

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF ANDERSON MUNICIPAL LIGHT & POWER, CRAWFORDSVILLE ELECTRIC LIGHT & POWER, FRANKFORT CITY LIGHT & POWER, KINGSFORD HEIGHTS MUNICIPAL ELECTRIC UTILITY, KNIGHTSTOWN ELECTRIC UTILITY, LEBANON UTILITIES, RICHMOND POWER & LIGHT, AND TIPTON MUNICIPAL UTILITIES FOR RELIEF FROM THE COMMISSION’S DECEMBER 9, 2009 PHASE II ORDER IN CAUSE NO. 42693 AND ANY ADDITIONAL REQUIREMENTS THAT MAY BE IMPOSED IN CAUSE NOS. 44310 OR 44441, PURSUANT TO I.C. 8-1-2.5 ET SEQ.

CAUSE NO. 44473

APPROVED:

SEP 03 2014

ORDER OF THE COMMISSION

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

On March 31, 2014, Anderson Municipal Light & Power (“AML&P”), Crawfordsville Electric Light & Power (“CEL&P”), Frankfort City Light & Power (“FCL&P”), Kingsford Heights Municipal Electric Utility (“KHMEU”), Knightstown Electric Utility (“KEU”), Lebanon Utilities (“Lebanon Utilities”), Richmond Power & Light (“RP&L”), and Tipton Municipal Utilities (“TMU”) (collectively the “Joint Petitioners”) filed a Verified Joint Petition with the Indiana Utility Regulatory Commission (“Commission”). Joint Petitioners request relief from the requirements established in the Commission’s December 9, 2009 Order issued in Cause No. 42693 (the “Phase II Order”) and any additional requirements that may result from the Commission’s Orders in Cause Nos. 44310 or 44441. On April 1, 2014, Joint Petitioners filed the direct testimony and exhibits of James R. French in support of the relief requested in their Verified Joint Petition.

A Prehearing Conference was held at 9:30 a.m. on May 27, 2014 in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Counsel for Joint Petitioners and the Indiana Office of Utility Consumer Counselor (“OUCC”) appeared and participated at the Prehearing Conference. Prior to the opening of the record and with the consent of all parties in attendance, an informal discussion was held regarding procedural and scheduling matters. During that discussion, counsel for the OUCC indicated the OUCC did not intend to prefile testimony in this proceeding.

An evidentiary hearing was held at 1:30 p.m. on July 7, 2014 in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. During the evidentiary hearing, Joint Petitioners’ testimony and exhibits 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. **Notice and Jurisdiction.** Due, legal, and timely notice of the hearings conducted in this Cause was given and published by the Commission as required by law. Each Joint Petitioner is a municipally owned utility as that term is defined in Ind. Code § 8-1-2-1(h). Joint Petitioners' respective 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 in accordance with Ind. Code § 8-1.5-3-8 and Ind. Code § 8-1.5-2-19. Each Joint Petitioner is an "energy utility" within the meaning of Ind. Code § 8-1-2.5-2. Accordingly, the Commission has jurisdiction over Joint Petitioners and the subject matter of this Cause.

2. **Joint Petitioners' Characteristics.** Joint Petitioners are members of the Indiana Municipal Power Agency ("IMPA") and purchase all of their electric power and energy requirements from IMPA pursuant to the terms of separate and substantively identical Power Sales Contracts. Joint Petitioner, AML&P provides retail electric service to approximately 35,950 consumers located within its assigned service area in and around the City of Anderson, Indiana. CEL&P furnishes retail electric service to approximately 9,767 customers in and around the City of Crawfordsville, Indiana. FCL&P furnishes retail electric service to approximately 9,100 consumers located in and around the City of Frankfort, Indiana. KHMEU furnishes retail electric service to approximately 525 consumers located in and around the Town of Kingsford Heights, Indiana. KEU furnishes retail electric service to approximately 1,700 consumers located in and around the Town of Knightstown, Indiana. Lebanon Utilities furnishes retail electric service to approximately 8,600 consumers located in and around the City of Lebanon, Indiana. RP&L furnishes retail electric service to approximately 21,100 consumers located in and around the City of Richmond, Indiana. TMU furnishes retail electric service to approximately 4,200 consumers located in and around the City of Tipton, Indiana.

3. **Background and Relief Requested.** The Commission's Phase II Order created a framework for developing a comprehensive State-wide demand side management ("DSM") initiative to assist jurisdictional electric utilities in meeting the Commission's 2% annual energy savings goals. As part of that initiative, the Phase II Order required each jurisdictional electric utility to offer five Core DSM programs to customers located in their respective assigned service areas as part of its basic utility service offering. The Phase II Order also created a DSM Coordination Committee ("DSMCC"), which was directed to issue a Request for Proposals to select a third party administrator ("TPA") to oversee and coordinate the five Core DSM programs. Jurisdictional electric utilities were required to enter into a contract with the chosen TPA, as well as a contract with a second TPA which would be responsible for evaluation, measurement and verification ("EM&V") of the Core DSM programs. The five Core DSM programs comprise what is known as the "Energizing Indiana Program."

Although the Joint Petitioners were not made individual members of the DSMCC, IMPA was made a member of the DSMCC. Accordingly, IMPA acted as the "face" of Energizing Indiana Program participation on behalf of its jurisdictional members. On October 21, 2011, IMPA entered into a Master Services Agreement with GoodCents, the chosen TPA, setting forth the terms under which GoodCents would provide the Core DSM Programs within the assigned service areas of all of IMPA's 59 member municipalities.

On February 27, 2013, the Commission initiated Cause No. 44310 to consider whether to pursue adoption of a structured self-direct DSM program for certain large customers. On January 16, 2014, the Presiding Officers issued a Docket Entry finding that Cause No. 44310 should be held in abeyance pending the Commission's decision in Cause No. 44441, which the Commission convened on the prior day to consider and review the continued reasonableness of requiring the participation of certain large customers in utility-sponsored DSM programs.

On December 13, 2013, the IMPA Board of Commissioners voted to terminate IMPA's voluntary participation in the Energizing Indiana Program. IMPA notified the Commission of that decision on December 16, 2013 in a *Notice of Proposed Change in Status on the DSM Coordinating Committee and Motion to Withdraw as an Intervening Party of the Indiana Municipal Power Agency*. By Docket Entry dated January 22, 2014, the Presiding Officers in Cause No. 42693-S1 granted IMPA's Motion and ordered Joint Petitioners, jointly or individually, to file with the Commission: (1) a plan for compliance with the Phase II Order outlining specific steps to be taken and dates for completion, or (2) a Petition seeking alternative relief by April 1, 2014.

On March 18, 2014, Senate Enrolled Act ("SEA") 340 was passed by the Indiana General Assembly and allowed to become law by the Governor effective March 28, 2014. SEA 340 provides that the "commission may not: (1) extend, renew, or require the establishment of an energy efficiency program under; or (2) after December 31, 2014, require an electricity supplier to meet a goal or target established in" the Phase II Order. SEA 340 further prohibits electricity suppliers from entering into a new contract with a State-wide TPA for a DSM Program approved in the Phase II Order and allows "industrial customers" to "opt out of participating in an energy efficiency program that is established by an electricity supplier in response to a DSM order by providing notice to the electricity supplier."

Following the enactment of SEA 340, the Commission modified the scope of Cause No. 44441 to consider requests by utilities for approval of tariffs implementing that portion of SEA 340 allowing industrial customers to "opt out of participating in an energy efficiency program ... established by an electricity supplier in response to a DSM order...." The Commission issued an Order in Cause No. 44441 on June 30, 2014 approving "opt out" tariff language and "opt out" rates filed by Duke Energy Indiana, Inc.; Indiana Michigan Power Co.; Indianapolis Power & Light Co.; Northern Indiana Public Service Company; and Southern Indiana Gas & Electric Co. d/b/a Vectren Energy Delivery.

In their Verified Joint Petition, Joint Petitioners request relief from the Commission's Phase II Order in the form of exemptions from direct participation in the Core DSM programs and other requirements thereof. Joint Petitioners further seek relief from any additional requirements the Commission may impose in Cause Nos. 44310 or 44441. Joint Petitioners elected to become subject to Ind. Code §§ 8-1-2.5-5 and -6, to the extent the relief they seek is subject to an alternative regulatory plan ("ARP"). Joint Petitioners' Exhibit JRF-1 demonstrates that public notice of the filing of this Cause was provided by Joint Petitioners in accordance with Ind. Code § 8-1-2.5-6(d).

4. Joint Petitioners' Evidence. RP&L's General Manager, James R. French, explained why Joint Petitioners believe it is impracticable for them to participate in the

Energizing Indiana Program. He testified that although Joint Petitioners differ from each other in the approximate number of customers and annual MWH sales, each Joint Petitioner is comparatively much smaller than other participants in the Energizing Indiana Program.

Mr. French also noted that until its withdrawal, IMPA participated in the DSMCC and oversaw the implementation of the Energizing Indiana Program on behalf of all of its members, including the Joint Petitioners. According to Mr. French: (i) a representative of IMPA and IMPA's in-house counsel regularly attended DSMCC meetings; (ii) IMPA was involved in the development of the requests for proposals for the TPA to oversee and coordinate five core DSM programs as well as the second EM&V TPA; (iii) IMPA entered into Master Services Agreements with both TPAs for services provided in the retail service territories of all of its members; (iv) IMPA oversaw the provision of services under the Master Services Agreements with the TPAs and communicated directly with the TPAs; and (v) IMPA handled administrative tasks required for IMPA's members to participate in the Energizing Indiana Program, including the supply of data to the TPAs on behalf of members and filing necessary reports with the Commission.

Mr. French stated that IMPA also was responsible for payment to the TPAs under the Master Services Agreements. IMPA included those costs in the development of its wholesale rates to IMPA members, which in turn were recovered by Joint Petitioners through their respective wholesale power tracking factors or in base rates.

According to Mr. French, IMPA's Board of Commissioners voted to terminate IMPA's participation in the Energizing Indiana Program on December 13, 2013 after determining that "it would be more beneficial to its members for IMPA to pursue an internally-managed, more modest and cost-effective energy efficiency program tailored to the unique nature of IMPA members." Joint Petitioners' Exhibit JRF at 9. In particular, IMPA estimated that the average residential rate for its members would be approximately 11% higher through continued participation in the Energizing Indiana Program than it would be if IMPA were to independently pursue more cost-effective energy efficiency programs. Based on that determination, Mr. French stated that IMPA terminated its agreements with the TPAs effective January 1, 2014.

Mr. French testified regarding his general understanding that control over municipal utility operations is vested in either a: (i) municipal works board, (ii) utility service board, or (iii) board consisting of members of the municipal legislative body. Among other things, the board is responsible for awarding contracts and adopting rules for the safe, economical, and efficient management and protection of the utilities under its control. Mr. French sponsored Joint Petitioners' Exhibit JRF-4, which is a Resolution of the Board of Directors of RP&L finding that RP&L should participate in the DSM and energy efficiency programs offered by IMPA and file a Joint Petition with the Commission seeking an exemption from RP&L's direct participation in the Energizing Indiana Program. Mr. French stated that each of Joint Petitioners' respective boards had adopted a substantially similar Resolution. Certified copies of Resolutions adopted by the boards of the other Joint Petitioners were included in Joint Petitioners' Exhibit JRF-5.

Mr. French stated that Joint Petitioners' respective boards decided to offer the IMPA DSM programs rather than participate in the Energizing Indiana Program because they are

concerned Joint Petitioners will be unable to effectively participate in the Energizing Indiana Program without IMPA's participation on the DSMCC and continuing to act as the "face" of their participation. In addition, Mr. French stated that as long-time members of IMPA, Joint Petitioners have confidence that IMPA has and will continue to effectively design energy efficiency programs specifically tailored to meet their respective needs. Mr. French noted that as members of IMPA, Joint Petitioners have input into the design of the programs offered in their communities.

Mr. French further testified that Joint Petitioners are concerned about the cost of participating in a State-wide program, which would have to be spread over their much smaller customer bases leading to higher per unit rates and charges for service. In addition, Mr. French stated that to effectively participate in the Energizing Indiana Program or a similar program, RP&L and the other Joint Petitioners would need to add staff with the technical experience necessary to oversee the TPAs. Mr. French explained "[u]nlike IMPA and the other members of the DSMCC, Joint Petitioners generally do not have staff with DSM expertise that would be able to work with the TPA – we depend on, and pay, IMPA for that type of expertise." Joint Petitioners' Exhibit JRF at 16. Mr. French noted that some of the Joint Petitioners have very few employees. For instance, KHMEU and KEU have 2 and 4 employees, respectively.

Mr. French also stated that IMPA performed and continues to perform the data collection and delivery functions for Joint Petitioners under IMPA's energy efficiency programs. Many of the Joint Petitioners do not have Information Technology ("IT") groups or departments that could independently perform these functions in connection with the Energizing Indiana Program or any successor program.

Mr. French further testified that none of the Joint Petitioners have approved rate mechanisms to recover costs that would be associated with offering the Energizing Indiana Program or any other Commission-approved energy efficiency program. Rather, the cost of offering the Energizing Indiana Program was passed along to all of IMPA's members through IMPA's wholesale rates, as are the costs of the current IMPA energy efficiency program. Therefore, as a prerequisite to directly participating in any State-wide DSM program, each of the Joint Petitioners would need to seek regulatory approval to implement a separate cost recovery mechanism to recover directly from customers the costs associated with the start-up, implementation and evaluation of DSM Programs.

Mr. French stated that Joint Petitioners began offering IMPA's energy efficiency programs on January 1, 2014. Mr. French described each of IMPA's residential and commercial and industrial programs. IMPA's residential energy efficiency program provides residential customers the opportunity to earn rebates on qualifying heating, ventilation, and air conditioning installations. In addition, IMPA's website includes a "Home Energy Suite" designed to help customers manage their energy use and find ways to improve their homes' energy efficiency. Mr. French stated that commercial and industrial customers are eligible for incentives for implementing the following energy-saving measures: energy efficient lighting; heating, ventilation, and air conditioning; variable frequency drives; and refrigeration and other food service controls.

Mr. French stated that, in his opinion, it is not in the public interest for Joint Petitioners to

offer both IMPA's energy efficiency programs and the Energizing Indiana Program or other similar State-wide DSM programs. Mr. French stated that certain costs relating to the Energizing Indiana Program duplicate IMPA's energy efficiency program costs and EM&V costs Joint Petitioners already pay as part of IMPA's wholesale rates. In Mr. French's opinion, this duplication of costs for energy efficiency programs could be substantial. Mr. French believes paying for both types of programs would be unduly burdensome for the Joint Petitioners and their respective ratepayers.

5. Commission Discussion and Findings. Joint Petitioners seek relief from the requirements imposed in the Commission's Phase II Order as well as any additional requirements that may be imposed in Cause Nos. 44310 or 44441. To the extent necessary, Joint Petitioners seek Commission approval of their request under Ind. Code §§ 8-1-2.5-5 and -6, which authorizes the Commission to determine the degree to which it should exercise jurisdiction over energy utilities, taking into consideration the public interest and other specific factors identified therein, and to approve an ARP.

No party opposed Joint Petitioners' request for relief. Notwithstanding the lack of opposition, the Commission must independently determine whether the evidence in this Cause is sufficient to support the relief sought. Although Joint Petitioners frame their request as one for ARP approval, they have not proposed an alternative plan. Instead, Joint Petitioners generally request that the Commission decline to exercise its jurisdiction over Joint Petitioners regarding the offering of the Core DSM programs and other related requirements of the Phase II Order and the Orders to be issued in Cause Nos. 44310 and 44441 concerning the participation of certain large customers in DSM programs.

Pursuant to Ind. Code § 8-1-2.5-5, "...on the request of an energy utility electing to become subject to this section, the commission may enter an order, after notice and hearing, that the public interest requires the commission to commence an orderly process to decline to exercise, in whole or in part, its jurisdiction over either the energy utility or the retail energy service of the energy utility, or both." In determining whether the public interest will be served, Ind. Code § 8-1-2.5-5(b), requires the Commission 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 Joint Petitioners in light of these factors to determine whether the public interest will be served in approving their request.

Indiana law requires consideration of DSM when determining whether to issue a certificate of public convenience and necessity for the construction of new generation. Ind. Code § 8-1-8.5-4. Consequently, DSM provides an essential resource option for ensuring a utility is engaging in least-cost planning and endeavoring to provide reasonably adequate electric service at just and reasonable rates.¹

As indicated above, the Phase II Order resulted from a Commission investigation into DSM offerings in the State of Indiana. The Commission's April 23, 2008 Order in Cause No. 42693 ("Phase I Order") concluded that cost-effective DSM programs act to reduce energy costs, provide economic benefits, mitigate environmental issues and lessen costs associated with new or increased regulatory requirements regarding energy generation. Phase I Order at 31. In Phase II of the Commission's investigation, we established specific objectives and established a State-wide DSM Program to be a part of the basic utility service offering in each jurisdictional utility's service territory. Phase II Order at 35.

Joint Petitioners are relatively small municipally-owned electric utilities that purchase all of their electric power and energy requirements from IMPA. Joint Petitioners' rates and charges for electric service, which would include the rates associated with offering DSM programs, are not only subject to the Commission's approval, but also the approval of their respective municipal legislative bodies. Joint Petitioners generally do not have IT departments or employees with DSM expertise. Nor do Joint Petitioners have Commission-approved trackers or tariffs that recover DSM program costs.

To effectively participate in the Energizing Indiana Program and the associated Phase II Order requirements, Joint Petitioners presented evidence indicating they would likely need to, at a minimum, retain additional employees with experience in DSM, become actively involved in the DSMCC, create and seek approval for implementation of a cost recovery mechanism that would allow for recovery of costs associated with offering the DSM programs and the related requirements, retain legal counsel to assist with the necessary filings, and address any IT issues associated with data transfers between the utility and TPAs. These costs would be spread over Joint Petitioners' relatively small customer bases.

Pursuant to SEA 340, the State-wide Energizing Indiana Program established by the Phase II Order will expire on December 31, 2014. Given the passage of SEA 340 and the limited remaining duration for the Energizing Indiana Programs, we find that the public interest will best be served by approving Joint Petitioners' requested relief. We also note that Joint Petitioners already are offering, through IMPA, a portfolio of energy efficiency programs. The IMPA DSM offerings include programs for residential, commercial, and industrial customers, several of which are similar to the Core DSM programs. Because each Joint Petitioner is represented on IMPA's Board of Commissioners, they have input into the design of the programs offered in

¹ We note that the importance of cost-effective DSM programs in Indiana may further increase depending on the U.S. Environmental Protection Agency's adoption of its proposed carbon pollution emission guidelines under Section 111(d) of the Clean Air Act.

their communities to better ensure cost-effectiveness of the programs for their particular customers. Moreover, each Joint Petitioner is offering the same energy efficiency programs as the other municipal members of IMPA, which results in consistency across their respective service territories. In addition, offering DSM programs through IMPA allows Joint Petitioners to take advantage of IMPA's expertise.

Accordingly, we find it beneficial for the Commission to decline to exercise its jurisdiction over Joint Petitioners regarding the offering of the Core DSM programs and other related requirements of the Phase II Order for the remaining months in 2014 as well as any additional requirements that may be imposed in Cause Nos. 44310 or 44441 concerning the participation of certain large customers in Commission-approved DSM programs.

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

1. Joint Petitioners' request for relief from the requirements imposed by the Commission's Phase II Order, including the requirement to participate in the Core DSM programs, and any additional requirements that may be imposed in Cause Nos. 44310 or 44441 is granted.

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

Commission Charges:	\$1,002.53
Legal Advertising Charges:	790.68
OUCG Charges:	<u>351.50</u>
Total:	\$2,144.71

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

STEPHAN, MAYS-MEDLEY, WEBER AND ZIEGNER CONCUR:

APPROVED: SEP 03 2014

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


Brenda A. Howe
Secretary to the Commission