POSITION PAPER OF INDUSTRIAL CONSUMERS
ON ELECTRIC REFORM

September 2013

This paper has been prepared on behalf of the Indiana Industrial Energy Consumers, Inc. ("INDIEC") and the Indiana Industrial Group, an ad hoc group consisting of INDIEC members and other large electric users operating industrial facilities in Indiana (collectively the "Industrial Consumers"). In light of the serious problems arising from rapidly escalating energy prices, the Industrial Consumers support reform of Indiana's retail electric market in order to provide greater flexibility and better options to manage energy costs. Specific proposals are set forth in Section D below.

A. Rising Energy Costs Are a Serious Problem for Industrial Consumers in Indiana

For many years, Indiana offered industrial operations a favorable business location arising from economical energy rates, in comparison to the region and the nation, arising largely from the availability of low cost Indiana coal. Because of economical natural gas supplies across the nation and rising rates in Indiana in recent years, Indiana can no longer be considered a low-cost energy state. Ten years ago, Indiana ranked sixth lowest in the nation in average electricity prices for industrial customers.[1] As of 2012, Indiana's national ranking had dropped to 24th in that respect.[2] In other words, over the past decade, Indiana has gone from being one of the lowest cost energy locations for industrial facilities in the United States to being average at best.

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[1] *See* U.S. Energy Information Administration, *Electric Power Monthly March 2004* (with data through December 2003), Table 5.6.B.

[2] *See* U.S. Energy Information Administration, *Electric Power Monthly February 2013* (with data through December 2012), Table 5.6.B. Through the first half of the current year (the most recent data available), Indiana's ranking dropped further from 24th to tied for 27th. *See* U.S. Energy Information Administration, *Electric Power Monthly August 2013* (with data through June 2013), Table 5.6.B.

That unfavorable trend is expected to continue to get worse into the future, due to factors largely outside the control of Indiana.

Attached as Exhibit A is a chart showing the direction of average industrial electricity prices over the past fifteen years in Indiana as compared to the average throughout the United States. Up until the past five years, Indiana maintained a consistent cost advantage, but since that time the spread has been essentially erased and the trend is in the wrong direction.[3] Exhibit B shows the same comparison in the region that includes Indiana, Illinois, Michigan, Ohio and Wisconsin. For the initial part of that period, Indiana was consistently at or near the bottom in energy rates in comparison to other states in the region, providing Indiana with a distinct advantage as a location of choice for industrial operations. The steep rise in energy prices, however, is apparent in the most recent decade. The unfavorable status of industrial electric rates in Indiana is further apparent in comparison to other Midwestern states that have retained traditional regulation. Exhibit C shows the rise in Indiana prices in comparison to averages in Kentucky and Iowa. As of 2012, Indiana's average electricity prices for industrial consumers were higher than those of Illinois and Ohio (restructured states), as well as Kentucky and Iowa (regulated states).

For several reasons, the problem of rapidly escalating energy costs can be expected to continue to get worse in Indiana. In the first place, Indiana is highly dependent on coal-fired generation, which continues to face very expensive environmental compliance challenges. Over

[3] Based on year-to-date data through June of this year, the average industrial electricity price in Indiana for 2013 was 6.54¢ per kWh and the average for the total United States was 6.66¢. *See* U.S. Energy Information Administration, *Electric Power Monthly August 2013* (with data through June 2013), Table 5.6.B.

80% of the electricity production in Indiana in 2011 was generated by coal plants.[4] The impact of federal environmental regulations were analyzed in a January 2012 report by the State Utility Forecasting Group, which concluded: "Due to the state's heavy reliance on coal as a fuel source for electricity generation, Indiana is expected to experience larger price increases than those projected on a regional or national level. Similar studies by other entities have shown projected electricity price increases at the regional or national level of roughly half those indicated in this study."[5] In other words, the impact of environmental compliance on electric prices in Indiana is expected to be on the order of twice as severe as the impact in the broader region and nationally.

Compounding the heavy reliance on coal-fired generation facilities, the State's generation resources are aging, with many units nearing the end of their useful production. Coal units are typically retired between forty and sixty years. Over 30% of the coal-fired generation in Indiana is greater than forty years old, and about 75% is over thirty years old.[6] "For the electric industry, an aging generation fleet is particularly concerning due to the potential risk to system reliability and the rising costs associated with the construction of new power plants."[7] In light of the high costs of environmental compliance for coal-fired generators, Indiana utilities are being forced to consider the retirement of coal units earlier than would otherwise be the case. As a result, Indiana is facing a period of very expensive construction projects to replace the capacity of aging coal plants as they are being retired.

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[4] *See* Indiana Utility Regulatory Commission, *2012 Annual Report to the Regulatory Flexibility Committee, 2012 Electricity Report*, pp. 23-24 & Chart 3.
[5] *See* State Utility Forecasting Group, *The Impacts of Federal Environmental Regulations on Indiana Electricity Prices* (January 2012), p.2.
[6] *See* Indiana Utility Regulatory Commission, *2012 Electricity Report, supra*, pp.28-30 & Table 2.
[7] *Id.* at p.28.

A third factor that continues to exacerbate the increasing electricity prices in Indiana is the trend in legislative policy with respect to regulated utilities. While Indiana retains the regulated monopoly model for the provision of electricity and provides designated utilities with exclusive sales territories, energy utilities in Indiana have been provided expanded opportunities to demand greater assurance of cost recovery on an accelerated basis, often based on forecasts and projections, with restricted regulatory oversight and limited opportunity for challenge by affected consumers. In particular, utilities have an array of tracker options at their disposal, by which selected categories of costs are subject to essentially automatic recovery through rates, without regard to the utility's overall financial status or the need for increases to establish reasonable rates. Virtually all major expense categories, from mine to meter, can be recovered by utilities through trackers without regard to the reasonableness of overall rates. This one-sided flexibility has enabled Indiana utilities to restrict regulatory oversight while imposing extensive costs on retail customers.

A particular example of one-sided deregulation is the Alternative Utility Regulation Act ("AUR Act"), by which an energy utility may propose a form of alternative regulation that deviates from traditional utility law.[8] Under the AUR Act, an alternative regulatory plan can only be proposed by an energy utility, not by any other party.[9] If the Indiana Utility Regulatory Commission modifies the utility's proposal in any respect, the utility has the extraordinary option to refuse the change and withdraw the proposal.[10]

The upward spiral in electric prices resulting from the combined effects of such factors has severely and adversely impacted the economics of industrial operations in Indiana. Indiana

[8] *See* Ind. Code §8-1-2.5-1 *et seq*.
[9] *See* Ind. Code §8-1-2.5-4.
[10] *See* Ind. Code §8-1-2.5-6(e).

has historically enjoyed a strong industrial base, due in significant part to traditionally low energy costs. Industrial processes are typically energy-intensive, and consequently energy costs are a material factor in the cost of production. In 2012, manufacturing operations provided employment to nearly half a million Hoosiers, representing one in six jobs in the State.[11] The percentage employed in Indiana in that sector is the highest of any state in the country.[12] In 2012, furthermore, industrials in Indiana consumed nearly 48 billion kilowatt-hours of electricity, accounting for nearly half the State's entire electric consumption.[13] For the same period, the total revenue paid by Indiana industrial consumers for electricity was more than $3 billion.[14] Energy-intensive, trade exposed (EITE) industrial operations in Indiana are impacted by changes in the overall economics due to the decision of being located in Indiana. Accordingly, EITE industrials will have to review their choice of Indiana as a location for competitive businesses active in global markets.

Unquestionably, energy costs have a substantial impact on the economic vitality of the State's industrial base. Those costs are a significant factor in business decisions involving the location of facilities, where to expand or restrict production, and the potential relocation of operations. The trend in energy prices is costing Indiana in productivity and jobs. As major employers and taxpayers, industrial businesses play a vital role in the Indiana economy.[15]

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[11] *See* Stats Indiana, www.stats.indiana.edu/ces/ces_naics (based on U.S. Bureau of Labor Statistics and Indiana Dept. of Workforce Development data).
[12] *See* Indiana Manufacturers Association, *Indiana Leads the U.S. in Manufacturing Production, Employment and Earnings* (April 4, 2013), www.imaweb.com/press-releases.
[13] *See* U.S. Energy Information Administration, *Electric Power Monthly* (with data for December 2012) (February 2013), p.118, Table 5.4.B.
[14] *Id.* at p.120, Table 5.5.B.
[15] *See* InContext, *Manufacturing's Impact on Household Income and the Middle Class*, www.incontext.indiana.edu/2012/nov-dec/article4.asp ("For every 1 percentage point increase in manufacturing's contribution to Indiana's economy, yearly median household incomes increase by nearly $89.").

Indiana is now falling behind other states such as Illinois, Ohio, Kentucky and Iowa in the provision of affordable energy. As a result, the State's ability to attract and retain industrial operations and maintain productivity in that essential sector has been seriously undermined. There is a compelling need, therefore, to provide industrial consumers in Indiana with effective energy solutions and greater flexibility to secure access to economical sources of electric energy.

B. The Time is Right to Reform Indiana's Retail Electric Market

For a number of decades, there has been a progression in federal law toward the restructuring of regulated industries and the promotion of competition, as in the transportation, telecommunications and natural gas markets. That movement in federal regulatory policy has typically been followed at the state level by restructuring of state-regulated markets. In the 1990s, federal initiatives restructured the wholesale electric market and the interstate transmission system. The federal restructuring was intended to promote competition in the process by which public utilities purchase electricity for resale, and has resulted in the establishment of independent system operators with responsibility for regional transmission systems.

As federal restructuring of the electric industry progressed, virtually every state, including Indiana, considered measures to introduce competition at the retail level in which electricity is purchased by consumers. In 1995, the General Assembly passed the AUR Act, which addressed the increasing competition in energy services by providing a mechanism to implement greater flexibility in traditional regulation in Indiana through deregulatory proposals and alternative regulatory plans. Comprehensive restructuring aimed at the establishment of retail electric competition was proposed in bills introduced in Indiana starting in 1997. That proposed legislation was supported by an array of consumer groups, trade associations and two

of the State's investor-owned electric utilities. The prevailing perspective at the time, however, was that Indiana already had advantageously low energy rates and hence should proceed with caution. In 2000, an energy crisis in California exposed structural flaws in the restructuring model that was implemented in that state, effectively chilling the national trend toward restructuring retail electric markets.

Although Indiana and the majority of states did not proceed with electric restructuring, a number of other states went forward with restructuring. Many of those states were in the northeastern United States, where electric rates tended to be higher. At this point, there are sixteen jurisdictions with active electric competition programs: Illinois, Ohio, Michigan, Texas, Oregon, Pennsylvania, New York, New Jersey, Maryland, District of Columbia, Delaware, Connecticut, Massachusetts, Rhode Island, New Hampshire and Maine.[16] In each of those states, the restructuring process began in the 1990s. None of the other states with retail competition programs have experienced the kind of energy crisis that occurred in California in 2000. In recent years there has been some concern about the adequacy of long-term reserve margins in some regions, in particular with respect to projected capacity deficiencies in Texas.[17]

Attached as Exhibit D is a chart comparing average retail electricity prices to industrial consumers from 1997 to June 2013 in states with currently restructured markets and states that have retained the regulated monopoly model. The prices are weighted by relative consumption across the competitive and regulated states. As indicated in the chart, average industrial prices started out considerably higher in what are now restructured states, and for a period of time, as those markets transitioned to competition, the spread grew wider. Over the most recent five

[16] *See* U.S. Energy Information Administration, *Status of Electricity Restructuring by State*, www.eia.gov/electricity/policies/restructuring/restructure_elect.html.
[17] *See* North American Electric Reliability Corporation, *2012 Long-Term Reliability Assessment*, November 2012, www.nerc.com/files/2012_ltra_final.pdf.

years, however, while price levels in regulated states have been relatively flat (and while Indiana's rates have continued to rise precipitously), the average in restructured states has dropped steadily. Price trends have been affected by a variety of factors, including the imposition of federal environmental regulations, changes in the natural gas market, shifts in demand and regulatory conditions. Indiana's current regulatory framework does not provide industrial consumers with effective tools to manage those risk factors.

The present circumstances differ in key respects from those at the time that Indiana previously considered electric reform. Most notably, Indiana no longer enjoys the advantage of low energy rates, and to the contrary high electricity prices in Indiana are now a serious impediment to industrial productivity and greatly impair the State's economic development prospects. The problem, moreover, is getting worse. The federal initiatives and restructuring by other states, which were at the beginning stages when Indiana last considered electric competition, have now matured into more established structures that provide a baseline of experience and data for comparative analysis. Two neighboring states with restructured markets, Illinois and Ohio, now have lower cost energy than Indiana. Nearby states that have retained their regulatory models, Kentucky and Iowa, have also achieved an advantage over Indiana in energy costs. For the State to remain competitive as a location for industrial operations, accordingly, Indiana should take immediate steps to provide industrial consumers with more flexible energy options and enhanced capability to manage energy costs.

C. Indiana Should Support the Development of Private Generation Resources

An important element of any potential reform involves the long-range development of generation resources by non-utilities. Under traditional regulation, monopoly suppliers are provided exclusive sales territories subject to an obligation to reliably serve the public demand at

regulated rates. The duty of public utilities to serve the public, in combination with rates imposed on consumers with the force of law, establishes a framework under which utilities can undertake expensive construction projects to build generation facilities with a high degree of assurance that the costs will be recovered from captive customers, which in turn enhances access to favorable financing arrangements. With the introduction of competition and customer choice, on the other hand, the development of generation resources becomes to a greater extent subject to the market dynamics of supply and demand. In that context, adequate measures to support new generation by private enterprises can facilitate a diversity of supply options for consumers.

In a number of contexts, established public policy already favors the construction of private generation projects. Cogeneration facilities producing both electric power and useful thermal output for an industrial host operation,[18] small power production facilities,[19] combined heat and power units,[20] waste-to-energy facilities,[21] wind farms and other renewable sources of energy[22] – all are examples of alternative generation resources that non-utilities can develop, outside the traditional model of public utility regulation, pursuant to existing legislative policy under both federal and Indiana law. The policy favoring private energy projects, notably, is designed substantially to support the development of alternative energy solutions for industrial operations in particular. In the current market, accordingly, the recognized policy favoring the development of alternative energy resources by non-utilities supports supply diversity and provides greater flexibility and options for industrial consumers. Advancing the same policy,

[18] *See* 16 U.S.C. §824a-3; Ind. Code §8-1-2.4-1 *et seq*.
[19] *See* 16 U.S.C. §796(17)(A)(ii); Ind. Code §8-1-2.4-5(a).
[20] *See* www.epa.gov/chp/index.html; Ind. Code §8-1-37-4(a)(20).
[21] *See* 16 U.S.C. §796(17)(A)(i); Ind. Code § 8-1-37-4(a)(5)(D), (9).
[22] *See* 16 U.S.C. §796(17)(A)(i); Ind. Code § 8-1-2.4-2(b)(1); Ind. Code § 8-1-37-4(a)(1)-(6), (11).

furthermore, facilitates the establishment of a wider array of energy resources better equipped to meet demand with new production.

The important policy supporting the development of private energy facilities by non-utilities, however, faces significant obstacles that undermine the current effectiveness in meeting the needs of industrial consumers and threatens the future establishment of a more diverse supply portfolio in Indiana. Some of the impediments are non-regulatory and not specific to issues under the public utility laws, including challenges relating to siting, permitting, financing and taxation. In addition, however, private energy projects face an array of difficulties arising from the existing framework of public utility regulation. In particular, due to their exclusive service franchises, monopoly utilities typically control access to the electric grid and non-utilities must navigate a regulatory maze to transmit electric power. In many instances, a non-utility must interconnect with a public utility and secure both regulatory compliance as well as contractual rights, impairing the efficiency and adding to the complexity of the arrangement. Under current law, furthermore, industrial consumers encounter resistance and regulatory obstacles in connection with efforts to access off-site energy resources, to join with other consumers or developers on private energy ventures, to aggregate load at different locations for efficient purchasing and private distribution, and to secure the back-up and maintenance services needed for reliable operation of private generation facilities.

Reform of the regulatory framework to remove existing impediments to the development of private energy projects, accordingly, will provide benefits to industrial consumers and the State by promoting efficiency and enhancing the diversity of supply options. Measures to support the construction of energy facilities by industrial consumers and other non-utilities will expand production by Indiana's native energy industry and broaden the availability of in-state

energy alternatives. Such measures could provide immediate relief to consumers seeking greater ability to manage rising energy costs with innovative solutions at their own initiative. In the longer term, the same steps promote the establishment of adequate supply resources as Indiana considers and implements further reforms to its retail electric market.

D. Indiana Should Reform Its Regulatory Framework to Provide Efficient Solutions to Rising Energy Costs

Based on experience in other states, comprehensive restructuring to institute competition in the provision of retail electric service involves a sequence of steps and initiatives over a multi-year transition period. The Industrial Consumers propose, accordingly, that the process of implementing regulatory reform commence with a thorough study of alternative solutions to the many complex issues presented. The purpose of the study would be to determine an optimal form and timeline for any restructuring in Indiana and to evaluate alternative avenues of containing rate increases through revised regulatory standards and procedures. In the meantime, the present challenges to consumers facing rapidly escalating energy costs call for immediate measures to provide relief without delay. Industrial consumers need access to mechanisms to manage energy costs through self-directed procurement.

The Industrial Consumers therefore support the following measures:

1. A thorough study should be conducted, under the oversight of the Indiana Utility Regulatory Commission and the Regulatory Flexibility Committee, to determine the optimal form of comprehensive reform and to assess potential measures to rectify the deficiencies in the existing regulatory structure. The study will be oriented on determining the approach best suited to promote efficiency, reliability, diversity of supply options, the restoration of Indiana's energy advantage and competitiveness with neighboring states, and the equitable allocation of risks and benefits for all consumers in Indiana's retail electric market. In many restructured states, the

process began with an evaluation of approaches by the state agency charged with regulating public utilities. In Indiana, the Commission has the expertise to investigate regulatory reform and the procedural tools to elicit evidence and consider the policy views of all interested stakeholders. An effective process requires adequate opportunity for all affected stakeholders, including consumer groups, to present views and proposals. The Commission reports annually to the Regulatory Flexibility Committee, which, with the determinations presented by the Commission and further information and recommendations presented through the legislative process, can then submit a proposal for consideration by the General Assembly. A one-year period to study potential approaches and determine the best alternative for Indiana would enable the General Assembly to consider comprehensive legislation in the 2015 session.

2. The AUR Act should be amended to permit parties other than energy utilities to propose alternative regulatory plans for approval by the Commission. The AUR Act was established in the mid-1990s as a mechanism to provide flexibility in traditional regulation, in recognition that "competition is increasing in the provision of energy services in Indiana and the United States."[23] Under the existing provisions, however, only an energy utility can propose flexible regulation and, if the utility's plan is modified by the Commission, the utility has the option to reject the modification.[24] Consumers, consequently, have been denied the opportunity to present proposals promoting competition and other energy alternatives, and the Commission's

[23] *See* Ind. Code §8-1-2.5-1.

[24] *See* Ind. Code §8-1-2.5-4 (provisions authorizing deregulation or alternative regulatory plans "do not apply to an energy utility unless the energy utility voluntarily submits a verified petition to the commission stating the energy utility's election to become subject to such section or sections"); *id.* §8-1-2.5-6(e) ("[T]he commission may not order that material modifications changing the nature, scope or duration of the plan take effect without the agreement of the energy utility. The energy utility shall have twenty (20) days after the date of a commission order modifying the energy utility's proposed plan within which to, in writing, accept or reject the commission's order.").

ability to regulate flexibly in the public interest has been circumscribed. Amending the AUR Act to permit other interested parties to propose alternative regulatory plans,[25] without providing the utility with veto power over any resulting Commission order, would restore balance to the statutory mechanism and would permit the Commission to consider alternative proposals, such as a pilot program for electric choice. The interests of the utility, notably, would remain protected by its ability to present evidence and assert positions in the proceeding, by the statutory criteria that must be satisfied for any proposal to be approved, [26] and by the Commission's authority to make public interest determinations. In short, this change would appropriately shift the focus of regulatory policy from that which is best only for Indiana's utilities to that which is best for jobs and the Indiana economy as a whole.

3. Both through immediate legislative initiatives and as developed and evaluated through the one-year study period, Indiana should implement regulatory reform measures to mitigate rising energy rates. The existing regulatory standards and procedures that permit Indiana utilities to implement rate increases with circumscribed regulatory oversight, based on projections and estimates, should be balanced with protections that mitigate the impact on consumers and restore the Commission's authority to prevent the imposition of unreasonable rates. Revisions to existing regulatory standards and procedures that should be adopted include the following:

(a) The Commission should be directed by statute to review and where appropriate to impose downward adjustments in an energy utility's authorized rate of

[25] The parties with standing to commence a formal complaint proceeding at the Commission against a public utility are defined at Ind. Code §8-1-2-54.
[26] *See* Ind. Code §§8-1-2.5-5(b), 8-1-2.5-6(a).

return to reflect the reduced level of risk when utilities take advantage of rate tracking mechanisms;

(b) An energy utility that implements a non-fuel tracking mechanism, or implements an alternative regulatory plan under the AUR Act, should be required to file a general rate case within two years, in order to enable the Commission to conduct a comprehensive review of rates and to adhere to the standard of just and reasonable rates;

(c) Because increases in a particular category of costs do not necessarily require increased revenue to maintain just and reasonable rates, such as in situations where energy sales increase or where another category of costs decreases, in all instances where an energy utility seeks a tracker for a given expense the Commission should be authorized to deny the request if it determines that the proposed tracker is not necessary to provide the utility with fair opportunity to earn its authorized rate of return;

(d) Any new revenue requirements authorized by the Commission through a tracking mechanism should be allocated among customer classes consistent with the methodology established in the most recent general rate proceeding or otherwise in accordance with cost causation principles;

(e) In all rate proceedings in which an energy utility seeks an increase in revenues to reflect increases in a tracked expense, the utility should bear the burden of proof in establishing that it has made reasonable efforts to manage the costs in order to provide efficient and reliable service as economically as possible, so that even where a tracker is approved the utility retains continuing responsibility and incentive to minimize the rate impact;

(f) In light of the prevalence of tracking mechanisms implemented by energy utilities in Indiana, the earnings test applicable to fuel cost adjustments pursuant to Ind. Code §8-1-2-42(d) should be expanded to reflect the cumulative impact of all trackers affecting rates;

(g) The existing statute that contemplates rate review every four years[27] should be amended to require a general rate proceeding for energy utilities at least once every four years; and

(h) In the event that the Office of Utility Consumer Counselor or affected ratepayers commence a proceeding challenging the rates and charges of an energy utility as excessive or unreasonable, the Commission should be authorized in any order granting relief to include customer refunds dating back to the date the complaint was filed.[28]

4. The Commission should be granted statutory authority to approve, on its own motion or upon petition by any interested party, tariff provisions applicable to particular electric utilities providing for distribution-only service. In connection with natural gas service, the General Assembly enacted a statute in 1987 authorizing the Commission to implement tariff provisions for transportation-only service.[29] Under the oversight of the Commission, large volume consumers now have access to competitively priced natural gas and can, under transportation tariffs, utilize the local utility's distribution system only for the purpose of transporting the gas to the customer's location. While recognizing significant differences between natural gas and electricity markets, the efficiencies and cost savings available under transportation tariffs in the natural gas market remain unavailable to consumers in the electric

[27] *See* Ind. Code §8-1-2-42.5.
[28] Under federal law, the Federal Energy Regulatory Commission has authority to provide refunds dating back to the filing of a rate complaint. *See* 16 U.S.C. §824e(b).
[29] *See* Ind. Code §8-1-2-87.7.

market. Authorizing the Commission to implement distribution-only tariff provisions for electric customers, in the same manner that transportation-only tariffs are authorized in the gas market under the existing statute, could expand the benefits and options available to consumers across a broader array of energy services. Such distribution tariffs would require Commission approval based on substantial evidence in the context of a specific utility, and would remain subject to the Commission's regulatory oversight.

5. Indiana should adopt measures to support the development of private electric generation and distribution facilities by non-utilities, including industrial consumers. In the long term, such measures could facilitate the construction of adequate energy resources in the context of any future regulatory reform, and in the near term would provide consumers and alternative suppliers with greater ability to fashion innovative and efficient energy solutions. Provisions supporting private energy projects would address issues relating to siting, permitting, financing and taxation, in addition to matters specific to the context of utility regulation. Such regulatory issues include: restrictions imposed by monopoly utilities associated with interconnection with the electric grid; imposition of the utility as a middleman buyer and reseller; prohibitions on aggregation of load and private distribution by consumers with multiple locations; impediments to off-site and joint venture projects by consumers; and restrictions in the availability of reliable back-up and maintenance service in the event of outages affecting private facilities. In all instances, the objective of promoting diversity of in-state supply resources and enhanced economic efficiency could be advanced by measures aimed at reducing the burdens and obstacles faced by industrial operations and other non-utilities seeking to develop energy projects, in particular the imposition of regulatory restrictions that assist monopoly utilities in efforts to inhibit the deployment of alternative energy solutions.

6. The Service Area Assignments Act[30] should be amended consistent with the regulatory reforms as proposed. The Service Area Assignments Act was initially enacted by the General Assembly in 1980 to establish the integrity of service area boundaries served by electric utilities in Indiana and thereby address recurring service disputes between adjacent suppliers.[31] The Act further provides for exclusive service rights by the designated utility within its defined service area.[32] While suited at the time to prevent incursions across boundaries in the context in which the Act was adopted, the statutory establishment of monopoly service rights now serves to inhibit and restrict consumer options in today's increasingly competitive electricity market. In connection with the proposed steps to mitigate rising energy costs, to provide a broader range of alternatives to consumers and to make Indiana more competitive as a location for large employers, the Service Area Assignments Act should therefore be amended to provide that the service rights of electric suppliers within their assigned service territories shall be subject to the following exceptions: (1) services by alternative suppliers in accordance with an alternative regulatory plan approved by the Commission pursuant to the AUR Act, as revised; (2) services to a customer eligible for and receiving service under a distribution-only tariff provision approved by the Commission; (3) electric power generated by facilities owned in whole or in part by the consumer being served, regardless of whether the facilities are located on the consumer's property or are off-site; and (4) electric power produced from a clean energy resource[33] that is connected to the distribution system of the utility in whose assigned service area the consumer is located. In the context of more comprehensive changes to Indiana's retail electric market,

[30] *See* Ind. Code §8-1-2.3-1 *et seq*.
[31] *See United REMC v. Indiana & Michigan Electric Co.*, 549 N.E.2d 1019, 1021 (Ind. 1990) (describing legislative history).
[32] *See* Ind. Code §8-1-2.3-4.
[33] "Clean energy resource" is defined at Ind. Code §8-1-37-4.

pursuant to further legislation arising from the proposed one-year study period, additional amendments to the Act may well be necessary and appropriate.

E. Conclusion

Indiana is no longer a low-cost energy state. Rising electric rates are posing increasing problems to the vitality of Indiana's industrial base, to the attraction and retention of large employers, and to the interests of all consumers. Indiana is falling behind other states in addressing high energy costs, and the problem is getting worse. The Industrial Consumers, accordingly, support the institution of a one-year study period to develop comprehensive regulatory reform legislation. The Industrial Consumers further support the prompt adoption of provisions to support energy projects by non-utilities and the immediate amendment of regulatory statutes to authorize greater flexibility to consumers seeking alternative supply options, including a grant of authority to the Commission to establish alternative regulatory mechanisms.