

From: [Heline, Beth E.](#)
To: [SBA Rules](#)
Subject: IURC SMR Rulemaking & Regulatory Analysis
Date: Monday, November 27, 2023 4:02:00 PM
Attachments: [2023-11-27 SMR Proposed Rule - IURC RM 23-03.docx](#)
[2023-11-27 SMR Regulatory Analysis - IURC RM 23-03.docx](#)
Importance: High

Attached for your review and approval are the regulatory analysis and proposed rule for IURC RM #23-03, the readoption and amendment of 170 IAC 4-11, which was originally promulgated as an emergency rule that did not expire until superseded.

Please contact me if you have questions or if you would like additional information.

Thank you!

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TITLE 170 INDIANA UTILITY REGULATORY COMMISSION
LSA Document #24-91
Regulatory Analysis

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, Ind. Code § 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.

170 IAC 4-11-2	Replaces “any” with “a”
170 IAC 4-11-3	Adds “by an electric utility”
170 IAC 4-11-4	Replaces “same definition as” with “meaning as set forth”
170 IAC 4-11-5	Replaces “(b)(1) and (2)” with “(b)(1) and (b)(2).”
170 IAC 4-11-6	Adds “thirty” before “(30)” and “(15)” after fifteen
170 IAC 4-11-7	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.

IX. Contact Information of Staff to Answer Substantive Questions

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X. Redline Draft of Proposed Rules

Attached.

XI. Resubmission Information (if applicable)

Not applicable.

DIGEST

Readopts and amends 170 IAC 4-11 regarding requirements for certification under IC 8-1-8.5 for the construction, purchase, or lease of small modular nuclear reactors by a public utility. Effective 30 days after publication.

170 IAC 4-11

SECTION 1. 170 IAC 4-11-1 IS READOPTED TO READ AS FOLLOWS:

Rule 11. Certification Requirements for the Construction, Purchase, or Lease of Small Modular Nuclear Reactors by a Public Utility.

170 IAC 4-11-1 Policy and scope

Authority: IC 8-1-1-3; IC 8-1-8.5-12.1

Affected: IC 8-1-8.5-12.1; IC 8-1-8.8

Sec. 1. This rule is intended to establish procedures and guidelines for a public utility's construction, purchase, or lease of small modular nuclear reactors:

(1) in Indiana for the generation of electricity to be directly or indirectly used to furnish public utility service to Indiana customers; or

(2) at the site of a nuclear energy production or generating facility that supplies electricity to Indiana retail customers on July 1, 2011.

(Indiana Utility Regulatory Commission; 170 IAC 4-11-1; emergency rule filed Jun 15, 2023, 10:24 a.m.:20230628-IR-170230500ERA)

SECTION 2. 170 IAC 4-11-2 IS AMENDED TO READ AS FOLLOWS:

170 IAC 4-11-2 Applicability under IC 8-1-8.5-12.1

Authority: IC 8-1-1-3; IC 8-1-8.5-12.1

Affected: IC 8-1-8.5-1; IC 8-1-8.5-12.1; IC 8-1-8.8

Sec. 2. This rule applies to ~~any~~ a public utility, as defined under IC 8-1-8.5-1(a), that petitions the commission for approval of the construction, purchase, or lease of a small modular nuclear reactor to provide utility service to Indiana customers. *(Indiana Utility Regulatory Commission; 170 IAC 4-11-2; emergency rule filed Jun 15, 2023, 10:24 a.m.:20230628-IR-170230500ERA)*

SECTION 3. 170 IAC 4-11-3 IS AMENDED TO READ AS FOLLOWS:

170 IAC 4-11-3 No change to other commission processes

Authority: IC 8-1-1-3; IC 8-1-8.5-12.1

Affected: IC 8-1-8.5-12.1; IC 8-1-8.8

Sec. 3. This rule does not replace other commission requirements, including, but not limited to:

- (1) a proceeding requesting a certificate of public convenience and necessity; and
- (2) the commission's rule, 170 IAC 4-7, regarding integrated resource planning **by an electric utility.**

(Indiana Utility Regulatory Commission; 170 IAC 4-11-3; emergency rule filed Jun 15, 2023, 10:24 a.m.:20230628-IR-170230500ERA)

SECTION 4. 170 IAC 4-11-4 IS AMENDED TO READ AS FOLLOWS:

170 IAC 4-11-4 Definitions

Authority: IC 8-1-1-3; IC 8-1-8.5-12.1

Affected: IC 8-1-1.1; IC 8-1-8.5; IC 8-1-8.8; IC 13-11-2-102; IC 13-11-2-216

Sec. 4. (a) The definitions in IC 8-1-8.5-12.1 and this section apply throughout this rule.

(b) "Commission" means the Indiana utility regulatory commission.

(c) "CPCN" means a certificate of public convenience and necessity, as required under IC 8-1-8.5-2.

(d) "High level radioactive waste" has the ~~same definition~~ **meaning** as **set forth** in IC 13-11-2-102.

(e) "NRC" means the United States Nuclear Regulatory Commission.

(f) "OUCC" means the Indiana office of utility consumer counselor established under IC 8-1-1.1.

(g) "Public utility" has the ~~same definition~~ **meaning** as **set forth** in IC 8-1-8.5-1(a).

(h) "SMR" means a small modular nuclear reactor as defined in IC 8-1-8.5-12.1(a).

(i) "Spent nuclear fuel" has the ~~same definition~~ **meaning** as **set forth** in IC 13-11-2-216.

(Indiana Utility Regulatory Commission; 170 IAC 4-11-4; emergency rule filed Jun 15, 2023, 10:24 a.m.:20230628-IR-170230500ERA)

SECTION 5. 170 IAC 4-11-5 IS AMENDED TO READ AS FOLLOWS:

170 IAC 4-11-5 Certificate and additional evidence required

Authority: IC 8-1-1-3; IC 8-1-8.5-12.1

Affected: IC 8-1-8.5

Sec. 5. (a) A public utility that seeks to construct, purchase, lease, or otherwise own or operate an SMR must first obtain a CPCN from the commission pursuant to IC 8-1-8.5.

(b) As part of its case-in-chief and in addition to the evidence required to support the CPCN factors listed in IC 8-1-8.5-4 and IC 8-1-8.5-5, the public utility must provide evidence regarding the following:

- (1) Whether, and to what extent, the one (1) or more SMRs proposed by the public utility will replace a loss of generating capacity in the public utility's portfolio resulting from the retirement or planned retirement of one (1) or more of the public utility's existing electric generating facilities that:

- (A) are located in Indiana; and
- (B) use coal or natural gas as a fuel source;
- (2) Whether one (1) or more of the SMRs that will replace an existing facility will be located on the same site as or near the existing facility and, if so, potential opportunities for the public utility to:
 - (A) make use of any land and existing infrastructure or facilities already owned or under the control of the public utility; or
 - (B) create new employment opportunities for workers who have been, or would be, displaced as a result of the retirement of the existing facility; and
- (3) Its plan to apply for all licenses or permits to construct or operate the proposed SMR as may be required by:
 - (A) the NRC;
 - (B) the Indiana department of environmental management;
 - (C) any other relevant state or federal regulatory agency with jurisdiction over the construction or operation of nuclear generating facilities; or
 - (D) the locality in which the proposed SMR is planned.
- (4) Its plan for education and community outreach regarding the proposed SMR.
- (5) Additional guidelines that may be provided in a general administrative order issued by the commission.

(c) The commission may grant a CPCN under circumstances and for locations other than those described in subdivisions (b)(1) and (b)(2).

(Indiana Utility Regulatory Commission; 170 IAC 4-11-5; emergency rule filed Jun 15, 2023, 10:24 a.m.:20230628-IR-170230500ERA)

SECTION 6. 170 IAC 4-11-6 IS AMENDED TO READ AS FOLLOWS:

170 IAC 4-11-6 Reports to and from NRC

Authority: IC 8-1-1-3; IC 8-1-8.5-12.1

Affected: IC 8-1-8.5-12.1

Sec. 6. (a) The owner or operator of a proposed or existing SMR shall provide to the commission all docket numbers assigned by the NRC regarding the proposed or existing SMR within **thirty (30)** days of the docket number being assigned, thus allowing the commission and its staff timely access, in accordance with applicable federal law and regulations, to any:

- (1) reports;
- (2) notices of violations; or
- (3) other notifications;

sent to or received from the NRC by or to the owner or operator of a proposed or existing SMR.

(b) To the extent that 10 CFR Part 2 requires documents to be served upon state officials, those documents shall also be provided electronically to the commission either by the NRC or the owner or operator of a proposed SMR, as applicable.

(c) Notices of violation received by the owner or operator of a proposed or existing SMR shall be served upon the commission within fifteen **(15)** days of receipt of the notice.

(d) If the owner or operator of a proposed or existing SMR submits to the commission a:

- (1) report;
- (2) notice of violation; or

(3) other notification;
containing information that is considered confidential or exempt from public access and disclosure under state or federal law, the owner or operator of a proposed SMR shall submit the information according to the commission's rules, specifically including 170 IAC 1-1.1-4.

(e) To the extent that the commission or its staff access, or seek to access, confidential documents in an NRC docket number, they shall comply with federal laws and regulations regarding confidentiality and maintain the confidentiality of such documents for as long as the confidentiality restrictions under federal law or regulations apply.

(Indiana Utility Regulatory Commission; 170 IAC 4-11-6; emergency rule filed Jun 15, 2023, 10:24 a.m.:20230628-IR-170230500ERA)

SECTION 7. 170 IAC 4-11-7 IS AMENDED TO READ AS FOLLOWS:

170 IAC 4-11-7 Storage of SMR spent nuclear fuel or radioactive waste

Authority: IC 8-1-1-3; IC 8-1-8.5-12.1

Affected: IC 8-1-8.5-12.1

Sec. 7. ~~Any~~A person that owns or operates an SMR in Indiana may not store:

(1) spent nuclear fuel; or

(2) high level radioactive waste;

from the SMR on the site of the SMR without first meeting all applicable requirements of the NRC.

(Indiana Utility Regulatory Commission; 170 IAC 4-11-7; emergency rule filed Jun 15, 2023, 10:24 a.m.:20230628-IR-170230500ERA)