IURC RM #11-05

RULEMAKING COMMENTS ON
VOLUNTARY CLEAN ENERGY PORTFOLIO STANDARD PROGRAM
PROPOSED RULE

OCTOBER 7, 2011

SUBMITTED BY

INDIANA INDUSTRIAL GROUP

The Indiana Industrial Group, by counsel, submits the following written comments and attached redlined document in furtherance of the Commission's adoption of rules under Ind. Code 4-22-1 to establish the Indiana voluntary clean energy portfolio standard program (the "Program"). The Industrial Group appreciates the Commission's consideration and welcomes any questions or comments.

1. Strawman Invites Vast Expansion of Tracked Costs Without New Investment

The Commission's strawman has fashioned a compromise by allowing utilities to have an approved "CHOICE" application, but not qualifying for the return on equity incentive unless the utility has invested in new clean energy resources. Under proposed rule 170 IAC 17-4-4(e), however, approval of the utility's application also triggers approval of a utility's request for a periodic rate mechanism. Under the statute, a utility's request for a new tracking mechanism can be extremely broad. Under the Commission's proposed strawman, it could be argued that a utility could seek a tracker for any costs related to an existing nuclear facility, or any existing or new facility that is not in service prior to January 1, 2012 which has been found to be a clean energy project under Indiana Code 8-1-8.8-2.

Under the Commission's strawman, utilities could become entitled to track significant costs merely because they have a generating facility which falls under any of the twenty-two (22) definitions of a "clean energy resource" under Ind. Code 8-1-37-4. This would result in a significant expansion in tracking treatment for existing assets without any new investment. For example I&M could seek tracking treatment of any operating costs associated with its existing nuclear facility and Duke could seek tracking treatment of any operating costs associated with its new IGCC facility. Such expansion of trackers significantly changes the traditional ratemaking formula and shifts risks to consumers, all without any new investment by the utility. Such a result is contrary to the intent of the legislation and is not in the public interest.

The Commission can address this issue by limiting the program to new investments in clean energy resources. As stated in the Industrial Group's initial comments limiting the program to new investment is most consistent with the statute and good public policy to provide significant incentives only when the utility makes new investment, not to provide a windfall to utilities for existing investments. The Industrial Group has suggested these changes in 170 IAC 17-3-4(c) and 170 IAC 17-4-4(e) of the strawman.

2. Program Application Should Require Plan for Meeting Each CPS Goal, and Supplier Should Abide By Plan to Prevent "Bait and Switch" cost recovery.

Because an electricity supplier is permitted to recover program costs through a tracker almost immediately upon approval of the application and throughout the duration of its participation in the CHOICE program, it should be required to demonstrate a corresponding likelihood of meeting the goal for each CPS Goal Period during that time. Otherwise, ratepayers bear the full burden and risk that a supplier may recover program costs only to later announce a failure or inability to meet any goals. The Commission can address this issue by adding additional clarifying language to section 170 IAC 17-4-2 and -4 so that electricity suppliers are required to provide specific details for meeting its goals during each CPS Goal Period, including a cost-benefit study and IRP modeling.

Likewise, Commission approval under 170 IAC 17-4-4 and 170 IAC 17-6-3 should contemplate the meeting of a CPS goal in the same or substantially similar manner as that set forth in a supplier's plan (as may be amended under 170 IAC 17-5-2). Otherwise, the supplier has is no incentive to file a workable, realistic plan with the Commission, yet is able to recover "program costs" under a filed plan that may have little - *if anything* – to do with the actual means of achieving the CPS goals. That is contrary to the legislative intent of the tracker mechanism, and is not in the public interest.

Moreover, clarifications have been proposed in 170 IAC 17-4-2 to reflect the requirement under Indiana Code 8-1-37-13(C) that program costs to be recovered through the periodic rate adjustment mechanism must be "just, reasonable and necessary".

3. Timeline for Review is Inadequate.

The Commission's strawman gives intervenors twenty (20) calendar days in which to object to the completeness of the electricity supplier's application. (170 IAC 17-4-3) It then states that the supplier has five business days in which to serve a copy of their filing upon request. Thus up to seven (7) of the twenty (20) day deadline may be lost waiting to receive a copy of the filing. Moreover, because intervenors must request a copy, several or more days may elapse before we are aware of the exact day of filing and are able to make a written request. In effect, then, it is highly likely the intervenors may have less than ten (10) calendar days in which to review the application and file a notice of lack of completeness. The same is true for the deadlines set forth in 170 IAC 17-6-3.

The Commission can address this issue by expanding the deadline for filing a notice of lack of completeness to a program application or incentive application, and shortening the time in which the electricity supplier has to serve a copy of its filing. The Industrial Group has suggested these changes in 170 IAC 17-4-3 and 170 IAC 17-6-3 of the strawman.

4. Additional Changes

The attached redlined strawman contains several additional changes to the proposed language which should be self-explanatory. However, the Industrial Group welcomes the opportunity to provide additional information or clarification to the extent the Commission might find it helpful.