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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**IN THE MATTER OF THE COMMISSION'S)
INVESTIGATION INTO THE IMPLEMENTATION)
OF SENATE ENROLLED ACT 340 WITH RESPECT)
TO THE OPT OUT OF AN INDUSTRIAL)
CUSTOMER FROM A REGULATED ELECTRIC)
UTILITY ENERGY EFFICIENCY PROGRAM AND)
OTHER RELATED MATTERS AS DETERMINED)
NECESSARY BY THE COMMISSION)**

CAUSE NO. 44441

APPROVED: JUN 30 2014

**RESPONDENTS: INDIANA REGULATED)
ELECTRIC UTILITIES)**

ORDER OF THE COMMISSION

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

On January 15, 2014, the Indiana Utility Regulatory Commission (“Commission”) issued an order initiating this investigation into the continued reasonableness of certain large customer participation in utility sponsored and Commission regulated demand side management (“DSM”) programs. The Commission named as respondents all regulated electric utilities in the State of Indiana subject to the Commission’s December 9, 2009 Phase II Order in Cause No. 42693 (“Phase II Order”).¹

The following parties petitioned to intervene in this Cause, and their petitions to intervene were granted without objection: Citizens Action Coalition of Indiana, Inc. (“CAC”); United States Steel Corporation (“US Steel”); Steel Dynamics, Inc. (“SDI”); Indiana Industrial Group (“IIG”); Nucor Steel-Indiana, a division of Nucor Corporation (“Nucor”); Wal-Mart Stores East, LP and Sam’s East, Inc. (“Wal-Mart”); the Kroger Co. (“Kroger”); and NLMK Indiana, a division of NLMK USA (“NLMK”) (collectively, “Intervenors”).

A prehearing conference was held in this Cause on February 3, 2014, and a procedural schedule was established. On March 31, 2014, subsequent to the enactment of Senate Enrolled Act 340² (“SEA 340”), the Commission suspended the procedural schedule and scheduled an attorneys’ conference for April 28, 2014. On April 30, 2014, the Commission issued a docket

¹ The respondents participating in this Cause consist of the following jurisdictional electric utilities: Duke Energy Indiana, Inc. (“Duke”), Indiana Michigan Power Co. (“I&M”), Indianapolis Power & Light Co. (“IPL”), Northern Indiana Public Service Company (“NIPSCO”), and Southern Indiana Gas & Electric Co. d/b/a Vectren Energy Delivery (“Vectren”) (collectively “Respondent Utilities”).

² Codified at Ind. Code § 8-1-8.5-9.

entry modifying the caption in this Cause to reflect the passage of SEA 340, and establishing a new procedural schedule for this Cause. The procedural schedule consists of two phases. The first phase (“Phase I”) is to address requests by the Respondent Utilities for approval of tariffs implementing the requirements of SEA 340, and the second phase (“Phase II”) is to address requests for Commission consideration of other issues related to or arising as a result of the industrial customer opt out provided for in SEA 340.

In accordance with the Phase I procedural schedule, on May 9, 2014, the Respondent Utilities prefiled their direct testimony and exhibits; on May 23, 2014, the OUCC and Intervenor prefiled their testimony and exhibits; and on May 27, the Respondent Utilities prefiled their rebuttal testimony and exhibits.

The Commission held a public evidentiary hearing in this Cause on May 29, 2014, at 9:30 a.m. in Room 222, PNC Center, 101 W. Washington Street, Indianapolis, Indiana. The Respondent Utilities, the Indiana Office of Utility Consumer Counselor (“OUCC”), and Intervenor were represented by counsel at the hearing. The prefiled testimony and exhibits of the Respondent Utilities, OUCC, and Intervenor were admitted into evidence without objection and several witnesses were cross-examined. No member of the general public appeared or sought to testify at the hearing.

Based on the applicable law and being duly advised, the Commission finds:

1. Notice and Jurisdiction. Due, legal, and timely notice of the public hearing conducted by the Commission herein was given and published as required by law. The Respondent Utilities are “public utilities” within the meaning of Ind. Code § 8-1-2-1 and “electricity suppliers” within the meaning of Ind. Code §§ 8-1-2.3-2(b) and 8-1-8.5-9(B). Pursuant to Ind. Code §§ 8-1-2-38, -39 and -42, the Commission has jurisdiction over changes in the Respondent Utilities’ retail electric tariffs and rates, and pursuant to Ind. Code § 8-1-8.5-9(i), the Commission has jurisdiction to issue guidelines to assist electricity suppliers and industrial customers in complying with SEA 340. Therefore, the Commission has jurisdiction over the Respondent Utilities and the subject matter of this Cause.

2. Industrial Customer Opt Out Under SEA 340. SEA 340 was passed by the Indiana General Assembly and allowed to become law by the Governor, effective as of March 28, 2014. SEA 340 allows “industrial customers” to opt out, prior to July 1, 2019, of participating and paying for utility-sponsored energy efficiency programs.

SEA 340 defines an “industrial customer” as “a person that receives services at a single site constituting more than one (1) megawatt of electric capacity from an electricity supplier.” SEA 340 provides that an industrial customer that meets this definition may opt out by simply providing notice to its electricity supplier. Once a qualifying customer has opted out, the electricity supplier may not charge the customer rates that include energy efficiency program costs that accrue or are incurred after the date of the opt out. However, the customer remains responsible for rates that include energy efficiency program costs that accrued or were incurred, or are related to investments made, before the date of the opt out, regardless of when such rates are actually charged to the customer. SEA 340 defines “energy efficiency program costs” as including: “(1) program costs; (2) lost revenues; and (3) incentives approved by the

commission.”

SEA 340 also allows customers to opt back in to participation and payment for utility-sponsored energy efficiency programs. *See* Ind. Code § 8-1-8.5-9(c) & (g). A customer who opts back in must participate in the energy efficiency program for at least 3 years. If the customer terminates participation in the energy efficiency program during that three-year period, however, the customer “shall continue paying energy efficiency program rates, including costs described in” Ind. Code § 8-1-8.5-9(f) for the remaining three-year period.

3. Respondent Utilities’ Case-in-Chief Testimony and Exhibits. The Respondent Utilities provided an overview of their proposed opt out procedures through the testimony of Alison M. Becker, Manager of Regulatory Policy for NIPSCO. Following the testimony of Ms. Becker, each utility provided testimony sponsoring and explaining their proposed opt out tariffs and procedures.

A. Opt Out Eligibility. Ms. Becker testified that, consistent with SEA 340, the Respondent Utilities’ opt out procedures allow for industrial customers having more than one megawatt (“MW”) of electric demand to opt out of paying for prospective energy efficiency program costs, so long as they provide the utility with notice of their decision to opt out prior to July 1, 2019. Ms. Becker explained that SEA 340 does not define the term “single site,” and that the Respondent Utilities propose to define “single site” as contiguous property, unless aggregation of multiple delivery points is allowed by an approved utility tariff (or is subsequently approved in an amended energy efficiency opt out tariff). The Respondent Utilities propose to assess whether or not a customer meets the “more than 1 MW” requirement of SEA 340 by requiring the customer to demonstrate electric demand of greater than 1 MW within the previous 12 months, as measured by a single demand meter on a single site.

B. Opt Out Notice and Effective Dates. The Respondent Utilities proposed procedures to enable efficient administration of the opt out process. While SEA 340 is silent on approval of rates, implementation requires electricity suppliers to have approved rates for industrial customers that have opted out. To facilitate approval of these rates and avoid having rates unique to each industrial customer, Respondent Utilities propose windows for qualifying customers to opt out. In order to opt out for the remainder of 2014, a qualifying customer must notify the utility of its decision to opt out by June 1, 2014. For following years, the customer must notify the utility of its decision to opt out by November 15 of the immediately preceding year. Opt outs for 2014 will be implemented effective by the utility’s July 2014 billing cycle; opt outs for subsequent years will be implemented by the utility’s January billing cycle. Ms. Becker explained that within the framework described above, each utility may implement the initial opt out date slightly differently, as described in the individual Respondent Utilities’ testimony and exhibits.

Ms. Becker testified a customer wanting to opt out must provide written notice that: (1) indicates the customer’s desire to opt out of the utility’s energy efficiency programs, (2) provides a listing of all qualifying accounts (either a meter with over 1 MW of load or located on the same site as a meter with over 1 MW of load) in the electric supplier’s service territory which the customer intends to opt out, and (3) contains confirmation that the signatory for the customer has authority to make that decision for the customer. Duke, I&M, IPL and NIPSCO have prepared a

form for customers to complete. A customer's notification of opt out is subject to the utility confirming the customer's and the site's eligibility. Ms. Becker testified that the Respondent Utilities will make good faith efforts to notify potential qualifying customers of the existence of SEA 340 and the requirements for opting out.

Ms. Becker explained that customers who opt out are no longer eligible to receive DSM rebates, incentives, or other direct benefits from a utility's DSM program. The only such payment an opt out customer may receive after the opt out date is for a project that was completed prior to the opt out date, but had not been verified or paid by the utility prior to the opt out date. A customer that has opted out and decides to opt back in must also provide a similar written notice to the utility, and must agree to remain in the program for three years (and must pay the program rates for three years). A customer that has opted back in and then subsequently (after the three-year period) desires to opt out again, must demonstrate at that time that it meets the criteria for opting out, and must provide proper notice to the utility.

The Respondent Utilities proposed that new customers signing contracts calling for more than 1 MW of electric demand could opt out immediately, while new customers without such contracts would need to demonstrate 1 MW of electric demand from a single meter at a single site, and provide proper notice to the utility during a window period, prior to qualifying for opt out.

C. Opt Out Rates. Consistent with SEA 340, the Respondent Utilities proposed procedures to make clear that qualifying customers that opt out remain responsible for energy efficiency program costs that accrue, were incurred, or relate to investments made prior to the date of opt out ("Trailing Costs"). Ms. Becker indicated this may include not only direct program costs, but also lost revenues, performance or shareholder incentives, and contract costs for contracts in place as of April 2014 associated with the Third Party Administrator ("TPA") contracts or the evaluation, measurement and verification ("EM&V") contracts currently in place. Trailing Costs may also include costs related to EM&V required to be conducted after a customer opts out on projects completed under an energy efficiency program while the customer was a participant.

For DSM rate adjustment factor purposes, Ms. Becker explained that as a general rule, the utilities propose that each opt out period will have its own DSM Rate Adjustment Factor. However, each Respondent Utility will describe its own proposed ratemaking for opt out customers.

D. NIPSCO-Specific Procedures. Ms. Becker also addressed certain proposed tariff provisions and procedures specific to NIPSCO as follows: (1) NIPSCO proposes to utilize an effective date of July 1, 2014, for all qualifying customers who provide proper notice to NIPSCO of their decision to opt out by June 1, 2014; (2) NIPSCO proposes to initially charge qualifying customers who provide proper notice by June 1, 2014, an opt out rate of zero for the period July 1 through December 31, 2014, to be reconciled in subsequent DSM Rate Adjustment proceedings to reflect Trailing Costs, as well as prior period variances; and (3) NIPSCO proposes that if prospective changes are made to its allocation of energy efficiency program costs, qualifying opt out customers will continue to pay their Trailing Costs and reconciliations based upon the allocation that was in effect at the time of their opt out.

E. Duke-Specific Procedures. Duke witness Michael Goldenberg, Senior Manager of Regulatory Strategy for Duke, testified concerning Duke's specific proposed tariff provisions and procedures.³ Mr. Goldenberg explained that Duke intends to use the same framework and procedures described by Ms. Becker, with one minor modification: any qualifying customer that properly notifies Duke of its intent to opt out within 30 days of the Commission's Phase I Order in this Cause, will have an opt out effective date of April 1, 2014 (to be implemented upon Commission approval of Duke's proposed opt out rates in this Cause, with billing adjustments made as needed to reflect an April 1 effective date). Subsequently, qualifying customers who provide proper opt out notice by November 15 of a calendar year will have an opt out date effective January 1 of the following year.

Mr. Goldenberg also testified that Duke is proposing a revised DSM Rate Adjustment Factor for 2014 in this filing, in addition to proposed tariff language and procedures, for qualified customers that opt out. Mr. Goldenberg explained that, given Duke's DSM filing schedule, if Duke did not propose an opt out rate in this proceeding, opt out customers would not have the benefit of new opt out rates until 2015. Mr. Goldenberg further explained that Duke's proposed opt out rate was developed by simply removing the revenue requirements associated with the estimated costs for 2014 energy efficiency programs (program costs, EM&V, performance incentives, and lost revenues associated with 2014 programs) from the revenue requirements that were included in the rates approved in Duke's Cause No. 43955 DSM 1 filing, and then dividing by the same billing determinants used in that filing. The resulting rates thus reflect only costs related to previous year (2012 and 2013) energy efficiency programs and Core program start-up costs. Duke's proposed opt out rate for which it seeks approval in this proceeding was shown in Duke Exhibit DLD-1.

F. I&M-Specific Procedures. I&M witness Jon C. Walter, Manager of Regulatory Support for I&M, testified concerning I&M's specific proposed tariff provisions and procedures that differ from the Respondent Utilities' procedures sponsored by Ms. Becker. Mr. Walter testified that not all I&M customers are billed on a MW basis; some are billed on a Mega Volt Ampere ("MVA") basis instead. Accordingly, I&M proposes to base the "greater than 1 MW" threshold in SEA 340 on a billing demand greater than 1,000 kilovolt-amperes ("kVA") (1 MVA).

Mr. Walter explained that, due to past DSM Rider activity, all I&M customers having demand greater than 1 MW at a single site currently have a DSM Rate Adjustment Factor of zero. As such, there is currently no need for I&M to create a specific DSM Rider rate for opt out customers at this time. Trailing Costs and prior period reconciliations applicable to opt out customers will be charged, as applicable, in future I&M DSM Rate Adjustment and reconciliation filings. Mr. Walter also proposed that if prospective changes are made to its allocation of energy efficiency program costs, qualifying opt out customers will continue to pay their Trailing Costs and reconciliations based upon the allocation that was in effect at the time of their opt out.

³ At the hearing, Mr. Goldenberg adopted the prefiled testimony of Diana L. Douglas, Director, Rates and Regulatory Planning for Duke Energy Business Services LLC.

G. IPL-Specific Procedures. IPL witness Lester H. Allen, DSM Program Development Manager, testified concerning IPL's specific proposed tariff provisions and procedures. Mr. Allen explained that IPL's procedures are consistent with the Respondent Utilities' proposed procedures, as sponsored by Ms. Becker. However, Mr. Allen explained that IPL intends to make opt outs for qualifying customers that provided proper notice by June 1, 2014, effective with the next applicable billing cycle following receipt of such notice. Mr. Allen also explained that IPL intends to charge opt out customers a zero opt out rate for the period July through December 2014, and that zero out opt rate would be modified in subsequent periods to reflect Trailing Costs and prior period reconciliations. Mr. Allen testified that, while IPL was seeking approval of its proposed opt out tariff and procedures in this proceeding, IPL was seeking approval of the zero opt out rate in its pending DSM Rate Adjustment proceeding, Cause No. 43623 DSM 9. IPL plans to effectuate 2014 opt outs via this zero opt out rate, if and when approved by the Commission in Cause No. 43623 DSM 9, as well as via bill credits for the time period between the effective date of opt out and the date of Commission rate approval. Mr. Allen also proposed that if prospective changes are made to its allocation of energy efficiency program costs, qualifying opt out customers will continue to pay their Trailing Costs and reconciliations based upon the allocation that was in effect at the time of their opt out.

H. Vectren-Specific Procedures. Vectren witness Shawn M. Kelly, Director, Regulatory Affairs for Vectren Utility Holdings, Inc., sponsored testimony concerning Vectren's specific proposed tariff provisions and procedures. Mr. Kelly testified that Vectren is proposing a revised DSM Rate Adjustment Factor for 2014 in this filing, in addition to proposed tariff language and procedures, for qualified customers that properly opt out. Mr. Kelly explained that Vectren's proposed opt out rate was developed by simply removing the Energy Efficiency Funding Component ("EEFC") from the most recently approved Vectren DSM Adjustment ("DSMA"). Vectren's proposed opt out rate for which it seeks approval in this proceeding was shown in Vectren's Exhibit SMK-2. Vectren further proposes to file its next DSMA filing in August 2014, instead of June 2014, to allow Vectren additional time to modify its DSMA schedules to ensure the changes required by SEA 340 are administered properly and allow the Commission and OUCG appropriate time to review the necessary changes to the DSMA process.

4. OUCG's Testimony and Exhibits. The OUCG, through its witness, April M. Paronish, Utility Analyst for the OUCG, raised five issues with respect to the Respondent Utilities' proposed opt out tariffs and procedures. First, Ms. Paronish testified that the OUCG does not believe SEA 340 permits customers to receive the advantage of avoiding energy efficiency program costs at a site while simultaneously receiving benefits from utility energy efficiency programs at the same site. For this reason, the OUCG recommends that opt out customers be required to opt out all meters at a single site.

Second, Ms. Paronish took issue with the Respondent Utilities' proposed procedures for new customers, specifically, the ability of a new customer having a contract with the utility calling for an electric demand of greater than 1 MW to immediately opt out. Ms. Paronish testified that new customers, like all other customers, should be required to demonstrate they are receiving electric service in excess of 1 MW of demand, measured by a single meter, at a single site, prior to opting out. In support of her position, Ms. Paronish noted that SEA 340 makes no special provisions for new customers nor makes any reference to alternate opt out eligibility criteria. Further, Ms. Paronish noted that allowing immediate opt out for new customers could be

discriminatory and prejudicial to existing customers, who must demonstrate greater than 1 MW of usage prior to opting out

Third, Ms. Paronish took issue with I&M's proposal to utilize an MVA rather than a MW threshold for determining opt out eligibility. Ms. Paronish testified that SEA 340 does not discuss MVA, kVA or alternate opt out eligibility criteria. She recommended that I&M include in its rebuttal testimony a revised tariff that includes an explanation of its math calculation of whether the MVA/kVA customer receives service exceeding 1 MW of capacity.

Fourth, Ms. Paronish noted several inconsistencies among the Respondent Utilities' proposed tariff language and forms, relating to the "more than 1 MW" threshold. She noted that SEA 340 allows opt out for customers having more than 1 MW of electric demand, not equal to or at least 1 MW. She recommended that the Respondent Utilities conform their tariffs and forms to reflect SEA 340's requirement of "more than 1 MW" of demand.

Finally, Ms. Paronish responded to the Respondent Utilities' proposals regarding future potential aggregation and future potential changes in cost allocation. She requested that utilities be required to file any proposed changes involving aggregation or energy efficiency program cost allocations in a docketed proceeding, such as a DSM case or rate case, and not in DSM tracker cases or a 30-day filings, in order to allow all stakeholders and the Commission the opportunity to fully review the potential impacts.

5. IIG's Testimony and Exhibits. IIG's witness, Nicholas Phillips, Jr., consultant and Managing Principal with the firm of Brubaker & Associates, made four recommendations in response to the Respondent Utilities' proposals. First, Mr. Phillips recommended that I&M, NIPSCO and Vectren clarify in their tariffs that the original date of a customer's opt out notice will be preserved if the customer opts out using a mechanism other than the utility's form (and is subsequently required by the utility to complete the utility's opt out form). Second, Mr. Phillips recommended that NIPSCO and Vectren clarify in their tariffs that a customer need not renew its opt out on an annual basis. Third, Mr. Phillips recommended that as necessary all of the Respondent Utilities add language to their tariffs specifically allowing a qualifying customer to opt out all accounts at a single site. Fourth, Mr. Phillips recommended that IPL include in its tariff language, consistent with IPL Witness Allen's testimony on cost allocation, that cost allocations in place at the time of a customer's notice of opt out will continue to apply to Trailing Costs and reconciliations even if subsequent changes are made to the allocation of energy efficiency program costs.

6. CAC's Testimony and Exhibits. CAC, through testimony of its witness Kerwin Olson, Executive Director of the CAC, offered testimony on the potential impact of the opt out provision of SEA 340, particularly with regard to issues of ratepayer equity. Mr. Olson explained that without the proper protections and safeguards put in place by the Commission, the negative consequences of SEA 340 could be far reaching and have implications that were not contemplated by the Indiana General Assembly.

Mr. Olson provided that SEA 340's opt-out provision should be viewed in the broader context of the need for and purpose of any energy efficiency program as a system-wide energy resource. Mr. Olson noted prior Commission findings about the importance of energy efficiency

as an important component of long-term resource planning to meet customer needs cost effectively, as provided in the Commission's Phase II Order. He noted that although certain directives in the Commission's Phase II Order in Cause No. 42693 will effectively expire at the end of this year, DSM programs will continue, a new savings goal may be established, and how the Commission allows customers to opt out of DSM programs must fit within the understanding of DSM as a system resource for all ratepayers. Mr. Olson expressed concern for the extra costs that will be required to replace the low cost-resource of industrial energy efficiency with more expensive electric supply resources and ratepayer equity requires that those extra costs be paid for by the customers that cause those extra costs to be incurred by their decisions to opt out. Thus, Mr. Olson recommended that the Commission establish a framework for quantifying those costs and a mechanism for recovering them.

Mr. Olson also asked the Commission to consider whether it is appropriate to require contributions to certain DSM programs that have special characteristics and provide additional benefits for all rate classes by those customers that are eligible for opt out, such as income qualified weatherization and school education programs. Mr. Olson also requested that the Commission consider whether the customer opt out notice to the utility should include a certification that the industrial customer has implemented or will implement, at its own expense, energy efficiency measures that would result in at least the same amount of savings that the customer was projected to receive from the utility program of which the customer is opting out. Mr. Olson also suggested the Commission require the customers opting out to submit plans for current and future investments in DSM project/s, stressing the importance of not losing that critical data. Mr. Olson also requested that the Commission require opt out customers to provide EM&V reports (subject to the same rigor as is required for utility programs currently) to the utility to validate the customers' energy and demand savings from implementing its own energy efficiency measures.

Mr. Olson also focused on four specific aspects of the Respondent Utilities' proposed opt out tariffs and procedures. First, Mr. Olson expressed concern with respect to the issue of meter aggregation in the context of industrial customer opt outs. Mr. Olson testified that enlargement of the pool of eligible customers for opt out is not provided for in SEA 340. SEA 340 clearly states an opt-out eligible customer must receive service at "a single site" with no additional language to suggest otherwise.

Second, Mr. Olson took issue with the Respondent Utilities' position that once a qualifying customer opted out, the utility will not revoke that customer's qualification at a later date, even if demand changes (and the customer will not need to annually indicate its continued desire to opt out). Mr. Olson argued that a renewal of notice should be required, every year or at periodic intervals, to ensure that the opt out option is not being abused. Many factors will change each year or periodically, such as load growth, demand, and the circumstances and economic environment of businesses. He suggested that, given SEA 340's three-year requirement pertaining to opting back in, perhaps a three-year renewal may be appropriate. Mr. Olson also testified that the language of SEA 340—that an industrial customer may opt out of participating in an energy efficiency program "that is established by an electric supplier in response to a DSM order"—could be interpreted to require that eligible customers must opt out each time the Commission issues an order approving a utility's DSM program.

Third, Mr. Olson recommended that any notification by utilities to eligible customers should provide full and complete information about the utility's energy efficiency programs so that the customers may make informed decisions about opting out.

Finally, Mr. Olson recommended that the Commission consider whether it is appropriate to allow industrial customers to opt out of existing DSM programs and contracts that have been entered into, have received prior Commission approval for, and have anticipated the inclusion of all Indiana customers and ratepayers, including industrial customers as defined in SEA 340. Mr. Olson suggested that the earliest time in which any industrial customer be allowed to opt out be the expiration of all existing Commission-approved DSM contracts and programs which included industrial customers for the purposes of budgeting and planning.

Mr. Olson concluded that the Commission should exercise its authority (including its authority under Ind. Code § 8-1-8.5-9(i) to develop rules under Ind. Code ch. 4-22-2 or guidelines to assist electricity suppliers and industrial customers in complying with SEA 340), and conduct a thorough investigation or begin an administrative rulemaking to explore the issues CAC and others offered for consideration in Phase II of this proceeding. Mr. Olson testified that any approval of the tariffs in Phase I of this proceeding should be reopened and modified as necessary to reflect the Commission order that results in Phase II of this proceeding.

7. Respondent Utilities' Rebuttal Testimony and Exhibits.

A. NIPSCO's Rebuttal Testimony. Ms. Becker responded to the OUCC's, IIG's and CAC's testimony. She also sponsored NIPSCO's Exhibit AMB-R1, a revised proposed NIPSCO opt out tariff reflecting NIPSCO's rebuttal positions. With regard to IIG's testimony, Ms. Becker indicated that NIPSCO agreed with IIG witness Phillips' recommendation to specifically include tariff language that preserves the original date of the customer's notice if the customer opts out using a mechanism other than the utility's opt out form. Ms. Becker indicated that NIPSCO also agreed with Mr. Phillips' recommendation to clarify that a customer need not renew its opt out on an annual basis. She also testified that NIPSCO agreed with Mr. Phillips' recommendation that language be added to NIPSCO's tariff to clarify that all of a customer's qualifying accounts at a single site will be opted out.

With regard to the OUCC's testimony, Ms. Becker testified that NIPSCO was agreeable to complying with OUCC witness Paronish's recommendation that all meters at a single site should be required to opt out. Ms. Becker noted, however, that NIPSCO's revised tariff language makes clear that there is a duty on the customer to verify it has notified the utility of the proper accounts to opt out prior to receiving relief from paying the rider for those accounts. Ms. Becker also indicated agreement with Ms. Paronish's recommendation that the Respondent Utilities' tariffs and forms consistently refer to the "more than 1 MW" threshold contained in SEA 340. Ms. Becker also stated that NIPSCO does not oppose Ms. Paronish's request that any proposed changes involving aggregation or energy efficiency cost allocation by NIPSCO should be filed in a docketed proceeding such as a rate case or DSM case, as opposed to a DSM Rate Adjustment case or a 30-day filing.

With regard to CAC's testimony, Ms. Becker testified that she disagreed with Mr. Olson's contention that the Respondent Utilities' proposed procedures enlarged the pool of

eligible opt out customers beyond that contemplated by SEA 340. Ms. Becker explained that the proposed eligibility criterion requires that a customer demonstrate more than 1 MW of demand via a demand meter at a single site. Allowing opt out of all accounts at a single site where a customer can demonstrate more than 1 MW of demand via a single demand meter simply facilitates administrative efficiency. Further, Ms. Becker explained that NIPSCO has two existing customers that are billed on an aggregated basis, and that it would be administratively inefficient to bill these two customers differently for purposes of the DSM Rate Adjustment. Ms. Becker also disagreed with Mr. Olson's suggestion that opt out customers should be required to annually or periodically renew their opt outs. She noted that nothing in SEA 340 requires such, and such a renewal requirement would create an administrative burden with no discernable benefit. Finally, Ms. Becker disagreed with Mr. Olson's proposal that the timing of opt outs be delayed until all current DSM programs and contracts have terminated. She noted that the General Assembly declared an emergency for SEA 340, resulting in the statute becoming effective immediately upon passage, and the Respondent Utilities' proposed procedures are designed to comply with this. She also emphasized that opt out customers will pay Trailing Costs, including fixed costs associated with current programs, which will mitigate the impact on other customers.

B. Duke's Rebuttal Testimony. Mr. Goldenberg responded to testimony by the OUCC, IIG and CAC, and sponsored Duke Exhibit DLD-6, a revised proposed Duke opt out tariff. With regard to the OUCC's positions, Mr. Goldenberg testified that Duke did not agree with Ms. Paronish's recommendation that all meters at a qualifying single site must be opted out. He stated there may be energy efficiency opportunities for specific meters at that site, and Duke wants to provide the flexibility to enable customers to avail themselves of energy efficiency programs when it makes sense for them to do so. Mr. Goldenberg emphasized that any accounts that had not opted out would continue to be charged full energy efficiency program costs through rates. Mr. Goldenberg also disagreed with Ms. Paronish's recommendation that new customers with contracts calling for more than 1 MW of demand should be required to demonstrate demand in excess of 1 MW before they can opt out. Mr. Goldenberg stated that this adds an unnecessary step to the opt out process and could adversely impact economic development. With respect to Ms. Paronish's recommendation that any changes to cost allocation or site aggregation only be proposed in rate cases or DSM cases, Mr. Goldenberg stated that it was premature to commit to this at this time.

With regard to IIG's recommendation that all accounts at a single site with qualifying load may be opted out, Mr. Goldenberg indicated that Duke generally agreed with this recommendation, with the caveat that this should be limited to non-residential accounts. Mr. Goldenberg believes that excluding residential accounts is consistent with SEA 340.

With regard to CAC's testimony, Mr. Goldenberg testified that the Respondent Utilities' definition of single site did not enlarge the pool of eligible opt out customers for Duke, and that Duke had no approved utility tariffs allowing for aggregation. He also expressed Duke's disagreement with CAC's proposal to require opt-out customers to renew their opt-out decisions on an annual or other basis, stating that such a requirement would be administratively burdensome for both the utility and the customer.

C. I&M's Rebuttal Testimony. I&M witness Walter responded to the

testimony of OUCC, IIG and CAC. Mr. Walter also sponsored I&M Exhibit JCW-R1, a revised proposed I&M opt-out tariff. With regard to IIG's testimony, Mr. Walter indicated that I&M agreed with IIG witness Phillips' recommendation to specifically include tariff language that preserves the original date of the customer's notice if the customer opts out using a mechanism other than the utility's opt-out form. However, Mr. Walter encouraged the Commission to stress the responsibility of the opting out customer to properly notify the utility of its intent to opt out. Mr. Walter testified that I&M agreed with Mr. Phillips' recommendation that language be added to I&M's tariff to clarify that all of a customer's qualifying accounts at a single site will be opted out.

With regard to the OUCC's positions, Mr. Walter disagreed with Ms. Paronish that all accounts at a single location be subject to the opt-out decision uniformly, on the basis that SEA 340 does not appear to require such. Mr. Walter also disagreed with Ms. Paronish's recommendation that new customers with contracts calling for more than 1 MW of demand should be required to demonstrate demand in excess of 1 MW before they can opt out. Mr. Walter encouraged the Commission to simplify the opt-out process to the extent possible, opining that a new customer that can clearly demonstrate its eligibility for opt out should not be forced to wait up to a year to qualify. With regard to Ms. Paronish's recommendation that I&M explain the math behind its proposal to convert the 1 MW threshold to 1 MVA, Mr. Walter explained that changes in billing practices and meter programming would be necessary to objectively determine the MW billing demand for these MVA customers. Mr. Walter reiterated that I&M does not bill or record certain customers on a MW basis, therefore some type of proxy is necessary to effectuate SEA 340's opt-out provisions. Mr. Walter emphasized that the suggested 1 MVA conversion is simple and recognizes I&M's unique situation. Finally, with respect to Ms. Paronish's recommendation that any changes to cost allocation or site aggregation only be proposed in rate cases or DSM cases, Mr. Walter stated that this recommendation was premature.

With regard to CAC's testimony, Mr. Walter disagreed with Mr. Olson's recommendation that opt-out customers should be required to renew their opt-out notices. He noted that SEA 340 empowers a certain category of customers to opt out. He recommended the Commission keep the opt-out implementation simple.

D. IPL's Rebuttal Testimony. On behalf of IPL, Mr. Allen responded to the OUCC, IIG, and CAC and also sponsored IPL Exhibit LHA-R2, a revised proposed IPL opt-out tariff. With regard to the OUCC's objection to the special contract method of opt out for new customers, Mr. Allen noted that IPL does not typically enter into individual customer contracts. As a result, new customers who have greater than 1 MW of demand will generally be required to demonstrate that demand prior to opting out. Mr. Allen also testified that the OUCC was correct that IPL's proposed opt-out tariff language and other opt-out documents should refer to "more than 1 MW" or "greater than 1 MW," not equal to or greater than 1 MW. Mr. Allen stated that IPL was agreeable to making conforming changes to its proposed opt-out tariff language, as well as its proposed opt-out and opt-in forms. Mr. Allen next addressed the OUCC's recommendation that utilities be required to file any proposed changes involving aggregation or DSM program cost allocation in a docketed proceeding such as a DSM case or a rate case, as opposed to a DSM tracker case or a 30-day filing. Mr. Allen testified that IPL does not oppose

this recommendation with respect to 30-day filings, but believes it is premature to conclude that such changes may not appropriately be made in DSM tracker filings.

Mr. Allen testified that IPL generally agreed with IIG witness Phillips' recommendation that language be added to IPL's tariff to clarify that all of a customer's qualifying accounts at a single site may be opted out, with a couple of minor exceptions. First, IPL believes the tariff language should reflect that the ability to opt out all services at a qualifying site should be limited to non-residential services. IPL believes it would be administratively burdensome to develop and bill (and reconcile) an opt-out rate for residential services. Mr. Allen also noted that SEA 340 refers to opt out being available to industrial customers. Second, IPL believes that the qualifying customer should be required to opt out for all (or none) of non-residential accounts at a single site, not pick and choose (and thereby participate in a utility's DSM programs for one account at the site, but opt out for others). For these reasons, Mr. Allen proposed that IIG's proposed addition to the tariffs be slightly modified to indicate that the ability to opt out all services at a qualifying site be limited to non-residential services, and that once a qualifying customer opts out at a site, it must opt out all non-residential services at that site (with the burden being on the customer to identify the non-residential services at the site). Mr. Allen further testified that IPL agreed with IIG's recommendation that IPL's opt-out tariff specifically include language stating that if IPL changes its allocation of DSM costs in the future, opt-out customers will continue to pay costs based upon the allocation in effect at the time of their opt out.

With regard to CAC's recommendation that opt-out renewals be required, Mr. Allen testified that IPL believed the Commission should reject this proposal because SEA 340 does not explicitly call for such renewals, and to do so would be administratively burdensome for customers as well as utilities. IPL also recommended the Commission reject CAC's proposal regarding delaying implementation of opt outs. Mr. Allen noted SEA 340 was made effective upon passage, which suggests to him that the General Assembly wanted qualifying customers to have the ability to opt out immediately. Moreover, he stated, both SEA 340 and the utilities' proposals protect non-opt-out customers from existing contract costs being shifted to them by charging opt-out customers their share of Trailing Costs (including fixed and administrative costs associated with current TPA and EM&V contracts).

E. Vectren's Rebuttal Testimony. Mr. Kelly testified in response to the testimony of the OUCC, IIG, and CAC, and also sponsored Vectren Exhibit SMK-R2, a revised proposed opt-out tariff. With regard to IIG witness Phillips' recommendation that Vectren's tariff language be clarified to preserve the date of initial customer notice as the effective date of opt out, Mr. Kelly expressed Vectren's view that such a revision is unnecessary and would cause confusion, and should, therefore, be rejected. Mr. Kelly explained the revision is unnecessary because Vectren's tariff explicitly sets forth the requirements for notice and intentionally does not require a form to qualify as notice. While Vectren may ask a customer to complete an opt-out form, Vectren's tariff ensures that the non-form notice qualifies as a notice provided that it includes the minimum information. In Mr. Kelly's view, Mr. Phillips' further clarification creates the potential for confusion about what qualifies for a notice.

Mr. Kelly next addressed IIG's recommendation to clarify that opt-out renewals are not required and that all meters at a single site may be opted out. Mr. Kelly explained that Vectren never contemplated requiring customers to re-apply for opt-out status and does not object to

making this explicit by adopting the language suggested by Mr. Phillips. Vectren also agreed that all non-residential meters located at a single site should be opted out of Vectren's energy efficiency programs. Mr. Kelly emphasized that Vectren is depending on the customer to be responsible for identifying all such accounts because the customer has superior knowledge about its accounts and Vectren's billing software does not allow Vectren to readily identify all accounts at a single site. He stated that if a customer fails to identify an account in the initial opt-out form, the customer should not receive a refund because Vectren will have designed its future energy efficiency programs assuming inclusion of that account.

With regard to OUCC witness Paronish's recommendation that customers who are opting out at a particular site must include all accounts in that opt out, Mr. Kelly testified that Vectren agreed. He stated Vectren proposes adding language to its DSMA tariff clarifying that customers who opt out may not benefit from DSM programs at the single site that is subject to the opt out. With regard to the OUCC's recommendation that new customers should have to establish they are taking more than 1 MW of demand before they are allowed to opt out, Mr. Kelly stated that Vectren disagreed. He explained that Vectren's proposed tariff allows new customers to opt out if they sign a demand contract of more than 1 MW. While the OUCC expressed concern that a new customer would sign a demand contract of more than 1 MW just to qualify for the opt out, Mr. Kelly stated Vectren believes the most efficient approach is to allow new qualifying customers to opt out at the earliest available date, rather than waiting up to a year. Vectren also disagreed with the OUCC's proposal to limit future changes in cost allocation to rate cases or DSM cases. Mr. Kelly stated Vectren did not oppose limiting such changes to docketed proceedings, but disagreed that they should not be considered in a DSM tracker proceeding.

With regard to CAC's concern about "the issue of meter aggregation," Mr. Kelly noted that Vectren's tariff does not allow customers to aggregate demand across meters at a single site to qualify for the usage requirements. Once a customer qualifies, however, Vectren's tariff allows all non-residential meters at the same site to be opted out. He stated this is consistent with the language used in SEA 340 concerning a single site, rather than a single account. Mr. Kelly also disagreed with CAC's recommendation that opt-out customers should be required to renew their opt-out status. He stated that SEA 340's explicit recognition that customers may opt back in serves the same purpose. Once customers are out, they can monitor Vectren's energy efficiency programs and elect to participate again if they so choose. Mr. Kelly stated the additional administrative burden on the utility and the customers of requiring a renewal of the opt out is not required by SEA 340 and is unnecessary. Mr. Kelly also disagreed with Mr. Olson's position that a customer should not be allowed to opt out until the expiration of the current contracts. Mr. Kelly testified that SEA 340 was passed on an emergency basis and became effective immediately upon passage. He stated that this demonstrates the legislative intent was to allow customers to opt out as soon as possible.

8. Commission Discussion and Findings. With the passage of SEA 340 in late March, the issues to be addressed in this Commission investigation were substantially altered. To ensure that the focus of this proceeding was clear and that SEA 340 would be implemented as quickly and efficiently as possible, with the necessary Commission guidance, the caption was changed to reflect the revised nature of the investigation and a new procedural schedule was established. It is evident from the record that much work has gone into developing opt-out

procedures and tariffs for industrial customers. We appreciate the parties' collaborative efforts to develop such procedures and to narrow the issues in this proceeding to allow for the expedited timelines associated with the implementation of the General Assembly's directive.

SEA 340 makes clear that the Commission's role is not only to implement SEA 340, but also to provide guidelines to assist the utilities and their customers in implementing the law. The delegation of authority to adopt rules or guidelines is not unusual and recognizes the Commission's expertise in addressing the technical electric utility industry issues. *See* Ind. Code § 8-1-2-6.6 (authorizing adoption of construction work in progress ratemaking rules at 170 IAC 4-6-1 to effectuate general statutory directive). The Commission has also been vested with the authority to conduct investigations into a utility's rates and charges and to approve changes thereto, along with a utility's tariffs and regulations. Ind. Code §§ 8-1-2-38 to -39, -42, and -58 to -60. Although this proceeding implicates issues of general applicability, each of the Respondent Utilities seeks Commission approval of utility-specific tariffs, regulations and/or rates necessary to implement the requirements of SEA 340.

Having considered SEA 340 and the evidence of record in this Cause, we make the following findings regarding the issues that remain in dispute in this proceeding.

A. Definition of Single Site/Meter Aggregation. CAC raised concerns that the proposed procedures—specifically the Respondent Utilities' definition of “single site”—would enlarge the pool of customers eligible to opt out of energy efficiency programs. After reviewing the Respondent Utilities' proposed tariffs and the testimony given on this issue, we do not share CAC's concern. While SEA 340 does not define the term “single site,” the Respondent Utilities propose to define “single site” as contiguous property, unless aggregation of multiple delivery points is already allowed by an approved utility tariff (or is subsequently approved in an amended energy efficiency opt-out tariff). Further, the Respondent Utilities propose to determine whether or not a customer meets the “more than 1 MW” requirement of SEA 340 by requiring the customer to demonstrate that at least one demand meter on the customer's “single site” has received service of more than 1 MW of electric capacity within the previous 12 months. Under this definition, except in very limited circumstances, customers may not aggregate demand in order to qualify for opt out; they must have one meter with more than 1 MW of demand at a site, and in that case, all meters (or services) at that site can be opted out. Moreover, those limited circumstances where aggregation may be permitted require either: aggregation to have been approved by the Commission previously (and the record indicates that only two NIPSCO customers fall into this category), or such aggregation must be approved by the Commission in the future. If such a situation materializes, interested parties may object and present their arguments against aggregation at that time. This Order in no way preapproves or prejudices the outcome of such a proposal. For all of these reasons, we reject CAC's objections and approve the Respondent Utilities' definition of a “single site” and their requirement that a customer demonstrate electric demand of greater than 1 MW within the previous 12 months, as measured by a single demand meter on a single site.

B. Preservation of Notice. IIG raised the issue of clarifying that a qualifying customer's notice of opt out should be effective as of the date of initial notice, even if the customer must subsequently fill out the utility's opt-out form, provide additional information to the utility, or correct a listing of opt-out accounts (or services). The Respondent Utilities

generally agreed with this proposition, with the caveat that it is the customer's obligation to provide accurate information to the utility concerning the opt out. The Respondent Utilities made clear that they do not believe they should be required to make refunds to customers for a customer's failure to accurately and completely provide opt-out information (e.g., a list of accounts or services) to the utility. We agree. While a customer should not be denied the opportunity to opt out because of the need to subsequently formalize an opt-out notice, neither should the utility be required to provide refunds if the customer fails to provide accurate and complete opt-out information. Further, after reviewing Vectren's proposed tariff language on this issue, we find Vectren's proposed tariff is sufficiently clear and consistent with our findings on this issue.

C. New Customers. The OUCC took issue with the Respondent Utilities' proposal to allow new customers to opt out immediately in cases where such customers have signed a contract for electric service with the utility calling for more than 1 MW of electric demand at a single site. The OUCC's concern was that a new customer could sign a contract calling for more than 1 MW of demand, without actually ever taking greater than 1 MW of power. While we appreciate this concern, we believe it is outweighed by two factors. First, we believe it is unlikely that a customer would intentionally sign a contract and pay rates for a higher MW demand than they will actually use in order to opt out of energy efficiency programs. And second, the administrative inefficiency of including a customer into the system for one year, creating associated cost allocation and measure life tracking requirements, only to have that customer opt out after proving its demand as envisioned by the OUCC outweighs any benefit of the desired certainty. Given the General Assembly's declaration of an emergency for SEA 340 to become effective upon passage, we believe the Respondent Utilities' proposal is reasonable, consistent with the legislative intent to allow certain large customers to opt out from utility DSM programs as soon as possible, and should be adopted.

D. MW/MVA Equivalency. SEA 340 provides that an "industrial customer" as used in the statute "means a person that receives services at a single site constituting more than one (1) megawatt of electric capacity from an electricity supplier." Ind. Code § 8-1-8.5-9(e). The enactment does not define "services," "single site," or "electric capacity." As explained by I&M witness Walter, not all I&M customers are billed on a MW basis. Some of I&M's customers are billed on a MVA basis and the meters are set to measure this basis. For purposes of identifying those customers qualifying for the opt-out option that are not tracked or billed on a MW or a numerical derivation, I&M proposes to base the 1 MW threshold on a billing demand equal to or greater than 1,000 kVA (i.e., 1 MVA).

OUCC witness Paronish recognized that SEA 340 does not discuss MVA, kVA or alternate, utility-specific opt-out eligibility based on billing methods. She recommended that I&M be required to file a revised tariff that determines eligibility criteria compliant with SEA 340 and includes the supporting math formula to be used in calculating whether a customer billed on an MVA/kVa basis receives service exceeding "1 MW of electric capacity." No other witness objected to I&M's proposal.

I&M's proposed tariff states: "For customers that are billed on a MVA and not on MW basis, I&M will use 1 MVA as an equivalent for 1 MW to determine if [*sic*] the status of a Qualifying Customer." I&M Ex. JCW-R1, at Sheet 38.2, Section B. Mr. Walter explained that

while MW billing demand could be determined formulaically, I&M's current meters do not save the data needed to make this computation. The record reflects that while new meters or meter software could be implemented on a going-forward basis, that change would take time and impose a cost burden on I&M's customers. Mr. Walter testified that the 1 MVA for 1 MW equivalency is straightforward, clear and self-policing. During cross-examination, Mr. Walter acknowledged that I&M's proposal assumes a power factor of 1. Through cross-examination the OUCC suggested an 85% average power factor might be used instead. However, the OUCC did not demonstrate its proposed proxy is reasonable or better than I&M's proposal; it merely identified it as a different possibility.

SEA 340 defines a subset of customers that the General Assembly directs be allowed to opt out of paying for future energy efficiency program costs. The imposition of the costs on this subset is a reasonable consideration in approving I&M's proposed opt-out procedures. Based on the evidence presented, it is clear that additional time and expense would be necessary to change I&M's meters to permit the customer's peak demand to be identified for determining the exact electric capacity on a MW basis. The relationship of MVA to MW is a reasonably understood relationship and a 1-MVA peak-demand customer is reasonably considered a large customer. We find that the 1-MVA proxy for 1 MW is simple, reasonable, and serves to draw a clear line on eligibility that can be readily understood by all stakeholders. Accordingly, we find I&M's proposal to be reasonable and should be approved.

E. Totality of Opt Out. There were differences of opinion among the parties, and among the Respondent Utilities, as to whether a qualifying customer that opts out should be required to opt out all accounts (or services) at the site, or whether it may pick and choose which accounts (services) to opt out. There are good arguments on both sides of this issue. On the one hand, there is evidence that it would be administratively burdensome for at least some of the utilities to have some accounts (services) at a single site opted out, and others opted in. Additionally, concerns were raised that a customer might opt out its higher cost accounts, while leaving smaller accounts opted in so they may continue participating in energy efficiency without fully paying for it. On the other hand, a couple of the utilities took the position that there may be energy efficiency opportunities for specific accounts at a single site, and the utilities should have flexibility to enable customers to avail themselves of energy efficiency programs when it makes sense for them to do so.

This is an area where we believe some flexibility is warranted. Accordingly, if a utility concludes that it would be administratively burdensome to have some accounts (services) opted out and others opted in at a single site, we believe that is a reasonable decision. If others believe their systems can accommodate having some accounts opted out and others in, and want the flexibility to continue to offer energy efficiency programs for some accounts at that site, we believe that is a reasonable decision as well. However, the possibility of fraud and abuse of the opt-out option provided by the legislature is a valid and real concern. Energy efficiency is a system-wide resource for all ratepayers, and thus, the Commission cannot leave the opt-out option vulnerable to threats like fraud. Thus, the utility-specific oversight boards shall help make these determinations, perhaps by developing guidelines for doing so. Furthermore, in order to maintain consistency with SEA 340, we will impose the requirement that at least one account (service), as measured by a single demand meter having more than 1 MW of demand, must opt out even if the utility allows fewer than all accounts (services) at a qualifying site to opt out.

Accordingly, as a minimum threshold condition to address potential abuse concerns, we find it a reasonable and appropriate condition that all accounts on a common rate at a single site be treated similarly, and as such all meters on a single common rate at a single site must have the same opt-out (or opt-in) status.⁴

F. Timing. CAC recommended that opt out be delayed until the Respondent Utilities' current DSM program contracts (such as the current TPA and EM&V contracts) have terminated. In support of this position, CAC asserted that current DSM programs were planned without consideration of opt out, and therefore, remaining customers would pay more DSM costs than they should if opt out is implemented immediately. We reject this position for two reasons. First, as several witnesses pointed out, SEA 340 was passed as an "emergency," made effective immediately upon passage. This indicates that the General Assembly did not want to delay implementation in any way. Consistent with this view, SEA 340 itself does not contain any provisions that suggest implementation should be delayed. Additionally, SEA 340's provisions relating to recovery of Trailing Costs (costs that were accrued, incurred, or related to investments made before the date of opt out) from opt-out customers eliminates, or at least mitigates, the potential for cost shifting from opt-out customers to remaining customers.

G. Renewal. CAC also recommended that opt-out customers be required to renew their opt-out decisions annually, or at least periodically. The Respondent Utilities opposed this recommendation on the basis that requiring such would be burdensome for both customers and utilities with either no or very little benefit. We agree. We further note that SEA 340 does not require such renewals, but instead provides an opportunity for customers to opt back into a utility's DSM programs should they desire to do so.

H. Future Proposed Changes to Cost Allocation or Aggregation. The OUCC proposed that the Respondent Utilities be limited in the way they could propose future changes to energy efficiency cost allocations or aggregation. Specifically, the OUCC requested that such proposals be limited to rate cases or DSM program cases, and not take place in 30-day filings or DSM Rate Adjustment proceedings. No party opposed the OUCC's recommendations that such revisions not be proposed in 30-day filings. I&M, Duke, and Vectren opposed a prohibition on raising these issues in DSM Rate Adjustment proceedings. We agree that there is no reason in this order to predetermine that future changes to cost allocation or aggregation could not be made in a DSM Rate Adjustment proceeding. The OUCC's primary concern was the limited time often afforded to process DSM Rate Adjustment proceedings. However, no statute or rule mandates any particular schedule for these proceedings. A utility that proposes a cost allocation or allocation revision may be required to agree to a longer procedural schedule to address this issue. There is no basis at this time to conclude that these issues could not be addressed in a DSM Rate Adjustment proceeding. However, we strongly encourage the Respondent Utilities to consider the nature and complexity of any proposed change, as well as the possible impact from any delay in implementing a DSM Rate Adjustment, in determining the appropriate forum for making its filing.

⁴ We note that Duke indicated that it would have no difficulty in opting out all meters on a single common rate schedule. Duke Late-Filed Ex. 1.

I. Opt-Out Rate. IPL, I&M and NIPSCO all propose to assess no DSM rate adjustment charge for qualifying customers that opt out for the period of July 1, 2014 through December 31, 2014.⁵ And, any costs that should be allocated to these customers will be reflected in new rates approved to be effective January 1, 2015. Vectren's proposed DSMA includes charges that qualifying opt-out customers remain responsible for. Vectren's proposal was to remove the EEFC component from its DSMA. Vectren will reflect any costs qualifying opted out customers are responsible to pay in a new EEFC charge applicable to opted out customers effective January 1, 2015. Duke proposed to change rates charged to customers who opt out. Duke witness Goldenberg explained that its proposed opt-out rate was developed by removing the revenue requirements associated with the estimated costs for 2014 energy efficiency programs from the revenue requirements that were included in the rates approved in Cause No. 43955 DSM 1, and then dividing by the same billing determinants used in that filing. We note that no party took exception to the Respondent Utilities' opt-out rate methodologies, or to the specific opt-out rates proposed by NIPSCO, Vectren and Duke in this proceeding. We find the approach of the Respondent Utilities to be reasonable. Accordingly, we approve the Respondent Utilities' proposed opt-out rate methodologies, and also approve the specific proposed opt-out rates as detailed in the respective prefiled testimony of Duke, NIPSCO and Vectren.

J. Conclusion. Based on the foregoing, we find that the Respondent Utilities' proposed opt-out procedures and tariffs, as represented by the revised tariffs filed in each of the Respondent Utilities' rebuttal cases, are reasonable and should be approved as discussed above. The Commission also approves Duke's, NIPSCO's and Vectren's specific proposed opt-out DSM Rate Adjustment factors.

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

1. The Respondent Utilities' proposed opt-out procedures, as modified by their rebuttal testimony and exhibits, are reasonable and are approved for implementation.
2. NIPSCO's proposed opt-out tariff language and opt-out rates, as shown in NIPSCO Exhibit AMB-R1, are hereby approved, and shall be effective upon its filing and approval with the Commission's Electricity Division.
3. Duke's proposed opt-out tariff language and opt-out rates, as shown in Duke Exhibit DLD-6, are hereby approved, and shall be effective upon its filing and approval with the Commission's Electricity Division.
4. I&M's proposed opt-out tariff language, as shown in I&M Exhibit JCW-R1, is hereby approved, and shall be effective upon its filing and approval with the Commission's Electricity Division.

⁵ IPL sought and received approval of its zero opt out rate in Cause No. 43623 DSM 9; I&M's large industrial rates for DSM are already at zero; NIPSCO is seeking approval of its proposed zero opt out rate in this proceeding.

5. IPL's proposed opt-out tariff language, as shown in IPL Exhibit LHA-R2, is hereby approved, and shall be effective upon its filing and approval with the Commission's Electricity Division.

6. Vectren's proposed opt-out tariff language and opt-out rates, as shown in Vectren South Exhibit SMK-R2, are hereby approved, and shall be effective upon its filing and approval with the Commission's Electricity Division.

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

STEPHAN, MAYS, AND ZIEGNER CONCUR; WEBER NOT PARTICIPATING:

APPROVED: JUN 30 2014

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



Brenda Howe
Secretary to the Commission