

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF DUKE ENERGY INDIANA, )  
INC. FOR APPROVAL OF (1) ITS PROPOSED )  
DEMAND SIDE MANAGEMENT AND )  
ENERGY EFFICIENCY PROGRAMS FOR )  
2015, INCLUDING COST RECOVERY, LOST )  
REVENUES AND SHAREHOLDER )  
INCENTIVES; (2) AUTHORITY TO OFFER ) CAUSE NO. 43955 DSM 02  
ADDITIONAL DEMAND SIDE )  
MANAGEMENT PROGRAMS WITH COST )  
RECOVERY, INCLUDING LOST MARGINS )  
AND A SHAREHOLDER INCENTIVE; (3) )  
AUTHORITY TO DEFER COSTS INCURRED ) APPROVED:  
UNTIL SUCH TIME THEY ARE REFLECTED )  
IN RETAIL RATES; (4) RECONCILIATION )  
OF DEMAND SIDE MANAGEMENT AND )  
ENERGY EFFICIENCY PROGRAM COST )  
RECOVERY THROUGH DUKE ENERGY )  
INDIANA, INC. STANDARD CONTRACT )  
RIDER 66-A; AND (5) REVISIONS TO )  
STANDARD CONTRACT RIDER 66-A )

DEC 30 2014

ORDER OF THE COMMISSION

**Presiding Officers:**

**David E. Ziegner, Commissioner**

**David E. Veleta, Administrative Law Judge**

On May 29, 2014, Petitioner Duke Energy Indiana, Inc. ("Duke Energy Indiana" or "Petitioner") filed its Petition with the Indiana Utility Regulatory Commission ("Commission") initiating this Cause. In its Petition, Duke Energy Indiana requested: approval of its proposed demand-side management ("DSM") and energy efficiency ("EE") programs for 2015; approval of program cost recovery, recovery of lost revenues, and recovery of shareholder incentives; authority to defer costs incurred until such time as they are reflected in retail rates; reconciliation of DSM and EE program cost recovery through Petitioner's Standard Contract Rider 66-A; and associated revisions to Standard Contract Rider 66-A.

On May 29, 2014, Petitioner filed its Direct Testimony and Exhibits. On July 3 and on August 5, 2014, Petitioner filed Corrected Direct Testimony and Exhibits. On June 10, June 18, and July 31, 2014, respectively, the Citizens Action Coalition of Indiana, Inc. ("CAC"), Nucor Steel-Indiana, a division of Nucor Corporation ("Nucor"), and the Duke

Energy Indiana Industrial Group (“Industrial Group”) filed Petitions to Intervene in this proceeding. The Presiding Officers granted those Petitions to Intervene on June 23, July 1, and August 13, 2014, respectively.

On September 8, 2014, the OUCC and CAC filed their respective cases-in-chief. On September 18, 2014, Petitioner filed its Rebuttal Testimony and Exhibits.

On September 26, 2014, the Petitioner and the OUCC filed a Joint Notice of Settlement and Request to Continue the Evidentiary Hearing, and on September 30, 2014, the Presiding Officers issued a docket entry approving a revised procedural schedule for the remainder of this proceeding. On October 1, 2014, Petitioner filed the settlement agreement between Petitioner and the OUCC (the “Settlement Agreement”), as well as testimony in support of the Settlement Agreement, a copy of which is attached to this Order and incorporated herein. Also on October 1, 2014, the OUCC filed testimony in support of the Settlement Agreement. No other party filed testimony concerning the Settlement Agreement.

An evidentiary hearing was held in this Cause on October 27, 2014, at 9:30 a.m., in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, the parties offered their respective pre-filed testimony and exhibits, which were admitted into the evidentiary record without objection, and the witnesses were subject to cross examination. No members of the public appeared.

The Commission, having considered the evidence and applicable law, finds as follows:

**1. Notice and Commission Jurisdiction.** Notice of the hearing in this Cause was given as required by law. Duke Energy Indiana is a “public utility” within the meaning of Indiana Code § 8-1-2-1. Pursuant to Indiana Code §§ 8-1-2-4, -42, -68, -69, Indiana Code ch. 8-1-8.5 and 170 IAC 4-8, the Commission has jurisdiction over Petitioner’s DSM program offerings and associated cost recovery. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

**2. Petitioner’s Characteristics.** Duke Energy Indiana is a public utility corporation organized and existing under the laws of the State of Indiana with its principal office in Plainfield, Indiana, and is a second tier wholly-owned subsidiary of Duke Energy Corporation. Duke Energy Indiana is engaged in rendering electric utility service in the State of Indiana and owns, operates, manages, and controls, among other things, plant and equipment within the State of Indiana used for the production, transmission, delivery and furnishing of such service to the public. Duke Energy Indiana directly supplies electric energy to approximately 810,000 customers located in 69 counties in the central, north central and southern parts of the State of Indiana. It also sells electric energy for resale to municipal utilities and to other public utilities that in turn supply electric utility service to numerous customers in areas not served directly by Petitioner.

**3. Relief Requested.** In its Petition, Petitioner requested authority to continue to provide the programs approved in Cause Nos. 43955 and 43955 DSM 1 for one additional year, through December 31, 2015, and sought to include additional programs in its portfolio.

The portfolio includes programs for all customer segments, while also anticipating that a substantial portion of its customer load may choose to opt out of the C&I programs. Petitioner also requested accounting and ratemaking authority to recover associated program costs, lost revenues, and a shared savings mechanism. Petitioner proposes to exclude its income-qualified program from its shareholder incentive proposal. Because there are no longer Commission-provided energy savings targets and because it better aligns Petitioner's and customers' goals in the provision of cost effective EE, Petitioner initially sought approval of a shared savings mechanism in lieu of a tiered savings incentive as currently approved.

Petitioner also sought approval of its reconciliation of the costs incurred (including lost revenues) for both Core and Core Plus Programs and incentives achieved (for Core Plus Programs only) during 2013, with amounts actually collected from customers from Rider EE billings, and to adjust the reconciliation of 2012 that was included in DSM 1 to reflect the results of evaluation, measurement & verification ("EM&V") in accordance with the Settlement Agreement approved in DSM 1. Duke Energy Indiana further requested authority to adjust Rider EE accordingly and for continued authority to use deferred accounting on an ongoing basis until such costs are reflected in retail rates, to ensure proper matching of expenses with the rate recovery of such expenses through Rider EE. Finally, Petitioner sought confidential treatment of certain information submitted in its testimony and exhibits.

With the Settlement Agreement entered into by Petitioner and the OUCC and filed with the Commission on October 1, 2014, Petitioner also seeks approval of the Settlement Agreement, including: (1) approval of a tiered performance incentive mechanism instead of Petitioner's proposed shared savings mechanism; (2) removal of the Energy Management Information Services ("EMIS") Pilot Program from the proposed 2015 program portfolio, and (3) agreed-upon collaboration between Petitioner and the OUCC on strategic energy management programs and time-of-use rate issues.

**4. Petitioner's Case-in-Chief.** Duke Energy Indiana presented the testimony of four witnesses in its case-in-chief: Mr. Michael Goldenberg, Manager, Customer Planning and Regulatory Strategy for Petitioner; Ms. Roshena M. Ham, Manager, Measurement and Verification for Petitioner; Ms. Karen K. Holbrook, Director, Program Performance for Petitioner; and Ms. Diana L. Douglas, Director, Rates & Regulatory Planning for Petitioner.

In his testimony, Mr. Goldenberg addressed: the legal and regulatory framework currently in place for EE in Indiana; Petitioner's proposed 2015 EE program portfolio; Petitioner's ratemaking proposals; Petitioner's proposal concerning its Oversight Board ("OSB"); and an overview of Petitioner's EM&V plans.

Mr. Goldenberg explained that Senate Enrolled Act ("SEA") 340 was enacted this year and allows industrial customers with a load over 1 MW the ability to opt out of EE programs. Once industrial customers opt out, they remain responsible for the costs incurred as of the effective date of the customer's opt out. The precise implementation guidelines of the industrial customer opt out were addressed in Cause No. 44441. Mr. Goldenberg explained that SEA 340 also eliminated the targets established in Cause No. 42963 ("Phase II

Order”), and provided that the Commission may not require a third-party administrator to oversee a statewide program established in the Phase II Order.

Mr. Goldenberg testified that the enactment of SEA 340 impacts this filing in several ways. First, Duke Energy Indiana anticipates less participation from large customers. Accordingly, Duke Energy Indiana has modeled an opt out of 65% of opt out eligible load in planning program participation and impacts. Next, SEA 340 also eliminated the Commission’s Phase II targets for gross energy savings. Lastly, all EE programs will now be offered by each individual utility.

Mr. Goldenberg testified that Duke Energy Indiana continues to be committed to EE and has proposed a robust set of EE programs designed for participation from all customer classes. He stated that, consistent with its current cost recovery mechanism and to remove the disincentive to invest in EE, Duke Energy Indiana views shareholder incentives as its return on investment if results are delivered. Mr. Goldenberg testified that, with the elimination of the administratively determined targets, Duke Energy Indiana’s current incentive mechanism that is tied to achievement of targets is not as robust as moving to a shared savings model where shareholders retain a small percentage of the energy savings achieved. Mr. Goldenberg emphasized that, with the enactment of SEA 340, the delineation of Core and Core Plus goes away, and Duke Energy Indiana has the responsibility to deliver a comprehensive portfolio of programs to all participating customers.

Mr. Goldenberg addressed Duke Energy Indiana’s 2013 performance under the Phase II Order targets, stating for the Core Plus programs, the attainment to target was 93%. However, he testified that the Core Programs continued to underperform, reaching only 59% of the target. Mr. Goldenberg summarized that overall, Duke Energy Indiana met 67% of the total savings goal as of 2013.

Mr. Goldenberg testified about the 2015 EE programs for which Duke Energy Indiana is seeking Commission approval, and provided detailed program descriptions. Mr. Goldenberg explained that the EE programs Duke Energy Indiana seeks Commission approval in 2015 consist of the following:

<u>Residential</u>	<u>Non-Residential</u>
Residential Smart Saver	Smart Saver Prescriptive
Agency Assistance Portal	Smart Saver Custom
Appliance Recycling	
Energy Education for Schools	
Residential Neighborhood	
Multi-Family EE Products	
& Services	
My Home Energy Report	
Home Energy House Call	
Power Manager	

Mr. Goldenberg testified that Petitioner's proposed 2015 EE portfolio of programs was developed based on its most recent Market Potential Study ("MPS"), the current portfolio of both Core and Core Plus programs, and EE program experience gained in other Duke Energy jurisdictions.

Mr. Goldenberg explained that Duke Energy Indiana seeks to recover program costs, lost revenues, and a shared savings incentive. Mr. Goldenberg stated that, consistent with the settlement agreement approved in its DSM-1 case, Duke Energy Indiana is seeking recovery of verified lost revenues for the life of the measure. Mr. Goldenberg further testified that lost revenues are a mechanism to make a utility whole between rate cases; without lost revenue recovery, there is a strong disincentive for a utility to offer EE programs.

Mr. Goldenberg testified as to why a performance incentive is appropriate, citing the Commission's rules and emphasizing that shareholder incentives help to put demand-side resources on an equal footing with supply-side resources. Additionally, shareholder incentives provide an incentive to pursue cost-effective EE. Mr. Goldenberg explained and supported Petitioner's initially-proposed shared savings incentive mechanism.

Mr. Goldenberg also stated that Duke Energy Indiana is only seeking approval of a one-year plan, because of legislative uncertainty surrounding EE in Indiana. He noted that SEA 340 contains a provision that requires the Commission to prepare a status report about EE programs for the Indiana General Assembly, and he noted that Governor Pence has requested that the Commission make recommendations to assist his administration in formulating its EE policy for the State.

With respect to the Duke Energy Indiana OSB, Mr. Goldenberg testified that Duke Energy Indiana is maintaining the OSB that was approved in Cause No. 43955, emphasizing that with all the EE programs coming under the management of Duke Energy Indiana, the OSB will be able to assist across the entire portfolio rather than only with respect to the Core Plus programs.

Mr. Goldenberg concluded his testimony by stating that Duke Energy Indiana is committed to using an independent EM&V vendor, as it has for its current Core Plus Programs, to evaluate the 2015 portfolio of programs.

Ms. Ham testified regarding Duke Energy Indiana's proposed EM&V processes for its 2015 EE programs, as well as the cost-effectiveness of the proposed programs. She explained that EM&V documents program benefits and program effectiveness and is an important component of EE programming because reliably measuring savings achieved from EE provides certainty for resource planning and provides accountability to customers and shareholders. Ms. Ham also testified that properly executed evaluation activities support program improvements.

Ms. Ham sponsored an exhibit that listed the different types of evaluations and the approaches Duke Energy Indiana utilizes with each one. Ms. Ham testified that Duke Energy

Indiana plans to measure, monitor, and verify its program performance through verification of customer applications, field verification and monitoring, customer satisfaction surveys, and system performance tests. Load research metering samples and tracking will also be used to verify energy reductions.

Ms. Ham testified that she was familiar with the Commission's rules on EE program evaluation and she outlined the Commission's rules and what the evaluation plan must include, along with specifically addressing what Duke Energy Indiana has done to meet those rules. Ms. Ham testified that she believes Duke Energy Indiana can fully satisfy the Commission's rules on evaluations by completing the above-referenced steps.

Ms. Ham testified that Duke Energy Indiana estimates that 5% of total program costs across the complete portfolio will be required over the portfolio approval period to adequately and efficiently perform EM&V. She noted that, historically, evaluation costs typically run from 3% to 8%; therefore, Duke Energy Indiana believes 5% to be a reasonable and appropriate estimate for EM&V activities. She also sponsored an exhibit with the anticipated timeframe for Petitioner's EM&V activities.

Ms. Ham testified as to how Duke Energy Indiana will utilize the EM&V results in developing forecasts and true-ups for Rider 66-A. Ms. Ham testified that, pursuant to the settlement agreement approved in Cause No. 43955 DSM 1 ("DSM-1"), Duke Energy Indiana will utilize verified actual participation information applied to verified impact results that have been applied prospectively as the basis for true-ups to calculate the shareholder incentive.

Ms. Ham provided an update in her testimony on EM&V results to date, and how those results have been incorporated into Duke Energy Indiana's corrected filing for the purpose of lost revenue calculations.

Ms. Ham also testified as to cost-effectiveness of the proposed portfolio of EE programs. She explained that Duke Energy Indiana utilizes DSMore to estimate the net present value of the benefits and costs associated with the implementation of an EE measure or program or a demand response program, which is also used to compute benefit-cost ratios or tests. Ms. Ham explained that the analysis of EE cost-effectiveness has traditionally focused on the calculation of specific metrics, often referred to as California Standard Tests: Utility Cost Test ("UCT"), Ratepayer Impact Measure ("RIM") Test, Total Resource Cost ("TRC") Test, Participant Test, and Societal Test. DSMore provides the results of those tests for any type of EE program (demand response and/or energy savings).

Ms. Ham testified as to the results of the cost-effectiveness tests vis a vis Petitioner's proposed 2015 EE programs. She explained that Duke Energy Indiana uses the Participant Test as the first screen for a program to make sure a program makes economic sense for the individual consumer. Duke Energy Indiana also uses UCT, the TRC, and RIM Test for a comprehensive screening of EE measures. Ms. Ham testified that use of these multiple tests ensures the development of a reasonable set of EE programs, indicates the likelihood

customers will participate, and also protects against cross-subsidization. Ms. Ham testified that all of the proposed 2015 EE programs (with the exception of the Residential Neighborhood program, which is an income-qualified program) are cost effective under both the UCT and TRC tests.

Ms. Ham concluded her testimony by noting that the proposed EM&V plan is reasonable and, based upon the cost-effectiveness analyses conducted with respect to the proposed 2015 EE programs, the proposed EE programs are cost-effective.

Ms. Holbrook explained that her group was responsible for determining the actual costs for the Core and Core Plus programs used in the 2012 and 2013 reconciliations, including impacts, program costs, EM&V costs, lost revenues, and applicable utility incentives. Ms. Holbrook further testified that pursuant to the settlement agreement approved in DSM-1, her group applied EM&V where applicable for reconciliation of lost revenues and compiled those 2012 and 2013 results and provided those to Ms. Diana L. Douglas for use in her completion of the reconciliation and calculating rates.

Ms. Holbrook testified in detail regarding the 2013 Core Program costs, how the 2013 lost revenues for the Core Programs were determined, how program impacts were determined, and the sources of associated data. She emphasized that for measures with completed EM&V, the impacts reflect any changes, applied retrospectively per DSM-1.

Ms. Holbrook testified that based on the percentage of attainment referenced in Mr. Michael Goldenberg's testimony, Duke Energy Indiana earned a return of 10% of program costs for programs eligible for incentives.

Ms. Holbrook testified that her group was also responsible for determining the actual costs for Core and Core Plus programs that were used in the original 2012 reconciliation. She sponsored an exhibit that outlined the original and revised kWh and lost revenue amounts and the calculated difference. Ms. Holbrook testified that she provided the information to Ms. Douglas for use in updating the reconciliation and calculating rates.

Ms. Holbrook also testified as to how her group calculated the estimated shared savings incentive for 2015. This shareholder incentive was added to the program costs and EM&V for all programs to calculate the input to the revenue requirement provided to Ms. Douglas to calculate the rate applicable to the 2015 results.

In calculating estimated 2015 lost revenues, Ms. Holbrook testified that her group used the impacts calculated as described previously in her testimony. As Ms. Holbrook's group did not know in which rate schedules forecasted participation would occur, they applied the weighted average lost revenue rates for residential and non-residential programs based on the 2013 participation in the Core and Core Plus programs. Ms. Holbrook then used a half-year convention to reflect how impacts would be achieved throughout the year and added the lost revenue associated with participation since 2012, as well as the forecasted participation for the remainder of 2014, calculated for the life of measure.

Ms. Holbrook testified that she did make corrections in the calculation of 2015 lost revenue from the original filing as she incorporated the results of EM&V for Core Programs to reconcile lost revenues, pursuant to the settlement agreement in DSM-1. Ms. Holbrook further testified that in her opinion, the cost estimates she discussed in her testimony, which were given to Ms. Douglas for her calculations, were reasonable.

Ms. Douglas testified in detail about the ratemaking treatment for the EE programs approved in Cause No. 43955, which the Commission approved, with modifications, on March 21, 2012 (“2012 EE Order”). Among other things, the 2012 EE Order approved the use of Rider 66-A to recover the costs of a three-year portfolio of Core and Core Plus EE programs offered through 2013, including associated lost revenues and performance incentives on Core Plus programs.

Ms. Douglas also explained how customers get charged for the EE programs under the EE Rider, stating that according to the ratemaking model approved by the Commission in the 2012 EE Order for the EE Rider, residential customers as a group pay for the cost of residential programs (*i.e.*, all customers in the residential group pay the same rate per kWh) and non-residential customers as a group pay for the cost of non-residential programs (*i.e.*, all customers in the non-residential group pay the same rate per kWh). She explained that Duke Energy Indiana sets rates using estimates of the costs (including lost revenues) and performance incentives based on expected achievement levels (using an expectation of 100% achievement of target), and the amounts billed to customers will be reconciled or “trued-up” to actual costs and performance incentives earned. Ms. Douglas further testified that Duke Energy Indiana used this same ratemaking treatment in its EE Rider filing in Cause No. 43079 DSM-6.

Ms. Douglas testified that, in developing the lost revenue amounts included in the DSM-1 revenue requirements, Duke Energy Indiana refined its methodology by developing lost revenue pricing rates (*i.e.*, rates reflecting fixed costs embedded in base rates) for each rate schedule in the Residential and Non-Residential rate groups that had identified participation in 2012 and then applying the rates to the identified participation by rate schedule. This revised methodology was explained in Duke Energy Indiana’s filing in DSM-1. The Commission approved the lost revenue amounts and rates on January 15, 2014. In addition, the Commission also approved in DSM-1 the terms of a settlement agreement between Duke Energy Indiana and the OUCC which, among other things, provided for the retrospective application of EM&V for purposes of calculating lost revenues and for the recovery of lost revenues for the life of the measure (or until new base electric rates are implemented which reflect the energy reductions achieved).

Ms. Douglas further testified that the enactment of SEA 340 allows qualifying customers with a load of more than one megawatt measured at a demand meter at a single site to opt out of participation. An opted-out customer will not be responsible for paying for current and future EE programs, but will be responsible for any costs (or entitled to any credits) related to programs offered up to the effective date of opt out. This will require the



development of rates for multiple groups of non-residential customers based on their opt out status. The rates will be developed using the same methodology and concepts explained, but the costs and billing determinants used will be specific to each group of customers. Although not a ratemaking change, as was discussed by Ms. Holbrook in her testimony, Duke Energy Indiana was able to obtain participation data by rate schedule for Core programs for both 2012 and 2013, so it has been able to further refine the methodology for calculating lost revenues

Ms. Douglas' testimony also addressed the impact of SB 340 and larger customers who choose to opt out of participation in Duke Energy Indiana's EE programs. She explained that Duke Energy Indiana forecasted 71% of its eligible load will opt out by the end of 2015 for ratemaking purposes. Ms. Douglas explained that customers who opt out are responsible for program costs, including lost revenues, shareholder incentives and related reconciliations that accrued or were incurred before the effective date of the opt out. Her testimony discussed the costs for the calendar year 2015 applicable to those customers who opted out effective April 1, 2014, for customers who opted out effective January 1, 2015, as well as for customers who opted out effective April 1, 2014 and opted back in effective January 1, 2015. Ms. Douglas included exhibits with the applicable rates for each group. She explained that each of these groups would continue to be responsible for persisting lost revenues relevant to the time in which they were not opted out.

Ms. Douglas testified that the resulting revenue requirement for the costs to be recovered via the EE Rider in 2015 is approximately \$29.4 million for Residential customers and a credit amount of \$3.2 million for Non-Residential customers that opt out, for a total of \$26.2 million.

Ms. Douglas also explained a credit that was provided to Residential customers related to the final reconciliation of Rider 66, explained Duke Energy Indiana's plans for reconciliation of the costs included in the Rider, and explained the method used to determine the prices used to develop the amount of actual lost revenues included in this filing.

Ms. Douglas testified that Duke Energy Indiana intends to continue using the deferral accounting treatment discussed and approved in Cause No. 43955 and is requesting the Commission's approval to continue to use deferral accounting for EE expenses and revenues, as appropriate, to minimize the timing difference between cost or revenue recognition on Duke Energy Indiana's books and actual cost recovery.

**5. OUC's Case-in-Chief.** The OUC presented testimony of two witnesses in its case-in-chief: Mr. Wes R. Blakley, Senior Utility Analyst for the OUC; and Mr. Edward T. Rutter, Utility Analyst in the Resource Planning and Communications Division of the OUC.

Mr. Blakley testified that Duke Energy Indiana reconciled its estimated billings in its DSM tracker and made adjustments for customer opt outs pursuant to SEA 340, and that in his opinion the figures used in the Petitioner's calculation of its DSM adjustment factor are supported by the exhibits filed.

Mr. Rutter summarized portions of the SEA 340 relevant to his testimony. He stated that the OUCC supports Duke Energy Indiana's requested one-year program, as the program descriptions and the accompanying budget are in line with DEI's 2014 DSM programs. Mr. Rutter noted, however, that the proposed programs and budget include the EMIS Pilot Program and a corresponding budget, even though the EMIS Pilot Program was terminated by Duke Energy Indiana. Mr. Rutter also testified that the OUCC supports the proposed continuation of Duke Energy Indiana's OSB.

Mr. Rutter testified that shareholder incentives are not necessary in 2015 and further recommended that this issue be reviewed either generically or in individual utility 2016 DSM cases. Mr. Rutter stated that because SEA 340 prohibits the Commission from enforcing the energy-savings targets established in its Phase II Order, the OUCC believes shareholder incentives are not warranted for the 2015 plans.

Mr. Rutter further testified that Duke Energy Indiana had requested approval of a shareholder incentive for 2015 utilizing a shared savings mechanism, which is different from its currently approved mechanism. Mr. Rutter stated that under Duke Energy Indiana's current tiered incentive mechanism, the utility is rewarded with an incentive equal to a corresponding percentage of program costs. With its proposed shared savings mechanism, Duke Energy Indiana would get 15% (pre-tax) of the value of all the energy savings, based on avoided costs less program and EM&V costs. Additionally, he stated that the shared savings proposal would remove the current 60% performance floor, so Duke Energy Indiana would begin earning incentives with the first kWh saved.

Mr. Rutter also testified that the OUCC's opposition to Duke Energy Indiana's proposed 2015 shareholder incentive calculation is based on two key elements: (1) post-SEA 340, incentive floors and caps are critical to properly balance the interest of the utility, the customers, and the overall public interest; and (2) Duke Energy Indiana developed self-imposed 2015 DSM/EE goals and targets, which are not mandated by any Commission or legislative effort. Mr. Rutter stated that comparing the proposed shared savings incentive against the current mechanism with a 12% program cost cap, and utilizing current figures, the shared savings mechanism proposed by Duke Energy Indiana would be 37.3% greater than the current performance incentive in place, assuming an incentive at the 100% achieved level.

Mr. Rutter testified that, if the Commission determines that a shareholder incentive is appropriate for 2015, the OUCC recommends: (1) no shareholder incentive should be allowed for a program unless Duke Energy Indiana achieves 100% of its target for that program; (2) no additional incentive for a program should be permitted for achieving more than 100%; and (3) shareholder incentives should be capped at 10% of the total program costs for those individual programs that achieved a 100% savings goal.

Mr. Rutter also testified that he has concerns with the level of lost revenues Duke Energy Indiana included in the DSM/EE programs for 2015. While the programs pass the TRC Test and the UCT, with the exception of the Residential Neighborhood Program, these

tests exclude lost revenues and shareholder incentives paid by the ratepayers. He testified that only the Smart Saver Non-Residential Prescriptive – HVAC program passes the RIM test, which includes net lost revenues. Mr. Rutter testified that under the RIM test, the majority of the proposed portfolio results in the total cost to ratepayers exceeding the benefit they are receiving. Nonetheless, he stated that the OUCC is not recommending lost revenue denial in 2015, but rather recommending that lost revenue recovery and shareholder incentives be re-examined and either addressed generically or in the individual utilities' 2016 DSM filings.

Mr. Rutter testified that he does not believe the public interest will be served if the Commission approves Duke Energy Indiana's 2015 EE Plan as initially proposed because the shareholder incentive proposed represents an increase in the cost recovery from customers.

**6. CAC's Case-in-Chief.** Mr. Olson testified that Duke Energy Indiana's last base rate case was set in 2004 in Cause Number 42359, which was a decade ago. Since 2004, however, Duke Energy Indiana's overall rates and charges have increased through the use of rate adjustment mechanisms, also known as "trackers." CAC pointed out that according to the Commission's Annual Report of 2010-2011, which is the most recent of that report that is publicly available, over 28% of Duke Energy Indiana's monthly bills comes from trackers, which is the highest of all of the electric investor-owned utilities in the State. Mr. Olson noted that the prolonged use of trackers without the benefit of a general rate case is unfair to ratepayers in that the utility can raise rates when their costs may have increased without looking at where their costs may have decreased. CAC pointed out that Duke Energy Indiana did not provide any evidence that its proposed DSM programs would result in Duke Energy Indiana failing to receive sufficient revenues to recover its authorized costs, nor did it provide any evidence that it experienced a reduction in sales that resulted in Duke Energy Indiana not receiving sufficient revenues to recover its authorized costs because of its previous DSM programs. Mr. Olson also testified that if a utility's sales, after the effects of DSM programs are included, are still sufficient to allow it to recover its authorized costs (for example, when sales are at or above forecasted levels), there is no legitimate rationale for asking ratepayers to pay the utility for "lost" excess revenues that it did not collect due to DSM programs. That would essentially be asking utility ratepayers to guarantee excess revenues to the utility. Mr. Olson recommended that the Commission call in any utility that is recovering revenues in excess of authorized levels to reduce rates to remove the over-recovery. Ratepayers should not be asked to pay extra charges to compensate the utility for "lost revenues" when those revenues would have been excess revenues above authorized levels. Further, he noted that Duke Energy Indiana has not provided any evidence that its proposed DSM programs would cause electricity sales to fall sufficiently that Duke Energy Indiana would fail to recover its authorized costs; and unless Duke Energy Indiana can demonstrate that, ratepayers should not be asked to pay for so-called lost revenues.

Mr. Olson pointed out that although SEA 340 defines "lost revenues" as a "program cost," that does not make Duke Energy Indiana entitled to recovery of lost revenues. SEA 340 clearly states a utility "may recover" program costs, which is not a "shall" provision. Additionally, the Commission's rule at 170 IAC 4-8-6 states that the "[C]ommission may allow the utility to recover the utility's lost revenue." Again, this says "may" and not "shall."

Therefore, Duke Energy Indiana is eligible for lost revenue recovery, but Duke Energy Indiana is not entitled to it. Mr. Olson responded to the request by Duke to receive lost revenues for the entire life of the measure. He stated that this is excessive; and, if recovery of lost revenues is allowed, it should be limited to the first two years of the measure life, except in the case of programs with a one year measure life which should be limited to one year of lost revenues. After that time, a utility can file a new rate case and reset rates if it is not recovering its authorized costs. Mr. Olson recommended the Commission initiate an investigation to examine lost revenue calculations for DSM to ensure that ratepayers statewide participating in investor-owned electric utilities' DSM programs are not being overcharged, which should also evaluate the reasonableness of awarding lost revenues for the life of the measure.

With regard to Duke Energy Indiana's OSB, Mr. Olson testified that the CAC is not a voting member and requests that Duke consider making CAC a voting member and if they do not, CAC requests the Commission require Duke Energy Indiana to do so.

Mr. Olson also presented a recommendation for Duke Energy Indiana's income qualified weatherization program (also known as the Residential Neighborhood Program or Neighborhood Energy Saver). He called attention to the fact that the 2012 and 2013 Evaluation Measurement & Verification Final Reports identified health and safety issues as major obstacles in providing low income ratepayers with the benefit of this weatherization program. Mr. Olson also highlighted the fact that the 2015-2017 Core Programs Request for Proposal ("RFP") properly took this into account and provided a budget for addressing health and safety issues to enable low income weatherization before that RFP was withdrawn. He noted that the funds for health and safety issues in this 2015-2017 Core Programs RFP were limited to an average of \$750 per home. Thus, CAC recommends Duke Energy Indiana address, and not ignore, these important program delivery issues identified in the EM&V Reports and include in its low-income weatherization program budget an average at least \$500 per home to allow for remediation of health and safety issues to enable weatherization similar to Northern Indiana Public Service Company's 2015 DSM Plan. Mr. Olson also testified that ceiling and wall insulation is notably absent from this program even though Duke Energy Indiana previously adopted this measure as part of the 2015-2017 Core Third Party Administrator bid which was reflected in Duke Energy Indiana's Market Assessment and Action Plan for Electric DSM Programs presented in Duke Energy Indiana's case-in-chief in this proceeding. Mr. Olson identified the fact that although Petitioner proposes to have a separate Attic Insulation and Sealing program for residential customers generally, ceiling and wall insulation is not offered as part of the low income program. CAC offered that this program is missing out on incredible savings opportunities for this vulnerable customer segment and requests the Commission order Duke Energy Indiana to include these measures as originally planned.

Finally, Mr. Olson argued that Duke Energy Indiana's 2015 EE Plan is not reflective of the Report of the Commission's Electricity Division Director, Dr. Bradley K. Borum, Regarding 2013 Integrated Resource Plans, April 30, 2014 ("Dr. Borum's 2013 IRP Report"). Dr. Borum found that Duke Energy Indiana hard-wired the impact of EE in its 2013 IRP, thus

failing to meet the IRP requirements. Specifically, Dr. Borum concluded that Duke Energy Indiana's IRP "failed to evaluate EE and supply-side resources in a consistent and comparable manner." Mr. Olson then highlighted the fact that Duke Energy Indiana did not remedy its failing IRP to evaluate EE and supply-side resources in a consistent and comparable manner as Duke did not state in its filing in this proceeding that it made any changes per Dr. Borum's 2013 IRP Report to bring its IRP into compliance with 170 IAC 4-7-8. Based on the fact that Duke Energy Indiana's 2013 IRP failed to meet this requirement for evaluating DSM and that Duke Energy Indiana's 2015 EE Plan does not attempt to fix this faulty analysis, CAC recommends the Commission order Duke Energy Indiana to make adjustments that reflect Dr. Borum's findings on Duke Energy Indiana's 2013 IRP Report with regard to DSM. Mr. Olson stated that the reasonableness of Duke Energy Indiana's treatment of this resource is called into question because Duke Energy Indiana failed the requirements. Thus, in order to remedy this situation, CAC suggests that Duke Energy Indiana provide a supplemental plan or provide its OSB the authority to work on expanded or new program offerings to be delivered starting early in 2015.

Mr. Olson pointed out how the Comments of Mullett & Associates, CAC, Earthjustice and Sierra Club on Duke's 2013 IRP, submitted to the Commission February 7, 2014 ("CAC et. al Comments on Duke's IRP") noted that SEA 340 became law without the Governor's signature since Dr. Borum's 2013 IRP Report was issued. Although this occurred, Mr. Olson explained that utilities' obligations with respect to considering and integrating EE into their resource plans remains, and Duke must adhere to the requirements provided in the Commission's IRP rule. For example, utilities must consider a demand-side resource as a source of new supply in meeting future electric service requirements and provide detailed information concerning utility-sponsored programs identified as potential demand-side resources. This means that utilities must demonstrate that supply-side and demand-side resource alternatives have been evaluated on a consistent and comparable basis. Utilities must also show that their preferred resource portfolios utilize, to the extent practical, all economical load management, demand side management, and EE improvements, among other resources, as sources of new supply, meaning utilities must show that they have evaluated EE and other demand-side resources fairly and that they utilize all cost effective demand-side management resources available in their respective territories. Mr. Olson explained that such a demonstration is critical to utilities fulfilling their fundamental obligation to provide customers with "reasonably adequate service" at "just and reasonable rates" under Indiana Code § 8-1-2-4. Thus, Mr. Olson stated since Duke Energy Indiana did not correct its IRP to adhere to these rules, its 2015 EE portfolio may be inadequate.

**7. Petitioner's Rebuttal Testimony.** Mr. Goldenberg, Ms. Holbrook, and Ms. Douglas filed testimony in rebuttal to the testimony of the OUCC and CAC.

Mr. Goldenberg testified in rebuttal to CAC witness Olson and OUCC witness Rutter. With regard to the CAC's request to be made a voting member of the Duke Energy Oversight Board, Mr. Goldenberg explained that Duke Energy Indiana did not agree with the CAC's request, because the OSB already contains three voting members representing the major customer segments targeted by Duke Energy Indiana's EE programs. In Duke Energy

Indiana's view, adding CAC as a voting member would be duplicative. Mr. Goldenberg also testified that, although most decisions are reached by consensus, there is also a clear majority with three OSB voting members. He also noted that the OSB contains numerous non-voting members, including CAC, all of whom have an opportunity to provide meaningful input. He emphasized that the OSB works well as currently structured, and changing it would provide no additional benefit to customers.

With respect to the CAC's request that Duke Energy Indiana add additional program dollars to address health and safety issues as a part of its Neighborhood Program, Mr. Goldenberg testified that Duke Energy Indiana did not agree with this recommendation for this filing (*i.e.*, for 2015), but that it is not opposed to considering the addition of a weatherization program with a health and safety component as a complement to its Neighborhood Program in a future filing, and will work with the OSB to review options. Mr. Goldenberg explained that installation of efficiency measures under the proposed Neighborhood Program differs from the existing low-income Weatherization Program in that the latter is subject to Department of Energy rules that preclude installation of measures that may not remain intact or have the savings impacts due to issues with the home itself.

With regard to Mr. Olson's argument that the previous Request for Proposals for the previous Core Programs included health and safety dollars for the low-income program, Mr. Goldenberg testified that Duke Energy Indiana's Neighborhood Program is similar, but not identical to, the existing Income Qualified Weatherization Program included in the previous Core Programs. Differences between the two programs include: inclusion of renters and multi-family residences in the Neighborhood Program; and, as mentioned, the ability to install measures in homes with health and safety concerns.

With regard to the CAC's recommendation to add wall and ceiling insulation as part of the Neighborhood Program, Mr. Goldenberg disagreed, noting that the Neighborhood Program already includes an extensive list of measures, and that adding installation of ceiling and wall insulation would require a different skill set by the installation crews, thus increasing the costs of delivering the program. However, Mr. Goldenberg noted that, in the future, Duke Energy Indiana will work with the OSB to consider a complementary program to the Neighborhood Program in a future filing and would be willing to consider the CAC's recommendation at that time.

With regard to Mr. Olson's testimony concerning the Duke Energy Indiana's IRP, Mr. Goldenberg emphasized in his rebuttal testimony that every effort was made to provide the best estimate of EE in the IRP process and to evaluate EE resources on a comparable basis with supply-side resources. In Duke Energy Indiana's view, according to Mr. Goldenberg, the 2015 IRP stakeholder process is the proper forum for any concerns the CAC has regarding how Duke Energy Indiana models EE. In contrast, the 2015 EE Plan is a one-year plan designed to maintain a reasonable and achievable level of EE programming in the face of uncertainty (building codes and standards, opt out for industrial customers, etc.)

With regard to the OUCC's position that the budget dollars for the EMIS Pilot Program should be removed because the program has been terminated, Mr. Goldenberg agreed, noting that since the time of Duke Energy Indiana's petition it made the decision to not move forward with the EMIS Pilot. Mr. Goldenberg noted that all 2015 costs associated with the EMIS Pilot Program have been removed from Duke Energy Indiana's rebuttal testimony and exhibits.

With regard to the OUCC's position that shareholder incentives are not necessary for EE programs, Mr. Goldenberg disagreed, testifying that the basic premise of shareholder incentives for DSM is to put DSM investments on a level playing field with traditional supply-side resources. Further, Mr. Goldenberg disagreed with the OUCC's proposal to limit incentives to 100% achievement of targets, and cap incentives at 10%. He noted that the OUCC's proposal fails to align customer and shareholder interests in maximizing net benefits. Further, Mr. Goldenberg testified that, by proposing to lower the cap on incentives (from the 12% under the current structure to 10%), the OUCC's proposal fails to recognize that EE savings are becoming more difficult to achieve, for reasons such as improvements in building codes and standards, industrial customer opt outs, and the fact that many low cost measures have already been installed. If anything, according to Mr. Goldenberg, this argues for higher incentives, not lower. In summarizing his rebuttal testimony on these issues, Mr. Goldenberg emphasized that Duke Energy Indiana's shared savings incentive proposal truly aligns customers' and Duke Energy Indiana's interests and is focused on maximizing the cost-effectiveness of programs. However, Mr. Goldenberg went on to state that Duke Energy Indiana was willing to compromise on these issues, by including a cap of 120% and a floor of 70%.

With regard to the OUCC's comments regarding programs that fail the RIM test, Mr. Goldenberg testified that it would be unreasonable to impose a blanket rule that all programs must pass the RIM test, as that would severely curtail Duke Energy Indiana's EE portfolio and would result in not pursuing programs that are still providing a positive net benefit to the utility and its customers as a whole. Rather, Duke Energy Indiana advocates reviewing all of the four major cost-effectiveness tests in determining which programs to implement.

Ms. Holbrook testified in response to certain testimony of the OUCC. More specifically, Ms. Holbrook sponsored rebuttal testimony and exhibits that removed the projected 2015 EMIS Program costs (and associated projected EM&V costs and lost revenues) from Duke Energy Indiana's proposal in this proceeding. Ms. Holbrook also commented on calculations provided by OUCC witness Rutter relating to the calculation of incentives and revenue requirement per kWh.

Ms. Douglas testified in response to several issues raised by the testimony of CAC witness Olson. Ms. Douglas' rebuttal testimony also sponsored revised rates, tariffs, and rate impacts, to reflect the removal of costs associated with Duke Energy Indiana's EMIS Pilot Program, which Duke Energy Indiana agreed to remove from its 2015 EE program portfolio, as described in the rebuttal testimony of Mr. Goldenberg.

Regarding the CAC's position that lost revenue recovery should be rejected, Ms. Douglas testified that recovery of lost revenues is intended to reimburse the utility for fixed costs that will otherwise not be recovered because of the reduction in sales associated with its EE offerings. Ms. Douglas testified that for every unit of energy not sold because of a DSM measure, the fixed and variable costs that unit of revenue would have recovered is foregone. While the variable costs foregone as a result of DSM are avoided by the utility, in contrast, fixed costs are not avoided, and the utility continues to incur those fixed costs even in the absence of revenue recovery via sales of energy. Ms. Douglas emphasized that while cost-effective DSM programs can be a valuable resource, they cannot eliminate or reverse the cost of past capital investments made to serve customers. She testified that if the Commission approves Duke Energy Indiana's proposed 2015 EE programs, Duke Energy Indiana will in fact incur lost revenues as a result. In addition, she noted that Duke Energy Indiana will incur lost revenues in 2015 associated with previous (2012 through 2014) EE programs. She also testified that a rational business would not encourage activity that would reduce revenues necessary to cover such fixed costs. Ms. Douglas concluded that recovery of lost revenues is an important mechanism to reducing the disincentive for utilities to promote DSM programs, by providing for recovery of fixed costs.

Ms. Douglas noted that the Commission had approved lost revenue recovery for Duke Energy Indiana and other Indiana utilities in the past, that the Commission's DSM rules allow for the recovery of lost revenues (citing 170 IAC 4-8-3 and 4-8-6), and that newly-enacted SEA 340 also provides that the Commission may approve lost revenue recovery. She also noted that a number of other states (approximately 32) provide for some form of fixed cost recovery, via either lost revenue recovery mechanisms or decoupling mechanisms.

Ms. Douglas countered Mr. Olson's concern about "overearning" by pointing out that Indiana law contains an "earnings test" that is administered quarterly in conjunction with the fuel cost adjustment process, and that Duke Energy Indiana's earnings are below its authorized net operating income. She concluded that there is no reason to expect that recovery of lost revenues would result in Duke Energy Indiana earning more than its authorized return, and that there is no reason to deny lost revenue recovery due to an unsubstantiated concern that Duke Energy Indiana will earn more than its authorized return if lost revenue recovery is approved.

Ms. Douglas disagreed with Mr. Olson's opinion that the award of lost revenues for the entire life of the measure is excessive. She noted that Duke Energy Indiana will incur lost revenues intended to cover fixed costs for the entire life of the measure (or until new base rates are approved that reflect the lower level of sales that will result from the DSM measures). She testified that arbitrarily limiting lost revenue recovery to two years, as proposed by the CAC, would deny Duke Energy Indiana the opportunity to fully recover its fixed costs and earn the return it would otherwise have, absent the EE program. Ms. Douglas also testified that filing a new base rate case in order to recover lost revenues beyond the first two years of measure lives, as suggested by CAC, would be unreasonable; rate cases are very resource intensive for all stakeholders, and Indiana statutes prevent filing rate cases more



often than every 15 months. She stated that even with a base rate case every 15 months, there would be some level of unrecovered lost revenues incurred by Duke Energy Indiana.

Finally, Ms. Douglas disagreed with the CAC's recommendation that the Commission initiate a statewide investigation into lost revenue calculations and noted that there is sufficient opportunity to adequately review such calculations in each utility's individual EE filings.

**8. Settlement Evidence.** As mentioned above, prior to the evidentiary hearing held in this proceeding, Petitioner and the OUCC (the "Settling Parties") entered into a Settlement Agreement. Duke Energy Indiana witnesses Goldenberg, Holbrook, and Douglas testified in support of the Settlement Agreement. OUCC witness Rutter also testified in support of the Settlement Agreement.

**A. Duke Energy Indiana's Testimony.** Mr. Goldenberg sponsored the Settlement Agreement and provided an overview of the substantive terms of the Agreement. He explained that the Settlement Agreement addressed three areas: (1) the shareholder incentive calculation; (2) removal of the EMIS Pilot Program from the program portfolio; and (3) collaboration on strategic energy management programs and time-of-use rate issues.

As to shareholder incentives, Mr. Goldenberg testified that Duke Energy Indiana had agreed in the Settlement Agreement to a tiered performance incentive mechanism similar, but not identical to, its existing incentive mechanism. He stated that the parties agreed to a cap of 110% and a floor of 75% for purposes of earning an incentive, meaning that no additional incentive will be earned for performance above 110%, and no incentive will be earned for performance below 75%. Mr. Goldenberg explained and compared the Settlement Agreement performance tiers versus the existing incentive performance tiers, as follows:

<u>Achievement Level (kWh)</u>	<u>Incentive Level</u>
110%	12.13%
100% to 109.99%	12.00%
90% to 99.99%	10.00%
80% to 89.99%	8.00%
75% to 79.99%	6.00%
0% to 74.99%	0

The Settlement Agreement also indicates that the incentives will be calculated on a program, rather than a portfolio basis; that the incentive calculation will utilize both the performance attainment level and the associated incentive tier percentage (meaning shareholder incentives will be calculated by multiplying actual total costs at the program level by the achievement level for that program, and then multiplied by the corresponding incentive level); and that incentive level percentage applied for any program will be capped at a maximum of 12.13%. Duke Energy Indiana witness Douglas confirmed these aspects of the Settlement Agreement at the evidentiary hearing, in response to cross-examination questions from the Industrial Group.

Mr. Goldenberg testified that the Settling Parties agreed to the removal of the EMIS Pilot Program and its accompanying program costs. The Settling Parties also agreed to work in collaboration to research ISO 50001 as well as other strategic energy management programs, as well as time-of-use rates.

Mr. Goldenberg testified that the Settlement Agreement contains no changes to the Duke Energy Indiana's proposals regarding either the OSB or lost revenue recovery. He concluded his testimony by stating that the Settlement Agreement was in the public interest because it allows Duke Energy Indiana to offer a portfolio of programs for all customer segments, while also allowing for the recovery of program costs, including lost revenues, and a shareholder incentive.

Ms. Holbrook sponsored an updated exhibit and workpapers reflecting the impact of the Settlement Agreement – specifically, removing the inputs into revenue requirements, including lost revenues, for the EMIS Pilot Program, and reflecting the agreed upon incentive mechanism. Ms. Holbrook stated that the effect of removing the EMIS Pilot Program is to decrease the total input into revenue requirements of the plan by \$149,335 in total. Additionally, Ms. Holbrook's exhibits reflected the agreed upon incentive of 12% return on total eligible costs, assuming performance at 100% of target for each of the programs (with the exception of the Residential Neighborhood Program which is eligible for cost recovery and lost revenue only).

Ms. Douglas sponsored updated exhibits to conform to the terms of the Settlement Agreement. Her exhibits reflect the use of the agreed upon incentive methodology, reflecting an overall increase of \$170,340 for residential programs and a decrease of \$1,095,986 for non-residential programs, for a net decrease of \$925,646 compared to what Duke Energy Indiana filed in its case-in-chief. Ms. Douglas stated that there were no changes necessary for the removal of the EMIS Pilot Program as it had been removed in rebuttal testimony. Ms. Douglas testified that, with this revision, all customer groups will see a decrease from the rates they are currently being charged. With this revision, the typical residential customer using 1000 kWh will see a monthly bill reduction of \$0.34.

**B. OUC's Testimony.** Mr. Rutter provided an overview of the Settlement Agreement. He stated that the OSB should not change because it is working well and serves the public interest. He also stated that there are no changes to the lost revenue calculation. Mr. Rutter reiterated that Duke Energy Indiana agreed to remove the EMIS Pilot Program from its portfolio.

As to the incentive calculation, Mr. Rutter summarized the changes to the current calculation. The first change is that incentives will now be calculated at the program level as opposed to the portfolio level. As agreed to in the settlement agreement in DSM-1, the calculation will use prospective energy savings estimates and retrospective EM&V participation numbers. Duke Energy Indiana will provide energy savings and program participation calculations in supporting documentation in its reconciliation filings.

Mr. Rutter testified that Duke Energy Indiana will not earn a shareholder incentive on a program unless the program passes both the TRC and UCT with a score above 1.0. He stated that shareholder incentives will be calculated on actual total program costs, not to exceed the total budget or changes to the total budget for each program approved by the OSB, but in no event will the shareholder incentive exceed 12.13% of the total program level costs approved in Revised 2015 Plan budget.

Mr. Rutter testified that shareholder incentives will be calculated by multiplying actual total costs at the program level by the achievement level for that program, and then multiplied by the corresponding incentive level. He stated that Duke Energy Indiana will not earn additional incentives for a program that performs above 110% of its projected energy savings. Likewise, DEI will earn no incentives for programs that achieve less than 75% of projected energy savings.

Mr. Rutter concluded his testimony by stating that the public interest will be served by approval of the Settlement Agreement. He stated that the proposed 2015 EE programs are designed to provide cost effective benefits to both Duke Energy Indiana and its customers. The incentives agreed to in the Settlement Agreement are less than that initially proposed in this case and less than the current mechanism. Furthermore, Mr. Rutter testified that the Settlement Agreement reduces the top incentive level (12.13%, down from 15%), reduces the incentive earning potential (capped at 110% of estimated achievement, which was previously uncapped), and increases the incentive earning floor. He stated that calculating shareholder incentives at the program level prevents over-performing programs from increasing incentives paid to under-performers based on a portfolio-level calculation. Mr. Rutter also noted that the Settlement Agreement also produces commitments from Duke Energy Indiana to work with the OSB to explore energy-management system programs (such as ISO 50001) and time-of-use rates. He recommended that the Commission approve the Settlement Agreement.

**9. Commission Discussion and Findings.** Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition of Ind., Inc. v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coalition*, 664 N.E.2d at 406.

Furthermore, any Commission decision, ruling, or order – including the approval of a settlement – must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition of Ind., Inc. v. Public Service Co. of Ind., Inc.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission’s own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before we can approve the Settlement, we must determine whether the

evidence in this Cause sufficiently supports the conclusions that the Settlement is reasonable, just, and consistent with the purpose of Indiana Code ch. 8-1-2, and that such agreement serves the public interest.

**A. Duke Energy Indiana's Proposed EE Portfolio and EM&V Processes.** Duke Energy Indiana requests approval for a one-year term of January 1, 2015 through December 31, 2015 for its proposed 2015 EE portfolio. Duke Energy Indiana also proposed budgets associated with each component of its 2015 EE portfolio. Duke Energy Indiana's proposed 2015 EE portfolio contains eleven programs and offers programs for each customer class. Moreover, Duke Energy Indiana's EE Plan is projected to be cost-effective based on standard, well-established benefit-cost analyses. Ms. Ham testified that, aside from the Residential Neighborhood Program, all of the residential and non-residential programs have a UCT and TRC test score greater than one (1.0), indicating cost-effectiveness. And even the Neighborhood Program, a program offered to income-qualified customers and historically not subject to cost-effectiveness requirements, has a TRC test score greater than one (1.0).

As evidenced by testimony and the Settlement Agreement, the OUCC supports the proposed 2015 EE portfolio. However, the CAC recommended changes to the proposed Residential Neighborhood Program.

First, CAC recommended that Duke Energy Indiana include in its Residential Neighborhood Program a budget of \$500 per home to allow for remediation of health and safety issues, arguing that the previous Request for Proposals had included funds for such remediation. Duke Energy Indiana opposed this recommendations with respect to its 2015 EE portfolio, pointing out that the Neighborhood Program differed from the previous income-qualified Core Program in several respects, but indicated a willingness to consider the addition of a weatherization program with a health and safety component as a complement to its Neighborhood Program in a future filing.

CAC also recommended that the list of measures for the Residential Neighborhood Program be modified to include ceiling and wall insulation. Duke Energy Indiana disagreed, noting that the Neighborhood Program already includes an extensive list of measures, and that adding installation of ceiling and wall insulation would require a different skill set by the installation crews, thus increasing the costs of delivering the program. Here too, however, Duke Energy Indiana indicated a willingness to consider a complementary program addressing these measures in a future filing.

CAC also argued that Duke Energy Indiana did not evaluate EE and supply-side resources in a consistent and comparable manner for its 2015 EE Plan. In order to remedy this, CAC suggested that Duke provide a supplemental plan or provide its OSB the authority to work on expanded or new program offerings to be delivered starting early in 2015. Duke Energy Indiana opposed this recommendation. Duke Energy Indiana noted that its proposed 2015 EE portfolio was based upon a MPS, the previous Core and Core Plus Programs, and experience gained in other Duke Energy jurisdictions, and emphasized that every effort was

made to provide the best estimate of EE in the IRP process and to evaluate EE resources on a comparable basis with supply-side resources. Additionally, Duke Energy Indiana indicated that the proper forum for CAC's complaint was Duke Energy Indiana's 2015 IRP stakeholder process. In contrast, the proposed 2015 EE portfolio is a one-year plan designed to maintain a reasonable level of EE in the midst of legislative and regulatory uncertainty.

Regarding the CAC's recommendation for the Residential Neighborhood program, we find that Duke Energy Indiana's program strikes an appropriate balance between cost-effectiveness and assistance for low-income customers. We have not been presented with sufficient evidence justifying a requirement that ratepayers subsidize these improvements for other ratepayers. However, we encourage Duke Energy Indiana and its OSB to continue exploration of potential options to address these issues.

With regard to the CAC's IRP-related recommendation, we agree with Duke Energy Indiana that the preferred forum for this issue is the utility's IRP stakeholder process. While we continue to believe that utilities should strive to evaluate EE and supply-side resources in a consistent and comparable manner, we also recognize that there are differences between EE and supply-side resources that may require utilities to model EE and supply-side resources in slightly different ways for IRP purposes. Notably, Duke Energy Indiana's proposed 2015 EE portfolio is premised upon a market potential study and is similar in many respects to its current portfolio of Core and Core Plus Programs, which we have previously approved. Additionally, the proposed 2015 EE portfolio is intended for one year, while the CAC's argument goes to a long-term IRP planning issue. For all of these reasons, we decline the CAC's recommendation that we order any changes to the proposed 2015 EE portfolio as a result of its IRP concerns.

Accordingly, based on the evidence presented, the Commission finds that Duke Energy Indiana's proposed 2015 EE portfolio (exclusive of the EMIS Pilot Program), is cost-effective, reasonable, and should be approved for 2015.

Consistent with the provisions of 170 IAC 4-8-1, we also find that Duke Energy Indiana's proposed EM&V plans should be approved. The evidence indicates that Petitioner's EM&V plans will meet or exceed our EM&V requirements, and no party to this proceeding opposed the Petitioner's EM&V proposals.

Further, in accordance with 170 IAC 4-8-4 and to ensure that we receive timely and sufficient information, we find that Petitioner shall file annually by July 1 under this Cause its independent EM&V report concerning its 2015 EE programs. The EM&V report must include the completed cost/benefit analysis that identifies the total costs, total benefits, and associated benefit cost ratios for the utility cost test, total resource cost test, ratepayer impact measure test, and the participant cost test. It shall also identify the discount rate used in the cost/benefit calculations.

**B. Duke Energy Indiana's Oversight Board.** Duke Energy Indiana requests approval to continue to utilize its existing OSB to assist in the administration of the

2015 EE portfolio. The Commission has previously approved OSBs to oversee and monitor EE programs for utilities. *See, e.g., Indiana Michigan Power Co.*, Cause No. 43959, 2011 Ind. PUC LEXIS, (IURC Apr. 27, 2011); *Southern Indiana Gas and Elec. Co.*, Cause No. 43427, 2009) Ind. PUC LEXIS 495, (IURC Dec. 16, 2009). No party to this proceeding opposed the continuation of the OSB to assist with Duke Energy Indiana's 2015 EE programs. However, the CAC requested that the Commission require that Duke Energy Indiana include CAC as a voting member on the OSB. Duke Energy Indiana expressed concern, noting that the current composition of the OSB contains representatives of all participating customer sectors, that the addition of the CAC would be duplicative, that the current membership of three allows for a majority vote, that non-voting members have meaningful input, and that the current OSB works well. The OUCC testified that the OSB works well as currently constituted.

Based on the evidence presented, we do not believe it is necessary at this time to require Duke Energy Indiana to include the CAC as a voting member on the OSB. Although an OSB is not a regulatory requirement for approval of DSM plans, the existence of an OSB does weigh on our consideration of the ongoing management inherent in the proposed offerings and the flexibility afforded to the utility. Further, we note that the OUCC, the statutory representative of all ratepayers, is a voting member of the OSB. Additionally, Duke Energy Indiana has indicated that it seeks input from both voting and non-voting members. Furthermore, the evidence indicates that the OSB as currently composed is working well. Given the cooperative manner in which Duke Energy Indiana has worked with the CAC in the past and the lack of evidence to the contrary, we fully expect Duke Energy Indiana to continue its collaborative relationship with the CAC on DSM issues that may arise during implementation of the 2015-2016 EE Plan. Although we are approving the continuation of Duke Energy Indiana's current OSB at this time, we encourage Duke Energy Indiana to consider alternative OSB structures in the future that may allow for additional voting members, such as the CAC.

**C. Program Costs/Budget.** With respect to its 2015 EE portfolio, Duke Energy Indiana proposes a projected budget of \$11,920,569 for program costs (including both direct and indirect program costs) for residential programs. Duke Energy Indiana proposes a projected budget of \$8,457,680 for program costs (both direct and indirect) for non-residential programs. Duke Energy Indiana proposes to recover its 2015 EE portfolio costs on a projected/reconciled basis, via its Standard Contract Rider No. 66-A. Specific program costs will be allocated to residential and non-residential customer groups based upon the customer classes that are eligible to participate in such programs. Should actual costs deviate from Duke Energy Indiana's projections, Duke Energy Indiana will utilize its annual Rider 66-A mechanism to reconcile any differences. Having reviewed the evidence of record, the Commission finds that the proposed program budgets and the proposed recovery and allocation methodologies are reasonable, are consistent with the requirements of 170 IAC 4-8-5, and should be approved. Accordingly, Duke Energy Indiana is authorized to recover program costs associated with the programs in its approved 2015 EE portfolio, up to the approved budget amounts, and to recover EM&V costs for these programs.

**D. Performance Incentives.** The Settlement Agreement proposes a tiered performance incentive mechanism, similar to the performance incentive mechanism currently in effect for Duke Energy Indiana. No party opposed the incentive mechanism included in the Settlement Agreement. Both the Commission's rules and Indiana Code § 8-1-8.5-9(d) (SEA 340) make clear that the Commission may authorize shareholder incentives for utility-sponsored DSM programs. More specifically, our rules state that the Commission can "eliminate or offset regulatory or financial bias against DSM, or in favor of supply-side resources. . . ." See 170 IAC 4-8-3. Our rules also provide that "A utility is allowed an opportunity for earnings from prudent investments in both supply-side and demand-side resources. When appropriate, the commission may provide the utility with a shareholder incentive to encourage participation in and promotion of a demand-side management program." See 170 IAC 4-8-7. And SEA 340 specifically includes "incentives approved by the commission" in its definition of "energy efficiency program costs" for which cost recovery is available. See Indiana Code § 8-1-8.5-9(d). Additionally the evidence presented in support of the Settlement Agreement demonstrates that the incentive provision included therein is similar to the existing tiered performance incentive approved for Duke Energy Indiana, with additional constraints such as a higher floor, a lower ceiling, an overall cap on incentive earnings, and a more constrained overall incentive opportunity for Duke Energy Indiana. For all the foregoing reasons, we find the Settlement Agreement's proposed tiered performance incentive mechanism is reasonable and should be approved as proposed.

**E. Lost Revenue Recovery.** Duke Energy Indiana proposes recovery of lost revenues via its Standard Contract Rider No. 66-A. The OUCC supported Petitioner's recovery of lost revenues in this case, consistent with the terms of Duke Energy Indiana's existing lost revenue recovery and the Settlement Agreement.

The CAC opposed recovery of lost revenues, arguing that Duke Energy Indiana did not provide any evidence that its proposed DSM programs would result in it failing to receive sufficient revenues to recover its authorized costs, nor did it provide any evidence that it experienced a reduction in sales that resulted in it not receiving sufficient revenues to recover its authorized costs because of its previous DSM programs. Alternatively, CAC argued that if the Commission authorized lost revenue recovery, it should allow such recovery only for two years, rather than for the full measure life of the applicable DSM measures. In response, Duke Energy Indiana provided evidence that it would incur lost revenues as a result of implementation of its 2015 EE portfolio, and that those lost revenues would continue to be incurred throughout the life of the measures, unless a base rate case occurred prior to such time.

The record does not support the CAC's proposed elimination of lost revenue recovery. While we agree with the CAC that a utility's ability to recover lost revenues is not automatic and may be periodically reviewed, we have also previously explained that the recovery of lost revenues is a tool to assist in removing the disincentive a utility may have in promoting DSM

in its service territory.<sup>1</sup> See 170 IAC 4-8-6(c); *Southern Ind. Gas & Elec. Co.*, Cause No. 43938 at 40-41 (IURC August 31, 2012). We also explained that because the purpose of lost revenue recovery is to return the utility to the position it would have been in absent implementation of DSM, simply eliminating lost revenue recovery when sales are higher than the levels used to develop a utility's current base rates would be contrary to this purpose. *Id.* Further, Duke Energy Indiana's recovery of lost revenues is subject to reconciliation based on independent EM&V results and such revenues are included in the FAC earnings test.

The CAC also suggested that the Commission open an investigation to examine lost revenue calculations to ensure that ratepayers are not being overcharged and to evaluate the reasonableness of awarding lost revenues for the life of the measure. We decline to do so. The CAC's testimony on this point was speculative in nature, did not provide a basis for limiting lost revenues to the first two years of the DSM measure life, and failed to present a compelling need to evaluate these issues on a generic basis. No evidence was presented to demonstrate that Duke Energy Indiana (or any other utility) has overcharged its customers for DSM programs. We therefore decline to open an investigation into Duke Energy Indiana's or any other utilities' lost revenue calculations at this time, and decline to make Duke Energy Indiana's recovery of lost revenues subject to refund pending such an investigation.

Accordingly, the Commission finds that the Duke Energy Indiana's proposal for lost revenue recovery, as summarized in the Settlement Agreement, is consistent with applicable Indiana statutes and our DSM rules, is reasonable, and should be approved.

**F. Continuation of Deferred Accounting, Approval of Reconciliation and Rider 66-A Rates and Associated Rider 66-A Changes.** Duke Energy Indiana requested approval of continued authority to use deferred accounting on an ongoing basis until such costs are reflected in retail rates, to ensure proper matching of expenses with the rate recovery of such expenses through Rider EE. Duke Energy Indiana also proposed rate adjustments via Rider 66-A necessary to reconcile actual 2013 DSM costs with actual revenues collected from customers for such costs, and to adjust the reconciliation of 2012 that was included in DSM1 to reflect the results of EM&V in accordance with the Settlement Agreement approved in DSM1. Additionally, Duke Energy Indiana proposed tariff changes necessary to effectuate approval of the proposed 2015 EE portfolio, reconciliations, and associated cost recovery. No party to this proceeding opposed Duke Energy Indiana's proposals in this regard, and Duke Energy Indiana provided evidence in support of all such proposals.

The Commission accordingly finds that Duke Energy Indiana should be authorized to continue to use deferred accounting for EE expenses and revenues to minimize the timing difference between cost and revenue recognition and actual cost recovery its DSM costs.

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<sup>1</sup> SEA 340 provides that a utility "may recover energy efficiency programs cost in the same manner as energy efficiency programs costs were recoverable under" the Phase II Order. The Phase II Order (at p. 49) recognized that the Commission's DSM rules addressed cost recovery, including lost revenues and incentives, and declined to make any additional findings.



Based on the evidence presented, the Commission also finds Petitioner's calculations of its billing factors in Rider 66-A are accurate and appropriate, that Duke Energy Indiana's proposed reconciliations should be approved, and that Duke Energy Indiana's proposed tariff changes should be approved.

**G. Small Business Impact.** The Commission must consider, in accordance with 170 IAC 4-8-8, whether a plan such as Duke Energy Indiana's proposed 2015 EE portfolio may give an unfair competitive advantage to the utility in the provision of EE programs. We note that Duke Energy Indiana's proposed EE portfolio relies in large part on the use of trade allies and small businesses to support outreach and delivery of the programs. Therefore, we conclude that Duke Energy Indiana's plan will not provide an unfair competitive advantage as contemplated by 170 IAC 4-8-8.

**H. Conclusion.** Based on the evidence presented, we find that the Duke Energy Indiana's proposal as modified by the Settlement Agreement submitted in this proceeding is just, reasonable and in the public interest, and should be approved in its entirety. The proposed cost recovery, allocation methodology, and ratemaking and accounting treatment are consistent with applicable statutes, rules, and precedents. Additionally, the proposed Rider 66-A billing factors, as presented in the Settlement Testimony of Ms. Douglas reflecting the applicable terms of the Settlement Agreement should be implemented.

The Settling Parties agree that the Settlement Agreement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. Consequently, with regard to future citation of the Settlement Agreement, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, 1997 Ind. PUC LEXIS 459 at \*19-22 (IURC March 19, 1997).

**10. Confidential Information.** Duke Energy Indiana filed a Motion for Protection of Confidential and Proprietary Information, which was supported by affidavits, showing workpapers filed in this proceeding were trade secret information within the scope of Indiana Code § 5-14-3-4(a)(4) and Indiana Code § 24-2-3-2. The Presiding Officers made rulings from the bench finding such information confidential on a preliminary basis after which such information was entered into evidence under seal. Accordingly, we find that all such information should continue to be held confidential pursuant to Indiana Code § 5-14-3-4 and Indiana Code § 24-2-3-2.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION THAT:**

1. The Settlement Agreement between Duke Energy Indiana and the OUCC is approved.
2. Duke Energy Indiana's proposed 2015 EE portfolio of programs, as modified by the Settlement Agreement, including the proposed budgets, is approved as set forth herein.

3. Duke Energy Indiana's reconciliation of 2013 Core and Core Plus program costs, including lost revenues, and applicable incentive amounts, and its further adjustment of the 2012 reconciliation to reflect the results of EM&V, is approved. Duke Energy Indiana is ordered to perform further reconciliation in future annual filings, as applicable, in accordance with the terms of this Order.

4. All necessary accounting authority to effectuate this Order, including deferral of costs incurred until such time they are reflected in retail rates, is hereby granted.

5. Duke Energy Indiana's request for timely recovery of all costs, including program costs, lost revenues and performance incentives associated with the 2015 EE portfolio of programs, through Duke Energy Indiana's existing Rider 66-A is approved, consistent with the terms of the Settlement Agreement and our Order herein.

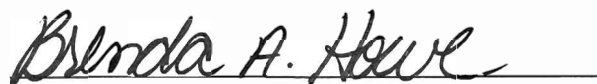
6. Duke Energy Indiana's Rider 66-A shall be and hereby is approved, consistent with our determinations herein.

7. This Order shall be effective on and after the date of its approval.

**STEPHAN, HUSTON, AND ZIEGNER CONCUR; MAYS-MEDLEY ABSENT;  
WEBER NOT PARTICIPATING:**

APPROVED DEC 30 2014

I hereby certify that the above is a true  
and correct copy of the Order as approved.



Brenda A. Howe  
Secretary to the Commission

### STIPULATION AND AGREEMENT

This Stipulation and Agreement ("Agreement"), dated as of the 29<sup>th</sup> day of September, 2014, is made and entered into by and between the duly authorized representatives of Duke Energy Indiana, Inc. ("Duke Energy Indiana") and the Indiana Office of the Utility Consumer Counselor ("OUCC") (individually referred to as "Party" and collectively referred to as "Settling Parties").

1.     **Scope of Agreement.** This Agreement, comprehensively resolves all issues between the Settling Parties associated with Indiana Utility Regulatory Commission ("IURC" or "Commission") Cause No. 43955 DSM-2 wherein Duke Energy Indiana seeks approval of a one-year portfolio of energy efficiency programs including program cost recovery, lost revenues, and shareholder incentives, pursuant to 170 IAC 4-8-1 *et seq.*

2.     **Presentation of the Agreement.**

a.     The Settling Parties will jointly move the Commission for approval of the Agreement in its entirety.

b.     If the Order of the Commission in this proceeding modifies or conditions this Agreement, only the Settling Parties to this Agreement may decide to accept or reject such modification or condition. If the Settling Parties do not unanimously accept the modified Agreement, this Settlement Agreement shall become void in its entirety and have no effect.

3.     **Effect and Use of Agreement.**

a.     The terms of this Agreement, including the substantive terms in Section 4 of this document, represent a fair, just and reasonable resolution by negotiation and compromise. This Agreement, including the substantive terms in Section 4, is solely the

result of compromise in the settlement process. Nothing contained herein is to be construed or deemed an admission, liability or wrongdoing on the part of the Settling Parties. Each of the Settling Parties hereto has entered into this Agreement solely to avoid further disputes and litigation with the attendant inconvenience and expenses.

b. The evidence presented by the Settling Parties in this Cause constitutes substantial evidence sufficient to this Agreement and provides an adequate evidentiary basis upon which the Commission can make findings of fact and conclusions of law necessary for the approval of this Agreement, as filed.

c. The undersigned represent and agree that they are fully authorized to execute this Agreement on behalf of their designated clients who will be bound thereby.

d. The Settling Parties shall not appeal the agreed final Order or any subsequent Commission's order to the extent such order is specifically implementing, without modification, the provisions of the Agreement and the Settling Parties shall not support any appeal of any such order by a person not a party to this Agreement.

e. The provisions of this Agreement shall be enforceable by any party at the Commission or any court of competent jurisdiction, whichever is applicable.

f. The communications and discussions during the negotiations and conferences that produced this Agreement have been conducted on the explicit understanding that they are or relate to offers of settlement and shall therefore be privileged.

4. Substantive Terms.

a. Oversight Board. There are no changes to Duke Energy Indiana's Oversight Board.

b. **Programs** – Duke Energy Indiana agrees to remove the EMIS program and associated costs from its proposed portfolio.

c. **Lost Revenues.** There are no changes to the treatment and calculation of lost revenues that was approved in Cause No. 43955 DSM1:

i. Duke agrees to reconcile estimated lost revenues with actual lost revenue as verified by EM&V, applied retrospectively to the previous reconciled period for each program.

a) Core measures will use January 1, 2012 as the starting date for the first reconciled period.

b) Core Plus measures will use April 1, 2012 as the starting date for the first reconciled period.

ii. OUCC agrees to recovery of lost revenues for the life of the measure for all measures installed.

a) Core measures lost revenue calculations will use January 1, 2012 as the starting date.

b) Core Plus measures lost revenue calculations will use April 1, 2012 as the starting date.

iii. All lost revenues will continue to be recovered for the specified measure or until the next Duke Energy Indiana general retail electric rate case regardless of any modification to lost revenue recovery in any future filings unless changed by Commission

d. **Shareholder incentives:**

- i. The performance incentive mechanism currently in place shall remain in place for 2015 with the stipulations outlined herein.
  - a) The performance incentive mechanism shall be calculated at the program level as set forth in Section d ii below.
    - (i) Calculated using prospective energy savings estimates and retrospective EM&V reconciled participation numbers.
    - (ii) Calculation of energy savings and participation will be provided in supporting documentation in reconciliation filings.
- ii. The Company cannot earn an incentive unless the programs pass the Total Resource Cost Test (“TRC”) and Utility Cost Test (“UCT”) cost-effectiveness tests. For purposes of calculating the performance incentive, the costs eligible for the incentive are defined as the actual total costs not to exceed the total budget or changes to the total budget for each program approved by the Oversight Board. The performance incentive levels shall be modified as follows, except that, in no case, shall the actual performance incentive the Company is allowed to earn exceed 12.13% of the total costs at the program level approved in the Revised 2015 Plan budget.

Achievement Level (kWh)	Incentive Level
110%	12.13%
100 - 109.99%	12.00%
90 - 99.99%	10.00%

80 - 89.99%	8.00%
75 - 79.99%	6.00%
0 - 74.99%	0%

The incentive shall be calculated by multiplying actual total costs for each individual program by the achievement level for that program, and then multiplied by the corresponding incentive level.

a) Duke Energy Indiana shall earn no additional incentive for a program's performance that exceeds 110% of its projected energy savings and will earn no incentive for a program's performance that is below 75% of its projected energy savings.

e. Other terms.

i. The Parties agree that the Company shall work with the Duke Energy OSB to assess the International Organization for Standardization's ("ISO") 50001 energy management system, the Department of Energy's Better Buildings Initiative or other similar strategic energy management programs for commercial and industrial ("C&I") customers.

ii. The Company also agrees to meet to discuss Time-of-Use Rate ("TOU") issues.

## 5. Procedural Terms.

a. The Settling Parties agree to jointly request Commission acceptance and approval of this Agreement in its entirety, without any change or condition that is unacceptable to either Settling Party to this Agreement.

b. Duke Energy Indiana may introduce into evidence in this Cause testimony and exhibits in support of the terms of this Agreement, after providing the OUCC a reasonable opportunity to review and comment on Duke Energy Indiana's draft settlement testimony and exhibits.

c. OUCC may offer prefiled testimony or exhibits into evidence in this Cause in support of the Agreement, after providing Duke Energy Indiana a reasonable opportunity to review and comment on the OUCC's draft testimony and exhibits before they are filed. OUCC and Duke Energy Indiana agree to waive cross-examination of each other's witnesses in this proceeding.


d. Duke Energy Indiana and the OUCC shall work together to finalize and file an agreed upon proposed order with the Commission as soon as possible, consistent with the terms of this Agreement. The Settling Parties will support an agreed proposed order and will request that the Commission issue an order promptly accepting and approving the same in accordance with its terms.


e. The Settling Parties either will support or will not oppose on rehearing, reconsideration and/or appeal a Commission Order accepting and approving this Agreement in accordance with its terms, including the submission of any applicable briefs and pleadings. The Settling Parties will also either support or not oppose the relief outlined in this Agreement in any other forum or tribunal.

f. Duke Energy Indiana and the OUCC agree to refrain from issuing any news releases concerning this Agreement until each has consulted with the other, provided that Duke Energy Indiana shall be able to issue such releases as necessary to comply with disclosure requirements.



ACCEPTED AND AGREED TO THIS 29th DAY OF SEPTEMBER 2014:

  
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Melanie D. Price, Associate General Counsel  
Attorney for Duke Energy Indiana, Inc.

  
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Jeffrey M. Reed, Deputy Consumer Counselor  
Indiana Office of Utility Consumer Counselor