) decommissioning;

of one (1) or more CSE systems in a unit that before July 1, 2021, has approved such construction, installation, siting, modification, operation, or decommissioning, regardless of whether the unit is a unit described in subsection (b); or

(3) affect any:

(A) economic development agreement; or

(B) other agreement;

entered before July 1, 2021, with respect to the construction, installation, siting, modification, operation, or decommissioning of one (1) or more CSE systems in one (1) or more units.".

Page 35, line 36, after "lines," insert "**generation tie lines,**".

Page 37, line 11, delete "The" and insert "**Except as provided in section 1(c) and 1(d) of this chapter, the**".

Page 37, line 14, delete "chapter." and insert "**chapter after June 30, 2021.**".

Page 39, between lines 25 and 26, begin a new line block indented and insert:

"**(10) A copy of any vegetation plan required by the permit authority or the unit under IC 8-1-42-11.**".

Page 39, line 26, delete "(10)" and insert "**(11)**".

Page 39, line 30, delete "(11)" and insert "**(12)**".

(Reference is to HB 1381 as printed February 11, 2021.)

NEGELE

March 23, 2021

ENGROSSED
SENATE BILL No. 349

DIGEST OF SB 349 (Updated March 22, 2021 2:03 pm - DI 101)

Citations Affected: IC 5-1.2; IC 8-1; IC 8-1.5.

Synopsis: Financing, transfer, and improvement of utility assets. Requires that the priority ranking system used by the Indiana finance authority in making loans or other financial assistance from: (1) the drinking water revolving loan fund; or (2) the wastewater revolving loan fund; must prioritize loans securing longer term benefits over shorter term projects, all other factors being equal. Provides that not later than 60 days after the effective date of a change in the applicable federal or state income tax rate as a result of new tax legislation: (1) a water or wastewater utility shall petition the utility regulatory commission (IURC) for; and (2) the IURC shall approve; a water or wastewater utility surcharge that adjusts the water or wastewater utility's rates and charges to provide recovery for the change in the federal or state income tax rate. Provides that an approved surcharge shall operate on prospective basis. Provides that an approved surcharge

(Continued next page)

Effective: Upon passage.

Koch, Zay, Houchin, Doriot,
Randolph Lonnie M
(HOUSE SPONSORS — SOLIDAY, PRESSEL)

January 11, 2021, read first time and referred to Committee on Utilities.
February 18, 2021, amended, reported favorably — Do Pass.
February 22, 2021, read second time, amended, ordered engrossed.
February 23, 2021, engrossed. Read third time, passed. Yeas 39, nays 8.

HOUSE ACTION

March 4, 2021, read first time and referred to Committee on Utilities, Energy and Telecommunications.
March 23, 2021, amended, reported — Do Pass.

shall be calculated to reflect the difference between: (1) the amount of federal or state taxes that each existing rate or charge of the water or wastewater utility was designed to recover based on the tax rate in effect at the time the rate or charge was approved; and (2) the amount of federal or state taxes that would have been embedded in the given rate or charge had the new tax rate been in effect at the time of approval. Amends the applicability language of the statute governing the transfer, acquisition, and improvement of utilities by municipalities to specify that the statute applies to a municipally owned electric, water, wastewater, or combined water and wastewater utility.

March 23, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

ENGROSSED
SENATE BILL No. 349

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 5-1.2-10-14, AS ADDED BY P.L.189-2018, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) The authority shall use a priority ranking system in making loans or other financial assistance from each fund.

(b) The authority, in consultation with other state agencies the authority determines to be appropriate, shall develop the priority ranking system to achieve optimum water quality consistent with federal primary drinking water regulations and health protection objectives of the federal Safe Drinking Water Act, the water quality goals of the state, and the federal Clean Water Act.

(c) The ranking system shall prioritize loans securing longer term benefits over shorter term projects, all other factors being equal.

SECTION 2. IC 8-1-2-4.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4.1. (a) As used in this section, "water or**

wastewater utility" means a public utility (as defined in section 1(a) of this chapter) that provides water or wastewater service to the public.

(b) Not later than sixty (60) days after the effective date of a change in the applicable federal or state income tax rate as a result of new tax legislation:

(1) a water or wastewater utility shall petition the commission for; and

(2) the commission shall approve;

a water or wastewater utility surcharge that adjusts the water or wastewater utility's rates and charges to provide recovery for the change in the federal or state income tax rate, independent of any other matters related to the water or wastewater utility's revenue requirement. A surcharge approved under this section shall operate on prospective basis.

(c) A surcharge under this section:

(1) applies to each rate or charge in effect at the time of the petition; and

(2) shall be calculated to reflect the difference between:

(A) the amount of federal or state taxes that each existing rate or charge was designed to recover based on the tax rate in effect at the time the rate or charge was approved; and

(B) the amount of federal or state taxes that would have been embedded in the given rate or charge had the new tax rate resulting from the new legislation been in effect at the time of approval.

(d) Beginning on the effective date of the new tax legislation, and pending approval of a petition filed under this section, a water or wastewater utility is authorized to use regulatory accounting for all calculated differences described in subsection (c)(2).

(e) A petition filed under this section is not considered a petition for a general increase in rates and charges.

SECTION 3. IC 8-1.5-2-2, AS AMENDED BY P.L.68-2015, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) This chapter does not apply to utilities governed by:

(1) IC 8-1-13; or

(2) IC 8-1-2 except for a municipally owned **electric,** water, wastewater, or combined water and wastewater utility.

(b) The law relating to acquisition of electric utility property and to electricity suppliers' service area assignments shall be governed by

IC 8-1-2.3 and IC 8-1-2-95.1, and nothing in this chapter modifies or abridges those provisions.

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. 349, 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 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-1-30.3-6.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6.5. (a) This section applies:**

(1) to a utility company that provides both water and wastewater service; and

(2) in one (1) or more areas in which the utility company has acquired wastewater utility property in an acquisition that was eligible for approval, or was approved, under:

(A) this chapter; or

(B) IC 8-1.5-2-6.1.

(b) A utility company described in subsection (a) may:

(1) in a general rate case; or

(2) in a petition to the commission for approval of a plan for service enhancement improvements to the wastewater utility property under IC 8-1-31.7;

propose to allocate a portion of eligible costs of the utility company's wastewater utility property to the utility company's water customers.

(c) If a utility company makes a proposal under subsection (b) as part of a general rate case, the utility company shall submit a cost of service study as part of its case in chief. If a utility company makes a proposal under subsection (b) in a petition for approval of a plan for service enhancement improvements under IC 8-1-31.7, the utility company shall submit the following as part of the utility company's case in chief:

(1) The estimated adjustment rider that would result if there were no allocation of eligible costs to the utility company's water customers.

(2) A calculation of five percent (5%) of the utility company's authorized total water revenues for purposes of subsection (e)(1).

(d) The commission may approve a utility company's proposal under subsection (b) to the extent the commission finds that:

(1) because of reasonable and necessary improvements that are proposed for the wastewater utility property, the resulting

rates charged to wastewater customers would reach levels necessitating the provision of financial assistance to the customers in accordance with IC 8-1-2-0.5 and in a manner consistent with IC 8-1-2-4; and

(2) the total rates charged by the utility company for water service will not increase unreasonably as a result of the allocation.

(e) For purposes of subsection (d)(2):

(1) an increase in the total rates charged for water service is not unreasonable if the allocation under subsection (b) results in an increase in total authorized water revenues of five percent (5%) or less; and

(2) if the utility company's request is made in a petition filed by the utility company under IC 8-1-31.7, the commission shall use the utility company's most recently authorized total water revenue for purposes of making the determination under subdivision (1).

(f) If the commission approves a utility company's proposal under subsection (d):

(1) the utility company shall, in subsequent general rate cases, submit a cost of service study as part of the utility company's case in chief; and

(2) the commission shall:

(A) evaluate the allocation of eligible costs of the utility's wastewater utility property to the utility company's water customers in subsequent general rate cases; and

(B) order, to the extent the commission finds necessary, any changes to the utility's rates to ensure just and reasonable rates.

(g) In the commission's annual report under IC 8-1-1-14 the commission shall include a description of any activity under this section in the fiscal year ending June 30 of the year for which the report is due.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 349 as introduced.)

KOCH, Chairperson

Committee Vote: Yeas 9, Nays 1.

SENATE MOTION

Madam President: I move that Senate Bill 349 be amended to read as follows:

Page 1, line 3, delete "applies:" and insert "**applies to a utility company that provides both water and wastewater service in one (1) or more areas in which the utility company has acquired wastewater utility property in an acquisition that was eligible for approval, or was approved, under:**

(1) this chapter; or

(2) IC 8-1.5-2-6.1.".

Page 1, delete lines 4 through 10.

Page 2, line 14, delete "(e)(1)." and insert "**(f)(1).**".

Page 2, line 17, after "(1)" insert "**subject to subsection (e),**".

Page 2, between lines 25 and 26, begin a new paragraph and insert:

"**(e) The commission may consider available reasonable measures that could be taken to reduce the cost of the service enhancement improvements described in subsection (d)(1).**".

Page 2, line 26, delete "(e)" and insert "**(f)**".

Page 2, line 28, delete "if the allocation under subsection (b) results" and insert "**to the extent the allocation under subsection (b) plus all other allocations granted under this section since the utility company's most recent general rate case results**".

Page 2, line 36, delete "(f)" and insert "**(g)**".

Page 3, line 2, after "in" insert "**those**".

Page 3, line 6, delete "(g)" and insert "**(h)**".

Page 3, line 17, reset in roman "The law relating to acquisition of electric utility property and to".

Page 3, reset in roman line 18.

Page 3, line 19, reset in roman "IC 8-1-2.3 and IC 8-1-2-95.1, and".

Page 3, line 19, delete "Nothing" and insert "nothing".

Page 3, line 20, reset in roman "those provisions.".

Page 3, line 20, delete "IC 8-1-2.3 or IC 8-1-2-95.1 with respect".

Page 3, delete line 21.

(Reference is to SB 349 as printed February 19, 2021.)

KOCH

COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities, Energy and Telecommunications, to which was referred Senate Bill 349, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 5-1.2-10-14, AS ADDED BY P.L.189-2018, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) The authority shall use a priority ranking system in making loans or other financial assistance from each fund.

(b) The authority, in consultation with other state agencies the authority determines to be appropriate, shall develop the priority ranking system to achieve optimum water quality consistent with federal primary drinking water regulations and health protection objectives of the federal Safe Drinking Water Act, the water quality goals of the state, and the federal Clean Water Act.

(c) The ranking system shall prioritize loans securing longer term benefits over shorter term projects, all other factors being equal.

SECTION 2. IC 8-1-2-4.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4.1. (a) As used in this section, "water or wastewater utility" means a public utility (as defined in section 1(a) of this chapter) that provides water or wastewater service to the public.**

(b) Not later than sixty (60) days after the effective date of a change in the applicable federal or state income tax rate as a result of new tax legislation:

(1) a water or wastewater utility shall petition the commission for; and

(2) the commission shall approve;

a water or wastewater utility surcharge that adjusts the water or wastewater utility's rates and charges to provide recovery for the change in the federal or state income tax rate, independent of any other matters related to the water or wastewater utility's revenue requirement. A surcharge approved under this section shall operate on prospective basis.

(c) A surcharge under this section:

(1) applies to each rate or charge in effect at the time of the petition; and

(2) shall be calculated to reflect the difference between:

(A) the amount of federal or state taxes that each existing rate or charge was designed to recover based on the tax rate in effect at the time the rate or charge was approved; and

(B) the amount of federal or state taxes that would have been embedded in the given rate or charge had the new tax rate resulting from the new legislation been in effect at the time of approval.

(d) Beginning on the effective date of the new tax legislation, and pending approval of a petition filed under this section, a water or wastewater utility is authorized to use regulatory accounting for all calculated differences described in subsection (c)(2).

(e) A petition filed under this section is not considered a petition for a general increase in rates and charges.".

Delete page 2.

Page 3, delete lines 1 through 13.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 349 as reprinted February 23, 2021.)

SOLIDAY

Committee Vote: yeas 12, nays 1.

March 23, 2021

ENGROSSED
SENATE BILL No. 386

DIGEST OF SB 386 (Updated March 22, 2021 1:59 pm - DI 101)

Citations Affected: IC 8-1; noncode.

Synopsis: Cost securitization for electric utility assets. Provides that an electric utility that has certain qualified costs that: (1) are associated with an electric generation facility that will be retired from service within 24 months; and (2) are equal to at least 5% of the electric utility's total electric base rate; may file a petition with the utility regulatory commission (IURC) for a financing order authorizing the securitization of the qualified costs. Provides that an "electric utility", for purposes of the bill, is a public utility that: (1) owns or operates any electric generation facility for the provision of electric utility service to Indiana customers; (2) is under the jurisdiction of the IURC; and (3) has a total of not more than 200,000 retail electric customers. Provides that not later than 240 days after a petition for a financing order is filed, the IURC shall conduct a hearing and issue an order on the petition. Provides that in issuing a financing order for cost securitization, the IURC must find that: (1) the electric utility has proposed a reasonable mechanism to reflect a reduction in the electric utility's base rates and charges upon the assessment of securitization charges on customer

(Continued next page)

Effective: Upon passage.

Koch, Zay, Niezgodski, Doriot, Baldwin, Perfect

(HOUSE SPONSOR — SOLIDAY)

January 14, 2021, read first time and referred to Committee on Utilities.
February 8, 2021, amended, reported favorably — Do Pass.
February 11, 2021, read second time, amended, ordered engrossed.
February 12, 2021, engrossed.
February 15, 2021, re-engrossed. Read third time, passed. Yeas 39, nays 6.

HOUSE ACTION

March 2, 2021, read first time and referred to Committee on Utilities, Energy and Telecommunications.
March 23, 2021, amended, reported — Do Pass.

bills, so as to remove any qualified costs from the electric utility's base rates; and (2) the mechanism will provide timely rate savings for customers. Provides that in issuing a financing order for cost securitization, the IURC must find that the electric utility will make capital investments in Indiana in an amount equal to or exceeding the amount of the electric utility's qualified costs, over a period of not more than seven years immediately following the issuance date of the securitization bonds. Provides that if the IURC makes the required findings with respect to the petition, the IURC shall issue a financing order that authorizes: (1) the issuance of securitization bonds with a term of not more than 20 years; (2) the collection of securitization charges from the electric utility's customers; and (3) the encumbrance of the resulting securitization property with a lien and security interest. Provides that qualified costs authorized in a financing order shall be allocated to the electric utility's customer classes using the same cost allocation methodology approved by the IURC in the electric utility's most recent base rate case, subject to certain exceptions. Provides that if an electric utility does not cause securitization bonds to be issued not later than 90 days after the date of a final, non-appealable financing order, the electric utility shall file a statement of abandonment with the IURC stating the reasons for the abandonment. Provides that a financing order issued by the IURC under these provisions must include a mechanism: (1) requiring that securitization charges be reviewed and adjusted by the IURC at least annually; and (2) allowing an electric utility, on its own initiative, to apply to the IURC at any time during a calendar year for an adjustment of its securitization charges, as the electric utility determines to be necessary; to correct any over collections or under collections of securitization charges, and to ensure the recovery of amounts sufficient to timely make all payments of debt service in connection with the securitization bonds. Sets forth provisions concerning the encumbrance of securitization property with a lien and security interest, including provisions concerning: (1) the attachment and perfection; and (2) the priority; of a security interest in securitization property. Specifies that securitization bonds are not: (1) a debt or obligation of the state; or (2) a charge on the state's full faith and credit or on the state's taxing power. Pledges that the state will not: (1) take or permit any action that would impair the value of securitization property; or (2) reduce, alter, or impair related securitization charges; until certain obligations in connection with the related securitization bonds have been paid or performed in full. Requires the IURC to adopt rules to implement these provisions. Urges the legislative council to assign to the interim study committee on energy, utilities, and telecommunications (committee) the task of studying during the 2022 legislative interim: (1) the implementation; and (2) use by electric utilities; of the bill's provisions concerning the securitization of costs for retired electric utility assets. Provides that if the committee is assigned to study this topic, the committee: (1) shall consider available data and other information concerning participating electric utilities to which the IURC has issued a financing order under the bill's provisions; (2) may request this data and information from certain parties; and (3) shall, not later than November 1, 2022, submit to the legislative council a report setting forth the committee's findings and recommendations, including the committee's recommendations as to whether to allow, under the bill's provisions, additional electricity suppliers to securitize costs associated with retired electric utility assets.

March 23, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

ENGROSSED
SENATE BILL No. 386

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 8-1-40.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 40.5. Pilot Program for Cost Securitization for Retired Electric Utility Assets

Sec. 1. As used in this chapter, "assignee" means any individual, corporation, or other legally recognized entity to which an interest in securitization property is transferred.

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

Sec. 3. As used in this chapter, "electric utility" means a public utility (as defined in IC 8-1-2-1(a)) that meets the following criteria:

(1) The public utility owns or operates any electric generation facility for the provision of electric utility service to Indiana

customers.

(2) The public utility is under the jurisdiction of the commission for the approval of rates and charges.

(3) The public utility has a total of not more than two hundred thousand (200,000) retail electric customers at the time of the filing of a petition under section 10 of this chapter.

Sec. 4. As used in this chapter, "financing order" means an order issued by the commission under section 10 of this chapter.

Sec. 5. (a) As used in this chapter, "financing party" means a holder of securitization bonds.

(b) The term includes a trustee, a collateral agent, or any other person acting for the benefit of the holder.

Sec. 6. As used in this chapter, "qualified costs", with respect to an electric generation facility that will be retired from service by an electric utility not later than twenty-four (24) months after the filing of a petition by the electric utility under section 10 of this chapter, means the net original cost of the facility and any associated investments, as reflected on the electric utility's accounting system, and as adjusted for depreciation to be incurred until the facility is retired, together with:

(1) costs of:

(A) removal; and

(B) restoration, as applicable;

of the facility, any associated improvements, and facility grounds;

(2) the applicable portion of investment tax credits associated with the facility and any associated investments;

(3) costs of issuing, supporting, and servicing securitization bonds;

(4) taxes related to the recovery of securitization charges; and

(5) any costs of retiring and refunding the electric utility's existing debt and equity securities in connection with the issuance of securitization bonds.

Sec. 7. (a) As used in this chapter, "securitization bonds" means bonds, debentures, notes, certificates of participation, certificates of a beneficial interest, certificates of ownership, or other evidences of indebtedness that:

(1) are issued by an electric utility, its successors, or an assignee under a financing order;

(2) have a term of not more than twenty (20) years; and

(3) are secured by, or payable from, securitization property.

(b) If certificates of participation, certificates of a beneficial

interest, or certificates of ownership are issued under this chapter, a reference in this chapter to "principal", "interest", or "premium" refers to comparable terms with respect to those certificates.

Sec. 8. As used in this chapter, "securitization charges" means nonbypassable amounts that are:

(1) approved by the commission under a financing order to allow for the full recovery of qualified costs by an electric utility;

(2) collected from all retail customers and customer classes of the electric utility, including any customer that:

(A) is participating in:

(i) a net metering program under 170 IAC 4-4.2;

(ii) a distributed generation program under IC 8-1-40; or

(iii) a feed-in-tariff program;

offered by the electric utility; or

(B) supplies at least part of the customer's own electricity demand;

(3) charged for the use or availability of electric services; and

(4) collected by the electric utility, its successors, an assignee, or any other collection agent as provided for in the financing order.

Sec. 9. As used in this chapter, "securitization property" means the rights and interests of an electric utility, or its successor, under a financing order, as described in section 11 of this chapter.

Sec. 10. (a) An electric utility with qualified costs that are at least five percent (5%) of the electric utility's total jurisdictional electric rate base may file a petition with the commission for the authority to:

(1) issue securitization bonds;

(2) collect securitization charges; and

(3) encumber securitization property with a lien and security interest, as described in section 15 of this chapter.

An electric utility's qualified costs may be estimated at the time of filing a petition under this section.

(b) Not later than two hundred forty (240) days after the date a petition is filed by an electric utility under subsection (a), the commission shall conduct a hearing and issue an order on the petition. The commission shall approve the issuance of securitization bonds, the collection of securitization charges, and the encumbrance of securitization property with a lien and security interest under section 15 of this chapter if the commission:

(1) makes the findings set forth in subsection (d); and

(2) finds that the net present value of the total securitization charges to be collected under the commission's financing order under this section is less than the amount that would be recovered through traditional ratemaking if the electric utility's qualified costs were included in the electric utility's net original cost rate base and recovered over a period of not more than twenty (20) years.

Subject to subsection (c), qualified costs authorized in the commission's financing order under this section shall be allocated to the electric utility's customer classes using the same cost allocation methodology approved by the commission in the electric utility's most recent base rate proceeding.

(c) The commission may, in the financing order or in a separate docketed proceeding initiated separately from the electric utility's base rate proceedings, adjust allocations of qualified costs to avoid unreasonable rates to customers in customer classes that have experienced material changes in electric load or in the number of customers. As part of any base rate proceeding initiated during the period over which the securitization charges are to be collected, the commission shall, if the commission orders a change to cost allocation, adjust the allocation of qualified costs among the electric utility's customer classes to reflect the cost allocation approved in that base rate proceeding. An allocation adjustment made under this subsection:

(1) must ensure that the adjustment of the allocation of securitization charges:

(A) will preserve the rating of the securitization bonds; and

(B) will not impair or reduce the total securitization charges; and

(2) must be just and reasonable.

This subsection does not prohibit the commission from approving tariff language as part of a financing order that addresses the conditions upon which allocation adjustments are to be made, including the establishment of a process by which such allocation adjustments must be revised as necessary to preserve the rating of the securitization bonds.

(d) In issuing a financing order under this section, the commission must make the following findings and determinations:

(1) A determination of the amount of the electric utility's qualified costs.

(2) A finding that the proceeds of the authorized securitization

bonds will be used solely for the purposes of reimbursing the electric utility for qualified costs, that the electric utility's books and records will reflect a reduction in rate base associated with the receipt of proceeds from the securitization bonds, and that such reduction will be reflected in retail rates when the securitization bonds are issued.

(3) A finding that the expected structuring and the expected pricing of the securitization bonds will result in reasonable terms consistent with market conditions and the terms of the financing order.

(4) A finding that the electric utility has demonstrated that it will make, subject to approval by the commission, capital investments in Indiana in an amount equal to or exceeding the amount of the electric utility's qualified costs, over a period of not more than seven (7) years immediately following the planned issuance date of the securitization bonds. Costs to purchase energy or capacity through a power purchase agreement do not constitute a capital investment for purposes of this subdivision. The commission may not impose any other requirement related to the use or distribution of the proceeds of the securitization bonds. However:

(A) the commission shall encourage the electric utility to use the proceeds from the securitization bonds for the construction and ownership of clean energy resources described in IC 8-1-37-4(a)(1) through IC 8-1-37-4(a)(15); and

(B) notwithstanding the issuance of the financing order, the proposed capital investments remain subject to commission approval to the extent otherwise required by this article.

(5) A finding that:

(A) the electric utility has proposed a reasonable mechanism to reflect a reduction in the electric utility's base rates and charges upon the assessment of securitization charges on customer bills, so as to remove any qualified costs from the electric utility's base rates; and

(B) the mechanism will provide timely rate savings for customers.

(6) A determination that the proposal is just and reasonable.

(e) A financing order issued under this section must set forth:

(1) the amount of qualified costs to be recovered by the

electric utility; and

(2) the period over which securitization charges are to be collected, which may not exceed twenty (20) years.

(f) Securitization bonds are effective in accordance with their terms if both:

(1) the financing order under which the securitization bonds are issued; and

(2) the securitization charges authorized in that order;

are irrevocable and not subject to reduction, impairment, or adjustment by further action of the commission under IC 8-1-2-72 or any other statute or rule, except as provided in subsection (h) and section 12(c) of this chapter.

(g) Securitization bonds issued under a financing order of the commission under this section are binding in accordance with their terms, even if the financing order is later vacated, modified, or otherwise held to be invalid in whole or in part.

(h) Upon the request of an electric utility, the commission may adopt a financing order under this section authorizing the retirement and refunding of previously authorized securitization bonds if the commission finds that future securitization charges required to service new securitization bonds, including transaction costs, will be less than the future securitization charges required to service the securitization bonds to be refunded. Upon the retirement of the refunded securitization bonds, the commission shall adjust the related securitization charges accordingly.

(i) IC 8-1-2-76 through IC 8-1-2-83 do not apply to:

(1) the issuance of securitization bonds under this section; or

(2) the encumbrance of securitization property with a lien and security interest under section 15 of this chapter.

(j) A financing order is subject to appeal under IC 8-1-3.

(k) After the issuance of a financing order in response to the petition of an electric utility, the electric utility retains sole discretion regarding whether to assign, sell, or otherwise transfer securitization property or to cause securitization bonds to be issued, including the right to defer or postpone assignment, sale, transfer, or issuance. If the electric utility abandons issuance of securitization bonds under the financing order or does not cause securitization bonds to be issued not later than ninety (90) days after the date of a final, non-appealable financing order, the electric utility shall file with the commission a statement of abandonment containing the reasons for the abandonment. However, the commission may, upon petition by the electric utility,

extend the ninety (90) day period set forth in this subsection for good cause shown.

(l) The commission may not refuse to allow an electric utility to recover qualified costs in a manner that is otherwise permissible, or refuse or condition authorization or approval of:

(1) the issuance and sale of securities by an electric utility; or

(2) the assumption by an electric utility of liabilities or obligations;

solely because of the potential availability of securitization bond financing.

Sec. 11. (a) Securitization property consists of the rights and interests of an electric utility, or its successor, under a financing order, including the following:

(1) The right to impose, collect, and receive securitization charges, as authorized under the financing order, in an amount necessary to provide for the full recovery of all qualified costs.

(2) The right under the financing order to obtain periodic adjustments of securitization charges under section 12(c) of this chapter.

(3) All revenue, collections, payments, money, and proceeds arising out of the rights and interests described in this section.

(b) Securitization property constitutes a present property right for purposes of contracts concerning the sale or pledge of property, even if the imposition and collection of securitization charges depend on further acts of the electric utility or others that have not yet occurred. The securitization property continues to exist, and the financing order under which the securitization property arises remains in effect, for the same period as the pledge of the state under section 16(b) of this chapter.

(c) All revenues and collections resulting from securitization charges constitute proceeds of only the securitization property arising from the financing order.

Sec. 12. (a) The interest of an assignee in securitization property and in securitization charges is not subject to setoff, counterclaim, surcharge, or defense by the electric utility or any other person, or in connection with the bankruptcy of the electric utility or any other person. A financing order remains in effect and unabated notwithstanding the bankruptcy of the electric utility, its successors, or assignees.

(b) A financing order must include terms ensuring that the securitization charges authorized under the order are

nonbypassable charges that are payable by all customers and customer classes of the electric utility, including any customer that:

(1) is participating in:

(A) a net metering program under 170 IAC 4-4.2;

(B) a distributed generation program under IC 8-1-40; or

(C) a feed-in-tariff program;

offered by the electric utility; or

(2) supplies at least part of the customer's own electricity demand.

(c) A financing order must include a mechanism requiring that securitization charges be reviewed and adjusted by the commission at least annually. Each year, not earlier than forty-five (45) days before the anniversary date of the issuance of securitization bonds under the financing order, and not later than the anniversary date of the issuance of the securitization bonds, the electric utility shall submit to the commission an application to do the following:

(1) Correct any over collections or under collections of securitization charges during the twelve (12) months preceding the date of the filing of the electric utility's application under this section. For the first annual review under this section, the electric utility shall correct for any over collections or under collections of securitization charges during those months:

(A) that precede the date of the filing of the electric utility's application under this section; and

(B) in which securitization charges were collected.

(2) Ensure, through proposed securitization charges, as set forth by the electric utility in the application, the expected recovery of amounts sufficient to timely provide all payments of debt service and other required amounts and charges in connection with the securitization bonds.

The commission shall review the application, including the electric utility's proposed securitization charges. The review of the filing must be limited to determining whether the application contains any mathematical or clerical errors in the application of the formula-based mechanism relating to the appropriate amount of any overcollection or undercollection of the securitization charges and the amount of an adjustment. If the proposed securitization charges have been appropriately calculated, the commission shall issue an order approving the application and the proposed securitization charges not later than forty-five (45) days after the filing of the application. The commission shall approve any

revisions to securitization charges under this subsection without conducting an evidentiary hearing. At any time during a calendar year, an electric utility may, on its own initiative, file an application with the commission under this section as the electric utility may determine to be necessary to meet the requirements set forth in subdivisions (1) and (2). The commission shall review any application filed by an electric utility outside of the annual review schedule, including the electric utility's proposed securitization charges, and if the proposed securitization charges have been appropriately calculated issue an order approving the application and the proposed securitization charges not later than forty-five (45) days after the filing of the application.

(d) A financing order must provide that:

(1) any difference between:

(A) qualified costs approved by the commission in the financing order; and

(B) the electric utility's qualified costs at the time an electric generation facility is retired;

shall be accounted for by the electric utility as a regulatory asset or liability;

(2) an electric utility that ultimately incurs costs of removal and restoration greater than the amount estimated at the time an electric generation facility is retired may seek recovery of such incremental costs through rates; and

(3) the commission may approve recovery of incremental costs under subdivision (2) if the commission finds the costs just and reasonable.

Sec. 13. (a) The commission, in exercising the commission's powers and carrying out the commission's duties with regard to any matter within the commission's authority under this chapter, may not:

(1) for purposes of ratemaking or approval of financing, consider:

(A) securitization bonds issued under a financing order to be the debt of the electric utility other than for federal income tax purposes;

(B) securitization charges paid under a financing order to be the revenue of the electric utility for any purpose; or

(C) securitization costs or financing costs specified in a financing order to be the cost of the electric utility; or

(2) determine any action taken by an electric utility that is consistent with the financing order to be unreasonable. This

subdivision does not require the commission to approve a proposed capital investment under section 10(d)(4)(B) of this chapter.

(b) This chapter does not prohibit an electric utility from requesting, or the commission from approving, alternative methods for recovery of the costs of an electric generation facility upon retirement.

(c) An electric utility that has received an order from the commission approving the recording of a regulatory asset to recover the net book value of an electric generation facility upon the planned retirement of the electric generation facility may not file a petition under section 10 of this chapter with respect to the generation facility.

Sec. 14. (a) If an agreement by an electric utility or an assignee to transfer securitization property expressly states that the transfer is a sale or is otherwise an absolute transfer:

(1) the resulting transaction:

(A) is a true sale; and

(B) is not a secured transaction; and

(2) title, both legal and equitable, passes to the person to which the securitization property is transferred.

(b) A transaction resulting from an agreement described in subsection (a) is a true sale regardless of:

(1) whether the purchaser has any recourse against the seller; or

(2) any other term of the agreement, including the following:

(A) The seller's retention of an equity interest in the securitization property.

(B) The fact that the electric utility acts as a collector of securitization charges relating to the securitization property.

(C) The treatment of the transfer as a financing for tax, financial reporting, or other purposes.

Sec. 15. (a) A valid and enforceable lien and security interest in securitization property may be created only by a financing order and the execution and delivery of a security agreement with a financing entity in connection with the issuance of securitization bonds.

(b) The lien and security interest attach automatically from the time that value is received for the securitization bonds, and:

(1) constitute a continuously perfected lien and security interest in the securitization property and all proceeds of the

property, whether or not accrued;

(2) have priority in the order of their filing, if a financing statement is filed with respect to the security interest in accordance with IC 26-1; and

(3) take precedence over any subsequent:

(A) judicial lien; or

(B) other creditor's lien.

In addition to the rights and remedies provided by this chapter, all rights and remedies provided by IC 26-1 with respect to a security interest apply with respect to securitization property.

(c) Transfer of an interest in securitization property to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, if a financing statement is filed with respect to the transfer in accordance with IC 26-1.

(d) The priority of a lien and security interest under this section is not impaired by the following:

(1) A later modification of the financing order under which the securitization property arises.

(2) The commingling of other funds with funds arising from the collection of securitization charges. Any other security interest that may apply to funds arising from the collection of securitization charges terminates when the funds are transferred to a segregated account for the benefit of the assignee or a financing entity. If securitization property has been transferred to an assignee, any proceeds from that property shall be held in trust for the assignee.

(e) If the electric utility or any of its successors default in paying revenues arising with respect to the securitization property, the commission or a court having jurisdiction shall, upon application of the financing party, and without limiting any other remedies available to the financing party, order the:

(1) sequestration; and

(2) payment to the financing party;

of revenues arising with respect to the securitization property. An order under this subsection remains in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor or any pledger or transferor of the securitization property.

(f) Securitization property constitutes an account as defined in IC 26-1-9.1-102.

(g) For purposes of this chapter and IC 26-1, securitization property is considered to exist regardless of whether:

(1) the revenue or proceeds with respect to the property have accrued; or

(2) the value of the property right is dependent on the customers of an electric utility receiving service.

(h) Changes in a financing order or in customers' securitization charges do not affect the validity, perfection, or priority of the security interest in the related securitization property.

(i) The description of securitization property in a security agreement, in another agreement, or in a financing statement is sufficient if it refers to this chapter and the financing order under which the securitization property arises.

(j) This chapter controls in any conflict between this chapter and any other Indiana law regarding:

(1) the attachment and perfection;

(2) the effect of perfection; and

(3) the priority;

of any security interest in securitization property.

Sec. 16. (a) Securitization bonds are not:

(1) a debt or obligation of the state; or

(2) a charge on the state's full faith and credit or on the state's taxing power.

(b) The state pledges, for the benefit and protection of financing parties and electric utilities under this chapter, that it will not:

(1) take or permit any action that would impair the value of securitization property; or

(2) reduce or alter, except as authorized by section 12(c) of this chapter, or impair securitization charges to be imposed, collected, and remitted to financing parties under this chapter;

until the principal, interest, and premium, and other charges incurred, or contracts to be performed, in connection with the related securitization bonds have been paid or performed in full. Any party issuing securitization bonds is authorized to include the pledge set forth in this subsection in any documentation relating to those bonds.

Sec. 17. (a) The acquisition, ownership, and disposition of any direct interest in any securitization bond shall not be taken into account in determining whether a person is subject to any income tax, franchise tax, business activities tax, intangible property tax, excise tax, stamp tax, or any other tax imposed by the state or by any political subdivision of the state.

(b) Any successor to an electric utility, whether that person

becomes a successor as a result of any:

(1) bankruptcy, reorganization, or other insolvency proceeding; or

(2) merger, acquisition, sale, or transfer;

shall, by operation of law, perform and satisfy all obligations of the electric utility under this chapter in the same manner and to the same extent as the electric utility would have been obligated to perform and satisfy before the event described in subdivision (1) or (2), including collecting and paying revenues arising with respect to the securitization property to persons entitled to those revenues.

(c) An assignee or financing party is not considered to be an electric utility solely by virtue of any transactions described in this chapter.

Sec. 18. The provisions of this chapter are severable in the manner provided in IC 1-1-1-8(b).

Sec. 19. The commission shall adopt rules under IC 4-22-2 to implement this chapter. In adopting the rules required by this section, the commission may adopt emergency rules in the manner provided by IC 4-22-2-37.1. Notwithstanding IC 4-22-2-37.1(g), an emergency rule adopted by the commission under this 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.

SECTION 2. [EFFECTIVE UPON PASSAGE] **(a) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.**

(b) As used in this SECTION, "committee" refers to the interim study committee on energy, utilities, and telecommunications established by IC 2-5-1.3-4(8).

(c) As used in this SECTION, "electric utility" has the meaning set forth in IC 8-1-40.5-3, as added by this act.

(d) As used in this SECTION, "participating electric utility" refers to an electric utility that:

(1) has been issued a financing order by the commission under IC 8-1-40.5-10, as added by this act; and

(2) has issued securitization bonds and collected securitization charges;

under the authority granted by the financing order.

(e) The legislative council is urged to assign to the committee during the 2022 legislative interim the task of studying the:

(1) implementation; and

(2) use by electric utilities;

of IC 8-1-40.5, as added by this act, concerning the securitization of costs for retired electric utility assets.

(f) If the committee is assigned to study the topic described in subsection (e), the committee shall consider available data and other information concerning the following:

(1) The number of electric utilities that have submitted a petition to the commission under IC 8-1-40.5-10, as added by this act, for the authority to:

(A) issue securitization bonds;

(B) collect securitization charges; and

(C) encumber securitization property with a lien and security interest.

(2) The number of financing orders that the commission has issued under IC 8-1-40.5-10, as added by this act.

(3) The total amount of securitization bonds issued under IC 8-1-40.5, as added by this act, by each participating electric utility.

(4) The total amount of securitization charges collected under IC 8-1-40.5, as added by this act, by each participating electric utility.

(5) The total savings realized by each participating electric utility by securitizing its qualified costs (as defined in IC 8-1-40.5-6, as added by this act), compared to the amount of those costs that would have been recovered by the electric utility through traditional ratemaking over the same period of years.

(6) The purposes for which each participating electric utility has used any savings described in subdivision (5).

(g) If the committee is assigned to study the topic described in subsection (e), the committee may request information on the topic, including the data and information described in subsection (f), from:

(1) the commission;

(2) electric utilities, including participating electric utilities;

(3) customers of participating electric utilities; and

(4) any experts, stakeholders, or other interested parties, as the committee determines appropriate.

(h) If the committee is assigned to study the topic described in subsection (e), the committee shall, not later than November 1, 2022, submit to the legislative council a report setting forth the committee's findings and recommendations on the topic described in subsection (e), including the committee's recommendations as to

whether the IC 8-1-40.5, as added by this act, should be amended to allow other electricity suppliers, in addition to electric utilities described in IC 8-1-40.5-3, as added by this act, to securitize costs associated with retired electric utility assets. A report submitted to the legislative council under this subsection must be in an electronic format under IC 5-14-6.

(i) This SECTION expires January 1, 2023.

SECTION 3. **An emergency is declared for this act.**

COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred Senate Bill No. 386, 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 1, line 12, delete "that:" and insert "**that meets the following criteria:**".

Page 1, line 13, after "(1)" insert "**The public utility**".

Page 1, line 13, delete "in Indiana".

Page 1, line 15, delete ";" and insert "**.**".

Page 2, line 1, after "(2)" insert "**The public utility**".

Page 2, line 2, delete "charges; and" and insert "**charges.**".

Page 2, line 3, after "(3)" insert "**The public utility**".

Page 2, line 5, after "chapter." insert "**This subdivision expires July 1, 2023.**".

Page 2, line 16, delete "facility," and insert "**facility and any associated investments,**".

Page 2, delete line 20, begin a new line block indented and insert:

"**(1) costs of:**

(A) removal; and

(B) restoration, as applicable;

of the facility, any associated improvements, and facility grounds;".

Page 2, line 22, delete "facility;" and insert "**facility and any associated investments;**".

Page 3, line 8, delete "or".

Page 3, line 9, after "(ii)" insert "**a distributed generation program under IC 8-1-40; or**

(iii)".

Page 3, line 12, delete "demand through distributed generation;" and insert "**demand;**".

Page 3, line 21, after "total" insert "**jurisdictional**".

Page 3, line 26, delete "14" and insert "**15**".

Page 3, line 29, delete "one hundred twenty (120)" and insert "**two hundred forty (240)**".

Page 3, line 35, delete "14" and insert "**15**".

Page 4, delete lines 24 through 31, begin a new line block indented and insert:

"**(4) A finding that the electric utility has demonstrated that it intends to make capital investments in an amount equal to or exceeding the amount of the electric utility's qualified costs,**

over a period of not more than seven (7) years immediately following the planned issuance date of the securitization bonds. The commission may not impose any other requirement related to the use or distribution of the proceeds of the securitization bonds. However:

(A) the commission shall encourage the electric utility to use the proceeds from the securitization bonds for the construction and ownership of clean energy resources described in IC 8-1-37-4(a)(1) through IC 8-1-37-4(a)(15); and

(B) notwithstanding the issuance of the financing order, the proposed capital investments remain subject to commission approval to the extent otherwise required by this article.

(5) A determination that the proposal is just and reasonable.".

Page 5, line 2, after "in" insert "**subsection (g) and**".

Page 5, line 2, delete "12(c)." and insert "**12(c) of this chapter.**".

Page 5, line 19, delete "14" and insert "**15**".

Page 5, delete lines 20 through 29, begin a new paragraph and insert:

"**(i) A financing order is subject to appeal under IC 8-1-3. However, notwithstanding IC 8-1-3, an appeal of a financing order under this chapter must be taken directly to the supreme court. The general assembly finds that the provisions of this subsection are necessary due to:**

(1) the great public importance of the implementation of this chapter; and

(2) the need for timely implementation of the process for issuance of securitization bonds under this chapter;

resulting in an emergency need for speedy resolution of an appeal taken under this subsection.

(j) After the issuance of a financing order in response to the petition of an electric utility, the electric utility retains sole discretion regarding whether to assign, sell, or otherwise transfer securitization property or to cause securitization bonds to be issued, including the right to defer or postpone assignment, sale, transfer, or issuance. The electric utility may abandon issuance of securitization bonds under the financing order by filing with the commission a statement of abandonment containing the reasons for the abandonment.

(k) The commission may not refuse to allow an electric utility to recover qualified costs in a manner that is otherwise permissible,

or refuse or condition authorization or approval of:

(1) the issuance and sale of securities by an electric utility; or

(2) the assumption by an electric utility of liabilities or obligations;

solely because of the potential availability of securitization bond financing.".

Page 6, line 7, delete "15(b)" and insert "**16(b)**".

Page 6, line 23, delete "or".

Page 6, line 24, after "(B)" insert "**a distributed generation program under IC 8-1-40; or**

(C)".

Page 6, line 27, delete "demand through distributed generation." and insert "**demand.**".

Page 7, line 9, delete "charges, and if" and insert "**charges. The review of the filing must be limited to determining whether the application contains any mathematical or clerical errors in the application of the formula-based mechanism relating to the appropriate amount of any overcollection or undercollection of the securitization charges and the amount of an adjustment. If**".

Page 7, line 10, delete "calculated" and insert "**calculated, the commission shall**".

Page 7, between lines 25 and 26, begin a new paragraph and insert:

"**(d) A financing order must provide that:**

(1) any difference between:

(A) qualified costs approved by the commission in the financing order; and

(B) the electric utility's qualified costs at the time an electric generation facility is retired;

shall be accounted for by the electric utility as a regulatory asset or liability;

(2) an electric utility that ultimately incurs costs of removal and restoration greater than the amount estimated at the time an electric generation facility is retired may seek recovery of such incremental costs through rates; and

(3) the commission may approve recovery of incremental costs under subdivision (2) if the commission finds the costs just and reasonable.

Sec. 13. (a) The commission, in exercising the commission's powers and carrying out the commission's duties with regard to any matter within the commission's authority under this chapter, may not:

(1) for purposes of ratemaking or approval of financing,

consider:

(A) securitization bonds issued under a financing order to be the debt of the electric utility other than for federal income tax purposes;

(B) securitization charges paid under a financing order to be the revenue of the electric utility for any purpose; or

(C) securitization costs or financing costs specified in a financing order to be the cost of the electric utility; or

(2) determine any action taken by an electric utility that is consistent with the financing order to be unreasonable.

(b) This chapter does not prohibit an electric utility from requesting, or the commission from approving, alternative methods for recovery of the costs of an electric generation facility upon retirement.

(c) An electric utility that has received an order from the commission approving the recording of a regulatory asset to recover the net book value of an electric generation facility upon the planned retirement of the electric generation facility may not file a petition under section 10 of this chapter with respect to the generation facility.".

Page 7, line 26, delete "13." and insert "**14.**".

Page 8, line 4, delete "14." and insert "**15.**".

Page 9, line 29, delete "15." and insert "**16.**".

Page 10, line 5, delete "16." and insert "**17.**".

Page 10, line 25, delete "17." and insert "**18.**".

Page 10, line 27, delete "18." and insert "**19.**".

Page 12, line 3, after "(2)" insert "**electric utilities, including**".

and when so amended that said bill do pass.

(Reference is to SB 386 as introduced.)

KOCH, Chairperson

Committee Vote: Yeas 9, Nays 2.

SENATE MOTION

Madam President: I move that Senate Bill 386 be amended to read as follows:

Page 3, line 11, delete "payable by" and insert "**collected from**".

Page 3, line 11, after "all" insert "**retail**".

Page 4, line 2, delete "(c);" and insert "**(d);**".

Page 4, line 10, delete "Qualified" and insert "**Subject to subsection (c), qualified**".

Page 4, line 14, delete "However, the commission may", begin a new paragraph and insert:

"**(c) The commission may, in the financing order or in a separate docketed proceeding initiated separately from the electric utility's base rate proceedings,**".

Page 4, line 17, after "customers." insert "**As part of any base rate proceeding initiated during the period over which the securitization charges are to be collected, the commission shall, if the commission orders a change to cost allocation, adjust the allocation of qualified costs among the electric utility's customer classes to reflect the cost allocation approved in that base rate proceeding. An allocation adjustment made under this subsection:**

(1) must ensure that the adjustment of the allocation of securitization charges:

(A) will preserve the rating of the securitization bonds; and

(B) will not impair or reduce the total securitization charges; and

(2) must be just and reasonable.

This subsection does not prohibit the commission from approving tariff language as part of a financing order that addresses the conditions upon which allocation adjustments are to be made, including the establishment of a process by which such allocation adjustments must be revised as necessary to preserve the rating of the securitization bonds.".

Page 4, line 18, delete "(c)" and insert "**(d)**".

Page 5, between lines 6 and 7, begin a new line block indented and insert:

"**(5) A finding that the electric utility's proposal reflects the cost reductions identified in subsection (b)(2) in retail customer rates.**".

Page 5, line 7, delete "(5)" and insert "**(6)**".

PAGE 5, line 8, delete "(d)" and insert "**(e)**".

Page 5, line 13, delete "(e)" and insert "**(f)**".

Page 5, line 20, delete "(g)" and insert "**(h)**".

Page 5, line 22, delete "(f)" and insert "**(g)**".

Page 5, line 26, delete "(g)" and insert "**(h)**".

Page 5, line 35, delete "(h)" and insert "**(i)**".

Page 5, line 39, delete "(i)" and insert "**(j)**".

Page 5, delete lines 40 through 42.

Page 6, delete lines 1 through 7.

Page 6, line 8, delete "(j)" and insert "**(k)**".

Page 6, line 17, delete "(k)" and insert "**(l)**".

Page 6, line 40, delete "depends" and insert "**depend**".

Page 9, line 14, after "unreasonable." insert "**This subdivision does not require the commission to approve a proposed capital investment under section 10(d)(4)(B) of this chapter.**".

(Reference is to SB 386 as printed February 9, 2021.)

KOCH

COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities, Energy and Telecommunications, to which was referred Senate Bill 386, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 1, delete "IC 8-1-41" and insert "IC 8-1-40.5".

Page 1, line 4, delete "41." and insert "**40.5.**".

Page 2, line 6, delete "This".

Page 2, delete line 7.

Page 2, line 41, delete "fifteen (15)" and insert "**twenty (20)**".

Page 4, line 9, delete "fifteen (15)" and insert "**twenty (20)**".

Page 5, line 3, delete "and".

Page 5, line 6, delete "bonds." and insert "**bonds, and that such reduction will be reflected in retail rates when the securitization bonds are issued.**".

Page 5, line 12, delete "intends to make capital investments" and insert "**will make, subject to approval by the commission, capital investments in Indiana**".

Page 5, line 16, after "bonds." insert "**Costs to purchase energy or capacity through a power purchase agreement do not constitute a capital investment for purposes of this subdivision.**".

Page 5, line 28, delete "that the electric utility's proposal reflects the" and insert "**that:**

(A) the electric utility has proposed a reasonable mechanism to reflect a reduction in the electric utility's base rates and charges upon the assessment of securitization charges on customer bills, so as to remove any qualified costs from the

electric utility's base rates; and

(B) the mechanism will provide timely rate savings for customers.".

Page 5, delete lines 29 through 30.

Page 5, line 36, delete "fifteen (15)" and insert "**twenty (20)**".

Page 5, line 38, delete "terms. Both:" and insert "**terms if both:**".

Page 6, line 27, delete "The electric utility may abandon" and insert "**If the electric utility abandons**".

Page 6, line 28, delete "by filing" and insert "**or does not cause securitization bonds to be issued not later than ninety (90) days after the date of a final, non-appealable financing order, the electric utility shall file**".

Page 6, line 30, after "abandonment." insert "**However, the commission may, upon petition by the electric utility, extend the ninety (90) day period set forth in this subsection for good cause shown.**".

Page 10, line 33, delete "subsequent judicial lien or other" and insert "**subsequent:**

(A) judicial lien; or

(B) other creditor's lien.".

Page 10, delete line 34.

Page 13, line 16, delete "IC 8-1-41-3," and insert "**IC 8-1-40.5-3,**".

Page 13, line 20, delete "IC 8-1-41-10," and insert "**IC 8-1-40.5-10,**".

Page 13, line 28, delete "IC 8-1-41," and insert "**IC 8-1-40.5,**".

Page 13, line 34, delete "commission under IC 8-1-41-10," and insert "**the commission under IC 8-1-40.5-10,**".

Page 13, line 41, delete "IC 8-1-41-10," and insert "**IC 8-1-40.5-10,**".

Page 14, line 1, delete "IC 8-1-41," and insert "**IC 8-1-40.5,**".

Page 14, line 4, delete "IC 8-1-41," and insert "**IC 8-1-40.5,**".

Page 14, line 8, delete "IC 8-1-41-6," and insert "**IC 8-1-40.5-6,**".

Page 14, line 28, delete "IC 8-1-41," and insert "**IC 8-1-40.5,**".

Page 14, line 30, delete "IC 8-1-41-3," and insert "**IC 8-1-40.5-3,**".

and when so amended that said bill do pass.

(Reference is to SB 386 Digest Correction as reprinted February 12, 2021.)

SOLIDAY

Committee Vote: yeas 13, nays 0.

February 15, 2021

HOUSE BILL No. 1164

DIGEST OF HB 1164 (Updated February 15, 2021 2:09 pm - DI 101)

Citations Affected: IC 5-22; IC 8-1; IC 8-20; IC 22-5; IC 36-1.

Synopsis: Various utility matters. Exempts a contract for the lease of state property under which no state expenditures are required from provisions: (1) requiring certain disclosures and certifications by a prospective state contractor regarding violations of Indiana telephone solicitation and automated calling statutes; (2) regarding cancellation of public purchasing contracts due to lack of funds; (3) regarding state contractor use of the E-Verify program; and (4) prohibiting state contractor employment of unauthorized aliens. Provides that: (1) rural electric cooperatives; and (2) municipalities providing electric service; shall permit attachments by communications service providers to poles owned or controlled by the cooperatives or municipalities. Provides that any pole attachment rental fee imposed by a rural electric cooperative or a municipality: (1) must be calculated on an annual, per-pole basis; and (2) is considered to provide reasonable compensation and to be nondiscriminatory, just, and reasonable if the fee: (A) is agreed upon by the parties; or (B) is not greater than the fee that would apply if the fee were calculated in accordance with the formula applied by the Federal Communications Commission (FCC). Amends the procedures under which a public utility applies to a municipality or county executive for authorization to occupy and perform work in a public right-of-way controlled by the municipality or county executive, and provides for restrictions on the requirements

(Continued next page)

Effective: July 1, 2021.

Manning

January 7, 2021, read first time and referred to Committee on Utilities, Energy and Telecommunications.
February 15, 2021, amended, reported — Do Pass.

a municipality or county executive may impose for purposes of granting such authority. Provides that the Indiana utility regulatory commission (IURC) may not require a communications service provider to: (1) file a tariff; or (2) report to the IURC any information that is: (A) available to the public on the communications service provider's Internet web site; (B) filed with the FCC; or (C) otherwise available to the public; except as required by the IURC to respond to consumer complaints or information requests from the general assembly. Amends the factors that must exist for a permit authority to prohibit the placement of a new utility pole or wireless support structure for purposes of construction, placement, or use of a small cell facility or structure in an area that is: (1) within a right-of-way; and (2) designated strictly for underground or buried utilities. Provides that a permit authority may not impose: (1) a restriction on maximum height of a wireless support structure, subject to certain federal regulations and state laws; or (2) a requirement regarding minimum separation distances between wireless support structures. Provides that a tariff filed with the IURC by a communications service provider is effective upon filing. Provides that a video service provider is not required to provide the IURC with information describing the provider's programming, including the provider's channel lineups or channel guides. Exempts a political subdivision's disposal of property by sale, exchange, transfer, or lease of the property to a public utility or a communications service provider from certain provisions regarding disposal of property by a political subdivision. Provides an exemption to the public works law for certain work done by the employees of a conservancy district established for the purpose of water or sewage treatment.

February 15, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1164

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 5-22-3-7, AS ADDED BY P.L.222-2005, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 7. (a) This section applies to every use of funds by a governmental body. However, this section does not apply to:

(1) a contract in which one (1) party is a political subdivision, including a body corporate and politic created by or authorized by a political subdivision; **or**

(2) a contract for the lease of property owned by the state under which no state expenditures are required.

(b) A prospective contractor may not contract with a governmental body unless the prospective contractor includes the following certifications as terms of the contract with the governmental body:

(1) The contractor and any principals of the contractor certify that:

(A) the contractor, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC 24-4.7;

(ii) IC 24-5-12; or
(iii) IC 24-5-14;
in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
(B) the contractor will not violate the terms of IC 24-4.7 for the duration of the contract, even if IC 24-4.7 is preempted by federal law.

(2) The contractor and any principals of the contractor certify that an affiliate or principal of the contractor and any agent acting on behalf of the contractor or on behalf of an affiliate or principal of the contractor:
(A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
(B) will not violate the terms of IC 24-4.7 for the duration of the contract, even if IC 24-4.7 is preempted by federal law.

(c) If a certification in subsection (b) concerning compliance with IC 24-4.7, IC 24-5-12, or IC 24-5-14 is materially false or if the contractor, an affiliate or a principal of the contractor, or an agent acting on behalf of the contractor or an affiliate or a principal of the contractor violates the terms of IC 24-4.7, IC 24-5-12, or IC 24-5-14, even if IC 24-4.7 is preempted by federal law, the attorney general may bring a civil action in the circuit or superior court of Marion County to:
(1) void a contract under this section, subject to subsection (d); and
(2) obtain other proper relief.

However, a contractor is not liable under this section if the contractor or an affiliate of the contractor acquires another business entity that violated the terms of IC 24-4.7, IC 24-5-12, or IC 24-5-14 within the preceding three hundred sixty-five (365) days before the date of the acquisition if the acquired business entity ceases violating IC 24-4.7, IC 24-5-12, or IC 24-5-14, even if IC 24-4.7 is preempted by federal law, as of the date of the acquisition.

(d) If:
(1) the attorney general notifies the contractor, department of administration, and budget agency in writing of the intention of the attorney general to void a contract; and
(2) the attorney general does not receive a written objection from the department of administration or budget agency, sent to both the attorney general and the contractor, within thirty (30) days of the notice;

a contract between a contractor and a governmental body is voidable at the election of the attorney general in a civil action brought under subsection (c). If an objection of the department of administration or the budget agency is submitted under subdivision (2), the contract that is the subject of the objection is not voidable at the election of the attorney general unless the objection is rescinded or withdrawn by the department of administration or the budget agency.

(e) If the attorney general establishes in a civil action that a contractor is knowingly, intentionally, or recklessly liable under subsection (c), the contractor is prohibited from entering into a contract with a governmental body for three hundred sixty-five (365) days after the date on which the contractor exhausts appellate remedies.

(f) In addition to any remedy obtained in a civil action brought under this section, the attorney general may obtain the following:

(1) All money the contractor obtained through each telephone call made in violation of the terms of IC 24-4.7, IC 24-5-12, or IC 24-5-14, even if IC 24-4.7 is preempted by federal law.

(2) The attorney general's reasonable expenses incurred in:

(A) investigation; and

(B) maintaining the civil action.

SECTION 2. IC 5-22-17-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 5. **(a) This section does not apply to a contract for the lease of property owned by the state under which no state expenditures are required.**

~~(a)~~ **(b)** When the fiscal body of the governmental body makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of a contract, the contract is considered canceled.

~~(b)~~ **(c)** A determination by the fiscal body that funds are not appropriated or otherwise available to support continuation of performance is final and conclusive.

SECTION 3. IC 8-1-2-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 5.5. (a) Every:**

(1) corporation organized under IC 8-1-13;

(2) 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; and

(3) municipality providing electric service;

shall permit attachments by communications service providers to poles owned or controlled by the corporation or municipality.

(b) A rate, term, or condition imposed by a corporation or

municipality described in subsection (a) for access to poles owned or controlled by the corporation or municipality:

(1) must be nondiscriminatory, just, and reasonable; and

(2) must not favor the pole owner or an affiliate of the pole owner.

(c) Any pole attachment rental fee imposed by a corporation or municipality described in subsection (a) for access to poles owned or controlled by the corporation or municipality:

(1) must be calculated on an annual, per-pole basis; and

(2) is considered to provide reasonable compensation and to be nondiscriminatory, just, and reasonable if the fee:

(A) is agreed upon by the parties; or

(B) is not greater than the fee that would apply if the pole attachment rental fee were calculated in accordance with the formula set forth in 47 U.S.C. 224(d), as applied by the Federal Communications Commission.

(d) If a communications service provider and a corporation or municipality described in subsection (a) fail to agree upon:

(1) access to poles owned or controlled by the corporation or municipality; or

(2) the rates, terms, and conditions for attachment to poles owned or controlled by the corporation or municipality;

the communications service provider may apply to the commission for a determination of the matter.

(e) Upon receiving a request for a determination under subsection (d), the commission shall:

(1) proceed to determine whether:

(A) the denial of access to one (1) or more poles was unlawful; or

(B) the rates, terms, and conditions complained of were not just and reasonable;

as applicable; and

(2) issue an order:

(A) directing that access to the poles at issue be permitted; and

(B) prescribing for such access such rates, terms, conditions, and compensations that:

(i) are reasonable; and

(ii) comply with subsections (b) and (c).

(f) In any case in which the commission issues an order under subsection (e):

(1) the access ordered by the commission under subsection

(e)(2)(A) shall be permitted by the corporation or municipality; and

(2) the rates, terms, conditions, and compensations prescribed by the commission under subsection (e)(2)(B) shall be observed, followed, and paid by the parties, as applicable;

subject to recourse to the courts upon the complaint of any interested party as provided in this chapter and in IC 8-1-3. Any order of the commission under subsection (e) may be revised by the commission from time to time upon application of any interested party or upon the commission's own motion.

SECTION 4. IC 8-1-2-101 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 101. (a) Every municipal council or county executive shall have power:

(1) To determine by ordinance the provisions, not inconsistent with **subsection (c), other provisions of** this chapter, or IC 8-1-11.1, upon which a public utility or department of public utilities created under IC 8-1-11.1 occupies the areas along, under, upon, and across the streets, highways, or other public property within such municipality or county. ~~and~~ Such **an** ordinance or other determination of ~~such~~ **a** municipality or county executive shall be in force and prima facie reasonable **if the ordinance or determination complies with subsection (c).** Upon complaint made by such public utility **or** department of public utilities, or by any qualified complainant, as provided in section 54 of this chapter, the commission shall set a hearing, as provided in sections 54 to 67 of this chapter, and if it shall find such ordinance or other determination to be unreasonable, such ordinance or other determination shall be void.

(2) To require of any public utility, by ordinance, such additions and extensions to its physical plant within said municipality or county as shall be reasonable and necessary in the interest of the public, and to **reasonably** designate the location and nature of all such additions and extensions, the time within which they must be completed, and all conditions under which they must be constructed, subject to review by the commission as provided in subdivision (1).

(3) To provide for a penalty for noncompliance with the provisions of any ordinance or resolution adopted pursuant to the provisions of this section.

(4) The power and authority granted in this section shall exist and be vested in said municipalities or county executives, anything in this chapter to the contrary notwithstanding.

Provided, however, ~~whenever,~~ ~~after~~ **that if a public utility or department of public utilities makes** a request by petition in writing ~~of any public utility, department of public utilities,~~ **and completes any required permit application, and** the city or other political subdivision or other body having jurisdiction of the matter ~~shall refuse or fail,~~ **refuses or fails,** for a period of ~~thirty (30)~~ **twenty-one (21)** days **or twenty-eight (28) days, as applicable under subsection (c)(5),** to give or grant to such public utility or department of public utilities permission and authority to construct, maintain, and operate any ~~additional construction,~~ equipment or facility **within the public right-of-way as is** reasonably necessary for the transaction of the business of such public utility or department of public utilities and for the public convenience or interest, then such public utility or department of public utilities may file a petition with said commission for such right and permission. ~~which~~ **The** petition ~~shall~~ **must** state, with particularity, the ~~construction,~~ equipment or other facility desired to be constructed and operated, ~~and~~ show a reasonable public necessity therefor, and ~~also~~ **state** the failure or refusal of such city, political subdivision, or other body to give or grant such right or permission. ~~and~~ **Upon receipt of the petition,** the commission shall ~~thereupon~~ give notice of the pendency of such petition, together with a copy thereof, to such city or other political subdivision or body, and of the time and place of hearing of the matter set forth in such petition. ~~and such~~ **The** commission shall have power to hear and determine such matters and to give or grant such right and permission and to impose such conditions in relation thereto as the necessity of such public utility or department of public utilities and the public convenience and interest may reasonably require, **subject to subsection (c).** Provided, further, that when the **construction, installation, maintenance, repair,** relocation, **or operation** by a public utility or department of public utilities of any of its construction, equipment, or ~~facility located~~ **facilities is requested to be performed** within the corporate limits of two (2) or more adjoining ~~cities~~ **political subdivisions and** is reasonably necessary for the public convenience or interest, and any or either of said ~~cities fail or refuse~~ **political subdivisions fails or refuses** to give or grant to such public utility or department of public utilities permission and authority to ~~relocate such construction, equipment, or facility,~~ **perform the requested work, the public utility, the department of public utilities, or** any ~~municipality which~~ **political subdivision that** has given or granted to such public utility or department of public utilities permission and authority to ~~relocate such construction, equipment, and facility, the public utility or department~~

~~of public utilities~~ **perform the work** may file a petition with said commission for such right and permission. ~~to which petition the city or cities failing or~~ **The political subdivision failing or** refusing to give or grant the ~~same~~ **right and permission** shall be made a respondent **to the petition,** and such public utility or department of public utilities, if not the petitioner, shall also be made a respondent. ~~and said~~ **The** commission shall have power to hear and determine such matter, ~~and~~ to give or grant such right and permission, and to impose such conditions in relation thereto as the public convenience and interest may reasonably require, ~~and~~ **subject to subsection (c).** If said commission shall give or grant such right and permission, no further public authority **is required for the public utility or department of public utilities** to ~~make such relocation~~ **perform the work** as authorized or to go on any street, alley, road, or highway in said ~~city or cities~~ **political subdivision** necessary to be used therefor. ~~shall be required of said public utility or department of public utilities.~~ All orders entered before June 30, 1931, by the commission in cases within the provisions of this section are hereby declared legal and valid.

(b) Subject to the commission's authority under subsection (a)(1) with respect to an ~~unreasonable~~ ordinance or other determination **that is unreasonable or does not comply with subsection (c),** the municipality or county executive may operate and maintain the streets, highways, and other public property in the municipality or county for the safety of the traveling public, and a municipality or county executive may manage the public right-of-way or require by ordinance fair and reasonable compensation on a competitively neutral and nondiscriminatory basis for occupation of the public right-of-way, ~~on a nondiscriminatory basis,~~ including occupation by the municipality or county executive, if the compensation required is publicly disclosed by the municipality or county executive. Fair and reasonable compensation may not exceed the municipality's or county executive's direct, actual, **documented,** and reasonably incurred costs of managing the public right-of-way **that are directly** caused by the public utility's or department of public utilities' occupancy. The management costs, which the municipality or county executive shall assign individually to the public utility or department of public utilities creating the management costs, must be limited to the direct, actual, **documented,** and reasonably incurred costs a municipality or county incurs in managing the public right-of-way. As used in this section, the term "management costs" includes but is not limited to the costs to the municipality or county of the following:

(1) ~~Registering occupants.~~ **Reviewing written requests or**

applications for occupation.

(2) Verifying ~~public right-of-way~~ **that the requested** occupation **is within the public right-of-way.**

(3) Updating municipal or county records to reflect the occupation.

~~(3)~~ **(4)** Inspecting job sites and restoration projects.

~~(4)~~ **(5)** ~~Restoring~~ **Performing restoration** work inadequately performed after providing notice and the opportunity to correct the work.

~~(5)~~ **(6)** Administering a reasonable restoration ordinance that ensures that a public utility or department of public utilities adequately restores the right-of-way as near as is reasonably possible to the right-of-way's original condition.

~~(6)~~ **(7)** Management costs associated with the implementation of an ordinance adopted under this section.

However, as used in this section, direct, actual, **documented,** and reasonably incurred management costs do not include rents, franchise fees, or any other payment by a public utility or department of public utilities for occupation of the public right-of-way, **or any costs incurred by the municipality or county that are not directly associated with the public utility's or department of public utilities' occupation of the public right-of-way.** As used in this section, the term "public right-of-way" does not include the airwaves above the streets, highways, or other public property within the municipality or county as those airwaves are used for cellular or other nonwire telecommunications or broadcast service.

(c) A municipality or county executive may not unreasonably delay a public utility's or department of public utilities' access to or use of a street, highway, or other public property within the municipality or county. However, subsection (a)(1) and this subsection do not limit a municipality or county executive's right to advance notification of and review of a public utility's or department of public utilities' occupation of a street, highway, or other public property within the municipality or county to ensure and protect the safety of the public, **subject to the following:**

(1) A municipality or county executive may require a utility that is not subject to the commission's jurisdiction to carry liability insurance covering the work to be performed or the occupation of the public right-of-way in an amount not greater than the cost of returning the public right-of-way to a condition equivalent to the public right-of-way's condition before the performance of the work. However, the

municipality or county executive may not require such a utility to provide proof of liability insurance more than once in a calendar year, or in a calendar year in which the utility does not apply for a permit from the municipality or county executive under this section.

(2) A municipality or county executive may not require a public utility or department of public utilities to submit more than one (1) drawing or site plan showing:

(A) the location of the facilities or equipment to be installed, maintained, or operated;

(B) the size of and materials comprising the facilities or equipment to be installed;

(C) the length of the installation; and

(D) the number of road cuts, road bores, or bridge or other structural attachments required for the installation, maintenance, or operation of the equipment or facilities.

(3) A municipality or county executive may not require a public utility or department of public utilities to submit more than one (1) notice, request, or application packet for the work to be performed or the occupation of the public right-of-way. If the notice, request, or application requires the review of more than one (1) department, board, or other entity within the municipality or county, the municipality or county executive must coordinate the review among the departments, boards, or other entities before issuing a determination.

(4) A municipality or county executive may charge only one (1) fee for compensation under subsection (b), regardless of the number of departments, boards, or other entities that must review the request or application.

(5) A municipality or county executive must issue a determination regarding an application or request for occupation of the right-of-way not later than:

(A) twenty-one (21) days after the date of the application or request; or

(B) twenty-eight (28) days after the date of the application or request if the municipality or county executive provides written notice to the applicant of the extension and the reason for the extension.

The municipality's or county executive's determination under this subdivision must include confirmation that the requested occupation is within the public right-of-way of the

municipality or county. If a municipality or county executive fails to issue a determination regarding an application or request for occupation of the right-of-way in the time required under clause (A) or clause (B), as applicable, the application or request is considered approved. However, if the applicant requires additional time to cure defects in the applicant's application or request, or if the review of the application or request by the municipality or county executive is otherwise delayed by the applicant, the time period described in clause (A) or clause (B) within which the municipality or county executive must issue a determination is extended for a corresponding amount of time.

(6) Municipalities and county executives shall, to the extent practicable, establish notice, request, and application procedures and forms that are uniform, reasonable, and brief. To the extent such procedures and forms are prescribed by law or regulation, or by an entity formed to represent the interests of Indiana municipalities or counties, municipalities and counties shall use such procedures and forms as prescribed. A municipality or county executive must electronically receive and process notices, requests, and applications for public utilities' and departments of public utilities' occupation of the right-of-way.

(7) Municipalities and county executives shall, to the extent practicable, work collaboratively with utilities to ensure that the public right-of-way is returned to its original condition within a reasonable amount of time.

(d) This section may not be construed to entitle a municipality or county executive the right to advance notification and review of work by a public utility or department of public utilities:

(1) that is performed on existing equipment or facilities located within the public right-of-way; and

(2) that:

(A) does not require ground disturbance activities;

(B) does not affect traffic flow; or

(C) is required due to a bona fide emergency that threatens injury to persons, loss of property, or loss or disturbance of utility service.

For purposes of this subsection, "ground disturbance activities" means any work, operation, or activity that results in a disturbance of the earth, including excavating, digging, trenching, cultivating, drilling, tunneling, boring, backfilling, blasting, topsoil stripping,

clearing, or grading. The term does not include maintenance or other minor work, such as checking or inspecting handholes, manholes, or other facilities.

~~(d)~~ **(e)** Nothing in this section may be construed to:

(1) affect franchise agreements between a cable company and a municipality or county; **or**

(2) modify the service area rights of a utility under any other law.

SECTION 5. IC 8-1-2.6-4, AS AMENDED BY P.L.53-2014, SECTION 76, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 4. (a) As used in this section, "committee" means the interim study committee on energy, utilities, and telecommunications established by IC 2-5-1.3-4.

(b) ~~Subject to subsection (c),~~ The commission shall, by July 1 of each year, report to the committee in an electronic format under IC 5-14-6 on the following:

(1) The effects of competition and technological change on universal service and on pricing of all telecommunications services offered in Indiana.

(2) The status of competition and technological change in the provision of video service (as defined in IC 8-1-34-14) available to Indiana customers, as including the following information:

(A) The number of multichannel video programming distributors offering video service to Indiana customers.

(B) The technologies used to provide video service to Indiana customers.

(C) The advertised programming and pricing options offered by video service providers to Indiana customers.

(3) Best practices concerning vertical location of underground facilities for purposes of IC 8-1-26. A report under this subdivision must address the viability and economic feasibility of technologies used to vertically locate underground facilities.

(c) In addition to reviewing the commission report prepared under subsection (b), the committee may also issue a report and recommendations to the legislative council by November 1 of each year that is based on a review of the following issues:

(1) The effects of competition and technological change in the telecommunications industry and impact of competition on available subsidies used to maintain universal service.

(2) The status of modernization of the publicly available telecommunications infrastructure in Indiana and the incentives required to further enhance this infrastructure.

(3) The effects on economic development and educational opportunities of the modernization described in subdivision (2).

(4) The current methods of regulating providers, at both the federal and state levels, and the effectiveness of the methods.

(5) The economic and social effectiveness of current telecommunications service pricing.

(6) All other telecommunications issues the committee deems appropriate.

The report and recommendations issued under this subsection to the legislative council must be in an electronic format under IC 5-14-6.

(d) The committee shall, with the approval of the commission, retain the independent consultants the committee considers appropriate to assist the committee in the review and study. The expenses for the consultants shall be paid by the commission.

~~(e) If the commission requests a communications service provider (as defined in section 13(b) of this chapter) to provide information for the commission to use in preparing a report under this section, the request must be limited to public information provided to the Federal Communications Commission and may be required to be provided only in the form in which it is provided to the Federal Communications Commission. However, the commission may request any public information from a communications service provider (as defined in section 13(b) of this chapter) upon a request from the committee's chairperson that specifically enumerates the public information sought.~~

SECTION 6. IC 8-1-2.6-13, AS AMENDED BY P.L.73-2020, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 13. (a) As used in this section, "communications service" has the meaning set forth in IC 8-1-32.5-3.

(b) As used in this section, "communications service provider" means a person or an entity that offers communications service to customers in Indiana, without regard to the technology or medium used by the person or entity to provide the communications service. The term includes a provider of commercial mobile service (as defined in 47 U.S.C. 332).

(c) Notwithstanding sections 1.2, 1.4, and 1.5 of this chapter, the commission may do the following, except as otherwise provided in this subsection:

(1) Enforce the terms of a settlement agreement approved by the commission before July 29, 2004. The commission's authority under this subdivision continues for the duration of the settlement agreement.

(2) Fulfill the commission's duties under IC 8-1-2.8 concerning

the provision of dual party relay services to deaf, hard of hearing, and speech impaired persons in Indiana.

(3) Fulfill the commission's responsibilities under IC 8-1-29 to adopt and enforce rules to ensure that a customer of a telecommunications provider is not:

(A) switched to another telecommunications provider unless the customer authorizes the switch; or

(B) billed for services by a telecommunications provider that without the customer's authorization added the services to the customer's service order.

(4) Fulfill the commission's obligations under:

(A) the federal Telecommunications Act of 1996 (47 U.S.C. 151 et seq.); and

(B) IC 20-20-16;

concerning universal service and access to telecommunications service and equipment, including the designation of eligible telecommunications carriers under 47 U.S.C. 214.

(5) Perform any of the functions described in section 1.5(b) of this chapter.

(6) Perform the commission's responsibilities under IC 8-1-32.5 to:

(A) issue; and

(B) maintain records of;

certificates of territorial authority for communications service providers offering communications service to customers in Indiana.

(7) Perform the commission's responsibilities under IC 8-1-34 concerning the issuance of certificates of franchise authority to multichannel video programming distributors offering video service to Indiana customers.

(8) **Subject to subsection (f),** require a communications service provider, other than a provider of commercial mobile service (as defined in 47 U.S.C. 332), to report to the commission on an annual basis, or more frequently at the option of the provider, ~~and subject to section 4(c) of this chapter,~~ any information needed by the commission to prepare the commission's report to the interim study committee on energy, utilities, and telecommunications under section 4 of this chapter.

(9) Perform the commission's duties under IC 8-1-32.4 with respect to telecommunications providers of last resort, to the extent of the authority delegated to the commission under federal law to perform those duties.

(10) Collect and maintain from a communications service provider the following information:

(A) The address of the provider's Internet web site.

(B) All toll free telephone numbers and other customer service telephone numbers maintained by the provider for receiving customer inquiries and complaints.

(C) An address and other contact information for the provider, including any telephone number not described in clause (B).

The commission shall make any information submitted by a provider under this subdivision available on the commission's Internet web site. The commission may also make available on the commission's Internet web site contact information for the Federal Communications Commission and the Cellular Telephone Industry Association.

(11) Fulfill the commission's duties under any state or federal law concerning the administration of any universally applicable dialing code for any communications service.

(d) The commission does not have jurisdiction over any of the following with respect to a communications service provider:

(1) Rates and charges for communications service provided by the communications service provider, including the filing of schedules or tariffs setting forth the provider's rates and charges.

(2) Depreciation schedules for any of the classes of property owned by the communications service provider.

(3) Quality of service provided by the communications service provider.

(4) Long term financing arrangements or other obligations of the communications service provider.

(5) Except as provided in subsection (c), any other aspect regulated by the commission under this title before July 1, 2009.

(e) The commission has jurisdiction over a communications service provider only to the extent that jurisdiction is:

(1) expressly granted by state or federal law, including:

(A) a state or federal statute;

(B) a lawful order or regulation of the Federal Communications Commission; or

(C) an order or a ruling of a state or federal court having jurisdiction; or

(2) necessary to administer a federal law for which regulatory responsibility has been delegated to the commission by federal law.

(f) Except as specifically required under state or federal law, or

except as required to respond to consumer complaints or information requests from the general assembly, the commission may not require a communications service provider:

(1) to file a tariff; or

(2) except for purposes of a petition or request filed or submitted to the commission by the communications service provider, to report to the commission any information that is:

(A) available to the public on the communications service provider's Internet web site;

(B) filed with the Federal Communications Commission; or

(C) otherwise available to the public in any form or at any level of detail;

including the communications service provider's rates, terms and conditions of service.

SECTION 7. IC 8-1-32.3-15, AS AMENDED BY P.L.23-2018, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 15. (a) This chapter applies to permits issued by a permit authority to a communications service provider, under local law and consistent with IC 36-7, for the following:

(1) Construction of a new wireless support structure.

(2) Substantial modification of a wireless support structure.

(3) Collocation of wireless facilities on an existing structure.

(4) Construction, placement, and use of small cell facilities.

(b) A permit authority may not require an application or a permit for, or charge fees for, any of the following:

(1) The routine maintenance of wireless facilities.

(2) The replacement of wireless facilities with wireless facilities that are:

(A) substantially similar to; or

(B) the same size or smaller than;

the wireless facilities being replaced.

(3) The installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by a communications service provider that is authorized to use the public rights-of-way. For purposes of this subdivision, "applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes that are:

(A) adopted by a recognized national code organization; and

(B) enacted solely to address imminent threats of destruction of property or injury to persons;

including any local amendments to those codes.

(c) With respect to the construction, placement, or use of a small cell facility and the associated supporting structure, a permit authority may prohibit the placement of a new utility pole or a new wireless support structure in a right-of-way within an area that is designated strictly for underground or buried utilities, if all of the following apply:

(1) The area is designated strictly for underground or buried utilities before May 1, 2017.

(2) No above ground:

(A) wireless support structure;

(B) utility pole; or

(C) other utility superstructure;

other than light poles, exists in the area.

~~(2)~~ **(3)** The permit authority does all of the following:

(A) Allows the collocation of small cell facilities on existing:

(i) utility poles; ~~and~~

(ii) light poles; and

~~(ii)~~ **(iii)** wireless support structures;

as a permitted use within the area.

(B) Allows the replacement or improvement of existing:

(i) utility poles; ~~and~~

(ii) light poles; and

~~(ii)~~ **(iii)** wireless support structures;

as a permitted use within the area.

(C) Provides:

(i) a waiver;

(ii) a zoning process; or

(iii) another procedure;

that addresses requests to install new utility poles or new wireless support structures within the area.

(D) Upon receipt of an application for the construction, placement, or use of a small cell facility on one (1) or more new utility poles or one (1) or more new wireless support structures in an area that is designated strictly for underground or buried utilities, posts notice of the application on the permit authority's Internet web site, if the permit authority maintains an Internet web site. The notice of the application required by this clause must include a statement indicating that the application is available to the public upon request.

~~(3)~~ **(4)** The prohibition or other restrictions with respect to the placement of new utility poles or new wireless support structures within the area are applied in a nondiscriminatory manner.

~~(4)~~ **(5)** The area is zoned strictly for residential land use before

May 1, 2017.

(d) **With respect to applications for the placement of one (1) or more small cell facilities in an area that is zoned strictly for residential land use, and that is designated strictly for underground or buried utilities,** a permit authority shall allow a neighborhood association or a homeowners association to register with the permit authority to:

(1) receive notice; **and**

(2) request that homeowners within the jurisdiction of the neighborhood association or homeowners association receive notice;

by United States mail of any application filed with the permit authority for the construction, placement, or use of a small cell facility on one (1) or more new utility poles or one (1) or more new wireless support structures in an area **that is designated strictly for underground or buried utilities and that is** within the jurisdiction of the neighborhood association or homeowners association. If the permit authority maintains an Internet web site, the permit authority shall post on the permit authority's Internet web site instructions for how a neighborhood association or homeowners association may register to receive notice under this subsection. **A permit authority that receives a request under subdivision (2) may agree to provide notice to homeowners regarding a project for which applications described in this subsection have been filed with the permit authority, but not provide notice to homeowners regarding each permit application filed with the permit authority with respect to the project. A permit authority that receives a request under subdivision (2) may agree to provide notice only to certain homeowners. A permit authority may require a neighborhood association, homeowners association, or homeowner to pay the cost of postage associated with the provision of notice to the neighborhood association, homeowners association, or homeowner under this subsection. A permit authority that provides notice under this subsection at its own cost may not pass those costs along to a permit applicant. To the extent technically feasible, a permit authority shall collaborate with a neighborhood association or homeowners association on the location and aesthetics of new utility poles added within the jurisdiction of the neighborhood association or homeowners association.**

(e) Subject to section 26(b) of this chapter, with respect to the construction, placement, or use of a small cell facility and the associated supporting structure within an area:

(1) designated as a historic preservation district under IC 36-7-11;
(2) designated as a historic preservation area under IC 36-7-11.1; or
(3) that is subject to the jurisdiction of the Meridian Street preservation commission under IC 36-7-11.2;

a permit authority may apply any generally applicable procedures that require applicants to obtain a certificate of appropriateness.

(f) An applicant for the placement of a small cell facility and an associated supporting structure shall comply with applicable:
(1) Federal Communications Commission requirements; and
(2) industry standards;

for identifying the owner's name and contact information.

(g) A resolution, ordinance, or other regulation:
(1) adopted by a permit authority after April 14, 2017, and before May 2, 2017; and
(2) that designates an area within the jurisdiction of the permit authority as strictly for underground or buried utilities;

applies only to communications service providers and those geographic areas that are zoned residential and where all existing utility infrastructure is already buried.

SECTION 8. IC 8-1-32.3-17, AS ADDED BY P.L.145-2015, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 17. (a) A permit authority may not discriminate among communications service providers or public utilities with respect to the following:
(1) Approving applications, issuing permits, or otherwise establishing terms and conditions for construction of wireless or wireline communications facilities.
(2) Authorizing or approving tax incentives for wireless or wireline communications facilities.
(3) Providing access to rights-of-way, infrastructure, utility poles, river and bridge crossings, and other physical assets owned or controlled by the permit authority.

(b) A permit authority may not impose a fall zone requirement that:
(1) applies to a wireless support structure; and
(2) is larger than the area within which the wireless support structure is designed to collapse, as set forth in the applicant's engineering certification for the wireless support structure.

However, a permit authority may impose a fall zone requirement that is larger than the area described in subdivision (2) if the permit authority provides evidence that the applicant's engineering certification is flawed. The permit authority's evidence must include a

study performed and certified by a professional engineer.

(c) Except as described in section 26(a) of this chapter with respect to small cell facilities, and subject to the restrictions under 14 CFR Part 77, 47 CFR Part 17, and IC 8-21-10, a permit authority may not impose:

(1) a restriction on the maximum height of a wireless support structure; or

(2) a requirement regarding minimum separation distances between wireless support structures.

SECTION 9. IC 8-1-32.5-11, AS ADDED BY P.L.27-2006, SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 11. (a) The commission may not require a communications service provider to file a tariff in connection with, or as a condition of receiving, a certificate of territorial authority under this chapter.

(b) This subsection does not apply to a provider of commercial mobile service (as defined in 47 U.S.C. 332). The commission may require, in connection with the issuance of a certificate under this chapter, the communications service provider to provide advance notice to the provider's Indiana customers if the provider will do any of the following:

(1) Increase the rates and charges for any communications service that the provider offers in any of the provider's service areas in Indiana.

(2) Offer new communications service in any of the provider's service areas in Indiana.

(3) Cease to offer any communications service that the provider offers in any of the provider's service areas in Indiana.

The commission shall prescribe any customer notification requirements under this subsection in a rule of general application adopted under IC 4-22-2.

(c) A tariff filed with the commission by a communications service provider is effective upon filing.

SECTION 10. IC 8-1-32.5-14, AS AMENDED BY P.L.189-2019, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 14. A communications service provider that holds a certificate issued under this chapter:

(1) is exempt from local franchises and related fees to the same extent as a communications service provider that holds a certificate of territorial authority or an indeterminate permit issued under IC 8-1-2 before July 1, 2009;

(2) may access public rights-of-way to the same extent as a public

utility (as defined in IC 8-1-2-1(a)): ~~other than~~

(A) including a public right-of-way under the control of a county or municipality as provided in IC 8-1-2-101; but

(B) not including rights-of-way, property, or projects that are the subject of a public-private agreement under IC 8-15.5 or IC 8-15.7 or communications systems infrastructure, including all infrastructure used for wireless communications, owned by or under the jurisdiction of the Indiana finance authority or the state or any of its agencies, departments, boards, commissions, authorities, or instrumentalities; and

(3) shall be designated as a public utility solely as that term is used in 23 CFR 710.403(e)(2).

SECTION 11. IC 8-1-34-16, AS AMENDED BY P.L.53-2014, SECTION 81, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 16. (a) Except as provided in section 21 of this chapter, after June 30, 2006:

(1) the commission is the sole franchising authority (as defined in 47 U.S.C. 522(10)) for the provision of video service in Indiana; and

(2) a unit may not:

(A) require a provider to obtain a separate franchise;

(B) impose any fee, gross receipt tax, licensing requirement, rate regulation, or build-out requirement on a provider;

(C) regulate a holder or provider; or

(D) establish, fund, or otherwise designate an agency, a board, or another subordinate entity to monitor, supervise, evaluate, or regulate the holder or provider;

except as authorized by this chapter.

(b) Except as provided in section 21 of this chapter, a person who seeks to provide video service in Indiana after June 30, 2006, shall file with the commission an application for a franchise. The application shall be made on a form prescribed by the commission and must include the following:

(1) A sworn affidavit, signed by an officer or another person authorized to bind the applicant, that affirms the following:

(A) That the applicant has filed or will timely file with the Federal Communications Commission all forms required by the Federal Communications Commission before offering video service in Indiana.

(B) That the applicant agrees to comply with all federal and state statutes, rules, and regulations applicable to the operation of the applicant's video service system.

(C) That the applicant agrees to:

(i) comply with any local ordinance or regulation governing the use of public rights-of-way in the delivery of video service; and

(ii) recognize the police powers of a unit to enforce the ordinance or regulation.

(D) If the applicant will terminate an existing local franchise under section 21 of this chapter, that the applicant agrees to perform any obligations owed to any private person, as required by section 22 of this chapter.

(2) The applicant's legal name and any name under which the applicant does or will do business in Indiana, as authorized by the secretary of state.

(3) The address and telephone number of the applicant's principal place of business, along with contact information for the person responsible for ongoing communications with the commission.

(4) The names and titles of the applicant's principal officers.

(5) The legal name, address, and telephone number of the applicant's parent company, if any.

(6) A description of each service area in Indiana to be served by the applicant. A service area described under this subdivision may include an unincorporated area in Indiana.

(7) The expected date for the deployment of video service in each of the areas identified in subdivision (6).

(8) A list of other states in which the applicant provides video service.

(9) If the applicant will terminate an existing local franchise under section 21(b) of this chapter, a copy of the written notice sent to the municipality under section 21(c) of this chapter.

(10) Any other information the commission considers necessary to:

(A) monitor the provision of video service to Indiana customers; and

(B) prepare, under IC 8-1-2.6-4, the commission's annual report to the interim study committee on energy, utilities, and telecommunications established by IC 2-5-1.3-4 in an electronic format under IC 5-14-6.

(c) This section does not empower the commission to require:

(1) an applicant to disclose confidential and proprietary business plans and other confidential information without adequate protection of the information; or

(2) a provider to disclose more frequently than in each odd

numbered year information regarding the areas in which an applicant has deployed, or plans to deploy, video services.

The commission shall exercise all necessary caution to avoid disclosure of confidential information supplied under this section.

(d) The commission may charge a fee for filing an application under this section. Any fee charged by the commission under this subsection may not exceed the commission's actual costs to process and review the application under section 17 of this chapter.

(e) Nothing in this title may be construed to require an applicant or a provider to disclose information that identifies by census block, street address, or other similar level of specificity the areas in which the applicant or provider has deployed, or plans to deploy, video service in Indiana. The commission may not disclose, publish, or report by census block, street address, or other similar level of specificity any information identifying the areas in Indiana in which an applicant or a provider has deployed, or plans to deploy, video service.

(f) Nothing in this title may be construed to require an applicant or provider to provide the commission with information describing the applicant's or provider's programming, including the applicant's or provider's channel lineups or channel guides.

SECTION 12. IC 8-20-1-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 28. Public and municipally owned utilities are authorized to construct, operate, and maintain their poles, facilities, appliances, and fixtures upon, along, under, and across any of the public roads, highways, and waters outside of municipalities, as long as they do not interfere with the ordinary and normal public use of the roadway, as defined in IC 9-13-2-157. However, the utility shall review its plans with the county executive before locating the pole, facility, appliance, or fixture, **and the county executive shall comply with IC 8-1-2-101.** The utility may trim any tree along the road or highway, but may not cut down and remove the tree without the consent of the abutting property owners, unless the cutting or removal is required by rule or order of the Indiana utility regulatory commission. The utility may not locate a pole where it interferes with the ingress or egress from adjoining land.

SECTION 13. IC 22-5-1.7-6, AS AMENDED BY P.L.28-2013, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 6. **(a)** As used in this chapter, "public contract for services" means any type of written agreement between a state agency or political subdivision and a contractor for the procurement of services.

(b) The term does not include a contract for the lease of

property owned by the state under which no state expenditures are required.

SECTION 14. IC 36-1-11-1, AS AMENDED BY P.L.270-2019, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 1. (a) Except as provided in subsection (b), this chapter applies to the disposal of property by:

(1) political subdivisions; and

(2) agencies of political subdivisions.

(b) This chapter does not apply to the following:

(1) The disposal of property under an urban homesteading program under IC 36-7-17 or IC 36-7-17.1.

(2) The lease of school buildings under IC 20-47.

(3) The sale of land to a lessor in a lease-purchase contract under IC 36-1-10.

(4) The disposal of property by a redevelopment commission established under IC 36-7.

(5) The leasing of property by a board of aviation commissioners established under IC 8-22-2 or an airport authority established under IC 8-22-3.

(6) The disposal of a municipally owned utility under IC 8-1.5.

(7) Except as provided in sections 5.5 and 5.6 of this chapter, the sale or lease of property by a unit to an Indiana nonprofit corporation organized for educational, literary, scientific, religious, or charitable purposes that is exempt from federal income taxation under Section 501 of the Internal Revenue Code or the sale or reletting of that property by the nonprofit corporation.

(8) The disposal of surplus property by a hospital established and operated under IC 16-22-1 through IC 16-22-5, IC 16-22-8, IC 16-23-1, or IC 16-24-1.

(9) The sale or lease of property acquired under IC 36-7-13 for industrial development.

(10) The sale, lease, or disposal of property by a local hospital authority under IC 5-1-4.

(11) The sale or other disposition of property by a county or municipality to finance housing under IC 5-20-2.

(12) The disposition of property by a soil and water conservation district under IC 14-32.

(13) The sale, lease, or disposal of property by the health and hospital corporation established and operated under IC 16-22-8.

(14) The disposal of personal property by a library board under IC 36-12-3-5(c).

(15) The sale or disposal of property by the historic preservation commission under IC 36-7-11.1.

(16) The disposal of an interest in property by a housing authority under IC 36-7-18.

(17) The disposal of property under IC 36-9-37-26.

(18) The disposal of property used for park purposes under IC 36-10-7-8.

(19) The disposal of curricular materials that will no longer be used by school corporations under IC 20-26-12.

(20) The disposal of residential structures or improvements by a municipal corporation without consideration to:

(A) a governmental entity; or

(B) a nonprofit corporation that is organized to expand the supply or sustain the existing supply of good quality, affordable housing for residents of Indiana having low or moderate incomes.

(21) The disposal of historic property without consideration to a nonprofit corporation whose charter or articles of incorporation allows the corporation to take action for the preservation of historic property. As used in this subdivision, "historic property" means property that is:

(A) listed on the National Register of Historic Places; or

(B) eligible for listing on the National Register of Historic Places, as determined by the division of historic preservation and archeology of the department of natural resources.

(22) The disposal of real property without consideration to:

(A) a governmental agency; or

(B) a nonprofit corporation that exists for the primary purpose of enhancing the environment;

when the property is to be used for compliance with a permit or an order issued by a federal or state regulatory agency to mitigate an adverse environmental impact.

(23) The disposal of property to a person under an agreement between the person and a political subdivision or an agency of a political subdivision under IC 5-23.

(24) The disposal of residential real property pursuant to a federal aviation regulation (14 CFR 150) Airport Noise Compatibility Planning Program as approved by the Federal Aviation Administration.

(25) The disposal of property by a political subdivision to a public utility (as defined in IC 8-1-2-1) or to a communications service provider (as defined in

IC 8-1-32.5-4).

SECTION 15. IC 36-1-12-1, AS AMENDED BY P.L.91-2017, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 1. (a) Except as provided in this section, this chapter applies to all public work performed or contracted for by:

(1) political subdivisions; and

(2) their agencies;

regardless of whether it is performed on property owned or leased by the political subdivision or agency.

(b) This chapter does not apply to an officer or agent who, on behalf of a municipal utility **or a conservancy district described in IC 14-33-1-1(a)(4) or IC 14-33-1-1(a)(5),** maintains, extends, and installs services of the utility **or district** if the necessary work is done by the employees of the utility **or district.**

(c) This chapter does not apply to hospitals organized or operated under IC 16-22-1 through IC 16-22-5 or IC 16-23-1, unless the public work is financed in whole or in part with cumulative building fund revenue.

(d) This chapter does not apply to tax exempt Indiana nonprofit corporations leasing and operating a city market owned by a political subdivision.

(e) As an alternative to this chapter, the governing body of a political subdivision or its agencies may do the following:

(1) Enter into a design-build contract as permitted under IC 5-30.

(2) Participate in a utility efficiency program or enter into a guaranteed savings contract as permitted under IC 36-1-12.5.

(f) This chapter does not apply to a person that has entered into an operating agreement with a political subdivision or an agency of a political subdivision under IC 5-23.

(g) This chapter does not apply to the extension or installation of utility infrastructure by a private developer of land if all the following apply:

(1) A municipality will acquire for the municipality's municipally owned utility all of the utility infrastructure that is to be extended or installed.

(2) Not more than fifty percent (50%) of the total construction costs for the utility infrastructure to be extended or installed, including any increased costs that result from any construction specifications that:

(A) are required by the municipality; and

(B) specify a greater service capacity for the utility infrastructure than would otherwise be provided for by the

private developer;

will be paid for out of a public fund or out of a special assessment.

(3) The private developer agrees to comply with all local ordinances and engineering standards applicable to the construction, extension, or installation of the utility infrastructure.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities, Energy and Telecommunications, to which was referred House Bill 1164, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, delete lines 32 through 42, begin a new paragraph and insert:

"SECTION 3. IC 8-1-2-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 5.5. (a) Every:**

(1) corporation organized under IC 8-1-13;

(2) 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; and

(3) municipality providing electric service;

shall permit attachments by communications service providers to poles owned or controlled by the corporation or municipality.

(b) A rate, term, or condition imposed by a corporation or municipality described in subsection (a) for access to poles owned or controlled by the corporation or municipality:

(1) must be nondiscriminatory, just, and reasonable; and

(2) must not favor the pole owner or an affiliate of the pole owner.

(c) Any pole attachment rental fee imposed by a corporation or municipality described in subsection (a) for access to poles owned or controlled by the corporation or municipality:

(1) must be calculated on an annual, per-pole basis; and

(2) is considered to provide reasonable compensation and to be nondiscriminatory, just, and reasonable if the fee:

(A) is agreed upon by the parties; or

(B) is not greater than the fee that would apply if the pole attachment rental fee were calculated in accordance with the formula set forth in 47 U.S.C. 224(d), as applied by the Federal Communications Commission.

(d) If a communications service provider and a corporation or municipality described in subsection (a) fail to agree upon:

(1) access to poles owned or controlled by the corporation or municipality; or

(2) the rates, terms, and conditions for attachment to poles owned or controlled by the corporation or municipality;

the communications service provider may apply to the commission

for a determination of the matter.

(e) Upon receiving a request for a determination under subsection (d), the commission shall:

(1) proceed to determine whether:

(A) the denial of access to one (1) or more poles was unlawful; or

(B) the rates, terms, and conditions complained of were not just and reasonable;

as applicable; and

(2) issue an order:

(A) directing that access to the poles at issue be permitted; and

(B) prescribing for such access such rates, terms, conditions, and compensations that:

(i) are reasonable; and

(ii) comply with subsections (b) and (c).

(f) In any case in which the commission issues an order under subsection (e):

(1) the access ordered by the commission under subsection (e)(2)(A) shall be permitted by the corporation or municipality; and

(2) the rates, terms, conditions, and compensations prescribed by the commission under subsection (e)(2)(B) shall be observed, followed, and paid by the parties, as applicable;

subject to recourse to the courts upon the complaint of any interested party as provided in this chapter and in IC 8-1-3. Any order of the commission under subsection (e) may be revised by the commission from time to time upon application of any interested party or upon the commission's own motion.

SECTION 4. IC 8-1-2-101 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 101. (a) Every municipal council or county executive shall have power:

(1) To determine by ordinance the provisions, not inconsistent with **subsection (c), other provisions of** this chapter, or IC 8-1-11.1, upon which a public utility or department of public utilities created under IC 8-1-11.1 occupies the areas along, under, upon, and across the streets, highways, or other public property within such municipality or county. ~~and~~ Such **an** ordinance or other determination of ~~such~~ **a** municipality or county executive shall be in force and prima facie reasonable **if the ordinance or determination complies with subsection (c).** Upon complaint made by such public utility **or** department of

public utilities, or by any qualified complainant, as provided in section 54 of this chapter, the commission shall set a hearing, as provided in sections 54 to 67 of this chapter, and if it shall find such ordinance or other determination to be unreasonable, such ordinance or other determination shall be void.

(2) To require of any public utility, by ordinance, such additions and extensions to its physical plant within said municipality or county as shall be reasonable and necessary in the interest of the public, and to **reasonably** designate the location and nature of all such additions and extensions, the time within which they must be completed, and all conditions under which they must be constructed, subject to review by the commission as provided in subdivision (1).

(3) To provide for a penalty for noncompliance with the provisions of any ordinance or resolution adopted pursuant to the provisions of this section.

(4) The power and authority granted in this section shall exist and be vested in said municipalities or county executives, anything in this chapter to the contrary notwithstanding.

Provided, however, ~~whenever,~~ ~~after~~ **that if a public utility or department of public utilities makes** a request by petition in writing ~~of any public utility, department of public utilities,~~ **and completes any required permit application, and** the city or other political subdivision or other body having jurisdiction of the matter ~~shall refuse or fail,~~ **refuses or fails,** for a period of ~~thirty (30)~~ **twenty-one (21)** days **or twenty-eight (28) days, as applicable under subsection (c)(5),** to give or grant to such public utility or department of public utilities permission and authority to construct, maintain, and operate any ~~additional construction,~~ equipment or facility **within the public right-of-way as is** reasonably necessary for the transaction of the business of such public utility or department of public utilities and for the public convenience or interest, then such public utility or department of public utilities may file a petition with said commission for such right and permission. ~~which~~ **The** petition ~~shall~~ **must** state, with particularity, the ~~construction,~~ equipment or other facility desired to be constructed and operated, ~~and~~ show a reasonable public necessity therefor, and ~~also~~ **state** the failure or refusal of such city, political subdivision, or other body to give or grant such right or permission. ~~and~~ **Upon receipt of the petition,** the commission shall ~~thereupon~~ give notice of the pendency of such petition, together with a copy thereof, to such city or other political subdivision or body, and of the time and place of hearing of the matter set forth in such petition. ~~and such~~ **The**

commission shall have power to hear and determine such matters and to give or grant such right and permission and to impose such conditions in relation thereto as the necessity of such public utility or department of public utilities and the public convenience and interest may reasonably require, **subject to subsection (c).** Provided, further, that when the **construction, installation, maintenance, repair,** relocation, **or operation** by a public utility or department of public utilities of any of its construction, equipment, or ~~facility~~ ~~located~~ **facilities is requested to be performed** within the corporate limits of two (2) or more adjoining ~~cities~~ **political subdivisions and** is reasonably necessary for the public convenience or interest, and any or either of said ~~cities fail or refuse~~ **political subdivisions fails or refuses** to give or grant to such public utility or department of public utilities permission and authority to ~~relocate such construction, equipment, or facility,~~ **perform the requested work, the public utility, the department of public utilities, or** any ~~municipality which~~ **political subdivision that** has given or granted to such public utility or department of public utilities permission and authority to ~~relocate such construction, equipment, and facility, the public utility or department of public utilities~~ **perform the work** may file a petition with said commission for such right and permission. ~~to which petition the city or cities failing or~~ **The political subdivision failing or** refusing to give or grant the ~~same~~ **right and permission** shall be made a respondent **to the petition,** and such public utility or department of public utilities, if not the petitioner, shall also be made a respondent. ~~and said~~ **The** commission shall have power to hear and determine such matter, ~~and~~ to give or grant such right and permission, and to impose such conditions in relation thereto as the public convenience and interest may reasonably require, ~~and~~ **subject to subsection (c).** If said commission shall give or grant such right and permission, no further public authority **is required for the public utility or department of public utilities** to ~~make such relocation~~ **perform the work** as authorized or to go on any street, alley, road, or highway in said ~~city or cities~~ **political subdivision** necessary to be used therefor. ~~shall be required of said public utility or department of public utilities.~~ All orders entered before June 30, 1931, by the commission in cases within the provisions of this section are hereby declared legal and valid.

(b) Subject to the commission's authority under subsection (a)(1) with respect to an ~~unreasonable~~ ordinance or other determination **that is unreasonable or does not comply with subsection (c),** the municipality or county executive may operate and maintain the streets, highways, and other public property in the municipality or county for

the safety of the traveling public, and a municipality or county executive may manage the public right-of-way or require by ordinance fair and reasonable compensation on a competitively neutral and nondiscriminatory basis for occupation of the public right-of-way, ~~on a nondiscriminatory basis,~~ including occupation by the municipality or county executive, if the compensation required is publicly disclosed by the municipality or county executive. Fair and reasonable compensation may not exceed the municipality's or county executive's direct, actual, **documented,** and reasonably incurred costs of managing the public right-of-way **that are directly** caused by the public utility's or department of public utilities' occupancy. The management costs, which the municipality or county executive shall assign individually to the public utility or department of public utilities creating the management costs, must be limited to the direct, actual, **documented,** and reasonably incurred costs a municipality or county incurs in managing the public right-of-way. As used in this section, the term "management costs" includes but is not limited to the costs to the municipality or county of the following:

(1) ~~Registering occupants.~~ **Reviewing written requests or applications for occupation.**

(2) Verifying ~~public right-of-way~~ **that the requested** occupation **is within the public right-of-way.**

(3) Updating municipal or county records to reflect the occupation.

~~(3)~~ **(4)** Inspecting job sites and restoration projects.

~~(4)~~ **(5)** ~~Restoring~~ **Performing restoration** work inadequately performed after providing notice and the opportunity to correct the work.

~~(5)~~ **(6)** Administering a reasonable restoration ordinance that ensures that a public utility or department of public utilities adequately restores the right-of-way as near as is reasonably possible to the right-of-way's original condition.

~~(6)~~ **(7)** Management costs associated with the implementation of an ordinance adopted under this section.

However, as used in this section, direct, actual, **documented,** and reasonably incurred management costs do not include rents, franchise fees, or any other payment by a public utility or department of public utilities for occupation of the public right-of-way, **or any costs incurred by the municipality or county that are not directly associated with the public utility's or department of public utilities' occupation of the public right-of-way.** As used in this section, the term "public right-of-way" does not include the airwaves above the

streets, highways, or other public property within the municipality or county as those airwaves are used for cellular or other nonwire telecommunications or broadcast service.

(c) A municipality or county executive may not unreasonably delay a public utility's or department of public utilities' access to or use of a street, highway, or other public property within the municipality or county. However, subsection (a)(1) and this subsection do not limit a municipality or county executive's right to advance notification of and review of a public utility's or department of public utilities' occupation of a street, highway, or other public property within the municipality or county to ensure and protect the safety of the public, **subject to the following:**

(1) A municipality or county executive may require a utility that is not subject to the commission's jurisdiction to carry liability insurance covering the work to be performed or the occupation of the public right-of-way in an amount not greater than the cost of returning the public right-of-way to a condition equivalent to the public right-of-way's condition before the performance of the work. However, the municipality or county executive may not require such a utility to provide proof of liability insurance more than once in a calendar year, or in a calendar year in which the utility does not apply for a permit from the municipality or county executive under this section.

(2) A municipality or county executive may not require a public utility or department of public utilities to submit more than one (1) drawing or site plan showing:

(A) the location of the facilities or equipment to be installed, maintained, or operated;

(B) the size of and materials comprising the facilities or equipment to be installed;

(C) the length of the installation; and

(D) the number of road cuts, road bores, or bridge or other structural attachments required for the installation, maintenance, or operation of the equipment or facilities.

(3) A municipality or county executive may not require a public utility or department of public utilities to submit more than one (1) notice, request, or application packet for the work to be performed or the occupation of the public right-of-way. If the notice, request, or application requires the review of more than one (1) department, board, or other entity within the municipality or county, the municipality or

county executive must coordinate the review among the departments, boards, or other entities before issuing a determination.

(4) A municipality or county executive may charge only one (1) fee for compensation under subsection (b), regardless of the number of departments, boards, or other entities that must review the request or application.

(5) A municipality or county executive must issue a determination regarding an application or request for occupation of the right-of-way not later than:

(A) twenty-one (21) days after the date of the application or request; or

(B) twenty-eight (28) days after the date of the application or request if the municipality or county executive provides written notice to the applicant of the extension and the reason for the extension.

The municipality's or county executive's determination under this subdivision must include confirmation that the requested occupation is within the public right-of-way of the municipality or county. If a municipality or county executive fails to issue a determination regarding an application or request for occupation of the right-of-way in the time required under clause (A) or clause (B), as applicable, the application or request is considered approved. However, if the applicant requires additional time to cure defects in the applicant's application or request, or if the review of the application or request by the municipality or county executive is otherwise delayed by the applicant, the time period described in clause (A) or clause (B) within which the municipality or county executive must issue a determination is extended for a corresponding amount of time.

(6) Municipalities and county executives shall, to the extent practicable, establish notice, request, and application procedures and forms that are uniform, reasonable, and brief. To the extent such procedures and forms are prescribed by law or regulation, or by an entity formed to represent the interests of Indiana municipalities or counties, municipalities and counties shall use such procedures and forms as prescribed. A municipality or county executive must electronically receive and process notices, requests, and applications for public utilities' and departments of public utilities' occupation of the right-of-way.

(7) Municipalities and county executives shall, to the extent practicable, work collaboratively with utilities to ensure that the public right-of-way is returned to its original condition within a reasonable amount of time.

(d) This section may not be construed to entitle a municipality or county executive the right to advance notification and review of work by a public utility or department of public utilities:

(1) that is performed on existing equipment or facilities located within the public right-of-way; and

(2) that:

(A) does not require ground disturbance activities;

(B) does not affect traffic flow; or

(C) is required due to a bona fide emergency that threatens injury to persons, loss of property, or loss or disturbance of utility service.

For purposes of this subsection, "ground disturbance activities" means any work, operation, or activity that results in a disturbance of the earth, including excavating, digging, trenching, cultivating, drilling, tunneling, boring, backfilling, blasting, topsoil stripping, clearing, or grading. The term does not include maintenance or other minor work, such as checking or inspecting handholes, manholes, or other facilities.

~~(d)~~ **(e)** Nothing in this section may be construed to:

(1) affect franchise agreements between a cable company and a municipality or county; **or**

(2) modify the service area rights of a utility under any other law.".

Delete pages 4 through 11.

Page 12, delete lines 1 through 24.

Page 16, line 16, delete "The" and insert "**Except as specifically required under state or federal law, or except as required to respond to consumer complaints or information requests from the general assembly, the**".

Page 16, line 19, delete "the communications service" and insert "**a petition or request filed or submitted to the commission by the communications service provider,**".

Page 16, delete line 20.

Page 16, line 21, delete "under IC 8-1-32.5,".

Page 16, line 29, delete "service, and service availability and maps of" and insert "**service.**".

Page 16, delete line 30.

Page 16, delete lines 31 through 42, begin a new paragraph and

insert:

"SECTION 7. IC 8-1-32.3-15, AS AMENDED BY P.L.23-2018, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 15. (a) This chapter applies to permits issued by a permit authority to a communications service provider, under local law and consistent with IC 36-7, for the following:

(1) Construction of a new wireless support structure.

(2) Substantial modification of a wireless support structure.

(3) Collocation of wireless facilities on an existing structure.

(4) Construction, placement, and use of small cell facilities.

(b) A permit authority may not require an application or a permit for, or charge fees for, any of the following:

(1) The routine maintenance of wireless facilities.

(2) The replacement of wireless facilities with wireless facilities that are:

(A) substantially similar to; or

(B) the same size or smaller than;

the wireless facilities being replaced.

(3) The installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by a communications service provider that is authorized to use the public rights-of-way. For purposes of this subdivision, "applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes that are:

(A) adopted by a recognized national code organization; and

(B) enacted solely to address imminent threats of destruction of property or injury to persons;

including any local amendments to those codes.

(c) With respect to the construction, placement, or use of a small cell facility and the associated supporting structure, a permit authority may prohibit the placement of a new utility pole or a new wireless support structure in a right-of-way within an area that is designated strictly for underground or buried utilities, if all of the following apply:

(1) The area is designated strictly for underground or buried utilities before May 1, 2017.

(2) No above ground:

(A) wireless support structure;

(B) utility pole; or

(C) other utility superstructure;

other than light poles, exists in the area.

~~(2)~~ **(3)** The permit authority does all of the following:

(A) Allows the collocation of small cell facilities on existing:

(i) utility poles; ~~and~~

(ii) light poles; and

~~(ii)~~ **(iii)** wireless support structures;

as a permitted use within the area.

(B) Allows the replacement or improvement of existing:

(i) utility poles; ~~and~~

(ii) light poles; and

~~(ii)~~ **(iii)** wireless support structures;

as a permitted use within the area.

(C) Provides:

(i) a waiver;

(ii) a zoning process; or

(iii) another procedure;

that addresses requests to install new utility poles or new wireless support structures within the area.

(D) Upon receipt of an application for the construction, placement, or use of a small cell facility on one (1) or more new utility poles or one (1) or more new wireless support structures in an area that is designated strictly for underground or buried utilities, posts notice of the application on the permit authority's Internet web site, if the permit authority maintains an Internet web site. The notice of the application required by this clause must include a statement indicating that the application is available to the public upon request.

~~(3)~~ **(4)** The prohibition or other restrictions with respect to the placement of new utility poles or new wireless support structures within the area are applied in a nondiscriminatory manner.

~~(4)~~ **(5)** The area is zoned strictly for residential land use before May 1, 2017.

(d) **With respect to applications for the placement of one (1) or more small cell facilities in an area that is zoned strictly for residential land use, and that is designated strictly for underground or buried utilities,** a permit authority shall allow a neighborhood association or a homeowners association to register with the permit authority to:

(1) receive notice; **and**

(2) request that homeowners within the jurisdiction of the neighborhood association or homeowners association receive notice;

by United States mail of any application filed with the permit authority for the construction, placement, or use of a small cell facility on one (1)

or more new utility poles or one (1) or more new wireless support structures in an area **that is designated strictly for underground or buried utilities and that is** within the jurisdiction of the neighborhood association or homeowners association. If the permit authority maintains an Internet web site, the permit authority shall post on the permit authority's Internet web site instructions for how a neighborhood association or homeowners association may register to receive notice under this subsection. **A permit authority that receives a request under subdivision (2) may agree to provide notice to homeowners regarding a project for which applications described in this subsection have been filed with the permit authority, but not provide notice to homeowners regarding each permit application filed with the permit authority with respect to the project. A permit authority that receives a request under subdivision (2) may agree to provide notice only to certain homeowners. A permit authority may require a neighborhood association, homeowners association, or homeowner to pay the cost of postage associated with the provision of notice to the neighborhood association, homeowners association, or homeowner under this subsection. A permit authority that provides notice under this subsection at its own cost may not pass those costs along to a permit applicant. To the extent technically feasible, a permit authority shall collaborate with a neighborhood association or homeowners association on the location and aesthetics of new utility poles added within the jurisdiction of the neighborhood association or homeowners association.**

(e) Subject to section 26(b) of this chapter, with respect to the construction, placement, or use of a small cell facility and the associated supporting structure within an area:

(1) designated as a historic preservation district under IC 36-7-11;

(2) designated as a historic preservation area under IC 36-7-11.1; or

(3) that is subject to the jurisdiction of the Meridian Street preservation commission under IC 36-7-11.2;

a permit authority may apply any generally applicable procedures that require applicants to obtain a certificate of appropriateness.

(f) An applicant for the placement of a small cell facility and an associated supporting structure shall comply with applicable:

(1) Federal Communications Commission requirements; and

(2) industry standards;

for identifying the owner's name and contact information.

(g) A resolution, ordinance, or other regulation:

(1) adopted by a permit authority after April 14, 2017, and before May 2, 2017; and

(2) that designates an area within the jurisdiction of the permit authority as strictly for underground or buried utilities;

applies only to communications service providers and those geographic areas that are zoned residential and where all existing utility infrastructure is already buried.".

Delete pages 17 through 18.

Page 19, delete line 1 through 7.

Page 19, line 31, delete "A" and insert "**Except as described in section 26(a) of this chapter with respect to small cell facilities, and subject to the restrictions under 14 CFR Part 77, 47 CFR Part 17, and IC 8-21-10, a**".

Page 19, line 32, after "on" insert "**the**".

Page 19, line 34, delete "distance" and insert "**distances**".

Page 19, delete lines 36 through 42.

Page 20, delete lines 1 through 6.

Page 23, line 16, delete "service," and insert "**programming,**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1164 as introduced.)

SOLIDAY

Committee Vote: yeas 9, nays 4.

January 28, 2021

HOUSE BILL No. 1191

DIGEST OF HB 1191 (Updated January 26, 2021 2:43 pm - DI 101)

Citations Affected: IC 8-1; IC 21-37; IC 36-1.

Synopsis: Local unit power to prohibit utility connection. Provides that the legislative body of a city or town or a county executive does not have the power to prohibit: (1) a public utility or department of public utilities from furnishing utility service to a utility customer; or (2) a customer of a public utility or department of public utilities from purchasing, using, or connecting or reconnecting to a utility service; based on the energy source of the utility service. Prohibits a state educational institution from adopting a rule or policy that would: (1) prohibit or restrict the manner in which electrical energy that is supplied to its facilities is generated, transmitted, or distributed, unless the prohibition or restriction: (A) would result in net monetary savings to the state educational institution; or (B) is in furtherance of an established academic discipline of the state educational institution as of January 1, 2021; (2) require: (A) the use of a particular component or type of material in the construction of a campus building solely because of the energy saving or energy producing qualities of the component or material; or (B) the retrofitting of a campus building with a particular device or material solely because of the energy saving or energy producing qualities of the device or material; unless the requirement can reasonably be expected to result in net monetary savings within 10 years after installation of the component, material, or device; or (3) prohibit, restrict, give preference to, or establish any condition concerning the purchase or use of motor vehicles by the state educational institution based upon the type of energy that powers the

(Continued next page)

Effective: January 1, 2021 (retroactive); July 1, 2021.

Pressel, Manning, Soliday

January 7, 2021, read first time and referred to Committee on Utilities, Energy and Telecommunications.
January 28, 2021, amended, reported — Do Pass.

motor vehicle, unless the state educational institution's policy: (A) would result in net monetary savings to the state educational institution over the life of the motor vehicle; or (B) is in furtherance of an established academic discipline of the state educational institution as of January 1, 2021. Provides that a local unit does not have the power to: (1) require that a particular component, design, or type of material be used in the construction of a building because of the energy saving or energy producing qualities of the component, design, or material; (2) prohibit the use of a particular component, design, or type of material in the construction of a building because the component, design, or material does not meet an energy saving standard; (3) require that a building or structure be retrofitted with a particular device or type of material because of the energy saving or energy producing qualities of the device or material; (4) prohibit or restrict the purchase or use of vehicles based upon the type of energy used; or (5) prohibit the sale, installation, or use of: (A) natural gas powered: (i) home heating equipment; (ii) home appliances; or (iii) outdoor heating appliances, torches, lamps, or other decorative features; or (B) outdoor grills and stoves.

January 28, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1191

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 8-1-2-101.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2021 (RETROACTIVE)]: **Sec. 101.2. (a) The following definitions apply throughout this section:**

(1) "Energy source" means:

(A) the method of generation; or

(B) the fuel source;

used to provide or supply utility service to a customer. The term includes any energy source used to provide utility service, including a clean energy resource (as defined in IC 8-1-37-4).

(2) "Executive" has the meaning set forth in IC 36-1-2-5.

(3) "Municipal council" has the meaning set forth in section 1(b) of this chapter.

(4) "Private property" means real property that is not owned or leased by a municipality or county.

(5) "Utility service" means any service provided by a liquid

petroleum gas company, a public utility, or a department of public utilities relating to:

(A) the generation, production, transmission, or distribution of electricity or thermal energy to or for the public, for compensation; or

(B) the production, manufacture, storage, transportation, distribution, sale, or furnishing of:

(i) natural gas;

(ii) artificial or manufactured gas; or

(iii) a mixture of natural gas and artificial or manufactured gas;

to or for the public, for compensation;

for heat, light, power, or other uses.

(b) A municipal council or county executive does not have the power to enact any code, ordinance, or land use regulation that would prohibit or have the effect of prohibiting, or to otherwise regulate in a manner that would prohibit or have the effect of prohibiting:

(1) a liquid petroleum gas company, a public utility, or a department of public utilities from furnishing utility service to a utility customer; or

(2) a customer of a liquid petroleum gas company, a public utility, or a department of public utilities from:

(A) purchasing;

(B) using; or

(C) connecting or reconnecting to;

a utility service;

based on the energy source of the utility service.

SECTION 2. IC 21-37-8 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

Chapter 8. Energy Related Requirements and Prohibitions

Sec. 1. (a) As used in this section, "net monetary savings" means the amount by which the overall costs associated with the electrical energy supplied to a state educational institution's facilities will be lower because of the implementation of a prohibition or restriction described in subsection (d) than they would have been without the implementation of the prohibition or restriction.

(b) As used in this section, "net monetary savings" does not include secondary savings or avoided or mitigated externalities not directly associated with the electrical energy supplied to a state educational institution's facilities.

(c) A determination of "net monetary savings" under subsection (d)(1) must consider:

(1) the stranded cost of any sources of electrical energy, including any sources of electrical energy supplied through:

(A) a power purchase agreement that is in effect as of the effective date of the prohibition or restriction described in subsection (d); or

(B) an electric generation facility owned or operated by the state educational institution as of the effective date of the prohibition or restriction described in subsection (d), including any stranded costs resulting from any part of the facility that is not fully depreciated as of the effective date of the prohibition or restriction described in subsection (d);

that will stop being used as a result of the implementation of the prohibition or restriction described in subsection (d); and

(2) the fully allocated cost of new sources of electrical energy that must be procured as a result of the implementation of a prohibition or restriction described in subsection (d);

as well as the difference in overall energy costs that would be incurred without the implementation of the prohibition or restriction and with the implementation of the prohibition and restriction.

(d) A state educational institution may not adopt, implement, or enforce a resolution, rule, or policy that would prohibit or restrict the manner in which electrical energy that is supplied to its facilities is generated, transmitted, or distributed, including any electrical energy that is supplied to its facilities through a power purchase agreement entered into after June 30, 2021, unless the prohibition or restriction:

(1) would result in net monetary savings to the state educational institution; or

(2) is in furtherance of an established academic discipline of the state educational institution as of January 1, 2021.

Sec. 2. (a) As used in this section, "net monetary savings" means the amount by which the overall costs associated with the construction, heating, cooling, use, and maintenance of a building or other structure will be lower because of the implementation of a requirement described in subsection (d)(1) or (d)(2) than they would have been without the implementation of the requirement.

(b) As used in this section, "net monetary savings" does not include secondary savings or avoided or mitigated externalities not

directly associated with the construction, heating, cooling, use, and maintenance of a building or other structure.

(c) A determination of "net monetary savings" under subsection (d) must consider:

(1) the stranded cost of any equipment or materials that will stop being used as a result of the implementation of a requirement described in subsection (d)(1) or (d)(2) before the equipment or materials are fully depreciated; and

(2) the fully allocated cost of new equipment and materials that must be acquired and used as a result of the implementation of a requirement described in subsection (d)(1) or (d)(2);

as well as the difference in energy costs that would be incurred without the implementation of the requirement and with the implementation of the requirement.

(d) A state educational institution may not adopt, implement, or enforce a resolution, rule, or policy that would:

(1) require the use of a particular component or type of material in the construction of a building or other structure on a campus of the state educational institution solely because of the energy saving or energy producing qualities of the component or material; or

(2) require the retrofitting of a building or other structure on a campus of the state educational institution with a particular device or type of material solely because of the energy saving or energy producing qualities of the device or material;

unless the requirement can reasonably be expected to result in net monetary savings within ten (10) years after the installation of the component, material, or device, as determined by an individual who is not an employee of or associated with the state educational institution and who has been certified as a Certified Energy Manager by the Association of Energy Engineers.

Sec. 3. (a) As used in this section, "net monetary savings" means the amount by which the overall costs associated with the purchase or use of motor vehicles by a state educational institution will be lower because of the implementation of a resolution, rule, or policy described in subsection (d) than they would have been without the implementation of the resolution, rule, or policy.

(b) As used in this section, "net monetary savings" does not include secondary savings or avoided or mitigated externalities not directly associated with the purchase or use of motor vehicles by a state educational institution.

(c) A determination of "net monetary savings" under subsection (e)(1) must consider:

(1) the stranded cost of any motor vehicles that will stop being used as a result of the implementation of a resolution, rule, or policy described in subsection (d) before the motor vehicles are fully depreciated; and

(2) the fully allocated cost of new or replacement motor vehicles that must be purchased as a result of the implementation of a resolution, rule, or policy described in subsection (d);

as well as the difference in vehicle or fuel costs that would be incurred without the implementation of the resolution, rule, or policy and with the implementation of the resolution, rule, or policy.

(d) Except as provided in subsection (e), a state educational institution may not adopt, implement, or enforce a resolution, rule, or policy that:

(1) would prohibit, restrict, give preference to, or establish any condition concerning the purchase or use of motor vehicles by the state educational institution; and

(2) is based upon the type of energy that powers the motor vehicle.

(e) The prohibition set forth in subsection (d) does not apply if the resolution, rule, or policy described in subsection (d):

(1) would result in net monetary savings to the state educational institution over the life of the motor vehicle; or

(2) is in furtherance of an established academic discipline of the state educational institution as of January 1, 2021.

SECTION 3. IC 36-1-3-13 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 13. A unit does not have the power to do the following:**

(1) Require that a particular component, design, or type of material be used in the construction of a building or other structure because of the energy saving or energy producing qualities of the component, design, or material.

(2) Prohibit the use of a particular component, design, or type of material in the construction of a building or other structure because the component, design, or material does not meet a standard for energy saving.

(3) Require that a building or other structure be retrofitted with a particular device or type of material because of the

energy saving or energy producing qualities of the device or material.

(4) Prohibit or restrict the purchase or use of vehicles or other machines based upon the type of energy that powers the vehicle or machine.

(5) Prohibit the sale, installation, or use of any of the following:

(A) Natural gas powered home heating equipment.

(B) Natural gas powered home appliances.

(C) Grills, stoves, and other food preparation appliances designed to be used outdoors.

(D) Natural gas powered:

(i) heating appliances; and

(ii) torches, lamps, and other decorative features;

designed to be used outdoors.

(6) Enact an ordinance, adopt a resolution, or enforce an ordinance or resolution that purports to exercise a power denied by subdivisions (1) through (5).

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

COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities, Energy and Telecommunications, to which was referred House Bill 1191, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 9, delete "nonrenewable or renewable energy source." and insert "**energy source used to provide utility service, including a clean energy resource (as defined in IC 8-1-37-4).**".

Page 1, line 15, after "by" insert "**a liquid petroleum gas company,**".

Page 1, line 16, delete "utility or" and insert "**utility, or a**".

Page 2, line 1, after "electricity" insert "**or thermal energy**".

Page 2, line 16, delete "public utility or" and insert "**liquid petroleum gas company, a public utility, or a**".

Page 2, line 18, delete "public utility or" and insert "**liquid petroleum gas company, a public utility, or a**".

Page 2, delete lines 25 through 29, begin a new paragraph and insert:

"SECTION 2. IC 21-37-8 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

Chapter 8. Energy Related Requirements and Prohibitions

Sec. 1. (a) As used in this section, "net monetary savings" means the amount by which the overall costs associated with the electrical energy supplied to a state educational institution's facilities will be lower because of the implementation of a prohibition or restriction described in subsection (d) than they would have been without the implementation of the prohibition or restriction.

(b) As used in this section, "net monetary savings" does not include secondary savings or avoided or mitigated externalities not directly associated with the electrical energy supplied to a state educational institution's facilities.

(c) A determination of "net monetary savings" under subsection (d)(1) must consider:

(1) the stranded cost of any sources of electrical energy, including any sources of electrical energy supplied through:

(A) a power purchase agreement that is in effect as of the effective date of the prohibition or restriction described in subsection (d); or

(B) an electric generation facility owned or operated by the state educational institution as of the effective date of the

prohibition or restriction described in subsection (d), including any stranded costs resulting from any part of the facility that is not fully depreciated as of the effective date of the prohibition or restriction described in subsection (d);

that will stop being used as a result of the implementation of the prohibition or restriction described in subsection (d); and

(2) the fully allocated cost of new sources of electrical energy that must be procured as a result of the implementation of a prohibition or restriction described in subsection (d);

as well as the difference in overall energy costs that would be incurred without the implementation of the prohibition or restriction and with the implementation of the prohibition and restriction.

(d) A state educational institution may not adopt, implement, or enforce a resolution, rule, or policy that would prohibit or restrict the manner in which electrical energy that is supplied to its facilities is generated, transmitted, or distributed, including any electrical energy that is supplied to its facilities through a power purchase agreement entered into after June 30, 2021, unless the prohibition or restriction:

(1) would result in net monetary savings to the state educational institution; or

(2) is in furtherance of an established academic discipline of the state educational institution as of January 1, 2021.

Sec. 2. (a) As used in this section, "net monetary savings" means the amount by which the overall costs associated with the construction, heating, cooling, use, and maintenance of a building or other structure will be lower because of the implementation of a requirement described in subsection (d)(1) or (d)(2) than they would have been without the implementation of the requirement.

(b) As used in this section, "net monetary savings" does not include secondary savings or avoided or mitigated externalities not directly associated with the construction, heating, cooling, use, and maintenance of a building or other structure.

(c) A determination of "net monetary savings" under subsection (d) must consider:

(1) the stranded cost of any equipment or materials that will stop being used as a result of the implementation of a requirement described in subsection (d)(1) or (d)(2) before the equipment or materials are fully depreciated; and

(2) the fully allocated cost of new equipment and materials

that must be acquired and used as a result of the implementation of a requirement described in subsection (d)(1) or (d)(2);

as well as the difference in energy costs that would be incurred without the implementation of the requirement and with the implementation of the requirement.

(d) A state educational institution may not adopt, implement, or enforce a resolution, rule, or policy that would:

(1) require the use of a particular component or type of material in the construction of a building or other structure on a campus of the state educational institution solely because of the energy saving or energy producing qualities of the component or material; or

(2) require the retrofitting of a building or other structure on a campus of the state educational institution with a particular device or type of material solely because of the energy saving or energy producing qualities of the device or material;

unless the requirement can reasonably be expected to result in net monetary savings within ten (10) years after the installation of the component, material, or device, as determined by an individual who is not an employee of or associated with the state educational institution and who has been certified as a Certified Energy Manager by the Association of Energy Engineers.

Sec. 3. (a) As used in this section, "net monetary savings" means the amount by which the overall costs associated with the purchase or use of motor vehicles by a state educational institution will be lower because of the implementation of a resolution, rule, or policy described in subsection (d) than they would have been without the implementation of the resolution, rule, or policy.

(b) As used in this section, "net monetary savings" does not include secondary savings or avoided or mitigated externalities not directly associated with the purchase or use of motor vehicles by a state educational institution.

(c) A determination of "net monetary savings" under subsection (e)(1) must consider:

(1) the stranded cost of any motor vehicles that will stop being used as a result of the implementation of a resolution, rule, or policy described in subsection (d) before the motor vehicles are fully depreciated; and

(2) the fully allocated cost of new or replacement motor vehicles that must be purchased as a result of the implementation of a resolution, rule, or policy described in

subsection (d);

as well as the difference in vehicle or fuel costs that would be incurred without the implementation of the resolution, rule, or policy and with the implementation of the resolution, rule, or policy.

(d) Except as provided in subsection (e), a state educational institution may not adopt, implement, or enforce a resolution, rule, or policy that:

(1) would prohibit, restrict, give preference to, or establish any condition concerning the purchase or use of motor vehicles by the state educational institution; and

(2) is based upon the type of energy that powers the motor vehicle.

(e) The prohibition set forth in subsection (d) does not apply if the resolution, rule, or policy described in subsection (d):

(1) would result in net monetary savings to the state educational institution over the life of the motor vehicle; or

(2) is in furtherance of an established academic discipline of the state educational institution as of January 1, 2021.

SECTION 3. IC 36-1-3-13 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 13. A unit does not have the power to do the following:**

(1) Require that a particular component, design, or type of material be used in the construction of a building or other structure because of the energy saving or energy producing qualities of the component, design, or material.

(2) Prohibit the use of a particular component, design, or type of material in the construction of a building or other structure because the component, design, or material does not meet a standard for energy saving.

(3) Require that a building or other structure be retrofitted with a particular device or type of material because of the energy saving or energy producing qualities of the device or material.

(4) Prohibit or restrict the purchase or use of vehicles or other machines based upon the type of energy that powers the vehicle or machine.

(5) Prohibit the sale, installation, or use of any of the following:

(A) Natural gas powered home heating equipment.

(B) Natural gas powered home appliances.

(C) Grills, stoves, and other food preparation appliances designed to be used outdoors.

(D) Natural gas powered:

(i) heating appliances; and

(ii) torches, lamps, and other decorative features;

designed to be used outdoors.

(6) Enact an ordinance, adopt a resolution, or enforce an ordinance or resolution that purports to exercise a power denied by subdivisions (1) through (5).".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1191 as introduced.)

SOLIDAY

Committee Vote: yeas 9, nays 4.

March 26, 2021

ENGROSSED
HOUSE BILL No. 1220

DIGEST OF HB 1220 (Updated March 25, 2021 12:05 pm - DI 101)

Citations Affected: IC 2-5.

Synopsis: 21st century energy policy development task force. Reestablishes the 21st century energy policy development task force (task force), following its expiration on December 2, 2020. Provides that the task force consists of 17 members as follows: (1) Six members of the house of representatives, with four of those members appointed by the speaker, and two appointed by the minority leader. (2) Six members of the senate, with four of those members appointed by the president pro tempore, and two appointed by the minority leader. (3) The utility consumer counselor or the utility consumer counselor's designee. (4) The public finance director or the public finance director's designee. (5) Three members appointed by the governor, each of whom must have specified experience with respect to energy. Provides that: (1) one of the members appointed by the speaker; and (2) one of the members appointed by the president pro tempore; shall serve

(Continued next page)

Effective: Upon passage.

Soliday, Manning

(SENATE SPONSORS — KOCH, MESSMER)

January 14, 2021, read first time and referred to Committee on Utilities, Energy and Telecommunications.
January 28, 2021, amended, reported — Do Pass.
February 1, 2021, read second time, amended, ordered engrossed.
February 2, 2021, engrossed. Read third time, passed. Yeas 66, nays 28.

SENATE ACTION

February 18, 2021, read first time and referred to Committee on Utilities.
March 25, 2021, amended, reported favorably — Do Pass.

as co-chairs of the task force. Provides that an individual appointed to serve on the task force at any time before December 2, 2020, under the expired statute governing the task force may be appointed to serve on the task force after December 1, 2020, under these new provisions, at the discretion of the appointing authority. Provides that: (1) all meetings of the task force shall be open to the public in accordance with the state's open door law; and (2) all records of the task force are subject to the requirements of the state's public records law. Sets forth specific issues that the task force must study not later than November 1, 2022. Requires the task force to: (1) develop recommendations for the general assembly and the governor concerning these issues; (2) issue a report setting forth the recommendations developed; and (3) not later than November 1, 2022, submit the report to the executive director of the legislative services agency, the governor, the chair of the utility regulatory commission, and the utility consumer counselor. Provides that these provisions expire July 2, 2023.

March 26, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

ENGROSSED
HOUSE BILL No. 1220

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 2-5-45.1 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 45.1. 21st Century Energy Policy Development Task Force

Sec. 1. As used in this chapter, "task force" refers to the 21st century energy policy development task force established by section 2 of this chapter.

Sec. 2. The 21st century energy policy development task force is established.

Sec. 3. (a) The task force consists of the following seventeen (17) members:

(1) Six (6) members of the senate, appointed as follows:

(A) Four (4) members appointed by the president pro tempore, one (1) of whom shall serve as co-chair of the task force.

(B) Two (2) members appointed by the minority leader.

(2) Six (6) members of the house of representatives, appointed as follows:

(A) Four (4) members appointed by the speaker, one (1) of whom shall serve as co-chair of the task force.

(B) Two (2) members appointed by the minority leader.

(3) The utility consumer counselor appointed under IC 8-1-1.1-3, or the utility consumer counselor's designee, to represent the interests of utility ratepayers.

(4) The public finance director appointed under IC 5-1.2-3-6, or the public finance director's designee, to provide expertise with respect to finance and stranded utility costs.

(5) One (1) member who:

(A) is a resident of Indiana; and

(B) has broad experience in electric utility policy;

appointed by the governor.

(6) One (1) member who:

(A) is a resident of Indiana; and

(B) has expertise with respect to the generation, transmission, and distribution of electricity;

appointed by the governor.

(7) One (1) member who:

(A) is a resident of Indiana; and

(B) has expertise in renewable energy technology and deployment;

appointed by the governor.

(b) Initial appointments to the task force under this section shall be made by the appropriate appointing authority not later than July 1, 2021.

(c) An individual appointed to serve on the 21st century energy policy development task force at any time before December 2, 2020, under IC 2-5-45-3 (before its expiration) may be appointed to serve on the task force after December 1, 2020, under subsection (a) at the discretion of the appointing authority.

Sec. 4. (a) Nine (9) members of the task force constitute a quorum.

(b) The affirmative vote of at least a majority of the members at a meeting at which a quorum is present is necessary for the task force to take official action other than to meet and take testimony.

(c) The task force shall meet at the call of the co-chairs.

Sec. 5. All meetings of the task force shall be open to the public in accordance with and subject to IC 5-14-1.5. All records of the task force are subject to the requirements of IC 5-14-3.

Sec. 6. (a) Not later than November 1, 2022, the task force shall study the following issues:

(1) The management of stranded utility assets, including:

(A) the use of securitization to recover stranded utility costs associated with legacy generation units; and

(B) the establishment of an annual reporting requirement that would require cooperatively owned power suppliers to annually report to the Indiana utility regulatory commission information concerning stranded costs, including information concerning:

(i) any differences between the costs for and the market value of a cooperatively owned power supplier's supply side portfolio;

(ii) any reduced electric load experienced by a cooperatively owned power supplier; and

(iii) any shifting of costs among member rural electric corporations of the cooperatively owned power supplier related to a cooperatively owned power supplier's reduced electric load or stranded costs.

As used in this clause, a "cooperatively owned power supplier" means either a general district corporation within the meaning of IC 8-1-13-23, or a corporation organized under IC 23-17 whose membership includes one (1) or more corporations organized under IC 8-1-13, regardless of whether the cooperatively owned power supplier or any of its members has withdrawn from the jurisdiction of the Indiana utility regulatory commission.

(2) Methods to assure fairness to all customer classes in retail electric rate structures, including alternative rate designs, such as time-of-use pricing, real-time pricing, and critical peak pricing.

(3) Appropriate regulation of the deployment of distributed energy resources, consistent with Federal Energy Regulatory Commission Order No. 2222 (172 FERC 61,247 (2020)).

(4) The impact on communities of utility plant or fuel source site closures.

(5) The status of energy efficiency efforts in Indiana, and the potential development of a statewide energy efficiency plan.

(6) Energy issues affecting:

(A) low income communities; and

(B) communities of color;

in relation to business and employment opportunities in those

communities.

(7) The potential use of "green zones", or "energy investment districts", that:

(A) are established in:

(i) low income communities; or

(ii) communities of color;

that have experienced inequitable environmental and economic hardships; and

(B) provide financial and technical assistance to develop local renewable energy resources by doing the following:

(i) Identifying impacted communities for targeted investments in local renewable energy resources and projects.

(ii) Prioritizing the identified communities for public investment, at both the state and local level, in renewable energy resources and projects, including related job creation programs and economic development initiatives.

(iii) Advancing local projects that install renewable energy resources and projects in the census tracts most burdened by inequitable environmental and economic hardships, while prioritizing both the creation of local jobs with sustainable wages and the transformation of neighborhoods in a manner that ensures sustainable development that does not result in the displacement of longtime residents or businesses.

(iv) Providing resources and assistance to impacted communities, such as by directing a portion of any proceeds from the securitization of stranded utility assets toward the funding of local renewable energy resources and projects.

(v) Establishing community governance and democratic decision making processes to ensure that investments made in local renewable energy resources and projects, along with the use of revenue generated by those resources and projects, are shaped by community input, leadership, and planning.

In studying the issues set forth in this subdivision, the task force may consider the experience of other jurisdictions that have established green zones or energy investment districts.

(8) Methods for the state to encourage electricity storage technology research.

(9) The impact of large scale electric vehicle deployment on

electric grid capacity and reliability.

(10) Electric vehicle charging station ownership and responsibility.

(11) Demand response and pricing systems that incentivize temporal shifting of electric load.

(b) The task force may, at the discretion of the co-chairs, examine any of the issues set forth in IC 2-5-45-6 (before its expiration), to the extent necessary to:

(1) study the issues set forth in subsection (a); or

(2) develop the recommendations and issue the report required by section 7 of this chapter.

Sec. 7. The task force shall:

(1) develop recommendations for the general assembly and the governor concerning the issues set forth in section 6(a) of this chapter;

(2) issue a report setting forth the recommendations developed under subdivision (1); and

(3) not later than November 1, 2022, submit the report to the following:

(A) The executive director of the legislative services agency for distribution to the members of the general assembly. The report submitted to the executive director of the legislative services agency under this clause must be in an electronic format under IC 5-14-6.

(B) The governor.

(C) The chair of the Indiana utility regulatory commission.

(D) The utility consumer counselor.

Sec. 8. The legislative services agency shall provide staff support to the task force.

Sec. 9. This chapter expires July 2, 2023.

SECTION 2. **An emergency is declared for this act.**

COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities, Energy and Telecommunications, to which was referred House Bill 1220, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 39, delete "including the" and insert "**including:**

(A) the use of securitization to recover stranded utility costs associated with legacy generation units; and

(B) the establishment of an annual reporting requirement that would require cooperatively owned power suppliers to annually report to the Indiana utility regulatory commission information concerning stranded costs, including information concerning:

(i) any differences between the costs for and the market value of a cooperatively owned power supplier's supply side portfolio;

(ii) any reduced electric load experienced by a cooperatively owned power supplier; and

(iii) any shifting of costs among member rural electric corporations of the cooperatively owned power supplier related to a cooperatively owned power supplier's reduced electric load or stranded costs.

As used in this clause, a "cooperatively owned power supplier" means either a general district corporation within the meaning of IC 8-1-13-23, or a corporation organized under IC 23-17 whose membership includes one (1) or more corporations organized under IC 8-1-13, regardless of whether the cooperatively owned power supplier or any of its members has withdrawn from the jurisdiction of the Indiana utility regulatory commission.".

Page 2, delete lines 40 through 41.

and when so amended that said bill do pass.

(Reference is to HB 1220 as introduced.)

SOLIDAY

Committee Vote: yeas 9, nays 4.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1220 be amended to read as follows:

Page 3, delete lines 33 through 36, begin a new line block indented and insert:

"**(6) Energy issues affecting:**

(A) low income communities; and

(B) communities of color;

in relation to business and employment opportunities in those communities.

(7) The potential use of "green zones", or "energy investment districts", that:

(A) are established in:

(i) low income communities; or

(ii) communities of color;

that have experienced inequitable environmental and economic hardships; and

(B) provide financial and technical assistance to develop local renewable energy resources by doing the following:

(i) Identifying impacted communities for targeted investments in local renewable energy resources and projects.

(ii) Prioritizing the identified communities for public investment, at both the state and local level, in renewable energy resources and projects, including related job creation programs and economic development initiatives.

(iii) Advancing local projects that install renewable energy resources and projects in the census tracts most burdened by inequitable environmental and economic hardships, while prioritizing both the creation of local jobs with sustainable wages and the transformation of neighborhoods in a manner that ensures sustainable development that does not result in the displacement of longtime residents or businesses.

(iv) Providing resources and assistance to impacted communities, such as by directing a portion of any proceeds from the securitization of stranded utility assets toward the funding of local renewable energy resources and projects.

(v) Establishing community governance and democratic decision making processes to ensure that investments made in local renewable energy resources and projects,

along with the use of revenue generated by those resources and projects, are shaped by community input, leadership, and planning.

In studying the issues set forth in this subdivision, the task force may consider the experience of other jurisdictions that have established green zones or energy investment districts.".

Page 3, line 37, delete "(7)" and insert "**(8)**".

Page 3, line 39, delete "(8)" and insert "**(9)**".

Page 3, line 41, delete "(9)" and insert "**(10)**".

Page 4, line 1, delete "(10)" and insert "**(11)**".

(Reference is to HB 1220 as printed January 28, 2021.)

PRYOR

COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred House Bill No. 1220, 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 1, line 11, delete "fifteen (15)" and insert "**seventeen (17)**".

Page 2, between lines 5 and 6, begin a new line block indented and insert:

"**(3) The utility consumer counselor appointed under IC 8-1-1.1-3, or the utility consumer counselor's designee, to represent the interests of utility ratepayers.**

(4) The public finance director appointed under IC 5-1.2-3-6, or the public finance director's designee, to provide expertise with respect to finance and stranded utility costs.".

Page 2, line 6, delete "(3)" and insert "**(5)**".

Page 2, line 10, delete "(4)" and insert "**(6)**".

Page 2, line 15, delete "(5)" and insert "**(7)**".

Page 2, line 28, delete "Eight (8)" and insert "**Nine (9)**".

and when so amended that said bill do pass.

(Reference is to HB 1220 as reprinted February 2, 2021.)

KOCH, Chairperson

Committee Vote: Yeas 11, Nays 0.

EH 1220—LS 7096/DI 101

February 11, 2021

HOUSE BILL No. 1348

DIGEST OF HB 1348 (Updated February 9, 2021 8:38 pm - DI 134)

Citations Affected: IC 6-1.1.

Synopsis: Assessment of utility grade solar projects. Provides that, for assessment dates beginning after December 31, 2021, the land portion of the fixed property of a utility grade solar energy installation facility shall be assessed at an amount that does not exceed the solar land base rate for the region in which the property is located. Provides that the land portion of the fixed property is considered nonresidential real property for purposes of calculating a person's credit under the tax caps. Provides a limited exception for certain utility grade solar energy installation facilities that were assessed on the January 1, 2021, assessment date. Requires the department of local government finance to annually determine and release a solar land base rate for each region based on the median true tax value per acre of all land in the region classified under the utility property class codes of the department of local government finance for the immediately preceding assessment date.

Effective: Upon passage; January 1, 2022.

Soliday

January 14, 2021, read first time and referred to Committee on Ways and Means.
February 11, 2021, amended, reported — Do Pass.

February 11, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1348

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-1.1-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022]: Sec. 2. As used in this chapter:

(1) The term "bridge company" means a company which owns or operates a toll bridge or an approach or facility operated in connection with such a bridge.

(2) The term "bus company" means a company (other than a street railway company) which is principally engaged in the business of transporting persons for hire by bus in or through two (2) or more townships of this state.

(3) The term "definite situs" means a permanent location in one (1) taxing district or a customary location for use in one (1) taxing district.

(4) The term "express company" means a company which is engaged in the business of transporting property by land, air, or water, and which does not itself operate the vehicles (except for terminal pickup and delivery vehicles) of transportation.

(5) The term "light, heat, or power company" means a company

which is engaged in the business of furnishing light, heat, or power by electricity, gas, or steam. **The term includes a utility grade solar energy installation facility.**

(6) The term "pipe line company" means a company which is engaged in the business of transporting or transmitting any gas or fluid (except water) through pipes.

(7) The term "property" includes both tangible and intangible property.

(8) The term "public utility company" means a company which is subject to taxation under this chapter regardless of whether the company is operated by an individual, a partnership, an association, a corporation, a limited liability company, a fiduciary, or any other entity.

(9) The term "railroad company" means a company which owns or operates:

(i) a steam or electric railroad;

(ii) a suburban or interurban railroad;

(iii) a switching or terminal railroad;

(iv) a railroad station, track, or bridge; or

(v) a facility which is part of a railroad system.

(10) The term "railroad car company" means a company (other than a railroad company) which owns or operates cars for the transportation of property on railroads.

(11) The term "sleeping car company" means a company (other than a railroad company) which owns or operates cars for the transportation of passengers on railroads.

(12) The term "solar land base rate" means the solar land base rates determined under section 24.5 of this chapter.

~~(12)~~ **(13)** The term "street railway company" means a company which operates a passenger transportation business principally within one (1) or more municipalities regardless of whether the transportation vehicles operate on tracks, by means of electric power transmitted through wires, or by means of automotive equipment.

~~(13)~~ **(14)** The term "system" means all property owned or used by a public utility company or companies and operated as one (1) unit in furnishing a public utility service.

~~(14)~~ **(15)** The term "telephone, telegraph, or cable company" means a company which is principally engaged in the business of communicating by electrical transmission.

~~(15)~~ **(16)** The term "tunnel company" means a company which owns or operates a toll tunnel.

~~(16)~~ **(17)** The term "unit value" means the total value of all the property owned or used by a public utility company.

(18) The term "utility grade solar energy installation facility" means a renewable utility grade solar electricity facility that is used for the purpose of generating solar electricity for resale to consumers.

~~(17)~~ **(19)** The term "water distribution company" means a company which is engaged in the business of selling or distributing water by pipe, main, canal, or ditch.

(20) The term "north region" means the region of the state consisting of Adams County, Allen County, Benton County, Blackford County, Carroll County, Cass County, DeKalb County, Elkhart County, Fulton County, Grant County, Howard County, Huntington County, Jasper County, Jay County, Kosciusko County, LaGrange County, Lake County, LaPorte County, Marshall County, Miami County, Newton County, Noble County, Porter County, Pulaski County, St. Joseph County, Starke County, Steuben County, Wabash County, Wells County, White County, and Whitley County.

(21) The term "central region" means the region of the state consisting of Boone County, Clay County, Clinton County, Delaware County, Fayette County, Fountain County, Franklin County, Hamilton County, Hancock County, Hendricks County, Henry County, Johnson County, Madison County, Marion County, Montgomery County, Morgan County, Owen County, Parke County, Putnam County, Randolph County, Rush County, Shelby County, Tippecanoe County, Tipton County, Union County, Vermillion County, Vigo County, Warren County, and Wayne County.

(22) The term "south region" means the region of the state consisting of Bartholomew County, Brown County, Clark County, Crawford County, Daviess County, Dearborn County, Decatur County, Dubois County, Floyd County, Gibson County, Greene County, Harrison County, Jackson County, Jefferson County, Jennings County, Knox County, Lawrence County, Martin County, Monroe County, Ohio County, Orange County, Perry County, Pike County, Posey County, Ripley County, Scott County, Spencer County, Sullivan County, Switzerland County, Vanderburgh County, Warrick County, and Washington County.

SECTION 2. IC 6-1.1-8-24, AS AMENDED BY P.L.146-2008, SECTION 98, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 24. (a) Each year, a township assessor, or the county assessor if there is no township assessor for the township, shall assess the fixed property that as of the assessment date of that year is:

(1) owned or used by a public utility company; and

(2) located in the township or county.

(b) The township or county assessor shall determine the assessed value of fixed property. A township assessor shall certify the assessed values to the county assessor on or before April 1 of the year of assessment. However, in a county with a township assessor in every township, the township assessor shall certify the list to the department of local government finance. The county assessor shall review the assessed values and shall certify the assessed values to the department of local government finance on or before April 10 of that year.

(c) This subsection applies to assessment dates after December 31, 2021. The land portion of the fixed property of a utility grade solar energy installation facility shall be assessed at an amount that does not exceed the solar land base rate for the region in which the property is located.

(d) Land used for the generation of solar power is considered nonresidential real property subject to the three percent (3%) cap under IC 6-1.1-20.6-7.5(a)(5) for purposes of calculating a person's credit under IC 6-1.1-20.6-7.5.

(e) This subsection applies to a utility grade solar energy installation facility:

(1) that had the land portion of its fixed property assessed and valued on January 1, 2021, for property taxes first due and payable in 2022; and

(2) for assessment dates after December 31, 2021, but only until the next planned reassessment of the property during the county's four (4) year reassessment cycle under IC 6-1.1-4-4.2.

If, for an assessment date described in subdivision (2), the assessed value of the land portion of the fixed property of a utility grade solar energy installation facility described in this subsection for the January 1, 2021, assessment date is less than the solar land base rate for the region in which the property is located on a particular assessment date, the land portion of the fixed property of a utility grade solar energy installation facility shall be assessed at an amount equal to the assessed value determined for the January 1, 2021, assessment date.

SECTION 3. IC 6-1.1-8-24.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 24.5. The department of local government finance shall annually determine and release a solar land base rate for the north region, the central region, and the south region of the state as follows:**

(1) For each region, the department shall determine the median true tax value per acre of all land in the region classified under the utility property class codes of the department of local government finance for the immediately preceding assessment date.

(2) The department shall release the department's annual determination of the solar land base rates on or before December 1 of each year.

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

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1348, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 13, after "assessed at" insert "**an amount that does not exceed**".

Page 4, between lines 14 and 15, begin a new paragraph and insert:

"**(d) Land used for the generation of solar power is considered nonresidential real property subject to the three percent (3%) cap under IC 6-1.1-20.6-7.5(a)(5) for purposes of calculating a person's credit under IC 6-1.1-20.6-7.5.**

(e) This subsection applies to a utility grade solar energy installation facility:

(1) that had the land portion of its fixed property assessed and valued on January 1, 2021, for property taxes first due and payable in 2022; and

(2) for assessment dates after December 31, 2021, but only until the next planned reassessment of the property during the county's four (4) year reassessment cycle under IC 6-1.1-4-4.2.

If, for an assessment date described in subdivision (2), the assessed value of the land portion of the fixed property of a utility grade solar energy installation facility described in this subsection for the January 1, 2021, assessment date is less than the solar land base rate for the region in which the property is located on a particular assessment date, the land portion of the fixed property of a utility grade solar energy installation facility shall be assessed at an amount equal to the assessed value determined for the January 1, 2021, assessment date.".

and when so amended that said bill do pass.

(Reference is to HB 1348 as introduced.)

BROWN T

Committee Vote: yeas 23, nays 1.

March 26, 2021

ENGROSSED
HOUSE BILL No. 1520

DIGEST OF HB 1520 (Updated March 25, 2021 11:52 am - DI 133)

Citations Affected: IC 8-1.

Synopsis: Electric utility reliability adequacy metrics. Provides that a public utility (defined in the bill as a utility listed in the utility regulatory commission's (IURC's) rule concerning integrated resource planning) that owns and operates an electric generating facility serving Indiana customers shall operate and maintain the facility using good utility practices and in a manner: (1) reasonably intended to support the provision of reliable and economic electric service to customers; and (2) reasonably consistent with the resource reliability requirements of the Midcontinent Independent System Operator (MISO) or any other appropriate regional transmission organization. Provides that, not later than 30 days after the deadline for submitting an annual planning reserve margin report to MISO, each public utility providing electric service to Indiana customers shall file with the IURC a report that provides the following information for each of the next three resource planning years: (1) The capacity, location, and fuel source for each electric generating facility that is owned and operated by the electric

(Continued next page)

Effective: July 1, 2021.

Soliday, Manning

(SENATE SPONSORS — KOCH, MESSMER)

January 14, 2021, read first time and referred to Committee on Utilities, Energy and Telecommunications.
February 4, 2021, amended, reported — Do Pass.
February 8, 2021, read second time, ordered engrossed. Engrossed.
February 11, 2021, read third time, passed. Yeas 93, nays 0.

SENATE ACTION

February 23, 2021, read first time and referred to Committee on Utilities.
March 25, 2021, reported favorably — Do Pass.

utility, and that will be used to provide electric service to Indiana customers. (2) The amount of generating resource capacity or energy, or both, that the public utility has procured under contract, and that will be used to provide electric service to Indiana customers. (3) The amount of demand response resources available to the public utility under contracts and tariffs. (4) The planning reserve margin requirements and other federal reliability requirements that the public utility is obligated to meet, including a comparison of each reported planning reserve margin requirement with the planning reserve margin requirement for the 2021-2022 planning year. (5) The reliability adequacy metrics (as defined in the bill) for the public utility, as forecasted for the three planning years covered by the report. Provides that in reviewing a public utility's report, the IURC may request technical assistance from MISO or any other appropriate regional transmission organization in making certain determinations concerning the adequacy of the public utility's available capacity resources to support the provision of reliable electric service. Provides that if, after reviewing a public utility's report, the IURC is not satisfied that the public utility can: (1) provide reliable electric service to the public utility's Indiana customers; or (2) meet its planning reserve margin requirement or other federal reliability requirements; during any of the planning years covered by the report, the IURC may conduct an investigation as to the reasons. Provides that if, after such an investigation, the IURC determines that the capacity resources available to the public utility will not be adequate to support the provision of reliable electric service to the public utility's Indiana customers, or to allow the public utility to meet its planning reserve margin requirements or other federal reliability requirements, the IURC shall issue an order directing the public utility to acquire or construct such capacity resources as are reasonable and necessary to enable the public utility to meet these requirements. Provides that not later than 90 days after the date of such an order by the IURC, the public utility shall file for approval with the IURC a plan to comply with the order. Provides that the IURC shall annually submit to the governor and to the interim study committee on energy, utilities, and telecommunications a report that includes the following: (1) The IURC's analysis regarding the ability of public utilities to: (A) provide reliable electric service to Indiana customers; and (B) meet their planning reserve margin requirements or other federal reliability requirements; for the next three resource planning years. (2) A summary of: (A) the projected demand for retail electricity in Indiana over the next calendar year; and (B) the amount and type of capacity resources committed to meeting this demand. Authorizes the IURC to adopt rules to implement these provisions.

March 26, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

ENGROSSED
HOUSE BILL No. 1520

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 8-1-8.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 1. (a) **Except as provided in subsection (c),** as used in this chapter, "public utility" means a:

(1) public, municipally owned, or cooperatively owned utility; or

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

(b) As used in this chapter, "public utility service" means the service rendered by a public utility.

(c) As used in section 13 of this chapter, "public utility" means only those utilities listed in 170 IAC 4-7-2(a) and their successors in interest.

SECTION 2. IC 8-1-8.5-13 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 13. (a) The general assembly finds that it is in the public interest to support the reliability, availability, and diversity**

of electric generating capacity in Indiana for the purpose of providing reliable and stable electric service to customers of public utilities.

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

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

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

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

(1) That the public utility:

(A) has in place sufficient summer UCAP; or

(B) can reasonably acquire not more than thirty percent (30%) of its total summer UCAP from capacity markets, such that it will have sufficient summer UCAP;

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

(2) That the public utility:

(A) has in place sufficient winter UCAP; or

(B) can reasonably acquire not more than thirty percent (30%) of its total winter UCAP from capacity markets, such that it will have sufficient winter UCAP;

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

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

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

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

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

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

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

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

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

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

(i) provide reliable electric service to Indiana customers for the winter period; and

(ii) meet its planning reserve margin requirement and other federal reliability requirements described in subsection (i)(4); and

(B) is acceptable to the commission.

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

(1) reasonably intended to support the provision of reliable and economic electric service to customers of the public utility; and

(2) reasonably consistent with the resource reliability

requirements of MISO or any other appropriate regional transmission organization.

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

(1) The:

(A) capacity;

(B) location; and

(C) fuel source;

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

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

(A) capacity;

(B) location; and

(C) fuel source;

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

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

(4) The following:

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

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

(i) applies to the planning years covered by the report; and

(ii) the public utility is obligated to meet in accordance with the public utility's membership in an appropriate

regional transmission organization;

to the extent known by the public utility with respect to any particular planning year covered by the report.

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

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

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

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

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

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

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

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

(l) A:

(1) corporation organized under IC 23-17 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13; or

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

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

(m) In reviewing a report filed by a public utility under

subsection (i), the commission may request technical assistance from MISO or any other appropriate regional transmission organization in determining:

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

(2) whether the resources available to the public utility under subsections (i)(1) through (i)(3) will be adequate to support the provision of reliable electric service to the public utility's Indiana customers.

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

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

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

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

(o) If, upon investigation under IC 8-1-2-58 and IC 8-1-2-59, and after notice and hearing, as required by IC 8-1-2-59, the commission determines that the capacity resources available to the public utility under subsections (i)(1) through (i)(3) will not be adequate to support the provision of reliable electric service to the public utility's Indiana customers, or to allow the public utility to meet its planning reserve margin requirements or other federal reliability requirements that the public utility is obligated to meet (as described in subsection (i)(4)), the commission shall issue an order directing the public utility to acquire or construct such capacity resources that are reasonable and necessary to enable the public utility to provide reliable electric service to its Indiana customers, and to meet its planning reserve margin requirements or other federal reliability requirements described in subsection (i)(4). Not later than ninety (90) days after the date of the commission's order under this subsection, the public utility shall file for approval with the commission a plan to comply with the commission's order. The public utility's plan may include:

(1) a request for a certificate of public convenience and

necessity under this chapter; or

(2) an application under IC 8-1-8.8;

or both.

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

(1) The commission's analysis regarding the ability of public utilities to:

(A) provide reliable electric service to Indiana customers; and

(B) meet their planning reserve margin requirements or other federal reliability requirements;

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

(2) A summary of:

(A) the projected demand for retail electricity in Indiana over the next calendar year; and

(B) the amount and type of capacity resources committed to meeting the projected demand.

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

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

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

COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities, Energy and Telecommunications, to which was referred House Bill 1520, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Replace the effective date in SECTION 1 with "[EFFECTIVE JULY 1, 2021]".

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-1-8.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 1. (a) **Except as provided in subsection (c),** as used in this chapter, "public utility" means a:

(1) public, municipally owned, or cooperatively owned utility; or

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

(b) As used in this chapter, "public utility service" means the service rendered by a public utility.

(c) As used in section 13 of this chapter, "public utility" means only those utilities listed in 170 IAC 4-7-2(a) and their successors in interest.".

Page 2, line 26, after "(i)(4)." begin a new line blocked left and insert:

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

Page 7, delete line 20.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1520 as introduced.)

SOLIDAY

Committee Vote: yeas 13, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred House Bill No. 1520, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to HB 1520 as printed February 4, 2021.)

KOCH, Chairperson

Committee Vote: Yeas 10, Nays 0

September 17, 2020

News Media Contact:
Craig Cano, mediadl@ferc.gov
Docket No. RM18-9-000

FERC Order No. 2222: A New Day for Distributed Energy Resources

FERC Order No. 2222 will help usher in the electric grid of the future and promote competition in electric markets by removing the barriers preventing distributed energy resources (DERs) from competing on a level playing field in the organized capacity, energy and ancillary services markets run by regional grid operators.

What are distributed energy resources?

DERs are small-scale power generation or storage technologies (typically from 1 kW to 10,000 kW) that can provide an alternative to or an enhancement of the traditional electric power system. These can be located on an electric utility's distribution system, a subsystem of the utility's distribution system or behind a customer meter. They may include electric storage, intermittent generation, distributed generation, demand response, energy efficiency, thermal storage or electric vehicles and their charging equipment.

What does Order No. 2222 do?

This rule enables DERs to participate alongside traditional resources in the regional organized wholesale markets through aggregations, opening U.S. organized wholesale markets to new sources of energy and grid services. It will help provide a variety of benefits including: lower costs for consumers through enhanced competition, more grid flexibility and resilience, and more innovation within the electric power industry.

This rule allows several sources of distributed electricity to aggregate in order to satisfy minimum size and performance requirements that each may not be able to meet individually.

What comes next?

Regional grid operators must revise their tariffs to establish DERs as a category of market participant. These tariffs will allow the aggregators to register their resources under one or more participation models that accommodate(s) the physical and operational characteristics of those resources.

Each tariff must set a size requirement for resource aggregations that do not exceed 100 kW.

- The tariffs also must address technical considerations such as:
- locational requirements for DER aggregations;
- distribution factors and bidding parameters;
- information and data requirements;
- metering and telemetry requirements; and
- coordination among the regional grid operator, the DER aggregator, the distribution utility and the relevant retail regulatory authority.

The rule also directs the grid operators to allow DERs that participate in one or more retail programs to participate in its wholesale markets and to provide multiple wholesale services, but to include any appropriate, narrowly designed restrictions necessary to avoid double counting.

Is this under FERC jurisdiction?

Yes. Importantly, the final rule builds off the DC Circuit Court's recent ruling on Order No. 841, in which the court affirmed the Commission's exclusive jurisdiction over the regional wholesale power markets and the criteria for participation in those markets.

The rule does not allow retail regulatory authorities to broadly prohibit DERs from participating in the regional markets. But it does allow retail regulators to continue prohibitions against distributed energy aggregators bidding the demand response of retail customers into the regional markets.

The rule also establishes a small utility opt-in. Specifically, it prohibits grid operators from accepting bids from the aggregation of customers of small utilities whose electric output was 4 million megawatt-hours or less in the preceding fiscal year, unless the relevant retail regulatory authority for a small utility allows such participation.

The rule explains that state and local authorities remain responsible for the interconnection of individual DERs for the purpose of participating in wholesale markets through a DER aggregation.

When will this rule take effect?

Order No. 2222 takes effect 60 days after publication in the *Federal Register*. Grid operators must make compliance filings FERC within 270 days of publication in the *Federal Register*.

###

NEWS RELEASES

FERC Issues Final Rule on Electric Storage Participation in Regional Markets

February 15, 2018
News Release:

February 15, 2018

Docket Nos. RM16-23

Item No. E-1 Order No. 841 (Errata Notice)

The Federal Energy Regulatory Commission (FERC) today voted to remove barriers to the participation of electric storage resources in the capacity, energy and ancillary services markets operated by Regional Transmission Organizations and Independent System Operators.

This order will enhance competition and promote greater efficiency in the nation's electric wholesale markets, and will help support the resilience of the bulk power system. In a November 2016 Notice of Proposed Rulemaking (NOPR), the Commission noted that market rules designed for traditional generation resources can create barriers to entry for emerging technologies such as electric storage resources.

Today's final rule helps remove these barriers by requiring each regional grid operator to revise its tariff to establish a participation model for electric storage resources that consist of market rules that properly recognize the physical and operational characteristics of electric storage resources.

The participation model must ensure that a resource using the model is eligible to provide all capacity, energy and ancillary services that it is technically capable of providing, can be dispatched, and can set the wholesale market clearing price as both a seller and buyer consistent with existing market rules.

The model also must account for the physical and operational characteristics of electric storage resources through bidding parameters or other means, and it must set a minimum size requirement that does not exceed 100 kilowatts.

The final rule also requires that the sale of electric energy from the wholesale electricity market to an electric storage resource that the resource then resells back to those markets must be at the wholesale locational marginal price.

The NOPR also proposed reforms related to distributed energy resource aggregations. While the Commission continues to believe that removing unnecessary barriers to market participation by these resources is important, today's rule concludes that more information is needed with respect to those proposed reforms.

In light of that, the Commission today also issued a Notice of Technical Conference (RM18-9-000), that identifies questions to help gather additional information to determine what action to take on the distributed energy resource aggregation reforms proposed in the NOPR. Commission staff also will use the technical conference as an opportunity to discuss other technical considerations for the bulk power system related to distributed energy resources.

Today's final rule takes effect 90 days after publication in the Federal Register. Compliance filings by the RTOs and ISOs are due 270 days after the effective date, with an additional 365 days to implement the tariff revisions.

R-18-10

Documents & Docket Numbers

- Order No. 841
- (Errata Notice)

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This page was last updated on May 26, 2020

Section Three

How Corporations Can Meet Sustainability Goals Via Virtual Renewable Purchased Power Agreements (PPAs)

Kristina Kern Wheeler
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Indianapolis, Indiana

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Section Three

How Corporations Can Meet Sustainability Goals Via Virtual Renewable Purchased Power Agreements (PPAs)…….Kristina Kern Wheeler
Emilie Wangerman

How Corporations Can Meet Sustainability Goals Via
Virtual Renewable Purchased Power Agreements (PPAs)

ICLEF Spring 2021 Energy Law CLE - Kristina Kern Wheeler, Bose McKinney & Evans LLP

I. Explanation of Federal (PURPA) and State Regulatory Structures in Indiana For Renewable Energy Projects.

A. How the Public Utility Regulatory Policy Act ("PURPA") Helped Renewable Energy Project Development.

The Public Utility Regulatory Policies Act or PURPA (Pub.L. 95–617, 92 Stat. 3117, enacted November 9, 1978 and codified at 16 U.S.C. ch. 46 § 2601 et seq.) was passed by Congress in response to the energy crisis of the 1970s. *FERC v. Mississippi*, 456 U.S. 742, 745 (1982). PURPA had several goals, one of which was to spur the development of renewable energy in the U.S. Prior to PURPA, public utilities as monopolies, often refused to purchase power from, or interconnect with, renewable energy projects. **PURPA requires public utilities and municipally-owned utilities to:**

(1) **Interconnect** with renewable energy projects;

(2) **Purchase power from renewable energy projects** if the price was less than the "avoided cost" the utility would incur to generate its own power or to buy it from another source; and

(3) **Provide backup, maintenance and supplemental power** to the renewable project site.

These PURPA protections applied to energy resources that meet the definition of a **"Qualified Facility" or QF. The two types of QFs are:**

(1) Small power production facilities that produce 80 megawatts (MW) or less and that use renewable sources (such as hydroelectric, wind or solar power) as the primary energy source; or

(2) Cogeneration facilities that produce both electricity and "another form of useful thermal energy (such as heat or steam) in a way that is more efficient than the separate production of both forms of energy.

16 U.S.C. §796(18)(A) and 18 CFR 292.203; *see also Am. Paper Inst., Inc. v. Am. Elec. Power Serv. Corp.*, 461 U.S. 402, 404 (1983). QF status also allows renewable energy projects to avoid traditional utility regulation under the Federal Power Act.

Self-Certification as a QF with the Federal Energy Regulatory Commission (FERC) is required for small power production facilities above 1MW in size. A renewable energy project must also notify their local utility and the IURC when the self-certification is filed. Interested parties then have 30 days to file a protest (which is a rare occurrence), which the renewable project could then rebut. Absent a protest or other insufficiency with the self-certification, FERC should issue an approval shortly after the protest period has expired. A QF must file a recertification whenever the Qualifying Facility "fails to conform with any material facts or representations presented…in its submittals to the Commission." 18 C.F.R. § 292.207(f).

The Federal Energy Regulatory Commission's ("FERC's") New Rules for QFs issued on December 17, 2020 are in a state of flux (FERC RM19-15-000, AD16-16-000). The rules have not yet been approved by the U.S. Office of Management and Budget, and will likely be appealed in federal district court. It is also unclear whether the FERC, now controlled by President Biden's administration, will change the QF rules again.

https://www.ferc.gov/sites/default/files/2020-07/07-2020-E-1-PURPA-fact-sheet.pdf

B. The State's Rules for QFs Also Impact Renewable Energy Development in Indiana.

"Pursuant to PURPA, the state regulatory agencies for utilities were required to consider and adopt or reject various standards . . . to conserve energy, promote efficient use of facilities

and resources by the utility and to promote equitable rates to consumers of electricity." *Greenwood Prof'l Park v. Pub. Serv. Comm'n of Ind.*, 487 N.E.2d 472, 473 (Ind. Ct. App. 1986). In 1982, Indiana passed its first laws creating a state policy to support renewable energy projects (Ind. Code § 8-1-2.4 *et seq*.). Indiana's statute mirrored the requirements of PURPA, using slightly different terms to define the same types of projects (with capacity less than 80 MW):

(1) **Alternate energy production facilities** include any solar, wind turbine, waste management, resource recovery, refuse-derived fuel, organic waste biomass, or wood burning facility;

(2) **Cogeneration facilities** that simultaneously generate electricity and useful thermal energy, and meets the energy efficiency standards of 16 U.S.C. 824a-3; and

(3) **Small hydro facilities**, which are hydroelectric dams.

Indiana requires its public and municipal utilities to purchase or "wheel" (transmit across the grid) electricity or useful thermal energy from alternate energy production facilities, cogeneration facilities, or small hydro facilities located in the utility's service territory, under the terms and conditions that the commission finds are just and reasonable, nondiscriminatory and will support the policy to develop these projects. IC 8-1-2.4-4(a)(2); *see also* 16 U.S.C. § 824a-3(b).

C. If These State and Federal Laws are 40+ Years Old, Why Has Indiana Not Seen More Renewable Energy Development?

PURPA and its Indiana counterpart were just the first steps in supporting renewable energy development in the state. Several other developments led to increased green power development, including:

(1) Technology advances that made solar and wind projects more economically feasible.

(2) FERC approved the creation of the first multistate Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) in 2000 that increased independent power producers' access to a competitive wholesale energy market and expanded transmission capability.

(3) Indiana was historically a low-cost electricity state, but that is changing, and many older generation projects are retiring.

(4) Understanding of the impacts of climate change, increased awareness, and desire to promote renewable energy.

(5) The Consolidated Appropriations Act (Act), signed into law on December 27, 2020 (H. R. 133, 116th Congress (2019-2020)) provides an extension of the beginning of construction deadline for the Production Tax Credit ("PTC") for wind projects and the Investment Tax Credit ("ITC") for solar and offshore wind, among other things. The Act extends this phase-down schedule by two years. Solar projects will now receive a 26% ITC if construction begins in 2021 or 2022, and 22% ITC if construction begins in 2023. Any solar project claiming the ITC must be placed in service no later than 2025 or else the project will only qualify for a 10% ITC.

Since January 2020, twelve new solar parks have filed requests for declination of jurisdiction with the Indiana Utility Regulatory Commission (IURC). This is an unprecedented number of solar parks simultaneously under development in Indiana. Some of these projects have traditional utility offtakers, others have corporate offtakers, and some have yet to be publicly announced.

II. How Does a Company Obtain Its Power from a Renewable Energy Project in Indiana?

A. Indiana Has Traditional Monopoly Service Territories for Electricity.

Electric utilities are given exclusive monopoly rights to serve retail customers in Indiana. Indiana's laws regarding electric suppliers' service territory assignments state that "an assigned electricity supplier has the sole right to furnish retail electric service to customers" in these designated areas. Ind. Code § 8-1-2.3-1.

B. The Prohibition of Third-Party Sales of Electricity to Retail Customers in Traditionally Regulated States Led to the Development of "Virtual Purchased Power Agreements (PPAs)".

A Virtual PPA is a financial and contractual instrument commonly used to bring renewable energy projects into the wholesale market. Companies that enter into Virtual PPA receive a hedge against future energy price fluctuations, while providing the renewable project owner with a steady stream of revenue to support operations and capital investment. Below is a table that describes the differences between a Physical PPA and a Virtual PPA:

Physical PPA	Virtual PPA
Energy is "physically" delivered to the buyer (actual electrons flow). Buyer pays for energy capacity delivered at the set contractual rate.	Financially-settled transaction between renewable energy project and buyer, no actual energy is delivered. Energy from the renewable project is sold into the wholesale power market for the RTO/ISO market price. Seller and buyer financially settle the transaction based upon the difference between the market price and the "strike price" in the Virtual PPA contract.
Buyer and renewable energy project are usually in the same interconnection grid region, due to the increased cost of delivering electricity across zones.	Buyer and renewable energy project do not have to be in the same interconnection grid region.
Available to buyers in states that permit direct retail access or electric competition.	Appealing in states that do not have retail electric competition or direct retail access to buyers. Also appealing to buyers operating in multiple geographic areas with different load centers.

Energy and capacity from the renewable energy project will exclusively serve the wholesale power market, thus avoiding any conflict with Indiana's prohibition on third-party electric sales. Virtual PPAs are a common way to bring renewable energy onto the grid in the

absence of a captive retail customer base, while helping companies to meet their clean energy and sustainability goals.

III. Explanation of Renewable Energy Credits (RECs) and Who Can Benefit from Them.

Due to the laws of physics, the flow of electrons from a specific generator to the end-use customer is impossible to track with precision. RECs are a legal instrument through which "environmental attributes" of renewable energy generation and use claims are substantiated in the U.S. renewable energy market. One REC represents the one megawatt-hour (1 MWh) of renewable electricity generation. Offtakers of renewable energy projects should not assume that a PPA entitles them to the project's RECs. FERC has held that absent express provisions to the contrary, PURPA contracts do not inherently convey to the purchasing utility any RECs. Rather, the power purchase price that the utility pays under such a contract compensates a generation facility only for the energy and capacity produced by that facility and not for any environmental attributes associated with the facility. *Am. Ref-Fuel Co., Covanta Energy Grp., Montenay Power Corp., & Wheelabrator Technologies, Inc.*, 107 FERC ¶ 61016 (Apr. 15, 2004). Therefore, during contract negotiations, an offtaker should negotiate the RECs along with the rates for energy and capacity and other terms and conditions in the renewable PPA. Absent a right to the RECs, a Virtual PPA buyer cannot substantiate the purchase of renewable energy.

IV. A Final Word and Warning on Virtual PPAs.

Virtual PPAs, as with any financial instrument, can carry significant rewards as well as significant risk of financial loss. Electricity markets are sophisticated and require particular technical and legal knowledge to navigate successfully. It is important to obtain independent legal advice regarding how to determine the strike price and other terms and conditions of any

PPA. Of particular importance is balancing the allocation of risk between the renewable project owner (seller) and the company (buyer).

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ICLEF: Energy Law in Indiana

How Corporations Can Meet Sustainability Goals Via Virtual Renewable Purchased Power Agreements (PPAs)

April 8, 2021

Kristina Kern Wheeler

Bose McKinney & Evans LLP

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BOSE McKINNEY & EVANS LLP
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Bose McKinney & Evans LLP is headquartered at 111 Monument Circle, Suite 2700, Indianapolis, Indiana 46204, with an office located at 200 East Main Street, Suite 536, Fort Wayne, Indiana 46802 and one located at 777 6th Street NW, Suite 510, Washington, DC 20001.

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Our Focus: Supporting Large-Scale Renewable Project Development

There are different green power products available in Indiana, each with a different regulatory and legal structure:

- Local utility retail products available customers (green power rates)
- Customer-owned generation (i.e., home or business with solar array on their own property)
- Large-scale renewable power projects that are built by independent power providers and sold into the wholesale power market.

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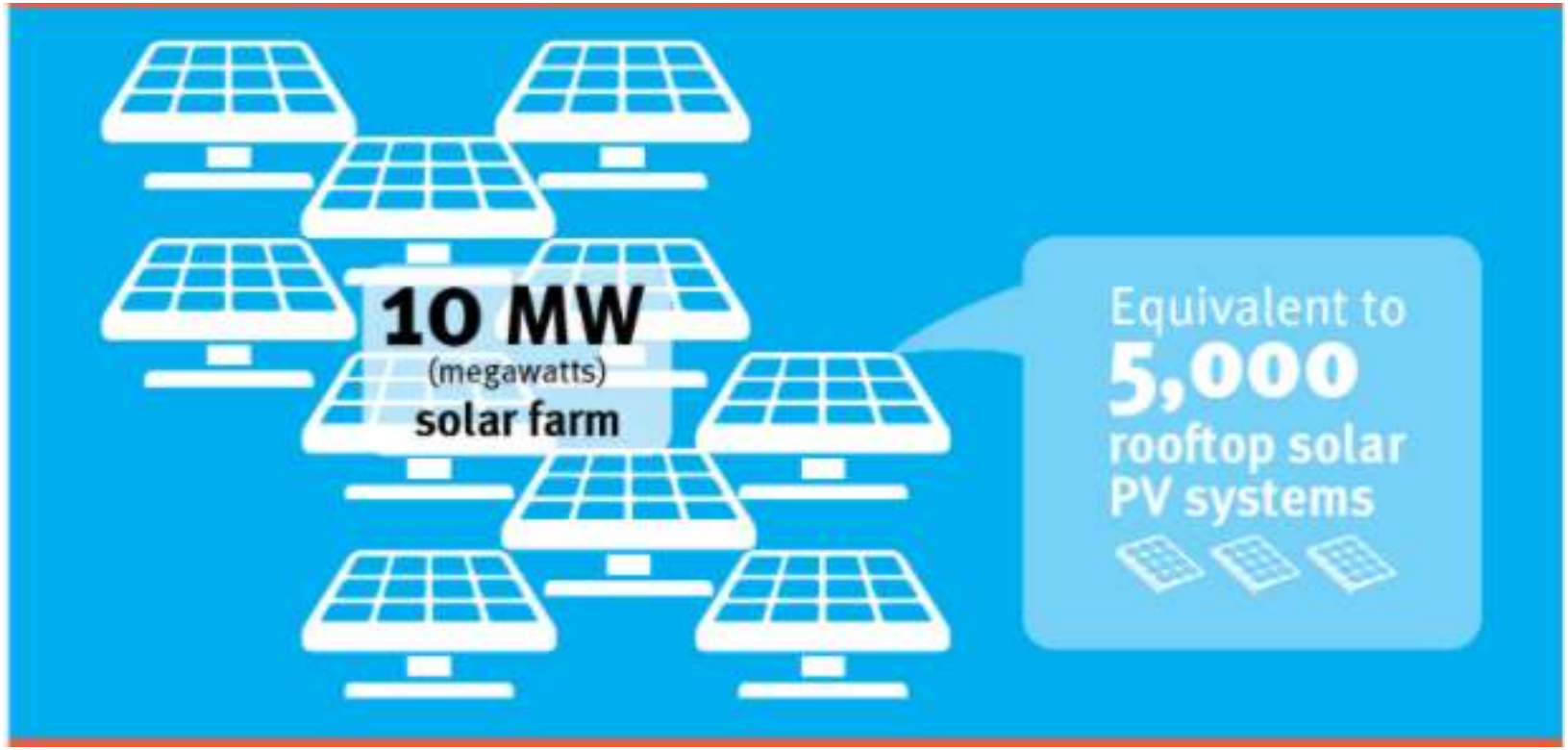
Scaling Renewable Projects



Source: National Archives, public domain images.

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About Lightsource bp

Local track record

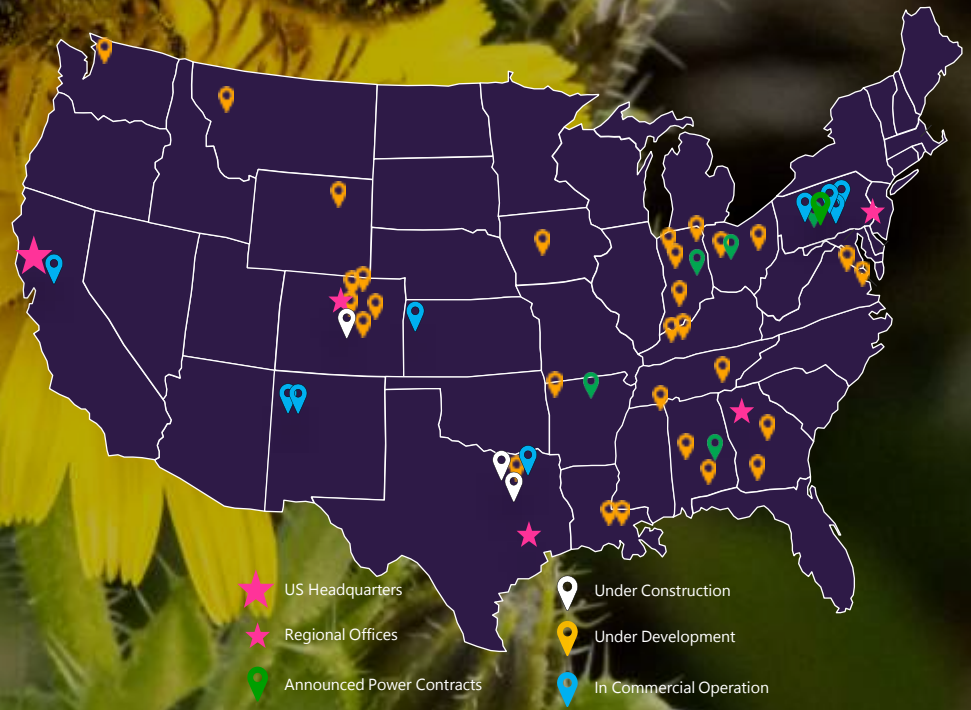
Since 2017, the team has developed a pipeline of 8,900MW of large-scale solar projects at various stages of development in 21 states across America.

U.S. Project Portfolio	Contracted Assets	Projects in Construction	North America Team
8.9GW total development pipeline	**2,370MW** executed power contracts with clients in 10 states	**617MW** Currently under construction	**70+** U.S. solar team with decades of experience in the U.S. solar and power markets

Global platform

We're a global leader in the development and management of solar energy projects.

Track Record	Global Platform	Full Lifecycle Capabilities	bp Strategic Partnership
3.0GW of projects developed around the world	**14** countries with active operations	**500+** staff covering end-to-end project lifecycle	**50:50** bp joint venture includes investment into project development and funding



403MW

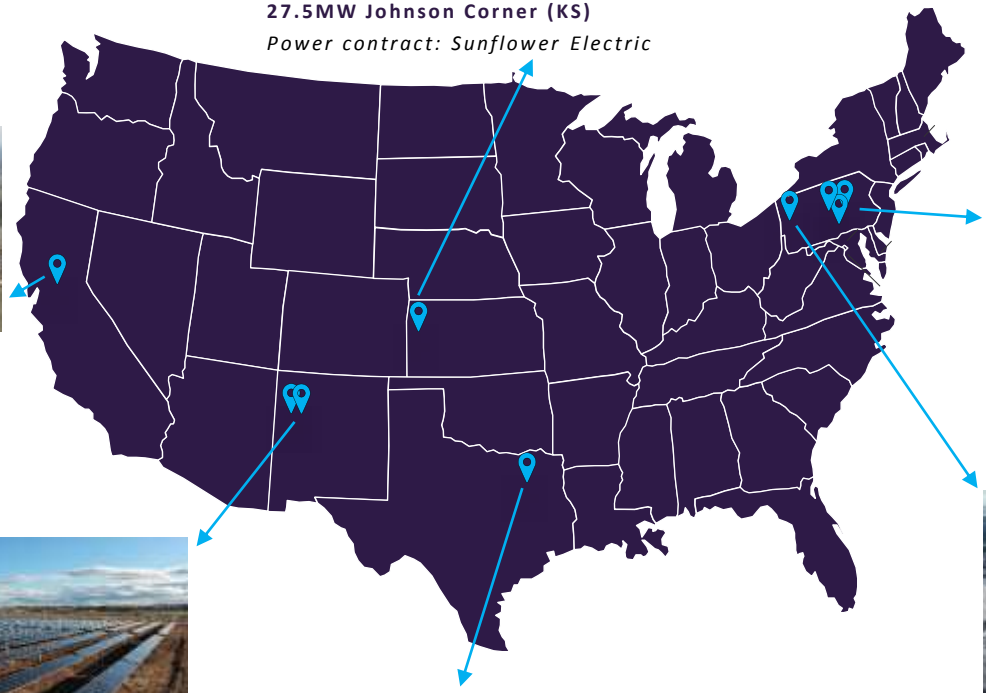
Projects in operation

27.5MW Johnson Corner (KS)

Power contract: Sunflower Electric

16.5MW Wildflower (CA)

Power contract: SMUD



18.2MW Whitetail 1 (PA)

27MW Whitetail 2 (PA)

27MW Whitetail 3 (PA)

Power contract: Penn State

5.8MW Grants (NM)

3.1MW Bluewater (NM)

Power contract: CDEC

17.5MW Elk Hill 2 (PA)

Power contract: SEPTA

260MW Impact (TX)

Power contract: bp

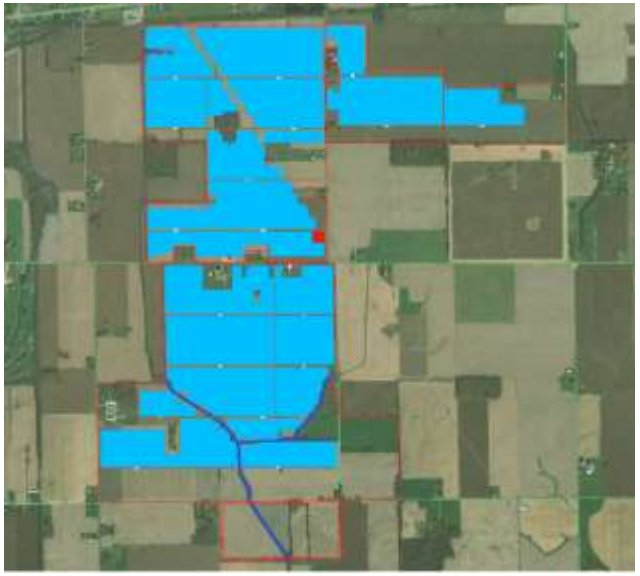
Safety
Integrity
Respect
Sustainability
Drive

Bellflower Solar: Our VPPA in Indiana

Project Description

Location	• Henry County, Indiana • 50 miles east of Indianapolis • 1,200 acres of land
Contract Structure	• Virtual PPA with Verizon Communications announced August 2020 • Supports Verizon's goal of carbon neutral operations by 2035
System Overview	• 152.5 MWac|187.5 MWdc • 312.9 GWh estimated base year generation • Offset equivalent of 223,440 metric tons of CO_2 annually
Dual Use Solar	• Pollinator-friendly solar farm, to be designed in collaboration with ecology experts to restore and conserve pollinator habitats • Part of a university research initiative on the benefits of co-locating solar with pollinator habitats

Site Plan



Safety
Integrity
Respect
Sustainability
Drive

The Federal Legal Structure for These Large-Scale Green Power Projects

The Public Utility Regulatory Policies Act (PURPA) was passed in response to the energy crisis of the 1970s. It's goals were to promote energy efficiency, and reduce America's reliance on foreign oil sources.

Source: National Archives, public domain images.

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Explanation of the Federal Legal Structure for Green Power Projects

PURPA applies to energy resources that meet the definition of a "Qualified Facility" (QF):

(1) Small power production facilities that produce **80 megawatts (MW) or less and that use renewable sources** (such as hydroelectric, wind or solar power) as the primary energy source; *or…*

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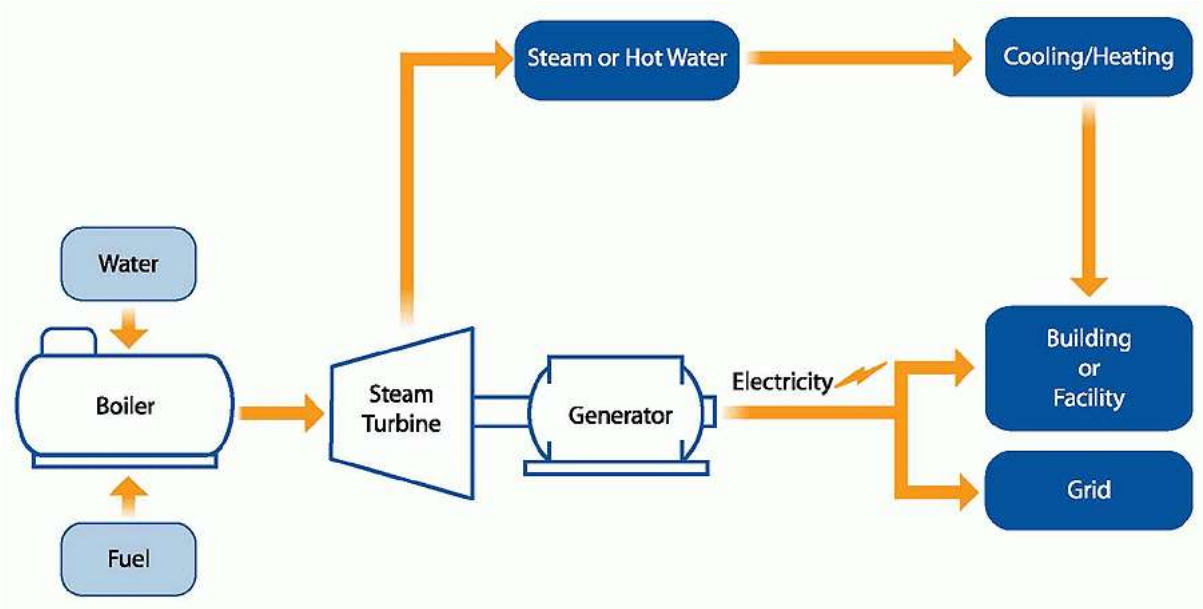
Explanation of the Federal Legal Structure for Green Power Projects

(2) **Cogeneration facilities** that produce both electricity and "another form of useful thermal energy (such as heat or steam) in a way that is more efficient than the separate production of both forms of energy.



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Explanation of the Federal Legal Structure for Green Power Projects

PURPA requires public utilities and municipally-owned utilities to:

(1) **Interconnect** with renewable energy projects and **"wheel" power across the grid** if needed;

(2) **Purchase power from** those projects at "avoided cost" rates;

(3) **Provide backup, maintenance and supplemental power** to the renewable project site.

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Explanation of Indiana's Legal Structure for Green Power Projects

Ind. Code § 8-1-2.4 et seq. mirrors PURPA, using slightly different terms to define the same types of projects (with capacity less than 80 MW):

(1) **Alternate energy production facilities** (solar, wind turbine, waste management, resource recovery, refuse-derived fuel, organic waste biomass, or wood burning facility);

(2) **Cogeneration facilities**; and

(3) **Small hydro facilities** (hydroelectric dams).

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40+ Years of PURPA: Why Has Indiana Not Seen More Green Power Projects?

PURPA and its Indiana counterpart were just the first steps in supporting renewable energy development in the state. Several other developments led to increased green power development, including:

(1) **Technology advances** that made solar and wind projects more economically feasible.

(2) The creation of **competitive wholesale energy markets** with expanded transmission capability.

(continued)

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40+ Years of PURPA: Why Has Indiana Not Seen More Green Power Projects?

(3) Indiana was historically a low-cost electricity state, but that is changing, and many **older generation projects are now retiring**.

(4) Understanding of the impacts of **climate change** increased awareness and desire to promote renewable energy.

(5) **Production Tax Credit** ("PTC") for wind projects and the **Investment Tax Credit** ("ITC") for solar were extended in Dec. 2020 for 2 more years.

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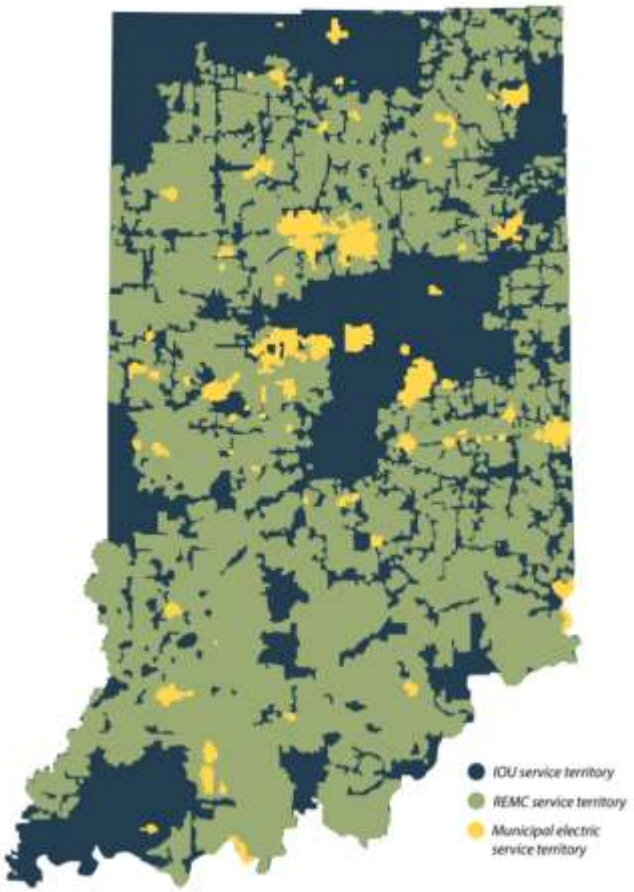
How Does a Company Obtain Its Power from a Green Power Project in Indiana?

Electric utilities are given exclusive monopoly rights to serve retail customers in Indiana where "an assigned electricity supplier has the **sole right to furnish retail electric service to customers**" in these designated areas. Ind. Code § 8-1-2.3-1.



Source: Indiana Utility Regulatory Commission.

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How Does a Company Obtain Its Power from a Green Power Project in Indiana?

Monopoly markets led to the Development of **"Virtual Purchased Power Agreements (PPAs)"** to support renewable energy development.

- A **financial and contractual instrument** commonly used to bring renewable energy projects into the wholesale market.
- Buyers receive a **hedge against future energy price fluctuations**, while providing the renewable project owner with a **steady stream of revenue** to support operations and capital investment.

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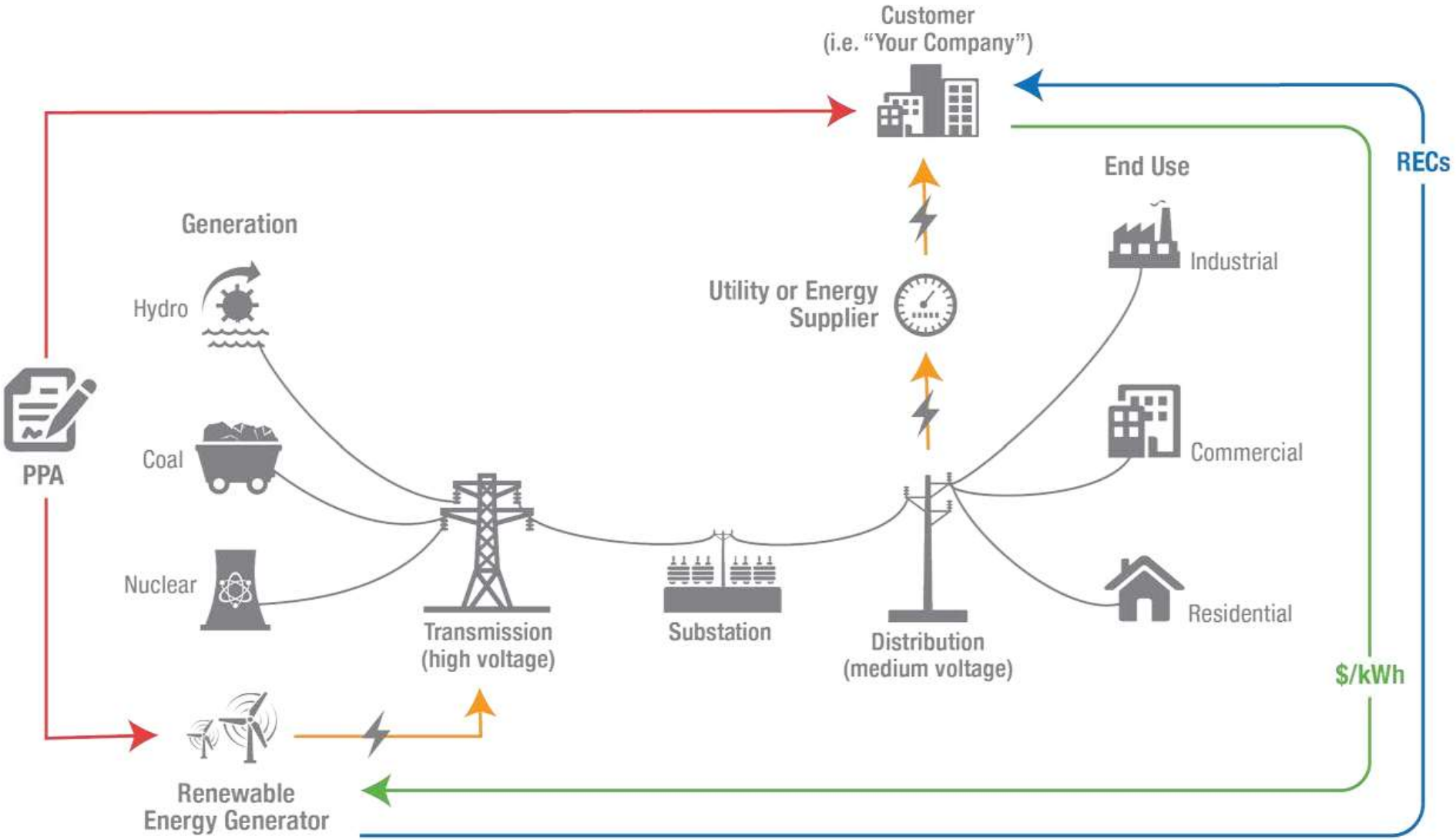

Source: EPA Green Power Partnership

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Virtual v. Physical PPAs

Physical PPA	Virtual PPA
Energy is "physically" delivered to the buyer (actual electrons flow). Buyer pays for energy capacity delivered at the set contractual rate.	Financially-settled transaction between renewable energy project and buyer, no actual energy is delivered. Energy from the renewable project is sold into the wholesale power market for the RTO/ISO market price. Seller and buyer financially settle the transaction based upon the difference between the market price and the "strike price" in the Virtual PPA contract.

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Virtual v. Physical PPAs

Physical PPA	Virtual PPA
Buyer and renewable energy project are usually in the same transmission interconnection region, due to the increased cost of delivering electricity across zones.	Buyer and renewable energy project do not have to be in the same transmission interconnection region.
Available to buyers in states that permit direct retail access or electric competition.	Appealing in states that do not have retail electric competition or direct retail access to buyers. Also appealing to buyers operating in multiple geographic areas with different load centers.

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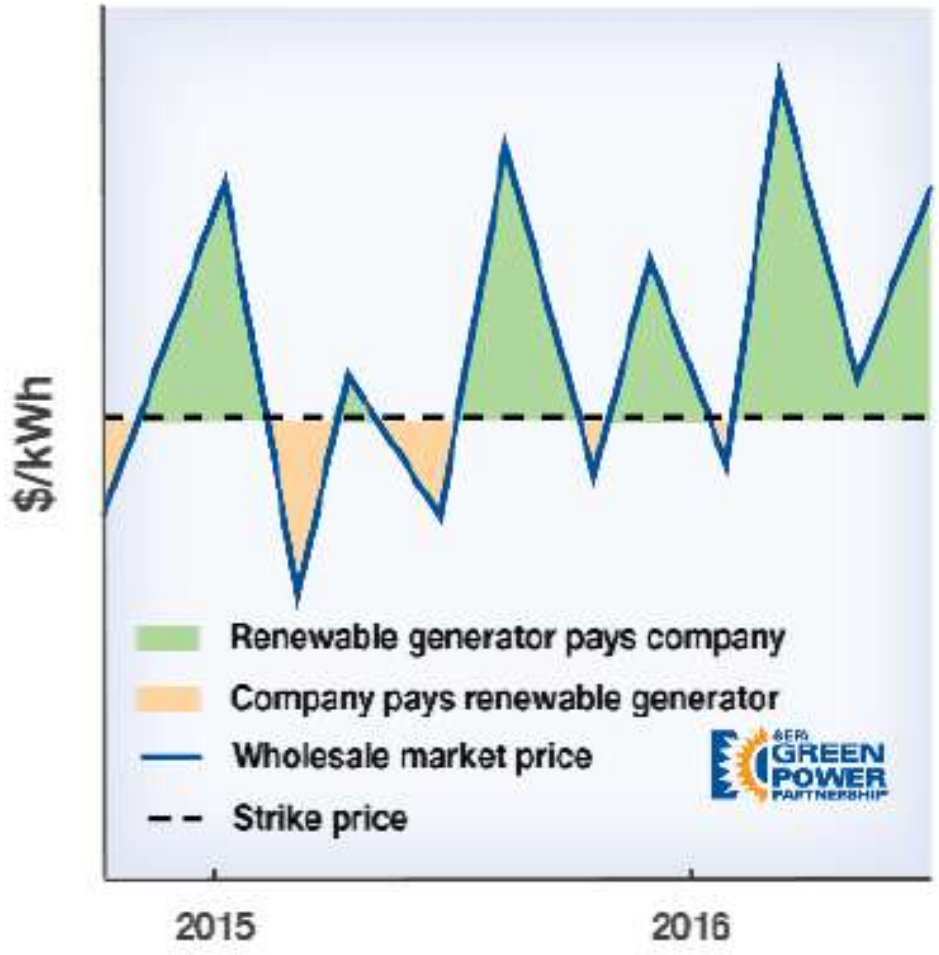
How Virtual PPAs Can Hedge a Company's Electricity Costs



Source: EPA Green Power Partnership

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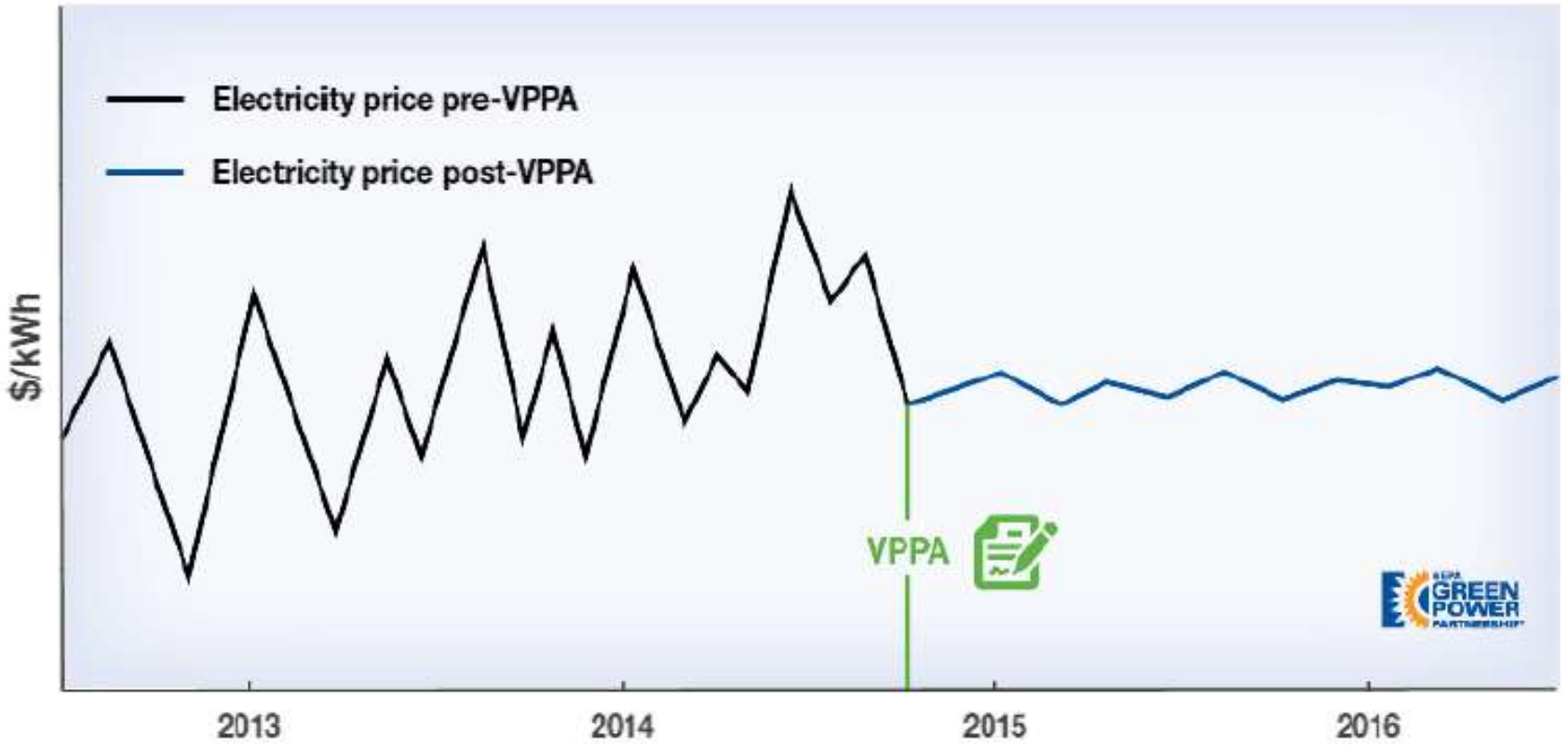
How Virtual PPAs Can Hedge a Company's Electricity Costs



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They Didn't Teach Me This in Law School…

WARNING:

Start slowly, and seek assistance outside your organization:

- Price risk – evaluate all market assumptions
- Carefully negotiate price and allocation of risks among the parties

"There ain't no such thing as a free lunch." –Milton Friedman

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Questions?

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