

IC 8-1-27

Chapter 27. Environmental Compliance Plans

IC 8-1-27-1

"Clean Air Act" defined

Sec. 1. As used in this chapter, "Clean Air Act" refers to the federal Clean Air Act (42 U.S.C. 7401 et seq.) and regulations adopted under the federal Clean Air Act.

As added by P.L.76-1991, SEC.1.

IC 8-1-27-2

"Clean Air Act Amendments of 1990" defined

Sec. 2. As used in this chapter, "Clean Air Act Amendments of 1990" refers to Title IV, Acid Deposition Control, of the federal Clean Air Act Amendments of 1990 (P.L.101-549) and regulations adopted under the federal Clean Air Act Amendments of 1990.

As added by P.L.76-1991, SEC.1.

IC 8-1-27-3

"Environmental compliance plan" defined

Sec. 3. As used in this chapter, "environmental compliance plan" means a plan developed by a public utility to comply in whole or in part with the requirements of the Clean Air Act Amendments of 1990.

As added by P.L.76-1991, SEC.1.

IC 8-1-27-4

"Indiana coal" defined

Sec. 4. As used in this chapter, "Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tippie.

As added by P.L.76-1991, SEC.1.

IC 8-1-27-5

"Public utility" defined

Sec. 5. As used in this chapter, "public utility" means a public utility, a municipally owned utility, or a cooperatively owned utility.

As added by P.L.76-1991, SEC.1.

IC 8-1-27-5.5

"Change of fuel type" defined

Sec. 5.5. As used in this chapter, "change of fuel type" means any change in the fuel, including a change from Indiana coal, used by a public utility.

As added by P.L.92-1993, SEC.2.

IC 8-1-27-6

Environmental compliance plan; required information

Sec. 6. (a) A public utility that has at least one (1) generating unit affected by Section 404 (Phase I) or Section 405 (Phase II) of the

Clean Air Act Amendments of 1990 may voluntarily submit a verified environmental compliance plan that sets forth the manner in which the public utility intends to comply with the requirements of the Clean Air Act Amendments of 1990 to the commission for the commission's review and approval under this chapter.

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

(1) A description of the requirements of the Clean Air Act Amendments of 1990 applicable to each generating unit owned or operated by the public utility.

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

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

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

(5) An analysis of the comparative estimated costs of meeting the applicable requirements of the Clean Air Act Amendments of 1990 through the measures proposed by the public utility and other alternative compliance measures considered by the public utility.

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

(A) An analysis of the following:

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

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

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.

As added by P.L.76-1991, SEC.1. Amended by P.L.92-1993, SEC.3.

IC 8-1-27-7**Public hearing on plan; notice**

Sec. 7. The commission shall hold a public hearing for each environmental compliance plan submitted by a public utility under this chapter. The public utility shall publish a notice of the filing of its petition for approval of an environmental compliance plan in one (1) newspaper of general circulation published in each county in which the public utility renders service. The provisions of IC 8-1-2-62 through IC 8-1-2-67 apply to a public hearing held under this section.

As added by P.L.76-1991, SEC.1.

IC 8-1-27-8**Order approving plan; conditions**

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;
 - (B) constitutes a reasonable and least cost strategy over the life of the investment consistent with providing reliable, efficient, and economical electrical service;
 - (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.

As added by P.L.76-1991, SEC.1.

IC 8-1-27-9**Rejection of plan; modified plan; withdrawal of plan without prejudice**

Sec. 9. (a) If the commission finds that an environmental compliance plan submitted by a public utility does not satisfy the requirements of section 8 of this chapter, the commission may reject the plan.

(b) If a public utility's environmental compliance plan is rejected by the commission, the public utility may voluntarily submit to the commission a modified plan intended to satisfy the requirements of section 8 of this chapter.

(c) A modified plan submitted under subsection (b) shall be

considered by the commission under sections 7 and 8 of this chapter.

(d) A public utility may withdraw a proposed environmental compliance plan without prejudice.

As added by P.L.76-1991, SEC.1.

IC 8-1-27-10

Submission of plan to government environmental agency; conflicts

Sec. 10. A public utility shall submit its environmental compliance plan or modified environmental compliance plan to any applicable state government environmental agency on or before the date that the public utility submits the plan to the commission under this chapter. If there is a conflict between the commission and a federal or state government environmental agency concerning the necessary components of a public utility's environmental compliance plan or modified environmental compliance plan, the determination by the government environmental agency shall control.

As added by P.L.76-1991, SEC.1.

IC 8-1-27-11

Modification of previously approved plan; review by commission

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, the public utility shall submit a modified environmental compliance plan to the commission for the commission's review. The conflict provisions of section 10 of this chapter apply to a modified environmental compliance plan submitted under this section.

As added by P.L.76-1991, SEC.1.

IC 8-1-27-12

Recovery of costs by public utility for capital projects or implemented plan

Sec. 12. (a) If the commission issues an order approving an environmental compliance plan submitted by a public utility under this chapter, the commission shall, absent fraud, concealment, gross mismanagement, or inadequate quality control, allow the public utility to do the following:

(1) If a public utility is allowed by law to earn a return on the public utility's investment, the public utility may add to the fair value of the public utility's property the fair value of a completed capital project, or part of a capital project, that:

(A) is constructed and consists of:

(i) new systems, equipment, or facilities; or

(ii) modifications to existing systems, equipment, or facilities; and

(B) is part of the environmental compliance plan approved

by the commission;
up to the amount approved under section 8(2) or 13 of this chapter, whichever is applicable.

(2) The public utility may recover the costs incurred by the public utility in the development and implementation of the approved environmental compliance plan up to the amount approved under section 8(2) or 13 of this chapter, whichever is applicable.

(b) The public utility may not recover costs in excess of the cost estimate approved by the commission under section 8(2) or 13 of this chapter, whichever is applicable, unless the commission finds that the additional costs were necessary and prudent.

(c) Except as provided in subsection (d), costs otherwise recoverable by a public utility under subsections (a) and (b) shall be recovered only through a general rate proceeding for the public utility and, to the extent such costs provide the public utility with a return of, or return on, the public utility's investment in a completed capital project, or a part of a capital project, such costs shall be so recovered only if the capital project, or part of the capital project, is found by the commission to be used and useful.

(d) Costs otherwise recoverable by a public utility under subsections (a) and (b) that also qualify for recovery under IC 8-1-2-6.6 shall be recovered by the public utility when and as provided under IC 8-1-2-6.6.

(e) This section does not apply if the public utility elects the review described in section 19 of this chapter.

As added by P.L.76-1991, SEC.1.

IC 8-1-27-13

Revised cost and schedule estimate for developing and implementing plan; submission to commission

Sec. 13. (a) If a public utility makes a substantial change in a cost and schedule estimate for developing and implementing an environmental compliance plan or a modified environmental compliance plan after the estimate has been approved by the commission under this chapter, the public utility shall file with the commission for the commission's review and approval the revised cost and schedule estimate.

(b) To the extent the commission approves a revised cost and schedule estimate, the estimate shall be the approved cost and schedule estimate for the plan.

As added by P.L.76-1991, SEC.1.

IC 8-1-27-14

Plan exceeding Clean Air Act Amendments of 1990 requirements; credits or additional benefits

Sec. 14. If the commission finds that an environmental compliance plan or a modified environmental compliance plan approved by the commission under this chapter exceeds the applicable requirements of the Clean Air Act Amendments of 1990

by means of early or over compliance, the commission shall, in the order approving the plan, determine the manner and timing of the applicable ratemaking and regulatory treatment of any emission credits or other additional benefits expected to result from the early or over compliance.

As added by P.L.76-1991, SEC.1.

IC 8-1-27-15

General rate proceedings; consideration of change in risk to utility following approval of plan

Sec. 15. In a general rate proceeding following the issuance of an order by the commission approving an environmental compliance plan under this chapter, the commission shall, in reviewing and authorizing the public utility's return, give due consideration to any change in risk to the public utility as a result of the commission's approval of the environmental compliance plan and include in the order issued with respect to the general rate proceeding a finding on the change.

As added by P.L.76-1991, SEC.1.

IC 8-1-27-16

Utility's recovery of expenditures due to plan modification

Sec. 16. If the commission issues an order under sections 8, 11, or 18 of this chapter that approves modifications to a public utility's environmental compliance plan, the commission shall, absent fraud, concealment, gross mismanagement, or inadequate quality control, allow the public utility to recover under sections 12(a) and 12(b) of this chapter, to the extent permitted under sections 12(a) and 12(b) of this chapter, the following:

- (1) The public utility's expenditures made under the environmental compliance plan before the date the commission issued the order approving the modified environmental compliance plan.
- (2) The public utility's expenditures made under the modified environmental compliance plan after the date the commission issued the order approving the modified environmental compliance plan.

As added by P.L.76-1991, SEC.1.

IC 8-1-27-17

Recovery of costs incurred by utility in implementing measure set forth in plan but disapproved by commission upon review

Sec. 17. If a public utility cancels the implementation of a measure set forth in an environmental compliance plan as a result of an order issued by the commission under section 18 or 19 of this chapter that withdraws the commission's approval of the inclusion of the measure in the environmental compliance plan, the public utility may, absent fraud, concealment, gross mismanagement, or inadequate quality control, recover:

- (1) over a reasonable time; and

(2) through the rates of the public utility; the costs incurred by the public utility in implementing the measure and a reasonable return on the unamortized balance, to the extent the implementation and the costs were approved previously by the commission. The public utility may not recover costs in excess of the cost estimate approved by the commission under section 8(2) or 13 of this chapter, whichever is applicable, unless the commission finds that the additional costs were necessary and prudent.

As added by P.L.76-1991, SEC.1.

IC 8-1-27-18

Review of plan by commission; withdrawal of approval or modification of plan

Sec. 18. (a) If the commission, after an investigation commenced upon its own initiative or upon a petition of the public utility or a class of persons satisfying the standing requirements of IC 8-1-2-54 (including the office of the utility consumer counselor), finds that substantial changes:

- (1) in the need for or estimated cost of an approved environmental compliance plan have occurred; or
- (2) in the estimated cost of alternative compliance measures have occurred;

the commission may commence a review of the approval of the environmental compliance plan.

(b) If the commission finds that all or part of an environmental compliance plan no longer meets the requirements of section 8 of this chapter, the commission may, consistent with sections 8 and 10 of this chapter, issue an order:

- (1) withdrawing the commission's approval of all or part of the environmental compliance plan, whichever is applicable; or
- (2) approving modifications to the environmental compliance plan.

(c) If the commission approves modifications to an environmental compliance plan under subsection (b), the modified environmental compliance plan shall constitute the public utility's approved environmental compliance plan for purposes of this chapter.

As added by P.L.76-1991, SEC.1.

IC 8-1-27-19

Ongoing review of cost and implementation of plan; progress report; recovery of costs; approval or disapproval by commission; effect

Sec. 19. (a) In addition to the review of the continued appropriateness of an environmental compliance plan under section 18 of this chapter, the commission shall, at the request of a public utility, conduct an ongoing review of the cost and implementation of the public utility's approved environmental compliance plan. The public utility that has filed a compliance plan under this chapter shall submit to the commission:

- (1) each year; or

(2) at other times the commission and the public utility agree on;
a progress report that includes any information the commission may require.

(b) If the commission approves the cost and implementation of the part of the environmental compliance plan under review, then, absent fraud, concealment, or gross mismanagement, the approval forecloses subsequent challenges to:

- (1) the recovery in rates of those costs; and
- (2) if the public utility is allowed by law to earn a return on the public utility's investment, the addition to fair value of the public utility's property of the fair value of a completed capital project, or part of a capital project, that:

(A) is constructed and consists of:

- (i) new systems, equipment, or facilities; or
- (ii) modifications to existing systems, equipment, or facilities; and

(B) is part of the environmental compliance plan implementation approved by the commission; up to the amount approved under section 8(2) or 13 of this chapter, whichever is applicable. The public utility may not recover costs in excess of the cost estimate approved by the commission under section 8(2) or 13 of this chapter, whichever is applicable, unless the commission finds that the additional costs were necessary and prudent.

(c) If the commission does not issue an order disapproving all or part of the implementation of the part of the environmental compliance plan under review within six (6) months of the commencement of the commission's review, the commission shall be considered to have approved all of the implementation of that part of the environmental compliance plan, unless the commission issues an order extending the time for such review.

(d) Except as provided in subsection (e), costs otherwise recoverable by a public utility under subsection (b) shall be recovered only through a general rate proceeding for the public utility and, to the extent such costs provide the public utility with a return of, or a return on, the public utility's investment in a completed capital project, or portion of a capital project, such costs shall be so recovered only if the capital project, or portion of the capital project, is found by the commission to be used and useful.

(e) Costs otherwise recoverable by a public utility under subsection (b) that also qualify for recovery under IC 8-1-2-6.6 shall be recovered by the public utility when and as provided under IC 8-1-2-6.6.

(f) This section applies instead of sections 12 and 16 of this chapter for a public utility that elects the review described in this section.

(g) If the commission disapproves all or part of the implementation of the part of the environmental compliance plan under review:

(1) the commission may, consistent with sections 8 and 10 of this chapter, issue an order withdrawing the commission's approval of all or part of the environmental compliance plan; and

(2) the public utility may voluntarily submit a modified environmental compliance plan to the commission for the commission's review and approval under this chapter.

If the commission issues an order approving all or part of the modified environmental compliance plan, the environmental compliance plan constitutes the public utility's approved environmental compliance plan for purposes of this chapter.

As added by P.L.76-1991, SEC.1.

IC 8-1-27-20

Annual plan review; compliance with IC 8-1-27-8

Sec. 20. The commission shall annually review each environmental compliance plan, the implementation of which has resulted in the displacement or diminished use of Indiana coal and determine whether a different compliance measure would more fully satisfy the requirements of section 8 of this chapter.

As added by P.L.76-1991, SEC.1.

IC 8-1-27-21

Repealed

(Repealed by P.L.1-1992, SEC.32.)

IC 8-1-27-22

Contract for sale and purchase of coal; effect of chapter

Sec. 22. (a) This chapter does not give a party to a contract for the sale and purchase of coal any greater rights under a force majeure provision of the contract than the party had before July 1, 1991.

(b) The commission may not implement this chapter in a way that would give a party to a contract for the sale and purchase of coal any greater rights under a force majeure provision of the contract than the party had before July 1, 1991.

(c) This chapter does not give the commission the authority to order a public utility to cancel, terminate, amend, or otherwise modify a contract for the purchase and sale of coal.

As added by P.L.76-1991, SEC.1.

IC 8-1-27-23

Voluntary nature of chapter procedures

Sec. 23. (a) Use of the procedures in this chapter is voluntary to a public utility. The failure of a public utility to use the approval provisions of this chapter may not create a presumption of imprudence or nonrecovery in rates for environmental compliance plan costs.

(b) This chapter does not require a public utility to use this chapter to recover a cost or expense otherwise recoverable in the public utility's rates. A higher standard for the recovery of such costs

or for determining the appropriateness of an environmental compliance plan may not be imposed because of a public utility's election not to use the provisions of this chapter.

(c) An order of the commission approving an environmental compliance plan under this chapter may not limit or define the measures that may be proposed in a compliance plan submitted by another public utility or approved by the commission.

As added by P.L.76-1991, SEC.1.