

## **IC 8-1-2.5**

### Chapter 2.5. Alternative Utility Regulation

#### **IC 8-1-2.5-1**

##### **Legislative findings**

Sec. 1. The Indiana general assembly hereby declares the following:

- (1) That the provision of safe, adequate, efficient, and economical retail energy services is a continuing goal of the commission in the exercise of its jurisdiction.
- (2) That competition is increasing in the provision of energy services in Indiana and the United States.
- (3) That traditional commission regulatory policies and practices, and certain existing statutes are not adequately designed to deal with an increasingly competitive environment for energy services and that alternatives to traditional regulatory policies and practices may be less costly.
- (4) That an environment in which Indiana consumers will have available state-of-the-art energy services at economical and reasonable costs will be furthered by flexibility in the regulation of energy services.
- (5) That flexibility in the regulation of energy services providers is essential to the well-being of the state, its economy, and its citizens.
- (6) That the public interest requires the commission to be authorized to issue orders and to formulate and adopt rules and policies that will permit the commission in the exercise of its expertise to flexibly regulate and control the provision of energy services to the public in an increasingly competitive environment, giving due regard to the interests of consumers and the public, and to the continued availability of safe, adequate, efficient, and economical energy service.

*As added by P.L.108-1995, SEC.3.*

#### **IC 8-1-2.5-2**

##### **"Energy utility" defined**

Sec. 2. As used in this chapter, "energy utility" means a public utility or a municipally owned utility within the meaning of IC 8-1-2-1, or a local district corporation or a general district corporation within the meaning of IC 8-1-13-23, engaged in the production, transmission, delivery, or furnishing of heat, light, or power.

*As added by P.L.108-1995, SEC.3.*

#### **IC 8-1-2.5-3**

##### **"Retail energy service" defined**

Sec. 3. As used in this chapter, "retail energy service" means energy service furnished by an energy utility to a customer for ultimate consumption, including energy service by a general district corporation to a local district corporation within the meaning of

IC 8-1-13-23. The term does not include wholesale energy service furnished by an energy utility for resale (other than energy service by a general district corporation to a local district corporation) to another energy utility, a cooperatively owned electric utility, or a municipally owned electric utility.

*As added by P.L.108-1995, SEC.3.*

#### **IC 8-1-2.5-4**

##### **Petition from energy utility requesting relief**

Sec. 4. Section 5 or 6, or both, of this chapter do not apply to an energy utility unless the energy utility voluntarily submits a verified petition to the commission stating the energy utility's election to become subject to such section or sections. A request for relief by an energy utility under section 5 of this chapter shall be limited to jurisdiction over the energy utility or its retail energy services, including rates, charges, or both. A request for relief by an energy utility under section 6 of this chapter shall be limited to approval of its energy services or the establishment of its rates and charges, or both.

*As added by P.L.108-1995, SEC.3.*

#### **IC 8-1-2.5-5**

##### **Commission's order declining jurisdiction**

Sec. 5. (a) Notwithstanding any other law or rule adopted by the commission, except those cited, or rules adopted that pertain to those cited, in section 11 of this chapter, on the request of an energy utility electing to become subject to this section, the commission may enter an order, after notice and hearing, that the public interest requires the commission to commence an orderly process to decline to exercise, in whole or in part, its jurisdiction over either the energy utility or the retail energy service of the energy utility, or both.

(b) In determining whether the public interest will be served, the commission shall consider the following:

- (1) Whether technological or operating conditions, competitive forces, or the extent of regulation by other state or federal regulatory bodies render the exercise, in whole or in part, of jurisdiction by the commission unnecessary or wasteful.
- (2) Whether the commission's declining to exercise, in whole or in part, its jurisdiction will be beneficial for the energy utility, the energy utility's customers, or the state.
- (3) Whether the commission's declining to exercise, in whole or in part, its jurisdiction will promote energy utility efficiency.
- (4) Whether the exercise of commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment.

*As added by P.L.108-1995, SEC.3.*

#### **IC 8-1-2.5-6**

##### **Powers of commission in approving rates and services; alternative regulatory plan**

Sec. 6. (a) Notwithstanding any other law or rule adopted by the commission, except those cited, or rules adopted that pertain to those cited, in section 11 of this chapter, in approving retail energy services or establishing just and reasonable rates and charges, or both for an energy utility electing to become subject to this section, the commission may do the following:

(1) Adopt alternative regulatory practices, procedures, and mechanisms, and establish rates and charges that:

(A) are in the public interest as determined by consideration of the factors described in section 5 of this chapter; and

(B) enhance or maintain the value of the energy utility's retail energy services or property;

including practices, procedures, and mechanisms focusing on the price, quality, reliability, and efficiency of the service provided by the energy utility.

(2) Establish rates and charges based on market or average prices, price caps, index based prices, and prices that:

(A) use performance based rewards or penalties, either related to or unrelated to the energy utility's return or property; and

(B) are designed to promote efficiency in the rendering of retail energy services.

(b) This section:

(1) does not give a party to a collective bargaining agreement any greater rights under the collective bargaining agreement than the party had before January 1, 1995;

(2) does not give the commission the authority to order a party to a collective bargaining agreement to cancel, terminate, amend or otherwise modify the collective bargaining agreement; and

(3) may not be implemented by the commission in a way that would give a party to a collective bargaining agreement any greater rights under the collective bargaining agreement than the party had before January 1, 1995.

(c) An energy utility electing to become subject to this section shall file with the commission an alternative regulatory plan proposing how the commission will approve retail energy services or just and reasonable rates and charges for the energy utility's retail energy service.

(d) The energy utility shall publish a notice of the filing of a petition under this section in a newspaper of general circulation published in any county in which the energy utility provides retail energy service.

(e) After notice and hearing, the commission may approve, reject, or modify the energy utility's proposed plan if the commission finds that such action is consistent with the public interest. However, the commission may not order that material modifications changing the nature, scope or duration of the plan take effect without the agreement of the energy utility. The energy utility shall have twenty (20) days after the date of a commission order modifying the energy

utility's proposed plan within which to, in writing, accept or reject the commission's order.

(f) An energy utility may withdraw a plan proposed under this section without prejudice before the commission's approval of the plan, or the energy utility may timely reject a commission order modifying its proposed plan under this section without prejudice. However, the energy utility may not file a petition for comparable relief under this section for a period of twelve (12) months after the date of the energy utility's withdrawal of its proposed plan or the date of the energy utility's rejection of the commission's order, whichever is applicable.

*As added by P.L.108-1995, SEC.3.*

### **IC 8-1-2.5-7**

#### **Termination of plan; exercise of jurisdiction over energy utility**

Sec. 7. The commission may:

- (1) on its own motion;
- (2) at the request of the utility consumer counselor;
- (3) at the request of the affected energy utility; or
- (4) at the request of any class satisfying the standing requirements of IC 8-1-2-54;

enter an order notifying an energy utility subject to an alternative regulatory plan or over which jurisdiction was either limited or not exercised under this chapter that the commission will proceed to terminate the plan, or any part thereof, or exercise jurisdiction over the energy utility or its retail energy service to the extent the public interest requires, unless a formal request for a hearing is filed by the energy utility with the commission not more than fifteen (15) days after the date of the order. In the event that such a formal request is timely filed, the commission shall hold a hearing concerning such matters and issue its order thereon based upon the evidence introduced at the hearing. However, if the commission has declined jurisdiction in whole or in part or approved an alternative regulatory plan under this chapter for a fixed term of years, such jurisdiction may be reimposed on the plan, or any part of the plan, may be terminated before expiration of the term only if material and irreparable harm to the energy utility, the energy utility's customers, the state, or the safety of the energy utility's workforce has been established.

*As added by P.L.108-1995, SEC.3.*

### **IC 8-1-2.5-8**

#### **Commencement of proceedings**

Sec. 8. A proceeding before the commission under section 5 or 6, or both, of this chapter may be commenced only by an energy utility that elects to become subject to the applicable section.

*As added by P.L.108-1995, SEC.3.*

### **IC 8-1-2.5-9**

#### **Regulatory flexibility committee**

Sec. 9. (a) A regulatory flexibility committee established under IC 8-1-2.6-4 to monitor changes in the telephone industry shall also serve to monitor changes and competition in the energy utility industry.

(b) The commission shall before August 15 of each year prepare for presentation to the regulatory flexibility committee an analysis of the effects of competition or changes in the energy utility industry on service and on the pricing of all energy utility services under the jurisdiction of the commission.

(c) In addition to reviewing the commission report prepared under subsection (b), the regulatory flexibility committee shall also issue a report and recommendations to the legislative council before November 1 of each year that are based on a review of the following issues:

- (1) The effects of competition or changes in the energy utility industry and the impact of the competition or changes on the residential rates.
- (2) The status of modernization of the energy utility facilities in Indiana and the incentives required to further enhance this infrastructure.
- (3) The effects on economic development of this modernization.
- (4) The traditional method of regulating energy utilities and the method's effectiveness.
- (5) The economic and social effectiveness of traditional energy utility service pricing.
- (6) The effects of legislation enacted by the United States Congress.
- (7) All other energy utility issues the committee considers appropriate; however, it is not the intent of this section to provide for the review of the statutes cited in section 11 of this chapter.

The report and recommendations issued under this subsection to the legislative council must be in an electronic format under IC 5-14-6.

(d) This section:

- (1) does not give a party to a collective bargaining agreement any greater rights under the agreement than the party had before January 1, 1995;
- (2) does not give the committee the authority to order a party to a collective bargaining agreement to cancel, terminate, amend or otherwise modify the collective bargaining agreement; and
- (3) may not be implemented by the committee in a way that would give a party to a collective bargaining agreement any greater rights under the agreement than the party had before January 1, 1995.

(e) The regulatory flexibility committee shall meet on the call of the co-chairs to study energy utility issues described in subsection (c). The committee shall, with the approval of the commission, retain independent consultants the committee considers appropriate to assist the committee in the review and study. The expenses for the consultants shall be paid with funds from the public utility fees

assessed under IC 8-1-6.

(f) The legislative services agency shall provide staff support to the committee.

(g) Each member of the committee is entitled to receive the same per diem, mileage, and travel allowances paid to individuals who serve as legislative members of interim study committees established by the legislative council.

*As added by P.L.108-1995, SEC.3. Amended by P.L.78-1997, SEC.2; P.L.28-2004, SEC.70.*

#### **IC 8-1-2.5-10**

##### **Implementation of chapter**

Sec. 10. The commission may also adopt rules under IC 4-22-2 to implement this chapter, but the absence of such rules does not affect the commission's authority under this chapter.

*As added by P.L.108-1995, SEC.3.*

#### **IC 8-1-2.5-11**

##### **Limitations on chapter's applicability**

Sec. 11. Nothing in this chapter affects the continuing applicability of IC 8-1-2-87, IC 8-1-2-87.5, IC 8-1-2.3, or IC 8-1-3.

*As added by P.L.108-1995, SEC.3.*

#### **IC 8-1-2.5-12**

##### **Wages of independent contractor**

Sec. 12. For purposes of IC 8-1-2.5, wages paid to an independent contractor of an energy utility for construction or maintenance performed for an energy utility shall not be found to be excessive merely because the wages are those normally paid for work of the same type and quality in the labor market in which the work for the energy utility is being performed.

*As added by P.L.108-1995, SEC.3.*