

2013 Indiana Legislative Recap

The conclusion of the Indiana General Assembly came a day early in 2013, and generally without the usual fireworks... in fact, it ended with handshakes, pats on the back and smiles. Legislators in Indiana concluded their work by passing a \$30B Biennial budget, including a phase-in of a five (5) percent reduction in personal income taxes by 2017, funding schools, addressing health care costs on the state level and addressing a myriad of other issues including: education reform, school vouchers, gaming reform, water resources, economic development incentives and tax policy updates.

Among the more important pieces of legislation for utilities that have been sent to the Governor for his signature in the next few weeks were:

Senate Enrolled Act 560 – Future Test Years/Interim Rates/Rate Case Deadlines/Transmission & Distribution Tracker

- **Allows the use of a forward, hybrid or historic test year in setting new rates.**
- **Establishes a statutory deadline of 300 days and, under certain circumstances, up to 360 days, to encourage timely action by the IURC in general rate cases.**
- **Allows the authorization of temporary or interim rates if a general rate case is not timely decided by the IURC.** Under the legislation a utility can implement a temporary rate of 50% of the utilities proposed rate increase if the IURC does not act within the 300 to 360 days. Following a final order, there is a “true up” which would include a customer refund if final approved rates are less than the temporary rates that were charged. If a customer is due a refund, the utility is required to pay interest on that refund.
- **Allows a utility to seek timely recovery through a “tracker” mechanism of infrastructure investments related to transmission, distribution and storage systems.** If the IURC determines that the costs are reasonable and they approve the utility plan, the utility can recover 80 % of their investment on a more-timely basis through a tracker. Recovery of the remaining 20% would be deferred until the utility’s next base rate case. SEA 560 also requires a utility to submit a related seven-year plan on these expenses and the utility must also file for a rate case before the end of the seven-year plan. The IURC is required to review and approve the costs recovered under the infrastructure tracker prior to such costs being included in rates. An annual “cap” is applied on the rate impact from any costs recovered under the infrastructure tracker in any given year to 2%.
- **Allows large electric consumers to petition the Indiana Utility Regulatory Commission for discounted rates to encourage investment, expansion and new jobs in Indiana.** The discount would be available to a customer that consumes or will consume at least 10 MW of power; plans to increase load by 1 MW; employs more than 50 full time employees; and demonstrates that the discount is necessary and essential for the customer to attract, create or retain jobs. The discount would apply to the demand charge of the incremental increased load but could be expanded under certain circumstances. All of these criteria must be met at a single facility. If the customer has a special contract or takes service under a different economic development discount tariff, it cannot use the discount provided in the bill--no double dipping. The discounts are 15% for redevelopment projects, 20% for brownfield projects and 10% for all others.
- **Creates property tax incentives and cost payback incentives for the build-out of water and natural gas to rural areas of the state.**
- **Urges the Legislative Committee on Regulatory Flexibility to study retail electric competition the summer of 2013.**

Senate Enrolled Act 94 – Right of First Refusal/ State Oversight of Transmission

- **The legislation addresses ROFR in Indiana and the circumstances involved with having two (2) RTO's (MSO and PJM are both in Indiana) and recognizing that there will be new entrants in the development of new transmission facilities.** SEA 94 was a compromise among all utilities to protect their respective ability and desire to maintain the reliability of its own system while addressing the need to follow FERC Order 1000.
- **Right of First Refusal (ROFR) limited to small reliability projects only** - Lines with a rating of at least one hundred (100) Kilovolts in Indiana and not more than three hundred (300) Kilovolts (for PJM located facilities) and related transmission facilities and controls remain under the purview of the incumbent utility. This provision applies equally to all utilities including investor-owned utilities, municipal utilities and REMCs (who sought full ROFR on all projects). All other projects do not contain ROFR.
- **Provides oversight authority to the IURC to allow them to ascertain the technical, managerial and financial wherewithal of a new transmission entity to construct, operate and maintain electric transmission facilities.** This includes IURC oversight of non-utility transmission entities that might not have a track record in Indiana.
- **Requires new transmission developers to meet various notice requirements and to make pledges that the entity will comply with all statutes, rules, and regulations enforced by the Commission.**
- **Gives the IURC the authority to resolve disputes.**
- **The Legislative Committee on Regulatory Flexibility will study transmission, siting, and ROFR in the summer of 2013. (Not specified in legislation)**

Senate Enrolled Act 365 – Utilities/Local Government Communication on Local Road Projects

- **Creates a mechanism similar and already in place with INDOT on state projects that calls for local governmental units to put in place a system to designate certain roadway projects to follow a spelled out process to emphasize timelines, certain utility exemptions to the timelines, and expectations to ensure enhanced communication among all parties.**
- **Utilities must annually submit to INDOT a list of appropriate internal contact information for use by local government (already submit similar for state road projects).**
- **Proposed fining authority for not moving utility lines in specified timeframes were removed from the legislation.**
- **Applies to all utilities (gas, electric, phone, cable, water).**

House Enrolled Act 1546 – Emergency Restoration Worker Personal Income Tax Exemption

- **Provides a personal income tax exemption for out-of-state utility restoration workers doing work in Indiana during a mutual assistance agreement period or a declared emergency.**

- Applies for a period ten (10) days before and sixty (60) days after a mutual assistance agreement is initiated or an emergency is declared.
- Applies exemptions to associated payments for worker's compensation, unemployment insurance, and licensing and registrations.

Among the items defeated this Session were:

- Mandated customer choice pursued by large industrials;
- Enhanced fining and merger authority;
- Deposit Fee alterations;
- Mandatory Renewable standards (a study of wind and state/local siting rules needed will take place in the Legislative Committee on Regulatory Flexibility the summer of 2013);
- Energy Efficiency and DSM standards;
- Anti-shareholder provisions relating to the use of "trackers";
- Using utility bills as a means to collect fees and taxes not linked to a utility bill; and,
- Nuclear scrutiny initiatives (a study of small modular nuclear facilities will take place in the Legislative Committee on Regulatory Flexibility the summer of 2013).