

**Rulemaking #11-05 – Indiana Clean Energy Portfolio Standard (INCEPS)
Indiana Industrial Group Comments**

The Indiana Industrial Group, by counsel, submit the following written comments in furtherance of the Commission’s adoption of rules under Ind. Code 4-22-1 to establish the Indiana voluntary clean energy portfolio standard program (the “Program”). We welcome any questions or comments that the Commission might have, including requests for additional or clarifying information.

A. Incentive-Based Program/Double Recovery

IC 8-1-37 reflects a legislative intent to incentivize participating electricity suppliers to supply electricity from clean energy.” See 8-1-37-10(a). There is no need to incentivize pre-existing commitments, therefore Projects already being undertaken by electricity suppliers should not be included in the Program. To find otherwise undermines the role of 8-1-37 as a catalyst to new investment and innovation, and instead treats it as a discount program for existing projects. Distinguishing pre-existing projects from new Program-related projects also helps to guard against double recovery of program costs, which are broadly defined in 13(c). As such, the Industrial Group makes the following recommendations:

B. Program Application Process under 8-1-37-11(a)

The Program Application process under Section 11 should be a docketed proceeding in which the applicant provides information analogous to the reporting requirements of Section 14(a) in order to establish base-line clean energy resources (which should not be included in the Program), and distinguish that from new Project-related clean energy resources. That information includes:

1. Amount of clean energy generated by facilities owned or operated by applicant at the time of Application (see Section 14(a)(2)(A)(i-iv)), and the identity of that resource.
2. The amount of clean energy purchased from other suppliers of clean energy at the time of Application (see Section 14(a)(2)(B)(i-iv)), including the identity of those resources.
3. Detailed Plans for meeting the CPS program goals, including:
 - i. Reasonable Expectation – identify new facilities, new resources, new contracts and/or CEC’s to be used in connection with CPS Goal Period I, II and III;
 - ii. Annual projections of energy saved by kWh per resource type, including CECs;
 - iii. Complete description of the project scope, cost and location;
 - iv. Justification of the need for the generation through existing or updated IRP modeling;
 - v. Estimated emission reductions;
 - vi. Project estimated cost;

- vii. Ratepayer impact if Application not approved v. impact if Approved, including all assumptions;
- viii. Workpapers containing all details and calculations necessary to replicate and understand all elements of the utility's application.

C. Time for Filing a Program Application

The definition of "CPS goal" in Section 5 makes clear that it refers to a goal under CPS Goal Period I, II or III that an electricity supplier:

1. "must achieve" (not merely in the process of achieving)
2. "during the Program" (not prior to acceptance into the Program), and
3. in order to qualify for the incentive.

Thus, Section 5 reflects the General Assembly's intention that no incentive be granted prior to a goal's full achievement. The achievement of an average 4% CPS goal for 6 years is very different than achievement of that goal for a shorter period. We therefore recommend that the Project Application be received prior to the commencement of the CPS Goal Period for which an Incentive may be sought. However, in recognition of the possibility that a final rule is not in place until July 2012, it may be possible to pro-rate any incentives resulting for Project Applications received during the first year of CPS Goal Period I.

D. Application for Recovery of Program Costs under 8-1-37-13(c)

If the Commission has approved a Program Application then the Commission shall permit the recovery of the enumerated just, reasonable and necessary program costs incurred by a participating utility. Subsection (d) reflects that a participating utility that seeks such recovery must apply for approval. That application should be a docketed proceeding that, at a minimum, provides the following evidentiary basis:

1. In order to minimize the problem of tracking cost recovery on "moving targets", the Application for Cost Recovery must reflect a direct connection between the Detailed Plans filed with the Program Application and the requested cost;
2. That the costs have been incurred;
3. That the costs are just, reasonable and necessary;
4. That all annual reports required under section 14 have been filed; and
5. That the applicant has made proportionate progress toward, and is reasonably expected to achieve, the CPS goals set forth in its Program Application based on objective data including the information required to be reported in IC 8-1-37-14.

The recovery of Program Costs under Section 13 (c) should be reviewed no less than annually, and should be subject to refund pending a final determination that the CPS goals have been achieved.

Depreciation on plant or amortization of initial start up costs of a program should not be at an accelerated rate, but instead spread over the life of the asset or amortized over the length of the program. No other capital or financing costs should be permitted other than what is included in the statute in relation to CPS goal attainment. All administrative and ancillary operating costs should be directly associated with the CPS project and not allocated from the utility, including labor and benefits and overhead already included in base rates.

E. Application for Incentives under 8-1-37-13(a)

Pursuant to Indiana Code 8-1-37-13(c), the Incentive Application process under Section 13 should also be a docketed proceeding in which the applicant provides evidence of its compliance with the CPS goal for CPS Goal Period I, II, or III. Incentive Applications should only be accepted after achievement of the full CPS. The Incentive Application should be a docketed proceeding that, at a minimum, provides evidentiary basis that:

1. The CPS goal reflected in section 12(a) for the applicable CPS Goal Period was achieved during the Program; and
2. The CPS goal was achieved as a result of the Detailed Plan filed with the Program Application.

Consistent with the voluntary and incentive nature of the Program, The Industrial Group also recommends that the Incentive Application net out clean energy obtained in compliance with non-Program mandates under state and federal law when calculating their CPS goal percentage. Legally mandated achievements are neither voluntary, nor is an incentive required for compliance.

F. Incentive Amounts

In light of the broad range of clean energy resources, their varying levels of contribution to economic development and technological innovation, and the unique operating and organizational characteristics of the participating energy suppliers, the Industrial Group does not believe a formulaic approach to incentives is advisable. Instead, we recommend that the cap referenced in IC 8-1-37-13(a), and the considerations reflected in 13(b) be used as a guideline for determining the incentive on a case-by-case basis.