FILED
October 12, 2021
INDIANA UTILITY
REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF INDIANAPOLIS POWER & LIGHT COMPANY D/B/A AES INDIANA PURSUANT TO IND. CODE 8-1-2.5-5 AND 8-1.2.5-6 FOR THE COMMISSION TO DECLINE TO EXERCISE JURISDICTION OVER AND APPROVE AN ALTERNATIVE REGULATORY PLAN FOR THE OFFERING OF A CLEAN ENERGY SUBSCRIPTION OPTION WITH FLAT MONTHLY BILLING FOR RESIDENTIAL CUSTOMERS ("AES INDIANA PLUS SUBSCRIPTION")	**))))))))))**	**CAUSE NO. 45584**

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

PUBLIC'S EXHIBIT NO. 1

TESTIMONY OF WITNESS BARBARA A. SMITH

OCTOBER 12, 2021

Respectfully submitted,

Jeffrey M. Reed
Attorney No. 11651-49
Deputy Consumer Counselor

TESTIMONY OF OUCC WITNESS BARBARA A. SMITH
INDIANAPOLIS POWER & LIGHT
D/B/A AES INDIANA

I. INTRODUCTION

Q: Please state your name and business address.

A: My name is Barbara A. Smith. My business address is 115 West Washington Street, Suite 1500 South, Indianapolis, IN 46204.

Q: By whom are you employed and in what capacity?

A: I am employed by the Indiana Office of Utility Consumer Counselor ("OUCC") as the Executive Director, Technical Operations. For a summary of my educational and professional experience, as well as my testimonial preparation in this case, please see Appendix BAS-1 attached to my testimony.

Q: What is the purpose of your testimony?

A: I discuss the OUCC's concerns regarding Indianapolis Power & Light ("IPL") D/B/A AES Indiana's ("AES Indiana" or "Petitioner") request for the Indiana Utility Regulatory Commission's ("IURC" or "Commission") to decline to exercise jurisdiction over and approve an alternative regulatory plan for offering a AES Indiana Plus Clean Energy Flat Bill Subscription ("Subscription Program") for residential customers. Specifically, I focus my testimony on four specific areas of AES Indiana's proposal:

1. The inappropriate involvement of an unregulated affiliate company, Uplight, Inc. ("Uplight" or "Company");
2. The lack of cost transparency;

3. Inequitable fees and processes; and
4. Lack of compliance with General Administrative Order ("GAO") 2020-05 Part V.

I ultimately recommend the IURC deny AES Indiana's request in this case.

Q: To the extent you do not address a specific item or adjustment, should that be construed to mean you agree with Petitioner's proposal?

A: No. Excluding any details AES Indiana or Uplight proposes does not indicate my approval. Rather, the scope of my testimony is limited to the specific items addressed herein.

II. INAPPROPRIATE INVOLVEMENT OF AN UNREGULATED AFFILIATE

Q: What is the nature of the affiliate relationship between AES Indiana and Uplight?

A: AES Indiana witness Sharon Schroder states on page 10 of her direct, "The AES Corporation, AES Indiana's parent company, is a strategic investor in Uplight."[1] The Petition at page 5 under #13 states, "Contemporaneous with the filing of this Petition, a copy of the Affiliate Agreement ("Agreement") with Uplight is being filed separately with the Commission pursuant to I.C. § 8-1-2-49.

Q: Who is the "Company" in AES Indiana Plus Subscription Terms and Conditions ("SRS-2" or "Subscription Terms") and AES Indiana Plus App Terms of Service ("SRS-3" or "App Terms")?

A: Uplight is the "Company" in these two contractual agreements. Uplight is making these commitments directly with AES Indiana utility customers.

Q: Please explain the OUCC's concerns regarding AES Indiana's proposal to use Uplight in this Program.

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[1] Schroder page 10, lines 5-6.

A: Unlike Duke Energy Indiana ("DEI"), Indiana Michigan Power Company ("I&M") and IPL's past flat billing constructs,[2] AES Indiana's participating customers will contract with, and pay their flat monthly billed amount directly to Uplight, a non-regulated affiliate. In addition, Uplight developed the mobile application,[3] determines the billing amount the customer pays, and controls the development and changes in the contract terms with customers. Unlike a regulated utility, Uplight is not accountable to the IURC. Allowing a non-regulated affiliate to control the regulated utility's obligations runs contrary to Indiana's utility regulatory process, does not protect customers, and does not serve the public interest.

Uplight's operations are not transparent to customers, the OUCC, other interested parties or the IURC. This is important because participating ratepayers will be paying Uplight substantial fees for a flat-bill and 100% green power , which is not radically different from AES Indiana's current offerings. AES Indiana already has a green power offering, a budget bill offering and DSM programs with costs already embedded in rates. AES Indiana customers can participate in these programs without paying extra fees to Uplight.

Ratepayers are already paying AES Indiana; they should not pay unreasonable Usage Adders and Program Fees to a non-regulated entity where the terms and costs lack transparency. AES Indiana can and should offer this Program

[2] DEI Your Fixed Bill: IURC Cause Nos. 42721, 43439, 44586. I&M EZ Bill: IURC Cause No. 45114. IPL Sure Bill Option: IURC Cause Nos. 40959 and 41817.

[3] Schroder, page 10, lines 2-3.

directly.

AES Indiana's insertion of a non-regulated affiliate unnecessarily reduces transparency while simultaneously increases unnecessary costs. DEI, I&M and even IPL have successfully developed, implemented, and managed flat billing programs without a 3rd party.

While AES Indiana claims participants are still AES Indiana customers, the proposal transfers the core utility function of billing to the unregulated affiliate. Uplight's proposed Subscription Terms give Uplight significant flexibility to modify contract rules, terms and fees. The proposal unnecessarily clouds the determination of ultimate responsibility for resolving customer disputes.

Q: Can you point to specifics in AES Indiana's filing highlighting the OUCC's concerns?

A: Yes, Uplight's Subscription Terms (Pet. Ex. SRS-2), page 6 of 7, state Uplight:

> …may, at any time and without notice, modify these Terms of Service by revising them and giving notice thereof, including on or through AES Indiana Plus. Your continued use of AES Indiana Plus constitutes your acceptance of any such revisions to their Terms of Service. You may not modify these Terms of Service except through a writing signed by the Company.

Uplight has carte blanche to change anything in the Subscription Terms. It does not specify what type of notice will be provided, or when. The Subscription Terms do not define how much use constitutes "continued use." If a customer activates the Plus App without seeing the notice, it may be too late to object. The cited language resides in the middle of page six of a seven-page contract, in standard font – hardly positioned to maximize visibility or highlight its significance to a prospective customer. While functionally identical language appears more prominently on page one of the App Terms, it gives Uplight the same unchecked ability to modify that document as well. It should be obvious that the vast majority of potential customers are not going to thoroughly examine 14 pages of contractual terms and conditions simply to pay their electric bill with an app. Even for those that do, a full appreciation and understanding seems unlikely.

Q: Do you have any concerns regarding Uplight's App Terms of Service (Pet. Ex. SRS-3)?

A: Yes. On page 10 of 12, the App Terms state Uplight:

> …reserves the right to modify, or temporarily suspend or discontinue AES Indiana Plus, its content or the App, in whole or in part, at any time, in its sole discretion, for any reason. Neither the Company, nor its agents/subcontractors shall be liable to you or any third party for any damage or loss cause or alleged to have been caused by or in connection with the modification or discontinuance of AES Indiana Plus, its Content or the App.

The first sentence means Uplight has zero obligation to the customer to provide the App, or even the Plus program, for any period of time. This seems particularly inequitable given the year-long commitment customers must make coupled with their commitment to pay Termination Fees (which include one month's bill plus potentially an additional $25). The second sentence attempts to avoid any and all of Uplight's legal responsibility "in connection" in any way, with modifying or cancelling the program, content or the App itself. On that same page, under the heading "Effect of Termination," Uplight continues to require the customer to waive legal rights they may have, saying Uplight:

> …shall not be liable to you or anyone else for any damages arising from or related to the suspension or termination of our Account; your access to AES Indiana Plus, its content or the App (in whole

> or in part); or in the event the Company modifies, discontinues or restricts the availability of AES Indiana Plus or its Content or the App (in whole or in part).

More heavily pro-Uplight, anti-consumer and perhaps more disturbing language is found on page 2, 2nd paragraph:

> We use reasonable efforts to make accurate, complete and current information available through *AES Indiana Plus*; however, we do not warrant, and we expressly disclaim any warranty, that such information is accurate, complete, current or free of technical or typographical errors. It is your responsibility to verify any information before relying on it. (Emphasis added.)

The biggest difference between AES Indiana's existing flat bill and green power programs and the Subscription is the App, which customers cannot rely on, as accurate, complete or current.

The "Effect of Termination" section (page 10) contains additional problematic language, this time regarding customer data:

> If the Company suspends or terminates your *AES Indiana Plus* Account or your AES Indiana account is terminated, the Company has no obligation to provide any further data or information to you, so you are advised to back-up any information you want to retain. The Company may continue to use and/or store certain information and data about you and your Account after termination of your Account, including personal information…

Uplight retains customer-sensitive data and personal information to use as it sees fit after a customer terminates their agreement, including voluntarily at the end of the agreement, but customers can be locked out of data while still under contract if Uplight suspends the account, perhaps during a dispute, when the customer would most need access to the Subscription data. The document is silent as to how customers will be able to back up their Subscription/App data, or whether it will be available in a useable format, such as Excel, CSV, etc.

These excerpts are just some examples of how the customer contracts grant Uplight virtually total control over the availability of App, the Subscription Program and customer data, while simultaneously stripping away as many customer rights as possible. The OUCC is concerned that the full ramifications of this language will not be presented to customers in such a way that they can appreciate its significance and make an informed decision.

Q: Does the OUCC have concerns regarding Uplight's proposed late fees?

A: Yes. If the customer is late paying a bill, Uplight will charge the overdue balance, plus interest at "the maximum rate permitted by law and to indemnify and reimburse us for any expense (including reasonable attorney fees) we may incur in connection with such delay or failure to pay or in collecting amounts owed by you under the Clean Energy Subscription." Because Uplight is not a regulated utility, it is not bound by IURC utility rules including fees and customer protections.

Q: Does the OUCC have concerns regarding Uplight's proposed language addressing reducing the customer's monthly subscription fees?

A: Yes. On SRS-2, page 4 of 7, Uplight may, "in its sole discretion," lower the monthly subscription amount if the customer's average usage, over three consecutive months, is more than 15% below the average usage projection. However, neither the testimony nor exhibits make clear how customers can access either their actual or projected usage, or if actual vs. projected usage will be provided at all. Also, it is unknown whether customers can request a reduced subscription charge. Regardless, this is a significant disincentive to customers interested in energy efficiency. After years of successful energy efficiency/demand side management ("DSM") programs, many AES Indiana customers have adopted energy saving measures and lifestyle changes to reduce their monthly bills. This makes it significantly more difficult for them to take steps to make incremental energy savings. Even if they able to do generate some savings, anything less than 15% produces zero cost savings for them.

Uplight's proposal sends dissonant price signals. For example, a customer who reduces average projected usage by 14% for the entire 12-month contract period will receive zero reduction in their bill. Similarly, customers able to reach the 15%+ reduction threshold for as many as 8 months, but without 3 consecutive months, receive zero price reduction. If a customer was somehow able to meet the required 15%+ / three consecutive month combination, Uplight can choose not to reduce the bill. Even if Uplight does elect to reduce the customer's bill, it appears the reduction applies prospectively. The customer will be overpaying for as many as six months based on language in the Terms and Conditions on page 5, "Except as otherwise provided, you may expect any of the foregoing modifications to your Monthly Charge to take up to ninety (90) days to take effect." Uplight's proposal runs counter to promoting energy efficiency, sends disconnected price signals and will most likely result in AES Indiana ratepayers who succeed in reducing their usage actually paying more (on a per kWh basis) and thus receiving no economic benefit for their efforts.

Q: In its case-in-chief, did AES Indiana quantify the maximum profit Uplight can earn from the Usage Adder, Program Fees and other customer charges?

A: No. There is no example calculation of a dollar amount, or range of dollar amounts.

III. <u>LACK OF COST TRANSPARENCY</u>

Q: Does the OUCC have transparency concerns regarding proposed fees?

A: Yes. Uplight's proposed Termination Fees include at least an additional full month's bill if the customer terminates within 12 months – much higher than any other flat billing program such as those offered by DEI and I&M.[4] If Uplight terminates the customer early, in some cases they will owe an additional $25 charge. Setting aside the amount, the OUCC is concerned the size of these penalties will not be prominently featured and explained in detail to potential customers. Uplight's Termination Fees include the Green Energy costs, the 4% Usage Adder and the Program Fee which can be as much as 10% of the monthly bill.

AES Indiana's responses to OUCC data request ("DR") 1-1 and 1-2 (Attachment BAS 1) demonstrate the Usage Adder and Program Fees calculations, which together could add as much as $16.80 per month for a customer using 1,000 kWh. The Usage Adder and Program Fees pose an even greater transparency concern. These amounts are monthly costs added over and above the kWh used at the "Expected Rate." Based on the $16.80 monthly adder, and assuming customers incur no penalties for Excessive Usage or any other penalty or fees, a 1,000 kWh

[4] SRS-2, page 6 of 7.

/ month "average" customer would pay an additional $201.60 annually, simply for the convenience of the App and e-bill, since as noted above, AES Indiana already offers a "flat bill" program, green energy and DSM. This figure is not presented in Ms. Schroeder's testimony, the Subscription Terms, the App Terms or any of the sample App screen shots in SRS-4. It seems unlikely Uplight will quantify and prominently feature this amount in promoting the Subscription. It is equally unlikely that, prior to committing to the Subscription Program, customers will grasp the full magnitude of these additional charges.

Furthermore, customers may not fully appreciate that even if the customer stays at or below the projected energy usage, these amounts will always be added to the monthly bill and are never subject to a true-up. OUCC DR 1-8[5] asked AES Indiana where an AES Indiana Plus customer can see Uplight fee details and bill impacts before signing the Uplight contract. AES Indiana's response states these items are found within the FAQs and the Subscription Terms in the app. The risk that customers will not understand the full and true costs of this program, prior to binding themselves to a year-long commitment is substantial. This is exacerbated by the significant premium to be paid as it relates to the cost of simply enrolling in AES Indiana's Budget Bill and Green Power programs without the App.

Q: As proposed, will the details of the Termination Fee, Usage Adder and Program Fee be clear and transparent to the potential Program participant/App user ("Subscriber") before enrollment?

A: No. In response to OUCC's DR 1-8, AES Indiana states:

Details of the Termination Fee, Usage Adder and Program Fee

[5] OUCC DR 1-8, BAS-2.

> will be stated within the FAQs which can be accessed directly from the Subscription Offer detail on the app. The user will also have to scroll through the terms and conditions before being able to confirm enrollment for the program. Details about the program will also be sent directly to the Subscriber upon enrollment. Additionally, Subscribers may unenroll easily and free of charge within 7 days of enrollment.

The Subscription Terms of Service (SRS-2) are 7 (8.5 x 11) printed pages, and the App Terms of Service (SRS-3) are another 12 pages. A typical iPhone screen is about 3" by 5." Setting aside for a moment any customer's individual ability to understand the language and ramifications of each section of these documents, converting this amount of information to a phone screen-sized presentation is inarguably going to cause most customers to only "scroll through," which should not be considered sufficient to fully educate and inform prospective subscribers.

Q: Does the OUCC consider the customer's ability to unenroll without penalty up to seven days after enrollment a sufficient consumer protection?

A: No. Customers are unlikely to grasp the full impact of the total annual maximum costs or the legal rights Uplight requires the customer to waive within seven days. A more meaningful comprehension of these items will only come after multiple months with the Subscription/App, after customers receive multiple bills, a dispute arises, or Uplight changes some of the Terms of Service or modifies the App, etc.

Q: Does Uplight make it clear to potential Subscription Program participants that it is not designed to give the customer the lowest annual price?

A: Yes, but it is certainly not a priority. The last sentence of Subscription Terms tells the customer their bill "may be more or less than what Customer would have paid under AES Indiana's standard, regulated rates and charges." Attachment SRS-4, image 4-8(b) does state within the "Personalized Offer," "The Clean Energy

Subscription is not designed to offer you the lowest cost of energy." It seems unlikely this placement was selected to maximize the probability customers would be alerted to this fact early in the decision-making process and question just how much more above the "lowest cost of energy" their bills could reach.

IV. INEQUITABLE FEES AND PROCESSES

Usage Adder Fee

Q: How does Uplight explain the purpose of its Usage Adder?

A: Uplight's Subscription Terms[6] state "We will determine a Usage Adder fee, which is intended to account for the potential for your energy consumption to increase compared to your previous 12 months, but the Usage Adder fee will not exceed 4% of the 12-month usage projection."

Program Fee

Q: What costs are included in Uplight's Program Fee?

A: According to SRS-2, page 3, the Program Fee covers:

> "all costs associated with offering a subscription model, including, but not limited to: utility fuel cost change, unexpected seasonal variation, non-seasonal variation, credit card fees and REC premiums."

In response to OUCC DR 1-2, AES Indiana provided a confidential attachment (including confidential percentages related to its Program Fee) with more detailed non-confidential categories including a technology component and marketing costs. AES Indiana has not provided an explanation for how the

[6] SRS-2; pages 2-3.

percentages for these Uplight expenditures were determined, rendering it impossible for interested parties the OUCC and the IURC to determine their reasonableness. The inclusion of "utility fuel cost change" is confusing since the "Expected Rate" incorporates the Fuel Adjustment Charge and GCA as part of all trackers associated with the basic residential tariff, along with other trackers such as the DSM and Transmission, Distribution, and Storage Improvement Charge. "Non-seasonal variation" is not defined, but seems like a catch all for any nonweather-related charges Uplight wishes to add, perhaps including fees to cover excess usage above the 4% Usage Adder but insufficient to trigger the "material increase" or "Excessive Usage" penalty triggers.

Q: How do the Usage Adder, Program Fee & Termination Fee relate to Uplight's margin?

A: These fees appear to be the primary sources for Uplight's margin. Petitioner's Attachment SRS-7, the Plus Subscription Statement of Work (or the AES Indiana-Uplight Affiliate Agreement referred to in Section 13 of the Petition), at page 8, Section E. Pricing states, Uplight "shall be entitled to retain the program fees and usage adder fees charged to Users [AESI Plus Subscribers], after [Uplight] wholly reimburses [AES Indiana] on a monthly basis for the Utility Bill at the standard rate RS." Presumably Uplight retains the entire one month's bill Termination Fee and the additional $25 charge as well, as there does not appear to be language in SRS-7 mandating those costs be passed along to AES Indiana.

Q: Do you have anything further regarding Uplight's fees?

A: Yes. On SRS-2, page 2, Uplight provides components included in the Expected

Rate, Program Fee and Usage Adder Fee. Customers see the Expected Rate includes "projected kWh rates for AES Indiana Standard Residential tariff, inclusive of tax and all riders forecasted to be applicable during the Subscription period" but does not address the Green Power costs. Later in that section, "REC premiums" is listed as part of the Program Fee. Customers cannot tell from Uplight's Subscription Terms if the Green Power costs are part of the Expected Rate or the Program Fee. Attachment SRS-7, which Subscription customers do not receive, at page 2, 2nd bullet says:

> Built into the offer is a Company [Uplight] program fee and usage adder fee, which include the costs to 1) <u>enroll the User into Customer's [AESI] Rider 21 (the RECs)</u>; 2) manage the volume risk associated with offering a flat-bill subscription model, and 3) cover the credit card processing fees.

(<u>Emphasis Added</u>.)

AES Indiana's response to OUCC DR 3.5(a)[7] appears to say the Green Power Fee is not part of the Usage Adder or Program Fee, but instead part of the Expected Rate:

> The projected AES Indiana Green Power Initiative tariff rate will be included in the Subscription Offer calculation as part of the Expected Rate.

The response goes on to say

> The reference in AES Indiana Attachment SRS-2 to "REC premiums" that may be included in the Program Fee is identified, similar to fuel cost changes, as a type of tariff rate change that was

[7] OUCC DR 3-5(a), BAS-3.

not projected when the Expected Rate was calculated.

If the Green Power costs are part of the Expected Rate, the Subscription Terms need to explain what the "REC premiums" are and demonstrate this is not a double collection.

<u>Termination Fee and Process</u>

Q: At page 22, lines 11-16 (Q&A 35), Ms. Schroeder testifies that Uplight's Subscription Termination Fee is "reasonable." In some cases, the Termination fee can be increased by an additional $25. Do either the testimony or exhibits cost-justify the Termination Fee or the additional $25?

A: No. Responding to OUCC DR 1-7[8], which requested the analysis performed and any supporting workpapers AES Indiana or Uplight considered in concluding that one-month's bill was a "reasonable" Termination Fee, AES Indiana responded saying:

- There are no workpapers,
- Pointed to Ms. Schroder's testimony Q33-Q35, which generally discuss the Subscription and Renewal Terms, customer-initiated termination and the Q&A identified in OUCC's DR,
- The one-month's bill termination fee is part of the customer's contract with Uplight, and
- The termination fee is "simple for the customer to understand and provides more certainty to the customer as compared to a variable termination fee.

None of these responses justify one month's bill (which includes the Usage Adder & Program Fees) or the additional $25 charge as reasonable.

Responding to part (b) of the same OUCC DR 1-7, AES Indiana says the Termination Fee is, "designed to protect Uplight from costs due to early

[8] OUCC DR 1-7, BAS-4.

termination of contract," but the response offers no evidence quantifying the "costs" relative to the Fee. All of the items listed in this response are recovered as part of each monthly bill, so early termination will not subject Uplight to increased costs. Ms. Schroeder's testimony, at page 22, Q&A 35, says the Termination Fee is reasonable because early termination means customers "are not reasonably compensating the provider [Uplight] for the benefits received." Here neither the testimony nor attachments specify these "benefits," nor do they offer any evidence demonstrating the cost, or value, of the "benefits" relative to the Termination Fee.

Responding to OUCC 1.7(c), AES Indiana included a list of customer "benefits" for which Uplight is allegedly denied reasonable compensation due to customers' early termination. These include items "such as early release from their contract with Uplight and <u>the ability to pursue other options such a</u>s self-generation or <u>AES Indiana's standard residential tariff and billing options</u>." (Emphasis added.) A customer's ability to return to the same, basic residential service all other customers receive is not a benefit, and it most certainly is not something Uplight can prevent. AES Indiana also confirmed in its response that Uplight's Termination Fee does not change regardless of whether the customer terminates in Month Two, Month Eleven or anywhere in between.

AES Indiana bears the burden to demonstrate one-month's bill and the additional $25 charge are reasonable Termination Fees for its unregulated affiliate. The company has failed to meet that burden.

<u>Reenrollment Grace Period</u>

Q: What is Uplight's process for a customer to cancel their Clean Energy Subscription at the end of the 12-month contractual commitment?

A: Uplight will notify customers by mail at least 30 days before the end of the subscription term. This notice will include a new offer for the next 12-month period's monthly charge. It will also specify any other changes to the Subscription Terms. If the customer does not respond before the end of the current term, the customer will be automatically reenrolled and obligated to another 12-month subscription. There is a seven-day grace period after acceptance during which the customer may cancel and avoid paying the Termination Fee. A 30- to 45-day penalty-free grace period would be more reasonable.

V. <u>LACK OF COMPLIANCE WITH GAO 2020-05, PART V.</u>

Q: What is the verbiage in GAO 2020-05, Part V?

A: It states:

> The following shall apply to applications for approval of pilot programs:
> A pilot program means a limited experiment designed to evaluate the costs and benefits of the program. Applications for approval of pilot program should show the costs of programs an describe the benefits to both participants and non-participants. Applications for pilot programs shall:
>
> A. Fully describe the need and goals of the program;
> <u>B. Propose and design objective evaluation criteria to measure the success or usefulness of the pilot program;</u>
> C. Provide an estimate of all costs of the pilot program;
> D. Allow for reasonable flexibility;
> E. Propose a timeline for completion and termination of the pilot program; and
> F. Include testimony regarding why the program is in the

> public interest, including how participants, non-participants, and/or the general public may be affected.
>
> (Emphasis added.)

Q: What does Petitioner state about its proposed and designed objective evaluation criteria to measure the success or usefulness of the pilot program?

A: In her direct testimony on page 15 at A23, Ms. Schroder states:

> The objective evaluation criteria included in its annual report will be: number of subscribers, percent of Subscribers enrolled who adopt AES Indiana DSM, number of Subscribers who voluntarily exited, number of Subscribers who involuntarily exists (categorized by cause of exit), exit fees assessed, number of Subscribers who re-enrolled, number of Subscribers who did not re-enroll, and a comparison of the average usage for AES Indiana Plus Subscribers and non-subscribing customers.

In Answer 22 on page 14, lines 10-12 she says:

> For the adoption rate, AES Indiana would like to see 5,000 customers, trending upward, in Year 1. AES Indiana aims to achieve a 60% renewal rate, trending upward, throughout the pilot.

OUCC DR 1-6 asked how each element in A23 will be measured and used in the Program’s evaluation. AES Indiana responded in part 1-6(c) that it would use the data points to understand the program’s acceptance, give insight into the effectiveness or used to set the Usage Adder.[9] When asked again in OUCC DR 3-7, AES Indiana answered:

> AES Indiana does not plan to judge the overall success or usefulness of the pilot based solely on participation rates in an isolated year. Participation in an individual year will be assessed based on trends, renewal rates, and other factors identified by Ms. Schroder, including economic factors (such as ongoing developments associated with the COVID 19 pandemic). Data

[9] OUCC DR 1-6, BAS-5

> from an individual year may be used to iterate and adapt the program and its offerings to continue to grow the customer base.[10]

While these responses name some objectively measurable criteria, many fail to establish a specific target or range. For those that do, the responses fail to explain how, or even if, reaching these targets will qualify the pilot as a "success" or as having sufficient "usefulness." The IURC's Order in Cause No. 45352-S2 (July 22, 2020) addressed the importance of explaining the metrics' relationship to determining the pilot program's success:

> We must also acknowledge the Settling Parties' attempt to connect the ratemaking treatment associated with the ET Pilot Program to a set of measurements of success. However, while the Settlement Agreement puts forth various measurements, it does not define what determines if such measure is to be deemed successful. For example, a measure of success presented for the DCFC component is identified as "Track user demographics – are users [Duke Energy Indiana] customers or out of state users?" While this may certainly be a key program metric, as suggested by our discussion above, the Settlement Agreement is silent as to what value of the metric would be deemed successful. Accordingly, we find this possibly protective feature of the Settlement Agreement does not warrant material weight. (Emphasis added.)

AES Indiana has not provided sufficient detail explaining the nexus between metrics and pilot success. As such, this portion of its testimony, as well as the subsequent DR responses, should not warrant material weight.

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[10] OUCC DR 3-7, BAS-6

Q: If the Subscription Program was not a "pilot," would determining success metrics before the Program's implementation be an essential part of the Program's project management?

A: Yes. Metrics with specific success values help transform vague requirements into hard data than can more accurately map a program's process efficiency and effectiveness. If there are no success values attached to metrics, upon completion, one cannot know if a program's scope, goals, and objectives were accomplished. Whether or not this program is called a pilot, setting metrics with values is sensible project management.

VI. RECOMMENDATIONS

Q: Please summarize your recommendations.

A: After analyzing AES Indiana's verified petition, testimony, exhibits, and DR response, I recommend the Commission deny AES Indiana's Clean Energy Subscription program for the following reasons:

1. The AES Indiana Plus program inappropriately involves an unregulated affiliate company;
2. The Program lacks cost transparency;
3. The Program has inequitable fees and processes; and
4. The Program pilot lacks compliance with GAO – 2020-05, Part V.

Q: Does this conclude your testimony?

A: Yes.

APPENDIX BAS-1 TO TESTIMONY OF
OUCC WITNESS BARBARA A. SMITH

Q: Please describe your educational background and experience.

A: I received a Bachelor of Science degree, magna cum laude, from Indiana Wesleyan University. I also earned an Associate's Certificate in Project Management through George Washington University. I was employed by Vectren Energy from 1987 through 2006 in various capacities, including Supervisor of Distribution Planning. My responsibilities included planning installation of new natural gas pipelines, making pipeline replace-repair decisions, as well as development, implementation and support of new data repositories (such as asset management and compliance systems, support of the Geographic Information System, capital work order systems, outage management systems and storm outages.) My professional experience as a member of the management team at Vectren with direct customer contact helped me develop a broad understanding of consumer interests, including the value place on reliable service and the impact rate increases have on consumers. I joined the OUCC as a Utility Analyst in the electric Division in October 2006 and held the position of Director, Resource Planning and Communication Division from April 2009 through July 2015. I was promoted to my current position of Executive Director, Technical Operations in August 2015. On behalf of the OUCC, I have led many case teams in complex cases, including Certificate of Public Convenience and Necessity cases, critical infrastructure as well as demand side management and renewable energy cases.

Q: Have you previously testified before the Indiana Utility Regulatory Commission?

A: Yes.

Q: Please describe the review and analysis you conducted to prepare your testimony.

A: I reviewed Petitioner's verified petition, testimony, and exhibits submitted in this Cause. I reviewed Petitioner's responses to OUCC discovery requests. I met with AES Indiana and other members of the OUCC team on October 5, 2021.

AFFIRMATION

I affirm, under the penalties for perjury, that the foregoing representations are true.

Barbara A. Smith

Barbara A. Smith
Executive Director, Technical Operations
Indiana Office of Utility Consumer Counsel
Cause No. 45584
AES Indiana

Date: October 12, 2021

Data Request OUCC DR 1 - 1

Please detail the cost of each element included in the Usage Adder. Please include the calculation of the cost and the element's percentage of the total.

Objection:

Response:

The element included in the Usage Adder is the volumetric risk related to the potential for the customer to increase their energy consumption compared to their historical behavior. The cost of that potential increased usage is the Expected Rate times the increased kWh. This is the only element included in the Usage Adder, therefore it represents 100% of the Usage Adder. The Usage Adder is initially set at 4% of the Subscriber's 12-month Usage Projection, and could be adjusted down based upon program experience. Incentivizing participation and maintaining competitiveness is a goal for this program, and adjusting the Usage Adder will be one tool to reflect actual behavioral changes or further incentivize program participation.

For example, for a Residential customer with projected monthly usage of 1,000 kWh, their Usage Adder would be a maximum of 40 kWh; and the cost of that Usage Adder would be the 40 kWh * the Expected Rate during that month. Using an average Residential Rate, the maximum cost to the Subscriber of the Usage Adder would be 40 kWh * $0.12/kWh = $4.80/month.

Data Request OUCC DR 1 - 2

Please detail the cost of each element included in the Program Fee. Please include the calculation of the cost and the element's percentage of the total.

Objection:

AES Indiana objects to the Request on the grounds and to the extent the Request solicits information that is confidential, proprietary, competitively sensitive and/or trade secret. Subject to and without waiver of the foregoing objections, AES Indiana provides the following response with the confidential information provided pursuant to the nondisclosure agreement between the parties.

Response:

The elements included in the Program Fee are the Administrative Costs, Weather Fluctuations, and Price Fluctuations related to the potential for the Subscriber's electricity costs to increase throughout the 12-month subscription. See OUCC DR 1-2 Confidential Attachment 1 for further detail on the components of the Program Fee.

The Program Fee is initially set at 10% and may be adjusted down based upon program experience. Incentivizing participation and maintaining competitiveness is a goal for this program, and adjusting the Program Fee will be one tool to further incentivize program participation.

For example, for a Residential customer with an Expected Rate of $0.12/kWh, the Program Fee would be a maximum of $0.012/kWh. Assuming the Residential customer uses 1,000kWh, the cost of that Program Fee would be $12 per month [1,000 kWh * the $0.012/kWh = $12.00].

Data Request OUCC DR 1 - 8

How is Uplight making the details of the Termination Fee, Usage Adder and Program Fee clear and transparent to the potential Subscriber before enrollment? Will AESI play any role in making the details of the Termination Fee, Usage Adder and Program Fee clear and transparent to the potential Subscriber before enrollment?

Objection:

Response:

Details of the Termination Fee, Usage Adder and Program Fee will be stated within the FAQs which can be accessed directly from the Subscription Offer detail on the app. The user will also have to scroll through the terms and conditions before being able to confirm enrollment for the program. Details about the program will also be sent directly to the Subscriber upon enrollment. Additionally, Subscribers may unenroll easily and free of charge within 7 days of enrollment.

Indianapolis Power & Light Company
d/b/a AES Indiana
Cause No. 45584
AES Indiana Responses to OUCC DR Set 3

Data Request OUCC DR 3 - 5

Referencing SRS-3, page 7 of 12. "As of September 1, 2019, the premium for AES Indiana's Green Power Option was adjusted to $0.001 per kilowatt-hour. A typical residential customer using 1000 kWh per month enrolled at the 100% level would pay an additional $1.00 on their AES Indiana electric bill."
a. What is the current premium for AES Indiana's Green Power Option in per kilowatt-hour adjustment and impact to a typical customer using 1000 kWh per month enrolled at the 100% level?
b. Will the AES Indiana's Green Power Option per kilowatt-hour cost and typical customer monthly bill impact be updated in the document, "AES Indiana Plus App Terms of Service" (SRS-3)?

Objection:

Response:

a. The current green power premium is $0.003 per kWh. A typical residential customer using 1000 kWh per month enrolled at the 100% level would pay an additional $3.00 on their AES Indiana electric bill.

   The projected AES Indiana Green Power Initiative tariff rate will be included in the Subscription Offer calculation as part of the Expected Rate. The reference in AES Indiana Attachment SRS-2 to "REC premiums" that may be included in the Program Fee is identified, similar to fuel cost changes, as a type of tariff rate change that was not projected when the Expected Rate was calculated. As shown in AES Indiana Attachment SRS-6, the Program Fee is intended to recover the costs associated with tariff rate changes that were not forecasted as part of the Expected Rate that may occur during the Subscription period.

   In AES Indiana Attachment SRS-2, page 3, the Clean Energy Subscription Term states that the RECs for the program "may be furnished under AES Indiana Standard Contract Rider No. 21: Green Power Initiative or other appropriate means." The phrase "or other appropriate means" is intended to provide Uplight optionality in case AES Indiana's Green Power Initiative cannot furnish the required RECs for the Subscribers, though AES Indiana does not expect this to occur.

b. The current green power premium will be reflected to the customer at the time of subscription through the Terms of Service. Uplight will update the Terms of Service annually to provide customers up-to-date information on AES Indiana Standard Contract Rider No. 21: Green Power Initiative. Additionally, the Terms of Service document also directs customers to the AES Indiana cost estimator to see their custom green power premium based on their individual usage.

Data Request OUCC DR 1 - 7

Page 22, A35

a. Please provide the analysis and any supporting workpapers or other documentation performed or considered by AESI regarding AESI's assertion that the one-month Termination Fee is "reasonable".

b. Please provide the analysis and any supporting workpapers or other documentation performed or considered by Uplight regarding AESI's assertion that the one-month Termination Fee is "reasonable".

c. Please specify, and identify the value of, each of the "benefits received" (line 16) by the customer from Uplight for which Uplight is due compensation for early termination.

d. Please explain why one month's subscription, which varies for each customer, is always a "reasonable" amount of compensation for Uplight for early termination.

e. Will the one-month termination fee apply whether it occurs at any point in the customer's 12-month participation? For example, the second month as compared to the eleventh month.

f. If the answer to 5.e is affirmative, please explain how Uplight's need for economic compensation from a customer's early termination is equal after only two months compared to after 11 months. Please provide any analysis and supporting documentation performed or considered by Uplight.

Objection:

Response:

a) An early termination fee is a reasonable part of a 12-month contract. The one-month Termination Fee is simple for the customer to understand and provides more certainty to the customer as compared to a variable termination fee. For further information, see AES Indiana Witness Schroder Testimony Q/A 33-35 and response to OUCC DR 1-7 (b). There are no specific workpapers.

b) The termination fee is designed to protect Uplight from costs incurred due to early termination of contract. When a contract is terminated early, Uplight will bear the seasonal differences in bills and any overage accrued to that date. Additional costs of providing the subscription service include the mobile application, personalized insights, and any energy efficiency incentives.

   Duke Energy Indiana and Alliant Energy[1] have a termination provision of a flat fee plus a true-up of the balance where the customer pays anything owed but does not get any amount credited. See OUCC DR 1-7 Attachment 1 for information on Duke Energy Indiana's Subscription offer.

[1] https://www.alliantenergy.com/BillPayOptions/PaymentPrograms/FixedAmountBill

For further information, see AES Indiana Witness Schroder Testimony Q/A 33-35 and response to OUCC DR 1-7 (a). There are no specific workpapers.

c) Customers receive benefits such as early release from their contract with Uplight and the ability to pursue other options such as self-generation or AES Indiana's standard residential tariff and billing options. See also AES Indiana Witness Schroder Testimony Q/A 33-35.

d) Each Customer's usage level is correlated with the amount of variability Uplight will be managing for that customer. A universal fee would not recognize that some Subscribers may have lower bill amounts and lower range of variability to manage via the subscription agreement. See also AES Indiana Witness Schroder Testimony Q/A 33-35.

e) Yes. See also AES Indiana Witness Schroder Testimony Q/A 33-35.

f) The financial impact of termination to Uplight is dependent on the total variability between the subscription offer and the customer's actual bill, not necessarily the number of months the customer has been on the program. In any single month, the customer can use up to 45% more than the offer without a modification in offer. In addition, each customer is made aware and agrees to entering into a 12-month contract when they are presented the Subscription Offer. See also AES Indiana's response to OUCC DR 1-7 (a) and AES Indiana Witness Schroder Testimony Q/A 33-35.

Data Request OUCC DR 1 - 6

Page 15, A23
a. At lines 5-6 the testimony references the IURC's GAO 2020-05. Please explain how AESI will meet the requirements of IURC's GAO 2020-05 Part V.B. : "Applications for pilot programs shall: B. Propose and design objective evaluation criteria to measure the success or usefulness of the pilot program?" (emphasis added).
b. What is the measure of success required for each of the data elements listed in A23 in order to determine the pilot program's success?
c. Please explain how each element in A23 will be measured and used in the program's evaluation.

Objection:

Response:

a. AES Indiana proposes to set objective evaluation criteria to measure the success or usefulness of the pilot program based on the adoption rate and subscription renewal rate criteria. These proposed criteria are described in A22, lines 10-12.

b. The metrics described in A23 are designed to show customer acceptance of the program as well as provide insight into program mechanics to allow for appropriate adjustments as the program develops. The customer acceptance metrics will be the number of Subscribers, number of Subscribers who re-enrolled, and number of Subscribers who did not re-enroll. The success criteria are described in AES Indiana's response to OUCC DR 1-6(a). The metrics that will provide insight into program mechanics will be percent of Subscribers enrolled who adopt AES Indiana DSM, exit fees assessed, number of Subscribers who voluntarily and involuntarily exited, and a comparison of the average usage for *AES Indiana Plus* Subscribers and non-subscribing customers.

c. Number of Subscribers, number of Subscribers who voluntarily exited, number of Subscribers who involuntarily exited (categorized by cause of exit), number of Subscribers who re-enrolled, and number of Subscribers who did not re-enroll will be measured using enrollment data provided by Uplight to AES Indiana. These will be used to understand the programs acceptance by AES Indiana customers.

   Percentage of Subscribers who adopt AES Indiana DSM will be provided to AES Indiana by Uplight and verified with the AES Indiana DSM team. This will give insight into the effectiveness of the DSM-related mobile enrollment.

   The comparison of the average usage for *AES Indiana Plus* Subscribers and non-subscribing customers will be provided using the AES Indiana customer data. This will provide data to set the Usage Adder more accurately for new customers and future Subscription Offers.

The termination fees assessed will provide insight into its effect on customer retention and satisfaction.

Indianapolis Power & Light Company
d/b/a AES Indiana
Cause No. 45584
AES Indiana Responses to OUCC DR Set 3

Data Request OUCC DR 3 - 7

OUCC DR 1-6(a) asked about AESI witness Schroder's testimony at page 15, Q&A 23, lines 5-6 referencing the IURC's GAO 2020-5. The OUCC asked:

Please explain how AESI will meet the requirements of IURC's GAO 2020-05 Part V.B. : "Applications for pilot programs shall:
B. Propose and design objective evaluation criteria to measure the success or usefulness of the pilot program?" (emphasis added).
AESI responded:
a. AES Indiana proposes to set objective evaluation criteria to measure the success or usefulness of the pilot program based on the adoption rate and subscription renewal rate criteria. These proposed criteria are described in A22, lines 10-12.

Ms. Schroder's testimony at A22, lines 10-12 states:

"For the adoption rate, AES Indiana would like to see 5000 customers, trending upward, in Year 1. AES Indiana aims to achieve a 60% renewal rate, trending upward, throughout the pilot."

In addition, Ms. Schroder also lists in A23 the following "objective evaluation criteria": percent of subscribers enrolled who adopt AES Indiana DSM, number of subscribers who voluntarily exited, number of subscribers who involuntarily exited, exit fees assessed, number of subscribers who did not re-enroll and comparison of the average usages for AES Indiana Plus subscribers and non-subscribing customers."

Questions:
a. For adoption rate, if AES Indiana does not achieve "5000 customers, trending upward, in Year 1", how many customers will be necessary for AES Indiana to conclude the program is a "success" or has sufficient "usefulness" (as those two terms were used by AES Indiana in her direct at page 14, A22, lines 10-12)?
b. For renewal rate, if AES Indiana does not achieve "a 60% renewal rate, trending upward, throughout the pilot" what renewal rate percentage will be necessary for AES Indiana to conclude the program is a "success" or has sufficient "usefulness" (as those two terms were used by AES Indiana in her direct at page 14, A22, lines 10-12)?
c. For each of the following "objective evaluation criteria" set forth in Ms. Schroder's direct at page 15, A23, please provide the amount of each item that will be necessary for AES Indiana to conclude the program is a "success" or has sufficient "usefulness" (as those two terms were used by AES Indiana in her direct at page 14, A22, lines 10-12):
1. percent of subscribers enrolled who adopt AES Indiana DSW,
2. number of subscribers who voluntarily exited,
3. number of subscribers who involuntarily exited,
4. exit fees assessed,
5. number of subscribers who did not re-enroll, and

6. comparison of the average usages for AES Indiana Plus subscribers and non-subscribing customers

Objection:

Response:

a. As stated by Witness Schroder in Q/A 22, "(t)he success or usefulness of the program will be evaluated based on the adoption and renewal rates through the three years of the pilot. These objective measures will be considered together with customer feedback, program costs and other factors such as technological change." AES Indiana does not plan to judge the overall success or usefulness of the pilot based solely on participation rates in an isolated year. Participation in an individual year will be assessed based on trends, renewal rates, and other factors identified by Ms. Schroder, including economic factors (such as ongoing developments associated with the COVID 19 pandemic). Data from an individual year may be used to iterate and adapt the program and its offerings to continue to grow the customer base.
b. See OUCC DR 3-7 (a).
c. See OUCC DR 3-7 (a).

CERTIFICATE OF SERVICE

This is to certify that a copy of the ***OUCC Public's Exhibit No. 1_Testimony of Witness Barbara A. Smith*** has been served upon the following parties of record in the captioned proceeding by electronic service on October 12, 2021.

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