

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE COMMISSION'S)
INVESTIGATION, PURSUANT TO IC § 8-1-2-58,)
INTO THE EFFECTIVENESS OF DEMAND SIDE)
MANAGEMENT ("DSM") PROGRAMS)
CURRENTLY UTILIZED IN THE STATE OF)
INDIANA, INCLUDING AN EXAMINATION OF)
ISSUES THAT COULD IMPROVE THE)
EFFECTIVENESS OF DEMAND SIDE)
MANAGEMENT PROGRAMS IN THE STATE)
INCLUDING CONSIDERATION OF THE)
ESTABLISHMENT OF AN INDEPENDENT DSM)
ADMINISTRATOR MODEL ON A STATE-WIDE)
BASIS)

CAUSE NO. 42693 S1

INTERIM ORDER

APPROVED: JAN 26 2011

RESPONDENTS: ALL JURISDICTIONAL)
ELECTRIC AND GAS UTILITIES IN THE)
STATE OF INDIANA)

BY THE COMMISSION:

David E. Ziegner, Commissioner

Lorraine L. Seyfried, Administrative Law Judge

This subdocket was established by the Indiana Utility Regulatory Commission ("Commission") to address issues concerning the implementation of the Commission's Order dated December 9, 2009 in Phase II of Cause No. 42693 ("Phase II Order"). In pertinent part, the Phase II Order provided that jurisdictional electric utilities ("Respondents") shall contract with a single independent third-party entity for the purpose of jointly administering and implementing the Core Programs required by the Phase II Order. Phase II Order at 38. The Commission found that the independent statewide Third-Party Administrator ("TPA") would oversee the Core Programs established by the Phase II Order and the Respondents would oversee any additional programs needed to achieve the energy savings goals established in the Phase II Order. *Id.* at 41.

In the Phase II Order (at 42-43, 52), the Commission created the DSM Coordination Committee ("DSMCC")¹ and directed it to undertake efforts for the preparation and submission of two joint requests for proposals ("RFPs") on behalf of, or issued by, the Respondents. The

¹ The DMSCC members are: Citizens Action Coalition of Indiana, Inc. ("CAC"); Duke Energy Indiana, Inc. ("Duke"); Hoosier Energy; Indiana Industrial Group ("Industrial Group"); Indiana Michigan Power Company ("I&M"); Indiana Municipal Power Agency; Indiana Office of Utility Consumer Counselor ("OUCC"); Indianapolis Power & Light Company ("IPL"); Northern Indiana Public Service Company ("NIPSCO"); Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren South"); and Wabash Valley Power Association.

Phase II Order explained that the first RFP was to be issued for the selection of the TPA. The second RFP required by the Phase II Order was to be issued for the selection and utilization of a statewide evaluation, measurement and verification Administrator (“EM&V”). The Phase II Order required the proposed RFPs to be filed in this subdocket for approval by March 1, 2010. *Id.* at 43. The Phase II Order contemplated that the TPA and Core Programs should be in place by the end of 2010. *Id.* at 51-52. The docket entry dated March 22, 2010 approved the RFPs and directed the DSMCC to submit its recommended candidates to the Commission for approval together with a discussion of why a certain candidate was selected based on a comparison to other applicants. The docket entry dated April 22, 2010 established a schedule for the issuance of the RFPs, review of responses, negotiation of contracts, and implementation of the Core Programs. In particular, this docket entry provided that the contract negotiation would be complete by October 22, 2010, the Commission would approve the TPA contract by November 19, 2010 and the TPA would begin implementation on December 31, 2010.

Throughout 2010, the DSMCC and the Respondents undertook the significant work to timely comply with the Phase II Order. On July 1, 2010, the Respondents filed their initial compliance reports regarding their proposals to achieve the annual energy savings targets established by the Phase II Order and the estimated cost of the first three years of compliance. On August 9, 2010, the DSMCC filed a report to update the Commission on the RFP process. On September 17, 2010, the Industrial Group filed an objection wherein it sought the Commission to require the DSMCC to negotiate with the lowest cost bidder to administer the Core Programs. The DSMCC responded to this objection on September 29, 2010 and filed a further update regarding its progress in selecting the TPA and EM&V with the Commission on October 4, 2010. The Industrial Group filed its reply in support of its objection to the DSMCC negotiations with a non-least cost bidder on October 6, 2010. By docket entry dated October 19, 2010, the presiding officers found that the mere claim that another bidder had a lower contract price does not per se establish that that bidder offered the reasonable least-cost alternative. This docket entry denied the Industrial Group’s request that the DSMCC be required to engage in negotiations with the lowest cost bidder and directed the DSMCC to tender a contract to the Commission by October 22, 2010.

On October 19, 2010, a group of Respondents filed a motion for accounting authority to defer TPA and EM&V costs, which motion is being addressed by separate Commission order.

By motions filed on October 20 and 22, and November 29, 2010, Harrison County REMC, Jackson County REMC, Northeastern REMC, Marshall County REMC, Auburn Municipal Electric Department, Logansport Municipal Utilities and Mishawaka Utilities moved the Commission to relieve them from compliance with the Phase II Order. The Motions were denied by the presiding officers in docket entries dated December 14, 2010.

On October 22, 2010, the DSMCC submitted the TPA and EM&V contracts to the Commission for approval (“Majority Report”). The TPA contract will govern the provision of the Core Programs through 2013. On November 1, 2010, the Industrial Group filed its redacted minority report opposing approval of the TPA contract (“Minority Report”). By docket entry dated November 4, 2010, a lengthy email communication concerning pending issues that was received by the presiding Commissioner was tendered to the parties in accordance with 170 IAC 1-1.5-6.

On November 12, 2010, an Attorneys' Conference was conducted in this Cause for the purpose of discussing a procedural schedule to address the numerous pending issues. At this time, and in order to afford the Commission the opportunity to hear and consider evidence and argument, and to rule on the pending issues, the parties made requests that the Commission amend and hold in abeyance the implementation requirements of the Phase II Order until further order of the Commission. Such action would avoid undue injury and provide for the conduct of a reasonable and fair process within a timeframe that should permit the Commission to issue an order(s) on the pending matters in a reasonable and timely manner.

On November 12, 2010, Respondents Duke, I&M, IPL, NIPSCO and Vectren South (collectively referred to herein as "Utilities") filed a written response to the Minority Report and renewed their request that the Commission amend and hold in abeyance the implementation dates and energy savings targets contained in the Phase II Order; issue an order clarifying the confusion among the parties about the legal implications of the Phase II Order and related evidentiary requirements, and thereafter establish a procedural schedule to accept prefiled evidence and conduct a hearing on the issues raised in the Minority Report ("Utilities Response").

On November 17, 2010, the Industrial Group filed its statement of legal issues ("Statement of Legal Issues") to which the DSMCC Majority responded on November 24, 2010 ("DSMCC Majority Response").² The Industrial Group filed a Reply to the DSMCC Majority Statement of Legal Issues on December 3, 2010 ("Minority Reply"). By docket entry dated November 18, 2010, the presiding officers suspended the dates for approval of the TPA and EM&V contracts and for implementation of the Core Programs by the TPA pending further direction by the Commission so as to afford the Commission an opportunity to issue an order on the legal issues prior to proceeding with an evidentiary hearing.

The Commission, based upon applicable law and being duly advised in the premises, now finds as follows:

1. Minority Report and Statement on Scope of Legal Issues. In its Minority Report, the Industrial Group contends that the TPA contract submitted for approval must be reviewed thoroughly and only approved if it is consistent with the least cost standard. In the Industrial Group's view, the Majority Report does not provide the Commission with the information to conduct the necessary review. The Minority Report states that the expedited process used in this docket departs from the Commission's traditional process. The Industrial Group argues that if a thorough review is not conducted now, it must be conducted later and the costs incurred in reliance on the Commission's approval of the TPA contract must be subject to future disallowance for ratemaking purposes.

The Industrial Group contends that under the Commission's method of establishing the Core Programs, there was no data to perform a cost-effective analysis. The Industrial Group contends that utilities have the burden of showing that the Core Programs are cost-effective in their individual service territories. The Industrial Group contends that information regarding the

² Counsel for the other DSMCC Majority members did not receive communication from CAC regarding its position with respect to the DSMCC Majority Response at the time required for filing.

costs of the TPA contract must be provided to the Commission. The Industrial Group contends that the selected TPA bidder is the least efficient of the four bidders; questions why the negotiation process appears to have brought about no reduction in the cost of the program; and contends that the DSMCC Majority has failed to present any legitimate analysis under the “least-cost planning” standard. The Industrial Group argues that such analysis should discuss what the DSMCC views as appropriate service and reliability levels and why the proposed TPA meets these levels but the other bidders did not.

In the Minority Report, the Industrial Group concludes that the Commission should not approve the TPA contract because it is inconsistent with the least cost standard. The Industrial Group claims that the DSMCC received other bids to provide the Core Programs mandated by the Commission at significantly lower costs. The Industrial Group contends that the DSMCC Majority has not identified any reliability or service features from the selected TPA bidder that justify the incurrence of millions of dollars of additional costs – costs which the utilities will seek to pass through trackers to ratepayers. The Industrial Group believes that the DSMCC Majority’s TPA selection boils down to a subjective preference which costs ratepayers millions of dollars. The Industrial Group argues that if the Commission approves the TPA contract, the question whether the costs incurred by the utilities under the contract may be recovered for ratemaking purposes must remain open. The Industrial Group notes that under 170 IAC 4-8-3(c), demand side management programs (“DSM”) and cost recovery are to be considered in conjunction with each other.

In its Statement of Legal Issues, the Industrial Group contends that the legal issues to be considered by the Commission are: (1) Is the Commission’s establishment of the Core Programs grounded within the statutory framework historically used to approve DSM programs or an alternative authority? and (2) If the cost-effectiveness provisions of the Commission’s Integrated Resource Plan (“IRP”) and DSM regulations do not apply, under what standard will the Commission use to judge cost-effectiveness?

2. Utilities Response Regarding Minority Report. The Utilities agree that the Minority Report raises important issues that should be thoroughly vetted before the Respondents enter into the TPA and EM&V contracts. The Utilities Response explains that the participating utilities have proceeded based on the understanding that the Phase II Order mandates engaging a TPA to offer the Core Programs on a statewide basis within the timeframe required by the Phase II Order regardless of whether the Respondents could demonstrate that the Core Programs are cost-effective in their individual service territories.

The Utilities’ Response states that the compliance costs are significant. They explained that the Respondents are directed by the Phase II Order to enter into agreements that will obligate the Respondents, and ultimately their customers, to incur approximately \$190 million over the next three years to provide the Core Programs throughout the State. The Utilities state that the industrial customers will be allocated a share of the costs and their concerns about the level of costs deserve an opportunity to be heard through a formal evidentiary hearing process. In the Utilities’ view, subsequent legal challenges to the cost effectiveness and cost recovery of the Core Programs in multiple dockets will result in duplicative and unnecessary expenditure of the resources of the Commission, Industrial Group, the Utilities and other parties and potentially delay the pursuit of energy efficiency. The Utilities believe no party will benefit from approval

of the TPA contract without the Commission first resolving the issues raised in the Minority Report and that it is therefore reasonable for the Commission to address the concerns raised by an important customer constituency. They state that given the energy savings set forth in the Phase II Order cover a ten year period and other changes in circumstances since the issuance of the Phase II Order, any costs or delay that a review might entail are outweighed by the associated benefits. They note that since the existing DSM efforts already underway by individual Respondents will continue during the review process, progress would continue to be made with regard to the goal of increasing cost-effective energy efficiency in Indiana.

3. DSMCC Majority Response Regarding Scope of Legal Issues. The DSMCC Majority Response contends that it is reasonable for the Commission to enter an order addressing the matters raised by the Industrial Group so as to permit the parties to have an understanding of the scope of the evidence that should be presented at the hearing to be scheduled in this Cause. In particular, the DSMCC Majority states that the Commission should clearly and unequivocally address whether the Respondents are required to enter into the TPA and EM&V contracts and whether the Respondents are required to achieve the energy savings goals identified in the Phase II Order regardless of how such goals impact each utility's respective integrated resource planning needs. The DSMCC Majority Response explains that its process and other compliance activities have been conducted based on the view that the answers to these questions are in the affirmative.

The DSMCC Majority explains the Phase II Order does not state that the requirement that Respondents enter into the third-party contracts and achieve the designated energy savings is dependent on the IRP and DSM guidelines. The Commission's findings about the required level of energy efficiency were made without addressing how these requirements fit within the Respondents' IRPs. In the DSMCC Majority's view, this demonstrates that the effect of the Phase II Order was to provide that DSM at the level necessary to satisfy the targets set forth in the Phase II Order is now an input to the IRP process. Put another way, Respondents must assume that DSM necessary to achieve the targets is part of the optimal resource mix, regardless of whether each utility's independent analysis resources would lead to the inclusion of the specified level of DSM within the timeframe directed in the Phase II Order. Moreover, it is the DSMCC Majority's understanding that regardless of whether or not an individual utility's modeling shows it requires additional resources to meet future demand within the timeframe covered by the Phase II Order, the utility will offer the Core Programs and a portfolio of additional Core Plus programs designed to achieve the energy savings targets set forth in the Phase II Order.

The DSMCC Majority acknowledges that in the Phase II Order, the Commission specifically noted that the "policy objectives identified in [the Phase II Order] are intended to supplement, rather than supplant, existing statutes and administrative rules with respect to Integrated Resource Planning, Demand Side Management, Demand Response, or requirements regarding Certificates of Public Convenience and Necessity in the State of Indiana." Phase II Order at 29. The DSMCC Majority argues that when construed in conjunction with the Commission's other findings, this finding merely indicates that Respondents are not free to abandon future IRP planning but must recognize the impact of the required DSM in such planning (since the level of energy savings from DSM required by the Phase II Order must be assumed as an input to each utility's planning process). The DSMCC Majority contends that this

conclusion is further supported by the DSM schedule set forth in the Phase II Order. The Phase II Order establishes a three-year term for the TPA and EM&V to provide opportunities to revisit the Core Programs. The Phase II Order does not coordinate this review period with the IRP process. If the Commission had intended for the IRP process to drive the selection of Core Programs and other DSM offerings, the DSMCC Majority opines that careful coordination with the IRP process would have been set forth in the Phase II Order.

The DSMCC Majority acknowledges that the Phase II Order does not define how cost-effectiveness shall be assessed or specifically explain whether the reasonableness of the statewide contracts will be judged based on cost-effectiveness and if so, whether cost-effectiveness will be assessed on a statewide basis or a utility-specific basis. The DSMCC Majority explained that the Respondents intend to produce evidence that demonstrates that the TPA and EM&V contracts associated with the statewide offering of Core Programs are reasonable in light of the competitive bids received and evaluated and believe that the presentation of such evidence is consistent with the structure and process established by the Phase II Order. The DSMCC Majority explained that the additional evidence sought by Industrial Group would expand the scope and complexity of the evidence significantly depending on the extent to which the evidence addresses cost-effectiveness on a statewide basis versus a utility-specific basis. The DSMCC Majority explained that use of utility-specific avoided costs creates problems for planning and evaluating programs that are to be implemented on a statewide basis and be consistent from one utility service territory to another. In contrast, it states use of a consistent statewide proxy for avoided costs with respect to statewide Core Programs solves those problems while utility-specific avoided costs would continue to play a role in the utility-specific Integrated Resource Planning and Core Plus program analysis.

The DSMCC Majority recognizes that the costs involved here are significant. The DSMCC Majority contends that if the Commission finds that the TPA and EM&V contracts are reasonable and should be approved, that determination by necessity must foreclose future challenges to the ratemaking recognition of the costs incurred under the Commission-approved contracts. The DSMCC Majority contends that Respondents cannot enter into these contracts without assurance from the Commission that the costs will be recognized for ratemaking purposes. Therefore, in order to provide for an efficient hearing process, the DSMCC Majority asks the Commission to enter an order that clearly and unequivocally addresses (1) whether the Respondents are required to enter into the TPA and EM&V contracts and (2) whether the Respondents are required to achieve the energy savings goals identified in the Phase II Order regardless of how such goals impact each utility's respective integrated resource planning needs. To the extent that the Commission requires (or desires) further evidence addressing how the Phase II Order requirements fit within the cost-effectiveness tests and overall IRP framework identified by the Industrial Group, the DSMCC Majority contends that administrative efficiency would be served by the Commission giving guidance to the parties on these issues.

4. Minority Reply. In the Minority Reply, the Industrial Group contends that if the DSM regulations do not apply, there is no basis to provide deferral of costs, tracking of costs, lost margins and shareholder incentives for the Core Programs. It states that although there is no "per se" standard of cost effectiveness in Indiana utility regulations, any charge made by a public utility must, at a minimum, be just and reasonable. The Industrial Group advocates application of the DSM regulations in determining the cost-effectiveness of the proposals for Core and Non-

Core (*i.e.*, Core Plus) Programs. Because the energy savings goals were not established by statute, the goals must be rooted in the existing laws of utility regulation and the programs cannot be assumed to be cost-effective. The Industrial Group contended that there must be an evaluation of cost-effectiveness as part of the upcoming evidentiary hearing.

5. Commission Discussion and Findings. Pursuant to Ind. Code § 8-1-2-58, the Commission initiated the underlying Cause “to examine the overall effectiveness of DSM programs in the state and to allow it to consider any and all issues that may improve DSM.” Cause No. 42693, Phase I Order at 1 (April 23, 2008) (“Phase I Order”). In the Phase I Order, the Commission found that the current approach to DSM “has resulted in an inconsistent patchwork of programs that exclude customers...from the benefits of energy efficiency services.” *Id.* at 29. We noted the evidence indicated that effective DSM Programs act to reduce energy costs, provide overall economic benefits, mitigate environmental issues, and lessen costs associated with electricity generation related regulatory requirements. *Id.* at 31. Consequently, based on the Commission’s determination that “the availability of DSM programs across the State of Indiana was inadequate or could not be obtained by many citizens,” we proceeded to a second phase to allow the Commission “to issue an Order, pursuant to IC 8-1-2-69, to address the issues identified in the Phase I Order in a manner that will ensure that electric DSM programs are adequate and may be obtained throughout the State of Indiana.” Phase II Order at 4.

The Phase I and Phase II Orders were the products of a multi-year investigation by the Commission initiated in response to a variety of factors, including the projected need for potentially costly new generation in the State, as well as to federal legislation such as the Energy Independence and Security Act. In the Phase II Order (at 30), the Commission recognized the need to approve additional generation capacity as necessary to meet the needs of customers and ensure Indiana’s ongoing economic success. Therein, the Commission also recognized that an important component of long-term planning for Indiana’s generation needs is the effective utilization of DSM programs by Respondents as part of their duty to provide electric service. *Id.*

Because the Commission found in the Phase I Order that the traditional integrated resource planning process had failed to provide for the creation and implementation of creative, effective, predictable and comprehensive DSM programs throughout the State, the Phase II Order set about to address this result by establishing both a framework for the provision of statewide DSM programs in Indiana and energy savings targets “to be achieved by jurisdictional electric utilities in the State of Indiana within 10 years, with interim savings goals established in this Order to be achieved in year one through nine.” Phase I Order at 29 and Phase II Order at 53. The objectives were established “as statewide objectives and represent a savings floor to be achieved in Indiana.” Phase II Order at 32. In determining that a consistent statewide approach to basic energy efficiency programs should be utilized and establishing the initial Core Programs, the Commission stated that “[s]uch programs shall be deemed a part of the basic utility service offering in a utility’s service territory.” *Id.* at 35. The Commission further recognized that the Core Programs would be adjusted over time as conditions warrant. *Id.* at 36. The purpose of the Phase II Order is to ensure that the level of DSM required therein is part of the resource arrangements to meet Indiana needs for electricity.

Now that the proceeding has progressed to a point where competitively acquired

estimates of the compliance costs and rate impacts of the goals and Core Programs established in the Phase II Order are available, the Industrial Group and the Utilities ask the Commission to make determinations regarding the pending matters and thereafter proceed to conduct a formal evidentiary hearing. So as to provide an efficient hearing process we make the following preliminary determinations regarding the requirements of the Phase II Order and our review of the TPA and EM&V contracts required by that Order:

(a) What was the basis for establishment of the Core Programs? The first issue raised by the Industrial Group concerns whether the Commission's establishment of the Core Programs and associated requirements regarding the TPA is grounded within the statutory framework historically used to approve DSM. In its statement of legal issues (at 3), the Industrial Group argues that DSM is part of the integrated resource planning process implemented in accordance with the Commission's IRP and DSM regulations (170 IAC 4-7-1 *et seq.* and 4-8-1 *et seq.*). The Industrial Group notes that historically, DSM programs have been developed *out of* a utility's IRPs and have been presented to the Commission in accordance with the DSM rules. *Id.*

The Commission's Phase II Order in Cause No. 42693 established initial Core Programs required to be offered by Respondents.³ Consequently, we fail to see any need to further address an issue (*i.e.*, the basis or the Commission's authority for the establishment of the initial Core Programs) that has already been fully addressed and determined by the Phase II Order.

(b) Are the Respondents required to enter into the TPA and EM&V contracts? The Respondents are required to enter into the TPA and EM&V contracts for the reasons set forth in our previous orders in Cause No. 42693. The Respondents have understood throughout the implementation of the process imposed by the Phase II Order that Commission approval of the TPA and EM&V contracts would also constitute a finding that the costs incurred pursuant to the TPA and EM&V contracts in complying with the Phase II Order are reasonable and recoverable through rates. We find this position to be reasonable. It is incongruous for the Commission, having found that the Respondents must implement the Core Programs identified in the Phase II Order through TPA and EM&V contracts within the timeframe specified in the Phase II Order, to later find the utility decision to enter into the contracts after working through the specified DSMCC process was imprudent or that the associated cost incurred in reliance on the Commission's approval of the contracts is unreasonable and unrecoverable for ratemaking purposes. Given that Respondents are required to enter into TPA and EM&V contracts, the significant cost of those contracts and the Commission's objective to improve energy efficiency in Indiana, we find that if the TPA and EM&V contracts are ultimately approved, that approval forecloses challenges to the ability to seek timely recovery of those approved contract costs.

(c) Are the Respondents required to achieve the energy savings identified in the Phase II Order? As noted above, the Phase II Order responded to the projected need for potentially costly new generation in the State, as well as to federal legislation such as the Energy Independence and Security Act. The Industrial Group contends that before moving forward with the TPA and EM&V contracts (and presumably other compliance with the Phase II Order), the Respondents must each demonstrate that their own individual IRP process would independently

³ We note that the Phase II Order was issued on December 9, 2009 and no appeal of that order was filed.

project the level of DSM mandated by the Phase II Order as part of the reasonable and least-cost mix of resources. We disagree.

The process and deadlines established in the Phase II Order and by the previous docket entries in this Cause did not require the Respondents to make this demonstration. Nor did the Commission make compliance with the TPA and other requirements contingent upon this sort of demonstration. The Industrial Group's view fails to recognize that the Commission initially adopted the energy savings requirements because it viewed the individual utility process as providing a level of DSM insufficient for Indiana's future, particularly given the evidence presented that energy efficiency was cost effective in other states and Indiana utilities were doing very little DSM. To remedy the situation, the Phase II Order established an overall annual energy savings goal of 2% to be achieved within ten (10) years (which also includes interim savings goals) and established certain initial Core DSM Programs that jurisdictional utilities are required to offer as a component of the established annual energy savings goals.

The Commission views the Core and Core Plus Programs to be individual and distinct components of utility specific DSM offerings. The issue before us in this immediate proceeding relates only to the Core Program offerings; and more specifically, to the selection of the statewide TPA and EM&V providers for these programs. The Commission recognizes, as it did in its Phase II Order (at 36), that the components within the Core Programs are likely to change over time. However, the composition of the Core Programs is not the issue in this proceeding.

(d) What standard will the Commission use to review the TPA and EM&V contracts? As noted above, the Phase II Order established the initial set of Core Programs required to be offered by Indiana jurisdictional utilities. It was for this set of Core Programs that the DSMCC was required to issue an RFP for the TPA and the EM&V.

The TPA and EM&V RFPs were approved in a March 22, 2010 Docket Entry. The DSMCC was also instructed to submit its recommended TPA and EM&V candidates to the Commission for approval, along with a discussion as to "why a certain candidate was selected based on a comparison to the other applicants." *Id.* at 4. Therefore, the Commission believes it is appropriate to consider whether the proposed TPA and EM&V contracts associated with the statewide offering of Core Programs are reasonable in light of the competitive bids received and evaluated. The presentation of such evidence is consistent with the structure and process established by the Phase II Order.

While we defer to the parties with respect to the evidence they choose to present, we would expect such evidence to include at a minimum, a discussion of the criteria or factors considered in choosing the recommended candidates, the contract costs and their reasonableness as compared to the other bids received and evaluated, and the specific reasons for choosing the recommended candidates over the other possible candidates.

6. Conclusion. This implementation subdocket results from a Commission-initiated investigation which established requirements applicable to Respondents. We have made these interim findings to provide guidance and to permit the evidentiary hearing that will be scheduled in this Cause to be conducted in an efficient manner. This order does not prohibit any party from pre-filing additional evidence to be presented at the formal evidentiary hearing in this Cause or

from presenting argument during the course of the post-hearing briefing process.

7. **Ex Parte Communications.** The Utilities, in their proposed order, included a provision that would designate the Commission's legal and technical staff members, as well as the Commission's consultant who served as an investigator in the underlying proceeding, as testimonial staff. While we recognize that Commission staff has communicated with the DSMCC, the Phase II Order specifically contemplated that the Commission, through its staff, would play an active role in the oversight and discussion of issues to be addressed by the DSMCC. Phase II Order at 42; *see also*, March 22, 2010 Docket Entry at 4. Consequently, we see no need at this time to designate any Commission staff as testimonial staff in this Cause.

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

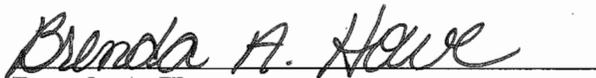
1. The presiding officers shall convene an attorneys' conference for the purpose of establishing a procedural schedule for the pre-filing of written testimony and exhibits and the conduct of a formal evidentiary hearing.

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

ATTERHOLT, LANDIS AND ZIEGNER CONCUR; MAYS NOT PARTICIPATING:

APPROVED: JAN 26 2011

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



Brenda A. Howe

Secretary to the Commission