

August 15, 2011

## **INTRODUCTION**

Citizens Action Coalition of Indiana (“CAC”) appreciates this opportunity to submit written comments with respect to the Commission’s rulemaking related to the recently enacted SEA 251 (“PL 2-11-150”). Our comments here supplement the comments that we made in the stakeholder meeting with the Commission on July 25, 2011.

CAC is an Indiana based 501(c)4 not-for-profit membership organization that was founded in 1974 by a group of organizations, churches, labor unions, and senior groups, to name a few, who saw the need for a grassroots organization dedicated to protecting consumers during the energy crisis. Since that time, CAC has expanded to a statewide organization with about 40,000 members. CAC is dedicated to protecting ratepayers and advocating for affordable healthcare and a clean environment. CAC does this through community outreach and organizing as well as through lobbying and litigation on behalf of its members.

CAC’s mission is to initiate, facilitate and coordinate citizen action directed to improving the quality of life of all inhabitants of the State of Indiana through principled advocacy of public policies to preserve democracy, conserve natural resources, protect the environment, and provide affordable access to essential human services.

## **OVERVIEW**

First we will reiterate some of our concerns expressed at our stakeholder meeting and highlight what we believe the Commission rules, at a minimum, should consider:

- 1) An improperly implemented VCEPS will do little else than increase end use electricity prices for consumers with no quantifiable benefit;
- 2) The VCEPS does not replace the need for a CPCN proceeding;
- 3) The VCEPS does not replace the need to update Indiana’s Integrated Resource Planning (“IRP”) process to include a more robust analysis and inclusion of greater quantities of renewable resources ;
- 4) The VCEPS was intended to incentivize utilities to change their behavior and diversify energy resources; it was not intended to reward utilities for previous business decisions and investments, especially if those decisions and investments were the result of previous mandates by the Commission or other governmental agencies or regulations. More specifically, utilities should only be rewarded for incremental increases in clean energy resources directly attributable to the program;
- 5) The application process should be a docketed proceeding which includes public hearing and participation;
- 6) The Commission should establish firm guidelines for a cost benefit analysis that results in “just and reasonable” rates for adequate and reliable service;

- 7) Although the legislation includes many different clean energy resources on the list that may qualify for incentives, not all clean energy resources are equal and some carry tremendous additional costs and risks which must be factored into any incentive regime.
- 8) Incentives should be recovered after compliance. If the Commission decides to allow recovery of incentives through a PRAM, those costs should be interim and subject to refund dependent upon utilities completion of previously approved compliance plan;
- 9) Utilities should not be allowed to “double dip” for cost recovery or incentives through multiple statutes.

### **LEGISLATIVE INTENT**

CAC believes the legislative intent is somewhat vague. No discussion was held in public with respect to what “clean energy” means, nor was there any real discussion regarding the intended outcome of the statute. What is clear based on discussions held and actual language contained within the bill is:

- 1) The legislature did not intend the statute to reward the utilities for prior business decisions. This was unequivocally stated by the bill’s author during the introduction of the bill before the House Committee on Utilities and Energy;
- 2) This was not intended to be a mandate. As a result, the Commission was given broad discretion;
- 3) The legislature did not intend the statute to penalize consumers with unjust and unreasonable rates as a result of a utility’s decision to participate in the voluntary program.

It is imperative for the Commission to understand that the VCEPS was part of a rather comprehensive bill. Cost recovery for federally mandated costs as well as the life cycle management costs of nuclear power plants was addressed in other sections of the bill. The legislature did not intend the VCEPS to be used for the purpose of incentivizing or encouraging those investments, but rather for the purpose of diversification of a utilities generation portfolio and to encourage decisions the utility may not otherwise make absent the VCEPS.

### **ELIGIBLE RESOURCES**

CAC recognizes the wide array of resources deemed eligible for the VCEPS; however we remain strident and consistent in our rejection of fossil fuels and nuclear energy as “clean”. Furthermore, there are real costs associated with such energy sources which must be included in any analysis and incentives for such resources.

There is simply nothing clean about coal. From the mine mouth to the air we breathe and the water we drink, coal wreaks horrifying damage on public health, our environment and our natural resources. Irrespective of how the coal is utilized at the power plant, mountains were destroyed, landscapes were devastated, and our natural world was forever marred as a result of the extraction of coal. In addition, coal combustion residues are the second largest waste stream in the United States. That fact alone should exclude coal from any consideration as a “clean” resource.

The same is true of nuclear energy. The nuclear fuel cycle, including mining, milling, and enrichment of uranium into nuclear fuel, is highly energy and carbon intensive. Radiation releases, whether from mining, mill tailings, transportation, or otherwise are toxic, persistent and long lasting. What to do with high-level radioactive waste remains the Achilles heel of the nuclear industry. The only solution to the problem is to stop making it. Recent events in Fukushima are another lesson that nuclear energy is neither safe, nor clean.

Lastly, CAC has many concerns with labeling natural gas as a “clean” energy resource. The environmental consequences of hydro-fracking for shale gas or coal bed methane are severe and potentially catastrophic and irreversible. In addition, substitute natural gas derived from coal should not be considered clean, for reasons previously stated.

What resources should qualify for a clean energy credit is discussed in greater detail in the section below dedicated to CECs.

### **RATE IMPACTS**

Pursuant to Section 10(b)(2), the Commission must determine, before approval of an application under section 11, that the approval of 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. This can be accomplished by integrating the CPS rule into the IRP process and would ideally consist of the following: (1) Completion of a long term Clean Energy Procurement Plan by the electricity supplier, (2) Pass/Fail and comparative cost benefit metrics including an avoided cost analysis, and Total Resource Cost Test (TRC) and (3) an assessment of Least Cost based on the levelized cost of the proposed Clean Energy Projects. In addition, some clean energy resources are subject to higher risks and future costs, such as increased greenhouse gas emissions, long term storage of nuclear waste, or unsustainable resource requirements on water or fuel (such as wood wastes). Those risks and costs need to be factored into any analysis and incentive regime.

### **CLEAN ENERGY PROCUREMENT PLAN**

The Indiana Voluntary Clean Energy Portfolio Standard (VCEPS) requires that participating electricity suppliers achieve statutory CPS targets to qualify for financial benefits associated with program activities. To achieve these goals, CAC recommends that participating electricity suppliers each submit to the Commission, as part of an initial application to participate, a Clean Energy Procurement Plan, and periodically update that plan when the Commission deems it appropriate. Ideally, the Clean Energy Procurement Plan would work on two levels: (1) act as a stand-alone base case for purposes of meeting the CPS targets under a docketed proceeding, and would also be incorporated into, or act in conjunction with, an alternative resource assessment in the utility specific IRP.

Completion of the Clean Energy Procurement Plan would also act as a critical barrier in order to avoid rewarding past behavior, or behavior that would have occurred in absence of the program activities. In CAC’s estimation, the base year only establishes a baseline for the statutory CPS targets and nothing more. To receive financial incentives for an electricity supplier’s participation in the VCEPS Program, the

participating electricity supplier's investment in clean energy resources must be attributable to the program activities.

Preexisting resources that resulted from Commission mandated programs (such as Demand Side Management or Demand Response programs) should not be applied to the CPS targets, nor should they qualify for additional financial incentives. The same can be said for pollution control equipment -- if pollution control measures were (or are) installed to comply with environmental regulations, or were previously approved then they need no additional incentive. By rewarding a participating electricity supplier with additional incentives on top of prudent environmental compliance (past, present, or future), the electricity supplier is being rewarded for new or changed behavior and ratepayers are being charged additional amounts for no incremental gain.

As part of the Clean Energy Procurement Plan, and integration within the scope of the IRP process, the participating electric supplier would be required to document specific clean energy projects that they intend to develop, operate and maintain (or contract to develop, operate and maintain), projects with which they intend to execute an RFP and enter into a PPA, and/or to disclose the amount and type of transferrable Clean Energy Credits (CECs) that it will use to comply with the specified CPS targets.

#### **TOTAL RESOURCE COST TEST**

As a pass/fail metric for what is to be considered just and reasonable, CAC recommends that the Commission adopt a standard and uniform methodology to calculate the bill impact to the end user assuming approval of the clean energy application, and in absence of the clean energy project. In our view, it is less than ideal to allow utilities to enter into a contract or to develop a project, and subsequently apply for financial incentives after completion or effectuation of a PPA. The ideal scenario would include a standardized process whereby "just and reasonable" rates are known prior to application and approval of a contract or development. In fact, in addition to the Commission's statutory charge to ensure just and reasonable rates for adequate and reliable service, the Commission is also charged prospectively under the statute to mitigate rate impact pursuant to Section 10(b)(2), whereby:

*"The rules adopted by the commission under this section to establish the program must...(2) require the commission to determine, before approving an application under section 11 of this chapter, that the approval of 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;"*

The aim is to establish a threshold at or below which approved Clean Energy Projects may be considered "just and reasonable", and determine whether or not a clean energy resource qualifies for financial incentives as defined by the Commission. Establishment of this pass/fail methodology can be done in a variety of ways, although ideally would function congruently with the IRP methodology and process. It becomes quickly obvious that what may be considered "just and reasonable" at one given point in time may not be "just and reasonable" at a future point in time. As is the current practice in

Indiana, CAC would recommend that the Total Resource Cost (TRC) test be used for assessing the cost effectiveness of Clean Energy Projects.

Within the scope of the VCEPS rulemaking, CAC believes the Commission has broad discretion in quantifying measurable benefits associated with clean energy development and the diversification of portfolios. Without quantifiable assumptions, CAC finds it difficult to meaningfully monetize the benefits necessary for inclusion in a traditional cost benefit run. It is because of this lack of quantifiable evidence that CAC recommends that the Commission play this role within the scope of the VCEPS rulemaking process, and that the assumptions included within the TRC be open for discussion among stakeholders.

Indeed, one of the critical intents of a typical Renewable Energy Standards is to create a “currency” for the abstract environmental benefit of reducing dependency on carbon intensive, traditional base load resources. While there are documented ways to monetize a Renewable Energy Credit, there is little to no experience associated with quantifying the value of a Clean Energy Credit. Without monetizing carbon (and other criteria pollutants like NOx and SO2) it becomes impossible to properly weight the value of CECs among differing qualified “Clean Energy Resources” and the associated incentive value. Are we to say that 1MWh of generation from an IGCC generation plant has the same quantifiable benefit as 1MWh or solar photovoltaic generation? Should they receive the same incentive value?

### **LEAST COST ANALYSIS**

A critical aspect would be completion of a Least Cost analysis that should be required as part of the IRP and CPCN process. It is CAC’s view that pursuant to IC 8-1-8.5-2, a utility will still be required to file for a CPCN when developing or purchasing a Clean Energy Project.

*IC 8-1-8.5-2 “Necessity for certification” states:*

*Sec. 2. ..., a public utility may not begin the construction, purchase, or lease of any steam, water, or other facility for the generation of electricity to be directly or indirectly used for the furnishing of public utility service, even though the facility is for furnishing the service already being rendered, without first obtaining from the commission a certificate that public convenience and necessity requires, or will require, such construction, purchase, or lease. As added by P.L.43-1983, SEC.12. Amended by P.L.88-1985, SEC.6; P.L.11-1987, SEC.14.*

As a condition for receiving this certificate, the applicant electricity supplier must file an estimated cost of construction, purchase, or lease costs in such detail as the Commission may require (8-1-8.5-5). It would be recommended that the Commission include this process as a requirement in the initial application process for clean energy projects.

In the event that the participating electricity supplier meets all of the requirements, including submission of a Clean Energy Procurement Plan, passing the cost effectiveness standards (TRC, avoided costs analysis, and Least Cost test associated with the CPCN process), absent fraud, concealment, or

gross mismanagement, the participating electricity supplier must still reach the specified statutory CPS targets to qualify for an enhanced ROE and any other financial incentives defined in Section 13. In the event that a participating electricity supplier enters into a PPA with a merchant that is subject to approval under the VCEPS program, CAC recommends that similar scrutiny be applied to the Commission approval of the PPA.

### **CLEAN ENERGY CREDITS (CECs)**

To achieve the statutory CPS targets, a participating electricity supplier may own or purchase “Clean Energy Credits” (CECs) pursuant to Section 12(e) of Chapter 37. Pursuant to Chapter 37, section 3, a:

Clean Energy Credit, or “CEC”, means an interest that: (1) represents one (1) megawatt hour of clean energy that satisfies the condition set forth in section 12(c)(2) of this chapter; (2) is quantifiable and transferrable; and (3) is possessed by not more than one entity at a time.

Section 12(c)(2) of Chapter 37 dictates that for a participating electricity supplier to meet a particular CPS target, the Commission shall only consider clean energy that is “generated by a facility located in a control area that is part of a regional transmission organization of which an electricity supplier is a member.”

It would be CAC’s understanding that to earn, possess, or transfer a “Clean Energy Credit”, the clean energy must be generated by a supply side facility. It would be our strong opinion that the terms “generated” and “facility” demand the interpretation that there must be a physical, supply side facility generating electricity in order to constitute 1MWh of electricity production, and thus establish a “Clean Energy Credit”.

In other words, not all qualified “Clean Energy Resources” under Section 4 of Chapter 37 are consistent with the definition of a “Clean Energy Credit” or the creation thereof. Assuming this interpretation is correct, “Clean Energy Resources” that do not generate electricity from a supply side resource cannot be applied to the statutory CPS targets, and thus do not meet the requirements to qualify for financial incentives as described in Section 13.

Section 4(17) defines a “project described in IC 8-1-8.8-2(1)” as a “Clean Energy Resource.” A “Clean Energy Resource” as defined in IC 8-1-8.8-2(1)(A) includes “Projects at new energy production or generating facilities that employ the use of clean coal technology and that produce energy, including substitute natural gas, primarily from coal, or gases derived from coal, from the geological formation known as the Illinois Basin.” It must be noted that only new energy production or generating facilities that employ the use of “clean coal technology” can be defined as both a “Clean Energy Resource” and a supply side generating facility to merit the creation of a “Clean Energy Credit” (so long as it satisfies the conditions set forth in 12(c)(2) of Chapter 37). Section 4 of Chapter 37 does not qualify “clean coal technology” as defined in IC 8-1-8.8-3 as a “Clean Energy Resource”, thus excluding the statutory definition of “clean coal technology” as defined in IC 8-1-8.8-3 as a “Clean Energy Resource.” Clean coal

technology as defined as a “Clean Energy Resource” is limited to the definition set forth in IC 8-1-8.8-2(1).

IC 8-1-8.8-2(1)(B) describes “Projects to provide advanced technologies that reduce regulated air emissions from or increase the efficiency of existing energy production or generating plants that are fueled primarily by coal or gases from coal from the geological formation known as the Illinois Basin, such as flue gas desulfurization and selective catalytic reduction equipment.” It would be CAC’s contention that while “advanced technologies that reduce regulated air emissions or increase the efficiency of existing energy production” clearly meet the statutory definition of a “Clean Energy Resource” the resource does not meet the criteria of a “facility” that “generates” electricity, and therefore does not meet the definition of, or the necessary criteria to create, a “Clean Energy Credit.” Scrubbers, desulfurization and selective catalytic reduction equipment, and other pollution control equipment do not generate electricity, and therefore cannot account for, or be applied towards, the statutory CPS goals.

Again, we are grateful for the opportunity to submit these comments and look forward to working with the Commission and other stakeholders in the process moving forward.

Respectfully,

Citizens Action Coalition

Kerwin Olson  
Interim Executive Director

Zac Elliot  
Statewide Organizer