



## **INDIANA MICHIGAN POWER COMPANY**

**JANUARY 12, 2023 COMMENTS**

### **ON IURC'S DRAFT PROPOSED RULE REGARDING SMALL MODULAR NUCLEAR REACTORS (RM#22-05)**

#### **I. INTRODUCTION**

The Indiana Michigan Power Company (I&M or Company) appreciates the opportunity to review and comment on the draft proposed rules regarding small modular nuclear reactors (SMRs) as proposed by the Indiana Utility Regulatory Commission (Commission). As the only Indiana electric utility that owns and operates a nuclear generating facility, I&M has considerable experience and expertise to offer the Commission. I&M welcomes the opportunity to assist the Commission in any way it can on this matter.

#### **II. COMMENTS**

##### **A. NRC Reports**

Providing the Commission with copies of NRC Reports should be meaningful and not burdensome. Owning and operating a nuclear fission generation power plant is highly regulated by the rules, regulations, and policies of the United States Nuclear Regulatory Commission or, NRC, under its exclusive jurisdiction to regulate the safe operation of nuclear facilities. I&M interacts with the NRC on a daily basis and is frequently audited for operational, maintenance and control equipment and practices. The Company constantly receives and sends numerous notices and reports to the NRC based on various NRC regulations and policies.

As drafted, the proposed rule could require an owner of an SMR to provide the Commission with each and every report it makes to the NRC regardless of whether the report is meaningful to the Commission. Doing so would not only be extremely burdensome to an owner, but would also impose a significant administrative burden effort on the Commission with minimal value.

Therefore, I&M suggests that Section 6 of the proposed rules either be deleted in its entirety or revised to require only reports related to significant notices of violations be provided to the IURC. Additionally, I&M notes that NRC regulations already require distribution of licensee reports to State officials. I&M suggests adding to Section 6 that the reporting requirements of IC 8-1-8.5-12.1(c)(5) are deemed met when licensee reports are distributed as directed by 10 C.F.R. Part 2 and any specific Orders by the IURC.

I&M appreciates that the draft rule recognizes that such reporting should be considered confidential given the potential sensitive nature of the content of those reports. The Company notes, however, that the proposed rule states that confidential information is to be submitted

according to 170 IAC 1-1.1-4, requiring the filing of application in a docketed proceeding. I&M proposes that the draft rules include that such a filing seeking protection of confidential information be made only once in a docket, perhaps the CPCN docket approving the SMR, that remains active for the life of the SMR, so as to avoid the needless effort of repeating a potentially lengthy process.

## **B. Replacement of Existing Facilities**

Section 5 of the proposed rules requires a public utility that plans to construct, purchase, lease, own, or operate an SMR in Indiana to first obtain a Certificate of Public Convenience and Necessity (CPCN). I&M recognizes the need for a CPCN, but notes that limiting the location of the facility to being located only in Indiana in the current draft could be construed to exclude any consideration for I&M's Cook Nuclear Facility ("Cook") located in Michigan. I&M owns and operates Cook and Cook's output is currently used to meet the needs of I&M's Indiana retail customers. The rules should be revised to explicitly allow for a situation where if for some reason Cook was retired and I&M planned to replace it with SMRs. As such, I&M suggests the following edits to Section 5 (b)(1):

- (1) Whether, and to what extent, the one (1) or more 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 one (1) or more of the public utility's existing electric generating facilities that:
  - (A) are located in Indiana; ~~and~~
  - (B) use coal, or natural gas as a fuel source; ~~or~~
  - (C) is at the site of a nuclear energy production or generating facility that supplies electricity to Indiana retail customers on July 1, 2011.

## **C. General/Miscellaneous Comments**

I&M encourages the Commission to also consider that a nuclear project, including an SMR, involves a sizable investment in siting and Federal permitting. While a public utility would undertake such effort in coordination with Commission practices such as Integrated Resource Planning and proceedings for a CPCN, a non-utility entity may focus on locations that foster its convenience delaying the opportunity for Commission input too late in the project. As such, the project may not be optimized for the public interest when total costs are considered such as distribution and transmission needs for a multi-hundred megawatt SMR project.

It is in the public interest to ensure the total costs to Indiana residents arising from new technologies, such as SMRs, are incorporated into the power grid in a cost-effective and reliable manner regardless of the owner or operator. The rules could be revised in the future to allow for an entity besides a public utility to construct, purchase or lease an SMR, but this would require significant coordination with utility and transmission owner and utilize planning provisions under the regulation of the IURC, similar to those applicable to an SMR project by a public utility.

United States Nuclear Regulatory Commission or, NRC, regulations for a new nuclear project, like an SMR, demonstrate financial qualifications in addition to technical qualifications. For a public utility (which the NRC defines as an “electric utility”), demonstration of financial qualifications is fairly straight-forward. For other entities, the NRC requires a more fulsome showing. Such a showing may include assurances from a State. In its regulations that an entity besides a public utility that pursues a SMR project, the Commission should be clear that such an entity cannot base its demonstration of financial assurance to the NRC on direct or indirect State assurances, such as financial guarantees or non-bypassable wire charges except pursuant to an Order from the IURC.

As the proposed rule and Indiana statute reflect, a SMR project will provide a number of direct and indirect benefits to the State. As such, the IURC should allow for incentives to encourage SMR projects such as allowing a 100 basis point adder to return on equity for investment by a public utility in a SMR project. The IURC could allow for an additional equity adder to foster investment that has further incremental benefits to the public interest, such as a project at brownfield or coal site, a project that disproportionately benefits a disadvantaged community, or a project that incorporates significant content produced in Indiana. The recent Federal tax credit programs, like the IRA, are examples of the types of attributes that the IURC could adapt to meet situations specific to Indiana.

### **III. CLOSING**

I&M appreciates the opportunity to provide comments on RM#22-05. The Company can provide additional information and answer questions the Commission may have.

**Draft Proposed Rule**  
LSA Document #23-\_\_\_\_  
IURC RM #22-05

DIGEST

Adds 170 IAC 4-11 regarding requirements for certification under IC 8-1-8.5 for the construction, purchase, or lease of small modular nuclear reactors by a public utility. Effective June 30, 2023.

**170 IAC 4-11**

SECTION 1. 170 IAC 4-11 IS ADDED AS FOLLOWS:

**170 IAC 4-11 Certification Requirements for the construction, purchase, or lease of small modular nuclear reactors by a public utility.**

**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 procedures and guidelines for a public utility's construction, purchase, or lease of small modular nuclear reactors:**

**(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 electricity to Indiana retail customers on July 1, 2011.**

*(Indiana Utility Regulatory Commission; 170 IAC 4-11-1)*

**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 8-1-8.5-12.1; IC 8-1-8.8**

**Sec. 2. This rule applies to any public utility, as defined under IC 8-1-8.5-1(a), that petitions the commission for approval of the construction, purchase, or lease of a small modular nuclear reactor to provide utility service to Indiana customers. *(Indiana Utility Regulatory Commission; 170 IAC 4-11-2)***

**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.**

*(Indiana Utility Regulatory Commission; 170 IAC 4-11-3)*

**170 IAC 4-11-4 Definitions**

**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. 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 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 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 in IC 13-11-2-216.

*(Indiana Utility Regulatory Commission; 170 IAC 4-11-4)*

**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 8-1-8.5-12.1

**Sec. 5. (a)** A public utility that seeks to construct, purchase, lease, or otherwise own or operate an SMR must first obtain a CPCN from the commission pursuant to IC 8-1-8.5.

**(b)** As part of its case-in-chief, the public utility must provide evidence regarding the following:

**(1)** Whether, and to what extent, the one (1) or more 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 one (1) or more of the public utility's existing electric generating facilities that:

- (A)** are located in Indiana; ~~and~~
- (B)** use coal or natural gas as a fuel source; ~~or~~
- (C)** is at the site of a nuclear energy production or generating facility that supplies electricity to Indiana retail customers on July 1, 2011.

**(2)** Whether 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 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; or
- (C) any other relevant state or federal regulatory agency with jurisdiction over the construction or operation of nuclear generating facilities.

(c) The commission may grant a CPCN under circumstances and for locations other than those described in subdivisions (b)(1) and (2).  
*(Indiana Utility Regulatory Commission; 170 IAC 4-11-5)*

**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) Any:
- (1) reports;
  - (2) notices of violations; or
  - (3) other notifications;

sent to or from the NRC by or to the owner or operator of a proposed SMR must be submitted by the owner or operator to the commission within 30 days of being sent or received.

- (b) If a:
- (1) report;
  - (2) notice of violation; or
  - (3) other notification;

contains 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 the commission's rules, specifically including 170 IAC 1-1.1-4.  
*(Indiana Utility Regulatory Commission; 170 IAC 4-11-6)*

**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 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 meeting all applicable requirements of the NRC.  
*(Indiana Utility Regulatory Commission; 170 IAC 4-11-7)*