ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF DUKE ENERGY INDIANA, INC. SEEKING AUTHORITY TO REFLECT ADDITIONAL VALUES OF QUALIFIED POLLUTION CONTROL PROPERTY UNDER CONSTRUCTION IN ITS RATES THROUGH ITS STANDARD CONTRACT RIDER NO. 62, PURSUANT TO IND. CODE SECTIONS 8-1-2-6.6, 8-1-2-6.8 AND 170 I.A.C. 4-6-18; SEEKING APPROVAL OF AN ONGOING REVIEW PROGRESS REPORT CONCERNING CERTAIN CLEAN COAL TECHNOLOGY PROJECTS PURSUANT TO IND. CODE SECTION 8-1-8.7-7; SEEKING APPROVAL OF AN UPDATED COMPLIANCE PLAN, UPDATED COST ESTIMATES AND ESTIMATED IN-SERVICE DATES FOR ENVIRONMENTAL PROJECTS; SEEKING APPROVAL OF AN ADJUSTMENT TO ITS RATES THROUGH ITS CLEAN COAL OPERATING COST REVENUE ADJUSTMENT STANDARD CONTRACT RIDER NO. 71, IN ACCORDANCE WITH IND. CODE SECTION 8-1-8.8-11; AND SEEKING APPROVAL OF AN ADJUSTMENT TO ITS RATES THROUGH ITS SO_2, NO_X AND Hg EMISSION ALLOWANCE ADJUSTMENT, STANDARD CONTRACT RIDER NO. 63	)	CAUSE NO. 42061 ECR 14 APPROVED: JAN 27 2010

BY THE COMMISSION:
David E. Ziegner, Commissioner
Loraine L. Seyfried, Administrative Law Judge

On October 26, 2009, Duke Energy Indiana, Inc. ("Petitioner" or "Duke Energy Indiana") filed a Petition with the Indiana Utility Regulatory Commission ("Commission") seeking to reflect additional values of qualified pollution control property ("QPCP") in its rates and charges for electric service, through Standard Contract Rider No. 62; seeking approval of an ongoing review progress report concerning certain clean coal technology projects; seeking approval of updated environmental projects, cost estimates and in-service dates for environmental projects; seeking approval of an adjustment to its rates through its Clean Coal Operating Cost Revenue Adjustment mechanism, Standard Contract Rider No.71; and seeking approval of an adjustment to its rates through its sulfur dioxide ("SO_2"), nitrogen oxide ("NO_x") and mercury ("Hg") Emission Allowance Adjustment, Standard Contract Rider No. 63.

Pursuant to notice published as required by law, proof of which was incorporated into the record, an Evidentiary Hearing was held in this case on December 22, 2009 at 3:00 p.m.in Room 224, National City Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner and the Indiana Office of Utility Consumer Counselor ("OUCC") appeared at the hearing. During

the hearing, Petitioner presented its case-in-chief, consisting of the testimony and exhibits of Mr. John J. Roebel, Ms. Diana L. Douglas, as corrected[1], Mr. John P. Griffith, and Mr. Edward O. Abbott. Petitioner also submitted supplemental testimony of Ms. Diana L. Douglas, as corrected. The OUCC presented the testimony of Mr. Wes R. Blakley and Ms. Cynthia Armstrong.

Based upon the applicable law and the evidence herein and being duly advised, the Commission now finds as follows:

1. **Notice and Jurisdiction.** Due, legal and timely notice of the Evidentiary Hearing in this Cause was given and published by the Commission as required by law. Petitioner is a public utility within the meaning of the Public Service Commission Act, as amended, Ind. Code § 8-1-2-1, and is subject to the jurisdiction of the Commission, in the manner and to the extent provided by the laws of the State of Indiana. Petitioner requests relief pursuant to Ind. Code § 8-1-2-6.6, Ind. Code § 8-1-2-6.8, Ind. Code § 8-1-2-42(a), Ind. Code § 8-1-8.7-1 *et seq.*, Ind. Code § 8-1-8.8-1 *et seq.*, and 170 IAC 4-6-1 *et seq.* The Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Petitioner's Characteristics.** Petitioner is a public utility organized and existing under the laws of the State of Indiana, and has its principal office at 1000 East Main Street, Plainfield, Indiana 46168. It 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 the public.

3. **Petitioner's Electric Generating Properties.** As of the date of the Petition in this Cause, Petitioner's electric generating properties consisted of: (1) steam capacity located at five stations comprised of nineteen coal-fired generating units supplied by nineteen coal-fired boilers[2] and one oil-fired boiler; (2) combined cycle capacity comprised of three natural gas-fired Combustion Turbines ("CT") and two steam turbine-generators; (3) a run-of-river hydroelectric generation facility comprised of three units; (4) peaking capacity consisting of seven oil-fired diesels located at two stations, eight oil-fired CT units located at two stations, and sixteen natural gas-fired CTs, one of which has oil back-up.

4. **Background to this Proceeding.**

a. **NO_X SIP Call.** The federal NO_X State Implementation Plan ("SIP") Call and related Indiana NO_X SIP Call required that Indiana reduce its NO_X emissions during the ozone season of May 1 through September 30 to a level of 0.15 lb/mmBtu by May 31, 2004. The reductions in NO_X emissions in Indiana came primarily from industrial and utility sources.

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[1] Corrected direct and supplemental testimony of Ms. Douglas was filed on December 22, 2009 to reflect corrected property tax amounts that were not known at the time of filing but were subsequently known and were determined to be in the customers' favor.

[2] Pursuant to the New Source Review ("NSR") order ("NSR Order"), issued on May 29, 2009 by the U.S. District Court for the Southern District of Indiana, Wabash River Units 2, 3, and 5 were shut down, effective September 30, 2009, pending a decision on appeal of the NSR Order. Therefore, although Petitioner's generating properties consist of nineteen coal-fired boilers, only sixteen of those coal-fired boilers are in service at this time.

On July 3, 2002, this Commission issued an order in consolidated Cause Nos. 41744 S1 and 42061, wherein, among other things, we: found that Petitioner's NO_x Compliance Plan was reasonable; issued a certificate of public convenience and necessity for the use of clean coal technology; approved the use of Petitioner's proposed QPCP; approved Petitioner's updated cost estimates related to its NO_x Compliance Plan equipment; and approved a Standard Contract Rider No. 62 that allows for construction work in progress ("CWIP") ratemaking treatment for Petitioner's QPCP. We found that Petitioner may update the value of its QPCP for CWIP ratemaking purposes no more often than every six months. Additionally, we found that, under our ongoing review rules, Petitioner should submit, at least annually, a progress report detailing any revisions in its cost estimates or in the planned construction of its clean coal technology projects.

b. <u>CAIR and CAMR Compliance Requirements.</u> In January 2004, the EPA published two new significant proposed emission reduction requirements: (1) the interstate air quality rule (later renamed the Clean Air Interstate Rule or "CAIR"); and (2) the utility mercury reductions rule (later renamed the Clean Air Mercury Rule or "CAMR"). EPA finalized CAIR on May 12, 2005 (70 Fed. Reg. 25162) and CAMR on March 29, and May 18, 2005 (70 Fed. Reg. 15994 and 70 Fed. Reg. 28606).

CAIR requires 29 states (plus the District of Columbia, and including Indiana) to adopt plans to dramatically reduce SO_2 and NO_x emissions from power plants and other sources, to facilitate compliance with the 8-hour ozone and fine particulate matter ("PM 2.5") national ambient air quality standards ("NAAQS"). CAMR regulates mercury emissions from power plants for all states. The final CAIR requires major SO_2 and NO_x reductions in two stages: (1) a cap of 3.6 million SO_2 tons by 2010, and a cap of 2.5 million SO_2 tons by 2015 (for a total SO_2 decrease of approximately 65%); and (2) a cap of 1.5 million NO_x tons by 2009, and a cap of 1.3 million tons of NO_x by 2015 (for a total NO_x reduction of approximately 70%). CAIR also establishes both an annual NO_x trading program and a seasonal NO_x trading program (similar to and replacing the NO_x SIP Call requirements), effective in 2009. CAIR also prescribes that, instead of SO_2 emission allowances continuing to allow the holder to emit one ton of SO_2, post-2010 vintage SO_2 emission allowances will only allow the holders to emit one-half to one-third as much per emission allowance. The Indiana Air Pollution Control Board adopted the final CAIR on November 1, 2006.[3]

The final CAMR provides regulatory authority for a mercury cap and trade program, with a mercury cap for 2010 set at 38 tons, and 15 tons in 2018. The Indiana Air Pollution Control Board adopted the CAMR on October 3, 2007.[4]

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[3] On July 11, 2008, the U.S. Court of Appeals for the District of Columbia in *State of North Carolina v. Environmental Protection Agency* issued an opinion vacating and remanding CAIR; however, parties to the litigation requested rehearing of aspects of the Court's decision, including the vacatur of the rules. On December 23, 2008, the Court granted rehearing only to the extent that it remanded the rules to EPA without vacating them. The practical effect of this ruling is that CAIR remains in place until EPA issues a new rule in accordance with the July 11, 2008 decision ("CAIR Decision").

[4] On February 8, 2008, the U.S. Court of Appeals for the District of Columbia, in *State of New Jersey, et al., Petitioners v. Environmental Protection Agency, Respondent*, vacated the Federal CAMR.

On May 24, 2006, the Commission issued an order in consolidated Cause Nos. 42622 and 42718 approving a Settlement Agreement among Petitioner, the OUCC, and the PSI Industrial Group wherein, among other things, we: found that the Settlement Agreement was in the public interest; approved Petitioner's Phase 1 CAIR/CAMR Compliance Plan; found that the proposed scrubber, scrubber upgrade and baghouse projects constitute clean coal technology, clean coal and energy projects and qualified pollution control property; issued a Certificate of Public Convenience and Necessity for the Phase 1 CAIR/CAMR Compliance Plan projects; approved Petitioner's request for ongoing review of the Phase 1 CAIR/CAMR Compliance Plan projects; approved Petitioner's cost estimates for the Phase 1 CAIR/CAMR Compliance Plan projects; approved the use of accelerated (20-year) depreciation for the Phase 1 CAIR/CAMR Compliance Plan projects as provided in the Settlement Agreement; and approved the timely recovery of costs associated with Petitioner's CAIR/CAMR Compliance Plan.

c. **Emission Allowance ("EA") Adjustment.** In Cause Nos. 42411 and 42359 the Commission approved the recovery of NO_x EA costs in Petitioner's then existing SO_2 Emission Allowance Adjustment mechanism. In Consolidated Cause Nos. 42622 and 42718, the Commission approved the inclusion of Mercury EA costs in this same mechanism. Petitioner has used the Commission's 30-day filing process to implement these adjustments quarterly in accordance with the Settlement Agreement and Order in Cause No. 42411, but beginning with Cause No. 42061 ECR 10 elected to include future updates in these proceedings.

5. **Relief Sought in this Proceeding.** In this six-month update proceeding, Petitioner requests the authority to reflect additional values of QPCP, as of the date ending June 30, 2009, in its rates and charges for electric service. Petitioner also requests approval of an ongoing review progress report concerning certain clean coal technology projects, approval of updated environmental projects, cost estimates and in-service dates for environmental projects, approval of an update and adjustment to Petitioner's Clean Coal Operating Cost Revenue Adjustment Rider, and approval of an update and adjustment to Petitioner's SO_2, NO_x and Hg Emission Allowance Adjustment Rider.

6. **Statutory and Regulatory Framework.**

a. **Clean Coal Technology Statute.** Ind. Code § 8-1-8.7-7 provides that an applicant for a certificate of clean coal technology may elect ongoing review of its construction and construction costs, in which case the utility must periodically submit progress reports and cost estimate revisions to the Commission.

b. **CWIP Statute and Administrative Rules.** 170 IAC 4-6-4 provides that the Commission shall approve the use of QPCP if it consists of one or more air pollution control devices, the devices meet applicable state or federal requirements, the devices are designed to accommodate the burning of coal from the geological formation known as the Illinois basin, and the estimated costs of construction and installation are reasonable. Once pollution control equipment is found to be QPCP, then the utility is allowed to add the value of the QPCP to the value of the utility's property for ratemaking purposes. *See* 170 IAC 4-6-5; Ind. Code § 8-1-2-6.6, and 6.8. Per the Commission's CWIP rules, CWIP ratemaking treatment is available for QPCP that has been under construction for six months or longer, and a utility can update the amounts of its CWIP balances no more often than every six months. *See* 170 IAC 4-6-9, 4-6-18.

c. **Utility Generation and Clean Coal Technology Statute, Ind. Code § 8-1-8.8 (also referred to as "Senate Bill 29").** Ind. Code § 8-1-8.8-11(a)(1) and (5) provide that "the commission shall encourage clean coal and energy projects by creating the following financial incentives for clean coal and energy projects, if the projects are found to be reasonable and necessary: (1) the timely recovery of costs incurred during construction and operation of projects described in section 2(1) or 2(2) of this chapter; . . . (5) other financial incentives the commission considers appropriate." Ind. Code § 8-1-8.8-2(1)(B) defines "clean coal and energy projects" as "projects to provide advanced technologies that reduce regulated air emissions from existing energy generating plants that are fueled primarily by coal or gases from coal from the geologic formation known as the Illinois Basin, such as flue gas desulfurization and selective catalytic reduction equipment."

d. **Emission Allowance Adjustment Authority.** Ind. Code § 8-1-2-42(a) contemplates and recognizes rate adjustments in accordance with tracking provisions approved by the Commission, specifically exempting such rate adjustments from Indiana's "fifteen month rule."

7. **Summary of Evidence.** Petitioner presented case-in-chief testimony and exhibits of Mr. John J. Roebel, Senior Vice President, Engineering and Technical Services, Ms. Diana L. Douglas, Director, Rates, as corrected, Mr. John P. Griffith, Director, Portfolio Optimization, Fuel and Emissions, and Mr. Edward O. Abbott, Consulting Engineer, Performance & Measures. Ms. Douglas also sponsored supplemental testimony, as corrected.

Mr. Roebel stated that Petitioner is constructing its NO_x Compliance Plan projects in order to meet federal and state NO_x SIP Call regulations that took effect in May 2004 and is constructing its CAIR/CAMR Projects in order to comply with those Federal requirements. Mr. Roebel explained that Petitioner's NO_x Compliance Plan is continuously changing and indicated that the current NO_x Compliance Plan is not significantly different from the plan presented in 42061 ECR13, the most recent six-month update case. Thus, the following projects are currently included in Petitioner's current active NO_x Compliance Plan for which Petitioner is seeking CWIP and Senate Bill 29 recovery:

Gallagher Station Boiler Optimization Units 1- 4 Low NO_x Burners & Fuel Flow Monitoring Unit 4 Gibson Station Selective Catalytic Reduction ("SCRs") Units 1-5, including Injection System Boiler Optimization Units 1-5 SCR catalyst beds Units 1-5	Cayuga Station Boiler Optimization Units 1-2 Electrostatic Precipitator Units 1-2 Wabash River Station Boiler Optimization Units 2-6 Low NO_x Burners Units 2, 3, 4, 5, and 6 (Units 4 and 6 Low NO_x Burner recovery sought and approved for Senate Bill 29 only).

Mr. Roebel testified that the arsenic mitigation system described in ECR 11 is essentially complete.

Mr. Roebel also reiterated that the estimated costs of the NO_x Compliance Plan have remained reasonably accurate; although as with any multi-year plan there are ongoing impacts and refinements that could potentially affect costs. He further added that with the Commission's

approval, for CWIP ratemaking purposes, the Petitioner proposes to include the actual costs of the projects once they are known, whether higher or lower than the original estimates.

Mr. Roebel then testified that the NO_x SIP Call Compliance Plan cost estimates that were approved in the previous ECR Cause Nos. remain valid, reminding us to take into account the adjustments as previously recorded. Overall, Petitioner's estimated costs for its NO_x Compliance Plan have increased slightly, reflecting the additional replacement catalyst beds planned through 2019.

Mr. Roebel testified that the only projects added to Petitioner's CAIR/CAMR compliance plan since the Settlement Agreement in Cause Nos. 42622/42718 have been the addition of mercury emission monitors that were under construction or purchased by the time CAMR was vacated. Petitioner's remaining mercury monitors in Indiana are being stored pending further actions by the State of Indiana and/or the EPA related to mercury regulations. Thus, the following projects are currently included in Petitioner's current Phase 1 CAIR/CAMR Compliance Plan for which Petitioner is seeking CWIP and Senate Bill 29 recovery:

Gallagher Station Units 1 & 2—Common Baghouse Units 3 & 4—Common Baghouse Landfill Mercury Monitors Gibson Station Unit 1—Wet Scrubber Unit 2—Wet Scrubber Unit 3—Wet Scrubber Unit 4—Scrubber Upgrade Unit 5—Scrubber Upgrade Mercury Monitors	Cayuga Station Unit 1—Wet Scrubber Unit 2—Wet Scrubber Switchyard Addition Landfill Mercury Monitors Edwardsport Mercury Monitors Wabash River Station Mercury Monitors
Compliance Engineering Mercury Removal Study	

Mr. Roebel discussed Petitioner's updated cost estimates for the CAIR/CAMR Compliance Plan projects. He explained that as with any multi-year plan there are incremental changes from ongoing impact and refinements as a normal part of an ongoing construction program. He added that Petitioner expects these costs to continue to be refined to a small degree. Overall, Petitioner's estimated costs for its CAIR/CAMR Compliance Plan have decreased slightly.

Mr. Roebel indicated that Petitioner proposed, for CWIP ratemaking purposes, to include only the actual costs of the projects once they become known, whether those costs are higher or lower than the original estimate on any specific project. He stated that current cost estimates of Petitioner's CAIR/CAMR Compliance Plan continue to be reasonable. Overall, the current estimates have decreased slightly.

Mr. Roebel next provided some background on the NSR lawsuit brought by the U.S. Department of Justice against Duke Energy Indiana in U.S. District Court. He explained that in

May 2008, a jury verdict was issued in favor of Duke Energy Indiana on 4 of the 8 remaining claims and that the four projects for which the jury found liability were the projects on Wabash River Units 2, 3, and 5. Mr. Roebel discussed the proposed remedies for the Wabash River projects recommended by Petitioner and the U.S. Department of Justice. He testified that on May 29, 2009, the Court ordered the shutdown of Wabash River Units 2, 3 and 5 by September 30, 2009 and that until such time as the units were shutdown, Petitioner was required to run those units at a rate not to exceed the pre-project baseline emissions. The Court also ordered Petitioner to permanently surrender SO_2 EAs for the period May 22, 2008, the date of the jury verdict, through the date of shutdown of the units on September 30, 2009.[5]

Mr. Roebel provided a current status of the Wabash River Units stating that on September 30, 2009, Duke Energy Indiana did a reserve shutdown of these units, meaning that although the units are currently shutdown, the units are not permanently shutdown as the court's decision is currently on appeal.[6] Mr. Roebel stated his opinion that it was reasonable to litigate the Wabash River Units 2, 3 and 5 claims because Petitioner was successful in reducing the initial 102 Indiana-specific claims to ten before the hearing and that Petitioner ultimately prevailed on all but four of the claims. He stated that customers have benefitted over the years by the continued use of the units to serve retail native load and by the fact that these units were not required to include pollution control equipment at an earlier date.

Mr. Roebel estimated that the cost associated with the surrender of the SO_2 EAs in February 2010 is approximately $6.5 million and is viewed by Duke Energy Indiana as a prudent cost to the utility that should be recovered from customers and as such is included in the EA Rider for recovery.[7]

Ms. Douglas described the proposed implementation of CWIP ratemaking treatment via Duke Energy Indiana Standard Contract Rider No. 62 ("Rider 62"), and provided the schedules and information required by 170 IAC 4-6-12 (calculated consistent with the Commission's CWIP rules). Specifically, Ms. Douglas provided information establishing the incremental value of QPCP investment through June 30, 2009, for which Petitioner is seeking recovery; showed the computation of the jurisdictional revenue requirement associated with that investment; and determined the allocation of the jurisdictional revenue requirement to various retail customer groups. Ms. Douglas explained, that consistent with the Commission's Order in consolidated Cause Nos. 41744 S1 and 42061 and subsequent related Orders, the QPCP projects will be deemed to be under construction, and Petitioner will continue to receive revenues through Rider 62, until the Commission determines that these projects are used and useful in a proceeding that involves the establishment or investigation of Petitioner's base rates and charges, or until these projects no longer satisfy the other requirements of the Commission's CWIP ratemaking rules.

Ms. Douglas also explained that Petitioner pledged to return the difference between the property tax expense approved in Cause No. 42359 and actual jurisdictional property tax expense, if lower. In corrected testimony, filed on December 22, 2009, Ms. Douglas testified

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[5] Petitioner must surrender an amount equal to the SO_2 emissions from Wabash River Units 2, 3 and 5.

[6] On September 21, 2009, Cinergy filed its Notice of Appeal to the Seventh Circuit. All briefing is currently scheduled to conclude in May 2010 with an anticipated decision by the end of 2010.

[7] On December 15, 2009, Petitioner filed supplemental testimony in which the request for recovery of the amount of the surrendered EAs was removed from this proceeding.

that based on this commitment; there is a net jurisdictional amount to be refunded to retail customers of $3,326,000.

Ms. Douglas testified regarding the residential customer impact of the proposed CWIP ratemaking treatment, as corrected. Ms. Douglas stated that the monthly bill of a typical residential customer using 1,000 kilowatt-hours would decrease by approximately fifty-nine cents, or 0.7%, when compared to the last approved factor.

Ms. Douglas also explained and supported Petitioner's proposed adjustments to Standard Contract Rider No. 71—Clean Coal Operating Cost Revenue Adjustment ("Rider 71") covering the reconciliation of depreciation and operation and maintenance expenses billed versus depreciation and operation and maintenance expenses actually incurred for the six months ended June 30, 2009, and the estimated costs for the period July through December, 2009. Ms. Douglas explained that, in accordance with the Commission's Order approving the Settlement Agreement in consolidated Cause Nos. 42622 and 42718, Duke Energy Indiana has credited customers with a reduction in operation and maintenance expense related to removal of the electrostatic precipitators at Gallagher Station. Ms. Douglas indicated that residential rates under Rider No. 71 would decrease by approximately ninety-three cents, or 1.2% when compared to the last approved factor.

Finally, Ms. Douglas explained and supported Petitioner's proposed adjustments to Standard Contract Rider No. 63, Petitioner's SO_2, NO_x and Hg Emission Allowance Adjustment Rider covering the reconciliation of SO_2 and NO_x EA expenses, net of the impact of sales of native load EAs, billed to retail jurisdictional customers versus the expenses net of sales actually incurred for the six months ended August 31, 2009, and the estimated NO_x and SO_2 EA costs for the period January through June 2010. Ms. Douglas testified that realized gains from the sale of SO_2 and NO_x EAs of approximately $4.7 million were booked in March through August 2009, and included in the development of the factor. Ms. Douglas stated that no estimates of EA sales were included during the projected period. Ms. Douglas also explained that the SO_2 compliance rule change effective in 2010, as explained by Mr. Griffith, has been factored into the forecasted amounts for EA expense which have been included in the development of the proposed factor in this proceeding. Although Ms. Douglas' direct testimony proposed recovery of the forecasted EA costs of approximately $6.5 million for the native load portion of the cost of the SO_2 EAs to be surrendered for Wabash River Units 2, 3 and 5 pursuant to the NSR Order, Ms. Douglas filed supplemental testimony that removed the request for recovery of the surrendered EAs in this proceeding.

Mr. Griffith discussed the CAIR Decision and stated that immediately after the Court vacated and remanded CAIR, the SO_2 and NO_x EA markets became much less liquid, while the seasonal NO_x market was not as affected because a number of market participants still needed to use the market to prepare for 2008 compliance. He noted that since the Court's remand of CAIR, after a brief initial price increase, EA prices have decreased steadily during 2009.

Mr. Griffith stated that under CAIR there were some SO_2 compliance issues on the horizon, namely effective with vintage 2010 SO_2 EAs. Two EAs of vintage 2010 must be surrendered for each ton of SO_2 emitted in 2010 and is in effect for SO_2 EAs for vintages 2010 through 2014; but, the compliance ratio for SO_2 EAs of vintage 2009 or earlier does not change. He stated that this may contribute to increasing compliance costs.

Mr. Griffith testified that Duke Energy Indiana has been naturally short of SO_2 EAs and that the purchase of EAs has been Duke Energy Indiana's primary form of compliance with Phase II of the Clean Air Act Amendments of 1990. However, with the construction of the additional scrubbers at Gibson and Cayuga as described above, Petitioner does not expect to be as short in the future.

Mr. Griffith described the sophisticated production costing model that Duke Energy Indiana uses to determine whether it needs to purchase EAs or if it has a surplus and can sell some of its EA inventory. According to Mr. Griffith, the model recognizes and reflects the interrelationship and interaction of the various inputs, such as fuel costs, purchased power prices and EA prices, on the operation of Petitioner's system. For example, when the price of purchased power is lower, all else equal, Petitioner will use less EAs. Mr. Griffith explained that Petitioner's goal is to approach a balanced position for EAs plus a reserve for contingencies and that all transactions, either purchases or sales of EAs, are conducted at the then current market price and are based on the results of the model's forecasts. Mr. Griffith also explained that there were a few purchases of SO_2 EAs as well as purchases and sales of NO_x EAs in order to balance Duke Energy Indiana's position and that Petitioner identified $4.5 million in realized gains from the sale of NO_x EAs. Mr. Griffith stated that the purchases and sales of native load EAs have been conducted in a reasonable manner and in an effort to provide energy to native load customers as economically as possible.

Mr. Griffith concluded his testimony by stating that the surrender of SO_2 EAs for Wabash River Units 2, 3 and 5 as ordered by the Court in the NSR litigation will result in Duke Energy Indiana surrendering approximately 21,500 additional SO_2 EAs for the native load portion of emissions from Wabash River Units 2, 3 and 5 from May 22, 2008 through September 30, 2009 and that the surrender will most likely occur in February 2010. He also stated that fewer EAs will be required to be purchased to comply with the reduced emissions due to the reserve shutdown of the Wabash River units.

Mr. Edward O. Abbott, Consulting Engineer, Performance & Measures testified that the projects having incremental operation and maintenance ("O&M") expenses associated with Petitioner's NO_x SIP Call Compliance Plan are the Gibson Station Units 1-5 SCRs, arsenic mitigation system, and the SO_3 mitigation systems. He stated that these incremental costs will fluctuate based on demand and the generation level of the units.

Mr. Abbott also testified regarding the incremental O&M expenses associated with Petitioner's CAIR/CAMR Compliance Plan. He explained that the projects associated with these expenses are the Cayuga Units 1 and 2 Flue Gas Desulfurization units ("FGDs"), Gibson Units 1-3 FGDs, Gibson Units 4 and 5 FGD upgrades. Mr. Abbott stated that the Gallagher Units 1-4 baghouses have not had any incremental costs but will need to have the bags replaced periodically along with repairs to the baghouse structures and ash handling system as the units operate longer. He concluded that the incremental costs associated with these projects will also vary based on demand and the generation level of the units.

In supplemental testimony, Ms. Douglas explained that, after discussions with the OUCC, Duke Energy Indiana removed the estimated cost of EAs required to be surrendered pursuant to the NSR Order from the calculation of the factor previously presented to the Commission for approval and instead plans to include for Commission approval the actual cost of the required allowance surrender in its reconciliation of actual emission allowance costs in its

next ECR proceeding. Ms. Douglas testified that the allowances at issue are planned to be surrendered to the EPA in February 2010. Ms. Douglas indicated in supplemental testimony that under Rider No. 63 the monthly bill of a typical residential customer using 1,000 kilowatt-hours would increase by approximately seven cents, or 0.1% when compared to the last approved factor.

Ms. Douglas indicated in supplemental testimony, as corrected, that if the proposed factors for all three riders are approved, the monthly bill of a typical residential customer using 1,000 kilowatt-hours would decrease by approximately one dollar and forty-four cents, or 1.7% when compared to the last approved factor.

Mr. Wes R. Blakley, Senior Utility Analyst for the OUCC, testified that he had reviewed Petitioner's filings in this Cause, as well as filings in the previous ECR, and nothing came to his attention that would indicate Petitioner's calculation of estimated ECR adjustment factors for the relevant period are unreasonable.

Ms. Cynthia M. Armstrong, Utility Analyst in the Electric Division for the OUCC, testified that she had reviewed Petitioner's filings in this Cause, as well as previous filings and Court Orders pertaining to Petitioner's NSR violations on Wabash River units 2, 3, and 5. She also conducted a field audit to review detailed accounting material for randomly selected dates of EA transactions and spoke to Duke Energy Indiana staff. Ms. Armstrong confirmed the OUCC's discussions with Petitioner regarding its withdrawal from this proceeding of its request to recover the projected cost of the court-ordered surrender of emission allowances corresponding to operation of the Wabash River units. Ms. Armstrong noted that the OUCC's silence in this proceeding on the merits of recovering the cost of surrendering the EAs does not constitute acquiescence as to propriety of recovery, nor a waiver of the OUCC's right to take any positions as to future requests by the Petitioner for recovery of EA surrender costs. Ms. Armstrong also testified that an error was made in the Petitioner's recording of one of the EA transactions, but that the full impact would not be known until the end of November. Because the reconciliation period for this proceeding ended in August 2009, the OUCC and Petitioner agreed that the adjustment to correct the error would be made in Petitioner's next ECR filing. Ms. Armstrong testified that, subject to review of the anticipated revisions in Ms. Douglas' supplemental testimony, Petitioner's calculation of EA adjustments were accurately applied and Petitioner's EA trades were reasonable.

8. <u>Commission Discussion and Findings</u>. Based upon the evidence presented, the Commission finds that Petitioner's request should be approved. Specifically, the Commission finds that Petitioner should be authorized to reflect the additional values of QPCP in its rates and charges for electric service in accordance with Duke Energy Indiana's Rider 62, as indicated in the direct testimony and exhibits of Ms. Diana L. Douglas, as corrected.

Petitioner should be authorized to recover its operation and maintenance and depreciation expenses in accordance with Duke Energy Indiana's Rider 71, as described in the testimony and exhibits of Ms. Douglas, as corrected, including the reconciliation of such expenses for the period January 2009 through June 2009 and the estimated amounts for the period July 2009 through December 2009.

Petitioner should also be authorized to recover its SO_2 and NO_x emission allowance expenses in accordance with Duke Energy Indiana's Rider 63, as described in the direct and

supplemental testimony and exhibits of Ms. Douglas, as corrected, including the reconciliation of such expenses for the period March 2009 through August 2009 and the estimated amounts for the period January 2010 through June 2010.

Petitioner's ongoing review progress report regarding its clean coal technology projects is hereby approved. We find that the updated construction cost estimates and updated in-service dates provided by Petitioner in this Cause are reasonable and are hereby approved as such. We note that in accordance with the clean coal technology certificate statute, if the Commission approves the construction and the costs of such equipment, that approval forecloses subsequent challenges to the inclusion of those costs in the utility's rate base on the basis of excessive cost, inadequate quality control, or inability to employ the technology. *See* Ind. Code § 8-1-8.7-7(c).

9. <u>Confidential Information.</u> Petitioner filed a *Motion for Protection of Confidential and Proprietary Information* ("Motion") with the Affidavit of Mr. John J. Roebel on November 6, 2009. In this Motion, Petitioner demonstrated a need for confidential treatment for the detailed cost estimates associated with its NO_x SIP Call Compliance Plan and its CAIR/CAMR Compliance Plan. In a November 10, 2009, Docket Entry, the Presiding Officers preliminarily found that such information should be subject to confidential procedures. The Affidavit of Mr. Roebel indicates that such confidential information has actual or potential independent economic value for Petitioner and its ratepayers, the disclosure of the confidential information could provide Petitioner's competitors and suppliers an unfair advantage, and Petitioner and its affiliates have taken all reasonable steps to protect the confidential information from disclosure. Accordingly, pursuant to Ind. Code § 5-14-3-4(a)(4), we find that the detailed cost estimates are "trade secrets" and should be afforded confidential treatment. The Commission hereby orders that procedures should be taken so that such information is appropriately secured and made available only to selected members of the Commission staff who are under an obligation not to publicly disclose such information.

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

1. Petitioner's proposed updated Rider 62, as reflected in the exhibits and testimony of Duke Energy Indiana, including QPCP values as of June 30, 2009, is hereby approved. The Rider 62 shall go into effect upon the filing of the final Rider with the Commission's Electricity Division for all bills rendered after the effective date of this Order.

2. Petitioner's proposed updated Rider 71, as reflected in the exhibits and testimony of Duke Energy Indiana, is hereby approved. The Rider 71 shall go into effect upon the filing of the final Rider with the Commission's Electricity Division for all bills rendered after the effective date of this Order.

3. Petitioner's proposed updated Rider 63, as reflected in the exhibits and testimony of Duke Energy Indiana, is hereby approved. The Rider 63 shall go into effect upon the filing of the final Rider with the Commission's Electricity Division for all bills rendered after the effective date of this Order.

4. Petitioner's ongoing review progress report on its clean coal technology projects is hereby approved.

5. Petitioner's updated cost estimates, in-service dates and updated environmental projects for its NO_x Compliance Plan equipment are hereby approved as reasonable.

6. Petitioner's updated cost estimates and in-service dates for its Phase 1 CAIR/CAMR Compliance Plan equipment are hereby approved as reasonable.

7. The detailed cost estimate information contained in the testimony and exhibits of this case are found to be confidential and trade secrets and therefore, excepted from public access.

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

HARDY, ATTERHOLT, GOLC, LANDIS, and ZIEGNER CONCUR:
APPROVED: JAN 27 2010

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

Brenda A. Howe

Brenda A. Howe
Executive Secretary to the Commission