
**ALLIANCE COAL, LLC'S COMMENTS
ON THE INDIANA UTILITY REGULATORY COMMISSION'S
DRAFT STATEWIDE ANALYSIS
OF FUTURE RESOURCE REQUIREMENTS FOR ELECTRICITY**

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Alliance Coal, LLC ("Alliance") offers its comments in response to the Indiana Utility Regulatory Commission ("IURC") Staff's 2018 Draft Statewide Analysis of Future Resource Requirements for Electricity ("Statewide Analysis" or "Draft"). Alliance is also a party to the comments submitted by the Joint Stakeholders. Alliance is the second-largest coal producer in the eastern U.S. It primarily serves major United State utilities and industrial users, operating eight underground mining complexes in five states including Indiana. Alliance also operates a coal loading terminal on the Ohio River at Mt. Vernon, Indiana and owns several mining and coal transportation facilities in the service territory of Southern Indiana Gas and Electric Company, d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren").

I. EXECUTIVE SUMMARY

Alliance's goal is to ensure that the Statewide Analysis meets all statutory requirements, since the Commission must consider the analysis in acting upon any petition by any utility for construction under IC 8-1-2.3 *et seq.* Ensuring adequate supply of reliable and low-cost electricity from diversified sources is in the best interest of all residential and businesses consumers. For the reasons detailed below, Alliance believes that the Draft Statewide Analysis fails to meet the requirements of state law, and is not the proper foundation envisioned by the Indiana General Assembly for decision-making regarding the need for generating resources in Indiana. There was no opportunity for meaningful public participation in the development of the Draft, and the Draft contains only a cursory overview of issues which are critical to decision making regarding billions of dollars in future generation investments in Indiana. The Commission should revisit the statutory requirements and revise the Draft accordingly.

II. INTRODUCTION

On April 11, 2018, the Commission issued General Administrative Order 2018-2 (the "GAO") wherein the Commission delegated to its staff the preparation of the Statewide Analysis to meet the requirements of Ind. Code § 8-1-8.5-3 ("Section 3"). Appendix A to the GAO directs the Commission staff to post the final Statewide Analysis to the Commission's website in time for the Statewide Analysis to be included in the Commission's Annual Report and/or provided to the Governor and the appropriate committees of the General Assembly by October 1st of each year pursuant to Ind. Code § 8-1-14(a).

Nothing in Section 3 requires the Statewide Analysis to be a part of the IURC's Annual Report to the General Assembly. Thus, the October 1st deadline for the Statewide Analysis is self-imposed. Alliance also notes that the Commission has had the statutory mandate to create a Statewide Analysis for thirty-five (35) years, yet has never done so. In 1983, the General Assembly passed its original version of this requirement as part of the new Chapter 8.5, which while amended three times since, read very similar to today's statute in relevant part:

Sec. 3. (a) The commission shall develop, publicize, and keep current an analysis of the long-range needs for expansion of facilities for the generation of electricity.

(b) This analysis must include an estimate of:
(1) the probable future growth of the use of electricity;
(2) the probable needed generating reserves;
(3) the extent, size, mix, and general location of generating plants; and
(4) arrangements for pooling power to the extent not regulated by the Federal Energy Regulatory Commission and other arrangements with other utilities and energy suppliers to achieve maximum efficiencies for the benefit of the people of Indiana.

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

P.L.43-1983 (H.B. 1712, § 12, approved April 22, 1983).

Alliance is puzzled as to why the Commission has decided to put the development of its Statewide Analysis on such a very short five-month timeframe (i.e., between when the GAO was issued in April and the October 1st deadline for the Annual Report), when its statutory obligation has existed unmet for so many years. While Ind. Code § 8-1-8.5-3(h) provides that "each year" the Commission shall submit to the Governor and General Assembly a report of its analysis regarding the future requirements of electricity for Indiana or this region, there is no specific deadline for that act in the statute. While Alliance appreciates the opportunity to comment on the Statewide Analysis, the process for development of the Draft does not include the statutorily required formal procedure, and the Draft fails to contain the type of detailed analysis and judgment *from the Commission* that is required by law. The Draft Statewide Analysis is not much more than a "copy and paste" of the utilities' various Integrated Resource Plans ("IRPs").

III. STATUTORY REQUIREMENTS FOR THE STATEWIDE ANALYSIS

A. Procedural Concerns and Requirements

First, Alliance will address its concerns with the procedural aspects of the process and the procedural requirements of Section 3 which have not been met (or not met in full).

- 1. Ind. Code § 8-1-8.5-3(d)(1) - In developing the analysis, the commission shall confer and consult with: (A) the public utilities in Indiana; (B) the utility commissions or comparable agencies of neighboring states; (C) the Federal Energy Regulatory Commission; and (D) other agencies having relevant information.**

The Draft Statewide Analysis states on page 6 that "...Commission staff utilized information from Indiana utilities' IRPs, the Midcontinent Independent System Operator ("MISO"), the PJM Interconnection, LLC ("PJM"), the Federal Energy Regulatory Commission ("FERC"), and the U.S Energy Information Administration ("EIA")." However, there is no detail regarding how the Commission itself "conferred and consulted" with these other entities,

nor is there any indication that the Commission conferred or consulted with utility commissions in any neighboring states in compliance with the statute. Given that Section 3(d)(1) has a "shall" requirement for the Commission to do so, the Draft Statewide Analysis fails to meet this statutory requirement.

2. Ind. Code § 8-1-8.5-3(f) - Insofar as practicable, each utility, the utility consumer counselor, and any intervenor may attend or be represented at any formal conference conducted by the commission in developing an analysis for the future requirements of electricity for Indiana or this region.

The use of the terms "intervenor" and "formal conference" in Section 3(f) indicate a more formal procedure is needed than what is envisioned by the GAO. Webster's Dictionary defines "intervenor" as "one who intervenes; especially: one who intervenes as a third party in a legal proceeding." Moreover, Section 3(f) states that these proceedings are to be "conducted by the commission," not its General Counsel, as envisioned by the GAO. The GAO procedure is more akin to a Commission rulemaking, but this is not a rulemaking. The final Statewide Analysis must be used by the Commission when considering a petition by a utility for construction under IC 8-1-8.5-3(c). The Statewide Analysis is a piece of evidence that must be taken into account by the Commission in those cases, but the Draft seems to be only perfunctory. The GAO states that the Commission staff may distribute questions to the utilities requesting information relevant to the development of the Statewide Analysis. No opportunity for input on the Draft Statewide Analysis was given to the Office of the Utility Consumer Counselor ("OUCC") or any non-utility stakeholder prior to its publication.

3. Ex Parte Concerns

Alliance is in the difficult position of providing comments on the Draft Statewide Analysis while Vectren's petition for a Certificate of Convenience and Necessity to build new generation is simultaneously pending before the Commission in Cause No. 45052. Since the

Statewide Analysis must be used in the Commission's decision-making under I.C., 8-1-8.5-5, it is directly relevant to the issues in that proceeding. The Commission's *ex parte* rules, found at 170 IAC 1-1.5, prohibit direct communications regarding issues relevant to a pending proceeding. All comments on the Draft Statewide Analysis, and any communications regarding the Draft with the Commissioners and staff are *ex parte* for purposes of the Vectren proceeding. Indiana courts have repeatedly held that:

Providing a party the opportunity to meet and rebut adverse evidence or the opportunity to cross-examine adverse witnesses has been held by the Supreme Court of the United States to be one of the minimum requirements of due process in an administrative hearing. *Goldberg v. Kelly* (1970), 397 U.S. 254. It is also the view held in Indiana. *Doran v. Board of Education of Western Boone Co. Com. Sch.* (1972), 152 Ind. App. 250, 283 N.E.2d 385; *Public Service Comm. v. Indiana Bell Telephone Co.* (1955), 235 Ind. 1, 130 N.E.2d 467; see also 18 A. L. R. 2d 552. Indiana follows the rule that a final administrative decision is a denial of due process when it considers evidence received outside the presence of a party who is without notice of its consideration and who is not afforded an opportunity to rebut the evidence.

State Bd. of Tax Comm'rs v. Oliverius, 156 Ind. App. 46, 54, 294 N.E.2d 646, 651 (1973).

Even though there is an IRP stakeholder process that purports to create opportunities for input under proposed administrative rules that have never been formalized in a final rulemaking, the reality is that the utilities have closed door meetings with Commission staff regarding the substance of the IRPs that frequently appear to have the effect of changing the substance of findings in the Electric Division Director's Report on the 2016 IRPs.

The parties to Cause No. 45052 have no means of knowing the existence, extent or content of any communications between the Commission, its staff, and Vectren to date regarding the development of the Statewide Analysis. Given that this GAO is not a formal proceeding,

there is no means of disclosing and responding to any such communications in the record pursuant to 170 IAC 1-1.5-6 and I.C. 8-1-1-5(e).

B. Substantive Requirements

Section 3 also has several substantive requirements for the Statewide Analysis. Rather than conducting its own analysis that meet these legal requirements, the Commission staff regurgitated large portions of the utilities' IRPs and information from other industry sources. There is little to no independent analysis from the Commission staff in the Draft. This results in "islands of data" from individual utilities being the basis of the Draft Statewide Analysis, without any real analysis of Indiana's energy needs on a truly statewide basis.

The Commission staff is uniquely suited to conduct a critical and independent analysis on energy issues and issue fair and balanced findings. This excerpt from page 24 of the 2016 Final Director's Report for the 2016 Integrated Resource Plans is demonstrative:

In conversations with NIPSCO staff, NIPSCO confirmed its belief that the primary driver of natural gas prices was the demand for natural gas. While this is a plausible theory, given the paradigm change in the natural gas markets, total reliance on changes in the demand for natural gas to dictate the price of natural gas seems problematic. Recent history has shown prices going down as demand for natural gas has increased, largely due to increases in oil production. For example, NIPSCO's assumption doesn't capture the nuanced and dynamic relationships between oil and natural gas markets or whether the historic correlations between natural gas and coal markets are changing. To the extent there are other possible explanations for the changing relationships between coal and natural gas prices, these other possible explanations did not influence the development of scenarios or sensitivities and, as a result, did not result in different portfolios that might have provided NIPSCO with additional valuable insights that might alter future plans.

Notably, the Draft includes none of the Director's analysis or critique of the IRPs.

The Draft additionally fails to satisfy the following specific statutory requirements:

1. **Ind. Code § 8-1-8.5-3(b)(1)(a) - This analysis must include an estimate of the probable future growth of the use of electricity.**

After regurgitating many pages directly from eight utility IRPs, the section titled "Indiana Future Resource Needs Summary" on page 28 of the Draft Statewide Analysis states

that “Indiana utilities project relatively low load growth and adequate resources to satisfy reliability requirements”. There simply is no projection of the Commission’s own estimate of the probable future growth of electricity. On page 1 of the Executive Summary, there is a statement that “Taking into account plant retirements, the generation and/or other resources required to meet Indiana’s future needs are: 3,600 megawatts (“MW”) by 2025, 6,300 MW by 2030, and 9,300 MW by 2035.” There is no citation for where this information comes from, so it is unclear whether this is the Commission’s own calculation, or simply a mathematical addition of the various estimates contained in the utilities’ IRPs.

2. Ind. Code § 8-1-8.5-3(b)(2) - This analysis must include an estimate of the probable needed generating reserves.

The Draft Statewide Analysis contains no estimate of the probable needed generating reserves for the state. As such, the Draft Statewide Analysis fails to comply with the statute. Future revisions should, in order to comply with the statute, analyze this issue and include an estimate.

3. Ind. Code § 8-1-8.5-3(b)(3) - This analysis must include an estimate of, in the judgment of the commission, the optimal extent, size, mix, and general location of generating plants.

The Draft Statewide Analysis also fails to meet this statutory requirement. Page 29 of the Draft states “In analyzing the possible future resources, it is important to note that the Commission does not have the capability to predict the location of potential future resources.” The statute does not require the Commission to *predict* the location of generating plants. Rather, it requires the Commission to analyze the enumerated factors and include an estimate of the optimal *general* location, extent, size and mix of generating plants. Nonetheless, no attempt was made to do so.

4. Ind. Code § 8-1-8.5-3(b)(4) - This analysis must include, in the judgment of the commission, the optimal arrangements for statewide or regional pooling of power and arrangements with other utilities and energy suppliers to achieve maximum efficiencies for the benefit of the people of Indiana.

The Draft Statewide Analysis contains not a single mention of what the commission believes is the optimal arrangement for statewide or regional pooling of power. Similarly, the Draft Statewide Analysis is silent on the optimal arrangements with other utilities and energy suppliers to achieve maximum efficiencies for the benefit of Hoosiers. By ignoring these requirements of the statute, the Draft Statewide Analysis falls far short of satisfying either the spirit or letter of Section 3.

5. Ind. Code § 8-1-8.5-3(b)(3) - This analysis must include an estimate of the comparative costs of meeting future growth by other means of providing reliable, efficient, and economic electric service, including purchase of power, joint ownership of facilities, refurbishment of existing facilities, conservation (including energy efficiency), load management, distributed generation, and cogeneration.

The Draft Statewide Analysis does not include an estimate of the comparative costs of meeting future growth by the other means of providing electric service as enumerated in the statute. The Draft discusses the use of the Levelized Cost of Electricity as one method to analyze the issue, but the Draft never reaches a conclusion or provides the estimate required by the statute.¹ Having an estimate of the comparative costs as envisioned by the statute is an important part of the analysis because it allows all interested stakeholders an aggregated, statewide view of comparative costs for various generation sources which would prove instructive as future

¹ Page 56 of the Draft Statewide Analysis states in pertinent part: "A useful first way of estimating and comparing the potential cost of new resources is to consider the Levelized Cost of Electricity ("LCOE"). LCOE represents the per-megawatt hour ("MWh") cost (in discounted real dollars) of building and operating a generating plant over an assumed financial life of the facility. . . . The direct comparison of LCOE across technologies is, therefore, difficult and can be misleading as a method to assess the economic competitiveness of various generation alternatives."

decisions are made that will have a significant impact on Indiana's economy and its ratepayers. Accordingly, the Commission should reconsider its Draft and provide further analysis that includes the statutorily required estimate of comparative costs.

IV. CONCLUSION

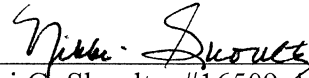
As the single state agency that has the unique expertise and statutory authority to access all of the information necessary to produce a comprehensive Statewide Energy Analysis, the Commission should serve as the impartial and well-reasoned directional beacon for Hoosier energy policy. This is understandably a tall order for a Commission whose staff is already carrying more than its fair share of important work.

The General Assembly has rightly recognized how important the Commission's Analysis is to the state. The Analysis is intended to serve as the yardstick against which the Commission should measure requests to build expensive new generation capacity, which often result in higher electric rates for Hoosiers. Because of its importance, the General Assembly has called upon the Commission to gather, analyze, and synthesize a list of specific information and to consult with specific sources of valuable information, including the Indiana Utility Consumer Counselor, other state commissions, and more. The General Assembly did not intend for the Analysis to unquestioningly adopt and repeat a utility's declarations in its Integrated Resource Plan. Rather, the General Assembly calls upon the Commission to consider the utility's perspective as one among many that must be considered and balanced to produce a fair and accurate analysis.

Because of its importance, the process leading up to the issuance of the final Analysis should not be rushed. It should not be based on underlying information to which interested stakeholders are not privy. Alliance respectfully requests that that the Commission and its

hardworking staff consider the foregoing comments and produce a Statewide Energy Analysis that complies with both the letter and spirit of the statute.

Respectfully submitted,



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