

IC 4-4-11.6

Chapter 11.6. Additional Authority; Substitute Natural Gas Contracts

IC 4-4-11.6-0.5

"2011 order"

Sec. 0.5. As used in this chapter, "2011 order" refers to the order of the commission issued on November 22, 2011, approving a purchase contract entered into on January 14, 2011.

As added by P.L.228-2013, SEC.1.

IC 4-4-11.6-1

"Account"

Sec. 1. As used in this chapter, "account" refers to the substitute natural gas account established by section 27 of this chapter.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-2

"Authority"

Sec. 2. As used in this chapter, "authority" refers to the Indiana finance authority.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-2.5

"Business day"

Sec. 2.5. As used in this chapter, "business day" means a day other than a Saturday, Sunday, or legal holiday (as defined in IC 1-1-9-1).

As added by P.L.228-2013, SEC.2.

IC 4-4-11.6-3

"Coal gasification facility"

Sec. 3. As used in this chapter, "coal gasification facility" means a facility that:

- (1) uses a manufacturing process that converts coal into substitute natural gas; and
- (2) not later than June 30, 2009, has applied for a federal loan guarantee through the United States Department of Energy Loan Guarantee Program Office, Solicitation Number DE-FOA-0000008 for the financing of the facility.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-4

"Commission"

Sec. 4. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-5

"Energy utility"

Sec. 5. As used in this chapter, "energy utility" has the meaning set forth in IC 8-1-2.5-2.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-6

"Management contract"

Sec. 6. As used in this chapter, "management contract" means a contract that:

- (1) is entered into by the authority and a regulated energy utility; and
- (2) provides for:
 - (A) the delivery, billing, collection, and remittance of monies received for SNG delivered in the service area of the regulated energy utility; and
 - (B) reasonable compensation for services provided by the regulated energy utility under the terms of the contract.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-7

"Purchase contract"

Sec. 7. As used in this chapter, "purchase contract" means a contract that:

- (1) is entered into by the authority and a producer of SNG for the sale and purchase of SNG;
- (2) has a thirty (30) year term;
- (3) provides a guarantee of savings for retail end use customers; and
- (4) contains other terms and conditions determined necessary by the authority.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-8

"Regulated energy utility"

Sec. 8. As used in this chapter, "regulated energy utility" means an energy utility that is subject to IC 8-1-2-42.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-9

"Related contract"

Sec. 9. As used in this chapter, "related contract" means a contract for services that the authority determines are necessary and appropriate for the delivery of SNG to the city gate point of a regulated energy utility.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-10

"Retail end use customer"

Sec. 10. As used in this chapter, "retail end use customer" means a customer who acquires energy at retail for the customer's own consumption:

- (1) from a gas utility that must apply to the commission under IC 8-1-2-42 for approval of gas cost changes; or
- (2) under a program approved by the commission through which the customer purchases gas that would be subject to price adjustments under IC 8-1-2-42 if the gas were sold by a gas utility.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-10.5

"Savings"

Sec. 10.5. As used in this chapter, a "savings" occurs, with respect to a purchase contract subject to review by the commission under section 14.5 of this chapter, when the purchase price of SNG paid by the authority under the purchase contract is less than the average market price of natural gas during intervals determined by the commission as set forth in section 14.5(b)(4) of this chapter.

As added by P.L.228-2013, SEC.3.

IC 4-4-11.6-11

"Substitute natural gas" or "SNG"

Sec. 11. As used in this chapter, "substitute natural gas" or "SNG" means pipeline quality gas produced by a facility that uses a gasification process to convert coal into a gas capable of being used by a utility to supply gas utility service to retail end use customers in Indiana.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-12

Findings

Sec. 12. (a) The general assembly makes the following findings:

- (1) The furnishing of reliable supplies of reasonably priced natural gas for sales to retail customers is essential for the well being of the people of Indiana. Natural gas prices are volatile, and energy utilities have been unable to mitigate completely the effects of the volatility.
- (2) Long term contracts for the purchase of SNG between the authority and SNG producers will enhance the receipt of federal incentives for the development, construction, and financing of new coal gasification facilities in Indiana.
- (3) The authority's participation in and oversight of the purchase, sale, and delivery of SNG to retail end use customers is critical to obtain low cost financing for the construction of new coal gasification facilities.
- (4) Obtaining low cost financing for the construction of new coal gasification facilities is necessary to allow retail end use customers to enjoy the benefits of a reliable, reasonably priced, and long term energy supply.

(b) In addition to the findings set forth in subsection (a), the general assembly makes the following findings:

- (1) With respect to pending litigation concerning contracts

entered into under this chapter, the general assembly defers to the constitutional role and independence of the judicial branch.

(2) The general assembly recognizes the expertise and independence of the commission in matters concerning Indiana's natural gas ratepayers.

(3) Legislative power includes the power to amend and repeal existing laws. The legislature has no power to enact a law or to make a contract or arrangement that in any way surrenders or abridges this legislative power. The act of one (1) legislature is not binding upon a future legislature.

(4) An action by a general assembly, including the enactment of legislation, to protect the public interest is a proper exercise of the police power and is not intended to impair a long term contract for the purchase of SNG.

(5) New discoveries of natural gas supplies and development of advanced drilling techniques may affect the determination of whether a long term contract for the purchase of SNG is in the public interest.

(6) Realizing savings at intervals during the term of a contract for the purchase of SNG protects retail end use customers and serves the public interest.

As added by P.L.2-2009, SEC.2. Amended by P.L.228-2013, SEC.4.

IC 4-4-11.6-13

Powers of authority

Sec. 13. The authority may do the following:

- (1) Enter into contracts for the purchase, transportation, and delivery of SNG.
- (2) Establish and collect rates and charges for SNG.
- (3) Enter into contracts for private professional and technical assistance concerning SNG contracts.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-14

Ability of authority to enter into purchase contracts; approval of purchase contracts, amendments, and other agreements by commission

Sec. 14. (a) The authority, either directly or as an assignee of an energy utility, may enter into purchase contracts for the purchase of SNG from coal gasification facilities.

(b) The authority shall submit the following to the commission for approval:

- (1) The following:
 - (A) A purchase contract that is:
 - (i) originally submitted to the commission for approval before January 1, 2012; and
 - (ii) subsequently amended, supplemented with addenda or agreements, or otherwise modified to amend the definition of retail end use customers in the purchase contract.
 - (B) A purchase contract entered into after December 31,

2012.

(2) Any amendments, addenda, or other modifications made or added at any time to a purchase contract, regardless of when the purchase contract is entered into.

(3) Any other agreements entered into between the authority and a producer of SNG.

As added by P.L.2-2009, SEC.2. Amended by P.L.228-2013, SEC.5.

IC 4-4-11.6-14.5

Approval, rejection, or modification of purchase contract by commission; findings; final order; expedited appeal; adoption of rules by commission

Sec. 14.5. (a) This section applies if an opinion by a court of appeal that does not affirm the 2011 order in its entirety is certified under Rule 65 of the Indiana Rules of Appellate Procedure.

(b) After notice and a hearing, the commission may approve, reject, or, before approval, require modification of a purchase contract submitted to the commission under section 14(b)(1) of this chapter if the commission finds that such action is in the public interest. The commission shall consider the following before finding that an action under this subsection is in the public interest:

(1) Whether the purchase contract is structured in a way that lessens the impact of any price volatility in the natural gas market on retail end use customers.

(2) Whether the assumptions underlying the model used to calculate the purchase price of SNG under the purchase contract, including assumptions about the future price of natural gas and coal and the value of future byproducts of the coal gasification facility, adequately apportion financial risk between the SNG producer and retail end use customers.

(3) The findings of any study conducted by the commission on the natural gas market and reported to the general assembly.

(4) Whether a purchase contract allows retail end use customers to realize savings during the term of the purchase contract at intervals established by the commission.

(5) Any other factors the commission considers necessary.

The commission shall issue a final order not more than one hundred eighty (180) business days after the date on which the authority submits the purchase contract to the commission under section 14(b)(1) of this chapter.

(c) A party that seeks to appeal an order issued under subsection (b) shall do so only through an expedited direct appeal to the Indiana supreme court under rules to be adopted by the Indiana supreme court.

(d) The commission may adopt rules under IC 4-22-2 to carry out the requirements of this section. A rule adopted under this subsection must establish filing and other procedural deadlines for all parties to a hearing under subsection (b).

As added by P.L.228-2013, SEC.6.

IC 4-4-11.6-15

Ability of authority to enter into management and related contracts

Sec. 15. The authority may enter into management and related contracts as needed to transport, store, deliver, manage, and bill and collect for the delivery and sale of SNG to retail end use customers.
As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-16

Procurement requirements

Sec. 16. Notwithstanding any other law, including public purchasing and competitive bidding requirements, the authority may procure purchase and related contracts using the processes and procedures it considers appropriate to obtain a reliable, long term supply of SNG.
As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-17

Consultation with consumer counselor

Sec. 17. Before negotiating the terms of, entering into, or accepting assignment of a contract under this chapter, the authority shall consult with the consumer counselor of the office of utility consumer counselor appointed under IC 8-1-1.1-3.
As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-18

Taking title to and selling SNG

Sec. 18. (a) The authority may take title to SNG under the terms of the purchase contract to which the authority is a party.

(b) The commission shall allocate on an annual basis SNG purchased by the authority to the retail end use customers of a regulated energy utility based on the proportion of the amount of gas delivered by the regulated energy utility to the total amount of gas delivered by all regulated energy utilities in the immediately preceding calendar year.

(c) SNG is considered sold by the authority when the SNG is delivered to retail end use customers.

(d) The authority has the right to sell SNG to third parties instead of retail end use customers if the authority determines that sales to third parties are necessary and appropriate to manage the delivery of SNG to retail end use customers.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-19

Cost recovery; adoption of rules

Sec. 19. (a) If the authority sells SNG to retail end use customers, the authority shall sell the SNG at a price that is sufficient to permit recovery by the authority of costs related to the SNG sold to the retail end use customers, including the following:

- (1) Costs of purchasing SNG.

- (2) Costs of transporting SNG.
- (3) Costs of delivering SNG.
- (4) Costs incurred by the authority in administering this chapter.
- (5) Costs associated with supplying working capital, maintaining financial reserves, and allowing for defaults by retail end use customers.

The mechanism and processes that the authority uses to calculate the costs must be capable of audit and verification.

(b) The commission shall require a regulated energy utility to include in the rates collected from retail end use customers that purchase SNG from the authority the price for SNG sold to the retail end use customers by the authority.

(c) The commission shall adopt rules under IC 4-22-2 to carry out the requirements of this section. A rule adopted under this subsection must require that a bill provided by a regulated energy utility to a retail end use customer include a line item for costs associated with the purchase and delivery of SNG.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-20

Payments for SNG

Sec. 20. (a) A payment for SNG:

- (1) to which the authority holds title; and
- (2) that is delivered by a regulated energy utility to its retail end use customers;

is a direct obligation of the retail end use customers to the authority. The regulated energy utility shall collect the payments from the retail end use customers as an agent of the authority.

(b) Payments made under subsection (a):

- (1) are the property of the authority;
- (2) shall be segregated and held in trust for the authority by the regulated energy utility that collects the payments; and
- (3) shall be credited to the account.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-21

Financial obligations of authority

Sec. 21. The obligation of the authority to pay for SNG, or for any services under a contract entered into under this chapter, is limited to the funds available in the account plus any other amount recoverable by the authority through a provision included in a contract under section 19 of this chapter. An obligation under this section is not supported by the full faith and credit of the state.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-22

Mandatory management contracts

Sec. 22. (a) Upon the request of the authority, the commission shall order a regulated energy utility to enter into a management contract with the authority to:

- (1) distribute and deliver SNG purchased by the authority; and
- (2) provide billing, collection, and other services related to the purchase, distribution, and delivery of the SNG.

(b) A management contract entered into under subsection (a) must include a mechanism by which the regulated energy utility is reimbursed for all costs incurred in performing the management contract in excess of costs that, as determined by the commission, the regulated energy utility would otherwise have incurred in the ordinary course of business.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-23

Authority is not energy utility

Sec. 23. Notwithstanding any other law, the authority is not:

- (1) considered an energy utility solely by virtue of its participation in any transaction described in this chapter;
- (2) subject to the jurisdiction of the commission except as provided in this chapter; or
- (3) required to obtain the approval of the commission except as provided in this chapter.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-24

Impairment of contracts

Sec. 24. If the authority enters into a contract under this chapter, the state covenants and agrees, for the benefit of the parties to the contract, as well as any entity that provides financing to a party to the contract, that the state will not take or permit any action that would:

- (1) impair the contract; or
- (2) otherwise limit, alter, or impair the ability of the authority to satisfy its contractual obligations, including the establishment and collection of the price for SNG from retail end use customers;

until the contract has been performed in full.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-25

Limits on power of authority

Sec. 25. This chapter does not authorize the authority to take ownership of the transportation, transmission, generation, production, or distribution assets of an energy utility.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-26

Energy utilities obligated to provide energy service

Sec. 26. This chapter may not be construed to reduce or modify an energy utility's obligation to provide energy service.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-27

Substitute natural gas account

Sec. 27. (a) The authority shall establish and administer a separate account known as the substitute natural gas account.

(b) The account consists of payments credited to the account under section 20(b)(3) of this chapter.

(c) The authority shall use the account to provide funding and pay expenses to satisfy the obligations of this chapter.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-28

Adoption of rules

Sec. 28. In addition to the rules adopted under section 19(c) of this chapter, the authority may adopt rules under IC 4-22-2 to implement this chapter, including a rule to protect confidential or proprietary financial or trade secret information included in reports provided to the authority by SNG producers, energy utilities, or regulated energy utilities.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-29

Customer choice programs

Sec. 29. The terms of a customer choice program (as defined in IC 8-1-2-42.1) may not impair the ability of the authority to deliver and sell SNG to retail end use customers.

As added by P.L.2-2009, SEC.2.

IC 4-4-11.6-30

Third party contracts

Sec. 30. (a) To carry out this chapter, the authority may enter into a contract to sell SNG to third parties with the net effect of the proceeds and costs of those sales to be reflected in the line item on customers' bills as required by section 19(c) of this chapter.

(b) The following apply if the authority enters into a contract under subsection (a):

(1) The contract between the authority and a producer of SNG for the sale and purchase of SNG must be a purchase contract and is subject to all the requirements of this chapter.

(2) Contracts for services the authority determines are necessary and appropriate to effectuate SNG sales and the related transportation and delivery of SNG, including contracts authorizing third parties to act as the authority's agent in selling the SNG, must be related contracts.

(3) Contracts between the authority and regulated energy utilities for the crediting and charging of the proceeds and costs to all retail end use customers, including the billing and collecting of any net costs, must be management contracts subject to section 22 of this chapter.

(c) The:

(1) proceeds of the sales of SNG;

(2) costs of purchasing, transporting, and delivering the SNG;

- (3) authority's administrative costs;
- (4) costs incurred in carrying out this section by an agent of the authority; and
- (5) costs associated with supplying working capital, maintaining financial reserves, and allowing defaults by SNG purchasers or retail end use customers;

shall be allocated to the retail end use customers of each regulated energy utility based on the proportion of the amount of gas delivered by the regulated energy utility to the total amount of gas delivered by all regulated energy utilities in the immediately preceding calendar year. The commission shall determine a just and reasonable method for allocating the credits and charges to the retail end use customers. The mechanism and processes the authority uses to calculate the costs must be capable of audit and verification.

(d) The obligation of the authority to pay for SNG or for any services under a contract entered into under this chapter is limited to the funds available in the account plus any other amount recoverable by the authority through a provision included in a contract under this section. An obligation under this section is not supported by the full faith and credit of the state.

As added by P.L.113-2010, SEC.7.