
IURC RM #11-05

**RULEMAKING COMMENTS ON
PROPOSED RULE ESTABLISHING VOLUNTARY
CLEAN ENERGY PORTFOLIO STANDARD PROGRAM**

May 24, 2012

SUBMITTED BY

INDIANA INDUSTRIAL GROUP

The Indiana Industrial Group, on behalf of its members¹, by counsel, submits the following comments and redlined proposed rule in furtherance of the Commission's adoption of rules under Ind. Code 4-22-2 to establish the Indiana Voluntary Clean Energy Portfolio Standard Program (the "Choice Program"). The Industrial Group appreciates the Commission's consideration and welcomes any questions or comments.

I. Overview

As discussed below, the proposed rule eliminates any requirement that a utility provide basic information regarding estimated program costs, financial risks, generation needs or alternatives, or cost-benefit analysis in connection with its CHOICE Program application. Instead, it entitles a utility to recover all CHOICE plan costs by way of a tracker immediately upon application approval without disclosing what those costs are, without any analysis of the reasonableness or prudence of the CHOICE plan, without thereafter complying with that CHOICE plan, and without meeting any clean portfolio standard ("CPS") goals. As such, the current rule represents a radical expansion of tracked costs and shareholder incentives with little or no additional investment or risk to the utility, and without any duty to provide sufficient information to allow the Commission or stakeholders to determine whether a utility's CHOICE plan is reasonable, prudent, justifiable, or efficient. The current proposed rule is contrary to the CHOICE program goals and the public interest and should – at a minimum - be modified as reflected on Exhibit A attached hereto prior to approval by the Commission.

II. Specific Comments

Response to proposed 170 IAC 17.1-4-2(3) (re: Program application contents):

¹ The Indiana Industrial Group members include Air Products & Chemicals, Inc., Alcoa, Inc., Chrysler Group, LLC, General Motors LLC, Haynes International, Inc., Marathon Petroleum Company LP and USG Corporation.

“A CHOICE plan to obtain clean energy ... may include the following:”

If a utility desires the significant benefits associated with participation in the CHOICE Program, a utility should be required to supply information relevant to its accomplishment of program goals. Indeed, under IC 8-1-37-11(c)(3) it is the utility’s burden of proving to the Commission that the utility’s application is complete and complies with the purposes of IC 8-1-37.

However, by using the permissive term “may” as opposed to the term “shall” when describing the CHOICE Program application contents, the proposed rule leaves it up to the applicant utility whether or not to disclose basic program information prior to its recovery of all program costs from ratepayers through a tracker under 170 IAC 17.1-4-3(e). Given this choice, there is little motivation for a utility to provide the additional information necessary for ratepayers or the Commission to properly assess its plan.

The information that a utility may exclude as a result of the use of the term “may” instead of “shall” is listed in Section 3(A) through (K):

1. Any analysis or estimates of ratepayer impact, or showing that the resources will not result in an increase in retail rates above what could reasonably be expected;
2. Any description of the estimated or known costs, scope or location of projects to be built under the CHOICE plan;
3. Identification of the type or source of clean energy resources to be utilized, or the amount of clean energy anticipated to be produced;
4. Justification of the need for generation, alternatives considered, or identification of any changes in load forecast or supply mix.

The Commission and stakeholders should be entitled to basic program information regarding generation options, cost-benefit analysis and estimated program costs and risks in connection with its CHOICE program application before the costs of that utility’s CHOICE plan are imposed upon ratepayers. The proposed rule fails in that regard, and the result is the availability of incentive and tracker recovery with no requirement that a utility disclose what those program costs are, or any analysis of the reasonableness or prudence a utility’s plan for achieving CPS Goals.

Response to proposed 170 IAC 17.1-4-3 (Commission Approval):

The failure of the proposed rule to require a utility to provide basic CHOICE plan information in its application puts stakeholders and this Commission at a distinct disadvantage in assessing that application prior to recovery of all plan costs. The Commission will be ill-equipped to determine whether the utility’s plan reasonably complies with the law or results in an increase to the retail rates above what could reasonably be expected if the application were not approved. (170 IAC 17.1-4-3(a)(3)). In the absence of that information there may be no basis upon which to assess the factors, assumptions or risks associated with a utility’s asserted analysis or conclusions. This

lack of information will inevitably lead to regulatory delay while the Commission and stakeholders are forced to request information that should instead be provided by the utility as part of the application process.

Therefore, in addition to modifying the proposed rule to require a CHOICE application to include the information referenced in 170 IAC 17.1-4-2(3)(A) through (K), 170 IAC 17.1-4-3(c) should be amended to require the Commission to consider the following when making the determinations in subsections (a) and (b) of that Section:

- (1) Estimates of avoided capital costs.
- (2) Regulatory risk.
- (3) Fuel cost risk.
- (4) Contribution to peak power production or peak power shaving.
- (5) Incentives already being received by the electricity supplier.
- (6) Risk of higher future costs.
- (7) Environmental impact and costs of the various clean energy resources.
- (8) The establishment of voluntary feed-in tariffs (VFITs)

The foregoing considerations are both consistent with the enumerated statutory considerations found in IC 8-1-37-13(b) and necessary for the Commission to fulfill its statutory duties thereunder.

As to recovery of program costs under 170 IAC 17.1-4-3(e)(1) – which is virtually guaranteed under the current proposed rule’s minimal filing standards – the Commission should only approve recovery of “just, reasonable and necessary” program costs. Currently, the rule does not express a standard for recovery.

Finally, in order to receive a CHOICE incentive, the utility should show that it has met a CPS goal “in the same or substantially similar manner as set forth in its approved CHOICE plan” – otherwise there is no required link between the CHOICE Plan being funded by the ratepayers, and the achievement of the CPS goals giving rise to the incentive. Without that link, a utility has no motivation to ensure that its CHOICE Plan is workable, likely to lead to the desired result, or given proper support after the application is approved. Instead, it may continue to recover all the costs of an ineffective program while pursuing its CPS goals by entirely different means, and at ratepayer expense.

For the foregoing reasons the Industrial Group respectfully requests that the proposed rule be modified in a manner consistent with the changes set forth on Exhibit A hereto.

Respectfully submitted,



Steven W. Griesemer, #24770-49

LEWIS & KAPPES P.C.
2500 One American Square
Indianapolis, Indiana 46282
Phone (317) 639-1210
Fax: (317) 639-4882

EXHIBIT A

170 IAC 17.1-4-2 Program application contents

Authority: IC 8-1-1-3; IC 8-1-37

Affected: IC 8-1-37

Sec. 2. In order to be deemed complete by the commission, the program application submitted by the electricity supplier must contain at least the following:

- (1) Contact information of the electricity supplier.**
- (2) Total electricity obtained by the electricity supplier to meet the energy requirements of its Indiana retail electric customers during the base year.**
- (3) A CHOICE plan to obtain clean energy in an amount equal to at least ten percent (10%) of the total electricity supplied to its Indiana retail electric customers during the calendar year ending December 31, 2025, which ~~may~~ shall include the following:
 - (A) A detailed business plan with annual milestones to ensure a participating electricity supplier will meet the CPS goals.**
 - (B) Identification of the:
 - (i) owner;**
 - (ii) operator; or**
 - (iii) manager;**of the clean energy resources to be utilized by the electricity supplier.**
 - (C) The type of the clean energy resources to be utilized by the electricity supplier.**
 - (D) Affirmation by the electricity supplier that its CHOICE plan contains not more than thirty percent (30%) of any combination of the clean energy resources listed in IC 8-1-37-4(a)(17) through IC 8-1-37-4(a)(21).**
 - (E) The amount of clean energy anticipated to be produced by kilowatt-hour per resource type, including the clean energy credits that will be submitted as part of the plan.**
 - (F) A description of any projects to be built under the CHOICE plan, including, to the extent known, the:
 - (i) scope;**
 - (ii) cost; and**
 - (iii) location;******

of the project.

(G) Justification of the need for the generation through IRP modeling.

(H) If the electricity supplier chooses to use its last IRP model runs, it must demonstrate that there have been no changes in its load forecast or supply mix since the time of the IRP model run.

(I) Other generation options considered as alternatives to the final clean energy resources listed in the CHOICE plan.

(J) Justification that the resources listed in the CHOICE plan will not result in an increase to the retail rates and charges of the electricity supplier above what could reasonably be expected if the application were not approved.

(K) Analysis of ratepayer impact including the following types of information:

(i) An explanation on how the electricity supplier determined the impact on rates of the program application plan.

(ii) Documentation on the impact on rates if the application is approved.

(4) An explanation as to how this portfolio addition fits into the applicant's long-term generation plan.

(5) Identification of CHOICE incentive being requested for each CPS goal period if the electricity supplier meets the CPS goal for that period.

(6) Explanation of the basis for the amount of the CHOICE incentive being requested for each CPS goal period.

(7) Identification of incentives currently being received for any of the projects listed in the program application plan, including, but not limited to, the following:

(A) Federal, state, and local tax incentives.

(B) Federal, state, and local grants.

(C) Other incentives received by the supplier, including, but not limited to, the following:

(i) Shareholder incentives.

(ii) Lost margins.

(8) If the electricity supplier requests a periodic rate adjustment mechanism for the recovery of costs associated with the CHOICE program, a detailed explanation and supporting documentation of how the periodic rate adjustment mechanism would work.

(9) Work papers detailing all considerations and calculations in the program application and the program application plan. Each working paper must be:

- (A) legible;
 - (B) paginated; and
 - (C) specifically identified.
- (10) Any supporting written testimony, affidavits, and other evidence the electricity supplier wishes to submit in support of its application.

(Indiana Utility Regulatory Commission; 170 IAC 17.1-4-2)

170 IAC 17.1-4-3 Commission approval

Authority: IC 8-1-1-3; IC 8-1-37

Affected: IC 8-1-37

Sec. 3. (a) The commission shall approve an electricity supplier's participation in the CHOICE program if the commission finds that:

(1) the electricity supplier's program application is:

(A) complete; and

(B) reasonably complies with:

(i) this article; and

(ii) IC 8-1-37;

(2) the electricity supplier submitting the application has demonstrated that the electricity supplier has a reasonable expectation of meeting the goal for CPS goal period III, as provided in Rule 3, section 3 of this article [*sic*]; and

(3) approving the application will not result in an increase to the retail rates and charges of the electricity supplier above what could reasonably be expected if the application were not approved.

(b) If the electricity supplier has requested CHOICE incentives for meeting one (1) or more CPS goals, the commission shall also determine, pursuant to IC 8-1-37-13(b):

(1) whether the CHOICE incentives should be approved; and

(2) if so, in what amount.

(c) In making the determinations in subsections (a) and (b), the commission ~~shall~~ may also consider ~~other factors it deems relevant; the following factors:~~

(1) Estimates of avoided capital costs.

(2) Regulatory risk.

Formatted: No bullets or numbering

- (3) Fuel cost risk.
- (4) Contribution to peak power production or peak power shaving.
- (5) Incentives already being received by the electricity supplier.
- (6) Risk of higher future costs.
- (7) Environmental impact and costs of the various clean energy resources.
- (8) The establishment of voluntary feed-in tariffs (VFITs)

(d) In making the determination in subsection (b), the awarding of CHOICE incentives shall exclude the contribution toward reaching the CPS goals of clean energy resources:

(1) that were:

- (A) in service;
- (B) purchased; or
- (C) contracted for;

prior to the effective date of the CHOICE program; or

(2) for which incentives have already been approved or granted by the commission.

(e) Upon approval of the electricity supplier's participation in the CHOICE program:

(1) if the electricity supplier has requested a periodic rate adjustment mechanism to recover the costs of participating in the CHOICE program, the commission shall approve recovery of just, reasonable and necessary costs through a periodic rate adjustment mechanism, the details of which shall be outlined in the commission's approval order and which mechanism shall start upon the date of the commission's approval order; and

(2) if the electricity supplier has requested a CHOICE incentive, the commission shall include in its approval order a determination regarding whether the commission is approving the CHOICE incentive and the amount of CHOICE incentive, which the participating electricity supplier shall receive upon:

(A) meeting a CPS goal in the same or substantially similar manner as that set forth in its approved CHOICE plan; and
(B) approval of an incentive application with the commission that:

- (i) is complete; and
- (ii) contains sufficient supporting documentation.