

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

PETITION OF DUKE ENERGY)	
INDIANA, LLC FOR (1) APPROVAL OF)	
ITS PROPOSED PLAN FOR DEMAND)	
SIDE MANAGEMENT AND ENERGY)	
EFFICIENCY PROGRAMS FOR 2020 -)	
2023, (2) AUTHORITY TO RECOVER)	
ALL PROGRAM COSTS, INCLUDING)	CAUSE NO. 43955 DSM-8
LOST REVENUES AND FINANCIAL)	
INCENTIVES IN ACCORDANCE WITH)	
IND. CODE §§ 8-1-8.5-3, 8- 1-8.5-10, 8-1-2-)	
42(a) AND PURSUANT TO 170 IAC 4-8-5)	
AND 170 IAC 4-8-6; (3) AUTHORITY TO)	
DEFER ALL SUCH COSTS INCURRED)	
UNTIL SUCH TIME THEY ARE)	
REFLECTED IN RETAIL RATES; (4))	
REVISIONS TO STANDARD)	
CONTRACT RIDER 66-A; AND (5))	
INTERIM AUTHORITY TO CONTINUE)	
OFFERING ITS CURRENT DEMAND)	
SIDE MANAGEMENT AND ENERGY)	
EFFICIENCY PROGRAMS UNTIL A)	
FINAL ORDER IS ISSUED IN THIS)	
CAUSE)	

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR’S REPLY
TO DUKE ENERGY INDIANA, LLC’S MOTION TO STRIKE PORTIONS
OF THE TESTIMONY OF OUCC WITNESS JOHN E. HASELDEN

The Indiana Office of Utility Consumer Counselor (“OUCC”) replies to Duke Energy Indiana, LLC’s (“DEI”) Motion to Strike Portions of OUCC witness Mr. John E. Haselden’s testimony and requests the Indiana Utility Regulatory Commission (“Commission”) reject Duke’s Motion. The testimonial portions challenged by Duke are appropriate expert testimony and do not violate Indiana Rule of Evidence 704 because they are not legal conclusions. Mr. Haselden’s experience qualifies him as an expert in demand side management and energy efficiency. He has particular expertise in cases dealing with these issues before the Commission.

Haselden Direct at 2, line 17 – Page 3, Line 3

“The OUCC is also concerned about the lack of transparency in the calculations and assumptions used by DEI. Discovering the assumptions and calculations for even one measure has required multiple data requests, meetings and telephone conversations.¹ Even then, all questions cannot be answered. A utility must present a complete case-in-chief that thoroughly supports its request. This not only satisfies a utility’s burden of proof, but also provides the basic level of transparency necessary to assess and evaluate the petition.” (Footnote omitted).

The first sentence addresses the OUCC’s concerns, which are not a legal conclusion. The second and third sentences describe Mr. Haselden’s efforts to acquire explanations or additional information from DEI, and his assessment of whether the information provided was sufficient for him to answer his questions. The fourth and fifth sentences describe the level of information Mr. Haselden believes is necessary, in his expert opinion, for him to adequately understand the utility’s request and prepare his testimony for the OUCC. Mr. Haselden, through his experience in proceedings before this Commission, understands that a petitioning utility has a burden to prove its case. While the term “burden of proof” has a specific meaning in motions practice, its inclusion here refers specifically to “the basic level of transparency necessary [for him] to assess and evaluate the petition.” It is not a “legal conclusion.”

Haselden Direct at 8, Lines 10–23

“These changes, other than the introduction of the new Outdoor Lighting Modernization program, were not discussed in DEI’s case-in-chief nor disclosed in the Oversight Board meetings. As stated in the Commission’s recent order in Cause No. 44340 FMCA 12, page 11:

We remind NIPSCO that as the petitioning party, its case-in chief must include sufficient detail to support its requested relief in order to carry its evidentiary burden. As our recent orders in the City of Evansville and Indiana-American Water Company cases reiterate, when a petitioning party fails to provide basic supporting information in its direct evidence and does so only in discovery or rebuttal testimony, time and resources are needlessly wasted.

Without this OUCC testimony, the evidentiary record would hold little substantive detail of the DSM Plan for which DEI seeks approval.”

Neither the first sentence, nor the quote from Cause No. 44340 FMCA 12 are conclusions. The first sentence is a factual assertion. The quote is the Commission’s language, not Mr. Haselden’s opinion or conclusion. It is entirely proper for a witness to refer the Commission to prior orders dealing with similar topics – in this instance, the absence of information from case-in-chief filings and the subsequent difficulty in obtaining it via data requests, meetings and telephone conversations. The sentence after the quote is Mr. Haselden’s opinion of the relative merits of his testimony. The phrase “little substantive detail” is neither a legal term-of-art nor a legal conclusion.

Haselden Direct at 25, Lines 11–13 and at 31, Lines 17-18

“At best it is a theoretical concept that there are T&D capacity savings; however, no evidence has been offered that would satisfy the requirements of 170 IAC 4-8-7.”

“This would satisfy the requirements of 170 IAC 4-8-2 and the other rules noted above.”

In the first quote (from page 25), Mr. Haselden’s testimony regarding the difficulty in measuring transmission and distribution system capacity savings, and perhaps their very existence, is not a legal conclusion. As for his comments in both quotes regarding satisfying the requirements of the Commission’s DSM rules contained within the Indiana Administrative Code, he has been working with the Commission’s DSM rules since 1993 when he became Director of DSM for Indianapolis Power and Light. As an expert, with substantially more experience, skill, training and education with the Commission’s DSM rules than a lay witness, including preparing and presenting testimony for both IPL and the OUCC, Mr. Haselden can offer an expert opinion on the rules with which he’s worked for 20+ years. As he is not an attorney, it is not a legal opinion. Finally, any concerns with the second quote (from page 30) disappear simply by changing the word “would” to “may”.

DEI witness Mr. Duff, who like Mr. Haselden is not an attorney, offers rebuttal testimony in a similar vein. For example, on page 11 at 12 through page 12 at 16, DEI witness Duff cites 170 IAC 4-8-7 (c) and (g), and opines that the proposed incentive structure under discussion, does not comport with the aforementioned rule because the rule requires avoided energy savings. Similarly, between page 12 at 17 and page 14 at 6, DEI witness Duff cites to 170 IAC 4-8-3, and particularly subsection (a)(2), and concludes DEI's Low-Income Neighborhood Energy Saver Program "does not meet the definition of a home energy efficiency program" under the cited rule. DEI witness Duff then proceeds to cite 170 IAC 4-8-7(e) and opine Mr. Haselden's interpretation of the rule is "too broad" based on Mr. Duff's assessment of prior Commission orders in Cause Nos. 43955 DSM 1-3. DEI's rebuttal testimony was filed prior to the Motion to Strike. It seems unlikely that if DEI believed Mr. Haselden's testimony was improper, the Company would have included Mr. Duff's testimony as described above. DEI's objections should be rejected by the Commission. At best, they go to the weight the Commission should give Mr. Haselden's testimony, not its admissibility.

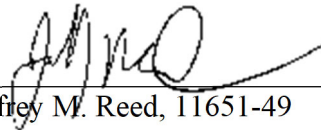
Finally, it should be noted that Mr. Haselden's testimony regarding a lack of evidentiary support is not an isolated phenomenon regarding DEI filings. Most recently, the Commission expressed its concerns in Cause No. 45276, DEI's CPCN for a combined heat and power project at Purdue. In the March 31, 2020 Order the Commission stated at page 14,

[w]e must express our disappointment with the presentation of Petitioner's case-in-chief. Instead of learning on rebuttal that Petitioner has been working with Purdue for several years on this project, it would have been helpful if Petitioner had explained in its case-in-chief: how this particular project was conceived, when the determination was made to pursue this project, and the reasons why Petitioner chose to pursue this project with Purdue. It would also have been helpful to understand how Purdue's steam and electricity requirements from the Wade Utility Plant, which Purdue owns and operates, will be impacted by Petitioner's construction and operation of the Purdue CHP Facility. In addition, many of the OUCC's concerns with the economics related to the Purdue CHP Facility should have reasonably been anticipated, considered, and addressed in Petitioner's case-in-chief. In the future, we encourage Petitioner to give greater consideration to providing sufficient background and facts in its case-in-chief that will allow for a better understanding

of the requested relief (and why Petitioner believes it is reasonable) by those not as familiar as Petitioner with the proposed project and addressing reasonably anticipated issues.

WHEREFORE the Indiana Office of Utility Consumer Counselor requests the Commission deny DEI's Motion to Strike in its entirety.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'J. Reed', is written over a horizontal line.

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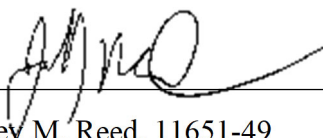
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was electronically delivered this 6th day of April, 2020, to:

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A handwritten signature in black ink, appearing to read "J. Reed", is written over a horizontal line.

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