

# COMMITTEE REPORT

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## MADAM PRESIDENT:

The Senate Committee on Utilities and Regulatory Affairs, to which was referred House Bill No. 1824, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1           Page 1, between the enacting clause and line 1, begin a new  
2 paragraph and insert:  
3           "SECTION 1. IC 8-1-2-6.1 IS AMENDED TO READ AS  
4 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.1. (a) As used in  
5 this section, "clean coal technology" means a technology (including  
6 precombustion treatment of coal):  
7           (1) that is used at a new or existing electric **or steam** generating  
8 facility and directly or indirectly reduces **or avoids** airborne  
9 emissions of ~~sulfur or nitrogen based~~ pollutants **that are:**  
10            **(A)** associated with the combustion or use of coal; and  
11            **(B) regulated, or reasonably anticipated by the commission**  
12 **to be regulated, by:**  
13            **(i) the federal government;**  
14            **(ii) the state;**  
15            **(iii) a political subdivision of the state; or**  
16            **(iv) any agency of a unit of government described in**  
17            **items (i) through (iii); and**  
18           (2) that either:  
19            (A) is not in general commercial use at the same or greater  
20            scale in new or existing facilities in the United States as of

1           January 1, 1989; or  
 2           (B) has been selected by the United States Department of  
 3           Energy for funding under its Innovative Clean Coal  
 4           Technology program and is finally approved for such funding  
 5           on or after January 1, 1989.

6           (b) As used in this section, "Indiana coal" means coal from a mine  
 7           whose coal deposits are located in the ground wholly or partially in  
 8           Indiana regardless of the location of the mine's tippie.

9           (c) Except as provided in subsection (d), the commission shall allow  
 10          a utility to recover as operating expenses those expenses associated  
 11          with:

12          (1) research and development designed to increase use of Indiana  
 13          coal; and

14          (2) preconstruction costs (including design and engineering costs)  
 15          associated with employing clean coal technology at a new or  
 16          existing coal burning electric **or steam** generating facility if the  
 17          commission finds that the facility:

18                (A) utilizes and will continue to utilize (as its primary fuel  
 19                source) Indiana coal; or

20                (B) is justified, because of economic considerations or  
 21                governmental requirements, in utilizing nonIndiana coal;  
 22          after the technology is in place.

23          (d) The commission may only allow a utility to recover  
 24          preconstruction costs as operating expenses on a particular project if  
 25          the commission awarded a certificate under IC 8-1-8.7 for that project.

26          (e) The commission shall establish guidelines for determining  
 27          recoverable expenses.

28          SECTION 2. IC 8-1-2-6.6 IS AMENDED TO READ AS  
 29          FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.6. (a) As used in  
 30          this section:

31                "Clean coal technology" means a technology (including  
 32                precombustion treatment of coal):

33                (1) that is used at a new or existing electric **or steam** generating  
 34                facility and directly or indirectly reduces **or avoids** airborne  
 35                emissions of ~~sulfur or nitrogen based~~ pollutants **that are:**

36                        (A) associated with **the** combustion or use of coal; and

37                        (B) **regulated, or reasonably anticipated by the commission**  
 38                        **to be regulated, by:**

39                                (i) **the federal government;**

40                                (ii) **the state;**

41                                (iii) **a political subdivision of the state; or**

42                                (iv) **any agency of a unit of government described in**

- 1                    **items (i) through (iii); and**  
 2                    (2) that either:  
 3                    (A) is not in general commercial use at the same or greater  
 4                    scale in new or existing facilities in the United States as of  
 5                    January 1, 1989; or  
 6                    (B) has been selected by the United States Department of  
 7                    Energy for funding under its Innovative Clean Coal  
 8                    Technology program and is finally approved for such funding  
 9                    on or after January 1, 1989.

10                  "Indiana coal" means coal from a mine whose coal deposits are  
 11                  located in the ground wholly or partially in Indiana regardless of the  
 12                  location of the mine's tipple.

13                  "Qualified pollution control property" means an air pollution control  
 14                  device on a coal burning electric **or steam** generating facility or any  
 15                  equipment that constitutes clean coal technology that has been  
 16                  approved for use by the commission, that meets applicable state or  
 17                  federal requirements, and that is designed to accommodate the burning  
 18                  of coal from the geological formation known as the Illinois Basin.

19                  "Utility" refers to any electric **or steam** generating utility allowed  
 20                  by law to earn a return on its investment.

21                  (b) Upon the request of a utility that began construction after  
 22                  October 1, 1985, and before March 31, 2002, of qualified pollution  
 23                  control property that is to be used and useful for the public  
 24                  convenience, the commission shall for ratemaking purposes add to the  
 25                  value of that utility's property the value of the qualified pollution  
 26                  control property under construction, but only if at the time of the  
 27                  application and thereafter:

- 28                    (1) the facility burns only Indiana coal as its primary fuel source  
 29                    once the air pollution control device is fully operational; or  
 30                    (2) the utility can prove to the commission that the utility is  
 31                    justified because of economic considerations or governmental  
 32                    requirements in utilizing some nonIndiana coal.

33                  (c) The commission shall adopt rules under IC 4-22-2 to implement  
 34                  this section.

35                  SECTION 3. IC 8-1-2-6.7 IS AMENDED TO READ AS  
 36                  FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.7. (a) As used in  
 37                  this section, "clean coal technology" means a technology (including  
 38                  precombustion treatment of coal):

- 39                    (1) that is used in a new or existing electric **or steam** generating  
 40                    facility and directly or indirectly reduces **or avoids** airborne  
 41                    emissions of ~~sulfur or nitrogen based~~ pollutants **that are:**  
 42                    (A) associated with the combustion or use of coal; and

- 1                   **(B) regulated, or reasonably anticipated by the commission**  
 2                   **to be regulated, by:**  
 3                   **(i) the federal government;**  
 4                   **(ii) the state;**  
 5                   **(iii) a political subdivision of the state; or**  
 6                   **(iv) any agency of a unit of government described in**  
 7                   **items (i) through (iii); and**  
 8                   (2) that either:  
 9                   (A) is not in general commercial use at the same or greater  
 10                   scale in new or existing facilities in the United States as of  
 11                   January 1, 1989; or  
 12                   (B) has been selected by the United States Department of  
 13                   Energy for funding under its Innovative Clean Coal  
 14                   Technology program and is finally approved for such funding  
 15                   on or after January 1, 1989.
- 16                   (b) The commission shall allow a public or municipally owned  
 17                   electric **or steam** utility that incorporates clean coal technology to  
 18                   depreciate that technology over a period of not less than ten (10) years  
 19                   or the useful economic life of the technology, whichever is less and not  
 20                   more than twenty (20) years if it finds that the facility where the clean  
 21                   coal technology is employed:  
 22                   (1) utilizes and will continue to utilize (as its primary fuel source)  
 23                   Indiana coal; or  
 24                   (2) is justified, because of economic considerations or  
 25                   governmental requirements, in utilizing nonIndiana coal;  
 26                   after the technology is in place.
- 27                   SECTION 4. IC 8-1-2-6.8 IS AMENDED TO READ AS  
 28                   FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.8. (a) This  
 29                   section applies to a utility that begins construction of qualified  
 30                   pollution control property after March 31, 2002.
- 31                   (b) As used in this section, "clean coal technology" means a  
 32                   technology (including precombustion treatment of coal):  
 33                   (1) that is used in a new or existing energy **or steam** generating  
 34                   facility and directly or indirectly reduces **or avoids** airborne  
 35                   emissions of sulfur, mercury, or nitrogen oxides or other ~~regulated~~  
 36                   air emissions **that are:**  
 37                   **(A) associated with the combustion or use of coal; and**  
 38                   **(B) regulated, or reasonably anticipated by the commission**  
 39                   **to be regulated, by:**  
 40                   **(i) the federal government;**  
 41                   **(ii) the state;**  
 42                   **(iii) a political subdivision of the state; or**

1                   **(iv) any agency of a unit of government described in**  
 2                   **items (i) through (iii); and**

3           (2) that either:

4                   (A) was not in general commercial use at the same or greater  
 5                   scale in new or existing facilities in the United States at the  
 6                   time of enactment of the federal Clean Air Act Amendments  
 7                   of 1990 (P.L.101-549); or

8                   (B) has been selected by the United States Department of  
 9                   Energy for funding under its Innovative Clean Coal  
 10                  Technology program and is finally approved for such funding  
 11                  on or after the date of enactment of the federal Clean Air Act  
 12                  Amendments of 1990 (P.L.101-549).

13           (c) As used in this section, "qualified pollution control property"  
 14           means an air pollution control device on a coal burning energy **or**  
 15           **steam** generating facility or any equipment that constitutes clean coal  
 16           technology that has been approved for use by the commission and that  
 17           meets applicable state or federal requirements.

18           (d) As used in this section, "utility" refers to any energy **or steam**  
 19           generating utility allowed by law to earn a return on its investment.

20           (e) Upon the request of a utility that begins construction after March  
 21           31, 2002, of qualified pollution control property that is to be used and  
 22           useful for the public convenience, the commission shall for ratemaking  
 23           purposes add to the value of that utility's property the value of the  
 24           qualified pollution control property under construction.

25           (f) The commission shall adopt rules under IC 4-22-2 to implement  
 26           this section.

27           SECTION 5. IC 8-1-8.7-1 IS AMENDED TO READ AS  
 28           FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. As used in this  
 29           chapter, "clean coal technology" means a technology (including  
 30           precombustion treatment of coal):

31                   (1) that is used in a new or existing electric **or steam** generating  
 32                   facility and directly or indirectly reduces **or avoids** airborne  
 33                   emissions of ~~sulfur or nitrogen~~ based pollutants **that are:**

34                           **(A)** associated with the combustion or use of coal; and

35                           **(B) regulated, or reasonably anticipated by the commission**  
 36                           **to be regulated, by:**

37                                   **(i) the federal government;**

38                                   **(ii) the state;**

39                                   **(iii) a political subdivision of the state; or**

40                                   **(iv) any agency of a unit of government described in**  
 41                                   **items (i) through (iii); and**

42           (2) that either:

1 (A) is not in general commercial use at the same or greater  
 2 scale in new or existing facilities in the United States as of  
 3 January 1, 1989; or

4 (B) has been selected by the United States Department of  
 5 Energy for funding under its Innovative Clean Coal  
 6 Technology program and is finally approved for such funding  
 7 on or after January 1, 1989.

8 SECTION 6. IC 8-1-8.7-3 IS AMENDED TO READ AS  
 9 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Except as  
 10 provided in subsection (c), a public utility may not use clean coal  
 11 technology at a new or existing electric **or steam** generating facility  
 12 without first applying for and obtaining from the commission a  
 13 certificate that states that public convenience and necessity will be  
 14 served by the use of clean coal technology.

15 (b) The commission shall issue a certificate of public convenience  
 16 and necessity under subsection (a) if the commission finds that a clean  
 17 coal technology project offers substantial potential of reducing ~~sulfur~~  
 18 ~~or nitrogen based~~ pollutants **described in section 1(1) of this chapter**  
 19 in a more efficient manner than conventional technologies in general  
 20 use as of January 1, 1989. For purposes of this chapter, a project that  
 21 the United States Department of Energy has selected for funding under  
 22 its Innovative Clean Coal Technology program and is finally approved  
 23 for funding after December 31, 1988, is not considered a conventional  
 24 technology in general use as of January 1, 1989. When determining  
 25 whether to grant a certificate under this section, the commission shall  
 26 examine the following factors:

27 (1) The costs for constructing, implementing, and using clean coal  
 28 technology compared to the costs for conventional emission  
 29 reduction facilities.

30 (2) Whether a clean coal technology project will also extend the  
 31 useful life of an existing electric **or steam** generating facility and  
 32 the value of that extension.

33 (3) The potential reduction of ~~sulfur and nitrogen based~~ pollutants  
 34 **described in section 1(1) of this chapter that can be** achieved  
 35 by the proposed clean coal technology system.

36 (4) The reduction of ~~sulfur nitrogen based~~ pollutants **described**  
 37 **in section 1(1) of this chapter** that can be achieved by  
 38 conventional pollution control equipment.

39 (5) Federal ~~sulfur and nitrogen based~~ pollutant emission  
 40 standards.

41 (6) The likelihood of success of the proposed project.

42 (7) The cost and feasibility of the retirement of an existing electric

1           **or steam** generating facility.

2           (8) The dispatching priority for the facility utilizing clean coal  
3           technology, considering direct fuel costs, revenues and expenses  
4           of the utility, and environmental factors associated with  
5           byproducts resulting from the utilization of the clean coal  
6           technology.

7           (9) Any other factors the commission considers relevant,  
8           including whether the construction, implementation, and use of  
9           clean coal technology is in the public's interest.

10          (c) A public utility is not required to obtain a certificate under this  
11          chapter for a clean coal technology project that constitutes a research  
12          and development project that may be expensed under IC 8-1-2-6.1.

13          SECTION 7. IC 8-1-8.8-3 IS AMENDED TO READ AS  
14          FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this  
15          chapter, "clean coal technology" means a technology (including  
16          precombustion treatment of coal):

17                 (1) that is used in a new or existing energy **or steam** generating  
18                 facility and directly or indirectly reduces airborne emissions of  
19                 sulfur, mercury, or nitrogen oxides or other ~~regulated~~ air  
20                 emissions **that are:**

21                         (A) associated with the combustion or use of coal; and  
22                         (B) **regulated, or reasonably anticipated by the commission**  
23                         **to be regulated, by:**  
24                                 (i) **the federal government;**  
25                                 (ii) **the state;**  
26                                 (iii) **a political subdivision of the state; or**  
27                                 (iv) **any agency of a unit of government described in**  
28                                 **items (i) through (iii); and**

29                 (2) that either:  
30                         (A) was not in general commercial use at the same or greater  
31                         scale in new or existing facilities in the United States at the  
32                         time of enactment of the federal Clean Air Act Amendments  
33                         of 1990 (P.L.101-549); or  
34                         (B) has been selected by the United States Department of  
35                         Energy for funding under its Innovative Clean Coal  
36                         Technology program and is finally approved for such funding  
37                         on or after the date of enactment of the federal Clean Air Act  
38                         Amendments of 1990 (P.L.101-549).

39          SECTION 8. IC 8-1-8.8-6.3 IS ADDED TO THE INDIANA CODE  
40          AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE  
41          UPON PASSAGE]: **Sec. 6.3. (a) As used in this chapter, "existing**  
42          **electric or steam generating facility" refers to a facility in Indiana,**

1 other than a new energy generating facility, that, regardless of its  
2 fuel source, is used to generate electricity or steam.

3 (b) The term does not include a facility that generates electricity  
4 or steam from the incineration, burning, or heating of any:

- 5 (1) general household;
- 6 (2) institutional;
- 7 (3) commercial;
- 8 (4) industrial lunchroom;
- 9 (5) office; or
- 10 (6) landscape;

11 waste.

12 SECTION 9. IC 8-1-8.8-11.5 IS ADDED TO THE INDIANA  
13 CODE AS A NEW SECTION TO READ AS FOLLOWS  
14 [EFFECTIVE UPON PASSAGE]: Sec. 11.5. (a) As used in this  
15 section, "regulated air emissions" means air emissions from an  
16 electric or steam generating facility that are regulated, or  
17 reasonably anticipated by the commission to be regulated, by:

- 18 (1) the federal government;
- 19 (2) the state;
- 20 (3) a political subdivision of the state; or
- 21 (4) any agency of a unit of government described in  
22 subdivisions (1) through (3).

23 (b) As used in this section, "regulated air emissions project"  
24 means a project designed to reduce regulated air emissions from an  
25 existing electric or steam generating facility. The term includes  
26 projects that provide offset programs, such as agricultural and  
27 forestry activities, that reduce the level of greenhouse gases in the  
28 atmosphere.

29 (c) An energy utility (as defined in IC 8-1-2.5-2) may petition the  
30 commission for approval of the construction, installation, and  
31 operation of a regulated air emissions project. If the commission  
32 finds, after notice and hearing, the proposed regulated air  
33 emissions project to be reasonable and necessary, the commission  
34 shall approve the project and provide the following incentives:

- 35 (1) The timely recovery of costs associated with the regulated  
36 air emissions project, including capital, operation,  
37 maintenance, depreciation, tax, and financing costs incurred  
38 during the construction and operation of the project.
- 39 (2) The recovery of costs associated with:
  - 40 (A) the purchase of emissions allowances; or
  - 41 (B) the payment of emission taxes;
- 42 arising from compliance with air emissions regulations.

1           **(d) In addition to the incentives described in subsection (c), the**  
 2 **commission may provide any other financial incentives the**  
 3 **commission considers appropriate.**

4           SECTION 10. IC 8-1-8.9 IS ADDED TO THE INDIANA CODE  
 5 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 6 JULY 1, 2007]:

7           **Chapter 8.9. Conservation and Load Management Programs for**  
 8 **Electric Utilities**

9           **Sec. 1. (a) The general assembly makes the following findings:**

10           **(1) Growth of Indiana's population and economic base has**  
 11 **created a need for additional sources of reliable electric**  
 12 **energy in Indiana.**

13           **(2) In addition to the construction of new energy generating**  
 14 **facilities, the development and implementation of cost**  
 15 **effective conservation and load management programs is**  
 16 **needed if Indiana is to continue to provide reliable electric**  
 17 **utility service at reasonable prices.**

18           **(3) Economic barriers exist to the increased development and**  
 19 **implementation of conservation and load management**  
 20 **programs by electric utilities.**

21           **(4) It is in the public interest for the state to encourage the**  
 22 **increased development and implementation of cost effective**  
 23 **conservation and load management programs by:**

24           **(A) removing economic barriers to the development and**  
 25 **implementation of conservation and load management**  
 26 **programs; and**

27           **(B) providing financial incentives to electric utilities to**  
 28 **develop and implement conservation and load**  
 29 **management programs.**

30           **(b) The purpose of this chapter is to:**

31           **(1) enhance the competitiveness of Indiana's economy; and**  
 32 **(2) complement the state's efforts to encourage the**  
 33 **construction of new energy generating facilities;**

34 **through the promotion and increased use of cost effective**  
 35 **conservation and load management programs.**

36           **Sec. 2. As used in this chapter, "conservation and load**  
 37 **management program" means a program that:**

38           **(1) is sponsored by an electric utility;**

39           **(2) is designed to:**

40           **(A) reduce the amount of electricity consumed by the**  
 41 **electric utility's customers; or**

42           **(B) otherwise influence customers' timing or use of**

- 1           electricity to reduce the demand placed on the electric  
2           utility's distribution system; and  
3           **(3) employs any of the following to achieve the reduction or**  
4           **change in customers' electricity use described in subdivision**  
5           **(2):**  
6           **(A) End use devices or other equipment.**  
7           **(B) Special rates or rate structures.**  
8           **(C) Customer incentives.**  
9           **(D) Customer education initiatives.**  
10          **(E) Other technologies or services.**

11          **Sec. 3. (a) As used in this chapter, "conservation and load**  
12          **management costs" means the capital, operating, and maintenance**  
13          **costs incurred by an electric utility in developing and implementing**  
14          **a conservation and load management program.**

15          **(b) The term includes the following costs associated with an**  
16          **electric utility's conservation and load management program:**

- 17          **(1) Research and development costs.**  
18          **(2) Administrative costs.**  
19          **(3) Labor costs, including costs for services of contractors and**  
20          **subcontractors.**  
21          **(4) Equipment and depreciation costs.**  
22          **(5) Tax costs.**  
23          **(6) Financing costs.**  
24          **(7) Financial incentives paid to participating customers.**  
25          **(8) Marketing and advertising costs.**  
26          **(9) Monitoring and evaluation costs.**  
27          **(10) Financial incentives offered by the electric utility for:**  
28          **(A) investment in; or**  
29          **(B) performance associated with;**  
30          **its conservation and load management program.**

31          **Sec. 4. (a) As used in this chapter, "electric utility" means a**  
32          **utility:**

- 33          **(1) that generates or distributes electricity; and**  
34          **(2) whose rates and charges are regulated by the commission.**  
35          **(b) The term includes the following:**  
36          **(1) A rural electric membership corporation organized under**  
37          **IC 8-1-13.**  
38          **(2) A corporation organized under IC 23-17 that is an electric**  
39          **cooperative and that has at least one (1) member that is a**  
40          **corporation organized under IC 8-1-13.**

41          **Sec. 5. As used in this chapter, "lost revenues" refers to**  
42          **revenues lost by an electric utility as a result of not generating**

1 electricity because of the implementation of a conservation and  
2 load management program. In determining the revenues lost as a  
3 result of a conservation and load management program, an electric  
4 utility shall subtract the value of any reduced operating or  
5 maintenance costs resulting from the program, including fuel cost  
6 savings.

7 Sec. 6. As used in this chapter, "performance based shared  
8 savings incentive" means an incentive mechanism designed to  
9 allocate the net system benefits of an electric utility's conservation  
10 and load management programs between:

- 11 (1) the electric utility's shareholders; and
- 12 (2) the electric utility's retail customers.

13 Sec. 7. (a) The commission shall encourage electric utilities to  
14 implement conservation and load management programs by  
15 creating the following incentives for the implementation of  
16 conservation and load management programs, if the programs are  
17 found by the commission to be reasonable and necessary:

- 18 (1) The timely recovery of conservation and load management  
19 costs over a reasonable amortization period, as determined by  
20 the commission.
- 21 (2) The timely recovery of lost revenues, or the authorization  
22 of other mechanisms to remove lost revenues as a barrier to  
23 the implementation of conservation and load management  
24 programs.
- 25 (3) The authorization of a return to the electric utility in the  
26 form of:
  - 27 (A) a timely return equal to the electric utility's weighted  
28 cost of capital (as determined under 170 IAC 4-6-14) with  
29 respect to the electric utility's total unrecovered capital  
30 investment in conservation and load management  
31 programs; or
  - 32 (B) a performance based shared savings incentive.
- 33 (4) Other financial incentives the commission considers  
34 appropriate.

35 (b) An electric utility that seeks one (1) or more of the incentives  
36 described in subsection (a) must file, on a form approved by the  
37 commission, an application with the commission for approval of  
38 the incentives sought.

39 (c) The commission shall, after notice and hearing, issue a  
40 determination on the eligibility of the electric utility's conservation  
41 and load management program for the financial incentives  
42 described in subsection (a) not later than one hundred twenty (120)

1       **days after the date of the electric utility's application under**  
2       **subsection (b)."**

3           Page 1, line 10, after "counties," insert "**each of**".

4           Renumber all SECTIONS consecutively.

(Reference is to HB 1824 as reprinted February 24, 2007.)

**and when so amended that said bill do pass .**

Committee Vote: Yeas 9, Nays 0.

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**Senator Hershman, Chairperson**