

Ed Simcox, Interim President

Boonville Natural Gas Corp.

Citizens Energy Group

Community Natural Gas Co., Inc.

Duke Energy

Fountaintown Gas Co., Inc.

Indiana Michigan Power

Indiana Natural Gas Corp.

Indianapolis Power & Light Company

Midwest Natural Gas Corp.

Northern Indiana Public Service Co.

Ohio Valley Gas Corp.

South Eastern Indiana Natural Gas Co., Inc.

Sycamore Gas Co.

Vectren Energy Delivery of Indiana, Inc.

September 13, 2012

Beth Krogel Roads
Assistant General Counsel - Legal Counsel, RTO/FERC Issues
Indiana Utility Regulatory Commission
101 W. Washington Street, Suite 1500 E
Indianapolis, IN 46204

Comments on Integrated Resource Plan Draft Rules

Dear Beth:

The Indiana Energy Association (“IEA”), on behalf of its public electric utility members, hereby submits comments on the proposed Integrated Resource Plan (“IRP”) rules intended to amend 170 IAC 4-7 (the “Proposed Rules”).¹

The IEA and its members greatly appreciate the opportunity to further discuss the Proposed Rules on September 4, 2012. The discussion provided tremendous insight into the Indiana Utility Regulatory Commission’s (“Commission”) objectives for the Proposed Rules. The IEA members’ primary concerns with the Proposed Rules are the additions of a compliance determination and authority for the Commission staff to mandate particular methodologies. These two additions threatened to eliminate the IRP’s role of a business planning document relied upon by electric utilities to evaluating future needs. The discussion with the Commission established that the Commission did not intend such a significant change in the IRP’s purpose.

Commissioner Bennett articulated the Commission’s goal for the Proposed Rules. She highlighted the relationship between the IRP submission and a subsequent Certificate of Public Convenience and Necessity (“CPCN”) proceeding. She stated this transition from the IRP to the CPCN is descriptive but not quite illustrative. Specifically, she noted that the progression from an

¹ The IEA members participating in these comments are Duke Energy Indiana, Inc.; Indiana Michigan Power Company; Indianapolis Power & Light Company; Northern Indiana Public Service Company and Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc.

IRP submission to a CPCN proceeding allows stakeholders to see that a utility got from the proverbial Point A to Point B, but that current practice does not illustrate that movement. The goal, as she pointed out, should be for stakeholders to “see” the utility’s logic between planning for projects and then acting on those plans. The IEA believes that the Commission’s objective can be achieved more efficiently and effectively by incorporating Staff involvement in the proposed public advisory process and eliminating the compliance determination.

While the majority of the comments are focused on the efficiency gained by eliminating the compliance determination and using the public advisory purpose to achieve the Commission’s objective, the IEA has also identified some additional technical issues in the Proposed Rules. Given the longevity of the initial rules, these revisions are intended to ensure the Proposed Rules match actual practice during the next fifteen years. Finally, additional details about the cost estimates are provided.

Compliance Determination

During the technical conference held on September 4, 2012 to discuss the Proposed Rules, the Commission indicated that the objective of the Proposed Rules’ compliance determination was to ensure greater transparency about how the IRP analyses leads to investment. This objective can be reached without the compliance determination’s complexities through open and transparent participation in the public advisory process. The IEA proposes to eliminate a bi-annual compliance determination while proposing additional avenues for the Commission and its staff to raise questions or concerns about an IRP’s assumptions, models, methodologies and analysis and provide feedback about these inputs. Such a modification harmonizes the proposed rules with the Utility Power Plant Construction Act (the “Act”, codified at Ind. Code § 8-1-8.5-1 *et seq.*) while ensuring the Commission is familiar with the components that make-up a utility’s IRP.

The IEA members recognize all stakeholders benefit by addressing the Commission’s questions, concerns and perspectives about their IRPs prior to its finalization and submission. IRPs play a crucial role in satisfying the evidentiary burden needed to support a public utility’s CPCN petition. Ind. Code § 8-1-8.5-2; *Wabash Valley Power Assoc., Inc.*, Cause No. 42299, p. 4 (IURC Jan. 22, 2003) (granting a CPCN based, in part, on the conclusion that the proposed generation was consistent with the utility’s “IRP submitted pursuant to I.C. § 8-1-8.5-3(e).”) If the Commission has a substantive disagreement with a utility’s IRP, understanding the nature of the disagreement at the time the IRP is being prepared—rather than after it is completed or during a CPCN proceeding—benefits all stakeholders. The utility can work to address the Commission’s concern or question before the IRP is finalized and

incorporate that resolution into the final IRP. This eliminates the need to prepare the IRP again (as might be the case if an IRP is found to be non-compliant). In this fashion, stakeholders avoid reviewing multiple iterations of the IRP and minimize litigated issues in a CPCN.²

A compliance determination is an inefficient mechanism to provide this transparency because it adds unnecessary complexity that consume stakeholders' resources with little assurance that the same or different issues will not require further litigation in a subsequent CPCN proceeding. The IEA advocates achieving this same objective without inviting the concerns raised by the compliance determination.

The Proposed Rules already lengthen the time required to process an IRP to provide for a public advisory process. Adding a compliance determination once the IRP is finalized, however, substantially increases the potential time to finalize an IRP—potentially adding a year or longer. Section 2(l) requires sixty days for the Director of the Energy Division to make a determination. The IRP could not be final for thirty more days as a utility waits to determine whether the compliance determination is appealed to the full Commission in accordance with Section 2(s). If such an appeal is taken, the Proposed Rules establish no timeline for Commission resolution. Consumer affairs decisions are typically resolved in 2-5 months, although the additional complexity of the IRP may require more time to evaluate the evidence.³ Parties aggrieved by the Commission's resolution of factual controversies about IRP compliance could challenge the decision pursuant to Ind. Code § 8-1-3-1. *Indiana & Michigan Elec. Co. v. Public Serv. Comm'n of Indiana*, 495 N.E.2d 779, 784 (Ind.Ct.App. 1986) (Noting that while “the act of promulgation [of a rule] is not subject to direct review,” the “review provisions are clearly applicable to orders, rulings or decisions based upon factual controversies.”). Appeals can last 9 months or longer. By the time the IRP is resolved, the utility would have already begun the process of its next IRP. The IEA members cannot endorse a model that may turn the IRP process into a litigious and uncertain effort on a full-time, year-around basis.

² This is not to say that all issues can be resolved in the public advisory process. The IEA members acknowledge that there may be a difference of opinion among the stakeholders about certain issues that further clarification and understanding will not resolve.

³ The compliance determination should be eliminated on policy grounds and because it is inconsistent with the Act. However, if it is retained in the Proposed Rules, Section 2(r) must be revised. The current language permits only entities that qualify to file a complaint pursuant to Ind. Code § 8-1-2-54 to appeal a compliance determination. Notably, public utilities would not qualify to appeal a compliance determination, although they are directly impacted. This essentially forecloses a utility from any review of a compliance determination.

It would be naïve to conclude such delays are unlikely. Jurisdictions such as New Mexico which require approval of IRPs by the utility regulatory commission often experience significant litigation over the IRP. *See e.g., In re Possible Changes to the Filing Requirements for Renewable Energy Portfolio Procurement Plans, Efficient Use of Energy Reports and Integrated Resource Plans*, Case No. 12-00057-UT, p. 1 (NMPRC March 6, 2012) (Order Scheduling Workshop) (“Public utilities expend a great deal of time and resources preparing and defending these plans/reports, which often involves lengthy and expensive litigation.”)⁴ There is no reason to believe that Indiana would be any different. Some parties might adopt a strategy of drawing-out the IRP process to promote their business interests or political views through challenges to the full Commission and appeals to the appellate courts.

The compliance determination may also result in stakeholders investing much more effort into the IRP process without reducing resources that must be expended in a subsequent CPCN proceeding. Stakeholders participating in the early meetings indicated that they did not expect to refocus their resources from the CPCN proceedings to the public advisory process. Inclusion of the compliance determination should cause stakeholders to re-evaluate the wisdom of not participating in the IRP process. The Proposed Rules do specify that the compliance determination would not constitute a pre-approval or prior commission authorization of any specific resource action. *See* 170 IAC 4-7-2(i) and (j). Yet, resolution of the compliance determination means that the utility and the Commission Staff have come to a consensus that the IRP complies with rules designed to produce the best resource option. Parties may reserve the right to challenge the result, but there is a risk that the Commission will have already been persuaded through the IRP process about the best outcome. If this is not the result, then the compliance determination is a very expensive formality without any purpose.

Yet even with a compliance determination, controversies in CPCN proceedings are unlikely to be diminished. IRPs may be outdated by the time they are submitted due to the fast-changing pace of the electric industry. Utilities sometimes must explain that changing circumstances justify a different resource from what is identified in its most recent IRP. *See Joint Petition of Duke Energy Indiana, Inc., Wabash Valley Power Association, Inc., and Duke Energy Vermillion II, LLC*, Cause No. 43596 (IURC; Dec. 28, 2011); *Indianapolis Power & Light Co.*, Cause No. 43740, pp. 12-13 (IURC Jan. 27,

⁴ Available at <http://www.nmprc.state.nm.us/general-counsel/docs/12-00057-UT%20-%20Order%20Scheduling%20Workshop.pdf>.

2010). This may render stakeholder investment in resources in a prior-IRP proceeding of significantly less value in an ensuing CPCN proceedings.⁵

The introduction of the compliance determination introduces significant complexity and delays without any significant benefits. A bi-annual compliance determination is also inconsistent with the Act, which provides that the Commission “shall consider and approve, in whole or in part, or disapprove a utility specific proposal or amendment thereto jointly with an application for a certificate under this chapter.” Ind. Code § 8-1-8.5-5(d). The “proposal” in this subsection is the IRP submitted by Indiana utilities pursuant to Ind. Code § 8-1-8.5-3(e). *See* Ind. Code § 8-1.5-5(2)(B). The Act contemplates a model similar to Michigan’s, where the approval of an IRP takes place only at the time a CPCN is initiated. Mich. Comp. Laws § 460.6s(11). Indeed, the Act provides that the approval (or disapproval) is “solely for the purpose of acting upon the pending certificate for the construction, purchase, or lease of a facility for the generation of electricity.” I.C. 8-1-8.5-5(d). This approach conserves stakeholders’ resources by focusing them on a proceeding where decisions about investments are actually being made. While this is a different model from other States which specifically require IRP approval, the Commission must adopt rules consistent with Indiana’s statutes.⁶ *See Alan Bryant Health Care Facilities, Inc. v. Hamilton*, 788 N.E.2d 495, 500 (Ind.Ct.App. 2003) (“Any regulation that conflicts with statutory law is wholly invalid.”) By incorporating the Commission staff into the public advisory process, the objectives of the compliance determination can be maintained without complexity, delays and wasteful use of resources.

Contemporary Methods.

The Commission indicated that it does not intend the Proposed Rules to alter the design of the IRP as a business planning document utilized by the utilities to evaluate future resource needs. The IEA has eliminated the mandate to utilize contemporary methods and inserted language requiring an explanation concerning the use of contemporary methods in Section 4(b)(10). If the

⁵ The flexibility to pursue an option not included in the IRP resource plan is a benefit under the existing rules that should not be lost. The objective of the Act is to protect the public convenience and necessity, not enact a rigid planning process that cannot be deviated from when changes require. Consistent with this approach, the Act calls for approval of the IRP at the time of a CPCN application. Ind. Code § 8-1-8.5-5(d).

⁶ In contrast to the Act, legislation in other states where the IRPs are approved or acknowledged by the Commission’s equivalent body explicitly requires such approval. *See e.g.* Ga. Code Ann. § 4603A-2(b) (“After hearing, the commission shall determine whether” the IRP satisfies identified criteria.); N.H. Rev. Stat. Ann. § 378:39 (“The commission shall review proposals for integrated least-cost resource plans in order to evaluate the adequacy of each utility’s planning process.”); and Va. Code Ann. § 56-599(E) (“[T]he Commission shall make a determination as to whether an IRP is reasonable and in the public interest.”).

Commission's staff can mandate the contemporary methods that a utility must utilize, the document may cease to be a business plan of the utility and instead reflect the policy objectives of the Commission staff. The IEA does not believe this was the Commission's intent.

Public Advisory Process

A properly implemented public advisory process is the most effective way to achieve the transparency sought by the Commission. Foremost, the IEA believes the intimate mechanics of the public advisory process should remain within utility control, and that the utilities and stakeholders can institute an effective advisory process. This said, the IEA believes an effective advisory process requires Commission participation. For example, the goal is to inform stakeholders beyond the actual text of an IRP. The advisory process serves as a good vehicle for utilities to explain and discuss resource planning logic. This process is especially effective if meetings like technical conferences can occur. These types of meetings allow presenters to convey information and for them to receive interested parties' comments.

Revised IRP rules do not need to change the interaction between utilities and Commission staff. Under the currently effective IRP rule, the Commission informally reviews and interacts with utilities. If a discrepancy or shortcoming exists, or if a Staff member has a question, Staff members contact the submitting utility. The process is not rigid, and the current rule does not prescribe the necessary steps. The advent of a specific public advisory process, however, provides a new format for this exchange earlier in the process so that input can be taken into account at the earliest stage of review.

The Proposed Rules contains language providing for the informal exchange of information and comments. Commission staff should be involved in the discussion during the pre-submission meetings. The inclusion of staff at advisory meetings allows utilities to convey effectively and efficiently the logic behind decisions. With interested parties in attendance, these meetings help facilitate the casual, but important, exchange of comments.

The IEA has proposed language requiring that utilities address Staff comments that arise in the advisory process. This ensures utilities engage Staff, that utilities respond to Staff, and that Staff has a direct stake in the meetings. As has always been the case, the utilities remain open to meeting with Staff outside of the advisory process as necessary to address staff's concerns. Again, if the goal for creating an advisory process is to provide a mechanism to address what happen between a utility's point "A" and "B," then the rule should reflect the informal nature of current exchange of information. Some fluidity must exist for discussion between the utility and the Commission.

The IEA continues to seek certainty about the timing of the public advisory process and advocate that the Proposed Rules should provide set times (or periods) for larger stakeholder group meetings. Planning for an IRP document submission is a long process, and utilities can best prepare for these meetings when being able to pinpoint when the larger meetings occur. These pre-set times help keep the schedule in the utility's domain while encouraging stakeholder meetings.

Other Technical Issues

Section 1(p). The IEA has proposed minor suggestions to promote clear language in this definition.

Section 1(t). The IEA proposes eliminating the word dispatching and replacing the term with discharging because the term dispatch could imply the resource must have some capability to dispatch into an RTO to be captured in the definition.

Section 1(gg). The IEA added this definition to provide meaning to a term added to Section 6(d)(3).

Section 1(hh). The original language implied that the primary focus in arriving at the preferred resource portfolio was cost. While cost is one important consideration in developing the resource portfolio, the Commission and Indiana appellate courts have consistently recognized that cost must be balanced against other factors including reliability, risk and uncertainty. *See e.g., Duke Energy Indiana, Inc.*, Cause No. 43955, p. 33 (IURC March 21, 2012).

Section 1(kk). The IEA proposes clarify that the public's role in the advisory process is to propose issues for the utility to consider in developing the IRP. Use of the term participate could be construed as a joint effort, which was not the original intent.

Section 1(aaa). The IEA proposes a revised definition of the utility cost test that is more consistent with industry standards.

Section 2.2. The IEA recommends that contemporary issues meeting be deemed a technical conference in the rules because characterizing the gathering as a technical conference is more consistent with the intention of the gathering.

Section 3. The IEA proposes revisions to Section 3 of the Proposed Rules addressing the necessity of the most recent IRP to be consistent with the relief sought in a CPCN proceeding. As currently written, the language suggests that a utility must submit an entirely new IRP if its proposed resource

is different from the most recent IRP. As noted previously, changes impacting the resource portfolio frequently occur after an IRP is submitted. Submitting an entirely new IRP is generally not necessary to explain what changes have occurred to justify a different resource proposal. This requirement encourages utilities to disregard alternatives that differ from the resource plan of the most recent IRP to avoid the investment in resources to prepare a new IRP even if the alternative resource is now a better option and might discourage investment in needed generation resources. The revisions proposed by the IEA continue to require an explanation and revised IRP analysis, but stop short of requiring an entirely new IRP.

Section 4(b)(5). The IEA recommends limiting the discussion of distributed generation to resources that may have a material impact on the development of the IRP. Many customers may have their own generation resource but many of these sources are of such a small scale or operated in a fashion that offers no material impact on the IRP. Requiring analysis of these inputs unnecessarily complicates the IRP with no benefit.

Section 4(b)(7). The original language suggested that the IRP needed to justify (or provide the rationale for) a utility's fuel procurement strategy. While accounting for a utility's fuel inventory procurement is relevant to the IRP, an IRP is not the proper place to address the appropriateness of the strategy. Utilities address such issues quarterly in fuel adjustment clause proceedings. The IEA proposes revisions to remove any suggestion the IRP must justify the fuel procurement strategy.

Section 4(b)(8). The original language suggested that the IRP needed to justify (or provide the rationale for) a utility's emissions allowance inventory and procurement practices. While accounting for a utility's air emissions strategy is relevant to the IRP, an IRP is not the proper place to address the appropriateness of the strategy. The utilities address such issues in environmental cost recovery proceedings. The IEA proposes revisions to remove any suggestion the IRP must justify air emissions allowance inventory and procurement practices.

Section 5(a)(1). Historically, an IRP has presented the load shapes identified in the rule. The addition of the word "analysis" could be construed as requiring something more than the data and graphs that have historically been presented. The IEA proposes eliminating this uncertainty.

Section 5(a)(4). The IEA proposes eliminating a description of the "use and reporting of actual" weather normalized energy and demand levels and instead inserted the word "actual." The rationale for this change is that the phrase "use and reporting of actual" is unclear.

Section 6(a)(5). The IEA has eliminated the scheduled power import and export transactions because the advent of the markets for energy operated by the regional transmission organizations (“RTOs”) serving Indiana renders this data impossible to provide. The cogeneration and nonutility production expected to be available for purchase by the utility has been moved to the new resource section, where it fits better.

Section 6(a)(6). The IEA has modified this section to better reflect that utilities are members of RTOs.

Section 6(b)(2). This definition was eliminated because the definition of lost opportunities was deleted.

Section 6(c)(3). Identifying the value of new or upgraded transmission facilities depends on information that is only available at the RTO level. The purpose of this revision is to ensure the information that is sought corresponds with the information available from the RTOs.

Section 8(b)(4). The IEA eliminated conservation and inserted the defined term demand side management to promote consistency with the use of the phrase demand side management in other parts of the rule. The word distribution was eliminated because including distribution in this analysis has not been done historically and requiring this type of analysis at a distribution level would dramatically increase the analysis required in the IRP process without providing significant benefits.

Section 8(b)(6). The IEA proposes changing the word price to cost to avoid any implication that the average dollar per kilowatt hour resulting from this analysis includes all of the components of rates that are paid by ratepayers.

Cost Estimate.

The IEA is also providing additional detail regarding the estimated cost of compliance with the Proposed Rules. The incremental resource costs are due in part to the anticipated continuous process that spans each two year IRP cycle in the current draft of the Proposed Rules. The IEA members believe that the cost impact would be smaller if the compliance determination is eliminated. The estimates have been made without any actual experience and include interpretations of what may be required by certain proposed changes to the rules. Based on the understanding of the changes, the five public electric utilities estimate that the Proposed Rule will impose an aggregated cost increase on them of approximately \$2-2.9 Million for each IRP cycle. The utilities’ incremental costs predominately fall into three categories:

(1) Internal labor: The utilities anticipate additional time devoted to the IRP process by current and added employees. These labor costs would total \$722,800 to \$737,800. Increased employee resources will be necessary to manage the public advisory process and the compliance determination. As noted in the comments, the IEA anticipates that the Proposed Rules could cause the IRP to become a year-around project rather than a bi-annual filing. Additional resources will be required to manage this process, as current employees are currently tasked with other responsibilities during the period that the IRP is being prepared.

(2) Consulting: The utilities anticipate added external consulting required to obtain certain types of analysis and data required by the rule, including such items as demand response studies, and more frequent dynamic stability studies and updates to demand side management market potential studies. These consulting costs would total \$735,000 to \$1,440,000.

(3) Public meetings: The utilities also anticipate added cost of conducting two public participation meetings and related reporting. These public meetings and related work would total \$648,000 to \$723,000. Costs included in this category include preparing documents, funding meeting incidentals, engaging legal counsel to evaluate and assist in responding to counsel and preparing responses to substantive comments.

These estimates do not take into account the unlikely eventuality that the rules would be construed as requiring a more nodal analysis of transmission and distribution assets. In that instance, the costs imposed would be considerably more.

These estimates are subject to change based on the level of public input received, the need to appeal decisions related to a compliance determination of the IRP, and the need to update IRPs whether or not a CPCN case is also pending.

Conclusion

The IEA members appreciate the Commission's investment of time in the Proposed Rules. Attached is a redline of the Proposed Rules suggesting revisions addressed by these comments. With these revisions, the Proposed Rules more efficiently achieve the objectives of the Commission without changing the basic purpose of the IRP.

Sincerely,


Ed Simcox