

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1116 be amended to read as follows:

- 1 Page 8, between lines 33 and 34, begin a new paragraph and insert:
- 2 "SECTION 7. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS
- 3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
- 4 PASSAGE]:
- 5 **Chapter 8.4. Merchant Power Plants**
- 6 **Sec. 1. This chapter does not apply to a merchant power plant**
- 7 **that has filed a petition with the commission under IC 8-1-2.5**
- 8 **before March 1, 2001, seeking an order that the commission**
- 9 **decline to exercise, in whole or in part, its jurisdiction over the**
- 10 **merchant power plant.**
- 11 **Sec. 2. (a) As used in this chapter, "merchant power plant"**
- 12 **means a facility within Indiana used for the:**
- 13 **(1) production, transmission, delivery, or furnishing of heat,**
- 14 **light, or power; and**
- 15 **(2) sale of electric energy exclusively on the wholesale market;**
- 16 **to other public utilities, energy service providers, or power**
- 17 **marketers within or outside Indiana.**
- 18 **(b) The term includes a facility that has made a significant**
- 19 **alteration to the labor used to construct or remodel the facility. For**
- 20 **purposes of this subsection, a facility makes a significant alteration**
- 21 **in the labor used to construct or remodel a facility if the person**
- 22 **uses contractors, subcontractors, or work crews that include**
- 23 **workers who are not participants in or have not completed a**
- 24 **jointly administered labor and management apprenticeship**

1 program approved by the United States Department of Labor's
2 Bureau of Apprenticeship Training.

3 (c) The term does not include a facility that is owned, controlled,
4 or operated by a person that is obligated contractually to provide
5 substantially all of the wholesale power requirements of an
6 electricity supplier under a contract extending at least five (5)
7 years.

8 Sec. 3. Except as provided in section 1 of this chapter, a
9 merchant power plant is subject to the jurisdiction of the
10 commission.

11 Sec. 4. (a) The commission shall consider the following when
12 acting upon any petition by a merchant power plant under
13 IC 8-1-2.5 or IC 8-1-8.5:

14 (1) Location.

15 (2) Need.

16 (3) Financing.

17 (4) Reporting requirements.

18 (5) Impact on electric, water, and natural gas suppliers and
19 customers.

20 (6) The recommendation of the department of natural
21 resources under section 12 of this chapter.

22 (b) The commission shall issue a decision either approving or
23 denying a merchant power plant's petition under IC 8-1-2.5 or
24 IC 8-1-8.5 not later than eighteen (18) months after the date of the
25 petition.

26 Sec. 5. (a) When petitioning the commission under IC 8-1-2.5 or
27 IC 8-1-8.5, a merchant power plant must establish proof of
28 financial responsibility by filing one (1) or a combination of the
29 following with the commission:

30 (1) A fully funded trust fund agreement.

31 (2) A surety bond with a standby trust fund agreement.

32 (3) A letter of credit with a standby trust fund agreement.

33 (4) An insurance policy with a standby trust fund agreement.

34 (5) Proof that the merchant power plant meets a financial test
35 established by the commission and equivalent to one (1) of the
36 items in subdivisions (1) through (4).

37 (b) The amount of financial responsibility that a merchant
38 power plant must establish under this section shall be determined
39 by the commission. In all cases, the amount must be sufficient to
40 close the merchant power plant in a manner that:

41 (1) minimizes the need for further maintenance and
42 remediation; and

43 (2) provides reasonable, foreseeable, and necessary
44 maintenance and remediation after closure for at least twenty
45 (20) years after the merchant power plant ceases operations.

46 (c) The commission may use:

47 (1) a trust fund agreement;

- 1 (2) a surety bond;
- 2 (3) a letter of credit;
- 3 (4) an insurance policy; or
- 4 (5) other proof of financial responsibility;

5 filed under this section for the closure or post-closure monitoring,
6 maintenance, or remediation of a merchant power plant approved
7 by the commission, if the merchant power plant does not comply
8 with closure or post-closure standards established by the
9 commission under subsection (d).

10 (d) The commission shall adopt rules under IC 4-22-2 to
11 establish the following:

- 12 (1) Standards for the proper closure and post-closure
13 monitoring, maintenance, and remediation of merchant power
14 plants.
- 15 (2) Criteria for how money in a trust fund agreement, a surety
16 bond, a letter of credit, an insurance policy, or other proof of
17 financial responsibility provided by a merchant power plant
18 may be released to the merchant power plant when the
19 merchant power plant meets the closure and post-closure
20 standards established under subdivision (1).

21 Sec. 6. (a) Not later than seven (7) days after filing a petition
22 under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall:

- 23 (1) send notice of the petition by United States mail to all
24 record owners of real property located within one-half (1/2)
25 mile of the proposed facility; and
- 26 (2) cause notice of the petition to be published in a newspaper
27 of general circulation in each county in which the facility or
28 proposed facility is or will be located.

29 (b) The notice of the petition shall include:

- 30 (1) a description of the facility or proposed facility; and
- 31 (2) the location, date, and time of the field hearing required by
32 section 7 of this chapter.

33 Sec. 7. Not later than thirty (30) days after filing a petition
34 under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall
35 conduct a field hearing at a location in a county in which the
36 facility or proposed facility is or will be located. The purpose of the
37 field hearing is to determine local support for the merchant power
38 plant.

39 Sec. 8. Not later than thirty (30) days after the field hearing
40 required by section 7 of this chapter, a majority of the persons
41 described in section 6(a)(1) of this chapter may request in writing
42 a hearing before the commission.

43 Sec. 9. (a) Not later than thirty (30) days after a hearing is
44 requested under section 8 of this chapter, the commission shall
45 conduct a hearing at a location in a county in which the facility or
46 proposed facility is or will be located. The hearing required by this
47 subsection must be held:

- 1 (1) before or at the same time as the hearing required under
2 IC 8-1-8.5-5(b); and
- 3 (2) before the commission issues a certificate of public
4 convenience and necessity under IC 8-1-8.5.
- 5 (b) At least ten (10) days before the scheduled hearing, notice of
6 the hearing must be served by first class mail on:
- 7 (1) all record owners of property located within one-half (1/2)
8 mile of the proposed facility; and
- 9 (2) the merchant power plant.
- 10 (c) The parties to the hearing include:
- 11 (1) a person entitled to notice under section 9(b)(1) of this
12 chapter; and
- 13 (2) the merchant power plant.
- 14 (d) The commission shall accept written or oral testimony from
15 any person who appears at the public hearing, but the right to call
16 and examine witnesses is reserved for the parties to the hearing.
- 17 (e) The commission shall make a record of the hearing and all
18 testimony received. The commission shall make the record
19 available for public inspection.
- 20 Sec. 10. Not later than forty-five (45) days after a hearing is
21 conducted under section 9 of this chapter, the commission shall
22 issue written findings based on the testimony presented at the
23 hearing. To the extent the commission's findings differ from
24 testimony presented at the hearing, the commission must explain
25 its findings.
- 26 Sec. 11. When considering whether to approve a merchant
27 power plant, the commission shall give preference to the following
28 locations for siting:
- 29 (1) Brownfield sites that are isolated from populated areas.
- 30 (2) Sites of existing or former utilities that can be replaced or
31 repowered.
- 32 (3) Other sites identified for power plant or heavy industrial
33 development in local land use plans before the initiation of site
34 selection for the facility.
- 35 Sec. 12. (a) For purposes of this section:
- 36 (1) "department" refers to the department of natural
37 resources; and
- 38 (2) "water resource" has the meaning set forth in
39 IC 14-25-7-8.
- 40 (b) When considering whether to approve a merchant power
41 plant, the commission shall obtain a recommendation from the
42 department regarding the merchant power plant's planned use of
43 and its potential effect on the water resource.
- 44 (c) To make its recommendation, the department may do the
45 following:
- 46 (1) Rely on the merchant power plant's water resource
47 assessment under subsection (d).

- 1 **(2) Consult with and advise users of the water resource.**
- 2 **(3) Enter upon any land or water in Indiana to evaluate the**
- 3 **effect of the merchant power plant on the water resource.**
- 4 **(4) Conduct studies to evaluate the availability and most**
- 5 **practical method of withdrawal, development, conservation,**
- 6 **and use of the water resource.**
- 7 **(5) Require metering or other reasonable measuring of water**
- 8 **withdrawals and reporting of the measurement to the**
- 9 **department.**
- 10 **(6) Engage in any other activity necessary to carry out the**
- 11 **purposes of this section.**
- 12 **(d) A merchant power plant shall provide an assessment of its**
- 13 **effect on the water resource and its users to the commission and**
- 14 **the department. The assessment shall be prepared by a licensed**
- 15 **professional geologist (as defined in IC 25-17.6-1-6.5) or an**
- 16 **engineer licensed under IC 25-31-1. The assessment must include**
- 17 **the following information:**
- 18 **(1) Sources of water supply.**
- 19 **(2) Total amount of water to be used by the merchant power**
- 20 **plant for each source.**
- 21 **(3) Location of wells or points of withdrawal.**
- 22 **(4) Ability of the water resource to meet the needs of the**
- 23 **merchant power plant and other users.**
- 24 **(5) Probable effects of the merchant power plant's use and**
- 25 **consumption of the water resource on other users.**
- 26 **(6) Alternative sources of water supply.**
- 27 **(7) Conservation measures proposed by the merchant power**
- 28 **plant for reducing the plant's effect on the water resource.**
- 29 **(8) Other information required by any other law, rule, or**
- 30 **regulation.**
- 31 **Sec. 13. Following the approval of a petition by the commission,**
- 32 **the merchant power plant shall:**
- 33 **(1) notify the commission upon becoming an affiliate of any**
- 34 **regulated Indiana utility selling electricity at retail to Indiana**
- 35 **consumers, at which time the commission may reassert any**
- 36 **jurisdiction it had declined under IC 8-1-2.5;**

- 1 **(2) obtain prior commission approval with respect to the sale**
- 2 **of any electricity to any affiliated regulated Indiana retail**
- 3 **utility, or any affiliate of a regulated Indiana retail utility;**
- 4 **and**
- 5 **(3) obtain prior commission approval of any transfers of**
- 6 **ownership of the facility or its assets."**

7 Page 8, after line 35, begin a new paragraph and insert:
8 "SECTION 8. **An emergency is declared for this act.**"
9 Re-number all SECTIONS consecutively.
 (Reference is to HB 1116 as printed January 31, 2002.)

Representative Adams T