

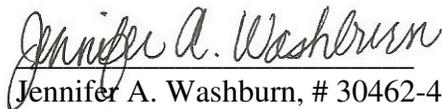
STATE OF INDIANA  
INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE VERIFIED PETITION OF )  
INDIANA MICHIGAN POWER COMPANY FOR )  
APPROVAL OF ALTERNATIVE REGULATORY )  
PLAN FOR DEMAND SIDE MANAGEMENT (DSM) )  
AND ENERGY EFFICIENCY (EE) PROGRAMS FOR ) CAUSE NO. 44486  
2015 AND ASSOCIATED ACCOUNTING AND )  
RATEMAKING MECHANISMS, INCLUDING )  
TIMELY RECOVERY THROUGH I&M'S DSM/EE )  
PROGRAM COST RIDER OF ASSOCIATED COSTS, )  
INCLUDING ALL PROGRAM COSTS, NET LOST )  
REVENUE, SHAREHOLDER INCENTIVES AND )  
CARRYING CHARGES, DEPRECIATION AND )  
OPERATIONS AND MAINTENANCE EXPENSE ON )  
CAPITAL EXPENDITURES )

**SUBMISSION OF CITIZENS ACTION COALITION OF INDIANA, INC.'S  
EXCEPTIONS TO PROPOSED ORDER OF I&M AND THE OUCC**

Citizens Action Coalition of Indiana, Inc. ("CAC"), by and through its legal counsel, respectfully files its Exceptions to the Proposed Order of Indiana Michigan Power Company ("I&M") and the Indiana Office of Utility Consumer Counselor ("OUCC"). CAC's Exceptions contain recommended changes to this Proposed Order of I&M and the OUCC and are provided in both "redline" and "clean" form. The fact that CAC chose not to address other issues in its Exceptions should not be construed as endorsing any language or positions in the Proposed Order of I&M and the OUCC.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served by electronic mail or U.S.

Mail, first class postage prepaid, this 14<sup>th</sup> day of October, 2014, to the following:

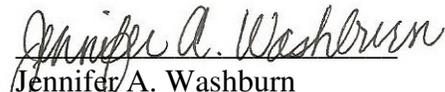
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FOR 2015 AND ASSOCIATED ACCOUNTING ) CAUSE NO. 44486  
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INCLUDING TIMELY RECOVERY ) APPROVED:  
THROUGH I&M'S DSM/EE PROGRAM COST )  
RIDER OF ASSOCIATED COSTS, )  
INCLUDING ALL PROGRAM COSTS, NET )  
LOST REVENUE, SHAREHOLDER )  
INCENTIVES AND CARRYING CHARGES, )  
DEPRECIATION AND OPERATIONS AND )  
MAINTENANCE EXPENSE ON CAPITAL )  
EXPENDITURES. )

**ORDER OF THE COMMISSION**

**Presiding Officers:**

**David E. Ziegner, Commissioner**

**Loraine L. Seyfried, Chief Administrative Law Judge**

On May 5, 2014, Indiana Michigan Power Company ("I&M") filed its Verified Petition and Request for Administrative Notice with the Indiana Utility Regulatory Commission ("Commission"), requesting approval of a plan for Demand Side Management/Energy Efficiency ("DSM/EE") Programs for 2015 and associated accounting and ratemaking recognition.

The I&M Industrial Group ("Industrial Group"), Citizens Action Coalition of Indiana ("CAC") and the City of Fort Wayne ("Fort Wayne" or "City") intervened in this Cause. On May 7, 2014, I&M filed its case-in-chief and supporting workpapers. On July 24, 2014, the Indiana Office of Utility Consumer Counselor ("OUCC") and CAC filed their respective cases-in-chief. On July 28, 2014, Fort Wayne filed its case-in-chief. On August 5, 2014, I&M filed its rebuttal evidence.

The Commission held an evidentiary hearing in this Cause on August 15 and 25, 2014 in Hearing Room 222, 101 W. Washington Street, Indianapolis, Indiana. I&M, the OUCC, the Industrial Group, CAC and Fort Wayne appeared and participated at the hearing. No members of the general public attended the hearing. At the August 25, 2014 evidentiary hearing, I&M and the OUCC reported that they had reached an agreement in principle and required time to fully document their proposed settlement. On the same date, I&M and the OUCC filed a Joint Motion

for Leave to Submit Settlement Agreement and requested the procedural schedule be set to allow for the presentation of evidence and hearing on the Settlement Agreement. The Joint Motion was granted and the hearing was continued until September 29, 2014.

On September 3, 2014, I&M and the OUCC filed testimony and exhibits in support of their Settlement Agreement. On September 16, 2014, Fort Wayne filed responsive testimony. I&M filed additional testimony on September 22, 2014, rebutting Ft. Wayne's filing.<sup>1</sup> The Commission held a settlement hearing on September 29, 2014 in Hearing Room 222, 101 W. Washington Street, Indianapolis, Indiana. I&M, the OUCC, the Industrial Group, CAC and Fort Wayne appeared and participated at the hearing. No members of the general public attended the settlement hearing.

Based upon applicable law and evidence presented, the Commission finds:

**1. Notice and Jurisdiction.** Notices of the hearings in this Cause were given and published as required by law. Proofs of publication of the notices are contained in the official files of the Commission. I&M is a public utility as defined in Ind. Code § 8-1-2-1(a). Therefore, the Commission has jurisdiction over I&M and the subject matter of this Cause.

**2. I&M's Characteristics and Business.** I&M, a wholly-owned subsidiary of American Electric Power ("AEP"), is a corporation organized and existing under the laws of the State of Indiana, with its principal office at One Summit Square, Fort Wayne, Indiana. I&M is a member of the East Zone of the AEP System. I&M is engaged in, among other things, rendering electric service in the States of Indiana and Michigan. In Indiana, I&M provides retail electric service to approximately 458,000 customers in the following counties: Adams, Allen, Blackford, DeKalb, Delaware, Elkhart, Grant, Hamilton, Henry, Howard, Huntington, Jay, LaPorte, Madison, Marshall, Miami, Noble, Randolph, St. Joseph, Steuben, Tipton, Wabash, Wells, and Whitley.

**3. Relief Requested.** I&M requests Commission approval of a 2015 DSM Plan, which is a plan to implement a cost-effective portfolio of DSM/EE programs for the calendar year 2015 and associated ratemaking and accounting relief.

**4. I&M's Direct Evidence.**

**A. 2015 DSM Plan.** Mr. Walter explained that the 2015 DSM Plan continues many of the same DSM/EE programs approved in the Commission's generic DSM Order, Cause No. 42693-S1, or in I&M Cause Nos. 43959, and 43827 DSM-3, but as I&M-specific DSM/EE programs as presented in this Cause. Mr. Walter provided a program summary, proposed funding levels, and related information for the following programs:

- Residential EE Products
- Residential Low Income Weatherization

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<sup>1</sup> Fort Wayne also filed a Response to Joint Motion of I&M and OUCC Regarding Settlement Agreement. As the Presiding Officers previously granted the Joint Motion and recognizing Fort Wayne's September 29, 2014 decision not to offer its responsive testimony, we find the City's Response to be moot.

- Schools Energy Education
- Residential Appliance Recycling
- Residential New Construction
- Residential Weatherization
- Residential Online Audit
- Residential Home Energy Reports
- Residential Peak Reduction
- C&I Prescriptive
- C&I Custom (a.k.a. C&I Incentives)
- C&I Audit & Small Business Direct Install (“SBDI”)
- Electric Energy Consumption Optimization (“EECO”)

Mr. Walter explained how a consultant was used to develop the Action Plan for 2014-2016. Mr. Walter explained why approval was sought for a one-year plan and discussed how the 2015 DSM Plan optimized the consultant’s recommendations to reflect Senate Enrolled Act (“SEA”) 340, reflect I&M’s experience with the existing program offerings, improve cost-effectiveness and program design, and reflect factors unique to I&M.

**B. Cost-Effectiveness.** Mr. Walter presented the cost-effectiveness analysis performed by I&M’s consultant. William K. Castle, Director of Resource Planning and DSM for AEP Service Corporation (“AEPSC”) also presented an analysis of the cost-effectiveness of the portfolio of proposed DSM programs. He discussed the standard economic tests, inputs and assumptions used in the cost-effectiveness analysis. He explained the differences between I&M’s original 2015 DSM portfolio and its current DSM portfolio that materially impacts cost-effectiveness and discussed the risks to the cost-effectiveness of the portfolio.

**C. Shared Savings.** David M. Roush, Director-Regulated Pricing and Analysis for AEPSC, testified that I&M proposes a sharing mechanism wherein I&M receives, before taxes, 15 percent of the shared savings. He said I&M is not seeking shared savings for the Low Income Weatherization or EECO programs. I&M’s share of the shared savings would be treated as above-the-line for ratemaking purposes and included in the earnings test under the fuel adjustment clause.

**D. Cost Recovery.** Mr. Roush explained the calculation of future DSM/EE Program Cost Rider rates. He explained that in addition to Program Costs, the revenue requirement for the DSM/EE Program Cost Rider will include net lost revenues, shared savings, an adjustment, if needed, based on the year-to-date experience for the current program year and a reconciliation of prior program years. He added that I&M is not proposing to revise the Rider rates at this time but instead will propose new rates at the time of its annual true-up/reconciliation proceeding. He explained how subsequent Rider rates will be established and stated I&M’s requested ratemaking treatment is consistent with the Commission’s rules.

**E. Stakeholder Input.** Mr. Walter explained that I&M proposes an Advisory Board process similar to the process used to elicit stakeholder input to the I&M 2013 Integrated Resource Plan (“IRP”). He proposed that I&M solicit stakeholder input into DSM planning and program implementation via quarterly Advisory Board meetings. I&M can then discuss and

respond to stakeholder input regarding future direction of programs planned and discuss current and ongoing program implementation progress so that interested stakeholders can stay informed on I&M DSM program performance.

**5. OUCC's Evidence.** The OUCC presented the testimony of three witnesses. April M. Paronish, Senior Utility Analyst in the OUCC Resource Planning and Communications Division, discussed I&M's shared savings mechanism and proposed changes to I&M's DSM/EE Program Implementation Oversight Board ("OSB"). Ronald L. Keen, Senior Analyst within the OUCC Resource Planning and Communications Division, discussed the fact that the EECO Program affects all customers served on a specific circuit in the same manner, regardless of whether the customer opts-out of participation in future DSM programs under SEA 340. Edward T. Rutter, Utility Analyst in the OUCC Resource Planning and Communications Division, testified regarding I&M's proposed shared savings mechanism, net lost revenues and EECO program cost recovery.

Ms. Paronish recommended that the Commission deny I&M's proposal to modify the structure and operation of the current OSB and deny I&M's requested spending flexibility unless the Commission maintains the current OSB structure. She further recommended the Commission deny I&M's proposed shared savings mechanism and not allow incentives for savings generated by programs previously designated as statewide Core programs under Cause No. 42693 Phase II.

Mr. Rutter recommended that no shareholder incentive be approved for 2015. He testified that the shareholder incentive proposed destroys the proper balance between the interests of the utility, its shareholders, utility customers and the public interest under the regulatory compact. However, if the Commission decides to continue to provide a shareholder incentive to I&M despite the OUCC's opposition, Mr. Rutter testified that:

- No shareholder incentive should be allowed unless I&M achieves 100% of its target energy savings after EM&V;
- No additional incentive should be permitted for achieving more than 100% of the utility's self-imposed energy savings target; and
- Shareholders' incentives should be capped at 10% of total eligible DSM program costs by customer sector.

Mr. Rutter also recommended that EECO program costs and corresponding net lost revenue recovery not be permitted through a DSM Program Cost Rider, but rather considered in I&M's next base rate case or through a TDSIC filing. Finally, Mr. Rutter emphasized that, due to the magnitude of net lost revenues and shareholder incentives recovered through I&M's DSM tracker, it is important that the Commission re-examine both lost margin recovery and shareholder incentives, either generically or in individual investor-owned electric utilities' 2016 DSM plan approval cases.

**6. CAC's Evidence.** The CAC presented the testimony of Kerwin L. Olson, its Executive Director, who testified regarding I&M's request to recover Net Lost Revenues, I&M's 2013 IRP and I&M's OSB. Mr. Olson opposed I&M's recovery of lost revenues at this time and requested the Commission open an investigation to examine lost revenue calculations for DSM to ensure that ratepayers are not being overcharged. He stated that I&M did not provide any evidence

that its proposed DSM programs will result in I&M failing to receive sufficient revenues to recovery its authorized costs. Furthermore, I&M also did not provide any evidence that it experienced a reduction in sales that resulted in I&M not receiving sufficient revenues to recover its authorized costs *because of* its previous DSM programs. Mr. Olson stated 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. He said that this would essentially be asking utility ratepayers to guarantee excess revenues to the utility. He further stated that a utility that is recovering revenues in excess of authorized levels should be called in to reduce rates to remove the over-recovery and that 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. Unless I&M can demonstrate and provide sufficient evidence that its proposed DSM programs would cause electricity sales to fall sufficiently that I&M would fail to recover its authorized costs, any request for lost revenues should be denied. Mr. Olson pointed out that SEA 340 does define lost revenues as a program cost; however it clearly states a utility "may recover" program costs—not "shall." Additionally, Mr. Olson noted that the Commission's rule at 170 IAC 4-8-6 states that the "commission may allow the utility to recover the utility's lost revenue" which is another "may" provision. Mr. Olson deduced that I&M may be eligible for lost revenue recovery, but is not entitled. Mr. Olson commented on the fact that I&M receives lost revenues for the life of the measure, which is excessive. He stated that 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. He stated that after that time, a utility can file a new rate case and re-set rates if it is not recovering its authorized costs. He also mentioned how the Commission has authority to revise how it has treated lost revenues pursuant to 170 IAC 4-8-6(c), which states that: The commission may periodically review the need for continued recovery of the lost revenue as a result of a utility's DSM program, and the approval of a lost revenue recovery mechanism shall not constitute approval of specific dollar amount, the prudence or reasonableness of which may be debated in a future proceeding before the commission. He recommended that the Commission open up an investigation to examine lost revenue calculations for DSM to ensure that ratepayers are not being charged. Such an investigation should also evaluate the reasonableness of awarding lost revenues for the life of the measure.

Mr. Olson also commented on I&M's 2015 DSM Plan and I&M's 2013 IRP as modified by the Report of the Indiana Utility Regulatory Commission Electricity Division Director, Dr. Bradley K. Borum, Regarding 2013 Integrated Resource Plans, April 30, 2014. Mr. Olson noted the inconsistency with I&M's statement that its 2015 DSM Plan is consistent with its 2013 IRP, even though I&M's IRP did not make any adjustments to its IRP to remedy its failure to meet the IRP requirements as noted by Dr. Borum. He noted that Dr. Borum found that I&M's hard-wiring of the impact of energy efficiency through 2019 made I&M's IRP fail to meet the requirement that it evaluate energy efficiency and supply-side resources in a consistent and comparable manner. I&M did not remedy its failing IRP to address this and did not state that it made any changes per Dr. Borum's report to bring its IRP into compliance with 170 IAC 4-7-8. Thus, Mr. Olson recommended that the Commission order I&M to make adjustments that reflect Dr. Borum's findings on I&M's IRP with regard to DSM and how the reasonableness of I&M's treatment of

this resource, including I&M's 2015 DSM Plan, is called into question because I&M failed the DSM requirements for its IRP. CAC suggested that I&M provide a supplemental plan or provide its OSB the authority to work on expanded or new program offerings to be delivered starting in 2015. Mr. Olson noted that in the Comments of CAC, Earthjustice, Mullett & Associates and Sierra Club on the IURC Electricity Division Director's Draft Report Regarding 2013 Integrated Resource Plans, submitted on March 31, 2014, CAC et. al noted at pp. 11-12 that SEA 340 became law without the Governor's signature since the Draft Report was issued. Although this occurred, utilities' obligations with respect to considering and integrating energy efficiency into their resource plans remains. I&M must adhere to the requirements provided in the Commission's IRP rule.<sup>2</sup> 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. 170 IAC 4-7-6(b). Utilities must demonstrate that supply-side and demand-side resource alternatives have been evaluated on a consistent and comparable basis (170 IAC 4-7-8(b)(3)). Utilities must also show that their preferred resource portfolios utilize, to the extent practical, all economical load management, demand side management, and energy efficiency improvements, among other resources, as sources of new supply (170 IAC 4-7-8(b)(4)). That is, utilities must show that they have evaluated energy efficiency and other demand-side resources fairly and that they utilize all cost effective demand-side management resources available in their respective service territories. Such a demonstration is critical to utilities fulfilling their fundamental obligation to provide customers with "reasonably adequate service" at "just and reasonable rates" under Ind. Code 8-1-2-4. I&M did not correct its IRP to adhere to these rules, and thus its 2015 DSM Plan may be inadequate. Mr. Olson also noted that I&M had ample time between the comments filed in January 2014 and Dr. Borum's Draft Report filed on February 28, 2014 to make adjustments to bring its 2015 DSM Plan into compliance with its 2013 IRP as modified by Dr. Borum's 2013 IRP Report.

Mr. Olson also commented on I&M's recommendation to make changes to the governance of its OSB. He described the Settlement Agreement in 43769 which was entered into by I&M, CAC, the City of Fort Wayne, the I&M Industrial Group and the Office of Utility Consumer Counselor (43769 Settlement Agreement attached to CAC Exhibit 1). The Settlement Agreement serves as the current governance document for the OSB and provides that each member to the Settlement Agreement is a voting member of the OSB. Generally, the Settlement Agreement states that the OSB "will be responsible for monitoring and administering the progress and effectiveness" of the programs. P. 4. It "will meet as necessary on an ongoing monthly basis as programs are being implemented and evaluated." *Id.* It "shall oversee the high level implementation" of the programs and that "I&M will be responsible for the day to day program management, delivery and implementation." *Id.* The Settlement Agreement also provided that the following would be discussed and voted upon by the OSB in accordance with the Settlement Agreement: appropriate customer incentive levels, appropriate customer rebate eligibility periods, addition or deletion of measures for any particular program, evaluation of overall program and selection of independent third-party evaluator, monitor program implementation, monthly and annual reports to the Commission, and changes in program budgets. *Id.* at 5. Importantly, the Settlement Agreement also states that the OSB "will use good faith efforts to reach consensus" but "will reach decisions

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<sup>2</sup> On January 14, 2013, Governor Pence issued Executive Order 13-03, which put into place a rulemaking moratorium. The amendment to the IRP rule currently falls under the rulemaking moratorium; however, I&M (as well as other utilities) agreed to follow the rule although it is still pending.

through a majority decision of its voting members.” *Id.* However, “to the extent the Implementation Oversight Board cannot reach a consensus after a good faith effort by all members, and as a result a decision is reached by a mere majority, any individual member can raise objections to a majority decision by filing such objections with the Commission.” *Id.* at 6. He noted that I&M wished to abandon the current framework for its OSB and instead use something “[s]imilar to the process used to elicit stakeholder input to the I&M 2013 Integrated Resource Plan.”<sup>3</sup> Mr. Olson responded that through the IRP stakeholder process, CAC and other entities criticized I&M for: the lack of meeting frequency, noting that an effective process needs more time for stakeholders to digest the information presented and to provide recommendations; the fact that the meetings were often too short to delve deeper into discussions; that stakeholders did not have an opportunity to meaningfully review and further develop scenarios; and that meeting materials should have been distributed at least one to two weeks in advance of a given meeting so that stakeholders could more meaningfully participate in meetings. Most importantly, CAC and other parties noted that “[m]eaningful stakeholder participation depends in large part on utility receptivity to feedback and requests for information.”<sup>4</sup> They further stated that for “the I&M stakeholder process, comments from one meeting often did not carry over to subsequent meetings and/or were not responded to or reflected in the modeling. As a result, stakeholders did not have time or opportunity to engage with I&M concerning its responses to those comments as they arose in the stakeholder process and to develop more thorough modeling scenarios based on those exchanges.”<sup>5</sup> And, I&M flat out rejected many of the stakeholder’s suggestions, as CAC et. al. noted throughout its Comments on I&M’s 2013 IRP and Comments on Draft Report. He concluded that all in all CAC was disappointed with I&M’s participation in the stakeholder process and object to I&M’s proposal to make its OSB similar to what CAC saw and experienced in I&M’s Stakeholder Advisory process for its 2013 IRP.

Mr. Olson noted that the Phase II Report in Cause Number 42693 noted the important role of an active oversight board. It stated that oversight boards have the benefit of “bring[ing] together diverse perspectives and expertise”; “use a consensus process in making key decisions regarding funding, program design, and evaluation”; “ensure that problems are identified in a timely manner, and provide a mechanism for program design adjustments and reallocation of resources as needed.” 42693-Phase II Order, P. 39. The Report goes on to state how greater benefits may arise from a formal process. In establishing the DSMCC, it stated how it “would provide a forum for reaching agreement on contentious issues, or at a minimum provide key stakeholders an opportunity to engage in constructive dialog regarding opposing viewpoints.” *Id.*

Thus, CAC recommended that the Commission reject I&M’s suggested changes and allow the OSB to continue as it has to ensure adequate stakeholder input. He stated that if the Commission does, however, accept I&M’s proposed changes to the OSB, CAC respectfully requests the Commission implement many controls to ensure ratepayer protection, including but not limited to assigning nontestimonial staff to I&M’s Advisory Board; allowing the current OSB members to continue to vote on matters provided for in the 43769 Settlement Agreement and file minority reports with the Commission; and instructing I&M to provide written bi-weekly updates in order to ensure proper program administration and evaluation.

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<sup>3</sup> I&M witness Walter Testimony, p. 34, lines 1-2.

<sup>4</sup> CAC et. al Comments on Draft Report, p.2.

<sup>5</sup> *Id.*, pp. 2-3.

Mr. Olson summarized CAC's recommendations that the Commission reject or make subject to refund I&M's request for lost revenues until the Commission concludes an investigation into lost revenue calculations for DSM to ensure that ratepayers are not being overcharged; order I&M to align its 2015 DSM Plan with its IRP as modified by Dr. Borum's 2013 IRP Report; and reject I&M's proposal to alter its OSB in order to ensure proper ratepayer protection.

**7. Fort Wayne's Evidence.** Douglas J. Fasick, Senior Program Manager, Utilities Energy Engineering and Sustainability Service for the City of Fort Wayne's City Utilities Division, expressed the City's concern that I&M's proposed 2015 DSM program does not recognize the unique nature of the energy requirements for the City's wastewater and water systems and the opportunities for very substantial reductions in energy consumption and electric demand through the City's combined heat and power ("CHP") project and DSM initiatives. He explained that the CHP project at the City's wastewater facility did not fit within any particular DSM/EE program offering and added that the City chose to participate in this proceeding to encourage I&M and the Commission to adopt a 2015 DSM program that will provide flexibility to consider projects that will capture these energy savings opportunities at the City's wastewater and water systems. He proposed that I&M's C&I Custom Program should allow customers to present their own analysis of the economics for consideration by I&M in determining whether a project is of "high value" and that the program should not be limited to buildings or operational efficiencies. Finally, Mr. Fasick stated the C&I Custom Program should provide the flexibility to design DSM projects specific to facilities and operations and that the City should be given the opportunity to work with I&M to develop a project that provides value to both the City and I&M.

**8. I&M Rebuttal.** I&M presented rebuttal testimony from Mr. Walter responding to the concerns raised by the other parties regarding shared savings, Net Lost Revenues, EECO program cost recovery, OSB structure, I&M's 2013 IRP and I&M's C&I Custom Program. Mr. Walter explained that eliminating shareholder incentives would abandon an important aspect of DSM programs – to incent the utility to offer robust and impactful programs rather than focusing solely on the provision of retail electric service. He reiterated that I&M's shared savings model applies a simple and straightforward benefit cost test result and provides 85 percent of the benefits produced by I&M's DSM programs to I&M's customers. He also explained how the OUCC's proposed modifications to the shared savings mechanism would result in an unfair sharing of program benefits and incent unintended adverse consequences.

Mr. Walter responded to Mr. Rutter's recommendation that EECO Program costs and corresponding net lost revenues be considered in a base rate case or TDSIC filing rather than through the DSM/EE Rider. He explained that Mr. Rutter recognizes the EECO Program is distinct from other energy efficiency programs and that timely cost recovery is appropriate. He explained why he disagreed with Mr. Rutter that SEA 340 creates a concern with including the EECO program in the 2015 DSM Plan. He also explained that acceptance of Mr. Rutter's TDSIC recommendation would effectively deny I&M timely cost recovery for the EECO program and possibly cause the program and its associated benefits to be discontinued at least until such time as a TDSIC filing could be prepared and considered by the Commission. He said the Commission and the parties have had an opportunity to investigate this particular program in two cases and it is providing cost-effective benefits for customers. Accordingly, he concluded it would be

unreasonable to deny or delay ongoing cost recovery of the EECO program through the DSM/EE Rider. Mr. Walter added that while Mr. Rutter did not identify any specific concerns about the Company's evaluation, verification and measurement ("EM&V") for the EECO program, the Company is interested in working with the OUCC and other industry stakeholders on EM&V for the EECO program and has already met with the OUCC to discuss EECO program results and ongoing EM&V.

Mr. Walter testified that Mr. Olson's comparison of actual sales to forecast sales was not a meaningful comparison for the purposes of evaluating the impact of DSM programs or the appropriateness of lost revenue recovery. He explained why I&M believes it is reasonable and appropriate to provide lost revenue recovery for the life of the measure, and not require utilities to file general rate cases on an arbitrary schedule. Mr. Walter disagreed with Mr. Olson's request that I&M's lost revenue recovery be made subject to refund pending further investigation. He testified that I&M is in compliance with current Commission rules and Orders regarding net lost revenue reporting and recovery, and that the Company is also in compliance with the agreed upon treatment conventions with industry stakeholders. He explained that I&M has consistently trued up any net lost revenue recovery to independent EM&V annual results. He stated that CAC witness Olson's opposition to net margin recovery is unfounded.

Mr. Walter responded to the OUCC and CAC recommendations regarding the OSB. He emphasized that I&M is not proposing to dismantle stakeholder input but rather to allow for broader stakeholder input beyond the members of the old board and recognize that the utility is responsible for DSM programs. He explained how I&M will work with stakeholders to keep them updated and aware of program progress. He said I&M is supportive of an open advisory process that will help stimulate a free exchange of ideas as opposed to the old model that by its mere structure carried the inherent risk that members could hold veto power of issues through voting blocks. He also explained why I&M's proposed spending flexibility is reasonable and recognizes the need of the utility to retain management control of the matters for which the utility has responsibility.

In response to the City of Fort Wayne, Mr. Walter testified that Mr. Fasick discussed only one component of the C&I Custom Program, which seems to lead to his interpretation that efficiency improvements would not qualify for the program and its incentives. He explained that his direct testimony regarding this program specifically states that the Custom program "provides incentives for non-prescriptive, non-deemable (variable operating characteristics) C&I sector measures and projects." (Walter Direct, pp. 19-20). He added that the program supports projects that require a customized, more complex engineering analysis to determine the level of energy savings possible from projects. He stated that the C&I Custom Program was combined with the Retro Commissioning Lite Program because the delivery aspects required for both are similar and would cause less application confusion to customers. He said Mr. Fasick interpreted the Retro Commissioning Lite component of the newly combined Custom program as the only potential route for his energy savings projects and clarified that this is not the case.

With regard to the City's CHP project, Mr. Walter explained I&M is not opposed to discussing how CHP incentive programs may be feasible in the future but pointed out that this is not a simple issue. He testified that CHP projects were not planned as potential projects within the

scope of the C&I Custom Program. He stated that CHP projects are variable and complex in nature. He added that complex analysis, metering, and engineering are required. He noted that CHP is on-site generation, not an energy efficiency measure upgrade *per se*. He recognized that the cost and benefit of CHP can be significant but stated that the Commission has previously ruled that generation sold back to the utility would not count toward energy efficiency savings targets. In other words, the Commission has distinguished between net metering and feed-in-tariffs.

He explained that while I&M is committed to providing cost effective DSM, the cost-effectiveness of CHP projects is untested because they are site specific and complex in nature, and have the potential to interconnect and sell their generation resource into electric markets. He stated that the concept of I&M providing incentives to help justify projects where the benefits can extend beyond I&M avoided generation are also untested. Mr. Walter proposed I&M and the City work together to try to identify a CHP project that qualifies for the C&I Custom Program as currently structured.

**9. Settlement Agreement.** The Settlement Agreement is attached hereto and incorporated herein by reference. Specifically, the Settlement Agreement provides that:

- a. The 2015 DSM Plan as filed by I&M will be adopted as proposed, including the timely recovery of program costs, lost revenues and shared savings, with the modifications outlined in the Settlement Agreement.
- b. I&M shall be authorized to receive a shareholder incentive in the form of a shared savings mechanism as set forth in the Settlement Agreement.
- c. The OSB for I&M's 2015 DSM Plan will include five voting members: I&M, Industrial Group, CAC, Fort Wayne and the OUCC. Paragraph A(3)(c)(i-iii) on pages 3-4 of the Settlement Agreement enumerates the specific list of issues that will be decided by a vote of the OSB members. The Settlement Agreement also includes a quarterly meeting requirement and dispute resolution provisions.

**10. Settlement Testimony.** Mr. Walter and Ms. Paronish both sponsored and provided an overview of the Settlement Agreement (Joint Exhibit 1).

Mr. Walter testified that the Settlement Agreement captures the agreement of the Settling Parties on implementation of the 2015 DSM Plan as proposed by I&M, with specific modifications enumerated in the Settlement Agreement, including an agreed shared savings methodology and new oversight or stakeholder process. Mr. Walter described each of the key Settlement Agreement provisions in detail and explained that the Settlement Agreement, taken as a whole, represents the result of arms-length negotiations on the issues raised in the docket. More specifically, he explained that the Settlement Agreement provides the agreed upon methodology to govern the sharing of benefits (shared savings) realized as a result of cost-effective implementation of the 2015 DSM Plan. He noted that the Settling Parties agreed that the savings eligible for recovery will be determined by the amount of the net benefits from the programs that achieve Utility Cost Test ("UCT") benefit-cost scores at or above 1.0 at the program level excluding savings from the

EECO Program. He stated that the Settling Parties agreed that I&M would receive 15 percent of 90 percent of the total shared savings at the sector level (excluding EECO savings and programs that are not cost-effective under the UCT). He stated that I&M will not be eligible to recover shared savings beyond 15 percent of sector program costs, effectively serving as the cap on I&M shared savings earnings. He explained that the Settling Parties agreed that I&M may still forecast the amount of shared savings to be reflected in the DSM Rider factor based on energy savings projections, but those forecasts are subject to reconciliation based on the verified net benefits determined by the independent EM&V vendor.

Mr. Walter explained that the oversight or stakeholder process in the Settlement Agreement provides for five voting members for the I&M OSB, namely I&M, the I&M Industrial Group, CAC, the City of Fort Wayne, and the OUCC. He stated that the OSB will hold meetings at least on a quarterly basis. He stated that the meetings will have agendas distributed no less than five days before the meeting. He explained that the quarterly meetings are intended to provide I&M an opportunity to seek input and gather feedback from members on program performance to date and, when required, conduct voting on upcoming issues.

Mr. Walter explained that the Settlement Agreement enumerates the specific list of issues to be decided by a vote of the OSB members. Mr. Walter also discussed the voting procedures set forth in the Settlement Agreement as well as the plan for communications between quarterly meetings and the steps that will be taken to protect confidential information from disclosure. Mr. Walter also discussed the dispute resolution process agreed to in the Settlement Agreement. He explained that this process was included to ensure that there was an extra check and balance in the system, in that an escalation mechanism was established where critical issues could be elevated to the attention of OSB members' management as a safeguard to ensure communication is clear. He stated that I&M agreed to delay implementation of any contested items that do not require immediate action so that OSB member management personnel can discuss matters within a three business day period. He clarified that this process is not intended to replace the ability of the Commission to act as final arbiter on any matter. He said the provision is included to provide an avenue for OSB members to ensure proper consideration of important issues if there is not agreement among the members. Mr. Walter also explained that the Settlement Agreement makes it clear that nothing in the agreement shall limit I&M from seeking input on its programs and DSM activity from interested stakeholders beyond the members of the OSB.

Mr. Walter stated that to the extent that any issue is not addressed in the Settlement Agreement the Commission can look to I&M's original filing and supporting testimony approve implementation of the 2015 DSM Plan. He explained that Party experts were involved with legal counsel in the development of both the conceptual framework and the details of the Settlement Agreement. He said many hours were devoted by the Parties to discussions, the collaborative exchange of information, and settlement negotiations.

Mr. Walter explained why he believes Commission approval of the Settlement Agreement is in the public interest. He stated that the Settlement Agreement incorporates considerable concessions by both Settling Parties in comparison to the positions provided in pre-filed testimony. He stated that I&M proposed a sharing mechanism that did not cap the amount of shared savings received by the Company beyond the 15/85 percent sharing allocation between I&M and

customers, respectively. He explained that the Settlement Agreement provides that I&M customers will not only receive the benefit of 85 percent of the net benefits but also that I&M's 15 percent share will be based on only 90 percent of the net benefits, as opposed to the proposed 100 percent in I&M's plan. He stated that the Settlement Agreement further benefits customers because another cap will be applied so that I&M will be constrained to only collect its already capped 15 percent share of net benefits up to another separate 15 percent cap based on program costs by sector. He stated that these layered caps provide more potential savings for customers from I&M's originally proposed 2015 DSM plan.

Mr. Walter also explained that the customers are advantaged by the new Oversight Board process. He said the clarification on the issues eligible for voting will allow I&M to obtain input on the provision of these voluntary programs while managing the implementation of the programs by the Company. He explained that the agreement also provides a clear path to govern the OSB interactions and involves member management if there are concerns in need of greater attention. He testified that the Settlement Agreement also makes it clear that I&M may seek other stakeholder input beyond members of the OSB. He stated that I&M sought approval of certain programs and associated incentives and recovery of lost revenues in its 2015 DSM Plan. I&M is willing to carry out its voluntary 2015 DSM Plan as filed with the modification included in the Settlement Agreement reached with OUC.

Ms. Paronish testified that the Settlement Agreement enumerates modifications to the 2015 DSM Plan proposed by I&M. She stated that I&M's proposed 2015 DSM program portfolio continues the majority of its 2014 DSM programs, but there are some agreed program changes that should improve the cost-effectiveness of I&M's DSM portfolio. She stated the Settlement Agreement includes OSB provisions that could improve operational efficiencies without sacrificing ratepayer protections. She stated that the Settlement Agreement also allows I&M to continue to earn performance incentives, but would provide greater ratepayer protections than I&M originally proposed. She explained that rather than basing shared savings on goals or projections, I&M will calculate final actual shared savings based on the verified savings determined by the independent EM&V vendor. She said the amount of savings will be calculated using the UCT benefit-cost scores. She stated that the UCT score must be at least 1.0 at the program level to count associated energy or demand reductions in I&M's shared savings calculation. She added that the EECO program will be excluded from I&M's shared savings calculation. She explained that I&M will not receive shared savings on the first 10 percent of benefits calculated by the UCT. However, it will receive 15 percent of the remaining savings at the sector level (excluding shared savings attributable to the EECO program and any programs that do not score at least 1.0 under the UCT at the program level), subject to a shared savings cap. She explained that shared savings shall be capped at 15 percent of I&M's total annual eligible program costs, by sector, excluding the EECO program and any other program(s) that do not score at least 1.0 under the UCT at the program level. She explained that I&M shall not be eligible to collect shared savings in excess of the agreed cap for each sector (*i.e.*, 15 percent of that sector's eligible program costs). She stated that I&M will forecast the amount of 2015 shared savings and include its authorized share of the forecasted amount in its DSM Rider factor. However, estimated shared savings recovered through the DSM Rider factor will be reconciled and trued-up to I&M's final EM&V results calculated by an independent EM&V vendor.

Ms. Paronish identified the I&M OSB's voting Members and noted that unless otherwise agreed by the OSB Members, I&M will provide notice of any voting need to the OSB at least five (5) business days in advance of the vote. Ms. Paronish reviewed the list of issues subject to the voting process, listed in paragraph A(3)(c)(i-iii) on pages 3-4 of the Settlement Agreement, and discussed the OSB meeting procedures. She explained that I&M will also provide pertinent material to OSB Members not less than five (5) business days before the vote. She stated that the OSB Members will act in good faith and will not use requests for information to unnecessarily delay a vote. She stated that should an OSB Member fail to vote within the required timeframe, that failure to act will reduce the number of votes on that issue. She testified that all votes will be determined by a simple majority of voting Members participating in a particular vote (except votes to add new OSB Members, which would require a unanimous vote).

Ms. Paronish also discussed the Settlement Agreement provisions regarding communications between quarterly meetings. She added that to allow for a reasonable opportunity for discussion and input from OSB Members, I&M will notify OSB Members before making future DSM plan or reconciliation filings. Ms. Paronish discussed the additional dispute resolution procedure available under the Settlement Agreement and noted that the Settlement does not limit stakeholders' ability to take disputes to the Commission for resolution; nor does the agreement limit I&M's ability to seek input from other interested stakeholders beyond OSB Members.

Finally, Ms. Paronish explained why she believes Commission approval of the Settlement Agreement will serve the public interest. She testified that the proposed 2015 programs are designed to provide cost effective benefits to both I&M and its customers. She stated that I&M's shareholder incentives remain tethered, with the first 10 percent of shared savings allocated to I&M ratepayers, along with 85 percent of the remaining 90 percent of shared savings, with I&M's recovery limited to the agreed cap on shareholder incentives (i.e., 15% of eligible program costs, by sector). She added that while the OSB will be altered, it will retain current Members and voting rights critical to ratepayer protection.

**11. 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 v. PSI Energy*, 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 v. Public Service Co.*, 583 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). The Commission may also approve a settlement subject to certain modifications if the Commission decides it is warranted. *See Citizens Action Coalition of Ind., Inc. v. Duke Energy Ind., Inc.*, Cause No. 43114 IGCC 4S1, p. 121 (IURC 12/27/2012). Therefore, the Commission must determine whether the evidence in this Cause

sufficiently supports the conclusions that the Settlement is reasonable, just and consistent with the purpose of Ind. Code ch. 8-1-2, and that such agreement serves the public interest, and whether approval of such agreement should be made subject to certain modifications to address the concerns of the non-settling parties and the public interest..

Commission policy favors settlement because settlements help advance matters with far greater speed and certainty and far less drain on public and private resources than litigation or other adversarial proceedings. The strong policy favoring settlements is further enhanced here because the OUCC, the party mandated by statute to represent the interests of the public, is a party to the Settlement Agreement.

**A. 2015 DSM Plan.** The Settlement Agreement (a copy of which is attached to this Order and incorporated herein by reference) provides for a voluntary 2015 DSM plan consisting of a portfolio of cost-effective programs designed to offer a broad mix of DSM measures to I&M's customers. The Commission notes that, with the exception of the City's suggestions for I&M's C&I Custom Program, no parties questioned the cost-effectiveness or need for the programs included in I&M's 2015 DSM plan. The City expressed its support for the Settlement Agreement at the hearing on the Settlement Agreement leaving no opposition to the 2015 Plan programs with the exception of the argument raised by CAC that I&M's 2015 DSM Plan is not in accordance with its 2013 IRP as modified by the Report of the Indiana Utility Regulatory Commission Electricity Division Director, Dr. Bradley K. Borum, Regarding 2013 Integrated Resource Plans, April 20, 2014. The Commission agrees that the fact that I&M did not remedy its failing IRP to evaluate energy efficiency and supply-side resources in a consistent and comparable manner for its 2015 DSM plan means that its IRP is not in compliance with 170 IAC 4-7-8. Dr. Borum found that I&M's hard-wiring of the impact of energy efficiency through 2019 made its IRP fail. The Commission agrees with CAC's recommendation that I&M should be ordered to make adjustments that reflect Dr. Borum's findings on I&M's IRP with regard to DSM as the reasonableness of I&M's treatment of this resource is called into question. Thus, I&M shall work with its OSB to work on expanded or new program offerings to be delivered starting early in 2015. The Commission also finds that I&M shall resubmit its IRP in accordance with Dr. Borum's findings in this regard.

Based on the evidence presented in this case, we find that I&M's proposed portfolio of DSM programs is cost-effective, offers opportunities for all customer classes, and appropriately builds on I&M's historical program experience. Therefore, we approve the 2015 DSM programs as proposed by I&M, as modified under the Settlement Agreement and as modified herein. We further authorize the timely recovery of program costs, lost revenues, and shared savings proposed by I&M, with the modifications set forth in the Settlement Agreement and herein as discussed below.

**B. EECO Program Cost Recovery.** I&M requested the continued recovery of capital, depreciation and O&M costs associated with the EECO program through the DSM/EE Program Cost Rider using over/under deferral accounting. I&M also requested authority to begin deferral, for subsequent recovery, of carrying charges and depreciation expense, after each additional EECO circuit is placed in-service, based on the actual in-service date for each circuit.

As noted above, the Settlement Agreement provides for the timely recovery of approved EECO program costs as proposed by I&M in its filing.

At the evidentiary hearing, Mr. Walter was cross-examined by the Industrial Group as to whether the EECO program reduced demand for electricity, whether it provided less energy at a comparable level of energy service, and the potential impact on other customers should C&I customers be permitted to opt out of the EECO program under SEA 340. Mr. Walter explained that the EECO program was, in many respects, designed primarily to reduce demand. He stated that it reduces demand because, while it operates for the entire year, the EECO system is operational during the time of I&M's peak and results on average in a three percent reduction in both demand and energy. Mr. Walter explained this is different from many DSM programs, which focus on offering energy efficiency improvements. Further, the record reflects that the EECO program provides peak demand reduction, as opposed to the general demand reduction that may be associated with decreased energy usage from other types of DSM programs. SEA 340 provides that opt out does not include a program designed primarily to reduce demand. The record establishes that the EECO program is designed primarily to reduce demand.

Furthermore, SEA 340 limits opt out to a program that is designed to implement energy efficiency improvements as defined in 170 IAC 4-8-1(j) for customers. Our DSM rules define an "energy efficiency improvement" to mean "reduced energy use for a comparable level of energy service." 170 IAC 4-8-1(j). "Energy service," in turn, is defined as "the light, heat, motor drive, and other service for which a customer purchases electricity from the utility." 170 IAC 4-8-1(k). Thus, an energy efficiency improvement offers a consumer a particular end-use service (heating, cooling, *etc.*) at a reduced energy usage. For example, to make one's home or office more efficient, consumers may install Energy Star appliances, energy-efficient pumps or variable speed motors. By implementing these energy efficiency improvements, individuals and companies may obtain a comparable level of heating, cooling, refrigeration, motor drive or other energy service while reducing their energy usage.

The record reflects that the EECO program is different from the types of energy efficiency improvements defined in our DSM rules. The EECO program provides demand reduction, thereby altering I&M's load shape. The EECO program does not provide incentives to buy end-use devices like appliances, pumps or motors that offer comparable levels of energy service at reduced energy usage. We conclude that the EECO program is not designed to implement energy efficiency improvements as that term is defined in 170 IAC 4-8-1(j). In our Order in Cause No. 43827 DSM-3 we explained how approval of the EECO program as DSM is consistent with the definitions set forth in 170 IAC 4-8-1(e), (f) and (g). Cause No. 43827 DSM-3, Order at 11. We conclude, as we did in Cause No. 43827 DSM-3, that the EECO program is a deliberate intervention that produces a desired change in I&M's load shape through technology at I&M's energy delivery system. Based on the record, we find, therefore, that the EECO program is DSM as defined in 170 IAC 4-8-1(e), (f) and (g) and not an "energy efficiency program" as defined in 170 IAC 4-8-1(j).

Further, even assuming that SEA 340 permitted certain large industrial customers to opt out of the EECO program, the record shows that no such customers have sought to opt out at this time. No evidence was submitted as to the number of customers situated on EECO-upgraded circuits who may be eligible to opt out, or what percentage of those eligible may choose to

ultimately opt-out. We find that continued timely cost recovery of the costs associated with the EECO program through the DSM/EE Program Cost Rider as provided for in the I&M proposal as adopted by the Settlement Agreement is appropriate and reasonable. We further grant I&M authority to begin deferral, for subsequent recovery, of the carrying charges and depreciation expense once each additional EECO circuit is placed in-service, based on the actual in-service date for each circuit.

**C. Shared Savings.** The Commission's DSM Rules at 170 IAC 4-8-7(a) authorize the Commission to "provide the utility with a shareholder incentive to encourage participation in and promotion of a demand side management program" when the Commission determines it is appropriate to do so. We have previously approved a shareholder incentive in the form of shared savings for many of I&M's current DSM programs. *Re Indiana Michigan Power Company*, Cause No. 43827 DSM-3 (IURC 12/30/2013). The Settlement Agreement approved in this Order provides that I&M shall calculate final actual shared savings based on the verified savings determined by the EM&V vendor, rather than on projections or goals proposed by the utility. The savings eligible for sharing will be determined by the amount of savings resulting from programs that achieve Utility Cost Test ("UCT") benefit-cost scores at or above 1.0 at the program level, excluding savings from the EECO program and any DSM programs that are not cost-effective. I&M will receive a 15 percent share of 90 percent of the total shared savings at the sector level (excluding any shared savings attributed to EECO and any programs that are not cost-effective under the UCT). I&M will not be eligible to recover shared savings beyond 15 percent of sector program costs, effectively serving as a cap on I&M shared savings. The Settlement Agreement provides that I&M may still forecast the amount of shared savings to be reflected in the DSM/EE Program Cost Rider based on energy savings projections, but those forecasts are subject to reconciliation based on the verified net benefits determined by the independent EM&V vendor.

The Commission finds the proposed shared savings mechanism set forth in the Settlement Agreement to be reasonable and in the public interest. As noted in the Settling Parties' settlement testimony, the sharing mechanism set forth in the Settlement Agreement provides additional benefits to I&M's customers beyond those proposed in I&M's initial shared savings mechanism. I&M customers will not only receive the benefit of 85 percent of the net benefits produced by the 2015 DSM programs, but will also benefit because I&M's 15 percent share will be based on only 90 percent of the net benefits. As Mr. Walter explained, the Settlement Agreement further benefits customers because an additional cap will be applied so that I&M will be constrained to only collect its already-capped 15 percent share of 90 percent of the total net benefits up to a separate 15 percent cap based on eligible program costs, by sector. Accordingly, we authorize I&M to implement its shared savings mechanism consistent with the terms of the Settlement Agreement.

**D. Net Lost Revenues.** 170 IAC 4-8-6 authorizes the Commission to consider the recovery by a utility of lost revenues as a result of the implementation of DSM programs. We have previously approved I&M's recovery of net lost revenues associated with its DSM programs in Cause Nos. 43959, 43827 and 43827 DSM-3. We have similarly approved recovery of lost revenues for other utilities. Mr. Roush explained that I&M requests the Commission authorize the continued recovery of Net Lost Revenues through I&M's DSM/EE Program Cost Rider. The

Settlement Agreement provides that I&M will be authorized to recover Net Lost Revenues as originally proposed by I&M.

Mr. Olson requested that the Commission reject or make subject to refund I&M's request for Net Lost Revenue recovery until the Commission concludes an investigation into lost revenues calculations for demand side management programs to ensure that ratepayers are not being overcharged. We agree that I&M did not provide any evidence that its proposed DSM programs will result in it failing to receive sufficient revenues to recover its authorized costs, nor did I&M provide any evidence that it experienced a reduction in sales resulting in I&M not receiving sufficient revenues to recover its authorized costs. Ratepayers should not be asked to pay extra charges to compensate a utility for lost revenues when those revenues would have been excess revenues above authorized levels. It is the burden of the utility to ensure that this is not occurring, and I&M failed to make that showing here. Furthermore, the Commission is concerned about awarding lost revenues for the life of the measure as these amounts are growing quite large. Ratepayers should not be obligated to pay lost revenues for more than 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. If the utility at that point is not recovering its authorized costs, it can file a new rate case and re-set rates. To do so otherwise would essentially be asking utility ratepayers to guarantee excess revenues to the utility, which is not in the public interest.

Mr. Walter stated that Net Lost Revenues are not a cost of the DSM programs themselves but instead are reasonable and necessary costs of providing retail electric service that, absent the DSM program energy savings, would have been recovered through the just and reasonable rates established by the Commission. He contended that Mr. Olson's comparison of I&M's actual sales to forecast sales is not a meaningful comparison for the purposes of evaluating the impact of DSM programs for a number of reasons.

As noted above, the Commission has previously approved I&M's recovery of net lost revenues associated with its DSM programs. However, Commission rule at 170 IAC 4-8-6(c) provides the Commission with the ability to "periodically review the need for continued recovery of the lost revenue as a result of a utility's DSM program, and the approval of a lost revenue recovery mechanism shall not constitute approval of specific dollar amount, the prudence or reasonableness of which may be debated in a future proceeding before the commission." The record supports the CAC's proposed elimination of net lost revenue recovery. Indeed, the evidence shows that even if Mr. Olson's comparison of actual sales to forecast sales were meaningful for purposes of lost revenue recovery, I&M's retail sales in 2011, 2012 and 2013 were all lower than the test year level of sales used in I&M's last rate case decided February 13, 2013 in Cause No. 44075. However, I&M did not make that showing in this case. The CAC presented sound policy and equity arguments into the prudence and reasonableness of lost revenue recovery that would justify the Commission opening 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. Until such investigation concludes, any award of lost revenues is subject to refund. There is substantial evidence supporting the need for such an investigation. Such a proceeding would properly balance the interests of the utilities and the interests of ratepayers. We therefore agree to open an investigation into I&M's and the other electric investor-owned utilities' lost revenue calculations at this time, and make I&M's recovery of net lost revenues subject to refund pending such an investigation.

**E. Oversight Board.** The Settlement Agreement provides for an OSB with five voting members: I&M, I&M Industrial Group, CAC, Fort Wayne, and the OUCC. I&M says that it will hold meetings with its OSB at least quarterly to provide an opportunity to gather feedback from OSB members on performance to date and seek input on upcoming program and budget decisions. Pursuant to the Settlement Agreement, a vote of the five OSB voting members will be taken on the following specific issues as they arise: (i) EM&V: selection of the EM&V vendor and application of the EM&V results to shared savings, lost revenues and final energy savings; (ii) Program funds: requests by I&M to move approved funds between sectors, any I&M proposal to reassign more than 25 percent of a sector's total budget to other programs in the same sector, any I&M request to spend up to 10 percent more than the estimated total budget for each sector, and any I&M request to move approved program funds to another program from the low-income program; and (iii) adding new voting members to the OSB. As explained by Mr. Walter, if there is a need to vote on any of these enumerated issues, I&M will provide five business days' advance notice, unless the OSB members agree otherwise. I&M will also provide all pertinent information concerning I&M's DSM programs required for OSB members to make informed decisions on the underlying issues, with the understanding that I&M is not required to research or obtain information on behalf of any OSB members. Likewise, the Settlement Agreement provides that OSB members will act in good faith and will not use requests for information to unnecessarily delay voting on any issue.

Mr. Walter explained at the evidentiary hearing that I&M had initially proposed an advisory board process to address some of the concerns I&M had with the structure of the current Program Implementation Oversight Board and that I&M did not intend to limit or restrict the flow of DSM-related information going forward. Indeed, the Settlement Agreement provides a process to allow for OSB communication and voting between quarterly meetings and I&M has committed to provide monthly scorecards consistent with current format within 45 days of the end of each month. I&M has also committed to notifying OSB members prior to making a future DSM plan or reconciliation filing to provide a reasonable opportunity for discussion and input. The Settlement Agreement also provides for a dispute resolution process if there is an issue concerning a pending action by I&M that any voting member of the OSB indicates is in need of further discussion or escalation. Finally, the Settling Parties agreed that nothing in the Settlement Agreement shall limit the ability of I&M to seek other interested stakeholder input beyond the members of the OSB.

Based on the evidence presented, we find that the OSB structure proposed in the Settlement Agreement should be modified slightly, but is reasonable and in the public interest. The Settlement Agreement calls for a vote on the selection of the EM&V vendor, but not for the selection of the third-party administrator ("TPA") program implementer/s. The Commission believes it is important that the stakeholders are involved in this selection, as well; thus the Settlement Agreement is modified to include the selection of the TPA vendor as one of the specific, enumerated issues on which the OSB should vote. I&M has committed to continue the open sharing of information with its interested stakeholders on a regular, reasonable basis. The Settlement Agreement provides for OSB votes on specific, enumerated issues while providing an additional check and balance through a new dispute resolution mechanism, and ultimately through this Commission. Mr. Walter explained that this provision is included to provide an avenue for

OSB members to ensure proper consideration of important issues if there is not agreement among the members, without usurping the IURC's authority to decide disputes. Accordingly, we approve the creation of the OSB as set forth in the Settlement Agreement, as modified herein.

**F. Spending Flexibility.** I&M also requested that the Commission grant I&M the ability to spend up to and including 10 percent above the costs set forth in this filing for its proposed 2015 DSM programs, and for the ability to transfer up to 25 percent of unencumbered program costs between programs in the same customer class. Mr. Walter explained that this flexibility will help provide for the continuation of a program that is projected to exceed the yearly program budget and allow I&M to better achieve DSM savings within the overall authorized budget. The Settlement Agreement provides that I&M's proposed spending flexibility be granted, subject to the OSB voting provisions discussed above. We find that I&M's proposed spending flexibility is reasonable and should be approved. As shown on Pet. Ex. DMR-1, I&M's estimated 2015 DSM program costs total approximately \$17.3 million. The spending flexibility requested by I&M therefore amounts to approximately \$1.7 million. As shown on Pet. Ex. WKC-1, net benefits from the DSM programs are estimated to be approximately \$35.8 million. It is therefore unlikely that the spending flexibility granted herein will materially change the potential net benefits from I&M's DSM programs.

**G. Conclusion.** In this proceeding, the Commission analyzed the evidence and the Settlement Agreement to determine that it properly balances the interests of the utility, the customers, and the overall public interest. The Settling Parties' testimony in support of the Settlement Agreement and I&M's direct and rebuttal testimony and exhibits have enabled the Commission to understand the mechanics of the Settlement provisions and to determine that the Settlement Agreement is supported by the evidence of record. The Commission points out that the City of Fort Wayne also expressed support for the Settlement Agreement at the hearing considering the agreement. The Commission further finds that the Settlement Agreement is a reasonable resolution of the contested issues, in the public interest, and shall be approved, as modified herein.

**12. Effect of the Settlement Agreement.** 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 (IURC 3/19/1997).

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

1. The Settlement Agreement between I&M and the OUCC, attached hereto and incorporated herein by reference, is approved as modified herein.
2. I&M's request for timely recovery of costs associated with its 2015 DSM Plan, as modified under the Settlement Agreement, including program costs, portfolio level costs, net lost revenues, shared savings, and EM&V costs through I&M's DSM/EE Program Cost Rider and the carrying charges, depreciation and O&M expense on

the capital expenditures incurred for the EECO program is approved consistent with the Settlement Agreement; however, the recovery of lost revenues shall be made subject to refund pending the Commission's investigation into these calculations to ensure that ratepayers are not being overcharged.

3. Petitioner's requested accounting and ratemaking treatment, including the authority to defer the over and under recoveries of projected DSM/EE program costs through the DSM/EE Program Cost Rider pending reconciliation in subsequent rider periods, the monthly deferral of any costs incurred implementing the DSM/EE programs prior to the time the Commission issues an order authorizing I&M to recognize these costs through the ratemaking process. The accounting procedures necessary to implement the requested recovery of net lost revenues is also approved; however, the recovery of lost revenues shall be made subject to refund pending the Commission's investigation into these calculations to ensure that ratepayers are not being overcharged.
4. Petitioner is authorized to begin deferral, for subsequent recovery, of the carrying charges and depreciation expense after each additional EECO circuit is placed in-service, based on the actual in-service date for each circuit.
5. This Order shall be effective on and after the date of its approval.

**STEPHAN, MAYS-MEDLEY, HUSTON, WEBER 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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**Brenda A. Howe**  
**Secretary to the Commission**

Redline Version

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE VERIFIED )  
 PETITION OF INDIANA MICHIGAN POWER )  
 COMPANY FOR APPROVAL OF )  
 ALTERNATIVE REGULATORY PLAN FOR )  
 DEMAND SIDE MANAGEMENT (DSM) AND )  
 ENERGY EFFICIENCY (EE) PROGRAMS )  
 FOR 2015 AND ASSOCIATED ACCOUNTING ) CAUSE NO. 44486  
 AND RATEMAKING MECHANISMS, )  
 INCLUDING TIMELY RECOVERY ) APPROVED:  
 THROUGH I&M'S DSM/EE PROGRAM COST )  
 RIDER OF ASSOCIATED COSTS, )  
 INCLUDING ALL PROGRAM COSTS, NET )  
 LOST REVENUE, SHAREHOLDER )  
 INCENTIVES AND CARRYING CHARGES, )  
 DEPRECIATION AND OPERATIONS AND )  
 MAINTENANCE EXPENSE ON CAPITAL )  
 EXPENDITURES.

ORDER OF THE COMMISSION

**Presiding Officers:**

**David E. Ziegner, Commissioner**

**Loraine L. Seyfried, Chief Administrative Law Judge**

On May 5, 2014, Indiana Michigan Power Company ("I&M") filed its Verified Petition and Request for Administrative Notice with the Indiana Utility Regulatory Commission ("Commission"), requesting approval of a plan for Demand Side Management/Energy Efficiency ("DSM/EE") Programs for 2015 and associated accounting and ratemaking recognition.

The I&M Industrial Group ("Industrial Group"), Citizens Action Coalition of Indiana ("CAC") and the City of Fort Wayne ("Fort Wayne" or "City") intervened in this Cause. On May 7, 2014, I&M filed its case-in-chief and supporting workpapers. On July 24, 2014, the Indiana Office of Utility Consumer Counselor ("OUCC") and CAC filed their respective cases-in-chief. On July 28, 2014, Fort Wayne filed its case-in-chief. On August 5, 2014, I&M filed its rebuttal evidence.

The Commission held an evidentiary hearing in this Cause on August 15 and 25, 2014 in Hearing Room 222, 101 W. Washington Street, Indianapolis, Indiana. I&M, the OUCC, the Industrial Group, CAC and Fort Wayne appeared and participated at the hearing. No members of the general public attended the hearing. At the August 25, 2014 evidentiary hearing, I&M and the OUCC reported that they had reached an agreement in principle and required time to fully document their proposed settlement. On the same date, I&M and the OUCC filed a Joint Motion

for Leave to Submit Settlement Agreement and requested the procedural schedule be set to allow for the presentation of evidence and hearing on the Settlement Agreement. The Joint Motion was granted and the hearing was continued until September 29, 2014.

On September 3, 2014, I&M and the OUCC filed testimony and exhibits in support of their Settlement Agreement. On September 16, 2014, Fort Wayne filed responsive testimony. I&M filed additional testimony on September 22, 2014, rebutting Ft. Wayne's filing.<sup>1</sup> The Commission held a settlement hearing on September 29, 2014 in Hearing Room 222, 101 W. Washington Street, Indianapolis, Indiana. I&M, the OUCC, the Industrial Group, CAC and Fort Wayne appeared and participated at the hearing. No members of the general public attended the settlement hearing.

Based upon applicable law and evidence presented, the Commission finds:

**1. Notice and Jurisdiction.** Notices of the hearings in this Cause were given and published as required by law. Proofs of publication of the notices are contained in the official files of the Commission. I&M is a public utility as defined in Ind. Code § 8-1-2-1(a). Therefore, the Commission has jurisdiction over I&M and the subject matter of this Cause.

**2. I&M's Characteristics and Business.** I&M, a wholly-owned subsidiary of American Electric Power ("AEP"), is a corporation organized and existing under the laws of the State of Indiana, with its principal office at One Summit Square, Fort Wayne, Indiana. I&M is a member of the East Zone of the AEP System. I&M is engaged in, among other things, rendering electric service in the States of Indiana and Michigan. In Indiana, I&M provides retail electric service to approximately 458,000 customers in the following counties: Adams, Allen, Blackford, DeKalb, Delaware, Elkhart, Grant, Hamilton, Henry, Howard, Huntington, Jay, LaPorte, Madison, Marshall, Miami, Noble, Randolph, St. Joseph, Steuben, Tipton, Wabash, Wells, and Whitley.

**3. Relief Requested.** I&M requests Commission approval of a 2015 DSM Plan, which is a plan to implement a cost-effective portfolio of DSM/EE programs for the calendar year 2015 and associated ratemaking and accounting relief.

**4. I&M's Direct Evidence.**

**A. 2015 DSM Plan.** Mr. Walter explained that the 2015 DSM Plan continues many of the same DSM/EE programs approved in the Commission's generic DSM Order, Cause No. 42693-S1, or in I&M Cause Nos. 43959, and 43827 DSM-3, but as I&M-specific DSM/EE programs as presented in this Cause. Mr. Walter provided a program summary, proposed funding levels, and related information for the following programs:

- Residential EE Products
- Residential Low Income Weatherization
- Schools Energy Education

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<sup>1</sup> Fort Wayne also filed a Response to Joint Motion of I&M and OUCC Regarding Settlement Agreement. As the Presiding Officers previously granted the Joint Motion and recognizing Fort Wayne's September 29, 2014 decision not to offer its responsive testimony, we find the City's Response to be moot.

- Residential Appliance Recycling
- Residential New Construction
- Residential Weatherization
- Residential Online Audit
- Residential Home Energy Reports
- Residential Peak Reduction
- C&I Prescriptive
- C&I Custom (a.k.a. C&I Incentives)
- C&I Audit & Small Business Direct Install (“SBDI”)
- Electric Energy Consumption Optimization (“EECO”)

Mr. Walter explained how a consultant was used to develop the Action Plan for 2014-2016. Mr. Walter explained why approval was sought for a one-year plan and discussed how the 2015 DSM Plan optimized the consultant’s recommendations to reflect Senate Enrolled Act (“SEA”) 340, reflect I&M’s experience with the existing program offerings, improve cost-effectiveness and program design, and reflect factors unique to I&M.

**B. Cost-Effectiveness.** Mr. Walter presented the cost-effectiveness analysis performed by I&M’s consultant. William K. Castle, Director of Resource Planning and DSM for AEP Service Corporation (“AEPSC”) also presented an analysis of the cost-effectiveness of the portfolio of proposed DSM programs. He discussed the standard economic tests, inputs and assumptions used in the cost-effectiveness analysis. He explained the differences between I&M’s original 2015 DSM portfolio and its current DSM portfolio that materially impacts cost-effectiveness and discussed the risks to the cost-effectiveness of the portfolio.

**C. Shared Savings.** David M. Roush, Director-Regulated Pricing and Analysis for AEPSC, testified that I&M proposes a sharing mechanism wherein I&M receives, before taxes, 15 percent of the shared savings. He said I&M is not seeking shared savings for the Low Income Weatherization or EECO programs. I&M’s share of the shared savings would be treated as above-the-line for ratemaking purposes and included in the earnings test under the fuel adjustment clause.

**D. Cost Recovery.** Mr. Roush explained the calculation of future DSM/EE Program Cost Rider rates. He explained that in addition to Program Costs, the revenue requirement for the DSM/EE Program Cost Rider will include net lost revenues, shared savings, an adjustment, if needed, based on the year-to-date experience for the current program year and a reconciliation of prior program years. He added that I&M is not proposing to revise the Rider rates at this time but instead will propose new rates at the time of its annual true-up/reconciliation proceeding. He explained how subsequent Rider rates will be established and stated I&M’s requested ratemaking treatment is consistent with the Commission’s rules.

**E. Stakeholder Input.** Mr. Walter explained that I&M proposes an Advisory Board process similar to the process used to elicit stakeholder input to the I&M 2013 Integrated Resource Plan (“IRP”). He proposed that I&M solicit stakeholder input into DSM planning and program implementation via quarterly Advisory Board meetings. I&M can then discuss and respond to stakeholder input regarding future direction of programs planned and discuss current

and ongoing program implementation progress so that interested stakeholders can stay informed on I&M DSM program performance.

5. **OUCC's Evidence.** The OUCC presented the testimony of three witnesses. April M. Paronish, Senior Utility Analyst in the OUCC Resource Planning and Communications Division, discussed I&M's shared savings mechanism and proposed changes to I&M's DSM/EE Program Implementation Oversight Board ("OSB"). Ronald L. Keen, Senior Analyst within the OUCC Resource Planning and Communications Division, discussed the fact that the EECO Program affects all customers served on a specific circuit in the same manner, regardless of whether the customer opts-out of participation in future DSM programs under SEA 340. Edward T. Rutter, Utility Analyst in the OUCC Resource Planning and Communications Division, testified regarding I&M's proposed shared savings mechanism, net lost revenues and EECO program cost recovery.

Ms. Paronish recommended that the Commission deny I&M's proposal to modify the structure and operation of the current OSB and deny I&M's requested spending flexibility unless the Commission maintains the current OSB structure. She further recommended the Commission deny I&M's proposed shared savings mechanism and not allow incentives for savings generated by programs previously designated as statewide Core programs under Cause No. 42693 Phase II.

Mr. Rutter recommended that no shareholder incentive be approved for 2015. He testified that the shareholder incentive proposed destroys the proper balance between the interests of the utility, its shareholders, utility customers and the public interest under the regulatory compact. However, if the Commission decides to continue to provide a shareholder incentive to I&M despite the OUCC's opposition, Mr. Rutter testified that:

- No shareholder incentive should be allowed unless I&M achieves 100% of its target energy savings after EM&V;
- No additional incentive should be permitted for achieving more than 100% of the utility's self-imposed energy savings target; and
- Shareholders' incentives should be capped at 10% of total eligible DSM program costs by customer sector.

Mr. Rutter also recommended that EECO program costs and corresponding net lost revenue recovery not be permitted through a DSM Program Cost Rider, but rather considered in I&M's next base rate case or through a TDSIC filing. Finally, Mr. Rutter emphasized that, due to the magnitude of net lost revenues and shareholder incentives recovered through I&M's DSM tracker, it is important that the Commission re-examine both lost margin recovery and shareholder incentives, either generically or in individual investor-owned electric utilities' 2016 DSM plan approval cases.

6. **CAC's Evidence.** The CAC presented the testimony of Kerwin L. Olson, its Executive Director, who testified regarding I&M's request to recover Net Lost Revenues, I&M's 2013 IRP and I&M's OSB. Mr. Olson opposed I&M's recovery of lost revenues at this time and requested the Commission open an investigation to examine lost revenue calculations for DSM to ensure that ratepayers are not being overcharged. He stated that I&M did not provide any evidence that its proposed DSM programs will result in I&M failing to receive sufficient revenues to

recovery its authorized costs. Furthermore, I&M also did not provide any evidence that it experienced a reduction in sales that resulted in I&M not receiving sufficient revenues to recover its authorized costs *because of its previous DSM programs*. Mr. Olson stated 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. He said that this would essentially be asking utility ratepayers to guarantee excess revenues to the utility. He further stated that a utility that is recovering revenues in excess of authorized levels should be called in to reduce rates to remove the over-recovery and that 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. Unless I&M can demonstrate and provide sufficient evidence that its proposed DSM programs would cause electricity sales to fall sufficiently that I&M would fail to recover its authorized costs, any request for lost revenues should be denied. Mr. He stated that 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. He recommended that the Commission order I&M to make adjustments to its 2015 Plan to reflect comments received by I&M on its 2013 IRP or provide the OSB with authority to work on expanded or new program offerings to be delivered starting early in 2015. Olson pointed out that SEA 340 does define lost revenues as a program cost; however it clearly states a utility "may recover" program costs—not "shall." Additionally, Mr. Olson noted that the Commission's rule at 170 IAC 4-8-6 states that the "commission may allow the utility to recover the utility's lost revenue" which is another "may" provision. Mr. Olson deduced that I&M may be eligible for lost revenue recovery, but is not entitled. Mr. Olson commented on the fact that I&M receives lost revenues for the life of the measure, which is excessive. He stated that 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. He stated that after that time, a utility can file a new rate case and re-set rates if it is not recovering its authorized costs. He also mentioned how the Commission has authority to revise how it has treated lost revenues pursuant to 170 IAC 4-8-6(c), which states that: The commission may periodically review the need for continued recovery of the lost revenue as a result of a utility's DSM program, and the approval of a lost revenue recovery mechanism shall not constitute approval of specific dollar amount, the prudence or reasonableness of which may be debated in a future proceeding before the commission. He recommended that the Commission open up an investigation to examine lost revenue calculations for DSM to ensure that ratepayers are not being charged. Such an investigation should also evaluate the reasonableness of awarding lost revenues for the life of the measure. Mr. Olson also opposed I&M's proposed stakeholder process and recommended that the OSB continue as it has to ensure adequate stakeholder input.

Mr. Olson also commented on I&M's 2015 DSM Plan and I&M's 2013 IRP as modified by the Report of the Indiana Utility Regulatory Commission Electricity Division Director, Dr. Bradley K. Borum, Regarding 2013 Integrated Resource Plans, April 30, 2014. Mr. Olson noted the inconsistency with I&M's statement that its 2015 DSM Plan is consistent with its 2013 IRP, even though I&M's IRP did not make any adjustments to its IRP to remedy its failure to meet the IRP requirements as noted by Dr. Borum. He noted that Dr. Borum found that I&M's hard-wiring of the impact of energy efficiency through 2019 made I&M's IRP fail to meet the requirement that

it evaluate energy efficiency and supply-side resources in a consistent and comparable manner. I&M did not remedy its failing IRP to address this and did not state that it made any changes per Dr. Borum's report to bring its IRP into compliance with 170 IAC 4-7-8. Thus, Mr. Olson recommended that the Commission order I&M to make adjustments that reflect Dr. Borum's findings on I&M's IRP with regard to DSM and how the reasonableness of I&M's treatment of this resource, including I&M's 2015 DSM Plan, is called into question because I&M failed the DSM requirements for its IRP. CAC suggested that I&M provide a supplemental plan or provide its OSB the authority to work on expanded or new program offerings to be delivered starting in 2015. Mr. Olson noted that in the Comments of CAC, Earthjustice, Mullett & Associates and Sierra Club on the IURC Electricity Division Director's Draft Report Regarding 2013 Integrated Resource Plans, submitted on March 31, 2014, CAC et. al noted at pp. 11-12 that SEA 340 became law without the Governor's signature since the Draft Report was issued. Although this occurred, utilities' obligations with respect to considering and integrating energy efficiency into their resource plans remains. I&M must adhere to the requirements provided in the Commission's IRP rule.<sup>2</sup> 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. 170 IAC 4-7-6(b). Utilities must demonstrate that supply-side and demand-side resource alternatives have been evaluated on a consistent and comparable basis (170 IAC 4-7-8(b)(3)). Utilities must also show that their preferred resource portfolios utilize, to the extent practical, all economical load management, demand side management, and energy efficiency improvements, among other resources, as sources of new supply (170 IAC 4-7-8(b)(4)). That is, utilities must show that they have evaluated energy efficiency and other demand-side resources fairly and that they utilize all cost effective demand-side management resources available in their respective service territories. Such a demonstration is critical to utilities fulfilling their fundamental obligation to provide customers with "reasonably adequate service" at "just and reasonable rates" under Ind. Code 8-1-2-4. I&M did not correct its IRP to adhere to these rules, and thus its 2015 DSM Plan may be inadequate. Mr. Olson also noted that I&M had ample time between the comments filed in January 2014 and Dr. Borum's Draft Report filed on February 28, 2014 to make adjustments to bring its 2015 DSM Plan into compliance with its 2013 IRP as modified by Dr. Borum's 2013 IRP Report.

Mr. Olson also commented on I&M's recommendation to make changes to the governance of its OSB. He described the Settlement Agreement in 43769 which was entered into by I&M, CAC, the City of Fort Wayne, the I&M Industrial Group and the Office of Utility Consumer Counselor (43769 Settlement Agreement attached to CAC Exhibit 1). The Settlement Agreement serves as the current governance document for the OSB and provides that each member to the Settlement Agreement is a voting member of the OSB. Generally, the Settlement Agreement states that the OSB "will be responsible for monitoring and administering the progress and effectiveness" of the programs. P. 4. It "will meet as necessary on an ongoing monthly basis as programs are being implemented and evaluated." *Id.* It "shall oversee the high level implementation" of the programs and that "I&M will be responsible for the day to day program management, delivery and implementation." *Id.* The Settlement Agreement also provided that the following would be discussed and voted upon by the OSB in accordance with the Settlement Agreement: appropriate

<sup>2</sup> On January 14, 2013, Governor Pence issued Executive Order 13-03, which put into place a rulemaking moratorium. The amendment to the IRP rule currently falls under the rulemaking moratorium; however, I&M (as well as other utilities) agreed to follow the rule although it is still pending.

customer incentive levels, appropriate customer rebate eligibility periods, addition or deletion of measures for any particular program, evaluation of overall program and selection of independent third-party evaluator, monitor program implementation, monthly and annual reports to the Commission, and changes in program budgets. *Id.* at 5. Importantly, the Settlement Agreement also states that the OSB “will use good faith efforts to reach consensus” but “will reach decisions through a majority decision of its voting members.” *Id.* However, “to the extent the Implementation Oversight Board cannot reach a consensus after a good faith effort by all members, and as a result a decision is reached by a mere majority, any individual member can raise objections to a majority decision by filing such objections with the Commission.” *Id.* at 6. He noted that I&M wished to abandon the current framework for its OSB and instead use something “[s]imilar to the process used to elicit stakeholder input to the I&M 2013 Integrated Resource Plan.”<sup>3</sup> Mr. Olson responded that through the IRP stakeholder process, CAC and other entities criticized I&M for: the lack of meeting frequency, noting that an effective process needs more time for stakeholders to digest the information presented and to provide recommendations; the fact that the meetings were often too short to delve deeper into discussions; that stakeholders did not have an opportunity to meaningfully review and further develop scenarios; and that meeting materials should have been distributed at least one to two weeks in advance of a given meeting so that stakeholders could more meaningfully participate in meetings. Most importantly, CAC and other parties noted that “[m]eaningful stakeholder participation depends in large part on utility receptivity to feedback and requests for information.”<sup>4</sup> They further stated that for “the I&M stakeholder process, comments from one meeting often did not carry over to subsequent meetings and/or were not responded to or reflected in the modeling. As a result, stakeholders did not have time or opportunity to engage with I&M concerning its responses to those comments as they arose in the stakeholder process and to develop more thorough modeling scenarios based on those exchanges.”<sup>5</sup> And, I&M flat out rejected many of the stakeholder’s suggestions, as CAC et. al. noted throughout its Comments on I&M’s 2013 IRP and Comments on Draft Report. He concluded that all in all CAC was disappointed with I&M’s participation in the stakeholder process and object to I&M’s proposal to make its OSB similar to what CAC saw and experienced in I&M’s Stakeholder Advisory process for its 2013 IRP.

Mr. Olson noted that the Phase II Report in Cause Number 42693 noted the important role of an active oversight board. It stated that oversight boards have the benefit of “bring[ing] together diverse perspectives and expertise”; “use a consensus process in making key decisions regarding funding, program design, and evaluation”; “ensure that problems are identified in a timely manner, and provide a mechanism for program design adjustments and reallocation of resources as needed.” 42693-Phase II Order, P. 39. The Report goes on to state how greater benefits may arise from a formal process. In establishing the DSMCC, it stated how it “would provide a forum for reaching agreement on contentious issues, or at a minimum provide key stakeholders an opportunity to engage in constructive dialog regarding opposing viewpoints.” *Id.*

Thus, CAC recommended that the Commission reject I&M’s suggested changes and allow the OSB to continue as it has to ensure adequate stakeholder input. He stated that if the Commission does, however, accept I&M’s proposed changes to the OSB, CAC respectfully

<sup>3</sup> I&M witness Walter Testimony, p. 34, lines 1-2.

<sup>4</sup> CAC et. al Comments on Draft Report, p.2.

<sup>5</sup> *Id.*, pp. 2-3.

requests the Commission implement many controls to ensure ratepayer protection, including but not limited to assigning nontestimonial staff to I&M's Advisory Board; allowing the current OSB members to continue to vote on matters provided for in the 43769 Settlement Agreement and file minority reports with the Commission; and instructing I&M to provide written bi-weekly updates in order to ensure proper program administration and evaluation.

Mr. Olson summarized CAC's recommendations that the Commission reject or make subject to refund I&M's request for lost revenues until the Commission concludes an investigation into lost revenue calculations for DSM to ensure that ratepayers are not being overcharged; order I&M to align its 2015 DSM Plan with its IRP as modified by Dr. Borum's 2013 IRP Report; and reject I&M's proposal to alter its OSB in order to ensure proper ratepayer protection.

**7. Fort Wayne's Evidence.** Douglas J. Fasick, Senior Program Manager, Utilities Energy Engineering and Sustainability Service for the City of Fort Wayne's City Utilities Division, expressed the City's concern that I&M's proposed 2015 DSM program does not recognize the unique nature of the energy requirements for the City's wastewater and water systems and the opportunities for very substantial reductions in energy consumption and electric demand through the City's combined heat and power ("CHP") project and DSM initiatives. He explained that the CHP project at the City's wastewater facility did not fit within any particular DSM/EE program offering and added that the City chose to participate in this proceeding to encourage I&M and the Commission to adopt a 2015 DSM program that will provide flexibility to consider projects that will capture these energy savings opportunities at the City's wastewater and water systems. He proposed that I&M's C&I Custom Program should allow customers to present their own analysis of the economics for consideration by I&M in determining whether a project is of "high value" and that the program should not be limited to buildings or operational efficiencies. Finally, Mr. Fasick stated the C&I Custom Program should provide the flexibility to design DSM projects specific to facilities and operations and that the City should be given the opportunity to work with I&M to develop a project that provides value to both the City and I&M.

**8. I&M Rebuttal.** I&M presented rebuttal testimony from Mr. Walter responding to the concerns raised by the other parties regarding shared savings, Net Lost Revenues, EECO program cost recovery, OSB structure, I&M's 2013 IRP and I&M's C&I Custom Program. Mr. Walter explained that eliminating shareholder incentives would abandon an important aspect of DSM programs – to incent the utility to offer robust and impactful programs rather than focusing solely on the provision of retail electric service. He reiterated that I&M's shared savings model applies a simple and straightforward benefit cost test result and provides 85 percent of the benefits produced by I&M's DSM programs to I&M's customers. He also explained how the OUCC's proposed modifications to the shared savings mechanism would result in an unfair sharing of program benefits and incent unintended adverse consequences.

Mr. Walter responded to Mr. Rutter's recommendation that EECO Program costs and corresponding net lost revenues be considered in a base rate case or TDSIC filing rather than through the DSM/EE Rider. He explained that Mr. Rutter recognizes the EECO Program is distinct from other energy efficiency programs and that timely cost recovery is appropriate. He explained why he disagreed with Mr. Rutter that SEA 340 creates a concern with including the EECO program in the 2015 DSM Plan. He also explained that acceptance of Mr. Rutter's TDSIC

recommendation would effectively deny I&M timely cost recovery for the EECO program and possibly cause the program and its associated benefits to be discontinued at least until such time as a TDSIC filing could be prepared and considered by the Commission. He said the Commission and the parties have had an opportunity to investigate this particular program in two cases and it is providing cost-effective benefits for customers. Accordingly, he concluded it would be unreasonable to deny or delay ongoing cost recovery of the EECO program through the DSM/EE Rider. Mr. Walter added that while Mr. Rutter did not identify any specific concerns about the Company's evaluation, verification and measurement ("EM&V") for the EECO program, the Company is interested in working with the OUCC and other industry stakeholders on EM&V for the EECO program and has already met with the OUCC to discuss EECO program results and ongoing EM&V.

Mr. Walter testified that Mr. Olson's comparison of actual sales to forecast sales was not a meaningful comparison for the purposes of evaluating the impact of DSM programs or the appropriateness of lost revenue recovery. He explained why I&M believes it is reasonable and appropriate to provide lost revenue recovery for the life of the measure, and not require utilities to file general rate cases on an arbitrary schedule. Mr. Walter disagreed with Mr. Olson's request that I&M's lost revenue recovery be made subject to refund pending further investigation. He testified that I&M is in compliance with current Commission rules and Orders regarding net lost revenue reporting and recovery, and that the Company is also in compliance with the agreed upon treatment conventions with industry stakeholders. He explained that I&M has consistently trued up any net lost revenue recovery to independent EM&V annual results. He stated that CAC witness Olson's opposition to net margin recovery is unfounded.

Mr. Walter responded to the OUCC and CAC recommendations regarding the OSB. He emphasized that I&M is not proposing to dismantle stakeholder input but rather to allow for broader stakeholder input beyond the members of the old board and recognize that the utility is responsible for DSM programs. He explained how I&M will work with stakeholders to keep them updated and aware of program progress. He said I&M is supportive of an open advisory process that will help stimulate a free exchange of ideas as opposed to the old model that by its mere structure carried the inherent risk that members could hold veto power of issues through voting blocks. He also explained why I&M's proposed spending flexibility is reasonable and recognizes the need of the utility to retain management control of the matters for which the utility has responsibility.

In response to the City of Fort Wayne, Mr. Walter testified that Mr. Fasick discussed only one component of the C&I Custom Program, which seems to lead to his interpretation that efficiency improvements would not qualify for the program and its incentives. He explained that his direct testimony regarding this program specifically states that the Custom program "provides incentives for non-prescriptive, non-deemable (variable operating characteristics) C&I sector measures and projects." (Walter Direct, pp. 19-20). He added that the program supports projects that require a customized, more complex engineering analysis to determine the level of energy savings possible from projects. He stated that the C&I Custom Program was combined with the Retro Commissioning Lite Program because the delivery aspects required for both are similar and would cause less application confusion to customers. He said Mr. Fasick interpreted the Retro

Commissioning Lite component of the newly combined Custom program as the only potential route for his energy savings projects and clarified that this is not the case.

With regard to the City's CHP project, Mr. Walter explained I&M is not opposed to discussing how CHP incentive programs may be feasible in the future but pointed out that this is not a simple issue. He testified that CHP projects were not planned as potential projects within the scope of the C&I Custom Program. He stated that CHP projects are variable and complex in nature. He added that complex analysis, metering, and engineering are required. He noted that CHP is on-site generation, not an energy efficiency measure upgrade *per se*. He recognized that the cost and benefit of CHP can be significant but stated that the Commission has previously ruled that generation sold back to the utility would not count toward energy efficiency savings targets. In other words, the Commission has distinguished between net metering and feed-in-tariffs.

He explained that while I&M is committed to providing cost effective DSM, the cost-effectiveness of CHP projects is untested because they are site specific and complex in nature, and have the potential to interconnect and sell their generation resource into electric markets. He stated that the concept of I&M providing incentives to help justify projects where the benefits can extend beyond I&M avoided generation are also untested. Mr. Walter proposed I&M and the City work together to try to identify a CHP project that qualifies for the C&I Custom Program as currently structured.

**9. Settlement Agreement.** The Settlement Agreement is attached hereto and incorporated herein by reference. Specifically, the Settlement Agreement provides that:

- a. The 2015 DSM Plan as filed by I&M will be adopted as proposed, including the timely recovery of program costs, lost revenues and shared savings, with the modifications outlined in the Settlement Agreement.
- b. I&M shall be authorized to receive a shareholder incentive in the form of a shared savings mechanism as set forth in the Settlement Agreement.
- c. The OSB for I&M's 2015 DSM Plan will include five voting members: I&M, Industrial Group, CAC, Fort Wayne and the OUCC. Paragraph A(3)(c)(i-iii) on pages 3-4 of the Settlement Agreement enumerates the specific list of issues that will be decided by a vote of the OSB members. The Settlement Agreement also includes a quarterly meeting requirement and dispute resolution provisions.

**10. Settlement Testimony.** Mr. Walter and Ms. Paronish both sponsored and provided an overview of the Settlement Agreement (Joint Exhibit 1).

Mr. Walter testified that the Settlement Agreement captures the agreement of the Settling Parties on implementation of the 2015 DSM Plan as proposed by I&M, with specific modifications enumerated in the Settlement Agreement, including an agreed shared savings methodology and new oversight or stakeholder process. Mr. Walter described each of the key Settlement Agreement provisions in detail and explained that the Settlement Agreement, taken as a whole, represents the

result of arms-length negotiations on the issues raised in the docket. More specifically, he explained that the Settlement Agreement provides the agreed upon methodology to govern the sharing of benefits (shared savings) realized as a result of cost-effective implementation of the 2015 DSM Plan. He noted that the Settling Parties agreed that the savings eligible for recovery will be determined by the amount of the net benefits from the programs that achieve Utility Cost Test (“UCT”) benefit-cost scores at or above 1.0 at the program level excluding savings from the EECO Program. He stated that the Settling Parties agreed that I&M would receive 15 percent of 90 percent of the total shared savings at the sector level (excluding EECO savings and programs that are not cost-effective under the UCT). He stated that I&M will not be eligible to recover shared savings beyond 15 percent of sector program costs, effectively serving as the cap on I&M shared savings earnings. He explained that the Settling Parties agreed that I&M may still forecast the amount of shared savings to be reflected in the DSM Rider factor based on energy savings projections, but those forecasts are subject to reconciliation based on the verified net benefits determined by the independent EM&V vendor.

Mr. Walter explained that the oversight or stakeholder process in the Settlement Agreement provides for five voting members for the I&M OSB, namely I&M, the I&M Industrial Group, CAC, the City of Fort Wayne, and the OUCC. He stated that the OSB will hold meetings at least on a quarterly basis. He stated that the meetings will have agendas distributed no less than five days before the meeting. He explained that the quarterly meetings are intended to provide I&M an opportunity to seek input and gather feedback from members on program performance to date and, when required, conduct voting on upcoming issues.

Mr. Walter explained that the Settlement Agreement enumerates the specific list of issues to be decided by a vote of the OSB members. Mr. Walter also discussed the voting procedures set forth in the Settlement Agreement as well as the plan for communications between quarterly meetings and the steps that will be taken to protect confidential information from disclosure. Mr. Walter also discussed the dispute resolution process agreed to in the Settlement Agreement. He explained that this process was included to ensure that there was an extra check and balance in the system, in that an escalation mechanism was established where critical issues could be elevated to the attention of OSB members’ management as a safeguard to ensure communication is clear. He stated that I&M agreed to delay implementation of any contested items that do not require immediate action so that OSB member management personnel can discuss matters within a three business day period. He clarified that this process is not intended to replace the ability of the Commission to act as final arbiter on any matter. He said the provision is included to provide an avenue for OSB members to ensure proper consideration of important issues if there is not agreement among the members. Mr. Walter also explained that the Settlement Agreement makes it clear that nothing in the agreement shall limit I&M from seeking input on its programs and DSM activity from interested stakeholders beyond the members of the OSB.

Mr. Walter stated that to the extent that any issue is not addressed in the Settlement Agreement the Commission can look to I&M’s original filing and supporting testimony approve implementation of the 2015 DSM Plan. He explained that Party experts were involved with legal counsel in the development of both the conceptual framework and the details of the Settlement Agreement. He said many hours were devoted by the Parties to discussions, the collaborative exchange of information, and settlement negotiations.

Mr. Walter explained why he believes Commission approval of the Settlement Agreement is in the public interest. He stated that the Settlement Agreement incorporates considerable concessions by both Settling Parties in comparison to the positions provided in pre-filed testimony. He stated that I&M proposed a sharing mechanism that did not cap the amount of shared savings received by the Company beyond the 15/85 percent sharing allocation between I&M and customers, respectively. He explained that the Settlement Agreement provides that I&M customers will not only receive the benefit of 85 percent of the net benefits but also that I&M's 15 percent share will be based on only 90 percent of the net benefits, as opposed to the proposed 100 percent in I&M's plan. He stated that the Settlement Agreement further benefits customers because another cap will be applied so that I&M will be constrained to only collect its already capped 15 percent share of net benefits up to another separate 15 percent cap based on program costs by sector. He stated that these layered caps provide more potential savings for customers from I&M's originally proposed 2015 DSM plan.

Mr. Walter also explained that the customers are advantaged by the new Oversight Board process. He said the clarification on the issues eligible for voting will allow I&M to obtain input on the provision of these voluntary programs while managing the implementation of the programs by the Company. He explained that the agreement also provides a clear path to govern the OSB interactions and involves member management if there are concerns in need of greater attention. He testified that the Settlement Agreement also makes it clear that I&M may seek other stakeholder input beyond members of the OSB. He stated that I&M sought approval of certain programs and associated incentives and recovery of lost revenues in its 2015 DSM Plan. I&M is willing to carry out its voluntary 2015 DSM Plan as filed with the modification included in the Settlement Agreement reached with OUCC.

Ms. Paronish testified that the Settlement Agreement enumerates modifications to the 2015 DSM Plan proposed by I&M. She stated that I&M's proposed 2015 DSM program portfolio continues the majority of its 2014 DSM programs, but there are some agreed program changes that should improve the cost-effectiveness of I&M's DSM portfolio. She stated the Settlement Agreement includes OSB provisions that could improve operational efficiencies without sacrificing ratepayer protections. She stated that the Settlement Agreement also allows I&M to continue to earn performance incentives, but would provide greater ratepayer protections than I&M originally proposed. She explained that rather than basing shared savings on goals or projections, I&M will calculate final actual shared savings based on the verified savings determined by the independent EM&V vendor. She said the amount of savings will be calculated using the UCT benefit-cost scores. She stated that the UCT score must be at least 1.0 at the program level to count associated energy or demand reductions in I&M's shared savings calculation. She added that the EECO program will be excluded from I&M's shared savings calculation. She explained that I&M will not receive shared savings on the first 10 percent of benefits calculated by the UCT. However, it will receive 15 percent of the remaining savings at the sector level (excluding shared savings attributable to the EECO program and any programs that do not score at least 1.0 under the UCT at the program level), subject to a shared savings cap. She explained that shared savings shall be capped at 15 percent of I&M's total annual eligible program costs, by sector, excluding the EECO program and any other program(s) that do not score at least 1.0 under the UCT at the program level. She explained that I&M shall not be eligible to collect shared savings

in excess of the agreed cap for each sector (i.e., 15 percent of that sector's eligible program costs). She stated that I&M will forecast the amount of 2015 shared savings and include its authorized share of the forecasted amount in its DSM Rider factor. However, estimated shared savings recovered through the DSM Rider factor will be reconciled and trued-up to I&M's final EM&V results calculated by an independent EM&V vendor.

Ms. Paronish identified the I&M OSB's voting Members and noted that unless otherwise agreed by the OSB Members, I&M will provide notice of any voting need to the OSB at least five (5) business days in advance of the vote. Ms. Paronish reviewed the list of issues subject to the voting process, listed in paragraph A(3)(c)(i-iii) on pages 3-4 of the Settlement Agreement, and discussed the OSB meeting procedures. She explained that I&M will also provide pertinent material to OSB Members not less than five (5) business days before the vote. She stated that the OSB Members will act in good faith and will not use requests for information to unnecessarily delay a vote. She stated that should an OSB Member fail to vote within the required timeframe, that failure to act will reduce the number of votes on that issue. She testified that all votes will be determined by a simple majority of voting Members participating in a particular vote (except votes to add new OSB Members, which would require a unanimous vote).

Ms. Paronish also discussed the Settlement Agreement provisions regarding communications between quarterly meetings. She added that to allow for a reasonable opportunity for discussion and input from OSB Members, I&M will notify OSB Members before making future DSM plan or reconciliation filings. Ms. Paronish discussed the additional dispute resolution procedure available under the Settlement Agreement and noted that the Settlement does not limit stakeholders' ability to take disputes to the Commission for resolution; nor does the agreement limit I&M's ability to seek input from other interested stakeholders beyond OSB Members.

Finally, Ms. Paronish explained why she believes Commission approval of the Settlement Agreement will serve the public interest. She testified that the proposed 2015 programs are designed to provide cost effective benefits to both I&M and its customers. She stated that I&M's shareholder incentives remain tethered, with the first 10 percent of shared savings allocated to I&M ratepayers, along with 85 percent of the remaining 90 percent of shared savings, with I&M's recovery limited to the agreed cap on shareholder incentives (i.e., 15% of eligible program costs, by sector). She added that while the OSB will be altered, it will retain current Members and voting rights critical to ratepayer protection.

**11. 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 v. PSI Energy*, 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 v. Public Service Co.*, 583 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 the Commission can approve the Settlement, we~~The Commission may also approve a settlement subject to certain modifications if the Commission decides it is warranted. See *Citizens Action Coalition of Ind., Inc. v. Duke Energy Ind., Inc.*, Cause No. 43114 IGCC 4S1, p. 121 (IURC 12/27/2012). Therefore, the Commission must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement is reasonable, just and consistent with the purpose of Ind. Code ch. 8-1-2, and that such agreement serves the public interest, ~~and whether approval of such agreement should be made subject to certain modifications to address the concerns of the non-settling parties and the public interest.~~

Commission policy favors settlement because settlements help advance matters with far greater speed and certainty and far less drain on public and private resources than litigation or other adversarial proceedings. The strong policy favoring settlements is further enhanced here because the OUCC, the party mandated by statute to represent the interests of the public, is a party to the Settlement Agreement.

**A. 2015 DSM Plan.** The Settlement Agreement (a copy of which is attached to this Order and incorporated herein by reference) provides for a voluntary 2015 DSM plan consisting of a portfolio of cost-effective programs designed to offer a broad mix of DSM measures to I&M's customers. The Commission notes that, with the exception of the City's suggestions for I&M's C&I Custom Program, no parties questioned the cost-effectiveness, ~~adequacy~~, or need for the programs included in I&M's 2015 DSM plan. The City expressed its support for the Settlement Agreement at the hearing on the Settlement Agreement leaving no opposition to the 2015 Plan programs; ~~with the exception of the argument raised by CAC that I&M's 2015 DSM Plan is not in accordance with its 2013 IRP as modified by the Report of the Indiana Utility Regulatory Commission Electricity Division Director, Dr. Bradley K. Borum, Regarding 2013 Integrated Resource Plans, April 20, 2014. The Commission agrees that the fact that I&M did not remedy its failing IRP to evaluate energy efficiency and supply-side resources in a consistent and comparable manner for its 2015 DSM plan means that its IRP is not in compliance with 170 IAC 4-7-8. Dr. Borum found that I&M's hard-wiring of the impact of energy efficiency through 2019 made its IRP fail. The Commission agrees with CAC's recommendation that I&M should be ordered to make adjustments that reflect Dr. Borum's findings on I&M's IRP with regard to DSM as the reasonableness of I&M's treatment of this resource is called into question. Thus, I&M shall work with its OSB to work on expanded or new program offerings to be delivered starting early in 2015. The Commission also finds that I&M shall resubmit its IRP in accordance with Dr. Borum's findings in this regard.~~

Based on the evidence presented in this case, we find that I&M's proposed portfolio of DSM programs is cost-effective, offers opportunities for all customer classes, and appropriately builds on I&M's historical program experience. Therefore, we approve the 2015 DSM programs as proposed by I&M, as modified under the Settlement Agreement; ~~and as modified herein~~. We further authorize the timely recovery of program costs, lost revenues, and shared savings proposed by I&M, with the modifications set forth in the Settlement Agreement ~~and herein~~ as discussed below.

**B. EECO Program Cost Recovery.** I&M requested the continued recovery of capital, depreciation and O&M costs associated with the EECO program through the DSM/EE Program Cost Rider using over/under deferral accounting. I&M also requested authority to begin deferral, for subsequent recovery, of carrying charges and depreciation expense, after each additional EECO circuit is placed in-service, based on the actual in-service date for each circuit. As noted above, the Settlement Agreement provides for the timely recovery of approved EECO program costs as proposed by I&M in its filing.

At the evidentiary hearing, Mr. Walter was cross-examined by the Industrial Group as to whether the EECO program reduced demand for electricity, whether it provided less energy at a comparable level of energy service, and the potential impact on other customers should C&I customers be permitted to opt out of the EECO program under SEA 340. Mr. Walter explained that the EECO program was, in many respects, designed primarily to reduce demand. He stated that it reduces demand because, while it operates for the entire year, the EECO system is operational during the time of I&M's peak and results on average in a three percent reduction in both demand and energy. Mr. Walter explained this is different from many DSM programs, which focus on offering energy efficiency improvements. Further, the record reflects that the EECO program provides peak demand reduction, as opposed to the general demand reduction that may be associated with decreased energy usage from other types of DSM programs. SEA 340 provides that opt out does not include a program designed primarily to reduce demand. The record establishes that the EECO program is designed primarily to reduce demand.

Furthermore, SEA 340 limits opt out to a program that is designed to implement energy efficiency improvements as defined in 170 IAC 4-8-1(j) for customers. Our DSM rules define an "energy efficiency improvement" to mean "reduced energy use for a comparable level of energy service." 170 IAC 4-8-1(j). "Energy service," in turn, is defined as "the light, heat, motor drive, and other service for which a customer purchases electricity from the utility." 170 IAC 4-8-1(k). Thus, an energy efficiency improvement offers a consumer a particular end-use service (heating, cooling, *etc.*) at a reduced energy usage. For example, to make one's home or office more efficient, consumers may install Energy Star appliances, energy-efficient pumps or variable speed motors. By implementing these energy efficiency improvements, individuals and companies may obtain a comparable level of heating, cooling, refrigeration, motor drive or other energy service while reducing their energy usage.

The record reflects that the EECO program is different from the types of energy efficiency improvements defined in our DSM rules. The EECO program provides demand reduction, thereby altering I&M's load shape. The EECO program does not provide incentives to buy end-use devices like appliances, pumps or motors that offer comparable levels of energy service at reduced energy usage. We conclude that the EECO program is not designed to implement energy efficiency improvements as that term is defined in 170 IAC 4-8-1(j). In our Order in Cause No. 43827 DSM-3 we explained how approval of the EECO program as DSM is consistent with the definitions set forth in 170 IAC 4-8-1(e), (f) and (g). Cause No. 43827 DSM-3, Order at 11. We conclude, as we did in Cause No. 43827 DSM-3, that the EECO program is a deliberate intervention that produces a desired change in I&M's load shape through technology at I&M's energy delivery system. Based

on the record, we find, therefore, that the EECO program is DSM as defined in 170 IAC 4-8-1(e), (f) and (g) and not an “energy efficiency program” as defined in 170 IAC 4-8-1(j).

Further, even assuming that SEA 340 permitted certain large industrial customers to opt out of the EECO program, the record shows that no such customers have sought to opt out at this time. No evidence was submitted as to the number of customers situated on EECO-upgraded circuits who may be eligible to opt out, or what percentage of those eligible may choose to ultimately opt-out. We find that continued timely cost recovery of the costs associated with the EECO program through the DSM/EE Program Cost Rider as provided for in the I&M proposal as adopted by the Settlement Agreement is appropriate and reasonable. We further grant I&M authority to begin deferral, for subsequent recovery, of the carrying charges and depreciation expense once each additional EECO circuit is placed in-service, based on the actual in-service date for each circuit.

**C. Shared Savings.** The Commission’s DSM Rules at 170 IAC 4-8-7(a) authorize the Commission to “provide the utility with a shareholder incentive to encourage participation in and promotion of a demand side management program” when the Commission determines it is appropriate to do so. We have previously approved a shareholder incentive in the form of shared savings for many of I&M’s current DSM programs. *Re Indiana Michigan Power Company*, Cause No. 43827 DSM-3 (IURC 12/30/2013). The Settlement Agreement approved in this Order provides that I&M shall calculate final actual shared savings based on the verified savings determined by the EM&V vendor, rather than on projections or goals proposed by the utility. The savings eligible for sharing will be determined by the amount of savings resulting from programs that achieve Utility Cost Test (“UCT”) benefit-cost scores at or above 1.0 at the program level, excluding savings from the EECO program and any DSM programs that are not cost-effective. I&M will receive a 15 percent share of 90 percent of the total shared savings at the sector level (excluding any shared savings attributed to EECO and any programs that are not cost-effective under the UCT). I&M will not be eligible to recover shared savings beyond 15 percent of sector program costs, effectively serving as a cap on I&M shared savings. The Settlement Agreement provides that I&M may still forecast the amount of shared savings to be reflected in the DSM/EE Program Cost Rider based on energy savings projections, but those forecasts are subject to reconciliation based on the verified net benefits determined by the independent EM&V vendor.

The Commission finds the proposed shared savings mechanism set forth in the Settlement Agreement to be reasonable and in the public interest. As noted in the Settling Parties’ settlement testimony, the sharing mechanism set forth in the Settlement Agreement provides additional benefits to I&M’s customers beyond those proposed in I&M’s initial shared savings mechanism. I&M customers will not only receive the benefit of 85 percent of the net benefits produced by the 2015 DSM programs, but will also benefit because I&M’s 15 percent share will be based on only 90 percent of the net benefits. As Mr. Walter explained, the Settlement Agreement further benefits customers because an additional cap will be applied so that I&M will be constrained to only collect its already-capped 15 percent share of 90 percent of the total net benefits up to a separate 15 percent cap based on eligible program costs, by sector. Accordingly, we authorize I&M to implement its shared savings mechanism consistent with the terms of the Settlement Agreement.

**D. Net Lost Revenues.** 170 IAC 4-8-6 authorizes the Commission to consider the recovery by a utility of lost revenues as a result of the implementation of DSM programs. We have previously approved I&M's recovery of net lost revenues associated with its DSM programs in Cause Nos. 43959, 43827 and 43827 DSM-3. We have similarly approved recovery of lost revenues for other utilities. Mr. Roush explained that I&M requests the Commission authorize the continued recovery of Net Lost Revenues through I&M's DSM/EE Program Cost Rider. The Settlement Agreement provides that I&M will be authorized to recover Net Lost Revenues as originally proposed by I&M.

~~Mr. Olson opposed Net Lost Revenue recovery based on I&M's actual sales in 2012 and 2013 and suggested that if recovery of lost revenues is allowed, it should be limited to the first two years of the measure life, or one year in the case of programs with a one year measure life. He also recommended the Commission open an investigation to examine lost revenue calculations and the reasonableness of awarding lost revenues for the life of the measure. Olson requested that the Commission reject or make subject to refund I&M's request for Net Lost Revenue recovery until the Commission concludes an investigation into lost revenues calculations for demand side management programs to ensure that ratepayers are not being overcharged. We agree that I&M did not provide any evidence that its proposed DSM programs will result in it failing to receive sufficient revenues to recover its authorized costs, nor did I&M provide any evidence that it experienced a reduction in sales resulting in I&M not receiving sufficient revenues to recover its authorized costs. Ratepayers should not be asked to pay extra charges to compensate a utility for lost revenues when those revenues would have been excess revenues above authorized levels. It is the burden of the utility to ensure that this is not occurring, and I&M failed to make that showing here. Furthermore, the Commission is concerned about awarding lost revenues for the life of the measure as these amounts are growing quite large. Ratepayers should not be obligated to pay lost revenues for more than 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. If the utility at that point is not recovering its authorized costs, it can file a new rate case and re-set rates. To do so otherwise would essentially be asking utility ratepayers to guarantee excess revenues to the utility, which is not in the public interest.~~

Mr. Walter ~~explained~~stated that Net Lost Revenues are not a cost of the DSM programs themselves but instead are reasonable and necessary costs of providing retail electric service that, absent the DSM program energy savings, would have been recovered through the just and reasonable rates established by the Commission. He ~~explained~~contended that Mr. Olson's comparison of I&M's actual sales to forecast sales is not a meaningful comparison for the purposes of evaluating the impact of DSM programs for a number of reasons. ~~First, a comparison of actual sales to a weather normalized forecast of sales may simply indicate the impact of weather in a given year. Second, I&M's forecasts incorporate a projection of the effects of DSM programs. Third, actual sales are subject to fluctuations for reasons other than DSM and weather, such as overall economic conditions. Mr. Walter also disagreed with Mr. Olson's proposal to limit lost revenue recovery to the first two years of a measure life, or one year in the case of measures with a one year life. He testified that it is inappropriate and incorrect to determine the need and timing of basic rate cases using this arbitrary time limit because it ignores the fact that a utility's actual sales are determined by a confluence of external factors outside the realm of DSM. He stated that~~

~~I&M is in compliance with the Commission's rules and prior orders regarding Net Lost Revenue reporting and recovery.~~

As noted above, the Commission has previously approved I&M's recovery of net lost revenues associated with its DSM programs. ~~The record does not support~~ However, Commission rule at 170 IAC 4-8-6(c) provides the Commission with the ability to "periodically review the need for continued recovery of the lost revenue as a result of a utility's DSM program, and the approval of a lost revenue recovery mechanism shall not constitute approval of specific dollar amount, the prudence or reasonableness of which may be debated in a future proceeding before the commission." ~~The record supports~~ the CAC's proposed elimination of net lost revenue recovery. Indeed, the evidence shows that even if Mr. Olson's comparison of actual sales to forecast sales were meaningful for purposes of lost revenue recovery, I&M's retail sales in 2011, 2012 and 2013 were all lower than the test year level of sales used in I&M's last rate case decided February 13, 2013 in Cause No. 44075. ~~Further, I&M's recovery of net lost revenues is subject to reconciliation based on independent EM&V results and are included in the FAC earnings test. The CAC also suggested that the Commission open~~ However, I&M did not make that showing in this case. The CAC presented sound policy and equity arguments into the prudence and reasonableness of lost revenue recovery that would justify the Commission opening 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~~ Until such investigation concludes, any award of lost revenues is subject to do so refund. There is ~~no~~ substantial evidence supporting the need for such an investigation. Such a proceeding would ~~require a significant expenditure of resources not only for~~ properly balance the Commission ~~but also for~~ interests of the respondent utilities and ~~other interested stakeholders and should not be~~ initiated. ~~The CAC's testimony on this point was speculative in nature and failed to present a compelling need to evaluate these issues on a generic basis. No evidence was presented to demonstrate that I&M (or any other utility) has overcharged its customers for DSM programs; the interests of ratepayers.~~ We therefore ~~decline~~ agree to open an investigation into I&M's ~~or any~~ and the other electric investor-owned utilities' lost revenue calculations at this time, and ~~decline to~~ make I&M's recovery of net lost revenues subject to refund pending such an investigation.

~~Notably, under the non-precedential settlement reached in this cause by the OUCC and I&M, the OUCC agreed that I&M should continue to recover Net Lost Revenues (a.k.a. lost margins) resulting from its 2015 DSM programs through its DSM/EE Program Cost Rider, as approved herein, consistent with the terms of the Settlement Agreement. We therefore grant I&M all necessary accounting authority to effectuate such recovery for its 2015 DSM programs.~~

**E. Oversight Board.** The Settlement Agreement provides for an OSB with five voting members: I&M, I&M Industrial Group, CAC, Fort Wayne, and the OUCC. I&M says that it will hold meetings with its OSB at least quarterly to provide an opportunity to gather feedback from OSB members on performance to date and seek input on upcoming program and budget decisions. Pursuant to the Settlement Agreement, a vote of the five OSB voting members will be taken on the following specific issues as they arise: (i) EM&V: selection of the EM&V vendor and application of the EM&V results to shared savings, lost revenues and final energy savings; (ii) Program funds: requests by I&M to move approved funds between sectors, any I&M proposal to reassign more than 25 percent of a sector's total budget to other programs in the same

sector, any I&M request to spend up to 10 percent more than the estimated total budget for each sector, and any I&M request to move approved program funds to another program from the low-income program; and (iii) adding new voting members to the OSB. As explained by Mr. Walter, if there is a need to vote on any of these enumerated issues, I&M will provide five business days' advance notice, unless the OSB members agree otherwise. I&M will also provide all pertinent information concerning I&M's DSM programs required for OSB members to make informed decisions on the underlying issues, with the understanding that I&M is not required to research or obtain information on behalf of any OSB members. Likewise, the Settlement Agreement provides that OSB members will act in good faith and will not use requests for information to unnecessarily delay voting on any issue.

Mr. Walter explained at the evidentiary hearing that I&M had initially proposed an advisory board process to address some of the concerns I&M had with the structure of the current Program Implementation Oversight Board and that I&M did not intend to limit or restrict the flow of DSM-related information going forward. Indeed, the Settlement Agreement provides a process to allow for OSB communication and voting between quarterly meetings and I&M has committed to provide monthly scorecards consistent with current format within 45 days of the end of each month. I&M has also committed to notifying OSB members prior to making a future DSM plan or reconciliation filing to provide a reasonable opportunity for discussion and input. The Settlement Agreement also provides for a dispute resolution process if there is an issue concerning a pending action by I&M that any voting member of the OSB indicates is in need of further discussion or escalation. Finally, the Settling Parties agreed that nothing in the Settlement Agreement shall limit the ability of I&M to seek other interested stakeholder input beyond the members of the OSB.

Based on the evidence presented, we find that the OSB structure proposed in the Settlement Agreement ~~is reasonable and in the public interest.~~ should be modified slightly, but is reasonable and in the public interest. The Settlement Agreement calls for a vote on the selection of the EM&V vendor, but not for the selection of the third-party administrator ("TPA") program implementer/s. The Commission believes it is important that the stakeholders are involved in this selection, as well; thus the Settlement Agreement is modified to include the selection of the TPA vendor as one of the specific, enumerated issues on which the OSB should vote. I&M has committed to continue the open sharing of information with its interested stakeholders on a regular, reasonable basis. The Settlement Agreement provides for OSB votes on specific, enumerated issues while providing an additional check and balance through a new dispute resolution mechanism, and ultimately through this Commission. Mr. Walter explained that this provision is included to provide an avenue for OSB members to ensure proper consideration of important issues if there is not agreement among the members, without usurping the IURC's authority to decide disputes. Accordingly, we approve the creation of the OSB as set forth in the Settlement Agreement, as modified herein.

**F. Spending Flexibility.** I&M also requested that the Commission grant I&M the ability to spend up to and including 10 percent above the costs set forth in this filing for its proposed 2015 DSM programs, and for the ability to transfer up to 25 percent of unencumbered program costs between programs in the same customer class. Mr. Walter explained that this flexibility will help provide for the continuation of a program that is projected to exceed the yearly program budget and allow I&M to better achieve DSM savings within the overall authorized budget. The Settlement Agreement provides that I&M's proposed spending flexibility be granted,

subject to the OSB voting provisions discussed above. We find that I&M's proposed spending flexibility is reasonable and should be approved. As shown on Pet. Ex. DMR-1, I&M's estimated 2015 DSM program costs total approximately \$17.3 million. The spending flexibility requested by I&M therefore amounts to approximately \$1.7 million. As shown on Pet. Ex. WKC-1, net benefits from the DSM programs are estimated to be approximately \$35.8 million. It is therefore unlikely that the spending flexibility granted herein will materially change the potential net benefits from I&M's DSM programs.

**G. Conclusion.** In this proceeding, the Commission analyzed the evidence and the Settlement Agreement to determine that it properly balances the interests of the utility, the customers, and the overall public interest. The Settling Parties' testimony in support of the Settlement Agreement and I&M's direct and rebuttal testimony and exhibits have enabled the Commission to understand the mechanics of the Settlement provisions and to determine that the Settlement Agreement is supported by the evidence of record. The Commission points out that the City of Fort Wayne also expressed support for the Settlement Agreement at the hearing considering the agreement. The Commission further finds that the Settlement Agreement is a reasonable resolution of the contested issues, in the public interest, and shall be approved, as modified herein.

**12. Effect of the Settlement Agreement.** 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 (IURC 3/19/1997).

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

1. The Settlement Agreement between I&M and the OUCC, attached hereto and incorporated herein by reference, is approved in its entirety as modified herein.
2. I&M's request for timely recovery of costs associated with its 2015 DSM Plan, as modified under the Settlement Agreement, including program costs, portfolio level costs, net lost revenues, shared savings, and EM&V costs through I&M's DSM/EE Program Cost Rider and the carrying charges, depreciation and O&M expense on the capital expenditures incurred for the EECO program is approved consistent with the Settlement Agreement; however, the recovery of lost revenues shall be made subject to refund pending the Commission's investigation into these calculations to ensure that ratepayers are not being overcharged.
3. Petitioner's requested accounting and ratemaking treatment, including the authority to defer the over and under recoveries of projected DSM/EE program costs through the DSM/EE Program Cost Rider pending reconciliation in subsequent rider periods, the monthly deferral of any costs incurred implementing the DSM/EE programs prior to the time the Commission issues an order authorizing I&M to recognize these costs through the ratemaking process. The accounting procedures

necessary to implement the requested recovery of net lost revenues is also approved; however, the recovery of lost revenues shall be made subject to refund pending the Commission's investigation into these calculations to ensure that ratepayers are not being overcharged.

4. Petitioner is authorized to begin deferral, for subsequent recovery, of the carrying charges and depreciation expense after each additional EECO circuit is placed in-service, based on the actual in-service date for each circuit.
5. This Order shall be effective on and after the date of its approval.

**STEPHAN, MAYS-MEDLEY, HUSTON, WEBER AND ZIEGNER CONCUR**

**APPROVED:**

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

\_\_\_\_\_  
**Brenda A. Howe**  
**Secretary to the Commission**

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