

**CONFERENCE COMMITTEE REPORT  
DIGEST FOR ESB 494**

**Citations Affected:** IC 4-4-11.6.

**Synopsis:** Substitute natural gas. Conference committee report for ESB 494. Defines "2011 order", "business day", and "savings". Makes additional findings concerning substitute natural gas (SNG). Requires the Indiana finance authority to submit certain contracts and agreements to the utility regulatory commission (IURC) for approval. Specifies that if a certified appellate opinion does not affirm the 2011 order in its entirety, the IURC shall, after notice and hearing, approve, reject, or require the modification of a purchase contract if in the public interest. Specifies certain factors the IURC must consider before taking action. Requires the IURC to issue a final order within 180 business days. Provides that a party that seeks to appeal a final order shall do so through an expedited direct appeal to the Indiana supreme court under rules to be adopted by the Indiana supreme court. Authorizes the IURC to adopt rules, including rules establishing filing deadlines. Requires the IURC to study the sales price of natural gas and report the study results in an electronic format to the general assembly by November 30, 2013. **(This conference committee report deletes and replaces the contents of ESB 494 as reprinted April 5, 2013, with ESB 510 as printed April 5, 2013, with the following changes: (1) Changes all effective dates to upon passage. (2) Defines "2011 order". (3) Deletes the amended definition of "purchase contract". (4) Requires the Indiana finance authority to submit the following to the IURC for approval: (A) A purchase contract entered into after December 31, 2012. (B) A purchase contract that was originally submitted to the IURC before January 1, 2011, and subsequently amended to amend the definition of retail end use customers. (C) Any amendments made to a purchase contract, regardless of when the purchase contract is entered into. (D) Certain other agreements. (Current law requires only a final purchase contract to be submitted for approval.) (5) Specifies that if a certified appellate opinion does not affirm the 2011 order in its entirety, the IURC shall, after notice and hearing, approve, reject, or require the modification of (rather than approve, reject, or modify) a purchase contract if in the public interest. (6) Requires the IURC to study the sales price of natural gas and report the study results in an electronic format to the general assembly (rather than the regulatory flexibility committee) by November 30, 2013.)**

**Effective:** Upon passage.



Adopted      Rejected

## CONFERENCE COMMITTEE REPORT

**MR. SPEAKER:**

*Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 494 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1           Delete everything after the enacting clause and insert the following:
- 2           SECTION 1. IC 4-4-11.6-0.5 IS ADDED TO THE INDIANA
- 3           CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 4           [EFFECTIVE UPON PASSAGE]: **Sec. 0.5. As used in this chapter,**
- 5           **"2011 order" refers to the order of the commission issued on**
- 6           **November 22, 2011, approving a purchase contract entered into on**
- 7           **January 14, 2011.**
- 8           SECTION 2. IC 4-4-11.6-2.5 IS ADDED TO THE INDIANA
- 9           CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 10          [EFFECTIVE UPON PASSAGE]: **Sec. 2.5. As used in this chapter,**
- 11          **"business day" means a day other than a Saturday, Sunday, or**
- 12          **legal holiday (as defined in IC 1-1-9-1).**
- 13          SECTION 3. IC 4-4-11.6-10.5 IS ADDED TO THE INDIANA
- 14          CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 15          [EFFECTIVE UPON PASSAGE]: **Sec. 10.5. As used in this chapter,**
- 16          **a "savings" occurs, with respect to a purchase contract subject to**
- 17          **review by the commission under section 14.5 of this chapter, when**
- 18          **the purchase price of SNG paid by the authority under the**
- 19          **purchase contract is less than the average market price of natural**
- 20          **gas during intervals determined by the commission as set forth in**
- 21          **section 14.5(b)(4) of this chapter.**
- 22          SECTION 4. IC 4-4-11.6-12, AS ADDED BY P.L.2-2009,

1 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
2 UPON PASSAGE]: Sec. 12. (a) The general assembly makes the  
3 following findings:

4 (1) The furnishing of reliable supplies of reasonably priced natural  
5 gas for sales to retail customers is essential for the well being of  
6 the people of Indiana. Natural gas prices are volatile, and energy  
7 utilities have been unable to mitigate completely the effects of the  
8 volatility.

9 (2) Long term contracts for the purchase of SNG between the  
10 authority and SNG producers will enhance the receipt of federal  
11 incentives for the development, construction, and financing of  
12 new coal gasification facilities in Indiana.

13 (3) The authority's participation in and oversight of the purchase,  
14 sale, and delivery of SNG to retail end use customers is critical to  
15 obtain low cost financing for the construction of new coal  
16 gasification facilities.

17 (4) Obtaining low cost financing for the construction of new coal  
18 gasification facilities is necessary to allow retail end use  
19 customers to enjoy the benefits of a reliable, reasonably priced,  
20 and long term energy supply.

21 **(b) In addition to the findings set forth in subsection (a), the**  
22 **general assembly makes the following findings:**

23 **(1) With respect to pending litigation concerning contracts**  
24 **entered into under this chapter, the general assembly defers**  
25 **to the constitutional role and independence of the judicial**  
26 **branch.**

27 **(2) The general assembly recognizes the expertise and**  
28 **independence of the commission in matters concerning**  
29 **Indiana's natural gas ratepayers.**

30 **(3) Legislative power includes the power to amend and repeal**  
31 **existing laws. The legislature has no power to enact a law or**  
32 **to make a contract or arrangement that in any way**  
33 **surrenders or abridges this legislative power. The act of one**  
34 **(1) legislature is not binding upon a future legislature.**

35 **(4) An action by a general assembly, including the enactment**  
36 **of legislation, to protect the public interest is a proper exercise**  
37 **of the police power and is not intended to impair a long term**  
38 **contract for the purchase of SNG.**

39 **(5) New discoveries of natural gas supplies and development**  
40 **of advanced drilling techniques may affect the determination**  
41 **of whether a long term contract for the purchase of SNG is in**  
42 **the public interest.**

43 **(6) Realizing savings at intervals during the term of a contract**  
44 **for the purchase of SNG protects retail end use customers and**  
45 **serves the public interest.**

46 SECTION 5. IC 4-4-11.6-14, AS ADDED BY P.L.2-2009,  
47 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
48 UPON PASSAGE]: Sec. 14. (a) The authority, either directly or as an  
49 assignee of an energy utility, may enter into purchase contracts for the  
50 purchase of SNG from coal gasification facilities.

51 (b) The authority shall submit a ~~final purchase contract~~ **the**

1 following to the commission for approval:

2 (1) The following:

3 (A) A purchase contract that is:

- 4 (i) originally submitted to the commission for approval  
5 before January 1, 2012; and  
6 (ii) subsequently amended, supplemented with addenda  
7 or agreements, or otherwise modified to amend the  
8 definition of retail end use customers in the purchase  
9 contract.

10 (B) A purchase contract entered into after December 31,  
11 2012.

12 (2) Any amendments, addenda, or other modifications made  
13 or added at any time to a purchase contract, regardless of  
14 when the purchase contract is entered into.

15 (3) Any other agreements entered into between the authority  
16 and a producer of SNG.

17 SECTION 6. IC 4-4-11.6-14.5 IS ADDED TO THE INDIANA  
18 CODE AS A NEW SECTION TO READ AS FOLLOWS  
19 [EFFECTIVE UPON PASSAGE]: Sec. 14.5. (a) This section applies  
20 if an opinion by a court of appeal that does not affirm the 2011  
21 order in its entirety is certified under Rule 65 of the Indiana Rules  
22 of Appellate Procedure.

23 (b) After notice and a hearing, the commission may approve,  
24 reject, or, before approval, require modification of a purchase  
25 contract submitted to the commission under section 14(b)(1) of this  
26 chapter if the commission finds that such action is in the public  
27 interest. The commission shall consider the following before finding  
28 that an action under this subsection is in the public interest:

29 (1) Whether the purchase contract is structured in a way that  
30 lessens the impact of any price volatility in the natural gas  
31 market on retail end use customers.

32 (2) Whether the assumptions underlying the model used to  
33 calculate the purchase price of SNG under the purchase  
34 contract, including assumptions about the future price of  
35 natural gas and coal and the value of future byproducts of the  
36 coal gasification facility, adequately apportion financial risk  
37 between the SNG producer and retail end use customers.

38 (3) The findings of any study conducted by the commission on  
39 the natural gas market and reported to the general assembly.

40 (4) Whether a purchase contract allows retail end use  
41 customers to realize savings during the term of the purchase  
42 contract at intervals established by the commission.

43 (5) Any other factors the commission considers necessary.

44 The commission shall issue a final order not more than one  
45 hundred eighty (180) business days after the date on which the  
46 authority submits the purchase contract to the commission under  
47 section 14(b)(1) of this chapter.

48 (c) A party that seeks to appeal an order issued under subsection  
49 (b) shall do so only through an expedited direct appeal to the  
50 Indiana supreme court under rules to be adopted by the Indiana  
51 supreme court.

1           **(d) The commission may adopt rules under IC 4-22-2 to carry**  
2 **out the requirements of this section. A rule adopted under this**  
3 **subsection must establish filing and other procedural deadlines for**  
4 **all parties to a hearing under subsection (b).**

5           **SECTION 7. [EFFECTIVE UPON PASSAGE] (a) Not later than**  
6 **November 30, 2013, the Indiana utility regulatory commission**  
7 **created by IC 8-1-1-2 shall:**

8           **(1) conduct a study of the natural gas market, including:**

9           **(A) natural gas prices on both the open and captive**  
10 **markets; and**

11           **(B) the effect of the availability of substitute natural gas**  
12 **and shale gas on natural gas prices; and**

13           **(2) report the study results in an electronic format under**  
14 **IC 5-14-6 to the general assembly.**

15           **(b) This SECTION expires December 31, 2013.**

16           **SECTION 8. An emergency is declared for this act.**

(Reference is to ESB 494 as reprinted April 5, 2013.)

**Conference Committee Report**  
**on**  
**Engrossed Senate Bill 494**

**S**igned by:

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Senator Eckerty  
Chairperson

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Representative Crouch

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Senator Hershman

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Representative Koch

**Senate Conferees**

**House Conferees**