

## **IC 8-1-8.5**

### Chapter 8.5. Utility Powerplant Construction

#### **IC 8-1-8.5-1**

##### **Definitions**

Sec. 1. (a) As used in this chapter, "public utility" means a:

- (1) public, municipally owned, or cooperatively owned utility;
- or
- (2) joint agency created under IC 8-1-2.2.

(b) As used in this chapter, "public utility service" means the service rendered by a public utility.

*As added by P.L.43-1983, SEC.12. Amended by P.L.23-1988, SEC.40; P.L.54-1992, SEC.4.*

#### **IC 8-1-8.5-2**

##### **Necessity for certification**

Sec. 2. Except as provided in section 7 of this chapter, a public utility may not begin the construction, purchase, or lease of any steam, water, or other facility for the generation of electricity to be directly or indirectly used for the furnishing of public utility service, even though the facility is for furnishing the service already being rendered, without first obtaining from the commission a certificate that public convenience and necessity requires, or will require, such construction, purchase, or lease.

*As added by P.L.43-1983, SEC.12. Amended by P.L.88-1985, SEC.6; P.L.11-1987, SEC.14.*

#### **IC 8-1-8.5-3**

##### **Analysis of needs; plans; hearings; report**

Sec. 3. (a) The commission shall develop, publicize, and keep current an analysis of the long-range needs for expansion of facilities for the generation of electricity.

(b) This analysis must include an estimate of:

- (1) the probable future growth of the use of electricity;
- (2) the probable needed generating reserves;
- (3) in the judgment of the commission, the optimal extent, size, mix, and general location of generating plants;
- (4) in the judgment of the commission, the optimal arrangements for statewide or regional pooling of power and arrangements with other utilities and energy suppliers to achieve maximum efficiencies for the benefit of the people of Indiana; and
- (5) the comparative costs of meeting future growth by other means of providing reliable, efficient, and economic electric service, including purchase of power, joint ownership of facilities, refurbishment of existing facilities, conservation, load management, and cogeneration.

(c) The commission shall consider the analysis in acting upon any petition by any utility for construction.

(d) In developing the analysis, the commission:

- (1) shall confer and consult with:
  - (A) the public utilities in Indiana;
  - (B) the utility commissions or comparable agencies of neighboring states;
  - (C) the Federal Energy Regulatory Commission; and
  - (D) other agencies having relevant information; and
- (2) may participate as it considers useful in any joint boards investigating generating plant sites or the probable needs for future generating facilities.

(e) In addition to such reports as public utilities may be required by statute or rule of the commission to file with the commission, a utility may submit to the commission its utility specific proposals as to the future needs for electricity to serve the people of the state or the area served by the utility.

(f) Insofar as practicable, each utility, the utility consumer counselor, and any intervenor may attend or be represented at any formal conference conducted by the commission in developing a plan for the future requirements of electricity for Indiana or this region.

(g) In the course of making the analysis and developing the plan required by this section, the commission shall conduct one (1) or more public hearings.

(h) Each year, the commission shall submit to the governor and to the appropriate committees of the general assembly a report of its analysis and plan, the progress to date in carrying out such plan, and the program of the commission for the ensuing year in connection with such plan.

*As added by P.L.43-1983, SEC.12. Amended by P.L.88-1985, SEC.7; P.L.53-1992, SEC.2.*

### **IC 8-1-8.5-3.5**

#### **Forecasting group**

Sec. 3.5. (a) To arrive at estimates of the probable future growth of the use of electricity required by section 3(b)(1) of this chapter, the commission shall establish a permanent forecasting group to be located at a state supported college or university within Indiana. The commission shall financially support the group, which shall consist of a director and such staff as mutually agreed upon by the commission and college or university, from funds appropriated to the commission.

(b) The forecasting group shall develop and keep current a methodology for forecasting the probable future growth of the use of electricity within Indiana and within this region of the nation. To do this, the group shall solicit the input of residential, commercial, and industrial consumers and the electric industry.

(c) The commission shall use the methodology that the forecasting group devises as the commission's primary methodology in developing and keeping current the commission's:

- (1) analysis of the long range needs for expansion of facilities for the generation of electricity required by section 3(a) of this chapter; and

(2) plan for meeting the future requirements of electricity required by sections 3(e), 3(f), and 3(g) of this chapter.  
*As added by P.L.88-1985, SEC.8. Amended by P.L.53-1992, SEC.3.*

#### **IC 8-1-8.5-4**

##### **Consideration of petition**

Sec. 4. In acting upon any petition for the construction, purchase, or lease of any facility for the generation of electricity, the commission shall take into account:

- (1) the applicant's current and potential arrangement with other electric utilities for:
  - (A) the interchange of power;
  - (B) the pooling of facilities;
  - (C) the purchase of power; and
  - (D) joint ownership of facilities; and
- (2) other methods for providing reliable, efficient, and economical electric service, including the refurbishment of existing facilities, conservation, load management, cogeneration and renewable energy sources.

*As added by P.L.43-1983, SEC.12. Amended by P.L.88-1985, SEC.9.*

#### **IC 8-1-8.5-5**

##### **Estimate of costs; hearing on application; granting certificate; findings; force and effect of certificate; approval or disapproval of utility specific proposals**

Sec. 5. (a) As a condition for receiving the certificate required under section 2 of this chapter, the applicant shall file an estimate of construction, purchase, or lease costs in such detail as the commission may require.

(b) The commission shall hold a public hearing on each such application. A certificate shall be granted only if the commission has:

- (1) made a finding as to the best estimate of construction, purchase, or lease costs based on the evidence of record;
- (2) made a finding that either:
  - (A) the construction, purchase, or lease will be consistent with the commission's plan (or such part of the plan as may then be developed, if any) for expansion of electric generating capacity; or
  - (B) the construction, purchase, or lease is consistent with a utility specific proposal submitted under section 3(e) of this chapter and approved under subsection (d). However, if the commission has developed, in whole or in part, a plan for the expansion of electric generating capacity and the applicant has filed and the commission has approved under subsection (d) a utility specific proposal submitted under section 3(e) of this chapter, the commission shall make a finding under this clause that the construction, purchase, or lease is consistent with the commission's plan, to the extent developed, and that the construction, purchase, or lease is consistent with the applicant's plan under section 3(e) of this chapter, to the

- extent the plan was approved by the commission;
- (3) made a finding that the public convenience and necessity require or will require the construction, purchase, or lease of the facility; and
- (4) made a finding that the facility, if it is a coal-consuming facility, utilizes Indiana coal or is justified, because of economic considerations or governmental requirements, in using non-Indiana coal.

(c) If:

- (1) the commission grants a certificate under this chapter based upon a finding under subsection (b)(2) that the construction, purchase, or lease of a generating facility is consistent with the commission's plan for the expansion of electric generating capacity; and
- (2) a court finally determines that the commission plan is invalid;

the certificate shall remain in full force and effect if the certificate was also based upon a finding under subsection (b)(2) that the construction, purchase, or lease of the facility was consistent with a utility specific plan submitted under section 3(e) of this chapter and approved under subsection (d).

(d) The commission shall consider and approve, in whole or in part, or disapprove a utility specific proposal or an amendment thereto jointly with an application for a certificate under this chapter. However, such an approval or disapproval shall be solely for the purpose of acting upon the pending certificate for the construction, purchase, or lease of a facility for the generation of electricity.

*As added by P.L.43-1983, SEC.12. Amended by P.L.88-1985, SEC.10; P.L.53-1992, SEC.4.*

#### **IC 8-1-8.5-5.5**

##### **Review of continuing need; modification or revocation of certificate**

Sec. 5.5. When, in the opinion of the commission, changes in the estimate of the probable future growth of the use of electricity so indicate, the commission shall commence a review of any certificate granted under this chapter to determine whether the public convenience and necessity continues to require the facility under construction. If the commission finds that completion of the facility under construction is no longer in the public interest, the commission may modify or revoke the certificate.

*As added by P.L.88-1985, SEC.11. Amended by P.L.53-1992, SEC.5.*

#### **IC 8-1-8.5-6**

##### **Review of construction; force and effect of certificate approved under review; election to defer review**

Sec. 6. (a) In addition to the review of the continuing need for the facility under construction prescribed in section 5.5 of this chapter, the commission shall, at the request of the public utility, maintain an ongoing review of such construction as it proceeds. The applicant

shall submit each year during construction, or at such other periods as the commission and the public utility mutually agree, a progress report and any revisions in the cost estimates for the construction.

(b) If the commission approves the construction and the cost of the portion of the facility under review, the certificate shall remain in full force and effect.

(c) If the commission disapproves of all or part of the construction or cost of the portion of the facility under review, the commission may modify or revoke the certificate.

(d) Alternatively, the public utility may elect to forego commission review under subsection (a) and defer the review of the construction and cost until completion or cancellation of the facility. *As added by P.L.43-1983, SEC.12. Amended by P.L.88-1985, SEC.12; P.L.53-1992, SEC.6.*

### **IC 8-1-8.5-6.5**

#### **Rates; recovery of costs**

Sec. 6.5. Absent fraud, concealment, or gross mismanagement, a utility shall recover through rates the actual costs the utility has incurred in reliance on a certificate issued under this chapter, and as modified under sections 5.5 and 6 of this chapter as follows:

(1) If a facility has been found to be completed and the facility's construction has been subject to ongoing review under section 6(a) of this chapter, the costs of construction approved by the commission during the ongoing review shall be included in the utility's rate base without further commission review.

(2) If a facility has been found to be completed and the facility's construction is subject to subsequent review under section 6(d) of this chapter, the costs of construction that do not exceed the estimate found under section 5(b)(1) of this chapter shall be included in the utility's rate base, except for costs that are shown to result from inadequate quality controls. However, inclusion of costs in excess of the estimate found by the commission under section 5(b)(1) of this chapter in the utility's rate base is not permitted unless shown by the utility in construction of that facility to be necessary and prudent.

(3) If a facility has been canceled as a result of the modification or revocation of the certificate under section 5.5 or 6 of this chapter and the facility's construction has been subject to ongoing review under section 6(a) of this chapter (including reviews after cancellation), the costs of construction approved by the commission during the review shall be recovered by the utility by inclusion in rates and amortization over a reasonable time to be determined by the commission. The utility shall be permitted to earn a return, computed using the utility's authorized rate of return, on the unamortized balance.

(4) If a facility has been canceled as a result of the modification or revocation of the certificate under section 5.5 or 6 of this chapter and the facility's construction is subject to subsequent review under section 6(d) of this chapter, the costs of

construction incurred before cancellation that were included in the estimate found under section 5(b)(1) of this chapter and that have not been shown to result from inadequate quality controls shall be recovered by the utility by inclusion in rates and amortization over a reasonable time to be determined by the commission. The utility shall be permitted to earn a return, computed using the utility's authorized rate of return, on the unamortized balance. However, costs that were not included in the estimate found by the commission under section 5(b)(1) of this chapter may not be included in rates unless shown by the utility in construction of that facility to be necessary and prudent.

*As added by P.L.53-1992, SEC.7.*

### **IC 8-1-8.5-7**

#### **Certification requirements; exemptions; report**

Sec. 7. The certification requirements of this chapter do not apply to persons who:

- (1) construct an electric generating facility primarily for that person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation;
- (2) construct an alternate energy production facility, cogeneration facility, or a small hydro facility that complies with the limitations set forth in IC 8-1-2.4-5; or
- (3) are a municipal utility and install an electric generating facility that has a capacity of ten thousand (10,000) kilowatts or less.

However, those persons shall, nevertheless, be required to report to the commission the proposed construction of such a facility before beginning construction of the facility.

*As added by P.L.43-1983, SEC.12.*

### **IC 8-1-8.5-8**

#### **Construction of chapter; valuation of property**

Sec. 8. Except as otherwise provided in this chapter, nothing in this chapter limits the commission's responsibility regarding valuation of utility property under IC 8-1-2-6.

*As added by P.L.5-1988, SEC.47. Amended by P.L.53-1992, SEC.8.*