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**INDIANA UTILITY REGULATORY COMMISSION**

**PETITION OF DUKE ENERGY INDIANA, LLC** )

**FOR APPROVAL OF A SOLAR SERVICES)**

**PROGRAM TARIFF, RIDER NO. 26, AND** ) **CAUSE NO. 45145 APPROVAL OF ALTERNATIVE REGULATORY** )

**PLAN ("ARP") AND DECLINATION OF** ) **APPROVED: JUN 0.5 2019**

## JURISDICTION TO THE EXTENT REQUIRED )

**UNDER IND. CODE 8-1-2.5-1, ET. SEQ.** )

**ORDER OF THE COMMISSION**

**Presiding Officers:**

**David L. Ober, Commissioner**

**Brad J. Pope, Administrative Law Judge**

On September 24, 2018, Duke Energy Indiana, LLC ("Duke Energy Indiana" or "Petitioner")·filed its Verified Petition requesting the Indiana Utility Regulatory Commission ("Commission") approve a voluntary solar services program, Standard Contract Rider No. 26 ("Solar Services Program" or "Rider 26"), as an Alternative Regulatory Plan ("ARP") with declination of Commission jurisdiction as requested under applicable Indiana law. On September 25, 2018, Petitioner filed its case-in-chief, consisting of the direct testimony and exhibits of Andrew S. Ritch, Wholesale Renewables Manager for Duke Energy Business Services LLC.

On October 15, 2018, Walmart, Inc. ("Walmart") filed its Petition to Intervene, which was granted by docket entry dated October 22, 2019. On October 16, 2019, the Citizens Action Coalition of Indiana, Inc. ("CAC") filed its Petition to Intervene, which was granted by docket entry dated October 22, 2019.

On January 9, 2019, the Indiana Office of Utility Consumer Counselor ("OUCC") filed the testimony of John E. Haselden, Senior Utility Analyst, Lauren M. Aguilar, Utility Analyst, and Kaleb G. Lantrip, Utility Analyst, all in the OUCC's Electric Division. Walmart filed the testimony of Gregory W. Tillman on January 9, 2019, and the CAC filed the testimony of Kerwin Olson on January 14, 2019. On January 21, 2019, Duke Energy Indiana filed the rebuttal testimony and exhibits of Mr. Ritch.

The Commission held an evidentiary hearing in this Cause on January 30, 2019, at 9:30

* 1. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner, the OUCC, CAC, and Walmart appeared and participated at the hearing, and the parties' prefiled testimony and exhibits were admitted into evidence without objection. A member of the general public appeared, offering an ex parte letter of support for the proposed Solar Services Program. His letter of support, along with several other ex parte letters of support, were entered into evidence by the OUCC, as Public's Exhibit No. 4. The Commission also asked questions of Petitioner's witness, Mr. Ritch.

Based on the applicable law and the evidence presented, the Commission finds:

* + 1. **Notice and Jurisdiction.** Notice of the hearing in this Cause was given and published by the Commission as required by law. Duke Energy Indiana is a public utility as defined in Ind. Code§ 8-1-2-l(a) and is subject to the jurisdiction of this Commission as provided in the Public Service Commission Act, as amended. In its Petition, Duke Energy Indiana indicated that it has elected to be subject to the provisions of Ind. Code§§ 8-1-2.5-5 and 8-1-2.5-6 for purposes of declination of Commission jurisdiction, in part, over Rider 26, and for authority to charge market-based rates for the services proposed in this proceeding. Thus, Duke Energy Indiana's Petition, testimony, and exhibits constitute its proposed ARP for purposes of this proceeding.
    2. **Petitioner's Characteristics.** Duke Energy Indiana is a public utility organized and existing under the laws of the State of Indiana, and its principal office is located at 1000 East Main Street, Plainfield, Indiana. Duke Energy Indiana is engaged in rendering electric utility service in the State of Indiana and owns, operates, manages, and controls, among other things, plant and equipment within the State of Indiana used for the production, transmission, delivery, and furnishing of such electric service to more than 820,000 customers located in 69 counties in the central, northcentral, and southern parts of Indiana.
    3. **Relief Requested.** Duke Energy Indiana requested approval of its ARP, which includes the Commission declining jurisdiction over certain, limited aspects of this Solar Services Program, approving Rider 26, and granting Duke Energy Indiana authority to charge market-based rates for its Solar Services Program.
    4. **Petitioner's Case-in-Chief.** Mr. Ritch presented the Solar Services Program, explaining that Duke Energy Indiana is proposing this offering in response to the increasing interest of non-residential customers in having additional service options for cleaner energy. He explained that the program provides customers an alternative financing method for onsite solar energy generation facilities compared to traditional ownership. He added that Duke Energy Indiana will install, operate, and maintain a solar energy facility on the participating customer's premises, and the customer will receive the electrical output of the solar facility.

Mr. Ritch testified that this proposed tariff was developed as part of the collaborative that followed the Commission's approval of the Edwardsport Settlement Agreement in Cause No. 43114 IGCC 15 on August 24, 2016 ("2016 Edwardsport Settlement Agreement"). He explained that the settling parties to that agreement were involved in discussions, and changes to the proposal were made based on feedback from them. However, the settling parties did not formally support or oppose the Solar Services Program.

Mr. Ritch explained that Duke Energy Indiana proposes that customers participating in Rider 26 would be eligible for net metering and that solar facilities installed under this program would be in addition t,o and would not count against the system net metering cap in Duke Energy Indiana's Standard Contract Rider No. 57 - Net Metering ("Rider 57''). He also stated that participation in this program would initially be limited to a total of 12 megawatts ("MW"), and for the first five years of the program, Duke Energy Indiana would not use an affiliate to construct the solar generation facilities.

Mr. Ritch explained that residential customers were not included at this time because Duke Energy Indiana plans to offer the tariff to a limited number of non-residential rate classes in order to gain experience with this offering prior to considering opening it up to additional rate classes.

Mr. Ritch testified that qualifying customers who purchase land or buildings from existing tariff participants can participate in the program, subject to the terms and conditions of each customer's specific Solar Energy Service Agreement ("Service Agreement"), a sample of which was provided as an exhibit to Mr. Ritch's testimony. Mr. Ritch also testified that each facility must be limited to the sizing requirements in Duke Energy Indiana's net metering tariff, Rider 57.

Mr. Ritch then confirmed that participating customers will not be subject to disconnection of retail electric service due to non-payment under their Service Agreement.

Mr. Ritch testified th\:1-t Duke Energy Indiana will make all eligible customers who express interest in solar aware of this offering through various Duke Energy teams and will work with third-party solar developers who meet Duke Energy Indiana supplier standards to develop, competitively procure, and construct the solar facilities for participating customers. He also explained that Duke Energy Indiana engaged a variety of solar developers active in its service territory to preview the offering, and they expressed an interest in participating in the Solar Services Program.

Next, Mr. Ritch described the proposed accounting and ratemaking treatment for the program. He explained that Duke Energy Indiana is proposing that all costs and revenues associated with this tariff be treated below-the-line, which segregates the financial activities for Rider 26 from Duke Energy Indiana's jurisdictional business. This treatment will ensure that customers who are not participating in the program will not subsidize those who are and that all costs of the program will be covered with revenues from customers who elect to participate.

Mr. Ritch explained that this proposal is being filed under the Alternative Utility Regulation provisions of Ind. Code ch. 8-1-2.5 ("ARP Statute"). He also stated that the aggregate of all the generation to be eligible under Rider 26 is 12 MW and that although these smaller solar projects are exempt from the requirements of a Certificate of Public Convenience and Necessity ("CPCN"), they would still require Commission approval under Ind. Code § 8-1-8.5-7(4). He explained that Duke Energy Indiana is requesting that the Commission approve an ARP· or otherwise decline its jurisdiction over this optional tariff offering to the extent required for Duke Energy Indiana to individually price this voluntary service to customers based on available market prices and to construct solar energy facilities for participating customers without needing to seek separate Commission approval for each facility. Mr. Ritch opined that public interest is served by approval of this option because there are technological and competitive forces that render Commission jurisdiction unnecessary, and this option provides benefits to Duke Energy Indiana, its customers, promotes energy utility efficiency, and allows Petitioner to effectively compete with providers of functionally similar services.

Mr. Ritch concluded by stating that this is a voluntary program offering that allows eligible customers to have solar energy facilities on their premises to be constructed, operated, maintained, and financed by Duke Energy Indiana from which the customer will receive the kilowatt-hour

("kWh") output. Eligible customers include non-residential customers on Rate CS, Rate LLF, Rate HLF, and Rate WP. Each Service Agreement between Duke Energy Indiana and a participating customer will have a term of up to 20 years, with pricing varying depending on the facility configuration and the specific negotiations with the participating customer.

* + 1. **OUCC Testimony.** OUCC witness Lauren M. Aguilar testified that Duke Energy Indiana is requesting that the Commission enter an order under Ind. Code ch. 8-1.2.5 declining to exercise its jurisdiction over Petitioner's proposed customer solar leasing program, which requires that the Commission find such declination will serve the public interest.

Ms. Aguilar presented the OUCC's concerns regarding: (1) the insufficient evidence provided in Duke Energy Indiana's case-in-chief; (2) the potential inclusion of net metering for customers of Duke Energy Indiana's proposed solar leasing program, even though they do not meet the net metering statutory and rule requirements; and (3) the lack of sufficient evidence to support a finding that approval would serve the public interest, as required under the ARP statute. Ms. Aguilar presented these concerns in the context that the Solar Services Program, if approved and implemented, would create an anti-competitive environment and would result in an unregulated monopoly. Ultimately, Ms. Aguilar recommended that Petitioner's request be denied.

Next, Ms. Aguilar explained Duke Energy Indiana's burden of proof. She stated that it is incumbent upon Duke Energy Indiana to present all necessary supporting evidence in its case-in­ chief, which provides the OUCC all information needed to analyze the relief requested and to make a recommendation to the Commission regarding the reasonableness of the request. She added that by so doing, the Commission would have sufficient evidence to support its decision to grant or deny the request.

Ms. Aguilar explained that Commission approval of a proposed ARP supersedes other statutes, except those listed in section 11, as specified by Ind. Code § 8-1-2.5-6(a). She then explained that the flexibility afforded to a utility with an approved ARP requires a high standard in the evidence and pleadings to support Commission approval of an ARP. Ms. Aguilar indicated that ARP approval requests should be clear, complete, and fully transparent. She urged the Commission to carefully scrutinize such requests before declining to exercise any or all of its statutory jurisdiction over ARPs proposed by regulated utilities. She testified that in this case, the Commission should strive to fully understand the specific nature and impact of the flexible regulations and reduced controls Duke Energy Indiana is asking the Commission to implement and the traditional Indiana utility regulatory requirements the utility would be excused from meeting if Duke Energy Indiana's proposed ARP were ultimately approved., Ms. Aguilar stated this information cannot be ascertained from Duke Energy Indiana's case-in-chief, which was exceptionally short, vague, confusing, and failed to explain the full breadth of Petitioner's requested ARP. Therefore, the OUCC could not confirm that the public interest would be served, as required by the ARP Statute.

Ms. Aguilar also indicated that Duke Energy Indiana has failed to meet its burden of proof because it has not presented a clear case where the requested relief and the full breadth and potential impacts of its proposed long-term solar leasing and net metering program are readily ascertainable. She stated that Duke Energy Indiana's request is vague because it fails to identify

what regulations it is asking the Commission to decline to exercise its jurisdiction over and because Duke Energy Indiana has not supplied evidence in its case-in-chief so that it can be determined whether the participants are paying too much or too little for this service, which results in an unregulated monopoly in that other entities cannot provide the same service. Therefore, the Commission cannot be assured other Duke Energy Indiana customers or the participants would not be negatively affected.

Ms. Aguilar then explained how Duke Energy Indiana's request is vague, confusing, and fails to explain the full breadth of the program and its potential impacts. She stated that the filing requests Commission authority under Ind. Code § 8-1-2.5-S(b) to construct facilities without a CPCN proceeding by asking the Commission to decline such jurisdiction. She stated that Duke Energy Indiana witness Ritch's testimony refers to a discussion during a collaborative that followed the Commission's approval of the 2016 Edwardsport Settlement Agreement. Mr. Ritch testified that those discussions addressed a proposed solar leasing program and the need to satisfy Indiana's net metering eligibility requirements to participate in Duke Energy Indiana's solar leasing program. She continued that Rider No. 26 and the Service Agreement do not discuss whether any or all Duke Energy Indiana commercial solar leasing program participants will be compensated for renewable energy generation under a net metering arrangement. She noted that Duke Energy Indiana's case-in-chief does not specifically seek Commission approval of net metering for all participants in its proposed solar leasing program nor does it request a waiver of requirements for net metering and other forms of distributed generation under Ind. Code ch. 8-1- 40 or the Commission's net metering rule under 170 IAC 4-4.2. She added that Duke Energy Indiana's case-in-chief also failed to present a discemable business plan for its proposed long-term net metering solar leasing program.

Ms. Aguilar described relevant parts of Duke Energy Indiana's tariff,1 Indiana Code2, and

Commission rules3 regarding net metering. She testified that the public interest does not require net metering to be made available to customers planning to participate in the proposed Rider 26 and that Ind. Code ch. 8-1-40 prohibits utilities from changing their net metering tariffs. Although Duke Energy Indiana does not propose changing its existing net metering tariff, Ms. Aguilar stated that Mr. Ritch testified that customers participating in the proposed solar program will be eligible for net metering, which contradicts the requirement in Rider 57 that participants conform to the requirements oflnd. Code ch. 8-1-40. She expressed that, as proposed, the Solar Services Program customers would neither own nor operate renewable generation facilities, which contradicts applicable statutes and Commission rules and that any deviation from that requirement would constitute a change in net metering provisions, which are prohibited. As such, she argued that utilities should not be permitted to circumvent this statutory limitation by proposing a new tariffed service offering that incorporates net metering provisions.

1 Duke Energy Indiana's Rider 57 states "[n]et Metering is available to customers ... and will conform to the provisions of Indiana Code ch. 8-1-40."

2 Ind. Code ch. 8-1-40 governs distributed generation, which includes net metering. Ind. Code § 8-1-40-2 states the

Commission's rules for net metering in 170 IAC 4-4.2 apply to "net metering under an electricity supplier's net metering tariff "

3 170 IAC 4-4.2 defines a net metering customer as "a customer in good standing that owns and operates an eligible

net metering energy resource facility "

Ms. Aguilar next summarized the OUCC's concerns regarding whether the Solar Services Program would serve the public interest. She stated that the proposed Solar Services Program does not meet the public interest requirements of an ARP and approval would give Duke Energy Indiana an unfair competitive advantage over other renewable energy providers by creating an unregulated monopoly that would exist outside of the statutory limits on competitive renewable energy providers. Ms. Aguilar asserted that Duke Energy Indiana would be the only solar services provider with no regulatory oversight by the Commission or any other state or local government authority. She testified that the proposed program does not meet the public interest requirements as the program is designed to serve a small portion of Duke Energy Indiana's customer base and customers not participating in the Solar Services Program may be called upon to cross-subsidize Petitioner's net metered customers not participating in the program. She stated that the tariff and Service Agreement are unclear on who owns the Solar Renewable Energy Certificates ("SRECs" or "RECs") associated with the planned renewable energy generation and whether any customers will benefit from the future sale or retirement of SRECs. She also expressed that customer demand for the program was not shown.

In conclusion, Ms. Aguilar explained that the OUCC does not recommend approval of the proposed program because Duke Energy Indiana failed to meet its burden of proof by not providing sufficient evidence, Duke Energy Indiana's request is vague, confusing, and does not explain the impact of the ARP relief requested, and the ARP Statute's public interest requirement is not met. The OUCC recommended that if the Commission decides to approve the ARP, it should correct the above-mentioned deficiencies.

John E. Haselden also presented testimony on behalf of the OUCC. He testified that he does not doubt that there may be non-residential customers in Duke Energy Indiana's service territory that are interested in acquiring renewable energy, but that the proposed Solar Services Program will not satisfy customers' desire for renewable energy because Duke Energy Indiana's case-in-chief indicates that Duke Energy Indiana intends to retain any related RECs, unless otherwise negotiated.

Mr. Haselden explained that proposed Rider 26 does not address the renewable energy needs of customers and does not address the ownership of the SRECs produced by the leased systems. He suggested, if approved, the language in the tariff and the Services Agreement be amended to expressly assign ownership of any environmental attributes to the customer or Petitioner, if so negotiated.

Mr. Haselden testified regarding several aspects of the proposed solar program that could trigger complaints of unfair competition. Individual Service Agreements would not have to be filed with or submitted to the Commission under the proposed ARP even though pricing and other terms could vary between similar customers. He further testified the Duke Energy Indiana confirmed in discovery that it would not allow other leasing companies to participate in Rider 26, and it does not generally lease or rent systems to customers who wish to qualify for net metering.

Mr. Haselden stated that Duke Energy Indiana is proposing that facilities participating in Rider 26 will be required to comply with the requirements of Rider 57. However, Mr. Haselden notes that neither Rider 26 nor the Service Agreement explicitly state that all program participants

are eligible to participate in Rider 57. Mr. Haselden observed that Duke Energy Indiana did not request an exemption from Ind. Code § 8-1-40-3 as part of its ARP. Instead, Duke Energy Indiana relied on language in Rider 57 that states, "At its sole discretion, [Duke Energy Indiana] may provide net metering services to other customer-generators not meeting all the conditions listed on a case-by-case basis." Mr. Haselden explained that the list of conditions does not include the requirement of customer ownership of renewable generation facilities to make a customer eligible for net metering. He also noted Duke Energy Indiana is construing its net metering tariff language in a way that is contrary to 170 IAC 4-4.2-lG) and (k:) and without regard to the ownership requirement in Ind. Code § 8-1-40-3.

Next, Mr. Haselden testified that Petitioner is proposing to add 12 MW of nameplate capacity to the amount eligible to participate in Rider 26. He stated that rather than establishing a separate pool of net metering capacity for dedicated uses, Petitioner could increase its net metering cap of 1.5% of its most recent summer peak load in aggregate, as prescribed by 170 IAC 4-4.2- 4(b). He pointed out that the proposed tariff does not mention the 12 MW limit and that Duke Energy Indiana is not proposing to change Rider 57 to accommodate the additional 12 MW, which it petitioned for leave to offer under Rider 26.

In contradiction to Mr. Ritch's testimony, Mr. Haselden stated that other customers could be subsidizing Duke Energy Indiana's net metering service. He explained that if participating customers put power onto Petitioner's distribution system and reduce the kWh they purchase, other non-participating customers would subsidize this service by paying a greater share of costs Duke Energy Indiana recovers through its riders and the non-volumetric portion of costs recovered per kWh in base rates.

Mr. Haselden continued that approval of Rider 26, as currently proposed, would not serve the public interest. Non-participating customers will be subject to higher rates through possible subsidization of Solar Services Program participants. A few participating customers could receive some economic benefit, but the primary beneficiary will be Petitioner. Mr. Haselden observed that, shielded from competition from other leasing companies, Duke Energy Indiana would be able to charge whatever the closed market it creates for this service will bear. He maintained that Petitioner's proposal creates an unregulated monopoly in solar leasing.

Concluding his testimony, Mr. Haselden stated that the OUCC recommends that the Commission deny Duke Energy Indiana's request for approval of the solar leasing ARP as currently proposed. He testified that this proceeding would not be necessary if Duke Energy Indiana compensated participants via Rider 50 - Parallel Operation for Qualifying Facility, or up to a stated percentage of Petitioner's generation portfolio. He recommended that if the Commission approves Rider 26 and declines jurisdiction, it should make the following changes:

1. Allow participation in Rider 26 by additional solar leasing providers selected by participating customers;
2. Require Duke Energy Indiana to immediately initiate a proceeding pursuant to Ind. Code § 8-1-40-16;
3. Require billing for leased equipment to be separate from the customers' electric bill or at least clearly defined as discussed by OUCC witness Lantrip;
4. Designate ownership of any environmental benefits to the customers;
5. Limit the nameplate capacity of a leased system to minimize the revenue requirement impact on non-participating customers resulting from the net metering subsidy;
6. Make a finding as to whether participants under Rider 26 are eligible to participate in net metering and, if so, require Petitioner to affirmatively state in Rider 26 and in its proposed Service Agreement that participants qualify for net metering while such offerings are still available under Ind. Code ch. 8-1-40;
7. State Duke Energy Indiana's aggregate MW participation limit in proposed Rider No. 26;
8. Limit Duke Energy Indiana's proposed ARP to a four-year trial period, to terminate automatically four years after its approval, absent a Duke Energy Indiana and OUCC agreement to extend the pilot program, subject to Commission approval;
9. At the end of the second program year, permit Duke Energy Indiana, the OUCC, or other interested parties to file a request in this docket asking the Commission to approve requested changes to the existing ARP, in addition to the Commission's right to modify or terminate the Solar Services Program ARP on its own without changing any existing contractual rights and obligations under leasing agreements already entered into by Duke Energy Indiana and any eligible customers; and
10. Require Duke Energy Indiana to file annual reports regarding relevant Solar Services Program information, including the following:
    1. Current number of Solar Services Program customers and the number of new Solar Services Program customers added during the last 12 months;
    2. The effective date and term (number of years) of each of the Service Agreements;
    3. The tariff or type of service arrangement (Rate CS, Rate LLF, Rate HLF, or Rate WP) under which each Solar Services Program customer is served; and
    4. A detailed stat ment of revenue, expenses and net operating income (or loss) of the Solar Services Program covering the last twelve months and confirmation that all related revenues, expenses, assets, and liabilities are being tracked for below the line regulatory treatment.

Mr. Kaleb G. Lantrip also presented testimony on behalf of the OUCC. Mr. Lantrip reviewed Petitioner's proposal on recovering the costs associated with the proposed tariff and how customers will be billed for participation in the program. He testified that the manual billing practice would allow for the clear allocation of payments for customers participating in the Solar Services Program and would provide detail to enable customers to understand how the net payment due was derived. Mr. Lantrip recommended that although Petitioner indicated it will manually bill customers in separate invoices until its new system is capable of producing consolidated bills, the OUCC recommends customers have the option to continue to be billed separately for Solar Service Program charges rather than including these charges on bills for recovery of standard electric service costs. He stated that if customers opt for a consolidated billing, leasing charges for customers participating in the program should be distinctly shown from the standard electric

service charges on their utility bills and that any excess generation netted from the leased installation be clearly illustrated on the bills.

Mr. Lantrip explored Duke Energy Indiana's proposal to use existing personnel to administer and coordinate its Solar Services Program. He explained that, without further detail in Petitioner's case-in-chief, he questions whether and how Duke Energy Indiana will be able to accurately segregate labor costs and reduce the potential for program subsidization. Mr. Lantrip testified that in response to OUCC discovery requests, Duke Energy Indiana explained that employees' time on program-related work would be accounted for separately, to reflect the actual · time spent on each activity and protect against excessive billing.

Next, Mr. Lantrip explained that Petitioner's proposal would be eligible for Investment Tax Credits and accelerated depreciation treatment for favorable tax recovery. He testified that it is unclear who will retain this benefit because Duke Energy Indiana's discovery responses suggest that it will retain the full value of the tax credits and benefits. However, the Petition indicates those benefits will be provided to or otherwise used to benefit utility customers.

Concluding his testimony, Mr. Lantrip recommended denial of Petitioner's proposal. However, if the Commission approves this proposed program, Mr. Lantrip testified that Duke Energy Indiana should be required to: (1) separate all program costs from amounts recovered through standard electric service rates; (2) maintain the option for separate billing for the Solar Services Program charges; (3) identify the split between standard electric service charges and Solar Services Program costs and revenues to allow interested customers to select consolidated billing;

1. provide updates on the Solar Services Program's progress and cost segregation in a compliance filing; and (5) identify those program costs in Duke Energy Indiana's next electric base rate case.
2. **Walmart Testimony.** Walmart witness Gregory W. Tillman discussed Walmart's corporate renewable energy goals and framework for renewable opportunities. He testified that Walmart seeks renewable energy resources that deliver industry leading cost, including renewable and project-specific attributes, such as RECs, within structures where the value proposition allows the customer to receive any potential benefits brought about by taking on the risk of being served by that resource instead of, or in addition to, the otherwise applicable resource portfolio.

Mr. Tillman recommended that the proposed tariff language, along with the Service Agreement, be modified to indicate that the RECs are transferred to the customer, or alternatively, that Duke Energy Indiana be required to retire the RECs on the customer's behalf. He opined that without these changes, customers would be not able to claim that the energy purchased and consumed through the program is renewable energy, making it unlikely that Walmart would choose to participate.

Mr. Tillman testified that Walmart does not oppose the financing structure of the Service Agreement, as modified to include the conveyance of the RECs. He also opined that Waimart would not oppose Petitioner's proposed below-the-line accounting and ratemaking treatment.

Mr. Tillman concluded his testimony by testifying that Walmart is in agreement that Petitioner's proposal is a competitive service offering that can be offered by other providers in the

market and that in order to maintain a competitive environment, the Commission should establish that Indiana energy customers have a right to choose an alternative supplier for behind-the-meter, solar leasing services financed through a lease agreement with a performance guarantee to ensure that customers are able to access renewable energy resources through a solar lease at the best available price. Without this assurance, and if Duke Energy Indiana is the only available solar supplier, Mr. Tillman testified that pricing would not be kept in check by the competitive pressures introduced through multiple suppliers.

1. **CAC Testimony.** CAC witness Kerwin Olson presented testimony on behalf of the CAC. Mr. Olson testified that the CAC supports the approval of the proposed Solar Services Program. He also stated that over the years, CAC has had multiple discussions with non-profit entities, such as churches and schools, with a strong desire to install solar energy on their properties. This program will help enable these entities to have solar installed and will likely lead to approximately 12 MW of solar energy being installed in Indiana, which otherwise would not have been installed absent approval of Duke Energy Indiana's proposed Rider 26.

Mr. Olson testified that the proposed Solar Services Program was presented by Duke Energy Indiana and discussed as part of a collaborative that was established pursuant to the 2016 Edwardsport Settlement Agreement. He explained that the CAC, Duke Industrial Group, Nucor Steel, the OUCC, the Hoosier Chapter of the Sierra Club, and solar installer Johnson-Melloh, Inc. attended those collaborative meetings. He stated that Duke Energy Indiana made clear that it was interested in concerns, feedback, and suggestions from all collaborative participants. Mr. Olson pointed out that the CAC provided multiple suggestions regarding the proposed Rider 26 service offering. Duke Energy Indiana was responsive to CAC's suggestions and made changes to its proposed Rider 26 offering based on some of the feedback CAC provided.

Mr. Olson testified that the CAC recommends Commission approval of the proposed Solar Services Program with certain changes: (1) Duke Energy Indiana should modify the tariff and the Service Agreement to indicate that the RECs will be transferred to the customer; (2) Duke Energy Indiana should bill customers for the program fees separately from the charges related to their retail energy service; (3) Duke Energy Indiana should file an annual compliance report detailing participation in the program and accounting for all program costs associated with implementation, marketing, and management, in order to alleviate any concerns related to below-the-line accounting treatment; and (4) the Commission should go beyond Duke Energy Indiana's proposal in th,is proceeding to expressly state that customers have the right to use vendors of their choice, including Duke Energy Indiana, to install behind-the-meter solar facilities utilizing a leasing arrangement or other financing options.

1. **Petitioner's Rebuttal Testimony.** Mr. Ritch provided rebuttal testimony responding to the testimonies of the OUCC, CAC, and Walmart. First, Mr. Ritch addressed the OUCC's opposition to this proposed program. He explained that Duke Energy Indiana's proposal in this proceeding was made after a two-year collaborative process, as part of the 2016 Edwardsport Settlement Agreement, in which the OUCC participated, and after multiple meetings with active solar developers in Indiana. Mr. Ritch discussed that Petitioner worked with the OUCC after its filing to clarify its proposal and revise its tariff and Service Agreement to address any concerns. He testified that solar developers in Indiana were excited about partnering with

# Petitioner and did not view the proposed tariff as an "unregulated monopoly" or "unfair competition" as alleged by the OUCC. Mr. Ritch reiterated that this voluntary program is an option for Duke Energy Indiana customers to use for financing the construction, operation, and maintenance of a solar energy facility on their premise and, thereby, receive the benefits of renewable energy without the financial risk associated with facility performance and maintenance. Mr. Ritch opined that the OUCC opposing a completely voluntary program designed to modestly expand distributed solar generation in the state that minimally, if at all, impacts Duke Energy Indiana's non-participating customers, was inexplicable.

Mr. Ritch then addressed the testimonies of Walmart and the CAC, specifically, their interest in having the RECs generated under the program to be either retired or granted to the participating customer. He explained that, unless the participating customer expressed an interest in obtaining the RECs itself, Duke Energy Indiana had initially intended to retain the RECs associated with the solar facilities constructed because Duke Energy Indiana would be owning the solar facilities through the term of the Service Agreement and would have the option of selling the RECs to benefit all customers. However, Mr. Ritch explained that Duke Energy Indiana is willing to change its proposal and give any RECs to the participating customer or retire them on the customer's behalf and has revised the tariff and Service Agreement to indicate this change.

Mr. Ritch testified that in response to the OUCC's testimony and to alleviate any concerns that this program is an "unregulated monopoly" or "unfair competition," Duke Energy Indiana wants the Commission to have full access to information regarding the program and is proposing annual reporting requirements of: (1) number of participating customers; (2) number of new customers since last submittal; (3) effective date of each new service agreement; (4) electric tariff rate each participating customer is served under; and (5) revenues and expenses to Duke Energy Indiana from the program. He explained that Petitioner has not sought an ARP as a means of avoiding regulatory oversight, but seeks only to eliminate the need to file separate approval requests for each solar facility constructed under the tariff and to allow Duke Energy Indiana to charge market rates for the services provided under the Service Agreement.

Mr. Ritch explained that Duke Energy Indiana is proposing additional cl;ianges to its tariff and Service Agreement in response to stakeholder positions and is proposing to offer the Solar Services Program as a pilot program. He stated that Duke Energy Indiana will return to the Commission when there are participating customers with systems equaling 10 MW in the

aggregate, or five years, whichever happens sooner4. He explained that this will help ensure

continued Commission oversight, as well as prompting a broader conversation about the interest of Indiana companies in sponsoring solar facilities on their premises. In response to the OUCC's testimony, Mr. Ritch explained that Duke Energy Indiana also modified its tariff to state that participation will be limited to 10 MW capacity and that all C&I customers participating in the proposed Solar Services Program would be permitted to enter into a net metering arrangement with Petitioner.

4 In Duke Energy Indiana's Petition and in Mr. Ritch's Direct Testimony, the aggregate of all generation proposed to be eligible under Standard Contract Rider No. 26 was to be capped at 12 MW. However, in Mr. Ritch's Rebuttal Testimony and later confirmed by a docket entry response, Duke now proposes that the Solar Services Program be characterized as a pilot program and be imited to a total of 10 MW.

Mr. Ritch addressed the OUCC's and CAC's concerns about billing participating customers under the program. He explained that participating customers will receive a separate, manually produced bill that will include the cost under the Service Agreement in addition to a separate bill for their electric service. He discussed that, in the future, a new customer information system may be able to produce one bill for both services instead of separate bills. If participating customers have an interest in receiving one bill for both services or a separate bill for each, Duke Energy Indiana would make both options available to them.

Next, Mr. Ritch addressed the OUCC's statement that this proposal offers financial and public relations benefits to Duke Energy Indiana and a few select customers at the expense of other ratepayers. He explained that this proposal is being offered in response to interest from customers for greater options for cleaner energy. There are numerous school districts, corporations, cities, and towns across Indiana that are investing in renewable energy, and this is a voluntary program that provides interested customers the ability to meet their renewable and sustainability goals through a tangible, visible solar system located on their premises. The public interest is served by offering this program as it is a voluntary option for customers to finance the facility. Continuing, he explained that the public interest is also served by the fact that non-participating customers are not impacted by the program but for the subsidy already inherent in net metering. The public interest is further served by the Commission and other stakeholders learning more about the level of interest among participating customers, and the formed partnerships that will promote continued solar energy expansion in the state creating jobs and impacting the local economy. The public interest is also served by the involvement of the Commission in overseeing and monitoring the installation of solar facilities on customer premises throughout Duke Energy Indiana's service territory.

Mr. Ritch emphasized that contrary to the OUCC's argument that this program would be an unregulated monopoly, Duke Energy Indiana will remain a public utility, subject to the Commission's oversight and regulatory authority, and that customers will only voluntarily participate in this program should it prove attractive to them. Not only will this program be regulated, but it will not be a monopoly. Customers already have other choices to construct, operate, and fmance solar facilities on their property, and this program is simply one more option for those customers. Duke Energy Indiana provided a summary net metering report which demonstrated the interest and market for customers interested in installing solar. Mr. Ritch explained that this pilot program serves the public interest and should be approved for its initial term.

Mr. Ritch next addressed the OUCC's comment that suggests the proposed Solar Services Program would not have any regulatory protections for consumers. He explained that this is incorrect. He again stated that Petitioner will remain a public utility under Indiana law, subject to regulatory oversight of the Commission. Mr. Ritch testified that the exceptions sought by Duke Energy Indiana under the proposed ARP are narrow and limited: (1) for Duke Energy Indiana to be able to construct solar facilities for a limited number of participating customers without filing additional proceedings; and (2) for Duke Energy Indiana to be able to offer this service to customers at market-based rates, tailored to the size and other needs of each specific customer. Duke Energy Indiana will remain subject to Commission oversight in all other manners and forms.

The proposed reporting requirements and limited initial term of this pilot offering also ensure continued Commission oversight.

Continuing his rebuttal testimony, Mr. Ritch explained that the proposed tariff is not an unfair means of competing with other solar developers in the state. He clarified that the proposal increases competition, which provides direct benefits to both solar developers and customers. Restating his direct testimony, he explained that Duke Energy Indiana has met with numerous solar developers, and they do not view this offering as unfair competition but welcome the possibility of partnering with a public utility to expand solar in Indiana. He stated that the solar developers see the program as an additional tool for them to use when promoting sales to customers. Duke Energy Indiana provided two letters of support from Indi a solar developers welcoming Duke Energy Indiana's involvement and showing their interest in partnering with Duke Energy Indiana under this program.

Mr. Ritch testified regarding Duke Energy Indiana's efforts to create a competitive market through this offering. He explained that Petitioner will not use any affiliates of its parent, Duke Energy Corporation, to construct these facilities, but based on the preference of each customer, it will competitively bid out construction of each facility. Mr. Ritch stated that Duke Energy Indiana issued a Request for Information in November 2018 to the regional solar development community, including a list of developer contacts submitted by the CAC. He also explained that Duke Energy Indiana has already begun reviewing qualifications of solar developers and will announce its preferred vendors should this pilot program be approved.

Mr. Ritch explained that any participating customer in this pilot will be eligible for net metering5 as explained in the proposed rider and will not receive any economic benefit beyond that received by net metering customers that do not participate in this program.

Continuing, Mr. Ritch responded to the OUCC's assertion that Duke Energy Indiana will retain the full value of any Investment Tax Credits associated with the construction of facilities under the program. He testified that this is inaccurate, and as Duke Energy Indiana stated in its Petition, Duke Energy Indiana, to the extent possible, will take advantage of any tax credits and provide the benefits to participating customers.

Concluding his rebuttal testimony, Mr. Ritch addressed the OUCC's, CAC's, and Walmart's suggestion that Duke Energy Indiana may be the sole entity to offer solar leases in its service territory and that this is an issue the Commission should address in this proceeding. Mr. Ritch testified that this is a narrow request for approval of this pilot program with limited and voluntary participation. There is no need for the Commission to expand the scope of this proceeding and review or modify the Service Territory Act, the statutory definition of a public utility, or to assert jurisdiction over the types of financial transactions related to energy and capacity supply that are being executed by customers and third parties today. The only issue before the Commission at this time is whether Petitioner may offer the voluntary tariff, up to 10 MW, to its commercial and industrial customers. This is just an additional option for customers in an already competitive market for the construction of onsite solar facilities.

*5* As governed by Ind. Code ch. 8-1-40.

1. **Commission Discussion and Findings.** Duke Energy Indiana has proposed this voluntary tariff to provide its customers with an additional choice in how they construct, operate, maintain, and finance onsite solar energy projects. Duke Energy Indiana has proposed a limited size and term for this program and ongoing reporting requirements to this Commission. Duke Energy Indiana has also requested that the Commission approve this pilot program as an ARP under the Alternative Utility Regulation provisions of Indiana law because Duke Energy Indiana desires to: (1) construct solar facilities for participating customers without needing to return to the Commission for approval of each specific project under Ind. Code ch. 8-1-8.5; and (2) charge rates

\_ to customers who opt into this voluntary service based on the market prices available for the solar facility each participating customer selects to match their individual needs. This requires the Commission to assess Duke Energy Indiana's proposal under the provisions of the ARP Statute.

We first note that Ind. Code § 8-1-2.5-1 states that "an environment in which Indiana consumers will have available state-of-the-art energy services at economical and reasonable costs will be furthered by flexibility in the regulation of energy services" and that "flexibility in the regulation of energy services providers is essential to the well-being of the state, its economy, and its citizens." Further, "the public interest requires the commission ... to flexibly regulate and control the provision of energy services to the public ... giving due regard to the interests of consumers "Ind. Code§ 8-1-2.5-1(6). With that in mind, we tum to the specific requests from

Duke Energy Indiana in this proceeding.

First, Duke Energy Indiana has sought a declination of Commission jurisdiction for the limited purpose of allowing Duke Energy Indiana to construct solar facilities, equaling no more than 10 MW in the aggregate, or over five years, whichever is soonest, without needing to initiate additional proceedings. Ind. Code § 8-1-2.5-5(a) provides that we may decline to exercise, in whole or in part, our jurisdiction over either the energy utility, the retail energy service of the energy utility, or both. As stated above, Duke Energy Indiana is not asking us to decline to exercise our jurisdiction in whole over it (as an energy utility) or its proposed tariff (the retail energy service of the energy utility). Therefore, in determining whether the public interest will be served by this limited declination of jurisdiction, Ind. Code § 8-1-2.5-5(b) requires we consider the following:

* 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; and
  4. Whether the exercise of commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment.

In considering the first factor, we acknowledge that Duke Energy Indiana has proposed

that participation in the Solar Services Program will be both limited and voluntary. Each interested customer will enter into a customer-specifit Service Agreement, which will include the monthly payment that will cover the cost of construction, operation, maintenance, and financing of the solar energy facility over the term of the Service Agreement. We recognize that there are a variety of active solar developers in Duke Energy Indiana's service territory and that those solar developers are eager to partner with Duke Energy Indiana as part of this program. Duke Energy Indiana has also made clear that all costs and revenues associated with the Solar Services Program will be booked below-the-line for regulatory accounting purposes and will have no impact on Petitioner's jurisdictional rate base or revenue r quirements. In addition, Duke Energy Indiana has agreed to certain reporting requirements as detailed below. As such and in light of this being an initial pilot offering, we find that assertion of Commission jurisdiction over the proposed Solar Services Program regarding the selection, installation, relocation, transfer, sale, rate, or CPCN review and regulation would be wasteful, without benefit, and should be declined. The approval of this limited tariff offering, along with the continuation of Commission jurisdiction to review and monitor the operation of this program through the reporting requirements, not to mention the full breadth of Commission authority over a public utility such as Duke Energy Indiana maintains sufficient jurisdiction. As such, we approve the exemption that Duke is not required to seek Commission approval every time an eligible customer agrees to participate in the Solar Services Program.

Regarding the second factor, we find that Duke Energy Indiana has submitted testimony indicating benefits for Duke Energy Indiana, its customers, and the State of Indiana. More specifically, eligible customers will benefit by having a tailor-made option that will provide an additional means to construct, operate, and finance an onsite solar facility. Should eligible customers find the benefits of this proposed program attractive, they may choose - but are under no obligation - to participate. Duke Energy Indiana benefits from this program through continuing to be seen as a valued partner committed to serving its customers. Duke Energy Indiana's other customers will not be impacted by this program. Duke Energy Indiana is accounting for the costs of this program below-the-line, thus ensuring program costs are borne solely by those opting to participate. The Commission and other interested stakeholders benefit by learning more about the operation of such a program in the state. The Commission also sees a benefit to its involvement in and oversight of this new tariff offering. We are well aware that distributed solar energy facilities are being constructed across the state outside of our authority and jurisdiction. Increasing our knowledge of consumer trends in this area will benefit the Commission and could help better shape regulations in a future where distributed generation options are more accessible and widespread. The State of Indiana benefits through the partnerships that will be formed in this industry that will promote the continued expansion of solar energy generation in the state. In addition, we understand that Duke Energy Indiana intends to engage independent third-party solar developers to construct, operate, and maintain these facilities for participating customers, thus creating jobs and impacting the local economy. The Commission finds that it has considered this second factor and that approval of Duke Energy Indiana's proposed program will be beneficial to the utility, its customers, and the state.

The third factor we must consider is whether our limited declination of jurisdiction will promote energy utility efficiency. We find that it does. As explained above, we see no benefit to requiring specific approvals of the size and location of each participating customer's solar facility. It will be more efficient for Duke Energy Indiana to report back to us on the operations of this

program during its initial pilot.

The fourth and final factor we must consider is whether exercise of Commission jurisdiction would inhibit Duke Energy Indiana from competing with other providers of functionally similar energy services or equipment. We believe it would. Similar to our consideration of the factors above, requiring Duke Energy Indiana to seek a separate approval (likely taking six or more months) for every participating customer would inhibit Duke Energy Indiana from successfully operating its proposed program. Both customers and developers would most likely decide to finance the construction of the solar facilities through other, already available means rather than wait for necessary regulatory approvals. Developers would likely view this requirement as a hindrance to getting a project underway to meet a customer's specific needs and, therefore, chose to pursue other options for development of solar generation.

In light of these factors, we find that our limited declination of jurisdiction will serve the public interest. As such, we approve this aspect of Duke Energy Indiana's proposed Solar Services Program. '

Duke Energy Indiana also seeks the ability to charge rates to customers who opt into this voluntary service that will be based on the market prices available for the solar facility that each participating customer selects to match their individual needs. In order for Duke Energy Indiana to tailor the rate charged to match each customer's project specifications, Duke Energy Indiana has requested that we approve its alternative regulatory practice and its ability to establish rates and charges that: (1) are in the public interest as determined by consideration of the factors listed in Ind. Code § 8-1-2.5-5; and (2) enhance or maintain the value of a utility's energy services or property including practices, procedures, and mechanisms focusing on the price, quality, reliability, and efficiency of the service provided by the energy utility. Ind. Code § 8-1-2.5-6(a)(l).

Our approval of the proposed Solar Services Program and more specifically, of Duke Energy Indiana's ability to charge rates for this program that are based on market prices available for each specific solar facility constructed, turns on our consideration of the same Ind. Code § 8- 1-2.5-5 factors considered above. As we found when reviewing those factors with regard to declining jurisdiction over preapproval of the size and location of each participating customer's solar facility, we find that the public interest will be served by our approval of Duke Energy Indiana's ability to charge specific rates that will be tailored to meet the wants and needs of each individual participating customer. Again, customers are not required to participate in this program

- they must choose to opt in based on their own determination of its value. This factor, along with the limited size and term of the program and the factors discussed above all contribute to our finding that the public interest is served by approving Duke Energy Indiana's proposal.

Regarding the concerns raised by other parties in this proceeding, specifically the OUCC, we find that Duke Energy Indiana has adequately addressed these issues. Duke Energy Indiana has committed to providing RECs generated by the program to participating customers - an issue upon which the OUCC and intervenors agreed.

Concerns were also raised about how customers would be billed for this program. We find Duke Energy Indiana's proposal reasonable. Specifically, Duke Energy Indiana shall bill

participating customers separately for services received under this program for the near future. When Duke Energy Indiana's billing system has the capability to consolidate billing for this program along with the customer's retail electric service, it shall make that option available to participating customers. Duke Energy Indiana shall keep the Commission updated on the ability of its billing system in its annual report as noted in Paragraph 10 below. The proposed reporting requirements, approved in Paragraph 10 below, also address the OUCC's concern that nonparticipating customers not subsidize the proposed program.

In its rebuttal testimony, Duke Energy Indiana revised its proposed Rider No. 26 to make clear that participating customers may also participate in its Rider No. 57 (Duke Energy Indiana's net metering program). While this change partially addressed an issue raised by the OUCC, it does not resolve the OUCC's concern that this proposed program allows eligible customers to participate in net metering without owning and operating the solar facilities constructed under this proposed tariff. In response to that concern, the Commission finds that the limited size and term of this proposal, the continued oversight of the Commission, and the fact that Duke Energy Indiana already has flexibility under its net metering tariff (which cannot be changed under Indiana law) to make exceptions on a case-by-case basis to allow participation, leads us to find that this narrow expansion of net metering through a pilot project is in the public interest.

We are also not persuaded to include the option of third-party leasing by alternative suppliers in Indiana as part of our approval of this program, as was suggested by Walmart and the CAC. The pricing afforded by electric utilities for excess generation from customer-sited generation within their respective service territories is governed by Ind. Code ch. 8-1-40, Ind. Code ch. 8-1-2.4, 170 IAC 4-4.2, and 170 IAC 4-4.1, and it is applied through utility-specific Commission-approved tariffs. As noted above, Rider No. 57 affords Duke Energy Indiana the opportunity for discretion in expanding the offering of net metering to its customers. As found in this Order, Duke Energy Indiana's proposed expansion through its ARP is in the public interest. Our public interest finding herein is not dependent upon further expansion of that proposal to include third-party leasing by alternative suppliers. As such, we decline the invitation to direct Duke Energy Indiana to modify its proposal by applying additional discretionary expansion.

Accordingly, the Commission finds Duke Energy Indiana's request for the approval of the Solar Services Program ARP, Standard Rider Contract No. 26 should be approved as a pilot program with Petitioner returning to the Commission when it has participating customers with systems equaling 10 MW in the aggregate or five years, whichever happens sooner, with the limited declination of Commission jurisdiction described above.

On January 28, 2019, Duke Energy Indiana responded to the Presiding Officer's January 24, 2019 docket entry, which requested the pricing construct that would ensue for customers participating in this ARP when net metering ends. Under Ind. Code§ 8-1-40-13, a customer with a net metering facility installed after December 31, 2017, and who is participating in an electricity supplier's net metering tariff shall be served under the terms and conditions of that net metering tariff until the customer either removes or replaces the facility or until July 1, 2032. Duke Energy Indiana stated that after 2032, pricing for program participants would follow the rules established under Ind. Code ch. 8-1-40. However, Ind. Code§ 8-1-40-3(a)(2) restricts "distributed generation" under Ind. Code ch. 8-1-40 to generators or other devices that are owned by the customer, not for

leased units as Duke Energy Indiana proposed. Furthermore, Duke Energy Indiana has not sought relief from this statutory term. Accordingly, we direct Duke Energy Indiana to ensure that any program discussions or presentations denote the future pricing constructs that a program participant could reasonably expect to have available and are fully consistent with existing statutes.

* + 1. **Reporting Requirements.** We find that Duke Energy Indiana shall make annual

\_ reports for the term of this program, containing the following information related to this program, on or before the anniversary issuance date of this Order. The annual report shall be filed under this Cause and contain the following information:

* + - 1. Number of participating customers;
      2. Number of new customers since the last submittal;
      3. Effective date of each new service agreement;
      4. Electric Tariff rate each participating customer is served under;
      5. Revenues and expenses to Petitioner from this program; and
      6. Provide an update on billing system.

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

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1. Duke Energy Indiana's requested relief for approval of its Solar Services Program ARP, with declination of Commission jurisdiction as specified herein, is hereby approved.
2. Duke Energy Indiana's Solar Services Program Revised Tariff, Rider No. 26, is hereby approved.

Order.

1. Duke Energy Indiana shall file annual reports pursuant to Paragraph 10 of this
2. The Solar Services Program Tariff, Standard Contract Rider No. 26 shall be

effective upon filing with and approval by the Commission's Energy Division.

1. This Order shall be effective on and after the date of its approval.

## HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR: APPROVED: JUN 0:5 2019

**I hereby certify that the above is a true**

**and correct copy of the Order as approved.**



**Mary M.@J7erra**

**Secretary of the Commission**