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**TITLE 170 INDIANA UTILITY REGULATORY COMMISSION**

Emergency Rule  
LSA Document #23-500

**DIGEST**

Adds [170 IAC 4-11](#) regarding requirements for certification under [IC 8-1-8.5](#) for the construction, purchase, or lease of small modular nuclear reactors by a public utility. Effective June 30, 2023.

**[170 IAC 4-11](#)**

SECTION 1. [170 IAC 4-11](#) IS ADDED TO READ AS FOLLOWS:

**Rule 11. Certification Requirements for the Construction, Purchase, or Lease of Small Modular Nuclear Reactors by a Public Utility**

**[170 IAC 4-11-1](#) Policy and scope**

Authority: [IC 8-1-1-3](#); [IC 8-1-8.5-12.1](#)

Affected: [IC 8-1-8.5-12.1](#); [IC 8-1-8.8](#)

Sec. 1. This rule is intended to establish procedures and guidelines for a public utility's construction, purchase, or lease of small modular nuclear reactors:

- (1) in Indiana for the generation of electricity to be directly or indirectly used to furnish public utility service to Indiana customers; or
- (2) at the site of a nuclear energy production or generating facility that supplies electricity to Indiana retail customers on July 1, 2011.

(Indiana Utility Regulatory Commission; [170 IAC 4-11-1](#); emergency rule filed Jun 15, 2023, 10:24 a.m.: [20230628-IR-170230500ERA](#))

**[170 IAC 4-11-2](#) Applicability under [IC 8-1-8.5-12.1](#)**

Authority: [IC 8-1-1-3](#); [IC 8-1-8.5-12.1](#)

Affected: [IC 8-1-8.5-1](#); [IC 8-1-8.5-12.1](#); [IC 8-1-8.8](#)

Sec. 2. This rule applies to any public utility, as defined under [IC 8-1-8.5-1\(a\)](#), that petitions the commission for approval of the construction, purchase, or lease of a small modular nuclear reactor to provide utility service to Indiana customers.

(Indiana Utility Regulatory Commission; [170 IAC 4-11-2](#); emergency rule filed Jun 15, 2023, 10:24 a.m.: [20230628-IR-170230500ERA](#))

**[170 IAC 4-11-3](#) No change to other commission processes**

Authority: [IC 8-1-1-3](#); [IC 8-1-8.5-12.1](#)

Affected: [IC 8-1-8.5-12.1](#); [IC 8-1-8.8](#)

Sec. 3. This rule does not replace other commission requirements, including, but not limited to:

- (1) a proceeding requesting a certificate of public convenience and necessity; and
- (2) the commission's rule [170 IAC 4-7](#) regarding integrated resource planning.

(Indiana Utility Regulatory Commission; [170 IAC 4-11-3](#); emergency rule filed Jun 15, 2023, 10:24 a.m.: [20230628-IR-170230500ERA](#))

**[170 IAC 4-11-4](#) Definitions**

Authority: [IC 8-1-1-3](#); [IC 8-1-8.5-12.1](#)

Affected: [IC 8-1-1.1](#); [IC 8-1-8.5](#); [IC 8-1-8.8](#); [IC 13-11-2-102](#); [IC 13-11-2-216](#)

Sec. 4. (a) The definitions in [IC 8-1-8.5-12.1](#) and this section apply throughout this rule.

(b) "Commission" means the Indiana utility regulatory commission.

(c) "CPCN" means a certificate of public convenience and necessity, as required under [IC 8-1-8.5-2](#).

(d) "High level radioactive waste" has the same definition as in [IC 13-11-2-102](#).

(e) "NRC" means the United States Nuclear Regulatory Commission.

(f) "OUCC" means the Indiana office of utility consumer counselor established under [IC 8-1-1.1](#).

(g) "Public utility" has the same definition as in [IC 8-1-8.5-1\(a\)](#).

(h) "SMR" means a small modular nuclear reactor as defined in [IC 8-1-8.5-12.1\(a\)](#).

(i) "Spent nuclear fuel" has the same definition as in [IC 13-11-2-216](#).

*(Indiana Utility Regulatory Commission; [170 IAC 4-11-4](#); emergency rule filed Jun 15, 2023, 10:24 a.m.: [20230628-IR-170230500ERA](#))*

#### [170 IAC 4-11-5](#) Certificate and additional evidence required

Authority: [IC 8-1-1-3](#); [IC 8-1-8.5-12.1](#)

Affected: [IC 8-1-8.5](#)

Sec. 5. (a) A public utility that seeks to construct, purchase, lease, or otherwise own or operate an SMR must first obtain a CPCN from the commission pursuant to [IC 8-1-8.5](#).

(b) As part of its case-in-chief and in addition to the evidence required to support the CPCN factors listed in [IC 8-1-8.5-4](#) and [IC 8-1-8.5-5](#), the public utility must provide evidence regarding the following:

(1) Whether, and to what extent, the one (1) or more SMRs proposed by the public utility will replace a loss of generating capacity in the public utility's portfolio resulting from the retirement or planned retirement of one (1) or more of the public utility's existing electric generating facilities that:

(A) are located in Indiana; and

(B) use coal or natural gas as a fuel source;

(2) Whether one (1) or more of the SMRs that will replace an existing facility will be located on the same site as or near the existing facility and, if so, potential opportunities for the public utility to:

(A) make use of any land and existing infrastructure or facilities already owned or under the control of the public utility; or

(B) create new employment opportunities for workers who have been, or would be, displaced as a result of the retirement of the existing facility; and

(3) Its plan to apply for all licenses or permits to construct or operate the proposed SMR as may be required by:

(A) the NRC;

(B) the Indiana department of environmental management;

(C) any other relevant state or federal regulatory agency with jurisdiction over the construction or operation of nuclear generating facilities; or

(D) the locality in which the proposed SMR is planned.

(4) Its plan for education and community outreach regarding the proposed SMR.

(5) Additional guidelines that may be provided in a general administrative order issued by the commission.

(c) The commission may grant a CPCN under circumstances and for locations other than those described in subdivisions (b)(1) and (2) [*sic*, (b)(2)].

(Indiana Utility Regulatory Commission; [170 IAC 4-11-5](#); emergency rule filed Jun 15, 2023, 10:24 a.m.: [20230628-IR-170230500ERA](#))

#### **[170 IAC 4-11-6](#) Reports to and from NRC**

Authority: [IC 8-1-1-3](#); [IC 8-1-8.5-12.1](#)

Affected: [IC 8-1-8.5-12.1](#)

Sec. 6. (a) The owner or operator of a proposed or existing SMR shall provide to the commission all docket numbers assigned by the NRC regarding the proposed or existing SMR within 30 days of the docket number being assigned, thus allowing the commission and its staff timely access, in accordance with applicable federal law and regulations, to any:

- (1) reports;
- (2) notices of violations; or
- (3) other notifications;

sent to or received from the NRC by or to the owner or operator of a proposed or existing SMR.

(b) To the extent that 10 CFR Part 2 requires documents to be served upon state officials, those documents shall also be provided electronically to the commission either by the NRC or the owner or operator of a proposed SMR, as applicable.

(c) Notices of violation received by the owner of *[sic, or]* operator of a proposed or existing SMR shall be served upon the commission within fifteen (15) days of receipt of the notice.

(d) If the owner or operator of a proposed or existing SMR submits to the commission a:

- (1) report;
- (2) notice of violation; or
- (3) other notification;

containing information that is considered confidential or exempt from public access and disclosure under state or federal law, the owner or operator of a proposed SMR shall submit the information according to the commission's rules, specifically including [170 IAC 1-1.1-4](#).

(e) To the extent that the commission or its staff access, or seek to access, confidential documents in an NRC docket number, they shall comply with federal laws and regulations regarding confidentiality and maintain the confidentiality of such documents for as long as the confidentiality restrictions under federal law or regulations apply.

(Indiana Utility Regulatory Commission; [170 IAC 4-11-6](#); emergency rule filed Jun 15, 2023, 10:24 a.m.: [20230628-IR-170230500ERA](#))

#### **[170 IAC 4-11-7](#) Storage of SMR spent nuclear fuel or radioactive waste**

Authority: [IC 8-1-1-3](#); [IC 8-1-8.5-12.1](#)

Affected: [IC 8-1-8.5-12.1](#)

Sec. 7. Any person that owns or operates an SMR in Indiana may not store:

- (1) spent nuclear fuel; or
- (2) high level radioactive waste;

from the SMR on the site of the SMR without first meeting all applicable requirements of the NRC.

(Indiana Utility Regulatory Commission; [170 IAC 4-11-7](#); emergency rule filed Jun 15, 2023, 10:24 a.m.: [20230628-IR-170230500ERA](#))

LSA Document #23-500

Filed with Publisher: June 15, 2023, 10:24 a.m.

Posted: 06/28/2023 by Legislative Services Agency  
An [html](#) version of this document.