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Subject: IURC Securitization Rulemaking & Regulatory Analysis
Date: Tuesday, November 21, 2023 3:18:00 PM
Attachments: [2023-11-21 Securitization Regulatory Analysis - IURC RM 23-02.docx](#)
[2023-11-21 Securitization Proposed Rule - IURC RM 23-02.docx](#)
Importance: High

Attached for your review and approval are the regulatory analysis and proposed rule for IURC RM #23-02, the readoption and amendment of 170 IAC 4-10, which was originally promulgated as an emergency rule that did not expire until superseded.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 #24-90
Regulatory Analysis

I. Description of Rule

This rule readopts and amends 170 IAC 4-10 regarding procedures and guidelines for cost securitization for retired electric utility assets.

- 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 8-1-40.5, “Pilot Program for Cost Securitization for Retired Electric Utility Assets,” was enacted in 2021, and required the Indiana Utility Regulatory Commission (“IURC” or “Commission”) to adopt rules to implement the chapter. Indiana Code section 8-1-40.5-19 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.” Following two written comment periods, the Commission adopted an emergency rule, 170 IAC 4-10, LSA #21-538, on December 15, 2021, with an effective date of January 1, 2022. 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-21-02-creating-170-iac-4-10/>.

On May 10, 2022, Southern Indiana Gas and Electric Company (“SIGECO”), dba CenterPoint Energy Indiana South (“CenterPoint”) filed a petition with the Commission, requesting authorization to issue securitization bonds pursuant to IC 8-1-40.5 and following the procedures outlined in 170 IAC 4-10. The case was docketed before the Commission as IURC Cause No. 45722. The Indiana Office of Utility Consumer Counselor (“OUCC”) represented the public and the ratepayers, and a number of other entities intervened. Following the filing of written testimony by CenterPoint, the OUCC, and the other parties, and after an evidentiary hearing, the Commission issued an order on January 4, 2023, approving CenterPoint’s petition. CenterPoint then proceeded with the bond issuance and, on June 23, 2023, filed the Issuance Advice Letter and other documentation, including an estimate of \$52.9 million of savings to CenterPoint customers over 18 years. All of the filings and Commission orders are available through the Commission’s online portal at: <https://iurc.portal.in.gov/>.

With the passage of HEA 1623, the securitization 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 #21-538 was placed on the Governor’s list and, therefore, expires on October 1, 2024. The promulgation of this proposed rule allows

170 IAC 4-10 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 4-10. 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 – Even though CenterPoint has completed its initial filing and the issuance of the securitization bonds under IC 8-1-40.5, the bonds themselves and the process for the continuation of payments and the security supporting the bonds will continue for the life of the bonds, approximately 18 years. 170 IAC 4-10 needs to be readopted so that investors will continue to have confidence in Indiana’s securitization process.

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 8-1-40.5-19.

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.

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: CenterPoint and its approximately 151,000 electric customers.

IV. Changes in Proposed Rule

The proposed rule readopts and makes the following non-substantive amendments to 170 IAC 4-10, so that the rule to be more fully compliant with the Administrative Rules Drafting Manual.

170 IAC 4-10-1	Replaces “qualified costs” with “retired utility assets”
170 IAC 4-10-2	Replaces “any” with “an”
170 IAC 4-10-3	Adds “by an electric utility” after “integrated resource planning”
170 IAC 4-10-4	Replaces “subsection” with “section”, “below” with “of this rule”, and “mean” with “means
170 IAC 4-10-5	Adds “two hundred forty” before “(240)”; deletes all uses of “any”; adds “if applicable”; replaces “shall also be” with “are also”; replaces “Schedule(s)” with “Schedule or schedules”; replaces “Such” with “The”; replaces “assumption(s)” with “assumption or assumptions”; replaces “so as” with “in order”; replaces “such tariffs shall be” with “these tariffs are”; replaces “investment that is” with “investments that are”; replaces “calculation” with “calculations”; adds “applicable”; adds “a” and “an” to a list; replaces “such” with “those”
170 IAC 4-10-6	Adds “thirty” before “(30)”
170 IAC 4-10-7	Replaces “No” with “Not”

V. Benefit Analysis

a. Estimate of Primary and Direct Benefits of the Rule – The primary and direct benefits of the rule include continued confidence in, and the availability of, the securitization of CenterPoint’s retiring utility assets and an overall cost

savings to its customers of approximately \$52.9 million over the course of the securitization.

b. Estimate of Secondary or Indirect Benefits of the Rule - As a secondary benefit is continued confidence by investors in Indiana's securitization process.

c. Estimate of Any Cost Savings to Regulated Industries – This rule is part of the securitization process that allows CenterPoint to be reimbursed for its investments in utility assets that are now retiring and to spread those costs over a longer period of time and at a reduced financing cost (the AAA bond rate vs. CenterPoint's authorized return on investment), thereby reducing customer rates from what they otherwise would have been and saving customers approximately \$52.9 million.

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 existing statutes and IURC rules.

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 the analysis performed and the information and documentation provided in IURC Cause No. 45722.

a. Independent Verifications or Studies -None

b. Sources Relied Upon in Determining and Calculating Costs and Benefits – The Commission staff relied on the analysis performed and the information and documentation provided in IURC Cause No. 45722, as well as its knowledge and experience, for costs and benefits.

VIII. Regulatory Analysis

The rule, as originally promulgated, provided clarification and requirements for CenterPoint's filing of its securitization request and was part of Indiana's overall securitization process, which resulted in an estimated savings of \$52.9 million over approximately 18 years. This proposed rule readopts and amends the existing rule, so that the rule does not expire on October 1, 2024, allowing continued confidence in the Indiana securitization process, so that 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.

Title 170 INDIANA UTILITY REGULATORY COMMISSION

LSA Document # _____

DIGEST

Readopts and amends 170 IAC 4-10 regarding procedures and guidelines for cost securitization of certain electric utility assets. Effective 30 days after publication.

170 IAC 4-10-1, 170 IAC 4-10-2, 170 IAC 4-10-3, 170 IAC 4-10-4, 170 IAC 4-10-5, 170 IAC 4-10-6, 170 IAC 4-10-7

Rule 4-10. Cost Securitization for Retired Electric Utility Assets

SECTION 1. 170 IAC 4-10-1 IS AMENDED TO READ AS FOLLOWS:

170 IAC 4-10-1 Policy and scope

Authority: IC 8-1-1-3; IC 8-1-40.5-19

Affected: IC 8-1-40.5

Sec. 1. This rule is intended to establish procedures and guidelines for cost securitization for ~~qualified costs~~ **retired utility assets** under IC 8-1-40.5. (*Indiana Utility Regulatory Commission; 170 IAC 4-10-1; emergency rule filed Dec 20, 2021, 9:30 a.m.; 20211229-IR-170210538ERA, eff Jan 1, 2022*)

SECTION 2. 170 IAC 4-10-2 IS AMENDED TO READ AS FOLLOWS:

170 IAC 4-10-2 Applicability under IC 8-1-40.5

Authority: IC 8-1-1-3; IC 8-1-40.5-19

Affected: IC 8-1-40.5-3; IC 8-1-40.5-10

Sec. 2. This rule applies to ~~any~~ **an** electric utility, as defined under IC 8-1-40.5-3, that meets the threshold for qualified costs pursuant to IC 8-1-40.5-10(a). (*Indiana Utility Regulatory Commission; 170 IAC 4-10-2; emergency rule filed Dec 20, 2021, 9:30 a.m.; 20211229-IR-170210538ERA, eff Jan 1, 2022*)

SECTION 3. 170 IAC 4-10-3 IS AMENDED TO READ AS FOLLOWS:

170 IAC 4-10-3 No change to other commission processes

Authority: IC 8-1-1-3; IC 8-1-40.5-19

Affected: IC 8-1-40.5

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 4-10-3; emergency rule filed Dec 20, 2021, 9:30 a.m.; 20211229-IR-170210538ERA, eff Jan 1, 2022)

SECTION 4. 170 IAC 4-10-4 IS AMENDED TO READ AS FOLLOWS:

170 IAC 4-10-4 Definitions

Authority: IC 8-1-1-3; IC 8-1-40.5-19

Affected: IC 8-1-1.1; IC 8-1-40.5

Sec. 4. (a) The definitions in IC 8-1-40.5 and this section apply throughout this rule:

(b) “Case-in-chief” means the evidence and documentation provided by the utility in support of its petition, including, but not limited to, those listed in ~~subsection~~ **section 5(c) below of this rule.**

(c) “Commission” means the Indiana utility regulatory commission.

(d) “OUCC” means the Indiana office of utility consumer counselor established under IC 8-1-1.1.

(e) “Removal costs” ~~mean~~**means** those costs:

(1) incurred, or expected to be incurred, to physically remove retired utility generation facilities; and

(2) that have not already been recovered from customers.

(f) “Restoration costs” ~~mean~~**means** those costs found to be just and reasonable by the commission, which:

(1) have not been recovered from customers; and

(2) are incurred or expected to be incurred to restore the site of retired utility generation facilities to a reasonable state as determined by applicable law.

(Indiana Utility Regulatory Commission; 170 IAC 4-10-4; emergency rule filed Dec 20, 2021, 9:30 a.m.; 20211229-IR-170210538ERA, eff Jan 1, 2022)

SECTION 5. 170 IAC 4-10-5 IS AMENDED TO READ AS FOLLOWS:

170 IAC 4-10-5 Petition and case-in-chief

Authority: IC 8-1-1-3; IC 8-1.5-3-8.3

Affected: IC 8-1-40.5-10; IC 8-1-40.5-12; IC 8-1.5-3-8.1; IC 8-1.5-3-8.3

Sec. 5. (a) An electric utility seeking to securitize costs for retired electric utility generation assets shall file its petition and its case-in-chief on the same day. The **two hundred forty (240)** day timeline in IC 8-1-40.5-10(b) does not start until the case-in-chief is filed.

(b) The electric utility’s petition shall contain, at a minimum, the following:

(1) The best estimate of the amount and terms of the proposed securitization.

(2) The best estimate of the proposed term in years of the securitization bonds.

(3) The best estimate of the total jurisdictional rate base at time synchronized with the best estimate of qualified costs at time of bond issuance.

(4) An executive summary of the request

(c) The electric utility’s case-in-chief shall contain, at a minimum, the following:

(1) An estimate of the electric utility's total proposed qualified costs, together with descriptions and schedules of the proposed qualified costs to be subject to the securitization, including linking or mapping the proposed qualified costs to the costs currently included in utility rates, as applicable. ~~Any~~ Excel worksheets, **if applicable, shall** also be submitted with the formulas intact.

(2) ~~Schedule(s)~~ **Schedule or schedules** comparing the net present value of the total of the proposed securitization charges with the net present value of the recovery of the qualified costs through traditional ratemaking, over a period not to exceed twenty (20) years. ~~Such~~ **The** schedules shall:

(A) identify the ~~assumption(s)~~ **assumption or assumptions** utilized in the net present value analysis; and

(B) include evidence supporting the ~~assumption(s)~~ **assumption or assumptions**.

~~Any~~ Excel worksheets, **if applicable, shall** also be submitted with the formulas intact.

(3) Identification and list of the specific electric utility generation assets to be retired for which securitization is being requested, together with a calculation of the net original cost of the assets adjusted for depreciation to be incurred until the facility is retired.

(4) Proposed process to accomplish the requirements of IC 8-1-40.5-12(c), including a demonstration that the proposed securitization charges are expected to be sufficient to timely provide all payments on:

(A) debt service; and

(B) other required amounts and charges in connection with the securitization bonds.

(5) Evidence describing:

(A) the use of the securitization bonds proceeds; and

(B) accounting entries;

at receipt of bond proceeds.

(6) Description of the proposed mechanism to reduce the electric utility's base rates and charges upon assessment of the securitization charges on customer bills, ~~so~~ **as in order** to remove ~~any~~ costs associated with the qualified costs that are reflected in the electric utility's retail rates at the time the petition is filed.

(7) Tariffs for:

(A) securitization charges; and

(B) any credits or rate reductions required to remove qualified costs from existing rates.

Work papers utilized in determining ~~such~~ **these** tariffs ~~shall~~ **be** submitted to the commission and provided to participating parties.

(8) Description of:

(A) current and anticipated market conditions; and

(B) expected bond structure, including a sensitivity analysis showing various bond rates and maturities, along with the corresponding estimated savings for ratepayers.

(9) Evidence of the anticipated costs incurred to:

(A) issue; and

(B) maintain;

the securitization bonds.

(10) Proposed plan for capital investment in Indiana, with justification of ~~any~~ plan ~~investment~~ **investments** that ~~is~~ **are** not identified as a clean energy resource.

(11) Schedules and supporting documentation for estimated numbers relied upon to support the case-in-chief, including assumptions used in ~~any~~ net present value ~~calculation~~ **calculations**.

(12) A description of:

(A) ~~any~~ debt or equity securities to be refinanced or retired; and

(B) estimated redemption premiums, if ~~any~~ **applicable**;

including previously issued securitization bonds.

(13) A copy of ~~any~~:

(A) **a** contract;

(B) **an** agreement; or

(C) **an** arrangement;

that is proposed or has been made, or examples of ~~such~~ **those** documents, for the sale of the securitization bonds proposed to be issued.

(14) Demonstration of the proposed process to be used to correct ~~any~~ over collections or under collections of securitization charges.

(15) Proposed financing order.

(16) Proposed issuance advice letter for securitization bonds, if the utility plans to use such a letter.

(Indiana Utility Regulatory Commission; 170 IAC 4-10-5; emergency rule filed Dec 20, 2021, 9:30 a.m.; 20211229-IR-170210538ERA, eff Jan 1, 2022)

SECTION 6. 170 IAC 4-10-6 IS AMENDED TO READ AS FOLLOWS:

170 IAC 4-10-6 Notice to the commission, OUCC, and anticipated intervenors

Authority: IC 8-1-1-3; IC 8-1.5-3-8.3

Affected: IC 8-1.5-3-8.1; IC 8-1.5-3-8.3

Sec. 6. (a) The electric utility shall provide notice at least **thirty (30)** days prior to filing its petition to the commission by sending a letter to the secretary of the commission.

(b) The electric utility is encouraged to, prior to the filing of its petition, provide notice and meet with:

(1) the OUCC; and

(2) other anticipated intervenors.

(Indiana Utility Regulatory Commission; 170 IAC 4-10-6; emergency rule filed Dec 20, 2021, 9:30 a.m.; 20211229-IR-170210538ERA, eff Jan 1, 2022)

SECTION 7. 170 IAC 4-10-7 IS AMENDED TO READ AS FOLLOWS:

170 IAC 4-10-7 Notice to customers

Authority: IC 8-1-1-3; IC 8-1.5-3-8.3
Affected: IC 8-1.5-3-8.1; IC 8-1.5-3-8.3

Sec. 7. (a) ~~Not~~ **Not** later than thirty (30) days after the filing of its petition, the electric utility shall provide notice to its customers by:

- (1) posting notice on the electric utility's website; and
- (2) publishing notice through an advertisement in a newspaper of general circulation in each county served by the electric utility.

(b) The notice shall state:

- (1) that the electric utility has filed with the commission a petition for a securitization financing order and the authority for a finance subsidiary to issue securitization bonds;
- (2) the estimated total amount of the securitization bonds requested;
- (3) the proposed securitization charges and the number of years the charges will be collected;
- (4) the estimated net impact on customer rates;
- (5) that interested persons may send comments to the OUCC; and
- (6) the mailing and website addresses and tollfree telephone numbers for the OUCC and the commission.

(Indiana Utility Regulatory Commission; 170 IAC 4-10-7; emergency rule filed Dec 20, 2021, 9:30 a.m.; 20211229-IR-170210538ERA, eff Jan 1, 2022)