

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Notice of First Public Comment Period

LSA Document #24-91

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

PURPOSE OF NOTICE

The Indiana Utility Regulatory Commission (IURC) is soliciting public comment on amending rules at 170 IAC 4-11 concerning certification requirements for the construction, purchase, or lease of small modular nuclear reactors by a public utility. The IURC seeks comment on the affected citations listed and any other provisions of Title 170 that may be affected by this rulemaking.

CITATIONS AFFECTED: 170 IAC 4-11

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

OVERVIEW

Basic Purpose and Background

The proposed rule amends 170 IAC 4-11 regarding procedures and guidelines for certification requirements for the construction, purchase, or lease of small modular nuclear reactors by a public utility.

For purposes of IC 4-22-2-28.1, small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Beth E. Heline
General Counsel
Indiana Utility Regulatory Commission
101 West Washington Street, Suite 1500 E
Indianapolis, IN 46204
(317) 232-2092
bheline@urc.in.gov

For purposes of IC 4-22-2-28.1, the Small Business Ombudsman designated by IC 5-28-17-6 is:

Matthew Jaworowski
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 650-0126
majaworowski@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in IC 5-28-17-6, specifically IC 5-28-17-6(9), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

REQUEST FOR PUBLIC COMMENTS

The IURC is soliciting public comments on the proposed rule. Comments may be submitted in one of the following ways:

(1) By mail or common carrier to the following address:

LSA Document #24-91
Beth Heline
General Counsel
Indiana Utility Regulatory Commission
101 West Washington Street, Suite 1500 E
Indianapolis, IN 46204

(2) By electronic mail to urccomments@urc.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will not be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

(3) Attend scheduled public hearing.

COMMENT PERIOD DEADLINE

All comments must be postmarked or time stamped not later than April 24, 2024.

The rule, Regulatory Analysis, appendices referenced in the Regulatory Analysis, and materials incorporated by reference (if applicable) are on file at the Indiana Utility Regulatory Commission, 101 West Washington Street, Suite 1500 E, Indianapolis, Indiana and are available for public inspection. Copies of the rule, Regulatory Analysis, and appendices referenced in the Regulatory Analysis are available at the office of the Indiana Utility Regulatory Commission and on the IURC website at <https://www.in.gov/iurc/rulemakings/rulemakings-pending-and-effective/rm-23-03-regarding-170-iac-4-11/>.

If the IURC does not receive substantive comments during the public comment period or public hearing, the rule may be adopted with text that is the same as or does not substantially differ from the text of the proposed rule published in this notice.

ADDITIONAL DOCUMENTS

Regulatory Analysis: 20240320-IR-170240091RAA

Notice of Public Hearing: 20240320-IR-170240091PHA

PROPOSED RULE

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*)