

**ORIGINAL**

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF DUKE ENERGY )	
INDIANA, INC. FOR APPROVAL AND )	
RECONCILIATION OF DEMAND SIDE )	
MANAGEMENT ("DSM") PROGRAM )	CAUSE NO. 43079 DSM 6 S1
COST RECOVERY THROUGH DUKE )	
ENERGY INDIANA, INC. STANDARD )	
CONTRACT RIDER NO. 66 AND )	APPROVED: MAR 21 2013
UPDATED RIDER CHARGE ESTIMATES )	
AND BILL IMPACT ANALYSIS FOR )	
RIDER EE. )	

ORDER OF THE COMMISSION

**Presiding Officers:**  
**David E. Ziegner, Commissioner**  
**Loraine L. Seyfried, Chief Administrative Law Judge**

On June 27, 2012, Duke Energy Indiana, Inc. ("Duke Energy Indiana" or "Petitioner") filed its Petition with the Indiana Utility Regulatory Commission ("Commission") for approval and reconciliation of Demand Side Management ("DSM") program cost recovery through Duke Energy Indiana's Standard Contract Rider No. 66 in Cause No. 43079 DSM 6. Petitioner also prefiled the Direct Testimony and Exhibits of Ms. Diana L. Douglas.

On July 11, 2012, Petitioner filed its Amended Petition to include updated rider charge estimates and bill impact analysis for Rider EE, as required by the Commission's March 21, 2012 Order in Cause No. 43955 ("43955 Order"). On July 27, 2012, Duke Energy Indiana prefiled the Supplemental Testimony and Exhibits of Ms. Douglas and the Direct Testimony and Exhibits of Mr. Timothy Duff and Ms. Karen K. Holbrook. Petitioner's July 27, 2012 request for Administrative Notice of pertinent documents, testimony, exhibits and the 43955 Order was approved on August 9, 2012, and such documents were entered into the record at the evidentiary hearing.

The Indiana Office of Utility Consumer Counselor ("OUCC") prefiled the testimony and exhibits of Ms. April Paronish and Mr. Wes Blakley on October 2, 2012, and Duke Energy Indiana prefiled the Rebuttal Testimony of Mr. Duff on October 16, 2012. On October 24, 2012 Duke Energy Indiana responded to certain questions from the Commission from its October 18, 2012 Docket Entry.

An evidentiary hearing was conducted on November 1, 2012. At the hearing, the evidence of Petitioner and the OUCC was offered and admitted without objection. Before an order was issued, Steel Dynamics, Inc. ("SDI") filed on November 19, 2012 a Notice of Defect, Motion to Dismiss in Part and/or Motion to Establish Subdocket. On that same date, SDI filed

its Petition to Intervene Out-of-Time. On November 21, 2012, Nucor Steel – Indiana, a division of Nucor Corporation (“Nucor”) filed its Joinder in SDI’s Motions and a Petition to Intervene Out-of-Time. Duke Energy Indiana filed its Response to SDI’s Motions on November 29, 2012, with SDI and Nucor timely filing their Joint Reply on December 6, 2012.

On December 19, 2012, the Commission issued its Order in Cause No. 43079 DSM 6 approving the reconciliation amounts from Rider 66 and instructing Petitioner to monitor the Rider 66 billing amounts until the full revenue requirement approved is close to being billed, at which time “Petitioner shall make a compliance filing in [Cause No. 43079 DSM 6] to terminate Rider 66 by setting the billing factors to zero for all customer classes...” Order at p. 10.

The Commission also granted SDI’s and Nucor’s Motions to intervene and created this subdocket with an amended caption to address Petitioner’s request for approval of updated rider charge estimates and bill impact analysis for Rider EE. Although a procedural schedule for the filing of additional testimony was established, no additional testimony was filed. However, on February 13, 2013, Petitioner filed a stipulated exhibit consisting of responses to data requests from Nucor.

Pursuant to notice as provided by law, proof of which was incorporated into the record and placed into the official files of the Commission, a public evidentiary hearing in this Cause was held on February 15, 2013 at 1:30 p.m. in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the evidentiary hearing, Petitioner moved for admission of the testimony and exhibits from Cause No. 43079 DSM 6, which was granted without objection. The stipulated exhibit was also admitted into evidence.

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

**1. Notice and Jurisdiction.** Notice of the evidentiary hearing concerning Duke Energy Indiana’s Amended Petition in this Cause was issued by the Commission on January 4, 2012 and published in the Indianapolis Star on January 8, 2013; in the Weekend Flyer on January 9, 2013; and in the Hendricks County Republican on January 10, 2013.

Petitioner is a public utility within the meaning of the Public Service Commission Act, as amended, Ind. Code ch. 8-1-2 and subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Indiana. Petitioner requests relief pursuant to Ind. Code ch. 8-1-8.5, Ind. Code § 8-1-2-42(a) and 170 IAC 4-8. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

**2. Petitioner’s Characteristics and Business.** Petitioner is a public utility organized and existing under the laws of the State of Indiana with its principal place of business located at 1000 East Main Street, Plainfield, Indiana. It is engaged in rendering electric utility service to the State of Indiana and owns, operates, manages, and controls, among other things, plants, properties, and equipment within the State of Indiana used and useful for the production, transmission, delivery, and furnishing of such electric service to the public. Petitioner directly supplies electric energy to approximately 790,000 customers located in 69 counties in the central, north central, and southern parts of Indiana and supplies steam service to one customer from its Cayuga Generating Station.

**3. Requested Relief.** In its Petition, Duke Energy Indiana sought approval of reconciliation and close-out of Standard Contract Rider No. 66 (“Rider 66”), which has been used to collect rates for legacy demand side management (“DSM”) programs. Pursuant to the Order in Cause No. 43079 DSM 5, the Commission approved budgeted program amounts through the time that the Commission approved Petitioner’s plan for compliance with the Commission’s December 9, 2009 Order in Cause No. 42963 (“Phase II Order”). In Cause No. 44008, Petitioner subsequently received approval to increase the budget for 2011 to include a new residential lighting program. Petitioner seeks approval of its reconciliation of costs incurred for Petitioner’s legacy DSM programs for calendar years 2010, 2011 and through March 2012, which was the last month its DSM programs were offered under the Rider 66 umbrella. This portion of Petitioner’s request was approved in our December 19, 2012 Order in Cause No. 43079 DSM 6.

Petitioner’s Standard Contract Rider No. 66-A (“Rider EE”) is used to collect Core and Core Plus Program costs approved under the Phase II Order and the 43955 Order. Duke Energy Indiana’s Amended Petition seeks approval of its updated charge estimates and bill impacts under Rider EE for calendar year 2013, which were required to be filed with the Commission in accordance with the 43955 Order.

**4. Background.** On December 9, 2009, the Commission issued its Phase II Order in Cause No. 42693. Pursuant to the Commission’s Order, the utilities must achieve an annual energy savings goal of 2% within ten years, with annual stepped savings targets, for years one through nine. In the Phase II Order, the Commission also found that jurisdictional electric utilities, of which Duke Energy Indiana is one, are required to offer certain Core Programs to all customer classes and market segments. To implement these programs, electric utilities are required to pursue coordinated marketing, outreach and consumer education strategies on a statewide basis. Further, the utilities were required to implement and manage any additional programs needed (Core Plus Programs) to achieve the energy savings goals established.

In its 43955 Order, the Commission approved, among other things, Petitioner’s proposed Core Plus Program portfolio along with cost recovery (including lost revenues) and incentives through Rider EE. The 43955 Order also approved Core Program cost recovery through Rider EE. In the Commission’s Order, Duke Energy Indiana was directed, in relevant part, as follows:

By June 29, 2012, DEI shall submit to the Commission updated Rider EE charge estimates for the remainder of the approved three-year DSM Plan, along with a reconciliation of the existing DSM Rider 66. Further by June 29, 2012, DEI shall submit an updated bill impact analysis.

*Duke Energy Indiana, Inc.*, Cause No. 43955 at 44 (IURC March 21, 2012).

**5. Petitioner’s Case-in Chief Evidence.** In his Direct Testimony, Mr. Timothy Duff, General Manager, Retail Customer and Regulatory Strategy for Duke Energy Business Services, explained Petitioner’s update to the annual energy savings impacts tied to the achievement thresholds to be used in determining performance incentives and the projected energy savings impacts from the portfolio of energy efficiency programs approved in Cause No. 43955.

Mr. Duff summarized the incentive structure approved in Cause No. 43955. He explained that Petitioner calculated the annual thresholds for the approved incentives by looking at the required energy savings impacts needed to meet the first Compliance period established in the Phase II Order and subtracting the energy savings impacts to be achieved by the Core Programs through the third-party administrator. The balance required to be achieved were considered Core Plus targets and reflected in the filing in Cause No. 43955 for purposes of calculating the incentive targets. Mr. Duff testified that the incentive target amounts needed to be updated because the Commission directed Petitioner in its 43955 Order to file updated charge estimates. Mr. Duff then explained that to ensure consistency, annual impacts tied to achievement thresholds for the incentive mechanism were also being updated. In essence, Petitioner calculated the gross energy savings needed to be in compliance with the Phase II Order and subtracted the actual energy savings achieved in 2010 and 2011 to get the amount of energy savings needed for the remainder of the first compliance period (*i.e.*, 2012 and 2013). The under-compliance amount was then allocated between 2012 and 2013. The updated annual projected impact contribution from the Core Programs in 2012 and 2013 was subtracted to get to the total energy savings needed in 2012 and 2013 from Core Plus Programs in order to achieve the Phase II targets for the first compliance period. These figures were then used in the revised achievement thresholds.

Ms. Karen Holbrook, Director, Product Analytics for Duke Energy Business Services, sponsored Direct Testimony that provided updated program costs, lost revenues and incentives that correspond to the updated target achievement numbers described in Mr. Duff's testimony. Additionally, she updated the budget numbers to reflect the removal of the PowerShare<sup>®</sup> and the Home Energy Comparison Report ("HECR") programs, as directed in the 43955 Order, as well as revised evaluation, measurement, and verification ("EM&V") costs as provided by the EM&V vendor.

Ms. Holbrook testified that the lost revenue amount is less than originally projected because more savings were achieved by the legacy Duke Energy Indiana DSM programs, which are not eligible for lost revenues. As to incentive amounts, Ms. Holbrook testified that the revised amount of incentives projected is less than originally projected primarily due to elimination of incentives on the HECR pilot and Demand Response programs. She concluded her testimony by stating that the total costs for the approved programs for 2012 and 2013 are less than the total cost for the plan approved in Cause No. 43955 because of impacts achieved from legacy DSM programs, the removal of PowerShare<sup>®</sup> and the removal of incentives on Power Manager and the HECR pilot.

In her Supplemental Testimony, Ms. Douglas explained Duke Energy Indiana's updated charge estimates and an updated bill impact analysis related to the remainder of its 2011 – 2013 Energy Efficiency Plan ("EE Plan") approved in the 43955 Order. She testified regarding the ratemaking treatment granted in Cause No. 43955 and explained that Petitioner filed its revised tariff for 2012 on March 26, 2012 consistent with the Order, using the plan amounts approved for 2011 to develop the rates. The revised Rider EE was approved by the Commission's Electricity Division on March 28, 2012. Duke Energy Indiana is currently billing customers those amounts under Rider EE.

Ms. Douglas sponsored exhibits and testimony updating the charge estimates for 2013 to reflect the remainder of the EE Plan period. She explained that due to a number of intervening events between filing Cause No. 43955 and receiving the final order it was necessary to update components for both Core and Core Plus Programs. As to Core Programs, the revised budget reflects more recent estimates of Core Program costs and impacts for 2013 that were provided by the statewide third-party administrator and the statewide EM&V administrator. For Core Plus Programs, Ms. Douglas testified that the changes were dictated by the 43955 Order, which required the removal of PowerShare<sup>®</sup> CallOption and the removal of incentives for HECC and Power Manager. Additionally, the shortening of the time period for achieving the targeted savings in the first compliance period from three years to two years required changes to impacts and costs. Ms. Douglas testified that the overall costs for the 2011-2013 three-year period (now condensed into less than two years for the EE Plan programs) do not exceed those presented and approved in Cause No. 43955.

Ms. Douglas sponsored exhibits that updated Core and Core Plus Program costs, with estimated lost revenues for all programs and estimated incentives for the Core Plus Programs. She explained lost revenues extended into 2014 and 2015 because lost revenues were reflected for three years from program participation dates or the life of a measure, if shorter. She testified that the updated Core Program cost is approximately \$112.4 million and that the updated Core Plus Program cost is approximately \$47.1 million, for a total to be reflected in all four calendar years for the two-year updated EE Plan of approximately \$159.5 million. She further explained the development of the proposed rates.

Ms. Douglas testified that, when considering the rate impact of Rider EE and the final reconciliation rates for Rider 66 to be billed in 2013, the net impact for 2013 will be an increase of approximately 0.7% for residential customers. Ms. Douglas testified that the impact of Rider EE and the final reconciliation rates for Rider 66 to be billed in 2013 will result in an average net impact for all retail customers of approximately 1.2%.

Ms. Douglas testified that Petitioner will reconcile 2012 EE Plan actual costs, lost revenues and incentives to amounts billed for Rider EE from April through December 2012 in the next Rider EE filing, planned for June 2013, presenting a new three-year plan to meet the Commission's energy savings targets for 2014 – 2016 and developing rates for 2014 that will be effective with the first billing cycle of 2014. She stated that the reconciliation will include a true-up of 2012 lost revenues and incentives based on 2012 actual participation in the energy efficiency programs and the results of any EM&V available at that time (both of which will affect the kWh impact achievement levels used to determine the lost revenue and incentive amounts). Ms. Douglas noted that due to the compressed timing to achieve incentives, Petitioner has ramped up its expenditures in 2012 above what was initially estimated. As a result, Petitioner may experience an under-recovery of the estimated costs of its programs for calendar year 2012 and such under-recovery would be reflected in the reconciliation process described above.

**6. OUC's Case-in-Chief Evidence.** Ms. April Paronish, Senior Utility Analyst in the Resource Planning and Communications Division at the OUC testified regarding her concerns with Petitioner's proposal to reduce its 2012 DSM savings targets while maintaining its original incentive structure. Ms. Paronish stated Duke Energy Indiana's proposal to reduce its

2012 Core Plus target energy savings by 20,000 mWh, or almost 40% less energy savings, while maintaining the same incentive structure fundamentally alters its approved incentive mechanism. She testified that all utilities required to offer the Core Programs were equally affected by the delays in implementation. Further, she argued that the delays did not negatively impact Duke Energy Indiana, as evidenced by the fact that Petitioner is the only utility proposing to reduce its savings targets. In addition, she stated that it was Duke Energy Indiana's choice to wait until Commission approval to offer its Core Plus Program portfolio. Ms. Paronish testified that she had the same concerns to a lesser degree for 2013.

Ms. Paronish testified the OUCC does not recommend Duke Energy Indiana be required to achieve the target savings in the 43955 Order because the evidence indicates that Petitioner can meet its energy savings with its reduced targets. Instead, Ms Paronish recommended the Commission reject Duke Energy Indiana's proposed target-to-incentive recalibration and instead apply the proposed savings to the incentive structure approved in the 43955 Order. She also stated that the OUCC has concerns about Petitioner's lost revenue reconciliation process, but will take up that issue in the next reconciliation proceeding.

Mr. Wes Blakley, Senior Utility Analyst for the OUCC stated that the figures used in Petitioner's calculation of its DSM adjustment factor are supported by the prefiled exhibits. He raised no issues with Duke Energy Indiana's filing.

7. **Duke Energy Indiana Rebuttal Testimony.** Mr. Duff filed Rebuttal Testimony addressing Ms. Paronish's concerns with the updated incentive targets. Mr. Duff explained that delays in implementation of both Core and Core Plus Programs required the third-party administrator and Duke Energy Indiana to update its planned spending and savings by attempting to achieve three years of impacts in two years or less of full implementation. This required a recalibration of the projected impacts to be achieved. Mr. Duff disagreed that Duke Energy Indiana has fundamentally altered its incentive mechanism as claimed by the OUCC. He explained that the incentive mechanism was designed to reward Petitioner for complying with the savings targets. Meeting 100% of the savings targets corresponds to a 12% incentive under the mechanism approved in Cause No. 43955, just as it does in Duke Energy Indiana's proposal in this proceeding. The only thing that has changed is the amount of kWh savings required in 2012 and 2013 needed from Core Plus Programs to meet the three-year compliance period target. Because Petitioner's legacy DSM programs have contributed to additional significant energy savings in 2010 and 2011, the Core Plus Programs need less kWh savings in 2012 and 2013 in order to achieve compliance with the Phase II targets.

Mr. Duff explained that Duke Energy Indiana calculated the savings needed from Core Plus Programs in the same way it did in its initial filing in Cause No. 43955. However, because Petitioner realized a higher than anticipated savings from its legacy DSM programs, it achieved significant energy savings without receiving any shareholder incentive or lost revenue. As such, the savings needed from Core Plus Programs have been reduced, as well as the estimated lost revenues and incentives.

Mr. Duff disagreed that Duke Energy Indiana's proposal will allow it to earn 100% more incentive than it would have under the initial estimates from Cause No. 43955, as claimed by the OUCC. He stated that Petitioner's proposal will not result in Duke Energy Indiana earning more

incentives on a percentage or absolute basis. Rather, Duke Energy Indiana is still proposing to earn 12% for delivering Core Plus achievements necessary to meet the Commission's Phase II savings targets, and the absolute amount of incentive is 16% lower than initially estimated.

Finally, Mr. Duff took issue with Ms. Paromish's statement that Duke Energy Indiana simply could have initiated its Core Plus Programs prior to Commission approval and achieved the savings initially estimated, notwithstanding the delay in approval. Mr. Duff pointed out that Petitioner has historically and currently works in a collaborative fashion on its energy efficiency initiatives with interested stakeholders. He noted that Petitioner has not taken the position that it can begin new programs unilaterally without approval from or at a minimum notice to interested parties and the Commission. He noted the OUCC wanted to have prior input and required Petitioner to seek Commission approval before beginning a new lighting program in 2011. In the present case, he believes that if Duke Energy Indiana had begun Core Plus Programs prior to Commission approval, the savings that resulted would be subject to hindsight criticism and would be at risk of not counting toward the mandates.

**8. Commission Docket Entry.** In an October 18, 2012 Docket Entry, the Commission requested information from Duke Energy Indiana concerning its Core Plus Program EM&V framework. Duke Energy Indiana responded that there are no changes contemplated to the framework other than removal of the HECR program per the Commission's Order and that Duke Energy Indiana's evaluation plan falls within the Indiana Evaluation Framework reviewed by the Demand Side Management Coordination Committee.

Petitioner also indicated that it expected to have Core Program EM&V results in April 2013 and some Core Plus Program EM&V results beginning in the third quarter of 2013, with results ranging from 12 to 24 months after Core Program implementation.

Finally, Petitioner explained that its proposal in this proceeding is not expected to have a material impact on the cost effectiveness of its Core Plus Programs because ultimately the same total level of program spending and savings are anticipated over the 2010-2013 compliance period.

**9. Commission Discussion and Findings.** At issue in this subdocketed proceeding is Petitioner's request for approval of its updated Rider EE for implementation in calendar year 2013, demonstrating, as directed in the 43955 Order, the updated charge estimates and bill impact analysis. While the OUCC agrees that Petitioner's calculations of its billing factors in Rider EE are accurate and appropriate, the OUCC asserts that Petitioner has impermissibly modified its incentive mechanism by proposing to reduce the savings targets and impacts for its Core Plus Programs. However, the OUCC did not advocate requiring Petitioner to achieve the savings targets identified in Cause No. 43955 because such savings are not necessary to meet the Phase II Order savings goals.

Based on the evidence presented, the Commission finds Petitioner's calculations of its billing factors in Rider EE are accurate and appropriate. With regard to the OUCC's arguments concerning the incentive mechanism, the Commission finds that Duke Energy Indiana's proposal to update the savings targets associated with its Core Plus Program incentives is reasonable and should be approved based upon the unique circumstances presented herein. The Commission

recognized in its 43955 Order that the passage of time would require an update to charge estimates and a change in bill impacts for the three-year compliance period, and we directed Petitioner to provide such an update. Petitioner calculated its updated Core Plus Program savings targets using the same methodology as it did in Cause No. 43955, *i.e.*, the Core Plus Program savings targets are based on the remaining energy savings needed to meet the Phase II Order energy savings goals after accounting for savings from other sources. Duke Energy Indiana's savings forecast in Cause No. 43955 was based on the expectation that the Core Programs would be implemented in 2011 (but, which did not occur until 2012) and approval of its Core Plus Programs by mid-2011 (but, which did not occur until March 2012). Because more savings were achieved through Petitioner's legacy programs and the Core Programs than originally contemplated by Petitioner in Cause No. 43955, less savings are needed from its Core Plus Programs to meet the Phase II Order savings goals.

Furthermore, we agree with Duke Energy Indiana that the OUCC's position undermines Petitioner's ability to earn the incentives approved by the Commission in Cause No. 43955. Petitioner continues to propose the same 12% incentive for delivering the annual Core Plus achievements needed to meet the Commission's savings targets. Petitioner has also revised its projected expenditures to align with the revised lower targets. The OUCC, however, appears to suggest that the incentive targets should remain unchanged, and also that Duke Energy Indiana should not attempt to reach those existing incentive targets. The Commission finds this position to be unreasonable.

The Commission notes that it indicated in its Phase II Order (at p. 32) that the "savings goals are established as statewide objectives and represent a savings floor to be achieved in Indiana." Accordingly, utilities were "encouraged to utilize best efforts to exceed the savings goals" contained in the Phase II Order. *Id.* The Commission has also authorized a utility to credit any savings in excess of a specific annual goal for purposes of meeting the incremental goals in subsequent years. *See Northern Indiana Public Service Company*, Cause No. 43912 at 25 (IURC July 27, 2011). Accordingly, although the Commission is approving Duke Energy Indiana's lower proposed incentive targets based on the evidence presented in this Cause, this Order is not meant to suggest that utilities (and associated Core Plus incentive structures) should never strive (or be set) to exceed the Commission's savings goals.

Accordingly, Duke Energy Indiana is directed to implement its proposed Rider EE billing factors on all bills rendered on or after the effective date of this Order.

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

1. Petitioner's proposed updated charge estimates and bill impacts under Rider EE for calendar year 2013, including its revised program impact targets used to calculate its shareholder incentive, as well as revised program costs, including lost revenues, and its incentive amounts, are hereby approved.

2. Petitioner is authorized to continue to offer and receive cost recovery, lost revenues and incentives consistent with the Order in Cause No. 43955 and this Order for its Core Plus Programs.

3. Petitioner is authorized to continue to collect revenues associated with the cost recovery and lost revenues for Core Programs.

4. Petitioner's budget estimates for Core and Core Plus Programs are hereby approved.

5. Petitioner is authorized to implement its requested Rider EE and to implement its requested Rider EE adjustment factors.

6. Petitioner may begin billing new Rider EE factors on all bills rendered on or after the effective date of this Order, subject to its filing of the final Rider with the Commission's Electricity Division.

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

**ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:**

**APPROVED: MAR 21 2013**

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



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**Shala M. Coe**  
**Acting Secretary to the Commission**