

## **IC 8-1-8.9**

### **Chapter 8.9. Financing of Substitute Natural Gas Costs**

#### **IC 8-1-8.9-0.3**

##### **General assembly findings of fact**

Sec. 0.3. The general assembly finds the following:

- (1) The development of coal gasification facilities in Indiana that would use local coal resources for the production of substitute natural gas is in the public interest for purposes of:
  - (A) reducing the reliance of Indiana energy utilities on gas imports;
  - (B) mitigating price and supply risk;
  - (C) improving price stability; and
  - (D) promoting economic development and job creation.
- (2) Coal gasification is encouraged by federal policies intended to increase the energy independence of the United States, including through the availability of tax incentives and loan guarantees.
- (3) Indiana has the necessary resources and infrastructure suitable for development of coal gasification facilities.
- (4) The receipt of federal incentives for the development, construction, and financing of new coal gasification facilities in Indiana will be enhanced by Indiana energy utilities entering into long term contracts for the purchase of substitute natural gas produced by such facilities.
- (5) It is necessary to allow Indiana energy utilities to recover, through rate adjustments for the utility's customers, costs incurred from entering into supply contracts for substitute natural gas in order to promote the creation of such contracts without causing Indiana energy utilities to incur undue risk.

*As added by P.L.220-2011, SEC.186.*

#### **IC 8-1-8.9-1**

##### **"Assignee" defined**

Sec. 1. (a) As used in this chapter, "assignee" means any individual, corporation, or other legal entity to which an SNG property interest is transferred.

(b) The term includes an assignee of a person described in subsection (a).

*As added by P.L.175-2007, SEC.21.*

#### **IC 8-1-8.9-2**

##### **"Commission" defined**

Sec. 2. 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.175-2007, SEC.21.*

#### **IC 8-1-8.9-3**

##### **"Energy utility" defined**

Sec. 3. As used in this chapter, "energy utility" has the meaning

set forth in IC 8-1-2.5-2.  
*As added by P.L.175-2007, SEC.21.*

**IC 8-1-8.9-4**

**"Financing entity" defined**

Sec. 4. As used in this chapter, "financing entity" means a person that provides:

- (1) equity financing; or
- (2) debt financing;

that is secured by an SNG property interest.

*As added by P.L.175-2007, SEC.21.*

**IC 8-1-8.9-5**

**"Qualified contract" defined**

Sec. 5. As used in this chapter, "qualified contract" means a contract with a term of at least thirty (30) years for the sale of substitute natural gas to an energy utility.

*As added by P.L.175-2007, SEC.21.*

**IC 8-1-8.9-6**

**"Qualified cost" defined**

Sec. 6. As used in this chapter, "qualified cost" means any cost incurred by an energy utility in purchasing substitute natural gas under a qualified contract.

*As added by P.L.175-2007, SEC.21.*

**IC 8-1-8.9-7**

**"Qualified order" defined**

Sec. 7. As used in this chapter, "qualified order" means a final and irrevocable order that:

- (1) is issued by the commission; and
- (2) approves a qualified contract adopted in accordance with this chapter and IC 8-1-2-42.1.

*As added by P.L.175-2007, SEC.21.*

**IC 8-1-8.9-8**

**"Substitute natural gas" defined**

Sec. 8. As used in this chapter, "substitute natural gas" or "SNG" has the meaning set forth in IC 8-1-2-42.1(a).

*As added by P.L.175-2007, SEC.21.*

**IC 8-1-8.9-9**

**"SNG property interest" defined**

Sec. 9. As used in this chapter, "SNG property interest" means the right, title, and interest that:

- (1) are held by an energy utility or its assignee;
- (2) are created by a qualified order; and
- (3) entitle the energy utility or its assignee to recover qualified costs under IC 8-1-2-42.1.

*As added by P.L.175-2007, SEC.21.*

**IC 8-1-8.9-10****"SNG seller" defined**

Sec. 10. As used in this chapter, "SNG seller" means any individual, corporation, or other legal entity that engages in the production and sale of substitute natural gas.

*As added by P.L.175-2007, SEC.21.*

**IC 8-1-8.9-11****Qualified order for cost recovery**

Sec. 11. (a) Notwithstanding any other law, the commission may, in accordance with this chapter and IC 8-1-2-42.1, issue a qualified order that:

- (1) approves the terms of a qualified contract; and
- (2) authorizes the recovery of qualified costs by an energy utility from its customers.

(b) A qualified order issued under this section may not be:

- (1) rescinded;
- (2) nullified; or
- (3) modified;

in such a manner that reduces or otherwise impairs the value of an SNG property interest.

*As added by P.L.175-2007, SEC.21.*

**IC 8-1-8.9-12****SNG property interest; property rights**

Sec. 12. (a) An SNG property interest, including any right to future purchases of substitute natural gas during the term of a qualified contract, constitutes a present property right.

(b) Qualified costs recovered by an energy utility under a qualified order constitute proceeds of only the SNG property interest that is created by the qualified order.

(c) If the commission issues a qualified order under section 11 of this chapter, the state covenants and agrees, for the benefit of the energy utility and any assignee or financing entity involved, that the state will not take or permit any action that would:

- (1) reduce or otherwise impair the value of the SNG property interest created by the qualified order; or
- (2) limit, alter, or impair:
  - (A) the qualified order;
  - (B) the SNG property interest created by the qualified order;or
  - (C) qualified costs that are:
    - (i) imposed on and collected by the energy utility; and
    - (ii) remitted to the SNG seller;under the terms of the qualified contract;

until the qualified contract has been performed in full.

*As added by P.L.175-2007, SEC.21.*

**IC 8-1-8.9-13****SNG property interest; assignability**

Sec. 13. (a) An energy utility may assign an SNG property interest to an assignee, including:

- (1) another party to the qualified contract; or
- (2) a financing entity.

An assignee may in turn assign an SNG property interest to a financing entity that provides financing to the assignee.

(b) An assignment to a financing entity under this section may be:

- (1) an absolute assignment of the SNG property interest; or
- (2) an assignment of the SNG property interest as collateral for an obligation owed to the financing entity.

(c) An assignee under this section may enforce the SNG property interest by all applicable legal and equitable means.

(d) Any amounts collected by an energy utility in connection with the sale, transfer, or disposition of substitute natural gas under a qualified contract that forms the basis of an SNG property interest assigned under this section constitute the property of the assignee. Pending the transfer of the SNG property interest to the assignee, the amounts described in this subsection shall be:

- (1) segregated by the energy utility; and
- (2) held in trust for the benefit of the assignee;

subject to the terms of the qualified contract that forms the basis of the SNG property interest that is being assigned.

*As added by P.L.175-2007, SEC.21.*

#### **IC 8-1-8.9-14**

##### **SNG property interest; bankruptcy setoff**

Sec. 14. The interests of an assignee in:

- (1) an SNG property interest transferred to the assignee under section 13 of this chapter; and
- (2) any revenues or collections arising from the SNG property interest transferred;

are not subject to setoff by the energy utility that transferred the SNG property interest, or by any other person, in connection with any bankruptcy proceeding involving the energy utility.

*As added by P.L.175-2007, SEC.21.*

#### **IC 8-1-8.9-15**

##### **SNG property interest; true sale**

Sec. 15. (a) If an agreement by an energy utility or an assignee to assign an SNG property interest expressly states that the assignment is a sale or is otherwise an absolute transfer:

- (1) the resulting transaction:
  - (A) is a true sale; and
  - (B) is not a secured transaction; and
- (2) title, both legal and equitable, passes to the person to which the SNG property interest is assigned.

(b) A transaction resulting from an agreement described in subsection (a) is a true sale regardless of whether:

- (1) the assignee has recourse against the assignor; or
- (2) the agreement provides for any of the following:

(A) The assignor's retention of an equity interest in the SNG property interest transferred.

(B) Continuing obligations of the energy utility under the qualified contract, including the obligation of the energy utility to serve as the collector of qualified costs.

(C) The treatment of the transfer as a financing for tax, financial reporting, or other purposes.

*As added by P.L.175-2007, SEC.21.*

### **IC 8-1-8.9-16**

#### **SNG property interest; security interests**

Sec. 16. (a) An SNG property interest does not constitute an account or a general intangible under IC 26-1-9.1-102. The creation, granting, perfection, and enforcement of liens and security interests in SNG property interests are governed by this chapter and not by IC 26-1-9.1.

(b) A valid and enforceable lien and security interest in an SNG property interest may be created only by the execution and delivery of a security agreement with a financing entity in connection with the issuance of indebtedness. The security interest attaches automatically from the time that value is received for the indebtedness secured by the SNG property interest and, upon perfection through the filing of notice with the secretary of state:

- (1) constitutes a continuously perfected lien and security interest in the SNG property interest and all proceeds of the SNG property interest, whether or not accrued;
- (2) has priority in the order of its filing; and
- (3) takes precedence over any subsequent judicial lien or other creditor's lien.

If notice is filed with the secretary of state not later than ten (10) days after value is received for the indebtedness, the security interest is perfected retroactive to the date the value was received. If notice is not filed with the secretary of state within ten (10) days after value is received for the indebtedness, the security interest is perfected as of the date of filing.

(c) Transfer of an SNG property interest to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, upon:

- (1) the delivery of transfer documents to the assignee; and
- (2) the filing of notice with the secretary of state in accordance with subsection (b).

However, if notice of the transfer is not filed with the secretary of state within ten (10) days after the delivery of the transfer documentation, the transfer of the SNG property interest is not perfected against third parties until the notice is filed.

(d) The priority of a lien and security interest under this section is not impaired by either of the following:

- (1) A later modification of the qualified order creating the SNG property interest being transferred.
- (2) The commingling of other funds with funds collected in

connection with a qualified contract. Any other security interest that may apply to funds collected in connection with a qualified contract terminates when the funds are transferred to a segregated account for the benefit of the assignee or a financing entity. If an SNG property interest has been transferred to an assignee, any proceeds from the SNG property interest shall be held in trust for the assignee.

(e) If a default or termination occurs in connection with a financing secured by an SNG property interest, the financing entity or its representative may foreclose on or otherwise enforce its lien and security interest in the SNG property interest as if the financing entity were a secured party under IC 26-1-9.1. Amounts arising from the qualified contract that is the basis of the SNG property interest shall be transferred to a separate account for the financing entity's benefit and are subject to the financing entity's security interest and lien.

*As added by P.L.175-2007, SEC.21.*

#### **IC 8-1-8.9-17**

##### **SNG property interest; status of parties to transaction**

Sec. 17. An assignee or a financing party is not considered an energy utility solely by virtue of its participation in any transaction described in this chapter.

*As added by P.L.175-2007, SEC.21.*

#### **IC 8-1-8.9-18**

##### **SNG property interest; successor obligations**

Sec. 18. Any entity that becomes a successor to an energy utility as the result of:

- (1) any bankruptcy, reorganization, or other insolvency proceeding;
- (2) any merger, sale, or transfer involving the energy utility; or
- (3) the operation of law;

or for any other reason, shall perform and satisfy any obligations of the energy utility incurred under this chapter in the same manner and to the same extent as the energy utility would have been obligated to perform, including the obligation to pay to an assignee any funds collected by the energy utility in connection with the SNG property interest assigned to the assignee.

*As added by P.L.175-2007, SEC.21.*

#### **IC 8-1-8.9-19**

##### **SNG property interest; SNG seller contract with energy utility**

Sec. 19. An SNG seller that is an assignee may contract with the energy utility, in the qualified contract or in another contract, for the performance of services related to the sale of substitute natural gas under the qualified contract, including:

- (1) the transportation and distribution of substitute natural gas; and
- (2) billing, collection, and other related services;

according to terms and conditions that reasonably compensate the energy utility for its services and adequately secure payment to the SNG seller.

*As added by P.L.175-2007, SEC.21.*

**IC 8-1-8.9-20**

**SNG property interest; SNG seller rights**

Sec. 20. If an energy utility makes a true sale of an SNG property interest to an SNG seller under section 15 of this chapter, the SNG seller:

- (1) retains title to all substitute natural gas distributed by the energy utility to the energy utility's retail end use customers;
- (2) is entitled to all amounts collected by the energy utility from its retail end use customers for the distribution of the substitute natural gas, subject to the terms of the qualified contract; and
- (3) has the same rights to payments made by the energy utility's retail end use customers as does the energy utility that provides the substitute natural gas to those customers.

*As added by P.L.175-2007, SEC.21.*