

ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	√		
Bennett	√		
Freeman	√		
Veleta	√		
Ziegner	√		

INDIANA UTILITY REGULATORY COMMISSION

Final Rulemaking

LSA #24-91(F)
IURC RM #23-03

This Final Rulemaking amends 170 IAC 4-11-1, 170 IAC 4-11-2, 170 IAC 4-11-3, 170 IAC 4-11-4, 170 IAC 4-11-5; 170 IAC 4-11-6, and 170 IAC 4-11-7 regarding the certification requirements for the construction, purchase, or lease of small modular nuclear reactors by a public utility.

The final rule is effective 30 days after filing with the publisher.

Upon prior publication of notice, a public hearing was held on April 22, 2024, at 2:00 p.m., local time in Judicial Courtroom 222 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana, as required by the provisions of I.C. 4-22-2-1, et seq.

The Indiana Utility Regulatory Commission previously adopted the proposed rule on March 6, 2024, at 10:00 a.m. local time in Judicial Courtroom 222, PNC Center, Indianapolis, Indiana at which time a majority of members of said Commission were present.

The Secretary is hereby directed to submit the aforesaid final rule to the Attorney General and Governor of Indiana, for their approval of same, and thereafter to submit the aforesaid rule to the publisher, Indiana Register.

IT IS SO ORDERED.

HUSTON, BENNETT, FREEMAN, VELETA, AND ZIEGNER CONCUR:

APPROVED: MAY 22 2024

I hereby certify that the above is a true and correct copy of the Rule as approved.

Dana Kosco
Secretary of the Commission

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Final Rule LSA Document #24-91(F)

Amends 170 IAC 4-11-1 through 170 IAC 4-11-7 regarding the certification requirements for the construction, purchase, or lease of small modular nuclear reactors by a public utility.

170 IAC 4-11-1; 170 IAC 4-11-2; 170 IAC 4-11-3; 170 IAC 4-11-4; 170 IAC 4-11-5; 170 IAC 4-11-6; 170 IAC 4-11-7

CERTIFICATION REQUIREMENTS FOR THE CONSTRUCTION, PURCHASE, OR LEASE OF SMALL MODULAR NUCLEAR REACTORS BY A PUBLIC UTILITY

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

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 ~~establishes~~ procedures and guidelines for a public utility's construction, purchase, or lease of ~~small modular nuclear reactors:~~ **SMRs:**

(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~~ **supplying** 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~~ **petitioning** the commission for approval of the construction, purchase, or lease of a ~~small modular nuclear reactor~~ **an SMR** 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 as~~ **meaning 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 as~~ **meaning 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 as~~ **meaning 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 8-1-8.5-4; IC 8-1-8.5-5

Sec. 5. (a) A public utility ~~that seeks~~ **seeking** to construct, purchase, lease, or otherwise own or operate an SMR must first ~~obtain~~ **get** a CPCN from the commission ~~pursuant to~~ **under** 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~~ **a** public utility must provide evidence regarding the following:

(1) Whether, and to what extent, ~~the~~ **at least one (1) or more of the** 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 **at least one (1) or more** of the public utility's existing electric generating facilities: ~~that~~

(A) ~~are~~ located in Indiana; and

(B) ~~use~~ **using** coal or natural gas as a fuel source.

(2) Whether **at least 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 the~~ 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~~ **constructing** or ~~operation of operating~~ 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~~ **subdivision (b)(1) and ~~(2)~~ (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 ~~an~~ existing SMR shall provide to the commission ~~all the~~ 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~~ **under** applicable federal ~~law~~ **laws** 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~~ **the** proposed or existing SMR.

(b) To the extent that 10 CFR Part 2 requires documents to be served ~~upon~~ **on** 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 ~~of~~ **or** operator of a proposed or ~~an~~ existing SMR shall be served ~~upon~~ **on** the commission within fifteen (15) days ~~of receipt of~~ **after receiving** the notice.

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

- (1) ~~a~~ report;
- (2) ~~a~~ 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~~ **under** 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~~ **those** documents for as long as the confidentiality restrictions under federal ~~law~~ **laws** 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;

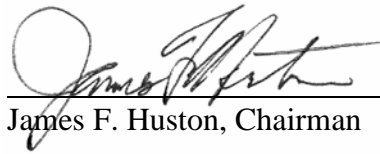
from the SMR on the site of the SMR ~~without first~~ **before** meeting ~~all the~~ applicable requirements of the NRC. (*Indiana Utility Regulatory Commission; 170 IAC 4-11-7; emergency rule filed Jun 15, 2023, 10:24 a.m.: 20230628-IR-170230500ERA*)

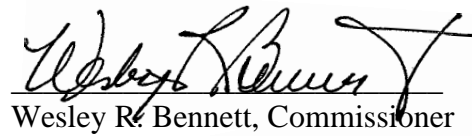
Rule Signature Page

Rule #: LSA #24-91(F)
Agency: Indiana Utility Regulatory Commission
Subject: Amends 170 IAC 4-11 regarding the certification requirements for the construction, purchase, or lease of small modular nuclear reactors by a public utility.

ADOPTED:

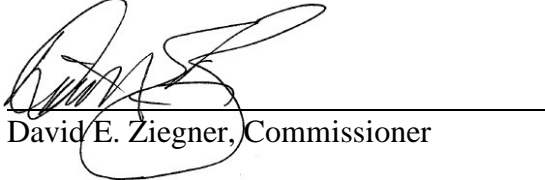
By the Indiana Utility Regulatory Commission Date: MAY 22 2024


James F. Huston, Chairman


Wesley R. Bennett, Commissioner


Sarah E. Freeman, Commissioner


David E. Veleta, Commissioner


David E. Ziegner, Commissioner

APPROVED AS TO FORM AND LEGALITY:

By: _____ Date: _____

Todd Rokita
Attorney General, State of Indiana

APPROVED:

By: _____ Date: _____

Eric J. Holcomb
Governor, State of Indiana

ACCEPTED FOR FILING:

By: _____ Date: _____

Indiana Register
Legislative Services Agency