First Regular Session of the 123rd General Assembly (2023)

HOUSE ENROLLED ACT No. 1173

AN ACT to amend the Indiana Code concerning utilities.

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

SECTION 1. IC 22-14-8 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 8. Utility Scale Battery Energy Storage Systems

Sec. 1. For purposes of NFPA 855 and this chapter, "authority having jurisdiction" refers to the department.

Sec. 2. As used in this chapter, "NFPA 855" refers to:

(1) the 2023 edition of NFPA 855, Standard for the Installation of Stationary Energy Storage Systems, as adopted by the National Fire Protection Association; or

(2) if the commission adopts a rule under IC 4-22-2 to amend:

(A) the 2023 edition; or

(B) any subsequent edition;

of NFPA 855, the version of NFPA 855 as amended by the commission.

Sec. 3. (a) As used in this chapter, "utility scale battery energy storage system" means an energy storage system (as defined in NFPA 855) that is capable of storing and releasing more than one (1) megawatt of electrical energy for a minimum of one (1) hour using an AC inverter and DC storage.

(b) The term does not include the following:

(1) Foundations or property used to directly or indirectly

connect the AC inverter or DC storage of such a system to electrical energy production equipment or to a customer's meter.

(2) An energy storage system that is used for the purpose of providing electricity to meet or offset all or part of a host operation's energy needs.

(3) A battery recycling facility.

(4) The manufacturing or storage of batteries by an automobile manufacturer.

Sec. 4. (a) After June 30, 2023, a person may not:

(1) install a new utility scale battery energy storage system; or

(2) expand the capacity of an existing utility scale battery energy storage system by more than ten percent (10%) of the system's original capacity;

without applying for and obtaining the prior approval of the department.

(b) An application for approval under subsection (a) must be in the form and manner specified by the department and must include the following information:

(1) The proposed location, including the county, of the utility scale battery energy storage system.

(2) Plans and specifications for the utility scale battery energy storage system.

(3) A description of the manner in which the utility scale battery energy storage system will comply with the requirements set forth in sections 6 through 8 of this chapter, as applicable.

(4) The applicant's proposed emergency response plan for responding to a:

(A) fire at; or

(B) discharge or threatened discharge of environmental contaminants by;

the utility scale battery energy storage system.

(5) The applicant's plan for offering emergency response training under section 9 of this chapter.

The operator of a utility scale battery energy storage system for which installation is complete before July 1, 2023, shall submit to the department before January 1, 2024, a notice providing the information set forth in this subsection with respect to the utility scale battery energy storage system.

(c) An application fee of two hundred fifty dollars ($250) per application must be included with each application submitted

under this section.

(d) Not later than thirty (30) days after the department receives an application for approval under subsection (a) and the accompanying application fee under subsection (c), the department shall provide notice to the applicant of the department's approval or disapproval of the application. The department shall approve an application that complies with this chapter.

(e) The department may adopt procedures under which the department:

(1) evaluates an application for approval under subsection (a); and

(2) makes a determination as to whether to approve the installation or expansion proposed by the application.

(f) The department is the sole authority with respect to the regulation and approval of the installation or expansion of a utility scale battery energy storage system. Subject to subsection (g), a local unit may not:

(1) require the owner or operator of a utility scale battery energy storage system to obtain a separate approval, permit, or license for the installation, expansion, or operation of the utility scale battery energy storage system;

(2) impose any fee on the owner or operator of a utility scale battery energy storage system; or

(3) regulate the ownership or operation of a utility scale battery energy storage system.

(g) Subsection (f) does not:

(1) affect the ability of a local unit to exercise zoning, land use, planning, or permitting authority otherwise allowed under law, including IC 36-7, with respect to the installation or expansion of a utility scale battery energy storage system;

(2) exempt an applicant for the installation or expansion of a utility scale battery energy storage system from complying with applicable laws and ordinances concerning land use; or

(3) affect the authority of the Indiana utility regulatory commission granted under IC 8.

Sec. 5. (a) A person may not operate a utility scale battery energy storage system installed after June 30, 2023, unless the person has first applied for and obtained the approval of the department to do so.

(b) An application under this section must contain:

(1) a commissioning plan; and

(2) a commissioning test;

that complies with NFPA 855.

Sec. 6. (a) A utility scale battery energy storage system installation of which is subject to department approval under section 4(a)(1) of this chapter must comply with NFPA 855.

(b) An installation added to an existing utility scale battery energy storage system in an expansion for which department approval is required under section 4(a)(2) of this chapter must comply with NFPA 855.

Sec. 7. The total capacity of the batteries contained within a single enclosure in:

(1) a utility scale battery energy storage system installation of which is subject to department approval under section 4(a)(1) of this chapter; or

(2) an installation added to an existing utility scale battery energy storage system in an expansion for which department approval is required under section 4(a)(2) of this chapter;

may not exceed ten (10) megawatt hours unless authorized under rules adopted by the commission under this chapter.

Sec. 8. (a) This section applies only to a utility scale battery energy storage system installation of which is subject to department approval under section 4(a)(1) of this chapter.

(b) If a utility scale battery energy storage system is located less than one-half (1/2) mile from the nearest one hundred (100) year flood plain, as determined by the most recently issued Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps, all of the system's equipment must be located at least two (2) feet above the one hundred (100) year frequency flood elevation.

Sec. 9. (a) The operator of a utility scale battery energy storage system shall:

(1) provide a copy of the emergency response plan described in section 4(b)(4) of this chapter, as finally adopted, to the fire department that is responsible for providing fire protection services in the area in which the utility scale battery energy storage system is located; and

(2) offer on an annual basis a training session described in subsection (b) to the members of the fire department described in subdivision (1). For a utility scale battery energy storage system for which installation is complete before July 1, 2023, the first training under this subdivision must be offered before January 1, 2024.

(b) Subject to subsection (c), the training offered under subsection (a)(2) must provide participating members of the fire

department with information regarding the installation and operation of the utility scale battery energy storage system reasonably necessary to allow the fire department to safely and effectively respond to a:

(1) fire at; or

(2) discharge or threatened discharge of environmental contaminants by;

the utility scale battery energy storage system.

(c) This section does not require the operator of a utility scale battery energy storage system to divulge a trade secret (as defined in IC 24-2-3-2).

Sec. 10. (a) The commission may adopt rules under IC 4-22-2 to implement this chapter and to specify standards for the installation and operation of utility scale battery energy storage systems consistent with:

(1) this chapter; and

(2) NFPA 855.

(b) Rules adopted by the commission under subsection (a) must include standards for:

(1) chemical spill prevention and control; and

(2) appropriate setbacks from surface water resources;

for the installation and expansion of utility scale battery energy storage systems, as necessary to protect soil and surface water resources from chemicals contained in or produced by utility scale battery energy storage systems. In establishing the standards described in this subsection, the commission shall consult with the department of environmental management or the department of natural resources, as appropriate.

(c) In adopting rules under this section, the commission may adopt emergency rules in the manner provided by IC 4-22-2-37.1.

SECTION 2. [EFFECTIVE UPON PASSAGE] **(a) Not later than November 1, 2023, the department of homeland security shall issue to the executive director of the legislative services agency for distribution to the members of the interim study committee on energy, utilities, and telecommunications a report regarding the progress of the fire prevention and building safety commission in adopting the rules described in IC 22-14-8-10, as added by this act.**

(b) This SECTION expires December 31, 2023.

SECTION 3. **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: _____