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THE VOICE FOR INDIANA ENERGY

October 7, 2011

Ms. Beth Krogel-Roads
Legal Counsel
Indiana Utility Regulatory Commission
101 W. Washington St., Suite 1500 East
Indianapolis, Indiana 46204

Re: Indiana Voluntary Clean Energy Portfolio Standard Program – Strawman

Dear Ms. Roads,

On behalf of the electric utility members of the Indiana Energy Association, we want to thank you for providing the strawman for rules to implement the Voluntary Clean Energy Portfolio Standard Program. We look forward to participating in the workshop scheduled for October 14 and we thank the Commission for giving us the opportunity to provide these remarks. We offer the following comments to help shape the rule into a form that is consistent with the statutory intent and without determining whether or not a given electricity supplier would volunteer to participate in the CHOICE program.

1. We believe the substantive requirement discussing subaccounts for "Allowance for funds used during construction" ("AFUDC") established in 170 IAC 17-2-3 should be set out in a separate provision in this rule and not in the definition as it is currently. Perhaps, the subaccount requirements would be better positioned in 170 IAC 17-4-4(e)(2) addressing incentives.

2. We believe that the Statute provides that megawatt *savings* provided by demand side management ("DSM"), net metering and feed in tariff initiatives count toward Clean Portfolio Standard goal compliance and the award of program incentives. We suggest specifically delineating those sources as clean energy resources that count towards the goal in 170 IAC 17-3-4(a)(1)(A) because of the potential for confusion about whether these sources constitute an amount of megawatt hours acquired by the participating supplier.

3. We appreciate incorporation of the statutory provision (IC 8-1-37-13 (f)) for a 120 day expedited proceeding for the commission's evaluation of the financial incentive and periodic rate adjustment mechanism. We also recognize and appreciate the commission setting forth an expedited procedural schedule for the application. We believe, however, that the procedural rules established in 170 IAC 17-3-5 (Confidentiality), 170 IAC 17-4-3 (Expedited program application proceeding), and 170 IAC 17-6-3

(Expedited incentives application proceeding) are not needed. The commission's existing Rules of Practice and Procedure address identical issues. We would note that parties in many commission proceedings have historically reached settlement on non-disclosure agreements without specific rule language directing them to do so. In addition, procedures for expedited proceedings are already established under IC 8-1-2-42(a) and 170 IAC 1-5.

4. We believe the program application requirements laid out at 170 IAC 17-4-2 are overly restrictive, complicate the decision as to whether to file an application, and requires overly complex and theoretical planning and compliance tools to demonstrate the ability to satisfy a particular clean energy goal. The application procedure was intentionally made simple in the statute, which provides at IC 8-1-37-11(c)(2) that the commission, in evaluating an application, must find only that the applying supplier has demonstrated a "reasonable expectation" of securing the clean energy resources needed to meet the 2025 goal and that the sources secured will not increase rates beyond what is reasonably expected. It is impossible to identify with any degree of certainty the requirements proposed in (A), (B), (C) and (E) of the proposed provision thirteen years prior to the end of the program in 2025. The viability of the various clean energy resources available to satisfy the goals will most certainly change over time. In fact, the commission may add to the list of clean energy resources which are not even contemplated at the time in which a program application is filed.

   Further, the requirements set out in 170 IAC 17-4-2(3) (I) and (J) do not reflect the requirements of the statute. The statutory requirements for an applicant set out at IC 8-1-37-11(c) include a complete application, demonstration of a reasonable expectation of meeting the 2025 goal and demonstration of no increase in rates beyond what is reasonably expected. In particular, the risk factors listed in (J) are difficult to quantify and subject the applicant to uncertainty regarding the method in which the commission will follow to approve an application. The viability of clean energy resources may be negatively impacted by a stringent adherence to an absolute cost test. It is appropriate to reflect the requirements of the statute, and not an exhaustive list of subjective criteria for parties to quarrel over in an adversarial proceeding. The burden is on the applicant to meet the statutory criteria and it should be left to the applicant to determine how best to attempt to meet that burden.

5. In 170 IAC 17-4-2(3)(K), we believe "impacts" is missing after "ratepayer" in the phrase "Analysis of ratepayer including…."

6. "Sec. 5" at the top of Page 10 of the draft rule, should read "Sec. 4."

7. We are concerned with the language in 170 IAC 17-4-4(c) seting out substantial subjective criteria the commission may consider for awarding an incentive that are overly restrictive and will complicate evaluation of whether to file an application. Our concerns are largely the same as those described previously in comment 4. Specifically, the criteria should mirror the language of the Statute, providing that the award of incentive shall be based on (1) satisfaction of the particular goal (with each goal potentially having different incentive levels); and (2) the extent to which an electricity supplier utilizes clean energy sources listed 8-1-37-4(a)(1) – 4(a)(16) IC 8-1-37-13 (a) and (b). Factors such as evaluation of regulatory risk, fuel cost risks, contribution to peak power production, environmental impact of the various applicable sources, and establishment of feed in tariffs identified in the proposed rule are not within the statutory considerations, not relevant to the evaluation of the incentive, and should not be listed as criteria to be evaluated in awarding incentives.

8. Regarding 170 IAC 17-4-4(e)(2), we believe participating electricity suppliers should conditionally receive, subject to refund, voluntary Clean Energy Portfolio Standard incentives at the time participation is approved through a periodic rate adjustment mechanism. IC 8-1-37-13(g) provides that subject to the awarding of the incentive by the commission and the applicant's "continuing compliance" with the applicable goal, the incentive is in effect as provided in the commission's order. The same framework, utilizing the term "continuing compliance" is utilized in IC 8-1-37-13(h) for the rate adjustment mechanism. It appears the legislative intent was to allow both the incentive and cost recovery mechanism at the time they are approved. If a particular goal is not met, the participating electricity supplier should refund the applicable incentive.

   Further evidence that the legislature intended the incentive to be received by the applicant once approved by the commission is statutory direction provided in IC 8-1-37(g)(1) and (2), which clearly indicates that an incentive will continue to be received until the earlier of either a time or event specified in the approving order or a new incentive order is issued by the commission for the subsequent compliance period.

9. With respect to the proposed language provided at 170 IAC 17-4-4(d) excluding pre-existing resources from consideration of the incentives, we believe that rather than referencing the effective date of the CHOICE program it is logical to reference the effective date of Section 16 of SEA 251, which is May 10, 2011. Resources procured after the effective date of Section 16 of the Act may have been obtained in anticipation of meeting program goals. Utilizing the effective date of the CHOICE

program creates a scenario in which early movers reacting to the passage of the Act are penalized and encourages a utility which may plan to participate in the program to game the timing of procurement of resources, neither of which is in the best interests of the program or the advancement of the targeted resources.

10. We believe 170 IAC 17-5-1(5) should include only those technological advances known by the participating electricity supplier to affect its activities described in 170 IAC 17-5-1(1) – (4).

11. We are concerned that the language of 170 IAC 17-5-2(a) restricts the flexibility necessary to participate in the voluntary Clean Energy Portfolio Standard program. We would note that there will likely be a need for a participating electricity supplier to deviate from and substantially modify its originally filed plan over time. This proposed provision may create substantial confusion and duplicative work as identifying all deviations before program participation may prove very difficult. If a participating electricity supplier decides to change part of its approved plan, the participating electricity supplier should identify those changes in its annual report that is required by 170 IAC 17-5-1.

12. We believe 170 IAC 17-5-2(c) should not place the burden on participating electricity suppliers to demonstrate when rates will no longer be just and reasonable. IC 8-37-1-12(d) provides that this is a commission determination. Affected parties, or the commission on its own motion, are best situated to originate such a petition. The affected party or parties who challenge the electricity supplier's continued participation should carry the burden to prove that the electricity supplier's rates are no longer just and reasonable.

13. The rule should clarify in 170 IAC 17-5-2 that if the commission finds that a participating utility's continued participation in the program will cause rates to be unjust and unreasonable, the program's commission approved costs incurred by the utility during the time it was participating in the program is recoverable. The recovery of costs should be amortized over a reasonable time to be determined by the commission and subject to the utility's authorized rate of return.

14. Finally, we believe the incentive application process provided in Rule 6 of the draft is misplaced and not reflective of the statutory requirements. The incentive application contents provided at 170 IAC 17-6-2 are in past tense, which leads the reader to believe that the awarded incentive would be available to the participating supplier only after meeting a goal. For the reasons set out in previous comment 8, we believe this is

an erroneous reading of the statute. The commission's incentive application evaluation should be consolidated with the program application on the front end of the process and ruled on within 120 days of application. For the reasons set out in comment 8, the incentive should be provided to the participating supplier once approved by the commission.

For purpose of convenience, the comments presented above are shown in a redlined version of the proposed rule attached to this letter.

We want to thank you again for the opportunity to provide these comments. If you have any questions regarding our proposed revisions prior to the workshop, I would be pleased to discuss those with you. We look forward to a productive session on October 14th.

Very truly yours,

Stan Pinegar