

### **IC 8-1-8.7**

#### Chapter 8.7. Clean Coal Technology

### **IC 8-1-8.7-1**

#### **"Clean coal technology"**

Sec. 1. As used in this chapter, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing electric generating facility and directly or indirectly reduces airborne emissions of sulfur or nitrogen based pollutants associated with the combustion or use of coal; and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

*As added by P.L.105-1989, SEC.4.*

### **IC 8-1-8.7-2**

#### **"Public utility"**

Sec. 2. As used in this chapter, "public utility" means a public or municipally owned utility.

*As added by P.L.105-1989, SEC.4.*

### **IC 8-1-8.7-3**

#### **Certificate of public convenience and necessity; use of clean coal technology**

Sec. 3. (a) Except as provided in subsection (c), a public utility may not use clean coal technology at a new or existing electric generating facility without first applying for and obtaining from the commission a certificate that states that public convenience and necessity will be served by the use of clean coal technology.

(b) The commission shall issue a certificate of public convenience and necessity under subsection (a) if the commission finds that a clean coal technology project offers substantial potential of reducing sulfur or nitrogen based pollutants in a more efficient manner than conventional technologies in general use as of January 1, 1989. For purposes of this chapter, a project that the United States Department of Energy has selected for funding under its Innovative Clean Coal Technology program and is finally approved for funding after December 31, 1988, is not considered a conventional technology in general use as of January 1, 1989. When determining whether to grant a certificate under this section, the commission shall examine the following factors:

(1) The costs for constructing, implementing, and using clean coal technology compared to the costs for conventional emission reduction facilities.

- (2) Whether a clean coal technology project will also extend the useful life of an existing electric generating facility and the value of that extension.
- (3) The potential reduction of sulfur and nitrogen based pollutants achieved by the proposed clean coal technology system.
- (4) The reduction of sulfur nitrogen based pollutants that can be achieved by conventional pollution control equipment.
- (5) Federal sulfur and nitrogen based pollutant emission standards.
- (6) The likelihood of success of the proposed project.
- (7) The cost and feasibility of the retirement of an existing electric generating facility.
- (8) The dispatching priority for the facility utilizing clean coal technology, considering direct fuel costs, revenues and expenses of the utility, and environmental factors associated with byproducts resulting from the utilization of the clean coal technology.
- (9) Any other factors the commission considers relevant, including whether the construction, implementation, and use of clean coal technology is in the public's interest.

(c) A public utility is not required to obtain a certificate under this chapter for a clean coal technology project that constitutes a research and development project that may be expensed under IC 8-1-2-6.1. *As added by P.L.105-1989, SEC.4.*

#### **IC 8-1-8.7-4**

##### **Hearings and requisite findings; estimated costs; use of Indiana coal**

Sec. 4. (a) As a condition for receiving the certificate required under section 3 of this chapter, an applicant must file an estimate of the cost of constructing, implementing, and using clean coal technology and supportive technical information in as much detail as the commission requires.

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

- (1) made a finding that the public convenience and necessity will be served by the construction, implementation, and use of clean coal technology;
- (2) approved the estimated costs;
- (3) made a finding that the facility where the clean coal technology is employed:
  - (A) utilizes and will continue to utilize Indiana coal as its primary fuel source; or
  - (B) is justified, because of economic considerations or governmental requirements, in utilizing non-Indiana coal; after the technology is in place; and
- (4) made a finding on each of the factors described in section 3(b) of this chapter, including the dispatching priority of the facility to the utility.

*As added by P.L.105-1989, SEC.4.*

#### **IC 8-1-8.7-5**

##### **Modification or revocation of certificate**

Sec. 5. When, in the opinion of the commission, changes in the estimate of the cost or the need for clean coal technology occur, the commission shall immediately commence a review of the certificate granted under this chapter to determine if public convenience and necessity will be served by the implementation of the technology. If the commission finds that implementation of the technology will not serve the public convenience and necessity, the commission may modify or revoke the certificate.

*As added by P.L.105-1989, SEC.4.*

#### **IC 8-1-8.7-6**

##### **Cancellation of clean coal technology implementation; recovery of expenditures**

Sec. 6. If a public utility cancels the implementation of the technology as a result of the modification or revocation of a certificate by the commission under section 5 of this chapter, the public utility may recover the amount of its investment in the technology, along with a reasonable return on the unamortized balance. The utility may not recover on amounts expended in excess of the cost estimates approved by the commission under section 4 of this chapter unless the utility can prove to the commission that those expenditures were necessary and prudent. The recovery must be made over a reasonable period of time through rates charged by the public utility. A recovery may not be made if there was fraud, concealment, or gross mismanagement on the part of the public utility.

*As added by P.L.105-1989, SEC.4.*

#### **IC 8-1-8.7-7**

##### **Ongoing review of construction and costs**

Sec. 7. (a) This section does not apply if the utility elects the review described in section 8 of this chapter.

(b) In addition to the review of the continuing need for the clean coal technology system under construction prescribed in section 5 of this chapter, the commission shall at the request of the public utility maintain an ongoing review of that construction as the construction proceeds. The applicant shall submit each year during construction, or at other times as the commission and the public utility mutually agree, a progress report and any revisions in the cost estimates for the construction. The commission must hold a public hearing before it may approve or deny a proposed increase in the cost estimates for the implementation, construction, or use of clean coal technology.

(c) If the commission approves the construction and the cost of the part of the clean coal technology system under review, the approval forecloses subsequent challenges to the inclusion of that part of the clean coal technology system in the public utility's rate

base on the basis of excessive cost, inadequate quality control, or inability to employ the technology.

(d) If the commission disapproves of all or part of the construction or cost of the part of the clean coal technology system under review, the commission may modify or revoke the certificate. If the public utility cancels construction of the clean coal technology system as a result of the modification or revocation of the certificate, the utility may recover over a reasonable period of time through rates, absent fraud, concealment, or gross mismanagement, the amount of its investment in the clean coal technology system along with a reasonable return on the unamortized balance to the extent the construction and the cost were approved previously by the commission.

*As added by P.L.105-1989, SEC.4.*

#### **IC 8-1-8.7-8**

##### **Review of completed construction; costs exceeding estimated and approved costs**

Sec. 8. A public utility may elect to forgo any commission review of the construction and cost until completion of the clean coal technology system. If the commission has annually approved the continuing need for the project under section 5 of this chapter, and to the extent the public utility seeks to add to the rate base an amount that does not exceed that filed under section 4(a) of this chapter, the inclusion of that amount may be challenged only on the basis of inadequate quality controls. However, inclusion of costs in excess of those approved by the commission under section 4(b)(2) of this chapter is not permitted unless the public utility shows those costs to be necessary and prudent.

*As added by P.L.105-1989, SEC.4.*

#### **IC 8-1-8.7-9**

##### **Dispatching priority**

Sec. 9. After the commission has made a finding under section 4(b)(4) of this chapter as to the dispatching priority of a facility utilizing clean coal technology, the utility receiving the certificate under this chapter may dispatch the facility for which the certificate is issued in accordance with such finding, and such dispatch shall not be considered to be in conflict with the provisions of IC 8-1-2-42.

*As added by P.L.105-1989, SEC.4.*

#### **IC 8-1-8.7-10**

##### **Construction of electric generating facilities; additional certification; joint applications**

Sec. 10. (a) This chapter does not relieve a public utility of the duty to obtain a certificate under IC 8-1-8.5 if the utility is proposing the use of clean coal technology as a part of the construction of an electric generating facility.

(b) A public utility seeking a certificate under IC 8-1-8.5 and this chapter for one (1) project may file a joint application for both

certificates. If a joint application is filed, the commission shall jointly consider both certificates.  
*As added by P.L.105-1989, SEC.4.*