JOA
[illegible]
[illegible]
CM
Keele

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF MARSHALL COUNTY RURAL ELECTRIC MEMBERSHIP CORPORATION REQUESTING THE COMMISSION TO APPROVE AN ALTERNATIVE REGULATORY PLAN PURSUANT TO IND. CODE 8-1-2.5-1 ET SEQ REGARDING IMPLEMENTATION OF DEMAND SIDE MANAGEMENT PROGRAMS AND ADOPTION OF DEMAND RESPONSE TARIFFS OR RIDERS TO IMPLEMENT MISO DEMAND RESPONSE PROGRAMS	)	CAUSE NO. 44041 APPROVED: FEB 22 2012

ORDER OF THE COMMISSION

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

On June 20, 2011, Marshall County Rural Electric Membership Corporation ("Petitioner" or "Marshall REMC") filed a Verified Petition with the Indiana Utility Regulatory Commission ("Commission") requesting approval of an alternative regulatory plan pursuant to Ind. Code ch. 8-1-2.5 regarding implementation of Demand Side Management ("DSM") programs and adoption of demand response tariffs or riders to implement the Midwest Independent Transmission System Operator, Inc. ("MISO") Demand Response Programs. Petitioner filed the direct testimony of Mark W. Batman on August 17, 2011, which was supplemented on October 18, 2011. The Indiana Office of the Utility Consumer Counselor ("OUCC") filed the direct testimony of April M. Paronish and Ronald L. Keen on November 3, 2011. Thereafter, Petitioner filed the responsive testimony of Mark W. Batman and Gregory E. Wagoner on November 9, 2011.

Pursuant to notice duly given and published, an evidentiary hearing was conducted in this Cause at 9:30 a.m. on November 28, 2011, in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, the testimony and exhibits of the parties were admitted into the record without objection. No member of the public appeared or sought to testify at the hearing.

The Commission, having considered the evidence and applicable law, now finds:

1. **Commission Notice and Jurisdiction.** Due, legal and timely notice of the public hearing conducted herein was given and published by the Commission as required by law. Petitioner is a rural electric membership corporation within the meaning of the Rural Electric Membership Corporation Act found at Ind. Code ch. 8-1-13, and is subject to the jurisdiction of the Commission as provided therein. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Petitioner's Characteristics.** Marshall REMC is a local electric distribution cooperative with its principal place of business located at 11299 12th Road, Plymouth, Indiana. Marshall REMC provides distribution of electric public utility service to more than 6,900 member-customers throughout Marshall and parts of St. Joseph, Kosciusko, Fulton, Starke, and Elkhart counties in Indiana, and its rates and operations are regulated by the Commission. Marshall REMC is a member of Wabash Valley Power Association, Inc. ("Wabash Valley") and receives its wholesale power and related power services through an all requirements power purchase arrangement with Wabash Valley.

3. **Background and Relief Requested.** Marshall REMC requests relief in this Cause related to two Commission Orders. The first is the Commission's December 9, 2009 Phase II Order in Cause No. 42693, which established certain annual electric energy savings goals for all jurisdictional electric utilities and required the offering of certain DSM programs ("Core Programs") through a single independent third party administrator ("TPA"). The second is the Commission's July 28, 2010 Order in Cause No. 43566 requiring all jurisdictional electric utilities to file tariffs or riders authorizing the participation of retail customers, through their utility provider, in the applicable regional transmission organization's ("RTO") demand response programs.

In its Verified Petition, Marshall REMC elected to become subject to the provisions of Ind. Code §§ 8-1-2.5-5 and 8-1-2.5-6 for the purpose of this filing. Petitioner is an "energy utility" providing "retail energy service" within the meaning of Ind. Code §§ 8-1-2.5-2 and 8-1-2.5-3, respectively. Petitioner's Exhibits MWB-1 and MWB-2 demonstrates public notice of the filing of this Cause was provided by Petitioner in accordance with Ind. Code § 8-1-2.5-6(d). Petitioner requests approval of an alternative regulatory plan ("ARP") with regard to the Commission's requirements concerning DSM program offerings[1] and the development of MISO demand response tariffs or riders.

4. **Summary of the Evidence.**

A. Petitioner's Direct Testimony. Mark W. Batman, President and CEO of Marshall REMC, testified that Marshall REMC a local distribution cooperative governed by a nine-member board of directors who are members and owners of the REMC. Marshall REMC purchases its electric power and energy pursuant to an all requirements contract with Wabash Valley.

Mr. Batman summarized the Commission's investigation into demand side management practices of Indiana regulated utilities in Cause No. 42693 and the Phase II Order requirements. He testified the Phase II Order established certain annual electric savings goals for each regulated electric utility and required each jurisdictional electric utility to implement the following five DSM Core Programs through a statewide TPA: residential lighting program, home energy audit program, low income weatherization program, energy efficient schools program, and commercial and industrial program. He also noted that the Phase II Order also recognized jurisdictional utilities would need to develop additional program offerings to meet the

[1] The Commission notes that the testimony presented in this Cause uses the terms "demand side management" and "energy efficiency" interchangeably.

annual energy savings goals.

Mr. Batman testified that Marshall REMC, in coordination with Wabash Valley, currently offers energy efficiency programs similar to the Core Programs. He stated Wabash Valley has studied, designed and implemented the following programs: C&I Lighting/HVAC Prescriptive Program, Heat Pump Rebate Program, Energy Star Clothes Washer Rebate Program, Second Refrigerator/Freezer Recycling Program, and Home Energy Performance Audit Program.

Mr. Batman stated the C&I Lighting/HVAC Prescriptive Program was introduced in January 2011 and at the time of filing his testimony, several lighting program applications had been received and one HVAC Program application had been received. He noted that at the time of filing his testimony one C&I customer had replaced 200 458-watt fixtures with 200 360-watt fixtures, for an annual savings of 19,600 kWh per year.

Mr. Batman explained the Heat Pump Rebate Program is for residential retail members with existing electric heat. To encourage customers to move to more efficient forms of electric heat, Wabash Valley provides a $125 per ton rebate for air source heat pumps and a $150 per ton rebate for geothermal heat pumps, both of which must meet minimum efficiency qualifications for eligibility. He stated since October 2010, Marshall REMC has had five rebates for heat pumps for a saving of 25,225 kWh, representing 16 geo-tons and four heat pump-tons; 13 geothermal heat pump rebates amounting to 57.5 geo-tons; and 12 air-to-air heat pump rebates amounting to 37.5 geo-tons. In addition, Mr. Batman stated, the Energy Star Clothes Washer Rebate Program is for residential retail members with electric water heaters that purchase Energy Star qualified clothes washers, in which case they receive a $50 rebate.

Mr. Batman testified the Second Refrigerator/Freezer Recycling Program provides a buy back incentive to encourage residential retail members to give up a working second refrigerator or freezer. He noted a recent saturation survey showed that a high number of residential members have more than one refrigerator or freezer in their home, and many of the units are very old and in unconditioned outbuildings, such as garages or barns. He stated members are paid $35 to give up a plugged-in, working unit, which is hauled away for free by a third-party vendor to an environmental recycling service. He stated Marshall REMC has recycled 76 second refrigerators, representing savings of 57,289 kWh.

The Home Energy Performance Audit, Mr. Batman testified, is for residential retail members, and a pilot version ran between September 15, 2010 and December 31, 2010. A cooperative energy advisor provided a home audit, focused on energy savings and home comfort increasing recommendations. He stated that a majority of the homes audited in the pilot were gas and electric and implemented, on average, three energy savings recommendations. He stated although the pilot is being further evaluated in 2011 to determine cost effectiveness and overall member interest, Marshall REMC, through Wabash Valley, performed 14 residential home audits in 2011 with an estimated savings of 7,000 kWh. He stated that minor program changes were anticipated in 2011, primarily concerning the selection of direct install measures. He also noted that in addition to the Wabash Valley program, Marshall REMC gave away 835 13-watt compact fluorescent light bulbs.

Mr. Batman testified that, collectively, the programs in place and planned will be similar to the Core Programs. He stated the cost of Wabash Valley's Energy Efficiency Program is embedded in its wholesale rates to its member systems and that Marshall REMC would not receive any rate credit from Wabash Valley as a result of its participation in the Core Programs. Thus, any costs imposed on Marshall REMC for the Core Programs would duplicate costs already included and paid in Wabash Valley's wholesale rates by Marshall REMC and its ratepayers. Mr. Batman testified the duplication of costs is substantial. He stated that although the precise annual cost for the Core Programs was not yet known with certainty, it appeared they were likely to be equal to or more than the costs incurred for Wabash Valley's Energy Efficiency Program. He testified that to be required to pay both would be unduly burdensome to Marshall REMC and its ratepayers, and Marshall REMC could face substantial technology costs to meet the data sharing requirements of the TPA. In addition, Mr. Batman testified, two separate but similar consumer energy efficiency program offerings could lead to customer confusion, particularly if rebates or incentive amounts differ. He also stated because Wabash Valley has already implemented its energy efficiency programs, there is a certain level of understanding and familiarity in the marketplace, and that implementing the similar Core Programs will only confuse customers.

Mr. Batman testified that Wabash Valley and Marshall REMC expect to add energy efficiency programs for commercial and residential markets. He stated Wabash Valley works annually with its Energy Efficiency Committee and efficiency consultants to determine the most cost effective measures for member consumers. Each year there are a series of new residential, commercial and industrial programs reviewed by the Committee and offered to the membership.

With respect to the development of tariffs or riders for retail consumer access to the MISO Demand Response Programs, Mr. Batman testified that Wabash Valley and its member systems, when taken together, provide the service that is typically provided by a vertically integrated utility. For purposes of MISO's Demand Response Programs, the member systems are the direct load servicing entities ("LSE"), but because of the unique agency relationship among Wabash Valley and its member systems, Wabash Valley serves as the Market Participant for its member systems when dealing with MISO. Mr. Batman stated Wabash Valley offers a multi-pronged approach to DSM which includes energy efficiency programs previously noted and direct load control. Wabash Valley does not currently offer riders but will offer, beginning in 2012, emergency demand response for loads that can interrupt 300 kW or greater. He stated it is neither economical nor practical for Marshall REMC to retain the additional staff necessary to implement additional services that under normal conditions are offered by Wabash Valley. He further stated Marshall REMC is unaware of any member customer with sufficient load to participate in such programs without entirely shutting down the member customer's operations.

Mr. Batman testified it is not necessary for Marshall REMC to offer tariffs to pass through to end use customers the benefits of MISO Demand Response Programs and that residential customers of Marshall REMC already have sufficient demand response opportunities available to them through the direct load control opportunities provided by Wabash Valley. He stated that customers benefiting from participation in demand response programs should bear the cost of participation rather than other customers of the REMC, and because the costs of participation in the MISO Demand Response Programs will be relatively high, it is unlikely the benefits will outweigh the costs of participation. Mr. Batman stated it would be inappropriate to pass the costs of the MISO Demand Response Programs to members who do not benefit from the program, and for the program to be successful, it must provide price signals to which customers can respond.

Mr. Batman testified that along with implementation costs, Marshall REMC would also incur significant costs to perform measurement and verification for MISO Demand Response Program participants. He stated that Wabash Valley, however, is integrating an evaluation, measurement and verification ("EM&V") program targeted to be operational in 2012. Whereas, if Petitioner was required to be a stand-alone participant in the MISO Demand Response Programs, it would need to register as a Market Participant and hire additional staff. He stated Marshall REMC would also incur costs for obtaining and maintaining the MISO credit requirements and would incur the risk of further costs if unable to provide the full amount of resources to bid into the MISO markets.

Mr. Batman concluded that Marshall REMC is requesting that the Commission decline to exercise jurisdiction to require Marshall REMC to file a demand response tariff or rider because Wabash Valley provides sufficient demand response opportunities for retail members of Marshall REMC. He stated Marshall REMC expects to receive few, if any, requests for direct access to MISO Demand Response Programs. Marshall REMC also requests that the Commission decline to exercise its jurisdiction to require compliance with the provisions of the Phase II Order because Wabash Valley provides a number of opportunities and programs for energy efficiency. He stated Marshall REMC has implemented a number of such opportunities and programs voluntarily, and ordering participation in the Core Programs would add significant additional costs to be borne by the members of Marshall REMC.

B. OUCC's Testimony. April M. Paronish, Utility Analyst in the Resource Planning and Communications Division, testified that Marshall REMC currently offers energy efficiency programs through Wabash Valley. She explained Petitioner is requesting to opt out of participation in the Core Programs because participation in both programs may result in ratepayers paying twice for similar services without receiving any additional benefit.

Ms. Paronish testified the OUCC's concerns with Marshall REMC's request to opt out of the Core Programs included issues with transparency, EM&V and the portfolio of programs. With respect to transparency and EM&V, Ms. Paronish testified that Marshall REMC's DSM program costs and cost effectiveness are calculated at the Wabash Valley level rather than the individual cooperative's level, making it difficult for the Commission and OUCC to determine whether an individual utility is offering cost effective DSM programs. Ms. Paronish further testified that independent EM&V has not been conducted, making determination as to savings attributed to programs and the cost effectiveness of the programs at the Marshall REMC level impossible.

Ms. Paronish testified that while not offering similar energy efficiency programs creates a "patchwork" of programs among jurisdictional utilities, allowing utilities to offer different DSM programs may prove beneficial in the short-term. The knowledge gained from other utilities' experiences through various DSM offerings throughout the state would allow for further refinement of the Core Programs. However, Ms. Paronish expressed concern with ensuring that Marshall REMC participate in the Core Programs in the future if Wabash Valley's programs prove ineffective or cease to exist. She also noted the Core Programs are not expected to remain static, and as the market is transformed and technology evolves, programs may be changed, eliminated or added. Consequently, a disparity would exist if Wabash Valley did not also make changes to its programs.

Ms. Paronish testified that although the OUCC had some concerns, it remained sensitive to the fact Petitioner's ratepayers may be asked to pay for additional DSM programs without a corresponding increase in benefits. In addition, requiring jurisdictional REMCs to participate in the Core Programs while simultaneously participating in Wabash Valley's program places those that choose to remain under the Commission jurisdiction, such as Marshall REMC, at a disadvantage when compared to other similarly situated utilities. She stated because there are jurisdictional and non-jurisdictional utilities, a patchwork of program offerings will continue to exist, despite the goal to avoid such a result. Ms. Paronish further testified that a better approach may be to minimize the patchwork of DSM offerings along similarly situated utilities by placing similar utilities under the same umbrella (i.e., all municipal utilities, regardless of whether they are under Commission jurisdiction, should offer the same portfolio of energy efficiency programs, and, similarly, all members of state cooperatives, such as Wabash Valley and Hoosier Energy, should offer the portfolio of energy programs already created for those members, regardless of whether they are jurisdictional utilities). Ms. Paronish testified that forcing an REMC to offer and pay for both sets of programs would be inherently unfair and may lead to unintended consequences. An REMC choosing to remain under Commission jurisdiction should not be forced to offer and pay for two similar portfolios of DSM programs or opt out of Commission jurisdiction.

Ms. Paronish testified that if the Commission allows Petitioner to opt out of the Core Programs, the OUCC recommends such an opt out be done on a trial basis, with bi-annual meetings with Marshall REMC, representatives of Wabash Valley and other interested parties to discuss the DSM programs. The OUCC also suggests that Marshall REMC be required to file a report with the OUCC and the Commission regarding the cost effectiveness of their DSM Programs at the end of Program Year 1, and submit independent verification of DSM savings and performance in meeting DSM goals. Petitioner should also be required to report any anticipated changes in programs to be offered for an upcoming period, including program budgets, estimated savings by measure and by customer, cost effectiveness at the program and portfolio level, and the number of anticipated participants by program. At the end of Program Year 1, the Commission should consider whether Marshall REMC remains in Wabash Valley's Energy Efficiency Program or rejoins the statewide DSM effort.

Ronald L. Keen, Senior Analyst with the Resource Planning and Communications Division, summarized the proceedings and Commission Orders in Cause Nos. 43426 and 43566. He testified that well designed and robust demand response with the broadest possible participation is in the best interests of all consumers. Customers enrolled in demand response programs agree to reduce energy consumption in response to peak system demand, grid emergencies, peak wholesale prices or other agreed upon factors, thereby contributing to grid stability and potentially lowering market prices. He stated demand response programs offer customers another tool in their financial and energy management strategies, as well designed demand response programs can increase revenue and reduce energy expenses.

Mr. Keen testified that curtailment service providers ("CSPs") have the potential to further enhance demand response opportunities for energy generators and end use customers. CSPs may be able to contract with clients in multiple programs in more than one region, allowing customers to increase revenue potential. He stated CSPs administer demand response programs in capacity and price response formats. In a capacity format, CSPs contract with clients to be available and willing to curtail energy usage when demand exceeds supply in a specific region. These customers have the potential to earn revenue on a regular basis, regardless of whether they are actually requested to curtail. In a price response format, CSPs contract with clients who voluntarily reduce energy usage upon notification by the grid operator. CSPs have the ability to provide opportunities for small and medium sized commercial and industrial customers who are potentially under-served by traditional utility demand response programs or who may require additional effort for participation in demand response.

Mr. Keen testified the OUCC recommends the Commission deny Marshall REMC's request for Commission waiver of jurisdiction regarding the development of MISO Demand Response tariffs or riders. He stated, while the OUCC understands that the cost per customer in providing the additional programs rises for entities serving smaller groups of customers, the Commission considered and rejected that argument in Cause No. 43566. In addition, even if Marshall REMC has no customers wanting to participate in the programs today, they are still required to comply with the Commission's Order. Mr. Keen recognized the relationship between Marshall REMC and Wabash Valley, but stated it is the responsibility of the jurisdictional REMC to develop, offer, and implement the demand response tariffs. Mr. Keen stated that the requirements for participation in the MISO Demand Response Programs need not be excessively onerous and that the OUCC is willing to collaboratively work with Petitioner to expedite the development of the tariffs and riders through the approval process, as it has with another utility.

C. Petitioner's Responsive Testimony. Mr. Batman testified that he generally agreed with Ms. Paronish's recommendations that the Commission waive jurisdiction concerning Marshall REMC's participation in the Core Programs on a trial basis and that Marshall REMC be required to meet with the OUCC twice a year to discuss its DSM programs and submit a final report at the end of 2012 regarding its DSM progress. However, due to cost considerations, he suggested the trial period become permanent thirty days after filing the final report with the Commission if no objection is filed by the OUCC. Mr. Batman also testified that the level of EM&V recommended by the OUCC would be cost prohibitive because Marshall REMC and its members participate in DSM programs through Wabash Valley, and the programs are evaluated and measured for cost effectiveness on a Wabash Valley level for all Wabash Valley customers. He stated there are no processes currently in place to evaluate the programs except at the generation and transmission level.

With respect to EM&V, Mr. Batman further testified that Wabash Valley will utilize EM&V in 2012 to validate program savings impacts, monitor program performance, and ensure that incentives paid are proportionate to achieved savings. He testified that impact evaluation activities would include: (1) validation of the savings estimates for prescriptive measures of the development of a Wabash Valley specific technical reference manual detailing all measure of savings assumptions; (2) a review of the overall portfolio tracking system that captures measure and/or project data, develops initial estimates of savings and retains participant information to assist with subsequent EM&V activities; (3) select field verification of a sample of project sites to confirm measures are installed at the quantity and efficiency level as rebated on paper; (4) a review of program and measure cost effectiveness; and (5) a detailed report on program participation, by measure type, for all member cooperatives, including Marshall REMC, which includes an annual estimate of savings as a percent of sales for each cooperative and weighted estimated DSM Program costs as a percent of revenue. He testified the process and market assessment evaluation activities would include: (1) direct market baseline research and market characterization to support improved plan implementation; (2) targeted customer and trade ally program satisfaction surveys to assess program performance and make suggestions for program delivery improvements; (3) process interviews with Wabash Valley program managers and implementation contractors; and (4) review and comment on implementation contractor performance goals and key performance indicators. His understanding is that the overall evaluation approach is based on an integrated cross-disciplinary model that includes evaluators as members of "project teams" involved in the various stages of program planning, design, monitoring and evaluation.

With respect to the OUCC's recommendation concerning the development of MISO response tariffs or riders, Mr. Batman testified the OUCC's reasoning fails to adequately account for the differences between Marshall REMC and the investor-owned utilities. He stated development of market participation at the retail level by distribution REMCs would be uneconomical and would require unreasonable costs be assigned either to the member customer base as a whole or to the member customers that may request such service. In order for Marshall REMC to individually offer the demand response tariffs or riders, Marshall REMC would have to become a Market Participant in MISO. To become a Market Participant and offer individual demand response tariffs or riders, Mr. Batman testified Marshall REMC would need to hire at least two additional full-time staff members which, based on inquiry, is anticipated to cost approximately $150,000 per staff member per year. Consequently, the incremental costs to Marshall REMC to implement the program to become a MISO Market Participant, including staff costs and additional technology, would exceed $300,000 per year. Assuming a customer base of approximately 6,900, over $40 per customer would be assigned per year for participation in the MISO Demand Response Programs, assuming the entire costs are socialized to all members. He stated because no Marshall REMC customers have indicated the desire to participate in such programs, Marshall REMC would have to allocate the costs of such a program to all its member owners. He further stated that if customers did seek such service, full allocation of the incremental costs to such requesting customers would make the service uneconomical for the prospective participating member customer.

Mr. Gregory E. Wagoner, Vice President of Business Development at Wabash Valley, testified that he disagreed with the OUCC's recommendation concerning the development of MISO demand response tariffs or riders. As background, he explained the relationship between Wabash Valley and its distribution cooperatives and how this form of business differs from the vertically integrated utilities. Specifically, Wabash Valley is a generation and transmission cooperative providing wholesale power and transmission service to its members for resale to retail customers. Wabash Valley is entirely controlled by its members, who are the purchasers of power pursuant to long-term wholesale power contracts, and Wabash Valley is responsible for meeting all the power requirements of its member systems. Under the wholesale power contract, each member system is required to pay Wabash Valley for power furnished in accordance with a formulary rate approved by the Wabash Valley Board of Directors and the Federal Energy Regulatory Commission. Together, Wabash Valley and its members provide service that is normally provided by vertically integrated utilities. Although the member systems are the LSEs, Wabash Valley represents its member systems as the Market Participant when dealing with MISO and PJM, including the RTO's Demand Response Programs.

Mr. Wagoner testified that Wabash Valley has had a load management program since 1981, when a direct load control program for residential water heaters was established. He stated prior to 1986, each cooperative performed individual control on the load management devices to reduce non-coincident peak billing demands, and, in 1986, Wabash Valley began centralized control of the load response program to more effectively manage overall association power costs. Mr. Wagoner stated Wabash Valley and its member systems work to reduce the collective hourly contribution to the system peaks in the MISO and PJM footprints, thereby reducing its contribution to the overall capacity requirements.

Mr. Wagoner testified that to keep wholesale power costs low, Wabash Valley has developed a diverse power supply portfolio that includes a Direct Load Control ("DLC") demand response program. He stated that demand response programs have the most value at the generation and transmission level. Since Wabash Valley has the ability to participate in the MISO and PJM demand response markets, it can aggregate all load reductions into a bigger load with a greater benefit to all of its members. He stated in the spring of 2010, Wabash Valley procured the services of Siemens/eMeter to develop and implement a meter data management ("MDM") system whereby hourly metered load information from end users would be collected. The MDM will provide a solution to the measurement and verification of actual and calculated baseline load levels needed for market participation and meeting MISO and PJM requirements.

Mr. Wagoner testified the first of Wabash Valley's member systems began deployment of control devices and integration with the MDM system in January 2011, and that full implementation to all members will be based on their individual decision to participate. He stated the goal of Wabash Valley's load management program is to reduce their peak demand costs to the benefit of the entire association, the participating member systems and the participating end users, without shifting the costs of the program to non-participating members and end users.

Mr. Wagoner testified that initial deployment of the direct load control devices are water heaters, air conditioners, pool pumps and special applications, such as irrigation systems and commercial HVACs. He stated the DLC program and the PJM and MISO Demand Response Programs each have their own unique characteristics, but the basic principles are the same. Both allow multiple small loads to be aggregated into one larger load and require baseline calculations to determine the amount of load reduction a participant can claim. He stated Wabash Valley would be acting as the CSP for the DLC program. He said without the ability to aggregate a load, Wabash Valley's DLC program would not qualify for any demand response market programs. Likewise, without hourly meter data from the member systems and the MDM system to manage the data aggregation and baseline calculations, market participation is nearly impossible.

Mr. Wagoner also testified that beginning January 1, 2012, Wabash Valley will offer a MISO Emergency Demand Response Rider and PJM Emergency Load Response Rider to its members.

Mr. Wagoner testified that because distribution cooperatives are not vertically integrated electric utilities, they rely on Wabash Valley to procure and deliver all of their wholesale power needs. Wabash Valley also acts as the Market Participant on behalf of its members in MISO and PJM. He stated a single point of contact reduces costs for all Wabash Valley members and makes for efficient interaction with developed wholesale power markets; whereas to require each distribution cooperative to administer their individual program would only increase costs to member owners who want to participate in the RTO programs through distribution cooperatives.

Mr. Wagoner testified that Wabash Valley will continue to evaluate whether it is beneficial to all of its members to offer other MISO Demand Response Programs, which will be subject to approval by the Wabash Valley Board of Directors. He said that to be considered beneficial, such programs would have to meet the objectives of not shifting costs among Wabash Valley's members and their customers, as well as resulting in least cost administration of such programs for all of its members. Because Wabash Valley and its member systems are not fully integrated, as are the vertically integrated utilities, unique challenges arise between the wholesale rate offered by Wabash Valley and the retail rate provided by its members to potential demand response participants. He stated that to offer economic demand response programs, consideration for non-performance and eliminating cost shifts would have to be addressed.

Mr. Wagoner testified he does not believe that Marshall REMC should be required to establish MISO demand response tariffs or riders because it would unnecessarily increase Marshall REMC's costs to serve all of its retail members. He stated increased costs would be incurred in Marshall REMC becoming a Market Participant and adding additional employees to administer such programs, with the result that settlement between MISO and Wabash Valley would exceed any savings achieved by offering such programs outside the collective offering of Wabash Valley to its members. He stated that because the investor-owned utilities are already MISO Market Participants and have the infrastructure, personnel and technology in place to perform these functions, compliance with the Commission's directive is far less burdensome to those utilities.

5. Commission Discussion and Findings. Marshall REMC requests the Commission approve an ARP that exempts it from participation in the Core Programs established in Cause No. 42693 and the requirement to file tariffs or riders allowing customer participation through the LSE in MISO Demand Response Programs in accordance with the Commission's Order in Cause No. 43566. The ARP would provide for Marshall REMC's participation in Wabash Valley's demand side management programs and demand response offerings.

Pursuant to Ind. Code § 8-1-2.5-6(a)(1), the Commission may adopt alternative regulatory practices, procedures and mechanisms, and establish rates and charges that: (a) are in the public interest as determined by a consideration of the factors listed in Ind. Code § 8-1-2.5-5; and (b) enhance or maintain the value of the energy utility's retail energy services or property, including practices and procedures focusing on price, quality, reliability and efficiency of the service provided by the energy utility. Pursuant to Ind. Code § 8-1-2.5-5(b), the Commission, in determining whether the public interest will be served must consider:

(1) Whether technological or operating conditions, competitive forces, or the extent of regulation by other state or federal regulatory bodies render the exercise, in whole or in part, of jurisdiction by the commission unnecessary or wasteful.

(2) Whether the commission's declining to exercise, in whole or in part, its jurisdiction will be beneficial for the energy utility, the energy utility's customers, or the state.

(3) Whether the commission's declining to exercise, in whole or in part, its jurisdiction will promote energy utility efficiency.

(4) Whether the exercise of commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment.

Consequently, the Commission considers the evidence presented in light of these factors to determine whether the public interest will be served in approving the requested ARP with respect to Marshall REMC's demand side management and demand response program offerings.

A. Participation in Core Programs. The Commission's Phase II Order in Cause No. 42693 ("Phase II Order") requires all jurisdictional electric utilities, including Joint Petitioners, to offer certain Core Programs through a single TPA. Because the availability of DSM programs across the State of Indiana was determined to be inadequate and inconsistent, the offering of these Core Programs was deemed a part of the basic utility service offering in a utility's service territory. Petitioner requests the Commission approve an ARP that would exclude it from participating in the offering of the Core Programs through the TPA.

Petitioner is a local distribution cooperative that purchases its electric power and energy pursuant to an all requirements power purchase contract with Wabash Valley. Consequently, Petitioner does not directly control the generation resources and capital costs for resources used to generate the power it distributes to customers. The evidence also demonstrates that Wabash Valley has recently begun to implement DSM programs, several of which are similar to the Core Programs, for residential and C&I customers in cooperation with its members. In addition, the costs for these programs are embedded in the wholesale rates paid by Petitioner.

As indicated in the Phase II Order (at pp. 32-36), one of the reasons the Commission required the development of the Core Programs in which all jurisdictional electric utilities would participate was to address the inconsistent patchwork of DSM offerings across the state of Indiana. Recognizing non-jurisdictional electric utilities would not be subject to the Phase II Order, the Commission nonetheless encouraged "all electric utilities to consider offering some or all of the core programs to their customers in order to take advantage of economies of scale and scope." *Id.* at 36. Although the Commission has encouraged a uniform set of core DSM programs across the state, we also recognize that, at least initially, there may be reasons (as further discussed below) to permit a utility on a limited scale to offer alternative programs.

The evidence presented by Petitioner in this Cause demonstrates some of the inherent differences between a vertically integrated investor-owned utility and a distribution only REMC purchasing power and related services through a long-term contract with a non-jurisdictional REMC, which also serves other jurisdictional and non-jurisdictional cooperatives. Unlike a vertically integrated investor-owned utility, Petitioner is contractually obligated to pay the costs for Wabash Valley's DSM programs through the wholesale rates charged by Wabash Valley. Although Petitioner's evidence on the cost for such programs was limited, it is clear that there are costs associated with the offering of both Wabash Valley's DSM programs and the Core Programs and that Petitioner will not receive any rate credit for participating in the Core Programs.[2] The evidence also demonstrates that both DSM program offerings contain similar types of programs. Consequently, we agree with the parties that requiring Petitioner to pay for participation in the Core Programs results in additional costs to its customers that likely will not provide a corresponding increase in benefits.

We agree that requiring participation in two sets of similar DSM programs with different design or delivery components has the potential to confuse customers, resulting in lower participation rates and less energy efficiency savings. The OUCC also points out that Petitioner's participation in programs that are not identical to the Core Programs may be beneficial in the short term in further refining the Core Programs by taking into account other utilities' experiences. Further, we note that requiring Petitioner to participate in two sets of DSM programs has the potential to place Petitioner at a disadvantage in attracting new industrial customers when competing with vertically integrated utilities and non-jurisdictional rural electric cooperatives for economic development because its retail rates will be higher than they otherwise would be.

While supportive of Commission approval of Petitioner's proposed ARP, the OUCC raised concern with the frequency and the level of EM&V performed, which to date appears to have been conducted at the Wabash Valley level, as opposed to the individual REMC level. Petitioner testified concerning the EM&V that Wabash Valley will perform in 2012 to validate program savings impacts, monitor program performance and ensure incentives paid are proportionate to achieved savings. Petitioner opposed conducting EM&V on an individual REMC basis, asserting they have no process in place to perform such evaluation and to do so would be expensive and uneconomical.[3] As we are administratively aware of the EM&V cost associated with the Core Programs, we generally understand the cost to perform EM&V is not immaterial and would require additional resources. Consequently, given the REMC structure and the relationship between the individual REMCs and their generation and transmission provider, we agree that conducting EM&V at the Wabash Valley level is generally appropriate

[2] We note that although Petitioner's witness Mr. Batman testified the costs for participation in the Core Programs would duplicate the costs paid in Wabash Valley's wholesale rates, no evidentiary support was offered for his statement.

[3] Once again, we note the general lack of evidentiary support for these claims.

and more analogous to the EM&V performed by a vertically integrated utility. However, robust EM&V conducted by an independent third party not only provides information on energy savings, but provides validation on the cost-effectiveness of the program, validation of the process (program implementation and process improvement), and measurement and validation of other impacts (e.g., customer use and satisfaction). Therefore, it will be necessary for Petitioner to work with Wabash Valley to obtain the information necessary for it to demonstrate compliance with the annual DSM savings goals required by the Phase II Order.

The OUCC also expressed concern that Wabash Valley's DSM programs may prove to be ineffective or cease to exist and recommended Petitioner's proposed ARP be approved on a one-year trial basis, with bi-annual meetings to discuss the DSM programs. The evidence presented indicates that significant time, effort and resources have been invested in the development and offering of Wabash Valley's DSM programs, and such efforts are being met with success. Consequently, based on the evidence presented, we expect Wabash Valley's DSM programs to continue in the near future. However, in the event the DSM programs in which Petitioner participates are discontinued or considered to be ineffective, the Commission has the authority to terminate the ARP, either on its own motion or at the request of another entity, such as the OUCC. *See* Ind. Code § 8-1-2.5-7. To assist in monitoring the effectiveness of the ARP, and because Petitioner had no objection, we find Petitioner shall meet bi-annually in 2012 with the OUCC and any other interested parties to discuss its DSM programs. We further note that although we are approving Petitioner's proposed ARP with respect to participation in the Core Programs, Petitioner remains subject to the other requirements of the Phase II Order, including the annual electric savings goals and the requirement to file a three-year DSM Plan with annual supplemental updates in the interim periods that address the utility's progress in meeting the annual electric savings goals. *See*, Phase II Order at p. 52.

Having considered the factors listed in Ind. Code § 8-1-2.5-5(b), the Commission finds the evidence supports approval of Petitioner's proposed ARP providing for its participation in Wabash Valley's DSM programs and exclusion from participation in the Core Programs as in the public interest. The proposed ARP will benefit both Petitioner and its customers. The offering of a single portfolio of DSM programs will avoid potential customer confusion with similar programs, which should increase customer participation and energy efficiency savings. The proposed ARP will also avoid duplication of costs for similar program offerings without a corresponding increase in benefits and provide additional opportunities to evaluate and refine the effectiveness of DSM program design in general. Approving Petitioner's proposed ARP will also minimize the patchwork of DSM offerings among similarly situated or non-jurisdictional REMCs. Accordingly, we find Petitioner's proposed ARP to be in the public interest and will enhance or maintain the value of Petitioner's retail energy services and should be approved.

B. MISO Demand Response Program Tariffs. The Commission, in Cause No. 43566, commenced an investigation to consider issues associated with an end-use electric customer's participation in an RTO demand response program. In its July 28, 2010 Order ("43566 Order"), the Commission concluded that based upon Indiana's regulatory structure the evidence did not support an end-use customer directly participating in RTO demand response programs, but that use of demand response resources should be encouraged. Consequently, the Commission required all jurisdictional electric utilities to continue to offer end-use customers opportunities to participate in LSE-provided demand response programs and to also file tariffs or riders authorizing end use customer participation, through their LSE, in the applicable RTO's demand response programs.

In this Cause, Petitioner seeks approval of an ARP that provides for the offering of demand response programs to end-use customers through Wabash Valley's demand response riders and member offerings and exclusion from the requirement to file a tariff or rider authorizing customer participation, through Petitioner, in MISO Demand Response Programs. The OUCC generally objected to approving Petitioner's proposed ARP, noting that CSPs are available to work with smaller customers that may require additional assistance.

Due to the REMC structure, Marshall REMC is not a MISO Market Participant. Instead, Petitioner's wholesale power supplier, Wabash Valley, is the MISO Market Participant. Consequently, because of the REMC structure, Joint Petitioners will incur significantly higher costs to comply with the 43566 Order than a vertically integrated investor owned utility because they will have to become a MISO Market Participant and employ sufficient skilled staff and technology to appropriately participate in MISO Demand Response Programs. Because Joint Petitioners have fewer customers, both in general and that would be likely to participate in such programs, these costs will necessarily be allocated to fewer customers adversely impacting any associated benefits. In addition, the evidence demonstrates that Wabash Valley offers a DLC program in which Marshall REMC may participate, and beginning in January 2012 Wabash Valley will also offer a MISO Emergency Demand Response Rider. The MISO Emergency Demand Response Rider appears to be a cost effective alternative means for a distribution cooperative to make a part of the RTO demand response markets available to qualifying retail customers. Under the Rider, a retail customer must enter into a contract with the distribution cooperative for an interruptible load of at least 300 kW. The retail customer's demand response capacity will be utilized by WVPA in the MISO Emergency Demand Response Rider. WVPA will register the customer's curtailment load as an emergency demand response resource and make daily offers into the MISO energy markets. The evidence also indicates that Wabash Valley is continuing to explore whether it would be beneficial to offer other MISO Demand Response Programs to its members.

Based on the evidence presented, the Commission finds that Petitioner's proposed ARP provides cost effective demand response opportunities within the REMC structure that are beneficial to Petitioner and its customers. Having considered each of the factors identified in Ind. Code § 8-1-2.5-5(b), the Commission finds the evidence supports approval of Petitioner's proposed ARP. We also encourage Petitioner to participate in the demand response offerings provided through Wabash Valley and to further explore other possible avenues with Wabash Valley that allow for greater participation in MISO Demand Response Programs.

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

1. Marshall REMC's alternative regulatory plan concerning demand side management and demand response program offerings, as described in Petitioner's Verified Petition, testimony and exhibits, is hereby approved.

2. Marshall REMC remains subject to the annual savings goals and requirement to file three year DSM Plans with annual supplemental updates set forth in the Commission's Phase II Order in Cause No. 42693.

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

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

FEB 22 2012

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