

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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

PROPOSED ORDER

Presiding Officers:

David Ober, Commissioner

Brad Pope, Administrative Law Judge

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

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

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

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

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

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

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

Mr. Ritch testified that this proposed tariff was developed as part of the 2016 Edwardsport Settlement Agreement collaborative. He explained that the Settling Parties to that agreement were involved in discussions and changes to the proposal were made based on feedback from them.

As part of this proposal, Mr. Ritch explained that the Company agreed that participants in Rider 26 would be eligible for net metering, and that solar facilities installed under this program will be in addition to and will not count against the system net metering cap in the Company's Standard Contract Rider No. 57 - Net Metering ("Rider 57"). Participation in this program would initially be limited to a total of 12 MWs, and for the first five years of the program, the Company agreed not to use an affiliate to construct the facilities.

Mr. Ritch testified that qualifying customers who purchase land or buildings from existing tariff participants can participate in the program subject to the terms and conditions of each customer's specific Solar Energy Service Agreement ("Service Agreement"), which was provided as an exhibit to Mr. Ritch's testimony, and that each facility must be limited to the sizing requirements of Rider 57.

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

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

Next, Mr. Ritch described the proposed accounting and ratemaking treatment for the proposal. He explained that the Company is proposing that all costs and revenues associated with this tariff be treated below-the-line, which segregates the financial activities for this Rider 26 from the Company's jurisdictional business. This treatment will ensure that non-participating customers will not subsidize participating customers and that all costs of the program¹ will be covered with revenues from voluntarily participating customers.

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

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

5. OUCC and Intervenor Testimony. Lauren Aguilar presented testimony on behalf of the OUCC recommending that Petitioner's request be denied. Ms. Aguilar explained the flexibility of an ARP and that this information cannot be ascertained from Petitioner's case-

¹ Marketing, etc.

in-chief and therefore, the OUCC is unable to determine whether the public interest will be served. She stated that it was unclear on which regulations Petitioner is asking the Commission to decline to exercise jurisdiction over, and that Duke Energy Indiana has not supplied evidence to know whether the participants are paying too much or too little for this service which results in an unregulated monopoly because other entities are unable to provide the service Duke Energy Indiana is proposing. Therefore, the OUCC is unable to determine whether customers or participants are negatively affected.

Ms. Aguilar explained that Petitioner's request does not discuss whether any or all commercial solar services program participants will be compensated for renewable energy generation under a net metering arrangement and that the Company did not seek a waiver of the Commission's net metering rule.

Next, Ms. Aguilar described the Company's tariff², statutes³, and Commission rules⁴ regarding net metering. Ms. Aguilar testified that public interest does not require net metering to be made available to customers planning to participate in the proposed Rider 26 and that Indiana Code 8-1-40 prohibits utilities from changing their net metering tariffs. Although Petitioner does not propose changing its existing net metering tariff, Ms. Aguilar stated that Mr. Ritch testified that customers participating in the proposed solar program will be eligible for net metering, which contradicts the requirement in Rider 57 that participants conform to the requirements of Indiana Code 8-1-40. She expressed that, as proposed, the solar services customers would neither own nor operate renewable generation facilities which contradicts applicable statutes and Commission rules and that any deviation from that requirement would constitute a change in net metering provisions which are prohibited.

Ms. Aguilar next testified regarding the ARP statute and that the proposed solar services program does not meet the public interest requirements and approval would give Petitioner an unfair competitive advantage over other renewable energy providers by creating an unregulated monopoly that would exist outside of the statutory limits on competitive renewable energy providers. As proposed, Ms. Aguilar asserted, Duke Energy Indiana would be the only solar services provider with no regulatory oversight by the Commission or any other state or local government authority. Continuing, Ms. Aguilar testified that the proposed program does not meet the public interest requirements as the program is designed to serve a small portion of Duke Energy Indiana's customer base and customers not participating in the solar services program may be called upon to cross-subsidize Petitioner's net metered customers not participating in the program. She stated that the tariff and Service Agreement are unclear on who owns the Solar Renewable Energy Certificates ("SRECs" or "RECs") associated with the planned renewable energy generation and whether any customers will benefit from the future sale or retirement of SRECs. She also expressed that customer demand for the program wasn't shown.

² Duke Energy Indiana's Rider 57 states "[n]et Metering is available to customers ... and will conform to the provisions of Ind. Code 8-1-40."

³ Ind. Code ch. 8-1-40 governs distributed generation, which includes net metering. Ind. Code § 8-1-40-2 states the Commission's rules for net metering in 170 IAC 4-4.2 apply to "net metering under an electricity supplier's net metering tariff..."

⁴ 170 IAC 4-4.2 defines a net metering customer as "a customer in good standing that owns and operates an eligible net metering energy resource facility..."

In conclusion, Ms. Aguilar explained that the OUCC does not recommend approval of the proposed program because the Company failed to meet its burden of proof by not providing sufficient evidence; Petitioner's request is vague, confusing, and doesn't explain the impact of the ARP relief requested; and that the ARP statute's public interest requirement isn't met. The OUCC recommended that if the Commission decides to approve the ARP, it should correct the above-mentioned deficiencies.

John E. Haselden also presented testimony on behalf of the OUCC. He testified that he does not doubt that there are non-residential customers in Duke Energy Indiana's service territory that are interested in acquiring renewable energy, but that the proposed solar services program will not satisfy customers' desire for renewable energy because the Company intends to retain any related RECs, unless otherwise negotiated.

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

Mr. Haselden testified regarding several aspects of the proposed solar program that could trigger complaints of unfair competition. Individual Service Agreements would not have to be filed with or submitted to the Commission under the proposed ARP even though pricing and other terms could vary between similar customers.

Mr. Haselden explained that the Company is proposing that participating facilities in Rider 26 will be required to comply with the requirement of Rider 57. However, he complains that Rider 26 or the Service Agreement do not explicitly state that all program participants are eligible to participate in Rider 57. Mr. Haselden stated that the Company did not request an exception from Indiana Code § 8-1-40-3 as part of its ARP.

Next, Mr. Haselden testified that Petitioner is proposing to add 12 MW of nameplate capacity to the amount eligible to participate in Rider 26. He opined that rather than establishing a separate pool of net metering capacity for dedicated uses, Petitioner could increase the net metering cap of 1.5% of its most recent summer peak load. He pointed out that the proposed tariff does not mention the 12 MW limit nor is Duke Energy Indiana proposing to change Rider 77 to accommodate the additional 12 MW.

In contradiction to Mr. Ritch's testimony, Mr. Haselden felt that other customers would be subsidizing the net metering service. He explained that if participating customers put power onto Petitioner's distribution system and reduce the kWh they purchased, other non-participating customers would subsidize this service by paying a greater share of costs the Company recovers through its riders and non-volumetric portion of costs recovered per kWh in base rates.

Mr. Haselden continued, asserting that Rider 26 does not serve the public interest as proposed. Non-participating customers will be subject to higher rates through subsidization of solar services program participants. A few participating customers could benefit if they receive

any economic benefit, but the primary beneficiary will be Petitioner. Shielded from competition from other leasing companies, Mr. Haselden argued, Duke Energy Indiana can charge whatever the closed market it creates for this service will bear. He maintained that Petitioner's proposal creates an unregulated monopoly in solar leasing.

Concluding his testimony, Mr. Haselden stated that the OUCC recommends that the Commission deny Duke Energy Indiana's request for approval of an ARP as currently proposed. He testified that this proceeding would not be necessary if the Company compensated participants via the provisions of Rider 50 – Parallel Operation for Qualifying Facility, or up to a stated percentage of Petitioner's generation portfolio. He opined that should the Commission approve Rider 26 and decline jurisdiction; the Commission should make the following changes:

1. Limit the nameplate capacity of a leased system to minimize the revenue requirement impact on non-participating customers resulting from the net metering subsidy;
2. Make a finding whether participants under Rider 26 are eligible to participate in net metering and, if yes, require Petitioner to affirmatively state in Rider 26 and in the Solar Energy Service Agreement that participants qualify for net metering while such offerings are still available under Indiana Code 8-1-40;
3. State the 12 MW participation limit in proposed Rider No. 26;
4. Limit Duke Energy Indiana's proposed ARP to a four-year trial period, to terminate automatically four years after its approval, absent Duke Energy Indiana and OUCC agreement to extend the program, subject to Commission approval;
5. At the end of the second program year, permit Duke Energy Indiana, the OUCC or other interested persons to file a request in this docket asking the Commission to approve requested changes to the existing ARP, in addition to the Commission's right to modify or terminate the Solar Services Program ARP on its own, after notice and hearing without changing any existing contractual rights and obligations under leasing agreements already entered into by Duke Energy Indiana and any eligible customers;
6. Require Duke Energy Indiana to file annual reports regarding relevant Solar Services Program information, including the following:
 - a. Current number of Solar Services Program customers and the number of new Solar Services Program customers added during the last 12 months;
 - b. The effective date and term (number of years) of each of the Solar Services Program Agreements;
 - c. The tariff or type of service arrangement (Rate CS, Rate LLF, Rate HLF, or Rate WP) under which each Solar Services Program customer is served; and
 - d. A detailed statement of revenue, expenses and net operating 2 income (or loss) of the Solar Services Program covering the 3 last twelve months and confirmation that all related 4 revenues, expenses, assets and liabilities are being tracked 5 for below the line regulatory treatment.

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

Mr. Lantrip explained the Company's proposal to use existing personnel to administer and coordinate its solar services program. He explained that, without further detail, he has concerns on how the Company will be able to segregate labor costs and the potential for program subsidization. Mr. Lantrip testified that in response to discovery, the Company explained that employees time on program-related work would be accounted for separately, which would accurately account for the time spent on each activity and protect against excessive billing.

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

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

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

Mr. Tillman recommended that the proposed tariff language, along with the Solar Energy Service Agreement, be modified to indicate that the RECs are transferred to the customer, or alternatively, that the Company be required to retire the RECs on the customer's behalf. He opined that without these changes, customers would be not able to claim that the energy

purchased and consumed through the program is renewable energy, and that Walmart is unlikely to participate.

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

Mr. Tillman concluded his testimony by testifying that Walmart is in agreement that Petitioner's proposal is a competitive service offering and that in order to maintain a competitive environment, the Commission should establish that Indiana energy customers have a right to choose an alternative supplier for behind-the-meter, solar leasing services financed through a lease agreement with a performance guarantee.

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

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

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

6. Rebuttal Testimony. Mr. Ritch provided rebuttal testimony responding to the testimonies of the OUCC, CAC, and Walmart. Mr. Ritch initially provided his reaction to the OUCC's opposition to this proposed program. He explained that the Company's proposal in this

proceeding was made only after a two-year collaborative process, as part of the 2016 Edwardsport Settlement Agreement, in which the OUCC participated, and after multiple meetings with active solar developers in Indiana. Mr. Ritch discussed that Petitioner worked with the OUCC after its filing to clarify its proposal and revise its tariff and Service Agreement to address any concerns. He testified that solar developers in Indiana were excited about partnering with Petitioner and did not view the proposed tariff as an “unregulated monopoly” or “unfair competition” as alleged by the OUCC. Mr. Ritch reiterated that this voluntary program is an option for Duke Energy Indiana customers to use for financing constructing, operating and maintaining a solar energy facility on their premises, receiving the benefits of renewable energy without the financial risk associated with facility performance and maintenance. Mr. Ritch opined that the OUCC opposing a completely voluntary program designed to modestly expand distributed solar generation in the state that minimally, if at all, impacts the Company’s non-participating customers was inexplicable.

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

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

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

Continuing his testimony, Mr. Ritch explained in response to the OUCC’s testimony, the Company also modified its tariff to state that participation will be limited to 10 MW capacity and that participants may also participate in the Company’s net metering tariff.

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

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

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

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

oversight in all other manners and forms. The proposed reporting requirements and limited initial term of this pilot offering also ensure continued Commission oversight and jurisdiction.

Continuing his rebuttal testimony, Mr. Ritch next addressed that the proposed tariff is not an unfair means of competing with other solar developers in the state. He explained that the proposal increases competition, which provides direct benefits to both solar developers and customers. Restating his direct testimony, he explained that the Company has met with numerous solar developers and they do not view this offering as unfair competition, but welcome the possibility of partnering with a public utility to expand solar in Indiana and represents an additional tool for them to use when promoting sales to customers. Duke Energy Indiana provided two letters of support from Indiana solar developers welcoming the Company's involvement, and showing their interest in partnering with the Company under this program.

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

Mr. Ritch explained that any participating customer in this pilot will be eligible for net metering⁵ as explained in the proposed rider and will not receive any increased economic benefit over other net metering customers that do not participate in this program.

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

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

⁵ As governed by Indiana Code 8-1-40.

7. Commission Discussion and Findings. Duke Energy Indiana has proposed this voluntary tariff to provide its customers with an additional choice in how they construct, operate, maintain and finance onsite solar energy projects. The Company has proposed a limited size and term of this program and ongoing reporting to this Commission. Duke Energy Indiana has requested that the Commission approve this pilot program as an ARP under the Alternative Utility Regulation provisions of Indiana law because the Company desires to: 1) construct solar facilities for participating customers without needing to return to the Commission for approval of each specific project under Indiana Code 8-1-8.5,⁶ and 2) charge rates to customers who opt into this voluntary service that will be based on the market prices available for the solar facility each participating customer selects to match their individual needs. This requires the Commission to assess the Company's proposal under the provisions of Indiana Code 8-1-2.5.

We first note that Indiana Code § 8-1-2.5-1 states that “an environment in which Indiana consumers will have available state-of-the-art energy services at economical and reasonable costs will be furthered by flexibility in the regulation of energy services” and that “flexibility in the regulation of energy services providers is essential to the well-being of the state, its economy, and its citizens.” Further, “the public interest requires the commission . . . to flexibly regulate and control the provision of energy services to the public . . . giving due regard to the interests of consumers . . .” Ind. Code § 8-1-2.5-1(6). Keeping that in mind, we turn to the specific requests from Duke Energy Indiana in this proceeding.

First, the Company has sought a declination of our jurisdiction for the limited purpose of allowing Duke Energy Indiana to construct solar facilities, equaling no more than 10 MW in the aggregate, or over five years, whichever is soonest, without needing separate Commission approvals for each facility under Indiana Code § 8-1-8.5-7(4). Indiana Code § 8-1-2.5-5(a) provides that we may decline to exercise, in whole or in part, our jurisdiction over either the energy utility, the retail energy service of the energy utility, or both. As stated above, Duke Energy Indiana is not asking us to decline to exercise our jurisdiction in whole over it (as an energy utility) or its proposed tariff (the retail energy service of the energy utility). Therefore, in determining whether the public interest will be served by this limited declination of jurisdiction, Indiana Code § 8-1-2.5-5(b) requires we consider the following:

- (1) Whether technological or operating conditions, competitive forces, or the extent of regulation by other state or federal regulatory bodies render traditional regulation unnecessary or wasteful,
- (2) Whether the commission's approval of an alternative regulatory plan will be beneficial for the utility, its customers, or the state,
- (3) Whether the commission's declining to exercise, in whole or in part, its jurisdiction will promote energy utility efficiency, and

⁶ Each clean energy resource constructed by Duke Energy Indiana (as a public utility), while not requiring a Certificate of Public Convenience and Necessity, must still be approved by the Commission under Indiana Code § 8-1-8.5-7(4).

- (4) Whether the exercise of commission jurisdiction inhibits a utility from competing with other providers of functionally similar services or equipment.

In considering the first factor, we bear in mind that participation in the Solar Services Program will be both limited and voluntary. Each interested customer will enter into a customer-specific Service Agreement, which will include the monthly payment that will cover the payment for the construction, operation, maintenance and financing of the solar energy facility over the term of the Agreement. We understand that there are a variety of solar developers already active in Duke Energy Indiana's territory and that those solar developers are eager to partner with Duke Energy Indiana as part of this program. The Company has also made clear that all costs and revenues associated with the Solar Services Program will be booked below the line for regulatory accounting purposes, will have no impact on Petitioner's jurisdictional rate base or revenue requirements, and will not be included in or otherwise considered as part of Integrated Resource Planning. In addition, Duke Energy Indiana has agreed to certain reporting requirements as detailed below. As such and in light of this being an initial pilot offering, we find that assertion of Commission jurisdiction over the proposed Solar Services Program regarding the selection, installation, relocation, transfer, sale, rate or Certificate of Public Convenience and Necessity review and regulation would be wasteful, without benefit and should be declined. The approval of this limited tariff offering, along with the continuation of Commission jurisdiction to review and monitor the operation of this program through the reporting requirements, not to mention the full breadth of Commission authority over a public utility such as Duke Energy Indiana maintains sufficient jurisdiction. We see no need to approve each individual location every time an eligible customer opts into participating in this program.

Regarding the second factor, we find that Duke Energy Indiana has submitted testimony indicating benefits for the Company, its customers and the state of Indiana. More specifically, eligible customers will benefit by having a tailor-made option that will provide an additional means to construct, operate and finance an onsite solar facility. Should eligible customers find the benefits of this proposed program attractive, they may choose – but are under no obligation – to participate. Duke Energy Indiana benefits from this program through continuing to be seen as a valued partner committed to serving its customers. The Company's other customers will largely be unaffected by this program. The Company is accounting for the costs of this program below the line, thus ensuring program costs are borne solely by those opting to participate. The Commission and other interested stakeholders benefit by learning more about the operation of such a program in the state. The Commission also sees a benefit to its involvement in and oversight of this new energy service. We are well aware that distributed solar energy facilities are being constructed across the state outside of our authority and jurisdiction. Increasing our knowledge of consumer wants and needs in this area will benefit the Commission and could help better shape regulations in a future where distributed generation options are expanding. The state of Indiana benefits through the partnerships that will be formed in this industry that will promote the continued expansion of the solar energy industry in the state. In addition, we understand that Duke Energy Indiana intends to engage independent third party solar developers to construct, operate and maintain these facilities for participating customers, thus creating jobs and impacting the local economy. The Commission finds that it has considered this second

factor and that approval of the Company's proposed program will be beneficial to the utility, its customers and the state.

The third factor we must consider is whether our limited declination of jurisdiction will promote energy utility efficiency. We find that it does. As explained above, we see no benefit to requiring specific approvals of the size and location of each participating customer's solar facility. It will be more efficient for Duke Energy Indiana to report back to us on the operations of this program during its initial pilot.

Finally, the fourth factor we must consider is whether exercise of Commission jurisdiction would inhibit Duke Energy Indiana from competing with other providers of functionally similar energy services or equipment. We believe it would. Similar to our consideration of the factors above, it seems to this Commission that requiring Duke Energy Indiana to seek a separate approval (likely taking six or more months) for every participating customer would prevent the Company from operating its proposed program with any success. Both customers and developers would simply opt to finance the construction of the solar facilities through other, already available means rather than wait for necessary regulatory approvals. Developers would not view this another option that could benefit their potential customers but as a hinderance to getting a project underway to meet a customer's needs.

In light of these factors, we find that our limited declination of jurisdiction will serve the public interest and as such, we approve this aspect of the Company's proposed program.

In addition to this declination of jurisdiction, the Company also seeks the ability to charge rates to customers who opt into this voluntary service that will be based on the market prices available for the solar facility each participating customer selects to match their individual needs. In order for Duke Energy Indiana to tailor the rate charged to match each customer project's specification, the Company has requested that we approve its alternative regulatory practice and its ability to establish rates and charges that: (a) are in the public interest as determined by consideration of the factors listed in Indiana Code § 8-1-2.5-5; and (b) enhance or maintain the value of a utility's energy services or properties. Ind. Code § 8-1-2.5-6(a)(1). In addition, Indiana law provides that any alternative regulatory practice approved must be focused on the price, quality, reliability, and efficiency of the service provided by the energy utility. *Id.*

Our approval of the proposed program and more specifically, of the Company's ability to charge rates for this program that are based on market prices available for each specific solar facility constructed turns on our consideration of the same Indiana Code § 8-1-2.5-5 factors considered above. Just as we found when reviewing those factors with regards to our limited declination of jurisdiction over this program offering, we find that the public interest will be served by our approval of this proposal and the Company's ability to charge specific rates that will be tailored to meet the wants and needs of each specific participating customer. As we have noted several times, customers are not required to participate in this program – they must choose to opt into it based upon their own determination of value. This factor, along with the limited size and term of the program, as well as the factors discussed above all contribute to us finding the public interest is served by our approving Duke Energy Indiana's proposal.

Regarding the concerns raised by other parties in this proceeding, specifically the OUCC, we find that Duke Energy Indiana has adequately addressed those issues. The Company has committed to providing the RECs to participating customers – an issue upon which the OUCC and intervenors agreed.

Concerns were also raised about how customers would be billed for this program. We find the Company's proposal reasonable: Duke Energy Indiana shall bill participating customers separately for services received under this program for the near future. When Petitioner's billing system has the capability to consolidate billing for this program along with the customer's retail electric service, Petitioner shall make that option available to participating customers. The Company shall keep this Commission updated on the ability of its billing system in its annual report as noted in Paragraph 8 below.

The proposed reporting requirements, approved in paragraph 8 below, also address the OUCC's concern that nonparticipating customers not subsidize the proposed program.

In addition, in its rebuttal testimony Duke Energy Indiana revised its proposed Rider No. 26 to make clear that participating customers may also participate in its Rider No. 57 (the Company's net metering program). While this change partially addressed an issue raised by the OUCC, it does not resolve the OUCC's complaint that this proposed program allows eligible customers to participate in net metering without owning and operating the solar facilities constructed under this proposed tariff. In response to that concern, the Commission finds that the limited size and term of this proposal, the continued oversight of the Commission, and the fact that Duke Energy Indiana already has flexibility under its net metering tariff (which cannot be changed under Indiana law) to make exceptions on a case by case basis to allow participation leads us to find that this narrow expansion of net metering through a pilot project in the public interest. The subsidization of net metering customers by nonparticipating customers has already been addressed by the Indiana General Assembly and is being phased out over time. We are also not moved to take up the issue of third-party leasing in Indiana as part of our consideration of this program, as was suggested by Walmart and the CAC. Instead, we find it more appropriate to review and oversee this initial pilot offering and the response of the industry and eligible customers to this program. Changes to Indiana law to allow third-party leasing should be debated and decided by the Indiana General Assembly and we decline to invitation to expand this proceeding to make broader policy decisions.

Accordingly, the Commission finds Petitioner's request for the approval of the Solar Services Program ARP, Standard Rider Contract No. 26 should be approved as a pilot program with Petitioner returning to the Commission when it has participating customers with systems equaling 10 MW in the aggregate or five years, whichever happens sooner, with the limited declination of Commission jurisdiction described above.

8. Reporting Requirements. We find that Petitioner shall make annual reports for the term of this program, containing the following information related to this program, on or before the anniversary issuance date of this Order. The annual report shall contain the following information:

- a. Number of participating customers;
- b. Number of new customers since the last submittal;
- c. Effective date of each new service agreement;
- d. Electric Tariff rate each participating customer is served under;
- e. Revenues and expenses to the Company from this program; and
- f. Provide an update on billing system.

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

1. Duke Energy Indiana's requested relief for approval of its Solar Services Program ARP, with declination of Commission jurisdiction as specified herein, is hereby approved.
2. Duke Energy Indiana's Solar Services Program Revised Tariff, Rider No. 26, is hereby approved.
3. Duke Energy Indiana shall file annual reports pursuant to Paragraph 8 of this Order.
4. The Solar Services Program Tariff, Standard Contract Rider No. 26 shall be effective upon filing with and approval by the Commission's Energy Division.
5. This Order shall be effective on and after the date of its approval.

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

APPROVED:

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

**Mary M. Becerra
Secretary to the Commission**