
SENATE BILL No. 209

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-8.4.

Synopsis: Merchant power plants. Requires a person seeking to construct a merchant power plant in Indiana to file a petition with and receive siting approval from the utility regulatory commission (IURC). Allows the IURC to approve the siting of a merchant power plant if the plant will not be adverse to the interests of local residents and all Indiana citizens. Specifies factors that the IURC must consider in acting upon a siting petition. Requires a petitioner to demonstrate that it has considered: (1) brownfields; (2) sites of existing or former utilities; and (3) sites identified for power plant and heavy industrial use in local plans; for the siting of the merchant power plant. Requires the IURC to obtain a recommendation from the department of natural resources concerning the potential effect of a merchant power plant on its proposed water resource. Requires a petitioner to file proof of financial responsibility with the IURC to cover expenses associated with decommissioning the merchant power plant upon closure. Requires the IURC to hold a hearing and receive testimony upon each petition to site a merchant power plant. Requires a merchant power plant to submit certain reports to the IURC upon receiving siting approval. Allows the IURC to revoke its approval of a merchant power plant if the plant does not operate in accordance with the IURC's order of approval. Provides that information concerning a merchant power plant's fuel arrangements or electric sales is not a public record. Requires the state utility forecasting group to conduct an annual power market study to assess the regional needs for and effects of merchant power plants.

Effective: Upon passage.

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January 9, 2003, read first time and referred to Committee on Utility and Regulatory Affairs.



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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

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SENATE BILL No. 209



A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
3 PASSAGE]:

4 **Chapter 8.4. Merchant Power Plant Certification and Siting**

5 **Sec. 1. As used in this chapter, "brownfield" has the meaning set**
6 **forth in IC 13-11-2-19.3.**

7 **Sec. 2. (a) As used in this chapter, "merchant power plant"**
8 **means an electric generating facility all or a designated part of**
9 **which is used for the production and sale of electric energy**
10 **exclusively into the wholesale power market or to other utilities,**
11 **energy service providers, or power marketers within or outside**
12 **Indiana. However, for purposes of sections 2 through 18 of this**
13 **chapter, the term does not include a plant all or a designated part**
14 **of which, before becoming a plant or a designated part of a plant**
15 **used for the production and sale of electric energy exclusively into**
16 **the wholesale power market, was used to produce electric energy**
17 **for sale to retail Indiana customers.**



1 **(b) The term does not include a cogeneration facility (as defined**
 2 **in IC 8-1-2.4-2(c)) or plants owned by any of the following:**

- 3 **(1) A corporation organized and operating under IC 8-1-13.**
 4 **(2) A nonprofit Indiana corporation most of whose members**
 5 **are organized and operating under IC 8-1-13.**
 6 **(3) A joint agency created and operating under IC 8-1-2.2.**
 7 **(4) A municipally owned utility.**

8 **Sec. 3. As used in this chapter, "need" means a commission**
 9 **finding supported by substantial evidence that:**

- 10 **(1) the regional power market has a projected need:**
 11 **(A) for the type of capacity being proposed at or near the**
 12 **time the proposed merchant power plant is expected to**
 13 **become commercially operational; and**
 14 **(B) that will not be met by other supply or demand side**
 15 **resources reasonably expected to be available at or near**
 16 **the time described in clause (A); and**
 17 **(2) the proposed merchant power plant is likely to be**
 18 **dispatched with sufficient frequency in the wholesale regional**
 19 **power market over the period of the merchant power plant's**
 20 **expected operating life to recover the merchant power plant's**
 21 **revenue requirement.**

22 **Sec. 4. As used in this chapter, "person" means any corporation,**
 23 **company, partnership, limited liability company, individual,**
 24 **association of individuals, or their lessees, trustees, or receivers**
 25 **appointed by a court.**

26 **Sec. 5. As used in this chapter, "petitioner" means a person that**
 27 **files with the commission a petition under this chapter to site a**
 28 **merchant power plant.**

29 **Sec. 6. Any person that owns, operates, manages, or controls a**
 30 **merchant power plant in Indiana is a public utility (as defined in**
 31 **IC 8-1-2-1(a)).**

32 **Sec. 7. (a) A person may not begin to construct a merchant**
 33 **power plant by significantly altering a site to install permanent**
 34 **equipment or structures unless the person files a petition with and**
 35 **obtains approval from the commission under this chapter.**

36 **(b) The commission shall issue a decision approving or denying**
 37 **a petition under this chapter not earlier than two hundred seventy**
 38 **(270) days after the filing of the petition.**

39 **(c) A person filing a petition under this chapter shall publish a**
 40 **notice of the filing in a newspaper of general circulation published**
 41 **in the county in which the proposed merchant power plant will be**
 42 **sited.**

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1 **Sec. 8. The commission may approve the siting of a merchant**
2 **power plant if the commission determines that the siting of the**
3 **merchant power plant is not adverse to the interests of:**

- 4 **(1) the citizens of Indiana in general; and**
- 5 **(2) the citizens of the locality where the proposed merchant**
6 **power plant will be sited.**

7 **Sec. 9. The commission shall consider the following when acting**
8 **upon a petition under this chapter:**

- 9 **(1) The need for the merchant power plant.**
- 10 **(2) The location of the merchant power plant.**
- 11 **(3) The ownership or transfer of ownership of the merchant**
12 **power plant.**
- 13 **(4) The management of the merchant power plant.**
- 14 **(5) The financing of the merchant power plant.**
- 15 **(6) The capacity of the merchant power plant.**
- 16 **(7) The type and size of the merchant power plant.**
- 17 **(8) The type of fuel used by the merchant power plant.**
- 18 **(9) The merchant power plant's fuel supply arrangements and**
19 **their effect on the reliability of Indiana's electrical system and**
20 **the price and availability of the fuel for other uses in Indiana,**
21 **taking into account the effects of other merchant power**
22 **plants.**
- 23 **(10) The merchant power plant's electric supply contracts.**
- 24 **(11) The merchant power plant's effect on the electric and gas**
25 **transmission systems serving Indiana.**
- 26 **(12) The merchant power plant's effect on:**
 - 27 **(A) water supplies and usage, taking into account the**
28 **effects of other merchant power plants using the same or**
29 **interconnected sources of water; and**
 - 30 **(B) current users of the merchant power plant's sources of**
31 **water.**
- 32 **(13) Local ordinances and area plans.**
- 33 **(14) Oral and written testimony received by the commission**
34 **under section 13 of this chapter.**
- 35 **(15) The results of the study required under section 20 of this**
36 **chapter.**
- 37 **(16) Other factors that the commission considers relevant in**
38 **making a determination under this chapter.**

39 **Sec. 10. The petitioner must provide documentation to the**
40 **commission that it has thoroughly considered the feasibility and**
41 **economics of the following types of sites:**

- 42 **(1) Brownfield sites that are isolated from populated areas.**

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1 (2) Sites of existing or former utilities that can be replaced or
2 repowered.

3 (3) Other sites identified for power plant and heavy industrial
4 development in local land use plans before the initiation of site
5 selection for the merchant power plant.

6 Sec. 11. (a) As used in this section:

7 (1) "department" refers to the department of natural
8 resources; and

9 (2) "water resource" means any source of water included in
10 the definition of water resource set forth in IC 14-25-7-8 that:

11 (A) serves the water requirements of;

12 (B) receives any output or discharge from; or

13 (C) is otherwise affected by;

14 the operation of a particular merchant power plant.

15 (b) When considering whether to approve a merchant power
16 plant under this chapter, the commission shall obtain a
17 recommendation from the department regarding the merchant
18 power plant's planned use of and the merchant power plant's
19 potential effect on the merchant power plant's water resource.

20 (c) In making its recommendation, the department may do the
21 following:

22 (1) Rely on the merchant power plant's water resource
23 assessment under subsection (d).

24 (2) Consult with and advise users of the water resource.

25 (3) Enter upon any land or water in Indiana to evaluate the
26 effect of the merchant power plant on the water resource.

27 (4) Conduct studies to evaluate the availability of and most
28 practical method of withdrawal, development, conservation,
29 and use of the water resource.

30 (5) Require metering or other reasonable measuring of water
31 withdrawals and reporting of the measurement to the
32 department.

33 (6) Engage in any other activity necessary to carry out the
34 purposes of this section.

35 (d) A petitioner shall provide to the commission and the
36 department an assessment of the proposed merchant power plant's
37 effect on the water resource and its users. The assessment shall be
38 prepared by a licensed professional geologist (as defined in
39 IC 25-17.6-1-6.5) or an engineer licensed under IC 25-31-1. The
40 assessment must include the following information:

41 (1) Sources of water supply.

42 (2) Total amount of water to be used by the merchant power

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1 plant from each source.

2 (3) Location of wells or points of withdrawal.

3 (4) Ability of the water resource to meet the needs of the
4 merchant power plant and other users.

5 (5) Ability of the water resource to meet the future needs of
6 the county in which the proposed merchant power plant will
7 be located.

8 (6) Alternative sources of water supply.

9 (7) Conservation measures proposed by the petitioner for
10 reducing the merchant power plant's effect on the water
11 resource.

12 **Sec. 12. (a) If a person files a petition with the commission under**
13 **this chapter or any other law for the siting of a merchant power**
14 **plant, the person must establish proof of financial responsibility by**
15 **filing one (1) of the following or a combination of the following**
16 **with the commission at the time, either before or after commission**
17 **approval of the petition, that shall be determined by the**
18 **commission:**

19 (1) A fully funded trust fund agreement.

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

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

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

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

26 (b) The amount of financial responsibility that a person must
27 establish under this section shall be determined by the commission.
28 In all cases, the amount must be sufficient, but not more than
29 reasonably necessary, to:

30 (1) fully decommission the site and remove structures,
31 equipment, and site hazards;

32 (2) minimize the need for further maintenance and
33 remediation; and

34 (3) provide for reasonable, foreseeable, and necessary
35 maintenance and remediation for at least twenty (20) years
36 after closure of the merchant power plant;

37 after the merchant power plant ceases operations.

38 (c) The commission may use:

39 (1) a trust fund agreement;

40 (2) a surety bond;

41 (3) a letter of credit;

42 (4) an insurance policy; or

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1 **(5) other proof of financial responsibility;**
 2 **filed under this section for the closure and post closure monitoring,**
 3 **maintenance, or remediation of a merchant power plant approved**
 4 **by the commission if the merchant power plant does not comply**
 5 **with closure or post closure standards established by the**
 6 **commission under subsection (d).**

7 **(d) The commission may adopt rules under IC 4-22-2 to**
 8 **establish criteria for how money in a trust fund agreement, a**
 9 **surety bond, a letter of credit, an insurance policy, or other proof**
 10 **of financial responsibility provided by a merchant power plant**
 11 **meets the standards to decommission the merchant power plant**
 12 **under subsection (b).**

13 **Sec. 13. (a) Not later than thirty (30) days after the petitioner**
 14 **has prefiled testimony with the commission for the siting of a**
 15 **merchant power plant under this chapter, the commission shall**
 16 **conduct a hearing at a location in the county in which the merchant**
 17 **power plant is proposed.**

18 **(b) The commission shall send notice of the hearing by first class**
 19 **mail not later than ten (10) days before the hearing to the**
 20 **following:**

21 **(1) Relevant state regulatory agencies, as determined by the**
 22 **commission.**

23 **(2) Zoning and area plan authorities for the:**

24 **(A) county; and**

25 **(B) municipality, if any;**

26 **where the merchant power plant is proposed.**

27 **(3) Record owners of real property located within one-half**
 28 **(1/2) mile of the proposed site for the merchant power plant.**

29 **However, at the commission's discretion, the commission may**
 30 **notify record owners of real property located within two (2)**
 31 **miles of the proposed site in sparsely populated areas.**

32 **(c) The commission shall cause notice of the hearing to be**
 33 **published in a newspaper of general circulation in each county in**
 34 **which the merchant power plant is proposed. The publication**
 35 **required under this subsection must occur once a week for two (2)**
 36 **weeks, with the second publication occurring not later than fifteen**
 37 **(15) days before the date of the hearing.**

38 **(d) The commission shall accept written and oral testimony**
 39 **from any person who appears at the public hearing.**

40 **(e) The commission shall make a record of the hearing and all**
 41 **testimony received. The commission shall make the record**
 42 **available for public inspection.**



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1 **Sec. 14. Following the approval of a petition by the commission,**
 2 **the merchant power plant shall submit the following to the**
 3 **commission:**

4 **(1) At least one (1) week before commencement of**
 5 **construction activities, a startup report that includes the:**

6 **(A) status of necessary permits; and**

7 **(B) expected in service date.**

8 **(2) A midpoint report, to be submitted at a time determined**
 9 **by the commission, that includes information concerning the:**

10 **(A) status of construction; and**

11 **(B) expected in service date.**

12 **(3) A testing notice not later than two (2) weeks before any**
 13 **testing of the merchant power plant.**

14 **(4) At the time of the initial commercial operation of the**
 15 **merchant power plant, an in service notice that includes the**
 16 **following:**

17 **(A) Information identifying all contracts for firm sales of**
 18 **power to utilities both within and outside Indiana.**

19 **(B) A summary of fuel contracts, including any pipelines**
 20 **involved in the transactions.**

21 **(C) Any contingency plans detailing response plans to**
 22 **emergency conditions as required by state or local units of**
 23 **government, transmission owners, or any regional**
 24 **transmission grid operator.**

25 **(D) The merchant power plant's certified dependable**
 26 **capacity rating.**

27 **(5) Not later than thirteen (13) months after the in service**
 28 **date, a first year report that includes the following:**

29 **(A) Summer and winter dependable capacity ratings.**

30 **(B) The annual capacity factor, including the summer and**
 31 **winter seasonal capacity factor.**

32 **(C) The hours of operation for each season.**

33 **(D) Total annual, peak day, and summer seasonal water**
 34 **usage and discharge.**

35 **(E) An itemization of transmission load restrictions or**
 36 **other operational restrictions incurred during the year.**

37 **(F) The number of employees employed by the merchant**
 38 **power plant.**

39 **(6) Other information requested by the commission.**

40 **Sec. 15. Following approval of a petition for the siting of a**
 41 **merchant power plant by the commission, the petitioner must:**

42 **(1) notify the commission upon becoming an affiliate of any**

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1 regulated Indiana utility selling electricity at retail to Indiana
2 consumers;

3 (2) obtain prior commission approval for the sale of electricity
4 to an affiliate that is a regulated Indiana retail utility, except
5 for electricity purchased by the affiliate on the wholesale spot
6 market;

7 (3) obtain prior commission approval of any transfers of
8 ownership of the merchant power plant or its assets;

9 (4) obtain commission approval before altering the capacity
10 of or significantly altering the size of the merchant power
11 plant; and

12 (5) obtain commission approval before altering the type of
13 fuel used by the merchant power plant.

14 **Sec. 16.** After notice and hearing, the commission may withdraw
15 its approval for the siting of a merchant power plant if the
16 petitioner or subsequent owner or operator:

17 (1) fails to commence construction of the merchant power
18 plant within two (2) years of the date of the commission's
19 order of approval and is no longer diligently pursuing the
20 commencement of construction of the merchant power plant;
21 or

22 (2) fails to complete construction of the merchant power plant
23 within five (5) years of the date of the commission's order of
24 approval.

25 **Sec. 17. (a)** A person that receives commission approval of the
26 siting of a merchant power plant under this chapter or any other
27 law, or the subsequent owner or operator of the merchant power
28 plant for which siting approval is given, must operate the merchant
29 power plant in accordance with the commission's order of
30 approval.

31 (b) If the commission finds that the merchant power plant is not
32 operating in accordance with the commission's order of approval,
33 the commission may:

34 (1) order an investigation; and

35 (2) revoke the approval after the investigation, a hearing, and
36 the conclusion of any appeals in the matter.

37 **Sec. 18. (a)** Notwithstanding IC 8-1-2.5-5, the commission may
38 not decline to exercise its jurisdiction under this chapter with
39 respect to a merchant power plant. However, the commission may
40 adopt rules under IC 4-22-2 to establish procedures for the exercise
41 of its jurisdiction under this chapter based on the type, size, or fuel
42 resource of the merchant power plant.

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1 (b) Whenever the commission substantially declines its
 2 jurisdiction under IC 8-1-2.5 with respect to a merchant power
 3 plant and its developer, the developer may not exercise the powers
 4 conferred under IC 4-20.5-7-10.5, IC 5-11-10-1(c)(1), IC 6-1.1-8-1
 5 or IC 8-1-8-1, or any other rights, privileges, or immunities
 6 conferred by law on electric utilities assigned service areas under
 7 IC 8-1-2.3 on account of the obligation of electric utilities assigned
 8 service areas under IC 8-1-2.3 to serve the general public without
 9 undue discrimination at regulated rates and charges.

10 (c) Except as provided by federal law, the commission has sole
 11 and exclusive jurisdiction over the siting and location of utility
 12 facilities, including merchant power plants.

13 **Sec. 19. Information pertaining to:**

- 14 (1) fuel arrangements or contracts; or
 15 (2) electric sales and contracts;

16 of merchant power plants that are approved by the commission
 17 under this chapter or any other law is not a public record under
 18 IC 5-14-3.

19 **Sec. 20. The commission shall direct the state utility forecasting**
 20 **group established by IC 8-1-8.5-3.5 to conduct an annual regional**
 21 **power market study to assess:**

- 22 (1) the need for merchant power plant additions in the region;
 23 (2) the effect of merchant power plants on the price of fuels
 24 used by merchant power plants;
 25 (3) the effect of merchant power plants on the price of
 26 electricity;
 27 (4) the effect of merchant power plant construction and
 28 operation on the deployment of demand side resources
 29 regionally and in Indiana;
 30 (5) the amount of merchant power plant capacity contracted
 31 to Indiana electric utilities;
 32 (6) the amount of merchant power plant capacity contracted
 33 to out-of-state marketers and electric utilities; and
 34 (7) other issues the commission considers relevant.

35 **SECTION 2. [EFFECTIVE UPON PASSAGE] (a) As used in this**
 36 **SECTION, "commission" refers to the Indiana utility regulatory**
 37 **commission established by IC 8-1-1-2.**

38 (b) Except as provided in subsection (c), a petitioner that files
 39 for commission approval of the siting of a merchant power plant
 40 before the effective date of this act is not subject to IC 8-1-8.4, as
 41 added by this act.

42 (c) A petitioner that files for commission approval of the siting

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1 of a merchant power plant before the effective date of this act is
 2 subject to the following provisions, all as added by this act:
 3 (1) IC 8-1-8.4-6.
 4 (2) IC 8-1-8.4-12. For purposes of this subdivision, the
 5 commission shall determine a date, after the effective date of
 6 this act, by which all petitioners to which this subsection
 7 applies must file the required proof of financial responsibility.
 8 (3) IC 8-1-8.4-15, for described actions taken by the petitioner
 9 after the effective date of this act.
 10 (4) IC 8-1-8.4-16, if the petitioner has not received siting
 11 approval from the commission before the effective date of this
 12 act.
 13 (5) IC 8-1-8.4-17. The commission may exercise its authority
 14 under IC 8-1-8.4-17(b), as added by this act, only for actions
 15 by the petitioner that occur after the effective date of this act.
 16 (6) IC 8-1-8.4-18(b).
 17 (7) IC 8-1-8.4-19.
 18 SECTION 3. An emergency is declared for this act.

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