

**ORIGINAL**



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

**CAUSE NO. 44441**  
**APPROVED: SEP 03 2014**

**ORDER OF THE COMMISSION**

**Presiding Officers:**  
**David E. Ziegner, Commissioner**  
**Loraine 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”).<sup>1</sup>

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 340<sup>2</sup> (“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 entry modifying the caption in this Cause to reflect the passage of SEA 340, and establishing a new procedural

<sup>1</sup> 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”).  
<sup>2</sup> Codified at Ind. Code § 8-1-8.5-9.

schedule for this Cause. The procedural schedule consisted of two phases.

On June 30, 2014, the Commission issued an Order in the first phase, which addressed requests by the Respondent Utilities for approval of tariffs implementing the requirements of SEA 340.

The second phase (“Phase II”) was 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 II procedural schedule, on May 19, 2014, the OUCC, Wal-Mart, Kroger, and CAC filed requests for consideration of additional issues; on June 6, 2014, the Respondent Utilities, IIG, Nucor, SDI, and CAC filed responses to the requests for consideration of additional issues.

**1. Requests for Consideration of Additional Issues.**

**A. OUCC.** The OUCC asks the Commission to consider commencing an investigation into the following issues:

(1) whether regulated electric utilities should be subject to energy savings goals after December 31, 2014;

(2) whether a new investigation should be opened to generally consider all aspects of DSM in Indiana;

(3) whether customers electing to opt out of DSM should be required to perform evaluation, measurement, and verification (“EM&V”) activities and report verified energy savings to the Commission in light of the proposed regulations under Section 111(d) of the Clean Air Act (“Section 111(d)”);

(4) examination of the relationship between DSM and the Integrated Resource Planning (“IRP”) process;

(5) whether independent, third-party energy efficiency audits should be conducted of regulated electric utilities for purposes of identifying cost-effective DSM;

(6) examination of the relationship between water, wastewater, and energy usage for purposes of DSM programming; and

(7) examination of the relationship between natural gas and electric utilities for purposes of DSM programming.

**B. Wal-Mart.** Wal-Mart asks the Commission to consider whether certain large commercial customers should be allowed the opportunity to opt out of electric utility DSM programs.

**C. Kroger.** Kroger request the Commission consider whether certain large commercial customers should be allowed to avoid the fees associated with utility-sponsored DSM programs by pursuing their own DSM programs.

**D. CAC.** The CAC requests Commission consideration of the following additional issues:

(1) the impact on regulated electric utilities and customers of a utility resource portfolio that does not include industrial energy efficiency resources;

(2) whether industrial customers that opt out should be considered “free riders” and continue paying the fixed costs of DSM programs;

(3) the effect of the industrial customer opt out in SEA 340 on compliance with Section 111(d) relating to carbon dioxide regulation.

(4) whether and how energy and demand savings from industrial customers that opt out can be used by regulated electric utilities in the IRP process;

(5) whether a highly structured self-direct program should be offered to customers as an alternative to opt out;

(6) whether the Commission should adopt rules or guidelines to assist customers in complying with the opt out provision in SEA 340 or to require opt out customers to provide EM&V reports concerning the customers own energy efficiency measures;

(7) whether an oversight board should be established to monitor and evaluate compliance with SEA 340;

(8) determination of a mechanism to be used by opt out customers to pay for the regulated electric utilities’ administrative expenses related to implementing the opt out provisions; and

(9) establishment of criteria for determining “reasonable and cost effective” DSM programs and the role of various oversight boards in developing DSM programs.

**2. Responses to Requests.**

**A. Respondent Utilities.** The Respondent Utilities responded that many of the suggested issues for Commission investigation are either beyond the scope of this proceeding, addressed by SEA 340, better suited for discussion in an individual utility’s IRP or DSM proceeding, or more appropriately addressed in response to the Commission’s General Administrative Order 2014-1. They also asserted that any investigation concerning Indiana’s compliance with Section 111(d) would be premature as the federal rule has yet to be finalized; the mandating of energy efficiency audits invades a utility’s management responsibilities; expanding the scope of an electric DSM investigation to other types of utilities and their services would be administratively burdensome and not beneficial to electric utility customers; and the issues raised by Wal-Mart and Kroger have been fully briefed and are better addressed in Cause No. 44310.

**B. IIG.** IIG requests the Commission refrain from expanding the scope of this proceeding to address any of the issues raised by the OUCC or CAC because they run counter to SEA 340, have already been resolved, or can be addressed in other forums.

C. **Nucor and SDI.** Nucor and SDI noted that Phase II of this proceeding was limited to considering other issues related or arising as a result of the industrial customer opt out provided for in SEA 340. Nucor and SDI assert that all of the OUCC's and many of the CAC's issues extend beyond the specified scope of Phase II. In addition, the other issues raised by the CAC are contrary to SEA 340, seek action beyond the Commission's statutory authority, or are premature.

D. **CAC.** The CAC supported Commission consideration of the OUCC's issues, but opposed Commission consideration of a commercial opt out as advocated by Wal-Mart because SEA 340 already addresses and limits those who may opt out. However, the CAC did not oppose consideration of self-direct DSM programs, such as in Cause No. 44310, which is currently being held in abeyance pending a decision in this Cause.

3. **Commission Discussion and Findings.** Having reviewed the issues identified by the parties for additional consideration, the Commission finds that none of the issues are appropriate for further consideration in this Cause. The Commission has broad discretion to investigate matters pertinent to public utilities operating within the state. *See* Ind. Code §§ 8-1-2-58 to -69. As indicated above, the Commission originally commenced this investigation to consider the continued reasonableness of certain large customer participation in utility DSM programs. However, the passage of SEA 340 and its provision for certain "industrial customers" to opt out from utility DSM programs necessitated a change in the purpose or focus of the investigation. First and foremost, the investigation was modified to address the Regulated Utilities' implementation of the legislative directive that industrial customers be allowed to opt out of utility DSM programs. Accordingly, the Commission's June 30, 2014 Order in this Cause ("Phase I Order") addressed the procedures for an industrial customer to opt out of a Regulated Utility's DSM programs and approved necessary changes to utility rules and tariffs.

Secondly, to ensure that all issues related to SEA 340's industrial customer opt out provision were addressed, a second phase was established to allow the parties to identify and raise with the Commission any additional associated issues outside the time constraints of Phase I. As discussed at the Attorneys Conference and further indicated in the Presiding Officers' April 30, 2014 Docket Entry, Phase II was limited to the consideration of "issues related to or arising as a result of the industrial customer opt out provided for in SEA 340," and not intended to address DSM programs or the requirements for implementing DSM generally in Indiana. Rather, the Governor's March 27, 2014 letters, one to the Commission and the other to the Legislative Leaders, made clear the Governor's intent to consider DSM and a "new legislative framework" in the 2015 legislative session.

As noted by several of the parties, the majority of the issues proposed for consideration are beyond the defined scope of the Phase II proceeding. While the Commission is aware that the landscape of DSM in Indiana has changed substantially since the passage of SEA 340, the scope of this investigation was defined as addressing implementation of the industrial customer opt out and associated issues. All of the OUCC's proposed issues are broader and more general in nature, relating to the manner in which DSM should be considered and implemented in Indiana. As noted by IIG, these issues are currently being addressed through the Commission's General Administrative Order 2014-1, which solicited public comment to assist the Commission in responding to the Governor's March 27, 2014 letter. The only issue raised by the OUCC related to the industrial customer opt out, i.e., performance of EM&V and reporting of energy savings by

opted out customers, was raised in the Phase I portion of this proceeding, but not accepted by the Commission. SEA 340 does not impose any such obligations upon an industrial customer that has exercised its statutory right to opt out of a utility's DSM programs.

Similarly, the CAC raised several issues that are beyond the scope of the industrial customer opt out provision or already addressed by the Phase I Order and the explicit requirements (or lack thereof) in SEA 340. More specifically, issues 1 and 4 raise general concerns the opt out provision may have on utility resource planning; issues 2, 6 - 8 are addressed through the language of SEA 340; and issue 9 concerns DSM generally. In addition, although these issues may not be appropriate for consideration in Phase II of this proceeding, they may be appropriate for consideration in other Commission proceedings, such as in a utility's IRP process for stakeholder input or an individual utility's DSM tracker or program approval proceeding. With respect to the concern the industrial opt out provision may have on Section 111(d) compliance, EPA has yet to issue its final rule and is therefore premature for consideration in this proceeding.

Finally, the CAC's suggestion to consider a structured self-direct DSM program was also raised by Kroger and, to a similar degree, Wal-Mart. However, as noted by the other parties, this issue is already the subject of a Commission investigation that is currently pending in Cause No. 44310.

Accordingly, and for the reasons set forth above, the Commission finds that none of the proposed issues for consideration fall within the defined scope of the investigation and no further action is necessary for implementation of the industrial customer opt out provision contained in SEA 340. The Attorneys Conference scheduled for October 9, 2014 is vacated and this investigation is closed.

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

1. The Attorneys Conference scheduled for October 9, 2014 is vacated and this investigation is closed.
2. This Order shall be effective on and after the date of its approval.

**STEPHAN, MAYS-MEDLEY AND ZIEGNER CONCUR;**  
**WEBER NOT PARTICIPATING;**

**APPROVED: SEP 03 2014**

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

  
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**Brenda Howe**  
**Secretary to the Commission**