

**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.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House 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
5 natural gas for sales to retail customers is essential for the well
6 being of the people of Indiana. Natural gas prices are volatile, and
7 energy utilities have been unable to mitigate completely the
8 effects of the 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**
 28 **finding 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**
 49 **subsection (b) shall do so only through an expedited direct appeal**
 50 **to the Indiana supreme court under rules to be adopted by the**
 51 **Indiana 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

Signed by:

Senator Eckerty
Chairperson

Representative Crouch

Senator Hershman

Representative Koch

Senate Conferees

House Conferees