

ORIGINAL

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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED EMERGENCY PETITION OF THE)
CITY OF INDIANAPOLIS, AS SUCCESSOR)
TRUSTEE OF A PUBLIC CHARITABLE TRUST,)
D/B/A CITIZENS GAS, INDIANA GAS COMPANY,)
INC. D/B/A VECTREN ENERGY DELIVERY OF)
INDIANA, INC., SOUTHERN INDIANA GAS AND)
ELECTRIC COMPANY D/B/A VECTREN ENERGY)
DELIVERY OF INDIANA, INC., AND NORTHERN)
INDIANA PUBLIC SERVICE COMPANY FOR THE)
APPROVAL OF NECESSARY AND TEMPORARY)
ALTERATIONS TO THE ALTERNATIVE)
REGULATORY PLAN APPROVED IN CAUSE NO.)
43669)

CAUSE NO. 44094

APPROVED: DEC 07 2011

EMERGENCY ORDER OF THE COMMISSION

Presiding Officers:
James D. Atterholt, Chairman
Loraine L. Seyfried, Chief Administrative Law Judge

On September 23, 2011, Northern Indiana Public Service Company (“NIPSCO”) filed with the Indiana Utility Regulatory Commission (“Commission”) a petition in Cause No. 43629 GCA 20 which included (among other requested relief) a request for approval of certain funding related to its Universal Service Program (“USP”).¹ On October 5, 2011, the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis, as Successor Trustee of a Public Charitable Trust, d/b/a Citizens Gas (“Citizens”) filed a Verified Emergency Petition requesting approval of temporary alterations to the alternative regulatory plan (“ARP”) under which it operates its USP. Citizens’ petition was docketed in Cause No. 44086. Citizens simultaneously filed its supporting testimony. Indiana Gas Company, Inc. d/b/a Vectren Energy Delivery of Indiana, Inc. (“Vectren North”) and Southern Indiana Gas & Electric Company, d/b/a Vectren Energy Delivery of Indiana, Inc. (“Vectren South”) (collectively, “Vectren Energy”) filed a Verified Emergency Petition on October 12, 2011 also requesting approval of temporary alterations to the ARPs under which they operate their USPs and an extension of those ARPs. Vectren Energy’s petition was originally docketed in Cause No. 44093. Vectren Energy filed its supporting testimony on October 13, 2011.

On October 18, 2011, the Commission issued a Docket Entry finding that because these proceedings all requested relief relating to the USPs approved by the Commission for Citizens, Vectren Energy and NIPSCO (collectively the “Petitioners”) to address the anticipated shortfall

¹ Although some of the utilities have different names for their USP and associated Rider, this Order refers to each utility’s approved program as “USP” and its associated Rider as the “USP Rider.” In an effort to decrease confusion with respect to these programs, we encourage the utilities to do the same in the future.

in federal Low Income Home Energy Assistance Program (“LIHEAP”) funding, administrative efficiency was promoted by addressing these issues in a consolidated proceeding. The Docket Entry consolidated Cause Nos. 44086 and 44093 into this Cause and instructed NIPSCO to file a verified petition, along with its supporting evidence concerning its requested relief herein.

NIPSCO filed its Verified Emergency Petition and case-in-chief on October 21, 2011. The Commission approved a procedural schedule agreed to among Petitioners and the Indiana Office of Utility Consumer Counselor (“OUCC”) in its October 28, 2011 Docket Entry. The OUCC filed its case-in-chief on November 2, 2011 and Petitioners filed rebuttal evidence on November 9, 2011. On November 15, 2011, the Commission issued a docket entry directing Petitioners to respond to certain questions concerning their respective proposals. Petitioners submitted written responses on November 17, 2011.

Pursuant to proper notice given as provided by law, an evidentiary hearing was held on November 18, 2011 at 1:30 p.m. local time in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioners and the OUCC appeared and participated in the evidentiary hearing. The direct testimony and exhibits of the Petitioners and the OUCC were offered and admitted into evidence without objection. Petitioners’ rebuttal testimony and responses to the Commission’s Docket Entry also were offered and admitted into evidence without objection. No members of the general public appeared.

Based upon the applicable law, the evidence presented herein, and being duly advised, the Commission now finds:

1. Notice and Jurisdiction. Due, legal and timely notice of the commencement of the evidentiary hearing in this Cause was given and published by the Commission as required by law. Legal notice of the filing for approval of the modifications to the ARPs was published by each Petitioner in accordance with Ind. Code § 8-1-2.5-2.

Citizens operates a gas utility and is a “municipally owned utility” within the meaning of the Public Service Commission Act, as amended. NIPSCO and Vectren Energy are engaged in rendering natural gas utility service to the public within the State of Indiana and own, operate, manage and control plant and equipment used for distributing and furnishing such service. NIPSCO and Vectren Energy are public utilities as defined in Ind. Code § 8-1-2-1(a).

Each Petitioner is an energy utility as defined in Ind. Code § 8-1-2.5-2 and is subject to the jurisdiction of the Commission to the extent provided by Indiana law. Accordingly, the Commission has jurisdiction over Petitioners and the subject matter of this Cause.

2. Petitioners’ Characteristics. Citizens is a municipally owned gas utility and has the power and authority to engage in, and is engaged in, the business of rendering gas distribution service solely within the State of Indiana in accordance with Ind. Code ch. 8-1-11.1. Citizens owns, operates, manages, and controls, among other things, plant, property, equipment and facilities, which are used and useful for the production, storage, transmission, distribution and furnishing of gas service to approximately 261,000 residential, commercial and industrial customers in and around Marion County, Indiana.

NIPSCO has authority to engage in and is engaged in the business of supplying electricity and natural gas to the public and owns franchises and indeterminate permits authorizing it to transact the business of supplying electricity and natural gas to the public in the area it serves in the State of Indiana. NIPSCO owns, operates, manages and controls, among other things, plant, property, equipment and facilities which are used and useful for the production, storage, transmission, distribution and furnishing of gas service to approximately 786,000 residential, commercial and industrial customers in northern Indiana.

Vectren North has charter power and authority to engage in, and is engaged in the business of rendering natural gas distribution service solely within the State of Indiana under indeterminate permits, franchises, and necessity certificates heretofore duly acquired. Vectren North owns, operates, manages, and controls, among other things, plant, property, equipment and facilities, which are used and useful for the production, storage, transmission, distribution and furnishing of gas service to approximately 565,000 ultimate consumers in 311 communities and adjacent rural areas in 49 counties in the north central, central, and southern portions of Indiana.

Vectren South has charter power and authority to engage in, and is engaged in the business of rendering both natural gas and electric public utility service in the State of Indiana. Vectren South owns, operates, manages, and controls, among other things, plant and equipment within the State of Indiana used for the production, transmission, delivery and furnishing of service to approximately 141,000 ultimate electric customers and 110,000 ultimate gas customers in southwestern Indiana.

3. Relief Requested. Federal LIHEAP funding is projected to be reduced during the 2011-2012 heating season. In response to the reduction in LIHEAP funding, Petitioners each request authority to modify their currently approved USPs to create a separate fund for each service territory that will be distributed through the Indiana Housing and Community Development Authority (“IHCDA”) during the 2011-2012 heating season to replace a portion of the projected reductions in LIHEAP funding and enable assistance to Petitioners’ qualified low-income customers (the “Supplemental LIHEAP Fund”). Petitioners propose to use the Supplemental LIHEAP Funds for an Energy Assistance Program (“EAP”)² like benefit to qualifying low-income customers of Petitioners that would receive EAP benefits through LIHEAP absent any decrease in such funding. In addition, NIPSCO and Vectren Energy propose to use a portion of their Supplemental LIHEAP Funds to pay the administrative costs of Community Action Program agencies (“CAP Agencies”) that qualify customers for LIHEAP. Each of the Petitioners proposes to use different sources of funding for their Supplemental LIHEAP Fund.

Vectren Energy also requests authority to continue their USPs through May 31, 2016 without filing new base rate cases. The Commission’s November 19, 2009 Order in Cause No. 43669 (“43669 Order”) authorized the continuation of Vectren Energy’s USPs through October 31, 2012, but provided that extension beyond October 31, 2012 would only be considered in the context of new base rate case proceedings for Vectren Energy.

² The Energy Assistance Program is Indiana’s program designed to assist low-income customers with winter heating bills. It is funded by the federal LIHEAP block grant.

4. Evidence Presented.

A. Petitioners' Direct Testimony. Petitioners submitted testimony from Gregory A. Sawyers, Citizens' Director of Customer Services; Michael J. Martin, Director, Regulatory & Governmental Policy of NIPSCO; Cynthia C. Jackson, Manager of Demand Side Management and Energy Efficiency of NIPSCO; Jeffrey W. Whiteside, President of Vectren Foundation, Inc. and Vice President of Community Sustainability for Vectren Corporation; Rebecca J. Brann Manager of Low Income Programs for Vectren Energy Utility Holdings, Inc.; and Sherry Seiwert, Executive Director of IHCDA.

1. LIHEAP Operation and Coordination with Petitioners' USPs. LIHEAP is for customers whose income is 150% or less of federal poverty guidelines. Petitioners' Exhibit RJB-1, 6. It is funded through a block grant from the federal Department of Health and Human Services to the states, which are in turn responsible for allocating LIHEAP dollars within their boundaries. States have latitude in allocating funds within their boundaries so that the most effective use of the funding can occur. In Indiana, LIHEAP block grants are administered by the IHCDA, a state agency responsible for allocating LIHEAP dollars among Indiana's ninety-two counties. Petitioners' Exhibit CCJ, 2-3.

Ms. Jackson stated that in Indiana, IHCDA provides individual household grants based on a Matrix Point system that takes into consideration factors such as income level, heating source, household number and whether children or the elderly are present in the home. The program is implemented through the CAP Agencies with outreach offices in every county, where individual residents of Indiana can apply for assistance. These agencies provide intake, application processing and utility vendor payments. IHCDA works to ensure that all CAP Agencies are in compliance with state and federal rules and regulations regarding the distribution of LIHEAP funds. Historically, LIHEAP funds have been allocated to Indiana CAP Agencies based on the number of customers meeting the income guidelines that are living within the area served by the CAP Agency. Ms. Jackson explained that those communities with the highest number of customers at or below 150% of the Federal Poverty Level receive the largest allocations. Petitioners' Exhibits SS-1, 3-5; CCJ, 3-4.

Ms. Brann testified the USPs consist of two components—bill discounts and a crisis hardship fund. USP discounts are tiered discounts received by customers who qualify for LIHEAP. She said the discounts are designed to make winter heating bills more manageable for low-income customers and thereby provide them with an opportunity to break the cycle of disconnection and reconnection. Petitioners' Exhibit RJB-1, 4-5.

According to Petitioners, each utility works with the CAP Agencies located in its service territory concerning the distribution of LIHEAP funds and qualification of customers for USP discounts. Customers who qualify and receive LIHEAP are automatically enrolled for the USP discount. The amount of discount received is determined during the qualification process at the CAP Agency. Petitioners' Exhibits RJB-1, 4-5; CCJ, 8; GAS, 6, 9. The 43669 Order (at 35) required Petitioners, until considered further in a rate case, to contribute 25% of total program costs from shareholder funding to fund the USPs and determined that the other 75% may be funded by customer contributions.

2. Expected Reduction In LIHEAP Funding. Ms. Seiwert testified that federal funding of the LIHEAP block grant is expected to be reduced for the 2011-2012 heating season. She indicated that the President's budget recommended a cut in LIHEAP funding from \$4.7 billion in 2011 to \$2.57 billion, which is approximately a 45% reduction in LIHEAP funding. Ms. Seiwert said that although the 2012 budget has not been approved, IHCDA anticipates a significant cut in LIHEAP funding overall and a 50% reduction in LIHEAP funding for Indiana. Petitioners' Exhibit SS-1, 5.

According to Ms. Seiwert, IHCDA is seeking ways to make up the LIHEAP funding shortfall. Ms. Seiwert testified there is approximately \$7 million carried forward from last year's LIHEAP allocation. She said that Indiana received a \$13 million allocation in June through September of 2011 and due to the timing, there was no way to distribute those funds in conjunction with the winter heating needs. Since Indiana is allowed to carry over up to 10% of funds each year, the IHCDA opted to hold a significant amount of funding because of the foreseeable uncertainty in federal allocations as a result of congressional dissonance. *Id.* Ms. Jackson noted that IHCDA's own budget and other state funding mechanisms will also be used to close a portion of the LIHEAP gap. Ms. Jackson anticipates the State will be able to cover approximately 20% to 25% of the total reduction in annual LIHEAP funding. This means that between 70% and 75% of the overall LIHEAP budget for fiscal year 2012 will be covered either by federal grant money or the State of Indiana. Petitioners' Exhibit CCJ, 4-5.

Mr. Sawyers testified that due to the LIHEAP funding shortfall and even with the State's efforts to close the gap, the IHCDA preliminarily anticipates that in the coming heating season, the average annual Statewide Energy Assistance Program ("EAP") benefit per household will be reduced from \$380 to \$255 and the number of households served in Indiana will be reduced from 168,000 to 122,250. Mr. Sawyers does not believe there are sufficient funds available from charitable sources to offset the reduction in LIHEAP funding. Petitioners' Exhibit GAS, 8-9.

Mr. Sawyers explained that the most significant consequence of these budget shortfalls in Citizens' service territory will be the reduction in per household heating assistance and the decreased number of families receiving assistance. *Id.* Mr. Whiteside echoed these sentiments for Vectren Energy, noting cuts in LIHEAP may result in 25% fewer Vectren Energy customers receiving EAP assistance. Petitioners' Exhibit JWW-1, 8-9.

Mr. Martin also indicated reduced federal LIHEAP grant amounts would be insufficient to provide adequate benefits for low-income customers, even when coupled with amounts from NIPSCO's other low-income assistance programs. He stated many of NIPSCO's manufacturing customers continue to operate at reduced levels, having been particularly hard hit by the economic downturn. He noted that according to statistics published by the Indiana Department for Workforce Development, unemployment in NIPSCO's service territory ranges from a high of 10.6% in Elkhart County to a low of 7.3% in Pulaski County on a non-seasonally adjusted basis as of July, 2011. Petitioners' Exhibit MJM, 4-5.

Ms. Jackson, Mr. Sawyers and Mr. Whiteside all noted that because the LIHEAP benefit also qualifies households for protection under Indiana's winter shut-off moratorium, many fewer households will receive protection from utility disconnection during the winter months. Petitioners' witnesses also expressed concern that customers' enrollment in the USPs, which is

done in conjunction with LIHEAP qualification, would be jeopardized by the loss of LIHEAP funding. Petitioners' Exhibits CCJ, 5; GAS, 6-9; JWW-1, 8-9.

Petitioners' witnesses also described the impact of reduced LIHEAP funding on CAP Agencies and the role of CAP Agencies in the USPs. Mr. Whiteside testified that LIHEAP funding not only provides assistance to low income customers, but it also provides funding used by the IHCDA to support the operations of the CAP Agencies that qualify low income customers and distribute EAP funds. He said that when LIHEAP funding runs short, CAP Agencies may shut down because they lack the resources to continue qualifying customers. Petitioners' Exhibit JWW-1, 8-9. Ms. Jackson also testified that CAP Agencies are staffed at appropriate levels based on the anticipated number of customers who will apply for assistance through LIHEAP. She explained that often CAP Agencies hire additional temporary staffing to meet this program need. IHCDA allocates a certain amount of LIHEAP funding to cover the administrative costs of the CAP Agencies. She expected corresponding cuts to agency administrative funds such that staffing levels will reflect the reduced level of funding and a corresponding decrease in the number of customers anticipated to be served. Petitioners' Exhibit CCJ, 6-7.

Ms. Jackson and Ms. Brann pointed to the last heating season as an example of the expected results of reduced LIHEAP funding on the CAP Agencies. Ms. Jackson testified that last heating season, funding for LIHEAP did not flow to the States in an efficient manner due to delays in passing the Federal budget, and that many agencies across Indiana ran out of funding on a temporary basis. Ms. Brann stated that for the first time since the program's inception, they were faced with the possibility of some CAP Agencies shutting their doors to LIHEAP customers during the 2010-2011 heating season, which would have meant the end of USP discounts and moratorium protection for customers who would otherwise be eligible to receive them. NIPSCO, Citizens Gas and Vectren Energy entered into an agreement with IHCDA to provide the needed program funding until LIHEAP funds could be distributed by IHCDA to the CAP Agencies. Ms. Jackson stated IHCDA indicated that administrative funding would also be needed to keep the agencies properly staffed to qualify customers, and the utilities and IHCDA agreed to provide \$30 per application to the agencies to cover their administrative costs. At the proverbial eleventh hour, Congress passed a continuing resolution that allocated funds for LIHEAP and prevented the wide-spread closing of CAP Agencies. Petitioners' Exhibits CCJ, 7-8; RJB-1, 10-11.

3. Citizens' Proposed Supplemental LIHEAP Fund. To account for the anticipated reduction in LIHEAP benefits, Mr. Sawyers stated that Citizens proposes to modify its USP during the 2011-2012 heating season to provide an additional \$1,050,000 to low-income customers in its service territory that would otherwise qualify for EAP, but will not receive assistance as a result of the LIHEAP funding shortfall. Mr. Sawyers indicated \$1,050,000 will provide benefits to approximately 5,000 families and expects this level of assistance will ensure that the number of households receiving heating assistance in Citizens' service territory remains approximately the same as it was during the 2010-2011 heating season. Customers receiving these funds, in lieu of EAP assistance, also would be qualified for the USP and protection from service termination during the disconnection moratorium period. Petitioners' Exhibit GAS, 10-11.

Mr. Sawyers explained that the \$1,050,000 would be derived from the following sources: (i) a \$425,000 contribution from various Citizens' sources, including Warm Heart Warm Home Foundation funds and funds provided for under Article VII of the Settlement Agreement approved by the Commission in Cause No. 43963; (ii) approximately \$500,000 to be collected from Citizens' customers through the USP Rider; and (iii) Citizens' matching contribution of 25% of the amount contributed by customers through the USP Rider (*i.e.*, \$125,000). Mr. Sawyers noted that Citizens is not proposing to increase the USP Rider; rather, customers would pay the same amount as they have in previous years. Petitioners' Exhibit GAS, 11-12.

Mr. Sawyers stated the proposed additional funding is urgently needed because there potentially could be EAP cash flow problems early in the heating season. Mr. Sawyers further stated that the requested temporary changes to Citizens' USP are necessary to avoid interruptions in bill assistance benefits and prevent increases in defaults, collection activities, and disconnections, which can lead to higher bad debt and increased use of unsafe heating alternatives. Mr. Sawyers noted that the IHCDA supports Citizens' proposal and provided a letter of support from the IHCDA's Executive Director, Sherry Seiwert, as an exhibit to his testimony. Mr. Sawyers concluded that, in his opinion, the requested relief is in the public interest and necessary "to prevent injury to the . . . interests of the people . . . of this State." Petitioners' Exhibits GAS, 13-14; GAS-3.

4. NIPSCO's Proposed Supplemental LIHEAP Fund. Mr. Martin described NIPSCO's request for authority to use a portion of a refund from the Tennessee Gas Pipeline (the "Tennessee Refund") in combination with undistributed 2010 Winter Warmth Program dollars to fund the anticipated shortfall in LIHEAP dollars and create a Supplemental LIHEAP Fund.³ Petitioners' Exhibit MJM, 2-4. He added that when the magnitude of the remaining amount of the Tennessee Refund became clear, NIPSCO evaluated other approaches to the use of the refund dollars to identify ways to provide a greater positive impact on its service territory. Mr. Martin testified NIPSCO proposes that approximately \$1.0 million of the remaining Tennessee Refund would be used to create the Supplemental LIHEAP Fund. He stated the \$1.0 million proposal is by necessity based on the most current estimate of the impact of reductions in LIHEAP funding, and the actual amount required to allow benefits to continue for the same number of customers will not be known until the federal budget process is complete and the state allocation of federal grant dollars has been made to individual counties. Consequently, NIPSCO is reserving an additional \$300,000 as a contingency for LIHEAP shortfall if the need is greater than initially projected. He stated that if any portion of the \$300,000 contingency is not needed for the Supplemental LIHEAP Fund, NIPSCO will transfer the unused portion to the economic development program being proposed in GCA20 at the end of the 2011-2012 winter heating season. *Id.* at 4-5, 7.

Mr. Martin acknowledged that pipeline refunds are typically treated as a credit to gas costs and are reflected on GCA Schedule 12A. He explained that NIPSCO is requesting to deviate from the typical manner that pipeline refunds are returned to its customers for two reasons. First, using a portion of the Tennessee Refund to create a Supplemental LIHEAP Fund serves a larger public benefit than the nominal amount that would be returned to all GCA eligible

³ Mr. Martin explained NIPSCO's proposal for the remainder of the Tennessee Refund to fund community revitalization and economic development measures is being addressed in Cause No. 43629 GCA 20 ("GCA20").

customers in the GCA mechanism. Second, the Tennessee Refund relates to overcharged billings that date back to 1995, so there is little commonality with customers on NIPSCO's system today because it is likely many were not NIPSCO customers at the time of the billings. Petitioners' Exhibit MJM, 6.

Ms. Jackson testified that prior to the implementation of NIPSCO's USP, NIPSCO administered a low-income assistance program known as Winter Warmth. She explained that during the transition to the USP approved by the Commission in the 43669 Order, the Winter Warmth program carried a surplus from the previous year because the total claims from qualified customers was lower than the dollars collected during the previous year. She stated the surplus budget was incorporated into the projected budget for the first year of the USP during the 2010-2011 heating season. She stated that for a variety of reasons, claims by customers qualifying for benefits under USP for the 2010-2011 heating season were again lower than the dollars collected by \$2.265 million. She testified NIPSCO intends to use those dollars as a partial offset to the shortfall in LIHEAP funding for 2012. Petitioners' Exhibit CCJ, 2, 9.

Mr. Martin described NIPSCO's proposal to use approximately \$1.9 million of the \$2.2 million of undistributed funding from the NIPSCO Winter Warmth and USP to create a Supplemental LIHEAP Fund. He stated the remaining \$340,000 of the \$2.2 million would be used to compensate CAP Agencies for administrative expenses associated with the distribution of the total additional LIHEAP funding. Dollars will be allocated to CAP Agencies in NIPSCO's gas service territory on the same proportional basis that funding from IHCDA is provided. Mr. Martin opined that this combination of funding will allow for benefits to be provided to the same number of households as received the benefit last year and will fund the administrative expenses essential to keep the CAP Agencies staffed for LIHEAP clients. Petitioners' Exhibit MJM, 7-8.

Ms. Jackson testified that while the need for the Supplemental LIHEAP Fund might seem to be greatest near the end of the heating season, the flow of funds requires action to be taken as soon as possible. She explained that the States will not receive their LIHEAP block grants in one lump sum payment because the Federal government's budget has been funded by a series of Continuing Resolutions that provide a designated level of funding to keep the governmental agencies and associated programs running until a final Federal budget is adopted. She explained that this process causes uncertainty in the final budget numbers. She stated during this heating season, IHCDA will make only the guaranteed amount of funding available to the CAP Agencies to assure it does not exceed its total budget for LIHEAP. She testified this situation could easily cause a cash flow problem early in the heating season as customer need surpasses the funding guaranteed to IHCDA at that time. Petitioners' Exhibit CCJ, 10.

5. Vectren Energy's Proposed Supplemental LIHEAP Fund. Mr. Whiteside testified Vectren Energy began focusing on the potential impact of reduced LIHEAP funding and working in conjunction with the IHCDA in the spring of 2011. He stated the discussions culminated in Vectren Energy's proposal to reduce the anticipated funding gap and provide an EAP-like benefit through a Supplemental LIHEAP Fund so that a number of customers similar to the amount that was helped last year will receive assistance this year. Petitioners' Exhibit JWW-1, 9. According to Ms. Brann, customers who receive bill assistance from the Supplemental LIHEAP Fund would be protected from disconnection during the moratorium period as defined

in Indiana Code § 8-1-2-121. Petitioners' Exhibit RJB-1, 15.

Mr. Whiteside testified that Vectren Energy proposes a one time modification to its USP for the 2011-2012 heating season to provide an additional \$1,537,500 to low-income customers in the Vectren North and South service territories that apply for and are eligible for EAP assistance, but otherwise would not receive such assistance due to the projected LIHEAP funding shortfall. He explained that Vectren Energy's proposal would provide up to a \$175 per person benefit for up to 7,500 customers in its service territories and cover the projected 25% of past EAP recipients that would not otherwise receive benefits due to LIHEAP funding cuts. Mr. Whiteside testified that in addition to using the \$161,708 of shareholder contributions remaining from last heating season, Vectren Energy plans to contribute an additional \$457,042 to the Supplemental LIHEAP Fund for a total shareholder contribution of \$618,750. According to Mr. Whiteside, Vectren Energy's contribution is incremental to the 25% of total program costs it contributes to fund the USPs each program year. The other \$918,750 will come from customer contributions, for a total contribution of \$1,537,500. Petitioners' Exhibit JWW-1, 9-10. According to Ms. Brann, 70% (5,250) of those low income customers receiving benefits from the Supplemental LIHEAP Funds will be located in Vectren North's service territory and 30% (2,250) in Vectren South's service territory. Petitioners' Exhibit RJB-1, 15-16.

Ms. Brann testified that the Supplemental LIHEAP Funds will be administered by the IHCDA pursuant to an agreement between the parties. Any portion of the Supplemental LIHEAP Funds that are unspent will be returned to Vectren Energy, Ms. Brann explained. She stated that in the case of Vectren North, any portion of the Supplemental LIHEAP Funds returned by the IHCDA will be used to offset future expenses associated with the USP and in the case of Vectren South, the funding has been provided by shareholders and therefore any portion of the Supplemental LIHEAP Funds returned by the IHCDA will be returned to shareholders. *Id.* at 20.

Ms. Brann testified that Vectren Energy's USP provides significant benefits to the lowest income and most vulnerable customers in Vectren Energy's service territory. She said those customers least able to pay their bills would be significantly and adversely impacted by the reduction in EAP benefits and inability to access Vectren Energy's USP discounts. Ms. Brann believes the proposed changes to Vectren Energy's USP are necessary to ensure that low-income families in Vectren Energy's service territory that have previously qualified for and received assistance from the EAP will not experience an interruption in bill assistance benefits. Absent the proposed changes to the USP, Ms. Brann testified that Vectren Energy will likely experience a significant increase in defaults, collection activity and disconnections among the former EAP recipients. This increased activity would result in higher bad debt that ultimately would be borne by the remainder of Vectren Energy's customers, as well as the potential for more unsafe heating alternatives to be used by low-income customers. *Id.* at 21-22.

Ms. Seiwert testified that IHCDA supports the establishment of the Supplemental LIHEAP Fund recommended by Vectren Energy. According to Ms. Seiwert, the anticipated cut to LIHEAP forces IHCDA to determine how to effectively and efficiently manage fewer dollars. She said the Supplemental LIHEAP Fund compliments IHCDA's efforts to address LIHEAP reductions and will provide a valuable lifeline for many low income customers. Petitioners' Exhibit SS-1, 7-8.

Ms. Seiwert testified that IHCDA will administer the Supplemental LIHEAP Fund similar to the way IHCDA administers LIHEAP funds. IHCDA has established relationships with the CAP Agencies and has the infrastructure in place to administer the Supplemental LIHEAP Fund. IHCDA will work with the agencies to determine which counties have the greatest need and distribute Supplemental LIHEAP Funds accordingly. Ms. Seiwert said that IHCDA will also be cognizant of the franchise boundaries of Vectren Energy's two Indiana utilities by ensuring that benefits are disbursed to CAP Agencies based upon the service territory in which the customers are located. IHCDA's grant tracking system will be used to monitor each award to a local CAP Agency and a random sample of 3% of all client files will be audited to ensure proper use of the funds. According to Ms. Seiwert, IHCDA will work with Vectren Energy to design and implement a process specific to the approval and disbursement of funds from the Supplemental LIHEAP Fund. The process will include a final reconciliation to determine total dollars spent and allocated. Ms. Seiwert stated that within sixty (60) days following the conclusion of the program, a final reconciliation will be provided to Vectren Energy that will demonstrate the amounts spent and the amounts, if any, to be returned to Vectren Energy. She explained that IHCDA has already distributed \$19 million for client benefits and based on last year's pace, it is estimated these funds will be exhausted in about thirty (30) days. *Id.* at 8-10.

6. Vectren Energy's Proposal To Continue Its USP Through May 31, 2016. Mr. Whiteside testified the 43669 Order approved Petitioners' USPs through October 31, 2012 and required Petitioners to initiate a new base rate case in order to request an extension of the USP beyond October 31, 2012. He stated Vectren Energy requests the Commission modify the 43669 Order to the extent necessary to allow Vectren Energy to extend its USP outside of a base rate case because Vectren Energy has no plans to file base rate cases and does not believe it should have to file them for the sole purpose of extending the USP. He stated filing a rate case requires significant time and expense for all stakeholders, and is not viewed as a positive occurrence from a customer perspective, particularly during current economic conditions. He explained that the USPs were in place during Vectren North's and Vectren South's most recent rate cases, and that bad debt expense was thoroughly examined and set at a representative level with the USP in place throughout the test years. He pointed out the USP extension would end at about the same time as the utilities' DSM programs and decoupled rate design. Petitioners' Exhibit JWW-1, 10-12.

Mr. Whiteside testified that while assistance programs are a cost borne by all Vectren Energy customers, these programs serve to prevent unnecessary bad debt and collection expenses that are ultimately born by all Vectren Energy customers. He stated that Vectren Energy's USP is a preventative measure that helps avoid greater expenses downstream, while also providing the additional important benefit of allowing low income customers to retain their utility services by making their energy bills more manageable and stabilizing the safety and security of their home life. Mr. Whiteside said if Vectren Energy's USPs are allowed to expire, bill discounts and crisis/hardship funds will be discontinued and more customers will be in threat of disconnection. In addition, he said that if USP is allowed to expire, excluding any remaining over/under recovery charges or credits, all Vectren Energy customers will cease to pay USP Rider charges on their bill, which will result in a decrease of approximately \$4.77 per residential customer per year; however, all Vectren Energy customers will pay higher costs through the bad debt component of the GCA mechanism and base rate adjustment for distribution that will be

reflected in the next general rate proceeding, which will offset, at least partially, the decrease in USP charges. *Id.* at 12-13.

Mr. Whiteside stated that if the USP is extended as requested, Vectren Energy is not proposing any changes to its annual USP Rider reconciliation. Vectren Energy will continue the \$200 cap for large volume and high usage customers and intends to continue reconciling actual recoveries and costs recoverable under the USP Rider annually, based upon the projected balance of its USP funds, the projected average residential gas bill for the upcoming 12-month period and projected enrollment/eligibility requirements of the State's EAP. He testified that Vectren Energy will continue to file its annual reconciliation by November 30th of each year as a compliance filing under Cause No. 43669 or any other future USP proceedings. Mr. Whiteside opined that extension of Vectren Energy's USPs through May 31, 2016 is in the public interest. *Id.* at 13-15.

Ms. Seiwert testified that IHCDCA supports the extension of Vectren Energy's USPs through May 31, 2016 because their expiration would be a significant loss to low income customers in the communities it serves. She noted the IHCDCA has partnered with Vectren Energy since 2004 to assist with administering its USPs and that the partnership is a valuable one for assisting low income individuals in meeting their home energy needs. Petitioners' Exhibit SS-1, 10.

B. OUC's Direct Testimony. Leja D. Courter, Director of the Natural Gas Division of the OUC, recommended the Commission deny the proposals of NIPSCO, Citizens and Vectren Energy to offset the anticipated shortfall in federal LIHEAP dollars. Public's Exhibit 1, 4. With respect to NIPSCO's proposal to use a portion of the Tennessee Refund to offset the anticipated LIHEAP shortfall, Mr. Courter testified the Tennessee Refund belongs to NIPSCO's ratepayers. Mr. Courter stated that he is not aware of any legal basis under which the Commission could approve NIPSCO's proposal. He cited the Commission's August 3, 1983 Order in Cause No. 37091, in which the Commission found that refunds from the utility's pipeline supplier should be returned to the utility's consumers through the GCA procedure over a period of twelve (12) months. Mr. Courter stated that pipeline refunds have been returned to ratepayers for close to thirty years. *Id.* at 6-7. In Mr. Courter's opinion "[i]t is not NIPSCO's responsibility, nor the OUC's, nor the Commission's, to determine whether a 'larger public benefit' can be served by using a ratepayer refund to fund anticipated LIHEAP shortfalls." *Id.* at 8-9.

Mr. Courter testified any lack of commonality between the customers of 1995 (the initial date of overcharged billings from which the Tennessee Refund stems) and the customers of today is irrelevant. Mr. Courter testified that the OUC is not opposed to LIHEAP or low income assistance programs, but believes it is inappropriate to finance anticipated LIHEAP shortfalls with pipeline refunds that belong to utility ratepayers. *Id.* at 9-10.

Mr. Courter further testified that pursuant to the Commission's recent Orders in Cause Nos. 43894, 43941, 43942 and 43943, NIPSCO's ratepayers contribute 75% of the funding for the USP, while NIPSCO contributes the remaining 25%. However, Mr. Courter stated that until recently, NIPSCO's ratepayers have shouldered a majority of the costs of NIPSCO's low income assistance programs. Accordingly, Mr. Courter believes NIPSCO's ratepayers should not be

required to effectively contribute additional funds to a low income assistance program through the loss of Tennessee Refund dollars. *Id.* at 10-12.

Mr. Courter testified the OUCC also opposes the use of over \$2.2 million of undistributed Winter Warmth/USP funds to offset the anticipated LIHEAP shortfall and to reimburse the administrative costs of CAP Agencies in its service territory. Instead, Mr. Courter stated the approximate \$2.2 million of undistributed Winter Warmth/USP dollars should be used as an offset to the 75% NIPSCO customer contributions, and therefore, used to decrease the amount customers pay through the USP Rider. *Id.* at 13.

Mr. Courter also recommended that the Commission deny Citizens' proposal to modify its USP to offset the anticipated LIHEAP shortfall. Mr. Courter stated that Citizens' residential ratepayers are already projected to pay \$1,346,497 to the USP for the 2011-2012 heating season and its commercial customers are projected to pay \$494,463 for the same period. Citizens' proposal would increase the amounts to be paid by residential and commercial ratepayers during the upcoming year by \$412,636 and \$104,886, respectively. He opined that Citizens' ratepayers should not be required to pay more than what Citizens' most recent base rate order requires. *Id.* at 14-15.

Mr. Courter noted that Citizens is not required to disconnect service to low-income customers in the winter months that have not qualified for protection under the service disconnection moratorium. Mr. Courter acknowledged, however, that to the extent payment arrangements are unsuccessful, and arrearages cannot be collected through reasonable and prudent efforts, then bad debt expense will increase. Noting that bad debt expense is one component of a gas utility's revenue requirements, Mr. Courter concluded that any increased bad debt expense may be addressed in Citizens' next base rate case. *Id.*

Mr. Courter testified the OUCC also opposes Vectren Energy's proposal to modify its USP for the 2011-2012 heating season to establish a Supplemental LIHEAP Fund in the amount of \$1,537,500. Mr. Courter testified that, in his opinion, the projected over-recovery of \$776,174 in USP funds from Vectren North customers should not be used to fund a Supplemental LIHEAP Fund. Instead, he stated, the over-recovery should be used to decrease the amount of funds necessary to be recovered in the USP Rider for the 2011-2012 heating season. Mr. Courter noted that Vectren North estimates it will collect \$2.573 million from its customers in 2012 to fund the USP for the 2011-2012 heating season and that Vectren South would collect \$840,000 for the same time period. Mr. Courter concluded that even if Vectren Energy's requested relief is denied, the USP would still be funded for the 2011-2012 heating season. *Id.* at 15-18.

Mr. Courter also opposed Vectren Energy's proposal to increase residential and commercial USP rates in order to provide \$142,576 of additional funding for the proposed Supplemental LIHEAP Fund. He noted that the reasonableness of any increased costs related to collections, customer arrearages and accounts receivable resulting from the loss of EAP assistance should be reviewed as part of Vectren Energy's next base rate cases. *Id.*

Lastly, Mr. Courter recommended denying Vectren Energy's request to modify the 43669 Order to allow Vectren Energy to continue its USP without filing a base rate case. Mr. Courter acknowledged that a rate case would require significant time and expense, and agreed that

Vectren should not file a base rate case merely to preserve the USP. However, Mr. Courter stated that if the USP expires on October 31, 2012, by virtue of the 43669 Order, Vectren should propose reinstatement of the USP when it eventually files new base rate cases for Vectren North and Vectren South. *Id.* at 18.

C. Petitioners' Rebuttal Testimony. Mr. Sawyers offered rebuttal testimony in response to the OUCC's recommendation that the Commission deny Citizens' proposal to modify its USP to include a Supplemental LIHEAP Fund. Mr. Sawyers opined that the OUCC's recommendation would adversely impact all of Citizens' customers, particularly the 5,000 families in Citizens' service territory that otherwise would receive EAP assistance, but will not as a result of the anticipated LIHEAP shortfall. He also expected it would likely increase the number of disconnections in Citizens' service territory (as compared to the decrease Citizens has experienced over the previous three heating seasons). Mr. Sawyers further testified he expected acceptance of the OUCC's proposal would cause the affected families to accumulate larger arrearages, which may cause some to be unable to reconnect to the system. In that event, he said families could be forced to choose between unsafe heating alternatives and going without heat. Petitioners' Exhibit GAS-R, 2-3.

Mr. Sawyers testified the OUCC's proposal also would be detrimental to Citizens' customers that do not rely on EAP or the USP. Mr. Sawyers stated that the absence of assistance to these 5,000 low-income families will increase bad debt expense, resulting in increased write-offs and, ultimately, higher revenue requirement in Citizens' next base rate case. Moreover, if families are unable to reconnect to the system, Mr. Sawyers testified the non-gas cost revenue previously collected from these families would have to be recovered from the remaining ratepayers at the time of Citizens' next base rate case. *Id.* at 4-5.

In Mr. Sawyers' opinion, Citizens' proposal to modify the USP is preferable to the OUCC's recommendation. Mr. Sawyers believes the short-term benefit of the OUCC's proposal (*i.e.*, the reduction of the amount customers pay under the USP Rider by approximately \$1.72 per year for the average residential customer, or approximately \$0.14 per month), is outweighed by the potential long-term negative impact that acceptance of the proposal might have on the affected families and Citizens' remaining customers. In the long-term, Mr. Sawyers believes Citizens' proposal will result in decreased service terminations, lower collection costs, reduced customer arrearages and decreased outstanding accounts receivable. *Id.* at 6-7.

Mr. Sawyers testified that Citizens is working with IHCDA to develop a process to administer the Supplemental LIHEAP Funds in the event Citizens' proposed modification to the USP is approved. The IHCDA has agreed to administer the funds without taking any administrative fee. *Id.* at 7.

Ms. Jackson addressed the implication in Mr. Courter's testimony that NIPSCO did not meet its obligation to fund programs as directed by the Commission in previous proceedings. She testified that Mr. Courter's analysis of NIPSCO's program funding is inaccurate. She explained that the OUCC data request referred to by Mr. Courter asked for customer contribution and NIPSCO contribution on June 30 and December 31 of various years. She stated these dates do not give an accurate picture of collections because NIPSCO's programs generally run on a heating season basis, November through May annually. Because of this program year concept,

June and December of the same calendar year would be in two different heating season program years, which is not representative of NIPSCO's contributions over that twelve month period. As a result, NIPSCO's contributions may not have been reflected in the totals provided in the snapshot months requested by the OUCC. She stated additionally, NIPSCO's contributions to its Gift of Warmth program, which are included in NIPSCO's annual requirement to provide 25% of its own funds, were not requested by the OUCC, and therefore the results provided in Mr. Courter's testimony are distorted. Finally, she explained the Commission Orders regarding Winter Warmth required NIPSCO to contribute less than 25% of total customer contributions in the initial 2 heating seasons covered by the timeframe requested by the OUCC, and that the 25% requirement has only been in place for the last 2 heating seasons covered by the timeframe of data requested by the OUCC. Petitioners' Exhibit CCJ-R, 1-2.

Ms. Jackson explained the contributions required of NIPSCO. She stated the OUCC asked for contribution information beginning in June 2008, so she began with the Commission Order issued in Cause No. 43077, dated November 7, 2007 ("43077 Order"). She stated the 43077 Order covered the timeframe of November 7, 2007 through May 31, 2009, which covered essentially two Winter Warmth program years. She stated the 43077 Order required NIPSCO increase its contribution from 13.33% of total customer collections to the program in the 2006/2007 program year to 17% in the 2007/2008 program year, and 18% in the 2008/2009 program year, provided that the first \$500,000 of these collections shall be available for NIPSCO's Gift of Warmth program on an annual basis. She testified NIPSCO was required to provide a percentage of the customer collections, not a percentage of the total program cost. *Id.* at 2-3.

Ms. Jackson explained the Winter Warmth program ended on May 31, 2009, was reinstated pursuant to the 43669 Order and ended with the issuance of the Commission's Order in Cause No. 43894 ("43894 Order"). She stated the Commission held in the 43669 Order that until the programs are considered in a rate case, the utilities shall contribute at least 25% of program cost, but that the 25% utility contribution would not include administrative expenses. *Id.* at 3.

Ms. Jackson testified the Winter Warmth program ended with the Commission Order in NIPSCO's Gas Rate Case, Cause No. 43894 issued on November 4, 2010. She explained that in that Order, the NIPSCO USP/ Hardship program also received approval, and NIPSCO agreed its shareholders will contribute 25% of USP program costs, the first \$500,000 of which will be utilized to continue a hardship program for non-eligible LIHEAP customers and the remainder of which will be NIPSCO's contribution to USP. *Id.* at 3-4

As to Mr. Courter's assertion that NIPSCO is asking ratepayers to "forfeit" refunds due to them, Ms. Jackson stated that NIPSCO is not asking to keep any of the funding, but rather asking to direct the funding to those ratepayers who are in the greatest need this coming heating season. She stated that Mr. Courter contends the Tennessee Refund should go back to NIPSCO's present day ratepayers, even if these ratepayers were not the original customers who paid the overcharged billings. She noted that in principle, this does not seem any different than returning the Tennessee Refund to present day ratepayers who may or may not have paid into the overcharged billings, but who now are in need of assistance to keep their heat connected over the winter months. *Id.* at 5-6.

As to Mr. Courter's contention that undistributed Winter Warmth/USP funds be used to reduce the factor charged for the upcoming heating season, Ms. Jackson stated that the surplus in Winter Warmth funds occurred because the need was not as great in the previous couple of years as had been anticipated. She stated it makes sense that these funds be used for the purpose for which they were originally collected now that there is once again great need. *Id.* at 6.

Vectren Energy's witness, Mr. Whiteside, responded to Mr. Courter's recommendations on Vectren Energy's proposal. Mr. Whiteside testified that after experiencing firsthand the emergency situation which developed during the last heating season when several CAP Agencies operating in Vectren Energy's territories were unable to qualify customers due to lack of LIHEAP funds, Vectren Energy has worked with the IHCDA to seek the relief requested in this proceeding in anticipation of such challenges this winter. According to Mr. Whiteside, the Supplemental LIHEAP Fund fills a void in terms of need and keeps the approved USP program viable. *Id.* at 3-4.

Mr. Whiteside testified that at the beginning of November, the IHCDA allocated approximately \$55 million to Indiana CAP Agencies in response to the \$48 million allocation received from the federal government and the \$7 million carried forward by IHCDA from last year. However, even with the additional funds, he stated at least two Indiana agencies (Hoosier Uplands and Lincoln Hills) will have depleted their share of the \$55 million allocation by processing only mail-in applications, and that Vectren Energy anticipates more agencies will deplete their allocation in a similar fashion. Mr. Whiteside said many CAP Agencies have altered their intake process in response to reduced funding. For example, Community Action Program of Evansville ("CAPE") mailed out only 1,200 applications this year, which is significantly fewer than last year, and had been accepting emergency walk-ins only three days a week, as opposed to five days a week just last year. However, he said CAPE stopped accepting emergency walk-ins as of November 9, 2011 and has a wait list in excess of 500 customers. According to Mr. Whiteside, this situation will leave low-income customers in Vectren Energy's service territory unable to be qualified for the USP, which will preclude low-income customers from not only receiving needed bill assistance but also from qualifying for the statutory moratorium this winter. *Id.* at 4-5.

Mr. Whiteside noted the OUCC did not comment on Vectren Energy's testimony that an expected reduction in federal LIHEAP funding creates an emergency situation that requires immediate attention to avoid eliminating assistance for as many as 7,500 of Vectren Energy's low-income customers. He presumed the OUCC did not oppose the creation of this fund. However, in the case of Vectren North, he noted the OUCC opposed using remaining 2010-2011 funding (\$776,174) from the USP Rider in conjunction with an increase to the USP Rider (\$142,576) to fund \$918,750 to compensate for a portion of the expected shortfall in federal LIHEAP funding. *Id.* at 6. Mr. Whiteside testified that during calendar year 2012, Vectren North customers would pay \$2.34 into the USP Rider if the remaining balance from the 2010-2011 heating season is refunded to Vectren North customers and would pay \$3.72 into the USP Rider if Vectren Energy's proposal in this proceeding is approved by the Commission. According to Mr. Whiteside, the \$1.38 difference, literally \$0.11 per month, is a minimal amount to pay to allow more than 5,000 low-income customers to receive bill discounts, obtain moratorium protection and receive an EAP-like benefit. *Id.* at 6-7; Petitioners' Exhibit SEA-R1, 8-9.

Mr. Whiteside testified that the decision to extend the USP outside of a base rate case is one for the Commission to make, as the requirement was imposed by the 43669 Order and can be modified by the Commission. According to Mr. Whiteside, the OUCC agrees there is no need for Vectren Energy to initiate a base rate case just to preserve the USP, but nonetheless opposes Vectren Energy's proposal. Petitioners' Exhibit JWW-R1, 7-8.

While Mr. Whiteside agreed with Mr. Courter that costs related to collections, customer arrearages and accounts receivable are normally reviewed during a base rate case along with other revenue requirements, he stated such costs were set at a level reflecting the USP impact in Vectren North's and Vectren South's most recent base rate cases. According to Mr. Whiteside, there is no basis to speculate that the continuation of the USP has somehow materially reduced bad debt expense since those rate cases. Mr. Whiteside said that when the USP was recently extended by agreement for Citizens Gas and NIPSCO, there does not appear to have been any modification of the utilities' bad debt expense or any other costs based on extension of the USP. *Id.* at 8-9.

Mr. Whiteside also acknowledged that service disconnections have decreased for Vectren Energy. However, he observed that several factors may account for the decrease in the number of customers disconnected. He stated the decrease does not diminish the need for the USPs, nor is it expected to continue. He testified the present program has reached customers who may otherwise have been disconnected and it is that group of customers most at risk if the program is lost. Mr. Whiteside testified that the USPs are important programs for low-income individuals in Vectren Energy's service territory. *Id.* at 9-10.

5. Commission Discussion and Findings.

A. Approval of Temporary Modifications to Petitioners' USPs. The Petitioners each request approval, on an emergency basis, to make temporary modifications to their USPs enabling the creation of Supplemental LIHEAP Funds for the 2011-2012 heating season to partially offset the expected reduction in federal LIHEAP funding. Ms. Seiwert, Executive Director of IHCDA, testified that federal funding for Indiana EAP benefits is anticipated to be decreased by 45% to 50% for the 2011-2012 heating season. Ms. Jackson, however, noted that IHCDA's budget and other state funding mechanisms are available to cover 20% to 25% of this expected shortfall. We recognize this anticipated reduction in funding has two impacts on Petitioners' service territories. The most obvious impact is the reduction of available benefits to help low-income customers manage their winter heating bills. Secondly, the lack of funding also impacts CAP Agencies, who depend on EAP funding to cover administrative fees incurred to qualify low-income customers for benefits.

The General Assembly recognized the importance of protecting low-income customers from disconnection during the heating months by enacting Ind. Code § 8-1-2-121(a) ("Section 121(a)"), which prohibits disconnection of customers that have qualified to receive EAP benefits from December 1 through March 15 of any year. Petitioners assert the objective of Section 121(a) may be in jeopardy for the 2011-2012 heating season since reduced LIHEAP funding may put LIHEAP qualification at risk for many customers that satisfy the LIHEAP criteria because both (a) the CAP Agencies that qualify customers may lack funds to operate and (b) knowledge that LIHEAP funding is unavailable may discourage some customers from seeking qualification.

Petitioners also argue customers that would otherwise qualify for LIHEAP will face the risk of being disconnected during the heating season, contrary to the purposes of Section 121(a). However, the OUCC noted the utilities are not required to disconnect customers for non-payment of a gas utility bill during the heating season.

Ind. Code § 8-1-2-113 (“Section 113”) provides the Commission authority to take temporary action for the benefit of the public interest. *Ind. Forge & Mach. Co. v. Northern Ind. Pub. Serv. Co.*, 396 N.E.2d 910, 915 (Ind.Ct.App. 1979). A grant of emergency relief requires proof that a situation exists which absent immediate corrective action will result in serious harm to either, or both, the petitioning utility and its customers. *Hoosier Energy Rural Elec. Coop., Inc.*, Cause No. 37294, 1984 Ind. PUC LEXIS 777, *5 (IURC Feb. 15, 1984).⁴ If the evidence demonstrates that an emergency situation exists such that immediate action is required to prevent serious injury, then the Commission should grant a reasonable level of interim emergency rate relief subject to terms and conditions that the Commission deems appropriate. *HVL Utilities, Inc. and HVL Services*, Cause Nos. 36630 and 36631, 1983 Ind. PUC LEXIS 682, *14 (IURC Jan. 11, 1983).

No party disputed the need to address the matters raised in this proceeding quickly since the 2011-2012 heating season begins on December 1. We have, accordingly, conducted this proceeding on an abbreviated schedule and appreciate the agreement of the Petitioners and the OUCC to submit their evidence in a time period that is much shorter than in most proceedings. This has eliminated the need to proceed under Section 113 without notice and an opportunity to be heard. *See e.g. Ind. Forge & Mach. Co.*, 396 N.E.2d at 915-916.

While we have had the luxury of proceeding with notice and an opportunity to be heard, we nonetheless find that a situation exists which requires immediate action to address the anticipated reductions in LIHEAP funding. As noted by Petitioners, the funding decrease not only puts low-income customers at risk of not receiving benefits to assist with the payment of heating bills, but also may result in the shut-down of the CAP Agencies that qualify low-income customers for LIHEAP and Indiana’s service disconnection moratorium. We agree that the continued receipt of heating assistance is important to both the Petitioners and the communities they serve.

Petitioners each propose to use different sources of funding for the Supplemental LIHEAP Fund. The various sources include unspent USP funds from the 2010-2011 heating season, continued or increased customer contributions during the 2011-2012 heating season, shareholder contributions, and pipeline supplier refunds. NIPSCO and Vectren Energy also propose to use a portion of the Supplemental LIHEAP Fund, which may contain both shareholder and ratepayer contributions, to pay the administrative costs of the CAP Agencies; while Citizens proposes to use funds from various Citizens Energy Group sources to pay CAP Agency administrative costs.

The OUCC recommended the Commission deny Petitioners’ requested relief. The OUCC generally opposed Petitioners’ use of funding sources that would otherwise be returned to

⁴ We have typically considered the following four factors in making a determination on a request for emergency relief: (1) the possible curtailment of service; (2) serious financial deterioration; (3) an inability to meet daily expenses; and (4) cost-cutting efforts. *Id.* However, these four factors are neither inclusive nor exclusive.

ratepayers or the collection of additional monies through Petitioners' respective USP Rider mechanisms. Specifically, the OUCC opposed use of (i) unspent USP funds from the 2010-2011 heating season; (ii) funds in excess of the projected costs of the USP for the 2011-2012 heating season; and (iii) the Tennessee Refund.

Based on the evidence presented, the Commission has several concerns with Petitioners' proposal. First, LIHEAP is a federally funded program that is administered in Indiana by the IHCDA through the CAP Agencies. Although qualification for participation in Petitioners' USPs is determined by application to and qualification by a CAP Agency, the appropriate funding level for LIHEAP is determined by the U.S. Congress. Secondly, we fail to understand why it is more efficient or beneficial to customers for the utilities to transfer ratepayer low-income heating assistance contributions to another state agency to administer through CAP Agencies, as opposed to Petitioners expanding their own USPs. Petitioners' proposal would not only subsidize a federal program with ratepayer contributions, but would also result in subsidization between utility customers served by the same CAP Agency. Furthermore, although the Commission has previously found Petitioners' USPs to be in the public interest (as set forth in the 43669 Order), Petitioners' proposals herein significantly expand the approved ARP and would require the Commission to evaluate and make specific findings concerning a federal program and its appropriate funding level. This we decline to do.

The Commission also has concerns with using ratepayer contributions for CAP Agency administrative costs. As indicated in Petitioners' Joint Exhibit 1, CAP Agencies provide various types of assistance to low-income families, in addition to the LIHEAP and USP qualification. This provides for the possibility of ratepayer funding to be used for administering assistance other than for natural gas heating. The federal LIHEAP program is not limited to customers heating with natural gas. Consequently, because of the importance of ensuring natural gas customers are only contributing to their respective utility's USP, we find that ratepayer contributions should be handled solely by the utility through their approved USP. Thus, as each of the Petitioners has proposed to utilize shareholder funding, the Commission finds that such funds should be used for CAP Agency administrative costs. However, these shareholder contributions for CAP Agency administrative costs should not be included in satisfying each utility's requirement to contribute at least 25% of USP program costs.

In addition, the Commission finds that each of the Petitioners should be authorized to maintain its current USP Rider factor and use any USP Rider over-collections from the 2010-2011 heating season to create a larger USP fund for distribution through bill discounts. Modifying Petitioners' proposals in this manner ensures that ratepayers are not subsidizing a federal program, non-participating customers are not paying a higher rate than last year, and low-income customers are assured of at least the same amount of USP discounts as last year. In addition, the use of the over-recoveries from last year will enable Petitioners to offer a greater benefit per customer or provide more customers with benefits than originally anticipated for this year. The Commission finds this approach to provide a better balance among the interests of the utility and its low-income and non-participating customers.

The Commission continues to encourage all utilities offering USPs to strive for uniformity among programs. In accordance with the 43669 Order, we reiterate that "the ideal uniform program will be transparent and will allow for comparison among participating

utilities....” *Id.* at 35. As Petitioners’ USPs have been approved under the Alternative Utility Regulation Act, pursuant to Ind. Code § 8-1-2.5-6(e), we find the ARPs, as modified herein, are reasonable and consistent with the public interest.

B. Reporting Requirements. As set forth above, Petitioners’ USP Rider rates for the upcoming heating season are approved to remain the same as last year. Therefore, Petitioners shall file under this Cause their respective USP Riders for the 2011-2012 heating season that reflect the USP Rider rates from the 2010-2011 heating season, along with any informational filings for the 2010-2011 period.

Based upon prior Commission Orders, including those in Cause Nos. 43669, 43894 and 43975, Petitioners are subject to a variety of different reporting requirements concerning their respective USPs. In an effort to streamline those reporting requirements into a single Cause and allow for easier comparison, Petitioners shall file hereinafter under this Cause their respective updated USP Rider rates no less than three business days before the beginning of the USP program year. The USP program year shall be October 1 through September 30. Petitioners shall file on or before October 30, under this Cause, the following information on a program year basis: ratepayer contributions received; utility contributions made; prior year carryover (if any); bad debt recovery through base rates; bad debt recovery through GCA; net bad debt write off during the program year period; and such other data as may be useful in demonstrating the efficacy of the USP program.

C. Extension of Vectren Energy’s USP. The 43669 Order (at 36) authorized the extension of Petitioners’ USPs through October 31, 2012, but found that continuation beyond this deadline would require Petitioners to request an extension of the USP in the context of a base rate case. NIPSCO and Citizens both initiated base rate cases after the 43669 Order and their USPs were each extended in those proceedings. *See Bd of Dir. ’s for the Utilities of the City of Indianapolis, As Successor Trustee of a Public Charitable Trust*, Cause No. 43975, pp. 30-31 (IURC Aug. 31, 2011) (approving continuation of the USP program until Citizens proposes to terminate it); *Northern Ind. Public Serv. Co.*, Cause No. 43894, p. 48 (IURC Nov. 4, 2010) (approving a USP for NIPSCO). While both Vectren North and Vectren South have had recent base rate cases, neither has initiated base rate cases since the 43669 Order was issued. Vectren Energy seeks authority to extend the availability of its USPs through May 31, 2016, beyond the October 31, 2012 deadline established in the 43669 Order and outside the context of a base rate case.

Vectren Energy asserted that because the expenses of Vectren North and Vectren South were both evaluated in a base rate case during the time their USPs were in operation, the costs embedded in Vectren Energy’s current rates and charges reflect the impacts of the USP. Moreover, Vectren Energy noted that filing a rate case requires significant time and expense for all stakeholders and that in difficult economic times it makes sense to delay rate increases when possible. While we continue to believe that evaluation of whether Vectren Energy’s USPs should continue is most appropriately made in a base rate proceeding, we also recognize that when the Commission issued the 43669 Order, Vectren Energy had indicated it would be filing a base rate case in 2012. *Id.* at 33. However, since Vectren Energy has reconsidered the need to file a new rate case, we agree that it is not in the public interest at this time to require Vectren Energy to initiate a base rate case solely for the purpose of extending the USPs. Therefore, we

find that Vectren Energy's USPs should be extended through September 30, 2014.

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

1. Petitioners shall be and hereby are authorized to utilize any unspent Universal Service Program monies from the 2010-2011 heating season to provide additional program funding during the 2011-2012 heating season.

2. Petitioners shall be and hereby are authorized to maintain their respective USP Riders at the current level.

3. Petitioners shall comply with the Reporting Requirements set forth in Finding Paragraph 5.B.

4. NIPSCO shall return the Tennessee Refunds to NIPSCO's ratepayers through its Gas Cost Adjustment.


5. Vectren North and Vectren South shall be and hereby are authorized to continue providing their respective Universal Service Programs through September 30, 2014.

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

ATTERHOLT, BENNETT, LANDIS AND ZIEGNER CONCUR; MAYS NOT PARTICIPATING:

APPROVED: DEC 07 2011

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



Brenda A. Howe
Secretary to the Commission