

Indiana **ENERGY**
Association

1600 ONE AMERICAN SQUARE, BOX 82065 INDIANAPOLIS, INDIANA 46282 317-632-4406 FAX 317-262-4940 www.indianaenergy.org

Stan Pinegar, President and CEO

Ed Simcox, President Emeritus

Boonville Natural Gas Corp.

Citizens Energy Group

Community Natural Gas Co., Inc.

Duke Energy

Fountaintown Gas Co., Inc.

Indiana Michigan Power

Indiana Natural Gas Corp.

Indianapolis Power & Light Company

Midwest Natural Gas Corp.

Northern Indiana Public Service Co.

Ohio Valley Gas Corp.

South Eastern Indiana Natural Gas Co., Inc.

Sycamore Gas Co.

Vectren Energy Delivery of Indiana, Inc.

THE VOICE FOR INDIANA ENERGY

August 15, 2011

RECEIVED

AUG 15 2011

INDIANA UTILITY
REGULATORY COMMISSION

Ms. Beth Krogel Roads
Counsel
Indiana Utility Regulatory Commission
101 W. Washington Street, Suite 1500 East
Indianapolis, Indiana 46204

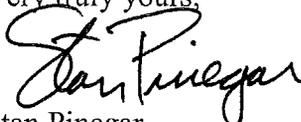
Re: IURC RM#11-05—Indiana voluntary clean energy portfolio standards
program rulemaking

Dear Beth:

Enclosed, please find written comments submitted by the Indiana Energy Association (IEA) with respect to the voluntary clean energy portfolio program rulemaking activity currently underway at the IURC. As noted in our comments, we have also included, as Attachment A, a set of proposed rules for consideration by the IURC which coincide with our written comments.

The IEA appreciates this opportunity. Please do not hesitate to contact me with any questions or concerns you may have with our comments.

Very truly yours,


Stan Pinegar

Enclosure

RECEIVED

AUG 15 2011

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION REGULATOR COMMISSION

INDIANA VOLUNTARY CLEAN ENERGY)
PORTFOLIO STANDARDS PROGRAM) IURC RM#11-05
RULEMAKING)

INITIAL WRITTEN COMMENTS OF THE
INDIANA ENERGY ASSOCIATION

The Indiana Energy Association (“IEA”)¹ hereby submits written comments on the scope of proposed rules necessary to implement the Voluntary Clean Energy Portfolio Standard Program Act (the “Act”) codified at Ind. Code § 8-1-37-1 *et seq.* The IEA has also prepared proposed rules for consideration by the Indiana Utility Regulatory Commission (“Commission”), attached hereto as Attachment A.

The purpose of the Act is to voluntarily encourage electricity suppliers to develop a plan to incorporate increasing percentages of Clean Energy Resources into their portfolio mix (a “Plan”). The focus of the implementation rules should, similarly, be to encourage voluntary participation. The Act’s inducement to participate is in the form of recovery of costs and incentives for electricity suppliers that elect to participate. These inducements should also be reflected in the implementing rules. Because an unduly burdensome application procedure would discourage participation, the implementation rules should also establish clear and straightforward procedures.

¹ The IEA is a trade association representing Indiana investor-owned electric and gas utilities whose primary purpose is to advocate, communicate and promote energy policies to improve the economy and quality of life in Indiana. The IEA’s electric utility members subject to these rules include Duke Energy Indiana, Indiana Michigan Power Company, Indianapolis Power & Light Co., Northern Indiana Public Service Company, and Vectren Energy Delivery of Indiana, Inc.

The IEA Comments focus first on the necessary components of a Plan to meet the CPS Goals prescribed in Section 12(c)², addressing issues that include limitations on the types of clean energy resources that can be considered under the Plan and satisfying the standard of review. Second, the Comments discuss the approval process and forms to be adopted by the Commission for submitting proposals. Finally, the IEA Comments address the relationship between the Act and other statutory provisions,

I. The Proposed Plan

An electricity supplier desiring to file under the Act must begin by developing a Plan with a reasonable expectation of success in achieving the CPS goals. Development of the Plan will be greatly assisted by clear rules concerning (1) the source of clean energy that can be relied upon; (2) the standard for reviewing the Plan; (3) cost recovery and available incentives and (4) the deadline for submitting an application. In some respects, the Act itself prescribes direction on these questions and the implementing rules should be consistent with this direction. Where the Act is silent, clarity in the rules will avoid uncertainty that is likely to stymie interest in pursuing a Plan.

A. The Source of Clean Energy

The Act defines a Clean Energy Resource in Section 4. The implementing rules should simply incorporate this definition to avoid deviating from the Legislature's intent. By maximizing the Clean Energy Resources a participating electricity supplier can rely on to meet the CPS Goals, the Commission will help ensure that the most cost-effective resource can be

² Throughout these comments, a reference to Section X refers to the sections of Ind. Code § 8-1-37-1 *et set.* Thus, a reference to Section 10(b) refers to Ind. Code § 8-1-37-10(b).

selected. The IEA proposes the implementing rules adopt the definition established in the Act for a Clean Energy Resource.

The Act's definition of a Clean Energy Resource, read in conjunction with rules of statutory construction, makes clear that most, although not all already acquired or implemented resources in an electricity supplier's portfolio can be used to satisfy the CPS Goals. The Legislature provided that two forms of Clean Energy Resources count towards the CPS Goals only to the extent they are implemented or acquired after a certain date. Section 4(a)(16) and (21) clarify that demand side management ("DSM") put in place prior to January 1, 2010 and electricity generated by natural gas at a facility constructed prior to July 1, 2011 do not constitute Clean Energy Resources. Although the Legislature identified several other categories of energy that constituted Clean Energy Resources, the Act's definition of these categories makes no mention of their date of implementation or acquisition. The silence with respect to other categories of Clean Energy Resources demonstrates that the Legislature did not intend to exclude existing resources from other categories. *State v. Willits*, 773 N.E.2d 808, 813 (Ind. 2002) ("When certain items or words are specified or enumerated in a statute then, by implication, other items or words not so specified or enumerated are excluded"). For example, electricity suppliers should be allowed to count wind energy purchased pursuant to existing purchased power agreements ("PPAs") as a Clean Energy Resource.

Allowing existing resources to satisfy the CPS Goal except in instances when the Act explicitly precludes their consideration is also consistent with the public interest. Excluding existing resources would disadvantage electricity suppliers that have already invested significantly in Clean Energy Resources as well as their customers. Electricity suppliers might have a more difficult time satisfying the goals of the program if they already have significant

Clean Energy Resources because additional forms may be more expensive than what has already been secured thereby making it more difficult to satisfy the standard set forth in Section 11(c)(2). Inefficiencies might also result as electricity suppliers seek to renegotiate contracts with existing Clean Energy Resource suppliers to make it easier to characterize the supply as a new, rather than an existing, supply.

B. Standard for Approval of an Application

The Act directs that an application to participate in the Program shall be approved by the Commission if it meets three criteria. First, the application must be complete and reasonably comply with the purpose of the chapter. Second, the electricity supplier must demonstrate it has a “reasonable expectation of obtaining clean energy to meet the energy requirements of its customers” equal to ten percent of its base year electric usage by 2025. Third, approving the application must 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 implementation rules should reflect this standard.

The first standard is relatively straightforward. An application should be complete if it includes the items required by the Act and the Commission’s implementing rules. The IEA’s proposed rules set forth the required elements of an application in Rule 2. IEA recommends that a provision similar to the minimum standard filing standards (“MSFR”) be incorporated to require interested parties to file a notice within thirty (30) days of a filing if they believe the application is not complete. *See* Rule 3(a). This will afford the electricity supplier an opportunity to address any shortcomings and avoid requiring parties’ and the Commission’s to invest time pursuing a proposal that some participants may believe is incomplete.

The second standard for approving an application should also be fairly straightforward. An electricity supplier must establish that the Plan it proposes has a “reasonable expectation” of supplying ten percent of its base year energy usage through Clean Energy Resources by the year 2025. Section 11(c)(2). Satisfaction of this standard would require an electricity supplier to present evidence establishing the type and source of Clean Energy Resources it anticipates utilizing to satisfy the standard. In satisfying this standard, recognizing that an electricity supplier may need to deviate from the Plan over the course of the compliance period to adjust to changing factors will be important.

The third standard will require clarity to avoid an interpretation that would make approval of an application essentially impossible. Under this standard, an electricity supplier must demonstrate that “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.” Section 11(c)(3). This standard should be clarified in the implementing rules to ensure it is not construed as requiring an electricity supplier to demonstrate that the short term direct cost of securing Clean Energy Resources would be no greater than the cost of the existing status quo. Construing the standard in this fashion would make it unlikely electricity suppliers would expend the resources to participate in the Program. An Electricity Supplier probably could not secure all of the necessary Clean Energy Resources without increasing costs beyond what would be incurred in terms of direct energy and demand costs if an electricity supplier did not pursue Clean Energy Resources.

An electricity supplier should be given leeway to consider the impact of known or reasonably likely regulation that will impact the cost of its supply resources over time. Future environmental regulations or supply diversity mandates might bring some of the Clean Energy

Resources into cost parity with other supply alternatives in an electricity supplier's Integrated Resource Plan ("IRP"). As an example, estimates of avoided capital costs should be considered. There will necessarily be some uncertainty about the assumptions given the need to project out to 2025 and the uncertainty about potential regulations. The need for flexibility should be embedded in the implementation rules. Attempting to identify all potential factors to be considered in rules would be an act in futility. The regulatory environment for environmental controls evolves quickly and no rule could reasonably forecast all potential considerations.

Accounting for the impact of any incentive awarded to an electricity supplier in the cost increase would also be inappropriate under the Act. The purpose of the Act is to voluntarily encourage electricity suppliers to participate in the Program. If granting an incentive is deemed to increase the cost of a Plan beyond what could otherwise be expected, an incentive could never be awarded. The practical effect of such a requirement may serve as a disincentive to electricity suppliers to pursue approval of a Program. Such a construction would be inconsistent with general principle of statutory construction that a statute should not be construed so as to render any portion of the act meaningless. *Rheem Mfg. Co. v. Phelps Heating & Air Conditioning, Inc.*, 746 N.E.2d 941, 948 (Ind. 2001) (In ascertaining legislative intent, a tribunal must "presume the legislature did not enact a useless provision such that where provisions are in conflict, no part of a statute should be rendered meaningless but should be reconciled with the rest of the statute.")

C. Cost Recovery and Available Incentives

The Act affords electricity suppliers both recovery of costs incurred to comply with the Plan and an opportunity to receive certain incentives for meeting the goals of the Act. The Commission's implementing rules should treat each of these provisions separately to avoid discouraging electricity suppliers from voluntarily proposing Plans under the Act.

The Act provides that all just, reasonable and necessary program costs incurred to carry out the Plan implemented pursuant to the Act shall be recovered by means of a periodic rate adjustment mechanism. Section 13(c). Program costs are defined to include “administrative costs, ancillary costs, capacity costs, costs associated with CECs, capital costs, depreciation costs, tax costs, and financial costs.” *Id.* The implementing rules should permit recovery of the same type of costs identified in the Act. This is best achieved by incorporating the language of the Act into the implementing rules, as the IEA has proposed.

The Act should not be construed as eliminating cost recovery if satisfaction of the CPS goals is not satisfied. Section 13(h) does provide that the periodic rate mechanism’s continuation is dependent on an electricity supplier continuing compliance with the applicable CPS Goal. If this is construed as prohibiting the recovery of future costs in the event an electricity supplier is unable to satisfy the CPS Goal, such construction would impose a risk on an electricity supplier of having to absorb costs approved under the Act’s rate adjustment mechanism if factors beyond its control cause it to fall short of a CPS goal.³ An electricity supplier is unlikely to risk investment in Clean Energy Resources if the loss of cost recovery is a possibility because many costs probably will not be easily eliminated if satisfaction of the CPS Goal cannot be met. Such a significant risk would act as a strong disincentive for an electricity supplier to proceed under the Act. Furthermore, because the Act contemplates a long-term Program, an electricity supplier may be out of compliance with the Act’s goals at any given time, but in compliance at the end of the time periods specified in the Act. IEA would urge the Commission to exercise its authority

³ For example, the cost of a proposed Alternative Energy Resource might rise between the time the Plan was proposed and the time to acquire the resource and other less expensive resources may not be available. In that instance, continuing under the Plan may be impossible pursuant to the standard in Section 11(c)(3).

pursuant to I.C. § 8-1-2-42(a) to authorize recovery of such costs notwithstanding any contrary construction of Section 13(h).

The Act also provides for consideration of incentives to electricity suppliers that satisfy the CPS Goals. *See* Section 13(a) and (b). IEA acknowledges that granting these incentives is within the Commission's discretion. The incentives should be used to encourage participation in the Act. Failure to allow electricity suppliers to recover the incentives will discourage them from developing Plans and submitting applications for Commission approval.

Receipt of the incentives should be tied to satisfying the CPS Goals. In some instances the incentives might be appropriately awarded after demonstrating a track record of compliance. Other incentives are more appropriately recovered at the time costs are incurred by the electricity supplier. Incentives could be awarded for other purposes, such as the extent to which an electricity supplier's Plan results in incremental Clean Energy Resources or to recognize an electricity supplier with a strong track record of supporting Clean Energy Resources. The IEA's proposed rule identifies a non-exhaustive list of factors that will be considered in awarding incentives to provide electricity suppliers some assurance that Plans meeting the criteria will receive incentives. Such assurances will increase the inducement to submit applications consistent with the Act.

The discretion to award incentives should be used judiciously so as to not unduly encourage one form of Clean Energy Resource over another except to the extent already embodied in the Act. The Act provides that certain forms of Clean Energy Resources may not constitute more than 50% of the portfolio to satisfy the CPS Goals. *See* Section 12(b). Had the Legislature desired to favor other forms of Clean Energy Resources, it could have done so and

the Commission's use of discretion should reflect this conservatism. *State v. Willits*, 773 N.E.2d at 813 (“When certain items or words are specified or enumerated in a statute then, by implication, other items or words not so specified or enumerated are excluded.”) Additional preference should be not be built into the rules to favor particular forms of Clean Energy Resources, but should be considered on their merits if presented in an application by a participating electricity supplier. Moreover, such preferences this will only make it more difficult for an electricity supplier to satisfy the cost standard established in Section 11(c)(3).

D. Deadline for Filing

Section 11(a)(2) requires the Commission to establish a date by which applications to participate in the Act must be filed. The Act does not establish the deadline. The IEA’s proposed rules incorporate a cut-off deadline of December 31, 2013 for applications. *See* Rule 2(2). This proposed deadline corresponds with the commencement of reporting for participating electricity suppliers in Section 14.

II. **Procedure for Application Review**

A. Type of Commission Proceeding

The Act does not specify how the application filed by an electricity supplier should be reviewed by the Commission. The IEA recommends utilizing a formally docketed proceeding to evaluate an application. Parties before the Commission are familiar with docketed proceedings and will be assured of appropriate procedural protections through the use of a docketed proceeding. Moreover, to the extent that an application requires approvals under other statutes, such as IC 8-1-8.5, a docketed proceeding could promote administrative efficiency. The IEA’s proposed rules contemplate the use of a docketed proceeding.

Additionally, while the Act may create an ambiguity about whether there are separate applications meant for applying to the Program and for approval of incentives, the IEA supports the use of a single application covering both the application and incentives. The two concepts are too intertwined to be separately adjudicated and the IEA is confident that the Commission can process a single application within the timeline set forth in the Act. Section 13(f).

B. Form Prescribed by Commission

The Act provides that applications are to be submitted to the Commission on forms it prescribes. Section 11(a)(1). The IEA recommends that the Commission use the type of forms generally relied upon to request relief from the Commission, *i.e.* a petition, prefiled direct testimony and associated workpapers. Parties before the Commission are familiar with this format and electricity suppliers will ensure this information establishes the elements required under the Act to qualify for relief.

C. Issues Open For Debate In An Approval Proceeding

The IEA recommends the Commission not expand the issues that can be raised by parties in the proceeding beyond those set out in the Section 11(c) standard of review. Applications under the Act may draw scrutiny from parties who would advocate requiring an electricity supplier to meet the standard with resources that financially benefit that particular party, which could unnecessarily delay the procedural schedule. The purpose of the Act, as made clear by its standard of review, is not to micro-manage the electricity supplier's resource supply nor to enable particular energy suppliers to tilt compliance in their favor. The Act requires the application to be approved if it (1) is complete; (2) has a reasonable expectation of satisfying the CPS Goal by 2025 and (3) will not result in an increase to the retail rates and charges above what could reasonably be expected if the application were not approved. This review does not

contemplated parties with a financial interest in a different Clean Energy Resource advocating that the Plan would be better (or better serve that party) by substituting some alternative energy source to meet the standard.

III. Correlation with other Statutory Provisions

The language of the Act gives no indication that the Legislature intended for it to eliminate compliance with or foreclose reliance on other statutory schemes in Title 8. For example, a gas facility constructed after July 1, 2011 that is used to replace a coal facility constitutes a Clean Energy Resource under the Act. *See* Section 4(a)(21). Nothing in the Act relieves an electricity supplier of the obligation to seek a certificate of public convenience and need (“CPCN”) pursuant to Ind. Code § 8-1-8.5-1 *et seq.* Neither must cost recovery be sought exclusively under the Act. An electricity supplier likely would still recover DSM costs pursuant to approved DSM rate making mechanisms approved under the Commission’s DSM rules. An electricity supplier might include a project under the Plan but seek cost recovery pursuant to Ind. Code § 8-1-8.8-1.

The IEA is not suggesting that the approval pursuant to these other statutory provisions should be sought through approval of an application (though that should not be foreclosed, either). The implementing rules should be flexible enough to enable an electricity supplier to include projects in its Plan which may require additional relief at the time the project is implemented. For example, an electricity supplier might include in its Plan the construction of a combined-cycle gas turbine to replace a coal facility in year five of its Plan to satisfy the CPS Goals. Obtaining a CPCN at the time the Plan is presented would be unnecessary and inefficient, since the costs would not be known with any certainty and the Plan may evolve during that five year period. The implementing rules should permit approval of an application and initiation of a

later proceeding to seek approval of the CPCN. However, the application should be clear about the manner in which a Plan will be implemented and relief sought under the various statutes.

The IEA expects that an electricity supplier with an approved application is likely to recover costs for Advanced Energy Resources under a variety of rate recovery mechanisms. For example, the CPS Goals might be satisfied by purchasing wind energy and DSM in CPS Goal period I, with the DSM costs recovered through a DSM rate recovery mechanism and the wind contract costs through a fuel adjustment clause or other rate recovery mechanism. This presents no risk to customers of paying for the same cost twice. Many electricity suppliers are currently recovering both types of costs through separate tracking mechanisms with no allegations that costs have been double recovered. A review of these costs would easily identify attempts to pass DSM costs through the fuel adjustment clause proceeding.

Even if a rate recovery mechanism is created under the Act for recovery of certain Advanced Energy Resource costs, the opportunity to review the costs being recovered would easily identify any double recovery of costs. If the electricity supplier relying on wind and DSM added hydropower and established a rate recovery mechanisms under the Act for recovery of associated costs, the proceeding to evaluate the Act's rate recovery mechanism would uncover any DSM or wind PPA costs an electricity supplier tried to include.

Attachment A

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Proposed Rule

LSA Document #11-xxx

DIGEST

Adds 170 IAC 4-_-1 through 170 IAC 4-_-22 regarding the Indiana voluntary clean energy portfolio standard program. Effective 30 days after filing with the Publisher.

**170 IAC 4-_-1; 170 IAC 4-_-2; 170 IAC 4-_-3; 170 IAC 4-_-4; 170 IAC 4-_-5;
170 IAC 4-_-6; 170 IAC 4-_-7; 170 IAC 4-_-8; 170 IAC 4-_-9; 170 IAC 4-_-9;
170 IAC 4-_-10; 170 IAC 4-_-11; 170 IAC 4-_-12; 170 IAC 4-_-13; 170 IAC 4-_-14;
170 IAC 4-_-15; 170 IAC 4-_-16; 170 IAC 4-_-17; 170 IAC 4-_-18; 170 IAC 4-_-19;
170 IAC 4-_-20; 170 IAC 4-_-21; 170 IAC 4-_-22**

Rule _- Voluntary Clean Energy Portfolio Standard Program

170 IAC 4-_-1 Definitions
Authority: IC 8-1-37-10
Affected: IC 8-1-37-1

Sec. 1. (a) As used in this rule, “base year” means the calendar year ending December, 31, 2010.

(b) As used in this rule, “clean energy” means electricity that is produced from a clean energy resource.

(c) As used in this rule, “clean energy credit”, or “CEC”, means an interest that:

- (1) represents one (1) megawatt hour of 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;
- (2) is quantifiable and transferrable; and
- (3) is possessed by not more than one (1) entity at a time.

(d) (1) As used in this rule, “clean energy resource” means any of the following sources, clean sources, alternative technologies, or programs used in connection with the production or conservation of electricity:

- (A) Energy from wind.
- (B) Solar energy.
- (C) Photovoltaic cells and panels.
- (D) Dedicated crops grown for energy production.
- (E) Organic waste biomass, including any of the following organic matter that is available on a renewable basis:
 - (i) Agricultural crops.
 - (ii) Agricultural wastes and residues.
 - (iii) Wood and wood wastes, including the following:
 - (a) Wood residues.
 - (b) Forest thinnings.

- (c) Mill Residue.
- (iv) Animal wastes.
- (v) Animal byproducts.
- (vi) Aquatic plants.
- (vii) Algae.
- (F) Hydropower.
- (G) Fuel cells.
- (H) Hydrogen.
- (I) Energy from waste to energy facilities, including energy derived from advanced solid waste conversion technologies.
- (J) Energy storage systems or technologies.
- (K) Geothermal energy.
- (L) Coal bed methane.
- (M) Industrial byproduct technologies that use fuel or energy that is a byproduct of an industrial process.
- (N) Waste heat recovery from capturing and reusing the waste heat in industrial processes for heating or for generating mechanical or electrical work.
- (O) Demand side management or energy efficiency initiatives that:
 - (1) reduce electricity consumption; or
 - (2) implement load management, demand response, or energy efficiency measure designed to shift customers' electric loads from period of higher demand to period of lower demand;
 as a result of equipment installed, or customers enrolled, after January 1, 2010.
- (P) A clean energy project described in IC 8-1-8.8-2(1).
- (Q) Nuclear energy.
- (R) Electricity that is:
 - (1) generated by a customer owned distributed generation facility that is interconnected to the electricity supplier's distribution system in accordance with the commission's interconnection standards set forth in 170 IAC 4-4.3; and
 - (2) supplied back to the electricity supplier for use in meeting the electricity supplier's electricity demand requirements in accordance with the commission's net metering rules set forth in 170 IAC 4-4.2.
- (S) Combined heat and power systems.
- (T) Electricity that is generated from natural gas at a facility constructed in Indiana after July 1, 2011, which displaces electricity generation from an existing coal fired generation facility.
- (2) Except for energy described in 170 IAC 4-_-1(d)(1)(I), the term does not include energy from the incineration, burning, or heating of any of the following:
 - (A) Tires.
 - (B) General household, institutional, commercial, industrial, lunchroom, office, or landscape waste.
 - (3) The term excludes treated or painted lumber.
 - (e) As used in this rule, "clean portfolio standard goal", or "CPS goal", refers to a

goal set forth in section 5(a) of this rule that a participating electricity supplier must achieve during a specified period during the program to qualify for one (1) or more of the financial incentives described in sections 12 – 21 of this rule.

(f) As used in this rule, "commission" means the Indiana utility regulatory commission.

(g) (1) As used in this rule, "electricity supplier" means a public utility (as defined by IC 8-1-2-1) that furnishes retail electric service to customers in Indiana on January 1, 2011.

(2) The term does not include a utility that is:

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

(B) a corporation organized under IC 8-1-13; or

(C) a 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.

(h) As used in this rule, "participating electricity supplier" refers to an electricity supplier that has been approved by the commission under section 2 of this rule to participate in the program.

(i) As used in this chapter, "program" refers to the Indiana voluntary clean energy portfolio standard program.

(j) As used in this chapter, "regional transmission organization", with respect to an electricity supplier, refers to the regional transmission organization approved by the Federal Energy Regulatory Commission for the control area that includes the electricity supplier's assigned service area (as defined in IC 8-1-2.3-2).

170 IAC 4-_-2	Application
Authority:	IC 8-1-37-10
Affected:	IC 8-1-37-11

Sec. 2. (a) An electricity supplier that seeks to participate in the voluntary CES program must submit an application to the commission:

(1) that includes:

(A) the name and characteristics of the applying electricity supplier;

(B) an identification of clean energy resources to be utilized by the electricity supplier;

(C) the source of the clean energy resources to be utilized by the electricity supplier;

(D) the amount of clean energy anticipated to be generated by facilities owned or operated by the electricity supplier to be supplied to the electricity supplier's Indiana retail electric customers;

(E) the amount of clean energy anticipated to be purchased from other suppliers of clean energy to be supplied to the electricity supplier's Indiana retail electric customers; and

(F) the electricity supplier's plans for meeting the CPS goals set out in section 5 of this rule; and

(2) not later than December 31, 2013

for approval to participate in the voluntary CES program.

(b) Approval of a voluntary CES program, shall not limit the electric supplier's option to seek alternative relief with regards to recovery of costs nor eliminate any requirement that the electric supplier seek necessary authority as provided by other Indiana statutes. In no event, shall an electric supplier be allowed to double recover eligible program costs.

170 IAC 4-_-3 Approval
Authority: IC 8-1-37-10
Affected: IC 8-1-37-11

Sec. 3. (a) Upon receiving an application under section 2 of this rule, the commission shall review the application for completeness. Any party contesting the completeness of an application may file with the commission a notice that such information does not comply with this rule within twenty days of the application. The notice shall identify the alleged deficiencies and the requirements necessary to cure the alleged deficiencies. Within thirty (30) days after participating supplier's filing, the commission shall notify all parties if the filing is found to be deficient, and any deficiencies under this rule shall be cured within ten (10) business days of any such determination.

(b) The commission may request additional information it considers necessary to aid in its review.

(c) If the commission, upon proper notice and hearing, determines that:

(1) an application submitted under subsection (a) is complete and reasonably complies with the purpose of this rule;

(2) the electricity supplier submitting the application has demonstrated that the electricity supplier has a reasonable expectation of obtaining clean energy to the meet the energy requirements of its Indiana retail electric customers during the calendar year ending December 31, 2025, in an amount equal to at least ten percent (10%) of the total electricity supplied by the participating electricity supplier to its Indiana retail electric customers during the base year, as set forth in section 5(a)(3) of this rule; 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;

the commission shall approve the application.

(d) In determining that the requirements of (c)(2) is met, the electricity supplier must present evidence establishing the sources of Clean Energy Resources it anticipates utilizing, while recognizing that modifications may need to be made over the course of time to adjust to changing factors.

(e) In determining whether the requirement of (c)(3) is met, the commission must find that the electricity supplier has utilized a planning approach which will find the set of options most likely to provide utility services at the lowest cost reasonably possible once appropriate service, reliability levels, supply diversity mandates and existing and projected regulations are considered. Electricity suppliers are to exercise reasonable judgment as to how best to meet the obligation to serve within the context of this standard.

170 IAC 4-_-4 Approval denied; burden of persuasion
Authority: IC 8-1-37-10
Affected: IC 8-1-37-11

Sec. 4. (a) The commission shall reject an application that it determines has not met the requirements of section 3 of this rule.

(b) The electricity supplier that submitted the application under section 2 bears the burden of proving to the commission that the application meets the requirements set forth in section 3 of this rule.

170 IAC 4-_-5 Clean portfolio standard goals
Authority: IC 8-1-37-10
Affected: IC 8-1-37-12

Sec. 5. (a) A participating electricity supplier must obtain clean energy to meet the energy requirements of the participating electricity supplier's Indiana retail electric customers according to the following CPS goals:

(1) CPS Goal Period I: For the six (6) calendar years beginning January 1, 2013, and ending December 31, 2018, an average of at least four percent (4%) of the total electricity obtained by the participating electricity supplier to meet the energy requirements of its Indiana retail electric customers during the base year.

(2) CPS Goal Period II: For the six (6) calendar years beginning January 1, 2019, and ending December 31, 2024, an average of at least seven percent (7%) of the total electricity obtained by the participating electricity supplier to meet the energy requirements of its Indiana retail electric customers during the base year.

(3) CPS Goal Period III: In the calendar year ending December 31, 2025, at least ten percent (10%) of the total electricity obtained by the participating electricity supplier to meet the energy requirements of its Indiana retail electric customers during the base year.

(b) For purposes of subsection (a), electricity is measured in megawatt hours. This includes megawatt savings for participating electricity suppliers for initiatives set forth in section 1(d)(1)(O) of this rule for clean energy.

(c) The commission shall require that at least fifty percent (50%) of a CPS goal be met with megawatt hours of clean energy obtained by the participating electricity supplier from clean energy resources located in Indiana.

170 IAC 4-_-6 Clean portfolio standard goals; measurement and evaluation
Authority: IC 8-1-37-10
Affected: IC 8-1-37-12; IC 8-1-37-13

Sec. 6. (a) In determining whether a participating electricity supplier has met a particular CPS goal set forth in section 5 of this rule, the commission shall consider only clean energy that:

(1) except as provided in section 10 of this rule, is obtained by the participating electricity supplier to meet the energy requirements of the participating electricity supplier's Indiana retail electric customers during the CPS goal period under consideration; and

(2) 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.

(b) (1) A participating electricity supplier's progress in meeting the CPS goals set forth in section 5 of this rule shall be measured and evaluated by the commission. The participating electricity supplier must show:

(A) the participating electricity supplier's efforts, if any, during the most recently ended calendar year to meet the CPS goal applicable to the most recently ended calendar year;

(B) the total amount of renewable energy supplied to the participating electricity supplier's Indiana retail electric customers during the most recently ended calendar, including a breakdown of the following:

(i) The amount of clean energy generated by facilities owned or operated by the participating electricity supplier. The participating electricity supplier shall identify each facility by:

(AA) name and location;

(BB) total generating capacity;

(CC) total amount of electricity generated at the facility during the most recently ended calendar year, including the percentage of this amount that was supplied to the participating electricity supplier's Indiana retail electric customers; and

(DD) total amount of clean energy generated at the facility during the most recently ended calendar year, including the percentage of this amount that was supplied to the participating electricity supplier's retail electric customers.

(ii) The amount of clean energy purchased from other suppliers of clean energy. The participating electricity supplier shall identify:

(AA) each supplier from whom clean energy was purchased;

(BB) the amount of clean energy purchased from each supplier;

(CC) the price paid by the participating electricity supplier for the clean energy purchased from each supplier; and

(DD) to the extent known, the name and location of each facility at which the clean energy purchased from each supplier was generated.

(C) the number of CECs purchased by the participating electricity supplier during the most recently ended calendar year. The participating electricity supplier shall identify:

(i) each person from whom one (1) or more CECs was purchased;

(ii) the price paid to each person identified in clause (A) of this section for the CEC's purchase;

(iii) the number of CECs applied, if any, during the most recently ended calendar year to meet the CPS goal applicable to the most recently ended calendar year; and

(iv) the number of CECs, if any, that the participating electricity supplier plans to carry over to the next succeeding CPS goal period, as permitted by section 10 of this rule.

(D) The participating electricity supplier's plans for meeting the CPS goal applicable to the calendar year in which the report is submitted.

(E) Advances in clean energy technology that affect activities described in subdivisions (A) and (D) of this section.

(2) The requirement in subsection (b)(1) is satisfied by a submission of a completed annual report as required by section 22 of this rule.

(3) For purposes of this subsection, amounts of clean energy and electricity shall be reported in megawatt hours. This includes megawatt savings for participating electricity suppliers for the initiatives set forth in section 1(d)(1)(O) of this rule for clean energy.

170 IAC 4-_-7 Clean portfolio standard goals; requisite to financial incentives

Authority: 8-1-37-10

Affected: 8-1-37-12; 8-1-37-13

Sec. 7. Subject to section 6(a) of this rule, to qualify for the financial incentives set forth in sections 12 – 14 of this rule, a participating electricity supplier must obtain clean energy to meet the energy requirements of the participating electricity supplier's Indiana retail electric customers according to the clean portfolio standard goals established in section 5 of this rule.

170 IAC 4-_-8 On-Going Review

Authority: 8-1-37-10

Affected: 8-1-37-12

Sec. 8. A participating electricity supplier is not required to obtain clean energy to meet a particular CPS goal if the commission determines that the cost of clean energy resources available to the participating electricity supplier does not result in the lowest cost reasonably possible once appropriate service, reliability levels, supply diversity mandates and existing and projected regulations are considered.

170 IAC 4-_-9 Multiple clean energy credits; limitation

Authority: 8-1-37-10

Affected: 8-1-37-12

Sec. 9. (a) A participating electricity supplier may own or purchase one (1) or more CECs to meet any of the CPS goals set forth in section 5 of this rule.

(b) The clean energy represented by the CEC must meet the condition set forth in section 6(2) of this rule.

170 IAC 4-_-10 Applying credits across CPS periods
Authority: 8-1-37-10
Affected: 8-1-37-12

Sec. 10. A participating electricity supplier may apply:
(1) amounts of clean energy supplied by the participating electricity supplier to its Indiana retail electric customers during a particular CPS goal period; or
(2) CECs acquired by the participating electricity supplier during a particular CPS goal period;
that exceed the requirements for the particular CPS goal period to the immediately succeeding goal period.

170 IAC 4-_-11 Limited application of certain clean energy resources
Authority: IC 8-1-37-10
Affected: IC 8-1-37-12

Sec. 11. A participating electricity supplier may use a clean energy resource described in section 1(d)(Q) – section 1(d)(T) of this rule to satisfy not more than thirty percent (30%) of any of the CPS goals set forth in section 5 of this rule.

170 IAC 4-_-12 Shareholder incentives; basis points
Authority: IC 8-1-37-10
Affected: IC 8-1-37-13

Sec. 12. (a) A shareholder incentive is established consisting of the authorization of an increased overall rate of return on equity.

(b) The overall rate of return on equity shall not exceed fifty (50) basis points over a participating electricity supplier's authorized rate of return, whenever the participating electricity supplier attains a CPS goal set forth in section 5 of this rule.

(c) The number of additional basis points authorized by the commission under this section may:

(1) be different for each of the CPS goal periods identified in section of this rule, as the commission determines is appropriate;

(2) in the case of a particular participating electricity supplier, be based on the extent to which the participating electricity supplier met a particular CPS goal using clean energy resources listed in section 1(d)(1)(A) – (P) of this rule.

170 IAC 4-_-13 Additional basis points; limitation
Authority: IC 8-1-37-10
Affected: IC 8-1-37-13; IC 8-1-8.8-11(a)(2)

Sec. 13. The additional basis points authorized by the commission under section 12 of this rule for each CPS goal are not cumulative and may not be authorized for a clean

energy resource for which the commission has authorized an incentive under IC 8-1-8.8-11(a)(2).

170 IAC 4-_-14 Determination of authorized rate of return

Authority: IC 8-1-37-10

Affected: IC 8-1-37-13

Sec. 14. In determining a participating electricity supplier's authorized rate of return to which additional basis points may be added upon the participating electricity supplier's achievements of a particular CPS goal, the commission will utilize the amount, ratio, and cost rate for the participating electricity supplier's long term debt and preferred equity capital as of the date of the application, and the amount, ratio and cost rate for the participating electricity supplier's common equity capital, utilizing the cost rate that has been established by the commission in a previous proceeding involving the participating electricity supplier's basic rates and charges and shall not include as part of the authorized rate of return any additional basis points awarded to the participating electricity supplier for having achieved the immediately preceding CPS goal.

170 IAC 4-_-15 Approval of shareholder incentives; considerations

Authority: IC 8-1-37-10

Affected: IC 8-1-37-13

Sec. 15. If the commission approves an application under section 3(c) of this rule, the incentives described in sections 12 – 14 of this rule and the recovery of costs, by means of a periodic rate adjustment, described in section 16 of this rule, shall be approved and the commission shall also approve:

(a) The recovery of lost revenues associated with implementation of demand side management or energy efficiency initiatives; and

(b) The designation of electricity produced or conserved by a clean energy resource as an energy savings for purposes of any initiative, rule, or order approved by the commission to promote the efficient use and production of electricity, including initiatives to implement demand side management, energy efficiency, or conservation measures in accordance with commission rules.

170 IAC 4-_-16 Recovery of costs; adjustment mechanism

Authority: IC 8-1-37-10

Affected: IC 8-1-37-10; IC 8-1-37-13

Sec. 16. (a) If the commission approves an application under section 3(c) of this rule, it shall permit the recovery, by means of a periodic rate adjustment mechanism, of all just, reasonable, and necessary program costs incurred by the participating electricity supplier in:

(1) constructing, operating, or maintaining facilities that generate clean energy that:

(A) is used by the participating electricity supplier in its efforts to meet a CPS goal set forth in section 5 of this rule; and
(2) the recovery of lost revenues associated with implementation of demand side management or energy efficiency initiatives.

(b) For the purpose of this section, “program costs” includes administrative costs, ancillary costs, capacity costs, capital costs, costs associated with CECs, depreciation costs, tax costs, and financing costs incurred in connection with an activity described in subsection (a).

(3) such approval shall also designate the electricity produced or conserved by a clean energy resource as an energy savings for purposes of any initiative, rule, or order approved by the commission to promote the efficient use and production of electricity, including initiatives to implement demand side management, energy efficiency, or conservation measures in accordance with commission rules.

170 IAC 4- _17 Application for shareholder incentives

Authority: IC 8-1-37-10

Affected: IC 8-1-37-13

Sec. 17. A participating electricity supplier that seeks an incentive established by the commission under sections 12 – 14 of this rule or a periodic rate adjustment mechanism established under section 16(a) of this rule must submit an application to the commission:

(a) that includes a demonstration by the participating electricity supplier of the following:

(1) the sharing of achieved savings or as a percentage of costs;
(2) the avoided costs resulting from achieving demand side management or energy efficient targets;

(b) not later than December 31, 2013;

for approval for the incentive or periodic rate adjustment mechanism sought.

170 IAC 4- _18 Application for shareholder incentives; periodic rate adjustment mechanism approval

Authority: IC 8-1-37-10

Affected: IC 8-1-37-13

Sec. 18. (a) A participating electricity supplier that seeks an incentive established by the commission under sections 12 – 14 of this rule must file an application with the commission within thirty days after filing the annual report required by section 22 of this rule. The commission shall rule upon the application within 120 days after the date of the application, unless the commission finds that the applicant has not cooperated fully in the proceeding. If the Commission does not rule upon the application within 120 days it will be approved as a matter of law.

A participating supplier may defer for recovery the incentive earned from the end of the applicable goal period to the effective date of the commission order approving the recovery of the incentive. If the commission finds that the participating supplier has met the requirements of Section 5, it shall authorize the recovery of the incentive, including any incentive deferred under this rule, through the periodic rate adjustment mechanism.

(b) A participating electricity supplier that seeks approval of a periodic rate adjustment mechanism established under section 17 of this rule may file an application at any time, but no more frequently than once in each quarter of a calendar year.

170 IAC 4-_-19 Application for shareholder incentives; eligibility

Authority: IC 8-1-37-10
Affected: IC 8-1-37-13

Sec. 19. The commission shall, after notice and hearing, issue a determination of a participating electricity supplier's eligibility for the financial incentive or periodic rate adjustment mechanism sought.

170 IAC 4-_-20 Termination of shareholder incentives

Authority: IC 8-1-37-10
Affected: IC 8-1-37-13

Sec. 20. Subject to the participating electricity supplier's efforts to meet the applicable CPS goal, as determined according to the measurement and evaluation procedures described in section 6(b) of this rule, a shareholder incentive described in section 12 – 14 of this rule continues in effect until the earlier of the following:

(1) A time or upon an event specified in the commission's order approving the shareholder incentive.

(2) The commission issues a new order authorizing the participating electricity supplier to receive a shareholder incentive for meeting the next CPS program goal.

170 IAC 4-_-21 Termination of adjustment mechanism

Authority: IC 8-1-37-10
Affected: IC 8-37-13

Sec. 21. (a) For purposes of this section, "program costs" includes administrative costs, ancillary costs, capacity costs, capital costs, costs associated with CECs, depreciation costs, tax costs, and financing costs incurred in connection with an activity described in section 16(a).

(b) Subject to the participating electricity supplier's efforts to comply with the applicable CPS goal, as determined according to the measurement and evaluation procedures described in section 6(b) of this rule, a periodic rate adjustment mechanism described in section 16(a) of this rule continues in effect until the earlier of the following:

(1) The participating electricity supplier has recovered the program costs for which the periodic rate adjustment mechanism was allowed.

(2) A time or upon an event specified in the commission's order approving the periodic rate adjustment mechanism.

170 IAC 4- -22 Commission reports

Authority: IC 8-1-37-10

Affected: IC 8-1-37-14

Sec. 22. (a) Beginning in 2014, each participating electricity supplier shall report to the commission not later than March 1 of each year on the following:

(1) The participating electricity supplier's efforts, if any, during the most recently ended calendar year to meet the CPS goal applicable to the most recently ended calendar year.

(2) The total amount of renewable energy supplied to the participating electricity supplier's Indiana retail electric customers during the most recently ended calendar, including a breakdown of the following:

(A) The amount of clean energy generated by facilities owned or operated by the participating electricity supplier. The participating electricity supplier shall identify each facility by:

(i) name and location;

(ii) total generating capacity;

(iii) total amount of electricity generated at the facility during the most recently ended calendar year, including the percentage of this amount that was supplied to the participating electricity supplier's Indiana retail electric customers; and

(iv) total amount of clean energy generated at the facility during the most recently ended calendar year, including the percentage of this amount that was supplied to the participating electricity supplier's Indiana retail electric customers.

(B) The amount of clean energy purchased from other suppliers of clean energy. The participating electricity supplier shall identify:

(i) each supplier from whom clean energy was purchased;

(ii) the amount of clean energy purchased from each supplier;

(iii) the price paid by the participating electricity supplier for the clean energy purchased from each supplier; and

(iv) to the extent known, the name and location of each facility at which the clean energy purchased from each supplier was generated.

(3) The number of CECs purchased by the participating electricity supplier during the most recently ended calendar year. The participating electricity supplier shall identify:

(A) each person from whom one (1) or more CECs was purchased;

(B) the price paid to each person identified in clause (A) of this section for the CEC's purchase;

(C) the number of CECs applied, if any, during the most recently ended calendar year to meet the CPS goal applicable to the most recently ended calendar year; and

(D) the number of CECs, if any, that the participating electricity supplier plans to carry over to the next succeeding CPS goal period, as permitted by section 10 of this rule.

(4) The participating electricity supplier's plans for meeting the CPS goal applicable to the calendar year in which the report is submitted.

(5) Advances in clean energy technology that affect activities described in subdivisions (1) and (4) of this section.

(b) For purposes of this subsection, amounts of clean energy and electricity shall be reported in megawatt hours.

(c) A participating electricity supplier's duty to submit a report under this subsection terminates after the participating electricity supplier has submitted the report that applies to the calendar year ending December 31, 2025.

(d) A participating electricity supplier may seek protection from disclosure of any proprietary or confidential information required to be submitted under this section in accordance with the commission's requirements for protective orders.