STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF DUKE ENERGY INDIANA, LLC FOR APPROVAL OF A SOLAR SERVICES PROGRAM TARIFF, RIDER NO. 26, AND APPROVAL OF ALTERNATIVE REGULATORY PLAN ("ARP") AND DECLINATION OF JURISDICTION TO THE EXTENT REQUIRED UNDER IND. CODE 8-1-2.5-1, ET. SEQ.	)	**CAUSE NO. 45145**

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR'S RESPONSE TO PETITIONER'S PROPOSED ORDER

Comes now, the Indiana Office of Consumer Counselor, by counsel, hereby submits its Response to Petitioner's Proposed Order to the Commission for its approval.

Respectfully submitted,

Karol H. Krohn
Attorney No. 5566-82
Deputy Consumer Counselor

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PROPOSED ORDER

Presiding Officers:
David Ober, Commissioner
Brad Pope, Administrative Law Judge

On September 24, 2018, Duke Energy Indiana, LLC (referred to herein as "Duke Energy Indiana", "DEI", the "Company" or the "Petitioner") filed its Petition requesting the Indiana Utility Regulatory Commission ("Commission") approve a voluntary solar services program, Standard Contract Rider No. 26 ("Solar Services Program" or "Rider 26"), as an Alternative Regulatory Plan ("ARP") with declination of Commission jurisdiction as requested under applicable Indiana law. On September 25, 2018, Petitioner filed its case-in-chief in this Cause, consisting of the direct testimony and exhibits of Andrew S. Ritch, Wholesale Renewables Manager for Duke Energy Business Services LLC. On January 9, 2019, the Indiana Office of Utility Consumer Counselor ("OUCC") submitted the testimony of Lauren M. Aguilar, Utility Analyst, John E. Haselden, Senior Utility Analyst, and Kaleb G. Lantrip, Utility Analyst, all in the OUCC's Electric Division. Walmart, Inc. ("Walmart") submitted the testimony of Gregory W. Tillman on January 9, 2019, and the Citizens Action Coalition of Indiana, Inc. ("CAC") submitted the testimony of Kerwin Olson on January 14, 2019. Duke Energy Indiana filed the rebuttal testimony and exhibits of Mr. Ritch on January 21, 2019.

Pursuant to notice, as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, an evidentiary hearing was held in this Cause on January 30, 2019 at 9:30 a.m., PNC Center, 101 W. Washington Street, Indianapolis, Indiana. Petitioner, OUCC, CAC, and Walmart appeared and participated at the hearing, and the parties' pre-filed evidence was offered and admitted into evidence without objection. A member of the general public appeared, offering an ex parte letter of support for the proposed solar services program. His letter of support, along with several other ex parte letters of support, were entered into evidence by the OUCC, as Public's Exhibit 4. The Commission also asked questions of Petitioner's witness, Mr. Ritch.

Based on the applicable law and evidence presented herein, the Commission now finds as follows:

1. **Notice and Jurisdiction**. Notice of the hearing in this Cause was given and published by the Commission as required by law. Duke Energy Indiana is a public utility under I.C. 8-1-2-1, *et seq*., and is subject to the jurisdiction of this Commission as provided in the Public Service Commission Act, as amended. In its Petition, Duke Energy Indiana indicated that it has elected to be subject to the provisions of I.C. 8-1-2.5-5 and I.C. 8-1-2.5-6 for purposes of declination of Commission jurisdiction, in part, over Rider 26, and for authority to charge market-based rates for the services proposed in this proceeding. Thus, Duke Energy Indiana's petition, testimony, and exhibits submitted herein constitute the ARP it proposed for Commission approval in this proceeding.

2. **Petitioner's Characteristics.** Duke Energy Indiana (also referred to herein as "the Petitioner" or "the Company") is an Indiana limited liability corporation with its principal office in the Town of Plainfield, Hendricks County, Indiana. Duke Energy Indiana is engaged in the business of generating and supplying electric utility service to more than 820,000 customers located in 69 counties in the central, north central, and southern parts of Indiana.

3. **Relief Requested**. Duke Energy Indiana requested approval of its ARP, which includes the Commission declining jurisdiction over certain limited aspects of this Solar Services Program, approving Rider 26, and granting Petitioner authority to charge market-based rates for its Solar Services Program.

4. **Petitioner's Case-in-Chief.** Mr. Ritch presented the Company's solar services program, explaining that the Company is proposing this offering in response to the increasing interest of non-residential customers to have additional service options for cleaner energy. He explained that this program provides customers an alternative financing method for on-site solar energy generation facilities compared to traditional ownership. The Company will install, operate, and maintain a solar energy facility on the participating customer's premises, and the customer will receive the electrical output of the solar facility.

Mr. Ritch testified that this proposed tariff was developed as part of the 2016 Edwardsport Settlement Agreement collaborative. He explained that the Settling Parties to that agreement were involved in discussions and that the Company made changes to its proposed Solar Services Program based on feedback provided by Citizens Action Coalition ("CAC").

For instance, the Company incorporated a provision in this filing indicating that customers participating in Rider 26 would be eligible for net metering; solar facilities installed under this program would be in addition to and would not count against the system net metering cap in the Company's Standard Contract Rider No. 57 - Net Metering ("Rider 57"); participation in this program would initially be limited to a total of 12 MWs; and for the first five years of the program, the Company would not use an affiliate to construct the solar generation facilities.

Mr. Ritch testified that qualifying customers who purchase land or buildings from existing tariff participants can participate in the program, subject to the terms and conditions of each customer's specific Solar Energy Service Agreement ("Service Agreement"), a sample of which was provided as an exhibit to Mr. Ritch's testimony. Mr. Ritch also testified that each

facility must be limited to the sizing requirements in the Company's net metering tariff, Rider 57.

Next, Mr. Ritch confirmed that participating customers will not be subject to disconnection of retail electric service due to non-payment under their Solar Services Agreement.

Mr. Ritch testified that the Company will make all eligible customers who express interest in solar aware of this offering through various Duke Energy teams and will work with third party solar developers who meet Duke Energy supplier standards, to develop, competitively procure and construct the solar facilities for participating customers. He also explained that the Company engaged a variety of solar developers active in Petitioner's service territory to preview the offering, and they expressed an interest in participating in the Solar Services Program.

Next, Mr. Ritch described the proposed accounting and ratemaking treatment for the program. He explained that the Company is proposing that all costs and revenues associated with this tariff be treated below-the-line, which segregates the financial activities for Rider 26 from the Company's jurisdictional business. This treatment will ensure that non-participating customers will not subsidize participating customers and that all costs of the program[1] will be covered with revenues from voluntarily participating customers.

Mr. Ritch explained that this proposal is being filed under the Alternative Utility Regulation provisions of Indiana Code ch. 8-1-2.5 in order to provide certain, limited flexibility to Petitioner in operating this program. He also stated that the aggregate of all the generation to be eligible under Rider 26 is 12 MW (reduced to 10 MW in Mr. Ritch's Rebuttal Testimony), and that although the smaller solar projects are exempt from the requirements of a CPCN, they would still require Commission approval under I.C. 8-1-8.5-7(4). He explained that Duke Energy Indiana is requesting the Commission approve an ARP or otherwise decline its jurisdiction over this optional tariff offering to the extent required for the Company to individually price this voluntary service to customers based on available market prices and to construct solar energy facilities for participating customers without needing to seek separate Commission approval for each facility. Mr. Ritch opined that public interest is served by approval of this option because there are technological and competitive forces that render Commission jurisdiction unnecessary, and this option provides benefits to the Company, its customers, promotes energy utility efficiency, and allows Petitioner to effectively compete with providers of functionally similar services.

Concluding his direct testimony, Mr. Ritch explained that this is a voluntary program offering that allows eligible customers to have solar energy facilities on their premises to be constructed, operated, maintained and financed by the Company and to receive the kWh output of the facility. Eligible customers include non-residential customers on Rate CS, Rate LLF, Rate HLF and Rate WP. Each Service Agreement between the Company and a participating customer will have a term of up to twenty (20) years, with pricing varying depending on the facility configuration and the specific negotiations with the participating customer. He noted that the Company is not proposing to make this program available to residential customers.

[1] Marketing costs, etc.

5. **OUCC Testimony.** OUCC Witness Lauren M. Aguilar testified that Duke Energy Indiana is asking the Commission to enter an order under I.C. ch. 8-1-2.5 declining to exercise its jurisdiction over Petitioner's proposed solar leasing offering for its commercial and industrial ("C&I") customers. To obtain Commission approval under the alternative regulatory statute, the Commission's declination of jurisdiction must serve the public interest, as well as meeting other applicable statutory requirements.

Ms. Aguilar presented the OUCC's concerns regarding: (1) the insufficient evidence provided in DEI's case-in-chief; (2) the potential inclusion of net metering for customers of DEI's proposed solar leasing program, even though they do not meet the net metering statutory and the Commission's net metering rule requirements; (3) the lack of sufficient evidence to support a finding that approval would serve the public interest, as required under the Alternative Regulatory Plan ("ARP") statute, I.C. ch. 8-1-2.5. Given the anti-competitive environment this unregulated program would foster (since the program would conflict with statutory and administrative rules that require net metering and distributed generation customers to own and operate their renewable generation facilities) and the resulting monopoly market power the Petitioner would enjoy within its regulated service territory where participating customers would lease renewable generation facilities owned and operated by their electric utility (not by participating customers), and those customers would enjoy the benefits of otherwise unavailable net metering arrangements if Petitioner's proposed ARP is approved and implemented.

It is incumbent upon DEI to present all necessary supporting evidence in its case-in-chief. This provides the OUCC and other interested stakeholders all information needed to analyze the relief requested and make an informed recommendation to the Commission regarding the reasonableness of the request and whether declination of Commission jurisdiction would serve the public interest. The Petitioner must present sufficient evidence to support the Commission's decision to either grant or deny the relief requested.

The Commission recently emphasized the importance of a petitioning regulated utility meeting its burden of proof in its case-in-chief when it wrote:

> … [A Utility] is reminded that it bears the burden of proof in demonstrating it is entitled to its requested relief. The OUCC should not have to request or otherwise seek basic supporting documentation that should have been provided with Petitioner's case-in-chief to support its requested relief. Further, even if the OUCC is able to ascertain through discovery the information necessary to support Petitioner's requested relief, the Commission, which is the entity that must ultimately render a decision on the matter, would still lack the necessary information to make its determination because it is not privy to the parties' discovery.[2]

As approved, this ARP would supersede other statutes, except those listed in I.C. 8-1-40-11. Indiana Code 8-1-2.5-6(a) states that the Commission may act on an alternative regulatory plans submitted for its approval:

> ... *[n]otwithstanding any other law or rule adopted by the commission*, except those

[2] *Evansville Municipal Water Utility*, Cause No. 45073, Order at p. 8 (December 5, 2018).

> cited, or rules adopted that pertain to those cited, in section 11 of this chapter [I.C. 8-1-2.5-11], in approving retail energy services or establishing just and reasonable rates and charges, or both, for an energy utility electing to become subject to this section. (Emphasis Added.)

The Indiana General assembly announced the following in I.C. 8-1-2.5-1(6) for Indiana's regulated energy utilities:

> … [T]he public interest requires the commission to be authorized to issue orders and to formulate and adopt rules and policies that will *permit the commission in the exercise of its expertise to flexibly regulate and control the provision of energy services to the public* in an increasingly competitive environment, *giving due regard to the interests of consumers and the public, and to the continued availability of safe, adequate, efficient, and economical energy service.* (Emphasis added.)

Ms. Aguilar testified that, in conjunction with the flexibility granted under I.C. 8-1-2.5-6(a) for an ARP, utilities seeking approval of an ARP should be required to meet a high standard in the evidence and pleadings filed to support Commission approval of an ARP. Ms. Aguilar indicated that ARP approval requests like this should be clear, complete, and fully transparent. She urged this Commission to carefully scrutinize such requests before declining to exercise any or all of its statutory jurisdiction over ARPs proposed by regulated utilities. In this case, the Commission should strive to fully understand the specific nature and impact of the flexible regulations and reduced controls DEI is asking this Commission to implement and the traditional Indiana utility regulatory requirements the utility would be excused from meeting if DEI's proposed ARP were ultimately approved by this Commission. Ms. Aguilar indicated the information cannot be ascertained from DEI's case-in-chief, which was exceptionally short, vague, confusing, and failed to explain the full breadth of the Petitioner's requested ARP. Therefore the OUCC could not confirm that the public interest would be served, as required in the alternative regulatory statute, I.C. ch. 8-1-2.5.

Ms. Aguilar also indicated that DEI has not met its burden of proof in this case. It did not present a clear case where the requested relief and the full breadth and potential impacts of its proposed long-term solar leasing and net metering programs were readily ascertainable. DEI's request is vague in that it fails to identify what regulations it is asking the Commission to decline to exercise its jurisdiction over if it approves the proposed ARP. Ms. Aguilar testified that DEI has not supplied evidence in its case-in-chief from which to determine whether the participants would be paying or receiving too much or too little for leasing the solar generation facilities and entering into a net metering or other distributed generation wholesale supply arrangement with DEI. Ms. Aguilar cautioned that allowing customers who do not own and operate their renewable generation facilities to enter into a net metering arrangement with their electric utility creates an unregulated monopoly market for DEI, since other entities cannot enter into leasing and net metering arrangements with its interested C&I customers. Therefore the Commission cannot be assured other DEI customers or even program participants will not be negatively affected if the Commission were to grant the requested declination of jurisdiction.

Ms. Aguilar pointed out that DEI's filing specifically requested Commission authority

under IC 8-1-2.5-5(b) to construct the solar generating facilities without requesting a CPCN by asking the Commission to decline to exercise that statutory jurisdiction. DEI Witness Mr. Andrew S. Ritch's testimony referred to a discussion during a collaborative held after the 2016 Edwardsport settlement. Mr. Ritch testified that those discussions addressed a proposed solar leasing program and the need to satisfy Indiana's net metering eligibility requirements to participate in DEI's solar leasing program.[3] Rider No. 26, Solar Leasing ("Rider 26") (Petitioner's Exhibit 1-A) and the Solar Energy Service Agreement (Petitioner's Exhibit 1-B) do not discuss whether any or all DEI C&I solar leasing program participants will be compensated for renewable energy generation under a net metering arrangement. Ms. Aguilar indicated that DEI's case-in-chief does not specifically seek Commission approval of net metering for all interested prospective participants in DEI's proposed solar leasing program, nor does it request a waiver of requirements the Indiana General Assembly recently imposed on net metering and other distributed generation arrangements under I.C. ch. 8-1-40. Ms. Aguilar indicated DEI did not seek waiver of the Commission's net metering rule under 170 IAC 4-4.2. DEI's also failed to present a discernable business plan for its proposed long-term net metering solar leasing program in its case-in-chief.

A recently enacted statute, I.C. ch. 8-1-40, governs distributed generation, including net metering arrangements. I.C. 8-1-40-2 states the Commission's rules for net metering in 170 IAC 4-4.2 apply to "...net metering under an electricity supplier's net metering tariff...."

DEI's Rider No. 57, Net Metering tariff ("Rider 57") states: "Net metering is available to customers ... and will conform to the provisions of Indiana Code 8-1-40."4 170 IAC 4-4.2 defines a net metering customer as "a customer in good standing that *owns and operates* an eligible net metering energy resource facility...." (Emphasis added.) As proposed, DEI's solar leasing customers would neither own nor operate renewable generation facilities.5 Therefore, DEI's potential inclusion of net metering for solar leasing customers conflicts with applicable statutes and Commission rules limiting the use of net metering.

Ms. Aguilar indicated that the public interest neither supports nor requires net metering to be made available to DEI's customers planning to participate in DEI's proposed Rider 26 long-term net metering solar leasing program. First, the timeframe for which net metering can be offered is finite and less than DEI's proposed leasing term (of up to 20-years). Pursuant to IC 8-1-40-10, systems installed after June 30, 2022 are not eligible for net metering under IC 8-1-40-13, and net metering facilities installed between now and July 1, 2022 are only eligible for net metering until July 1, 2032.

Ms. Aguilar explained that Indiana's new net metering statute does not permit utilities to change their net metering tariffs after the effective date of IC ch. 8-1-40. I.C. 8-1-40-11(1) specifically prohibits utilities such as DEI from seeking a change in their net metering tariffs, and I.C. 8-1-40-11(2) specifically prohibits the Commission from approving any changes to existing net metering tariffs before July 1, 2047. Although DEI does not propose changing its existing net metering tariff, Rider 57, Mr. Ritch stated on page 3 of his prefiled testimony that customers participating in Rider 26 would be eligible for net metering. Ms. Aguilar observed that entering

3 *See* Verified Direct Testimony of Andrew S. Ritch, page 2, lines 18-21 and page 3, lines 1-13.
4 I.C. 8-1-40-2 refers to the Commission's net metering rule in 170 IAC 4-4.2.
5 Petitioner's Exhibit 1-B (ASR), Page B-1, Paragraph 1.

into net metering or other distributed generation arrangements with customers who neither own nor operate renewable generation facilities violates the requirement in Rider 57 that participants will conform to the requirements of I.C. ch. 8-1-40. As previously discussed, I.C. 8-1-40-3 and 170 IAC 4-4.2-1(j) require net metering customers to own and operate their renewable generation facilities. Ms. Aguilar observed that any deviation from that requirement would constitute a change in existing net metering tariff provisions, which is prohibited under I.C. 8-1-40-11(1) and/or (2). Utilities should not be permitted to circumvent this statutory limitation by proposing a new tariffed service offering that includes new or different net metering provisions.

Ms. Aguilar emphasized that Indiana's ARP statute requires approval of a proposed ARP to further the public interest. The statutory requirements for approval of an ARP hinge upon a public interest showing established under I.C. 8-1-2.5-1(6), which states:

> … [T]he *public interest* requires the commission to be authorized to issue orders and to formulate and adopt rules and policies that will permit the commission in the exercise of its expertise to flexibly regulate and control the provision of energy services to the public in an increasingly competitive environment, g*iving due regard to the interests of consumers and the public*, and to the continued availability of safe, adequate, efficient, and economical energy service. (Emphasis added.)

Ms. Aguilar testified the review and analysis of public interest factors constitutes an important part of the Commission's review of proposed ARPs, including the one DEI has proposed in this proceeding.

Ms. Aguilar pointed to I.C. 8-1-2.5-5(b), which identifies the following factors which the Commission must consider in determining whether a proposed ARP would serve the public interest:

> (1) Whether technological or operating conditions, competitive forces, or the extent of regulation by other state or federal regulatory bodies render the exercise, in whole or in part, of jurisdiction by the commission unnecessary or wasteful.
>
> (2) Whether the commission's declining to exercise, in whole or in part, its jurisdiction will be beneficial for the energy utility, the energy utility's customers, or the state.
>
> (3) Whether the commission's declining to exercise, in whole or in part, its jurisdiction will promote energy utility efficiency.
>
> (4) Whether the exercise of commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment.

Ms. Aguilar testified that, as currently proposed, DEI's solar leasing program does not meet the public interest requirements of I.C. 8-1-2.5-5(b)(1) and (4), since approval of the ARP would give DEI an unfair competitive advantage over other renewable energy providers by permitting DEI to build an unregulated monopoly over solar leasing customers seeking access to net metering

arrangements. The solar leasing program DEI proposed would exist outside many of the statutory limits on Commission jurisdiction, including those recently imposed by the Indiana General Assembly on competitive renewable energy providers. Indeed, under the regulatory approach which DEI has proposed, it would be the only solar leasing provider not subject to the requirement that net metering and distributed generation customers own and operate their renewable generation facilities. All others would remain subject to Indiana's statutory prohibition and to the Commission's administrative rules limiting the use of such arrangements, while DEI would remain free from government regulation.[6]

Ms. Aguilar also noted that, as designed, DEI's proposed solar leasing program does not meet the public interest requirements of I.C. 8-1-2.5-5(b)(2) for the following reasons:

(a) This program is designed to serve a small portion of DEI's customer base. Therefore, customers not participating in the leasing program may be called upon to cross-subsidize DEI's solar leasing net metering customers participating in DEI's Solar Services Program;

(b) The tariff and associated leasing contract presented by DEI are deficient in clarity and transparency regarding who owns the Solar Renewable Energy Certificates[7] ("SRECs") associated with the planned renewable energy generation and whether any customers will benefit from the utility's future sale or retirement of SRECs; and

(c) DEI failed to show meaningful customer demand for its proposed solar leasing program.

The OUCC does not support DEI's requested relief in this cause. The OUCC recommended DEI's requested relief be denied because (1) DEI failed to meet its burden of proof by not providing sufficient evidence in its case-in-chief; (2) DEI's request is vague, confusing, and does not explain the full breadth and potential impact of the ARP relief requested for the proposed program; (3) The ARP statute's public interest requirement is not met. For specific recommendations, see Public's Exhibit No. 2, the prefiled testimony of OUCC Witness Mr. Haselden.

If the Commission rejects the OUCC's position that DEI has failed to meet its burden of proof in its case-in-chief, requiring the Commission to deny the relief requested, the OUCC recommends the Commission make further changes to the proposed ARP and place additional conditions on the ARP recommended by the OUCC.

Although the OUCC does not support approving DEI's ARP, as proposed, if the Commission decides to approve the ARP, the OUCC recommends the Commission condition such approval on DEI agreeing to modify its proposed ARP to correct the deficiencies discussed above, and described in greater detail in the prefiled testimony of OUCC Witnesses Mr. Haselden and Mr. Lantrip.

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[6] *See* SEA 309, now codified at I.C. ch. 8-1-40.

[7] Also referred to as "Renewable Energy Credits."

John E. Haselden also presented testimony on behalf of the OUCC. He testified that he does not doubt that there may be non-residential customers in Duke Energy Indiana's service territory that are interested in acquiring renewable energy, but that the proposed solar services program will not satisfy customers' desire for renewable energy because the Company's case-in-chief indicates that it intends to retain any related RECs, unless otherwise negotiated. He further stated the Company acknowledged in discovery that it is not aware of customers specifically inquiring about the possibility of leasing solar facilities from the Company in conjunction with net metering.

Mr. Haselden explained that proposed Rider 26 does not address the renewable energy needs of customers and does not address the ownership of the SRECs produced by the leased systems. He suggested, if approved, the language in the tariff and the Services Agreement be amended to expressly assign ownership of any environmental attributes to the customer or Petitioner, if so negotiated.

Mr. Haselden testified regarding several aspects of the proposed solar program that could trigger complaints of unfair competition. Individual Service Agreements would not have to be filed with or submitted to the Commission under the proposed ARP even though pricing and other terms could vary between similar customers. He further testified the Company confirmed in discovery that it would not allow other leasing companies to participate in Rider 26 or allow net metering for customers leasing solar facilities from other companies.

Mr. Haselden explained that the Company is proposing that facilities participating in Rider 26 be required to comply with requirements in the Company's net metering tariff, Rider 57. However, Mr. Haselden notes that neither Rider 26 nor the Service Agreement explicitly states that all program participants are eligible to participate in Rider 57. Mr. Haselden observed that the Company did not request an exemption from Indiana Code 8-1-40-3 as part of its ARP. Instead, the Company relied on language in Rider 57 that states, "At its sole discretion, the Company may provide net metering services to other customer-generators not meeting all the conditions listed on a case-by-case basis." Mr. Haselden explained that the list of conditions does not include the requirement of customer ownership of renewable generation facilities to make a customer eligible for net metering. Mr. Haselden noted the Company is construing its net metering tariff language in a way that is contrary to the Commission's new net metering rule in 170 IAC 4-4.2-1(j) and (k) and without regard to the ownership requirement in IC 8-1-40-3, Indiana's new net metering and distributed generation statute.

Next, Mr. Haselden testified that Petitioner is proposing to add 12 MW of nameplate capacity to the amount eligible to participate in Rider 26. He stated that rather than establishing a separate pool of net metering capacity for dedicated uses, Petitioner could increase its net metering cap, currently 1.5% of the Company's most recent summer peak load in aggregate, as prescribed by 170 IAC 4-4.2-4(b). He pointed out that the proposed tariff does not mention the 12 MW limit and that Duke Energy Indiana is not proposing to change Rider 57 to accommodate the additional 12 MW the Company petitioned for leave to offer under Rider 26.

In contradiction to Mr. Ritch's testimony, Mr. Haselden stated that other customers could be subsidizing the Company's net metering service. He explained that if participating customers

put power onto Petitioner's distribution system and reduce the kWh they purchase, other non-participating customers would subsidize this service by paying a greater share of costs the Company recovers through its riders and the non-volumetric portion of costs recovered per kWh in base rates.

Mr. Haselden agreed that approval of Rider 26, as currently proposed, would not serve the public interest. Non-participating customers will be subject to higher rates through possible subsidization of solar services program participants. A few participating customers could receive some economic benefit, but the primary beneficiary will be Petitioner. Mr. Haselden observed that, shielded from competition from other leasing companies, Duke Energy Indiana would be able to charge whatever the closed market it creates for this service will bear. Mr. Haselden pointed out that the closed market Petitioner proposes to create under Rider 26 would be limited to itself, leaving the Company free to negotiate different prices with different net metering participants, effectively turning the Company into an unregulated monopoly with respect to its proposed offer of net metering arrangements to customers leasing the utility-owned solar generation facilities.

Concluding his testimony, Mr. Haselden stated that the OUCC recommends that the Commission deny Duke Energy Indiana's request for approval of the solar leasing ARP, as currently proposed. He testified that this proceeding would not be necessary if the Company compensated participants via Rider 50 – Parallel Operation for Qualifying Facility, or if it voluntarily increased the aggregate cap on net metering as permitted under 170 IAC 4-4.2-4(b):

As an investor-owned electric utility, Duke Energy Indiana may limit the aggregate amount of net metering facility nameplate capacity under its net metering tariff to one and one-half percent (1.5%) of its most recent summer peak load with: (1) forty percent (40%) of the capacity reserved solely for participation by residential customers; and (2) fifteen percent (15%) of the capacity reserved solely for participation by customers that install a net metering facility that uses a renewable energy resource described in I.C. 8-1-37-4(a)(5). However, an investor-owned electric utility such as the Petitioner may, at its own discretion, increase the limit on its aggregate amount of net metering facility nameplate capacity.

Although the OUCC recommends denying the relief sought in this Petition, Mr. Haselden testified that, if the Commission rejects the OUCC's recommendations and approves Rider 26 while declining to exercise its jurisdiction over that service offering, the Commission should require the Petitioner to make at least the following changes to its ARP:

1. Allow participation in Rider 26 by additional solar leasing providers selected by participating customers;
2. Require the Company to immediately initiate a proceeding pursuant to I.C. 8-1-40-16;
3. Require billing for leased equipment to be separate from the customers' electric bill or at least clearly defined as discussed by OUCC witness Lantrip;
4. Designate ownership of any environmental benefits to the customers;
5. Limit the nameplate capacity of a leased system to minimize the revenue requirement impact on non-participating customers resulting from the net metering subsidy;

6. Make a finding as to whether participants under Rider 26 are eligible to participate in net metering and, if so, require Petitioner to affirmatively state in Rider 26 and in its proposed Solar Energy Service Agreement that participants qualify for net metering while such offerings are still available under I.C. ch. 8-1-40;
7. State the Company's aggregate MW participation limit in proposed Rider No. 26;
8. Limit Duke Energy Indiana's proposed ARP to a four-year trial period, to terminate automatically four years after its approval, absent a Duke Energy Indiana and OUCC agreement to extend the pilot program, subject to Commission approval in a docketed proceeding;
9. At the end of the second program year, permit Duke Energy Indiana, the OUCC or other interested persons to file a request in this docket asking the Commission to approve requested changes to the existing ARP, in addition to the Commission's right to modify or terminate the Solar Services Program ARP on its own, after notice and hearing, without changing any existing contractual rights and obligations under leasing agreements already entered into by Duke Energy Indiana and any eligible customers;
10. Require Duke Energy Indiana to file annual reports regarding relevant Solar Services Program information, including information required under 170 IAC 4-4.2-9, with the following additional information:
    a. Current number of Solar Services Program customers and the number of new Solar Services Program customers added during the last 12 months;
    b. The effective date and term (number of years) of each of the Solar Services Program Agreements;
    c. The tariff or type of service arrangement (Rate CS, Rate LLF, Rate HLF, or Rate WP) under which each Solar Services Program customer is served; and
    d. A detailed statement of revenue, expenses and net operating income (or net loss) of the Solar Services Program covering the last twelve months and confirmation that all related revenues, expenses, assets and liabilities are being tracked for below the line regulatory treatment

Mr. Kaleb G. Lantrip also presented testimony on behalf of the OUCC. Mr. Lantrip reviewed Petitioner's proposal on recovering the costs associated with the proposed tariff and how customers will be billed for participation in the program. He testified that the manual billing practice would allow for the clear allocation of payments for customers participating in the solar services program and provide detail for customers to understand how the net payment due was derived. Mr. Lantrip recommended that although Petitioner indicated it will manually bill customers in separate invoices until its new system is capable of producing consolidated bills, the OUCC recommends customers have the option to continue to be billed separately for solar service program charges rather than including these charges on bills for recovery of standard electric service costs. He opined that if customers opt for a consolidated billing, leasing charges for customers participating in the program should be distinctly shown from the standard

electric service charges on their utility bills, and that any excess generation netted from the leased installation be clearly illustrated on the bill.

Mr. Lantrip explored the Company's proposal to use existing personnel to administer and coordinate its solar services program. He explained that, given the lack of detail in Petitioner's case-in-chief, he questions whether and how the Company will be able to accurately segregate labor costs and reduce the potential for program subsidization. Mr. Lantrip testified that, in response to OUCC discovery requests, the Company explained that employees' time on program-related work would be accounted for separately, to reflect the actual time spent on each activity.

Next, Mr. Lantrip explained that Petitioner's proposal would be eligible for Investment Tax Credits and accelerated depreciation treatment for favorable tax recovery. He testified that it is unclear who will retain this benefit because Petitioner's discovery responses suggest that the Company will retain the full value of the tax credits and benefits. However, the petition indicates those benefits will be provided to or otherwise used to benefit utility customers.

Concluding his testimony, Mr. Lantrip recommended denial of Petitioner's proposal. However, if the Commission approves this proposed program despite the OUCC's position, Mr. Lantrip testified that the Company should be required to: separate all program costs from amounts recovered through standard electric service rates; maintain the option of separate billing for the solar services program charges; identify the split between standard electric service charges and solar services program costs and revenues allow interested customers to select consolidated billing; provide updates on the solar services program's progress and cost segregation in a compliance filing; and identify those program costs in the Company's next electric base rate case.

6. Walmart Testimony. Gregory W. Tillman presented testimony on behalf of Walmart discussing Walmart's corporate renewable energy goals and framework for renewable opportunities. He testified that Walmart seeks renewable energy resources that deliver industry leading cost, including renewable and project-specific attributes, such as RECs.

Mr. Tillman recommended that the proposed tariff language, along with the Solar Energy Service Agreement, be modified to indicate that the RECs are transferred to the customer, or alternatively, that the Company be required to retire the RECs on the customer's behalf. He opined that without these changes, customers would be not able to claim that the energy purchased and consumed through the program is renewable energy, making it unlikely that Walmart would choose to participate.

Mr. Tillman testified that Walmart does not oppose the financing structure of the Service Agreement, as modified to include the conveyance of the RECs. He also opined that Walmart would not oppose the proposed ratemaking treatment.

Mr. Tillman concluded his testimony by testifying that Walmart is in agreement that Petitioner's proposal is a competitive service offering and that in order to maintain a competitive environment, the Commission should establish that Indiana energy customers have a right to

choose an alternative supplier for behind-the-meter, solar leasing services financed through a lease agreement with a performance guarantee.

7. **Citizens Action Coalition Testimony**. Kerwin Olson presented testimony on behalf of the CAC. Mr. Olson testified that the CAC supports the approval of the proposed solar services program. He also stated that over the years, CAC has had multiple discussions with non-profit entities, such as churches and schools, with a strong desire to install solar energy on their properties. This program will help enable these entities to have solar installed and will likely lead to approximately 12 MWs of solar energy being installed in Indiana, which otherwise would not have been installed absent approval of the Company's proposed Rider 26.

Mr. Olson testified that the proposed solar services program was presented by the Company and discussed as part of a collaborative that was established pursuant to the 2016 Edwardsport Settlement Agreement. He explained that the CAC, Duke Industrial Group, Nucor Steel, the OUCC, the Hoosier Chapter of the Sierra Club, and solar installer, Johnson-Melloh, Inc. attended those collaborative meetings. The Company made it clear that it was interested in concerns, feedback, and suggestions from all collaborative participants. Mr. Olson pointed out that the CAC provided multiple suggestions regarding the Company's proposed Rider 26 service offering. The Company was responsive to CAC's suggestions and made changes to its proposed Rider 26 offering based on some of the feedback CAC provided.

Mr. Olson testified that the CAC recommends Commission approval of the Company's proposed solar services program. Mr. Olson also recommended certain changes to the proposed program: the Company should modify the tariff and the Service Agreement to indicate that the RECs will be transferred to the customer; the Company should bill customers for the program fees separately from the charges related to their retail energy service; the Company should file an annual compliance report detailing participation in the program and accounting for all program costs associated with implementation, marketing, and management, in order to alleviate any concerns related to below the line accounting treatment; and the Commission should go beyond Duke Energy Indiana's proposal in this proceeding to expressly state that customers have the right to use vendors of their choice, including Duke Energy Indiana, to install behind the meter solar facilities utilizing a leasing arrangement or other financing options.

8. **Rebuttal Testimony.** Mr. Ritch provided rebuttal testimony responding to the testimonies of the OUCC, CAC, and Walmart. Mr. Ritch initially provided his reaction to the OUCC's opposition to this proposed program. He explained that the Company's proposal in this proceeding was made only after a two-year collaborative process, as part of the 2016 Edwardsport Settlement Agreement, in which the OUCC participated, and after multiple meetings with active solar developers in Indiana. Mr. Ritch discussed that Petitioner worked with the OUCC after its filing to clarify its proposal and revise its tariff and Service Agreement to address any concerns. He testified that solar developers in Indiana were excited about partnering with Petitioner and did not view the proposed tariff as an "unregulated monopoly" or "unfair competition" as alleged by the OUCC. Mr. Ritch reiterated that this voluntary program is an option for Duke Energy Indiana customers to use for financing constructing, operating and maintaining a solar energy facility on their premises, receiving the benefits of renewable energy without the financial risk associated with facility performance and maintenance. Mr. Ritch

opined that the OUCC opposing a completely voluntary program designed to modestly expand distributed solar generation in the state that minimally, if at all, impacts the Company's non-participating customers was inexplicable.

Mr. Ritch addressed the testimonies of Walmart and the CAC, specifically their interest in having the RECs generated under the program to be either retired or granted to the participating customer. He explained that, unless the participating customer expressed an interest in obtaining the RECs itself, the Company had initially intended to retain the RECs associated with the solar facilities constructed because the Company would be owning the solar facilities through the term of the Service Agreement, and would have the option of selling the RECs to benefit all customers. However, Mr. Ritch explained that the Company is willing to change its proposal and give any RECs to the participating customer or retire them on the customer's behalf, and has revised the tariff and Service Agreement to indicate this change.

Mr. Ritch testified that in response to the OUCC's testimony and to alleviate any concerns that this program is an "unregulated monopoly" or "unfair competition," the Company wants the Commission to have full access to information regarding the program and is proposing annual reporting requirements of: number of participating customers; number of new customers since last submittal; effective date of each new service agreement; electric tariff rate each participating customer is served under; and revenues and expenses to the Company from the program. He explained that Petitioner has not sought an ARP as a means of avoiding regulatory oversight, but seeks only to eliminate the need to file separate approval requests for each solar facility constructed under the tariff and to allow the Company to charge going-market rates for the services provided under the Service Agreement.

Mr. Ritch explained that the Company is proposing additional changes to its tariff and Service Agreement in response to stakeholder positions and is proposing to offer this solar services program as a pilot program and will return to the Commission when there are participating customers with systems equaling 10 MW in the aggregate, or five years, whichever happens sooner. This will help to ensure continued Commission oversight, as well as prompting a broader conversation about the interest of Indiana companies in sponsoring solar facilities on their premises.

Mr. Ritch indicated that the Company modified its tariff to limit the proposed program's aggregate capacity to 10 MW, further limiting the size of the pilot program in his Rebuttal Testimony. Mr. Ritch also indicated on rebuttal that the Petitioner agreed that, if interested, all C&I customers participating in the proposed Solar Services Program would be permitted to enter into a net metering arrangement with the Petitioner.

Mr. Ritch addressed the OUCC and CAC's concerns about billing participating customers under the program. He explained that participating customers will receive a separate, manually produced bill that will include the cost under the Service Agreement (customers will also receive a separate bill for their electric service). He discussed that, in the future, a new customer information system may be able to produce one bill for both services instead of the separate bills. However, should participating customers have an interest in receiving one bill for

both services or a separate bill for each, the Company would make both options available to them.

Next, Mr. Ritch addressed the OUCC's statement that this proposal offers financial and public relations benefits to the Company and a few select customers at the expense of other ratepayers. He explained that this proposal is being offered in response to interest from customers for greater options for cleaner energy. There are numerous school districts, corporations, and cities and towns across the state of Indiana that are investing in renewable energy and this is a voluntary program that provides interested customers the ability to meet their renewable and sustainability goals through a tangible, visible solar system located on their premises. The public interest is served by offering this program as it is another voluntary option for customers to finance the facility. Continuing, he explained that the public interest is also served by the fact that non-participating customers are not impacted by the program, but for the subsidy already inherent in net metering. The public interest is further served by the Commission and other stakeholders learning more about the level of interest among participating customers, and the formed partnerships that will promote continued solar energy expansion in the state creating jobs and impacting the local economy. The public interest is also served by the involvement of the Commission in overseeing and monitoring the installation of solar facilities on customer premises throughout the Company's service territory.

Mr. Ritch emphasized that contrary to the OUCC's argument that this program would be an unregulated monopoly, Duke Energy Indiana will remain a public utility, subject to the Commission's oversight and regulatory authority, and that customers will only voluntarily participate in this program should it prove attractive to them. Not only will this program be regulated, but it will not be a monopoly. Customers already have other choices to construct, operate and finance solar facilities on their property and this program is simply one more option for those customers. Duke Energy Indiana provided a summary net metering report which demonstrated the interest and market for customers to install solar. Mr. Ritch explained that this pilot program serves the public interest and should be approved for its initial term.

Mr. Ritch next addressed the OUCC's comment that suggests the proposed solar services tariff would not have any regulatory protections for consumers. He explained that this is incorrect. Continuing, he again stated that Petitioner is proposing to and will remain a public utility under Indiana law, subject to regulatory oversight of the Commission. Mr. Ritch testified that the exceptions sought by the Company under the proposed ARP are narrow and limited: 1) for Duke Energy Indiana to be able to construct solar facilities for a limited number of participating customers without filing additional proceedings; and 2) for Duke Energy Indiana to be able to offer this service to customers at market-based rates, tailored to the size and other needs of each specific customer. Duke Energy Indiana will remain subject to Commission oversight in all other manners and forms. The proposed reporting requirements and limited initial term of this pilot offering also ensure continued Commission oversight and jurisdiction.

Continuing his rebuttal testimony, Mr. Ritch next addressed that the proposed tariff is not an unfair means of competing with other solar developers in the state. He explained that the proposal increases competition, which provides direct benefits to both solar developers and customers. Restating his direct testimony, he explained that the Company has met with

numerous solar developers and they do not view this offering as unfair competition, but welcome the possibility of partnering with a public utility to expand solar in Indiana and represents an additional tool for them to use when promoting sales to customers. Duke Energy Indiana provided two letters of support from Indiana solar developers welcoming the Company's involvement, and showing their interest in partnering with the Company under this program.

Mr. Ritch testified regarding the Company's efforts to create a competitive market through this offering. He explained that Petitioner will not use any affiliates of its parent, Duke Energy Corporation, to construct these facilities, but based on the preference of each customer, will competitively bid out construction of the facility. Mr. Ritch stated that the Company issued a Request for Information in November 2018 to the regional solar development community, including a list of developer contacts submitted by the CAC. He also explained that Duke Energy Indiana has already begun reviewing qualifications of solar developers and will announce its preferred vendors should this pilot program be approved.

Mr. Ritch explained that any participating customer in this pilot will be eligible for net metering[8] as explained in the proposed rider and will not receive any increased economic benefit over other net metering customers that do not participate in this program.

Continuing, Mr. Ritch responded to the OUCC's assertion that the Company will retain the full value of any ITCs associated with the construction of facilities under the program. He testified that this is inaccurate and as the Company stated in its petition, Duke Energy Indiana, to the extent possible, will take advantage of any tax credits and provide the benefits to participating customers.

Concluding his rebuttal testimony, Mr. Ritch addressed the OUCC, CAC, and Walmart's suggestion that Duke Energy Indiana may be the sole entity to offer solar leases in its service territory and that this is an issue the Commission should address in this proceeding. Mr. Ritch testified that this is a narrow request for approval of this pilot program with limited and voluntary participation. There is no need for the Commission to expand the scope of this proceeding and review or modify the Service Territory Act, the statutory definition of a public utility or to assert jurisdiction over the types of financial transactions related to energy and capacity supply that are being executed by customers and third parties today. The only issue before the Commission at this time is whether Petitioner may offer the voluntary tariff, up to 10 MW, to its commercial and industrial customers. This is just an additional option for customers in an already competitive market for the construction of onsite solar facilities.

10. Commission Discussion and Findings. Duke Energy Indiana originally sought a declination of our jurisdiction to allow it to construct up to 12 MW of solar facilities to lease to commercial and industrial ("C&I") customers. (That maximum aggregate capacity was reduced to 10 MW in its rebuttal testimony.) Though not specified in its original Petition or supporting testimony, the Company clarified through responses to discovery issued by the OUCC and in its rebuttal testimony that it could permit C&I customers leasing solar facilities from Duke under its proposed rider, Rider 26, to use net metering arrangements offered under Rider 57. Rider 26 mentions a lease term of up to 20 years for participating C&I customers. The Petition and

[8] As governed by IC ch. 8-1-40.

supporting testimony requested a broad declination of Commission jurisdiction, without explaining how the long-term solar leases would comply with Indiana's new net metering statute, IC ch. 8-1-40. Indeed, until Petitioner filed its Rebuttal Testimony, few specific details were disclosed or explained concerning its proposed alternative regulatory plan for Rider 26. Despite a requested declination of jurisdiction, the Company sought Commission approval of a proposed tariff without providing any figures or formulas with which to determine what amount the C&I customer would receive from the Petitioner for electricity generated by the leased solar facilities or what amount the C&I customer would be required to pay to the Petitioner to lease the solar facilities that would be purchased and owned by Duke Energy Indiana. The lack of specificity alone would make it impossible to judge whether participating C&I customers were treated fairly under Rider 26. However, since Petitioner's case-in-chief did not specifically adopt traditional rate-making principles of fairness, prudence, reasonableness, or cost-causation, it is not clear whether the rates charged or paid to participating C&I customers for sales to the Petitioner or lease payments under Rider 26 would be subject to any of those ratemaking principles -- despite Petitioner's plan to file its Rider 26 tariff with the Commission. The Petitioner's decision to make such a multi-faceted offering by Duke Energy Indiana alone, a regulated public utility, instead of using a separate affiliate for aspects of the Rider 26 service offering outside of the Commission's statutory jurisdiction, further muddies the waters in this case.

Given the complexity of the proposed service offering and the lack of clear guidance on the extent of regulatory authority (if any) the Commission might retain over Rider 26 (other than allowing Petitioner to file its Rider 26 tariff), we agree with the OUCC that Petitioner's case-in-chief was too vague to provide a fair and accurate understanding of what regulatory authority the Commission would retain to exercise over Rider 26 if Petitioner's proposed alternative regulatory plan ("ARP") is approved. Although declination of jurisdiction is envisioned under IC ch. 8-1-2.5, the request should make it clear what authority the Commission is being asked to relinquish and what authority it would continue to retain. The unique mixture of state regulated retail electric service with utility wholesale purchases and long-term lease arrangements between participating C&I customers and the Petitioner, make it important for the public to understand what part of a service and leasing arrangement under Rider 26 would be regulated by the Commission and to what extent, and what part would fall outside of Commission jurisdiction. A filed tariff (Rider 26) authorized by the Commission could make this offering appear to others (e.g., its customers and Indiana courts) to have been fully approved by the Commission and therefore subject to the Commission's exclusive jurisdiction and the filed-tariff doctrine.

The Petitioner has asked this Commission to decline to exercise its jurisdiction over Petitioner's proposed Rider 26 offering. Before applying the IC 8-1-2.5-5(b) factors the Indiana General Assembly requires this Commission to review when considering requests for approval of proposed ARPs, there must be a clear understanding of what aspects of Commission jurisdiction would be retained under the proposed ARP and what aspects of our jurisdiction would be declined. However, given the lack of clarity in Petitioner's case-in-chief, we find that its request for ARP approval should be denied.[9]

[9] Although this Order denies the relief requested, we draw Petitioner's attention to provisions in Indiana's new net metering and distributed generation statute that this Commission would intend to enforce even if we had decided to grant a partial declination of jurisdiction under I.C. ch. 8-1-2.5. Under I.C. ch. 8-1-40, it is unclear what role this Commission would be expected (and authorized) to play in the future if we had approved Rider 26 as proposed by

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Duke Energy Indiana's requested relief for approval of its Solar Services Program ARP, with declination of Commission jurisdiction as specified herein, is hereby denied.

2. Duke Energy Indiana's Solar Services Program Revised Tariff, Rider No. 26, is hereby rejected.

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

HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:

APPROVED:

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

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Mary M. Becerra
Secretary to the Commission

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the Petitioner. However, we note that under Indiana's recently enacted net metering and distributed generation statute, IC ch. 8-1-40, the Indiana General Assembly has limited and will gradually eliminate the use of net metering arrangements in our state. Had we decided to grant any of the relief requested in this proceeding, we would have required the Petitioner to further amend its ARP, even beyond changes the Petitioner proposed in its Rebuttal Testimony, to clarify that this Commission retained its full jurisdiction under IC ch. 8-1-40.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing ***Indiana Office of Utility Consumer Counselor's Response to Petitioner's Proposed Order*** has been served upon the following counsel of record in the captioned proceeding by electronic service on February 26, 2019.

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