

[NOTE – THIS PROPOSED ORDER IS OFFERD JOINTLY BY THE OFFICE OF UTILITY CONSUMER COUNSELOR AND DUKE INDUSTRIAL GROUP. IN ADDITION, NUCOR CORPORATION ALSO JOINS THIS PROPOSED ORDER ONLY FOR THE “LEGACY / PERSISTING LOST REVENUES” LANGUAGE FOUND IN THE DISCUSSION AND FINDINGS SECTION.]

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

FILED

September 25, 2017

PETITION OF DUKE ENERGY INDIANA, LLC)
FOR APPROVAL OF (1) ITS PROPOSED)
DEMAND SIDE MANAGEMENT AND ENERGY)
EFFICIENCY PROGRAMS FOR 2017-2019,)
INCLUDING COST RECOVERY, LOST)
REVENUES AND SHAREHOLDER INCENTIVES)
IN ACCORDANCE WITH IND. CODE §§ 8-1-8.5-3,)
8-1-8.5-10, 8-1-2-42(a) AND PURSUANT TO 170)
IAC 4-8-5 AND 170 IAC 4-8-6; (2) AUTHORITY TO)
DEFER COSTS INCURRED UNTIL SUCH TIME)
THEY ARE REFLECTED IN RETAIL RATES; (3))
RECONCILIATION OF DEMAND SIDE)
MANAGEMENT AND ENERGY EFFICIENCY)
PROGRAM COST RECOVERY THROUGH)
DUKE ENERGY INDIANA,LLC’S STANDARD)
CONTRACT RIDER 66A; AND (4) REVISIONS TO)
STANDARD CONTRACT RIDER 66A)

INDIANA UTILITY

REGULATORY COMMISSION

CAUSE NO. 43955 DSM-4

ORDER OF THE COMMISSION

Presiding Officers:

Sarah E. Freeman, Commissioner

David E. Veleta, Administrative Law Judge

On November 22, 2016, Duke Energy Indiana, LLC (“Petitioner” or “Company”) filed its Petition and Request for Administrative Notice (“Petition”) as well as its Direct Testimony and Exhibits with the Indiana Utility Regulatory Commission (“Commission”) seeking approval of its 2017-2019 EE Plan (“Plan”), pursuant to Ind. Code § 8-1-8.5-10.

On November 28, November 30, 2016, and February 6, 2017, respectively, Nucor Steel-Indiana, a division of Nucor Corporation (“Nucor”), the Citizens Action Coalition of Indiana, Inc. (“CAC”), and the Duke Industrial Group (“Industrial Group”) filed Petitions to Intervene in this proceeding. The Commission granted those Petitions to Intervene on December 13, 2016, and February 9, 2017.

On December 12, 2016, the Parties filed their Unopposed Motion for Adoption of Agreed Procedural Schedule and Withdrawal of Request for Prehearing Conference and on December 13, 2016, the Presiding Officers issued a Docket Entry establishing an agreed upon procedural schedule for this proceeding. Subsequently, the procedural schedule was modified on multiple occasions.

On March 6, 7, and 23, 2017, Petitioner submitted corrections to testimony and exhibits.

On March 21, 2017, the OUCC, CAC, and the Industrial Group filed their case-in-chief Testimony and Exhibits, along with the Industrial Group filing a Motion for Administrative Notice. On April 5, 2017, the Commission issued a Docket Entry granting the Industrial Group's Motion for Administrative Notice. On June 29, 2017, Petitioner filed its Rebuttal Testimony and Exhibits and on July 7, 2017, the Commission issued the Legal Notice of Evidentiary Hearing setting the hearing for August 17, 2017.

An evidentiary hearing was held in this Cause on August 17, 2017, at 9:30 a.m., in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, the Commission approved Petitioner's request for administrative notice and the parties offered their respective pre-filed testimony, all of which were admitted into the evidentiary record, and the witnesses were subject to cross-examination. No members of the public appeared.

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

1. Notice and Commission Jurisdiction. Notice of the hearing in this Cause was given as required by law. Petitioner is a "public utility" within the meaning of Indiana Code § 8-1-2-1 and an "electricity supplier" within the meaning of Ind. Code § 8-1-8.5-10(a). Pursuant to Ind. Code §§ 8-1-2-4, 8-1-2-42, Ind. Code ch. 8-1-8.5, and 170 IAC 4-8, the Commission has jurisdiction over Petitioner's DSM program offerings and associated cost recovery. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

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

3. Applicable Rules and Statutes. Duke has requested approval and recovery pursuant to Ind. Code chs. 8-1-8.5, 8-1-2-42, 170 IAC 4-8-5 and -6.

4. Requested Relief. Duke Energy Indiana requests approval of a 2017-2019 EE 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.

Duke Energy Indiana asserts that its 2017-2019 Plan includes a cost-effective portfolio of programs designed to achieve energy savings of 590,275,111 megawatt hours (“MWh”), with 201,144,061 MWh to be achieved in 2017, 191,487,598 MWh to be achieved in 2018, and 197,643,452 MWh to be achieved in 2019. The 2017-2019 Plan includes both residential and commercial EE programs, as follows:

Duke Energy Indiana 2017-2019 Energy Efficiency Programs

<u>Residential</u>	<u>Non-Residential</u>
*Smart Saver® Residential	Smart Saver® Non-Residential
Agency Assistance Portal	Small Business Energy Saver
Energy Efficiency Education for Schools	Power Manager® for Business
Low Income Neighborhood	Smart Saver® Non-Residential Performance Incentive
Low Income Weatherization	
Multi-Family Energy Efficiency Products & Services	
My Home Energy Report	
Residential Energy Assessments	
Power Manager®	
**Bring Your Own Thermostat	
**Energy Efficient Appliances	
**Manufactured Homes	
**Multi Family Retrofits	
**Residential New Construction	
**Multi-Family My Home Energy Report	
Key: * Modified Program	** New Product Development Program to be rolled out in later years of plan

The Plan has an estimated cost of \$110,233,151 for the three-year Plan, including direct and indirect costs, customer incentives and independent EM&V. Duke Energy Indiana also requests authority to continue recovering all program costs, including lost revenues and financial incentives, via its existing Rider EE, which includes components for the recovery of program costs, lost revenues for all customer classes, and performance incentives. Duke Energy Indiana does not seek approval of a performance incentive for its low-income weatherization program. Duke Energy Indiana also requests that two residential and one non-residential demand response program be eligible for a performance incentive.

Duke Energy Indiana requests that the its Oversight Board (“OSB”) continue to remain in place with the additional authority to approve new programs without seeking additional approval

from the Commission if those program budgets are within the ten percent spending cap for the approved portfolio budget.

Duke Energy Indiana also seeks approval of its reconciliation of the costs incurred (including lost revenues) for both Core and Core Plus Programs and incentives achieved (for Core Plus Programs only) during 2015 with amounts actually collected from customers from Rider EE billings. Pursuant to the Settlement Agreement approved in Cause No. 43955 DSM-1, Petitioner also seeks approval of its updated reconciliation of lost revenues for 2012, 2013, and 2014.

Finally, Petitioner seeks authority to adjust Rider EE accordingly and continued authority to use deferred accounting on an ongoing basis until such costs are reflected in retail rates.

5. Evidence.

A. Petitioner's Case-in Chief. Petitioner presented the testimony of five (5) witnesses in its case-in-chief: Mr. Michael Goldenberg, Senior Strategy and Collaboration Manager (entered into evidence as Petitioner's Exhibit 1); Mr. Scott Park, Director IRP & Analytics-Midwest (entered into evidence as Petitioner's Exhibit 2); Ms. Jean P. Williams, Manager DSM Analytics (entered into evidence as Petitioner's Exhibit 3); Ms. Karen K. Holbrook, Director Program Performance (entered into evidence as Petitioner's Exhibit 4); and Ms. Amy B. Dean, Lead Rates Analyst (entered into evidence as Petitioner's Exhibit 5).

Mr. Goldenberg presented Petitioner's EE Plan. As required in Ind. Code § 8-1-8.5-10, he presented the programs and budgets; the Company's proposed cost recovery mechanism for program costs, lost revenues and performance incentives; proposed changes to its OSB; and explained how the Company's Plan meets the requirements of Ind. Code § 8-1-8.5-10. Mr. Goldenberg also sponsored Corrected Petitioner's Exhibit 1-A, which was a complete description of each EE program, along with each EE program's cost breakdown and cost effectiveness scores. Mr. Goldenberg further explained that Petitioner was seeking approval of the following: reconciliation of costs approved in Cause No. 43955 DSM-2 ("DSM-2") for the 2015 program year, as well as, approval of its 2017-2019 Plan, under Ind. Code § 8-1-8.5-10.

Mr. Goldenberg testified that 83% of eligible load for commercial and industrial customers have opted out of participation in the EE Rider, accounting for a total of 50% of all commercial and industrial load. He stated that the portfolio included in this filing had programs for all eligible customer segments.

Mr. Goldenberg further testified that the Company's Plan presents goals that are consistent with the most recent IRP submitted to the Commission in 2015.

Mr. Goldenberg testified that Duke Energy Indiana's proposed Plan was designed by its Program Managers taking into consideration the state of the EE market in its Indiana service territory, past program success, and the addition of new programs to continue to grow the EE opportunities for eligible customers. He stated that Duke Energy Indiana designed its Plan to be consistent with its most recent IRP in terms of target energy and demand reduction achievement. Given the passage of time, the Program Managers continued to update the proposed Plan with the

addition of a few new programs, as well as EM&V results that have been received for certain EE programs, changing the energy savings estimates. Mr. Goldenberg testified that Duke Energy Indiana performed a separate analysis to be sure that the proposed Plan for 2017–2019 would have been selected as a cost-effective resource option in the 2015 IRP as submitted and stated that Mr. Park’s Direct Testimony demonstrates that the EE Plan is consistent with the portfolio that was selected by the 2015 IRP as part of the optimal resource plan.

Mr. Goldenberg presented Duke Energy Indiana’s goals for its 2017-2019 EE Plan and stated that he believes that the Company can reasonably achieve the goals for 2017-2019 based on its past performance and the Company’s Program Manager’s experience with the EE market in its service territory.

Mr. Goldenberg testified that the 2017-2019 Plan contained all the same programs as approved by the Commission in 43955 DSM-3 (“DSM-3”), with the exception of the Appliance Recycling Program, as well as proposed new programs. As to new programs, Mr. Goldenberg testified that Duke Energy Indiana proposes to add to the Smart Saver® Non-residential a Performance Incentive Program, which provides a mechanism to promote EE measures not eligible under the Company’s Smart Saver® Prescriptive or Custom programs. He also stated that the HVAC component of the Smart Saver® Residential program was modified to market the incentives directly to customers via program collateral and a managed contractor network. Mr. Goldenberg testified that the changes to this program will make it cost effective, because the Company will earn fees from participating trade allies for referrals generated that result in higher efficiency HVAC systems being installed by customers. He explained that the fees earned by Duke Energy Indiana for the referral will be used to offset program costs, which will effectively sustain program cost effectiveness, while providing customers with additional value, benefits, and services. Mr. Goldenberg testified that it was important to keep the Smart Saver® HVAC Residential Program in the portfolio because HVAC systems are traditionally the largest source of residential energy consumption. The addition of the managed network is critical to keeping the program in the portfolio by sustaining HVAC measures’ cost effectiveness.

Mr. Goldenberg provided further details on the Bring Your Own Thermostat (“BYOT”) Program testifying that it provides residential Demand Response (“DR”) load management using the customers’ own “smart” 2-way communicating thermostats instead of traditional load control switches. He explained that customers with AMI meters and who already own and use smart thermostats would have the opportunity to view, monitor, and engage with their energy usage. Mr. Goldenberg also stated that the Company is developing and evaluating a Smart Meter Usage App (“SMUA”) which will encourage customers to make behavioral changes to use less energy and save money and that a pilot offer of the SMUA to validate the offer’s cost effectiveness would be discussed with the OSB at the appropriate time.

Mr. Goldenberg testified that Duke Energy Indiana was including New Product Development (“NPD”) programs in this filing that are still in the evaluation stage as the Company is proposing a three-year Plan and he believes that these products will be ready for commercialization within the three-year period. He stated that when these offers are ready for commercialization, Duke Energy Indiana will thoroughly review the program with its OSB before

offering them to customers. If any of these programs in the final analysis fails to achieve cost effectiveness, Mr. Goldenberg testified, then it will not be brought forward for implementation.

Mr. Goldenberg testified that there are two residential DR programs and one non-residential DR program included in Duke Energy Indiana's Plan. For residential customers, the Company continues to offer its very successful Power Manager[®] program that now is available to both single family and apartment dwellers, and the Company proposes to add the BYOT program discussed above. The Company will also offer Power Manager[®] for Business for non-residential customers. Mr. Goldenberg explained that Duke Energy Indiana was proposing DR programs in its Plan as it has done for the last 13 years.

Mr. Goldenberg further explained that it is appropriate to include DR in the Company's Plan, as Section 10 does not preclude DR programs from a Plan. He stated that Ind. Code § 8-1-8-5-10(h) does not prohibit a utility from including demand response programs in a Plan and that the rules provide for cost recovery, lost revenues and incentives for both conservation and demand side management or DR programs. Mr. Goldenberg testified that the Commission has approved demand response programs in Duke Energy Indiana's DSM proceedings in the past.

Mr. Goldenberg testified that all programs except the Low Income Weatherization program are cost effective under the Utility Cost Test ("UCT"). He stated that although the program does not pass the UCT, the Company believes there are benefits to bringing these needed improvements to low-income customers. He testified that even with the Low-Income Weatherization program, the entire EE Program portfolio remains cost effective under the UCT.

Mr. Goldenberg also testified that Smart Saver[®] Non-Residential Prescriptive and Smart Saver[®] Residential have some individual measures with a UCT score below 1.0. He stated that these programs contain multiple measures within the program and that the overall programs are cost effective.

Mr. Goldenberg testified that the OSB agreed to delay the start of the Market Potential Study ("MPS"), approved in DSM-3, until early 2017 so the results would be as current as possible for use in developing the EE portion of the company's next IRP, which will be submitted in late 2018. He stated that no costs were incurred for the MPS in 2016.

Mr. Goldenberg testified that the Company was seeking to recover program costs (both direct and indirect costs, including the cost of EM&V), lost revenues, and a performance incentive for the Plan. Mr. Goldenberg testified that the Company is requesting lost revenue recovery for the life of the measure of the programs approved in its Plan, as approved in DSM-1 and DSM-2, because the promotion of EE causes utilities to experience a reduction in the recovery of their fixed costs absent the recovery of lost revenue. He stated that the Company's proposal for life of measure is reasonable because it matches the period over which the Company will experience a deficit in fixed cost recovery due to the impact from the EE programs.

Mr. Goldenberg also testified that a performance incentive is appropriate because it puts investments in EE on a level playing field with investments in traditional supply-side resources. He testified that the need for a performance incentive associated with EE programs is related to

the traditional regulatory framework that the Company operates under in Indiana; wherein, a utility earns a return on the capital it invests in supply side assets. He stated that this regulatory framework seeks to eliminate or offset the financial bias against DSM.

Mr. Goldenberg testified that Duke Energy Indiana was proposing a cost-plus tiered incentive structure, based on energy saving achievements for the portfolio for each program year, as measured by EM&V relative to impacts achieved. He stated that the incentive will be calculated at a portfolio level, as a percentage of program costs incurred, including associated EM&V costs, for incentive-eligible programs, using the total energy savings achievement level for the portfolio of eligible programs. He stated that Duke Energy Indiana is requesting the following performance incentive and tiers:

Duke Energy Indiana				
Target Achievement		2017-2019 (Gross MWh at the Meter)	Pre-Tax Rate of Return	Pre-Tax Return on Costs
Greater than 110%	≥	601,059	11.0%	\$ 11,471,797
100-110%	≥	546,417	10.5%	\$ 10,950,352
90-100%	≥	491,776	9.5%	\$ 9,907,461
80-90%	≥	437,134	8.5%	\$ 8,864,570
Less Than 80%	<	437,134	0.0%	\$ -

Mr. Goldenberg testified that the Company's proposed incentive mechanism excludes the Low Income Weatherization program from the calculation, as well as any pilot programs added to the portfolio through the end of 2019. He stated that programs that pass UCT are proposed to be included in the incentive calculation, even though they may have individual measures that fail. Mr. Goldenberg further testified that he is proposing that the NPD programs receive a performance incentive if they are approved by the OSB and commercialized in the market place.

Mr. Goldenberg testified that the total revenue requirement for the 2017-2019 period, which includes direct and indirect costs, EM&V, and other recoveries, including incentives and lost revenues, is \$197,632,578, assuming achievement of 100% of the goal. These costs are broken down as follows:

Duke Energy Indiana		
Cost Category		2017-2019 Revenue Requirement
Direct Administrative	\$	38,887,186
Indirect Administrative	\$	9,931,390
Customer Incentives	\$	57,734,182
EM&V	\$	3,680,392
Company Incentives	\$	10,950,352
Lost Revenues	\$	76,449,075
Total	\$	197,632,578

Mr. Goldenberg testified that Duke Energy Indiana is maintaining its OSB, which meets monthly. Mr. Goldenberg stated that the Company proposes to change its OSB governance to

permit the OSB to approve new programs if the budgets are within the ten percent (10%) discretionary spending authority as approved by the Commission in DSM-3.

Mr. Goldenberg explained that the Company's Plan concerning EM&V for the 2017-2019 portfolio of programs will continue the use of independent EM&V vendors as it is currently doing as discussed in Ms. Jean P. Williams' Direct Testimony.

Mr. Goldenberg testified that Duke Energy Indiana's Plan presented in this proceeding specifically meets the requirements of Section 10 as it presents a Plan that includes EE goals that are reasonably achievable, consistent with its 2015 IRP, and designed to save 1.1% of eligible retail sales each year over the three-year plan. The Plan includes program budgets and costs, including the direct and indirect costs of EE programs, the costs associated with EM&V program results, and the recovery of lost revenues and a performance incentive, as well as independent EM&V for the programs.

In conclusion, Mr. Goldenberg testified that Duke Energy Indiana's Plan is in the public interest as it aligns the Company's interests with those of its customers by offering programs for all market segments and including a wide spectrum of opportunities to lower consumption. Participating customers can become more educated regarding how they consume energy, become more energy efficient and help conserve our natural resources. Mr. Goldenberg testified that Duke Energy Indiana's portfolio of programs is consistent with the IRP submitted in November 2015, and as a result, is designed to lower emissions and delay the need to build additional generation in its service territory in the future.

Mr. Park testified he directed the development of the 2015 IRP and worked with the IRP modeling team and the EE Analytics, Engineering, Forecasting, and Fuels groups to do so. Mr. Park testified that the EE Plan is consistent with Duke Energy Indiana's preferred EE resource portfolio from the 2015 IRP in accordance with Ind. Code § 8-1-8.5-10.

Mr. Park sponsored Petitioner's Exhibits 2-A and 2-B, which was a copy of Volume 1 and Volume 2 of the public version of Duke Energy Indiana's 2015 IRP, respectively submitted to the Commission on November 2, 2015. Mr. Park also sponsored Petitioner's Exhibit 2-C, the Electricity Director's Final Report dated August 30, 2016.

Mr. Park testified that to model EE in the IRP, EE measures were combined to create bundles of KWh savings similar to a Power Purchase Agreement ("PPA") and featured the specific hourly shape dictated by the measures in the bundle. He stated that each bundle was assigned a total revenue requirement, similar to a PPA. Mr. Park testified that each EE bundle was entered into the System Optimizer model for economic selection based on the hourly shape and cost. He stated that five Base Bundles and five Incremental Bundles, each five years in duration, were created and analyzed using this process. He stated that the preferred portfolio included the five Base EE bundles as a result of the model's optimization and the Base Bundle for the initial five year period of the IRP is consistent with the EE Plan in this filing. In preparation for this filing, Mr. Park testified that the IRP Modeling Team performed additional analysis to ensure that the proposed EE Plan was still selected as cost effective given the slight differences in the composition of the EE Plan.

Mr. Park presented tables in his direct testimony comparing the 2015 IRP and the EE Plan in terms of EE Savings in GWh, EE Demand Savings in MW, and costs to demonstrate that the Plan is consistent with Petitioner's most recent IRP.

Ms. Williams described the cost-effectiveness of Petitioner's Plan, as well as, provided the EM&V procedures Duke Energy Indiana currently uses and will continue to use upon approval of its EE Plan and how the EM&V procedures comply with Indiana statutes and rules.

Ms. Williams testified that Petitioner evaluates the cost-effectiveness of EE programs using the tests specified in the California Standard Practice Manual and presented the cost-effectiveness tests scores for: the Participant Cost Test ("PCT"), the UCT, the Total Resource Cost ("TRC"), and the Ratepayer Impact Measure ("RIM") Test. She presented a table that showed the cost effectiveness scores for each program. Ms. Williams testified that all programs in the Plan are cost effective as required by Ind. Code § 8-1-8.5-10(j)(2) as all programs passed the UCT and TRC Tests, with the exception of the Low-Income Weatherization program. In addition, all the programs in which participants face an incremental out-of-pocket cost pass the Participant Test.

Ms. Williams identified the types of evaluations utilized by Duke Energy Indiana as approved in Cause No. 43955 and employed since that time. She testified that evaluation studies will be performed by independent and qualified evaluation professionals and will include various methods reviewed within the International Performance Measurement and Verification Protocol Committee, January 2012, the Indiana Evaluation Framework (Indiana Demand Side Management Coordination Committee, February 2013), the Uniform Methods Project Model Protocols (National Renewable Energy Laboratory, April 2013 - January 2015), and National Action Plan for Energy Efficiency Model Energy Efficiency Program Impact Evaluation Guide (Prepared by Steven R. Schiller, Schiller Consulting, Inc., November 2007). Ms. Williams sponsored Petitioner's Exhibit 3-A which provided an initial design for the EM&V analysis for the proposed EE programs. The timeframe for EM&V was presented in Petitioner's Exhibit 3-B.

Ms. Williams further testified that in DSM-1, the Commission approved a Settlement Agreement in which Duke Energy Indiana agreed to reconcile estimated lost revenues with actual lost revenues as verified by EM&V, applied retrospectively to the previously reconciled period for each program, and to calculate the shareholder incentives using prospective energy savings estimates and retrospective EM&V-reconciled participation numbers.

Ms. Williams testified that the estimated cost for all EM&V over the three (3) year portfolio period is \$3,680,392, which is approximately 3.3 percent (3.3%) of total costs.

Ms. Williams testified that Duke Energy Indiana has conducted an analysis on the long-term and short term effect on customer bills as required by Ind. Code § 8-1-8.5-10(j)(7). She stated that the effect on rates and bills of participants are demonstrated through the Participant Test, which compares the benefits to the participant through bill savings plus incentives from the utility relative to the incremental costs to the participant for implementing the EE measure. Ms. Williams stated that the long-term effect on rates and bills of non-participants are demonstrated through the RIM Test. If a program's RIM Test score is lower than one, it indicates that rates would likely

increase over time, whereas the UCT indicates whether revenues would increase more if the programs were not implemented and hence require increases in rates. Ms. Williams testified that because all of the programs, except Low Income Weatherization, pass the UCT, one can conclude that all customers would benefit from implementation of the EE programs.

Ms. Williams testified as to how the EM&V results will be utilized in developing forecasts for the proposed Rider. She stated that future forecasts will incorporate the most recent EM&V results and that the estimated participant and load impact information will be used to develop estimates of future lost revenues, future target achievement levels for development of estimated incentives, in future cost-effectiveness evaluations, and for other purposes. Ms. Williams testified that the EM&V results will be utilized in developing a true-up for the proposed Rider and that the Company will use the actual participation information and ex-post load impacts as the basis for retrospective true-ups of estimated lost revenues for the proposed EE Rider. The Company will also use the ex-post load impacts prospectively to calculate the shareholder incentive, as described in the Settlement approved by the Commission in DSM-1.

Ms. Holbrook testified as to the various calculations performed for this filing and the processes and sources used to develop actual and projected costs of providing programs that were used in the 2015 reconciliation, the update of the Core and Core Plus programs that were previously used in the 2012, 2013, and 2014 reconciliations, and the program budget estimates for 2017 through 2019.

Ms. Holbrook testified that there are Core program costs included in this reconciliation because Petitioner received invoices from the Core Third Party Administrator in 2015, as well as expenses from the Core Program EM&V vendor to EE programs offered in 2014. Ms. Holbrook stated that this would be the final reconciliation that will include program related costs associated with Core programs.

Ms. Holbrook testified to the sources and calculations used in the reconciliation of the 2015 revenue requirement, included direct and indirect costs, EM&V, utility incentive and lost revenue. She also testified that her group applied the results of all EM&V received by September 30, 2016, retroactively to the lost revenue impacts as agreed to in DSM-1. Exhibit 4-A reflects the total revenue requirement for 2015. Exhibit 4-B illustrates the calculation of the program level utility incentives.

Ms. Holbrook further explained what adjustments her group made to the 2014 and 2015 costs for purposes of proper ratemaking for opted out groups. Petitioner's Exhibits 4-C and 4-D illustrate the adjustments made.

Ms. Holbrook further explained the adjustments made to the 2012, 2013, and 2014 reconciliations. She stated that these reconciliations were updated for the application of EM&V to lost revenues and applied all EM&V received by September 30, 2016. She sponsored Exhibits that presented the impact of the application of EM&V.

Ms. Holbrook testified that her group was responsible for compiling the forecast for the 2017-2019 portfolio, including impacts (kWh and kW); program costs; EM&V costs; lost revenue; and applicable utility incentives. Ms. Holbrook testified that her organization calculated the

Company's incentive at a portfolio level to reflect a 10.5% return on total eligible costs as proposed, assuming portfolio performance at 100% of target, for all programs eligible for performance incentives. Exhibit 4-H shows the revenue requirement for each year, and in total, for the 2017-2019 time period.

Ms. Holbrook testified that 2017-2019 lost revenues were calculated using forecasted monthly participation and impacts per participant and using numbers at the meter, net of free riders. Ms. Holbrook presented Petitioner's Exhibit 4-I, an estimate of the Lost Revenues requested in this proceeding through 2023, assuming a base rate case is filed at the end of 2022.

Ms. Holbrook provided the revenue requirement for 2017, the reconciliation of 2015, and the updated reconciliations of 2012-2014 to Ms. Dean for her use in calculating rates.

Ms. Dean presented testimony on proposed rates in this proceeding under the Company's Standard Contract Rider No. 66-A, EE Revenue Adjustment ("EE Rider" or "Rider"), which the Company proposes to continue to use. She also sponsored the updated Tariffs for Commission approval. Ms. Dean explained that she calculated rates based on the following:

- Re-reconciliations based on the application of EM&V related to lost revenues prepared for 2012, 2013, and 2014;
- An adjustment for program costs in 2014 and 2015 as discussed in the testimony of Ms. Holbrook;
- The 2015 reconciliation that has been prepared using actual 2015 costs results; and
- Forecasted costs for calendar year 2017, as proposed in the Company's 2017-2019 EE Plan in this proceeding.

Ms. Dean testified that as approved in the Commission's Order in Cause No. 43955 ("EE Order") and subsequent Orders in Cause Nos. 43079 DSM-6, 44441 ("Opt Out Order"), DSM-1, DSM-2, and DSM-3 (collectively, the Company's EE Orders), all customers and rate classes are charged for the cost of a vintage year's EE programs to the extent they are or were eligible to participate in the programs offered for that period. She explained that costs for a vintage year's programs may extend beyond that vintage year or the time customers were eligible to participate in the programs, such as in the case of persisting lost revenues or for costs of EM&V performed in a subsequent year for a prior vintage year's programs.

Ms. Dean testified as to the ratemaking that has previously been approved in the Company's EE Orders. The other cost recovery and ratemaking concepts approved for use in the EE Rider include:

- Cost assignment to residential and non-residential rate groups based on the programs offered to each group and, within the non-residential rate group, based on whether and when customers were eligible to participate in the programs or whether and when customers opted out (or in) of participation;
- Inclusion of all customers in paying for the programs, including interruptible load to the extent not specifically excluded by contract language for customers with special contracts; and

- Cost allocation and rate development methodologies that include the use of kWh sales as billing determinants.

Ms. Dean testified that since the enactment of SEA 340, codified at Ind. Code § 8-1-8.5-9, the Company has received opt-out notifications from customers in all opt-out windows and one opt-in notice in the most recent opt-out window. Ms. Dean provided the Tariff rates for each of these opt-out groups. Ms. Dean also presented rates that the Company had developed for those customers who would opt out as part of the November 15, 2016 window, with the opt out to be effective January 1, 2017, by removing 2017 program costs and associated lost revenues and incentives from the costs assigned to participating customers.¹

Ms. Dean explained that a customer who opts out remains responsible for EE program costs, including lost revenues, shareholder incentives and related reconciliations, that accrued or were incurred or relate to EE investments made before the date on which the opt out is effective, regardless of the date on which the rates are actually assessed. Ms. Dean further explained that these groups will continue to be responsible in future years for their proportionate share of reconciliations and persisting lost revenues related to their respective opt-out date.

Ms. Dean testified that, as approved by the Commission in DSM-1 and DSM-2, the lost revenues associated with the 2012–2015 program years will be included in EE Rider rates until the measure life has expired for the individual programs or until rates are effective from a base rate case. She testified that, as approved by the Commission in DSM-3, the lost revenues associated with the 2016 program year will be included in EE Rider rates for the lesser of four years or measure life, or until rates are effective from a base rate case. Additionally, as approved in DSM-1, the lost revenues for these years are also subject to additional reconciliations in future years due to retrospective application of EM&V.

Ms. Dean explained the calculation of the rates proposed for the 2017 program year using the actual and estimated costs included in her rate development as provided by Ms. Holbrook. The 2017 estimated costs also included \$300,000 for a MPS, the cost of which has been allocated between residential and non-residential customers using the 2015 kWh sales, excluding customers who have opted out. Ms. Dean sponsored Petitioner's Exhibit 5-A, which was an update of Duke Energy Indiana's Standard Contract Rider No. 66-A, EE Revenue Adjustment to be effective for billing after Commission approval as well as Exhibit 5-B, which is a series of schedules developing the rates that are presented for Commission approval in this proceeding. Ms. Dean testified that she calculated separate reconciliation amounts for participating and opted out customers and presented the amounts in her testimony.

Ms. Dean further testified that reflected in the variances are differences in spending and participation (particularly for residential programs), performance incentive target achievement levels, and kWh sales for conservation and demand response programs from the estimates built into the rates that were charged to customers in 2015.

¹ Rates for 2017 Opt Out customers, as described in Supplemental Testimony, were approved in an Interim Order dated September ___, 2017.

Ms. Dean also sponsored Petitioner's Exhibit 5-C regarding the rate impact of the rate adjustment factors developed in Petitioner's Exhibit 5-B. For a typical residential customer using 1000 kWh, the proposed 2017 rate reflects an increase of \$0.73, or 0.92% in the monthly bill. Ms. Dean noted that this rate impact was developed without any consideration for the positive impact to customer bills from the lower energy usage that is expected to result from participation in these programs.

Ms. Dean further testified that upon Commission approval, the Company is proposing to update its Standard Contract Rider No. 66-A, Seventh Revised Sheet No. 66-A, Pages 1 through 15 (Petitioner's Exhibit 5-C, Pages 1 through 15) subject to Duke Energy Indiana's filing of the updated Rider 66-A Tariff sheet with the Commission's Electricity Division and begin billing the 2017 rates effective with the Commission's Order in this proceeding.

Ms. Dean testified that the estimated costs and impacts used to develop the 2017 rates proposed in this filing are expected to be reconciled in the Rider 66-A filing planned for mid-2018, developing rates to be billed in 2019, using actual participation and applicable EM&V.

Ms. Dean explained that the lost revenue pricing rates were based directly on Tariff rates or adjusted Tariff rates and will not change until new base rates are approved. She explained that the lost revenue pricing rates for the block Tariff rate schedules, which used average realizations as the basis for pricing rather than Tariff rates, could change year to year based on the sales at each of the Tariff block levels, as can average group rates, and will also change at the time new base rates are approved.

Ms. Dean concluded her testimony by testifying that the Company intends to continue using the deferral accounting treatment approved in Cause No. 43955 to minimize the timing difference between cost or revenue recognition in the Company's books and actual cost recovery.

B. OUC's Case-in-Chief. Edward T. Rutter, Chief Technical Advisor in the OUC's Energy Resources (formally the Resource Planning and Communications) Division, pre-filed testimony on behalf of the OUC. Mr. Rutter recommended that the Commission reject Duke's proposed DSM Plan in its entirety under I.C. 8-1-8.5-10(m), issue an order supporting its findings and provide Duke with a reasonable time to file a modified plan that meets the requirements of I.C. 8-1-8.5-10. Mr. Rutter identified the following reasons for denial:

1. Mr. Rutter argued that Duke's request to collect \$197M+ in lost revenue (\$76.4M), shareholder incentive (\$10.9M) and program costs (\$110.2) during the three-year plan is unreasonable. He testified that his CONFIDENTIAL Attachment OUC 1.1-A sets forth Duke's Utility Cost Test ("UCT") cost and benefit analysis, which calculates benefits (in the form of avoided revenue requirements) the proposed DSM plan will produce. Mr. Rutter testified that sharing the UCT net benefit equally between ratepayers and shareholders is reasonable because ratepayers pay 100% of program costs, revenue requirements, lost revenues and shareholder incentives. He testified that because the avoided revenue requirements benefit should flow through to ratepayers paying for them, it is unreasonable for Duke's total lost revenue / shareholder incentive /

program cost request to exceed 50% of the net UCT benefit.

2. Mr. Rutter testified that Duke's EM&V plan does not include annual EM&V and an accompanying report for each program for which it is requesting program costs, lost revenues and shareholder incentives. Mr. Rutter cited the Commission's DSM Rules, 170 IAC 4-8-4(b) as requiring this level of annual evaluation. Mr. Rutter argues that it is unreasonable to permit lost revenue or incentive recovery for any program when the proposed EM&V plan both violates the Commission's rules and prevents both the Commission and stakeholders from reviewing each program's annual performance, which form the basis for all lost revenue and shareholder incentive calculations.
3. Mr. Rutter testified that Duke's proposed Incentive Mechanism, which would award incentives based on a pre-tax rate of return between 8.5% - 11%, is unreasonable. He criticized the idea that in today's market, incentives are necessary to put DSM on "equal footing" with plant investment or to eliminate a DSM disincentive or bias against pursuing DSM. He analogized program costs and lost revenues as akin to a utility's "return of" its investment in plant, and incentives as the equivalent of the "return on" investment. Citing Duke's UCT net benefit analysis as evidence that there is no DSM disincentive, but rather a multi-hundred million dollar savings incentive, he concludes it is unreasonable to permit incentives in excess of Duke's current authorized rate of return for any program. He further testified that it was unreasonable to award incentives to any program unless it achieves 100% of its savings target. Mr. Rutter also concluded that incentives should be calculated for each specific program, not at the residential or commercial portfolio level or and the DSM Plan level.
4. Mr. Rutter testified Duke did not comply with several requirements set forth in I.C. 8-1-8.5-10(j), including failing to include a complete cost and benefit analysis required by subsection (j)(2), failing to include a complete analysis on the long-term and short-term effects on customer rates as required by subsection (j)(7), and by seeking recovery of lost revenues other than those associated with the 2017-2019 Plan as required by subsection (j)(8).

Mr. Rutter testified that his analysis is confined to Duke's DSM plan as-filed, and the resulting impact to ratepayers and the company during calendar years 2017-2019.

Mr. Rutter also recommended that Duke's Smart Saver HVAC Program be denied based on Duke's testimony that the program will not be cost effective unless participating trade allies pay Duke for customer referrals. Mr. Rutter recommended that the IURC reject the referral fee element and determine if the program remained cost effective. If it did not, he recommended the IURC reject the program pursuant to I.C. 8-1-8.5 -10(l).

Mr. Rutter noted that while Mr. Goldenberg's direct at page 11 stated that Duke had removed the Appliance Recycling Program from this proposed Plan, Mr. Goldenberg's Exhibit 1-A(MG) at page 25 included the program, objectives, a marketing plan, projected savings, a budget,

cost effectiveness information and measure lives. He recommended Duke demonstrate the program has been removed from the Plan, remove all associated costs from the budget, recalculate and provide a corrected Plan budget. If Duke seeks any relief other than complete removal of this program, Mr. Rutter recommend Duke make that plain.

Ms. Crystal L. Thacker, Utility Analyst in the OUCC's Electric Division, testified that she reviewed Duke's petition, direct testimony, exhibits, workpapers, discovery responses and documents filed in previous Duke DSM tracker proceedings. She also met with Duke representatives. She stated that nothing she reviewed indicated DEI's calculation of DSM Adjustment Factors (based on its current proposal) was incorrect. However, Ms. Thacker noted that if the Commission rejects any particular program, or finds the entire Plan unreasonable in its entirety, the Commission should require DEI continue recovery of the DSM adjustment factor approved in DSM-3, subject to later reconciliation, until DEI's re-submitted plan is approved.

C. CAC's Case-in-Chief.

D. Industrial Group's Case-in-Chief. The Industrial Group presented the testimony of Mr. Michael P. Gorman, Managing Principal of Brubaker & Associates, Inc. Mr. Gorman testified regarding the cost recovery components of Duke's DSM plan, as well as the DSM program structure. The Industrial Group also filed a Motion for Administrative Notice, which was granted by docket entry.

I. Cost Recovery

Mr. Gorman testified that Duke's overall rates must be established at a level that allows the Company to recover its prudently incurred costs and also gives the Company an opportunity to earn a reasonable rate of return, while at the same time cannot be set so high as to be confiscatory to Duke's ratepayers. (IG-1 at 3). He opined that Duke's EE Plan is unjust and unreasonable due to its proposals for excessive and unreasonable recovery of lost revenues and performance incentives, and the overall costs of the program. (*Id.* at 7).

A. Lost Revenue

Mr. Gorman concluded that the Company's \$76 million requested lost revenue recovery is excessive and its continued growth is unsustainable. (*Id.* at 8). Mr. Gorman testified that, according to Duke estimates, Duke's lost revenue recovery revenue requirement for the period covered by its 2017-2019 EE Plan is \$76.45 million, or 38.7% of the total requested EE Plan revenue requirement of \$197.63 million. Yet in contrast, Duke has requested only \$57.77 million in Customer Incentives—just 29.2% of the total Plan revenue requirement. Furthermore, he noted that a significant portion of the lost revenue Duke seeks is attributable to “legacy lost revenues.” Of the \$76.45 million in total requested lost revenue recovery, only about \$22.94 million is related to measures installed during the 2017-2019 Plan period. The remaining \$53.51 million represents recovery of “legacy lost revenues,” lost revenues associated with measures installed in past periods dating back to 2012. (*Id.* at 7-8). Mr. Gorman also explained that the requested revenue requirement for non-lost revenue EE Plan costs is approximately \$110 million, while the revenue requirement associated with lost revenues is \$76 million, which means the ratio of lost revenue recovery to non-lost revenue EE Plan costs is greater than 2:3. (*Id.* at 9).

Mr. Gorman identified three other reasons why Duke's lost revenue recovery request should be rejected. First, Mr. Gorman pointed out that Duke's sales have increased since the last rate case. He explained that lost revenue recovery is not justified when any decline in sales due to EE programs is offset by sales increases that result from other factors. Second, he testified that lost revenue recovery is not justified because it ignores the reality that any fluctuation in sales levels can be attributable to multiple factors other than utility-sponsored DSM programs. Mr. Gorman explained that while a utility may experience a "lost sale" due to the implementation of a DSM measure, that does not mean the utility has been deprived of a reasonable opportunity to earn its return, or even a reasonable opportunity to earn an amount in excess of its authorized return. Other changes, such as increased load growth, changes in operating expenses, managerial efficiency, and approval of other trackers all impact the utility's opportunity to earn its authorized return. Third, Mr. Gorman testified that the Company's lost revenue recovery mechanism represents single issue ratemaking that interferes with the ability to simultaneously reset costs, revenues and sales levels in a base rate case. He explained that sales fluctuations can occur due to a number of factors, including weather changes, broader macroeconomic drivers, changes in business cycles and the results of EE efforts that are independently undertaken by customers outside of utility-sponsored DSM programs. As such, it is very difficult to accurately isolate the effect of sales declines that are attributable solely to the effect of utility-sponsored DSM programs. (*Id.* at 9-12). He further noted that EM&V is a process of estimation, and that there is no guarantee it absolutely reflects the impact of a specific DSM measure, or even an EE Plan, as a whole. (*Id.* at 12-13).

Mr. Gorman also testified that Duke's lost revenue calculations are not reasonable because they include stale data. Mr. Gorman explained that Duke adjusts its tariff energy rate by removing fuel and variable O&M costs, which are calculated based on the levels from the Company's 2002 cost of service study. Yet such stale fuel and O&M costs are almost certainly not reasonably reflective of Duke's current fuel and variable O&M costs that were saved as a result of implementing EE programs. (*Id.* at 13-14).

Mr. Gorman opined that Duke's request to recover lost revenue is particularly unreasonable given that the Company's last rate case used a test year ending in 2002 and that Duke does not expect to file a base rate case until the end of 2022. Any "uncapped" lost revenues would not be "zeroed out" until new rates went into effect. (*Id.* at 8). Mr. Gorman calculated that Duke has collected, or forecasts collecting, roughly \$123.6 million in lost revenues associated with measures installed between 2012 and 2016, which accounts for 84% of the total \$147.16 million the Company has collected, or forecasts collecting, in lost revenues between 2012 and 2019. He testified that sheer scale of the recovery here illustrates how the life of the measure lost revenue recovery greatly reduces the Company's incentive to file a base rate case in the short term in which Duke's lost revenues could be reset to zero. He explained that this also illustrates the "pancaking" effect the Commission has previously found to be the basis for restricting lost revenue recovery to a specific term of years. (*Id.* at 17-18; MPG-A & MPG-C).

As an alternative to allowing recovery of lost revenues for the life of a measure, Mr. Gorman recommended using a "term of years" such as four years in order to preserve some balance between the utility and the ratepayer. He further explained that as Attachments MPG-A and MPG-

C illustrate, after about four years, the amount of lost revenue collected, or forecasted to be collected, for any particular vintage begins to decline. This suggests a four-year recovery effectively compensates the utility. He recommended that the cap be applied to legacy lost revenues as well, because such costs must be considered in evaluating whether rates are just and reasonable and because such a cap would have a minimal impact on Duke's requested revenue requirement. Finally, as an alternative to a four-year cap, Mr. Gorman recommended imposing a hard cap to ensure recovery of lost revenues does not cause Duke's overall rates to increase in excess of a specified percentage. (IG-1 at 19-21).

B. Performance Incentives

Mr. Gorman testified that the level of performance incentives Duke seeks to recover is too high in comparison to the goals that Duke has set. Mr. Gorman explained that Duke's proposed incentive structure seeks an ROR that is higher than the amount approved in Duke's last rate case. Specifically, if Duke reaches 80% of its target reductions, Duke would receive an ROR that is between 4.2% and 1.87% higher than what the Commission found to be a reasonable ROR range. If Duke reaches 110% of its self-selected targets, Duke's ROR would be between 6.7% and 4.37% higher than the reasonable range. Furthermore, since Duke sets the EE program energy savings targets, selects the EE programs it relies on to achieve these targets, determines the EE program budgets, and administers the program, Duke should not receive an award for anything less than achieving performance in excess of 100% of its EE savings targets. Mr. Gorman recommended that incentives be limited to situations where the Company achieves energy savings in excess of 110% of its EE savings goal, and be limited to an amount no more than 1.5% of the Commission authorized ROR in the last rate case. Mr. Gorman also recommended adopting a carrot-and-stick approach to performance incentives. Under this approach, if actual EE falls significantly below the EE savings target, Duke shareholders would be penalized at a comparable magnitude to the rewards that are available for exceeding the targets. (*Id.* at 22-24).

Mr. Gorman observed that Duke's proposed performance incentives would give the Company more profit for less risk relative to supply side options, thereby disadvantaging supply-side options. He testified that it is not reasonable to grant Duke's request for performance bonuses because doing so gives Duke a return on such expenditures even though the Company is not making a capital investment and is not putting any of its capital at risk. (*Id.* at 25-26).

C. Overall Costs of Dukes EE Plan

Mr. Gorman testified that the costs of Duke's EE Plan are unjust and unreasonable because Duke proposes to spend more to save energy than that same energy actually costs the customer on a per unit basis. (*Id.* at 28-30). He calculated that excluding legacy lost revenues, the Plan budget would cost about \$0.24 kwh saved, and taking into account legacy lost revenues and prior savings, the Plan would cost about \$0.084 per kwh saved. He pointed out the \$0.24 kwh is more than double the IURC staff's calculation of the cost to serve Residential customers. He also testified that the Plan is unreasonable because Duke cannot demonstrate that its overall charges – with its many trackers and stale rates – are just and reasonable. He calculated that almost 50% of a typical large industrial ratepayer's total electric bill currently derives from Duke trackers. Mr. Gorman testified that Duke must demonstrate that the total bill paid by ratepayers is reasonable, and that

Duke has not made such a demonstration, given Duke's numerous trackers and the amount of time that has passed since its last base rate case. (*Id.* at 31-32).

D. Cost Recovery Conclusions and Recommendations

Mr. Gorman concluded that Duke's petition in this case should be rejected. He testified that Duke's proposal to recover lost revenue is unjust and unreasonable in terms of the amount of lost revenue sought to be recovered and in light of the Company's current sales levels. In addition, Duke's proposal to recover performance incentives is unjust and unreasonable because the level of performance incentives is too high in comparison with the goals set, and contains no penalties for failure to achieve goals. Further, such incentives are not needed to level the playing field between demand side and supply side resource options. Finally, the overall costs of the DSM program are unjust and unreasonable in light of the costs themselves and in terms of the rates as a whole.

Mr. Gorman testified that if the Commission does permit Duke to recover lost revenue and performance incentives, it should reduce Duke's ROE in the next rate case to recognize the reduction in business risk associated with such recoveries.

II. Structure and Ratemaking of the DSM Program

A. Evaluation, Measurement and Verification

Mr. Gorman expressed concern that Duke applies all EM&V results retrospectively for the purpose of calculating lost revenues, which means that Duke reconciles its estimated lost revenues with actual lost revenues as verified by EM&V by applying the EM&V results retrospectively to previously reconciled EE program periods for each EE program. He also observed that the timeline is not consistent, resulting in a situation in which a particular Duke EE program might be subject to EM&V in Year One but not Year Two. (*Id.* at 35).

Mr. Gorman testified that if ongoing or future EM&V evaluations are applied retrospectively to adjust the lost revenue recoveries for Duke's EE programs beyond the end of the test year in the Company's next base rate case, then Duke's approach makes it impossible to fully reset the Company's lost revenue recoveries to zero in the Company's next base rate case. He testified that Duke should work with customers, especially opt-out customers, to limit the retrospective application of EM&V after Duke files a rate case petition. (*Id.* at 37).

B. Oversight Board

Mr. Gorman recommended against Duke's proposal to permit the OSB to approve new EE programs for Duke without Commission approval if the budgets of the new programs are within a 10% discretionary spending limit. He explained that that statute does not permit the Commission to delegate its authority to approve new EE programs to a third party or allow such new programs to be approved on a piece-meal basis outside of a comprehensive EE Plan. (*Id.* at 37-38).

E. Petitioner's Rebuttal Testimony. Mr. Goldenberg, Mr. Phillip O. Stillman, Director, Load Forecast & Fundamentals, Mr. Park, Ms. Williams, Ms. Holbrook, and Ms. Dean filed rebuttal testimony responsive to the OUCC, CAC, and the Industrial Group.

Mr. Goldenberg testified that Mr. Rutter's contention that just and reasonable rates should never exceed 50% of the net benefit as calculated under the UCT is flawed. He explained that Mr. Rutter failed to recognize that the calculation of the net UCT benefit excludes the bill savings that participating customers realize, which are the very basis for the lost revenues the Company experiences and that are included in the net UCT benefit analysis. Mr. Goldenberg responded that if the calculation is done in such a way that truly intends to balance both the investor and consumer interests, as Mr. Rutter proposes should be the case, then the Lost Revenues must be removed from the calculation because they are more than offset by the customer bill savings.

Mr. Goldenberg testified that he agrees with Mr. Rutter that lost revenues associated with Company-offered EE programs are not the only potential cause of the Company not fully recovering its fixed costs or earning its authorized return. Mr. Goldenberg further responded that the lost revenues sought to be recovered in this proceeding are those solely attributable to the installation of EE measures by Duke Energy Indiana's customers through their participation in the Company's EE programs. Mr. Goldenberg responded that if the Company sells less electricity as a direct result of its EE programs, fixed costs are not being recovered absent lost revenue recovery.

Mr. Goldenberg testified that Mr. Rutter's contention that the Company should not receive a shareholder incentive, or in the alternative that a shareholder incentive should be limited to 50% of the UCT net benefit and only if a utility achieves 100% of its proposed goals ignores the Commission rules providing for a performance incentive "to eliminate or offset regulatory or financial bias against DSM, or in favor of a supply-side resource, a utility might encounter in procuring least-cost resources."² Mr. Goldenberg responded to Intervenor arguments against a performance incentive stating that the effect of offering successful EE programs is that the Company is deferring or potentially eliminating the need to invest capital into the power system where it would earn a return on its capital investments.

Mr. Goldenberg responded to Intervenor who recommended against an incentive mechanism based on a percentage of program costs based on performance tiers explaining that the Company chose to continue with this incentive mechanism previously approved. He also stated that the Company's experience has demonstrated that this methodology offers transparency, simplicity and certainty around the potential magnitude of the performance incentive.

Mr. Goldenberg disagreed with Mr. Rutter's contention that incentives should only be awarded at the program level as opposed to the portfolio level. He explained that the Company's goals are stated at the portfolio level, the Company manages EE at the portfolio level and the IRP models EE at the portfolio level. He stated that Duke Energy Indiana works with its OSB to shift funds as needed to achieve these goals at the portfolio level. Mr. Goldenberg testified that the performance of all the programs in aggregate demonstrates the overall effectiveness of the Company's efforts and recognizes the fact there is an interactive effect between programs. He

² 170 IAC 4-8-3.

testified that requiring utility incentives to be calculated and earned at the program level would be a fundamental disconnect between the IRP and EE Plan.

Mr. Goldenberg responded to the OUCC's assertion that Duke Energy Indiana did not provide all the information required under Ind. Code § 8-1-8.5-10(j). Responsive to Ind. Code § 8-1-8.5-10(j)(2), Duke Energy Indiana provided a cost benefit analysis of its Plan on Pages 3 through 8 of Ms. Williams Direct Testimony. Mr. Goldenberg stated that the program budget presented in this proceeding included direct, indirect, and EM&V costs only, which are the costs used to calculate the UCT, consistent with what has been the historical basis for the Commission's determination of overall portfolio cost effectiveness. He responded to Mr. Rutter's argument that including lost revenues and financial incentives in the various tests used to calculate cost-effectiveness is inconsistent with years of Commission Orders approving programs as cost-effective and with how those terms are defined by the California Standard Practice Manual, relied upon by the Commission in past proceedings. Mr. Goldenberg stated that to change the inputs to these tests to include the program costs as that term is defined in Ind. Code § 8-1-8.5-10(g) distorts the results of the tests and what they are intended to measure.

Furthermore, Mr. Goldenberg testified that Petitioner provided testimony on the effect or potential effect on the rates of customers who participate in EE and those who do not participate as required by Section 10(j)(7) and referred to the Direct Testimony of Ms. Williams on Pages 6 and 16-17, where she specifically addresses the potential long and short term effects of the Plan on customer rates and bills by providing both the RIM and PCT scores.

Mr. Goldenberg testified that he did not agree with Mr. Rutter's contention that the Commission should curtail persisting lost revenues approved in previous proceedings as inconsistent with Ind. Code § 8-1-8.5-10(j)(8). Mr. Goldenberg explained that if the Commission were to eliminate the lost revenues granted in previous Orders, it would be engaging in prohibited retroactive ratemaking, because such costs recovery has already been approved.

Mr. Goldenberg also responded to the OUCC's concerns with Duke Energy Indiana's Smart Saver[®] HVAC program. He stated that Smart Saver[®] HVAC is one of the longest running programs in the Company's EE Portfolio and provides tremendous benefits to residential customers for the one piece of equipment that utilizes the largest amount of energy in the home. Mr. Goldenberg testified that to suggest that the program be eliminated due to a new and innovative design that has been well received in other Duke Energy jurisdictions by both customers and trade allies would be an unfortunate outcome for its customers.

Mr. Goldenberg also addressed the Industrial Group's concerns regarding incentives, lost revenues and changes to its OSB. Mr. Goldenberg cited Ind. Code § 8-1-8-5-10(o), which is clear in its wording, that the purpose of the incentive is to encourage implementation and to offset the financial bias towards supply-side investment inherent in the regulatory model, and to rebut Mr. Gorman's assertion that the Company should be punished for missing its goals with a negative incentive. Mr. Goldenberg further disagreed with Mr. Gorman's contention that granting the Company performance incentives disadvantages supply-side options relative to DSM, because EE is risk free. Mr. Goldenberg discussed the risks associated with Petitioner achieving its EE Goals:

lower than planned participation as well as the risk of lower than anticipated impacts from EM&V on program results.

Mr. Goldenberg further testified that he does not agree with Mr. Gorman's contention that lost revenue recovery is not justified when any decline in sales due to EE programs is offset by sales increases that result from other factors. As discussed in response to Mr. Rutter, Mr. Goldenberg stated that the recovery of lost revenues requested in this filing is attributable to the measured and verified results of customer participation in the Company's EE programs.

In regard to Mr. Gorman's statement that the Company should be required to ensure that it adjusts its lost revenue recovery claims and DSM program expenditures to accurately reflect the actual level of large customer opt-outs, including any additional opt-outs that may occur in future years, Mr. Goldenberg testified that the level of lost revenues and DSM program expenditures already reflect the impact of customers who have opted out given that they are not eligible to participate, and therefore, would have no program expenditures or lost revenue from the time of opt-out forward. Additionally, program budgets have been adjusted to compensate for known opt-outs; however, trying to guess which customers may opt-out in future years is an exercise in futility.

Mr. Goldenberg also testified that Mr. Gorman's opposition to OSB review of new programs is not consistent with how the OSB for other investor-owned utilities operate.

Mr. Goldenberg also responded to the CAC's concerns of Dr. Stanton and Ms. Sommer who urged the Commission to reject Duke Energy Indiana's EE Plan unless the Commission adopted their many recommendations.

Concerning Dr. Stanton's contention that performance incentives should be limited to 5-10% of the UCT benefits, Mr. Goldenberg testified that the Company would agree to be limited to 10% of the UCT benefit, but not an incentive at 5%. In regard to Dr. Stanton's contention that performance incentives should be connected to energy savings achieved, Mr. Goldenberg testified that Duke Energy Indiana's incentive proposal is connected to energy savings as the amount it would earn would depend on the amount of energy savings achieved in its tiered incentive structure. Mr. Goldenberg disagreed with Dr. Stanton's contention that an incentive mechanism based on a percentage of program costs incents spending dollars rather than focusing on result. He stated that the Company's Program Managers are tasked with running their programs at the lowest cost possible to achieve the highest participation and maintain cost effectiveness.

In regard to the OUCC and CAC's proposal on a shared savings incentive mechanism, Mr. Goldenberg testified that the Company was receptive to a shared savings incentive mechanism, if it is tiered based on the Company's performance relative to energy savings targets similar to the design approved for Southern Indiana Gas & Electric Company (d/b/a Vectren) in Cause No. 44645. Mr. Goldenberg testified that he believes the incentive mechanism approved in Cause No. 44645 would be appropriate if the Commission does not approve Duke Energy Indiana's requested incentive mechanism, because a shared savings incentive structure is designed to tie the magnitude of the utility incentive to the net benefit realized through customer adoption of the Company's programs.

Mr. Goldenberg disagreed with Dr. Stanton's assertion that it is unreasonable for Duke Energy Indiana to recover performance incentives for at least some of its proposed DR programs and cited a number of reasons why the Company included residential and non-residential DR programs, as part of the incentive calculation: (1) the peak demand reduction of these programs has been factored into the IRP; (2) the Commission has approved DR and EE programs as a component of the Company's DSM portfolio to be recovered under Rider 66 for years; and (3) the market transformation that is being facilitated by technological advances that are blurring the lines between EE and DR programs. He explained that this transformation has created new hybrid programs that are a combination of DR and EE and that as the technology market continues to evolve, more of these types of programs will be proposed and will most likely account for a larger percentage of the portfolio's EE reductions.

Mr. Goldenberg also disagreed with Dr. Stanton's assertion that the Company should be seeking to achieve the amount of impacts identified in its MPS. Mr. Goldenberg explained that the MPS Dr. Stanton is referencing was completed in 2013 and was developed before opt out for large commercial and industrial customers was an option. In addition, the MPS specifically targeted the need to achieve the targets established in Cause No. 42693 S1 and the impacts identified were not consistent with the EE impacts identified in the IRP.

Mr. Goldenberg testified that he did not agree with the OUCC's, CAC's, and Industrial Group's claims that Duke Energy Indiana's EE Plan was not reasonable and should not be approved. As Mr. Goldenberg discussed at length in both his direct and rebuttal testimonies, Duke Energy Indiana is not only a strong advocate for EE and DR, the Company has for over 25 years been continually innovating and looking for new and better ways to assist customers in their use of electricity. He stated that it is important to the Company that it receive approval to recover lost revenues and an incentive in return for undertaking the work necessary to maintain a robust and marketable portfolio for the benefit of its customers, while not undermining the Company's ability to earn a fair and reasonable return.

Mr. Goldenberg concluded his rebuttal testimony by stating that in order to provide the Commission with periodic updates on its EE program performance, Duke Energy Indiana will file its program scorecard after each quarterly in-person OSB meeting. Duke Energy Indiana will continue to file its EM&V reports as required in Cause No. 43955 DSM-2.

Mr. Stillman provided rebuttal testimony regarding how Duke Energy Indiana modeled EE in the load forecast that underlies the IRP. Mr. Stillman explained that the load forecast informs the IRP team of the estimated future energy and demand requirements that will be placed on the Company's system, which allows the IRP team to evaluate how well the existing resources will meet the estimated future requirements and allow for the planning of needed future resources.

Mr. Stillman testified as to how EE was modeled in the load forecast before 2015 and the changes that occurred for the 2015 IRP. In response to CAC witness Sommer's concerns about free ridership, Mr. Stillman testified that the Company accounted for free riders in its EE process by incorporating free riders in historical sales and historical economic activity, as well as when looking forward at naturally occurring efficiencies.

Mr. Stillman explained that, beginning in the 2015 IRP process, the Company began modeling EE to account for utility-sponsored energy efficiency (“UEE”). He explained that a “before-UEE” load forecast used in the IRP after which the IRP team then identified the UEE bundles that were to be included in the forecast. Mr. Stillman testified that based upon the UEE selected by the IRP team, the Company then included the UEE efficiencies in the “after-UEE” load forecast.

Mr. Stillman testified that there are challenges in introducing UEE savings into the forecast because many UEE programs serve to accelerate naturally occurring efficiency adoption rates; therefore, introducing UEE savings into the forecast in this new manner requires a fine balancing act in order to avoid double counting the UEE efficiencies with the naturally occurring efficiencies. Mr. Stillman stated that to ensure there is not a double counting of the efficiencies, the Company introduced the “roll off” concept where it no longer reduces the forecasted sales for the UEE savings at the conclusion of the measure life, as the forecast will have been reduced for that same efficiency measure through the inclusion of the naturally occurring efficiency trends.

Mr. Stillman testified that once the load forecast has been completed, the Company performs other analyses looking at historical sales volumes and the amount of energy an average customer uses. He stated that by looking at these historical trends and comparing those trends to future expectations, the Company gains confidence around the level of efficiency adoption that is assumed in the forecast. Additionally, the Company compares its expected efficiency gains between each jurisdiction, as well as, what other utilities are saying they have experienced and are expecting going forward.

Mr. Stillman concluded his rebuttal testimony by testifying that it is his opinion that the process described above provides the IRP team with a good snapshot of EE impacts over the IRP planning horizon and “accounts for all the ways in which customers might save energy regardless of who can take credit for those savings” as CAC witness Sommer recommended.

Mr. Park responded to CAC witnesses Dr. Stanton and Ms. Sommer’s concerns regarding Duke Energy Indiana’s EE Plan in this proceeding and its consistency with the Company’s 2015 IRP. Mr. Park testified that Ms. Sommer’s analysis on the process used by Duke Energy Indiana to demonstrate consistency between its proposed DSM Plan and its 2015 IRP is incorrect.

Mr. Park explained that the Company relied on its IRP model runs and performed additional runs in advance of this filing incorporating the most updated EM&V information to verify that the EE Plan was consistent with the most recent IRP. Mr. Park stated his belief that Ms. Sommer confused the analysis done as part of the IRP and the additional analyses performed for this filing.

Mr. Park explained Duke Energy Indiana’s 2015 IRP used the load forecast as a starting point because modeling EE as a supply-side resource is not as easy as simply adding EE to the IRP models. He reiterated Mr. Stillman’s concern with double counting or omitting EE in the modeling process. Mr. Park stated that modeling EE as a supply-side resource was a new methodology adopted at the request of Duke Energy Indiana stakeholders during the most recent IRP Stakeholder Meetings. To model EE as a supply-side resource, Mr. Park testified that the EE

Analytics Group developed an hourly energy profile of the EE bundles to facilitate economic selection. He explained that the IRP Group modeled EE as a fixed profile 5-year resource that included an hourly profile for the entire five-year period, referred to as an EE bundle.

Mr. Park explained that the Base EE bundle was constructed using the EE programs that were approved for 2015 and those proposed for 2016-2018 pending in Cause No. 43955 DSM-3. He stated that the EE Analytics Group assumed 2019 would have the same hourly shape and EE savings as 2018. Mr. Park testified that the EE Analytics Group then used the hourly shape, costs and impacts to fully define the first 5-year bundle of EE that was modeled in the 2015 IRP.

Mr. Park explained that subsequent bundles were 5 years in duration and that the EE Analytics Group leveraged the preceding Base Bundle and increased the cost at the standard rate of inflation plus a rate that reflects the increasing marginal costs as programs become increasingly saturated. He stated that the IRP Group added Incremental Bundles that were also five years in duration based on the corresponding Base Bundle in composition. Mr. Park explained that the initial Incremental Bundles were half the size of the corresponding Base Bundle at a higher cost to reflect the increasing marginal cost associated with incenting higher participation. Mr. Park testified that these initial Incremental Bundles were too costly and were not economically selected by the IRP models even in the higher cost scenarios. In response to this, the IRP Group re-characterized the initial Incremental Bundles at one-fourth the size of the Base Bundle, which roughly translated to 0.1% of sales, and removed the cost increases associated with rising market saturation. These revised Incremental Bundles were economically selected, but only in the high-cost scenarios. Mr. Park further testified that the preferred portfolio in the 2015 IRP included the first Base Bundles that cover the time period of EE in this filing.

Mr. Park testified that Duke Energy Indiana intends to continue to model EE as a supply-side resource and expects that in its 2018 IRP, Duke Energy Indiana will model EE bundles on a 3 year basis to coincide with the EE filing cycle, as well as, potentially adding more Incremental EE bundles.

Mr. Park also testified that the EE Analytics Group created an updated Base Bundle to further test the consistency between the proposed EE portfolio in this filing and the IRP. He stated that this updated Base Bundle incorporated updated assumptions utilizing updated EM&V results and combining historical 2015 data, projected 2016 data based on partial year actual data, and the expected savings outlined in the proposed EE filing. He testified that the updated assumptions included: (1) adjusted MyHER savings to reflect EM&V results that were received between completion of the 2015 IRP and the submission of this EE Plan; (2) adjustments to the Residential Energy Assessments savings to reflect changes to the kits provided to customers; and (3) changes in lighting for the Non Residential Smart Saver[®] Prescriptive program. He testified that the analysis demonstrated that the portfolio underlying the EE Plan continued to be consistent with the IRP.

Mr. Park explained that Duke Energy Indiana performed two specific analyses to show consistency with the IRP: (1) comparing the cumulative KWh of EE savings, KW demand savings and program costs for the EE portfolio for 2015-2019 that was selected by the 2015 IRP analysis to an updated EE portfolio for 2015-2019 that accounted for actual program performance in 2015,

projected program performance in 2016, and the use of the DSM-4 filed portfolio in 2017-2019; and (2) a rerun of the IRP analysis using the updated 2017-2019 portfolio to determine if the IRP model would select this updated portfolio. He testified that the results of the cumulative KWh comparison showed that the updated 2015-2019 EE Plan filed in this proceeding was slightly lower than the portfolio selected by the IRP model in the original IRP analysis and that the KW demand savings and program costs were also very close. He testified that, because these two portfolios are very similar in all aspects, the Portfolio included in this filing is consistent with the 2015 IRP.

Mr. Park testified that he disagreed with Dr. Stanton's contention that Duke Energy Indiana's EE Plan did not reconcile proposed savings with its 2015 IRP and explained that for the time period of 2015-2019, the IRP and the proposed EE filing are within 7.6% of each other on a demand basis, 1.9% of each other on an energy basis, and 1.2% on a cost basis.

Mr. Park also disagreed with Ms. Sommer's contention that Duke Energy Indiana incorrectly removed free riders savings to develop its EE Base Bundles and then added free riders back in when developing the goal for the EE Plan. He explained that the IRP does not include free riders in the Base EE bundles because they are accounted for in the load forecast. He explained that EE goals in the Plan were developed on a gross basis, but represented in the IRP on a net of free rider basis to avoid double counting.

Mr. Park further testified that Ms. Sommer's complaint that the IRP Base Bundle does not include all of the savings from the proposed goals in DSM-3, is not correct. The DSM-3 goals approved in that proceeding were included in the EE Base Bundles included in the 2015 IRP.

Mr. Park further addressed Ms. Sommer's concerns as to "some unspecified adjustment" to account for free riders. Mr. Park testified that this adjustment is not "unspecified", but rather is based on empirical and measured information where available and based upon reasonable expectations for new programs. He reiterated that the impact associated with free riders has already been accounted for in the load forecast Mr. Stillman provides for the IRP; therefore, these impacts must be removed from the forecast of utility-sponsored EE in order to avoid double counting of these impacts.

In regard to Ms. Sommer's contention that the Company adjusted EE savings for a half-year convention in the System Optimizer Model, Mr. Park testified that the System Optimizer model is primarily concerned with the amount of energy that all resources, including EE, provide at the time of the annual peak, which occurs in the summer. Mr. Park explained that at the time of the summer peak, the Company projected that only half of the total annual number of participants will be available; whereas, the annual savings capability would reflect the total number of participants at the end of the year.

Mr. Park further explained that adjustments must be made to properly analyze the annual KWh savings from all forms of EE in an IRP analysis. He stated that the following adjustments must be made to the gross KWh savings prior to analyzing them in an IRP: (1) The impacts associated with measures with a one-year measure life must be properly accounted for in the annual impacts; (2) The impacts of free riders must be removed from the adjusted gross savings;

and (3) The annual KWh savings must be converted to an hourly savings shape, properly accounting for the addition of customers throughout the year.

Mr. Park also explained the need for an adjustment for measures with a one-year measure life to properly reflect the nature of the impacts. He explained that it is critical that only the UEE savings that are incremental to what currently is embedded in the load forecast is included in the IRP analysis. Therefore, in the analysis performed by the Company for the 2015 IRP, only the impacts associated with incremental new customers for the MyHER program were included in the EE bundles.

Mr. Park also explained the need for an adjustment to convert the annual KWh savings to an hourly savings shape to properly calculate the impact on the system peaks. Mr. Park stated that the addition of new customers to the proposed programs must be shown to occur over time during a given year or the impact of these customers will artificially overstate the program impact at the time of the system peak. Duke Energy Indiana uses a methodology that spreads the expected customers evenly over the year by assuming participation of 1/12 of the customers in each month.

Mr. Park further explained Ms. Sommer is not properly adjusting the annual savings as described above in order to compare the actual inputs into the IRP analysis. Mr. Park provided a table to demonstrate the method to adjust the values from the DSM-3 filing to arrive at the Base EE bundle in the IRP. He stated that his comparison shows that the pertinent impacts demonstrate that the Net KWh Impacts are actually higher in this filing than in DSM-3.

Mr. Park further responded to Ms. Sommer's contention that System Optimizer is unable to distinguish between incremental and cumulative savings. Mr. Park explained that System Optimizer processes EE bundles based on the hourly shape of the EE bundle and does not need to distinguish between incremental and cumulative savings. The cumulative savings discussed in the IRP analysis are the summation of all of the incremental participants that have been added during the time period being analyzed in the IRP. For the purpose of the presentation in the DSM Plan, the incremental savings represent the amount of annual capability added to the overall EE portfolio in a given year.

Mr. Park rebutted Ms. Sommer's contention that Duke Energy Indiana takes cumulative savings from the IRP and translates them back to the incremental savings for purposes of the EE Plan, explaining that cumulative savings in the IRP do not reflect all the anticipated efficiency savings. He stated that the EE bundles modeled in the IRP represent incremental EE savings that are potentially achievable beyond the EE savings already included in the load forecast. In response to Ms. Sommer's concern about MyHER impacts, Mr. Park explained that to properly account for savings contributed by the MyHER program, which has a one-year measure life, the forecast of savings provided to the IRP must include only the incremental new savings that are incremental to the previous IRP.

Mr. Park also disagreed with Ms. Sommer's statement that Duke Energy Indiana's IRP may be undercounting savings stating that the IRP models EE savings as a supply-side resource for resource planning purposes. He reiterated that some of the EE savings are included in the load forecast and the remaining incremental EE is reflected in the EE bundles. He testified that Ms.

Sommer's contention that the load forecasters would have needed to know exactly what bundles were selected in the peak demand forecast is incorrect.

Mr. Park refuted Dr. Stanton's proposed alternative methodology to model EE in an IRP. He explained the problems with her approach: (1) while it may appear simple to allow the IRP model to evaluate 0.25 percent block of load decrements for avoided costs, one would still need an hourly savings shape for the load decrements to insert into the model; (2) it would be quite a challenge to match individual programs to a bucket of load reduction of 0.25 percent; and (3) besides the fact that running the IRP for each 0.25 percent bucket involves a significant amount of additional and lengthy IRP analyses and that the avoided costs would vary for each bucket.

Ms. Williams responded to Mr. Rutter's contention that the EM&V Plan submitted by Petitioner violates Commission Rule 170 IAC 4-8-4(b), because it does not include annual EM&V for each program. She responded that Petitioner is proposing to continue to use EM&V procedures approved by the Commission in past proceedings going back to 2012 and that nothing in the rule has changed in that time. She explained that Petitioner does not provide annual EM&V reports to allow for a program to mature sufficiently so that a statistically significant sample size is available to provide valid and useful EM&V results. Ms. Williams testified that the time necessary for a given program to reach the needed level of participation or historical customer usage data would vary by program. Ms. Williams further testified that EM&V activity will occur throughout the period of the EE Plan proposed in this proceeding; however, valid results for each program will only be available when a sufficient amount of time has passed to provide a statistically significant sample size.

Ms. Williams also testified that she did not agree with Mr. Rutter's contention that the cost benefit analysis as required under Ind. Code § 8-1-8.5-10(j)(2) must include lost revenues and utility incentives as part of the costs used in that analysis. She stated that the Company provided a set of four cost benefit analyses in this filing and those tests, following the guidelines established in the California Standard Practice Manual, and these are the same four tests the Company has provided in prior DSM portfolio filings. Ms. Williams further testified that she is not aware of any statutory requirement to include lost revenues and utility incentives in the calculation of the cost benefit analysis of this proposed portfolio.

Ms. Williams further testified that she does not agree with Mr. Rutter's statement that Duke Energy Indiana's proposed DSM Plan fails to comply with Ind. Code § 8-1-8.5-10(j)(7) ("Section (j)(7)") because it does not provide the actual cost of the Plan to ratepayers. She testified that Duke Energy Indiana has met this requirement by explaining how customer rates and bills will be affected based on the results of the PCT and RIM Tests, as well as, the overall portfolio UCT. Contrary to Mr. Rutter's contention, Ms. Williams explained that Section (j)(7) does not require a dollar amount, but rather a comparison. It would be difficult, if not impossible, to provide a dollar amount because of changes in usage patterns, variations in household composition, differences in size of residence, and other myriad differences.

Ms. Holbrook responded to Mr. Rutter's testimony arguing that an incentive mechanism should be limited to 50% of the avoided cost or UCT benefit. She stated that, although she disagrees with the general premise, if his suggested calculation is used, it should include only costs that are

incremental to customers. Ms. Holbrook argued that lost revenues are not incremental costs to customers but rather costs customers would pay absent EE.

Ms. Holbrook also responded to Mr. Rutter's contention that a utility incentive should only be granted at the program level as opposed to the portfolio level as has been done in the past. Ms. Holbrook explained that Duke Energy Indiana manages programs at a portfolio level and she disagreed with Mr. Rutter's argument that a few strong performing programs should not cover for weak performers in terms of earning a performance incentive. She stated that requiring incentives to be awarded at the program level does not align with how Duke Energy Indiana manages its portfolio, nor does it align with the goal of achieving its overall EE goals and it would add unnecessary complexity to the incentive calculation process.

Concerning Mr. Rutter's recommendation that performance incentive amounts should never exceed the utility's authorized rate of return, Mr. Holbrook explained that Mr. Rutter confuses the return on capital, which is an ongoing annual return the utility recovers over the life of an asset and a single-year return on program costs as an incentive to offer utility sponsored EE. She stated that Duke Energy Indiana is foregoing an ongoing multi-year return on investment for a one year return on program costs, and that a return on costs should therefore be higher than its allowed return on rate base because it is foregoing future earnings opportunities.

Ms. Holbrook took exception to Mr. Rutter's argument that there is a \$320M bias in favor of DSM because it is not clear how he arrived at this number. She testified that program cost recovery is not a net benefit to Duke Energy Indiana nor are lost revenues an incentive to offer EE programs as both of these items are removing a disincentive. She stated that it is only the performance incentive that provides a true incentive to offer EE programs.

Ms. Holbrook further stated that the lost revenue recovery requested in this proceeding will not provide Petitioner with a return in excess of what was authorized in its last rate proceeding. She reiterated that the recovery of lost revenues is meant to return the utility to the position it would be in if it had not offered EE measures. Ms. Holbrook testified that the lost revenues requested for recovery in this proceeding do not guarantee any type of returns on rate base for the utility and are focused only on EE activity covered in this rider.

Ms. Holbrook stated that Mr. Rutter's calculations for the cost of the EE Plan are erroneous because they are based on kWh saved, not on a billed amount to customers. She further stated that Mr. Rutter includes lost revenues awarded in previous years that continue to persist, which inflates the cost per kWh saved.

Ms. Holbrook responded to Mr. Gorman's proposed procedures for applying EM&V results to its EE programs after a rate case. She explained that in future EE Rider filing reconciliations, lost revenues and impacts will be recalculated by applying the latest EM&V results, and that it is possible a future rate adjustment to that vintage year will be required in the EE Rider, after the rate case and could serve to either increase or decrease the revenues sought.

Ms. Holbrook also testified that she did not agree with Mr. Gorman's assertions regarding the reasonableness of lost revenue recovery at issue in this proceeding, as he incorrectly states that

the amount the Company seeks to recover by including persisting lost revenues approved in previous proceedings. She stated that this proceeding concerns the EE Plan for 2017-2019 and not those lost revenues that the Commission approved for past EE activity.

Ms. Holbrook also testified that she does not agree with Mr. Gorman's argument that increasing or fluctuating sales argue against the recoverability of lost revenues. She stated that Duke Energy Indiana has very robust financial controls around all of its EE calculations, including lost revenue calculations, which are relied upon as Sarbanes-Oxley controls. Ms. Holbrook testified that these controls ensure that the only impacts that are measured and verified, both internally and by the third-party EM&V providers, are included for calculations for incentives and lost revenues.

Ms. Holbrook testified that she did not agree with Mr. Gorman's assertion that Duke Energy Indiana's proposed performance incentives would give the Company more profit for less risk relative to supply side options because there are risks associated with the profitability of an EE portfolio. She testified that it is conceivable that the Company would forego investment in supply-side resources for a profit that never materializes from the EE Plan due to a lack of customer participation and that the Company is foregoing ongoing annual returns for supply-side resources in return for a one-year return on program costs.

Ms. Holbrook also did not agree with Mr. Gorman's calculations as to the cost per kWh because he is comparing the cost of kWh saved to the cost of kWh billed. She explained that those two numbers are not comparable because one shows a calculation of the all in cost of the EE rider over kWh saved, while the other is a cost of service calculation over kWh billed. She stated that the UCT illustrates whether or not the programs Duke Energy Indiana is offering are cost effective; that is, whether the savings in avoided costs generated by the programs, over the lives of the various measures, exceeds the cost to implement those measures.

Ms. Dean disagreed with the premise put forth by Messrs. Rutter and Gorman that the Company would earn in excess of its allowed rate of return from its last rate case. She stated that both Mr. Rutter and Mr. Gorman have failed to recognize that the Company's proposed 8.5-11% performance incentive rate is a before-tax rate, *i.e.*, the performance incentive revenues that the Company receives will be subject to income tax. Ms. Dean testified that, after adjusting for taxes, the amount of incentive requested is actually 6.71%, which is less than the 7.30% of after-tax return approved to be earned on original cost depreciated rate base by the Commission in Cause No. 42359.

Ms. Dean testified that both Messrs. Rutter and Gorman believe a reasonable rate of return would be between 4.30 to 6.63%, which is the range of the rate of return on fair value rate base, not the 7.30% weighted cost of capital rate that was approved to be earned on original cost depreciated rate base in Cause No. 42359. Ms. Dean testified that she did not believe this was an accurate comparison because it is the original cost of capital that is applied to original cost depreciated rate base to determine revenue requirements in rate cases and capital recovery riders for supply-side options.

Ms. Dean responded to concerns about lost revenue recovery. She testified that the recovery of lost revenues is intended to reimburse the Company for fixed costs that will otherwise not be recovered because of the reduction in sales associated with its EE offerings. Ms. Dean testified that lost revenues are a real cost of EE in the context of DSM programs, because although cost-effective DSM programs can be an effective means to manage the rate of growth and costs of meeting the utility's future energy and capacity needs, they cannot generally eliminate or somehow reverse the cost of past capital investments made on behalf of customers.

Ms. Dean further testified that Duke Energy Indiana would incur lost revenue impacts from the Company's 2017-2019 programs for the duration of the life of each individual measure, which is different measure by measure, or until the energy savings reductions are reflected in the level of sales used to set new base retail rates. In response to Mr. Gorman's recommendation to limit lost revenues to four years and Dr. Stanton's three year recommendation, Ms. Dean testified that Mr. Gorman offered no support for his claim that four years is appropriate and that Dr. Stanton merely pointed to a previous Company filing. Ms. Dean stated that limiting lost revenues to anything other than life of the measure (or until the lower sales level is included in base rates) is an arbitrary cap on lost revenues, as is Mr. Gorman's suggestion that a dollar amount cap on lost revenues.

Concerning the "pancake effect" referenced by Dr. Stanton, Ms. Dean testified that lost revenues are a real cost of offering EE and therefore should continue to be recoverable. Ms. Dean testified the Company faces a "reverse pancake effect" on utility revenues with each additional year of measure life. Ms. Dean testified that Duke Energy Indiana will continue to incur lost revenues in 2017-2019 associated with the 2012-2016 EE programs, to the extent customers have implemented successful EE measures that continue to reduce their energy consumption.

In response to Dr. Stanton's recommendation that recovery of lost revenues should be limited to the amount associated with decreases in sales that are directly attributable to the implementation of Commission approved EE programs and only to the extent it impacts the Company's fixed cost recovery, Ms. Dean testified that Duke Energy Indiana's proposed lost revenue recovery is designed to include only lost revenues associated with decreases in sales that are directly attributable to the implementation of Commission approved EE programs.

Ms. Dean testified in response to Messrs. Rutter and Gorman and Dr. Stanton's argument that Duke Energy Indiana might not be at risk for under-recovering fixed costs due to other activities unrelated to DSM such as revenue or sales increases since the last base rate case. She stated that the participation and energy savings (*i.e.*, energy usage reductions) used to calculate the lost revenues that were included in the current proceeding were or will be subject to verification, including EM&V performed by a third party.

Ms. Dean rebutted Dr. Stanton and Messrs. Rutter and Gorman's concerns that, if the Company's lost revenue proposal is approved, Duke Energy Indiana might over-earn its authorized rate of return. Ms. Dean testified that the Company compares jurisdictional authorized earnings with actual earnings and authorized return with earned rate of return under Ind. Code § 8-1-2-42(d)(3), also known as the FAC Earnings Test. She presented analyses to demonstrate the Company is not overearning as Exhibits 12-C and 12-D to her rebuttal testimony.

In response to Mr. Gorman's concern that the Company has the benefit of recovery of projected lost revenues until a future reconciliation, Ms. Dean stated that the projections for program costs, EM&V and lost revenues are the best estimates available at the time of filing and that these projections are trued-up in a subsequent filing. She explained that a reconciliation might result in customers' charges increasing or decreasing.

In regard to Mr. Gorman's statement that the Company should be required to adjust lost revenue claims to reflect opt outs, Ms. Dean testified that Duke Energy Indiana does reconcile costs by the various opt-out groups. Petitioner's Exhibit 5-B, Page 10 of 10, shows lost revenues adjusted by opt-out groups in order to appropriately assign costs.

Responding to Mr. Gorman's claim that Petitioner should eliminate the exposure of opt out customers to ongoing EE charges following the Company's next base rate case, Ms. Dean explained that the terms of Duke Energy Indiana's Tariff provide that customers who have opted out remain responsible for any costs (or entitled to any credits) related to final reconciliations for rates billed for their share of EE program costs, including persisting lost revenues, as of the effective date of opt out. This applies to any subsequent reconciliation made after new base rates are implemented for such costs billed prior to base rates being implemented.

6. Commission Discussion and Findings. Petitioner requests approval of its Demand Side Management and Energy Efficiency Plan for 2017-2019 and authority to recover direct and indirect program costs, a shareholder incentive, and lost revenues pursuant to Ind. Code § 8-1-8.5-10 ("Section 10").

Section 10 requires:

[b]eginning not later than calendar year 2017, and not less than one (1) time every three (3) years, an electricity supplier shall petition the Commission for approval of a Plan that includes:

- (1) energy efficiency goals;
- (2) energy efficiency programs to achieve the energy efficiency goals;
- (3) program budgets and program costs; and
- (4) evaluation, measurement, and verification procedures that must include independent evaluation, measurement, and verification.

Ind. Code § 8-1-8.5-10(h).

Section 10(h) further requires us to consider the "overall reasonableness" of the utility's plan. Section 10(j) enumerates ten (10) factors we are to take into account in assessing the overall reasonableness of the proposed Plan. Sections 10(k), (l) and (m) provide us with three paths. We may conclude the plan is "reasonable in its entirety" (Section 10(k)), conclude that it is not reasonable because the cost of one or more of the programs exceed the benefits of the program(s) (Section 10(l)), or we may conclude that the plan is "not reasonable in its entirety" and set forth the reasons supporting this determination. (Section 10(m)). If we conclude that the plan is not "reasonable in its entirety", the utility must file a modified plan within a "reasonable time."

A recent decision by the Indiana Court of Appeals guides our interpretation of Section 10, and particularly the interrelationship between the ten factors we consider in Section 10(j) and our determination of the plan’s “overall reasonableness.” In *Southern Indiana Gas & Electric Co. v. IURC*, Vectren South challenged our approval of the company’s Section 10 plan after modifying the plan to limit the recovery of lost revenues to the lesser of 4-years, life of the measure, or until the implementation of new base rates. 2017 WL 899947 at *1 (Ind. Ct. App. March 7, 2017).³ As noted by the Court, Vectren South argued that we “erred as a matter of law by approving [the plan] but rejecting a portion of that plan addressing lost revenue recovery.” *Id.* at *6. Vectren South further argued that “Section 10 ‘calls for a single reasonableness inquiry’” under Section 10(j), including the proposed lost revenue recovery. *Id.* The Court agreed and concluded that by “capping lost revenue at four years, the Commission implicitly found the Vectren South’s lost revenue recovery policy to be unreasonable.” *Id.*

After also concluding that we did not make specifically sufficient findings that a four-year cap would allow Vectren South to recover reasonable lost revenues under Section 10(o), the Court then reversed and remanded with instructions. *Id.* at *7. Those directions stated 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.

Id. at *7.

Based on the Court’s decision, we note two important conclusions. First, our analysis under Section 10(j) is a “single reasonableness inquiry.” Thus, if we conclude that a portion of the proposed plan is unreasonable through our analysis, except for the limited circumstances outlined in Section 10(l), the correct approach is to follow the requirements of Section 10(m). That is, we must reject the plan in its entirety, issue an order setting forth the reasons in support of this determination, and allow the utility an opportunity to submit a modified plan within a reasonable time.

The remand instructions direct us, if we again reach the conclusion that Vectren South’s lost revenue recovery proposal is unreasonable, to “determine the Plan is not reasonable in its entirety pursuant to Section 10(m).” Slip op. at *7. In other words, if we conclude that some material component of the plan is unreasonable, outside the limited circumstances of Section 10(l), this calls for a determination that the plan, as a whole, is unreasonable

³ We acknowledge that the opinion in *Southern Indiana Gas & Electric Co.* is designated as a “memorandum decision” by the Court of Appeals, and thus, pursuant to Indiana Appellate Rule 65D has limited precedential value. Nevertheless, the opinion is the first, and only, decision rendered regarding a Section 10 proceeding. We will not ignore its guidance.

Second, the Court of Appeals opinion indicated that if we approve a plan, the recovery of “reasonable” lost revenues and financial incentives under Section 10(o) remains subject to our own assessment as to the reasonableness of the authorized recovery. Although the opinion speaks in terms of reasonableness of a four year cap on lost revenues to the utility, the opinion never states that the four year period is unreasonable, that lost revenues must be tied to life of the measure, nor that the only reasonable lost revenues are those for the life of the measure. Further, nothing in the opinion indicates the Court of Appeals intended that we disregard our statutory charge and long-standing precedent declaring that our obligation is to ensure just and reasonable rates for both the utility and ratepayers.

The Court’s conclusion, instead, goes to the adequacy of our findings as to the reasonableness of a four-year cap. The opinion does not impose a restraint on our conclusion that some proposal, different from that presented by the utility, is reasonable. The opinion only stated that we must explain why the recovery of lost revenue and incentives under Section 10(o) is reasonable. It does not foreclose the conclusion that some level of lost revenue recovery short of life of the measure is reasonable. Thus, to the extent we approve Duke’s Plan, we are required only to approve recovery of “reasonable” financial incentives and lost revenues.

Given this legal background, we begin by considering Duke Energy Indiana’s request for approval of its 2017-2019 Plan under Section 10.

A. Section 10 - Presentation of a Plan. The evidence is uncontroverted that Petitioner is an electricity supplier as defined by Section 10(a) and that it has made a submission under Section 10(h) seeking approval of a proposed Plan prior to 2017. However, the evidence is disputed as to whether Petitioner has submitted a Plan that includes all four of the criteria required by Section 10(h) or passes the reasonableness inquiry under Section 10(j).

Based on the evidence presented as discussed further below, we find that Duke Energy Indiana’s 2017-2019 Plan, with the exception of its proposed modification to the OSB to extend its authority to implement programs without Commission approval, satisfies the requirements of Section 10(h).

[THE OUCC AND INDUSTRIAL GROUP OFFERED NO DIRECT EVIDENCE REGARDING, AND OFFER NO SPECIFIC FINDINGS AS TO WHETHER DUKE PRESENTED A PLAN, AS DEFINED BY SECTION 10(H) CONTAINING “ENERGY EFFICIENCY GOALS” AS DEFINED BY SECTION 10(C). THE OUCC AND INDUSTRIAL GROUP DO NOT CONTEST THAT THE PLAN CONTAINS PROPOSED PROGRAMS, BUDGETS, OR A PROCEDURE FOR EM&V.

NEVERTHELESS, THE OUCC AND INDUSTRIAL GROUP OBJECT TO THE EXTENT THAT DUKE’S PLAN CONTAINS A REQUEST FOR AUTHORITY TO IMPLEMENT PROGRAMS WITHOUT COMMISSION APPROVAL, AND PRESENTED NO EVIDENCE WHICH WOULD ALLOW THE COMMISSION TO CONCLUDE THAT THOSE PROGRAMS, OR THE PLAN AS A WHOLE WITH THOSE PROGRAMS INCLUDED, WOULD BE REASONABLE.

THE OUCC AND INDUSTRIAL GROUP THUS REQUEST THAT THE COMMISSION INCLUDE THEIR PROPOSED LANGUAGE IN SECTION 6AII (EE PROGRAMS) WITH REGARDS TO THE PORTION OF THE PLAN ASKING FOR AUTHORITY TO IMPLEMENT NEW PROGRAMS.

IN ADDITION, THE OUCC AND INDUSTRIAL GROUP OFFER OBJECTIONS TO THE REASONABLENESS OF THE EM&V PROCESSES AND REQUESTED PROGRAM COSTS. THOSE OBJECTIONS WILL BE ADDRESSED BELOW AS IT RELATES TO THE REASONABLENESS ASSESSMENT OF UNDER SECTION 10(J). TO THE EXTENT THAT THE COMMISSION CONCLUDES DUKE HAS SUBMITTED A PLAN AS DEFINED BY SECTION 10(H), THE OUCC AND INDUSTRIAL GROUP REQUEST THE COMMISSION ADOPT THE PROPOSED LANGUAGE REGARDING THE REASONABLENESS ASSESSMENT UNDER SECTION 10(J) INCLUDED HEREIN.]

ii. EE Programs.

Problematic for Duke's portfolio of programs, however, is its request to modify its Oversight Board's (OSB) authority to allow the OSB to approve new programs if the budgets are within ten percent (10%) of the discretionary spending limit approved in Cause No. 43955 DSM-3. (Pet. Ex. 1 at 35-36). When questioned about this proposal during the hearing, Mr. Goldenberg admitted that the new programs contemplated under this request for expanded authority are not the six "new" programs identified on page 10 of his testimony that are in development and will be phased in over the life of the plan.

Rather, the new programs Duke seeks authority for its OSB to implement, without Commission review and approval, are as yet unidentified. When questioned about the programs, Mr. Goldenberg could not identify changes in consumption related to the programs, lost revenues or incentives related to the programs, admitted they were not identified in the Company's IRP, could not identify the impact on customers due to inclusion of costs in the DSMA Rider, nor the savings goals. Indeed, given that the programs are not yet "known" we have no idea what specific measures are being contemplated. Thus, we have almost no information related to the reasonableness inquiry under Section 10(j) as it pertains to the programs contemplated under this request. When it came to the budget of these unidentified programs, Mr. Goldenberg could be no more specific than to state they would be within 10% the discretionary spending limit previously approved.

This presents us with a wholly inadequate record to approve the requested change to the OSB. It also provides us with a wholly inadequate record on which to consider these unidentified programs as part of the Plan put forth by Duke. All we know, ultimately, is that the *program budgets*, distinct from *program costs* as defined in Section 10(g), of the unknown programs will be within the 10% discretionary limit. We have no other information as to their cost (such as lost revenues or performance incentives), no other basis to judge the reasonableness of these programs or their effect on the Plan as a whole, nor any ability to weigh them against any factors enumerated in Section 10(j). We cannot even assess whether the program costs of these unknown measures "exceed the projected benefits" under Section 10(l) as we have insufficient evidence to conduct

such an analysis. In short, there is no basis to approve this request and we cannot, based on the evidence, conclude the requested modification is reasonable.

In reaching this conclusion we also note the similarity between Duke's request to allow for the implementation of unidentified new DSM programs in subsequent years, with utility requests under the TDSIC Statute, Indiana Code chapter 8-1-39. Under the TDSIC Statute, a utility must submit a "plan" outlining proposed system improvements. Further under the TDSIC Statute, we must also make findings as to the costs of the proposed plan, and whether the plan is reasonable.

Numerous challenges have been raised regarding the TDSIC Statute, and two Court of Appeals decisions are particularly relevant here. First, in *NIPSCO Industrial Group v. NIPSCO*, 31 N.E.3d 1 (Ind. Ct. App. 2015), the Court concluded that we erred in approving a TDSIC Plan which presented detailed information for only the first year of the plan. The Court held that there was insufficient detail to support approval of the plan given the absence of information related to the projects that would be undertaken in subsequent years. *Id.* at *8. Even accepting an argument that some flexibility was necessary under the Plan, the Court stated that the utility bears the obligation to provide a plan that meets the statutory requirements, and that "[a]llowing flexibility in a plan is not the same as not having a plan at all." *Id.* The Court further held that our approval of the plan amounted to the impermissible establishment of a presumption of eligibility in favor of projects to be proposed in years two through seven of the plan. *Id.* at *8-9.

Likewise, in *Indiana Gas Co. v. IURC*, the Court of Appeals affirmed our decision to reject the addition of new projects in a TDSIC plan update proceeding which had never been previously included in the original plan. *See* 75 N.E.3d 568 (Ind. Ct. App. 2017).

As under the TDSIC Statute, Indiana Code 8-1-8.5-10 requires a utility to file a plan outlining its energy efficiency goals, programs to meet those goals, and budgets and program costs, and requires the Commission to evaluate the overall reasonableness of the proposed plan. Duke's request to approve a change in its OSB terms to allow it to introduce new, entirely unknown programs during the course of the plan period is ultimately no different from the situation in *NIPSCO Industrial Group* and *Indiana Gas*. Duke has failed to provide us with sufficient information to evaluate that part of the plan. To paraphrase, that component of Duke's request is "not a plan at all." Were we to approve the authority to implement unknown programs of unknown cost and impact, we would also be creating an impermissible presumption of eligibility in favor of those programs.

In short, Section 10 requires the presentation of a plan, and leaving a portion of that plan unidentified and unsupported is contrary to our obligations under Section 10 to submit that plan to evaluation, as well as the decisions in *Indiana Gas* and *NIPSCO Industrial Group*. We therefore reject Duke's request to include the modification to its OSB authority to introduce new programs.⁴

⁴ Duke argues that we have approved this discretion for other utilities. With the exception of Vectren South, we have not approved any similar discretion in the context of a contested Section 10 proceeding. Further, the *Indiana Gas* opinion, prohibiting the addition of new projects to a TDSIC plan was issued after our order approving Vectren South's Section 10 DSM Plan. In addition, under the restrictions of administrative stare decisis, we are not prohibited from altering our decisions in subsequent cases provided we set forth reasons for altering our approach. To that end, the question here is not whether we have approved the request in other proceedings, it is whether Duke has presented an evidentiary basis on which to approve the request in this case and whether there is a basis to deny the request. As

B. Reasonableness of the 2017-2019 Plan. Having determined that Duke Energy Indiana has submitted an EE Plan as required by Section 10(h), Section 10(j) identifies 10 factors the Commission must consider in determining its overall reasonableness. As explained above, our review of the Section 10(j) factors represents a “single reasonableness inquiry”. Under that inquiry, except for the case of programs that fall within the category of Section 10(l), if we conclude that a component of the plan is unreasonable, we must reject the plan as a whole.

i. Projected Changes in Customer Consumption. No party contested that Duke’s Plan is designed to produce estimated savings over the period 2017-2019 plan period and that the goals are achievable. We can thus reasonably expect some change in customer consumption compared to what it might be in the absence of the programs.

ii. Cost and Benefit Analysis. In making our determination of the overall reasonableness of a plan, Section 10(j)(2) requires the Commission to consider “A cost and benefit analysis of the plan, including the likelihood of achieving the goals of the energy efficiency programs included in the plan.” In Cause No. 44645 we determined that the legislature did not require us to define the “cost” of this “cost and benefit analysis of the plan” using the Section 10(g) the definition of “program costs” that comprise the programs in the plan we are to analyze. Upon further reflection, we reconsider our earlier interpretation. The purpose of a cost / benefit analysis is acquire an accurate assessment of whether the investment makes economic sense – if an energy efficiency plan saves \$1.00 but costs \$1.10, that is not an economically rational choice as costs exceed the benefit. It is most unlikely that the legislature empowered us in Section 10(l)(1) to eliminate individual programs with costs exceeding the expected benefit, and to perform this program-specific analysis without using the statutorily provided definition of “program costs.” It is most logical to assume then, in our Section 10(j) “overall reasonableness test” that the cost and benefit analysis of the plan” would be the same as the analysis of the individual programs that comprise the plan.

Duke’s DSM Plan does not provide a cost and benefit analysis required in subsection (j)(2) that includes “program costs” as they are defined in IC 8-1-8.5-10, subsection (g). The California Standards Practice Manual includes program costs when defining the term “costs” as it is used in calculating the RIM, PACT/UCT and TRC cost and benefit analyses. The DSM statute has defined “program costs” in subsection (g). We find no support within I.C. 8-1-8.5 supporting the idea that costs mandated to be considered in a cost and benefit analysis under subsection (j)(2) are different than the costs included under “program costs” as set forth in subsection(g) or the “costs associated with one (1) or more programs” in Section 10(l)(1). All “program costs”, as that term has been plainly defined by the Indiana Legislature, must be included in the development of costs used in calculating the cost and benefit analysis referred to in IC 8-1-8.5-10(j)(2).]

iii. Consistent with State Energy Analysis and Utility IRP. [THE OUCC AND INDUSTRIAL GROUP OFFER NO FINDINGS AND CONCLUSIONS ON THIS ISSUE]

highlighted above, Duke presented no evidence to evaluate the proposal and we will not approve the proposal in the absence of a record which enables us to evaluate the proposal against the statutory criteria necessary for plan approval.

iv. EM&V. Evaluation for all programs in the Plan will be conducted by an independent evaluator. Ms. Williams testified that the independent evaluator would perform a process evaluation and an impact evaluation and presented a current schedule of EM&V timelines. Mr. Goldenberg testified that Duke Energy Indiana will continue to file its EM&V reports as required in Cause No. 43955 DSM-2.

Duke's EM&V processes and procedures, however, deserve further consideration. As stated by Mr. Gorman, EM&V is "ultimately, a process of estimation" that is susceptible to error. (IG-1 at 12). As he further explained, all estimates of savings "act like any other estimate and become more susceptible to error over time as new variables, such as changes in customer behavior and technology, are added." (*Id.* at 18). We agree with Mr. Gorman assessment that EM&V is a process of estimation susceptible to error and has shortcomings, including problems with the estimates becoming less reliable as the passage of time and other variables enter the equation.

The Company's EM&V process, however, adds a layer of further uncertainty insofar as it does not operate on an annual basis. This means that some, but not all, programs are subjected to EM&V in any given year and that reports on given programs may be staggered significantly. (*See* Pet. Ex. 3-B). Thus, there can be a delay between the implementation of a measure, and the time in which the effects of the measure are subjected to any form of evaluation or reflected in a subsequent DSMA filing. This level of frequency of EM&V adds to concerns that it does not accurately capture savings in a timely manner, and contributes to our concerns with Duke's request for the recovery of lost revenues over the life of the measure – a subject we will address below.

We further note that during the hearing, Duke acknowledged that as a result of its EM&V processes, lost revenue calculation reaching back as much as "a couple of years" could occur after a base rate case, altering the amount of lost revenues the Company might claim for periods prior to the implementation of base rates.⁵ Ms. Dean, however, testified that this process described as "re-reconciliation" in this case extends to years 2012, 2013, and 2014, a period which includes measures installed 5 years in the past. (Pet. Ex. 5 at 9-10). In effect, then, the EM&V process alters savings calculated at times in the past. This makes it extremely difficult to gauge the actual savings achieved.

In addition, the EM&V process adopted by Duke makes is more difficult, even impossible, to fully zero out lost revenues at the time new base rates are implemented. Indeed, it would suggest that some customers, even opt-out customers as Ms. Dean testified, and even after new rates are in effect, will continue to pay legacy lost revenues related to measures installed prior to the base rate case. This runs contrary to our prior orders concluding that Duke may recover lost revenues until such time as new rates are implemented. Taking all of these factors into consideration, we cannot conclude that Duke's proposed EM&V plan is reasonable.

⁵ It was made clear by Ms. Holbrook that this was distinct from the process of adjusting for any variances attributable to the over/under recovery of forecasted lost revenues due to deviations from actual and forecasted consumption.

v. Undue or Unreasonable Preference to Customer Classes. [THE OUCC AND INDUSTRIAL GROUP OFFER NO DIRECT EVIDENCE REGARDING, AND OFFER NO FINDINGS AND CONCLUSIONS ON THIS ISSUE].

vi. Stakeholder Comments. This provision requires the Commission to consider comments provided by customers, customer representatives, the OUCC, or other stakeholders concerning the adequacy and reasonableness of the 2017-2019 Plan. The OUCC, CAC, Nucor Steel and the Industrial Group provided such comments through the evidence they presented in this proceeding, which the Commission has considered and addressed in making its determinations in this Order.

vii. Effect or Potential Effect of the Plan on Electric Rates and Customer Bills of Participants and Non-participants. Duke's cost and benefit analyses demonstrate the impact on participants, but this section requires the Commission to consider more. Duke's plan does include a transparent, verifiable method to understand the long-term effect on customers. The Plan does not contain an adequate analysis of the impact on customer bills (as opposed to rates) for non-participants. While it does contain some showing regarding the impact on residential customer bills, the statute's language is not limited to that customer class. There is insufficient evidence that demonstrates the impact on commercial and industrial customers' bills.

viii. Lost Revenues and Financial Incentives. In this section, we will consider the reasonableness of Duke's proposal to recover lost revenues and performance incentives.

Lost Revenues

With respect to lost revenues, Duke seeks authority to recover approximately \$76.45 million from ratepayers during the plan period. This is comprised of approximately \$22.94 million in lost revenues for measures installed during the Plan, and approximately \$53.51 million in "legacy" or "persisting" lost revenues — those related to measures installed in prior years. We will address several issues with Duke's request.

First, we note that we have previously denied lost revenue recovery to a utility when there is a lack of evidence that the proposed rate is reasonably reflective of current operating conditions and costs. *See In re IPL*, Cause No. 42623 (Feb. 10, 2010) at 58; *In re IPL*, Cause No. 43911 (Nov. 4, 2010) at 11-12. As in the past, we are confronted with the simple fact that Duke's last rate case resulted in an order in 2004, and utilized a 2002 test year. We are, however, further confronted with the fact that Duke has now filed for, and obtained approval of, a TDSIC Plan under Indiana Code chapter 8-1-39. This means that Duke may not file for a general rate case until approximately 2023, roughly 20 years removed from its last base rate case and the test year used to set rates. Even lost revenues associated with measures installed in 2019, the last year of the plan, will be at least 15 years removed from Duke's last rate order, and roughly 17 years removed from the test year.

We further note, as shown on IG-1 at MPG-B, there have been changes in customer usage since Duke's last rate. In addition, as shown on IG-1 at MPG-G, recovery of costs through trackers

now accounts for approximately 49.4% of the costs billed to some customers. In short, we must express concern, as the Industrial Group does, that Duke's proposed lost revenues are based on stale data and inputs. We have previously denied lost revenue recovery in similar situations when we are no longer confident the inputs used to calculate the rates are reasonably accurate. *See Cause No. 43623 at 58.* Confronted with evidence of changes to Duke's customer consumption and load characteristics (IG-1 at MPG-G), and evidence that nearly 50% of Duke's costs are recovered not through base rates, but tracker mechanisms, we conclude that the inputs used to calculate lost revenues are no longer reasonably reliable.

Second, Duke insists that lost revenue recovery is intended to return the company to a place it would have been in the absence of the reduction in consumption related to the implementation of the DSM programs. What Duke has not shown, however, is that the company has suffered any harm as a result of the imposition of its DSM programs; nor has it made any effort to take into account the possibility that through the reduction in load on its system as a result of the offering of DSM programs, it has not had additional opportunities for off-system sales which might offset any "lost" sales as a result of energy savings stemming from its energy efficiency programs. Failing to take this into account, and instead to insist upon full recovery of lost revenues through the DSMA Rider as though these realities did not exist is not reasonable.

Third, Duke has not shown why a cap on the recovery of lost revenues is unreasonable. Mr. Gorman's testimony indicates that by Duke's own assessment, a 4-year cap on lost revenues for measures installed in 2017-2019 would reduce lost revenue recovery by \$15.5 million. (IG-1 at 20, MPG-E). Duke has not demonstrated that it would lose a reasonable opportunity to earn its current authorized return by foregoing collection of that \$15.5 million.

Fourth, as described above, we have significant concerns with Duke's EM&V process and procedures. EM&V is a process of estimation, and we agree with Mr. Gorman's testimony that as time passes and other variables and factors come into play, the overall accuracy of the EM&V outputs becomes less certain. Duke's process of subjecting programs to EM&V on different schedules, and "re-reconciling" estimated savings as many as 5 years in the past following EM&V reports, calls into question the reasonableness of relying on that EM&V over time.

Finally, as we have in the past, we cannot ignore the effect caused by the "pancaking" of lost revenues. As illustrated by IG-CX-1, between 2012 and 2023, just for measures installed between 2012 and 2019, Duke estimates total collection of lost revenues of over \$210 million. The true figure to be collected through 2023 is, in fact, unknown because there is no evidence in the record as to forecasted lost revenues associated with measures installed beginning in 2020.

Regardless, the pancaking effect is clearly seen as each year new lost revenues are added as an increment to the lost revenues associated with prior year measures. Thus, in 2012 the Company collected about \$2.28 million in lost revenues, whereas by 2019 the Company forecasts collecting about \$25.3 million in total lost revenues. More than half of that amount, \$14.13 million, is tied to lost revenues for measures installed prior to 2017. IG CX-1.

Ultimately, as conceded by Ms. Dean on behalf of Duke, the Commission must take into account whether the resulting rate as a whole is just and reasonable when approving recovery of a

cost through a tracking mechanism such as the DSMA Rider. Here, we cannot reach that conclusion if we accept Duke's request to approve cost recovery for life of the measure in the absence of some cap on the recovery of lost revenues.

[AT THIS POINT, THE OUCC AND INDUSTRIAL GROUP JOINTLY OFFER TWO ALTERNATIVE ANALYSES TO ADDRESS LOST REVENUES]

ALTERNATIVE A

At a minimum, the request for life of the measure recovery associated with measures installed during the 2017-2019 Plan would stretch through 2023 and can reasonably project it will add significantly to the total DSMA charge as Duke recovers lost revenues associated with measures installed in 2020 and beyond. We must reasonably balance both utility and ratepayer interests. We find merit in the OUCC's UCT Net Benefit proposal as a reasonable method to achieve that balance. In Duke's last DSM proceeding, we found the OUCC's recommendation to consider the RIM test as a reasonable cost/benefit analysis was misplaced. Now, the OUCC has accepted Duke's preferred DSM Plan cost benefit analysis, the UCT, and Duke's calculation of the resulting net benefit as measured by that test. Rutter Direct at 5 and CONFIDENTIAL Attachment OUCC 1.1-A. Rather than debate the proper model inputs, the mechanics of the computations or the most appropriate way to classify costs or benefits, the OUCC's proposal puts forth a single, simple question: Based on who actually pays the DSM program costs that produce the avoided revenue requirements benefit, lost revenues and shareholder incentives, how should that benefit be reasonably allocated between ratepayers and Duke.

The UCT test produces two metrics: a benefit-cost ratio and a net present value. When a utility employs a DSM program, it avoids a supply-side option. As a result, the utility is either not burning fuel or deferring investment in capital infrastructure. The present value of the combined benefits of those two, over the life of the DSM measures is first component of the UCT test. The second component combines all program costs, incentives, and all the costs associated with running a DSM program, regardless of who pays them. The difference that results from subtracting the benefits (value of the program, incentives, administrative costs, EM&V, etc.) from the costs is the net present value of the UCT. Said another way, the difference is the reduction in the revenue requirement.

Ms. Dean was unequivocal that ratepayers pay the entire cost of Duke's program costs in the same year the measures are being installed and that the Company was unlikely to rely on any other funds to support its DSM programs. Yet, despite ratepayers paying 100% of the DSM Plan costs to produce the benefit, the OUCC proposes a 50-50 split, where Duke's recovery of combined direct program costs, lost revenues and shareholder incentives be capped at 50% of the UCT Net Benefit. Left uncapped, a utility's combined program cost / lost revenue / incentives request could consume the entire benefit depriving ratepayers of any benefit and instead making DSM more costly than an alternate fuel source. Mr. Rutter demonstrated that Duke's requested \$197M

combined request substantially exceeds the 50% threshold, and thus unreasonably deprives ratepayers of a large part of the very benefit they are paying for in its entirety.

From a purely economic perspective, an argument can be made that it is not unreasonable to collect lost revenues over the operational life of the DSM measure. Thus, any cap based on factors other than a purely economic rationale includes some additional subjectivity. As regulators we must consider numerous other factors; Section 10(j) makes that plain and the Court of Appeals opinion in Vectren South affirms that discretion. Mr. Rutter's UCT Net Benefit analysis, capping the utility's combined program cost / lost revenue / incentive recovery at 50% of the UCT Net Benefit, from both an economic and regulatory perspective, provides a reasonable alternative to a year-based cap.

We disagree with Duke's contention that Mr. Rutter's analysis is flawed because he does not provide documentation or cite examples of where this standard has been applied. Ind. Code 8-1-8.5-10(o)(2) states that the Commission shall determine "reasonable" lost revenues (and financial incentives). Over the last several decades, we have repeatedly found an equal split of a disputed cost to result in an equitable and reasonable result. In this instance, where Duke and its shareholders bear none of the costs, insuring ratepayers receive at least one-half of the benefit they alone fund is inherently reasonable. Likewise we reject Duke's contention that lost revenues be removed from Mr. Rutter's calculation. It is true that lost revenues are not a component of the UCT benefit cost test, nor should they be as that test measures utility costs. The OUCC's analysis is not a benefit cost test and Mr. Rutter does not hold it out as such. Rather it is a public policy weighing of the appropriate sharing of benefits. As such, we find it to be a valuable tool in our assessment of the overall reasonableness of Duke's proposed DSM Plan as required by Ind. Code 8-1-8.5-10(j), and specifically find it to be "other information the commission considers necessary" as described in Section 10(j)(10).

We find Duke's proposed combined program cost / lost revenue / financial incentive request to be unreasonable. As such, we must also find Duke's DSM Plan is not reasonable in its entirety pursuant to Ind. Code 8-1-8.5-10(m). We suggest Duke consider and address the issues discussed above in its modified DSM Plan.

[END ALTERNATIVE A]

ALTERNATIVE B

At a minimum, the request for life of the measure recovery associated with measures installed during the 2017-2019 Plan would stretch through 2023 and can be reasonably projected to add significantly to the total DSMA charge as Duke recovers lost revenues associated with measures installed in 2020 and beyond. As we have in the past, for other utilities, we deem it much more reasonable to provide some balance between the interests of the utility and its ratepayers through the imposition of a cap on the recovery of lost revenues. We continue to believe that a 4-year cap reasonably provides that balance, and further, provides some measure of

assurance that EM&V results are not so far removed the installation of the measure as to lack significant reliability.

This is particularly true in a situation, as is the case with Duke, while the utility has an ongoing TDSIC 7-Year Plan. Under the TDSIC statute, a utility must file for a new base rate case within 7 years of the TDSIC Plan's approval. A four-year cap on lost revenue recovery allows a utility with a TDSIC Plan to recover most lost revenues. Indeed, only the lost revenues tied to measures installed in the earliest years of the TDSIC Plan will "drop off" before new rates are implemented.

We believe this 4-year cap reasonably balances the interests of the utility and the ratepayer by minimizing any harm to the utility while protecting ratepayers by addressing our concerns expressed above with the accuracy of EM&V over time, staleness of rates and pancaking.

[END ALTERNATIVE B]

[FROM THIS POINT FORWARD, ALL PROPOSED LANGUAGE FROM THE OUCC AND INDUSTRIAL GROUP IS INTENDED TO APPLY TO EITHER ALTERNATIVE]

[NUCOR CORPORATION JOINS IN THE PROPOSED ORDER ONLY FOR THE FOLLOWING DISCUSSION OF LEGACY / PERSISTING LOST REVENUES]

Legacy / Persisting Lost Revenues

We also must address the continued recovery of legacy lost revenues. We first pause to confront several arguments that Duke has raised in opposition to any review of its recovery of legacy lost revenues. First, as noted above, although that recovery has been previously approved, Commission orders remain subject to our statutory authority to "rescind, alter, or amend" them. Here, we are presented with new evidence about the scale of lost revenue recovery and new evidence as to the likely timing of Duke's next rate case, evidence that was not previously available when we approved the settlements.

Second, contrary to Duke's position, those orders are a subject of this proceeding. Mr. Goldenberg expressly stated that the revenue requirement in this proceeding is based, in part, on the recovery of legacy lost revenues. Further, as Ms. Dean acknowledged, we are under an obligation to consider the rate as a whole when approving cost recovery. We cannot do that if we ignore the issue of legacy lost revenues.

Finally, Duke has argued that such modifications would amount to retroactive ratemaking. This is not accurate. Retroactive ratemaking involves the establishment of "future rates that allow a utility to recoup past losses, or to refund to customers excess utility profits." *See, e.g., State v. Public Utility Commission*, 883 S.W.2d 190, 199 (Texas 1994). Here we are doing neither. Instead, we are considering whether future rates will be just and reasonable if they continue to

embed recovery of legacy lost revenues. We are not ordering a refund of excess profits, nor allowing the utility to recoup past losses. Instead, we are setting prospective rates at a just and reasonable level.

Turning to the question of the continued recovery of legacy lost revenues, we have seen that exclusive of any lost revenue recovery associated with measures installed after 2019, the cost to ratepayers for all lost revenue recovery starting in 2012 through 2023 is over \$210 million dollars. Duke is correct that we have previously approved recovery of lost revenues for life of the measure in Cause Nos. 43955 DSM-1 and DSM-2. We note, however, those decisions involved the approval of settlements which are always subject to review to ensure they remain just reasonable and in the public interest; and further note that under Indiana Code 8-1-2-72 we have the statutory authority to “rescind, alter, or amend” any prior order.

During the hearing Ms. Dean agreed that one purpose of lost revenue recovery is to serve as a short-term bridge between rate cases. For Duke, the bridge is now extended beyond the point of reasonableness. All of the issues we have addressed above as they relate to Duke’s request for recovery of lost revenues associated with measures installed in 2017-2019 apply to Duke’s request to continue recovering lost revenues for measures installed in prior years. We therefore find, that request is unreasonable, and, with the exception of lost revenues for 2016 which are already capped, believe the imposition of a 4 year cap on the recovery of previously approved lost revenues is appropriate.

Shareholder / Financial Incentives

Duke argues it is entitled to a reasonable financial incentive under Ind. Code § 8-1-8.5-10(o). Duke’s proposal is “a cost-plus tiered incentive structure based on energy savings achievements for the portfolio for each program year.” (Duke uses the term “portfolio” to refer to the entirety of the programs included within the 2017-2019 DSM Plan.) The general structure is not unlike others we have previously approved. Specifically, Duke proposes to calculate the incentive as a percentage of costs incurred for incentive-eligible programs using the total energy savings achievement level for the portfolio of eligible programs. Duke seeks an incentive equivalent to a pre-tax return of 8.5% on the total program costs, or about \$9.3M upon achieving 80% of its total targeted savings, 9.5% (\$10.4M) after achieving 90% of the total target, 10.5% (\$10.9M) at the 100% achievement level and 11% (just over \$12M) at the 110% achievement level. Duke claims these incentives are necessary to put “investments in energy efficiency on a level playing field with traditional supply-side resources,” to allow Duke to earn the equivalent of the “return on the capital it invests in supply side assets,” and the only way to “truly eliminate the economic preference” of supply side investments.

During the time of the statewide Energizing Indiana program, utilities were required to meet IURC-mandated energy savings goals, savings levels the utilities argued were too burdensome. To that end, it was reasonable to approve higher incentive levels. When the legislature ended the statewide plan and allowed utilities to set their own savings targets, we saw

annual savings targets drop by 50%, but utility incentive requests remained high. Ind. Code § 8-1-8.5-10 now governs our consideration of DSM plans with new requirements and new processes. No party contested Duke's assertion, and we agree that Ind. Code § 8-1-8.5-10(o) states that if Duke's DSM Plan is found to be reasonable under Section 10(h), the Commission shall allow the recovery of reasonable financial incentives. The threshold question remains: what is a "reasonable" incentive in today's DSM world?

We begin with the most basic question: is it reasonable to continue to permit utilities to calculate their incentive at the total Plan level rather than for each individual program? We conclude that it is not. Ind. Code § 8-1-8.5-10(l) makes plain that as part of our overall reasonableness determination, we must also analyze whether each program's benefits outweigh that program's costs. If any program's costs outweigh the benefits, we may exclude that specific program from the Plan. To be eligible to earn a reasonable incentive, each program must be cost effective in its own right. Likewise, while it would be reasonable to allow Duke to earn an incentive for its residential lighting program that has wildly exceeded its savings target, it is unreasonable to reward Duke with an incentive for an underperforming commercial equipment replacement program. The programs serve different classes of customers, measure savings differently (kWh vs. kW), are managed separately. There is no logical or economic nexus between them. While underperformance for a particular program could be the result of any number of factors, one of those may well be poor management, and there are no circumstances justifying a greater incentive if that were ever to be the case.

Next we must address Duke's proposal to earn incentives for programs that achieve less than 100% of their targeted kWh savings. Ind. Code § 8-1-8.5 now requires DSM plans to be consistent with the Utility's IRP. Each utility develops its own IRP that plays a direct role in whether or not DSM is selected by the IRP process. Duke's IRP modeling process selected a level of DSM it determined was reasonable and Duke's DSM Plan must reflect that selection. It is simply unreasonable to reward Duke with an incentive for achieving less energy savings than their own modeling process determined to be reasonable. This is particularly true in any case where the collection of modeled DSM programs selected varies from the DSM programs included within the Plan. We conclude that a reasonable financial incentive for Duke should be calculated only for programs that achieve at least 100% of their targeted kWh savings.

Along with the methodological process, the amount of any financial incentive must also be analyzed for its reasonableness. As we set forth below, we conclude that Duke's proposed incentive rates are also unreasonable.

This Commission has issued several orders that discussed an economic bias against DSM and the importance of "leveling the playing field." Simply put, those days are gone. DSM is now a highly profitable enterprise, embraced by residential, commercial and industrial customers, service providers, utilities, regulators and governments. Its pervasiveness alone speaks volumes to

the changed landscape. Utilities no longer require an incentive to offer DSM; their customers, the public interest and Indiana Code 8-1-8.5 with its IRP consistency requirement, demand it.

As we discussed above, the OUCC has accepted Duke's preferred cost benefit analysis, the UCT. Using Duke's data, Duke's DSM Plan would likely produce hundreds of millions of dollars in avoided revenue requirements. Those efficiencies, coupled with guaranteed cost recovery and reasonable lost revenues combine to eliminate the need for incentives at levels we have approved prior to the implementation of Indiana Code 8-1-8.5-10.

Duke's incentive proposal is not intended put the company in substantially the same place it would be if it had invested in supply side options, but rather it would unreasonably put Duke in a far superior financial position while simultaneously essentially eliminating economic risk. A substantial supply side investment typically requires either new debt or equity, which Duke would need to acquire in the market, competing against others. Traditionally, recovery of this investment would not begin until the plant was found to be "used and useful" and included in rates through a rate case. Given the lengthy lives of most supply-side generation options, this investment would be recovered over years, and more likely decades. This places investor capital at risk, and warrants a commensurate "return on" the investment.

For its 2017-2019 DSM Plan, Duke confirmed under cross-examination that it will issue neither debt nor equity. It will not need to negotiate favorable interest rates or lure equity capital with an 8-, 9- or 10% return on equity. Duke's "investment" in DSM will be \$0; ratepayers will pay 100% of all direct and indirect program operating costs, including administrative costs, customer incentives, program EM&V costs, lost revenues and incentives. Duke's DSM tracker is designed to recover its "return of" 100% of the annual program operating costs and lost revenues in one year, not decades. Any under collection is immediately reconciled the following year. With Duke's involvement in the IRP process and inputs, the bundles of DSM available for the IRP model to select, the IRP model selecting "reasonable" levels of DSM and Duke selecting the mix of programs and measures to best hit that target, Duke's performance incentives, or "return on" are not only virtually guaranteed, they are 100% risk free.

Given the utility's involvement in the IRP process, the IRP selection of reasonably achievable savings, the utility's control over the selection and mix of measures to achieve the savings, and the fact that Duke invests no funds while ratepayers of 100% of program costs, it is no longer reasonable to award cost-of-equity-level financial incentives for DSM programs. Incentives set at Duke's weighted average cost of capital would still be unreasonably excessive given Duke's level of financial risk. The most reasonably comparable, fully transparent return is likely the 30-Year U.S. T-Bill rate.

DSM incentives should help put the utility in a comparable position to a supply-side investment, after weighing all factors. We find that Duke's proposed incentive structure would provide an unreasonable incentive and reject that proposal. Given that the DSM statute requires a

reasonable incentive be authorized for a reasonable DSM Plan, Duke should consider revising its incentive structure in such a fashion that it addresses the concerns discussed above.

ix. Utility's IRP. [THE OUCC AND INDUSTRIAL GROUP OFFER NO FINDINGS ON THIS ISSUE.]

As set forth above, we have found several elements of Duke's proposed DSM plan to be unreasonable. We specifically find, that our Section 10(j) "overall reasonableness" analysis leads us to conclude that Duke's Plan is not reasonable in its entirety. Based on this finding and the language of Section 10(m), Duke shall submit a modified plan within a reasonable time.

[THE OUCC AND INDUSTRIAL GROUP DO NOT BELIEVE IT IS NECESSARY TO INCLUDE DISCUSSION AND FINDINGS AS PROPOSED BY DUKE IN SECTIONS 6C, 6D OR 6E OF DUKE'S PROPOSED ORDER AS THE EVIDENCE EVALUATED UNDER INDIANA CODE SECTION 10(J) LEADS TO THE CONCLUSION THE PLAN IS UNREASONABLE. THIS REQUIRES THAT DUKE MUST MODIFY ITS PLAN AND RESUBMIT IT TO THE COMMISSION PURSUANT TO SECTION 10(M). TO THE EXTENT THAT THE COMMISSION REACHES A CONTRARY CONCLUSION, AND DEEMS DUKE'S PLAN "REASONABLE IN ITS ENTIRETY", THE OUCC AND INDUSTRIAL GROUP WOULD STILL REQUEST THAT THE COMMISSION REJECT DUKE'S PROPOSAL TO MODIFY THE AUTHORITY OF ITS OSB IN ORDER TO PERMIT THE INTRODUCTION OF NEW, ENTIRELY UNKNOWN, PROGRAMS.

AS DISCUSSED ABOVE IN THE OUCC AND INDUSTRIAL GROUP'S PROPOSED ORDER, THERE IS NO EVIDENTIARY BASIS IN THE RECORD TO SUPPORT THE APPROVAL OF THAT REQUEST; AND THAT REQUEST IS CONTRARY TO LAW. DUKE'S SOLE RESPONSE TO THAT CONTENTION, THAT OTHER UTILITIES HAVE THE AUTHORITY IS UNAVAILING. THAT IS NOT THE QUESTION. THE QUESTION IS WHETHER DUKE HAS PROVIDED AN EVIDENTIARY BASIS TO CONCLUDE THAT SUCH FLEXIBILITY IS PERMITTED UNDER SECTION 10, AND THAT IT IS REASONABLE TO INCLUDING SUCH FLEXIBILITY. DUKE HAS FAILED TO MEET THAT BURDEN AS THE RECORD IS DEVOID OF ANY EVIDENCE WHICH WOULD PERMIT THE COMMISSION EVALUATE THE REASONABLENESS OF ENTIRELY UNKNOWN PROGRAMS EITHER INDIVIDUALLY OR AS PART OF THE PLAN.

THUS, AGAIN, THE OUCC AND INDUSTRIAL GROUP RESPECTFULLY REQUESTS THAT THE COMMISSION DENY THAT PORTION OF DUKE'S REQUEST.]

7. Confidential Information Petitioner filed a Motion for Protection of Confidential and Proprietary Information, which was supported by Affidavits, showing Exhibits and Workpapers filed in this proceeding were trade secret information within the scope of Ind. Code § 5-14-3-4(a)(4) and Ind. Code § 24-2-3-2. The Presiding Officers made rulings from the bench finding such information confidential on a preliminary basis after which such information was

entered into evidence under seal. Accordingly, we find that all such information should continue to be held confidential pursuant to Ind. Code § 5-14-3-4(a)(4) and Ind. Code § 24-2-3-2.

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

1. For the reasons set forth above, Duke Energy Indiana's 2017-2019 Plan is not reasonable in its entirety, and is denied pursuant to I.C. 8-1-8.5-10 (m).
2. Duke Energy Indiana is ordered, pursuant to I.C. 8-1-8.5-10 (m), to submit a modified plan with a reasonable time.
3. Duke Energy Indiana's request for continued authority to use deferred accounting on an ongoing basis until such costs are reflected in retail rates through its Rider EE is denied pending approval of a modified DSM Plan.
4. Petitioner's reconciliation of the costs incurred, including lost revenues, for programs for 2015, with amounts actually collected from customers from Rider EE billings is hereby approved to the extent they are not modified by this order.
5. Petitioner's updated reconciliation of lost revenues for 2012, 2013 and 2014 is hereby approved to the extent they are not modified by this order.
6. The remainder of Petitioner's requested relief is denied.
7. This Order shall be effective on and after the date of its approval.

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

APPROVED:

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

Shala M. Coe
Acting Secretary to the Commission

CERTIFICATE OF SERVICE

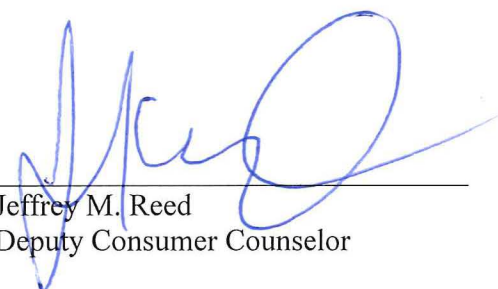
This is to certify that a copy of the foregoing *Joint Proposed Order Clean Version* has been served upon the following counsel of record in the captioned proceeding by electronic service on September 25, 2017.

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