SENATE BILL No. 512

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.

Synopsis: Annual utility rate reviews. Authorizes certain utilities to elect to have an annual rate review. Establishes the timing and form of the election. Requires a utility that elects to have annual rate review to submit an annual forecast report and an annual reconciliation report. Specifies the contents of the reports. Provides that an interested party may request an evidentiary hearing before the utility regulatory commission approves an election or an annual reconciliation report. Provides that certain rate adjustment mechanisms may be suspended during the period in which an election is in effect. Makes conforming amendments.

Effective: July 1, 2011.

Merritt

January 18, 2011, read first time and referred to Committee on Utilities & Technology.

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Introduced

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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SENATE BILL No. 512

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

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

SECTION 1. IC 8-1-2-42 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 42. (a) No change shall be made in any schedule, including schedules of joint rates, except upon thirty (30) days notice to the commission, and approval by the commission, and all such changes shall be plainly indicated upon existing schedules or by filing new schedules in lieu thereof thirty (30) days prior to the time the same are to take effect. The commission may prescribe a shorter time within which a change may be made. A public, municipally owned, or cooperatively owned utility may not file a request for a general increase in its basic rates and charges within fifteen (15) months after the filing date of its most recent request for a general increase in its basic rates and charges, except that the commission may order a more timely increase if:

(1) the requested increase relates to a different type of utility service;

(2) the commission finds that the utility's financial integrity or service reliability is threatened; or

(3) the increase is based on:

(A) a rate structure previously approved by the commission; or

(B) orders of federal courts or federal regulatory agencies having jurisdiction over the utility.

The phrase "general increase in basic rates and charges" does not include changes in rates related solely to the cost of fuel or to the cost of purchased gas or purchased electricity or adjustments in accordance with tracking provisions approved by the commission **or in accordance with IC 8-1-37.**

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

(c) Regardless of the pendency of any request for a fuel cost charge by any electric utility, the books and records pertaining to the cost of fuel of all public, municipally owned, or cooperatively owned utilities that generate electricity shall be examined by the utility consumer counselor not less often than quarterly, and the books and records of all electric nongenerating public, municipally owned, or cooperatively owned utilities shall be examined by the utility consumer counselor not less often than annually. The utility consumer counselor shall provide the commission with a report as to the examination of said books and records within a reasonable time following said examination. The utility consumer counselor may, if appropriate, request of the

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commission a reduction or elimination of the fuel cost charge. Upon such request, the commission shall hold a hearing forthwith in the manner provided in sections 58, 59, and 60 of this chapter.

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

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

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

(3) the fuel adjustment charge applied for will not result in the electric utility 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 electric utility were approved. However, subject to section 42.3 of this chapter, if the fuel charge applied for will result in the electric 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 electric utility were approved, the fuel charge applied for will be reduced to the point where no such excess of return will be earned; and

(4) the utility's estimate of its prospective average fuel costs for each such three (3) calendar months are reasonable after taking into consideration:

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

(B) the estimated fuel costs for the same latest three (3)

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calendar months for which actual fuel costs are available.

Subdivisions (2) and (3) do not apply to an electric utility during the period when an election approved under IC 8-1-37-3 is in effect with respect to the electric utility.

(e) Should the commission at any time determine that an emergency exists that could result in an abnormal change in fuel costs, it may, in order to protect the public from the adverse effects of such change suspend the provisions of subsection (d) 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.

(f) Any change in the fuel 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.

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

(1) Before the commission approves any changes in the schedule of rates, tolls, and charges of a gas utility based upon the cost of the gas, the utility consumer counselor may examine the books and records of the public, municipally owned, or cooperatively owned gas utility to determine the cost of gas upon which the proposed changes are based. In addition, before such an adjustment to the gas cost charge becomes effective, the commission shall hold a summary hearing on the sole issue of the gas cost adjustment. The utility consumer counselor shall conduct

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~~his~~ **the counselor's** review and make a report to the commission within thirty (30) days after the utility's request for the gas cost adjustment is filed. The commission shall hold the summary hearing and issue its order within thirty (30) days after it receives the utility consumer counselor's report. The provisions of this section and sections 39, 43, 54, 55, 56, 59, 60, and 61 of this chapter concerning the filing, printing, and changing of rate schedules and the time required for giving notice of hearing and requiring publication of notice do not apply to such a gas cost adjustment or such a summary hearing.

(2) Regardless of the pendency of any request for a gas cost adjustment by any gas utility, the books and records pertaining to cost of gas of all public, municipally owned, or cooperatively owned gas utilities shall be examined by the utility consumer counselor not less often than annually. The utility consumer counselor shall provide the commission with a report as to the examination of said books and records within a reasonable time following said examination. The utility consumer counselor may, if appropriate, request of the commission a reduction or elimination of the gas cost adjustment. Upon such request, the commission shall hold a hearing forthwith in the manner provided in sections 58, 59, and 60 of this chapter.

(3) A gas utility may apply for a change in its gas cost charge not more often than each three (3) months. When such application is filed, the petitioning utility shall show to the commission its cost of gas for the period between its last order from the commission approving gas costs in its basic rates and the latest month for which actual gas costs are available. The petitioning utility shall also estimate its average gas costs for a recovery period of not less than the three (3) calendar months subsequent to the expiration of the thirty (30) day period allowed the commission in subdivision (1). The commission shall conduct a summary hearing solely on the gas cost adjustment requested in the petition subject to the notice requirements of IC 8-1-1-8 and may grant the gas utility the requested gas cost charge if it finds that:

(A) the gas utility has made every reasonable effort to acquire long term gas supplies so as to provide gas to its retail customers at the lowest gas cost reasonably possible;

(B) the pipeline supplier or suppliers of the gas utility has requested or has filed for a change in the costs of gas pursuant to the jurisdiction and procedures of a duly constituted regulatory authority;

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(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.

Clause (C) does not apply to a gas utility during the period when an election approved under IC 8-1-37-3 is in effect with respect to the gas utility.

(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 2. IC 8-1-37 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

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Chapter 37. Utility Annual Rate Review

Sec. 1. As used in this chapter, "utility" means the following:

(1) An energy utility (as defined in IC 8-1-2.5-2).

(2) A utility operated by a department of public utilities created under IC 8-1-11.1-1, including a wastewater utility created by interlocal agreement under IC 36-1-7.

(3) A public utility (as defined in IC 8-1-2-1(a)) or a municipally owned utility (as defined in IC 8-1-2-1(h)) that:

(A) produces, transmits, delivers, or furnishes water; or

(B) collects, treats, or disposes of wastewater.

Sec. 2. (a) Notwithstanding any other law, a utility may elect to have its rates and charges adjusted under this chapter.

(b) To make an election, a utility must file with the commission a notice that includes the following:

(1) A verified statement that the utility has received a general rate order within the two (2) years immediately preceding the date on which the notice is filed, unless the utility files the notice at the same time it files a request for a general rate proceeding.

(2) The procedures and reporting schedules proposed by the utility to establish rates and charges under this chapter.

(3) Methods to calculate the following:

(A) For an investor owned utility, the utility's actual and projected jurisdictional rates of return on common equity.

(B) For a municipally owned utility, the utility's actual and projected net operating income.

(4) Distribution methods for the allocation of resulting revenue changes among the utility's rate schedules, and rates and charges within rate schedules.

(5) Any rate adjustment mechanisms, including rate adjustment mechanisms under IC 8-1-2-42, in effect for the utility that the utility designates to be suspended during the period when the utility's rates and charges are subject to an election under this chapter.

(6) Performance incentives previously approved by the commission that will be excluded from determining:

(A) the utility's jurisdictional rate of return on common equity, if the utility is an investor owned utility; or

(B) the utility's jurisdictional net operating income, if the utility is a municipally owned utility;

during the period when the utility's rates and charges are subject to an election under this chapter.

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(c) A utility may file a notice under subsection (b) at the same time it files a request for a general rate proceeding.

Sec. 3. Not more than sixty (60) days after receiving a utility's notice under section 2 of this chapter, and subject to section 4 of this chapter, the commission shall issue an order that:

(1) establishes the:

(A) procedures and reporting schedules to be used in establishing the utility's rates and charges;

(B) calculation methods for actual and projected jurisdictional rates of return on common equity or net operating income, as applicable;

(C) distribution methods for allocation of revenue changes;

(D) rate adjustment mechanisms to be suspended while the utility's election under this chapter is in effect; and

(E) performance incentives that will be excluded from the jurisdictional rate of return on common equity or net operating income determinations; and

(2) specifies a range for:

(A) a jurisdictional rate of return on common equity for an investor owned utility that is:

(i) fifty (50) basis points, or five-tenths (0.5) of one (1) percentage point, below; and

(ii) fifty (50) basis points, or five-tenths (0.5) of one (1) percentage point, above;

the jurisdictional rate of return on common equity authorized by the commission in the utility's most recent general rate proceeding; or

(B) a jurisdictional net operating income for a municipally owned utility that is:

(i) five percent (5%) below; and

(ii) five percent (5%) above;

the net operating income authorized by the commission in the utility's most recent general rate proceeding.

Sec. 4. (a) Not more than thirty (30) days after a utility files a notice under section 2 of this chapter, an interested party may:

(1) petition the commission to become a party to the proceeding; and

(2) request an evidentiary hearing.

(b) If the commission denies a request for a hearing, the commission shall issue an order concerning the election under section 3 of this chapter.

(c) If the commission approves a request, the commission shall

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hold an evidentiary hearing on the utility's notice.

(d) The commission shall establish a procedural schedule to conduct a hearing under this section. However, the commission shall issue an order on a utility's election not later than one hundred twenty (120) days after the utility files a notice of election under section 2 of this chapter.

Sec. 5. (a) A utility may withdraw a notice filed under section 2 of this chapter at any time before the commission rules on the notice.

(b) A utility may rescind an election approved under section 3 of this chapter not later than ninety (90) days after the date on which the order approving the election is issued.

(c) A withdrawal under subsection (a) or a rescission under subsection (b) is without prejudice to a subsequent election or request to change the utility's basic rates and charges in a general rate proceeding.

Sec. 6. (a) An election approved under section 3 of this chapter, or a renewal of an election under subsection (b), expires on the earlier of the following dates:

(1) The date on which the utility receives an order from the commission to change its basic rates and charges in a general rate proceeding in which the utility rescinded or did not renew its election.

(2) Six (6) fiscal years after the date on which the utility's election approved under section 3 of this chapter took effect.

(b) A utility may elect in a general rate proceeding to continue or renew its election approved under section 3 of this chapter. If a utility so elects, the utility's election approved under section 3 of this chapter remains in effect pending issuance of the rate order in the utility's general rate proceeding.

(c) If a utility does not renew its election, and at least one hundred eighty (180) days before the date on which the utility's election expires, the utility shall notify the commission of the rate adjustment mechanisms suspended under section 3(1)(B) of this chapter that will take effect on the date the election expires.

(d) During the period an election is in effect under this chapter, a utility may petition the commission to modify any or all of the procedures, schedules, and methods established under section 3 of this chapter. The commission shall rule on a petition in the manner set forth in sections 3 and 4 of this chapter.

Sec. 7. (a) At least sixty (60) days before the start of a utility's fiscal year, the utility shall:

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(1) file a forecast report with:
(A) the commission; and
(B) the office of utility consumer counselor; and
(2) transmit copies of the report to interested parties that have submitted written requests.

(b) A forecast report filed under subsection (a) must include the following:
(1) For an investor owned utility, the utility's forecast of its jurisdictional rate of return on common equity for the succeeding fiscal year.
(2) For a municipally owned utility, the utility's forecast of its jurisdictional net operating income for the succeeding fiscal year.

For purposes of forecasting its jurisdictional rate of return on common equity or net operating income under this subsection, a utility may include in its rate base construction work in progress.

(c) If a utility's forecasted rate of return or net operating income, as applicable, falls outside the applicable range determined under section 3(2) of this chapter, the utility's annual forecast report must:
(1) identify the increase or decrease in revenue needed to adjust the utility's jurisdictional rate of return on common equity or net operating income, as applicable, to the midpoint of the range; and
(2) include tariff sheets containing the proposed revised rates and charges needed to increase or decrease the utility's revenue to return the utility's jurisdictional rate of return or net operating income, as applicable, to the applicable midpoint.

Sec. 8. A utility may not include in its calculation of its jurisdictional rate of return or net operating income, as applicable:
(1) income received by the utility from performance incentives that are:
(A) approved by the commission; and
(B) not excluded under section 3(1)(E) of this chapter; or
(2) a reconciliation credit or surcharge allowed under section 14(b)(2) of this chapter.

Sec. 9. (a) Not more than forty-five (45) days after a utility files its annual forecast report under section 7 of this chapter, the commission shall issue an order approving the revisions to the utility's rates and charges calculated under section 7(c) of this chapter to adjust the utility's jurisdictional rate of return or net

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operating income, as applicable, to the midpoint of the applicable range specified in section 3(2) of this chapter.

(b) If the commission fails to issue an order within forty-five (45) days after the utility files its annual forecast report under section 7 of this chapter, the rates and charges proposed in the utility's annual forecast report are considered approved.

(c) Revised rates and charges approved under subsection (a) are effective for the utility's succeeding fiscal year.

Sec. 10. (a) Not more than five (5) months after the end of a utility's fiscal year, the utility shall:

(1) file a reconciliation report with:

(A) the commission; and

(B) the office of utility consumer counselor; and

(2) transmit copies of the report to interested parties that have submitted written requests for the report.

(b) A reconciliation report filed under subsection (a) must include the following:

(1) For a utility that is an investor owned utility, the utility's actual jurisdictional rate of return on the utility's common equity during the preceding fiscal year.

(2) For a utility that is a municipally owned utility, the utility's actual jurisdictional net operating income during the preceding fiscal year.

(3) The appropriate reduction or increase in revenue calculated under section 11 of this chapter.

Sec. 11. (a) If a utility's actual jurisdictional rate of return on common equity or net operating income, as applicable, exceeds the permissible range specified under section 3(2) of this chapter, the utility shall calculate the reduction in the utility's revenue needed to lower the utility's jurisdictional rate of return on common equity or net operating income, as applicable, to the upper limit of the permissible range specified under section 3(2) of this chapter.

(b) If a utility's actual jurisdictional rate of return on common equity or net operating income, as applicable, is below the permissible range determined under section 3(2) of this chapter, the utility shall calculate the additional revenue required to increase the utility's jurisdictional rate of return on common equity or net operating income, as applicable, to the lower limit of the permissible range determined under section 3(2) of this chapter.

Sec. 12. (a) Not more than forty (40) days after a reconciliation report is filed with the office of utility consumer counselor under

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section 10(1)(B) of this chapter, the utility consumer counselor shall:

(1) audit the report; and

(2) submit its findings, including any changes needed to correct errors or otherwise bring the report into compliance with this chapter, to the following:

(A) The utility.

(B) The commission.

(C) Interested parties that have submitted written requests for the findings.

(b) If a utility wishes to respond to the findings included in the audit, the utility shall submit its response to:

(1) the commission; and

(2) the office of utility consumer counselor;

not later than twenty (20) days after the findings are issued under subsection (a).

Sec. 13. (a) Not later than thirty (30) days after a utility files a reconciliation report under section 10 of this chapter, an interested party may:

(1) petition the commission for review of the report; and

(2) request an evidentiary hearing.

(b) If the commission approves the request, the commission shall establish a procedural schedule to conduct an evidentiary hearing under this section.

Sec. 14. (a) Not later than one hundred twenty (120) days after a utility files a reconciliation report under section 10 of this chapter, the commission shall review the report to determine compliance with this chapter.

(b) If the commission determines that a utility has complied with this chapter, the commission shall issue an order that:

(1) approves the amount of any increase or decrease in revenue calculated under section 11 of this chapter;

(2) calculates any:

(A) credit needed to generate a decrease in revenue; or

(B) surcharge needed to generate an increase in revenue;

calculated under section 11 of this chapter;

(3) distributes the credit or surcharge approved under subdivision (2), as applicable among:

(A) the utility's rate schedules; and

(B) each rate schedule's rates and charges;

based on the revenue distribution methods approved by the commission under section 3(1) of this chapter.

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(4) specifies the period during which the adjustments are effective.

(c) If the commission determines that a utility has not complied with this chapter, the commission shall issue an order that specifies:

(1) the areas of noncompliance; and

(2) the procedure by which the utility may amend and resubmit its report.

Sec. 15. A determination by the commission in a general rate proceeding is not subject to review or hearing under this chapter.

Sec. 16. This chapter does not limit the right of a utility to:

(1) petition the commission for a general rate proceeding, including the percentage of revenue increase sought in the general rate proceeding;

(2) apply for a financial incentive under IC 8-1-8.8; or

(3) petition the commission for any relief available under this title, other than rate adjustment mechanisms suspended under section 3(1)(D) of this chapter.

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