
SENATE BILL No. 478

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-1-5; IC 8-1-2.

Synopsis: IURC deliberations and deadlines. Permits the Indiana utility regulatory commission (IURC) to deliberate in executive session on a proposed order under certain circumstances. Allows a public, municipally owned, or cooperatively owned utility to implement rates proposed by the utility in a petition for a change in its basic rates and charges if the IURC fails to issue an order on the petition within nine months. Requires the utility to give notice to the IURC and to make appropriate changes to the utility's rate schedule not later than 14 days before implementing the proposed rates. Requires the utility to refund or credit to customers any difference between the rate implemented and the higher of the rate: (1) finally approved; or (2) previously in effect.

Effective: Upon passage.

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January 13, 2004, read first time and referred to Committee on Utility and Regulatory Affairs.

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Second Regular Session 113th General Assembly (2004)

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 2003 Regular Session of the General Assembly.

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SENATE BILL No. 478



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 8-1-1-5 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The commission shall in
3 all controversial proceedings heard by it be an impartial fact-finding
4 body and shall make its orders in such cases upon the facts impartially
5 found by it. The commission shall in no such proceeding, during the
6 hearing, act in the role either of a proponent or opponent on any issue
7 to be decided by it. All evidence given in any such proceeding shall be
8 offered on behalf of the respective parties to, or appearing in, the
9 proceeding and not in the name or behalf of the commission itself.

10 (b) Any report, audit, examination, or analysis prepared by the
11 commission staff at the request or direction of the commission may be
12 made a part of the record of the proceeding, subject to
13 cross-examination by any party of the person who performed or
14 directed the preparation of the report, audit, examination or analysis.

15 (c) If in any such proceeding the public interest is not otherwise
16 adequately represented by counsel, in the opinion of the commission,
17 it shall be the duty of the utility consumer counselor, if requested by the



1 commission, to make adequate preparation for the presentation of the
2 interests of the public in such proceeding and ~~he~~ **the utility consumer**
3 **counselor** shall at the hearing represent the public interests therein
4 involved.

5 (d) However, nothing in this section prevents the commission from
6 instituting, prosecuting, hearing, or determining any investigation or
7 proceeding which it is authorized to do, or make, on its own motion by
8 any law with the administration of which it is charged.

9 (e) Except as otherwise provided in this chapter, ~~no~~ **a member or an**
10 **employee** of the commission assigned to make findings of fact and
11 conclusions of law in a formally docketed evidentiary proceeding may
12 **not** communicate in connection with any issue of fact or law disputed
13 in that proceeding with any party or ~~his~~ **a party's** representative, except
14 on notice and with opportunity for all parties to participate.

15 (f) **In addition to holding an executive session in the instances**
16 **described in IC 5-14-1.5-6.1(b), the commission may hold an**
17 **executive session to deliberate on a proposed order if all the**
18 **following are satisfied:**

19 (1) **All evidence on the matter has been received by the**
20 **commission.**

21 (2) **The deliberations are preparatory to taking final action on**
22 **an order subject to judicial review.**

23 (3) **Only the following are permitted to participate in the**
24 **executive session:**

25 (A) **Commission members.**

26 (B) **Commission employees who are formally assigned to**
27 **advise or assist in preparing the order, including the**
28 **commission's technical staff and attorneys.**

29 **IC 5-14-1.5-5, IC 5-14-1.5-6.1, and IC 5-14-1.5-7 apply to an**
30 **executive session held under this subsection.**

31 (g) **A person who violates this section commits a Class C infraction.**

32 SECTION 2. IC 8-1-2-42 IS AMENDED TO READ AS FOLLOWS
33 [EFFECTIVE UPON PASSAGE]: Sec. 42. (a) **Except as provided in**
34 **section 42.1 of this chapter**, no change shall be made in any schedule,
35 including schedules of joint rates, except upon thirty (30) days notice
36 to the commission, and approval by the commission, and all such
37 changes shall be plainly indicated upon existing schedules or by filing
38 new schedules in lieu thereof thirty (30) days prior to the time the same
39 are to take effect. The commission may prescribe a shorter time within
40 which a change may be made. A public, municipally owned, or
41 cooperatively owned utility may not file a request for a general increase
42 in its basic rates and charges within fifteen (15) months after the filing

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1 date of its most recent request for a general increase in its basic rates
2 and charges, except that the commission may order a more timely
3 increase if:

- 4 (1) the requested increase relates to a different type of utility
5 service;
- 6 (2) the commission finds that the utility's financial integrity or
7 service reliability is threatened; or
- 8 (3) the increase is based on:
 - 9 (A) a rate structure previously approved by the commission; or
 - 10 (B) orders of federal courts or federal regulatory agencies
11 having jurisdiction over the utility.

12 The phrase "general increase in basic rates and charges" does not
13 include changes in rates related solely to the cost of fuel or to the cost
14 of purchased gas or purchased electricity or adjustments in accordance
15 with tracking provisions approved by the commission.

16 (b) No schedule of rates, tolls, and charges of a public, municipally
17 owned, or cooperatively owned utility which includes or authorizes any
18 changes in charges based upon costs is effective without the approval
19 of the commission. Before the commission approves any changes in the
20 schedule of rates, tolls, and charges of an electric utility, which
21 generates and sells electricity, based upon the cost of fuel to generate
22 electricity or upon the cost of fuel included in the cost of purchased
23 electricity, the utility consumer counselor shall examine the books and
24 records of the public, municipally owned, or cooperatively owned
25 generating utility to determine the cost of fuel upon which the proposed
26 charges are based. In addition, before such a fuel cost charge becomes
27 effective, the commission shall hold a summary hearing on the sole
28 issue of the fuel charge. The utility consumer counselor shall conduct
29 ~~his~~ a review and make a report to the commission within twenty (20)
30 days after the utility's request for the fuel cost charge is filed. The
31 commission shall hold the summary hearing and issue its order within
32 twenty (20) days after it receives the utility consumer counselor's
33 report. The provisions of this section and sections 39, 43, 54, 55, 56,
34 59, 60, and 61 of this chapter concerning the filing, printing, and
35 changing of rate schedules and the time required for giving notice of
36 hearing and requiring publication of notice do not apply to such a fuel
37 cost charge or such a summary hearing.

38 (c) Regardless of the pendency of any request for a fuel cost charge
39 by any electric utility, the books and records pertaining to the cost of
40 fuel of all public, municipally owned, or cooperatively owned utilities
41 that generate electricity shall be examined by the utility consumer
42 counselor not less often than quarterly, and the books and records of all

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1 electric nongenerating public, municipally owned, or cooperatively
 2 owned utilities shall be examined by the utility consumer counselor not
 3 less often than annually. The utility consumer counselor shall provide
 4 the commission with a report as to the examination of said books and
 5 records within a reasonable time following said examination. The
 6 utility consumer counselor may, if appropriate, request of the
 7 commission a reduction or elimination of the fuel cost charge. Upon
 8 such request, the commission shall hold a hearing forthwith in the
 9 manner provided in sections 58, 59, and 60 of this chapter.

10 (d) An electric generating utility may apply for a change in its fuel
 11 charge not more often than each three (3) months. When such
 12 application is filed the petitioning utility shall show to the commission
 13 its cost of fuel to generate electricity and the cost of fuel included in the
 14 cost of purchased electricity, for the period between its last order from
 15 the commission approving fuel costs in its basic rates and the latest
 16 month for which actual fuel costs are available. The petitioning utility
 17 shall also estimate its average fuel costs for the three (3) calendar
 18 months subsequent to the expiration of the twenty (20) day period
 19 allowed the commission in subsection (b). The commission shall
 20 conduct a formal hearing solely on the fuel cost charge requested in the
 21 petition subject to the notice requirements of IC 8-1-1-8 and shall grant
 22 the electric utility the requested fuel cost charge if it finds that:

23 (1) the electric utility has made every reasonable effort to acquire
 24 fuel and generate or purchase power or both so as to provide
 25 electricity to its retail customers at the lowest fuel cost reasonably
 26 possible;

27 (2) the actual increases in fuel cost through the latest month for
 28 which actual fuel costs are available since the last order of the
 29 commission approving basic rates and charges of the electric
 30 utility have not been offset by actual decreases in other operating
 31 expenses;

32 (3) the fuel adjustment charge applied for will not result in the
 33 electric utility earning a return in excess of the return authorized
 34 by the commission in the last proceeding in which the basic rates
 35 and charges of the electric utility were approved. However,
 36 subject to section 42.3 of this chapter, if the fuel charge applied
 37 for will result in the electric utility earning a return in excess of
 38 the return authorized by the commission, in the last proceeding in
 39 which basic rates and charges of the electric utility were
 40 approved, the fuel charge applied for will be reduced to the point
 41 where no such excess of return will be earned; and

42 (4) the utility's estimate of its prospective average fuel costs for

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1 each such three (3) calendar months are reasonable after taking
2 into consideration:

3 (A) the actual fuel costs experienced by the utility during the
4 latest three (3) calendar months for which actual fuel costs are
5 available; and

6 (B) the estimated fuel costs for the same latest three (3)
7 calendar months for which actual fuel costs are available.

8 (e) Should the commission at any time determine that an emergency
9 exists that could result in an abnormal change in fuel costs, it may, in
10 order to protect the public from the adverse effects of such change
11 suspend the provisions of subsection (d) as to the utility or utilities
12 affected by such an emergency and initiate such procedures as may be
13 necessary to protect both the public and the utility from harm. The
14 commission shall lift the suspension when it is satisfied the emergency
15 no longer exists.

16 (f) Any change in the fuel cost charge granted by the commission
17 under the provisions of this section shall be reflected in the rates
18 charged by the utility in the same manner as any other changes in rates
19 granted by the commission in a case approving the basic rates and
20 charges of the utility. However, the utility may file the change as a
21 separate amendment to its rate schedules with a reasonable reference
22 therein that such charge is applicable to all of its filed rate schedules.

23 (g) No schedule of rates, tolls, and charges of a public, municipally
24 owned, or cooperatively owned gas utility that includes or authorizes
25 any changes in charges based upon gas costs is effective without the
26 approval of the commission except those rates, tolls, and charges
27 contained in schedules that contain specific provisions for changes in
28 gas costs or the cost of gas that have previously been approved by the
29 commission. Gas costs or cost of gas may include the gas utility's costs
30 for gas purchased by it from pipeline suppliers, costs incurred for
31 leased gas storage and related transportation, costs for supplemental
32 and substitute gas supplies, costs incurred for exploration and
33 development of its own sources of gas supplies and other expenses
34 relating to gas costs as shall be approved by the commission. Changes
35 in a gas utility's rates, tolls, and charges based upon changes in its gas
36 costs shall be made in accordance with the following provisions:

37 (1) Before the commission approves any changes in the schedule
38 of rates, tolls, and charges of a gas utility based upon the cost of
39 the gas, the utility consumer counselor may examine the books
40 and records of the public, municipally owned, or cooperatively
41 owned gas utility to determine the cost of gas upon which the
42 proposed changes are based. In addition, before such an

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1 adjustment to the gas cost charge becomes effective, the
 2 commission shall hold a summary hearing on the sole issue of the
 3 gas cost adjustment. The utility consumer counselor shall conduct
 4 his review and make a report to the commission within thirty (30)
 5 days after the utility's request for the gas cost adjustment is filed.
 6 The commission shall hold the summary hearing and issue its
 7 order within thirty (30) days after it receives the utility consumer
 8 counselor's report. The provisions of this section and sections 39,
 9 43, 54, 55, 56, 59, 60, and 61 of this chapter concerning the filing,
 10 printing, and changing of rate schedules and the time required for
 11 giving notice of hearing and requiring publication of notice do not
 12 apply to such a gas cost adjustment or such a summary hearing.
 13 (2) Regardless of the pendency of any request for a gas cost
 14 adjustment by any gas utility, the books and records pertaining to
 15 cost of gas of all public, municipally owned, or cooperatively
 16 owned gas utilities shall be examined by the utility consumer
 17 counselor not less often than annually. The utility consumer
 18 counselor shall provide the commission with a report as to the
 19 examination of said books and records within a reasonable time
 20 following said examination. The utility consumer counselor may,
 21 if appropriate, request of the commission a reduction or
 22 elimination of the gas cost adjustment. Upon such request, the
 23 commission shall hold a hearing forthwith in the manner provided
 24 in sections 58, 59, and 60 of this chapter.
 25 (3) A gas utility may apply for a change in its gas cost charge not
 26 more often than each three (3) months. When such application is
 27 filed, the petitioning utility shall show to the commission its cost
 28 of gas for the period between its last order from the commission
 29 approving gas costs in its basic rates and the latest month for
 30 which actual gas costs are available. The petitioning utility shall
 31 also estimate its average gas costs for a recovery period of not less
 32 than the three (3) calendar months subsequent to the expiration of
 33 the thirty (30) day period allowed the commission in subdivision
 34 (1). The commission shall conduct a summary hearing solely on
 35 the gas cost adjustment requested in the petition subject to the
 36 notice requirements of IC 8-1-1-8 and may grant the gas utility the
 37 requested gas cost charge if it finds that:
 38 (A) the gas utility has made every reasonable effort to acquire
 39 long term gas supplies so as to provide gas to its retail
 40 customers at the lowest gas cost reasonably possible;
 41 (B) the pipeline supplier or suppliers of the gas utility has
 42 requested or has filed for a change in the costs of gas pursuant

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to the jurisdiction and procedures of a duly constituted regulatory authority;

(C) the gas cost adjustment applied for will not result, in the case of a public utility, in its earning a return in excess of the return authorized by the commission in the last proceeding in which the basic rates and charges of the public utility were approved; however, subject to section 42.3 of this chapter, if the gas cost adjustment applied for will result in the public utility earning a return in excess of the return authorized by the commission in the last proceeding in which basic rates and charges of the gas utility were approved, the gas cost adjustment applied for will be reduced to the point where no such excess of return will be earned; and

(D) the utility's estimate of its prospective average gas costs for each such future recovery period is reasonable and gives effect to:

(i) the actual gas costs experienced by the utility during the latest recovery period for which actual gas costs are available; and

(ii) the actual gas costs recovered by the adjustment of the same recovery period.

(4) Should the commission at any time determine that an emergency exists that could result in an abnormal change in gas costs, it may, in order to protect the public or the utility from the adverse effects of such change suspend the provisions of subdivision (3) as to the utility or utilities affected by such an emergency and initiate such procedures as may be necessary to protect both the public and the utility from harm. The commission shall lift the suspension when it is satisfied the emergency no longer exists.

(5) Any change in the gas cost charge granted by the commission under the provisions of this section shall be reflected in the rates charged by the utility in the same manner as any other changes in rates granted by the commission in a case approving the basic rates and charges of the utility. However, the utility may file the change as a separate amendment to its rate schedules with a reasonable reference therein that such charge is applicable to all of its filed rate schedules.

SECTION 3. IC 8-1-2-42.1 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 42.1. (a) As used in this section, "utility" means a public, municipally owned, or cooperatively owned utility**

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1 that is subject to the jurisdiction of the commission for the
2 approval of rates and charges. The term includes a department of
3 public utilities created under IC 8-1-11.1.

4 (b) Notwithstanding section 42(a) of this chapter, and subject to
5 subsection (c), if the commission fails to issue an order making a
6 determination on a request by a utility for an increase in the
7 utility's basic rates and charges within nine (9) months after the
8 filing of the utility's case in chief, the utility may implement the
9 utility's proposed rate changes beginning:

10 (1) on the first day of the first billing month following the
11 expiration of the nine (9) month period allowed the
12 commission under this subsection, if the utility's case in chief
13 is filed after June 30, 2003; or

14 (2) the first day of the first billing month that begins after
15 March 31, 2004, if the utility's case in chief is filed before July
16 1, 2003;

17 by filing notice with the commission and making the appropriate
18 changes to the utility's rate schedules not later than fourteen (14)
19 days before the proposed rates are to take effect under subdivision
20 (1) or (2). However, if the utility files the notice required under this
21 subsection before the expiration of the nine (9) month period
22 described in this subsection, and the commission makes a
23 determination on the utility's request before the expiration of the
24 nine (9) month period, the utility may not implement the utility's
25 proposed rates under this subsection and shall amend the utility's
26 rate schedule to reflect the rates established in the commission's
27 order, subject to IC 8-1-3-6.

28 (c) The commission may suspend the running of the nine (9)
29 month period described in subsection (b) if the commission finds
30 that:

31 (1) the utility did not file its case in chief in sufficient detail to
32 allow the commission to commence a review of the request;

33 (2) the utility materially altered the utility's case in chief after
34 its filing;

35 (3) an order compelling production by the utility of discovery
36 has not been satisfied within the time provided in the order;
37 or

38 (4) the commission temporarily lacks jurisdiction over the
39 proceeding due to the filing of an interlocutory judicial appeal
40 of a commission ruling or order.

41 The suspension ends and the running of the nine (9) month period
42 resumes as soon as the cause for suspension is cured.

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1 **(d) This subsection applies if the commission does not make a**
 2 **timely determination under subsection (b) and a utility implements**
 3 **the utility's proposed rates under subsection (b). After the**
 4 **commission issues an order making a determination on the utility's**
 5 **request, the utility may continue to collect the rates implemented**
 6 **by the utility under subsection (b) pending a petition for rehearing**
 7 **or an appeal of the commission's order under IC 8-1-3.**
 8 **Notwithstanding any other provision of this article, upon a final**
 9 **determination of the utility's request, including the determination**
 10 **of any petition for rehearing or appeal under IC 8-1-3, the utility**
 11 **shall refund or credit to customers any difference between:**

- 12 **(1) the revenues generated by the rates implemented by the**
 13 **utility under subsection (b); and**
 14 **(2) the revenues that would have been generated by the higher**
 15 **of:**
 16 **(A) the rates authorized in the final determination of the**
 17 **utility's request; or**
 18 **(B) the rates of the utility that were in effect immediately**
 19 **before the rates implemented by the utility under**
 20 **subsection (b);**

21 **for the period beginning on the effective date of the rates**
 22 **implemented by the utility under subsection (b) and ending on the**
 23 **effective date of the rates authorized in the final determination of**
 24 **the utility's request. The utility shall issue the refunds or credits**
 25 **required under this subsection not later than sixty (60) days after**
 26 **the effective date of the rates authorized in the final determination**
 27 **of the proceedings. The refunds or credits must include interest**
 28 **accrued from the date of the final determination at the interest rate**
 29 **set forth in IC 24-4.6-1-102.**

30 **(e) If the commission makes a timely determination under**
 31 **subsection (b) on a utility's request, IC 8-1-3-6 governs the rates**
 32 **that the utility may collect pending a petition for a rehearing or an**
 33 **appeal of the commission's order.**

34 **SECTION 4. An emergency is declared for this act.**

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