STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

IN THE RULE DEVELOPMENT
PHASE OF RM 15-06

December 17, 2015

OUCC REPLY TO COMMENTS ON IURC STRAWMAN REVISIONS TO ITS INTEGRATED RESOURCE PLAN AND DEMAND-SIDE MANAGEMENT RULES

I. Introduction

The Indiana Office of Utility Consumer Counselor ("OUCC") submits this reply to written comments submitted by other interested parties regarding the Indiana Utility Regulatory Commission's ("Commission") October 22, 2015 Strawman Draft Proposed Rule on integrated resource plans ("IRP") (170 IAC 4-7) and demand-side management ("DSM") (170 IAC 4-8) (the "Strawman Rule"). The OUCC will discuss points raised in or implicated by comments other interested parties submitted in response to the Commission's Strawman Rule.

In addition to comments submitted by the OUCC, the following utilities and other consumer and environmental groups commented on the Commission's Strawman Rule:

Utility Commenters:

- Hoosier Energy Rural Electric Cooperative, Inc. ("Hoosier Energy");
- Indiana Municipal Power Agency ("IMPA"); and
- Duke Energy Indiana, Indiana Michigan Power Company, Indianapolis Power & Light Company, Northern Indiana Public Service Company, and Southern Indiana Gas & Electric Company (collectively referred to as the "Joint Utilities").

Other Commenters:

- Indiana Industrial Energy Consumers ("INDIEC");
- Citizens Action Coalition of Indiana, Indiana Distributed Energy Alliance, the Indiana State Conference of the National Association for the Advancement of Colored People, Sierra Club, and Valley Watch (collectively referred to herein as the "Joint Consumer Commenters");
- Hoosier Environmental Council ("HEC"); and
- Midwest Energy Efficiency Alliance ("MEEA").

II. OUCC Reply to Utilities' Comments

There is a startling difference in the number of additional changes proposed by Hoosier Energy, IMPA, and the Joint Utilities (collectively, the "Utility Commenters") and those requested by other interested parties representing various consumer and environmental interests.

The comments Hoosier Energy and IMPA submitted on November 19, 2015, did not request any substantive changes to the Commission's Strawman Rule. The Joint Utilities' November 19, 2015 Comments proposed relatively few and mainly minor changes to the Strawman Rule, most of which were self-explanatory and non-controversial.[1] Note also that the Joint Utilities' proposed revisions contain a few minor errors that should be corrected, if adopted by the Commission.[2]

[1] See, for example:

- The word "calendar" inserted before "days" on pages 12 and 14;
- More accurate language inserted at the top of page 16 and on page 23, sub-paragraph (7)(B), consistent with discussion at a previous technical conference;
- Missing word inserted on page 20, sub-section (b)(5);
- The word "savings" inserted in sub-parts (p) and (q) on page 27 and sub-parts (aa) and (bb) on page 28; and
- Simple stylistic changes in sub-paragraph (d)(4) on page 21 and in newly re-numbered sub-paragraph (2), near the top of page 25.

[2] For instance, the text added on page 9, though noncontroversial, ends with a short parenthetical phrase that should be removed: "(on page 10 as well)." The immediately preceding phrase inserted on page 9 should be

The OUCC remains concerned over the Joint Utilities' apparent support for the removal of a number of other long-standing consumer protections. See, text deleted on pages 32 through 34 of the Strawman Rule, aimed at preserving consumers' rights to challenge actual dollar amounts claimed as program costs, lost revenue recovery, or shareholder incentives. The deleted text recommended that those elements of recovery remain subject to challenge in other proceedings.[3]

During the Commission's last technical conference on RM 15-06, the Strawman's proposed removal of those consumer protections drew opposition from a number of non-utility participants. All emphasized the continued importance of those protections to all utility customers, regardless of customer class. It is especially disappointing to see that language removed from this Strawman Rule, since the Commission has permitted subsequent challenges when other types of trackers are involved (e.g., GCA and FAC proceedings when later audits reveal inaccuracies that require subsequent revisions and reconciliation). Therefore, the removal of similar consumer protections from RM15-06 is troubling. As at the last technical conference, the OUCC requests that the above safeguards be restored.

The Commission retained several other paragraphs in the Strawman Rule that the OUCC and other consumer advocates had asked the Commission to either clarify or remove those provisions during the last technical conference. For instance, sub-paragraph 6(c) on page 33 addresses approval of alternative rate designs, ostensibly granted without requiring an updated rate case. As written, that provision could open the door to utilities seeking approval of rate

copied and inserted at the end of newly re-numbered sub-paragraph (C), near the top of page 10. Also, the word "risk" is misspelled near the top of page 23.

[3] See original sub-paragraph (5)(c) on page 32; original sub-paragraph (6)(c) on page 33; original sub-paragraph 7(i) on page 34; and original sub-paragraph 9(c) on page 35 of the Strawman Rule.

decoupling outside of a rate case, regardless of whether the utility's current rates are based on stale data.[4]

The Commission has rejected utility requests for decoupling in past electric DSM cases, finding it was necessary for the utility to update its base rates before it would consider approving such requests.[5] However, as utility representatives argued at the last technical conference, the utilities believe that requests for approval of alternative rate structures could be made in future stand-alone DSM proceedings, without updating base rates. The OUCC continues to oppose that language and again asks the Commission to clarify that alternative rate structures cannot be approved until base rates and cost allocations have been updated. The OUCC recommends that, as in prior cases, absent updated base rates, the Commission should deny requests for approval of alternative rate structures raised in DSM proceedings.

The OUCC also remains concerned that the Strawman Rule erases or blurs the statutory distinction drawn in SEA 412's treatment of energy efficiency ("EE") programs, as opposed to demand response ("DR") programs, which are "designed primarily to reduce demand for limited intervals of time, such as during peak electricity usage or emergency conditions."[6] The Strawman Rule uses the term "DSM," which covers both EE and DR programs. Since the application of SEA 412 is expressly limited to EE programs, while specifically excluding programs "designed primarily to reduce demand for limited interval of time, such as during peak electricity usage or emergency conditions"[7] (i.e., DR programs), the cost recovery provisions in SEA 412 should not be applied to DR programs absent other statutory directives. As an entity

[4] See, e.g., December 16, 2009 Order in *So. Ind. Gas and Elec. Co. (IURC Cause No. 43427) at pp. 32-34.*
[5] *Id.*
[6] See, e.g., Ind. Code § 8-1-8.5-9(c)(2), and Ind. Code § 8-1-8.5-10(d)(2).
[7] *Id*.

created by statute, the Commission's regulatory authority is based on and limited by Ind. Code ch. 8-1-1.[8] To the extent the Strawman Rule treats EE and DR programs the same, it does not conform to current Indiana law under SEA 412.

The Commission's handling of benefit-cost tests that are used to establish the cost-effectiveness of DSM programs should also apply the statutory definition of "program costs," which has been a key factor in each of the benefit-cost tests that have been used by this Commission. The Joint Utilities (and various other commenters) have asked the Commission not to apply Indiana's definition of "program costs" when performing benefit-cost studies. The Commission appears to have incorporated that recommendation into the Strawman Rule.[9] Since the statutory definition of "program costs" is specifically contradicted by the language in the Strawman Rule, it is unclear whether the Commission has sufficient flexibility within its delegated authority to allow that language to remain in the proposed Rule.

III. <u>OUCC Reply to INDIEC's Comments</u>

Although brief, INDIEC's Comments raised key issues the OUCC addressed in its November 19, 2015 Comments on the Strawman Rule. First, the Commission should restore "least-cost" and "cost minimization" language the Strawman Rule removes from the original IRP Rule. Those concepts should remain primary factors and goals in identifying and selecting a utility's preferred resource portfolio through the IRP process.[10] Rather than identify the "least-cost" option based solely on price, the preferred portfolio should contain the option ultimately shown to be least-cost, after taking cost, risk and uncertainty into account.

[8] See *Indiana Tel. Corp. v. Public Service Commission of Ind*., (1961) 171 N.E.2d 111, 131 Ind.App.314.
[9] See, e.g., Strawman Rule on pages 5, 22, and 35.
[10] See 170 IAC 4-7-8(b)(2) & (7).

Although "least-cost" and "cost minimization" principles were removed from the IRP Rule, the Commission left the "least-cost" principle in its DSM/EE Rule.[11] Substitute terminology used in the Strawman Rule (e.g., "economical") could be interpreted differently; possibly in a way that would not also require utilities to select least-cost portfolios in future IRPs. A cost-minimization objective offers meaningful consumer protection. Deleting cost-minimization principles from the IRP Rule would diminish the value and purpose of future IRPs. Therefore it should remain in the proposed rule and be emphasized throughout the process. The OUCC therefore urges the Commission to reinsert the terms "least-cost" and "cost minization" in the IRP section of RM 15-06 before finalizing its proposed IRP Strawman Rule.

IV. <u>OUCC Reply to Other Comments</u>

Many of the changes the Joint Consumer Commenters, HEC and MEEA requested in their November 19, 2015 Comments will further consumer interests. They aligned themselves with the Utility Commenters on certain elements of the benefit-cost tests used to establish the projected cost-effectiveness of future EE programs. However, in doing so, they ignore significant new statutory provisions under SEA 412.

Those Joint Consumer Commenters also asked the Commission to adopt a benefit-cost test that has not previously been accepted by the Indiana Commission: the Societal Cost Test. In addition to explicitly referencing that test, the non-utility Commenters also recommended that the Commission consider "non-utility benefits" in future benefit-cost studies. In essence, they invite this Commission to step outside its traditional statutory authority and monetize factors such as greater comfort, bluer skies, and improved respiratory health. Those are factors that this

[11] See 170 IAC 4-8-3(a) and (c).

Commission has not traditionally examined and which the OUCC urges it not to inject into the economic analysis of these proposed EE plans and programs. Nothing in SEA 412 would require a further expansion of the types of factors to be considered in benefit-cost studies. Unlike its treatment of "program costs," SEA 412 does not expand the definition of program benefits or otherwise compel the Commission to consider or give weight to societal benefits when conducting economic analyses of proposed EE programs. Rather than take that approach, the Commission has historically taken a more meaningful approach, exempting EE programs designed to meet low-income consumers' needs from passing traditional benefit-cost tests. That approach is taken only when important public policy interests support the continued offering of such programs. In such cases, the Commission has still required that the entire portfolio of DSM programs remain cost-effective, as a whole, even if low-income programs not expected to be cost-effective are included in the portfolio. The OUCC supports continuing to follow that approach for EE programs targeting low-income utility customers.

V. **Conclusion**

In 2015, when the Indiana General Assembly added lost revenue and performance incentives to the definition of EE "program costs," it took steps to ensure that Indiana electric utility customers will be protected from having to pay far more to their electric utilities than they will receive in benefits from utility-sponsored EE programs. Over the last several years, Indiana investor-owned utilities' claims for lost revenue and shareholder incentives have continued to grow to the extent that they now approach and, in some cases, exceed total traditional EE program costs. If that type of growth continues unchecked, more customer bills will become cost-prohibitive.

Indiana utilities have been permitted to recover lost revenue for the life of each EE measure. A utility's lost revenue claim will vary over time, as different vintages of EE programs with different useful lives accumulate. With the pancaking of all prior years' claimed reductions in energy usage for the life of each EE measure, Indiana's current EE program cost recovery mechanism is becoming more and more profitable for investor owned utilities. At the same time, utility customers continue to pre-pay all traditional EE program costs, based on levelized annual cost projections, plus projected lost revenue and shareholder incentives, all subject to later reconciliation.

The utilities are paid in full for all traditional program costs, together with lost revenue projections, regardless of whether there is any reduction in sales. A utility's original authorized return is already built into the amounts it recovers as "lost" revenue, without any commitment from the utility to reduce its energy production. That frees the utility to make off-system sales, possibly through MISO or PJM, at wholesale prices that could meet or exceed the utility's own retail rates.

When utilities started to offer EE programs under the Commission's generic Order in Cause No. 42693-S1, Indiana ratepayers were not immediately exposed to the high cost of "pancaking" different vintages of EE programs, which continue to generate lost revenue claims throughout the useful life of each measure. Now, after several years of program offerings, the amount that customers are required to pay for lost revenue can actually exceed traditional annual program costs, making it virtually impossible for consumers to enjoy any real reductions in their monthly electric bills because of these utility-sponsored EE programs.

Earlier this year the Indiana General Assembly took the first step toward eliminating that trend when it required utilities to treat lost revenue and shareholder incentives like other program costs. The Commission cannot ignore the legislature's directive under SEA 412 to conduct a more complete assessment of consumers' actual financial benefits and costs from these programs. The OUCC urges the Commission not to re-write SEA 412 by adopting a rule that would fail to follow the clear language of the statute.

Many of Indiana's largest industrial customers have opted-out of customer-funded utility EE programs that result in higher utility bills, without the possibility of any net benefit – except the windfall enjoyed by their investor-owned utilities. Some may argue that if consumers are denied any net financial benefit from participating in DSM programs, they deserve the same opportunity as large industrial customers to opt-out of EE program participation. DSM programs should be designed in a way that provides mutual benefits. That would help increase the utilization of EE programs, resulting in larger reductions in usage. Until a fundamental change is made in the cost recovery mechanism currently used for Indiana utilities' lost revenue claims, Indiana's EE efforts will never be able to reach their full potential.

The OUCC again urges the Commission to consider all comments previously submitted by the OUCC in the rule-development phase of this proceeding, including proposed red-lined changes to Indiana's current IRP and DSM Rules submitted before the Commission issued its Strawman Rule.

Respectfully submitted,

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