

*Indiana Office of Utility Consumer Counselor's 9-7-18 Comments
on IURC Draft IRP and DSM Rules in RM15-06 a/k/a LSA 18-127*

**STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION
RM 15-06 / LSA Document # 18-127**

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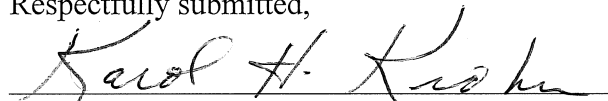
**INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR'S
COMMENTS ON AND RECOMMENDED CHANGES TO THE INDIANA
UTILITY REGULATORY COMMISSION'S DRAFT PROPOSED RULES
AMENDING 170 IAC 4-7 ON INTEGRATED RESOURCE PLANNING AND
170 IAC 4-8 ON ENERGY EFFICIENCY AND DEMAND RESPONSE PROGRAMS**

The Indiana Office of Utility Consumer Counselor ("OUCC") submits the attached proposed changes to and comments on the Indiana Utility Regulatory Commission's ("Commission's") 2018 proposed rules to amend the Commission's integrated resource planning ("IRP") rule in 170 IAC 4-7 and its energy efficiency ("EE") and demand response ("DR") rule in 170 IAC 4-8.

The OUCC appreciates the Commission's investment of significant time and effort and its thoughtful consideration of these and prior comments and changes submitted in the rule development phase of this proceeding.

The OUCC understands that, since the Commission will promptly post all comments received on its public web page for RM 15-06, parties are not required to serve their submissions on other interested stakeholders.

Respectfully submitted,



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The Indiana Office of Utility Consumer Counselor ("OUCC") submits the following comments and requested changes to RM 15-06:

1. At the top of page 3, between the definitions of "Director" in 170 IAC § 4-7-1(k) and "Distributed generation" in 170 IAC § 4-7-1(l), insert the following new definition:

(#) "Discount rate" means the rate at which utility customers are reasonably expected to trade present costs and benefits for future costs and benefits.

If the above change is made, two additional changes will be needed:

- A. On p. 5 in 170 IAC § 4-7-1(dd), change the last few words of the definition of "Present value" from "an interest rate" to "a discount rate," as follows:

(dd) "Present value" means the current value of a future sum or stream of money, calculated by discounting the sum or stream of money by ~~an interest~~ **a discount** rate.

-and-

- B. On p. 22, a similar change would be needed in 170 IAC § 4-7-8(b)(3), to substitute "discount rate" for "interest rate", as follows:

(3) The present value of revenue requirement for each candidate resource portfolio in dollars per kilowatt-hour delivered, with ~~interest~~ **discount** rate specified.

The OUCC urges the Commission to avoid use of the phrase "interest rate", because that term is often used to describe the level of interest accruing on debt. The term "discount rate" is standard terminology from the literature on cost-benefit analysis and investment decision-making pertaining to the trade-off between present and future costs and benefits. The definition proposed by the OUCC presents that standard definition and identifies that it is the customer's tradeoff that should be represented in the IRP. It is customers that will

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ultimately be required to pay for whatever new generation is selected through the Integrated Resource Planning (“IRP”) process, because the IRP is used to inform CPCN applications and thus customers will ultimately have to pay for related plant. The use of a customer-focused discount rate does not harm the utility in any way, because its use is only directed at the capital investment decision, not the recovery of revenue requirement. Rather it seeks to ensure that decisions that ultimately affect the affordability of electricity in Indiana are made in a way that Hoosier residents and businesses wish those decisions to reflect the tradeoffs between the present and the future.

2. At the top of p. 4, 170 IAC 4-7-1(t) references FERC’s Form 715 and includes cites to the Federal Register (“FR”), without citing the Code of Federal Regulations (“CFR”). Consider using the CFR cite instead of the FR cites, as follows:

(t) “FERC Form 715” means the annual transmission planning and evaluation report required by the FERC, ~~as adopted in 58 FR 52436, Oct. 8, 1993, and as amended by Order 643, 68 FR 52095, September 2, 2003~~ **in 18 CFR § 141.300.**

3. 170 IAC 4-7-2(a) on p. 7, establishes a 3-year filing rotation schedule for utilities required to submit IRPs (i.e., the five investor-owned electric utilities, IMPA, Hoosier Energy and WVPA). Some utilities have already asked the Commission’s Director of Research, Policy and Planning (Dr. Brad Borum) to extend their assigned IRP submission deadline or to permit them to file a revised or updated IRP in less than three years. The OUCC originally supported a 3-year rotating schedule to reduce the number of IRPs its technical staff would have to review in any given year. The desire to achieve a more convenient and better balanced workload became even more important to OUCC staff after learning it would have

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to cover approximately 25 public stakeholder meetings per 3-year IRP submission cycle (i.e., five meetings for each of the five Indiana investor-owned electric utilities.)

It remains unclear how special scheduling requests might impact the balanced 3-year rotation schedule in 170 IAC 4-7-2(a). For instance, if the Commission permits any of the five IOUs to submit IRPs at off-schedule times, will that alter the work balance implicit in the current rotation schedule, or should requests for scheduling changes be conditioned on an IOU agreeing to submit its next IRP in less than three years?

If the IURC (like the OUCC) prefers a more flexible approach to IRP scheduling issues, the OUCC recommends deleting the standing 3-year rotation schedule in 170 IAC 4-7-2(a) and moving it into a new General Administrative Order (“GAO”) which would provide greater flexibility for the Commission, the utilities, and other participating stakeholders. **The Commission’s proposed new language for 170 IAC 4-7-2(a), including subsections (1) through (3), and 170 IAC 4-7-2(b), should be deleted and replaced** with the following language:

(a) The Commission will separately establish and maintain a submission schedule for IRPs that distributes all IRP submissions in a fair and balanced manner across a 3-year rotating schedule. If utilities seek leave to deviate from their place in the 3-year rotation schedule, all interested parties should be permitted to voice their support for or opposition to the utility’s request and the utility should be given an opportunity to reply before a determination is made by the Commission or its Director of Research, Policy and Planning as to how, if at all, a permitted deviation from a standing 3-year rotation schedule will impact the utility’s next IRP submission deadline.

4. Language in 170 IAC 4-7-2(c)(2), in the paragraph below sub-section “D” on page 8 suggests that utilities can unilaterally decide to withhold information from their IRPs or

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supporting workpapers. The OUCC requests that the Commission clarify that the language permitting a utility to withhold information only applies to information the utility considers confidential and only if the utility follows the procedures established by the Commission for obtaining preliminary or final findings of confidentiality with protection from public disclosure under 170 IAC 4-7-2.1. That can be made clear by inserting the word “publicly” before the word “provide” on the first line of text after subsection D, as follows:

“If a utility does not **publicly** provide the above information....”

5. When utilities seek protection of confidential information under 170 IAC 4-7-2.1 on page 9, the utility should indicate how long the requested confidential treatment should last. In years past, the Commission limited the duration of such findings to two years, which was then the interval between IRP submissions. The presumption should be that any information deemed confidential in the last IRP will lose that protected status when the utility’s next IRP is filed, absent a utility showing good cause to continue protecting the confidentiality of certain information beyond the filing of the utility’s next IRP. This could also help simplify or reduce confidential document storage by the Commission. The OUCC recommends that the Commission insert a new subsection (c) after renumbering the current subsection to subsection (d). Language such as the following could be inserted as a new sub-paragraph (c) toward the bottom of page 9:

(c) Any findings of confidentiality made under this Section shall automatically terminate when the utility files its next IRP, absent a further determination by the Commission, after notice to interested stakeholders and an opportunity for all interested stakeholders to oppose extending the confidential treatment granted in the utility’s last IRP.

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6. On page 9, 170 IAC 4-7-2.1(a), in the middle of the 3rd line of that subsection, change “may” to “shall”, to read: “...**the utility or interested party shall instead....**” There is no reason to excuse electric utilities from complying with the Commission’s standard procedures for submitting information to the Commission the utility has identified as confidential, and allowing the Commission to decide whether that information should be exempted from Indiana’s public disclosure laws on a preliminary or final basis. Therefore, the OUCC recommends making the above language mandatory, rather than permissive, as described above.

7. Subsection 170 IAC § 4-7-2.1(c) (on page 9 of the proposed Rule) focuses on a utility not being prohibited from sharing information with interested parties under a non-disclosure agreement (“NDA”). The OUCC believes the Commission should go a step further, requiring Indiana electric utilities to treat as much information as possible as public information, creating an expectation that utilities will promptly share as much relevant information as possible with interested Stakeholders after the utility receives a mutually acceptable confidentiality agreement executed by the requesting Stakeholder. The following language could be added as a new, separate subsection “(d)”.

(d) Utilities submitting IRPs are encouraged to promptly submit as much supporting information as possible to each requesting stakeholder as public information. The Commission expects utilities submitting IRPs to endeavor to share as much information as possible with interested Stakeholders, and to promptly provide information considered confidential as soon as possible after the utility receives a mutually acceptable non-disclosure agreement executed by the requesting Stakeholder.

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8. On page 11, 170 IAC 4-7-2.3(b) addresses interim changes to prior IRP filings. Stakeholders should receive information from the utility if an IRP is updated due to significant changes or differences. The rule references 2 factors or circumstances that might prompt a stakeholder to challenge the utility's plan to update its IRP: "major differences" or "significant changes" since the utility's last IRP. The commission should consider using 1 modifier, rather than 2, to clarify. For instance, on lines 1 and 3 of 170 IAC 4-7-2.3(b), consider using "major differences" (line 1) and "major changes" (line 3) – or, alternatively, consider using: "significant differences" (on line 1) and "significant changes" (on line 3).

9. Questions for the Commission or its Director to Consider: If a utility wants to file a new IRP before 3 years have gone by, should it have to seek advance approval before submitting any changes? Should the utility have to give other interested parties (i.e., all stakeholders) advance notice & an opportunity to ask questions or make comments? Should any public stakeholder meetings be held to develop updates or to develop & a new IRP if a new one is being submitted less than 3 years after the previous one? What voice should public stakeholders have in the development of IRP updates or a new plan? The OUCC recommends that the Commission consider requiring one (1) or more stakeholder meetings before permitting an off-schedule filing that goes beyond simple corrections. That will help ensure that utilities honor the public stakeholder meeting requirement, rather than manipulating off-schedule filings to avoid the public stakeholder process when an off-schedule IRP filing significantly differs from the utility's last IRP.

10. On page 14, in the last line of 170 IAC § 4-7-4(5), delete the word "if":

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“...including the cost-benefit analysis ~~if~~ performed.”

Cost-benefit analyses ensure that customers' interests are being protected. Therefore, the optional word “if” should be removed.

11. On p. 30, remove ambiguity in the last line of 170 IAC § 4-8-3(b) by deleting the final phrase:

(b) The commission may approve a home energy efficiency assistance program as part of an energy efficiency plan, approved in its entirety or in part, whether or not the home energy efficiency assistance program is cost effective as analyzed in accordance with section 2(b)(3) of this rule ~~or as determined by the commission.~~

Utilities should be expected to follow the Commission's administrative rules. The deleted language unnecessarily invites deviation.

12. To limit this subsection to bill reductions from DSM programs, at the end of paragraph 170 IAC § 4-8-5(e), at the bottom of page 32, change “the reduction” to “**any resulting reduction**” and at the end of the same sentence, insert “...**confirmed as net energy savings through independent evaluation measurement and verification (“EM&V”).**” With those changes, the last clause in the first paragraph of 170 IAC § 4-8-5(e) should read as follows:

(e) ..., when combined with ~~the~~ **any resulting reduction in the participant's utility bill confirmed as net energy savings through independent evaluation measurement and verification (“EM&V”)**:

(1) reflects

13. Questions for the Commission and/or its Director to Consider: 170 IAC § 4-8-5(e) at the bottom of page 32 addresses the allocation of the costs and benefits of EE programs to participating and non-participating customers and to “utility shareholders”. Despite that language, the IURC has not granted past OUCC requests that utility shareholders be required

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to bear part of the utility's DSM program costs. Is it possible to include additional guidance as to when utility shareholders could reasonably be expected to bear a portion of the total cost of utility DSM programs, along with the significant benefits they already receive?

14. Do not delete language currently crossed out on 170 IAC § 4-8-8 (1), since the deleted language tracks language in the federal statute cited directly above it - *i.e.*, 16 U.S.C. § 2621(c)(3)(A) and 16 U.S.C. § 2621(c)(3)(B). The change the Commission is considering is unnecessary and could be confusing.