
SENATE BILL No. 492

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.

Synopsis: Utility regulation. Allows the Indiana utility regulatory commission (IURC) to add to the value of an energy utility's property for ratemaking purposes the value of certain qualified property constructed by the utility to comply with state or federal mandates. Allows an energy utility to recover through a retail rate adjustment mechanism governmentally mandated costs incurred in providing retail energy service. Allows a public utility providing electric or gas service to implement rates proposed by the utility in a petition for a change in its basic rates if the IURC fails to issue an order on the petition within nine months. Requires the utility to refund to customers any difference between the rate implemented and the higher of the rate: (1) finally approved; or (2) previously in effect. Provides that a merger, consolidation, reorganization, or stock transaction involving a utility company may not occur without IURC approval if the transaction will cause 50% or more of the company's voting stock to be held by different interests. Allows the IURC to impose a civil penalty of up to \$5,000 if a public utility providing specified services or a rural electric membership corporation (REMC) violates any utility law or fails to comply with: (1) a standard of service established by IURC rule; or (2) a rate or service requirement of an IURC order. Allows the IURC to impose an additional penalty of up to \$10,000 if the violation or failure demonstrates a disregard by the public utility or REMC of its duty to remedy the violation or failure. Specifies that a suit to recover a penalty imposed by the IURC shall be brought by the attorney general. Expands the eligibility of public utilities that may submit voluntary environmental compliance plans to the IURC to include public utilities subject to any state or federal environmental laws, in addition to public
(Continued next page)

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Effective: Upon passage; July 1, 2003.

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January 23, 2003, read first time and referred to Committee on Utility and Regulatory Affairs.



Digest Continued

utilities subject to the federal Clean Air Act. Repeals references to the federal Clean Air Act in the provisions concerning environmental compliance plans.

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Introduced

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

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SENATE BILL No. 492



A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-6.8, AS ADDED BY P.L.159-2002,
 2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 UPON PASSAGE]: Sec. 6.8. (a) This section applies to a utility that
 4 begins construction of qualified ~~pollution control~~ property after March
 5 31, 2002.

6 (b) As used in this section, "clean coal technology" means a
 7 technology (including precombustion treatment of coal):
 8 (1) that is used in a new or existing energy generating facility and
 9 directly or indirectly reduces airborne emissions of sulfur,
 10 mercury, or nitrogen oxides or other regulated air emissions
 11 associated with the combustion or use of coal; and
 12 (2) that either:
 13 (A) was not in general commercial use at the same or greater
 14 scale in new or existing facilities in the United States at the
 15 time of enactment of the federal Clean Air Act Amendments



1 of 1990 (P.L.101-549); or
 2 (B) has been selected by the United States Department of
 3 Energy for funding under its Innovative Clean Coal
 4 Technology program and is finally approved for such funding
 5 on or after the date of enactment of the federal Clean Air Act
 6 Amendments of 1990 (P.L.101-549).

7 (c) As used in this section, "qualified pollution control property"
 8 means: ~~an~~

9 (1) **any:**

10 (A) **air, wastewater, solid waste, or thermal pollution**
 11 **treatment, storage or disposal system or pollution control**
 12 **device ~~or~~ necessary to operate** a coal burning energy
 13 generating facility; or

14 (B) **any** equipment that constitutes clean coal technology;
 15 that has been approved for use by the commission and that meets
 16 applicable state or federal requirements; **or**

17 (2) **any air, wastewater, solid waste, or thermal pollution**
 18 **treatment, storage, or disposal system, pollution control**
 19 **device, or monitoring device, if the treatment, storage, or**
 20 **disposal system, pollution control device, or monitoring**
 21 **device:**

22 (A) **is used for any plant, equipment, or facility used or to**
 23 **be used for the production, transmission, delivery, or**
 24 **furnishing of heat, light, or power;**

25 (B) **is approved for use by the commission; and**

26 (C) **meets applicable state or federal requirements.**

27 (d) As used in this section, "qualified property" means any:

28 (1) **qualified pollution control property; or**

29 (2) **qualified utility system property.**

30 (e) As used in this section, "qualified utility system property"
 31 means any plant, equipment, or facility that is used or will be used
 32 on a utility system and that is required to meet state or federal
 33 requirements of any governmentally mandated event.

34 (f) As used in this section, "state or federal requirements"
 35 includes any requirement of:

36 (1) **any state or federal law, rule, regulation, or order; or**

37 (2) **any adjudication, settlement, or consent decree in any**
 38 **federal or state court or administrative proceeding**
 39 **interpreting or applying a state or federal law, rule,**
 40 **regulation, or order;**

41 **that is in effect, applicable to a utility, and not stayed pending**
 42 **judicial appeal.**

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1 (g) As used in this section, "utility system" means a system used
2 by a utility in whole or in part for the:

3 (1) production;

4 (2) transmission;

5 (3) distribution; or

6 (4) any combination of subdivisions (1) through (3);

7 of heat, light, or power to provide retail energy service (as defined
8 in IC 8-1-2.5-3), regardless of whether the service is provided
9 under IC 8-1-2.5 or another provision of this article.

10 (h) As used in this section, "governmentally mandated event"
11 has the meaning set forth in section 6.9 of this chapter.

12 (i) As used in this section, "utility" refers to ~~any~~ an energy
13 generating utility allowed by law to earn a return on its investment. (as
14 defined in IC 8-1-2.5-2).

15 ~~(e)~~ (j) Upon the request of a utility that begins construction after
16 March 31, 2002, of qualified ~~pollution control~~ property that is to be
17 used and useful for the public convenience, the commission shall for
18 ratemaking purposes add to the value of that utility's property the value
19 of the qualified ~~pollution control~~ property under construction.

20 ~~(f)~~ (k) The commission shall adopt rules under IC 4-22-2 to
21 implement this section.

22 SECTION 2. IC 8-1-2-6.9 IS ADDED TO THE INDIANA CODE
23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
24 UPON PASSAGE]: Sec. 6.9. (a) As used in this section,
25 "governmentally mandated costs" means capital, operating,
26 maintenance, depreciation, or tax costs incurred by an energy
27 utility after January 1, 2002, as a direct result of a governmentally
28 mandated event.

29 (b) As used in this section, "energy utility" has the meaning set
30 forth in IC 8-1-2.5-2.

31 (c) As used in this section, "governmental action" means a
32 federal, state, or local rule, regulation, order, or statute, or any
33 adjudication, settlement, or consent decree in any federal or state
34 court or administrative proceeding interpreting or applying a state
35 or federal law, rule, regulation, or order.

36 (d) As used in this section, "governmentally mandated event"
37 means compliance by a utility with a governmental action that:

38 (1) has a direct and material impact on the utility's operating
39 expenses or capital costs; and

40 (2) is in effect, applicable to a utility, and not stayed pending
41 judicial appeal.

42 (e) As used in this section "material impact" means a

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1 cumulative increase in an energy utility's intrastate regulated total
2 operating expenses or capital costs in an amount equal to or
3 greater than four percent (4%) of the energy utility's authorized
4 net operating income.

5 (f) As used in this section, "retail energy service" has the
6 meaning set forth in IC 8-1-2.5-3, regardless of whether the service
7 is provided under IC 8-1-2.5 or another provision of this article.

8 (g) As used in this section, "retail rate adjustment mechanism"
9 means a:

- 10 (1) tracking provision;
11 (2) surcharge provision; or
12 (3) similar mechanism or provision;

13 approved by the commission to periodically adjust an energy
14 utility's rates and charges for retail energy service to allow for the
15 recovery of certain costs.

16 (h) Upon the petition of an energy utility, the commission shall
17 allow the energy utility to recover through a retail rate adjustment
18 mechanism governmentally mandated costs if the commission finds
19 that the energy utility has demonstrated that the governmentally
20 mandated costs are a direct result of a governmentally mandated
21 event and are reasonable. Any deferral of or offset against the
22 retail rate adjustment mechanism may be made only for cost
23 reductions directly resulting from the governmentally mandated
24 event.

25 (i) Recovery of governmentally mandated costs under this
26 section does not preclude inclusion of the costs in an energy utility's
27 basic rates and charges in subsequent rate proceedings. Any
28 governmentally mandated costs subsequently recovered in the
29 energy utility's basic rates and charges may not also be recovered
30 through the retail rate adjustment mechanism under this section.

31 (j) A retail rate adjustment mechanism proposed by an energy
32 utility under this section may be based on actual or forecasted
33 data. If forecasted data is used, the retail rate adjustment
34 mechanism must contain a reconciliation mechanism to correct any
35 variance between the energy utility's forecasted costs and the
36 energy utility's actual costs in providing retail energy service. An
37 energy utility may not petition the commission for a change in the
38 retail rate adjustment mechanism more than once during any
39 twelve (12) month period.

40 (k) A retail rate adjustment resulting from a retail rate
41 adjustment mechanism approved by the commission under this
42 section:

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1 **(1) is in addition to any other rate adjustment a utility may be**
 2 **entitled to under this title; and**

3 **(2) is not considered a general increase in basic rates and**
 4 **charges under section 42(a) of this chapter or under**
 5 **IC 8-1-13-30(a).**

6 **(l) The commission shall make any adjustments to an energy**
 7 **utility's expense tests and return tests during the twelve (12) month**
 8 **test period considered by the commission in an application under**
 9 **section 42(d) or 42(g) of this chapter or under IC 8-1-13-30(d),**
 10 **whichever applies, necessary to permit the energy utility to retain**
 11 **the revenues resulting from a retail rate adjustment mechanism**
 12 **approved by the commission under this section.**

13 SECTION 3. IC 8-1-2-61 IS AMENDED TO READ AS FOLLOWS
 14 [EFFECTIVE UPON PASSAGE]: Sec. 61. (a) Any public utility may
 15 make complaint as to any matter affecting its own rates or service. The
 16 petition or complaint must include a statement as to whether the utility,
 17 if a not-for-profit water utility or municipal utility, has any outstanding
 18 indebtedness to the federal government. The public utility shall publish
 19 a notice of the filing of such petition or complaint in a newspaper of
 20 general circulation published in any county in which the public utility
 21 renders service. An order affecting rates or service may be entered by
 22 the commission without a formal public hearing, if:

23 (1) the utility is a not-for-profit water utility or a municipal utility;
 24 and

25 (2) the utility has obtained written consent to obtain an order
 26 affecting its rates from the commission without a formal hearing
 27 from any agency of the federal government with which the utility
 28 has outstanding evidence of indebtedness to the federal
 29 government.

30 The commission may, however, on its own motion require a formal
 31 public hearing, and shall, upon a motion filed by the utility consumer
 32 counselor, by any public or municipal corporation, or by ten (10)
 33 individuals, firms, corporations, limited liability companies, or
 34 associations, or ten (10) complainants of all or any of these classes,
 35 hold a formal public hearing with respect to any such petition or
 36 complaint.

37 (b) In any general rate proceeding under subsection (a) which
 38 requires a public hearing and in which an increase in revenues is
 39 sought which exceeds the sum of two million five hundred thousand
 40 dollars (\$2,500,000), the commission shall conduct at least one (1)
 41 public hearing in the largest municipality located within such utility's
 42 service area.

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1 (c) As used in this subsection, "public utility" includes a
 2 department of public utilities created under IC 8-1-11.1. If the
 3 commission fails to issue an order making a determination on a
 4 request by a public utility for an increase in the public utility's
 5 basic rates and charges for electric or gas service within nine (9)
 6 months after the filing of the public utility's case in chief, the public
 7 utility may implement the public utility's proposed rate changes
 8 beginning on the first day of the first billing month following the
 9 expiration of the nine (9) month period allowed the commission
 10 under this subsection by filing notice with the commission. The
 11 commission may suspend the running of the nine (9) month period
 12 if the commission finds that:

- 13 (1) the public utility did not file its case in chief in sufficient
 14 detail to allow the commission to commence a review of the
 15 request;
 16 (2) the public utility materially altered the public utility's case
 17 in chief after its filing;
 18 (3) an order compelling production by the public utility of
 19 discovery has not been satisfied within the time provided in
 20 the order; or
 21 (4) the commission temporarily lacks jurisdiction over the
 22 proceeding due to the filing of an interlocutory judicial appeal
 23 of a commission ruling or order.

24 The suspension ends and the nine (9) month period continues to
 25 run as soon as the public utility cures the cause for suspension.

26 (d) If the commission does not make a timely determination
 27 under subsection (c), after the commission issues an order making
 28 a determination on the public's utility's request, the public utility
 29 may continue to collect the rates implemented by the public utility
 30 under subsection (c) pending a petition for rehearing or an appeal
 31 of the commission's order under IC 8-1-3. If the commission does
 32 not make a timely determination under subsection (c), and
 33 notwithstanding any other provision of this article, upon the final
 34 determination on the public utility's request, including the
 35 determination on any petition for rehearing or appeal under
 36 IC 8-1-3, the public utility shall refund any difference between:

- 37 (1) the revenues generated by the rates implemented by the
 38 public utility under subsection (c); and
 39 (2) the revenues that would have been generated by the higher
 40 of:
 41 (A) the rates authorized in the final determination on the
 42 public utility's request; or

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1 **(B) the rates of the public utility that were in effect**
 2 **immediately before the rates implemented by the public**
 3 **utility under subsection (c);**
 4 **for the period beginning on the effective date of the rates**
 5 **implemented by the public utility under subsection (c) and ending**
 6 **on the effective date of the rates authorized in the final**
 7 **determination on the public utility's request. The public utility**
 8 **shall issue any refunds required under this subsection not later**
 9 **than sixty (60) days after the effective date of the rates authorized**
 10 **in the final determination on the proceedings. The refunds must**
 11 **include interest accrued from the date of the final determination at**
 12 **the interest rate set forth in IC 24-4.6-1-102.**

13 **(e) If the commission makes a timely determination under**
 14 **subsection (c) on a public utility's request, IC 8-1-3-6 governs the**
 15 **rates that the public utility may collect pending a petition for**
 16 **rehearing or an appeal of the commission's order.**

17 **SECTION 4. IC 8-1-2-84.1 IS ADDED TO THE INDIANA CODE**
 18 **AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
 19 **UPON PASSAGE]: Sec. 84.1. (a) Notwithstanding sections 83 and**
 20 **84 of this chapter, this section applies to:**

- 21 **(1) a transaction involving a merger, consolidation,**
 22 **reorganization, or union involving a utility company;**
 23 **(2) a tender offer or contract for the purchase, acquisition,**
 24 **assignment, or transfer of stock of a utility company; or**
 25 **(3) any transaction described in subdivision (1) or (2) that,**
 26 **when combined with one (1) or more transactions described**
 27 **in subdivision (1) or (2) and conducted within any three (3)**
 28 **year period, causes fifty percent (50%) or more of the then**
 29 **outstanding shares of a utility company's stock entitled to vote**
 30 **generally in the election of the utility company's directors to**
 31 **be beneficially held, directly or indirectly, immediately after**
 32 **the transaction by persons that are different from the persons**
 33 **that beneficially held, directly or indirectly, the shares of the**
 34 **utility company's stock immediately before the transaction.**

35 **This section does not apply to a transaction involving an exempt**
 36 **wholesale generator or a direct or indirect affiliate of an exempt**
 37 **wholesale generator that is under the jurisdiction of the Federal**
 38 **Energy Regulatory Commission and that is not controlled by or an**
 39 **affiliate of a utility that engages in retail sales in Indiana.**

40 **(b) As used in this section, "utility company" means a utility or**
 41 **a utility holding company.**

42 **(c) As used in this section, "utility" means every corporation,**

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1 company, partnership, limited liability company, individual,
2 association of individuals, their lessees, trustees, or receivers
3 appointed by a court that may own, operate, manage, or control
4 any plant or equipment in Indiana for the:

5 (1) production, transmission, delivery, or furnishing of heat,
6 light, or power to more than forty thousand (40,000) retail gas
7 or electric customers of the utility in Indiana;

8 (2) production, transmission, delivery, or furnishing of water;
9 or

10 (3) collection, treatment, purification, and disposal in a
11 sanitary manner of liquid and solid waste, sewage, night soil,
12 and industrial waste.

13 (d) As used in this section, "utility holding company" means a
14 corporation, company, partnership, or limited liability company
15 that owns a utility.

16 (e) Except as provided in subsection (f), without the prior
17 approval of the commission, a person may not, except in an
18 intracorporate transaction, consummate a transaction described
19 in subsection (a) that causes fifty percent (50%) or more of the
20 then outstanding shares of the utility company's stock entitled to
21 vote generally in the election of the utility company's directors to
22 be beneficially held, directly or indirectly, immediately after the
23 transaction by persons that are different from the persons that
24 beneficially held, directly or indirectly, the shares of the utility
25 company's stock immediately before the transaction.

26 (f) If the transaction to be consummated under subsection (e) is
27 a transaction described in subsection (a)(3), approval by the
28 commission is required only for the transaction in the combination
29 or series of transactions that triggers the fifty percent (50%)
30 threshold described in subsection (e). The commission may not
31 review any prior transaction that did not trigger the threshold.

32 (g) A utility shall file an application with the commission seeking
33 approval of a transaction subject to this section. After notice and
34 hearing, the commission shall approve a transaction subject to this
35 section if the commission finds, when considering the effect the
36 transaction has on the provision and cost of service to customers,
37 that the transaction will result in a new entity with the technical,
38 financial, and managerial capacity to provide adequate and
39 reliable retail utility service.

40 (h) The commission shall enter an order either approving or
41 disapproving a transaction subject to this section not later than one
42 hundred thirty-five (135) days after the date a utility files an



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1 application with the commission for approval of the proposed
 2 transaction. If the commission fails to issue an order within the one
 3 hundred thirty-five (135) day period allowed the commission under
 4 this subsection, the transaction shall be considered approved by
 5 operation of law as of the first day following the one hundred
 6 thirty-five (135) day period described in this subsection. If the
 7 transaction is approved by the commission or considered approved
 8 under this subsection, the commission may not take action in any
 9 state or federal administrative or judicial proceeding to oppose the
 10 transaction. Notwithstanding any other law, rule, or order, an
 11 order entered under this section is not subject to a petition for
 12 rehearing to the commission, and any appeal from the order must
 13 be filed in the supreme court within twenty (20) days after the date
 14 of the order.

15 (i) If commission approval of a transaction involving a:

- 16 (1) merger, consolidation, reorganization, or union involving
- 17 a utility company; or
- 18 (2) tender offer or contract for the purchase, acquisition,
- 19 assignment, or transfer of stock of a utility company;

20 is not required under this section, commission approval of the
 21 transaction is not required under any other provision of this title.

22 (j) Nothing in this chapter:

- 23 (1) prevents the holding of a utility company's stock lawfully
- 24 acquired before March 31, 2003; or
- 25 (2) prohibits a merger, consolidation, reorganization, or union
- 26 involving a utility company if the transaction was lawfully
- 27 initiated before March 31, 2003.

28 SECTION 5. IC 8-1-2-109 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 109. (a) This section
 30 does not apply to:

- 31 (1) a public utility that owns, operates, manages, or controls
- 32 any plant or equipment in Indiana for the production,
- 33 transmission, delivery, or furnishing of heat, light, water, or
- 34 power;
- 35 (2) a public utility that owns, operates, manages, or controls
- 36 any plant or equipment in Indiana for the collection,
- 37 treatment, purification, and disposal in a sanitary manner of
- 38 liquid and solid waste, sewage, night soil, and industrial
- 39 waste;
- 40 (3) a corporation organized or operating under IC 8-1-13; or
- 41 (4) a department of public utilities created under IC 8-1-11.1.

42 (b) A public utility that violates this chapter or fails to perform any

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1 duty enjoined upon it, for which a penalty is not otherwise provided,
2 commits a Class B infraction.

3 SECTION 6. IC 8-1-2-109.1 IS ADDED TO THE INDIANA CODE
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
5 1, 2003]: **Sec. 109.1. (a) This section does not apply when a public
6 utility's violation or failure to comply under subsection (d) is
7 caused by circumstances beyond the control of the public utility,
8 including any of the following:**

- 9 (1) Customer provided equipment.
- 10 (2) A negligent act or omission of a customer.
- 11 (3) An emergency situation.
- 12 (4) An unavoidable casualty.
- 13 (5) An act of God.

14 (b) As used in this section, "public utility" means every
15 corporation, company, partnership, limited liability company,
16 individual, or association of individuals, their lessees, trustees, or
17 receivers appointed by a court that own, operate, manage, or
18 control any plant or equipment in Indiana for the production,
19 transmission, delivery, or furnishing of heat, light, water, or power
20 or the collection, treatment, purification, and disposal in a sanitary
21 manner of liquid and solid waste, sewage, night soil, and industrial
22 waste. The term includes a department of public utilities created
23 under IC 8-1-11.1. The term does not include:

- 24 (1) a municipality or political subdivision; or
- 25 (2) a corporation organized or operating under IC 8-1-13.

26 (c) A public utility and every officer of a public utility shall
27 comply with every order or rule of the commission made under the
28 authority of this chapter.

29 (d) Except as otherwise provided in this chapter, if the
30 commission finds, after notice and hearing, that a public utility has
31 violated this chapter or failed after due notice to comply with:

- 32 (1) a standard of service established by commission rule; or
- 33 (2) a rate or service requirement of a final and unappealable
34 order of the commission;

35 the commission may order the public utility to pay a civil penalty
36 of not more than five thousand dollars (\$5,000) for each violation
37 or failure to comply.

38 (e) Notwithstanding subsection (d), if the commission finds after
39 notice and hearing that the public utility's violation or failure to
40 comply demonstrates, by a continuing pattern of conduct, a
41 disregard by the public utility of its obligation to remedy the
42 violation or failure to comply found under subsection (d), the

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1 commission may impose an additional civil penalty of not more
2 than ten thousand dollars (\$10,000) for each violation or failure to
3 comply.

4 (f) The commission shall consider the following when
5 determining the appropriateness of the imposition or amount of a
6 civil penalty:

7 (1) The size of the public utility.

8 (2) The gravity of the violation or failure to comply.

9 (3) The good faith of the public utility in attempting to remedy
10 the violation or failure to comply or achieve compliance after
11 receiving notification of the violation or failure.

12 (4) The effect of the civil penalty on the public utility's
13 financial ability to provide adequate and reliable service.

14 (5) If the public utility is a nonprofit company:

15 (A) the effect of the penalty on the company's members
16 and their capitalization of the company; and

17 (B) whether the act or omission causing the violation or
18 failure to comply had been approved or requested by the
19 company's members.

20 In the order imposing the civil penalty, the commission shall make
21 specific findings with respect to the factors described in
22 subdivisions (1) through (5).

23 (g) A public utility may not be subject to both a civil penalty
24 under this section and a penalty agreed to in a commission
25 approved settlement agreement for the same violation or failure to
26 comply. If the commission has approved a settlement agreement
27 that includes penalties or remedies for noncompliance with specific
28 provisions of the settlement agreement, the penalties provided in
29 this section do not apply to those instances of noncompliance
30 during the life of the settlement agreement.

31 (h) Notwithstanding section 112 of this chapter, a public utility
32 may not be subject to civil penalties under this section that exceed
33 in the aggregate for any twelve (12) month period the lesser of:

34 (1) two percent (2%) of the net operating income authorized
35 in the public utility's last order from the commission
36 approving basic rates and charges of the public utility; or

37 (2) three million seven hundred fifty thousand dollars
38 (\$3,750,000).

39 (i) Civil penalties recovered under this section shall be paid into
40 the treasury of the state.

41 (j) Upon the motion of a public utility, the commission shall stay
42 the effect or enforceability of an order under this section pending

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1 **an appeal, provided the public utility posts a bond that complies**
 2 **with Rule 18 of the Indiana Rules of Appellate Procedure.**

3 SECTION 7. IC 8-1-2-115 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 115. The commission
 5 shall inquire into any neglect or violation of the statutes of this state or
 6 the ordinances of any city or town by any public utility doing business
 7 therein, or by the officers, agents, or employees thereof, or by any
 8 person operating the plant of any public utility, and shall have the
 9 power, and it shall be ~~its~~ **the commission's** duty to enforce the
 10 provisions of this chapter, as well as all other laws, relating to public
 11 utilities. Any forfeiture or penalty provided in this chapter shall be
 12 recovered, and suit therein shall be brought in the name of the state of
 13 Indiana ~~in the circuit or superior court where the public utility has its~~
 14 ~~principal place of business:~~ **by the attorney general in a court that**
 15 **has jurisdiction.** Complaint for the collection of any such forfeiture
 16 may be made by the commission or any member thereof, and, when so
 17 made, the action so commenced shall be prosecuted by the **attorney**
 18 ~~general.~~ ~~counsel.~~

19 SECTION 8. IC 8-1-3-6 IS AMENDED TO READ AS FOLLOWS
 20 [EFFECTIVE UPON PASSAGE]: Sec. 6. All rules, practices,
 21 installations, and services prescribed, approved, or required by the
 22 commission shall be in force and shall be prima facie reasonable unless
 23 finally found otherwise by the court of appeals or by the supreme court
 24 if the cause is transferred to and decided by that court. ~~However;~~
 25 **Except as otherwise allowed under IC 8-1-2-61(c),** pending the
 26 appeal as in this chapter provided, any municipally owned utility,
 27 public utility, rural electric membership corporation, or rural telephone
 28 cooperative association whose rate or rates are affected by the decision,
 29 ruling, or order appealed from shall have the right to collect the rate or
 30 rates as fixed by said decision, ruling, or order, or the former rate,
 31 whichever is higher in amount, and such municipally owned utility,
 32 public utility, corporation, or association shall refund the difference to
 33 each consumer or contract customer if such difference be not sustained
 34 upon appeal. However, pending the appeal as in this chapter provided,
 35 the court of appeals, upon good cause shown by verified petition, may
 36 authorize and permit, but not require, any common or contract carrier
 37 whose rate or rates are affected by the decision, ruling, or order
 38 appealed from, to collect the rate or rates published and in effect or the
 39 rate or rates sought to be put into effect, immediately prior to the
 40 commencement of the proceeding before the commission, subject to
 41 such provisions for bond or escrow as the court shall provide to protect
 42 the interest of all parties of record before the court.



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1 SECTION 9. IC 8-1-3-7 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) Upon determination of
3 the appeal, the court shall have jurisdiction to affirm or set aside such
4 decision, ruling, or order of the commission, in whole or in part, or
5 remand the proceeding to the commission with instructions. No
6 evidence beyond that contained in the record of the proceedings before
7 the commission shall be considered or received by the court, except
8 that in cases where issues of confiscation or of constitutional right are
9 involved, the court, on its own motion or verified petition of a party,
10 may order such additional evidence as it deems necessary for the
11 determination of such issues to be taken before the commission and to
12 be received at the hearing before the commission in such manner and
13 upon such terms and conditions as the court shall order.

14 (b) If a new hearing is ordered under subsection (a), the commission
15 is not required to receive any evidence as to facts which were in
16 existence at the time of the prior commission hearing or hearings,
17 except upon a showing, either to the court in the first instance, or the
18 commission, upon the hearing, that:

19 (1) the evidence was not available for presentation to the
20 commission prior to the entry of its final decision, ruling, or order,
21 or prior to the determination of the commission upon the petition
22 for rehearing, if a petition for rehearing was filed; and

23 (2) due diligence was exercised by the party offering the evidence
24 to procure and present the evidence to the commission prior to the
25 entry of its final decision, ruling, or order, or its determination
26 upon the petition for rehearing, if any was filed.

27 (c) Whenever the court shall order additional evidence to be taken
28 the commission shall promptly hear and report the evidence to the
29 court so that the proof may be brought as nearly as reasonably possible
30 down to the date of its report to the court. The commission may, after
31 hearing such evidence, modify its findings as to facts and its original
32 decision, ruling, or order, and it shall file with the court the amended
33 decision or orders and any modified or new findings.

34 (d) If the commission modifies or amends its original decision or
35 orders, the appealing party or any other party aggrieved by the modified
36 or amended decision or order may file with the court, within the time
37 allowed by the court, a specification of any errors of law claimed to
38 have been made by the commission in the modified decision or orders.
39 A specification of errors shall be considered by the court in addition to
40 the errors of law asserted in the assignment or assignments of error.

41 (e) The supreme court and the court of appeals, as the case may be,
42 have jurisdiction, upon application of the commission or any party, to

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1 order or enjoin temporarily or permanently the enforcement of any
2 determination, ruling, or order of the commission made in the cause.

3 (f) The supreme court and the court of appeals, as the case may be,
4 also have jurisdiction upon application of a public utility to issue
5 temporary injunctions protecting the utility in the collection of rates
6 determined by the court to be nonconfiscatory during the pendency of
7 the proceeding and until nonconfiscatory rates are fixed by the
8 commission if existing rates are finally determined to be confiscatory,
9 with appropriate provisions as to bonds and refunds. **A public utility
10 that provides electric or gas service is not required to petition the
11 court under this subsection in order to collect the rates allowed
12 under IC 8-1-2-61(d) during the pendency of the proceeding.**

13 SECTION 10. IC 8-1-3-11 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. Nothing in this
15 chapter contained shall be construed to affect the duty or power of:

16 (1) the commission to commence ~~and prosecute~~ enforcement
17 proceedings in its own name; or

18 **(2) the attorney general to prosecute enforcement proceedings**
19 **in the name of the state of Indiana in the circuit or superior courts**
20 **of this state;**

21 pursuant to the provisions of **IC 8-1-2-115, IC 8-1-13-41.2, or** other
22 statutes, except insofar as such proceedings may interfere with the
23 jurisdiction of the court of appeals or supreme court in a cause then
24 pending on appeal.

25 SECTION 11. IC 8-1-13-41.1 IS ADDED TO THE INDIANA
26 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
27 [EFFECTIVE JULY 1, 2003]: **Sec. 41.1. (a) The authority granted to**
28 **the commission under this section is in addition to the commission's**
29 **authority to act under section 41 of this chapter.**

30 **(b) This section does not apply when a corporation's violation**
31 **or failure to comply under subsection (d) is caused by**
32 **circumstances beyond the control of the corporation, including any**
33 **of the following:**

34 **(1) Customer provided equipment.**

35 **(2) A negligent act or omission of a customer.**

36 **(3) An emergency situation.**

37 **(4) An unavoidable casualty.**

38 **(5) An act of God.**

39 **(c) A corporation subject to the commission's jurisdiction under**
40 **this chapter and every officer of the corporation shall comply with**
41 **every order or rule of the commission made under the authority of**
42 **this chapter.**



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1 (d) Except as otherwise provided in this chapter, if the
2 commission finds after notice and hearing that a corporation has
3 violated this chapter or failed after due notice to comply with:

- 4 (1) a standard of service established by commission rule; or
- 5 (2) a rate or service requirement of a final and unappealable
6 order of the commission;

7 the commission may order the corporation to pay a civil penalty of
8 not more than five thousand dollars (\$5,000) for each violation or
9 failure to comply.

10 (e) Notwithstanding subsection (d), if the commission finds after
11 notice and hearing that the corporation's violation or failure to
12 comply demonstrates, by a continuing pattern of conduct, a
13 disregard by the corporation of its obligation to remedy the
14 violation or failure to comply found under subsection (d), the
15 commission may impose an additional civil penalty of not more
16 than ten thousand dollars (\$10,000) for each violation or failure to
17 comply.

18 (f) The commission shall consider the following when
19 determining the appropriateness of the imposition or amount of a
20 civil penalty:

- 21 (1) The size of the corporation.
- 22 (2) The gravity of the violation or failure to comply.
- 23 (3) The good faith of the corporation in attempting to remedy
24 the violation or failure to comply or achieve compliance after
25 receiving notification of the violation or failure.
- 26 (4) The effect of the civil penalty on the corporation's
27 members and their capitalization of the corporation.
- 28 (5) Whether the act or omission causing the violation or
29 failure to comply had been approved or requested by the
30 corporation's members.

31 In the order imposing the civil penalty, the commission shall make
32 specific findings with respect to the factors described in
33 subdivisions (1) through (5).

34 (g) A corporation may not be subject to both a civil penalty
35 under this section and a penalty agreed to in a commission
36 approved settlement agreement for the same violation or failure to
37 comply. If the commission has approved a settlement agreement
38 that includes penalties or remedies for noncompliance with specific
39 provisions of the settlement agreement, the penalties provided in
40 this section do not apply to those instances of noncompliance
41 during the life of the settlement agreement.

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1 **(h) The total aggregate civil penalties under this section in any**
 2 **calendar year may not exceed five-tenths of one percent (0.5%) of**
 3 **the corporation's gross intrastate operating revenue from retail**
 4 **sales of energy after deducting the corporation's cost of fuel and**
 5 **purchased electricity.**

6 SECTION 12. IC 8-1-13-41.2 IS ADDED TO THE INDIANA
 7 CODE AS A NEW SECTION TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 2003]: **Sec. 41.2. Any forfeiture or penalty**
 9 **provided in this chapter shall be recovered and any suit related to**
 10 **the forfeiture or penalty shall be brought in the name of the state**
 11 **of Indiana by the attorney general in a court with jurisdiction.**
 12 **Complaint for the collection of any forfeiture or penalty may be**
 13 **made by the commission or any commission member and, when**
 14 **made, the action commenced shall be prosecuted by the attorney**
 15 **general.**

16 SECTION 13. IC 8-1-27-3 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this
 18 chapter, "environmental compliance plan" means a plan developed by
 19 a public utility to comply in whole or in part with the requirements of
 20 ~~the Clean Air Act Amendments of 1990.~~ **state or federal**
 21 **environmental laws.**

22 SECTION 14. IC 8-1-27-5.7 IS ADDED TO THE INDIANA CODE
 23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 24 UPON PASSAGE]: **Sec. 5.7. As used in this chapter, "state or**
 25 **federal environmental laws" means:**

26 **(1) any state or federal law, rule, regulation, or order; or**
 27 **(2) any adjudication, settlement, or consent decree in any state**
 28 **or federal court or administrative proceeding interpreting or**
 29 **applying a state or federal law, rule, regulation, or order;**
 30 **relating to the protection, monitoring, preservation, remediation,**
 31 **or restoration of human health, the environment, or natural**
 32 **resources from air, wastewater, solid waste, or thermal pollution.**

33 SECTION 15. IC 8-1-27-6 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) A public
 35 utility that has at least one (1) generating unit affected by ~~Section 404~~
 36 ~~(Phase I) or Section 405 (Phase II) of the Clean Air Act Amendments~~
 37 ~~of 1990~~ **state or federal environmental laws** may voluntarily submit
 38 **to the commission for the commission's review and approval under**
 39 **this chapter** a verified environmental compliance plan that sets forth
 40 the manner in which the public utility intends to comply with the
 41 requirements of the ~~Clean Air Act Amendments of 1990~~ to the

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1 ~~commission for the commission's review and approval under this~~
 2 ~~chapter: state or federal environmental laws addressed by the plan.~~

3 (b) An environmental compliance plan described in subsection (a)
 4 must include any information that the commission may reasonably
 5 require. The commission shall require a plan described in subsection
 6 (a) to include at least the following information:

7 (1) A description of the requirements of the ~~Clean Air Act~~
 8 ~~Amendments of 1990~~ **state or federal environmental laws**
 9 **addressed by the plan and** applicable to each **facility or**
 10 generating unit owned or operated by the public utility.

11 (2) A description of the measures the public utility proposes to
 12 implement to comply with the requirements.

13 (3) The schedule under which the public utility proposes to
 14 implement the measures.

15 (4) An estimate of the cost of implementing each of the measures
 16 proposed by the public utility.

17 (5) An analysis of the comparative estimated costs of meeting the
 18 applicable requirements of the ~~Clean Air Act Amendments of~~
 19 ~~1990~~ **state or federal environmental laws addressed by the**
 20 **plan** through the measures proposed by the public utility and
 21 other alternative compliance measures considered by the public
 22 utility.

23 (6) For all compliance plans submitted to the commission after
 24 July 1, 1993, if an environmental compliance plan proposes a
 25 change of fuel type from the fuel type consumed in the public
 26 utility's generating units and that change of fuel type would result
 27 in the displacement or diminished use of Indiana coal from the
 28 quantity of Indiana coal consumed by the public utility during the
 29 calendar year 1990, or an average of the quantity of Indiana coal
 30 consumed by the utility in calendar years 1990, 1991, and 1992,
 31 whichever is submitted by the utility in the plan, the public utility
 32 shall submit the following as part of the environmental
 33 compliance plan:

34 (A) An analysis of the following:

35 (i) The economic and employment effects of the proposed
 36 change of fuel type on the regions of Indiana in which the
 37 mining of coal provides employment, and on the service
 38 territory of the public utility.

39 (ii) The effects of the proposed modification on the
 40 preservation of the mining of Indiana coal as a viable source
 41 of fuel.

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The analyses required under this clause must include a comparison of the effects likely to result from the alternative compliance measures identified under subdivision (5).
(B) Information describing the availability, the reliability, the current costs, and the projected future costs of the fuel type proposed for use in connection with the environmental compliance plan.

SECTION 16. IC 8-1-27-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. The commission shall issue an order approving an environmental compliance plan if the commission:

- (1) finds that the environmental compliance plan:
 - (A) is reasonably designed to meet or exceed the applicable requirements of the ~~Clean Air Act Amendments of 1990~~; **state or federal environmental laws addressed by the plan**;
 - (B) constitutes a reasonable and least cost strategy over the life of the investment consistent with providing reliable, efficient, and economical electrical service; **and**
 - (C) is in the public interest; and
 - ~~(D) either:~~
 - (i) provides for continued or increased use of Indiana coal in the coal-consuming electric generating units owned or operated by the public utility and affected by the ~~Clean Air Act Amendments of 1990~~; or
 - (ii) if the plan does not provide for continued or increased use of Indiana coal, such nonprovision is justified by economic considerations including the effects in the regions of Indiana in which the mining of coal provides employment and in the service territory of the public utility; and
- (2) approves the cost and schedule estimate for developing and implementing the environmental compliance plan.

SECTION 17. IC 8-1-27-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. If a public utility:

- (1) chooses to; or
 - (2) because of action by a federal or state government environmental agency, is required to;
- modify a part of an environmental compliance plan that has previously been approved by the commission to comply with the requirements of the ~~Clean Air Act~~, **state or federal environmental laws addressed by the plan**, the public utility shall submit a modified environmental

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1 compliance plan to the commission for the commission's review. The
 2 conflict provisions of section 10 of this chapter apply to a modified
 3 environmental compliance plan submitted under this section.

4 SECTION 18. IC 8-1-27-14 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. If the
 6 commission finds that an environmental compliance plan or a modified
 7 environmental compliance plan approved by the commission under this
 8 chapter exceeds the applicable requirements of the ~~Clean Air Act~~
 9 ~~Amendments of 1990~~ **state or federal environmental laws addressed**
 10 **by the plan** by means of early or over compliance, the commission
 11 shall, in the order approving the plan, determine the manner and timing
 12 of the applicable ratemaking and regulatory treatment of any emission
 13 credits or other additional benefits expected to result from the early or
 14 over compliance.

15 SECTION 19. THE FOLLOWING ARE REPEALED [EFFECTIVE
 16 UPON PASSAGE]: IC 8-1-27-1; IC 8-1-27-2.

17 SECTION 20. [EFFECTIVE UPON PASSAGE] **(a) IC 8-1-2-61, as**
 18 **amended by this act, applies to a petition for an increase in basic**
 19 **rates and charges made by a public utility after March 31, 2003.**

20 **(b) This SECTION expires January 1, 2004.**

21 SECTION 21. **An emergency is declared for this act.**

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