



INDIANA MICHIGAN POWER COMPANY

MAY 18, 2023 COMMENTS

ON IURC'S DRAFT OF APRIL 5, 2023 PROPOSED RULE REGARDING SMALL MODULAR NUCLEAR REACTORS (RM#22-05)

I. INTRODUCTION

The Indiana Michigan Power Company (I&M or Company) appreciates the opportunity to review and comment on the draft proposed rules regarding small modular nuclear reactors (SMRs) as proposed by the Indiana Utility Regulatory Commission (Commission). I&M previously provided comments on an earlier draft on January 12, 2023, and provides these additional comments reflecting recent activity, including Indiana issuing Public Act 33 on this subject. As the only Indiana electric utility that owns and operates a nuclear generating facility, I&M has considerable experience and expertise to offer the Commission. I&M welcomes the opportunity to assist the Commission in any way it can on this matter.

II. COMMENTS

A. Replacement of Existing Facilities

Section 5 of the proposed rules remains inconsistent with Section 1 of the draft rules. Section 1 provides that the rules apply to existing nuclear facilities that serve Indiana customers, like I&M's Cook Nuclear Facility ("Cook"). Section 5 establishes a preference that the location of the facility be only in Indiana and could be construed to exclude consideration of adding an SMR at Cook located in Michigan. I&M owns and operates Cook and Cook's output is currently used to meet the needs of I&M's Indiana retail customers. The rules should be revised to explicitly allow for a facility covered by Section 1 of the draft rules. As such, I&M suggests the following edits to Section 5 (c):

(c) The commission may grant a CPCN under circumstances and for locations other than those described in subdivisions (b)(1) and (2), **specifically, the commission will give equal consideration where the small modular reactor is replacing or supplementing a facility either previously used for generating electricity or as described in section 1, subsection (2) of this regulation.**

General/Miscellaneous Comments

I&M encourages the Commission to also consider that a nuclear project, including a SMR, involves a sizable investment in public outreach, siting evaluation, and Federal permitting, with some of this investment occurring prior to seeking a Certificate of Public Convenience and Necessity ("CPCN"). Such investment is often called "site characterization effort". As the

proposed rule, Indiana statute IC 8-1-8.5-12.1, and the recently issued Indiana Public Laws 33-2023 and 83-2023 reflect, a SMR project will provide a number of direct and indirect benefits to the State. As such, the Commission should allow for financial incentives to encourage SMR projects, specifically to allow for recovery of site characterization effort. The Commission should clarify that financial incentives under IC 8-1-8.8-11 are available for site characterization work. The Commission should clarify that cost recovery and other financial incentives for a SMR project as a clean energy project may be pursued for site characterization work that may take place years before requesting a CPCN. As such, I&M suggests adding the following clarification to Section 3:

(3) a proceeding for a timely recovery of costs and expenses and other financial incentives to encourage development of a clean energy project, including a small modular reactor.

III. CLOSING

I&M appreciates the opportunity to provide comments on RM#22-05. The Company can provide additional information and answer questions the Commission may have.

Draft Proposed Rule
LSA Document #23-____
IURC RM #22-05

DIGEST

Adds 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 June 30, 2023.

170 IAC 4-11

SECTION 1. 170 IAC 4-11 IS ADDED AS FOLLOWS:

170 IAC 4-11 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)

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

Sec. 2. This rule applies to any 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)*

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; and-

~~(2)~~**(3)** a proceeding for a timely recovery of costs and expenses and other financial incentives to encourage development of a clean energy project, including a small modular reactor.

(Indiana Utility Regulatory Commission; 170 IAC 4-11-3)

170 IAC 4-11-4 Definitions

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. 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 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 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 in IC 13-11-2-216.

(Indiana Utility Regulatory Commission; 170 IAC 4-11-4)

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 8-1-8.5-12.1

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; or
- (C) any other relevant state or federal regulatory agency with jurisdiction over the construction or operation of nuclear generating facilities.

(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 (2). *specifically, the commission will give equal consideration where the small modular reactor is replacing or supplementing a facility either previously used for generating electricity or as described in section 1, subsection (2) of this regulation.*

(Indiana Utility Regulatory Commission; 170 IAC 4-11-5)

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 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 C.F.R. 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 days of receipt of the notice.

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

- (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)

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 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)

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