

IC 8-1-37

Chapter 37. Voluntary Clean Energy Portfolio Standard Program

IC 8-1-37-1

"Base year"

Sec. 1. As used in this chapter, "base year" means the calendar year ending December 31, 2010.

As added by P.L.150-2011, SEC.16.

IC 8-1-37-2

"Clean energy"

Sec. 2. As used in this chapter, "clean energy" means electricity that is produced from a clean energy resource.

As added by P.L.150-2011, SEC.16.

IC 8-1-37-3

"Clean energy credit"

Sec. 3. As used in this chapter, "clean energy credit", or "CEC", means an interest that:

- (1) represents one (1) megawatt hour of clean energy that satisfies the condition set forth in section 12(c)(2) of this chapter;
- (2) is quantifiable and transferrable; and
- (3) is possessed by not more than one (1) entity at a time.

As added by P.L.150-2011, SEC.16.

IC 8-1-37-4

"Clean energy resource"

Sec. 4. (a) As used in this chapter, "clean energy resource" means any of the following sources, clean sources, alternative technologies, or programs used in connection with the production or conservation of electricity:

- (1) Energy from wind.
- (2) Solar energy.
- (3) Photovoltaic cells and panels.
- (4) Dedicated crops grown for energy production.
- (5) Organic waste biomass, including any of the following organic matter that is available on a renewable basis:
 - (A) Agricultural crops.
 - (B) Agricultural wastes and residues.
 - (C) Wood and wood wastes, including the following:
 - (i) Wood residues.
 - (ii) Forest thinnings.
 - (iii) Mill residue wood.
 - (D) Animal wastes.
 - (E) Animal byproducts.
 - (F) Aquatic plants.
 - (G) Algae.
- (6) Hydropower.

- (7) Fuel cells.
- (8) Hydrogen.
- (9) Energy from waste to energy facilities, including energy derived from advanced solid waste conversion technologies.
- (10) Energy storage systems or technologies.
- (11) Geothermal energy.
- (12) Coal bed methane.
- (13) Industrial byproduct technologies that use fuel or energy that is a byproduct of an industrial process.
- (14) Waste heat recovery from capturing and reusing the waste heat in industrial processes for heating or for generating mechanical or electrical work.
- (15) A source, technology, or program approved by the commission and designated as a clean energy resource by a rule adopted by the commission under IC 4-22-2.
- (16) Demand side management or energy efficiency initiatives that:

- (A) reduce electricity consumption; or
- (B) implement load management, demand response, or energy efficiency measures designed to shift customers' electric loads from periods of higher demand to periods of lower demand;

as a result of equipment installed, or customers enrolled, after January 1, 2010.

- (17) A clean energy project described in IC 8-1-8.8-2(1).
- (18) Nuclear energy.
- (19) Electricity that is:

- (A) generated by a customer owned distributed generation facility that is interconnected to the electricity supplier's distribution system in accordance with the commission's interconnection standards set forth in 170 IAC 4-4.3; and
- (B) supplied back to the electricity supplier for use in meeting the electricity supplier's electricity demand requirements in accordance with the commission's net metering rules set forth in 170 IAC 4-4.2.

- (20) Combined heat and power systems.

- (21) Electricity that is generated from natural gas at a facility constructed in Indiana after July 1, 2011, which displaces electricity generation from an existing coal fired generation facility.

(b) Except for energy described in subsection (a)(9), the term does not include energy from the incineration, burning, or heating of any of the following:

- (1) Tires.
- (2) General household, institutional, commercial, industrial, lunchroom, office, or landscape waste.

(c) The term excludes treated or painted lumber.

As added by P.L.150-2011, SEC.16.

"Clean portfolio standard goal"

Sec. 5. As used in this chapter, "clean portfolio standard goal", or "CPS goal", refers to a goal set forth in section 12(a) of this chapter that a participating electricity supplier must achieve during a specified period during the program to qualify for one (1) or more of the financial incentives described in section 13 of this chapter.

As added by P.L.150-2011, SEC.16.

IC 8-1-37-6

"Electricity supplier"

Sec. 6. (a) As used in this chapter, "electricity supplier" means a public utility (as defined in IC 8-1-2-1) that furnishes retail electric service to customers in Indiana on January 1, 2011.

(b) The term does not include a utility that is:

- (1) a municipally owned utility (as defined in IC 8-1-2-1(h));
- (2) a corporation organized under IC 8-1-13; or
- (3) a corporation organized under IC 23-17 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13.

As added by P.L.150-2011, SEC.16.

IC 8-1-37-7

"Participating electricity supplier"

Sec. 7. As used in this chapter, "participating electricity supplier" refers to an electricity supplier that has been approved by the commission under section 11 of this chapter to participate in the program.

As added by P.L.150-2011, SEC.16.

IC 8-1-37-8

"Program"

Sec. 8. As used in this chapter, "program" refers to the Indiana voluntary clean energy portfolio standard program established by the commission under section 10 of this chapter.

As added by P.L.150-2011, SEC.16.

IC 8-1-37-9

"Regional transmission organization"

Sec. 9. As used in this chapter, "regional transmission organization", with respect to an electricity supplier, refers to the regional transmission organization approved by the Federal Energy Regulatory Commission for the control area that includes the electricity supplier's assigned service area (as defined in IC 8-1-2.3-2).

As added by P.L.150-2011, SEC.16.

IC 8-1-37-10

Adoption of rules establishing program

Sec. 10. (a) Subject to subsection (d), the commission shall adopt rules under IC 4-22-2 to establish the Indiana voluntary clean energy

portfolio standard program. The program established under this section must be a voluntary program that provides incentives to participating electricity suppliers that undertake to supply specified percentages of the total electricity supplied to their Indiana retail electric customers from clean energy.

(b) The rules adopted by the commission under this section to establish the program must:

(1) incorporate:

(A) the CPS goals set forth in section 12(a) of this chapter;

(B) methods for measuring and evaluating a participating electricity supplier's compliance with the CPS goals set forth in section 12(a) of this chapter;

(C) the financial incentives and periodic rate adjustment mechanisms set forth in section 13 of this chapter; and

(D) the reporting requirements set forth in section 14 of this chapter;

(2) require the commission to determine, before approving an application under section 11 of this chapter, that the approval of the application will not result in an increase to the retail rates and charges of the electricity supplier above what could reasonably be expected if the application were not approved;

(3) take effect not later than January 1, 2012; and

(4) be consistent with this chapter.

(c) Upon the effective date of the rules adopted by the commission under this section, an electricity supplier may apply to the commission under section 11 of this chapter for approval to participate in the program.

(d) The commission may adopt emergency rules under IC 4-22-2-37.1 to adopt the rules required by this section. An emergency rule adopted by the commission under IC 4-22-2-37.1 expires on the date a rule that supersedes the emergency rule is adopted by the commission under IC 4-22-2-24 through IC 4-22-2-36.

As added by P.L.150-2011, SEC.16.

IC 8-1-37-11

Application to program; review by the commission

Sec. 11. (a) An electricity supplier that seeks to participate in the program established by the commission under section 10 of this chapter must apply to the commission:

(1) in the manner and on a form prescribed by the commission; and

(2) not later than a date specified by the commission in the rules adopted under section 10 of this chapter;

for approval to participate in the program.

(b) Upon receiving an application under subsection (a), the commission shall review the application for completeness. The commission may request additional information the commission considers necessary to aid in the commission's review.

(c) If the commission determines that:

- (1) an application submitted under subsection (a) is complete and reasonably complies with the purpose of this chapter;
- (2) the electricity supplier submitting the application has demonstrated that the electricity supplier has a reasonable expectation of obtaining clean energy to meet the energy requirements of its Indiana retail electric customers during the calendar year ending December 31, 2025, in an amount equal to at least ten percent (10%) of the total electricity supplied by the participating electricity supplier to its Indiana retail electric customers during the base year, as set forth in section 12(a)(3) of this chapter; and
- (3) approving the application will not result in an increase to the retail rates and charges of the electricity supplier above what could reasonably be expected if the application were not approved;

the commission shall approve the application. If, however, the commission determines that the application does not meet the requirements set forth in this subsection, the commission shall reject the application. The electricity supplier that submitted the application under subsection (a) bears the burden of proving to the commission that the application meets the requirements set forth in this subsection.

As added by P.L.150-2011, SEC.16.

IC 8-1-37-12

Qualifications for shareholder financial incentive; application; considerations and determination by commission

Sec. 12. (a) Subject to subsection (c), to qualify for the financial incentives set forth in section 13 of this chapter, a participating electricity supplier must obtain clean energy to meet the energy requirements of the participating electricity supplier's Indiana retail electric customers according to the following CPS goals:

- (1) CPS Goal Period I: For the six (6) calendar years beginning January 1, 2013, and ending December 31, 2018, an average of at least four percent (4%) of the total electricity obtained by the participating electricity supplier to meet the energy requirements of its Indiana retail electric customers during the base year.
- (2) CPS Goal Period II: For the six (6) calendar years beginning January 1, 2019, and ending December 31, 2024, an average of at least seven percent (7%) of the total electricity obtained by the participating electricity supplier to meet the energy requirements of its Indiana retail electric customers during the base year.
- (3) CPS Goal Period III: In the calendar year ending December 31, 2025, at least ten percent (10%) of the total electricity obtained by the participating electricity supplier to meet the energy requirements of its Indiana retail electric customers during the base year.

(b) For purposes of subsection (a), electricity is measured in

megawatt hours. However, in determining whether a participating electricity supplier has met a CPS goal set forth in subsection (a), the commission shall require that at least fifty percent (50%) of the megawatt hours of clean energy obtained by the participating electricity supplier to meet the energy requirements of its Indiana retail electric customers during the CPS goal period under consideration must originate from clean energy resources located in Indiana.

(c) In determining whether a participating electricity supplier has met a particular CPS goal set forth in subsection (a), the commission shall consider only clean energy that:

(1) except as provided in subsection (f), is obtained by the participating electricity supplier to meet the energy requirements of the participating electricity supplier's Indiana retail electric customers during the CPS goal period under consideration; and

(2) is generated by a facility located in a control area that is part of a regional transmission organization of which an electricity supplier is a member.

(d) An electricity supplier is not required to obtain clean energy to meet a particular CPS goal if the commission determines that the cost of clean energy resources available to the electricity supplier would result in an increase in the rates and charges of the electricity supplier that would not be just and reasonable.

(e) A participating electricity supplier may own or purchase one (1) or more CECs to meet any of the CPS goals set forth in subsection (a) as long as the clean energy represented by the CEC meets the condition set forth in subsection (c)(2).

(f) A participating electricity supplier may apply:

(1) amounts of clean energy supplied by the participating electricity supplier to its Indiana retail electric customers during a particular CPS goal period; or

(2) CECs acquired by the participating electricity supplier during a particular CPS goal period;

that exceed the requirements for the particular CPS goal period to the immediately succeeding CPS goal period.

(g) A participating electricity supplier may use a clean energy resource described in section 4(a)(17) through 4(a)(21) of this chapter to satisfy not more than thirty percent (30%) of any of the CPS goals set forth in subsection (a).

As added by P.L.150-2011, SEC.16.

IC 8-1-37-13

Shareholder financial incentive; duties of the commission upon approval; application; determination; force and effect of incentive; force and effect of periodic rate adjustment mechanism

Sec. 13. (a) The commission may establish a shareholder incentive consisting of the authorization of an increased overall rate of return on equity, not to exceed fifty (50) basis points over a participating electricity supplier's authorized rate of return, whenever

the participating electricity supplier attains a CPS goal set forth in section 12(a) of this chapter. The number of additional basis points authorized by the commission under this subsection may:

- (1) be different for each of the CPS goal periods identified in section 12(a) of this chapter, as the commission determines is appropriate; and
- (2) in the case of a particular participating electricity supplier, be based on the extent to which the participating electricity supplier met a particular CPS goal using clean energy resources listed in section 4(a)(1) through 4(a)(16) of this chapter.

The additional basis points authorized by the commission under this subsection for each CPS goal period are not cumulative and may not be authorized for a clean energy resource for which the commission has authorized an incentive under IC 8-1-8.8-11(a)(2). In determining a participating electricity supplier's authorized rate of return to which additional basis points may be added upon the participating electricity supplier's achievement of a particular CPS goal, the commission shall not include as part of the authorized rate of return any additional basis points awarded to the participating electricity supplier for having achieved the immediately preceding CPS goal.

(b) If the commission approves an electricity supplier's application under section 11(c) of this chapter, the commission shall authorize the incentive described in subsection (a) and the recovery of costs, by means of a periodic rate adjustment mechanism, as described in subsection (c), based on the following considerations:

- (1) The sharing of achieved savings or as a percentage of costs.
- (2) Avoided costs resulting from achieving demand side management or energy efficiency targets.
- (3) The recovery of lost revenues associated with implementation of demand side management or energy efficiency initiatives.
- (4) The designation of electricity produced or conserved by a clean energy resource as an energy savings for purposes of any initiative, rule, or order approved by the commission to promote the efficient use and production of electricity, including initiatives to implement demand side management, energy efficiency, or conservation measures in accordance with commission rules.

(c) If the commission approved an electricity supplier's application under section 11(c) of this chapter, the commission shall permit the recovery, by means of a periodic rate adjustment mechanism, of all just, reasonable, and necessary program costs incurred by a participating electricity supplier in:

- (1) constructing, operating, or maintaining facilities that generate clean energy that:
 - (A) is used by the participating electricity supplier in its efforts to meet a CPS goal set forth in section 12(a) of this chapter; and
 - (B) meets the requirements set forth in section 12(c) of this chapter; or

(2) otherwise generating or purchasing clean energy that is used by the participating electricity supplier in its efforts to meet a CPS goal set forth in section 12(a) of this chapter.

For purposes of this subsection and subsection (h)(1), "program costs" includes administrative costs, ancillary costs, capacity costs, costs associated with CECs, capital costs, depreciation costs, tax costs, and financing costs incurred in connection with an activity described in subdivision (1) or (2).

(d) A participating electricity supplier that seeks an incentive established by the commission under subsection (a) or a periodic rate adjustment mechanism established by the commission under subsection (c) must apply to the commission:

- (1) in the manner and on a form prescribed by the commission; and
- (2) not later than any dates specified by the commission in rules adopted under section 10 of this chapter;

for approval for the incentive or periodic rate adjustment mechanism sought.

(e) The commission shall review an application filed under this section for completeness. The commission may request additional information the commission considers necessary to aid in the commission's review.

(f) The commission shall, after notice and hearing, issue a determination of a participating electricity supplier's eligibility for the financial incentive or periodic rate adjustment mechanism sought. The commission shall issue a determination under this subsection not later than one hundred twenty (120) days after the date of the application, unless the commission finds that the applicant has not cooperated fully in the proceeding.

(g) Subject to the participating electricity supplier's continuing compliance with the applicable CPS goal, as determined according to the measurement and evaluation procedures described in section 10(b)(1)(B) of this chapter, a shareholder incentive described in subsection (a) continues in effect until the earlier of the following:

- (1) A time or upon an event specified in the commission's order approving the shareholder incentive.
- (2) The commission issues a new order authorizing the participating electricity supplier to receive a shareholder incentive for meeting the next CPS program goal.

(h) Subject to the participating electricity supplier's continuing compliance with the applicable CPS goal, as determined according to the measurement and evaluation procedures described in section 10(b)(1)(B) of this chapter, a periodic rate adjustment mechanism described in subsection (c) continues in effect until the earlier of the following:

- (1) The participating electricity supplier has recovered the program costs for which the periodic rate adjustment mechanism was allowed.
- (2) A time or upon an event specified in the commission's order approving the periodic rate adjustment mechanism.

As added by P.L.150-2011, SEC.16.

IC 8-1-37-14

Annual report to commission required; content requirements; force and effect of duty to report; commission's annual report

Sec. 14. (a) Beginning in 2014, each participating electricity supplier shall report to the commission not later than March 1 of each year on the following:

(1) The participating electricity supplier's efforts, if any, during the most recently ended calendar year to meet the CPS goal applicable to the most recently ended calendar year.

(2) The total amount of renewable energy supplied to the participating electricity supplier's Indiana retail electric customers during the most recently ended calendar year, including a breakdown of the following:

(A) The amount of clean energy generated by facilities owned or operated by the participating electricity supplier. The participating electricity supplier shall identify each facility by:

(i) name and location;

(ii) total generating capacity;

(iii) total amount of electricity generated at the facility during the most recently ended calendar year, including the percentage of this amount that was supplied to the participating electricity supplier's Indiana retail electric customers; and

(iv) total amount of clean energy generated at the facility during the most recently ended calendar year, including the percentage of this amount that was supplied to the participating electricity supplier's Indiana retail electric customers.

(B) The amount of clean energy purchased from other suppliers of clean energy. The participating electricity supplier shall identify:

(i) each supplier from whom clean energy was purchased;

(ii) the amount of clean energy purchased from each supplier;

(iii) the price paid by the participating electricity supplier for the clean energy purchased from each supplier; and

(iv) to the extent known, the name and location of each facility at which the clean energy purchased from each supplier was generated.

(3) The number of CECs purchased by the participating electricity supplier during the most recently ended calendar year. The participating electricity supplier shall identify:

(A) each person from whom one (1) or more CECs was purchased;

(B) the price paid to each person identified in clause (A) for the CECs purchased;

(C) the number of CECs applied, if any, during the most

recently ended calendar year to meet the CPS goal applicable to the most recently ended calendar year; and
(D) the number of CECs, if any, that the participating electricity supplier plans to carry over to the next succeeding CPS goal period, as permitted by section 12(f) of this chapter.

(4) The participating electricity supplier's plans for meeting the CPS goal applicable to the calendar year in which the report is submitted.

(5) Advances in clean energy technology that affect activities described in subdivisions (1) and (4).

(6) Any other information that the commission prescribes in rules adopted under IC 4-22-2.

For purposes of this subsection, amounts of clean energy and electricity shall be reported in megawatt hours. A participating electricity supplier's duty to submit a report under this subsection terminates after the participating electricity supplier has submitted the report that applies to the calendar year ending December 31, 2025.

(b) Beginning in 2014, the commission's annual report to the regulatory flexibility committee under IC 8-1-2.5-9(b) must include a summary of the information provided by participating electricity suppliers under subsection (a) with respect to the most recently ended calendar year. The commission's duty to include the information specified in this subsection in its annual report to the regulatory flexibility committee terminates after the commission has submitted the information that applies to the calendar year ending December 31, 2025.

As added by P.L.150-2011, SEC.16.