

ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	✓		
Freeman	✓		
Krevda	✓		
Ober	✓		
Ziegner	✓		

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE COMMISSION'S)
 INVESTIGATION INTO THE CONCLUSION OF THE)
 ENERGY EFFICIENCY PROGRAMS OFFERED BY)
 MIDWEST NATURAL GAS CORPORATION, INDIANA)
 UTILITIES CORPORATION, SOUTH EASTERN)
 INDIANA NATURAL GAS COMPANY, INC.,)
 COMMUNITY NATURAL GAS COMPANY, INC.,)
 BOONVILLE NATURAL GAS CORPORATION,)
 INDIANA NATURAL GAS CORPORATION,)
 FOUNTAINTOWN GAS COMPANY, INC., AND)
 SWITZERLAND COUNTY NATURAL GAS COMPANY,)
 INC. AND RESOLUTION OF THE OUTSTANDING)
 ISSUES RELATED TO THE ENERGY EFFICIENCY)
 FUNDING COMPONENT AND SALES)
 RECONCILIATION COMPONENT.)

CAUSE NO. 43995 S1

APPROVED: NOV 10 2020

ORDER OF THE COMMISSION

Presiding Officers:

James F. Huston, Chairman

Loraine L. Seyfried, Chief Administrative Law Judge

On January 10, 2020, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed a Motion for Subdocket in Cause No. 43995, requesting the Indiana Utility Regulatory Commission (“Commission”) initiate a subdocket for consideration of proposals to formally resolve issues related to Joint Petitioners’¹ Energy Efficiency Funding Component (“EEFC”) and Sales Reconciliation Component (“SRC”) approved by the Commission in Cause No. 43995. On January 14, 2020, the Commission issued a Docket Entry creating this subdocket.

On January 28, 2020, an Attorney’s Conference was held, and thereafter a Technical Conference was held on February 27, 2020 to discuss the outstanding issues to be resolved in this proceeding. A docket entry establishing the procedural schedule for this subdocket was issued on March 3, 2020.

On March 26, 2020, Joint Petitioners submitted direct testimony from the following witnesses:

- David Osmon, President of Midwest and Indiana Natural

¹ Joint Petitioners are a group of eight small investor-owned Indiana natural gas utilities, including Midwest Natural Gas Corporation (“Midwest”), Indiana Utilities Corporation (“Indiana Utilities”), South Eastern Indiana Natural Gas Company, Inc. (“South Eastern”), Community Natural Gas Company, Inc. (“Community”), Boonville Natural Gas Corporation (“Boonville”), Indiana Natural Gas Corporation, Inc. (“Indiana Natural”), Fountaintown Gas Company, Inc. (“Fountaintown”), and Switzerland County Natural Gas Company, Inc. (“Switzco”).

- Frank Czeschin, President of Indiana Utilities
- Jason Wortman, Vice President of South Eastern and Fountaintown
- Mandy Leach, Controller for Community
- Marsha Chase, Manager of Switzco
- Paul Lewellyn, Vice President of Boonville
- Kerry A. Heid, independent utility rate consultant
- Earl L. Ridlen, III, Managing Partner at LWG CPAs & Advisors (“LWG”)
- Edward T. Rutter, Manager at LWG

On May 22, 2020, an Unopposed Motion for Extension of Time was filed by the OUCC, which was granted by docket entry on May 27, 2020. On June 11, 2020, the OUCC filed the testimony of Heather R. Poole, Assistant Director of the OUCC’s Natural Gas Division; and Leja D. Courter, Director of the OUCC’s Natural Gas Division.

On July 2, 2020, Joint Petitioners filed the rebuttal testimony of Messrs. Ridlen, Rutter, and Heid.

A docket entry requesting information from the OUCC and Joint Petitioners was issued on July 17, 2020. Joint Petitioners and the OUCC both filed their responses on July 22, 2020. Joint Petitioners filed a supplemental response on July 29, 2020.

The Commission set this matter for an Evidentiary Hearing to be held at 9:30 a.m. on July 31, 2020, in Room 222, PNC Center, 101 West Washington Street, Indianapolis, Indiana. A Docket Entry was issued on July 23, 2020, advising that in accordance with Indiana Governor Holcomb’s Executive Orders concerning the COVID-19 pandemic, the hearing would be conducted via Webex and providing related participation information. Joint Petitioners and the OUCC participated, by counsel, in the Evidentiary Hearing. The testimony and exhibits of Joint Petitioners and the OUCC were admitted into the record without objection.

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

1. Statutory Notice and Commission Jurisdiction. Notice of the hearings held in this Cause was given and published by the Commission as required by law. Joint Petitioners are all public utilities as defined in Indiana Code § 8-1-2-1(a). This subdocket flows from our November 30, 2011 Order in Cause No. 43995, wherein the Commission approved an Energy Efficiency Program (“EE Program”), including funding and decoupling mechanisms, as part of an alternative regulatory plan (“ARP”) under Ind. Code ch. 8-1-2.5. Therefore, the Commission has jurisdiction over Joint Petitioners and the subject matter of this Cause.

2. Joint Petitioners’ Characteristics. Each of the eight Joint Petitioners provides natural gas distribution service to customers in their respective service areas. While individually each of these utilities is relatively small, collectively they served approximately 40,000 customers when Cause No. 43995 was initiated. The service areas of Joint Petitioners includes customers in the following Indiana counties: Jennings, Jackson, Washington, Scott, Orange, Daviess, Greene, Knox, Monroe, Clark, Harrison, Floyd, Dearborn, Ripley, Decatur, Hancock, Henry, Rush, Shelby, Gibson, Posey, Dubois, Spencer, Pike, Warrick, Owen, Sullivan, Lawrence, Brown, Bartholomew, Crawford, Jefferson, and Switzerland.

3. **Background and Relief Requested.** On November 30, 2011, the Commission issued its Order in Cause No. 43995 (“EE Order”) approving a Settlement Agreement between Joint Petitioners and the OUCC that established an ARP whereby each Joint Petitioner was authorized to implement a three-year pilot EE Program along with an accompanying funding mechanism (the EEFC) and a decoupling mechanism (the SRC). The EE Program consisted of a portfolio of common energy efficiency programs for residential customers, including rebates for furnaces and programmable thermostats, energy efficiency kits, and low-income weatherization. The EEFC provided funding for the EE Program at an annual cost of \$10 per customer, whereas the SRC was to decouple the utility’s margins from the commodity cost. The SRC was to be filed annually to reconcile the difference between actual margins recovered from customers and the margins approved for recovery in a utility’s base rate case.

Following the EE Order, each Joint Petitioner filed new base rate cases to establish recovery of appropriate margins and initiate the ARP.² Each Joint Petitioner also filed tariffs in accordance with the 43995 Settlement Agreement to implement the EEFC and SRC. The EE Program was expected to run from April 2012 through March 2015, absent a request by Joint Petitioners on or before October 1, 2014 for an extension of the EE Program. No request for extension was filed and the EE Program ended on March 31, 2015. Upon expiration of the EE Program, all remaining funds allocated to the EE Program from the EEFC were to be returned to residential customers.

The EE Order also required Joint Petitioners to make annual filings containing information on the results of each utility’s EE Program, expenditure of funds, and the calculation of an appropriate SRC. Disagreement with the SRC calculation results led Joint Petitioners to delay implementation of the SRC while they worked with the OUCC to identify and resolve issues. Ultimately, Joint Petitioners never fully implemented the SRC as contemplated by the 43995 Settlement Agreement.

On January 10, 2020, the OUCC filed a Motion for Subdocket in Cause No. 43995, requesting the Commission initiate this subdocket “for consideration of proposals to formally resolve outstanding issues” related to Joint Petitioners’ EEFC and SRC mechanisms.

4. **Evidence Presented.**

A. **Joint Petitioners.** Joint Petitioners, through their respective officers, presented testimony regarding efforts to implement the EE Program, and in particular, concerns regarding the SRC. Joint Petitioners provided further detail through the testimony of its witnesses Messrs. Heid, Rutter, and Ridlen.

Mr. Osmon described his involvement with the EE Program, which included discussions with the other small gas utility managers, their consultants, and the OUCC. He explained that neither Midwest nor Indiana Natural implemented an SRC and thus never received any revenues from customers as a result. Mr. Osmon further discussed the varying results of the SRC compilations. He noted that while his management team manages both Midwest and Indiana

² Midwest filed in Cause No. 44063; Indiana Utilities filed in Cause No. 44062; South Eastern filed in Cause No. 44128; Fountaintown filed in Cause No. 44292; Community filed in Cause No. 44298; Boonville filed in Cause No. 44129; Indiana Natural filed in Cause No. 44453; Switzco filed in Cause No. 44293.

Natural, the compilation suggested that Midwest had under-collected revenue, while Indiana Natural had over-collected. He said since both companies are managed in the same manner, those opposite results make no sense to him. He said it is reasonable and appropriate to discontinue the EEFC and return any remaining EEFC funds (net of costs) back to customers. Given that the SRC was never implemented and no funds were recovered from customers, he said there is no “refund” or “surcharge” necessary related to the SRC.

Mr. Czeschin stated he repeatedly raised questions with the consultants at LWG about the results of the SRC compilation. He said no one was able to determine why the calculations were resulting in inconsistent and arbitrary results for the various utilities. He said given the clearly erroneous results, Indiana Utilities never implemented the SRC. He stated that Indiana Utilities, despite receiving a base rate increase in Cause No. 45116, continues to earn less than its authorized net operating income and has a net earnings bank deficiency of nearly \$1.2 million. He said the OUCC has failed to explain how it is possible to have over-earned through the SRC while continuing to under-earn the authorized earnings as shown in the Gas Cost Adjustment (“GCA”). He said that trying to implement the SRC now, eight years after the EE Program began, would simply create confusion for customers and provide no additional significant benefit.

Mr. Wortman stated his staff jointly manages South Eastern and Fountaintown and implemented the EE Program consistently between the two utilities. He said despite this common background, the SRC compilations resulted in dramatically different results for the two utilities. More specifically, he said Fountaintown would have to collect significant additional dollars from its customers, while South Eastern would have a small SRC balance to refund. He testified that given both utilities are under common management and used common approaches with the EE Program, the opposite results for these utilities and the significant difference under the SRC compilations shows there are errors in the SRC results and they cannot be relied on. He added that the companies’ recent GCA filings show there is no “reserve” of cash received or maintained by either utility as a result of the SRC that would be available to return to customers. He proposed consistent treatment for both utilities, in that they should neither collect nor refund the amounts shown in the erroneous SRC compilations. He proposed that any remaining EEFC funds, net of costs, be returned to customers over a reasonable period of time and that the SRC should not be implemented now.

Ms. Leach testified that following the Commission’s Order in Cause No. 43995, she participated in monthly meetings with the OUCC and other Joint Petitioners to discuss the implementation of the EE Program and related issues, including the SRC. She said she was personally involved in many of the discussions and can attest to the fact that the issues regarding the SRC methodology has been a years-long topic of discussion. She said Community never put into place an SRC and thus never received any revenues from customers as a result of an SRC. She testified that concluding the EE Program, and recognizing it was a reasonable attempt to promote energy efficiency, would resolve the lingering issues of the SRC; both the customers and the utility would be returned to the same position they were in before the EE Program was initiated.

Ms. Chase questioned the accuracy of the SRC compilation as it applied to Switzco. She testified that despite the fact that Switzco’s customer count was low, less than 600, and actually decreased during the first 12 months of implementing the EE Program, the SRC compilation suggested that Switzco somehow needs to collect additional revenue from its small pool of

customers. She proposed to wind up the EE Program in the same manner as the other small gas utilities by returning any remaining EEFC funds collected after recognizing and recovering the EE Program costs.

Mr. Lewellyn testified Boonville worked with the OUCC and its consultants to develop a compilation of information related to the SRC, which showed widely varying results for each utility. He said given that the utilities were engaged in the same energy efficiency efforts, the utilities were surprised to see the initial SRC computations be so inconsistent. He said Joint Petitioners advised the Commission through compliance filings in Cause No. 43995 that they were continuing to investigate the issue with the OUCC and their consultants and that Joint Petitioners would file an SRC if and when the parties had determined what was causing the errors in the SRC. While the utilities continued discussions with the OUCC, he said no one has been able to identify the primary driver for the incorrect SRC results. As a result, Boonville has never implemented an SRC. He said Boonville's sizeable under-earnings bank confirms that Boonville should not be penalized for offering energy efficiency programs to its customers and the OUCC's suggestion otherwise should be rejected.

Mr. Heid provided a brief description of the EE Program and the EEFC and SRC. He said the EE Program was created to help customers save energy, and that the SRC calculation was a mechanism designed to keep the utilities from being financially harmed by the loss of revenue when residential customers used less natural gas. He said the SRCs were never put into effect, but in spite of the significant energy efficiency efforts of the small gas utilities, the SRC calculations would suggest that in most cases residential customers actually used more natural gas, a result that is not intuitive or reasonable. He noted the Commission has previously recognized that problems could occur with a decoupling mechanism, and that the OUCC's position regarding the SRC is inconsistent with the position taken by the OUCC in Cause No. 43180. He testified the actual SRC calculation is still a new, complex, and unique mechanism (particularly with respect to very small gas utilities) that is open to numerous possible problems and issues.

Mr. Heid testified he has continued to research factors that could have contributed to the varying SRC results. He stated that for the SRC calculation results to be meaningful and accurate, it is necessary for the revenues and billing determinants to be in synch. He said this occurs when a cost of service study ("COSS") is done in a base rate case. He noted that only two of the eight small gas utilities had prepared a COSS in their last base rate case and therefore concluded that the SRC results for six of the small gas utilities are inaccurate, unreliable, and must be disregarded. He also explained his concerns with the SRC results for the two utilities that had conducted a COSS. In addition to the COSS, Mr. Heid expressed concern that the total book revenues used in the SRC calculation are not subject to a reconciliation. Finally, Mr. Heid identified the criteria he considered for concluding that the small gas utilities' proposal to not implement the SRC is in the public interest.

Mr. Ridlen provided a table reflecting the EEFC dollars collected from customers through the end of the program, as well as the costs incurred by Joint Petitioners through January 2020 as reflected on their books and records.³ He stated that to the extent there are any funds remaining

³ We note Joint Petitioners subsequently updated this information based on additional review of their books and records in their initial and supplemental response to our docket entry questions.

after applying all the costs associated with the EE Program, he recommended any balance be returned to the residential customers.

With respect to the OUCC's position regarding a "refund" of the SRC, Mr. Ridlen explained Joint Petitioners have not collected any funds related to the SRC program. He noted the OUCC made this "refund" proposal in Community's recent rate case, and the amount proposed to be "refunded" by the OUCC is more than 85% of Community's annual net operating income during the relevant period. He stated this significant amount underscores the unreasonableness of the OUCC's position. He also pointed to the excess earnings element of the GCA proceedings, which the OUCC checks either quarterly or semi-annually. Mr. Ridlen testified that the OUCC's proposal to create a refund through the application of its SRC is essentially creating a new earnings limitation that applies at the gross margin level, and any funds that were applied to the earnings bank or refunded to customers through the GCA excess earnings test would have already included gross margin excesses.

Mr. Ridlen stated there is no logical or rational explanation for large increases in gross margin that would result directly from the utilities promoting energy efficiency, which is elemental to the purpose of the SRC. He noted neither Joint Petitioners nor the OUCC can offer an explanation as to how promoting energy efficiency would cause customers to use more energy or Joint Petitioners to over-earn. He stated customers have received the benefits of the EE Program, and thus winding down the EE Program as proposed by Joint Petitioners is reasonable.

Mr. Rutter explained the SRC is a type of decoupling mechanism, but the OUCC's proposal is inconsistent with how decoupling mechanisms are intended to function. He said the SRC was intended to function as a decoupling mechanism to address the potential for decreased consumption and diminished fixed cost recovery as a result of the successful implementation of energy efficiency. He explained that ultimately, for reasons that are not fully understood by any party, concerns regarding decreased consumption were not borne out by reality following Joint Petitioners' implementation of the EE Program. Thus, he concluded, the intended function of the SRC decoupling mechanism was not necessary. He stated the OUCC asks the Commission to treat the SRC not as a decoupling mechanism, but as a revenue stabilization mechanism. He noted there is no allegation that Joint Petitioners have failed to successfully implement energy efficiency, or that they have otherwise failed to provide reasonable and adequate service to their customers. Nonetheless, the OUCC now seeks to penalize Joint Petitioners by requiring them to "refund" amounts never collected from customers. He testified that, as the Commission recognized in Cause No. 43180, such a result would "create disincentives for efficiency operation of a utility." He stated it would also discourage these small utilities from engaging in future energy efficiency programs, contrary to the State's energy policy.

Mr. Rutter testified that because there were no actual SRC mechanism revenues billed to customers from the date of the EE Order to present there is no need to refund to, or collect from, customers any SRC mechanism revenues. He said the preliminary submissions provided by representatives of the small gas utilities to the OUCC under the original proceeding appear to be a compilation of what could have been collected by each utility if the SRC mechanism had been implemented but without any annual reconciliations. The compilations were not a determination of SRC revenues actually collected. He recommended the Commission find that no SRC revenues were ever collected from customers that require reconciliation.

B. OUCC. The OUCC recommended the Commission require Joint Petitioners to comply with the Settlement Agreement approved in Cause No. 43995 (“43995 Settlement Agreement”) and implement the OUCC’s calculations of the SRC and EEFC to conclude the EE Program.

Ms. Poole provided a summary of the EE Program background, discussing specifics from Cause No. 43995, in which Joint Petitioners sought approval of an ARP to implement an energy efficiency program with accompanying funding and decoupling mechanisms. Ms. Poole testified as to the terms of the 43995 Settlement Agreement and discussed the reporting requirements that were implemented as a result of the 43995 Settlement Agreement.

Ms. Poole described the SRC reconciliation as an annual calculation of the actual margins recovered by the utility, reconciled against the margins approved by the Commission in an appropriate rate proceeding. Ms. Poole explained the calculation of the order granted margin, which is compared annually to the actual margin per customer. She stated the reconciled annual difference is divided by projected sales volumes to determine an appropriate charge or refund through the SRC. Ms. Poole testified none of the Joint Petitioners’ annual reconciliations for the SRC or EEFC have been filed with the Commission to date. She noted the SRC reconciliation was to take place after the fact – no charges were to be billed to customers up front.

Ms. Poole testified the 43995 Settlement Agreement was approved by the Commission as a whole, with specific language relating to filing annual reports that include an SRC reconciliation. Therefore, she stated, each Joint Petitioner should be required to make the SRC reconciliation. Ms. Poole noted the purpose of a reconciliation is to reconcile two items. In this instance, she stated the SRC reconciles actual margins adjusted for customer growth, with order granted margins from the last rate case. She stated that until the SRC reconciliation takes place, there is no charge or refund to be implemented. Additionally, just because the SRC charge has not occurred yet, does not mean it should not occur as a result of this subdocket proceeding.

Ms. Poole testified the SRC mechanism was designed to break the link between customer usage and cost recovery, ensuring the utility is made whole in obtaining its order granted margin. She stated if customers use less energy, the utility is made whole by supplementing the reduced margin received through a charge to customers. Likewise, if customers use more energy, the utility does not receive a windfall; it is returned to the prior rate case margin by refunding money to customers. She pointed out this is the same concept as explained in Mr. Heid’s testimony in Cause No. 43995.

Ms. Poole argued SRC earnings are different than earnings for the GCA earnings test because the SRC calculation only considers residential margins. She stated the GCA earnings test is based on total net operating income for the utility, which includes revenues from all classes of customers, as well as expenses. She contended that other factors could explain how the OUCC’s calculation of large SRC balances would not result in large excess earnings for that period but agreed that a portion of the SRC has already been dealt with through the refund of GCA over-earnings. However, she testified the pass back of these GCA over-earnings are refunded to all of a utility’s GCA customers, whereas the SRC is only applicable to residential customers. Despite this fact, she testified, the OUCC recommends applying 100% of the GCA refunds for over-earnings to the SRC calculation, lowering the amount due back to customers.

Ms. Poole testified that if Joint Petitioners did not include an asset or liability on their books for the SRC and EEFC reconciliations, the net operating income included in the GCA earnings test would be incorrect and need to be adjusted. Further, any incorrect income statements that have eroded the amounts of previous losses in the earnings test does not relieve Joint Petitioners of the duty to refund any amounts due to customers. She testified the 43995 Settlement Agreement does not indicate the earnings test in the GCA should be decreased for the SRC amounts. She pointed out Joint Petitioners' testimony in Cause No. 43995 states a reconciliation should be performed, with any under- or over-recovery being recovered or returned via the SRC over the next 12 months.

Ms. Poole testified the SRC calculation used by Joint Petitioners is modeled after the Vectren North and Vectren South (jointly "Vectren") SRC calculations, each of which have been in effect in Indiana for over a decade. Additionally, she stated Citizens Gas of Westfield's SRC calculation has been in effect since 2010. She also noted Citizens Gas of Westfield is considered a small utility, with fewer customers than some of Joint Petitioners. Ms. Poole testified that each year, Vectren makes a 30-day filing with the Commission to reconcile its SRC calculation from the previous year. She noted Citizens Gas of Westfield also performs an SRC calculation on an annual basis. She testified each reconciliation takes place after the fact, resulting in charges to customers or refunds going back to customers in the following year. She noted in the course of reconciling the SRC for the past decade, all three of these other utilities have had both charges to customers and refunds going back to customers, which shows it is possible to have an energy efficiency program in place and have greater sales of natural gas.

Ms. Poole testified Joint Petitioners failed to provide any SRC calculations to the Commission in this subdocket or any support for why the numbers are incorrect. She acknowledged the Joint Petitioners voiced concerns regarding variations in the calculations but stated Joint Petitioners have not pointed out any large problems with their billing systems or the reporting mechanism for preparing the billing registers/reports.

Ms. Poole argued Joint Petitioners must show why their billing records are not adequate for purposes of reconciling the SRC. She stated simply stating the billing registers cannot be used because they show Joint Petitioners collected greater margins than their order approved margins is not adequate. Ms. Poole stated Joint Petitioners did not provide any evidence showing customers who received furnace and thermostat rebates or home audits actually used less energy than before the rebates or the audit; nor did Joint Petitioners provide evidence that those customers who did not receive rebates or home audits were not using more energy than before the EE Program went into effect.

Ms. Poole testified the OUCC does not oppose service quality enhancements for the benefit of customers and is not seeking to penalize the utilities for engaging in energy efficiency. She stated the OUCC is simply requesting the Commission require Joint Petitioners to abide by the 43995 Settlement Agreement and perform the SRC and EEFC reconciliations. Ms. Poole testified if Joint Petitioners had filed their annual reports as agreed to in the 43995 Settlement Agreement, all parties involved could have resolved these issues in a timely manner.

With respect to the EEFC, Ms. Poole stated each utility's tariff from Cause No. 43995 provided funds from an annual charge of \$10 per customer. This charge was collected from customers by each Joint Petitioner to implement the EE Program. Ms. Poole stated that at the end

of the EE Program, a reconciliation should have been performed to determine whether each Joint Petitioner over-collected or under-collected funds from its customers.

Ms. Poole agreed that amounts collected from customers should be returned net of costs but proposed to limit recovery of all administrative costs to those incurred through December 31, 2015, the calendar year end of the EE Program. She stated even though the 43995 Settlement Agreement states that customers are owed a refund in the event the EE Program ceases to exist, Joint Petitioners have taken years to resolve the reconciliation of that refund. She testified that during this time, Joint Petitioners' consultants continued to charge the utilities to determine why the numbers they have provided are supposedly incorrect. Ms. Poole stated ratepayers should not be expected to pay for additional consultant fees when Joint Petitioners did not fulfill their obligations under the 43995 Settlement Agreement and did not act expeditiously in resolving the issues in this case.

Ms. Poole noted Joint Petitioners' witness Ridlen provided EEFC dollars collected from customers through the end of the EE Program along with a listing of costs through December 2018 and costs through January 2020. She stated no supporting documentation was given for how any of the revenues or costs were calculated. She noted the OUCC took the information provided through discovery and calculated an EEFC for each utility, using administrative costs through December 2015.

Ms. Poole testified the OUCC recommends any refund/charge go back to/be collected from Joint Petitioners' current residential customer base. She recommended any refunds or collections should be implemented on a \$10 per-customer, per-year basis. She stated each Joint Petitioner established a specific tariff within their base rate case implementing the EE Program for the refunding or collection of EEFC and SRC funds. She testified that at the end of each refund/collection period, the OUCC recommends each utility file a report under Cause No. 43995 S 1 to show the initial amount due to/from customers and the amount actually refunded to/collected from customers over that refund/collection period within 30 days of completing the refund/collection. Joint Petitioners should also use their current tariff to refund/collect any funds as a result of the reconciliations.

Finally, Ms. Poole provided the SRC and EEFC reconciliations for each Joint Petitioner and a detailed explanation of how they were calculated using information provided by Joint Petitioners.

Mr. Courter discussed 43995 Settlement Agreement approved in the EE Order and the requirement that Joint Petitioners file a tariff sheet describing the SRC. He noted the tariff sheet defines Actual Margins and Adjusted Order Granted Margins, states the SRC shall recover the differences between Actual Margins and Adjusted Order Granted Margins, and indicates how those differences are to be recovered or returned. Mr. Courter stated that Joint Petitioners requested, and ultimately obtained in the EE Order, Commission approval of the deferral of the SRC amounts for subsequent recovery/pass back.

Mr. Courter testified the SRC deferral approval negates Joint Petitioners' argument that because the SRC was never collected from customers, nothing is owed to customers. He explained that no funds were collected because Joint Petitioners were supposed to be keeping accounting

records of SRC deferrals and recovery or pass back would occur when annual filings were made. He testified the absence of these records does not justify Joint Petitioners' proposal to never reconcile actual margins against those set by the Commission in their rate cases as was contemplated and agreed to in the 43995 Settlement Agreement.

Regarding Mr. Heid's concerns with the lack of a COSS, Mr. Courter pointed out that Mr. Heid also argued the SRC results were not correct for Midwest or Community even though both of those utilities conducted a COSS. He also noted that Joint Petitioners were represented by consultants in Cause No. 43995 and any concern with SRC results not being accurate without a COSS should have been raised in 2011, before the Commission approved the EE Program and 43995 Settlement Agreement.

Mr. Courter testified Joint Petitioners are seeking to be relieved of their obligations under the 43995 Settlement Agreement and argued that Indiana courts have recognized the importance of holding parties to their agreements. Mr. Courter concluded Joint Petitioners have a legal obligation under the 43995 Settlement Agreement and should be required to comply with the agreed terms.

C. **Joint Petitioners' Rebuttal.** Mr. Heid explained that, in his opinion, Mr. Courter is disputing the utilities' decision not to implement rates under their energy efficiency tariffs, not their compliance with the 43995 Settlement Agreement. He also disagreed with Ms. Poole's contention that Joint Petitioners are attempting to "pick and choose" which portions of the 43995 Settlement Agreement to follow. He testified it was always the intention of the utilities to file the SRCs once the issues were identified and resolved that gave rise to the erratic, unreliable, and unreasonable results. Mr. Heid stated Joint Petitioners have tried to work collaboratively with the OUCC but are in the unenviable position of having the OUCC argue that Joint Petitioners must file SRCs, while recognizing the SRC results would be incorrect. He said that assuming the OUCC's issue is whether Joint Petitioners have complied with the 43995 Settlement Agreement, it would be reasonable for the Commission to exercise its authority as necessary to modify the requirement to file SRCs or otherwise conclude that the terms of the 43995 Settlement Agreement have been satisfied. Mr. Heid stated this approach is consistent with the "end use doctrine," in that applying the SRCs as proposed by the OUCC would not result in fair, equitable, or reasonable rates for Joint Petitioners.

Mr. Heid also responded to Mr. Courter's argument regarding the use of deferred accounting. He stated that it is not appropriate to defer accounting amounts unless there is a reasonable probability that they are accurate. Since the SRC amounts are not accurate, it is not appropriate for Joint Petitioners to make deferred accounting entries on their books and records. With respect to other utilities that have used SRC mechanisms, Mr. Heid pointed out differences that might impact the SRC, including the relative size of the utilities.

Mr. Ridlen testified that the OUCC offered no accounting evidence that the SRC was ever implemented and collected from customers, nor did the OUCC explain the cause of the erratic SRC results. With respect to Ms. Poole's arguments regarding the evidence presented by Joint Petitioners, Mr. Ridlen explained the calculations are far from new information and were in the OUCC's possession in 2016. Mr. Ridlen also argued it would be unreasonable to limit cost recovery to those costs incurred as of December 31, 2015 as proposed by Ms. Poole, because the

OUCC and Joint Petitioners have engaged in numerous collaborative efforts since then to try and resolve these issues.

Mr. Rutter agreed the amounts related to the EEFC should be returned to customers, net of costs. But, he testified the OUCC's position that Joint Petitioners must refund monies to customers or collect additional monies from customers for an SRC that was never implemented by the utilities based on the OUCC's hypothetical computation that ignores whether an SRC rate was ever approved or implemented is flawed. He said absent the collection of funds, there is no basis to calculate and order a refund. Similarly, because the gas utilities were unable to implement the SRC, no under-collection could have occurred and thus no additional collection from customers is necessary.

Mr. Rutter explained Mr. Courter's argument fails to distinguish between approval of the SRC methodology and the separate approval of the implementation of the SRC. He said the SRC was conceived as a tracker mechanism to allow utilities to recover lost or reduced revenue on an on-going basis, for the impact on revenues from investing in energy efficiency offerings to customers. He said that as Mr. Courter notes, the 43995 Settlement Agreement lays out the methodology by which the SRC could be implemented and contemplates the use of deferral accounting and annual reconciliations. However, that agreement also anticipated further action by the utilities would be necessary to implement the SRC mechanism. He noted the utilities were not able to arrive at reliable calculations for the anticipated SRC reconciliations and therefore could not make any changes. In other words, the Commission approved the SRC mechanism but has not approved an SRC rate for the utilities, individually or as a group, to implement and collect any additional revenues attributable to an SRC.

Mr. Rutter testified the OUCC's position in this case is contrary to actions taken by the Commission in accordance with Ind. Code § 8-1-8.5-10. Specifically, he stated the Commission has approved decoupling mechanisms to ensure that electric utilities are not harmed financially when they implement approved energy efficiency plans. He said this approach balances the interests of the ratepayer and the investor, a basic tenet of utility ratemaking. He said in the instant case, however, the OUCC suggests the SRC should instead be treated like a revenue stabilization mechanism for the benefit of customers, and that the utilities should be required to refund amounts never billed to customers. In addition, he noted that each of the Joint Petitioners have subsequently had a retail rate case since the 43995 Settlement Agreement. As a result, the implementation of new basic rates and charges would reset any over- or under-collection of revenues to be collected through an SRC. He explained that the OUCC's proposal would require the utilities to refund amounts for factors unrelated to their conservation efforts, which is contrary to the Commission's decision in *Duke Energy Ind.*, Cause No. 45253 (IURC June 29, 2020).

Mr. Rutter concluded that the Commission should not require the utilities to retroactively perform the hypothetical SRC reconciliation urged by the OUCC. Instead, he recommended the Commission should simply wind down the EE Program and find the 43995 Settlement Agreement has been satisfied and no further action is necessary with respect to the SRC mechanism.

5. Commission Discussion and Findings. In this proceeding, the OUCC requests the Commission to require Joint Petitioners to comply with the 43995 Order by returning any remaining funds allocated to the EE Program from the EEFC and performing the SRC

reconciliation calculations. Joint Petitioners, on the other hand, agree that any remaining EEFC funds should be returned to customers but request the Commission not require them to effectuate the SRC reconciliations because the results vary widely among the utilities and are considered flawed.

The parties present various arguments concerning who bears the burden of proof in this proceeding. We opened this subdocket at the request of the OUCC, and without objection from Joint Petitioners, to consider the parties' proposals to formally resolve the outstanding issues related to the EEFC and SRC mechanisms approved in the Commission's 43995 Order. As each party offers differing proposals related to the implementation of the 43995 Order, we find that each party bears the burden of proving their proposal should be approved. This proceeding is not unlike Commission investigations, where we have found that any determination made during the investigation would simply be based on the evidence set forth by the parties. *See Comm'n Investigation of N. Ind. Pub. Serv. Co.*, Cause No. 41746 at 2 (IURC Aug. 29, 2001).

However, Ind. Code § 8-1-2-73 also provides that in Commission proceedings, the burden of proof is upon the party adverse to the Commission or seeking to set aside any order of the Commission to show that the order is unreasonable or unlawful. Consequently, to the extent Joint Petitioners assert that any portion of the 43995 Order is unreasonable and should be set aside, Joint Petitioners bear the burden of proof.⁴

With these standards for the burden of proof in mind, we turn to the specific disputes among the parties.

A. Energy Efficiency Funding Component. In contrast to the SRC, there is some agreement between the parties regarding the treatment of the EEFC. The record shows Joint Petitioners and the OUCC agree that the EEFC was discontinued, and that a final reconciliation should be performed. The disagreement lies in how to perform that reconciliation. Joint Petitioners propose that funds collected through the EEFC should be returned to customers, net of costs. The OUCC likewise agrees that funds should be returned to customers, net of costs, but contends that only those costs incurred through December 31, 2015 should be used. As discussed below, the Commission finds the cut-off date proposed by the OUCC is reasonable and should be accepted.

In determining the appropriate amount of costs to include in the calculation of the EEFC reconciliations, we consider the 43995 Order and the evidence that has been presented concerning the reasonableness of the costs incurred. The 43995 Order authorized Joint Petitioners to undertake a 3-year pilot EE Program, which was to be implemented from April 2012 through March 2015 and estimated to require annual funding of \$363,400. The funding for the EE Program was to come from the EEFC as well as Normal Temperature Adjustment funds. The funds were to be allocated on an annual basis and any funds not expended during the one-year period would roll over to the following year for continued use in funding the EE Program. "Should the [EE Program] ever cease

⁴ We also note that Ind. Code § 8-1-2.5-7 provides, "if the [C]ommission has...approved an alternative regulatory plan under this chapter for a fixed term of years,...the plan, or any part of the plan, may be terminated before expiration of the term only if material and irreparable harm to the energy utility, the energy utility's customers, the state, or the safety of the energy utility's workforce has been established." Given that Joint Petitioners' ARP ended in March 2015, we question our jurisdiction to now alter that ARP. However, because we find that Joint Petitioners have failed to demonstrate any changes to the ARP should be made, we need not address this issue.

to exist, all remaining funds allocated to the [EE Program] from the EEFC shall be returned to residential ratepayers.” 43995 Settlement Agreement at 7. Consequently, Joint Petitioners received funding approval for the EE Program based on an annual estimated cost to implement the energy efficiency programs that would be later reconciled with the actual cost of implementation at the conclusion of the EE Program.

There is no dispute the EE Program ended on March 31, 2015 – over five years ago. Yet, Joint Petitioners have not performed the reconciliation required by the 43995 Order and instead have continued to incur significant legal and consulting costs exploring and negotiating issues regarding the SRC calculations with the OUCC (which is discussed further below). In a supplemental response to our July 17, 2020 Docket Entry, Joint Petitioners provided the following information regarding the legal and consulting costs they have incurred in connection with the EE Program:

	Midwest	Indiana Utilities	South Eastern	Boonville	Fountaintown	Switzco	Community	Indiana Natural
2011	\$98,400	\$21,300	\$13,800	\$35,100	\$24,600	\$5,100	\$49,350	\$52,500
2012								
2013	\$32,845		\$4,533	\$22,829	\$8,081	\$3,103	\$16,162	\$17,839
2014	\$18,721	\$11,049	\$12,905	\$9,158	\$14,960	\$970	\$5,182	\$9,988
2015	\$99,051	\$22,471	\$16,594	\$41,038	\$27,092	\$12,707	\$47,825	\$54,222
2016				\$128				
2017	\$14,336	\$2,124	\$1,376		\$2,453		\$4,906	\$5,235
2018	\$1,713	\$1,015	\$1,015		\$1,015			\$1,992
2019	\$9,407	\$7,408	\$14,814	\$7,911	\$14,488	\$14,631	\$6,681	\$8,874
2020	\$34,245	\$38,609	\$18,427	\$31,546	\$18,427	\$30,071	\$33,508	\$31,887
Total	\$308,718	\$103,976	\$83,464	\$147,710	\$111,116	\$66,582	\$163,614	\$182,537

Under the terms of the 43995 Settlement Agreement as approved in the 43995 Order, Joint Petitioners should have filed the required EEFC reconciliation within a reasonable time of the end of the EE Program. We agree with the OUCC that a reasonable time would have been by the end of December 2015. Instead, Joint Petitioners chose to continue incurring significant legal and consulting costs to explore the SRC calculations for an additional five years for a pilot program that was implemented less than three years. We find that choice to be unreasonable and decline to impose those costs upon Joint Petitioners’ customers. Joint Petitioners failed to explain why they could not have performed, or at least filed for approval with the Commission, the required reconciliation within a reasonable time of the EE Program ending. Nor did they offer sufficient evidence demonstrating the reasonableness of the significant legal and consulting costs incurred over such an extended time period or why such costs needed to be incurred. Therefore, consistent with our decision below regarding the SRC calculation, we find that recovery of any legal and administrative costs incurred after 2015 is denied.

In their proposed order, Joint Petitioners argue the issue of cost recovery for EE Program implementation costs has been previously litigated and resolved. While we agree the issue of whether Joint Petitioners may recover reasonable implementation costs has been previously litigated and resolved, we find that Ms. Poole’s calculation of the EEFC reconciliations include those reasonable implementation costs. Consistent with the 43995 Order, Joint Petitioners were

authorized in subsequent base rate cases to recover their actual costs incurred in implementing the EE Program and associated requirements. However, no Commission order has altered the 43995 Order requirement that Joint Petitioners reconcile those actual EEFC costs to the estimated costs of implementing the EE Program, which is subject to a reasonableness review. The 43995 Order did not provide a blank check to Joint Petitioners.

In addition, unlike Joint Petitioners, who simply provided a list of revenue and costs for each utility, the OUCC provided a full reconciliation of revenue and costs, along with supporting documentation to show how the amounts were calculated. Accordingly, we find the amounts presented in Ms. Poole's direct testimony and supported by her exhibits for each Joint Petitioners' EEFC reconciliation to be reasonable and should be implemented in the manner set forth further below.

B. Sales Reconciliation Component. The OUCC requests the Commission require Joint Petitioners to implement the SRC calculations required by the 43995 Order. Joint Petitioners, however, argue that the SRC was never implemented because funds were never collected from customers, and it should not be implemented because the SRC calculation results are inaccurate and erroneous. Although Joint Petitioners did not present any SRC calculations, the record shows there is no significant disagreement among the parties regarding the utilities' books and records relative to the SRC calculations that were presented by the OUCC. Based on the evidence presented and for the reasons set forth below, we find that the OUCC's calculations of the SRC reconciliations are reasonably accurate and should be implemented.

Joint Petitioners assert that the SRC was never implemented because no funds were ever collected from customers and, therefore, no funds need to be returned to customers. We disagree. The SRC was implemented by each of the Joint Petitioners because each filed a tariff reflecting the EEFC and SRC. However, it was the SRC calculations and required annual reconciliations that were not performed by Joint Petitioners. As the OUCC explained, unlike the EEFC, which reflected a tariff rate of approximately \$10 per customer per year, the SRC reflected a \$0 rate because the SRC reconciliation was to occur after the fact in the required annual filings. And, unlike the EEFC, which was to collect funds from customers that would be used to pay for expenses related to the EE Program, the SRC was not to collect funds from customers, but was to "decouple" consumption and utility profitability due to concerns that successful implementation of energy efficiency would decrease gas usage and resulting utility profits.

As approved in the 43995 Order, the SRC is simply an annual calculation of the actual margins received by the utility, reconciled against the margins approved in a utility rate proceeding by the Commission. Consequently, if customers use less gas, the utility is made whole by supplementing the reduced margin through a charge to customers. Likewise, if customers use more gas, the utility does not receive a windfall and is returned to its rate case margin through a refund to customers. The SRC is consistent with the decoupling mechanisms used by other utilities and the Commission's Order in Cause No. 43180.

Each Joint Petitioner received a Commission-approved operating margin that was determined in a base rate case, and which was to be compared with the utility's actual margin in its annual filing. However, Joint Petitioners failed to file any SRC calculations in their annual filings. As noted by the OUCC, Joint Petitioners sought and received approval to delay the first

annual filing of the SRC calculations until the Fall of 2014 when the EE Program would have been implemented for a full 12 months. On October 30, 2014, Joint Petitioners again sought to delay the SRC filing until December 2014 because preliminary calculations reflected unexpected variations of under- and over-collections. The Presiding Officers granted an extension until December 15, 2014 for the filing of the annual report and revised tariffs reflecting the SRC calculations. Although Joint Petitioners filed their 2014 annual report, they did not file the SRC calculations and instead proposed to delay making any SRC filings until the cause of the variations in results could be determined or resolved. The evidence shows the parties continued discussing the issue, but no further filings were made for five years until the OUCC requested this subdocket be convened.

While the OUCC argues that the SRC reconciliations should be made as required by the 43995 Settlement Agreement and Order, Joint Petitioners argue they should be relieved from such obligation because the SRC calculations are “inaccurate” and “unreasonable.” Joint Petitioners assert the SRC calculations are “erroneous” and should not be relied upon because the results vary widely among the utilities, with many of the SRC calculations requiring a refund to customers. Joint Petitioners argue that such results are inconsistent with their successful implementation of the EE Program, which is designed to reduce gas usage by customers.

Based on the evidence presented, we find that Joint Petitioners have failed to provide sufficient evidence demonstrating the SRC calculations are erroneous or otherwise should not be implemented. Simply because the SRC calculations varied among the utilities and the results were not as expected does not prove the SRC calculations are incorrect.⁵ Although each Joint Petitioner implemented energy efficiency programs, the evidence shows that the duration of those programs and the number of participants varied for each utility. In addition, although Joint Petitioners argue that increased gas usage by customers is inconsistent with their implementation of energy efficiency programs, none of Joint Petitioners conducted any evaluation, measurement, or verification (“EM&V”) of the energy efficiency programs. Consequently, as noted by the OUCC, Joint Petitioners failed to provide evidence showing that implementation of the energy efficiency programs did result in a decrease of customer gas usage.⁶

Joint Petitioners also argue that the SRC is not a simple formulaic calculation and that the Commission recognized in Cause No. 43180 that decoupling presents unique complications and challenges.⁷ As articulated most recently in Cause No. 45253, we continue to agree that decoupling presents unique complications and challenges, particularly for integrated electric utilities as compared to gas distribution utilities. Challenges often arise because there are a variety of factors, such as weather, economics, and technology, and not just energy efficiency, which can cause reductions in energy usage. However, we disagree that the SRC agreed upon by the parties in the 43995 Settlement Agreement is not a simple formulaic calculation. Contrary to Joint Petitioners’

⁵ The EE Program was approved as a “pilot program.” As such, it is not unusual that the results of implementing the EE Program were not as expected.

⁶ Although Joint Petitioners’ witness Osmon offers a gas usage comparison between two customers, one of which received a furnace rebate and another that did not, the comparison is of little value because the data set is too small (i.e., two customers) and contains too many assumptions (e.g., types and size of furnaces, thermostat settings, insulation, etc.).

⁷ We note that our Order in Cause No. 43180 was issued on October 21, 2009, two years prior to our approval of the 43995 Settlement Agreement at issue in this Cause wherein the parties agreed to use decoupling.

witness Rutter's assertions, decoupling is a type of revenue stabilization mechanism because it is designed to change the revenues a utility puts on its books from those actually received to those determined by a regulatory formula. It is not an adjustment designed solely to calculate revenues that may have been "lost" because of savings achieved under a utility program, such as energy efficiency.⁸ Joint Petitioners could have chosen to use a lost revenue adjustment mechanism as is used by most electric utilities and which adjusts revenues through a rate increase based on the energy savings achieved as verified by EM&V, but they did not. Instead, Joint Petitioners sought and received approval for the SRC, a decoupling mechanism that annually compares an order granted margin per customer with the actual margin per customer and recovers or returns the difference. Unlike a lost revenue adjustment mechanism, this SRC calculation is not impacted by any specific reason that customer usage may have increased or decreased.

Joint Petitioners' witness Heid also expressed concern that failure to conduct a cost of service study ("COSS") to synch revenues and billing determinants or to conduct a revenue reconciliation of book revenues may have contributed to what he considered to be unreasonable SRC results. We find that neither of these "concerns" rise to the level of sufficient evidence by which we may find that the SRC calculations are erroneous or unreasonable. Regarding the COSS, we note the two utilities that did perform a COSS in connection with their rate cases also had the same varying results as the other Joint Petitioners (i.e., one utility over-earned while the other under-earned). And, as to the reliability of the utilities' books and records to perform the SRC calculation, no evidence was offered to show that they are, in fact, inadequate.

Finally, Joint Petitioners argue that they should not be required to perform the SRC reconciliations because any over-earnings in its margins have been addressed through the Gas Cost Adjustment ("GCA") earnings test and by Joint Petitioners having filed base rates cases after the conclusion of the EE Program. As noted by the OUCC, the GCA earnings test and the SRC reconciliation are two different calculations. The SRC calculation only addresses residential margin, whereas the GCA earnings test measures total net operating income. However, the OUCC agreed that because some of the Joint Petitioners reflected over-earnings in their GCAs during implementation of the EE Program, a portion of the SRC amount due to customers has been addressed. Although the GCA over-earnings were refunded to both residential and non-residential customers, the OUCC recommended applying all the GCA over-earnings to the SRC calculation. We find this recommendation to be a reasonable solution and approve it. Regarding Joint Petitioners' argument that their rates have been reset through the filing of subsequent base rate cases, we generally agree that a rate case can "zero-out" or reset a tracker. However, in this instance, the reconciliations were to occur between rate cases (i.e., after the rate case establishing the approved customer margin and before the utility's next rate case that would establish new customer margins on a going forward basis). Because the reconciliations did not occur, there was no determined value for the SRC to be reset in the subsequent base rate cases. Instead, in each subsequent base rate case, the SRC reconciliations were either not addressed or specifically deferred to a later time.


⁸ See, *Decoupling for Electric and Gas Utilities: Frequently Asked Questions*, The National Association of Regulatory Utility Commissioners, September 2007, comparing decoupling, lost revenue adjustments, and straight-fixed variable rate design.

Accordingly, we find Joint Petitioners have failed to provide sufficient evidence that the SRC reconciliations required by the 43995 Settlement Agreement and Order should not be performed.

C. **Implementation of EEFC and SRC Reconciliation Variances.** Based on our determinations above and the evidence presented, we find the OUCC's proposal concerning the timing for refunding/collecting the variances from the EEFC and SRC reconciliations to be reasonable. Refunding to, or collecting from, customers the EEFC and SRC amounts at the same \$10 per year amount charged to customers during the EE Program is a reasonable solution for addressing amounts that should have been addressed more than five years ago and during implementation of the EE Program. We find this amount will create neither a hardship nor an immediate windfall for either Joint Petitioners or their customers. Joint Petitioners shall use their existing EEFC and SRC tariffs currently in place and file within 30 days of this Order revised tariffs under the Commission's Thirty-Day Administrative Filing Procedures, 170 IAC 1-6. Such filings shall reflect the amounts approved herein for the refunding, or collection, of the EEFC and SRC amounts. Within 30 days of completing the refund to, or collection from, customers, each Joint Petitioner must file a report under this Cause showing the initial amounts due to, or from, customers and the amount actually refunded to, or collected from, customers.

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

1. Within 30 days of this Order, Joint Petitioners shall file under 170 IAC 1-6 revised tariffs to implement the EEFC and SRC calculations approved herein.
2. Within 30 days of completing the refund to, or collection from, customers, each Joint Petitioner must file a report under this Cause showing the initial amounts due to, or from, customers and the amount actually refunded to, or collected from, customers.
3. This Order shall be effective on and after the date of its approval.

HUSTON, FREEMAN, KREYDA, OBER, AND ZIEGNER CONCUR:
APPROVED: 

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



Mary M. Schneider,
Secretary of the Commission