

## **IC 8-1-8.8**

### Chapter 8.8. Utility Generation and Clean Coal Technology

#### **IC 8-1-8.8-1**

##### **Legislative findings and declaration of purpose**

Sec. 1. (a) The general assembly makes the following findings:

(1) Growth of Indiana's population and economic base has created a need for new energy production or generating facilities in Indiana.

(2) The development of a robust and diverse portfolio of energy production or generating capacity, including coal gasification and the use of renewable energy resources, is needed if Indiana is to continue to be successful in attracting new businesses and jobs.

(3) Indiana has considerable natural resources that are currently underutilized and could support development of new energy production or generating facilities, including coal gasification facilities, at an affordable price.

(4) Certain regions of the state, such as southern Indiana, could benefit greatly from new employment opportunities created by development of new energy production or generating facilities utilizing the plentiful supply of coal from the geological formation known as the Illinois Basin.

(5) Technology can be deployed that allows high sulfur coal from the geological formation known as the Illinois Basin to be burned or gasified efficiently while meeting strict state and federal air quality limitations. Specifically, the state should encourage the use of advanced clean coal technology, such as coal gasification.

(6) It is in the public interest for the state to encourage the construction of new energy production or generating facilities that increase the in-state capacity to provide for current and anticipated energy demand at a competitive price.

(7) It is in the public interest for the state to encourage the study, analysis, development, and life cycle management of nuclear energy production or generating facilities, as well as carbon dioxide capture, transportation, and storage facilities.

(b) The purpose of this chapter is to enhance Indiana's energy security and reliability by ensuring all of the following:

(1) Indiana's and the region's energy production or generating capacity continues to be adequate to provide for Indiana's current and future energy needs, including the support of the state's economic development efforts.

(2) The vast and underutilized coal resources of the Illinois Basin are used as a fuel source for new energy production or generating facilities.

(3) The electric transmission and gas transportation systems within Indiana are upgraded to distribute additional amounts of electricity and gas more efficiently.

(4) Jobs are created as new energy production or generating

facilities are built in regions throughout Indiana.

(5) The study, analysis, development, and life cycle management of nuclear energy production or generating facilities are encouraged at the same time as are new coal fired and other fossil fuel based energy production or generating facilities.

*As added by P.L.159-2002, SEC.6. Amended by P.L.175-2007, SEC.11; P.L.150-2011, SEC.2.*

### **IC 8-1-8.8-2**

#### **"Clean coal and energy projects"**

Sec. 2. As used in this chapter, "clean energy projects" means any of the following:

(1) Any of the following projects:

(A) Projects at new energy production or generating facilities that employ the use of clean coal technology and that produce energy, including substitute natural gas, primarily from coal, or gases derived from coal, from the geological formation known as the Illinois Basin.

(B) Projects to provide advanced technologies that reduce regulated air emissions from or increase the efficiency of existing energy production or generating plants that are fueled primarily by coal or gases from coal from the geological formation known as the Illinois Basin, such as flue gas desulfurization and selective catalytic reduction equipment.

(C) Projects to provide electric transmission facilities to serve a new energy production or generating facility or a nuclear energy production or generating facility.

(D) Projects that produce substitute natural gas from Indiana coal by construction and operation of a coal gasification facility.

(E) Projects or potential projects that enhance the safe and reliable use of nuclear energy production or generating technologies to produce electricity.

(2) Projects to develop alternative energy sources, including renewable energy projects or coal gasification facilities.

(3) The purchase of fuels or energy produced by a coal gasification facility or by a nuclear energy production or generating facility.

(4) Projects described in subdivisions (1) through (2) that use coal bed methane.

*As added by P.L.159-2002, SEC.6. Amended by P.L.174-2005, SEC.2; P.L.175-2007, SEC.12; P.L.150-2011, SEC.3.*

### **IC 8-1-8.8-3**

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

Sec. 3. 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 energy production or

generating facility and directly or indirectly reduces or avoids airborne emissions of sulfur, mercury, or nitrogen oxides or other regulated air emissions associated with the combustion or use of coal; and

(2) that either:

(A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or

(B) has been selected by the United States Department of Energy for funding or loan guaranty under an Innovative Clean Coal Technology or loan guaranty program under the Energy Policy Act of 2005, or any successor program, and is finally approved for such funding or loan guaranty on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

*As added by P.L.159-2002, SEC.6. Amended by P.L.175-2007, SEC.13.*

#### **IC 8-1-8.8-4**

##### **"Coal gasification facility"**

Sec. 4. As used in this chapter, "coal gasification facility" means a facility in Indiana that uses a manufacturing process that converts coal into a clean gas that can be used:

(1) as a fuel to generate energy; or

(2) as substitute natural gas.

*As added by P.L.159-2002, SEC.6. Amended by P.L.175-2007, SEC.14; P.L.150-2011, SEC.4.*

#### **IC 8-1-8.8-5**

##### **"Costs associated with qualified utility system property"**

Sec. 5. As used in this chapter, "costs associated with qualified utility system property" means capital, operation, maintenance, depreciation, tax costs, and financing costs of or for qualified utility system property.

*As added by P.L.159-2002, SEC.6.*

#### **IC 8-1-8.8-6**

##### **"Eligible business"**

Sec. 6. As used in this chapter, "eligible business" means an energy utility (as defined in IC 8-1-2.5-2) or owner of a coal gasification facility that:

(1) proposes to construct or repower a new energy production or generating facility;

(2) proposes to construct or repower a project described in section 2(1) or 2(2) of this chapter;

(3) undertakes a project to develop alternative energy sources, including renewable energy projects or coal gasification facilities; or

(4) purchases fuels or energy produced by a coal gasification

facility or by a nuclear energy production or generating facility.  
*As added by P.L.159-2002, SEC.6. Amended by P.L.175-2007, SEC.15; P.L.150-2011, SEC.5.*

#### **IC 8-1-8.8-7**

##### **"Group"**

Sec. 7. As used in this chapter, "group" refers to the forecasting group established by IC 8-1-8.5-3.5.

*As added by P.L.159-2002, SEC.6.*

#### **IC 8-1-8.8-8**

##### **"New energy production or generating facility"**

Sec. 8. (a) As used in this chapter, "new energy production or generating facility" refers to a generation or coal gasification facility that satisfies all of the following:

(1) The facility produces energy primarily from coal or gases from coal from the geological formation known as the Illinois Basin.

(2) The facility is a:

(A) newly constructed or newly repowered energy plant; or

(B) newly constructed capacity expansion at an existing plant;

dedicated primarily to serving Indiana retail customers.

(3) The repowering, construction, or expansion of the facility was begun by an Indiana utility after July 1, 2002.

(4) Except for a facility that is a clean energy project under section 2(2) of this chapter, the facility has an aggregate rated electric generating capacity of at least one hundred (100) megawatts for all units at one (1) site or a generating capacity of at least four hundred thousand (400,000) pounds per hour of steam.

(b) The term includes the transmission lines, gas transportation facilities, and associated equipment employed specifically to serve a new energy production or generating facility.

*As added by P.L.159-2002, SEC.6. Amended by P.L.175-2007, SEC.16; P.L.150-2011, SEC.6.*

#### **IC 8-1-8.8-8.5**

##### **"Nuclear energy production or generating facility"**

Sec. 8.5. (a) As used in this chapter, "nuclear energy production or generating facility" means an energy production or generation facility that:

(1) uses a nuclear reactor as its heat source to provide steam to a turbine generator to produce or generate electricity;

(2) supplies electricity to Indiana retail customers on July 1, 2011;

(3) is dedicated primarily to serving Indiana customers; and

(4) is undergoing a comprehensive life cycle management project to enhance the safe and reliable operation of the facility during the period the facility is licensed to operate by the

United States Nuclear Regulatory Commission.

(b) The term includes the transmission lines and other associated equipment employed specifically to serve a nuclear energy production or generating facility.

*As added by P.L.150-2011, SEC.7.*

#### **IC 8-1-8.8-8.7**

##### **"Qualified utility system expenses"**

Sec. 8.7. As used in this chapter, "qualified utility system expenses" means the costs associated with the study, analysis, or development of a life cycle management project for a nuclear energy production or generating facility.

*As added by P.L.150-2011, SEC.8.*

#### **IC 8-1-8.8-9**

##### **"Qualified utility system property"**

Sec. 9. As used in this chapter, "qualified utility system property" means any:

- (1) new energy production or generating facility; or
- (2) nuclear energy production or generating facility;

used, or to be used, in whole or in part, by an energy utility to provide retail energy service (as defined in IC 8-1-2.5-3) regardless of whether that service is provided under IC 8-1-2.5 or another provision of this article.

*As added by P.L.159-2002, SEC.6. Amended by P.L.175-2007, SEC.17; P.L.150-2011, SEC.9.*

#### **IC 8-1-8.8-10**

##### **"Renewable energy resources"**

Sec. 10. (a) As used in this chapter "renewable energy resources" means the following:

- (1) A clean energy resource listed in IC 8-1-37-4(a)(1) through IC 8-1-37-4(a)(16).
- (2) Low temperature, oxygen starved gasification of municipal solid waste.
- (11) (3) Methane recovered from landfills for the production of electricity.

(b) Except for energy described in subsection (a)(2) and IC 8-1-37-4(a)(9), the term does not include energy from the incinerations, burning, or heating of any of the following:

- (1) Tires.
- (2) General household, institutional, commercial, industrial lunchroom, office, or landscape waste.

(c) The term excludes treated or painted lumber.

*As added by P.L.159-2002, SEC.6. Amended by P.L.175-2007, SEC.18; P.L.151-2009, SEC.4; P.L.95-2010, SEC.1; P.L.96-2011, SEC.1; P.L.150-2011, SEC.10; P.L.224-2011, SEC.1.*

#### **IC 8-1-8.8-11**

**Incentives for clean energy projects; application to commission;**

**commission's time for determining eligibility**

Sec. 11. (a) The commission shall encourage clean energy projects by creating the following financial incentives for clean energy projects, if the projects are found to be reasonable and necessary:

- (1) The timely recovery of costs and expenses incurred during construction and operation of projects described in section 2(1) or 2(2) of this chapter.
- (2) The authorization of up to three (3) percentage points on the return on shareholder equity that would otherwise be allowed to be earned on projects described in subdivision (1).
- (3) Financial incentives for the purchase of fuels or energy produced by a coal gasification facility or by a nuclear energy production or generating facility, including cost recovery and the incentive available under subdivision (2).
- (4) Financial incentives for projects to develop alternative energy sources, including renewable energy projects or coal gasification facilities.
- (5) Other financial incentives the commission considers appropriate.

(b) An eligible business must file an application to the commission for approval of a clean energy project under this section. This chapter does not relieve an eligible business of the duty to obtain any certificate required under IC 8-1-8.5 or IC 8-1-8.7. An eligible business seeking a certificate under IC 8-1-8.5 or IC 8-1-8.7 and this chapter for one (1) project may file a single application for all necessary certificates. If a single application is filed, the commission shall consider all necessary certificates at the same time.

(c) The commission shall promptly review an application filed under this section for completeness. The commission may request additional information the commission considers necessary to aid in its review.

(d) The commission shall, after notice and hearing, issue a determination of a project's eligibility for the financial incentives described in subsection (a) not later than one hundred twenty (120) days after the date of the application, unless the commission finds that the applicant has not cooperated fully in the proceeding.

*As added by P.L.159-2002, SEC.6. Amended by P.L.150-2011, SEC.11.*

**IC 8-1-8.8-12**

**Recovery of costs; rate adjustment mechanisms**

Sec. 12. (a) The commission shall provide financial incentives to eligible businesses for:

- (1) new energy production or generating facilities; and
- (2) nuclear energy production or generating facilities;

in the form of timely recovery of the costs incurred in connection with the study, analysis, development, siting, design, licensing, permitting, construction, repowering, expansion, life cycle management, operation, or maintenance of the facilities.

(b) An eligible business seeking authority to timely recover the costs described in subsection (a) must apply to the commission for approval of a rate adjustment mechanism in the manner determined by the commission.

(c) An application must include the following:

(1) A schedule for the completion of construction, repowering, life cycle management, or expansion of the facility for which rate relief is sought.

(2) Copies of the most recent integrated resource plan filed with the commission, if applicable.

(3) The amount of capital investment by the eligible business in the facility.

(4) Other information the commission considers necessary.

(d) The commission shall allow an eligible business to recover:

(1) the costs associated with qualified utility system property; and

(2) qualified utility system expenses;

if the eligible business provides substantial documentation that the expected costs and expenses and the schedule for incurring those costs and expenses are reasonable and necessary.

(e) The commission shall allow an eligible business to recover the costs associated with the purchase of fuels or energy produced by a coal gasification facility or by a nuclear energy production or generating facility if the eligible business provides substantial documentation that the costs associated with the purchase are reasonable and necessary.

(f) A retail rate adjustment mechanism proposed by an eligible business under this section may be based on actual or forecasted data. If forecast data is used, the retail rate adjustment mechanism must contain a reconciliation mechanism to correct for any variance between the forecasted costs and the actual costs.

*As added by P.L.159-2002, SEC.6. Amended by P.L.175-2007, SEC.19; P.L.150-2011, SEC.12.*

### **IC 8-1-8.8-13**

#### **Monthly report to lieutenant governor required**

Sec. 13. An eligible business shall file a monthly report with the lieutenant governor stating the following information:

(1) The amount of Illinois Basin coal, if any, purchased during the previous month for use in a new energy production or generating facility.

(2) The amount of any fuel or energy produced by:

(A) a coal gasification facility; or

(B) a nuclear energy production or generating facility;

that is purchased by the eligible business during the previous month.

(3) Any other information the lieutenant governor may reasonably require.

*As added by P.L.159-2002, SEC.6. Amended by P.L.1-2006, SEC.151; P.L.175-2007, SEC.20; P.L.150-2011, SEC.13.*

**IC 8-1-8.8-14****Annual study of using renewable energy resources**

Sec. 14. The group shall conduct an annual study on the use, availability, and economics of using in Indiana the clean energy resources listed in IC 8-1-37-4(a)(1) through IC 8-1-37-4(a)(6). The commission may direct the group to study additional clean energy resources as the commission considers appropriate. Each year, the group shall submit a report on the study to the commission for inclusion in the commission's annual report to the regulatory flexibility committee described in IC 8-1-2.5-9 and IC 8-1-2.6-4. The commission shall direct the group concerning the appropriate level of detail for the report. The report must include suggestions from the group to encourage the development and use of clean energy resources and technologies appropriate for use in Indiana.

*As added by P.L.159-2002, SEC.6. Amended by P.L.71-2009, SEC.2; P.L.150-2011, SEC.14.*

**IC 8-1-8.8-15****Commission's power to review approved projects**

Sec. 15. The commission may review any project approved under this chapter to determine that the project continues to comply with the commission's order initially approving incentives under this chapter. The commission may revoke any incentive approved in the order if the commission finds that the project no longer complies with the provisions of the order concerning the incentive.

*As added by P.L.159-2002, SEC.6.*