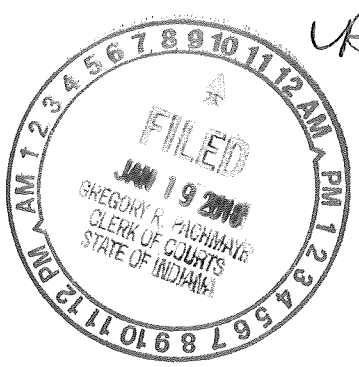

IN THE INDIANA COURT OF APPEALS

CAUSE NO. 18A-EX-95

Citizens Action Coalition of Indiana, Inc. Appellant, (Respondent-Intervenor below), v. Southern Indiana Gas and Electric Company, d/b/a Vectren Energy Delivery of Indiana, Inc., Appellee, (Petitioner below).	)	Appeal from the Indiana Utility Regulatory Commission Case No.: 44645 The Honorable David E. Ziegner, Commissioner Loraine L. Seyfried, Chief Administrative Law Judge

NOTICE OF APPEAL
(Appearance)

Party Information

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Requesting service of orders and opinions of the Court by:
■ E-mail ☐ FAX or ☐ U.S. Mail (choose one)
In forma pauperis: ☐ Yes ■ No

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IMPORTANT: Each attorney specified above:
(a) certifies that the contact information listed for him/her on the Indiana Supreme Court Roll of Attorneys is current and accurate as of the date this Notice of Appeal is filed;
(b) acknowledges that all orders, opinions, and notices in this matter will be sent to the attorney at the email address(es) specified by the attorney on the Roll of Attorneys regardless of the contact information listed above for the attorney; and
(c) understands that he/she is solely responsible for keeping his/her Roll of Attorneys contact information accurate, see Ind. Admis. Disc. R. 2(A).

Attorneys can review and update their Roll of Attorneys contact information on the Indiana Courts Portal.

INFORMATION FOR JUDGMENT/ORDER BEING APPEALED

Date of Judgment/Order being appealed: **December 20, 2017**
Title of Judgment/Order being appealed: **Order of the Commission on Remand**
Date Motion to Correct Error denied ☐ or deemed denied ☐, if applicable: _____
If case was heard by a magistrate, date trial judge approved judgment or order: _____
Basis for Appellate Jurisdiction:

- ■ Appeal from a Final Judgment, as defined by Appellate Rule 2(H) and 9(I)
- ☐ Appeal from an interlocutory order, taken as of right pursuant to Appellate Rule 14(A) or 14(D)
- ☐ Appeal from an interlocutory order, accepted by discretion pursuant to Appellate Rule 14(B)(3) or 14(C)(5)
- ☐ Expedited Appeal, taken pursuant to Appellate Rule 14.1

This appeal will be taken to:

- ■ Court of Appeals of Indiana, pursuant to Appellate Rule 5
- ☐ Indiana Supreme Court, pursuant to Appellate Rule 4
  - ☐ This is an appeal in which a sentence of death or life imprisonment without parole is imposed under Ind. Code § 35-50-2-9 or a post conviction relief case in which the sentence was death
  - ☐ This is an interlocutory appeal authorized under Rule 14 involving the death penalty or a life without parole case raising a question of interpretation of Ind. Code § 35-50-2-9
  - ☐ This is an appeal from an order declaring a statute unconstitutional
  - ☐ This is an appeal involving a waiver of parental consent to abortion under Rule 62
  - ☐ This is an appeal involving mandate of funds

Trial Court Clerk/Administrative Agency/Court Reporter Instructions

Pursuant to Appellate Rule 10 or 14.1(C), the clerk of Indiana Utility Regulatory Commission is requested to assemble the Clerk's Record, as defined in Appellate Rule 2(E).
Pursuant to Appellate Rule 11 or 14.1(C), the Court Reporter of the Indiana Utility Regulatory Commission is requested to transcribe, certify, and file with the clerk of the Indiana Utility Regulatory Commission the following hearings of record, including exhibits: **evidentiary hearing on September 5, 2017.**

Public Access

Was the entire trial court or agency record sealed or excluded from public access?
☐ Yes ■ No
Was a portion of the trial court or agency record sealed or excluded from public access?
☐ Yes ■ No
If yes, which provision in Administrative Rule 9(G) provides the basis for this exclusion:
n/a
If Administrative Rule 9(G)(4) provides the basis for this exclusion, was the trial court or agency order issued in accordance with the requirements of Administrative Rule 9(G)(4)(a-d)?
☐ Yes ☐ No **n/a**

Appellate Alternative Dispute Resolution

If civil case, is Appellant willing to participate in Appellate Dispute Resolution?
☐ Yes ■ No
If yes, provide a brief statement of the facts of the case. (Attach additional pages as needed.)

_____
_____
_____
_____

Attachments

The following SHALL be attached to this Notice of Appeal (in all appeals):
■ Copy of judgment or order being appealed

The following SHALL be attached to this Notice of Appeal if applicable (check if applicable):

- ■ Copy of the trial court or Administrative Agency's findings and conclusion (in civil cases)
- ☐ Copy of the sentencing order (in criminal cases)
- ☐ Order denying Motion to Correct Error or, if deemed denied, copy of Motion to Correct Error
- ☐ Copy of all orders and entries relating to the trial court or agency's decision to seal or exclude information from public access
- ☐ If proceeding pursuant to Appellate Rule 14(B)(3), copy of Order from Court of Appeals accepting jurisdiction over interlocutory appeal
- ☐ The documents required by Rule 40(C), if proceeding *in forma pauperis*

Certification

By signing below, I certify that:

(1) This case ☐ does ■ does not involve an interlocutory appeal; issues of child custody, support, visitation, adoption, paternity, determination that a child is in need of services, termination of parental rights; or an appeal entitled to priority by rule or statute.

(2) I have reviewed and complied, and will continue to comply, with the requirements of Appellate Rule 9(J), 23(F), and Administrative Rule 9(G) on appeal; and,

(3) I will make satisfactory payment arrangements for any Transcripts ordered in this Notice of Appeal, as required by Appellate Rule 9(H).

Respectfully submitted,

Citizens Action Coalition of Indiana, Inc.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 19th day of January, 2018, the foregoing was filed with the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court.

I also certify that on this 19th day of January, 2018, the foregoing was served by U.S. Mail, first class postage prepaid, upon:

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ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF SOUTHERN INDIANA GAS & ELECTRIC COMPANY D/B/A VECTREN ENERGY DELIVERY OF INDIANA, INC. REQUESTING THE INDIANA UTILITY REGULATORY COMMISSION TO APPROVE CERTAIN DEMAND SIDE MANAGEMENT PROGRAMS AND GRANT COMPANY AUTHORITY TO RECOVER COSTS, INCLUDING PROGRAM COSTS, INCENTIVES AND LOST MARGINS, ASSOCIATED WITH THE DEMAND SIDE MANAGEMENT PROGRAMS PURSUANT TO SENATE ENROLLED ACT 412 AND 170 IAC 4-8-1 ET. SEQ. VIA THE COMPANY'S DEMAND SIDE MANAGEMENT ADJUSTMENT	)	CAUSE NO. 44645
	)	APPROVED: DEC 20 2017

ORDER OF THE COMMISSION ON REMAND

Presiding Officers:
David E. Ziegner, Commissioner
Loraine L. Seyfried, Chief Administrative Law Judge

On June 29, 2015, Southern Indiana Gas & Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. ("Petitioner" or "Vectren South") filed a Verified Petition with the Indiana Utility Regulatory Commission ("Commission") seeking approval of its 2016–2017 Electric Demand Side Management ("DSM") Plan ("Plan"). The Commission held an evidentiary hearing on November 13, 2015. On March 23, 2016, the Commission issued its decision ("DSM Order") approving the Plan but limiting Vectren South's lost revenue recovery.

On April 22, 2016, Vectren South appealed the Commission's DSM Order to the Indiana Court of Appeals. On March 7, 2017, the Court reversed the DSM Order and remanded the case to the Commission for additional findings. The Court found that Ind. Code § 8-1-8.5-10 ("Section 10") requires the Commission to consider lost revenue recovery in determining the overall reasonableness of the Plan. The Court also found that the Commission failed to make specific factual findings that the limit placed on lost revenue recovery would allow Vectren South to recover reasonable lost revenues. Accordingly, the Court stated that,

> [o]n remand, the Commission may either (1) issue specific factual findings to justify its implicit determination that Vectren South's lost revenue recovery proposals are unreasonable, determine that the Plan is not reasonable in its entirety pursuant to Section 10(m), and allow Vectren South to submit a modified plan within a reasonable time; or (2) issue specific factual findings to justify a determination that the Plan is in fact reasonable in its entirety pursuant to Section 10(k) and allow Vectren South to recover reasonable lost revenues in accordance with the Plan.

S. Ind. Gas & Elec. Co. v. Ind. Util. Reg. Comm., 2017 WL 899947 at *7 (Ind. Ct. App. 2017).

On May 16, 2017, an Attorneys Conference was held to discuss establishing a procedural schedule for the submission of additional evidence concerning Vectren South's proposal for lost revenue recovery. On June 13, 2017, Vectren South filed its direct testimony and exhibits on remand, constituting its case-in-chief. On July 26, 2017, the Citizens Action Coalition ("CAC") filed its direct testimony and exhibits on remand. On August 16, 2017, Vectren South filed its rebuttal testimony and exhibits on remand.

An evidentiary hearing was held on September 5, 2017, at 9:30 a.m. Room 222 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana. At the hearing, Vectren South, the Indiana Office of Utility Consumer Counselor ("OUCC"), the Indiana Industrial Group ("Industrial Group") and CAC appeared by counsel. Vectren South, the Industrial Group and CAC offered into the record their respective testimony and exhibits, which were admitted into evidence. No member of the general public appeared.

Based on the applicable law and the evidence of record, the Commission finds:

1. **Notice and Jurisdiction.** Proper notice of the hearings held in this Cause was given as required by law. Vectren South is a "public utility" within the meaning of Ind. Code § 8-1-2-1 and an electricity supplier pursuant to Ind. Code § 8-1-8.5-10. Under Ind. Code §§ 8-1-2-4, -42, -68, -69, Ind. Code ch. 8-1-8.5, and 170 IAC 4-8, the Commission has jurisdiction over Petitioner's energy efficiency ("EE") and DSM programs and associated cost recovery. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. **Petitioner's Characteristics.** Vectren South is an operating public utility, incorporated under the laws of the State of Indiana, with its principal office and place of business in the City of Evansville, Indiana. Vectren South provides electric utility service to approximately 140,000 customers in six counties in southwestern Indiana. Vectren South renders such electric utility service by means of utility plant, property, equipment, and related facilities owned, leased, operated, managed, and controlled by it, which are used and useful for the convenience of the public in the production, treatment, transmission, distribution, and sale of electricity.

3. **Background.** Vectren South requested approval of its Plan, which includes EE goals, EE programs to achieve the EE goals, program budgets and costs, and procedures for independent evaluation, measurement, and verification ("EM&V") of programs included in the Plan. The Plan includes a cost-effective portfolio of programs designed to (1) achieve energy savings of 74,107 megawatt hours ("MWh"), with 36,317 MWh to be saved in 2016 and 37,791 MWh in 2017; and (2) reduce total peak demand by 15,443 kilowatts ("kW"), with 8,334 kW of peak demand reduction scheduled in 2016 and 7,109 kW in 2017. In addition, the Plan includes both residential and commercial EE programs and two of the EE programs also have a demand response ("DR") component.

The Plan has an estimated cost of $16.7 million, with $8.6 million to be spent in 2016 and $8.1 million in 2017. Vectren South requested authority to continue recovering all program costs, including lost revenues and financial incentives via its existing Demand Side Management

Adjustment ("DSMA"), which includes components for the recovery of program costs, lost revenues for all customer classes, and performance incentives. Vectren South also requested that all of the components of the DSMA remain in place and unchanged, except that Vectren South requested approval for the recovery of annual depreciation and operating expenses associated with the proposed conservation voltage reduction ("CVR") program investment via the DSMA. Vectren South did not request any changes to the performance incentive mechanism, but did seek approval to earn a performance incentive on all programs included in the Plan except for the CVR program and the income qualified weatherization ("IQW") program.

Finally, Vectren South requested that the Vectren Oversight Board ("Oversight Board") continue to remain in place unchanged during the Plan period, with continued authority to exceed Commission-approved budgets for DSM programs by up to 10% without having to seek additional approval from the Commission and authority to continue shifting funds from sector to sector, provided gas and electric funds are not commingled.

After hearing the evidence, which is summarized in the DSM Order, we found that Vectren South's Plan satisfies the requirements set forth in Section 10 and approved the Plan. We also limited Vectren South's lost revenue recovery to (1) four years or the life of the measure, whichever is less; or (2) until rates are implemented pursuant to a final order in Vectren South's next base rate case, whichever occurs earlier. It is this decision to limit lost revenue recovery that was reversed by the Court of Appeals and remanded for further consideration and findings by the Commission.

4. Summary of the Evidence on Remand.

A. Vectren South's Case-in-Chief. Rina H. Harris, Director of Energy Efficiency for Vectren Utility Holdings, Inc. ("VUHI") testified that Vectren South anticipates approximately $2.5 million of incremental lost revenues and approximately $34.3 million of lifetime lost revenues will be associated with the Plan. She confirmed that all lifetime dollars are nominal. The present value of the total lifetime lost revenue amount of $34.3 million would be $23.9 million.

Ms. Harris described how Vectren South currently calculates lost revenues and stated that it is reasonable to collect lost revenues for programs implemented pursuant to the Plan for the life of the measure. She testified that the measure life is an important input to the cost/benefit testing used to determine the cost effectiveness of a particular program or measure. Ms. Harris testified that Vectren South's lost revenue calculation already provides a conservative basis for the recovery of lost revenues, as it uses net energy and demand savings assumptions based on EM&V results, which accounts for a number of factors that reduce the savings. However, she said that in the interest of further ensuring customers only pay for lost revenues that are a result of EE measures, Vectren South is now proposing a methodology that provides even greater assurance customers are paying only for lost revenues that result from EE measures.

Ms. Harris described Vectren South's new proposal to base lost revenues on: (1) the weighted average measure life ("WAML") of the Plan; and (2) a 10% reduction in annual savings. Using this method, Vectren South would recover the reasonable amount of lost revenues associated with the WAML of its EE programs or the measure life, whichever is less. The WAML of the portfolio would be re-evaluated and adjusted with each EE filing. She said that in using this approach, Vectren South first determines the weighted average life of each program by weighting

the energy savings for each measure included in the program. Next, Vectren South calculates the weighted average measure life of a portfolio by weighting the energy savings of each program included in the portfolio. To determine individual measure lives, Vectren South uses the latest Indiana Technical Resource Manual ("TRM") for evaluation. Ms. Harris stated that capping recovery of lost revenues based upon WAML is reasonable because it limits lost revenue recovery based on the average equipment life and measure persistence of the entire program plan. In addition, only 90% of annual savings would be recovered, reflecting the statistical certainty EM&V providers can obtain for energy savings. She said the EM&V process utilizes at minimum a 90% confidence interval (an industry accepted standard). All inputs in the WAML (less 10% for statistical certainty) are grounded on evaluation and TRMs and provide a methodical cap to lost revenue recovery.

Dr. M. Sami Khawaja, Chief Economist at The Cadmus Group ("Cadmus"), an energy efficiency evaluation firm, testified that confidence and precision energy program evaluation is typically based on estimating energy impacts using a representative sample of program participants to determine how measures are installed and used. The results of these efforts are used to estimate savings for the program. For Vectren South, he said program evaluations are in line with the industry standard of obtaining estimates with a confidence level of 90% with a relative precision of ±10%.

Dr. Khawaja testified that it is appropriate to recover lost revenues for the life of the measure because as long as the measure is installed and is saving energy, the utility is losing revenue. He acknowledged that measures may be removed for many reasons, but that effective useful life ("EUL") estimates account for measure removal and failure.

Dr. Khawaja testified that it is appropriate to cap lost revenues based upon the weighted average measure life of a plan. He said that because lost revenues will take place for the duration of the measure life, that is the time upon which recovery should be based. He said it is important to appreciate that EUL is not an actual end of life metric for a measure, but is simply the median of life. He indicated that although 50% of all measures will fail before that date, 50% will also live long after the EUL, and the survival rate of measures is not linear. He stated that most of the 50% that will fail by the EUL will actually be operational for the great majority of the EUL. During that time period, revenues are lost almost consistently. In addition, for a time period after the EUL, revenues will continue to be lost for some period of time. As such, EUL is a conservative estimate of the length of revenue lost period. He testified the EULs currently used by Vectren South are conservative.

Dr. Khawaja testified that the EM&V impacts were estimated at 90% confidence and ±10% precision. He recommended going to the low end of the confidence interval and using those estimated savings to calculate the WAML. He said this approach will, in essence, conservatively use values that have a 95% chance of being at that level or higher. This will reduce the weighted average measure life calculation by 10%.

Dr. Khawaja discussed his concerns with a three- or four-year measure life cap. He said that utilities should be allowed a reasonable opportunity to recover their program cost and lost revenues. Otherwise, demand side and supply side options are not comparable from a financial perspective (the playing fields are not level). He said that failure to recover these costs will reduce utility earnings. Also, a three- or four-year cap will incent utilities to pursue measures with short lives at the expense of more deep reaching long lasting measures (e.g. insulation).

Scott E. Albertson, Vice President of Regulatory Affairs and Gas Supply for VUHI, addressed the DSM Order's concerns about the frequency of rate cases and the concept of "pancaking" lost revenues. He explained that electric utilities will be filing more frequent rate cases in the future for several reasons, including declining demand for electricity and required investments in infrastructure. He also pointed out that several utilities have received approval under Ind. Code ch. 8-1-39 to implement a transmission, distribution, and storage system improvement charge, which requires the filing of a rate case within seven years.

Mr. Albertson said that the term "pancaking" describes the accumulation of lost revenues that naturally occurs if an electric utility continues to offer successful EE programs. If an electric utility is successful in offering programs that incent customers to adopt EE measures year over year, the energy savings begin to accumulate over time as one year's program results build on the next, and so on. Mr. Albertson testified that pancaking of lost revenues represents a real harm to the utility. He said that lost revenue recovery tied to the life of each EE measure is already limited regardless of rate case timing. Program lives vary, which means that as an EE program matures, lost revenue recovery will begin to drop off every year as individual program lives end. In addition, the recovery ends at the same time the customer savings attributed to any given measure end. Mr. Albertson said that an arbitrary cap destroys that symmetry. The comparison also shows that the recovery cap is a one sided policy – lost revenues stop but the throughput harm to the utility resulting from the implementation of an EE measure continues on until the end of each measure's life. He noted the opposite asymmetry would also be inappropriate – lost revenue recovery would not and should not extend beyond the life of a measure; the measure life and the lost revenue recovery period should match.

Mr. Albertson testified that while the costs recovered via a lost revenue adjustment mechanism ("LRAM") would be lessened if rate cases were filed more frequently, the revenues lost as a result of EE are included in base rates each time the utility files a rate case. In either case, the appropriate level of fixed costs will be included in customers' bills. Customer usage at the time of a rate case reflects the usage reductions resulting from EE, thus increasing unit rates as needed to recoup fixed costs. So whether via an LRAM or new base rates, Mr. Albertson said the utility should recover the revenues needed to recover the approved level of fixed costs. An LRAM cap is merely a temporary limit on recovery that may force utilities into rate cases sooner and more frequently than would have otherwise been the case had the period of lost revenue recovery matched the lives of EE measures implemented by customers. He noted the Court of Appeals has indicated that rate cases are "expensive, time consuming, and sometimes result in large, sudden rate hikes for customers." Thus, he concluded that capping lost revenue recovery to force utilities to file a rate case is not good public policy.

Mr. Albertson testified that if a four year cap is implemented, a utility would be incented to offer only programs that have lives of four years or less and that it simply would not make sense to embed such a perverse incentive into the EE program framework. He said given the overall policy objective of eliminating financial bias against EE, lost revenues should be designed to effectively address the totality of lost revenues resulting from cost-effective EE measures, rather than from "half measures."

B. CAC's Case-in-Chief. Karl R. Rábago, the principal of Rábago Energy, LLC, recommended the Commission find Vectren South's Plan unreasonable based upon its proposed LRAM.

Mr. Rábago stated that there are several problems with Vectren South's position on the purpose of lost revenues. He testified that rates collected from customers and lost revenues must be reasonable. He expressed disappointment with Vectren South's position that EE is about encouraging customers to use less of its product, which ignores the fact that EE facilitates delivery of service at lower cost than conventional commodity generation and delivery systems. Mr. Rábago testified that the concept of full recovery of reasonable lost revenues for the life of each EE measure does not, in itself, establish that any LRAM must be set to a duration equal to the useful life of the underlying EE measure. Instead, recovery of lost revenues is subject to a reasonableness test within the context of the Plan evaluation.

Mr. Rábago said that in addition to Indiana's legal requirements that a utility's rates and charges be reasonable and just, sound rate making is guided by well-established principles articulated by noted experts like James Bonbright. He stated such principles include establishing rates that: are simple and understandable; are effective in yielding total revenue requirements; provide revenue (and cash flow) stability from year to year; are stable; aim for fairness in apportioning cost of service among different consumers; avoid undue discrimination; advance economic efficiency; and send efficient price signals promoting efficient use of energy and competing products and services.

Mr. Rábago testified that any LRAM must be limited to a maximum duration of four years to be reasonable. He compared the dollar amounts between: (1) Petitioner's original lifetime lost revenue recovery proposal; (2) Petitioner's modified lost revenue recovery "WAML" proposal; and (3) CAC's proposal to put a four-year cap on lost revenue recovery or the life the measure, whichever is shorter. He testified the total amount of lost revenues under Petitioner's original proposal is $34,263,799, which is 64.4% of the $53,172,506 Plan total. He said under Petitioner's lifetime lost revenue recovery proposal, ratepayers would pay $34.3 million in lost revenues for a program that costs $16.8 million to implement. Mr. Rábago testified the total amount of lost revenues under the modified WAML proposal is $25,892,931, which is 57.8% of the modified $44,801,638 Plan total. He stated the "pancake" effect still exists with Vectren South's modified proposal and the payment of $25.9 million in lost revenues for $16.8 million in actual program delivery is also unreasonable. Finally, Mr. Rábago testified that under CAC's proposal, total lost revenues are $14,376,794, which is 43.2% of the $33,285,501 Plan total.

Mr. Rábago testified that the pancake effect discussed by the Commission in its DSM Order and the American Council for an Energy-Efficient Economy ("ACEEE") report can be mitigated by capping lost revenue recovery at the lesser of four years or the life of the measure. He recommended the Commission make specific factual findings to both support a rejection of Petitioner's DSM Plan as unreasonable due to its unreasonable LRAM proposal and support its overall finding that a four-year cap on lost revenue is reasonable. He identified several findings that the Commission should make, including: four years is the maximum reasonable term for a LRAM; the amount of pancaking that will occur over four years is reasonable; and a shorter term for lost revenue recovery may also be reasonable.

Mr. Rábago testified that pancaking and piece-meal, or single-issue, ratemaking create serious problems of fairness and reasonableness if an LRAM is used for the entire useful life of the EE measures. He said pancaking can result in unreasonable rates due to the cumulative effects of lost revenue collections in the later years of an efficiency portfolio. He said that beyond four years, which is a period in which measure lives could reasonably be expected to be highly coherent, the LRAM would be subject to some volatility. Thus, a growing and significant component of rates would, in the outer years of total Plan life, be large, erratic, unpredictable, and increasingly difficult for customers to understand. He stated that revenue recovery by the utility would likewise become more erratic. In addition, as customer churn (i.e., customers moving in and out of the service territory or changing rate classes) increases, pancaked lost revenue collections late in the portfolio life would increasingly deviate from cost-causation principles and create a significant risk of undue discrimination in inter- and intra-class rates.

As to the problems with single-issue or piecemeal ratemaking, Mr. Rábago stated that ratemaking involves multiple costs, customer classes, and rate designs, which are often interrelated and interactive. He said it is difficult and rare that a single aspect of electric service rates, especially rates that reflect long-lived investment costs such as EE, can be addressed in isolation without impacting other aspects of costs and revenue recovery. He noted that as EE benefits accrue, they defer or avoid fixed investments in the grid and associated infrastructure, realizing avoided cost savings and reducing the revenue requirement fairly recovered from customers (even if not impacting lost revenues in the short-term). For these and other reasons, he testified, piece-meal or single-issue rate making leads to potential unfairness and inefficiency in price signals.

Responding to Vectren South's assertion that limiting lost revenue recovery will incent utilities to favor EE programs with shorter useful lives, Mr. Rábago stated that such an assertion raises serious questions about the credibility of Petitioner's approach to EE planning. He testified this position ignores the role of the Commission and other stakeholders in evaluation of EE proposals and implies Petitioner would choose uneconomic program outcomes solely because they would last less than four years. He said it also assumes Petitioner would not have an opportunity to incorporate unrecovered lost revenues in a base rate filing.

Mr. Rábago testified that Mr. Albertson's comments about reducing lost revenues through increased fixed customer charges for embedded fixed costs are disingenuous, inapt, and inaccurate. He stated that guaranteeing fixed cost recovery through non-bypassable fixed customer charges is not relevant to the issues in this proceeding and is a disingenuous argument for the extraction of monopoly rents. He testified that fixed charges create a perverse incentive to increase fixed cost investments beyond economic levels. While this might increase rates and make more EE superficially economic, he said it would result in Indiana's economy becoming less efficient overall as a result of higher electric rates.

Mr. Rábago disagreed with Vectren South's assertion that the expense and difficulty of base rate cases is a factor weighing against the reasonableness of relying on rate cases as a means for addressing lost revenue recovery after the four-year period of a LRAM. He testified that more frequent rate cases are a sound regulatory strategy to reduce the complexity, expense, and difficulty of such proceedings. They are also economically efficient and fairer in circumstances of dynamic market conditions as exist today.

With regard to Vectren South's modified lost revenue proposal, Mr. Rábago testified that the WAML cannot be fully and fairly evaluated as presented and was not subject to scrutiny in the proceeding to date. He stated the WAML is a mathematical solution to the rate volatility that results from long-term pancaking of a LRAM, but potentially creates greater problems in terms of rate fairness. He said that the method would "smooth out" year to year volatility in the later years of the portfolio useful life through an averaging calculation, but continues to result in unreasonable financial impacts.

Mr. Rábago expressed concern that Dr. Khawaja testified on behalf of Petitioner in this proceeding because his company, Cadmus, has been retained by Petitioner to perform program evaluation services for the past eight years. He referenced the requirements in Ind. Code § 8-1-8.5-10 that the EM&V procedures be independent and stated that Dr. Khawaja's advocacy position in this proceeding casts doubt on the integrity of the firm's work as an independent evaluator. Mr. Rábago recommended the Commission disregard Dr. Khawaja's testimony and Vectren South be directed to obtain a new independent evaluator for its EE programs. Alternatively, he recommended the Commission adopt the proposal made by CAC in Cause No. 44841 to use an Independent Evaluation Monitor ("IEM") modeled after the IEM in Arkansas. Mr. Rábago also referenced other sources the Commission should consider when addressing EM&V activities, including the ratepayer-funded Indiana Evaluation Framework and the Indiana Technical Resource Manual.

C. **Petitioner's Rebuttal.** Mr. Albertson addressed CAC's issues regarding lost revenue recovery associated with Vectren South's Plan. He said that CAC witness Rábago does not dispute that EM&V appropriately measures the amount of energy that will not be consumed as a direct result of implementation of an EE measure. Instead, Mr. Rábago contends that it is not reasonable for Vectren South to fully recover lost revenues that are demonstrated to result from implementation of EE measures.

Mr. Albertson testified that Vectren South's modified LRAM proposal sets a reasonable limit on the collection of lost revenues for several reasons. First, unlike an arbitrary cap not linked to measure life, Petitioner's WAML proposal is based on EM&V and thus inherently accounts for the corresponding savings provided to customers via the EE measures implemented. Second, it limits recoveries to the weighted average life of the EE programs by rate class, and in turn limits lost revenue recovery to a period less than the full life of some of the measures. Third, by reducing the results of the EM&V calculation by 10% to reflect statistical uncertainty in the EM&V process, it produces a conservative calculation of savings to determine lost revenue.

Mr. Albertson testified that since 2011, customers have seen a very slow and relatively small increase in average monthly bills and a proportionately small and steady increase in the DSM component of the monthly bill. The data shows that the year-over-year impact on the average monthly residential customer bill as a result of Petitioner's DSMA averaged (or is expected to average) an increase of $1.15 per month during the period 2011-2018 and an increase of $0.43 per month during the period 2019-2020.[1] Neither the average total bill nor the DSM component of the average bill has been erratic during this period.

Mr. Albertson testified that CAC witness Rábago did not provide any factual support demonstrating that a four-year cap will allow Vectren South to recover reasonable lost revenues as

[1] Based on average usage of 1,000 kWh per month.

provided in Ind. Code § 8-1-8.5-10(o). Nor does he address why it is reasonable to create demonstrated savings throughout a measure life that exceeds four years, but set a different, shorter period for the corresponding recovery of lost revenues. Mr. Albertson testified that a lost revenue recovery mechanism that creates an asymmetry between lost revenues and EE savings leaves the utility at financial risk and is contrary to the purpose of lost revenue recovery.

Ms. Harris responded to CAC's recommendation that the Commission find Petitioner's Plan unreasonable due to the proposed lost revenue recovery. She testified that Vectren South's WAML proposal is the only recommended approach that provides an opportunity for Vectren South to recover reasonable lost revenues. She said that capping recovery of lost revenues based upon WAML is reasonable because it limits lost revenue recovery based on the average equipment life and measure persistence of the entire Plan. Only 90% of savings would be recovered, reflecting the statistical certainty EM&V providers can obtain for lost revenues. She testified that two key factors associated with the proposed WAML that make it superior to CAC's recommended approach are: (1) lost revenue recovery remains connected to measure life; and (2) lost revenue recovery remains connected to EM&V, which has been relied upon for decades in determining energy savings. Ms. Harris confirmed that Vectren South did not propose this alternative approach as a concession that full recovery for measure life is unreasonable. Instead, it was to recognize that EM&V, over time, has limitations and to offer even further customer safeguards.

K. Chase Kelley, Vice President, Marketing and Communications for VUHI, disagreed with CAC's claim that Dr. Khawaja and Cadmus are no longer independent because Dr. Khawaja submitted testimony on behalf of Vectren South in this Cause. She said that although Mr. Rabago quotes the Indiana Evaluation Framework regarding the need for independence of EM&V activities, he does not explain how Dr. Khawaja's appearance in this proceeding conflicts with those tenets. She explained that Vectren South retained an arms-length relationship with Cadmus, Cadmus would not benefit from the findings of the evaluation, and Vectren South is not influencing Cadmus' evaluation. She said Cadmus' world-wide industry experience, eight-year history with evaluating Vectren South's programs, and role on the TecMarket Works[2] team made Dr. Khawaja an ideal choice to explain the importance of EM&V, how it can be used to determine lost revenues, and whether Vectren South made a proposal that links to EM&V. Because Dr. Khawaja and his firm validated the WAML of Vectren South's Plan, she stated his testimony was important to help the Commission understand how the EM&V can be relied upon to account for lost revenues.

Ms. Kelley disagreed with CAC's recommendation that the Commission use an IEM. She said the Commission has a talented staff of technical experts who are capable of interpreting EM&V reports filed by Vectren South and other utilities. She testified that an IEM would not add value to the existing process, which is guided by the Oversight Board.

5. **Commission Discussion and Findings.** As noted above, the Indiana Court of Appeals reversed and remanded this Cause for additional factual findings concerning Vectren South's lost revenue recovery proposal. Having previously reviewed the reasonableness of all other elements of the Plan under Section 10, which were not challenged on appeal, the only issue we need to address in this proceeding is the reasonableness of Vectren South's proposed LRAM.

[2] Cadmus was a member of the TecMarket Works team, which was selected by the Demand Side Management Coordination Committee to serve as the third party evaluator for state-wide core programs in Indiana.

On remand, we provided the parties with the opportunity to submit additional evidence on the issue of lost revenue recovery, and Vectren South and CAC chose to submit additional evidence. Vectren South proposed a modified approach to its initial proposal for lost revenue recovery, which caps lost revenue recovery associated with its Plan by using the WAML of the Plan programs and reduces the resulting recovery by an additional 10%. These changes reduce lost revenue recovery based strictly on measure lives by 24% or $8.4 million. Thus, the proposed LRAM is projected to recover slightly less than $26 million of lost revenues over the nine-year WAML of the Plan or, on average, approximately $2.9 million per year.

CAC continues to take issue with the amount of lost revenue proposed by Vectren South for recovery and recommends the Commission find Vectren South's Plan is unreasonable. CAC argues that a four-year cap on lost revenue recovery is reasonable because a term greater than four years creates unreasonable difficulties in tracking the accuracy of lost revenues, the pancaking or cumulative effect of lost revenues over time on rates, and lost revenue policies were created at a time when the period between rate cases was shorter.

Based on the evidence presented as further discussed below, we find Vectren South's modified proposal for lost revenue recovery is reasonable and approve the Plan in its entirety. It is commonly understood that the calculation of lost revenues is not an exact science and there will always be a range of what may be considered reasonable lost revenue recovery. Vectren South has sufficiently demonstrated that its WAML proposal is grounded in the EM&V processes that are required by Section 10 and universally relied upon in the utility industry to estimate energy savings and associated lost revenues. The other parties did not provide us with evidence demonstrating that Vectren South's proposal is unreasonable. Nor did they provide us with sufficient facts from which we could determine that a four-year (or less) cap on lost revenue recovery would allow Vectren South to recover reasonable lost revenues.

Under the modified proposal, Vectren South would recover the amount of lost revenues associated with the WAML of the Plan portfolio of programs or the measure life of the EE program, whichever is shorter. Dr. Khawaja explained that it was appropriate to cap lost revenue based on the WAML because lost revenue will take place for the duration of the measure life. The WAML is based on the EUL, which is the median of a measure's life. Although the other parties in this Cause took issue with Petitioner's rounding of the WAML calculation from 8.5 to nine years, Dr. Khawaja testified that the EUL values used by Petitioner are conservative and compare favorably to a WAML estimate based on values widely accepted in the EM&V industry of 9.5 years. Further, the proposed 10% reduction in annual energy savings reflects the use of the lower end 90% confidence level estimate of savings and equates to a 7.7 year measure life cap, making it significantly more conservative.

CAC and the other parties also argued that the longer measure lives of the Commercial and Industrial ("C&I") EE programs should not influence the length of time residential ratepayers should pay lost revenues. However, such an argument fails to recognize that all EE programs, including those for C&I customers, reduce electricity consumption and helps avoid the need for new generation, thereby benefitting all customers. While Petitioner could have avoided this argument by simply using separate WAML calculations (one for residential customers and one for C&I customers), based on the evidence with which we were presented, we do not find Petitioner's use of a WAML that averages the measure lives of all programs within the Plan to be unreasonable.

In addition to the use of the nine-year WAML, Vectren South proposes to recover only 90% of the annual energy savings. CAC and other parties, in their post-hearing filing, argue that because EM&V is only conducted once for each Plan year, the initial determination of energy savings and lost revenue becomes progressively less reliable and more uncertain in successive years and therefore should not be relied upon. Further, they argue that the proposed 10% reduction in energy savings only addresses the degree of confidence in the threshold EM&V determination, not the eroding reliability of assumed savings.

EM&V is the most established approach to reasonably estimating energy savings and lost revenues associated with EE programs. Vectren South's approach appears reasonably designed to ensure it recovers only the lost revenues that EM&V can establish, with a high degree of confidence, will result from savings driven by EE measures. Recognizing that estimates are more certain in the immediate as opposed to the distant future, Vectren South's evaluation process for estimating net energy savings utilizes at minimum a 90% confidence interval and supports a 10% degradation of annual savings within its lost revenue calculation, which results in a statistically conservative estimate. While we recognize that EM&V degrades over time based on accumulating changes, this degradation is built into the EM&V process. We further find that the approximate 24% reduction in recovered lost revenues compared to Petitioner's initial proposal is intended to strike a reasonable balance in terms of offsetting the inherent financial harm to a utility caused by EE sales reductions, while also ensuring the recoveries are fully supported by conservative EM&V estimates that safeguard the cost and benefit analysis relied upon to determine that the EE Plan provides short- and long-term benefits to customers.

As indicated above, CAC offered no basis upon which we could make factual findings that a four-year cap would allow Vectren South to recover reasonable lost revenues. Rather than providing a reasoned explanation or analysis to support ending lost revenue recovery after four years regardless of measure life or evidence related to the financial effects of such a proposal on Petitioner, CAC instead offers a conclusory opinion that the magnitude of lost revenues exceeds the program costs, which makes the proposal unreasonable. CAC provided no factual basis to support its contention that lost revenues should not exceed program costs. It is inherent to EM&V that validated energy savings will create lost revenues. Consequently, cost-effective EE programs should have lower programs costs with larger energy savings, which does result in higher lost revenues relative to program costs.

Finally, CAC raised concern with Vectren South offering testimony from Dr. Khawaja, who is the Chief Economist for the firm that performs the EM&V for Petitioner's EE programs. CAC argues that his testimony in this case creates a conflict of interest with Cadmus' role as an independent evaluator. Dr. Khawaja's testimony was largely limited to addressing the reasonableness of EM&V results over time and how the issues of uncertainty and persistence are accounted for in the EM&V process and methodology. While it may have been more prudent for Petitioner to retain an EM&V witness not associated with Cadmus, we lack sufficient evidence to find that EM&V independence has been undermined – particularly given the request for proposal process for selecting the EM&V entity and the ongoing participation by members of the oversight board in the review of the EM&V analysis and reports.

Therefore, we find that Vectren South's modified lost revenue recovery proposal, which has a strong relationship with the EM&V process, is reasonable. Our conclusion is consistent with the Commission's DSM rules at 170 IAC 4-8 and Section 10's requirement that EM&V are included in

any EE plan. Section 10(o) similarly recognizes the importance of subjecting lost revenues to EM&V. Vectren South's proposal recognizes that the EM&V process is not a perfect science. It also employs limitations on EM&V quantification of savings (and thus lost revenues) that ensure customers are billed for lost revenues based on a conservative determination of achieved savings with the highest level of confidence in the energy savings attributed to EE measures. Accordingly, we find Vectren South's Plan is reasonable and approved.

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

1. Vectren South's Plan is approved.

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

ATTERHOLT, FREEMAN, HUSTON, WEBER, AND ZIEGNER CONCUR:

APPROVED: DEC 20 2017

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

Mary M Becerra

Mary M. Becerra
Secretary of the Commission