

**Regulatory Analysis**  
LSA Document #24-91**I. Description of Rule**

This rule readopts and amends [170 IAC 4-11](#), which sets requirements for certification under [IC 8-1-8.5-12.1](#) for the construction, purchase, or lease of small modular nuclear reactors by a public utility.

**a. History and Background of the Rule** – This proposed rule is intended to replace an emergency rule that previously had an indefinite term. Indiana Code chapter 8-1-8.5-12.1, regarding small modular nuclear reactors ("SMRs"), was enacted in 2022 and amended in 2023, and required the Indiana Utility Regulatory Commission ("IURC" or "Commission") to adopt rules to implement the section. Indiana Code section 8-1-8.5-12.1(d) allowed the Commission to adopt emergency rules and provided that such an emergency rule "expires on the date on which a rule that supersedes the emergency rule is adopted." Commission staff consulted with the Indiana Department of Environmental Management ("IDEM") in the development of a strawman draft proposed rule and the final proposed rule, as well as in reviewing the comments received in writing and in meetings with stakeholders. Following two written comment periods, the Commission adopted an emergency rule, [170 IAC 4-11](#), LSA #23-500, on June 14, 2023, with an effective date of June 30, 2023. The documents and comments regarding this rulemaking are available on the IURC website at: <https://www.in.gov/iurc/rulemakings/rulemakings-pending-and-effective/rm-22-05-regarding-170-iac-4-11/>.

With the passage of HEA 1623, the SMR emergency rule would have expired on October 1, 2023, unless placed on a Governor's list, pursuant to [IC 4-22-2.3](#)(d). LSA #23-500 was placed on the Governor's list and, therefore, expires on October 1, 2024. The promulgation of this proposed rule allows [170 IAC 4-11](#) to remain in place as a fully adopted rule with amendments suggested by the Legislative Services Agency ("LSA").

**b. Scope of the Rule** – This rule readopts and amends [170 IAC 4-11](#). All of the amended language was suggested or required by LSA, so that the rule is more fully compliant with the Administrative Rules Drafting Manual.

**c. Statement of Need** – [IC 8-1-8.5-12.1](#) establishes that SMRs are a possible option for electric generation in the State of Indiana and sets reasonable regulatory expectations for the certification of a proposed SMR facility through the Commission's already well-established process for certificates of public convenience and necessity for electric generation in Indiana. A number of prototypes of SMRs are under development. [170 IAC 4-11](#) needs to be readopted so that developers of, and investors in, SMRs will know the regulatory requirements for SMRs to be a part of Indiana's overall electric generation mix.

**d. Statutory Authority for the Proposed Rule** – The statutory authority for this rulemaking falls under the Commission's general authority to implement rules, [IC 8-1-1-3](#)(g), as well as specific authority granted in [IC 8-1-8.5-12.1](#).

**e. Fees, Fines, and Civil Penalties** – This rulemaking does not add or increase any fees, fines, or civil penalties and so is not subject to the additional steps in [IC 4-22-2-19.6](#).

**II. Fiscal Impact Analysis****a. Anticipated Effective Date of the Rule** –

- The Commission anticipates receiving approval from the Office of Management and Budget and State Budget Agency within forty-five (45) days.
- Assume fifteen (15) days for the Commission to approve the proposed rule.
- Assume thirty (30) days for the first public comment period and public hearing.
- Assume fifteen (15) days for Commission staff to review any comments received.
- Assume thirty (30) days for the second public comment period and public hearing, if needed.
- Assume thirty (30) days for staff to review public comments and assemble the rule packet.
- Assume fifteen (15) days for the Commission to approve the final rule.
- The Attorney General has forty-five (45) days to review the packet.
- The Governor's office has up to thirty (30) days to review the packet.
- The rule is effective thirty (30) days from the date the Legislative Services Agency accepts the rule for filing.

Therefore, based on the facts and timeline above, the Commission anticipates the rule could be fully promulgated and effective within approximately 285 days, or mid-September 2024, and before October 1, 2024.

**b. Estimated Fiscal Impact on State and Local Government** – This rule will cause no fiscal impact on state and local government. The Commission is already required to review CPCN proceedings under [IC 8-1-8.5](#); this rule makes clear that SMRs are an allowed generation resource type.

**c. Sources of Expenditures or Revenues Affected by the Rule** – This rule will have no impact on expenditures or revenues of the Commission.

### III. Impacted Parties

The Commission estimates the following will be affected by the rule: Indiana public utilities that seek certification of an SMR and their customers and ratepayers.

### IV. Changes in Proposed Rule

The proposed rule readopts and makes the following non-substantive amendments to [170 IAC 4-11](#), so that the rule to be more fully compliant with the Administrative Rules Drafting Manual.

|                                |   |
|--------------------------------|---|
| <a href="#">170 IAC 4-11-2</a> | Replaces "any" with "a"                                   |
| <a href="#">170 IAC 4-11-3</a> | Adds "by an electric utility"                             |
| <a href="#">170 IAC 4-11-4</a> | Replaces "same definition as" with "meaning as set forth" |
| <a href="#">170 IAC 4-11-5</a> | Replaces "(b)(1) and (2)" with "(b)(1) and (b)(2)."       |
| <a href="#">170 IAC 4-11-6</a> | Adds "thirty" before "(30)" and "(15)" after fifteen      |
| <a href="#">170 IAC 4-11-7</a> | Replaces "Any" with "A"                                   |

### V. Benefit Analysis

**a. Estimate of Primary and Direct Benefits of the Rule** – The primary and direct benefit of the rule is increased regulatory certainty regarding SMRs as possible electric generation resources for Indiana public utilities.

**b. Estimate of Secondary or Indirect Benefits of the Rule** – Secondary or indirect benefits of the rule are unknown at this time, as SMRs are still under development.

**c. Estimate of Any Cost Savings to Regulated Industries** – The proposed rule uses the existing federal regulations, processes, and procedures of the United States Nuclear Regulatory Commission ("NRC") to the maximum extent possible.

### VI. Cost Analysis

**a. Estimate of Compliance Costs for Regulated Entities** – The proposed rule does not impose on regulated entities costs that are not already required under federal law and regulations or existing Indiana statutes and IURC rules. The only requirement in the proposed rule that is in addition to existing federal requirements is that notices of violations be provided to the Commission electronically within fifteen (15) days; all other notices, reports, and other documents can be provided pursuant to the federal law and regulations and NRC processes and procedures. SMRs are a developing technology and, as a result, exact numbers regarding costs and benefits of the proposed rule are not known at this time.

**c. The fees, fines, and civil penalties analysis required by [IC 4-22-2-19.6](#)** – Not applicable.

### VII. Sources of Information

The Commission staff relied on its own analysis and the information provided in written comments and stakeholder meetings. SMRs are a developing technology and, as a result, exact numbers regarding costs and benefits of the proposed rule are not known at this time.

**a. Independent Verifications or Studies** – None

**b. Sources Relied Upon in Determining and Calculating Costs and Benefits** – The Commission staff relied on its own analysis and the information provided in written comments and stakeholder meetings, as well as its knowledge and experience, for costs and benefits.

**VIII. Regulatory Analysis**

This proposed rule readopts and amends the existing rule, so that: (1) the rule does not expire on October 1, 2024, allowing continued certainty in the regulatory requirements related to SMRs as an option for Indiana public utilities; and (2) the rule more fully complies with the Administrative Rules Drafting Manual.

*Notice of First Public Comment Period with Proposed Rule:* [20240320-IR-170240091FNA](#)

*Notice of Determination Received:* February 28, 2024

*Posted:* 03/20/2024 by Legislative Services Agency

An [html](#) version of this document.