

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN RE:)
THE MATTER OF THE INDIANA)
UTILITY REGULATORY)
COMMISSION'S STATEWIDE ANALYSIS) GAO 2018-2
OF FUTURE RESOURCE)
REQUIREMENTS PURSUANT TO)
INDIANA CODE §8-1-8.5-3.)

**JOINT COMMENTS ON THE COMMISSION'S DRAFT STATEWIDE ANALYSIS
OF INDIANA'S FUTURE RESOURCE REQUIREMENTS FOR ELECTRICITY**

The Indiana Office of Utility Consumer Counselor ("OUCC"), Citizens Action Coalition of Indiana, Alliance Coal, LLC, Sunrise Coal, LLC, the Indiana Coal Council, Inc., Sierra Club Hoosier Chapter, and Valley Watch, Inc., Hoosier Environmental Council, Indiana Conservative Alliance for Energy, Indiana Distributed Energy Alliance ("IndianaDG"), Indiana State Conference of the NAACP, Indy Green Congregations (together, "Joint Stakeholders"), respectfully submit these comments on the Indiana Utility Regulatory Commission's ("Commission") Draft Statewide Analysis of Future Resource Requirements for Electricity (the "Draft Statewide Analysis"). Joint Stakeholders are a diverse group representing a variety of interests, including advocates for the public, residential, commercial and industrial utility consumers, coal industry and environmental representatives. These parties have come together despite differences they might have on individual issues to submit these joint comments addressing the Joint Stakeholders' common concerns. Despite differences on various issues, the Joint Stakeholders worked together to prepare these Joint Comments due to the importance of having a

fair, accurate and complete analysis upon which to base the Commission's statutorily-required statewide analysis under Indiana Code § 8-1-8.5-3(c): "The commission shall consider the analysis in acting upon any petition by the utility for construction."

I. Introduction

Joint Stakeholders express their appreciation for the efforts of the Commission and the Commission Staff on the first draft of a very difficult project; they were tasked with developing the legislatively directed "analysis of the long-range needs for the expansion of facilities for the generation of electricity." The General Assembly has outlined a process for the Commission to utilize its judgment to develop a comprehensive statewide energy analysis. The Statewide Analysis will provide guidance to assist the industry, consumer advocates and interested stakeholders in evaluating certain optimum conditions and mix of resources so that annual systematic resources planning can finally be undertaken in Indiana on a statewide basis. The very first Statewide Analysis deserves the time and effort to get it right, and in doing so, can streamline future annual updating. The Indiana General Assembly assigned the Commission an important, yet daunting, task to create this Statewide Analysis. Joint Stakeholders implore the Commission to ensure the first Statewide Analysis as robust and transparent as possible, both in process and substance.

As a threshold matter, the Commission Staff's Draft Statewide Analysis should address all statutory requirements, since the Commission must consider the analysis in acting upon any petition by any utility for construction under Indiana Code ch. 8-1-8.5. In addition, the Commission should consider the interrelated nature and timing of the Statewide Analysis with other resource-related proceedings, such as demand-side management cases under Indiana Code § 8-1-8.5-10, certificates of public convenience and necessity under Indiana Code § 8-1-8.5-5, the

on-going cycle of Integrated Resource Plans, and the transmission, distribution and storage system improvement charge proceedings (“TDSIC”) under Indiana Code ch. 8-1-39.

For the reasons detailed below, Joint Stakeholders encourage the Commission to revise and enhance the Draft Statewide Analysis to meet the requirements envisioned by the Indiana General Assembly for decision-making regarding the need for generating resources in Indiana. Joint Stakeholders also encourage the Commission to broaden public participation in the development of its Analysis and consider the limitations of the identified information sources currently relied upon. The Commission is mandated to consider its Analysis in cases that will implicate billions of ratepayer dollars in future Indiana generation investments. The Commission should revisit the statutory requirements, and effectuate an open, formal process by which all interested parties may participate, and develop the Statewide Analysis accordingly.

II. Concerns Regarding the Timeline of Draft Development

On April 11, 2018, the Commission issued General Administrative Order 2018-2 (the “GAO”) wherein the Commission delegated to its staff the preparation of the Statewide Analysis to meet the requirements of Indiana Code § 8-1-8.5-3 (“Section 3”). Appendix A to the GAO directs the Commission staff to post the final Statewide Analysis to the Commission’s website in time for the Statewide Analysis to be included in the Commission’s Annual Report and/or provided to the Governor and the appropriate committees of the General Assembly by October 1st of each year pursuant to Indiana Code § 8-1-1-14(a).

The Commission published on its website a Draft Statewide Analysis on June 20, 2018. The Commission set a public hearing for July 13, 2018 to receive comments on the Draft Statewide Analysis and indicated that parties may file written comments on the Draft Statewide Analysis on or before July 20, 2018. The Commission then received a request for an extension of time to file

comments on the Draft Statewide Analysis from a group representing various consumer interests, and as a result, extended the hearing date to August 10, 2018 and the comment deadline to August 17, 2018.

Thus, the Commission put the development of its initial Statewide Analysis on a very short five-month timeframe (i.e., between when the GAO was issued in April and the October 1st deadline for the Annual Report). The opportunity to comment on the draft Statewide Analysis is appreciated, however, Joint Stakeholders are concerned about the process for this draft development. The Draft Analysis relies heavily on the utilities' IRPs and the 2017 SUFG Report. Because of the vast array of potential uses of the Statewide Analysis, Joint Stakeholders urge the Commission to engage in robust and transparent discussions concerning the strengths and weaknesses of the data the Commission is directed by the statute to use, the weighing and reconciliation of sometimes contradictory information, as well as an understanding of exactly how this annual analysis will be utilized in consideration of future CPCN cases.¹

III. Statutory Criteria for Statewide Resource Analysis

Indiana Code § 8-1-8.5-3 requires the Commission to prepare and annually update a Statewide Analysis to address the long-range needs for expansion of electric generation facilities.

The required scope of the Statewide Analysis includes:

1. The probable future growth of the use of electricity;
2. The probable needed generating reserves;
3. In the judgment of the commission, the optimal extent, size, mix, and general location of generating plants;

¹ Joint Stakeholders appreciate General Counsel Heline's statement on the record at the August 10, 2018 hearing that "The Statewide Analysis is not an energy plan nor does it pre-judge current or future electric generation decisions by the utilities." Transcript, Opening Statement.

4. In the judgment of the commission, the optimal arrangements for statewide or regional pooling of power and arrangements with other utilities and energy suppliers to achieve maximum efficiencies for the benefit of the people of Indiana; and
5. The comparable costs of meeting future growth by other means of providing reliable, efficient, and economic electric service, including purchased power, joint ownership of facilities, refurbishments of existing facilities, conservation (including energy efficiency), load management, distributed generation, and cogeneration.²

IV. Concerns With Commission's Approach

1. *Level of Deference Given to Integrated Resource Plans*

The Integrated Resource Plans ("IRPs") submitted by each of the utilities are the foundation of the Draft Statewide Analysis. Indeed, the second paragraph of the Draft Statewide Analysis treats the IRPs as credible and reliable starting points for the Commission's statutorily required analysis. In footnote 1 of its Draft Statewide Analysis, the Commission wrote: "Indiana utilities utilize state-of-the-art analysis and work with their stakeholders to develop credible Integrated Resource Plans." However, the depth, quality and transparency of IRP modeling can differ from one utility to the next and from one IRP filing to the next. Some utilities develop and test more potential scenarios than others, using a broader range of possible future conditions. Model inputs and assigned values are often protected from public disclosure, preventing non-utility stakeholders from conducting complete and meaningful analyses of IRP modeling results. Without the ability to review, dissect, revise and test changes to model inputs, interested IRP stakeholders cannot gauge the impact that differences in assumed input values can be expected to have on model results. Different opinions concerning future economic, industrial, technological, financial,

² Indiana Code § 8-1-8.5-3(b).

regulatory, market and other conditions can significantly impact IRP cost model input values and cost modeling results. Further, the end result of the IRP process is not a Commission determination, but rather a Director's Report, limited to commenting on whether an IRP complied with the Commission's rules and pointing out where it did not. The Director's Report may not comment substantively on an IRP.

Thus, the result is that a utility's underlying IRP analysis can effectively go unchallenged. Accordingly, IRPs should not be entitled to any assumption of substantive validity and therefore, should not be the foundation upon which the Draft Statewide Analysis is based. Rather, as the statute suggests, the IRP should only be one among many factors that the Commission considers and synthesizes as it exercises its informed and impartial judgment about the future electricity needs of the entire state.

The Draft Statewide Report adopts the IRPs in whole but these are the utilities' perspectives of their current perception of their future needs. While the Joint Stakeholders appreciate the Commission IRP stakeholder process, since all the decisions rest with the utilities, the Commission should recognize the limitations in that process. They are not the findings of the Commission, and the Commission can only make such findings through a formal proceeding. Although the Director's Reports are limited in scope as discussed above, those Reports do contain critical analyses of the strengths and weaknesses of the various IRPs and address points raised in comments from various stakeholders, rather than simply restating the IRPs' contents. No such critical analysis is contained in the Draft Statewide Report. In its discussion of the IRPs, the Joint Stakeholders encourage the Commission to include consideration of the IRP reports prepared by its Director of Research, Policy and Planning.

The Draft Statewide Analysis is largely a compilation of information taken from pre-existing reports prepared by others, including:

- IRPs filed from 2015 through 2017;³
- The December 2017 report by the State Utility Forecasting Group (“SUFG”) entitled, “Indiana Electricity Projections: The 2017 Forecast” (“SUFG 2017 Forecast”);
- Other sources such as the 2018 Annual Energy Outlook published by the Energy Information Administration in February 2018; and
- Selected information from MISO and PJM.

While it is appropriate for the Commission to consider all of the foregoing, this information should be used as an input, and not a substitute, for the Commission's independent analysis as envisioned by the statute.

2. Need to Account for Disparate Foundational Assumptions

There are deficiencies in the Draft Statewide Analysis resulting from this dependence on pre-existing reports: There are significant differences in each of the sources and assumptions relied upon in the Draft Statewide Analysis, with no indication of any reconciliation of these differences. For example:

- a. Neither EIA nor the SUFG assumed a carbon regime in their forecasts. The state utilities assumed a carbon tax in each of their respective preferred cases, but there are widespread differences among their projections as to what future carbon prices will be.
- b. The IRPs’ assumptions. scenarios (e.g., projected fuel costs, the growth rate used to project future demand for electricity, different methods of and values used in

³ 2018 Draft Statewide Analysis, page 1.

modeling demand side management (“DSM”), and different projected regulatory changes) also differ widely between utilities (e.g., projected fuel costs, projected carbon prices, the growth rate used to project future demand for electricity, different methods of and values used in modeling demand side management (“DSM”), and different projected regulatory changes).

- c. Certain data used in the SUFG 2017 Forecast was provided by the utilities pursuant to non-disclosure agreements (“NDA”) with the SUFG, making dependence on that report in the Statewide Analysis not fully “open and transparent,” a priority identified by the Commission in its GAO.⁴ Relying on prior reports that were created with different levels of confidential protection among disparate parties denies interested stakeholders meaningful access to data.
- d. Different information sources predicting future trends in electricity generation and consumption, including federal and/or state government and other public information sources on energy and utility regulations.

In order to produce an independent analysis of the issues as envisioned in the statutory language, it is imperative that the Commission account for these discrepancies so that the ultimate findings that will guide the Commission and the industry are based on cohesive, consistent assumptions.

3. Reliance on Stale Data

The IRP data is stale. The use of stale data in the establishment of a statewide benchmark results in a flawed, inaccurate benchmark. This is problematic since the Statewide Analysis is to be considered by the Commission when deciding utility requests for construction.⁵ The IRPs were

⁴ Indiana Utility Regulatory Commission General Administrative Order 2018-2, April 11, 2018.

⁵ Indiana Code § 8-1-8.5-3(c).

all published before 2018⁶ and contain assumptions that are demonstrably at odds with current thinking. This extends virtually to all areas including commodity costs, regulatory assumptions, and the cost and operating capabilities of renewable sources of energy and batteries. Further, none of the data considers federal tax law changes and the relative impact on the cost of capital affecting the attractiveness of various resource options and calculation of the discount rate. Finally, recent reciprocal tariffs on steel and other metals have not been factored into any modeling, which may significantly increase costs of construction.

At the macro level, stated future Indiana resource needs in the Commission’s Draft Statewide Analysis are identical to those in the SUFG 2017 Forecast.⁷ For its 2017 Forecast the SUFG analysis states “the most current year with a complete set of actual historical data was 2015. Therefore, 2016 and 2017 numbers represent projections.”⁸ An analysis such as the statute envisions should rely on data more recent than 2015 (*see* Indiana Code § 8-1-8.5-3(a), “the Commission shall keep current...”). Joint Stakeholders request the Commission identify these critical gaps and include updated inputs using, for example, the resources listed in the statute along with other data points. Further, updated data should be integrated and synthesized to arrive at a more accurate benchmark against which generation construction petitions would be measured.

4. The Need for a Complete and In-Depth Analysis

1. The Optimal Power Plant Locations, Resource Mix and Pooling

The statutory language requires the Commission to evaluate the optimal extent, size, mix, and general location of generating plants. In its Draft Statewide Analysis, the Commission noted

⁶ The Duke Energy Indiana and the Indiana Michigan Power IRPs were prepared in 2015; the IPL, NIPSCO and Vectren IRPs were prepared in 2016, the IMPA, Hoosier Energy and Wabash Valley IRPs were prepared in 2017. Typically, IRPs rely on data from the calendar year prior to their submission.

⁷ Draft Statewide Analysis, pages 1 and 22. SUFG 2017 Forecast, page 1-1.

⁸ SUFG 2017 Forecast, pages 1-7.

that it “does not have the capability to predict the location of potential future generation resources.”⁹ Thus, the Draft Statewide Analysis does not address the evaluation of optimal arrangements for power plant locations, resource mix, statewide or regional pooling, etc. Nor would the use of separately prepared utility IRPs, the SUFG 2017 Forecast, and other sources based on differing basic assumptions and criteria adequately address this evaluation. One example would be selecting a geographic site for a power plant location.

The Joint Stakeholders maintain the statutory language that the Commission determine “the optimal...*general* location of generating plants” means that the Statewide Analysis should establish generally where and how future generation should be planned so that the grid’s ability to move electrons to market participants is optimized. This is precisely the issue for which consultation with regional transmission organizations and surrounding state commissions would be appropriate. For example, there may be transmission congestion in one region that should generally inform Commission decisions on the placement of future generation. It is unclear from the Draft Statewide Analysis whether or what consideration the Commission gave to transmission congestion. During the parties’ participation in the utilities’ IRP stakeholder meetings, at least some of the utilities’ IRP modeling did not consider transmission congestion.

2. TDSIC Investments

In addition, there is no indication that the massive investments in Transmission, Distribution, and Storage System Improvements (“TDSIC”) have been considered in either the SUFG 2017 Forecast or the Draft Statewide Analysis. Indiana Ratepayers are paying billions of dollars on infrastructure. The Commission, when approving TDSIC plans, must include “a determination whether the estimated costs of the eligible improvements included in the plan are

⁹ Draft Statewide Analysis, page 29.

justified by incremental benefits attributable to the plan.” The impact of these utility plans, which are paid for by Indiana ratepayers, should be reflected in the Commission’s Statewide Analysis. Like transmission congestion, the Commission should consider or synthesize the state of completed, planned or necessary improvements to a utility’s transmission and distribution system as informed by individual or collective TDSIC plans.

3. Analysis of Underlying Assumptions

The Draft Statewide Analysis adopts several utilities’ representations as to the cost advantages of switching to gas-fueled generation, without any indication that the Commission questioned the utilities’ underlying assumptions. Such cost advantages might be refuted or might be short-lived, especially given recent rapid cost reductions in storage and renewable generation technology. While the IURC’s Director’s Report definitively states that there is a risk to future increases in gas prices, the Commission’s Draft Analysis makes no reference to that risk.

Possible cost advantages of switching to gas do not take into consideration costs associated with carbon emissions. The Draft Statewide Analysis does not consider carbon emissions except to note that the Commission staff believed that carbon regulations were not significant drivers of utilities’ resource decisions.¹⁰ Given that each Indiana utility addresses carbon both in terms of economic importance, but also with respect to the importance of reducing carbon emissions over time, the failure to address possible carbon emission reductions is problematic. Further, the Draft Statewide Analysis does not consider possible consequences if a new generating resource has higher life cycle carbon emissions than the resource it is replacing. For example, it would be appropriate to compare the carbon emissions of an existing coal plant that is replaced at the end of

¹⁰ Draft Statewide Analysis, page 31.

its economic life with renewable power, to the life cycle carbon emissions of a new CCGT. The inclusion of a life cycle emission comparison would enhance the value of the Statewide Analysis.

4. Impacts of Regulatory Environment

The utilities' IRPs, EIA, and SUFG have varying assumptions with regard to the impacts of the regulatory environment. For example, neither EIA nor the SUFG assumed a carbon regime in their forecasts. And while the state utilities assumed a carbon tax in each of their respective preferred IRP cases, there are widespread differences among their projections as to what future carbon prices will be.

In addition, utilities are taking different approaches to modeling the Effluent Limitation Guideline ("ELG") Rule. The "as soon as possible" date in the ELG Rule has been delayed by two years to November 2020 as EPA reconsiders two of the standards from the 2015 rule. EPA expects to issue a proposed rule by the end of 2018.^[1] If the new proposed rule alters the regulatory requirements, the costs of compliance for some units may demonstrably change and could affect the economic analysis and related retirement decisions. ELG uncertainty suggests that utility should evaluate sensitivities around the ELG rule, though the base case should remain with implementation of the 2015 rule on the timeline currently in effect.

There are inconsistencies in critical sensitivities among the IRPs and between the IRPs and the Draft Statewide Analysis (e.g., carbon emissions and ELG considerations). These inconsistencies can have a significant impact on the economic analysis and resulting decisions. Although all IRPs discuss individual utility viewpoints in their modeling, the Draft Statewide Analysis should address the effects of the differing assumptions and synthesize them into a final analysis.

5. Potential Alternative Technologies

The Draft Statewide Analysis does not contain a robust discussion of the possible use of renewables and battery storage, which could make the economic life of a new gas plant shorter than currently anticipated. Without such a discussion, the rate impacts of a new gas plant are vastly

understated as the host utility would also expect to recover its incremental investments in renewables and battery storage, as well as stranded investment in existing capital resources they may replace.

V. Procedural Issues

A. Consultation with Required Resources

Indiana Code § 8-1-8.5-3(d)(1) states that in developing the analysis, the Commission shall confer and consult with: (A) the public utilities in Indiana; (B) the utility commissions or comparable agencies of neighboring states; (C) the Federal Energy Regulatory Commission; and (D) other agencies having relevant information.

The Draft Statewide Analysis states on page 6 that “Commission staff utilized information from Indiana utilities’ IRPs, the Midcontinent Independent System Operator (“MISO”), the PJM Interconnection, LLC (“PJM”), the Federal Energy Regulatory Commission (“FERC”), and the U.S. Energy Information Administration (“EIA”).” However, it is unclear how the Commission itself conferred and consulted with these other entities or how that information might have been included in the Draft, nor is there any indication that the Commission conferred or consulted with utility commissions in any neighboring states. Further, regarding the SUFG, while the Draft recognizes in Section II that the SUFG has new state-of-the-art modeling software and more recent electricity forecast data than what is contained in the IRPs referenced in the Draft, it is unclear to what extent the SUFG’s work was taken into account. It does not appear that any “reality check” on the utilities’ IRPs on a statewide basis was performed.

There is valuable information from other state commissions about how to develop the Statewide Analysis. Other state commissions with similar statutory obligations have developed analyses under formal proceedings. For example, the North Carolina Utilities Commission

(“NCUC”) has nearly an identical statutory requirement to provide a report on the long range needs for expansion of electric generating facilities.¹¹ In 2017, the NCUC issued a report, which contained references to formal proceedings, testimony, and analysis from the North Carolina Commission which, at times, was critical of some of the conclusions contained in the utilities’ IRPs.¹²

The National Association of State Energy Officials (“NASEO”), of which the Indiana Office of Energy Development is a member, has provided formal guidance for States in developing comprehensive energy plans.¹³ These guidelines identify several key energy planning elements that have the greatest value:

- **Comprehensive:** Takes into consideration a *holistic* perspective of the state’s energy profile, including all energy resources and end-use sectors and input from key public and private stakeholders;
- **Adaptable:** Projects future energy supply and demand and models the potential impacts of supply shifts, geopolitical risks and uncertainties, technological change, and other factors that affect near- and long-term energy needs;
- **Guiding:** Provides a framework that allows state and business decision makers to make informed and educated judgments based on the predictability ensured by a defined and structured plan; and

¹¹ North Carolina General Statute 62-110.1(c).

¹² The 2017 North Carolina Report may be found at: <http://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=2292ba92-d5a1-4b05-b2b7-b158c915655d>

¹³ NASEO’s State Energy Planning Guidelines can be found at: http://naseo.org/data/sites/1/documents/publications/SEPGuidelines_2018_Final.pdf

- **Strategic:** Offers a deliberate and vetted plan of action that lays out clear recommendations and actions that are set within goals that are measurable and achievable.

B. Required Process to Ensure Meaningful Stakeholder Participation

Indiana Code § 8-1-8.5-3(f) states that insofar as practicable, each utility, the utility consumer counselor, and any intervenor may attend or be represented at any formal conference conducted by the commission in developing an analysis for the future requirements of electricity for Indiana or this region.

The use of the terms “intervenor” and “formal conference” in Section 3(f) indicate a more formal procedure is contemplated than what is envisioned by the GAO. Section 3(f) states that these proceedings are to be “conducted by the commission,” rather than by its staff, as envisioned by the GAO. The Indiana General Assembly entrusted the Commission, with its unique expertise and resources, to create an independent Statewide Analysis that will be one of the most important tools for the evaluation of Indiana's energy decisions. Because the Statewide Analysis is intended to serve as a comprehensive yardstick against which the Commission measures requests to build expensive new generation capacity to be paid for by ratepayers, it is vitally important that the Commission follow a procedure that is deliberate, thorough, and transparent to all stakeholders.

VI. Conclusion

The Commission’s Draft Statewide Analysis is a first and useful step toward preparing the type of analysis envisioned by the General Assembly. The Statewide Analysis is a roadmap to guide efforts to move the state’s electricity industry into the utilities of tomorrow. General Counsel Helene stated the Statewide Analysis is not an energy plan nor does it pre-judge current or future electric generation decisions by the utilities; however, undue reliance on the Draft Statewide

Analysis for making long-term decisions could result in unintended consequences and additional regulatory costs ultimately recovered from utility ratepayers. As Duke Energy Indiana states, one of the objectives in its IRP is to avoid making irreversible decisions prematurely. Joint Stakeholders agree.

Developing a “statewide analysis”, as defined in the statute, would appear to require a significant additional investment in resources that the Commission might not currently have available for this purpose. In other words, this mandate may require additional funding for the Commission to complete the type of analysis the legislature expects including the retention of outside experts to conduct an independent analysis and prepare a written report on the Commission’s behalf – a report that would adequately and independently address all of the issues required under Indiana Code § 8-1-8.5-3.

The OUCC represents it is authorized by the Joint Stakeholders to submit these comments on their behalf.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "RCH", with a long horizontal flourish extending to the right.

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CERTIFICATE OF SERVICE

This is to certify that a copy of the *Draft Statewide Analysis* has been served upon the following parties of record in the captioned proceeding by electronic service on August 17, 2018.

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