

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF DUKE ENERGY INDIANA, LLC)
FOR APPROVAL OF A SOLAR SERVICES)
PROGRAM TARIFF, RIDER NO. 26, AND)
APPROVAL OF ALTERNATIVE REGULATORY)
PLAN ("ARP") AND DECLINATION OF)
JURISDICTION TO THE EXTENT REQUIRED)
UNDER IND. CODE 8-1-2.5-1, EST. SEQ.)

CAUSE NO. 45145

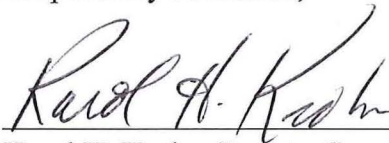
INDIANA OFFICE OF UTILITY CONSUMER COUSELOR

TESTIMONY OF

LAUREN M. AGUILAR - PUBLIC'S EXHIBIT NO. 1

JANUARY 9, 2019

Respectfully submitted,



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TESTIMONY OF OUCC WITNESS LAUREN M. AGUILAR
CAUSE NO. 45145
DUKE ENERGY INDIANA, LLC

I. INTRODUCTION

1 **Q: Please state your name, business address, and employment capacity.**

2 A: My name is Lauren M. Aguilar, and my business address is 115 W. Washington
3 St., Suite 1500 South, Indianapolis, IN, 46204. I am employed as a Utility Analyst
4 in the Indiana Office of Utility Consumer Counselor's ("OUCC") Electric Division.
5 See Appendix A for a summary of my qualifications.

6 **Q: Have you previously testified before the Commission?**

7 A: Yes. I have testified in Cause Nos. 42170 ECR -30, 44340 FMCA-9, 44963, 44978,
8 44981, 44998, 45010, 45047, 45052, and 45071.

9 **Q: Briefly summarize Petitioner's request in this proceeding.**

10 A: Duke Energy Indiana, LLC ("DEI" or "Petitioner") requests the Indiana Utility
11 Regulatory Commission ("Commission") enter an order under I.C. ch. 8-1-2.5
12 declining to exercise its jurisdiction over Petitioner's proposed commercial
13 customer solar leasing program, which also requires the Commission to find such
14 declination will serve the public interest.

15 **Q: What is the purpose of your testimony in this proceeding?**

16 A: I present the OUCC's concerns regarding: (1) the insufficient evidence provided in
17 DEI's case-in-chief; (2) the potential inclusion of net metering for customers of
18 DEI's proposed solar leasing program, even though they do not meet the net
19 metering statutory and rule requirements; (3) the lack of sufficient evidence to
20 support a finding that approval would serve the public interest, as required under

1 the Alternative Regulatory Plan (“ARP”) statute, I.C. ch. 8-1-2.5 – especially in
2 light of the anti-competitive environment this program and the resulting
3 unregulated monopoly created if approved and implemented.

4 **Q: Are you the only witness testifying on the OUCC’s behalf?**

5 A: No, there are two other witnesses testifying on behalf of the OUCC. Mr. John E.
6 Haselden discusses the solar leasing program, and Mr. Kaleb G. Lantrip discusses
7 DEI’s proposed ratemaking treatment for its proposed solar leasing program.

8 **Q: What have you done to evaluate issues presented in this Cause?**

9 A: I reviewed all materials presented in this docket, including the Petition initiating
10 this proceeding, Petitioner’s pre-filed verified direct testimony and exhibits, and
11 Petitioner’s responses to various discovery requests. I reviewed the compliance
12 statutes for ARPs and net metering as well as the Commission’s net metering rule.¹
13 In addition, other OUCC case team members and I met with Petitioner’s
14 representatives to discuss details of the proposed solar leasing program. I also met
15 with one of the intervening parties, Citizen’s Action Coalition, to discuss DEI’s
16 proposal.

17 **Q: Does the OUCC’s position in this case signal a blanket opposition to the**
18 **deployment of renewable generation or to the leasing of renewable generation**
19 **facilities?**

20 A. No. For more than a dozen years, the OUCC has supported increased use of
21 renewable energy in a number of different cases and contexts.² However, simply

¹ I.C. ch. 8-1-40 and 170 IAC 4-4.2

² See, e.g., *Indianapolis Power & Light Company* (“IPL”), Cause No. 43623 Phase I, which launched multi-stakeholder negotiations to (a) update IPL’s net metering tariff, its interconnection agreement, and to develop procedures for processing interconnection requests for customers requesting net metering arrangements and

1 because a project is “renewable” does not mean the project is automatically good,
2 necessary, or cost effective. The OUCC evaluates every case with the same scrutiny
3 and integrity regardless of the generation type. As I will explain below, the OUCC
4 has concerns regarding the design and impacts of the proposed program irrespective
5 of the program being a *solar* program.

II. INSUFFICIENCY OF DEI’S CASE-IN-CHIEF EVIDENCE

6 **Q: Please explain DEI’s burden of proof in this case.**

7 A: It is incumbent upon DEI to present all necessary supporting evidence in its case-
8 in-chief. This provides the OUCC all information it needs to analyze the relief
9 requested and make a recommendation to the Commission regarding the
10 reasonableness of the request. This also provides the Commission sufficient
11 evidence to support its decision to grant or deny the utility’s request.

12 **Q: What has the Commission said regarding a petitioning utility’s burden of**
13 **proof?**

14 A: The Commission recently emphasized the importance of a petitioning regulated
15 utility meeting its burden of proof in its case-in-chief when it wrote:

16 ...[A Utility] is reminded that it bears the burden of proof in
17 demonstrating it is entitled to its requested relief. The OUCC
18 should not have to request or otherwise seek basic

for customers or developers seeking approval of rates under a pilot feed-in-tariff program, interconnection requests, and (b) develop Indiana’s first “feed-in tariff” (IPL’s “Rate REP”) to encourage deployment of non-utility-owned, distributed renewable generation.(c) See also *Northern Indiana Public Service Company* (“NIPSCO”), Cause Nos. 43922 and 43993 in which the Commission approved NIPSCO’s net metering and feed-in tariffs established as pilot programs under a settlement NIPSCO reached with a number of different stakeholders representing a full range of varied, and sometimes conflicting, interests. See also *Indy Solar I, LLC, Indy Solar II, LLC, and Indy Solar III, LLC*, Cause No. 44304 (Order eff. May 29, 2013).

The OUCC also supported recent regulated public utility initiatives to deploy utility-scale solar projects in Cause No. 44511, Order February 4, 2015; Cause No. 44578, Order August 19, 2015; Cause No. 44734, Order July 6, 2016; Cause No. 44909, Order August 16, 2017; and Cause No 44953, Order November 21, 2017.

1 supporting documentation that should have been provided
2 with Petitioner's case-in-chief to support its requested relief.
3 Further, even if the OUCC is able to ascertain through
4 discovery the information necessary to support Petitioner's
5 requested relief, the Commission, which is the entity that
6 must ultimately render a decision on the matter, would still
7 lack the necessary information to make its determination
8 because it is not privy to the parties' discovery.³

9 **Q: What flexibility would be afforded to DEI if the Commission were to approve**
10 **its ARP request?**

11 A: Approval of an ARP will supersede other statutes, except those listed in section 11.

12 I.C. § 8-1-2.5-6(a) states:

13 *“Notwithstanding any other law or rule adopted by the*
14 *commission, except those cited, or rules adopted that pertain*
15 *to those cited, in section 11 of this chapter, in approving*
16 *retail energy services or establishing just and reasonable*
17 *rates and charges, or both for an energy utility electing to*
18 *become subject to this section...*” (Emphasis Added.)

19 **Q: Please explain the importance of a clear and concise request under the ARP**
20 **statute.**

21 A: One of the legislative findings the Indiana general assembly made in I.C. § 8-1-

22 2.5-1(6) when it decided to adopt an alternative regulatory statute for Indiana's

23 regulated energy utilities recognized:

24 That the public interest requires the commission to be
25 authorized to issue orders and to formulate and adopt rules
26 and policies that will *permit the commission in the exercise*
27 *of its expertise to flexibly regulate and control the provision*
28 *of energy services to the public in an increasingly*
29 *competitive environment, giving due regard to the interests*
30 *of consumers and the public, and to the continued*
31 *availability of safe, adequate, efficient, and economical*
32 *energy service.* (Emphasis added.)

³ *Evansville Municipal Water Utility*, Cause No. 45073, Order at p. 8 (December 5, 2018).

1 In conjunction with the flexibility granted under I.C. § 8-1-2.5-6(a) for an ARP, the
2 ability to use the ARP should require a high standard and high scrutiny from the
3 Commission.

4 To carry out that statutory charge in this case, the Commission must fully
5 understand the specific nature and impact of the flexible regulations and controls
6 DEI is asking the Commission to implement and the traditional Indiana utility
7 regulatory requirements the utility would be excused from if DEI's proposed ARP
8 is ultimately approved by the Commission. That information cannot be ascertained
9 from DEI's case-in-chief, which is exceptionally short, vague, confusing, and fails
10 to explain the full breadth of the requested ARP. Therefore the OUCC cannot
11 determine whether the public interest will be served as required in I.C. ch. 8-1-2.5.

12 **Q: Does the evidence presented in DEI's case-in-chief meet its burden of proof?**

13 A: No. DEI has not presented a clear case where the requested relief and the full
14 breadth and potential impacts of its proposed long-term solar leasing and net
15 metering program are readily ascertainable. DEI's request is vague because it fails
16 to identify what regulations it is asking the Commission to decline to exercise its
17 jurisdiction over through its approval of the proposed ARP. DEI has not supplied
18 evidence in its case-in-chief to know whether the participants are paying too much
19 or too little for this service, which results in an unregulated monopoly in that other
20 entities cannot provide the service DEI is proposing. Therefore the Commission
21 cannot be assured other DEI customers or even the participants are not negatively
22 affected.

1 **Q: Please explain how DEI's request is vague, confusing, and does not explain the**
2 **full breadth of the program or its potential impacts.**

3 A: The filing specifically requests Commission authority under IC 8-1-2.5-5(b) to
4 construct the facilities without a CPCN proceeding by asking the Commission to
5 decline such jurisdiction. DEI Witness Mr. Andrew S. Ritch's testimony refers to
6 a discussion during a collaborative held after the 2016 Edwardsport settlement. Mr.
7 Ritch testified that those discussions addressed a proposed solar leasing program
8 and the need to satisfy Indiana's net metering eligibility requirements to participate
9 in DEI's solar leasing program.⁴ Rider No. 26, Solar Leasing ("Rider 26")
10 (Petitioner's Exhibit 1-A) and the Solar Energy Service Agreement (Petitioner's
11 Exhibit 1-B) do not discuss whether any or all DEI commercial solar leasing
12 program participants will be compensated for renewable energy generation under a
13 net metering arrangement. DEI's case-in-chief does not specifically seek
14 Commission approval of net metering for all participants in DEI's proposed solar
15 leasing program nor does it request a waiver of requirements the Indiana General
16 Assembly subsequently imposed on net metering and other forms of distributed
17 generation under I.C. ch. 8-1-40. DEI did not seek waiver of the Commission's net
18 metering rule under 170 IAC 4-4.2. DEI's case-in-chief also failed to present a
19 discernable business plan for its proposed long-term net metering solar leasing
20 program.

⁴ See Verified Direct Testimony of Andrew S. Ritch, page 2, lines 18-21 and page 3, lines 1-13.

III. DEI SOLAR LEASING CUSTOMERS ARE NOT STATUTORILY ELIGIBLE FOR NET METERING

1 **Q: Are there compliance statutes and Commission rules on net metering?**

2 A: Yes. A recently enacted statute, I.C. ch. 8-1-40, governs distributed generation,
3 which includes net metering. I.C. § 8-1-40-2 states the Commission's rules for net
4 metering in 170 IAC 4-4.2 apply to "net metering under an electricity supplier's net
5 metering tariff...."

6 **Q: Does DEI have a net metering tariff?**

7 A: Yes. DEI's Rider No. 57, Net Metering tariff ("Rider 57") states: "Net metering is
8 available to customers ... and will conform to the provisions of Indiana Code 8-1-
9 40."⁵

10 **Q: Does DEI's potential inclusion of net metering for solar leasing customers
11 conflict with any applicable statutes or Commission rules regarding net
12 metering?**

13 A: Yes. 170 IAC 4-4.2 defines a net metering customer as "a customer in good
14 standing that *owns and operates* an eligible net metering energy resource
15 facility...." (Emphasis added.) As proposed, DEI's solar leasing customers would
16 neither own nor operate renewable generation facilities.⁶

17 **Q: Does the public interest require net metering to be made available to DEI's
18 customers planning to participate in DEI's proposed Rider 26 long-term net
19 metering solar leasing program?**

20 A: No. First, the timeframe for which net metering is available is finite and less than
21 the 20-year leasing term. Pursuant to IC § 8-1-40-10, systems installed after June
22 30, 2022 are not eligible for net metering pursuant to IC § 8-1-40-13, and net

⁵ I.C. § 8-1-40-2 refers to the Commission's net metering rule in 170 IAC 4-4.2.

⁶ Petitioner's Exhibit 1-B (ASR), Page B-1, Paragraph 1.

1 metering facilities installed between now and July 1, 2022 are eligible for net
2 metering only until July 1, 2032.

3 **Q: Does Indiana's new net metering statute permit utilities to change their net**
4 **metering tariffs after the effective date of IC ch. 8-1-40?**

5 A: No. I.C. § 8-1-40-11(1) specifically prohibits utilities such as DEI from seeking a
6 change in their net metering tariffs, and I.C. § 8-1-40-11(2) specifically prohibits
7 the Commission from approving any changes to existing net metering tariffs before
8 July 1, 2047. Although DEI does not propose changing its existing net metering
9 tariff, Rider 57, Mr. Ritch states on page 3 of his testimony that customers
10 participating in Rider 26 will be eligible for net metering. This contradicts the
11 requirement in Rider 57 that participants will conform to the requirements of I.C.
12 ch. 8-1-40. As previously discussed, I.C. § 8-1-40-3 and 170 IAC 4-4.2-1(j) require
13 net metering customers to own and operate their renewable generation facilities.
14 Any deviation from that requirement would constitute a change in net metering
15 provisions prohibited under I.C. § 8-1-40-11(1) and/or (2). Utilities should not be
16 permitted to circumvent this statutory limitation by proposing a new tariffed service
17 offering that incorporates net metering provisions.

IV. PUBLIC INTEREST REQUIREMENT IN INDIANA'S
ALTERNATIVE REGULATORY STATUTE FOR ENERGY
UTILITIES

18 **Q: Does Indiana's ARP statute require that a proposed ARP will further the**
19 **public interest?**

20 A: Yes. The statutory requirements for approval of an ARP hinge upon a public
21 interest showing established under I.C. § 8-1-2.5-1(6), which states:

22 ... [T]he *public interest* requires the commission to be
23 authorized to issue orders and to formulate and adopt rules

1 and policies that will permit the commission in the exercise
2 of its expertise to flexibly regulate and control the provision
3 of energy services to the public in an increasingly
4 competitive environment, *giving due regard to the interests*
5 *of consumers and the public*, and to the continued
6 availability of safe, adequate, efficient, and economical
7 energy service. (Emphasis added.)

8 Indeed, the review and analysis of public interest factors constitutes an important
9 part of the Commission's review of proposed ARPs, including the one DEI
10 proposed in this proceeding.

11 **Q: In reviewing a proposed ARP, how does the Commission determine whether**
12 **approval of the ARP would serve the public interest?**

13 A: I.C. § 8-1-2.5-5(b) identifies the following factors which the Commission must
14 consider in determining whether a proposed ARP would serve the public interest:

15 (1) Whether technological or operating conditions, competitive
16 forces, or the extent of regulation by other state or federal
17 regulatory bodies render the exercise, in whole or in part, of
18 jurisdiction by the commission unnecessary or wasteful.

19 (2) Whether the commission's declining to exercise, in whole or in
20 part, its jurisdiction will be beneficial for the energy utility, the
21 energy utility's customers, or the state.

22 (3) Whether the commission's declining to exercise, in whole or in
23 part, its jurisdiction will promote energy utility efficiency.

24 (4) Whether the exercise of commission jurisdiction inhibits an
25 energy utility from competing with other providers of
26 functionally similar energy services or equipment.

27 OUCC Witnesses Mr. Haselden and Mr. Lantrip further discuss specific concerns
28 as applied to the relief DEI is requesting in this case.

29 **Q: Please summarize the OUCC's concerns regarding whether this program**
30 **serves the public interest.**

31 A: As explained by Mr. Haselden and Mr. Lantrip:

1 (1) As currently proposed, DEI's solar leasing program does not meet the
2 public interest requirements of I.C. § 8-1-2.5-5(b)(1) and (4), since approval
3 of the ARP would give DEI an unfair competitive advantage over other
4 renewable energy providers by creating an unregulated monopoly. The
5 solar leasing program DEI proposed would exist outside of the statutory
6 limits recently imposed by the Indiana General Assembly on competitive
7 renewable energy providers. Indeed, under the regulatory approach which
8 DEI has proposed, it would be the only solar leasing provider with no
9 regulatory oversight by the Commission or any other state or local
10 government authority;⁷

11 (2) The solar leasing program, as designed, does not meet the public interest
12 requirements of I.C. § 8-1-2.5-5(b)(2) insofar as:

13 (a) This program is designed to serve a small portion of DEI's customer
14 base. Therefore, customers not participating in the leasing program
15 may be called upon to cross-subsidize DEI's net metered customers
16 participating in DEI's solar leasing program;

17 (b) The tariff and associated leasing contract presented by DEI are
18 deficient in clarity and transparency regarding who owns the Solar
19 Renewable Energy Certificates⁸ ("SRECs") associated with the
20 planned renewable energy generation and whether any customers

⁷ See SEA 309, now codified at I.C. ch. 8-1-40.

⁸Also referred to as "Renewable Energy Credits."

1 will benefit from the utility's future sale or retirement of SRECs;

2 and

3 (c) DEI failed to show meaningful customer demand for its proposed

4 solar leasing program.

V. RECOMMENDATIONS

5 **Q: Does the OUCC support DEI's requested relief in this cause?**

6 A: No. The OUCC recommends DEI's requested relief be denied because (1) DEI

7 failed to meet its burden of proof by not providing sufficient evidence in its case-

8 in-chief; (2) DEI's request is vague, confusing, and does not explain the full breadth

9 and potential impact of the ARP relief requested for the proposed program; (3) The

10 ARP statute's public interest requirement is not met. For specific

11 recommendations, see Public's Exhibit No. 2, the prefiled testimony of OUCC

12 Witness Mr. Haselden.

13 **Q: If the Commission rejects the OUCC's position that DEI has failed to meet its**
14 **burden of proof in its case-in-chief, thereby requiring the Commission to deny**
15 **the relief as currently requested, does the OUCC recommend making any**
16 **further changes or placing any additional conditions on DEI's proposed ARP?**

17 A: Yes. Although the OUCC does not support approving DEI's ARP as proposed, if

18 the Commission decides to approve the ARP, the OUCC recommends the

19 Commission condition such approval on DEI agreeing to modify its proposed ARP

20 to correct deficiencies listed above, and described in greater detail in the prefiled

21 testimony of OUCC Witnesses Mr. Haselden and Mr. Lantrip.

22 **Q: Does this conclude your testimony?**

23 A: Yes.

APPENDIX A

1 **Q: Summarize your professional background and experience.**

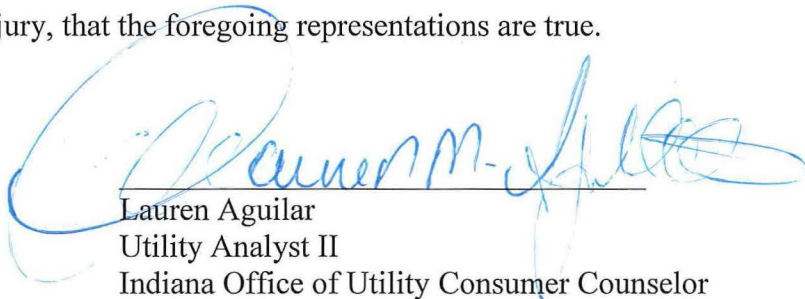
2 A: I graduated from Michigan State University in 2008 with a Bachelor of Science
3 degree in Environmental Science and Management. I graduated from Florida State
4 University College of Law, in May 2011 with a Juris Doctorate and Environmental
5 Law certificate. I spent over 2 years while in law school as a certified legal intern,
6 providing pro bono legal services to poverty level residents of Tallahassee. I
7 worked in the legal department of Depuy Synthes, a Johnson & Johnson Company,
8 where I assisted with patent filings and nondisclosure agreements. Starting in 2013,
9 I worked for the Indiana Department of Environmental Management as a rule
10 writer. I worked extensively with the public at large, special interests groups, and
11 affected regulated entities to understand the rulemaking process and to respond to
12 their comments on ongoing rules. I joined the OUCC in July of 2017.

13 **Q: Describe some of your duties at the OUCC.**

14 A: I review and analyze utilities' requests and file recommendations on behalf of
15 consumers in utility proceedings. As applicable to a case, my duties may also
16 include analyzing state and federal regulations, evaluating rate design and tariffs,
17 examining books and records, inspecting facilities, and preparing various studies.
18 The majority of my expertise is in environmental science, environmental state and
19 federal regulation, and state agency administration.

AFFIRMATION

I affirm, under the penalties for perjury, that the foregoing representations are true.



Lauren Aguilar
Utility Analyst II
Indiana Office of Utility Consumer Counselor
Cause No. 45145
Duke Energy Indiana, LLC

11/9/2019
Date

CERTIFICATE OF SERVICE

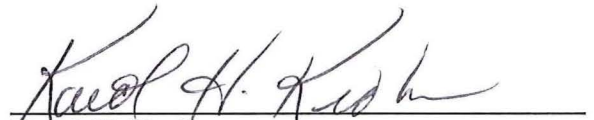
The undersigned counsel hereby certifies that a copy of *Indiana Office of Utility Consumer Counselor Testimony of Lauren M. Aguilar – Public’s Exhibit No. 1* was served via electronic mail on all counsel of record herein on this 9th day of January, 2019:

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