

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF DUKE ENERGY INDIANA, )  
INC. FOR APPROVAL TO OFFER )  
ADDITIONAL ENERGY EFFICIENCY )  
PROGRAMS; FOR APPROVAL OF )  
PROGRAM COST RECOVERY, LOST )  
REVENUES AND INCENTIVES PURSUANT )  
TO 170 IAC 4-8-5, 170 IAC 4-8-6, AND 170 )  
IAC 4-8-7; AUTHORITY TO DEFER COSTS )  
PENDING APPROVAL AND FOR )  
AUTHORITY TO IMPLEMENT ANNUAL )  
TRACKING MECHANISM )

CAUSE NO. 43955

APPROVED: JUN 20 2012

ORDER OF THE COMMISSION ON RECONSIDERATION

**Presiding Officers:**

**David E. Ziegner, Commissioner**

**David E. Veleta, Administrative Law Judge**

On September 28, 2010, Duke Energy Indiana, Inc. (“DEI”) filed with the Indiana Utility Regulatory Commission (“Commission”) its Petition requesting approval to offer additional energy efficiency programs; approval of program cost recovery, lost revenues, and shareholder incentives pursuant to 170 IAC 4-8-5, 170 IAC 4-8-6, and 170 IAC 4-8-7; authority to defer costs pending approval; and authority to implement an annual tracking mechanism.

An Evidentiary Hearing was conducted on July 14-15, 2011 at 9:30 a.m. in Room 222, PNC Center, Indianapolis, Indiana. On March 21, 2012, the Commission issued an Order in this Cause.

On April 10, 2012, Nucor Steel-Indiana, a Division of Nucor Corporation (“Nucor”), filed its Petition and Brief in Support of Reconsideration (“Petition for Reconsideration”), requesting the Commission reconsider portions of its findings within its March 21, 2012 Order in this Cause. On April 19, 2012, Steel Dynamics, Inc. (“SDI”) filed its notice of adoption of Nucor’s Petition for Reconsideration. On April 20, 2012, the DEI Industrial Group (“Industrial Group”) filed its partial concurrence in support of Nucor’s Petition for Reconsideration. On April 20, 2012, DEI filed its Response to Nucor’s Petition for Reconsideration.<sup>1</sup> On April 27, 2012, Nucor filed its Reply to DEI’s Response.

**1. Commission Jurisdiction.** The basis for our jurisdiction over DEI and the subject matter of this proceeding are set forth in our March 21, 2012 Order, and are hereby incorporated

<sup>1</sup> DEI requests that the Commission reject the filings of SDI and the Industrial Group as they were untimely filed. The Commission’s procedural rules require petitions for reconsideration to be filed within twenty (20) days of the entry of the final order in a proceeding. Thus, the filings of SDI and the Industrial Group were untimely and will not be considered.

into this Order on Reconsideration. The Commission has jurisdiction over DEI and the subject matter of this proceeding in the manner and to the extent provided by the law of the State of Indiana.

**2. Petition for Reconsideration.** Nucor, in its Petition for Reconsideration, requests that the Commission reconsider portions of its March 21, 2012 Order in this Cause. Nucor's brief filed in support of its Petition for Reconsideration sets forth the following three reasons for reconsideration. First, Nucor argues that the Commission should order DEI to continue to directly assign energy efficiency-related costs to its individual customer rate classes unless the Commission approves a change in allocation methodology in DEI's next base rate case. Furthermore, Nucor contends that DEI has not provided sufficient evidence of benefits to Nucor for its energy efficiency programs.

Second, Nucor requests that the Commission not impose energy efficiency costs upon interruptible load. Nucor contends that it has a Commission approved special contract with DEI which includes a demand charge that provides compensation to DEI for any perceived benefits. Thus, it is unnecessary for Nucor to pay additional amounts for energy efficiency costs. Nucor also argues that DEI does not incur capacity costs to serve interruptible load and that the inclusion of interruptible loads in the calculation of energy usage for determination of meeting the energy savings goals is not appropriate.

Finally, Nucor requests that the Commission permit self-directed programs. Nucor concedes that the Commission must cover the cost of the third-party administrator; however, it disagrees that it should be required to contribute. Nucor also argues that self-directed programs are the most cost effective route to maximize energy efficiency savings in Indiana.

**3. DEI's Response.** DEI's Response addresses each of Nucor's arguments for reconsideration. First, DEI notes that the Commission's Order in *Commission Investigation*, Cause No. 42693, 2009 Ind. PUC LEXIS 482 (IURC December 9, 2009)(the "Phase II Order") changed the Commission's approach to energy efficiency program offerings and the costs related to those offerings. The Phase II Order requires jurisdictional electric utilities, of which DEI is one, to offer certain energy efficiency programs to all customer classes and market segments. Additionally, DEI argues that the Commission has stated that there can be no opt-out for larger commercial and industrial customers at this time. Nucor's request to continue to directly assign costs is essentially a request to opt-out because Nucor is the only customer in its class. DEI argues that Nucor's argument that changes in allocation methodology should only be made in base rate proceedings ignores the fact that the direct assignment methodology Nucor advocates was not approved in a base rate proceeding. DEI states the Phase II Order and the changes to energy efficiency programming that have resulted support the reconsideration of cost allocation in the Commission's March 21, 2012 Order.

DEI states it submitted cost effectiveness results that demonstrated its programs meet the burden established in 170 IAC 4-8-5(f) and demonstrate that there are system benefits. DEI contends that energy efficiency programs benefit Nucor by reducing DEI's peak demand, thereby avoiding the need to purchase capacity to meet peak demands, and by reducing marginal fuel cost

for firm and interruptible load. Thus, Nucor and other special contract customers will benefit from DEI's energy efficiency programs, whether or not they choose to participate in those programs.

Second, DEI points out that the special contract between DEI and Nucor provides that "Nucor may be subject to additional riders approved by the Commission." Thus, the Commission may include Nucor's interruptible load in DEI's energy efficiency Rider. DEI also asserts Nucor's argument that interruptible load should not have been included within the ambit of the Phase II Order is an issue that should have been raised in that proceeding, and the time to appeal the Phase II Order has expired. DEI notes that although Nucor is correct that it pays a demand charge, it ignores the fact that conservation programs are focused primarily on reducing energy usage and the approved allocation methodology does not specifically allocate any demand-related costs to Nucor's interruptible load.

Finally, DEI notes that the Commission has repeatedly stated that a self-directed option is not currently appropriate.

**4. Reply of Nucor.** Nucor argues that the Commission should maintain the direct assignment cost methodology. Furthermore, Nucor argues that the best energy efficiency result will be achieved by permitting DEI's large customers to make their own investment decisions related to energy efficiency and that DEI's cost effectiveness results are highly speculative. In addition, Nucor requests that the Commission not impose energy efficiency costs upon interruptible load. Finally, Nucor renewed its request to be permitted to self-direct its energy efficiency program.

**5. Commission Discussion and Findings.** Many of the arguments presented by Nucor in support of its Petition for Reconsideration are the same as those presented in the underlying proceeding and rejected in our March 21, 2012 Order. Nucor continues to request that costs for energy efficiency programs be directly assigned by participating customer class, versus the direct assignment to rate groups approved by the Commission in its Order. After further consideration, we continue to believe that the cost assignment and allocation approved in the Commission's March 21, 2012 Order is appropriate, and based on sound reasoning. Although Nucor argues it is not appropriate to change cost allocation methodologies outside of a base rate case, Nucor fails to acknowledge that the prior cost allocation methodology was not originally approved in a base rate case. In this instance, where the Phase II Order necessitated changes to DEI's energy efficiency programs to make available the opportunity for participation by customers previously exempt from such programs, it is reasonable to also make adjustments to cost assignment and allocation.

Nucor requests that the Commission not impose energy efficiency costs upon interruptible load. However, as explained in the Commission's March 21, 2012 Order, Nucor benefits from DEI's energy efficiency programs. It is widely recognized that criteria other than cost causation are sometimes considered by utility commissions when deciding cost allocation and rate design. The concept that customers that benefit from a utility investment or program offering may be called upon to contribute to cost recovery is just one. The Commission also notes, as it did in the March 21, 2012 Order, that DEI's conservation oriented programs are focused on the reduction of energy rather than demand. Further, the energy from interruptible loads is included in the Commission's calculation of energy usage for determination of meeting the energy savings goals. Therefore, it would not be reasonable to exclude these loads from energy efficiency charges. Further, the energy

savings goals established in the Phase II Order, which was not appealed, were based on a percentage of weather normalized average electricity sales. The Phase II Order did not make any distinction for whether energy was or was not sold under an interruptible contract, and we decline to do so here.

Finally, the Commission has repeatedly expressed its concern that during the initial stages of developing a statewide DSM program, any opt-out or self-directed options could interfere with the successful implementation of such programs. Therefore, the Commission declines Nucor's request to reconsider its decision on self-directed programs at this time.

Therefore, based on the foregoing, we find that the Nucor's Petition for Reconsideration should be denied.

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

1. Nucor's Petition for Reconsideration is hereby denied.
2. This Order shall be effective on and after the date of its approval.

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

**APPROVED: JUN 20 2012**

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

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