

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE COMMISSION'S )  
INVESTIGATION INTO THE POSSIBLE )  
APPROVAL OF A SELF-DIRECT DEMAND )  
SIDE MANAGEMENT PROGRAM FOR )  
CERTAIN LARGE CUSTOMERS )

CAUSE NO. 44310

APPROVED: FEB 27 2013

RESPONDENTS: INDIANA REGULATED )  
ELECTRIC UTILITIES PARTICIPATING IN )  
THE OFFERING OF CORE DSM PROGRAMS )

ORDER OF THE COMMISSION

**Presiding Officers:**

**David E. Ziegner, Commissioner**

**Loraine L. Seyfried, Chief Administrative Law Judge**

On December 9, 2009, the Indiana Utility Regulatory Commission (“Commission”) issued its Phase II Order in Cause No. 42693 (“Phase II Order”) wherein it found, among other things, that demand side management (“DSM”) must be available to all customer classes and market segments. Phase II Order at 29. However, the Commission specifically indicated that it was not foreclosing possible consideration of opt-out provisions as recommended in the May 2009 Indiana Electric DSM Investigation Phase II Report at some future date. *Id.* at 30.

Since the issuance of the Phase II Order, several commercial and industrial customers have raised in various Commission proceedings the issue of permitting certain large customers to not participate in electric utility DSM programs but instead invest in their own self-directed DSM programs. *See e.g., Southern Ind. Gas & Elec. Co.*, Cause No. 43938 (IURC Aug. 31, 2011); *Duke Energy Ind., Inc.*, Cause No. 43955 (IURC March 21, 2012). Given the upcoming submission of Requests for Proposals concerning the Core DSM Programs and electric utilities’ three-year DSM plans, the Commission believes it is appropriate to consider at this time whether to pursue the adoption of a “structured” self-direct DSM program for certain large customers. Specifically, whether the DSM expense allocated to certain large customers for Core and Core Plus Programs should be utilized to fund a self-direct DSM program whereby these qualifying customers may access the funds, or receive credits, to complete defined energy efficiency projects that are subject to evaluation, measurement and verification.

**1. Commission Jurisdiction and Review.** Pursuant to Ind. Code § 8-1-2-58, investigations such as this one may be summarily made, with or without notice. If the Commission becomes satisfied that sufficient grounds exist to warrant a hearing pertinent to the matters investigated, Ind. Code § 8-1-2-59 requires that the public utility involved be furnished a statement notifying it of the matters under investigation. In addition to the foregoing statutory provisions, the

Commission notes that the Indiana Court of Appeals has specifically found that inherent in this grant of power is the implicit power and authority to “do that which is necessary to effectuate the regulatory scheme.” *South Eastern Indiana Natural Gas v. Ingram*, 617 N.E.2d 943, 948 (Ind. Ct. App. 1993).

The Commission has broad discretion to investigate matters pertinent to public utilities operating within the state. Ind. Code § 8-1-2-58 states:

Whenever the commission shall believe that any rate or charge may be unreasonable or unjustly discriminatory or that any service is inadequate, or can not be obtained, or that an investigation of any matters relating to any public utility should for any reason be made, it may, on its own motion, summarily investigate the same, with or without notice.

Ind. Code § 8-1-2-1(a) defines “public utility” as follows:

...every corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by the court, that may own, operate, manage, or control any plant or equipment within the state for the:

\* \* \*

(2) Production, transmission, delivery or furnishing of heat, light water or power....

Accordingly, the Commission has jurisdiction over the subject matter of this investigation.

**2. Parties.** As this investigation will consider issues associated with the continued implementation of Core DSM Programs and the savings goals established in the Phase II Order for jurisdictional electric utilities, we find that all regulated electric utilities operating within the State of Indiana and participating in the Core DSM Programs should be named Respondents in this Cause and served with a copy of this Order. The Indiana Office of Utility Consumer Counselor should also be included on the service list and participate in this proceeding. In addition, we are aware that certain industrial customers, industrial consumer groups and other advocacy groups will have an interest in the issues that will be investigated in this proceeding and we encourage them to intervene herein.

**3. Commission Testimonial Staff.** In undertaking this investigation, the Commission finds that consideration and review of particular aspects associated with structured self-direct programs can be done most effectively through the utilization of Commission staff in preparing a Report (“Staff Report”) to the Commission recommending possible approaches to creating and implementing a structured self-direct program for large customers in Indiana. To allow for the development of the Staff Report, the Commission is designating Dr. Bradley Borum, Director of the Electricity Division, as testimonial staff (“Testimonial Staff”) in this proceeding. In addition, Ms. Beth Krogel Roads, Assistant General Counsel, will participate as counsel for Testimonial Staff.

The Staff Report will be filed in this Cause prior to the scheduled Technical Conference to allow for a more informed discussion of the issues and to establish future procedural dates.

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

1. An investigation is hereby commenced to allow the Commission to consider and review the possible approval of a “structured” self-direct DSM program for certain large customers.
2. All regulated electric utilities operating within the State of Indiana and participating in the Core DSM Programs shall be made Respondents in this Cause and shall be served with a copy of this Order.
3. A Technical Conference to discuss and further define the issues for this proceeding, as well as establish a procedural schedule, is set for March 22, 2013 at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana.
4. This Order shall be effective on and after the date of its approval.

**ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:**

**APPROVED: FEB 27 2013**

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

  
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**Brenda A. Howe**  
**Secretary to the Commission**