ORIGINAL

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

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| **PETITION OF NORTHERN INDIANA PUBLIC SERVICE COMPANY FOR APPROVAL OF ELECTRIC ENERGY EFFICIENCY PROGRAMS TO BE EFFECTIVE FOR THE PERIOD JANUARY 1, 2016 THROUGH DECEMBER 31, 2018, FOR AUTHORITY TO RECOVER ASSOCIATED START-UP, IMPLEMENTATION AND ADMINISTRATIVE COSTS ALONG WITH COSTS ASSOCIATED WITH THE EVALUATION, MEASUREMENT AND VERIFICATION OF THOSE PROGRAMS ("PROGRAM COSTS"), LOST REVENUES AND PERFORMANCE INCENTIVES ("ENERGY EFFICIENCY PROGRAM COSTS") THROUGH ITS DEMAND SIDE MANAGEMENT ADJUSTMENT MECHANISM IN ACCORDANCE WITH IND. CODE § 8-1-2-42(a), 8-1-8.5-9 AND 8-1-8.5-10 AND PURSUANT TO 170 IAC 4-8-5, 170 IAC 4-8-6 AND 170 IAC 4-8-7 AND FOR AUTHORITY TO DEFER ENERGY EFFICIENCY PROGRAM COSTS.** | ) | **CAUSE NO. 44634**<br><br>**APPROVED:** DEC 30 2015 |

**ORDER OF THE COMMISSION**

**Presiding Officers:**
**David E. Ziegner, Commissioner**
**Marya E. Jones, Administrative Law Judge**

On June 4, 2015, Northern Indiana Public Service Company ("NIPSCO" or "Petitioner") filed its Verified Petition with the Indiana Utility Regulatory Commission ("Commission") for approval of electric energy efficiency programs and authority to recover associated start-up, implementation, and administrative costs along with costs associated with the evaluation, measurement, and verification ("EM&V") of those programs ("program costs"), lost revenues, and performance incentives for the period January 2016 through December 2018 through its Rider 683 – Adjustment of Charges for Demand Side Management Adjustment Mechanism ("DSMA Mechanism"). NIPSCO prefiled its direct testimony and exhibits on June 4, 2015.

Citizens Action Coalition of Indiana, Inc. ("CAC") filed a petition to intervene on June 8, 2015 and the NIPSCO Industrial Group[1] ("Industrial Group") filed a petition to intervene on July 17, 2015, both of which were granted by the Presiding Officers. The Indiana Office of Utility

[1] NIPSCO Industrial Group includes Arcelor Mittal USA, Cargill, Inc., Marathon Petroleum Company, LLC, United States Steel Corporation and USG Corporation.

Consumer Counselor ("OUCC"), CAC and Industrial Group all prefiled testimony on September 4, 2015. NIPSCO prefiled rebuttal testimony on September 28, 2015.

A public hearing was held in this Cause on October 20, 2015, at 10:00 a.m. in Room 222 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana. At the hearing, NIPSCO, the OUCC, CAC and the Industrial Group appeared by counsel. The parties offered their respective prefiled testimony and exhibits into evidence, which were admitted without objection. No members of the general public attended.

Based upon the applicable law and the evidence of record, the Commission now finds:

1. **Notice and Jurisdiction.** Due, legal, and timely notice of the hearing in this Cause was given and published by the Commission as required by law. NIPSCO is a public utility within the meaning of Ind. Code § 8-1-2-1. Pursuant to Ind. Code §§ 8-1-2-4, -42, Ind. Code ch. 8-1-8.5 and 170 IAC 4-8, the Commission has jurisdiction over Petitioner's demand-side management ("DSM") program offerings and associated cost recovery. Thus, the Commission has jurisdiction over NIPSCO and the subject matter of this Cause.

2. **Petitioner's Characteristics.** NIPSCO is a public utility corporation organized and existing under the laws of the State of Indiana with its principal office and place of business at 801 East 86th Avenue, Merrillville, Indiana. NIPSCO renders electric public utility service in the State of Indiana and owns, operates, manages and controls, among other things, plant and equipment within the State of Indiana used for the generation, transmission, distribution and furnishing of such service to the public.

3. **Background.** On May 25, 2011, the Commission issued an Order in Cause No. 43618 approving NIPSCO's request for approval of the DSMA Mechanism through Rule 52 of NIPSCO's General Rules and Regulations and Appendix G – Demand Side Management Adjustment Mechanism Factor.

On July 27, 2011, the Commission issued an Order in Cause No. 43912 approving, among other things, NIPSCO's proposed Core and Core Plus DSM programs, budgets for those programs, authority to recover program costs, and the NIPSCO Oversight Board ("OSB"). These DSM programs expired on December 31, 2013.

On January 2, 2012, the Core programs approved by the Commission in its December 9, 2009 Phase II Order in Cause No. 42693 ("Phase II Order") and administered by a third party administrator became available on a statewide basis. The statewide Core programs were in effect through December 31, 2014.

On August 8, 2012, the Commission issued an Order in Cause No. 44154 ("44154 Order") approving, among other things, NIPSCO's request for approval to recover lost revenue associated with reduced sales attributable to NIPSCO's Commission-approved electric DSM programs.

On December 18, 2013, the Commission issued an Order in Cause No. 44363 approving NIPSCO's request for approval of a portfolio of electric DSM programs through December 31, 2014, along with the continued authority to recover program costs and lost revenues associated

with those programs. The Commission also authorized the continuation of the NIPSCO OSB. These programs expired on December 31, 2014.

On November 12, 2014, the Commission issued an Order in Cause No. 44496 ("44496 Order") approving NIPSCO's request for: (1) approval of electric DSM programs for the term of January 2015 through December 2015 ("2015 Electric DSM Program"), (2) authority to recover associated program costs through the DSMA Mechanism, (3) authority to defer associated expenses that are incurred until such amounts are recovered through rates; (4) authority to recover associated lost revenues, as well as lost revenues associated with previous programs years and prior programs through the DSMA Mechanism, and (5) authority to defer associated lost revenues and lost revenues for previous program years, including DSM programs previously offered but subsequently discontinued, through the DSMA Mechanism until such amounts are recovered through rates. The 2015 Electric DSM Program is set to expire on December 31, 2015.

**4. Applicable Rules and Statutes.** The Commission has developed a regulatory framework that allows a utility to meet long-term resource needs with both supply-side and demand-side resource options in a least-cost manner. As part of its Integrated Resource Plan ("IRP"), an electric utility must consider alternative methods of meeting future demand for electric service, including a comprehensive array of demand-side measures that provide an opportunity for all ratepayers to participate in DSM, including low-income residential ratepayers. 170 IAC 4-7-6(b). The Commission adopted 170 IAC 4-8 providing guidelines for DSM cost recovery ("DSM Rules"). The DSM Rules were specifically designed to assist the Commission in its administration of the Utility Powerplant Construction Act, Ind. Code ch. 8-1-8.5, and to facilitate increased use of DSM as part of the utility mix. This regulatory framework acknowledges the possibility of financial bias against DSM, recognizes the need to evaluate the extent of any bias, and provides ways for the Commission to eliminate any bias through adoption of a package of cost recovery and incentive mechanisms designed to facilitate the use of DSM to meet the long-term resource needs of customers.

Ind. Code ch. 8-1-8.5, the statutory authority for both the Commission's DSM Rules, establishes a least-cost standard for issuances of certificates of public convenience and need prior to construction of electric generation facilities. We have previously defined "least-cost planning" as a "planning approach which will find the set of options most likely to provide utility services at the lowest cost once appropriate service and reliability levels are determined." *PSI Energy, Inc.*, Cause No. 42145, at 4 (IURC Dec. 19, 2002) (quoting *Southern Indiana Gas & Electric Co.*, Cause No. 38738, at 5 (IURC Oct. 25, 1989)). Public utilities are thus to exercise reasonable judgment as to how best meet the obligation to serve within the context of the least-cost standard. *PSI Energy, Inc.*, Cause No. 39175, at 3-4 (IURC May 13, 1992).

Ind. Code § 8-1-8.5-9 ("Section 9"), which became law on March 27, 2014, allows an electric utility to offer a cost-effective portfolio of energy efficiency programs to customers, and, if the Commission determines that the portfolio is reasonable and cost-effective, to recover energy efficiency program costs in the same manner as such costs were recoverable under the Phase II Order. It also creates the ability for certain industrial customers to opt out of participation in an electric utility's energy efficiency program.

Ind. Code § 8-1-8.5-10 ("Section 10"), which became law on May 6, 2015, mandates the periodic filing, beginning no later than 2017 and not less than once every three years, of plans by electricity suppliers that include energy efficiency goals, energy efficiency programs to achieve the goals, program budgets and program costs, and EM&V procedures that must include independent EM&V. Upon submittal of a plan, the Commission is required to consider ten factors in determining the overall reasonableness of a plan. If the Commission finds a plan to be reasonable in its entirety, the Commission shall: (1) approve the plan in its entirety, (2) allow the electricity supplier to recover all associated program costs on a timely basis through a periodic rate adjustment mechanism, (3) allocate and assign costs associated with a program to the class or classes of customers that are eligible to participate in the program, and (4) allow recovery of reasonable performance incentives and lost revenues. If the Commission finds the plan is not reasonable because costs associated with one or more programs included in the plan exceed the projected benefits of the program(s), the Commission may exclude the program(s) and approve the remainder. And, if the Commission finds the plan is not reasonable in its entirety, then the Commission's order shall set for the reasons for its determination and the electricity supplier shall submit a modified plan within a reasonable time.

It is against the backdrop of the Commission's Rules and Indiana statutes that we consider the DSM programs and ratemaking proposals made by NIPSCO in this Cause.

**5.** **Requested Relief.** NIPSCO requests Commission approval of its: (1) energy efficiency goals; (2) portfolio of electric energy efficiency programs ("Energy Efficiency Programs") to be effective for the period January 1, 2016 through December 31, 2018 and associated ratemaking and accounting mechanisms; (3) program budgets and costs; and (4) proposed EM&V ("Energy Efficiency Plan"). The Energy Efficiency Plan includes offerings to all customer classes, including low-income customers, and provides for industrial customer opt out in accordance with Section 9. Specifically, NIPSCO requests a Commission order:

(a) Approving the Energy Efficiency Plan, as described herein, to be effective for the period January 1, 2016 through December 31, 2018;

(b) Authorizing and approving NIPSCO's cost recovery through the DSMA Mechanism of the program costs, lost revenues, and performance incentives ("Energy Efficiency Plan Costs");

(c) Approving all accounting and ratemaking treatment requested herein, including the authority to defer and recover: (1) the over- and under-recoveries of projected Energy Efficiency Plan Costs through the DSMA Mechanism pending reconciliation in subsequent rider periods and approving the deferral of any costs incurred implementing the Energy Efficiency Programs prior to the time the Commission issues an Order in this proceeding authorizing NIPSCO to recognize these costs through the ratemaking process; and (2) lost revenues for previous program years, including DSM and energy efficiency programs previously offered but subsequently discontinued, through the DSMA Mechanism, until such amounts are recovered through rates.

(d) Approving NIPSCO's request to utilize its existing OSB to administer the Energy Efficiency Plan;

(e) Approving NIPSCO's request to continue the same EM&V program for its Energy Efficiency Plan; and

(f) Approving NIPSCO's request to file its annual EM&V results within 30 days of approval of the final EM&V report by its OSB.

**6. NIPSCO's Energy Efficiency Plan.** The following Energy Efficiency Programs are included in the Energy Efficiency Plan:

Residential Programs

- Residential Heating, Venting, and Air-Conditioning ("HVAC") Program
- Residential Lighting Program
- Residential Appliance Recycling Program
- Income Qualified Weatherization and Appliance Replacement Program
- Home Energy Assessments Program
- School Education Program
- Behavioral Program

Commercial & Industrial ("C&I") Programs

- Prescriptive Program
- Custom Incentive Program
- New Construction Program
- Retro-Commissioning Program
- Small Business Direct Install Program

**7. NIPSCO's Case-In-Chief.**

**A. Alison M. Becker.** Alison M. Becker, Manager of Regulatory Policy for NIPSCO, testified that NIPSCO recognizes the benefits of energy efficiency and wants to provide those benefits to its customers, while maintaining an appropriate balance between costs and benefits. She stated that NIPSCO's IRP, which was submitted to the Commission on October 31, 2014 ("2014 IRP"), projects that NIPSCO has sufficient existing energy resources to meet the needs of its customers through 2022. Ms. Becker testified that NIPSCO used the forecasted available energy efficiency for the timeframe of 2016 through 2018, and worked with its stakeholders to develop a proposed energy efficiency program that balances the benefits for customers with the cost to customers of providing those savings. Ms. Becker further testified that participants in the various Energy Efficiency Programs will realize bill savings by reducing their consumption of energy. In addition, she said all customers realize savings based upon avoided energy costs. Ms. Becker further stated that while NIPSCO's 2014 IRP does not project the immediate need for additional generating capacity, customers may in the long-term also realize savings for avoided capacity costs and receive revenue from the auction of capacity.

Ms. Becker testified that, consistent with the provisions of Section 9 and Section 10, the proposed cost recovery for the Energy Efficiency Plan includes a request for accounting and ratemaking procedures to recover, through NIPSCO's DSMA Mechanism, all program costs consistent with the provisions of 170 IAC 4-8-5, lost revenues consistent with the provisions of 170 IAC 4-8-6 and a performance incentive consistent with the provisions of 170 IAC 4-8-7. Ms. Becker stated that the cost recovery proposal also includes a request to defer and recover the over- and under-recoveries of projected Energy Efficiency Plan Costs through the DSMA Mechanism pending reconciliation in subsequent periods and approval to defer any program costs incurred in implementing the Energy Efficiency Plan prior to the time the Commission issues an order authorizing NIPSCO to recognize these costs through the ratemaking process. Ms. Becker testified that NIPSCO proposes to implement the cost recovery as part of its ongoing DSMA Mechanism reconciliation proceedings in Cause No. 43618 DSM X.

Ms. Becker testified that NIPSCO requests continued authority to recover lost revenues, which are the difference between the revenues lost and the variable operating and maintenance costs saved as a result of implementing an energy efficiency program associated with the Energy Efficiency Plan as well as lost revenues associated with previous program years, including those lost revenues associated with prior programs that are not included in the Energy Efficiency Plan, through the DSMA Mechanism. She also noted that NIPSCO is requesting continued authority to defer lost revenues from previous program years, including DSM and energy efficiency programs previously offered but subsequently discontinued, through the DSMA Mechanism, until such amounts are recovered through NIPSCO's rates. Ms. Becker testified that lost revenues associated with DSM and energy efficiency measures that were previously installed as part of programs NIPSCO is planning to discontinue do not cease when the program ends. Furthermore, Ms. Becker testified the Commission approved recovery of lost revenues associated with measures installed through NIPSCO's approved DSM and energy efficiency programs for the remainder of their useful lives in the 44154 Order. Thus, she opined, it is appropriate to continue to allow NIPSCO to collect lost revenues associated with those approved programs in the same manner they would be collected if the program had continued.

Regarding the length of time lost revenues should be collected, Ms. Becker testified that using any time period other than the life of the measure is arbitrary. Ms. Becker noted that NIPSCO bases the life of the measure on the expected useful life as determined by an independent evaluator. She stated that setting the number at anything other than the expected useful life simply means that a random number is chosen for some other reason. She also noted that the General Assembly did not choose to address a time limit on recovery of lost revenues or a specific timeframe for a rate case in Section 10, unlike it did in requiring a rate case at least every seven years for a utility with a Transmission, Distribution, and Storage System Improvement Charge tracker that was created through Senate Enrolled Act 560 in 2013.

Regarding the request to collect performance incentives, Ms. Becker testified that NIPSCO now has several years of EM&V on its programs and is able to demonstrate a track record of commitment to energy efficiency and proven benefits to its customers. Ms. Becker testified that to make energy efficiency investments competitive with supply-side resources where the organization receives a return on its investment, NIPSCO is requesting performance incentives, in the form of a shared savings mechanism. NIPSCO's performance incentive request will not exceed 15% of the program cost, excluding administrative and EM&V costs or 15% of the net benefits

provided by the program as determined by the Utility Cost Test ("UCT"). Ms. Becker noted that NIPSCO is not seeking performance incentives on programs designed for low-income or income qualified customers.

Ms. Becker testified that NIPSCO is proposing to continue to allocate program costs for all programs on a per kilowatt-hour ("kWh") basis based on the six-month kWh sales forecast for each Rate Schedule. In addition, NIPSCO will continue to forecast lost revenues by forecasting net energy and net demand savings by allocating projected energy savings in its energy forecast for most rates except the Residential Home Energy Conservation program which is forecasted based on customer count. Ms. Becker testified that NIPSCO proposes to allocate its performance incentives in the same manner as the allocation of program costs on a per kWh basis based on the six-month kWh sales forecast for each Rate Schedule.

Ms. Becker noted that 170 IAC 4-8-3 allows an electric utility to receive performance incentives to keep DSM programs on equal footing with supply-side resources under which the utility earns a return on its investment. Ms. Becker testified that the 2006 National Action Plan for Energy Efficiency Report noted that successful energy efficiency programs would be promoted by aligning utility incentives in a manner that encourages the delivery of energy efficiency as part of a balanced portfolio of supply, demand, and transmission investments. She also noted that Section 10 allows for the recovery of reasonable financial incentives that encourage the implementation of cost-effective energy efficiency programs through the elimination of a regulatory or financial bias that would otherwise exist in favor of supply-side resources, upon which NIPSCO is able to earn a return on its investment. Ms. Becker testified that NIPSCO is suggesting a "shared savings mechanism," whereby it receives an incentive for the implementation of cost-effective DSM and energy efficiency programs as it shares the calculated net benefits of the DSM and energy efficiency programs with customers. In order to accommodate the recovery of performance incentives, NIPSCO's schedules utilized in its DSMA proceedings have been revised to show projected performance incentives as well as the reconciliation of the performance incentives.

Ms. Becker also provided details regarding the treatment of customers who elect to opt out of NIPSCO's Energy Efficiency Programs. She testified those customers will continue to have a charge or credit for program costs, either for costs accrued or incurred while the customer was participating in the energy efficiency program or for reconciliation of costs for the time period during which the customer was participating in the energy efficiency program. In addition, Ms. Becker testified, those customers will continue to have a charge or credit for projected lost revenues and performance incentives as well as reconciliation of lost revenues and performance incentives for the appropriate time period (i.e., the life of the measure or a base rate case for lost revenues and period of participation for performance incentives).

With respect to Section 9 requirements, Ms. Becker testified that in preparing its budgets and program offerings, NIPSCO forecasted the amount of eligible C&I load that had previously opted out of participation in NIPSCO's 2015 Electric DSM Program. In addition, rather than having a portfolio of programs administered on a statewide basis by a single third party and a portfolio of programs administered by NIPSCO, NIPSCO will continue to administer its entire portfolio of Energy Efficiency Programs so that it best meets the needs of its service territory. Further, due to the elimination of the savings goals imposed in the Phase II Order, NIPSCO

structured the Energy Efficiency Plan based on the forecasted available savings during the 2016-2018 program years.

Ms. Becker testified that NIPSCO's filing comports with the requirements of Section 10. She stated the Energy Efficiency Plan includes energy efficiency goals that are: (1) reasonably achievable; (2) consistent with NIPSCO's 2014 IRP, and (3) designed to achieve an optimal balance of energy resources in NIPSCO's service territory. Second, the Energy Efficiency Plan includes energy efficiency programs that are sponsored by an electricity supplier and designed to implement energy efficiency improvements. Third, the Energy Efficiency Plan includes program budgets. Fourth, the Energy Efficiency Plan includes program costs which include: (1) direct and indirect costs of Energy Efficiency Programs, (2) costs associated with the EM&V of program results, and (3) recovery of lost revenues and performance incentives. For purposes of this filing, the "direct costs" are those associated with implementing the programs, including any costs associated with program start up, while "indirect costs" are the NIPSCO administrative costs. Finally, the Energy Efficiency Plan includes the EM&V procedures that involve an independent EM&V. Ms. Becker noted that the definition of "program costs" in Section 10 is different from the definition of "program costs" used in the evaluation of programs. She stated that for the evaluation of programs, including the benefit-cost tests, the definitions previously used should continue to apply; meaning that program costs in the determination of the benefits and costs of a particular program may not include EM&V costs or other recoveries or incentives approved by the Commission. However, if the test is designed to include any of those costs in the measurement of the program's cost and benefits, those costs will continue to be included.

Ms. Becker testified that Section 10 defines "energy efficiency goals" as all energy efficiency produced by cost-effective plans that are reasonably achievable, consistent with an electricity supplier's IRP, and designed to achieve an optimal balance of energy resources in an electricity supplier's service territory. She stated that NIPSCO has put together a plan that it finds to be achievable and that includes the programs selected by the 2014 IRP, which will allow NIPSCO to balance its energy resources as well as keeping the costs to customers in mind.

Ms. Becker testified that NIPSCO issued requests for proposals ("RFPs") for the residential and C&I programs. She testified that the RFPs were based on the achievable savings provided by Applied Energy Group ("AEG"), which was engaged to identify the DSM and energy efficiency measures that would be appropriate for the NIPSCO service territory, and in the same measure groupings as determined by the 2014 IRP. NIPSCO then worked with its OSB to select the winning bidder based on the programs offered, the cost per kWh saved and other factors such as the OSB's confidence in the vendor's ability to achieve the savings goals.

Ms. Becker testified that the DSM Rules set forth guidelines for DSM recovery. She stated 170 IAC 4-8-5 provides that a utility is entitled to recover the reasonable cost of planning and implementing a DSM program and lists several alternative cost recovery methodologies. In addition, 170 IAC 4-8-6 permits a utility to recover lost revenue from the implementation of a DSM program and states that a utility is allowed an opportunity for earnings from prudent investments in both supply- and demand-side resources. Ms. Becker also noted that 170 IAC 4-8-7 allows the Commission, when appropriate, to provide the utility with a financial incentive to encourage the participation in and promotion of a DSM program.

Regarding the OSB, Ms. Becker testified that the current OSB structure and process has been beneficial to both NIPSCO and its stakeholders. Therefore, NIPSCO proposes to maintain, without change, its OSB as most recently approved in the 44496 Order. NIPSCO also proposes to maintain its EM&V process as most recently approved in the 44496 Order.

Ms. Becker noted that once the Energy Efficiency Plan has been approved by the Commission, the OSB will have the flexibility to shift costs within a program budget as needed, shift funds among programs so long as the overall Energy Efficiency Plan budget is not exceeded, and design and implement new programs as long as they pass the Total Resource Cost ("TRC") test and the overall Energy Efficiency Plan budget is not exceeded. In addition, she testified that NIPSCO will work with its OSB to select a vendor and anticipates having a vendor in place by the time the Energy Efficiency Plan launches in 2016.

Ms. Becker testified that NIPSCO proposes to file its annual EM&V results within 30 days of approval of the final EM&V report by its OSB as well as a scorecard that includes program descriptions and performance updates in each of its DSMA filings. She noted that the scorecard will be for the reconciliation period included in the tracker filing.

Ms. Becker testified that NIPSCO's EM&V process in its proposed plan is consistent with the DSM Rules requiring that a utility have a process and load evaluation plan to assess the implementation and quantify the impact on energy and demand. She also noted that the cost-benefit tests discussed by Mr. Morgan address any concerns raised by the DSM Rule requirement that utilities show that an incentive paid by the utility to the customer, when combined with the reduction in the participants' utility bills, reflects the net benefit to the utility and all customers and that cross-subsidies are minimized between customer groups and between participants and nonparticipants within a customer group. She also noted that NIPSCO's allocation mechanism assures that costs are allocated to the appropriate customer class.

Regarding the relationship between the IRP and DSM, Ms. Becker testified that as required by 170 IAC 4-7 ("IRP Rules"), NIPSCO evaluated potential demand-side resources on a consistent and comparable basis with supply-side resources to provide safe, reliable, and cost-effective service to customers. She testified that, similar to developing assumptions for supply-side resources, NIPSCO developed assumptions for operating characteristics and associated costs for each of the demand-side resource options. Both the supply-side and demand-side resources were modeled as options available to the optimization model. Ms. Becker testified that the demand-side resources were available to be selected by the model and integrated into the plan; they were evaluated like supply-side resources and not treated as a reduction in the load forecast.

Ms. Becker testified that NIPSCO engaged AEG to identify the DSM and energy efficiency measures that would be appropriate for NIPSCO's service territory. NIPSCO then conducted an initial screen of these various measures using the DSMore® model by assessing the benefits (or avoided costs) against the costs of the measure. As such, if the benefits of a measure did not outweigh the costs, the measure was dropped from consideration. Ms. Becker testified that potential DSM and energy efficiency measures were aggregated and prescreened for cost-effectiveness using DSMore® to conduct industry standard cost-benefit tests. As a result, seven energy efficiency programs (three residential and four C&I) and one direct load control program, along with supply-side resources, were integrated into the 2014 IRP.

Ms. Becker testified how the DSM options were then integrated with the various scenarios and sensitivities. She said NIPSCO developed a base case scenario to establish the expected view of the future and sensitivity analyses were performed in order to evaluate the impacts when different assumptions in key drivers are assumed.

Ms. Becker sponsored Petitioner's Exhibit No. 1-D showing the forecast of energy savings associated with the implementation of the four energy efficiency programs selected as a result of the integration process for the 2014 IRP. The exhibit shows the forecasted cumulative net energy savings for the resources selected by the model, which includes all of the savings NIPSCO has obtained to date with additional savings being added by new measures each year. It also shows the incremental savings projected to be obtained through the addition of measures each year. In terms of the percentage of cumulative net energy savings, Ms. Becker testified that for the years 2016, 2017, and 2018, there is a forecast percentage energy savings of 0.85%, 1.18%, and 1.50%, respectively. Ms. Becker testified that all four of the energy efficiency programs selected by the 2014 IRP are included in the Energy Efficiency Plan and noted that NIPSCO's Energy Efficiency Plan goes beyond those programs selected to include other programs where AEG forecasted achievable savings.

**B. <u>Victoria A. Vrab</u>.** Victoria A. Vrab, Director of Demand Side Management for NIPSCO, testified that to develop programs for the period 2016-2018, NIPSCO contracted with AEG to perform a forecast of achievable savings ("AEG Study") to be utilized by NIPSCO's Strategic Planning Department in developing NIPSCO's 2014 IRP. AEG identified DSM and energy efficiency measures that would be appropriate for the NIPSCO service territory based on Census information, population growth, age of the housing stock, potential technology existing today and in the future, and the potential savings associated with these various measures. AEG also determined the likely level of participation. Ms. Vrab sponsored Petitioner's Exhibit No. 2-A, which included the achievable savings forecast as shown in Appendix G of the 2014 IRP. Ms. Vrab testified that NIPSCO then provided a variety of utility inputs for use with the modeling in DSMore to start the screening process by assessing the benefits (or avoided costs) against the cost of the measure.

Ms. Vrab testified NIPSCO included all of the program groupings from the AEG Study in its RFP even though not all of the program groupings were selected by the IRP for three reasons. First, NIPSCO wanted to offer a robust portfolio of energy efficiency programs for its customers. If NIPSCO had only selected the measure groupings that were accepted through the IRP model, there would have only been one program for its residential customers – lighting. Second, NIPSCO believed it was appropriate to pursue AEG's forecast of achievable savings and the benefits they will provide its customers. And, third, based on the planning numbers, the program size would remain relatively constant with what NIPSCO is currently providing.

Ms. Vrab testified that once NIPSCO had determined the level of savings it expected to achieve over the three-year period, it worked with its OSB to develop two RFPs – one for residential programs and one for C&I programs to determine the program budgets. Ms. Vrab testified that NIPSCO wanted one vendor to provide the complete portfolio of programs (even if that vendor elected to utilize subcontractors); it wanted the same vendor to offer both electric and gas programs where appropriate; and it was expecting a low-income program as well as a behavioral program to be part of the residential portfolio. Using these parameters, the bidders

submitted proposals and NIPSCO used the winning bids as the basis for its program budget, which then informed the remainder of the budget forecasting process. Ms. Vrab testified that NIPSCO recommended the selection of GoodCents to provide the residential programs and Lockheed Martin to provide the C&I programs, with the OSB voting 3-0 in favor of NIPSCO's recommendation and the Industrial Group abstaining.

Ms. Vrab explained that using one vendor for each portfolio allows the customers to have a single point of entry for NIPSCO's Energy Efficiency Programs and NIPSCO has fewer vendors to work with on issues related to marketing, reporting, and evaluation efforts. She stated NIPSCO will continue to work with its OSB to refine the program offerings so that they deliver the greatest value to its customers. Ms. Vrab testified that where savings accrue to both gas and electric service in NIPSCO's combined service territory, the programs will be offered as a portfolio of offerings to NIPSCO's combination customers to make sure they are aware of the ways they can become more energy efficient.

Ms. Vrab provided a description of each of the programs included in the Energy Efficiency Plan.[2] She testified that to get the most accurate bids from potential EM&V vendors, NIPSCO and its OSB elected to determine the programs and vendors for the Energy Efficiency Plan and then issue an RFP to select the vendor to evaluate the programs. The OSB has ultimate authority to select the EM&V vendor and NIPSCO plans to have one in place before the programs begin in 2016. To the extent any modifications to its plan or its EM&V efforts are necessary to comply with any federal regulations related to credits for emissions reduction, Ms. Vrab stated that NIPSCO will address them in its next request for approval of a DSM/energy efficiency plan and/or with the EM&V contractor.

Ms. Vrab testified NIPSCO took the proposed program budgets offered by the winning bidders and added projected NIPSCO administrative costs (approximately 5% of proposed program costs) and projected EM&V costs (approximately 5% of proposed program costs) to determine its proposed budget. NIPSCO then determined the amount of lost revenues anticipated to be collected over the three-year period by determining the projected lost revenues for measures that will be installed by the end of 2015 as well as the measures that are expected to be installed under the Energy Efficiency Plan. Finally, NIPSCO forecasted performance incentives with a 15% incentive cap based on program costs (excluding NIPSCO administrative and EM&V costs) for each of the three years in the plan. Ms. Vrab provided testimony regarding NIPSCO's budget and savings projections.

Ms. Vrab also testified regarding the lost revenues NIPSCO projects to collect as part of the proposed plan. However, those numbers were also updated by Ms. Becker in her rebuttal testimony. Regarding the mechanism for establishing the lost revenue projections, Ms. Vrab testified that NIPSCO considered the lost revenues associated with the measures that have been installed or are projected to be installed by December 31, 2015 and carried those lost revenues through the three year period of January 1, 2016 through December 31, 2018 using the same numbers utilized in its most recent semi-annual DSMA tracker proceeding (Cause No. 43618-DSM-8). She stated that NIPSCO then forecasted the costs of the lost revenues for the measures forecasted to be installed as part of the Energy Efficiency Plan. Ms. Vrab testified regarding the

[2] NIPSCO added an Income Qualified Weatherization component in its rebuttal case.

process NIPSCO utilizes to forecast and reconcile lost revenues, which she stated is consistent with the mechanism approved by the Commission in its 44154 Order.

Ms. Vrab testified NIPSCO is proposing a shared savings mechanism in which customers will receive 85% of the net benefits of the programs and NIPSCO will receive the remaining 15%. She testified that the proposed shared savings mechanism is based on actual (ex-post) net savings as evaluated by an independent third party evaluator and will be applied to all programs except programs for income qualified customers. Ms. Vrab testified that NIPSCO's share of the shared savings would be treated as above-the-line for ratemaking purposes and included in the earnings test under the fuel adjustment clause. She sponsored Petitioner's Exhibit No. 2-C to show that while NIPSCO is basing the calculation of incentives on the net present value of the program benefits as determined by the UCT, the total amount recovered for each program will not exceed 15% of the total program costs. Ms. Vrab testified that it is appropriate to utilize the UCT as the measurement for the shared savings because it motivates the utility to control energy efficiency program administrative costs and participant incentive costs, thereby resulting in more cost-effective programs for customers. In addition, she testified that NIPSCO is addressing the cost-effectiveness issue while also placing appropriate limits on the amount of performance incentives gained from the programs.

Ms. Vrab testified that NIPSCO forecasted the performance incentives based on the planning numbers submitted by the vendors and the analysis conducted by Mr. Morgan. Petitioner's Exhibit No. 2-C demonstrates both the 15% shared savings and the 15% program cost. She stated that NIPSCO is requesting recovery of the shared savings while not exceeding 15% of the program cost (excluding administrative and EM&V costs) and the forecasted numbers demonstrate the lower amount of the two. She stated that NIPSCO requests to collect performance incentives on a projected basis, with reconciliation taking place after the EM&V results are received based on the actual net present value of the net benefits as demonstrated through the UCT. This will be determined by the EM&V vendor selected by the OSB. Ms. Vrab explained that because NIPSCO's Energy Efficiency Plan costs are all reconciled based on actual costs and performance as determined by its EM&V report, a reconciliation method is included to correct for any variance which meets the requirements established by Section 10.

**C. <u>Richard A. Morgan</u>.** Richard A. Morgan, President of Morgan Marketing Partners, LLC, testified in support of the cost-benefit analysis of NIPSCO's Energy Efficiency Plan. Mr. Morgan testified that, as required by Commission, the analysis considers the UCT (also known as the Program Administrator Cost test), the TRC, the Ratepayer Impact Measure ("RIM") test, and the Participant Cost Test ("PCT") for the period of 2016-2018 for the residential and C&I portfolios. He testified that NIPSCO is likely to achieve its program goals given NIPSCO's previous efforts. Mr. Morgan testified that it is not appropriate to apply the definition of "program costs" as included in Section 10 when performing the cost-effectiveness test because if all of the costs included as "program costs" in Section 10 were included, the results would not be an accurate reflection of what each test is meant to measure. He explained that each of the cost-effectiveness tests have certain costs and benefits that are considered and that for purposes of these tests, the definition of "program cost" is different than what the General Assembly included in Section 10.

Mr. Morgan testified that, as required in Section 10, NIPSCO's Energy Efficiency Plan considers the change in customer consumption of electricity resulting from the plan in two ways.

The first is the savings the participant sees from making the efficiency improvement, which is shown in the PCT of the cost-benefit analysis. Mr. Morgan testified the results show that in all cases the participant saves more than they invest in the efficiency improvement. The second is through consideration of the savings from the programs in the IRP modeling for utility planning. Mr. Morgan testified that customer bills are affected by the program differently depending on whether the customer is a participant or a non-participant in the program. He stated the PCT looks at the bill savings compared to the incremental cost of the efficiency action the participant takes. He stated all of the programs included in NIPSCO's Energy Efficiency Plan have a positive PCT score greater than 1.0. Mr. Morgan testified that the potential impact on non-participants is shown by the RIM test, which is calculated by looking at the program costs plus the lost revenues not collected by the utility due to the efficiency improvements compared to the utility avoided benefits. According to Mr. Morgan, a score of less than one shows rates will potentially increase over the analysis period, but it does not necessarily mean that rates will increase. Mr. Morgan testified that the RIM score for NIPSCO's Energy Efficiency Plan is less than 1.0, which is typical for energy efficiency programs. Finally, Mr. Morgan testified that based on his review of NIPSCO's plan, the analysis of the goals, and the cost-benefit modeling, NIPSCO's Energy Efficiency Plan is cost-effective and achievable.

**8. <u>OUCC's Case-In-Chief.</u>**

**A. <u>Edward T. Rutter</u>.** Edward T. Rutter, Utility Analyst in the Resource Planning and Communications Division of the OUCC, testified regarding the OUCC's support of NIPSCO's proposed programs and budgets, exclusive of lost revenues and shareholder incentives.

Mr. Rutter described his participation in the discussion, development, and analysis of the components of NIPSCO's Energy Efficiency Plan. He testified NIPSCO worked closely with the OSB in developing programs that were generally consistent with the design and implementation of the programs adopted for 2015. He stated AEG developed a forecast of achievable savings to assist in the development of the 2014 IRP, which was also utilized by NIPSCO in developing the Energy Efficiency Plan.

Mr. Rutter expressed concern with the Income Qualified Appliance Replacement Program that provides income-qualified single family homeowners with an energy-efficient refrigerator as a replacement for their less efficient refrigerator. He recommended that a stringent control policy and a robust EM&V plan be put in place to ensure the appliances are placed, and remain, in the appropriate low-income households.

Mr. Rutter testified the direct project implementation budget is based on cost estimates from the residential and C&I program implementers and is reasonable, other than the potential need for greater EM&V for the Income Qualified Appliance Replacement Program. He stated that the administrative and EM&V budgets are also reasonable. He explained that they are reflective of historical costs and both average 5% of the proposed vendor program budgets.

Mr. Rutter testified the totality of NIPSCO's proposed Energy Efficiency Plan is unreasonable and should be rejected because of the proposed lost revenues and shareholder incentive recovery and the plan's failure to comply with Section 10. However, looking only at the program structures and costs other than lost revenues and shareholder incentives, he testified that

the programs are both cost-beneficial and reasonable. NIPSCO's programs are based on programs that have demonstrated success in NIPSCO's territory and/or other service territories across the country. He stated that the NIPSCO OSB has demonstrated the ability to work collaboratively to maximize the benefits from the previous and existing programs, and is confident that relationship will continue.

Mr. Rutter testified that NIPSCO's case-in-chief demonstrates that promoting DSM within NIPSCO's service territory does not expose it to any disincentive that requires removal, but rather provides an economic incentive that far exceeds what NIPSCO would earn by selecting a supply-side option. Mr. Rutter argued that if NIPSCO chose to meet demand with a supply-side option, such as a new plant, it would earn a return on its investment of 6.98%. That investment would come with significant risk, including financing a massive capital investment, slower cost recovery and the possibility that the Commission may not find the project used and useful. Whereas in comparison, none of those risks apply to NIPSCO's Energy Efficiency Plan.

Mr. Rutter defined "cost-effectiveness" as used in his testimony as a measure of the relationship between the benefits of a DSM investment and the associated costs. Results are typically developed in net present value dollars or as a ratio of benefits/costs. A score greater than 1.0 indicates the benefits exceed the costs. He stated there are five cost-effectiveness tests commonly used by state commissions and utilities, usually with input from other stakeholders.

Mr. Rutter stated that to determine if a DSM program or group of programs is cost-effective, absent other specific mandates, the first step is to select which of the five cost-effectiveness tests should be used: UCT, RIM, TRC, PCT or Societal Cost Test ("SCT"). He explained that these tests have been used for over 20 years. He stated NIPSCO focused its cost-benefit analysis on the UCT, RIM, and TRC and did not present complete results for the PCT or any results for the SCT. He stated that NIPSCO's proposed programs pass both the UCT and TRC tests, but fail the RIM test. He noted that because the programs' benefits outweigh their costs under the UCT and TRC, NIPSCO argues the lost revenues are reasonable, are entitled to be collected from ratepayers, and should be approved.

Mr. Rutter explained that while the benefits are identical for UCT, TRC, and RIM, the costs each test considers differ substantially. Neither UCT nor TRC recognize NIPSCO's proposed $78,000,000 in lost revenues and shareholder incentives to be paid by ratepayers. The RIM test results demonstrate that for every DSM dollar paid by residential ratepayers, they will receive only about $0.33 in benefits. For C&I customers, their $0.31 benefit is even worse. He stated these RIM test ratios are actually overstated, as the RIM test only factors in lost revenues, not the additional shareholder incentives.

Mr. Rutter stated that NIPSCO's projected DSM budget contains both the residential program costs of $19,623,165 and their associated proposed lost revenue recovery of $29,285,624. The C&I budget shows a similar disconnect between estimated program costs of $26,235,075 compared to the proposed lost revenue recovery of $43,473,722. NIPSCO seeks a total cost recovery of $123,886,122. He stated the program costs represent only 37% of that total ($19,623,165 + $26,235,075 = $45,858,240 / $123,886,122 = 37.02%).

Mr. Rutter testified that in NIPSCO's last DSM case, the OUCC expressed concern that lost revenues were producing DSM energy savings costing, on average, $0.30 per kWh saved. NIPSCO's Energy Efficiency Plan increases the cost to ratepayers, on average over the three years of the plan, to $0.37 per kWh saved. He stated that of the average $0.37 per kWh saved, the program cost recovery represents $0.14, with lost revenue recovery averaging $0.21 per kWh saved and the balance of $0.02 per kWh saved represented by the proposal to earn incentives. Mr. Rutter testified that these observations illustrate the serious imbalance between ratepayer and utility interests. Mr. Rutter testified that with lost revenues and shareholder incentives dwarfing the program costs, NIPSCO's proposed recovery of these two items is both unnecessary and unreasonable.

Mr. Rutter stated that in interpreting the statutory definition of "revenues lost" in Section 10(e)(1), the Commission should consider whether this term refers to losses that prevented the utility from achieving its base rate-embedded level of sales. Mr. Rutter testified that NIPSCO's DSM lost revenue request is unreasonable because the DSM lost sales are not preventing NIPSCO from recovering its authorized fixed costs.

Mr. Rutter sponsored an attachment reflecting NIPSCO's annual kWh sales for calendar years 2010 through 2014. He stated NIPSCO's test year kWh sales in its last base rate case were approximately 15.4 billion. Sales subsequent to the base rate order (2012, 2013, 2014) exceed test year sales by between 1.2 and 1.9 billion kWh annually. In comparison, this is about ten times greater than the estimated DSM-related lost sales for 2016-2018. Mr. Rutter stated that NIPSCO annually recovers far more fixed costs than authorized in base rates and there is no evidence that suggests NIPSCO will fail to realize its base rates authorized level of sales or fail to recover its authorized fixed costs as a result of DSM. He testified that providing recovery of lost revenues for DSM for any year subsequent to the test year is not only unnecessary, but unreasonable given NIPSCO's increase in kWh sales.

Mr. Rutter testified NIPSCO's Energy Efficiency Plan is not consistent with the provisions of Section 10. He stated NIPSCO selectively applies portions of Section 10 that are most favorable to it, but ignores portions that may not prove to be as beneficial. He stated that NIPSCO relies on Section 10 for the proposition that if the Commission finds a DSM plan to be reasonable, NIPSCO should be allowed to recover or receive reasonable financial incentives and lost revenues. However, if NIPSCO wants the lost revenues and incentive benefits of Section 10, it should be required to comply with all applicable portions of the law.

Mr. Rutter stated that Section 10(j) provides that in making its determination of the overall reasonableness of a plan submitted under subsection (h), the Commission must consider several items. One of those items, specified in Section 10(j)(2), is a cost and benefit analysis of the plan. Section 10(1) sets forth the actions available to the Commission if it determines that a DSM plan is not reasonable because the costs associated with one or more programs included in the plan exceed the projected benefits of the program or programs. And, Section 10(g) specifies that program costs include: (1) direct and indirect costs of energy efficiency programs; (2) costs associated with the EM&V of program results; and (3) other recoveries or incentives approved by the Commission, including lost revenues and financial incentives approved by the Commission under Section 10(o). He stated that read together, these portions of Section 10 require the Commission find a DSM plan reasonable before the utility may be eligible for lost revenue and

shareholder incentive recovery. Reasonableness is predicated, at least in part, on a cost-benefit analysis where program benefits exceed program costs and program costs must include lost revenues and incentives.

Mr. Rutter acknowledged that NIPSCO has shown that its proposed programs pass both the TRC and UCT, but fail the RIM test. He stated that neither the TRC nor UCT include lost revenues or shareholder incentives as program costs. In contrast, he stated that the RIM test includes direct and indirect program costs, EM&V costs, and lost revenues. The only Section 10(g)(3) cost it does not include is shareholder incentives, which would further reduce the test scores. Mr. Rutter suggested that while the TRC and UCT tests have been widely utilized by Indiana utilities, stakeholders, and the Commission, the Indiana General Assembly and Governor Pence have made it clear that Indiana law now requires a different, more inclusive analysis.

Based upon this analysis, Mr. Rutter opined that NIPSCO failed to meet Section 10(j)(7) that requires the Commission to consider the effect, or potential effect, in both the long term and short term, of the plan on the electric rates and bills of customers that participate in energy efficiency programs compared to the electric rates and bills of customers that do not participate in energy efficiency programs. Mr. Rutter testified that because NIPSCO's programs fail the RIM test, NIPSCO is not entitled to either lost revenues or shareholder incentives under Section 10. While 170 IAC 4-8-3 allows for an electric utility to receive shareholder incentives to keep DSM programs on an equal footing with supply-side resources, Mr. Rutter concluded that there is no compelling evidence demonstrating performance incentives are required to encourage cost-effective DSM in this case.

Mr. Rutter testified that the OUCC recommends the Commission find that NIPSCO's DSM plan is unreasonable in accordance with Section 10(l) and/or (m).

**B. <u>Wes R. Blakley</u>.** Wes R. Blakley, Senior Utility Analyst for the OUCC, testified regarding the design and mechanics of the DSMA Mechanism. He stated that NIPSCO requests to recover program costs and lost revenues for its Energy Efficiency Plan through its DSMA Mechanism, which currently operates as Cause 43618 DSM X and recurs semi-annually for billing January through June and July through December each year. NIPSCO also requests an incentive in the form of a shared savings mechanism that would be recovered in the DSMA Mechanism, if approved.

Mr. Blakley explained that NIPSCO proposes to continue to reconcile all costs in its DSMA Mechanism adjusting for a variance between projected costs and actual costs. He testified the design and mechanics of the DSMA Mechanism are reasonable, and have the advantage of a reconciliation process based on actual results as verified by the EM&V process.

**9. <u>CAC's Case-In-Chief</u>.** Ms. Natalie Mims, Energy Efficiency Director for the Southern Alliance for Clean Energy, recommended that NIPSCO's Energy Efficiency Plan be rejected as unreasonable until her recommendations are incorporated into the plan. Ms. Mims testified that while NIPSCO works to incorporate her recommendations, NIPSCO should continue to offer the programs under its 2015 Electric DSM Program for purposes of consistency, marketplace certainty, and for the benefit of NIPSCO's customers.

Ms. Mims testified that NIPSCO's evaluation of energy efficiency programs suffers from at least one, if not two, significant flaws, which not only go against Sections 10(c) and (h), but also Section 10(j)(9). She testified that NIPSCO evaluated the programs in a three-step process by: (1) assessing measures for cost-effectiveness under the UCT and the TRC; (2) testing the "market valuation" of programs targeting end-uses, e.g. Residential HVAC, Residential Lighting, and Residential Other, by running NIPSCO's IRP model with and without the program in question to determine the difference in net present value of revenue requirements; and (3) integrating energy efficiency programs with supply-side resources for comparison to supply-only resource plans. She also testified that the "market valuation" in step two is likely to undervalue energy efficiency since the relationship between the benefits of energy efficiency in an IRP and the quantity of savings achieved is not normally linear. Ms. Mims testified that NIPSCO should eliminate steps one and two in this process and refile its IRP when NIPSCO submits its revised Energy Efficiency Plan, incorporating her recommendations. She also testified that NIPSCO should increase its 2016-2018 annual budget levels to 2014 levels for those programs unaffected by opt out customers to levels consistent with the 2014 DSM budget.

Ms. Mims testified that NIPSCO's responses to CAC's Exhibit 1, Exhibit NM-2, Data Request CAC 8-002 as well as NIPSCO's 2014 IRP at pages 110-112 leave the impression that the self-build portion of the resource plan was developed and then held fixed when energy efficiency was added as a resource choice. She stated that this means the benefit of energy efficiency would be limited to avoiding short-term capacity purchases needed to smooth the transition between events like resource additions and retirements and to savings related to plant dispatch. Ms. Mims testified that this is likely to significantly understate the benefits of energy efficiency. She testified that NIPSCO should be required to fix what seems to be a major flaw in its evaluation of energy efficiency in its IRP when NIPSCO files its revised Energy Efficiency Plan. Ms. Mims testified that NIPSCO should present an energy efficiency plan that is consistent with an IRP that reasonably balances energy resources through comparable consideration of both supply- and demand-side resources. Ms. Mims testified that energy efficiency should not be screened more than supply-side resources and it should be evaluated in sufficient quantities that allow it to compete with supply-side resources in an IRP model.

Ms. Mims testified that NIPSCO should consider offering incentives on measures installed by schools such as lighting, air temperature controls, information technology, occupancy sensors, HVAC, and building re-commissioning through its commercial prescriptive program to reduce the upfront capital cost for schools to install these measures. She also recommended that for residential customers, NIPSCO adopt four additional programs: new construction, multifamily direct install, income qualified weatherization, and upstream manufactured home programs. Ms. Mims testified that for C&I customers, NIPSCO should adopt a self-direct program and provide more information about programs to eligible opt out customers in order to educate them about the opportunities they will miss by opting out. She also recommended that NIPSCO continue to offer, and expand, based on participation levels, its Residential New Construction program.

Ms. Mims testified that NIPSCO should re-introduce its multifamily program in its Energy Efficiency Plan. Ms. Mims testified that NIPSCO proposes to eliminate its Income Qualified Weatherization program and replace it with the Income Qualified Appliance Replacement program. She stated that NIPSCO plans to replace 751 refrigerators and save 665 megawatt hours ("MWh") each year with the Appliance Replacement program. Ms. Mims noted that in 2014,

NIPSCO offered a Low-Income Weatherization program that provided walk through audits and direct installations of energy efficiency measures to single-family homeowners or renters with landlord approval having a total household income up to 200% of the federal poverty level. She explained that the program identified neighborhoods using census block data, that all residents within the qualified block were eligible, and that in 2014, NIPSCO saved two gigawatt hours with this program. She stated that in 2015, NIPSCO proposed to save 616 MWh with its Income Qualified Weatherization program. Ms. Mims testified that she supports the Income Qualified Appliance Replacement program, but does not support NIPSCO eliminating the other aspects of the Low-Income Weatherization program. She stated that NIPSCO is effectively proposing to cut its low-income energy efficiency savings in half. Ms. Mims recommended NIPSCO continue to implement its Income Qualified Weatherization program at the level it did in 2014.

Ms. Mims also recommended that NIPSCO maintain the weatherization aspect of its program for manufactured homes and work with its implementer to ensure the success of the program. Ms. Mims testified that given the absence of a program that serves the new manufactured home market, NIPSCO should implement an upstream efficiency program that is targeted at manufactured home producers. Finally, Ms. Mims recommended that NIPSCO clarify that its residential HVAC, Lighting, Appliance Recycling, Income Qualified Appliance Replacement, Home Energy Assessment, and Behavioral Programs are available to manufactured homeowners and renters.

Ms. Mims testified that energy efficiency is the lowest cost resource, and NIPSCO should look for reasonably achievable ways to attract and retain energy efficiency program participation from its large customers. Ms. Mims testified that NIPSCO should offer a C&I self-direct program. She noted, however, that without a revision to the current lost revenue structure, this program is not likely to be appealing to non-residential customers. She stated that another option with a self-direct program would be to continue to allow customers to opt out, but require those customers opting out of the program to achieve verifiable efficiency savings. She also recommended for the C&I self-direct program that: (1) projects generate capacity savings and not just time-shifting of energy consumption; (2) projects started prior to being approved as a self-direct project should not be eligible for funding or credit; and (3) self-direct customers should be required to share plans with the administrator or other parties interested in implementing similar projects, subject to scrubbing the plans for confidentiality.

Ms. Mims testified that she recommends third party EM&V occur on a comparable schedule to NIPSCO's EM&V schedule, and be required to use the same standards for data collection as NIPSCO's Energy Efficiency Programs. She testified the important features of EM&V are that it is consistent across customers, transparent, and accountable. Ms. Mims testified that based upon her review of NIPSCO's letter to its industrial customers regarding the ability to opt out of Energy Efficiency Programs NIPSCO should modify the language to focus on the benefits the customer is declining when the customer opts out of Energy Efficiency Programs. She testified that currently the language focuses on the ease with which the customer can opt out. She recommended that NIPSCO also consider adding an additional page with a case study of a successful energy efficiency project that is in the same industrial sector as the customer as an example of the upside of the Energy Efficiency Programs.

Ms. Mims testified that NIPSCO's proposed Energy Efficiency Plan does not meet the "overall reasonableness" threshold with its continued use of trackers because the ongoing use of trackers to recover energy efficiency costs has an impact on customer bills, particularly when rate cases occur infrequently. Ms. Mims testified that the prolonged use of trackers without the benefit of a general rate case is unfair to ratepayers in that the utility can raise rates when its costs may have increased without looking at where its costs have decreased.

Ms. Mims testified that NIPSCO should be allowed to recover lost revenue if it was done in a manner consistent with CAC's testimony in Cause Nos. 44496, 43618, and 43912, and if recovery of lost revenues is allowed, it should be limited to the amount associated with decreases in sales that are directly attributable to the implementation of Commission approved Energy Efficiency Programs and only to the extent it impacts NIPSCO's fixed cost recovery. Ms. Mims testified that the current structure of recovery of lost revenues for NIPSCO, however, is not reasonable and should be changed to conform to Section 10. She testified that NIPSCO should be required to include customer load growth, off-system sales, and changes in other revenue structures when proposing any lost revenue adjustment mechanism. She stated that changes in these factors between rate cases provide the utility with additional fixed cost recovery, which should be offset in any lost revenue mechanism. Ms. Mims testified that NIPSCO has not provided evidence that it will under-recover fixed costs due to the impact of its Energy Efficiency Programs. She said this is unreasonable and why Indiana's lost revenue adjustment mechanism is asymmetrical – i.e., the utility makes no adjustment for increases in revenues due to activities unassociated with energy efficiency and instead simply assumes that lost revenues due to energy efficiency always occur. She also testified that lost revenue recovery is meant to be a short-term solution to address revenue loss in between rate cases. Ms. Mims testified that if lost revenue recovery is allowed, it should be limited to three years or the life of the measure, whichever is shorter, to avoid the "Pancake Effect."

Ms. Mims testified that in Indiana, the rationale for 36 months of lost revenue can also be found in Section 10, which requires the utilities to submit energy efficiency plans at least once every three years. Ms. Mims testified that lost revenue recovery should be limited to the duration of the energy efficiency plan approved by the Commission under Section 10(h). Additionally, she testified that a reasonable approach to collecting lost revenues would require that: (1) the utility show that implementation of Energy Efficiency Programs has prevented NIPSCO from recovering fixed costs; (2) a standard methodology be used across the State of Indiana to uniformly calculate lost revenue for a measure; and, (3) calculate the lost revenue for three years or the life of measure, whichever is shorter.

Ms. Mims testified that the Commission did not approve NIPSCO's lost revenue recovery indefinitely or put a time constraint on the methodology; the DSM Rules state that the Commission may periodically review the need for continued lost revenue recovery as a result of the utility's DSM program, and that the approval of a lost revenue recovery mechanism shall not constitute approval of a specific dollar amount, the prudence, or reasonableness of which may be debated in a future proceeding before the Commission. Also, Section 10(o) now includes the term "reasonable" in front of the term lost revenues. Ms. Mims testified that a reasonable lost revenue policy, assuming that NIPSCO can show it has actually lost revenues as a result of implementing Energy Efficiency Programs, would allow the utility to receive lost revenues for three years or the

life of the measure, whichever is shorter. Additionally, she testified that it would not be prudent to allow a utility to recover lost revenue until its next rate case given the length of time between utility rate cases in Indiana, because this could result in the utility recovering lost revenue for the life of the measure, which is not reasonable.

Ms. Mims recommended that in the absence of: (1) requiring the utility to show that they have "lost" revenues; and (2) shortening the lost revenue recovery period to the shorter of 36 months or the life of the measure, or requiring the utility to return to the Commission for a rate case every three years, NIPSCO should not receive a performance incentive. However, if the lost revenue period is shortened to 36 months or the life of the measure, whichever is shorter, the Commission should allow a performance incentive.

Ms. Mims also testified that she had reservations about NIPSCO's performance incentive proposal. First, she testified that although there are 12 states that use a shared net benefit performance incentive, it does cost more as a percent of energy efficiency program costs and results in less energy efficiency impacts than other performance incentives. Second, she testified that NIPSCO's proposed shared benefit performance incentive is based on the net present value of the net benefits of the UCT score and this creates an incentive indexed solely to the UCT benefits, which incentivizes NIPSCO to invest in only the most cost-effective programs rather than all cost-effective efficiency programs. Ms. Mims testified that the incentive mechanism could motivate NIPSCO to emphasize investments in low-cost programs that will not serve all customer classes equally.

Ms. Mims testified that NIPSCO's proposal for a shared net benefit performance incentive of 15% of the net present value of the UCT score is not reasonable for two reasons. First, she recommended that the Commission should establish a performance incentive that is contingent upon performance; a utility should only be rewarded for achieving its goals, and the proposal that NIPSCO has put forward does not require or depend upon any performance. She testified that if NIPSCO saved one kWh it would still receive a performance incentive. Second, she stated that 15% of net benefits calculated using the UCT is not a reasonable shared net benefit split between ratepayers and shareholders for the amount of energy that NIPSCO is proposing to save, which is approximately 0.60% of sales a year. Ms. Mims testified that based on national best practices, the Commission should require NIPSCO to achieve at least 70% of its energy savings goal to be eligible for the performance incentive. Because NIPSCO is setting its own energy efficiency goals, she recommended that if the Commission adopts a shared net benefit performance incentive, then it require NIPSCO to meet 100% of its goal as a threshold for a performance incentive.

Ms. Mims recommended that as part of the energy efficiency rulemaking, that a workshop be held to discuss a cohesive state policy on performance incentives and calculation of lost revenues, as these areas seem to have the most diverse methodologies among Indiana utilities. She recommended the Commission and stakeholders consider the costs and benefits of designing a performance incentive that has multiple criteria, as well as identify appropriate criteria for a three-year energy efficiency cycle that will motivate the utility to pursue Indiana's energy efficiency policy goals.

Finally, Ms. Mims testified that it does not seem prudent that NIPSCO has designed its Energy Efficiency Plan without having finalized its 2014 EM&V, particularly because NIPSCO is proposing to eliminate programs that were successful in 2013, including its Multifamily Direct Install, Low Income Qualified Weatherization, Residential New Construction, and the weatherization component of its Home Energy Assessment programs. She testified that EM&V should be finalized prior to programs that were previously part of its portfolio being eliminated.

**10. <u>Industrial Group's Case-In-Chief</u>.** Michael P. Gorman, Managing Principal of Brubaker & Associates, testified on behalf of the Industrial Group. Mr. Gorman summarized NIPSCO's proposal and noted that NIPSCO is seeking approval to recover an estimated $72.8 million in lost revenues and $5.3 million as a performance incentive. Together, this amounts to 63% of the total three-year budget of $123.9 million. Mr. Gorman testified that the fact that those items account for more than 60% of the total requested budget is indicative that the requested recovery for lost revenues and performance incentives is excessive and that it is not reasonable for those items to equal an amount roughly twice the total requested cost of the programs themselves.

Mr. Gorman also testified that the total proposed budget, relative to the amount of energy savings, shows that the costs of the program are exorbitant and not competitive nor reasonable. To illustrate this, he testified that the budget, relative to the projected savings, produces a cost to customers of about $318/MWh. Mr. Gorman compared this to the $9/kW-month credit paid to interruptible customers on NIPSCO's system, which using an assumed load factor of 60-65%, he testified equated to a cost of $19/MWh.

Mr. Gorman testified that NIPSCO's proposed lost revenue component of its budget will charge customers $187/MWh for projected savings over the three-year life of the proposed Energy Efficiency Plan. In comparison, Mr. Gorman testified, in NIPSCO's last base rate case, the Commission approved a gross margin of $926,500,000, based on a sales base of 15.49 million MWh, which translates into a gross margin in base rates of $59.81/MWh. Mr. Gorman testified that based on this analysis, NIPSCO will be making a substantially higher profit through its claims of lost revenues related to the Energy Efficiency Programs, than it would have earned had NIPSCO made additional sales rather than claiming lost sales as a result of the programs. Mr. Gorman further testified that if the proposed level of lost revenues were adjusted to account for the filing of a rate case as indicated by NIPSCO, the cost to ratepayers would still remain at least $84.31/MWh for savings achieved over the three-year course of the program.

Mr. Gorman testified that NIPSCO's request would not result in just and reasonable rates. He explained that the proposed budgets are far in excess of the costs of supply-side resources, and that NIPSCO's proposal to charge customers a lost revenues margin on reduced sales, results in greater profits compared to the gross margins built into NIPSCO's rates. Mr. Gorman further testified that the gross margin in rates reflects NIPSCO's costs in generation, transmission, and distribution, while the lost revenue related to energy efficiency reflects primarily production related fixed costs. Mr. Gorman stated that this renders the lost revenue methodology and proposed recovery level, excessive and not a reasonable or prudent resource cost. He also indicated that since NIPSCO's last rate case, its overall sales have not declined, but rather increased. As a result, he said it cannot reasonably be shown that NIPSCO has been deprived a

reasonable opportunity to earn its authorized revenue requirement due to the programs it has implemented, and further that its claims of lost revenues are without merit.

Mr. Gorman further testified that there are three reasons to reject NIPSCO's lost revenue recovery request: (1) NIPSCO has not lost revenue due to declines in sales since its last rate case; (2) the recovery is premature in light of the plan to file a rate case; and (3) the uncertainty regarding additional large customer opt out casts doubt on NIPSCO's requested relief.

Mr. Gorman testified that the premise of lost revenue recovery is that NIPSCO is being denied the opportunity to recover its fixed costs due to revenue erosion from declining sales attributable to the Energy Efficiency Programs it offers. Mr. Gorman stated that no utility could claim to have lost recovery of its fixed costs if sales are at the same level, or higher, than those used to set base rates. He stated that, as a result, the request to recover lost revenues should be based on evidence that declining sales in NIPSCO's territory have occurred due to Energy Efficiency Programs, and no other causes; and the decline in sales has resulted in reduced revenues relative to the authorized levels when base rates were last set. Lost revenues should not be awarded if a utility is able to offset any reduction in sales through other sources of income such as off-system sales.

Mr. Gorman testified that the electricity sales levels on NIPSCO's system have increased since its last base rate case, and are projected to remain above those levels. Annual sales in 2014, based on Federal Energy Regulatory Commission Form-1 data, and projected sales for 2015, based on Environmental Cost Recovery filings by NIPSCO, were both at, or above, 17 million MWhs, well above the 15.5 million MWhs used to set NIPSCO's current base rates. Mr. Gorman testified that this evidence demonstrates that NIPSCO cannot legitimately claim to have suffered erosion of fixed cost recovery since its last base rate case, and thus cannot establish a foundation for the continued approval to recover "legacy" lost revenues for measures installed prior to 2016. With respect to future lost revenue recovery associated with the proposed Energy Efficiency Plan, he stated there are two issues to consider. First, to the extent that lost revenue recovery is meant to provide assurance of a utility's recovery of fixed costs, the use of forecasted savings and sales is highly speculative. Mr. Gorman testified that changes in sales volumes can occur for a number of reasons, not simply energy efficiency programs, and that the purpose of lost revenue recovery is to determine whether the programs denied NIPSCO the opportunity to recover its fixed costs. He stated that this can best be done through a retrospective analysis taking into account sales and revenues versus the sales used to set base rates. Mr. Gorman testified that the Commission should approve recovery of lost revenues associated with the Energy Efficiency Plan on a retrospective basis if it does not defer consideration of the issue to NIPSCO's base rate case. He stated this would allow for a verification of an actual reduction in sales and whether the programs were the cause of that decline below the level used to set rates.

Second, Mr. Gorman testified that the speculative nature of using forecasted sales and savings, together with the fact that NIPSCO's proposed level of lost revenue recovery exceeds its current gross margin, indicates the need for a "circuit breaker" to restrict the level of lost revenue recovery. He stated that a cap on the continued recovery of lost revenues will help the Commission fulfill its obligation to ensure that rates remain just and reasonable. Mr. Gorman stated that as Section 10 requires a utility to file an energy efficiency plan every three years, the Commission

should limit recovery of lost revenues on a forecasted basis to three years, the life of the measure, or until NIPSCO files its next base rate case, whichever is shorter. Mr. Gorman testified that at that time, NIPSCO can present evidence that it has experienced and will continue to experience lost revenues, and the Commission can then judge the reasonableness of continued collection of lost revenues.

Mr. Gorman also testified about the impact of NIPSCO's planned rate case filing on its request for lost revenue recovery. Mr. Gorman stated that with the filing of the rate case and NIPSCO's plan to reset most of the "legacy" lost revenues to zero, the total amount of lost revenue recovery requested by NIPSCO should be reduced. He stated that the rate case could introduce issues of rate design that would increase fixed cost recovery, thus lowering the level of lost revenues associated with the Energy Efficiency Plan as well as result in a new gross margin. He stated these changes could mean that the requested level of lost revenue recovery, as well as the proposed method of calculating lost revenues, may no longer be reasonable following the rate case. Mr. Gorman testified that NIPSCO's request for lost revenue recovery is premature in light of the base rate case, and recommended that the Commission, if it does not reject recovery of lost revenues outright, defer the request to recover lost revenues associated with the Energy Efficiency Plan to NIPSCO's rate case.

Mr. Gorman also testified that it is NIPSCO's plan to zero-out only those lost revenues associated with measures installed prior to 2015 in its base rate case. He noted that NIPSCO does not plan to account for expected savings related to 2015 measures for purposes of setting sales levels for its base rate case. He said this position is concerning because NIPSCO has not established the existence of lost revenues relative to sales used to set rates in the prior rate case, making continued collection of pre-2016 legacy lost revenues problematic. Mr. Gorman further testified that when new rates are set, those rates should be set at a level that is sufficient to allow NIPSCO a reasonable opportunity to recover its authorized revenue requirement. He explained that by failing to account for 2015 lost revenues in new base rates, NIPSCO will experience a windfall by being permitted to recover not only its prudently incurred cost, but also the lost revenue associated with measures installed in 2015. He stated that this would be a detriment to customers and is another reason to reject NIPSCO's request to recover pre-2016 lost revenues.

Mr. Gorman testified that the additional opt out of large customers could have an impact on the estimated level of lost revenues resulting from the Energy Efficiency Plan, making it difficult to ascertain the reasonableness of NIPSCO's lost revenue recovery request. He also stated the Commission should consider that NIPSCO has the opportunity to make off-system sales and has other sources of revenue. Mr. Gorman explained that to the extent there is a decline in retail sales through energy efficiency programs, it could increase the opportunity for NIPSCO to make off-system sales, thus offsetting any reduction in revenues associated with the programs. He stated this should be taken into account when considering whether NIPSCO's lost revenue recovery is reasonable and whether NIPSCO has experienced any lost revenues. Mr. Gorman further explained that lost revenue recovery could also adversely impact a customer's incentive to participate in the programs by reducing the monetary savings the customer would otherwise see, thus reducing the economic incentive to participate.

With respect to NIPSCO's request for performance incentives, Mr. Gorman testified that NIPSCO has not proven that its Energy Efficiency Plan is competitive with supply-side resources. He testified that the program budgets, absent lost revenue and incentive recovery, are still roughly twice NIPSCO's current, $60/MWh gross margin. Mr. Gorman stated that since the Energy Efficiency Plan is not competitive with a supply-side resource, and would not be a prudent resource as measured by cost, NIPSCO should not be awarded a performance incentive. He said the performance incentive proposed by NIPSCO would give it more profit for less risk than a supply-side resource. In contrast to building a supply-side resource, in which NIPSCO would undertake numerous risks such as upfront investment repaid through depreciation over an extended period, disallowed capital investment, as well as risk associated with the costs of securing fuel supply and transportation, and environmental compliance; implementing the Energy Efficiency Plan, recovered through a rider, poses no risk to NIPSCO that it will not be compensated for its efforts. Mr. Gorman testified that there is no support for the claim that the proposed incentive is necessary to place demand- and supply-side resources on an equal footing.

Mr. Gorman further testified that it would not be reasonable to grant shareholders an incentive in light of the virtually risk free offering of energy efficiency programs. He testified that doing so would give NIPSCO a return on its expenditures when it was making no capital investment or putting any capital at risk. In addition, NIPSCO should not be rewarded with an incentive for meeting its basic service obligation or a legislative mandate, and that if lost revenues are awarded, NIPSCO should not receive an incentive since recovery of lost revenues would offset any disincentive to pursue energy efficiency programs.

Mr. Gorman also noted that the proposed incentive is based on forecasts, compounding the risk to ratepayers that recovery of energy efficiency costs will be excessive and unreasonable. He stated that an error in the forecasted expenditures, savings, or sales used to calculate, allocate, and recover costs could lead to over- or under-recovery that compounds the difficulty of monitoring the reasonableness of the incentives. Mr. Gorman testified that if an incentive is approved, it should be recovered only after EM&V confirms the savings, which will ensure that all relevant parties know the savings actually achieved and program expenditures, thus limiting the variables to produce more reasonable results. Mr. Gorman also testified about his concern that there is no "threshold" related to the incentive plan that NIPSCO needs to pass in order to ensure that NIPSCO is not pursuing energy efficiency programs that make only a theoretical check on its ability to earn an incentive. Mr. Gorman testified that as the Energy Efficiency Plan is designed and implemented, if any performance incentive is approved, then a threshold should be installed to impose risk on NIPSCO as a means of preserving balance between ratepayers and the utility.

Mr. Gorman also testified that if the Commission approves the lost revenue recovery and performance incentive, NIPSCO's rate of return should be reduced in the upcoming rate case to recognize the reduction in business risk to NIPSCO's shareholders through the use of a tracker to recover program costs, lost revenues, and an incentive. Mr. Gorman explained that in the context of traditional ratemaking, NIPSCO's shareholders are compensated for the business risk of the utility through the allowed rate of return. He stated that among these risks are the exposure to fluctuating retail sales and increases in costs for particular expenses. Mr. Gorman testified that through the DSMA Mechanism, NIPSCO is isolated from these risks related to the offering of

energy efficiency programs, and accordingly, failure to adjust the allowed return downward would over-compensate shareholders at the expense of ratepayers.

Regarding the proposed design of the C&I Custom Incentive program, Mr. Gorman stated that NIPSCO is proposing to implement a requirement that currently enrolled customers will be required to reapply for an incentive if they do not complete a program by 2016. He stated that all customers would be required to complete a project within 24 months or the end of the Energy Efficiency Plan. Mr. Gorman testified that these changes impose difficulties on customers that should not be overlooked in approving the program. He stated that many customers likely to rely on the C&I Custom Incentive program have budget and capital improvement cycles that extend for years, so that placing a cap on the time to complete a project may act as a deterrent to customers in pursuing projects through the program. In addition, for customers who applied prior to 2015, new incentive rates would apply, which could alter the economics of a project and lead customers to abandon projects. Mr. Gorman testified there is also a risk that projects may not receive re-approval, which could also lead customers to abandon projects.

To address these concerns, NIPSCO should be required to clearly notify customers of any pending changes. NIPSCO should also be required to provide customers a clear guide to project approval and incentives. And to reduce the risk of customers abandoning projects, the Commission should require NIPSCO to allow customers who have a project approved after 2016 until the end of the Energy Efficiency Plan to complete the project in order to fit the project within their budget and planning cycles. Mr. Gorman recommended the Commission deny NIPSCO's proposal to require customers who have received project approval to reapply after 2015. He noted that NIPSCO has indicated its intent to work with customers to determine which projects will, and will not, be pursued, which should make it possible for NIPSCO to develop the necessary understanding of expected completion dates to address its concerns about tying-up program budgets.

**11. <u>NIPSCO's Rebuttal Testimony</u>.**

**A. <u>Alison M. Becker</u>.** In response to the argument that the Energy Efficiency Plan does not meet Section 10(j)(6) because NIPSCO's case-in-chief did not include customer comments, Ms. Becker provided additional details regarding the collection of input from stakeholders on NIPSCO's Energy Efficiency Plan. Ms. Becker stated that in developing its 2014 IRP, NIPSCO followed the Public Advisory Process as required by the draft IRP rule. This included 18 one-on-one meetings with various stakeholder groups and two in-person meetings as well as a webinar/conference call with all stakeholders invited. Ms. Becker testified that in the development of the RFPs, selection of the bidders, and development of the Energy Efficiency Plan, NIPSCO discussed the plan with the members of its OSB on five occasions, with an additional six discussions taking place after the Energy Efficiency Plan was filed. She said both the OUCC and CAC voted to accept NIPSCO's proposed vendors, savings goals, and program budgets (not including NIPSCO administration, EM&V, lost revenues or performance incentives) and the Industrial Group abstained in the vote.

Ms. Becker testified that Mr. Rutter's proposal to divide program total cost by first year program savings is an inappropriate comparison. She noted that total program costs are used to acquire savings over the life of the measure, not just the first year kilowatt hours, and a more

appropriate approach would be to amortize the cost over the life of the measure then divide by annual savings over the life of the measure. Ms. Becker testified that this is useful as it allows for comparison to supply-side options as well as across measures or among different programs.

Ms. Becker testified it is not appropriate to calculate a rate of return using the net benefits from the UCT as Mr. Rutter advocates. She stated that applying the net benefits as Mr. Rutter did to his analysis assumes that net benefits are cash with a return. The benefits are merely an avoided expense, which has no return. She testified that the value of the net benefit of the UCT illustrates the reduction in the amount of revenue needed to provide the service (revenue requirement) as a result of undertaking the DSM effort. She testified that, for this portfolio, the present value of the benefit accruing the system is nearly $200 million over the life of the measures and the program costs are approximately $45 million, leading to a net benefit value of $155 million. Ms. Becker stated that because NIPSCO's request for lost revenues and incentives is less than the net benefit of the UCT, the system as a whole is still better off than going with the supply-side option.

Ms. Becker testified it is not appropriate to require NIPSCO's Energy Efficiency Plan to pass the RIM test as advocated by Mr. Rutter because the only way to force the programs to pass the RIM test would be to artificially lower the lost revenues to be collected, either by limiting the length of time for which lost revenues could be collected or placing a cap on the amount of lost revenue NIPSCO could collect, which would mean utilities would be seeking new rates every three years (or sooner). She stated that the ability to collect lost revenues for the life of the measure and without a cap promotes administrative efficiency. In addition, utilities who have Transmission, Distribution, and Storage System Improvement Charge trackers already have a seven-year window during which they are required to file a rate case.

In response to Mr. Rutter's argument that the definition of "program costs" in Section 10(g) must be applied to the cost-benefit tests and because of this, only the RIM test is appropriate for considering the cost-effectiveness of programs, Ms. Becker testified that Mr. Rutter references Ind. Code § 8-1-8.5-1(1), but then attempts to tie that back to the definition of program costs in Section 10(g).[3] She stated that by referencing "costs" instead of "program costs" in Ind. Code § 8-1-8.5-1(1), it is clear that the same definition was not meant to be applied when considering program costs.[4] She stated that Mr. Rutter himself also noted that the TRC and UCT tests have been widely utilized. Ms. Becker stated that if the General Assembly expected a certain cost-benefit test to be the main driver of determining if a program should be offered, it could have easily added that requirement to the statute. Finally, Ms. Becker testified the California Standard Practice Manual has been used as the primary source of definitions of cost-benefit tests for over 30 years and that NIPSCO applied the same definitions it has used in previous filings.

Ms. Becker testified that at the conclusion of the rate case it filed on October 1, 2015, NIPSCO will remove lost revenues associated with measures installed on or before December 31, 2014. She explained this date was selected because it is within the test year and it is the last date for which NIPSCO has EM&V results at this time.

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[3] Although Ms. Becker cites to Ind. Code § 8-1-8.5-1(l) in her testimony, this appears to be a typographical error as she appears to be referencing the language in Ind. Code § 8-1-8.5-10(l).
[4] Id.

Ms. Becker provided additional details regarding how NIPSCO's evaluation of DSM programs within its IRP is consistent with the IRP rule. She testified that NIPSCO evaluates potential options for its long-term resource plan as appropriate to ensure that cost-effective decisions are made for serving customers now and in the future. She stated that in its IRP process for 2014, NIPSCO considered demand-side and supply-side resources on an equal footing. She sponsored Petitioner's Exhibit No. 1-R-A showing the Resource Alternatives Analysis as included in NIPSCO's 2014 IRP. Specifically Ms. Becker testified that no options, supply-side or DSM, were ever held fixed in each independent optimization. She stated that under no circumstances were any future resource additions "hardwired" or forced into service in either of the optimizations. Rather, she testified that all seven proposed DSM options were considered for optimization with the supply-side options every time the inclusion of different supply-side options were evaluated. Ms. Becker stated that NIPSCO's evaluation of DSM programs within the IRP is consistent with the IRP rule.

In response to Ms. Mims' recommendations that NIPSCO should have maintained its budget and portfolio at the 2014 level, Ms. Becker testified that it would not be appropriate for NIPSCO to maintain the same level of savings as it had in 2014 due to the ability of certain large industrial customers to opt out of participation in energy efficiency programs as of January 1, 2015.

Ms. Becker provided additional details related to the development of its Energy Efficiency Plan. She stated that NIPSCO worked closely with its OSB on the selection of the final vendors, which ultimately meant program selection. She testified that, consistent with the settlement agreement filed in Cause No. 44637 where NIPSCO agreed to add an Income Qualified Weatherization program to its gas portfolio, NIPSCO is proposing to add an Income Qualified Weatherization component to the Income Qualified Appliance Replacement program. Ms. Becker testified that the Income Qualified Weatherization component of the program, which will be available to homeowners as well as renters with landlord approval, will be similar to the 2015 Low-Income Weatherization program by providing assistance to low-income customers to reduce their energy consumption through installation of energy efficient technologies and measures in their homes. She also testified that NIPSCO agreed to add language to the EM&V RFP to ask bidders to address a more robust evaluation of the Low-Income Appliance Replacement program in the first year. Ms. Becker provided updated budgets and savings based on this addition as well as other refinements to the program design and measure lists.

In response to Mr. Gorman's concern that limiting C&I Custom projects to two years may deter customers from pursuing energy efficiency projects, Ms. Becker testified that it is appropriate to place a two-year time limit on C&I Custom projects because the limit will encourage on-going customer communication to ensure that funds are not needlessly reserved for a project that will not be completed. She also explained why it is appropriate to ask customers who have C&I Custom projects pending at the end of 2015 to reapply for the new program and receive the new incentive rates. She noted that the application process will allow the new vendor to better track outstanding projects and will ensure customers are aware of any changes to the program's rules.

Ms. Becker testified that NIPSCO's request for recovery of lost revenues is consistent with the 44154 Order, wherein the Commission found that "the proposed lost revenue recovery methodology is reasonable, consistent with the requirements of 170 IAC 4-8-6, and should be approved." The Commission authorized NIPSCO to recover lost revenues associated with its

approved DSM programs for the remainder of the useful lives of the program measures. Ms. Becker testified that NIPSCO's proposal in this Cause follows what the Commission previously approved.

Ms. Becker further testified that, as required in the 44154 Order, in its rate case NIPSCO plans to adjust its usage determinants for energy efficiency measures installed through December 31, 2014, consistent with the EM&V. She stated that NIPSCO also plans to adjust its usage upward for energy efficiency measures installed between January 1 and March 31, 2015. She explained that once new base rates are approved, NIPSCO proposes to reset lost revenues in its DSMA Mechanism to eliminate lost revenues attributable to all energy efficiency measures installed prior to December 31, 2014. NIPSCO plans to reconcile lost revenues inside of its DSMA Mechanism for measures installed subsequent to December 31, 2014, consistent with EM&V results when they are available and in the following DSMA filing. She testified that ultimately, NIPSCO is seeking a neutral transition to lost revenue recovery between the rate case and the operation of its DSMA filings.

In response to Ms. Mims' recommendation that NIPSCO be required to include customer load growth, off-system sales, and changes in other revenue structures when proposing any lost revenue adjustment mechanism, Ms. Becker explained that NIPSCO is not proposing a lost revenue adjustment mechanism in this proceeding. She testified the Commission approved NIPSCO's DSMA Mechanism in its 44154 Order.

Regarding the argument that recovery of lost revenues should be limited to decreases in sales that are directly attributable to implementation of Commission approved DSM programs, Ms. Becker noted that NIPSCO only seeks lost revenues directly attributable to NIPSCO's Commission approved DSM programs and independently verified by the EM&V vendor. She said NIPSCO specifically developed a mechanism to collect lost revenues based upon demonstrated energy savings as confirmed by an independently completed measurement and verification of the programs' success. The EM&V report, which strives to separate program-related savings from other potential drivers, provides NIPSCO, its OSB, and the Commission with a nationally-used, statistically-relevant means to determine and verify the savings created by NIPSCO's DSM programs. She said sales are going to change for a variety of reasons, including new customers, economic conditions, and federal codes and standards. However, the EM&V report provided to and accepted by the OSB provides a mechanism to determine how NIPSCO's sales are impacted by its DSM programs.

Responding to the argument that because Section 10 requires utilities to file energy efficiency plans at least once every three years, it is appropriate for lost revenues to be limited to the same time period or a limit of the shorter of three years or the life of the measure, Ms. Becker testified that only allowing lost revenues to be collected for three years does not allow for parity in the causation and collection of lost revenues. If a measure is installed that has an expected useful life of five years, the customer receives those benefits for that time period and NIPSCO loses out on the lost revenues for that same time period.

In response to the concern that NIPSCO's proposed performance incentives could provide an incentive to NIPSCO for poorly managed programs, Ms. Becker testified that NIPSCO is suggesting that performance incentives do not apply to any program that achieves less than 80%

of the goal as approved by the OSB. This will provide a savings floor for goal achievement and the limit of 15% of the net benefits as determined by the UCT or 15% of the program budget, whichever is less, provides a ceiling. Ms. Becker noted that NIPSCO and the OSB may elect to change the goals during the program year in order to shift funding to programs that are better performing or more cost-effective. She testified that performance incentives should be based on the goals as approved by the OSB.

**B. Richard A. Morgan.** Mr. Morgan testified in support of the cost-benefit analysis for NIPSCO's updated programs. He testified that he considered the costs and benefits for each proposed program and the two portfolios, residential and C&I. He said the Energy Efficiency Programs were updated to include the weatherization component added to the Income Qualified program as well as other changes proposed by both vendors as program designs, savings and budgets have continued to be refined. He testified the program goals for each year are similar to NIPSCO's achievement in previous program years and the programs are similar to other programs they have analyzed by other utilities, which have been successful in meeting their goals. He stated that given the history of success of NIPSCO's programs and the similarity to other successful utility programs, it is his opinion that NIPSCO will continue to successfully meet its goals. Mr. Morgan stated that both the updated residential and C&I portfolios pass the TRC and the UCT tests and provided the results of the updated tests. In addition, all individual programs included in the residential and C&I portfolios also pass the TRC and UCT tests except for the Income Qualified program, which typically does not pass either test because the utility pays for all the measure costs and installation costs to help the disadvantaged customers control their bills.

He concluded that he believes NIPSCO's Energy Efficiency Plan is cost-effective and achievable.

**12. Commission Discussion and Findings.** NIPSCO requests approval of its Energy Efficiency Plan and authority to recover program costs, lost revenues, and performance incentives associated with the Energy Efficiency Programs through its DSMA Mechanism in accordance with Sections 9 and 10 and the DSM Rules.

As indicated earlier, Ind. Code ch. 8-1-8.5 establishes a least-cost standard for issuances of certificates of public convenience and necessity prior to construction of new generation facilities. Both the DSM and IRP Rules were adopted to assist the Commission in implementing Ind. Code ch. 8-1-8.5. The IRP Rules require utilities to consider on a biennial basis both supply- and demand-side resources to meet their long-term resource needs in a least-cost manner. The consideration of a utility's resource needs is performed through a long-range planning analysis, i.e., the IRP. Because of the often inherent regulatory or financial bias against demand-side resources, the DSM Rules were adopted to allow the Commission the opportunity to review any bias against DSM and establish guidelines for doing so. The DSM Rules address cost recovery related to all demand-side management activities, including the subset of energy efficiency improvements.[5] Consequently, the Commission has historically considered and approved utility DSM programs and associated cost recovery under Ind. Code ch. 8-1-8.5 and its DSM Rules. *E.g.,*

[5] Energy efficiency improvements have been traditionally limited to activities that reduce energy use for a comparable level of energy service. *See* 170 IAC 4-8-1(j) and Ind. Code § 8-1-8.5-9(c) and -10(b). Whereas, a demand-side resource is broader and encompasses any activity that reduces the demand for electric service, e.g., air conditioning load management, time-of-use, and demand response programs.

*Indianapolis Power & Light*, Cause No. 43623 (IURC 2/10/10) and *Indiana Michigan Power Co.*, Cause No. 44486 (IURC 12/3/14).

In 2015, the Indiana Legislature enacted Section 10 establishing that,

> [b]eginning not later than calendar year 2017, and not less than one (1) time every three (3) years, an electricity supplier shall petition the commission for approval of a plan that includes:
>
> (1) energy efficiency goals;
> (2) energy efficiency programs to achieve the energy efficiency goals;
> (3) program budgets and program costs; and
> (4) evaluation, measurement, and verification procedures that must include independent evaluation, measurement, and verification.

Ind. Code § 8-1-8.5-10(h).[6] Once such a plan has been submitted, the Commission is required to consider the ten factors enumerated in Section 10(j) to determine the overall reasonableness of the proposed plan. After making its determination of overall reasonableness, Sections 10(k), (l), and (m) establish three possible actions the Commission may take concerning the proposed plan.

Consequently, beginning not later than calendar year 2017, electricity suppliers are statutorily required to submit an energy efficiency plan to the Commission for approval. Until that time, an electricity supplier, when seeking approval of proposed energy efficiency programs and associated cost recovery, may elect to file either under Section 10 or under Section 9 and the DSM Rules. We reach this conclusion for several reasons.

The first step in statutory construction is to determine if the statute is clear and unambiguous. If a statute is clear and unambiguous, there is no room for judicial construction. *Thatcher v. City of Kokomo*, 962 N.E.2d 1224 (Ind. 2012). In addition, when interpreting the words of a single section of a statute, a court must construe them with due regard for all other sections and with regard to the legislative intent to carry out the spirit and purpose of the act. *N.D.F. v. State*, 775 N.E.2d 1085 (Ind. 2002).

Although Section 10 is less than clear regarding whether an electricity supplier has until January 1, 2017 or until December 31, 2017 to file a petition for approval of an energy efficiency plan, it is clear that such an obligation does not apply until at least 2017.[7] When enacting Section 10, the Legislature could have required electricity suppliers to submit a plan by the effective date of the statute, a date certain (including one before 2017), or upon expiration of a utility's current DSM program authorization, but it did not. Instead, the Legislature determined that electricity suppliers should have until calendar year 2017 to file its energy efficiency plans. The fact that Section 10, under Ind. Code § 8-1-8.5-10(h) and (q) respectively, establishes specific requirements for the content of the plans and instructs the Commission to adopt rules or guidelines for the

[6] Section 10(f) also defines a "plan" for purposes of this section as containing the four requirements set forth in Section 10(h).

[7] Because a calendar year encompasses an entire 12-month period, it is unclear whether "beginning not later than calendar year 2017" means the utility has until the beginning of calendar year 2017 (i.e., January 1, 2017) or until the end of calendar year 2017 (i.e., December 31, 2017) to file a plan. However, we need not make that determination here.

implementation of that section, also supports our conclusion that electricity suppliers have until calendar year 2017 to submit a plan for Commission approval.

When the Legislature enacts a particular piece of legislation, it is presumed to be aware of existing statutes on the same subject. *Lake Co. Bd. Of Elections and Registration v. Millender,* 727 N.E.2d 483 (Ind. Ct. App. 2000). Consequently, when the Legislature enacted Section 10, it was also aware of an electricity supplier's general obligation to consider both demand- and supply-side resources in meeting the future electric service needs of its customers through its IRP as well as the provisions of Section 9(m). Section 9(m) provides that after December 31, 2014, an electricity supplier may offer a cost-effective portfolio of energy efficiency programs and submit its proposal to the Commission for review. If the Commission finds the proposal reasonable and cost-effective, the electricity supplier may recover associated costs in the same manner as they were recovered under the Phase II Order, i.e., as authorized under the DSM Rules. *See* Phase II Order at 49. After 2017, Section 10 imposes a specific and mandatory requirement regarding energy efficiency offerings, whereas none of the other provisions of Ind. Code ch. 8-1-8.5, including Section 9, or the DSM Rules impose such requirements. In addition, Section 10 authorizes recovery of reasonable financial incentives and lost revenues if an electricity supplier's plan is approved, unlike under Section 9(m) and the DSM rules where such recovery is discretionary with the Commission.

Although Sections 10 and 9(m) may appear to conflict, at least after 2017, statutes covering the same subject matter should be construed in a way that produces a harmonious statutory scheme. *In re ITT Derivative Litigation*, 932 N.E.2d 664 (Ind. 2010). Courts will strive to avoid a construction that renders any part of the statute meaningless or superfluous. *Hizer v. Holt*, 937 N.E.2d 1 (Ind. App. 2010). But, in the case of a conflict, a more specific provision prevails over a more general provision. *State v. Greenwood*, 665 N.E.2d 579 (Ind. 1996). When examining these two sections together, they can be read harmoniously and in a way that gives meaning to Section 9(m) until at least 2017. Allowing an electricity supplier to seek approval of its energy efficiency programs under Section 9(m) until it is obligated to do so under Section 10 provides the utilities with the opportunity and ability to continue offering cost-effective energy efficiency programs when its existing programs expire (such as NIPSCO's on December 31, 2015) while it prepares to meet the specific criteria established in Section 10. We recognize that some utilities may be ready to meet the Section 10 requirements sooner than others. In addition, while the Commission is currently in the process of developing a rule that will address Section 10 requirements, it has yet to issue any final rules or guidance. Therefore, we find it is appropriate for electricity suppliers to file and for us to approve energy efficiency plans under Section 9(m) and the DSM Rule until such time as the electricity supplier submits an energy efficiency plan that meets the requirements of Section 10.

We would also note that, although Sections 10 and 9(m) may conflict after 2017 as both sections address an electricity supplier's energy efficiency plans, neither section addresses a utility's offering of a demand-side measure that is not energy efficiency. Nor did the addition of Section 10, or any of the amendments to other provisions in Ind. Code ch. 8-1-8.5, alter or otherwise abrogate an electricity supplier's obligation to consider both demand- and supply-side resources in meeting the future electric service needs of its customers. Instead, the 2015 amendments to Ind. Code ch. 8-1-8.5, if anything, only strengthened a utility's obligation to

consider DSM in its IRP. *See* Ind. Code § 8-1-8.5-3(e). Therefore, we fully expect that electricity suppliers will continue to seek Commission approval under the general provisions of Ind. Code ch. 8-1-8.5 and the DSM Rules when requesting associated cost recovery for DSM programs that do not qualify as energy efficiency under either Sections 9 or 10.

Given this legal background, we begin by considering NIPSCO's request for approval of its Energy Efficiency Plan under Section 10.

**A. Section 10 – Presentation of a Plan.** The evidence is uncontroverted that NIPSCO is an electricity supplier as defined by Section 10(a) and that it has made a submission under Section 10(h) seeking approval of a proposed plan prior to 2017. However, the evidence is disputed as to whether NIPSCO has submitted a plan that includes all four of the criteria required by Section 10(h), i.e., goals, programs to achieve goals, budgets and program costs, and independent EM&V.

Section 10(c) specifically defines "energy efficiency goals" as,

> [a]ll energy efficiency produced by cost effective plans that are:
> (1) reasonably achievable;
> (2) consistent with an electricity supplier's integrated resource plan; and
> (3) designed to achieve an optimal balance of energy resources in an electricity supplier's service territory.

NIPSCO asserts that its Energy Efficiency Plan includes goals that satisfy this definition. Ms. Becker testified that NIPSCO's goals are achievable based on the DSM and energy efficiency measures identified by the AEG Study as appropriate for NIPSCO's service territory. The analysis in the AEG Study was updated in part by Mr. Morgan who performed cost-benefit tests of the programs based on more recent information from a NIPSCO RFP for energy efficiency programs in the NIPSCO service territory.

Ms. Becker testified that NIPSCO evaluated potential demand-side resources on a consistent and comparable basis with supply-side resources in the 2014 IRP. One residential energy efficiency program and three C&I programs were selected as cost-effective as part of NIPSCO's IRP process. NIPSCO included these four programs in its Energy Efficiency Plan as well as an additional eight programs where AEG forecasted achievable savings.

The CAC disagrees that NIPSCO's Energy Efficiency Plan includes goals meeting the criteria of Section 10(c). More specifically, the CAC argues that NIPSCO's evaluation of its goals is flawed in two ways. First, NIPSCO's three-step analysis[8] for evaluating energy efficiency is likely to lead to over-screening and elimination of measures or programs that actually would be cost-effective, which Ms. Mims indicated NIPSCO may recognize given its choice to offer programs not selected as cost-effective in its 2014 IRP. And, second, the order in which NIPSCO

[8] The three-step process refers to NIPSCO's: (1) assessment of measures for cost-effectiveness under the TRC and UCT, (2) testing the market valuation of the programs targeting end uses by running the IRP model with and without the program in question to determine differences in net present value rate of return, and (3) integrating energy efficiency programs with supply-side resources for comparison to supply-only resource plans.

evaluated supply- and demand-side resources is flawed and the resources may not have been considered on an equal footing.

Based on the evidence presented, including NIPSCO's 2014 IRP and the related Director's Report, we agree and find that NIPSCO has failed to include energy efficiency goals as defined by Section 10(c) in its proposed Energy Efficiency Plan. Although the AEG Study and the additional analysis performed by Mr. Morgan supports the fact that the energy efficiency produced by the proposed Energy Efficiency Programs is reasonably achievable, the portfolio of Energy Efficiency Programs is not consistent with NIPSCO's 2014 IRP. Further, the limitations of NIPSCO's 2014 IRP and NIPSCO's failure to update its IRP analysis makes it difficult to determine whether the Energy Efficiency Programs have been designed to achieve an optimal balance of energy resources in NIPSCO's service territory. Therefore, as explained further below, we find that NIPSCO's proposed energy efficiency goals do not meet all the requirements in the definition of energy efficiency goals found in Section 10(c).

NIPSCO's proposed Energy Efficiency Plan is not consistent with its 2014 IRP because NIPSCO relied almost exclusively on the AEG Study to determine its energy efficiency goals. NIPSCO's 2014 IRP selected only four programs as cost-effective through its resource optimization process, yet Ms. Vrab testified that NIPSCO chose to significantly expand the variety of programs and the savings goals beyond those selected by the IRP for three reasons: (1) NIPSCO wanted to offer a robust portfolio of programs, (2) NIPSCO believed it appropriate to pursue energy savings that the AEG Study indicated was achievable, and (3) the program size will remain relatively constant with what is currently being provided and NIPSCO did not want to reduce the size of its DSM offering.[9] Essentially, NIPSCO decided not to rely on its 2014 IRP because it was too limiting with respect to DSM offerings.

Although increased development of energy efficiency based on the AEG Study may make sense from an economic perspective, NIPSCO's almost complete reliance on the study elevates it above the IRP and the associated development process. A market potential study that evaluates possible cost-effective DSM programs in a particular service area, such as the AEG Study, is an *input* into the IRP through which an optimal resource portfolio is to be developed taking into account a range of risks and uncertainties. Consequently, implementation of energy efficiency goals based on the AEG Study may be a movement towards acquiring an optimal balance of resources, but it cannot be reasonably demonstrated without a well-developed and thorough IRP analysis in which the AEG Study is an input.

NIPSCO's three reasons for justifying the inclusion of additional energy efficiency programs in its Plan than what resulted from its 2014 IRP analysis also raises questions about the adequacy of the 2014 IRP. Clearly, it appears that NIPSCO believes its 2014 IRP to be inadequate. Otherwise, it would not have placed so much reliance on the AEG Study in developing its Energy Efficiency Plan.

We further note that the Commission's Electricity Director's Final Report on 2014-2015 Integrated Resource Plans (at pp. 27-31) also indicated that NIPSCO's risk and uncertainty

[9] We note that Ms. Becker also testified that "if NIPSCO only offered programs consistent with the IRP, residential customers would only have the Residential Lighting program." Pet.'s Ex. 1 at 46.

analysis was too constrained and failed to provide sufficient explanation for its analysis of chosen energy resources. In contrast to NIPSCO's representation in its 2014 IRP that it comprehensively examined a range of plausible future states of the world, NIPSCO had just one alternative scenario to its base case and no discussion as to how the alternative scenario affected its IRP analysis. The lack of alternative scenarios and associated sensitivities is insufficient to provide a reasonable or credible assessment of the risks that NIPSCO articulated in its IRP. Furthermore, the lack of discussion is especially problematic because the sole alternative scenario was an "aggressive environmental regulation" scenario with higher gas and wholesale electricity prices and higher environmental compliance costs – a scenario in which one might expect the value of energy efficiency to increase. Despite having been informed that NIPSCO's preparation of an IRP with a base case and a single alternative case was insufficient to make any determination as to whether the recommended resource plan is reasonable, NIPSCO chose not to rerun any of its modeling to support its chosen Energy Efficiency Programs. The limitations of NIPSCO's 2014 IRP and the failure of NIPSCO to update its IRP analysis makes reliance on the 2014 IRP problematic for deciding whether the Energy Efficiency Plan proposed by NIPSCO is part of an effort to acquire an optimal resource portfolio.

While we agree, as discussed further below, that NIPSCO's decision to offer a broader array of DSM and energy efficiency programs than what was selected by its 2014 IRP is reasonable and in the public interest, we find that NIPSCO has failed to demonstrate that the energy efficiency to be produced from its Energy Efficiency Plan is consistent with its 2014 IRP and designed to achieve an optimal balance of energy resources in its service territory.

Because NIPSCO has failed to provide energy efficiency goals consistent with Section 10(c), which is the first required element of a plan, we find that NIPSCO has failed to submit a plan as required by Section 10(h). Accordingly, NIPSCO remains under the statutory obligation to file, beginning no later than calendar year 2017, a plan that satisfies the criteria of Section 10(h).

**B. Section 9 and the DSM Rules – Energy Efficiency Programs.** In addition to its request for approval of its Energy Efficiency Plan under Section 10, NIPSCO noted that Section 9 and the Commission's DSM Rules were applicable to its proposed Energy Efficiency Programs and request for associated cost recovery through its DSMA Mechanism. Verified Petition and Pet.'s Ex. 1 at 40. As set forth above, the Commission has the authority, at least until 2017, to regulate an electricity supplier's offering of energy efficiency programs under the general provisions of Ind. Code ch. 8-1-8.5, Section 9(m), and its DSM Rules. Accordingly, we consider NIPSCO's proposed programs and request for associated cost recovery under that authority.

1. Proposed Programs. NIPSCO proposes to offer eight residential programs and five C&I programs for the period of January 2016 through December 2018. The evidence demonstrates that the portfolio includes an array of cost-effective energy efficiency programs that will provide an opportunity for all ratepayers to participate in DSM, including low-income residential customers. In developing its program offerings, NIPSCO worked with its OSB on a process to allow potential vendors to be creative. While NIPSCO provided the overall energy saving goals to be achieved based on what the AEG Study determined was reasonably achievable and specified that the energy efficiency programs must include an income qualified program and a behavioral program, respondents to NIPSCO's DSM RFP were provided the opportunity to

respond with a portfolio of programs that could meet NIPSCO's savings goals in the most cost-effective manner. NIPSCO further indicated that its OSB has continued to work with the vendors on program designs and refinements, demonstrating a willingness to design programs that will lead to energy efficiency improvements.

NIPSCO's proposed budgets and program costs associated with each of its Energy Efficiency Programs is based on the RFP responses. NIPSCO also conducted a cost-benefit analysis using information acquired through the RFP that utilized the four traditional tests in evaluating whether the proposed DSM programs would be beneficial and cost-effective. The TRC test helps in determining whether energy efficiency is cost-effective overall, whereas the PCT, UCT, and RIM tests help to determine whether the program design and efficiency measures provided by the program are balanced from the perspectives of the participant, utility, and non-participants. The Commission has generally required the consideration of the four different tests to provide a comprehensive analysis of cost-effectiveness. The evidence demonstrates that NIPSCO's portfolio of Energy Efficiency Programs, as well as the individual programs except for the Income Qualified Weatherization program, is cost-effective, i.e., having a benefit-cost ratio above 1.0, under the TRC, PCT, and UCT tests. Although the RIM score for NIPSCO's Energy Efficiency Programs was less than one, this is typical for energy efficiency programs, as opposed to demand response programs.

The other parties to this Cause generally did not oppose NIPSCO's portfolio of proposed programs, but instead raised issues with particular programs. The OUCC indicated that when looking at the program structures and proposed costs, other than lost revenue and financial incentives, the Energy Efficiency Programs are both cost-beneficial and reasonable. The OUCC also noted that the programs are based on prior approved programs that have demonstrated success in NIPSCO's service territory. The CAC did not propose elimination of any proposed programs, but instead recommended that NIPSCO add or expand various energy efficiency programs, noting that energy efficiency is the lowest cost resource. The Industrial Group took issue with NIPSCO's proposal to require currently enrolled C&I customers in the C&I Custom Incentive program to reapply for an incentive if they do not complete a program by 2016.

Based on the evidence presented, we find that the proposed Energy Efficiency Programs are reasonable and should be approved. While ideally a utility would use its IRP process to determine if its proposed DSM programs are designed to achieve an optimal balance of energy resources, the use of NIPSCO's 2014 IRP is problematic for several reasons as indicated above. Both the concerns raised by CAC's witness, Ms. Mims, and the Electricity Director's Final Report, along with NIPSCO's own actions of choosing to rely upon its AEG Study, lead us to question whether the 2014 IRP can, or should, be reasonably relied upon as a tool to judge whether the proposed Energy Efficiency Programs are reasonable and designed to achieve an optimal balance of energy resources.

Given these concerns, we are left with determining whether NIPSCO's reasons for relying on its AEG Study are reasonable and whether NIPSCO has provided a sufficient basis for evaluating the reasonableness of the proposed Energy Efficiency Programs. In making this determination, we are cognizant of the fact that Section 10 and its associated requirements were proposed and enacted after NIPSCO prepared its 2014 IRP and only a few months before its current DSM programs were set to expire.

Based on the evidence presented, we find NIPSCO's reliance on the AEG Study is reasonable in combination with the RFP results and Mr. Morgan's further analysis of cost-effectiveness based on the RFP information, and supports approval of its proposed Energy Efficiency Programs. The AEG Study identified DSM measures, including energy efficiency, that would be appropriate for NIPSCO's service territory based on a variety of factors to determine a forecast of achievable savings. Working with Morgan Marketing Partners, NIPSCO completed a cost-benefit analysis using RFP information showing that each of the proposed Energy Efficiency Programs, with the exception of the Income Qualified Weatherization program, is cost-effective. Although the OUCC took issue with the consideration of lost revenues in the various cost-effectiveness tests, no party questioned the results of the AEG Study. In fact, the CAC argued that NIPSCO's energy efficiency goals should be higher based on the AEG Study. We also note that NIPSCO worked with its OSB to develop the proposed Energy Efficiency Programs and has committed to continuing to work with the OSB to evaluate and implement changes in programming when necessary.

The evidence also demonstrates that NIPSCO's proposed Energy Efficiency Programs are in the public interest as they are designed to reduce energy consumption and benefit customers by providing opportunities for them to manage their energy costs and reduce or defer future generation needs. The portfolio of programs provide energy efficiency opportunities for all customers, both residential and C&I customers, and are similar to programs offered by other utilities that have been successful in meeting their goals. We find that the public interest is also served by the continuation of cost-effective DSM programs until NIPSCO files a plan that complies with the newly enacted requirements of Section 10(h).

We note that several of the parties recommended changes and additions to NIPSCO's proposed programs. While we decline to require NIPSCO to make any changes other than those agreed to in its rebuttal testimony and as set forth below, we do encourage NIPSCO to consider those additional recommendations and work with its OSB to make any appropriate changes within the flexibility authorized to the OSB or in developing DSM programs to be implemented in the future.

With regard to the C&I Custom Incentive program, Mr. Gorman noted that NIPSCO has proposed to change the approval process to require customers to reapply under certain conditions. Specifically, customers who have not completed a project by the close of 2015 will have to reapply for project approval, and customers that apply under the new program beginning in 2016 will only have 24 months, or until the close of the program life to complete a project. In addition, for customers who applied prior to 2015 and received project approval, not only will they have to reapply but they will also be paid the new incentive rates.

Ms. Becker responded that NIPSCO is looking to encourage on-going customer communication to ensure that funds are not needlessly reserved for a project that will not be completed and that NIPSCO will continue to work with the customer if the customer continues to show progress toward, and interest in, completing the project. However, NIPSCO wants to be able to release those funds to other interested customers if the project is not going to be completed. Ms. Becker also indicated that NIPSCO could work with the OSB to address this issue if it is later determined that C&I customer participation is being harmed.

We agree with the Industrial Group that customers who have already received project approval but have not completed the project by December 31, 2015 should not be required to reapply for project approval to continue. NIPSCO initially approved the projects with the knowledge that the participating customer had a multi-year budget and capital improvement planning and implementation process. However, we agree that NIPSCO has a valid interest in maintaining regular communication with these customers to determine if the customer is still planning to implement the capital project and the proposed project timeline. If the project is no longer going to be completed, then NIPSCO needs to know this as soon as is reasonably possible so that the funds can be reallocated to other customers with eligible capital projects. Furthermore, because these customers do not have to reapply, we find the new incentives embodied in the C&I Custom Incentive program will not apply unless both the customer and NIPSCO mutually agree to change the incentives that applied when the customer's capital project was initially approved to participate in the program.

Although we are declining NIPSCO's request to require certain customer reapplication, we would emphasize that the participating customer has an obligation to complete the approved project within a reasonable timeframe. Therefore, we encourage the OSB to monitor project completion by participating C&I customers in the C&I Custom Incentive program and keep the Commission apprised of the status of approved projects.

2. Timely Recovery of Program Costs. 170 IAC 4-8-1(aa) defines program costs as those expenses incurred by a utility in a given year for operation of a DSM program, including such expenses related to administration, equipment, incentives paid to program participants, marketing and advertising, and EM&V. 170 IAC 4-8-5 provides that a utility is entitled to recover the reasonable cost of planning and implementing a DSM program through a cost recovery mechanism approved by the Commission. In this Cause, NIPSCO seeks approval to continue timely recovery of approved DSM-related costs through its existing DSMA Mechanism.

NIPSCO proposed a budget of $19,623,160 for program costs related to its residential programs and a budget of $25,680,932 for program costs related to its C&I programs. Ms. Vrab testified that NIPSCO worked with its OSB to refine its proposed program offerings and then issued two RFPs – one for residential programs and one for C&I programs. Ms. Becker noted that for the programs selected by the 2014 IRP, the winning bid, in the aggregate, had lower costs per kWh than the amount included in the IRP. In arriving at its proposed program cost budget, NIPSCO took the budget of the winning bidder and added projected NIPSCO administration costs and projected EM&V costs, each of which was approximately 5% of the proposed program costs and within industry norms. Based on the evidence presented, we find that NIPSCO's proposed program costs and its proposal to continue recovery of those costs through its existing DSMA Mechanism to be reasonable and consistent with the requirements of 170 IAC 4-8-5.

3. Lost Revenue. 170 IAC 4-8-6 provides that the Commission may allow a utility to recover its lost revenue from the implementation of DSM programs. Recovery of lost revenues is intended as a tool to remove the disincentive utilities would otherwise face as a result of promoting DSM in its service territory. *Southern Ind. Gas & Elec. Co.,* Cause No. 43938 at 40-41 (IURC 8/31/12). In *Indianapolis Power & Light*, Cause No. 43911 at 11 (IURC 11/4/10), we explained that one reason bias may exist is because a supply-side resource choice is primarily

a capital expenditure while a demand-side resource choice is primarily an expense. Utility capital expenditures found to be used and useful provide both a return of and a return on such investments; whereas utility expenses that are authorized to be included in rates for recovery from customers provide only a return of the expenditure. This financial advantage of a traditional supply-side resource requires a base rate case proceeding before such recovery occurs while authority to recover specific demand-side program expenses is regularly approved in rate adjustment tracker proceedings in the intervals between base rate cases. We also noted that bias could result from what is known as the throughput incentive. The choice of a successful demand-side resource investment results in reduced throughput, i.e., sales, which reduces the utility's revenue collections. The choice of a supply-side resource does not produce such an effect.

NIPSCO seeks to recover lost revenues associated with its Energy Efficiency Programs.[10] The OUCC, CAC, and the Industrial Group oppose any recovery of lost revenues. Each of these parties argue that lost revenues should be authorized only if NIPSCO has experienced a reduction in kWh sales compared to the kWh sales used to set rates in NIPSCO's last base rate case. We disagree. As we have previously explained, because the purpose of lost revenue recovery is to return the utility to the position it would have been in absent implementation of DSM, simply eliminating lost revenue recovery when sales are higher than the levels used to develop a utility's current base rates would be contrary to this purpose. *Southern Indiana Gas & Electric Co.,* Cause No. 43938 at 41 (IURC 8/31/11); *Indiana Michigan Power Co.,* Cause No. 44486 at 14-15 (IURC 12/3/14).

The OUCC, CAC, and the Industrial Group appear to be primarily concerned with what Ms. Mims termed the Pancake Effect, which is caused when lost revenues caused by energy efficiency investments in different years aggregate. For example, if the average weighted measure life is 10 years for an energy efficiency measure then the utility company, assuming there is no rate case in the interim, would still be collecting lost revenues in 2025 for measures installed in 2016, along with lost revenues for measures installed during 2017-2025.

NIPSCO's proposed annual budget shows lost revenue as a percentage of the total budget is 56% in 2016, 60% in 2017, 61% in 2018, or 59% averaged over the three-year period. The lost revenue budgeted by NIPSCO increases from $21,738,194 in 2016 to $26,685,768 in 2018. In regard to the parties' concerns with pancaking, Ms. Becker noted that NIPSCO proposes to reset lost margins in its DSMA Mechanism to eliminate lost margins attributable to all energy efficiency measures installed prior to December 31, 2014. NIPSCO projects such a reset based on an approved rate case will reduce the amount of lost revenues collected through the DSMA Mechanism by approximately $36 million for the period 2016-2018, which is an approximate 50% reduction relative to the $73 million in lost revenues included by NIPSCO in its original 2016-2018 budget that assumed no rate case reset.

Although we have previously approved lost revenues over a measure's life or until a utility's next base rate case, whichever is shorter, Ms. Mims' and the other parties' concerns with pancaking and the increased length of time between base rate cases for utilities in Indiana raise a valid concern. Clearly, pancaking of lost revenue is much less of an issue in an environment where

[10] We note that lost revenues are similarly defined under both Section 10(e) and the DSM Rules at 170 IAC 4-8-1(u).

a utility comes in regularly, i.e., every three to five years, for a base rate case. When the Commission's DSM Rules were adopted in the early 1990's, the previous twenty years was characterized by routine and sometimes almost back-to-back rate case filings where utilities' rates were reset on a regular basis. Consequently, recovery of lost revenues at that time was viewed as a tool of limited duration until the utility filed its next base rate case in the not too distant future. However, in the years after adoption of the DSM Rules, utilities have been staying out for ten or more years before filing for a rate case. *E.g., Indianapolis Power & Light,* 19 years between Cause No. 38664 (IURC 8/23/95) and pending Cause No. 44576; *Southern Indiana Gas & Electric Co.,* 12 years between Cause No. 39871 (IURC 6/21/95) and Cause No. 43111 (IURC 8/15/07); *Duke Energy Indiana, Inc.*, last rate case was filed 13 years ago in Cause No. 42359 (IURC 5/18/04, rh'g denied 7/28/04).

Because we believe the parties raise a valid concern, we find that NIPSCO's lost revenue recovery should be limited to: (1) four years or the life of the measure, whichever is less, or (2) until rates are implemented pursuant to a final order in NIPSCO's next base rate case, whichever occurs earlier. We note that the CAC also requested that the Commission initiate some type of formal process to develop a standard methodology for Indiana utilities to calculate lost revenues for an energy efficiency measure. Because Section 10 authorizes the recovery of reasonable lost revenues to utilities with an approved energy efficiency plan and Section 10(q) requires the Commission to adopt rules implementing the requirements of Section 10, we fully expect that this issue will be addressed in that future rulemaking.

Finally, the Industrial Group's witness, Mr. Gorman, expressed concern that NIPSCO will not fully zero out the lost revenues built into its DSMA Mechanism following its rate case. He argued that by failing to account for 2015 lost revenues in the new base rates, and instead continuing to recover any lost revenues on an ongoing basis through the DSMA tracker, NIPSCO will experience a windfall by being permitted to recover all prudently incurred expenses through base rates, plus the lost revenue associated with DSM measures installed in 2015. He requested the Commission reject NIPSCO's request for continuing authority to recover pre-2016 lost revenues.

Ms. Becker noted that NIPSCO plans to adjust its usage determinants for energy efficiency measures installed through December 31, 2014, consistent with its EM&V as required by the 44154 Order. NIPSCO also plans to adjust its usage upward for energy efficiency measures installed between January 1 and March 31, 2015. Once new base rates are approved, NIPSCO proposes to reset lost revenues in its DSMA Mechanism to eliminate lost revenues attributable to all energy efficiency measures installed prior to December 31, 2014. For measures installed subsequent to December 31, 2014, NIPSCO plans to reconcile lost revenues inside of its DSMA Mechanism, consistent with EM&V results when they are available and in the following DSMA filing.

The Commission finds the process described by Ms. Becker is reasonable and consistent with the 44154 Order, which provides at page 9 that, "[a]t the conclusion of NIPSCO's next base rate case, the margin calculation will be updated and the cumulative measure savings reset to zero as of the close of the test year." NIPSCO's pending rate case, Cause No. 44688, utilizes a test year of the twelve months ending March 31, 2015. By removing the lost revenues associated with all energy efficiency measures installed prior to December 31, 2014, and adjusting usage upward for

all energy efficiency measures installed between January 1 and March 31, 2015, NIPSCO has complied with the intent of the directive in the 44154 Order.

4. Financial Incentives. 170 IAC 4-8-7(a) provides that when appropriate, the Commission "may provide the utility with a shareholder incentive to encourage participation in and promotion of a demand-side management program."

Although NIPSCO does not have a performance incentive to implement its current DSM programs, it is seeking authorization of one in this proceeding. NIPSCO proposes a shared savings mechanism in which it will receive 15% of the net benefits of the programs. The proposed shared savings mechanism will be based on actual (ex post) net savings determined through EM&V and applied to all programs except the Income Qualified Weatherization and Appliance Replacement programs. The calculation of incentives is based on the net present value of the program benefits as determined by the UCT, with the total amount recovered for each program not to exceed 15% of the total program costs. NIPSCO also agreed in its rebuttal testimony that performance incentives would not apply to any program that achieves less than 80% of the goal approved by the OSB.

The CAC argued that any performance incentive awarded should be based on performance and should only be allowed if lost revenue recovery is limited to 36 months or the life of a measure, whichever is shorter. Ms. Mims argued that NIPSCO's proposal allows them to earn an incentive regardless of the level of performance achieved. She recommended NIPSCO be required to achieve at least 70% of its savings goal to be eligible for an incentive. She also indicated that the 15% share is too high given that NIPSCO is only proposing to save approximately 0.6% of prior year retail sales each year during the 2016-2018 period.

The OUCC opposed NIPSCO's request for performance incentives for several reasons, including those argued by Ms. Mims. In addition, the OUCC argued that NIPSCO has not provided any compelling evidence that performance incentives are needed to encourage cost-effective DSM and that NIPSCO has demonstrated a corporate culture change that encourages energy efficiency without a need for incentives.

Based on the circumstances presented in this proceeding, we find that financial incentives should not be authorized at this time. In making this decision, we note the significant changes that have occurred in the offering of DSM programs over the past several years. Beginning in 2010, the Phase II Order required utilities to offer DSM programs designed to meet an overall goal of 2% annual cost-effective DSM savings within ten years. This energy savings goal was aggressive, and we recognized that as a reason for awarding performance incentives. *E.g., Southern Indiana Gas & Electric Co.,* Cause No. 43427 at 35 (IURC 12/16/09). Although NIPSCO's proposed energy savings from its Energy Efficiency Programs is still appreciable, it is comparable to the energy savings goals of its current programs that do not receive a financial incentive. In addition, the 2% annual energy savings goal was eliminated in 2014. Instead, beginning no later than calendar year 2017, utilities will be required to establish energy efficiency goals in accordance with Section 10 every three years.

As discussed above, Section 10 requires a utility's energy efficiency goals to be reasonably achievable, consistent with its IRP, and designed to achieve an optimal balance of energy resources

in its service territory. Provided a utility's plan includes these goals and is approved by the Commission, Section 10(o) specifically authorizes a utility to recover reasonable financial incentives that encourage implementation of cost-effective energy efficiency programs, or eliminate or offset regulatory or financial bias against either energy efficiency programs or in favor of supply-side resources. However, as we found above, NIPSCO failed to submit a plan as required by Section 10(h) and, as a result, is not entitled to the reasonable financial incentives authorized by Section 10.

Moreover, the evidence demonstrates that NIPSCO has been successfully offering and encouraging participation in DSM programs comparable to those proposed in this proceeding without any financial incentive to do so, even when it was subject to a more aggressive energy savings goal. It is also clear that NIPSCO recognizes its statutory obligation to consider and offer cost-effective DSM to meet future electric service needs in its territory, despite the results of its 2014 IRP analysis and failure to demonstrate the proposed energy savings are designed to achieve an optimal balance of energy resources. While we recognize that NIPSCO would have been statutorily allowed to recover reasonable financial incentives if it had submitted a qualifying plan under Section 10, the DSM Rules provide the Commission with the discretion to allow financial incentives when it believes it is appropriate to do so. In this instance, we find that NIPSCO has not provided sufficient evidence of the need for an incentive to encourage or promote its proposed Energy Efficiency Programs.

5. Accounting and Ratemaking Treatment. NIPSCO requests approval of certain accounting and ratemaking treatment, including the authority to defer and recover: (1) the over- and under-recoveries of projected program costs, lost revenues and financial incentives through the DSMA Mechanism pending reconciliation in subsequent rider periods and approving the deferral of any costs incurred implementing the Energy Efficiency Programs prior to the time the Commission issues an Order in this proceeding and authorizing NIPSCO to recognize these costs through the ratemaking process; and (2) lost revenues for previous program years, including DSM and energy efficiency programs previously offered but subsequently discontinued, through the DSMA Mechanism, until such amounts are recovered through rates.

NIPSCO's requested accounting and ratemaking treatment is consistent with that authorized by the Commission in prior NIPSCO DSM orders, including the most recent 44496 Order. In addition, no party raised any objections to NIPSCO's request. Thus, we find NIPSCO's requested accounting and ratemaking treatment is reasonable and approve NIPSCO's request subject to the limitations on recovery of lost revenues and the denial of performance incentives as set forth herein.

6. NIPSCO's Oversight Board. NIPSCO requests approval to continue to utilize its existing OSB to assist in the administration of its Energy Efficiency Programs. The Commission has previously approved OSBs to oversee and monitor the implementation of energy efficiency programs for both electric and gas utilities. *E.g., Indiana Michigan Power Co.,* Cause No. 43959, (IURC Apr. 27, 2011); *Southern Indiana Gas and Elec. Co.,* Cause No. 43427, (IURC Dec. 16, 2009). No party opposed the continuation of NIPSCO's currently approved OSB to administer its proposed portfolio of programs. Likewise, there was no opposition to the parameters for program flexibility within that administration as proposed. Accordingly, based on the evidence

presented, we find that NIPSCO's proposal for the continuation of its currently approved OSB and its proposed parameters for flexible program administration should be approved.

7. EM&V. NIPSCO proposes to continue the same EM&V program that was approved by the Commission in its 44496 Order, which includes the use of an independent EM&V entity and is consistent with the requirements of 170 IAC 4-8-4. NIPSCO proposes to file its annual EM&V results within 30 days of approval of the final EM&V report by its OSB as well as a scorecard that includes program descriptions and performance updates in each of its DMSA filings. No party opposed the continuation of NIPSCO's currently approved EM&V program. Accordingly, and based on the evidence in the record, we approve NIPSCO's continuation of its EM&V program.

NIPSCO shall file annually under this Cause its independent EM&V report concerning its Energy Efficiency Programs within 30 days of OSB approval, but no later than July 1. If NIPSCO finds that it will be unable to file its EM&V report by July 1, then it shall file a notice so indicating and explaining the reason for the delay and the expected date of submission. The EM&V report must include the completed cost-benefit analysis that identifies the total costs, total benefits, and associated benefit cost ratios for the utility cost test, total resource cost test, ratepayer impact measure test, and the participant cost test. It shall also identify the discount rate used in the cost-benefit calculations.

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

1. NIPSCO's request for approval of its Energy Efficiency Plan pursuant to Section 10 is denied. Accordingly, NIPSCO remains under the statutory obligation to file, beginning no later than calendar year 2017, a plan that satisfies the criteria of Section 10(h).

2. NIPSCO is authorized to implement its proposed Energy Efficiency Programs, as approved herein, through December 31, 2018 or until NIPSCO submits and receives approval of a plan under Section 10, whichever occurs earlier.

3. NIPSCO's request for authority to recover program costs and lost revenues associated with the Energy Efficiency Programs through Petitioner's DSMA Mechanism is approved as modified herein.

4. NIPSCO's request for authority to recover financial incentives is denied.

5. NIPSCO's requested accounting and ratemaking treatment, including the authority to defer and recover (1) the over- and under-recoveries of projected costs associated with the Energy Efficiency Programs through the DSMA Mechanism pending reconciliation in subsequent rider periods and approving the deferral of any costs incurred implementing the programs prior to the time the Commission issues an Order in this proceeding authorizing NIPSCO to recognize these costs through the ratemaking process; and (2) lost revenues for previous program years, including DSM and energy efficiency programs previously offered but subsequently discontinued, through the DSMA Mechanism, until such amounts are recovered through rates is approved as set forth herein.

6. NIPSCO's request to utilize its existing OSB to administer the Energy Efficiency Programs is approved.

7. NIPSCO's request to continue the same EM&V program for its Energy Efficiency Programs is approved.

8. NIPSCO shall file under this Cause its annual EM&V results within 30 days of approval of the final EM&V report by its OSB, but no later than July 1, as well as a scorecard that includes program descriptions and performance updates in each of its semi-annual tracker filings (Cause No. 43618 DSM X) as approved herein.

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

**STEPHAN, HUSTON, AND ZIEGNER CONCUR; WEBER AND MAYS-MEDLEY DISSENTING WITH SEPARATE OPINION:**

**APPROVED:** DEC 30 2015

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

Brenda A. Howe

**Brenda A. Howe**
**Secretary to the Commission**

**MAYS-MEDLEY AND WEBER DISSENTING**

In the past two legislative sessions, the General Assembly passed bills that significantly changed the way the Commission addresses energy efficiency program offerings by utilities. Specifically, the General Assembly enacted Ind. Code §§ 8-1-8.5-9 (2014) ("Section 9") and 8-1-8.5-10 (2015) ("Section 10"). The majority's decision finds that NIPSCO's Energy Efficiency Plan fails to comply with Section 10 but then uses Section 9 as a fail-safe to approve the plan anyway. Because we believe this is an improper use of the statutes, we respectfully dissent.

Section 10 requires a utility to file an energy efficiency plan for Commission approval not later than calendar year 2017.[11] Ind. Code § 8-1-8.5-10(h). At the time the General Assembly passed Section 10, Section 9 already allowed a utility to submit an energy efficiency program to the Commission for review and associated cost recovery. Ind. Code § 8-1-8.5-9(m). Because the General Assembly did not repeal Section 9(m) when it enacted Section 10, we agree with the majority that if a utility is not yet prepared to file an energy efficiency plan that complies with Section 10, it may continue to offer energy efficiency programs and seek approval of and cost recovery for those programs under Section 9. But as the majority points out, until 2017 a utility must elect to file either under Section 10 or under Section 9.

Although NIPSCO refers to Section 9 in its petition and evidence, it is clear that NIPSCO is presenting a plan for approval under Section 10. Beginning on page 24 of her testimony, Ms. Becker provides a lengthy analysis of how NIPSCO's Energy Efficiency Plan complies with Section 10. When the other parties questioned whether NIPSCO's plan complies with Section 10, Ms. Becker comprehensively defended the plan's compliance with Section 10. We agree that NIPSCO could have continued its energy efficiency programs and requested recovery of the associated costs under Section 9, but it opted to propose a new energy efficiency plan under Section 10. As a result, Section 10 must guide our decision.

Section 10 provides three alternatives to the Commission for addressing a proposed energy efficiency plan: approve the plan in its entirety, approve a portion of the plan, or deny the plan in its entirety. Ind. Code § 8-1-8.5-10(k)-(m). Initially, we do not agree that NIPSCO's Energy Efficiency Plan does not comply with Section 10. The majority rejects NIPSCO's Energy Efficiency Plan for two reasons: first, because the energy efficiency goals are not consistent with NIPSCO's IRP; and second, because NIPSCO failed to demonstrate that the energy efficiency goals are designed to achieve an optimal balance of energy resources.

Ind. Code § 8-1-8.5-10(c)(2) requires NIPSCO's plan to have energy efficiency goals that are "consistent" with its IRP. *Consistent*, in the context of this case, means "compatible or in agreement with something." Oxford Dictionaries, http://www.oxforddictionaries.com/definition/american_english/consistent (last visited Dec. 29, 2015). In other words, the energy efficiency goals must be compatible or in agreement with a utility's IRP, but they need not be based solely on the IRP. We believe that NIPSCO provided sufficient evidence that the eight additional programs, which were not included in the 2014 IRP, are compatible with the 2014 IRP. Tying the hands of the utility to only offer energy efficiency programs selected by the IRP process, and

[11] We agree with the majority that the phrase "Beginning not later than calendar year 2017" in Section 10(h) is unclear. But we believe the Commission should provide a definitive interpretation of the phrase rather than avoiding the determination. We interpret the phrase to mean not later than January 1, 2017.

excluding other valid programs that are compatible with the IRP is unreasonable. The majority seems to agree, because they go on to find that NIPSCO's decision to offer a broader array of DSM and energy efficiency programs than what was selected by the 2014 IRP is reasonable and in the public interest.

Ind. Code § 8-1-8.5-10(c)(3) requires NIPSCO's plan to have energy efficiency goals that are "designed to achieve an optimal balance of energy resources ...." The majority discussed the Commission's Electricity Director's Final Report of 2014-2015 Integrated Resource Plans, which criticized NIPSCO's 2014 IRP for having a lack of alternative scenarios and associated sensitivities. Ultimately, the Commission finds: "The limitations of NIPSCO's 2014 IRP and the failure of NIPSCO to update its IRP analysis makes reliance on the 2014 IRP problematic for deciding whether the Energy Efficiency Plan proposed by NIPSCO is part of an effort to acquire an optimal resource portfolio." Ms. Becker presented detailed evidence in both her direct and rebuttal testimony describing the IRP process, and the various mixes of energy resources that were considered. In addition, she provided evidence that NIPSCO selected the additional programs because the AEG Study forecasted they had achievable energy savings. We believe this evidence is sufficient to make a finding that the energy efficiency goals are designed to achieve an optimal balance of energy resources.

Even accepting the majority's decision that NIPSCO's Energy Efficiency Plan does not comply with Section 10, the statute is clear about the Commission's options once it decides to deny approval of the plan. Under Section 10(m), if the Commission determines that NIPSCO's plan is not reasonable in its entirety, it "shall issue an order setting forth the reasons supporting its determination," and NIPSCO must submit a modified plan within a reasonable time. Section 10 does not authorize the Commission to approve the plan under Section 9 instead.

Utilities have until 2017 to comply with Section 10, but once a utility elects to submit a plan under Section 10, the statute in its entirety must guide our decision. The statute clearly defines what should occur when the Commission determines a plan does not comply with Section 10. Given the majority's decision that NIPSCO's Energy Efficiency Plan does not comply with Section 10, we would issue an order supporting that decision and require NIPSCO to submit a modified plan.