

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF AUBURN MUNICIPAL)
ELECTRIC DEPARTMENT AND MISHAWAKA) CAUSE NO. 44080
UTILITIES FOR RELIEF FROM THE COMMISSION'S)
JULY 28, 2010 DEMAND RESPONSE ORDER IN) APPROVED:
CAUSE NO. 43566.)

JUN 06 2012

ORDER OF THE COMMISSION

Presiding Officers:

Kari A.E. Bennett, Commissioner

Angela Rapp Weber, Administrative Law Judge

On September 30, 2011, Auburn Municipal Electric Department ("Auburn"), Logansport Municipal Utilities ("Logansport"), and Mishawaka Utilities ("Mishawaka") (collectively, Joint Petitioners)1 filed a Verified Petition with the Indiana Utility Regulatory Commission ("Commission"). The Joint Petitioners requested relief from the requirements imposed by the Commission's July 28, 2010 Order in Cause No. 43566 ("Demand Response Order"). On December 9, 2011, Joint Petitioners filed their case-in-chief. On February 9, 2012, the Office of Utility Consumer Counselor ("OUCC") filed its case-in-chief, and Joint Petitioners filed their rebuttal evidence on March 2, 2012.

Pursuant to notice given and published as required by law, an evidentiary hearing was held at 9:30 a.m. on March 19, 2012 in Room 224, 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.

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

1. Joint Petitioners' Characteristics. Joint Petitioners are municipally-owned utilities as defined in Indiana Code § 8-1-2-1(h). Joint Petitioners' rates and charges for service and issuance of bonds are subject to the approval of the Commission and each Joint Petitioner's municipal legislative body. Joint Petitioners furnish electricity to residential, commercial, industrial, and other customers located within their respective assigned service areas. Specifically, Auburn provides retail electric service to approximately 7,150 customers within the City of Auburn, Indiana and contiguous areas in DeKalb County, Indiana. Mishawaka furnishes retail electric service to approximately 26,000 customers in and around the City of Mishawaka in St. Joseph County, Indiana. Auburn and Mishawaka serve customers in the PJM Interconnection, LLC ("PJM") footprint and purchase all of their electric power and energy requirements from American Electric

1 On February 2, 2012, Auburn, Logansport, and Mishawaka filed a Motion to Amend Caption and Petition and Notice of Intent Not to Offer Testimony of Paul L. Hartman as a result of Logansport's withdrawal from Commission jurisdiction pursuant to Indiana Code § 8-1.5-3-9.1. The Presiding Officers granted the motion by Docket Entry dated February 17, 2012; thus, Logansport is no longer a Joint Petitioner.

Power Company (“AEP”) pursuant to the terms of separate and distinct Power Purchase Agreements. While Joint Petitioners serve customers who are located in the PJM footprint, neither Auburn nor Mishawaka is a member of PJM. Their wholesale power supplier, AEP, is a member of PJM.

2. Background and Relief Requested. Joint Petitioners request relief in this Cause related to the Commission’s Demand Response Order. The Demand Response Order required 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 the Verified Joint Petition, Joint Petitioners state they elect to become subject to the provisions of Indiana Code ch. 8-1-2.5 for the purpose of this filing. Each of the Joint Petitioners is an “energy utility” providing “retail energy service” within the meaning of Indiana Code § 8-1-2.5-2 and § 8-1-2.5-3, respectively. Public notice of the filing of this Cause was provided by Joint Petitioners in accordance with Indiana Code § 8-1-2.5-6(d). Joint Petitioners request approval of an alternative regulatory plan (“ARP”) with regard to the Commission’s requirement concerning the development of RTO demand response tariffs or riders.

3. Joint Petitioners’ Evidence. Robert C. Smith, Vice President of GDS Associates, Inc., a multi-disciplined engineering and consulting firm primarily serving electric, gas, and water utilities, testified on behalf of Joint Petitioners. Mr. Smith stated Mishawaka retained him to develop for Commission approval a tariff or rider allowing its customers to participate in the PJM demand response programs. Mr. Smith noted Mishawaka is not a member of PJM. Indiana Michigan Power Company (“I&M”) and AEP provide Mishawaka with all of its PJM generation, transmission, and ancillary services needs.

Mr. Smith said the structure of the wholesale power purchase contract between Mishawaka and AEP predates the PJM demand response initiatives and does not allow retail access to the wholesale market. Mr. Smith stated that there is no contractual provision which would allow the complex coordination, metering, and telemetry necessary to effectuate retail demand response programs within Mishawaka’s assigned service area. Mr. Smith testified that he met with AEP representatives who confirmed the current contract between AEP and Mishawaka would not allow Mishawaka’s retail customers access to PJM demand response initiatives.

Mr. Smith stated that even if Mishawaka’s wholesale purchase contract could be amended to allow for demand response, managing such programs would be a daunting task. The minimum amount of aggregated load that PJM can accept for demand response service is 100 MW. Therefore, participation by just a few Mishawaka customers, assuming any could curtail load and would participate, would have to be combined with AEP customer loads for the purposes of “bidding-in” that capacity for demand response. Mr. Smith stated that participation by a few or no Mishawaka customers would translate to no savings to the system and no revenues to the demand response customer.

Mr. Smith testified that to provide access to the PJM demand response programs, Mishawaka would have to develop a set of tariffs by May 25, 2012 and likely need to enter into a separate demand response contract with AEP to segregate the costs associated with Mishawaka’s demand response initiatives. Mr. Smith also outlined a number of additional steps that would be

necessary in order for Mishawaka to provide PJM demand response programs, including the education of customers, installation of special meters, collection of data, and hiring of staff. Mr. Smith added that Mishawaka does not belong to a fully functioning joint action agency, such as the Indiana Municipal Power Agency, which may provide energy efficiency and demand reduction programs from a central planning perspective. Without a negotiated agreement and compensation, AEP would not be obligated to perform demand response functions on behalf of Mishawaka.

Mr. Smith testified Mishawaka's customer base is primarily comprised of residential and small commercial customers. Thus, few, if any, Mishawaka customers would have an interest in or qualify to participate in the PJM demand response programs. He said he is not aware of any Mishawaka customer with manufacturing processes or demand profiles that allow them to tolerate curtailment of those processes for the lengths of time required to participate in the PJM demand response programs. And none of Mishawaka's customers have expressed interest in PJM's demand response programs.

Mr. Smith estimated that offering a tariff or rider allowing customers to participate in the PJM demand response programs could cost Mishawaka approximately \$200,000 to \$400,000 on an annual basis. Mr. Smith testified this cost added to a small utility with a relatively small customer base would add significant cost to other, non-participating customers. Mr. Smith concluded that because Mishawaka's customer base does not have the processes suited to significant demand reduction and is unlikely to take advantage of demand response, then all customers of these small systems will shoulder costs and potentially see little benefit.

Stuart L. Tuttle, Auburn's Superintendent, said Joint Petitioners are not members of PJM. He stated the Demand Response Order applies to utilities that are members of PJM. Thus, the Demand Response Order should not apply to Joint Petitioners. Mr. Tuttle testified that Joint Petitioners nonetheless made efforts to develop tariffs or riders authorizing the participation of their retail customers in PJM demand response programs. But the fact that Joint Petitioners are not members of an RTO has prevented them from developing tariffs or riders.

Further, allowing customers to directly participate in PJM demand response programs would require renegotiation of Joint Petitioners' wholesale power purchase agreements. Even if renegotiation were possible, the amended wholesale purchase agreements would likely have to be approved by the Federal Energy Regulatory Commission ("FERC"). Mr. Tuttle stated that Auburn would have to hire a rate consultant to develop a demand response tariff or rider. These requirements would impose substantial expense on Auburn's respective ratepayers.

Mr. Tuttle further stated that implementing PJM demand response programs would require Auburn to implement a multi-level institutional process because Auburn is not a member of PJM. Mr. Tuttle testified Auburn, unlike investor owned utilities, does not have the infrastructure, personnel, and technology in place to implement RTO-level demand response programs.

Mr. Tuttle said the significant additional costs Auburn would incur to offer PJM's demand response programs would be spread across its relatively smaller customer bases. Auburn already offers demand response programs through its time-of-use rate for industrial customers. He stated Auburn's largest industrial customer receives service under Rate Schedule EHPT, but no other customers have expressed interest in demand response.

James M. Schrader, Mishawaka's General Manager, noted Mishawaka's wholesale power purchase agreement would need to be renegotiated before it could offer PJM demand response programs. This would result in expenditures of significant time and effort and require FERC approval. Mr. Schrader also noted that even if Mishawaka's wholesale power purchase agreement could be renegotiated, creating a tariff or rider authorizing participation in the PJM demand response programs would be difficult because it would involve coordinating multiple institutional levels. Such efforts would impose significant additional costs on Mishawaka, which would be spread across its relatively smaller customer bases.

Mr. Schrader testified that if the Commission grants the requested relief, the result will be consistent with the approach used for other municipal utilities. Mr. Schrader testified, after FERC Order 719 was adopted, the American Public Power Association advised its member municipal electric utilities to adopt a model ordinance to opt out of direct participation in RTO demand response programs.

4. **OUCC's Evidence.** Ronald L. Keen, Senior Analyst with the OUCC's Resource Planning and Communications Division, described the Commission's findings in the Demand Response Order. Mr. Keen noted that Joint Petitioners participated in Cause No. 43566 and described Mr. Tuttle's testimony in that proceeding.

Mr. Keen acknowledged that renegotiation of Joint Petitioners' wholesale power contracts may be required for Joint Petitioners to offer the demand response programs of PJM. Mr. Keen also acknowledged that the cost per customer of providing demand response programs rises for entities serving smaller groups of customers. However, Mr. Keen stated that he believes the Commission already considered and rejected these arguments in Cause No. 43566. Joint Petitioners had an opportunity to participate in Cause No. 43566, and the Commission took steps to ensure it had the input of affected regulated utilities in determining whether to allow direct participation of end-use customers in RTO-level demand response programs.

Mr. Keen testified that Joint Petitioners have not shown that offering customers the option of participating through them in the RTO demand response programs, including the prospect of doing so through curtailment service providers, is impracticable. Even if Joint Petitioners have no customers who wish to participate in the required programs, they are still required to fulfill the requirements levied on regulated utilities by the Demand Response Order. In his opinion, Joint Petitioners should be given six months to work with the OUCC, I&M, and any other interested parties to attempt to comply with the Demand Response Order. Then, Joint Petitioners could either file for approval of their efforts to comply, or provide a more complete basis upon which the Commission could consider further extensions or whether to grant relief from the Demand Response Order.

5. **Petitioner's Rebuttal Evidence.** Mr. Tuttle stated that adopting Mr. Keen's recommendation would result in Joint Petitioners filing the exact same case again in six months. Joint Petitioners already have met with I&M, and the presence of the OUCC and other unidentified interested parties at another meeting will not change the fact that Joint Petitioners do not have the ability to manage PJM demand response programs with their existing staff, systems, and infrastructure.

Mr. Tuttle disagreed with Mr. Keen's suggestion that the Commission already rejected Joint

Petitioners' arguments in Cause No. 43566. Mr. Tuttle stated that his testimony in Cause No. 43566 was limited to the issues delineated by the Presiding Officers' February 2, 2009 Docket Entry in that Cause. In Cause No. 43566, Mr. Tuttle explained, he did not address the ability of municipal utilities that are not members of PJM (or a joint agency that is a member of PJM, like the Indiana Municipal Power Agency) to develop and implement tariffs or riders authorizing retail customer participation in PJM demand response programs.

Mr. Tuttle testified the OUCC did not address the issues raised by Joint Petitioners regarding the difficulties experienced in developing tariffs or riders authorizing the participation of retail customers in PJM demand response programs. Mr. Tuttle said that for Joint Petitioners to participate in the PJM demand response programs, their wholesale power purchase agreements would have to be amended, the amended agreements would have to be filed with FERC for approval, and Joint Petitioners would have to implement processes and procedures to allow customers to participate. Mr. Tuttle repeated that these efforts will result in additional costs of approximately \$200,000 to \$400,000 on an annual basis.

Mr. Schrader testified that Mr. Keen made nearly identical arguments in Cause 44040 and Cause No. 44041, which the Commission rejected. He noted the Commission found in these cases that the Rural Electric Membership Corporations ("REMC") would incur higher costs than investor-owned utilities to comply with the Demand Response Order. And the benefits of demand response programs would be offset by the allocation of costs to a smaller customer base.

Mr. Schrader testified the Commission's reasoning in the REMC proceedings is equally applicable to this proceeding because Joint Petitioners, like the REMCs, are not members of PJM and are not vertically-integrated utilities. Also, like the REMCs, Joint Petitioners have a smaller customer base and a smaller number of customers likely to participate in demand response programs. Costs would be allocated to fewer customers, adversely impacting any associated benefits.

6. Commission Discussion and Findings. Joint Petitioners request that the Commission grant them relief from the requirements of the Demand Response Order. Specifically, Joint Petitioners request Commission approval of an ARP that exempts them from the requirement to file demand response tariffs or riders in accordance with the Demand Response Order.

Pursuant to Indiana 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 Indiana 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 Indiana 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.

Thus, the Commission considers the evidence presented by the parties in light of these factors to determine whether the public interest will be served in approving the requested ARP with respect to demand response program offerings.

According to the evidence presented, neither Auburn nor Mishawaka is a member of PJM or a fully functioning joint action agency, like the Indiana Municipal Power Agency, that may provide energy efficiency and demand reduction programs from a central planning perspective. Rather, Joint Petitioners' wholesale power supplier, AEP, is a member of PJM. There are no provisions in Joint Petitioners' wholesale power purchase agreements that would allow them to permit end-use customers to directly participate in PJM demand response programs. In order to develop a demand response tariff or rider, Joint Petitioners' wholesale power purchase agreements would have to be renegotiated and potentially approved by FERC. The evidence presented indicates that such renegotiations and approval process would be time consuming and costly.

If the wholesale power purchase agreements could be renegotiated, Joint Petitioners would be required to implement technical processes and procedures to allow customers to participate in the PJM demand response programs, which were estimated to cost between \$200,000 and \$400,000 on an annual basis. Additional staff would need to be hired and systems installed to support demand response programs. The evidence demonstrates Joint Petitioners have small customer bases and due to the type of customers served, few, if any, customers are likely to participate in PJM demand response programs. Mr. Smith stated that Mishawaka's customer mix is made up of residential and small commercial customers. The evidence indicates that Joint Petitioners would not only incur significantly higher costs than vertically integrated investor-owned utilities to comply with the Demand Response Order, but the costs would be allocated to fewer customers, adversely affecting any associated benefits.

Based on the evidence presented, the Commission finds that Joint Petitioners should not be required to file tariffs or riders authorizing the participation of retail customers in PJM demand response programs. The Commission further finds that, having considered each of the factors identified in Indiana Code § 8-1-2.5-5(b), the evidence supports approval of Joint Petitioners' proposed ARP.

We note the OUCC recommended that Joint Petitioners be given six months to work with the OUCC, AEP, and other interested parties to develop demand response tariffs or riders. The evidence indicates that Joint Petitioners already have met with AEP as recommended by the OUCC. The Commission nevertheless encourages Joint Petitioners to continue to explore future opportunities with AEP that would allow for greater participation in PJM demand response programs.

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

1. Joint Petitioners' requested relief from any requirement in the Demand Response Order regarding the filing for Commission approval of tariffs or riders authorizing the participation of retail customers in PJM demand response programs is granted.

2. In accordance with Indiana Code § 8-1-2-70, Joint Petitioners shall, within twenty (20) days from the date of this Order, pay into the Treasury of the State of Indiana, through the Secretary of this Commission, the following itemized charges, as well as any additional charges which were or may be incurred in connection with this Cause:

Commission Charges:	\$ 1,213.44
Legal Advertising Charges:	\$ 1,186.24
OUCG Charges:	<u>\$ 362.81</u>
Total:	\$ 2,762.49

3. This Order shall become effective upon and after the date of its approval.

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

APPROVED: JUN 06 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