

Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1221

AN ACT to amend the Indiana Code concerning utilities.

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

SECTION 1. IC 8-1-2-1.3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.3. (a) As used in this section, "electric vehicle", or "EV", means a vehicle that employs electrical energy as a primary or secondary mode of propulsion. The term includes:**

- (1) all-electric vehicles; and**
- (2) plug-in hybrid electric vehicles.**

(b) As used in this section, "electric vehicle supply equipment", or "EV supply equipment", means a device or system designed and used specifically to transfer electrical energy to an electric vehicle, either as charge transferred by physical or wireless connection, by loading a fully charged battery into the vehicle, or by other means.

(c) Subject to subsections (d) and (e), a person, including a joint agency (as defined in IC 8-1-2.2-2), that:

- (1) owns, operates, or leases EV supply equipment;**
- (2) makes the EV supply equipment available for use by the public for compensation;**
- (3) procures the electricity that is provided to the public for compensation from an electricity supplier that is authorized to engage in the retail sale of electricity within the assigned service area in which the EV supply equipment is located; and**
- (4) resells electricity exclusively for the charging of plug-in**

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electric vehicles;
 may charge the public for such use based in whole or in part on the kilowatt hours of electricity sold in a particular transaction.

(d) Subject to subsection (c), a person, including a joint agency (as defined in IC 8-1-2.2-2), that:

- (1) owns, operates, or leases EV supply equipment; and
- (2) makes the EV supply equipment available for use by the public for compensation, regardless of whether the person charges the public for such use based on:
 - (A) the kilowatt hours of electricity sold;
 - (B) the amount of time spent by an electric vehicle at a designated charging space; or
 - (C) a combination of both clauses (A) and (B);

is not a public utility solely by reason of engaging in any activity described in subdivisions (1) through (2).

(e) This section does not:

- (1) apply to or prohibit the lawful use of:
 - (A) an alternate energy production facility;
 - (B) a cogeneration facility; or
 - (C) a small hydro facility;

within the scope of IC 8-1-2.4 by a retail electric customer for the private provision of electrical energy to EV supply equipment at the customer's location in connection with the charging of electric vehicles;

- (2) render the owner or operator of a facility described in subdivision (1)(A) through (1)(C) a public utility by reason of such lawful use of the facility described in subdivision (1); or
- (3) render the provision of electrical energy by a facility described in subdivision (1)(A) through (1)(C) a public utility service that is subject to regulation by reason of such lawful use of the facility described in subdivision (1).

(f) Subsection (e) does not authorize the furnishing of retail electric service to the general public.

SECTION 2. IC 8-1-2-61 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 61. (a) Any public utility may make complaint as to any matter affecting its own rates or service. The petition or complaint must include a statement as to whether the utility, if a not-for-profit water utility or municipal utility, has any outstanding indebtedness to the federal government. The public utility shall publish a notice of the filing of such petition or complaint in a newspaper of general circulation published in any county in which the public utility renders service. An order affecting rates or service may be entered by



the commission without a formal public hearing, if:

- (1) the utility is a not-for-profit water utility or a municipal utility; and
- (2) the utility has obtained written consent to obtain an order affecting its rates from the commission without a formal hearing from any agency of the federal government with which the utility has outstanding evidence of indebtedness to the federal government.

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

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

(c) In a proceeding brought by an energy utility (as defined in IC 8-1-2.5-2) under this section, the commission may approve:

- (1) time-varying price structures and tariffs; or**
- (2) other alternative pricing structures and tariffs;**

for retail energy service (as defined in IC 8-1-2.5-3), such as time-of-use or off-peak pricing, critical peak pricing, variable peak pricing, and real-time pricing.

SECTION 3. IC 8-1-2.5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) Notwithstanding any other law or rule adopted by the commission, except those cited, or rules adopted that pertain to those cited, in section 11 of this chapter, in approving retail energy services or establishing just and reasonable rates and charges, or both for an energy utility electing to become subject to this section, the commission may do the following:

- (1) Adopt alternative regulatory practices, procedures, and mechanisms, and establish rates and charges that:
 - (A) are in the public interest as determined by consideration of the factors described in section 5 of this chapter; and
 - (B) enhance or maintain the value of the energy utility's retail energy services or property;



including practices, procedures, and mechanisms focusing on the price, quality, reliability, and efficiency of the service provided by the energy utility.

(2) Establish rates and charges based on market or average prices, price caps, index based prices, and prices that:

(A) use performance based rewards or penalties, either related to or unrelated to the energy utility's return or property; and

(B) are designed to promote efficiency in the rendering of retail energy services.

(3) Approve:

(A) time-varying price structures and tariffs; or

(B) other alternative pricing structures and tariffs;

for retail energy service, such as time-of-use or off-peak pricing, critical peak pricing, variable peak pricing, and real-time pricing.

(b) This section:

(1) does not give a party to a collective bargaining agreement any greater rights under the collective bargaining agreement than the party had before January 1, 1995;

(2) does not give the commission the authority to order a party to a collective bargaining agreement to cancel, terminate, amend or otherwise modify the collective bargaining agreement; and

(3) may not be implemented by the commission in a way that would give a party to a collective bargaining agreement any greater rights under the collective bargaining agreement than the party had before January 1, 1995.

(c) An energy utility electing to become subject to this section shall file with the commission an alternative regulatory plan proposing how the commission will approve retail energy services or just and reasonable rates and charges for the energy utility's retail energy service.

(d) The energy utility shall publish a notice of the filing of a petition under this section in a newspaper of general circulation published in any county in which the energy utility provides retail energy service.

(e) After notice and hearing, the commission may approve, reject, or modify the energy utility's proposed plan if the commission finds that such action is consistent with the public interest. However, the commission may not order that material modifications changing the nature, scope or duration of the plan take effect without the agreement of the energy utility. The energy utility shall have twenty (20) days after the date of a commission order modifying the energy utility's proposed plan within which to, in writing, accept or reject the



commission's order.

(f) An energy utility may withdraw a plan proposed under this section without prejudice before the commission's approval of the plan, or the energy utility may timely reject a commission order modifying its proposed plan under this section without prejudice. However, the energy utility may not file a petition for comparable relief under this section for a period of twelve (12) months after the date of the energy utility's withdrawal of its proposed plan or the date of the energy utility's rejection of the commission's order, whichever is applicable.

SECTION 4. IC 8-1-43 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 43. Pilot Programs for Infrastructure for Public Use Electric Vehicles

Sec. 1. (a) As used in this chapter, "charging infrastructure" means:

- (1) structures;
- (2) machinery;
- (3) equipment;
- (4) hardware;
- (5) software; and
- (6) other capital investments;

installed to support and charge one (1) or more electric vehicles.

(b) The term includes Level 2 charging stations, direct-current fast charging stations, and battery exchange stations.

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

Sec. 3. As used in this chapter, "electric utility" means a public utility (as defined in IC 8-1-2-1(a)) that:

- (1) furnishes retail electric service to customers in Indiana; and
- (2) is under the jurisdiction of the commission for the approval of rates and charges.

Sec. 4. (a) As used in this chapter, "electric vehicle", or "EV", means a vehicle that employs electrical energy as a primary or secondary mode of propulsion.

(b) The term includes:

- (1) all-electric vehicles; and
- (2) plug-in hybrid electric vehicles.

Sec. 5. As used in this chapter, "make-ready infrastructure" means the:

- (1) structures;



- (2) machinery;
- (3) equipment;
- (4) hardware;
- (5) software;
- (6) storage batteries; and
- (7) other capital investments;

installed to connect charging infrastructure to an electric utility's distribution system, including any necessary upgrades to the electric utility's distribution system.

Sec. 6. (a) As used in this chapter, "public use electric vehicle", or "public use EV", means any of the following electric vehicles that is used primarily to serve the public, regardless of whether the electric vehicle (or any associated charging infrastructure) is owned, leased, or operated by, or on behalf of, a governmental or private entity:

- (1) An electric school bus.
- (2) An electric transit bus.
- (3) An electric vehicle that is used by a public or private commercial enterprise primarily to deliver goods or services to the public.

(b) The term does not include an electric vehicle that is used primarily for personal, family, or household purposes, or for commuting.

Sec. 7. As used in this chapter, "public use electric vehicle pilot program", or "pilot program", means a limited deployment of:

- (1) charging infrastructure; or
- (2) make-ready infrastructure;

that is designed to evaluate the feasibility and design, including the associated costs and benefits, of a larger scale deployment of such infrastructure necessary to support public use electric vehicles.

Sec. 8. (a) An electric utility may request approval from the commission to implement a public use electric vehicle pilot program to do any of the following:

- (1) Install, own, or operate charging infrastructure or make-ready infrastructure to support public use EVs.
- (2) Provide incentives or rebates to customers to encourage customer investment in public use EVs and in associated EV supply equipment.

For purposes of this subsection, "EV supply equipment" means a device or system designed and used specifically to transfer electrical energy to an electric vehicle, either as charge transferred via physical or wireless connection, by loading a fully charged



battery into the vehicle, or by other means.

(b) An electric utility's request for approval of a pilot program under this chapter must include the following:

(1) A full description of the need for and goals of the pilot program.

(2) A full description of objective evaluation criteria that will be used to measure the success or usefulness of the pilot program.

(3) An estimate of all costs of the pilot program, including an estimate of the costs to be borne by participating customers of the electric utility, nonparticipating customers of the electric utility, and the general public, as applicable.

(4) A timeline for completion or termination of the pilot program.

(5) A plan demonstrating that the charging infrastructure to be installed under the pilot program will be located in an equitable manner that ensures that all customers within the electric utility's service area have convenient access to the charging infrastructure, including in areas that are:

(A) economically distressed; or

(B) racially or ethnically diverse.

(6) Supporting evidence as to why the pilot program is in the public interest, including information as to how participating customers of the electric utility, nonparticipating customers of the electric utility, and the general public may be affected by the pilot program.

(c) An electric utility's request for approval of a pilot program under this chapter may include a request for:

(1) assurance of cost recovery for pilot program capital costs, up to the amount of an approved cost estimate; and

(2) deferral of pilot program capital costs.

(d) Subject to subsection (f), an electric utility may request approval of a pilot program under this chapter:

(1) through a proceeding initiated under IC 8-1-2-61, whether as a standalone proposal or as part of a base rate case;

(2) as an alternative regulatory plan under IC 8-1-2.5; or

(3) through any other process prescribed by the commission.

(e) The commission shall approve an electric utility's request for approval of a pilot program under this chapter if, after notice and an opportunity for hearing, the commission determines that the proposed pilot program is reasonable, just, and in the public interest. In making a determination under this subsection, the



commission shall consider the following:

(1) The goals of the pilot program, including any data that will be measured or collected through the pilot program, such as data concerning customers' electric charging behavior, the electric utility's load management capabilities, or the impact of public use EVs on the electric utility's distribution system.

(2) Whether the pilot program includes objective evaluation criteria consisting of clearly defined metrics to be used in assessing the success of the pilot program.

(3) The extent to which the estimated costs of the proposed pilot program will be borne by:

- (A) participating customers of the electric utility;**
- (B) nonparticipating customers of the electric utility; and**
- (C) the general public;**

based on the evidence in the record of the proceeding.

(4) Information as to any benefits that may inure to:

- (A) participating customers of the electric utility;**
- (B) nonparticipating customers of the electric utility; and**
- (C) the general public;**

as a result of the pilot program, based on the evidence in the record of the proceeding.

(5) The reasonableness of the:

- (A) scale; and**
- (B) duration;**

of the pilot program in relation to the estimated costs and benefits of the program, the electric utility's total customer base and service area, and the stated goals of the program.

(6) Whether the electric utility's proposal includes a plan demonstrating that the charging infrastructure to be installed under the pilot program will be located in an equitable manner that ensures that all customers within the electric utility's service area have convenient access to the charging infrastructure, including in areas that are:

- (A) economically distressed; or**
- (B) racially or ethnically diverse.**

(7) Other factors the commission considers relevant in determining whether the proposed pilot program is reasonable, just, and in the public interest.

(f) This chapter does not prohibit an electric utility from:

- (1) installing, owning, or operating charging infrastructure or make-ready infrastructure for electric vehicles; and**
- (2) seeking to include the associated capital costs in the**



electric utility's basic rates and charges through a proceeding initiated under IC 8-1-2-61.

The commission shall approve the inclusion of the capital costs described in subdivision (2) in the electric utility's basic rates and charges if the commission finds that the capital costs incurred are reasonable, just, and in the public interest.

Sec. 9. The commission shall adopt rules under IC 4-22-2 to implement this chapter. In adopting rules under this section, the commission may adopt emergency rules in the manner provided by IC 4-22-2-37.1. Notwithstanding IC 4-22-2-37.1(g), an emergency rule adopted by the commission under this section and in the manner provided by IC 4-22-2-37.1 expires on the date on which a rule that supersedes the emergency rule is adopted by the commission under IC 4-22-2-24 through IC 4-22-2-36.

SECTION 5. An emergency is declared for this act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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