

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.

SENATE ENROLLED ACT No. 251

AN ACT to amend the Indiana Code concerning utilities.

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

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

Chapter 8.4. Federally Mandated Requirements for Energy Utilities

Sec. 1. As used in this chapter, "certificate" refers to a certificate of public convenience and necessity issued by the commission under section 7(b) of this chapter.

Sec. 2. (a) As used in this chapter, "compliance project" means a project that is:

- (1) undertaken by an energy utility; and
- (2) related to the direct or indirect compliance by the energy utility with one (1) or more federally mandated requirements.

(b) The term includes:

- (1) an addition; or
- (2) an integrity, enhancement, or a replacement project;

undertaken by an energy utility to comply with a federally mandated requirement described in section 5(5) of this chapter.

Sec. 3. As used in this chapter, "energy utility" has the meaning set forth in IC 8-1-2.5-2.

Sec. 4. (a) As used in this chapter, "federally mandated costs"

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means costs that an energy utility incurs in connection with a compliance project, including capital, operating, maintenance, depreciation, tax, or financing costs.

(b) The term does not include fines or penalties assessed against or imposed on an energy utility for violating laws, regulations, or consent decrees related to a federally mandated requirement.

Sec. 5. As used in this chapter, "federally mandated requirement" means a requirement that the commission determines is imposed on an energy utility by the federal government in connection with any of the following:

- (1) The federal Clean Air Act (42 U.S.C. 7401 et seq.).
- (2) The federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).
- (3) The federal Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.).
- (4) The federal Toxic Substances Control Act (15 U.S.C. 2601 et seq.).
- (5) Standards or regulations concerning the integrity, safety, or reliable operation of:
 - (A) transmission; or
 - (B) distribution;pipeline facilities.
- (6) Requirements relating to a license issued by the United States Nuclear Regulatory Commission to operate a nuclear energy production or generating facility (as defined in IC 8-1-8.8-8.5).
- (7) Any other law, order, or regulation administered or issued by the United States Environmental Protection Agency, the United States Department of Transportation, the Federal Energy Regulatory Commission, or the United States Department of Energy.

Sec. 6. (a) Except as provided in subsection (c), or unless an energy utility has elected to file for:

- (1) a certificate of public convenience and necessity; or
- (2) the recovery of costs;

under another statute, an energy utility that seeks to recover federally mandated costs under section 7(c) of this chapter must obtain from the commission a certificate that states that public convenience and necessity will be served by a compliance project proposed by the energy utility.

(b) The commission shall issue a certificate of public convenience and necessity under section 7(b) of this chapter if the

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commission finds that the proposed compliance project will allow the energy utility to comply directly or indirectly with one (1) or more federally mandated requirements. In determining whether to grant a certificate under this section, the commission shall examine the following factors:

(1) The following, which must be set forth in the energy utility's application for the certificate sought, in accordance with section 7(a) of this chapter:

(A) A description of the federally mandated requirements, including any consent decrees related to the federally mandated requirements, that the energy utility seeks to comply with through the proposed compliance project.

(B) A description of the projected federally mandated costs associated with the proposed compliance project, including costs that are allocated to the energy utility:

(i) in connection with regional transmission expansion planning and construction; or

(ii) under a Federal Energy Regulatory Commission approved tariff, rate schedule, or agreement.

(C) A description of how the proposed compliance project allows the energy utility to comply with the federally mandated requirements described by the energy utility under clause (A).

(D) Alternative plans that demonstrate that the proposed compliance project is reasonable and necessary.

(E) Information as to whether the proposed compliance project will extend the useful life of an existing energy utility facility and, if so, the value of that extension.

(2) Any other factors the commission considers relevant.

(c) An energy utility is not required to obtain a certificate under this section for a project that constitutes a research and development project.

Sec. 7. (a) As a condition for receiving the certificate required under section 6 of this chapter, an energy utility must file with the commission an application that sets forth the information described in section 6(b) of this chapter, supported with technical information in as much detail as the commission requires.

(b) The commission shall hold a properly noticed public hearing on each application and grant a certificate only if the commission has:

(1) made a finding that the public convenience and necessity will be served by the proposed compliance project;

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- (2) approved the projected federally mandated costs associated with the proposed compliance project; and
- (3) made a finding on each of the factors set forth in section 6(b) of this chapter.

(c) If the commission approves under subsection (b) a proposed compliance project and the projected federally mandated costs associated with the proposed compliance project, the following apply:

- (1) Eighty percent (80%) of the approved federally mandated costs shall be recovered by the energy utility through a periodic retail rate adjustment mechanism that allows the timely recovery of the approved federally mandated costs. The commission shall adjust the energy utility's authorized net operating income to reflect any approved earnings for purposes of IC 8-1-2-42(d)(3) and IC 8-1-2-42(g)(3).
- (2) Twenty percent (20%) of the approved federally mandated costs, including depreciation, allowance for funds used during construction, and post in service carrying costs, based on the overall cost of capital most recently approved by the commission, shall be deferred and recovered by the energy utility as part of the next general rate case filed by the energy utility with the commission.
- (3) Actual costs that exceed the projected federally mandated costs of the approved compliance project by more than twenty-five percent (25%) shall require specific justification by the energy utility and specific approval by the commission before being authorized in the next general rate case filed by the energy utility with the commission.

SECTION 2. IC 8-1-8.8-1, AS AMENDED BY P.L.175-2007, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) The general assembly makes the following findings:

- (1) Growth of Indiana's population and economic base has created a need for new energy production or generating facilities in Indiana.
- (2) The development of a robust and diverse portfolio of energy production or generating capacity, including coal gasification and the use of renewable energy resources, is needed if Indiana is to continue to be successful in attracting new businesses and jobs.
- (3) Indiana has considerable natural resources that are currently underutilized and could support development of new energy production or generating facilities, including coal gasification

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facilities, at an affordable price.

(4) Certain regions of the state, such as southern Indiana, could benefit greatly from new employment opportunities created by development of new energy production or generating facilities utilizing the plentiful supply of coal from the geological formation known as the Illinois Basin.

(5) Technology can be deployed that allows high sulfur coal from the geological formation known as the Illinois Basin to be burned or gasified efficiently while meeting strict state and federal air quality limitations. Specifically, the state should encourage the use of advanced clean coal technology, such as coal gasification.

(6) It is in the public interest for the state to encourage the construction of new energy production or generating facilities that increase the in-state capacity to provide for current and anticipated energy demand at a competitive price.

(7) It is in the public interest for the state to encourage the study, analysis, development, and life cycle management of nuclear energy production or generating facilities, as well as carbon dioxide capture, transportation, and storage facilities.

(b) The purpose of this chapter is to enhance Indiana's energy security and reliability by ensuring all of the following:

(1) Indiana's **and the region's** energy production or generating capacity continues to be adequate to provide for Indiana's current and future energy needs, including the support of the state's economic development efforts.

(2) The vast and underutilized coal resources of the Illinois Basin are used as a fuel source for new energy production or generating facilities.

(3) The electric transmission and gas transportation systems within Indiana are upgraded to distribute additional amounts of electricity and gas more efficiently.

(4) Jobs are created as new energy production or generating facilities are built in regions throughout Indiana.

(5) The study, analysis, development, and life cycle management of nuclear energy production or generating facilities are encouraged at the same time as are new coal fired and other fossil fuel based energy production or generating facilities.

SECTION 3. IC 8-1-8.8-2, AS AMENDED BY P.L.175-2007, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. As used in this chapter, "clean ~~coal and~~ energy projects" means any of the following:

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(1) Any of the following projects:

(A) Projects at new energy production or generating facilities that employ the use of clean coal technology and that produce energy, including substitute natural gas, primarily from coal, or gases derived from coal, from the geological formation known as the Illinois Basin.

(B) Projects to provide advanced technologies that reduce regulated air emissions from **or increase the efficiency of** existing energy production or generating plants that are fueled primarily by coal or gases from coal from the geological formation known as the Illinois Basin, such as flue gas desulfurization and selective catalytic reduction equipment.

(C) Projects to provide electric transmission facilities to serve a new energy production or generating facility **or a nuclear energy production or generating facility.**

(D) Projects that produce substitute natural gas from Indiana coal by construction and operation of a coal gasification facility.

(E) Projects or potential projects that enhance the safe and reliable use of nuclear energy production or generating technologies to produce electricity.

(2) Projects to develop alternative energy sources, including renewable energy projects ~~and~~ **or** coal gasification facilities.

(3) The purchase of fuels **or energy** produced by a coal gasification facility **or by a nuclear energy production or generating facility.**

(4) Projects described in subdivisions (1) through ~~(3)~~ **(2)** that use coal bed methane.

SECTION 4. IC 8-1-8.8-4, AS AMENDED BY P.L.175-2007, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. As used in this chapter, "coal gasification facility" means a facility in Indiana that uses a manufacturing process that converts coal into a clean gas that can be used:

(1) as a fuel to generate energy; or

(2) as substitute natural gas.

SECTION 5. IC 8-1-8.8-6, AS AMENDED BY P.L.175-2007, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. As used in this chapter, "eligible business" means an energy utility (as defined in IC 8-1-2.5-2) or owner of a coal gasification facility that:

(1) proposes to construct or repower a new energy production or generating facility;

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- (2) proposes to construct or repower a project described in section 2(1) or 2(2) of this chapter;
- (3) undertakes a project to develop alternative energy sources, including renewable energy projects or **coal gasification facilities; or**
- (4) purchases fuels **or energy** produced by a coal gasification facility **or by a nuclear energy production or generating facility.**

SECTION 6. IC 8-1-8.8-8, AS AMENDED BY P.L.175-2007, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) As used in this chapter, "new energy **production or generating facility**" refers to a generation or coal gasification facility that satisfies all of the following:

- (1) The facility produces energy primarily from coal or gases from coal from the geological formation known as the Illinois Basin.
- (2) The facility is a:
 - (A) newly constructed or newly repowered energy ~~generation~~ plant; or
 - (B) newly constructed ~~generation~~ capacity expansion at an existing ~~facility; plant;~~ dedicated primarily to serving Indiana retail customers.
- (3) The repowering, construction, or expansion of the facility was begun by an Indiana utility after July 1, 2002.
- (4) Except for a facility that is a clean ~~coal and~~ energy project under section 2(2) of this chapter, the facility has an aggregate rated electric generating capacity of at least one hundred (100) megawatts for all units at one (1) site or a generating capacity of at least four hundred thousand (400,000) pounds per hour of steam.

(b) The term includes the transmission lines, gas transportation facilities, and associated equipment employed specifically to serve a new energy **production or generating or coal gasification** facility.

SECTION 7. IC 8-1-8.8-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8.5. (a) As used in this chapter, "**nuclear energy production or generating facility**" means an energy production or generation facility that:

- (1) uses a nuclear reactor as its heat source to provide steam to a turbine generator to produce or generate electricity;
- (2) supplies electricity to Indiana retail customers on July 1, 2011;
- (3) is dedicated primarily to serving Indiana customers; and

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(4) is undergoing a comprehensive life cycle management project to enhance the safe and reliable operation of the facility during the period the facility is licensed to operate by the United States Nuclear Regulatory Commission.

(b) The term includes the transmission lines and other associated equipment employed specifically to serve a nuclear energy production or generating facility.

SECTION 8. IC 8-1-8.8-8.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8.7. As used in this chapter, "qualified utility system expenses" means the costs associated with the study, analysis, or development of a life cycle management project for a nuclear energy production or generating facility.

SECTION 9. IC 8-1-8.8-9, AS AMENDED BY P.L.175-2007, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. As used in this chapter, "qualified utility system property" means any:

(1) new energy production or generating or coal gasification facility; or

(2) nuclear energy production or generating facility;

used, or to be used, in whole or in part, by an energy utility to provide retail energy service (as defined in IC 8-1-2.5-3) regardless of whether that service is provided under IC 8-1-2.5 or another provision of this article.

SECTION 10. IC 8-1-8.8-10, AS AMENDED BY P.L.95-2010, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) As used in this chapter "renewable energy resources" means alternative sources of renewable energy, including the following:

(1) Energy from wind:

(2) Solar energy:

(3) Photovoltaic cells and panels:

(4) Dedicated crops grown for energy production:

(5) Organic waste biomass, including any of the following organic matter that is available on a renewable basis:

(A) Agricultural crops:

(B) Agricultural wastes and residues:

(C) Wood and wood wastes, including the following:

(i) Wood residues:

(ii) Forest thinnings:

(iii) Mill residue wood:

(D) Animal wastes:

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(E) ~~Animal byproducts.~~

(F) ~~Aquatic plants.~~

(G) ~~Algae.~~

(6) ~~Hydropower from existing dams.~~

(7) ~~Fuel cells.~~

(8) ~~Energy from waste to energy facilities.~~

(9) ~~Energy storage systems.~~ **a clean energy resource listed in IC 8-1-37-4(a)(1) through IC 8-1-37-4(a)(16).**

(b) Except for energy described in subsection (a)(8), **from waste to energy facilities**, the term does not include energy from the incinerations, burning, or heating of any of the following:

(1) Tires.

(2) General household, institutional, commercial, industrial lunchroom, office, or landscape waste.

(c) The term excludes treated or painted lumber.

SECTION 11. IC 8-1-8.8-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) The commission shall encourage clean ~~coal and~~ energy projects by creating the following financial incentives for clean ~~coal and~~ energy projects, if the projects are found to be reasonable and necessary:

(1) The timely recovery of costs **and expenses** incurred during construction and operation of projects described in section 2(1) or 2(2) of this chapter.

(2) The authorization of up to three (3) percentage points on the return on shareholder equity that would otherwise be allowed to be earned on projects described in subdivision (1).

(3) Financial incentives for the purchase of fuels **or energy** produced by a coal gasification facility **or by a nuclear energy production or generating facility**, including cost recovery and the incentive available under subdivision (2).

(4) Financial incentives for projects to develop alternative energy sources, including renewable energy projects **or coal gasification facilities**.

(5) Other financial incentives the commission considers appropriate.

(b) An eligible business must file an application to the commission for approval of a clean ~~coal and~~ energy project under this section. This chapter does not relieve an eligible business of the duty to obtain any certificate required under IC 8-1-8.5 or IC 8-1-8.7. An eligible business seeking a certificate under IC 8-1-8.5 or IC 8-1-8.7 and this chapter for one (1) project may file a single application for all necessary certificates. If a single application is filed, the commission shall

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consider all necessary certificates at the same time.

(c) The commission shall promptly review an application filed under this section for completeness. The commission may request additional information the commission considers necessary to aid in its review.

(d) The commission shall, after notice and hearing, issue a determination of a project's eligibility for the financial incentives described in subsection (a) not later than one hundred twenty (120) days after the date of the application, unless the commission finds that the applicant has not cooperated fully in the proceeding.

SECTION 12. IC 8-1-8.8-12, AS AMENDED BY P.L.175-2007, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. (a) The commission shall provide financial incentives to eligible businesses for:

(1) new energy ~~producing and~~ **production or** generating facilities; **and**

(2) **nuclear energy production or generating facilities;**

in the form of timely recovery of the costs incurred in connection with the **study, analysis, development, siting, design, licensing, permitting,** construction, repowering, expansion, **life cycle management,** operation, or maintenance of the facilities.

(b) An eligible business seeking authority to timely recover the costs described in subsection (a) must apply to the commission for approval of a rate adjustment mechanism in the manner determined by the commission.

(c) An application must include the following:

(1) A schedule for the completion of construction, repowering, **life cycle management,** or expansion of the ~~new energy generating or coal gasification~~ facility for which rate relief is sought.

(2) Copies of the most recent integrated resource plan filed with the commission, if applicable.

(3) The amount of capital investment by the eligible business in the ~~new energy generating or coal gasification~~ facility.

(4) Other information the commission considers necessary.

(d) The commission shall allow an eligible business to recover:

(1) the costs associated with qualified utility system property; **and**

(2) **qualified utility system expenses;**

if the eligible business provides substantial documentation that the expected costs ~~associated with qualified utility system property~~ and **expenses and** the schedule for incurring those costs **and expenses** are reasonable and necessary.

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(e) The commission shall allow an eligible business to recover the costs associated with the purchase of fuels **or energy** produced by a coal gasification facility **or by a nuclear energy production or generating facility** if the eligible business provides substantial documentation that the costs associated with the purchase are reasonable and necessary.

(f) A retail rate adjustment mechanism proposed by an eligible business under this section may be based on actual or forecasted data. If forecast data is used, the retail rate adjustment mechanism must contain a reconciliation mechanism to correct for any variance between the forecasted costs and the actual costs.

SECTION 13. IC 8-1-8.8-13, AS AMENDED BY P.L.175-2007, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 13. An eligible business shall file a monthly report with the lieutenant governor stating the following information:

- (1) The amount of Illinois Basin coal, if any, purchased during the previous month for use in a new energy **production or generating or coal gasification** facility.
- (2) The amount of any fuel **or energy** produced by:
 - (A) a coal gasification facility; ~~and or~~
 - (B) a nuclear energy production or generating facility;****that is** purchased by the eligible business during the previous month.
- (3) Any other information the lieutenant governor may reasonably require.

SECTION 14. IC 8-1-8.8-14, AS AMENDED BY P.L.71-2009, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 14. The group shall conduct an annual study on the use, availability, and economics of using ~~renewable in Indiana~~ **the clean energy resources in Indiana listed in IC 8-1-37-4(a)(1) through IC 8-1-37-4(a)(6). The commission may direct the group to study additional clean energy resources as the commission considers appropriate.** Each year, the group shall submit a report on the study to the commission for inclusion in the commission's annual report to the regulatory flexibility committee described in IC 8-1-2.5-9 and IC 8-1-2.6-4. **The commission shall direct the group concerning the appropriate level of detail for the report.** The report must include suggestions from the group to encourage the development and use of **renewable clean** energy resources and technologies appropriate for use in Indiana. ~~In formulating the suggestions, the group shall evaluate potential renewable energy generation opportunities from biomass and algae production systems.~~

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SECTION 15. IC 8-1-13.1-2, AS ADDED BY P.L.151-2009, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. As used in this chapter, "alternative energy project" means a project that:

- (1) develops or makes use of:
 - (A) clean ~~coal and~~ energy projects (as defined in IC 8-1-8.8-2);
 - (B) renewable energy resources (as defined in IC 8-1-8.8-10) for the production of electricity;
 - (C) integrated gasification combined cycle (IGCC) technology to produce synthesis gas that is used:
 - (i) to generate electricity; or
 - (ii) as a substitute for natural gas;
 regardless of the fuel source used to produce the synthesis gas;
 - (D) methane recovered from landfills for the production of electricity;
 - (E) demand side management, energy efficiency, or conservation programs; or
 - (F) coal bed methane;
- (2) results in quantifiable reductions in, or the avoidance of:
 - (A) the use of electricity produced by traditional electric generating facilities that use fossil fuels as their fuel source; or
 - (B) regulated air pollutants and carbon emissions produced by traditional electric generating facilities that use fossil fuels as their fuel source; and
- (3) is implemented under a plan approved by:
 - (A) the office; and
 - (B) a corporation's or a cooperatively owned power supplier's board of directors.

SECTION 16. IC 8-1-37 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 37. Voluntary Clean Energy Portfolio Standard Program

Sec. 1. As used in this chapter, "base year" means the calendar year ending December 31, 2010.

Sec. 2. As used in this chapter, "clean energy" means electricity that is produced from a clean energy resource.

Sec. 3. As used in this chapter, "clean energy credit", or "CEC", means an interest that:

- (1) represents one (1) megawatt hour of clean energy that satisfies the condition set forth in section 12(c)(2) of this chapter;

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- (2) is quantifiable and transferrable; and
- (3) is possessed by not more than one (1) entity at a time.

Sec. 4. (a) As used in this chapter, "clean energy resource" means any of the following sources, clean sources, alternative technologies, or programs used in connection with the production or conservation of electricity:

- (1) Energy from wind.
- (2) Solar energy.
- (3) Photovoltaic cells and panels.
- (4) Dedicated crops grown for energy production.
- (5) Organic waste biomass, including any of the following organic matter that is available on a renewable basis:
 - (A) Agricultural crops.
 - (B) Agricultural wastes and residues.
 - (C) Wood and wood wastes, including the following:
 - (i) Wood residues.
 - (ii) Forest thinnings.
 - (iii) Mill residue wood.
 - (D) Animal wastes.
 - (E) Animal byproducts.
 - (F) Aquatic plants.
 - (G) Algae.
- (6) Hydropower.
- (7) Fuel cells.
- (8) Hydrogen.
- (9) Energy from waste to energy facilities, including energy derived from advanced solid waste conversion technologies.
- (10) Energy storage systems or technologies.
- (11) Geothermal energy.
- (12) Coal bed methane.
- (13) Industrial byproduct technologies that use fuel or energy that is a byproduct of an industrial process.
- (14) Waste heat recovery from capturing and reusing the waste heat in industrial processes for heating or for generating mechanical or electrical work.
- (15) A source, technology, or program approved by the commission and designated as a clean energy resource by a rule adopted by the commission under IC 4-22-2.
- (16) Demand side management or energy efficiency initiatives that:
 - (A) reduce electricity consumption; or
 - (B) implement load management, demand response, or

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energy efficiency measures designed to shift customers' electric loads from periods of higher demand to periods of lower demand;
as a result of equipment installed, or customers enrolled, after January 1, 2010.

(17) A clean energy project described in IC 8-1-8.8-2(1).

(18) Nuclear energy.

(19) Electricity that is:

(A) generated by a customer owned distributed generation facility that is interconnected to the electricity supplier's distribution system in accordance with the commission's interconnection standards set forth in 170 IAC 4-4.3; and

(B) supplied back to the electricity supplier for use in meeting the electricity supplier's electricity demand requirements in accordance with the commission's net metering rules set forth in 170 IAC 4-4.2.

(20) Combined heat and power systems.

(21) Electricity that is generated from natural gas at a facility constructed in Indiana after July 1, 2011, which displaces electricity generation from an existing coal fired generation facility.

(b) Except for energy described in subsection (a)(9), the term does not include energy from the incineration, burning, or heating of any of the following:

(1) Tires.

(2) General household, institutional, commercial, industrial, lunchroom, office, or landscape waste.

(c) The term excludes treated or painted lumber.

Sec. 5. As used in this chapter, "clean portfolio standard goal", or "CPS goal", refers to a goal set forth in section 12(a) of this chapter that a participating electricity supplier must achieve during a specified period during the program to qualify for one (1) or more of the financial incentives described in section 13 of this chapter.

Sec. 6. (a) As used in this chapter, "electricity supplier" means a public utility (as defined in IC 8-1-2-1) that furnishes retail electric service to customers in Indiana on January 1, 2011.

(b) The term does not include a utility that is:

(1) a municipally owned utility (as defined in IC 8-1-2-1(h));

(2) a corporation organized under IC 8-1-13; or

(3) a corporation organized under IC 23-17 that is an electric cooperative and that has at least one (1) member that is a

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corporation organized under IC 8-1-13.

Sec. 7. As used in this chapter, "participating electricity supplier" refers to an electricity supplier that has been approved by the commission under section 11 of this chapter to participate in the program.

Sec. 8. As used in this chapter, "program" refers to the Indiana voluntary clean energy portfolio standard program established by the commission under section 10 of this chapter.

Sec. 9. As used in this chapter, "regional transmission organization", with respect to an electricity supplier, refers to the regional transmission organization approved by the Federal Energy Regulatory Commission for the control area that includes the electricity supplier's assigned service area (as defined in IC 8-1-2.3-2).

Sec. 10. (a) Subject to subsection (d), the commission shall adopt rules under IC 4-22-2 to establish the Indiana voluntary clean energy portfolio standard program. The program established under this section must be a voluntary program that provides incentives to participating electricity suppliers that undertake to supply specified percentages of the total electricity supplied to their Indiana retail electric customers from clean energy.

(b) The rules adopted by the commission under this section to establish the program must:

(1) incorporate:

- (A)** the CPS goals set forth in section 12(a) of this chapter;
- (B)** methods for measuring and evaluating a participating electricity supplier's compliance with the CPS goals set forth in section 12(a) of this chapter;
- (C)** the financial incentives and periodic rate adjustment mechanisms set forth in section 13 of this chapter; and
- (D)** the reporting requirements set forth in section 14 of this chapter;

- (2)** require the commission to determine, before approving an application under section 11 of this chapter, that the approval of the application will not result in an increase to the retail rates and charges of the electricity supplier above what could reasonably be expected if the application were not approved;
- (3)** take effect not later than January 1, 2012; and
- (4)** be consistent with this chapter.

(c) Upon the effective date of the rules adopted by the commission under this section, an electricity supplier may apply to the commission under section 11 of this chapter for approval to

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participate in the program.

(d) The commission may adopt emergency rules under IC 4-22-2-37.1 to adopt the rules required by this section. An emergency rule adopted by the commission under IC 4-22-2-37.1 expires on the date a rule that supersedes the emergency rule is adopted by the commission under IC 4-22-2-24 through IC 4-22-2-36.

Sec. 11. (a) An electricity supplier that seeks to participate in the program established by the commission under section 10 of this chapter must apply to the commission:

- (1) in the manner and on a form prescribed by the commission; and
- (2) not later than a date specified by the commission in the rules adopted under section 10 of this chapter;

for approval to participate in the program.

(b) Upon receiving an application under subsection (a), the commission shall review the application for completeness. The commission may request additional information the commission considers necessary to aid in the commission's review.

(c) If the commission determines that:

- (1) an application submitted under subsection (a) is complete and reasonably complies with the purpose of this chapter;
- (2) the electricity supplier submitting the application has demonstrated that the electricity supplier has a reasonable expectation of obtaining clean energy to meet the energy requirements of its Indiana retail electric customers during the calendar year ending December 31, 2025, in an amount equal to at least ten percent (10%) of the total electricity supplied by the participating electricity supplier to its Indiana retail electric customers during the base year, as set forth in section 12(a)(3) of this chapter; and
- (3) approving the application will not result in an increase to the retail rates and charges of the electricity supplier above what could reasonably be expected if the application were not approved;

the commission shall approve the application. If, however, the commission determines that the application does not meet the requirements set forth in this subsection, the commission shall reject the application. The electricity supplier that submitted the application under subsection (a) bears the burden of proving to the commission that the application meets the requirements set forth in this subsection.

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Sec. 12. (a) Subject to subsection (c), to qualify for the financial incentives set forth in section 13 of this chapter, a participating electricity supplier must obtain clean energy to meet the energy requirements of the participating electricity supplier's Indiana retail electric customers according to the following CPS goals:

(1) CPS Goal Period I: For the six (6) calendar years beginning January 1, 2013, and ending December 31, 2018, an average of at least four percent (4%) of the total electricity obtained by the participating electricity supplier to meet the energy requirements of its Indiana retail electric customers during the base year.

(2) CPS Goal Period II: For the six (6) calendar years beginning January 1, 2019, and ending December 31, 2024, an average of at least seven percent (7%) of the total electricity obtained by the participating electricity supplier to meet the energy requirements of its Indiana retail electric customers during the base year.

(3) CPS Goal Period III: In the calendar year ending December 31, 2025, at least ten percent (10%) of the total electricity obtained by the participating electricity supplier to meet the energy requirements of its Indiana retail electric customers during the base year.

(b) For purposes of subsection (a), electricity is measured in megawatt hours. However, in determining whether a participating electricity supplier has met a CPS goal set forth in subsection (a), the commission shall require that at least fifty percent (50%) of the megawatt hours of clean energy obtained by the participating electricity supplier to meet the energy requirements of its Indiana retail electric customers during the CPS goal period under consideration must originate from clean energy resources located in Indiana.

(c) In determining whether a participating electricity supplier has met a particular CPS goal set forth in subsection (a), the commission shall consider only clean energy that:

(1) except as provided in subsection (f), is obtained by the participating electricity supplier to meet the energy requirements of the participating electricity supplier's Indiana retail electric customers during the CPS goal period under consideration; and

(2) is generated by a facility located in a control area that is part of a regional transmission organization of which an electricity supplier is a member.

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(d) An electricity supplier is not required to obtain clean energy to meet a particular CPS goal if the commission determines that the cost of clean energy resources available to the electricity supplier would result in an increase in the rates and charges of the electricity supplier that would not be just and reasonable.

(e) A participating electricity supplier may own or purchase one (1) or more CECs to meet any of the CPS goals set forth in subsection (a) as long as the clean energy represented by the CEC meets the condition set forth in subsection (c)(2).

(f) A participating electricity supplier may apply:

(1) amounts of clean energy supplied by the participating electricity supplier to its Indiana retail electric customers during a particular CPS goal period; or

(2) CECs acquired by the participating electricity supplier during a particular CPS goal period;

that exceed the requirements for the particular CPS goal period to the immediately succeeding CPS goal period.

(g) A participating electricity supplier may use a clean energy resource described in section 4(a)(17) through 4(a)(21) of this chapter to satisfy not more than thirty percent (30%) of any of the CPS goals set forth in subsection (a).

Sec. 13. (a) The commission may establish a shareholder incentive consisting of the authorization of an increased overall rate of return on equity, not to exceed fifty (50) basis points over a participating electricity supplier's authorized rate of return, whenever the participating electricity supplier attains a CPS goal set forth in section 12(a) of this chapter. The number of additional basis points authorized by the commission under this subsection may:

(1) be different for each of the CPS goal periods identified in section 12(a) of this chapter, as the commission determines is appropriate; and

(2) in the case of a particular participating electricity supplier, be based on the extent to which the participating electricity supplier met a particular CPS goal using clean energy resources listed in section 4(a)(1) through 4(a)(16) of this chapter.

The additional basis points authorized by the commission under this subsection for each CPS goal period are not cumulative and may not be authorized for a clean energy resource for which the commission has authorized an incentive under IC 8-1-8.8-11(a)(2). In determining a participating electricity supplier's authorized rate

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of return to which additional basis points may be added upon the participating electricity supplier's achievement of a particular CPS goal, the commission shall not include as part of the authorized rate of return any additional basis points awarded to the participating electricity supplier for having achieved the immediately preceding CPS goal.

(b) If the commission approves an electricity supplier's application under section 11(c) of this chapter, the commission shall authorize the incentive described in subsection (a) and the recovery of costs, by means of a periodic rate adjustment mechanism, as described in subsection (c), based on the following considerations:

- (1) The sharing of achieved savings or as a percentage of costs.
- (2) Avoided costs resulting from achieving demand side management or energy efficiency targets.
- (3) The recovery of lost revenues associated with implementation of demand side management or energy efficiency initiatives.
- (4) The designation of electricity produced or conserved by a clean energy resource as an energy savings for purposes of any initiative, rule, or order approved by the commission to promote the efficient use and production of electricity, including initiatives to implement demand side management, energy efficiency, or conservation measures in accordance with commission rules.

(c) If the commission approved an electricity supplier's application under section 11(c) of this chapter, the commission shall permit the recovery, by means of a periodic rate adjustment mechanism, of all just, reasonable, and necessary program costs incurred by a participating electricity supplier in:

- (1) constructing, operating, or maintaining facilities that generate clean energy that:
 - (A) is used by the participating electricity supplier in its efforts to meet a CPS goal set forth in section 12(a) of this chapter; and
 - (B) meets the requirements set forth in section 12(c) of this chapter; or
- (2) otherwise generating or purchasing clean energy that is used by the participating electricity supplier in its efforts to meet a CPS goal set forth in section 12(a) of this chapter.

For purposes of this subsection and subsection (h)(1), "program

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costs" includes administrative costs, ancillary costs, capacity costs, costs associated with CECs, capital costs, depreciation costs, tax costs, and financing costs incurred in connection with an activity described in subdivision (1) or (2).

(d) A participating electricity supplier that seeks an incentive established by the commission under subsection (a) or a periodic rate adjustment mechanism established by the commission under subsection (c) must apply to the commission:

- (1) in the manner and on a form prescribed by the commission; and
- (2) not later than any dates specified by the commission in rules adopted under section 10 of this chapter;

for approval for the incentive or periodic rate adjustment mechanism sought.

(e) The commission shall review an application filed under this section for completeness. The commission may request additional information the commission considers necessary to aid in the commission's review.

(f) The commission shall, after notice and hearing, issue a determination of a participating electricity supplier's eligibility for the financial incentive or periodic rate adjustment mechanism sought. The commission shall issue a determination under this subsection not later than one hundred twenty (120) days after the date of the application, unless the commission finds that the applicant has not cooperated fully in the proceeding.

(g) Subject to the participating electricity supplier's continuing compliance with the applicable CPS goal, as determined according to the measurement and evaluation procedures described in section 10(b)(1)(B) of this chapter, a shareholder incentive described in subsection (a) continues in effect until the earlier of the following:

- (1) A time or upon an event specified in the commission's order approving the shareholder incentive.
- (2) The commission issues a new order authorizing the participating electricity supplier to receive a shareholder incentive for meeting the next CPS program goal.

(h) Subject to the participating electricity supplier's continuing compliance with the applicable CPS goal, as determined according to the measurement and evaluation procedures described in section 10(b)(1)(B) of this chapter, a periodic rate adjustment mechanism described in subsection (c) continues in effect until the earlier of the following:

- (1) The participating electricity supplier has recovered the

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program costs for which the periodic rate adjustment mechanism was allowed.

(2) A time or upon an event specified in the commission's order approving the periodic rate adjustment mechanism.

Sec. 14. (a) Beginning in 2014, each participating electricity supplier shall report to the commission not later than March 1 of each year on the following:

(1) The participating electricity supplier's efforts, if any, during the most recently ended calendar year to meet the CPS goal applicable to the most recently ended calendar year.

(2) The total amount of renewable energy supplied to the participating electricity supplier's Indiana retail electric customers during the most recently ended calendar year, including a breakdown of the following:

(A) The amount of clean energy generated by facilities owned or operated by the participating electricity supplier. The participating electricity supplier shall identify each facility by:

(i) name and location;

(ii) total generating capacity;

(iii) total amount of electricity generated at the facility during the most recently ended calendar year, including the percentage of this amount that was supplied to the participating electricity supplier's Indiana retail electric customers; and

(iv) total amount of clean energy generated at the facility during the most recently ended calendar year, including the percentage of this amount that was supplied to the participating electricity supplier's Indiana retail electric customers.

(B) The amount of clean energy purchased from other suppliers of clean energy. The participating electricity supplier shall identify:

(i) each supplier from whom clean energy was purchased;

(ii) the amount of clean energy purchased from each supplier;

(iii) the price paid by the participating electricity supplier for the clean energy purchased from each supplier; and

(iv) to the extent known, the name and location of each facility at which the clean energy purchased from each

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supplier was generated.

(3) The number of CECs purchased by the participating electricity supplier during the most recently ended calendar year. The participating electricity supplier shall identify:

(A) each person from whom one (1) or more CECs was purchased;

(B) the price paid to each person identified in clause (A) for the CECs purchased;

(C) the number of CECs applied, if any, during the most recently ended calendar year to meet the CPS goal applicable to the most recently ended calendar year; and

(D) the number of CECs, if any, that the participating electricity supplier plans to carry over to the next succeeding CPS goal period, as permitted by section 12(f) of this chapter.

(4) The participating electricity supplier's plans for meeting the CPS goal applicable to the calendar year in which the report is submitted.

(5) Advances in clean energy technology that affect activities described in subdivisions (1) and (4).

(6) Any other information that the commission prescribes in rules adopted under IC 4-22-2.

For purposes of this subsection, amounts of clean energy and electricity shall be reported in megawatt hours. A participating electricity supplier's duty to submit a report under this subsection terminates after the participating electricity supplier has submitted the report that applies to the calendar year ending December 31, 2025.

(b) Beginning in 2014, the commission's annual report to the regulatory flexibility committee under IC 8-1-2.5-9(b) must include a summary of the information provided by participating electricity suppliers under subsection (a) with respect to the most recently ended calendar year. The commission's duty to include the information specified in this subsection in its annual report to the regulatory flexibility committee terminates after the commission has submitted the information that applies to the calendar year ending December 31, 2025.

SECTION 17. IC 14-37-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Money paid into the fund shall be appropriated for the following purposes:

(1) To supplement the cost required to abandon a well that has had a permit revoked under IC 14-37-13-1.

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(2) To cover the costs of remedial plugging and repairing of wells under IC 14-37-8, including the expenses of remedial action under IC 14-37-8-15.

(3) To cover the cost to:

(A) mitigate environmental damage; or

(B) protect public safety against harm;

caused by a well regulated under this article.

(4) Pipeline safety.

(b) The director may make expenditures from the fund for emergency purposes under section 6 of this chapter without the prior approval of the budget agency or the governor. An expenditure under this subsection may not exceed fifty thousand dollars (\$50,000).

(c) The director may establish a program to reimburse an applicant for the reasonable expenses of remedial action incurred under IC 14-37-8-15. The director may make expenditures from the fund for this purpose and may establish any necessary guidelines and procedures to administer the program.

SECTION 18. IC 14-39 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

ARTICLE 39. CARBON DIOXIDE

Chapter 1. Eminent Domain for Transportation of Carbon Dioxide by Pipeline

Sec. 1. As used in this chapter, "carbon dioxide" means a fluid consisting of more than ninety percent (90%) carbon dioxide molecules compressed to a supercritical state.

Sec. 2. As used in this chapter, "carbon dioxide transmission pipeline" means the part of a pipeline in Indiana, including appurtenant facilities, property rights, and easements, that is used exclusively for the purpose of transporting carbon dioxide to a carbon management application, including sequestration, enhanced oil recovery, and deep saline injection, within or outside Indiana.

Sec. 3. Because the movement conducted for:

(1) a person's own use or account; or

(2) the use or account of another person or persons;

of carbon dioxide by pipeline in Indiana for carbon management applications can assist efforts to reduce carbon dioxide emissions from the manufacture of gas using coal and the generation of electricity, the use of carbon dioxide transmission pipelines, including their routing, construction, maintenance, and operation, is declared as a matter of legislative determination to be a public

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use and service, in the public interest, and a benefit to the welfare and people of Indiana.

Sec. 4. (a) A carbon dioxide transmission pipeline company may apply to the department for issuance of a carbon dioxide transmission pipeline certificate of authority. The department shall prescribe the form of the application, which must:

- (1) include a filing fee of one thousand dollars (\$1,000);**
- (2) be signed by a responsible officer of the company;**
- (3) include a statement verifying that the information submitted is true, accurate, and complete to the best of that responsible officer's knowledge and belief; and**
- (4) include all information necessary for the department to find the following:**

(A) That the applicant has the financial, managerial, and technical ability to construct, operate, and maintain a carbon dioxide transmission pipeline in Indiana.

(B) That the applicant has the requisite experience constructing, operating, and maintaining a carbon dioxide transmission pipeline.

(C) That the applicant has entered into a contract to transport carbon dioxide by pipeline in Indiana with:

- (i) at least one (1) producer of carbon dioxide located in Indiana; and**
- (ii) unless all of the carbon dioxide to be transported in the proposed carbon dioxide transmission pipeline is for the applicant's own use or account, at least one (1) end user of carbon dioxide.**

(D) That the applicant has provided documentation to the department showing the proposed length, diameter, and location of the proposed carbon dioxide transmission pipeline in Indiana.

(E) That the applicant will construct, operate, and maintain the proposed carbon dioxide transmission pipeline in accordance with applicable local, state, and federal law, including federal and state safety regulations and rules governing the construction, operation, and maintenance of carbon dioxide transmission pipelines, and related facilities and equipment, to ensure the safety of pipeline employees and the public.

(F) That the applicant has:

- (i) entered into an agreement with the Indiana utility regulatory commission concerning the mitigation of**

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agricultural impacts associated with the construction of the proposed carbon dioxide transmission pipeline; or
 (ii) signed a statement indicating that the applicant agrees to use, in connection with the construction of the proposed carbon dioxide transmission pipeline, the guidelines adopted under IC 8-1-22.6-8 by the pipeline safety division of the Indiana utility regulatory commission.

(b) The department shall review an application filed under subsection (a). Subject to subsection (f), if the department determines that the application is incomplete or inaccurate, or both, the department shall return the application to the applicant, informing the applicant in writing of the applicant's right to file a corrected application with the department. If the department determines that the application is complete and accurate, the department shall provide notice to the applicant of:

- (1) that determination; and
- (2) the date, time, and location of the public information meeting to be held under subsection (d).

(c) The applicant shall:

(1) upon receipt of a notice under subsection (b):

(A) place for public inspection a copy of the application in a public library located in each county in which the carbon dioxide transmission pipeline is proposed to be located; and

(B) publish notice, in the same manner that would be required if the applicant were subject to IC 5-3-1, in each county in which the carbon dioxide transmission pipeline is proposed to be located, of:

- (i) the name and address of each library in which a copy of the application is placed under clause (A); and
- (ii) the date, time, and location of the public information meeting to be held under subsection (d);

(2) provide to the department proof of publication of notice under subdivision (1)(B); and

(3) have a representative present at the public information meeting held under subsection (d).

(d) The department shall:

(1) conduct a public information meeting in the county seat of one (1) of the counties, as determined by the department, in which the proposed carbon dioxide transmission pipeline will be located; and

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(2) provide an opportunity at the meeting for members of the public to be briefed and to ask questions about the proposed carbon dioxide transmission pipeline.

(e) Not later than ninety (90) days after the public information meeting held under subsection (d), the department shall notify the applicant in writing that:

(1) the department:

(A) has made the findings described in subsection (a)(4); and

(B) has approved the application; or

(2) the department:

(A) has determined that the department is unable to make the findings described in subsection (a)(4); and

(B) has disapproved the application.

(f) The department shall process a corrected application that is filed as permitted under subsection (b) in the same manner the department processes an initially filed application under subsection (a).

(g) If the department fails to act under subsection (e) not later than ninety (90) days after the public information meeting held under subsection (d), the application is considered to be approved by the department.

(h) If:

(1) the department approves the application under subsection (e)(1); or

(2) the application is considered to be approved as described in subsection (g);

the department shall issue to the applicant a carbon dioxide transmission pipeline certificate of authority.

Sec. 5. (a) Except as provided in subsection (b), if a carbon dioxide transmission pipeline company files with the department a verified certificate stating the reasons that the designation of confidential information is necessary, the carbon dioxide transmission pipeline company may designate information that it submits in an application to the department, or in subsequent reports, as trade secret or confidential and proprietary information.

(b) Subsection (a) does not apply to information referred to in section 4(a)(4)(D) of this chapter.

(c) The department shall exercise all necessary caution to avoid public disclosure of confidential information designated under subsection (a).

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Sec. 6. A certificate of authority issued by the department under this chapter must include at least the following:

- (1) A grant of authority to construct and operate a carbon dioxide transmission pipeline as requested in the application.**
- (2) A grant of authority to use, occupy, and construct pipeline facilities in any designated public right-of-way for the construction and operation of the carbon dioxide transmission pipeline.**
- (3) A grant of authority to take and acquire possession by eminent domain of any property or interest in property for the construction, maintenance, or operation of a carbon dioxide transmission pipeline in the manner provided for the exercise of the power of eminent domain under sections 7, 8, and 9 of this chapter.**

Sec. 7. If a carbon dioxide transmission pipeline company has received a carbon dioxide transmission pipeline certificate of authority from the department under this chapter and is not able to reach an agreement with a property owner for the construction, operation, and maintenance of the carbon dioxide transmission pipeline on the owner's property, the company may proceed to condemn a right-of-way or an easement necessary or useful for:

- (1) constructing, maintaining, using, operating, and gaining access to a carbon dioxide transmission pipeline and all necessary machinery, equipment, pumping stations, appliances, and fixtures for use in connection with the carbon dioxide transmission pipeline; and**
- (2) obtaining all necessary rights of ingress and egress to construct, examine, alter, repair, maintain, operate, or remove a carbon dioxide transmission pipeline and all of its component parts.**

Sec. 8. Except as otherwise provided in this chapter, IC 32-24-1 applies to the condemnation of property under this chapter by a carbon dioxide transmission pipeline company.

Sec. 9. A carbon dioxide transmission pipeline company that exercises the authority set forth in section 7 of this chapter shall:

- (1) compensate the property owner by making a payment to the owner equal to:**
 - (A) one hundred twenty-five percent (125%) of the fair market value of the interest in the property acquired, if the right-of-way or easement involves agricultural land; or**
 - (B) one hundred fifty percent (150%) of the fair market value of the interest in the property acquired, if the**

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right-of-way or easement involves a parcel of property occupied by the owner as a residence; and

(2) pay to the property owner:

(A) any damages determined under IC 32-24-1; and

(B) any loss incurred in a trade or business;

that are attributable to the exercise of eminent domain.

Sec. 10. Not later than one hundred eighty (180) days after the completion of a carbon dioxide transmission pipeline for which the department has issued a certificate of authority under this chapter, the carbon dioxide transmission pipeline company shall provide maps and other documentation to the department showing the actual route in Indiana of the carbon dioxide transmission pipeline.

Sec. 11. A determination of the department under section 4(e)(2) of this chapter is subject to administrative review under IC 4-21.5.

Sec. 12. The department shall deposit fee revenue received under section 4(a)(1) of this chapter in the oil and gas environmental fund established by IC 14-37-10-2.

Sec. 13. This chapter expires July 1, 2021.

SECTION 19. An emergency is declared for this act.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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