
IURC RM #11-05

**PRE-RULEMAKING COMMENTS ON
VOLUNTARY CLEAN ENERGY PORTFOLIO STANDARD PROGRAM
STRAWMAN PROPOSAL**

OCTOBER 12, 2011

SUBMITTED BY THE

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

The Indiana Office of Utility Consumer Counselor, by counsel, submits the following written comments and attached redlined document to promote the Commission's continuing development of a proposed rule to establish the Indiana voluntary clean energy portfolio standard program ("Choice Program").

Existing Resources Should Not Count Toward the Goals

As proposed in the Commission's draft strawman rule, 170 IAC 17-3-4(c) allows participating electricity suppliers to apply existing clean energy resources toward their compliance with portfolio diversification goals set for the Choice Program by the Indiana General Assembly. It is understandable that the Indiana Energy Association supported inclusion of existing resources; however, allowing electricity suppliers to count existing resources toward the clean portfolio standard ("CPS") goals would do little to encourage the development of clean energy and would render the statutory CPS Goal Periods I and II set forth in Indiana Code § 8-1-37-12 meaningless.

The OUCC has calculated the existing amount of clean energy resources held by Indiana's investor-owned utilities ("IOUs"), and as shown in the chart below, the IOUs already meet the goal for CPS Goal Period I. The goals of CPS Goal Period II are nearly complete.

Only CPS Goal Period III would require any significant additional effort from the IOU electricity suppliers.

As currently proposed, Indiana’s IOUs could leapfrog CPS Goal Period I and claim to have met the voluntary goals for that period by doing absolutely nothing. The IOUs would not be required to perform until CPS Goal Period II, which begins in 2019 and ends in 2024, and CPS Goal Period III, which begins in 2024 and ends in 2025, in order to meet and maintain compliance with statutory clean energy goals.

SEA 251 - Scenario Including Existing Resources (In MWh)¹

	CPS Goal: 4%			CPS Goal: 7%			CPS Goal: 10%		
	End of Period 1: 2018	Projected Clean Generation	% of Goal	End of Period 2: 2024	Projected Clean Generation	% of Goal	End of Period 3: 2025	Projected Clean Generation	% of Goal
Duke	1,367,936	1,631,862	100%	2,393,888	1,939,648	81%	3,419,840	2,247,433	66%
I&M	800,479	1,058,761	100%	1,400,838	1,238,868	88%	2,001,197	1,418,976	71%
IPL	762,219	1,154,647	100%	1,333,883	1,326,146	99%	1,905,547	1,497,645	79%
NIPSCO	718,918	865,265	100%	1,258,106	1,027,022	82%	1,797,294	1,188,778	66%
Vectren	252,965	342,532	100%	442,689	399,449	90%	632,412	456,366	72%

Counting existing clean energy resources toward compliance with the new Rule would not satisfy the intent behind, or achieve the goals adopted in, this new legislation. One of the original Senate Bill’s authors, Senator Beverly Gard, indicated that “SB 251’s goal is to encourage the use of clean energy sources that are lower-carbon and less polluting than traditional coal-fired power plants.”²

¹ In determining how an electricity supplier might meet its goals, an amount equal to 30% of each Period Goal was taken to determine the amount of existing resources (from Section 4, Subsections 17-21 of the statute) that could be used, and added to the amount of other existing resources (from Section 4, Subsections 1-16). This total was then compared to each Goal Period Requirements to determine the percentage of attainment.

² See Beverly Gard, *Bill Pushes Energy Options Besides Wind*, Fort Wayne Journal Gazette, May 10, 2011. Available at <http://www.journalgazette.net/article/20110510/EDIT05/305109976/-1/EDIT01>.

If the intent of the new statute were simply to tout Indiana utilities' voluntary past deployment of clean energy, the proposed strawman rule would suffice. If, on the other hand, the purpose of the legislation is to encourage the development of renewable energy generation in Indiana, the strawman rule, as currently drafted, will fall short.

Senate Enrolled Act 251, taken as a whole, supports the position that the purpose of the legislation is to develop *additional* clean energy resources. Section 11(c)(2) states "the electricity supplier submitting the application has demonstrated that the electricity supplier has a reasonable expectation of obtaining clean energy to meet the [statutory] requirements..." The use of the phrase "expectation of obtaining" indicates that the Indiana General Assembly intended to encourage the attainment of new generation using clean energy resources to meet new Choice Program standards, not to rely on existing clean energy resources. Similar language can also be found in SEA 251 Section 10(a), which provides that "the program established under this section must be a voluntary program that provides incentives to participating electric suppliers that undertake to supply specified percentages of the total..." Again, the use of the word "undertake" indicates future (not past) actions and new (rather than existing) clean sources of energy.

Further, by eliminating existing resources from the clean portfolio standard goal, 170 IAC 17-4-4(d) becomes unnecessary. While the OUCC agrees with the position adopted in the Commission's draft strawman rule that CHOICE incentives should not be approved for existing clean energy resources, the proposed language does not go far enough. The very nature of an incentive is to encourage *future* desired behavior. Prior utility decisions regarding renewable energy projects would have been based on a business case review conducted by the utility, whether through a positive cost-benefit analysis, or other requirements, such as business

necessity. Rewarding past utility investment decisions does very little to incent future behavior. The OUCC's proposed addition to 170 IAC 17-4-4(c)(9) was added to ensure electricity suppliers do not double-dip, by receiving multiple incentives for the same act. Whether the incentive comes from Indiana, another state, or the federal government, compounding the incentives will do little to encourage additional positive behavior. Instead, it provides a windfall to the electricity supplier. Encouraging the development of clean energy resources should be the goal of the Rule and must be done on a prospective basis.

The Application and Approval Process Should be Further Refined

The OUCC modified 170 IAC 17-4-2(3)(J) to change "may" to "shall" in order to reflect the necessity of receiving certain information and documentation from CHOICE Program applicants. Similar clarification was made to 170 IAC 17-4-1, which should indicate that a "complete" program application must be filed before an applicant is allowed to participate in the CHOICE Program. Given the tight time frames to complete reviews under the new statute, allowing the time period to run immediately upon the filing of an incomplete application will further reduce the period of time in which interested parties are able to seek additional information.

The OUCC also recommended an addition to 170 IAC 17-4-3(a) to clarify that proceedings brought under the new CHOICE statute must be docketed Commission proceedings. The use of a formal docketed proceeding is also consistent with the remainder of the strawman rule, which anticipates a prehearing conference and evidentiary hearing. The OUCC has proposed additional changes to 170 IAC 17-4-3(c) to increase the time available for review of the completeness of the filing to sixty (60) days to ensure sufficient time is available. The OUCC has also proposed a change to 170 IAC 17-4-3(e) to allow the OUCC and other

Intervenors to seek additional necessary information from the utilities. Those changes would help ensure that all interested parties have access to the discovery tools to obtain information for a full review of a CHOICE Program application before having to submit comments to the Commission regarding the application.

Turning to the approval process, the OUCC proposes the use of a “preponderance of the evidence standard” in 170 IAC 17-4-4(a). That addition should help clarify that the electricity supplier maintains the burden of proof in the CHOICE Program application process and defines the required standard of proof that must be satisfied by the applicant.

OUCC Role Following Commission Approval of CHOICE Program Applications

Once a CHOICE Program application has been approved, it may become necessary to change part of the CHOICE plan. The OUCC has therefore proposed changing 170 IAC 17-5-2 to include two (2) separate tracks. If a proposed change to an approved CHOICE plan is not expected to impact whether the electricity supplier will meet the statutory CPS Goals and is not expected to increase ratepayer impact, the electricity supplier may either request the change through a docketed proceeding, or if the OUCC waives its objection prior to the filing, the electricity supplier may use a streamlined 30-day filing process.

This modified 30-day filing process would be analogous to the expedited review process used by the DSM Oversight Boards. The Oversight Boards have been successful in allowing different stakeholders to work collaboratively toward common goals. In the event consensus is not reached at the Oversight Board level, members may seek relief from the Commission. The strawman rule change proposed by the OUCC would require electricity suppliers to explain their reasons for proposed changes to approved CHOICE Program plans, while allowing parties to

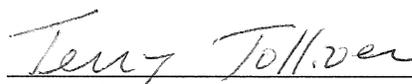
work together informally to reach a consensus. This would expedite the possible approval and implementation of changes to already approved CHOICE Program plans.

The OUCC is the statutory representative of all ratepayers and is thus in a unique position to review and comment on proposed changes to approved CHOICE Program plans. The OUCC's proposed changes to 170 IAC 17-5-2 would allow the parties an opportunity to fully evaluate any proposed changes in a docketed proceeding. Recognizing the need for an expedited process in certain circumstances, the OUCC has also proposed a 30-day filing process with the OUCC's consent.

Conclusion

The OUCC has included a red-lined version of the Proposed Rule for the Commission's review. Many of the changes are self-explanatory, or are clerical in nature. These accompanying Comments are not intended to minimize the importance of any proposed changes that are not specifically discussed above. The OUCC's Comments only address changes believed to require additional explanation. The OUCC appreciates the opportunity to participate in the initial shaping of the Commission's first draft proposed strawman rule and looks forward to further participation in this continuing review process.

Respectfully submitted,



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