

Rulemaking #11-05 – Indiana Clean Energy Portfolio Standard (INCEPS)  
OUCC Comments for IURC Meeting – July 21, 2011

**Sec. 4 – “Clean Energy Resource”**

Question: *Can participating electric suppliers use existing resources to meet the CPS goals?*

Recommendation: The OUCC submits that participants must use newly developed clean energy resources which are in-service after the date of the Commission’s approval of an electricity supplier’s participation in the CPS program. The exceptions to this requirement would be that (1) an electricity supplier may count “equipment installed, or customers enrolled “after January 1, 2010, pursuant to “(d)emand side management or energy efficiency initiatives.” See, IC 8-1-37-4(a)(16), or (2) that the supplier may count “electricity that is generated from natural gas at a facility constructed in Indiana after July 1, 2011 which displaces electricity generation from an existing coal fired generation facility. See, Sec. 4(a)(21).

Comment: The language of the statute would indicate the intent of the legislature was to encourage the addition of new clean energy resources to the state’s generation fleet. Section 11(c)(2) states “the electricity supplier submitting the application has demonstrated that the electricity supplier has a reasonable expectation of obtaining clean energy to meet the requirements...” The use of the word “obtaining” would indicate the legislature was intending on encouraging new generation to meet this standard, not using existing resources. Similar language can also be found in Section 10(a) which states, “the program established under this section must be a voluntary program that provides incentives to participating electric suppliers that undertake to supply specified percentages of the total...” The use of the word “undertake” would imply new resources, not existing resources.

Furthermore, utilities should not be rewarded or given incentives for actions taken in the past. Given that this program is voluntary, the goals are relatively modest and there is no non-compliance penalty for not meeting the specified goals, utilities will not be unfairly penalized if existing resources cannot be used to meet the standard, except as otherwise specified in the new law.

**Sec. 10 – “Adoption of Rules Establishing the Program”**

Question: *Who will be able to participate in the Indiana CEC Market?*

Recommendation: The OUCC recommends that any entity desiring to participate in the CEC market should be able to do so.

Comment: Anyone should be able to sell credits in the Indiana CEC market, including municipals and cooperatives. Allowing Hoosier Energy, Wabash Valley and IMPA to participate in the Indiana CEC market allows the state to increase the level of resources produced in Indiana to meet this voluntary standard. This will spur greater economic development for

these resources inside the state and reduce the need for participating electricity suppliers to go outside of Indiana to purchase clean energy credits.

Question: *How should the tracking and trading system be established for clean energy credits in Indiana?*

Recommendation: The Commission should establish a similar tracking system to that of Michigan and the Midwest ISO using NYSE Blue or a similar style to create the infrastructure necessary for CEC tracking function.

Comment: This type of infrastructure design offers many advantages. First, the interface is very simple and easy to use. Second, the tracking system can be designed to be specific to Indiana laws and requirements. Third, this interface and market infrastructure design allows for connection to other renewable energy credit markets such as the PJM GATS market and the MISO Renewable Energy Trading System. Fourth, using this interface will allow for easy reporting of compliance, transparency of transactions and detailed audit trails for oversight.<sup>1</sup> The NYSE Blue infrastructure can collect and report all of the information required by IC 8-1-37-14(a) (1, 2, 3). Finally, Indiana will have the time required to establish this system. Reporting will not begin until 2014 and the first goal period doesn't begin until 2013.

## **Sec. 11 – “Application to Program; Review by Commission”**

Question: *What should be the manner and form prescribed by the Commission when applying to the program (Sec. 11 (a)(1))?*

Comment & Recommendation: The OUCC recommends that the application process should be a docketed CPCN or similar proceeding so that its progress may be tracked by the Commission throughout the succeeding applications process and goal periods and so that the OUCC has the ability to appear on issues or matters of interest on behalf of the ratepayers. The applicant bears the burden of proof to the Commission that its Section 11 application should be granted. See, IC 8-1-37-11(c)(3). By making provision for this burden of proof, the General Assembly was indicating there must be some basis in an evidentiary record supporting the approval of the electricity supplier's participation in the program.

As stated in IC 8-1-1.1 – 5.1(e), “In all proceedings before the commission...and in a court in which the consumer counselor shall appear, the consumer counselor shall have charge of the interests of the ratepayers and consumers of the utility....”

Phase I of the docket will be Program Application. There will be no time limitations on this phase. The components of the Program Application are listed below.

Phase II of the docket will be the Incentive Request. Phase II cannot be filed until after the IURC has approved Phase I. Per Sec. 13(f) the Commission shall issue a determination “after notice and hearing” regarding the applicant's eligibility for the incentive sought “no later than

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<sup>1</sup> MIRECS FAQ <http://www.mirecs.org/about/FAQ.asp>

120 days after the date of the application unless the commission finds that the applicant has not cooperated fully in the proceeding.” The OUCC views the application date, as referenced from the SEA 251 language above, as also the filing date of the petitioner’s Phase II testimony.

Question: *What should be included in the Program Application form?*

Comment: The Program Application should include, at a minimum, the following:

- ✓ Total electricity obtained by the electricity supplier to meet the energy requirements of its Indiana retail electric customers during the base year.
- ✓ Applicant’s plan to obtain clean energy to meet the energy requirements of its Indiana retail electric customers during the calendar year ending December 31, 2025 in an amount equal to at least ten percent of the total electricity supplied to applicant’s Indiana retail electric customers during the base year. See, Sec. 11(c)(2).
  - This is meant to be a detailed, business plan with annual milestones. Although each annual accomplishment in Goal Period I, for example, will not be required to be a minimum of 4%, at the end of the Goal Period I (December 31, 2018), the electricity supplier shall have averaged 4% of the total electricity obtained by the participating electricity supplier to meet the energy requirements of its Indiana retail electric customers during the base year. This process is described in more detail in our Sec. 13 comments.
  - Annual projections of energy saved by kWh per resource type, including CECs will be submitted as part of the plan.
- ✓ A complete description of the project including the scope, cost and location
- ✓ Justification of the need for the generation through existing or updated IRP modeling.
- ✓ Estimate of anticipated level of emission reduction
- ✓ Project estimated cost
- ✓ Contingency amount
- ✓ AFUDC
- ✓ Ratepayers impact
  - Impact on rates if project is not approved (per Sec. 11(c)(3)). “...will not result in an increase to the retail rates and charges of the electricity supplier above what could reasonably be expected if the application were not approved.”
  - Impact on rate if project is approved.
  - Both scenarios must detail all assumptions used.
  - The term “reasonably be expected” as referenced above needs to be described in the electricity supplier’s submitted plan.
- ✓ Other generation options considered (as in a CPCN)

- ✓ How this portfolio addition fits into the applicant’s business plan
- ✓ Cost / benefit study
- ✓ All incentives currently being received for the projects listed in the Program Application
- ✓ Work papers detailing all considerations, including updated IRP modeling.

Question: *How should the Program Application be linked to the IRP Process?*

Comment: The timing of the application should not be tied to the IRP filing dates. Requiring all the Program Applications to be submitted simultaneously would diminish the focus on each application. However, the Program Application filing should document the applicant’s need for the requested generation. A demonstration of this need must have been clearly shown in the applicant’s last IRP and if not, the applicant should be required to update its IRP model run.

### **Sec. 13 – “Shareholder financial incentives...”**

Question: *When will the Commission authorize any incentive?*

Comment: The language in the statute is vague in regards to when and how the Commission will authorize or award the incentives. For instance, Section 13(a) states, “the Commission **may** establish a shareholder incentive consisting of the authorization of an increased overall rate of return on equity...” Then, Section 13(b) states, “If the Commission approves an electricity supplier’s application under section 11(c) of this chapter, the Commission **shall** authorize the incentive described in subsection (a)...” The use of the terms “may” and “shall” seem to contradict one another in these subsections.

Recommendation: The Commission should only award the incentive following an evaluation of the annual report supplied to the Commission on March 1 of each year in a CPS goal period. If the program application is to outline how a participant will meet annual goals to achieve the averages set forth in Section 12(a), the incentive should be awarded based on the progress of the participant in relation to the goals outlined in the initial program application.

Question: *It is not clear how the weighted average cost of capital is calculated. Are we to assume that it is done the same way as the rules state in 170 IAC 4-6-1, relating to *Qualified Pollution Control Property*?*

Recommendation: If and only if the utility hits its goal during the period will it qualify for any return on a project. If it has been determined that the utility has met its goal for the period, it will calculate a weighted average cost of capital with the approved equity incentive amount included in its cost rate for equity that had been established by the Commission in a previous proceeding involving the utility’s base rates and charges per 170 IAC 4-6-14. Only investments in utility plant necessary to complete a project toward achieving the goals are eligible for the equity incentive.

Question: *How should program costs be handled?*

Recommendation: Depreciation on plant or amortization on initial start up costs of a program should not be at an accelerated rate, but instead spread over the life of the asset or amortized over the length of a program. No other capital or financing costs should be permitted other than what is included in this statute in relation to CPS goal attainment. All administrative and ancillary operating costs should be directly associated with the CPS project and not allocated from the utility. This would include labor and benefits that are already included in base rates and all overhead costs allocations.