COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Utilities and Technology, to which was referred Senate Bill No. 201, 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:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:

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

Chapter 8.4. Certificate of Authority for Certain Electricity Supplier Projects

Sec. 1. As used in this chapter, "electricity supplier" refers to an electricity supplier (as defined in IC 8-1-2.3-2(b)) that is a public utility.

Sec. 2. As used in this chapter, "electric line facilities" means overhead and underground electric transmission and distribution lines, electric substations, and associated overhead and underground telecommunication line facilities.

Sec. 3. As used in this chapter, "owner", with respect to certificate of authority proceedings under this chapter, means a person that would be either of the following with respect to an action in eminent domain under IC 32-24-1 involving electric line facilities:

(1) A person referred to in IC 32-24-1-2.

(2) Any other defendant under IC 32-24-1-4(b)(2).

Sec. 4. As used in this chapter, "project" means the proposed

activity of an electricity supplier described in section 6 of this chapter.

Sec. 5. As used in this chapter, "public utility" has the meaning set forth in IC 8-1-2-1, except as provided in IC 8-1-2-1.1.

Sec. 6. An electricity supplier that proposes to take, acquire, condemn, or appropriate land, real estate, or any interest in land or real estate for one (1) or more of the following purposes with respect to electric line facilities may elect in writing to follow the procedure in this chapter instead of the procedures in IC 32-24-1:

(1) Construction.

(2) Reconstruction.

(3) Operation.

(4) Maintenance.

(5) Relocation.

(6) Upgrading.

(7) Removal.

Sec. 7. If an electricity supplier makes an election under section 6 of this chapter, the electricity supplier shall:

(1) file a petition with the commission for a certificate of authority for the project; and

(2) publish notice under IC 5-3-1 in each county in Indiana in which the project is to occur of:

(A) the project; and

(B) a public hearing to be held on the project in one (1) of those counties.

Sec. 8. The commission shall grant intervenor status in the certificate of authority proceeding to any owner that petitions the commission for intervenor status.

Sec. 9. (a) After the public hearing required by section 7 of this chapter, the commission shall issue a certificate of authority under this chapter authorizing the project if in the commission proceeding the electricity supplier demonstrates the following to the satisfaction of the commission:

(1) The project is expected to result in intrastate benefits or interstate benefits, or both.

(2) Except with respect to the removal of electric line facilities, the electric line facilities that are the subject of the project are needed or will be needed to furnish retail electric service or wholesale electric service, or both, in Indiana or outside Indiana, or both.

(3) The project is consistent with or part of a plan developed by a regional transmission organization approved by the

Federal Energy Regulatory Commission, or a successor or similar organization, for the control area applicable to the electric line facilities.

(4) Except with respect to the removal of electric line facilities, the following for the project are reasonable:

(A) The site.

(B) The location.

(C) The general route, width, and beginning and end points of the right-of-way.

(b) After the public hearing required by section 7 of this chapter, the commission may deny the petition if the electricity supplier fails to demonstrate the factors listed in subsection (a) to the satisfaction of the commission.

Sec. 10. (a) The commission:

(1) shall promptly review a petition filed under section 7 of this chapter for completeness;

(2) may request additional information it considers necessary to aid in its review; and

(3) shall act under section 9 of this chapter on a petition not later than one hundred twenty (120) days after the date of the petition.

(b) If the commission fails to act in a timely manner under subsection (a)(3):

(1) the factors listed in section 9(a) of this chapter are considered to have been demonstrated to the satisfaction of the commission; and

(2) the certificate of authority for which the petition was filed under section 7 of this chapter is considered to have been approved by the commission.

Sec. 11. Upon the request of the electricity supplier, the commission shall certify the issuance of a certificate of authority under section 9 of this chapter.

Sec. 12. If:

(1) an action in eminent domain is commenced by a public utility against an owner of land, real estate, or an interest in land or real estate to which a certificate of authority issued under section 9 of this chapter applies;

(2) the public utility files in that action the certificate of authority as certified under section 11 of this chapter; and

(3) the court in that action finds that the public utility has made an offer to purchase the land, real estate, or interest in land or real estate under IC 32-24-1-3(b)(2) and IC 32-24-1-5;

the court shall issue to the public utility an order of appropriation and appointment of appraisers under IC 32-24-1-7 for the land, real estate, or interest in land or real estate and assess compensation and damages for the appropriation under IC 32-24-1.

Sec. 13. Upon review of an appropriate petition filed by an electricity supplier, the commission shall encourage investment in electric line facilities by creating financial incentives that the commission finds to be reasonable and necessary, including the following:

(1) The timely recovery of costs incurred for:

(A) a project for which the commission has approved a certificate of authority under this chapter; or

(B) a project:

(i) for which the commission has not approved a certificate of authority under this chapter; and

(ii) that the commission finds to be reasonable and necessary.

(2) The timely recovery of costs, by means of a periodic rate adjustment mechanism, incurred by the public utility taking service under a tariff of, or being assessed costs by, a regional transmission organization approved by the Federal Energy Regulatory Commission, or a successor or similar organization, for an area that includes the control area in which the public utility's assigned service area is located.

(3) The authorization of up to an additional three (3) percentage points on the return on shareholder equity that would otherwise be allowed to be earned on a project.

(4) Financial incentives for projects directly related to the development of alternative energy sources, including renewable energy projects.

(5) Other financial incentives the commission considers appropriate.

Sec. 14. If an electricity supplier does not petition under this chapter for a certificate of authority for specific electric line facilities:

(1) nothing in this chapter diminishes:

(A) the electricity supplier's right of eminent domain for those electric line facilities; or

(B) the rights of an owner in any eminent domain proceeding; and

(2) the election by an electricity supplier to not petition under

this chapter for a certificate of authority may not be raised as an objection in any eminent domain proceeding by the owner under IC 32-24-1-8.".

Delete page 2.

Page 3, delete lines 1 through 13.

Page 3, delete lines 18 through 42, begin a new paragraph and insert:

"**Sec. 1. (a) As used in this chapter, "alternate energy production facility" has the meaning set forth in IC 8-1-2.4-2(b).**

(b) The term includes:

(1) ethanol and biodiesel production facilities; and

(2) facilities for the production of parts and equipment used in renewable energy resources.

Sec. 2. As used in this chapter, "energy utility" has the meaning set forth in IC 8-1-2.5-2.

Sec. 3. As used in this chapter, "green infrastructure project" means the construction, addition, extension, or improvement of an energy utility's plant or equipment to:

(1) provide electric, steam, or gas service to; or

(2) receive electric, steam, or gas service from;

an alternate energy production facility or a renewable energy resource.

Sec. 4. As used in this chapter, "renewable energy resource" has the meaning set forth in IC 8-1-8.8-10.

Sec. 5. (a) The commission shall encourage green infrastructure projects by allowing an adjustment of the energy utility's basic rates and charges to provide the timely recovery of reasonable and necessary costs incurred by the energy utility in connection with a green infrastructure project.

(b) In allowing the recovery of costs by allowing an adjustment of the energy utility's basic rates and charges under subsection (a), the commission shall determine the following:

(1) The amount of reasonable and necessary costs that the energy utility may recover.

(2) The rate adjustment mechanism by which the energy utility may recover costs.

(3) The schedule under which the energy utility may recover costs.

Sec. 6. (a) An energy utility must:

(1) submit an application to the commission for approval of a green infrastructure project for which the energy utility seeks to recover costs under section 5 of this chapter; and

(2) serve a copy of the application on the Indiana economic development corporation established by IC 5-28-3-1.

(b) The commission shall prescribe the form for an application submitted under subsection (a).

(c) Upon receipt of an application under subsection (a), the commission shall review the application for completeness. The commission may request additional information from the applicant as needed.

(d) Subject to subsection (e), the commission shall approve or deny the application not later than one hundred twenty (120) days after the date of the application.

(e) The period under subsection (d) does not include the days beginning on the date of a request for additional information under subsection (c) and ending on the date the requested information is provided.

(f) If the commission fails to act on or before the deadline established in subsection (d) on a complete application submitted under subsection (a):

(1) the application is considered approved by the commission; and

(2) the energy utility may implement an adjustment of the energy utility's basic rates and charges to provide the timely recovery of reasonable and necessary costs incurred by the energy utility in connection with the green infrastructure project.

Sec. 7. The commission may adopt rules to implement this chapter.

SECTION 3. IC 32-24-1-3, AS AMENDED BY P.L.110-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Any person that may exercise the power of eminent domain for any public use under any statute may exercise the power only in the manner provided in this article, except as otherwise provided by law.

(b) Except as provided in subsection (g), before proceeding to condemn, the person:

(1) may enter upon any land to examine and survey the property sought to be acquired; and

(2) must make an effort to purchase for the use intended the land, right-of-way, easement, or other interest, in the property.

(c) The effort to purchase under subsection (b)(2) must include the following:

(1) Establishing a proposed purchase price for the property.

(2) Providing the owner of the property with an appraisal or other evidence used to establish the proposed purchase price.

(3) Conducting good faith negotiations with the owner of the property.

(d) If the land or interest in the land, or property or right is owned by a person who is an incapacitated person (as defined in IC 29-3-1-7.5) or less than eighteen (18) years of age, the person seeking to acquire the property may purchase the property from the guardian of the incapacitated person or person less than eighteen (18) years of age. If the purchase is approved by the court appointing the guardian and the approval is written upon the face of the deed, the conveyance of the property purchased and the deed made and approved by the court are valid and binding upon the incapacitated person or persons less than eighteen (18) years of age.

(e) The deed given, when executed instead of condemnation, conveys only the interest stated in the deed.

(f) If property is taken by proceedings under this article, the entire fee simple title may be taken and acquired.

(g) This subsection applies to ~~a public utility (as defined in IC 32-24-1-5.9(a)) or~~ a pipeline company (as defined in IC 8-1-22.6-7). If a ~~public utility or a~~ pipeline company seeks to acquire land or an interest in land under this article, the ~~public utility or~~ pipeline company may not enter upon the land to examine or survey the property sought to be acquired unless either of the following occur:

(1) The ~~public utility or the~~ pipeline company sends notice by certified mail to the affected landowner (as defined in IC 8-1-22.6-2) of the ~~public utility's or the~~ pipeline company's intention to enter upon the landowner's property for survey purposes. The notice required by this subdivision must be mailed not later than fourteen (14) days before the date of the ~~public utility's or the~~ pipeline company's proposed examination or survey.

(2) The ~~public utility or the~~ pipeline company receives the landowner's signed consent to enter the property to perform the proposed examination or survey.

An affected landowner may bring an action to enforce this subsection in the circuit court of the county in which the landowner's property is located. A prevailing landowner is entitled to the landowner's actual damages as a result of the ~~public utility's or the~~ pipeline company's violation. In addition, the court may award a prevailing landowner reasonable costs of the action and attorney's fees.

SECTION 4. IC 32-24-1-5, AS AMENDED BY P.L.163-2006,

SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) As a condition precedent to filing a complaint in condemnation, and except for an action brought under IC 8-1-13-19 (repealed), a condemnor may enter upon the property as provided in this chapter and must, at least thirty (30) days before filing a complaint, make an offer to purchase the property in the form prescribed in subsection (c). The offer must be served personally or by certified mail upon:

(1) the owner of the property sought to be acquired; or

(2) the owner's designated representative.

(b) If the offer cannot be served personally or by certified mail, or if the owner or the owner's designated representative cannot be found, notice of the offer shall be given by publication in a newspaper of general circulation in the county in which the property is located or in the county where the owner was last known to reside. The notice must be in the following form:

NOTICE

TO: _____, _____ (owner(s)), _____ (condemnor) needs your property for a _____ (description of project), and will need to acquire the following from you: _____ (general description of the property to be acquired). We have made you a formal offer for this property that is now on file in the Clerk's Office in the _____ County Court House. Please pick up the offer. If you do not respond to this notice or accept the offer by ____ (a date 30 days from 1st date of publication) 20___, we shall file a suit to condemn the property.

_____

Condemnor

The condemnor must file the offer with the clerk of the circuit court with a supporting affidavit that diligent search has been made and that the owner cannot be found. The notice shall be published twice as follows:

(1) One (1) notice immediately.

(2) A subsequent publication at least seven (7) days and not more than twenty-one (21) days after the publication under subdivision (1).

(c) The offer to purchase must be in the following form:

UNIFORM PROPERTY OR EASEMENT

ACQUISITION OFFER

_____ (condemnor) is authorized by Indiana law to obtain

your property or an easement across your property for certain public purposes. _____ (condemnor) needs (your property) (an easement across your property) for a _____ (brief description of the project) and needs to take _____ (legal description of the property or easement to be taken; the legal description may be made on a separate sheet and attached to this document if additional space is required)

It is our opinion that the fair market value of the (property) (easement) we want to acquire from you is $ ____, and, therefore, _____ (condemnor) offers you $ _____ for the above described (property) (easement). You have thirty (30) days from this date to accept or reject this offer. If you accept this offer, you may expect payment in full within ninety (90) days after signing the documents accepting this offer and executing the easement, and provided there are no difficulties in clearing liens or other problems with title to land. Possession will be required thirty (30) days after you have received your payment in full.

HERE IS A BRIEF SUMMARY OF YOUR OPTIONS AND LEGALLY PROTECTED RIGHTS:

1. By law, _____ (condemnor) is required to make a good faith effort to purchase (your property) (an easement across your property).

2. You do not have to accept this offer and _____ (condemnor) is not required to agree to your demands.

3. However, if you do not accept this offer, and we cannot come to an agreement on the acquisition of (your property) (an easement), _____ (condemnor) has the right to file suit to condemn and acquire the (property) (easement) in the county in which the property is located.

4. You have the right to seek advice of an attorney, real estate appraiser, or any other person of your choice on this matter.

5. **Unless the condemnor has obtained a certificate of authority from the Indiana utility regulatory commission for this project under IC 8-1-8.4,** you may object to the public purpose and necessity of this project.

6. If _____ (condemnor) files a suit to condemn and acquire (your property) (an easement) and the court grants its request to condemn, the court will then appoint three appraisers who will make an independent appraisal of the (property) (easement) to be acquired.

7. If we both agree with the court appraisers' report, then the matter is settled. However, if either of us disagrees with the appraisers' report to the court, either of us has the right to ask for a trial to

decide what should be paid to you for the (property) (easement) condemned.

8. If the court appraisers' report is not accepted by either of us, then _____ (condemnor) has the legal option of depositing the amount of the court appraisers' evaluation with the court. And if such a deposit is made with the court, _____ (condemnor) is legally entitled to immediate possession of the (property) (easement). You may, subject to the approval of the court, make withdrawals from the amount deposited with the court. Your withdrawal will in no way affect the proceedings of your case in court, except that, if the final judgment awarded you is less than the withdrawal you have made from the amount deposited, you will be required to pay back to the court the amount of the withdrawal in excess of the amount of the final judgment.

9. The trial will decide the full amount of damages you are to receive. Both of us will be entitled to present legal evidence supporting our opinions of the fair market value of the property or easement. The court's decision may be more or less than this offer. You may employ, at your cost, appraisers and attorneys to represent you at this time or at any time during the course of the proceeding described in this notice. (The condemnor may insert here any other information pertinent to this offer or required by circumstances or law).

10. If you have any questions concerning this matter you may contact us at:

_____

_____

(full name, mailing and street address, and phone of the condemnor)

This offer was made to the owner(s):

_____of_____,

_____of_____,

_____of_____,

_____of_____,

on the _____ day of _____ 20___,

BY:

_____

(signature)

_____

(printed name and title)

Agent of: _____

_____

(condemnor)

If you decide to accept the offer of $ _____ made by _____ (condemnor) sign your name below and mail this form to the address indicated above. An additional copy of this offer has been provided for your file.

ACCEPTANCE OF OFFER

I (We), _____, _____, _____, owner(s) of the above described property or interest in property, hereby accept the offer of $ _____ made by _____ (condemnor) on this _____ day of _____, 20___.

_____

_____

_____

_____

NOTARY'S CERTIFICATE

STATE OF _____)

)SS:

COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 20___.

My Commission Expires: _____

_____

(Signature)

_____

(Printed) NOTARY PUBLIC

(d) If the condemnor has a compelling need to enter upon property to restore utility or transportation services interrupted by disaster or unforeseeable events, the provisions of subsections (a), (b), and (c) do not apply for the purpose of restoration of utility or transportation services interrupted by the disaster or unforeseeable events. However, the condemnor shall be responsible to the property owner for all damages occasioned by the entry, and the condemnor shall immediately vacate the property entered upon as soon as utility or transportation services interrupted by the disaster or unforeseeable event have been

1 restored.

2 SECTION 5. **An emergency is declared for this act.**".

3 Delete page 4.

(Reference is to SB 201 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 11, Nays 0.

Senator Merritt, Chairperson