

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF DUKE ENERGY)
INDIANA, INC. (1) SEEKING AUTHORITY TO)
REFLECT COSTS INCURRED FOR THE)
EDWARDSPORT INTEGRATED GASIFICATION)
COMBINED CYCLE GENERATING FACILITY)
("IGCC PROJECT") PROPERTY UNDER)
CONSTRUCTION IN ITS RATES AND AUTHORITY)
TO RECOVER EXTERNAL COSTS THROUGH ITS)
INTEGRATED COAL GASIFICATION COMBINED)
CYCLE GENERATING FACILITY COST)
RECOVERY ADJUSTMENT, STANDARD)
CONTRACT RIDER NO. 61 PURSUANT TO IND.)
CODE SECTIONS 8-1-8.8-11 AND -12; (2) SEEKING)
AN EXPEDITED APPROVAL OF AN UPDATED)
COST ESTIMATE FOR THE IGCC PROJECT,)
INCLUDING APPROVAL OF AN ONGOING)
REVIEW PROGRESS REPORT PURSUANT TO)
IND. CODE 8-1-8.7; AND (3) SEEKING APPROVAL)
OF AND COST RECOVERY ASSOCIATED WITH)
THE STUDY OF CARBON CAPTURE,)
SEQUESTRATION AND/OR ENHANCED OIL)
RECOVERY FOR THE IGCC PROJECT)
PURSUANT TO AN ALTERNATIVE REGULATORY)
PLAN UNDER IND. CODE § 8-1-2.5-6)

CAUSE NO. 43114 IGCC 1

APPROVED: APR 01 2009

BY THE COMMISSION:
David E. Ziegner, Commissioner
Scott R. Storms, Chief Administrative Law Judge

On May 1, 2008, Duke Energy Indiana, Inc. ("Duke Energy Indiana," "Petitioner" or "Company") filed its Verified Petition with the Indiana Utility Regulatory Commission ("Commission") in this Cause. Following an Evidentiary Hearing in this matter, the Commission issued a final order ("Final Order") in this Cause on January 7, 2009.

1. Motion for Clarification and Responses. On January 27, 2009, the Indiana Office of the Utility Consumer Counselor ("OUCC") filed a *Motion for Clarification* ("Motion"). In its Motion the OUCC indicated that implicit in the testimony and exhibits of several witnesses for Petitioner, but never explicitly stated, is that the use of IGCC Project-related deferred income taxes ("IGCC Project Specific DITs" or "DITs") as an offset to rate base described in the Commission's November 20, 2007 Order in Cause Nos. 43114 and 43114 S-1 (consolidated) ("November Order") and in the Final Order issued in this matter, must continue over the depreciable life of the IGCC Project plant regardless of intervening base rate cases. According to the OUCC, clarification of the issue is necessary to properly implement the Commission's Order in this Cause and in Cause Nos. 43114 and 43114 S-1, as

the continued use of DITs as an offset to rate base, regardless of an intervening base rate proceeding timed to coincide with the anticipated in-service date of the IGCC Project, could be used to eradicate benefits to ratepayers or could act to effectively increase the “additional incentive” that the Commission has approved.

On February 6, 2009, Duke Energy Indiana filed a Response to the OUCC’s Motion in which it disagreed that any clarification of the Commission's Order is necessary. According to the Petitioner, the Commission clearly explained the reasoning for its approval of DITs in its November Order and in the Final Order in this proceeding. The OUCC's Motion would have the Commission issue a ruling as to the future ratemaking of IGCC Project Specific DITs based on the chance that future rulings of the Commission might somehow harm customers. Duke Energy Indiana further indicates that base rate cases are complex and involve all facets of a utility's investment, costs, revenues and rate structure and that the Commission should not bind future Commissions regarding the treatment of IGCC Project Specific DITs in future rate cases. Accordingly, the Company believes that the Commission need not, and should not, commit to a specific ratemaking treatment of deferred taxes in base rate proceedings as requested by the OUCC.

In its Reply filed on February 16, 2009, the OUCC indicates, *inter alia*, that “[i]t would be a less efficient use of Commission resources to unnecessarily complicate one or more future rate proceedings by delaying the clarification of this Commission Order, particularly as understanding of and familiarity with the record evidence in this Cause becomes more remote. A clarification of the Commission's findings in this Cause does not undermine the Commission's ability to determine future base rates that are just and reasonable, but, rather, provides a concurrent clarification that *enhances* the Commission's ‘ability to consider its prior Orders as it assesses the appropriate relief in the Company's future base rate cases.’” OUCC Reply at 1-2, emphasis in original. The OUCC goes on to indicate in its Reply that “...clarification [now] may assist all Parties with an understanding and expectation of the appropriate accounting entries to be made in the interim, leading up to Petitioner's next base rate case, which the OUCC must inspect as it audits IGCC tracker and base rate filings.” *Id.* at 2.

2. Discussion and Findings by the Commission. In its November Order the Commission authorized the Petitioner to compute its rate of return by excluding accumulated DITs from the capital structure. The Order in this proceeding did not modify that finding, but limited the incentive to be provided by DITs to the initial projected cost of the project of \$1.985 billion. The determination made in the November Order was not the subject of a successful appeal and a request for clarification was not made by any party at the conclusion of that proceeding.

Based on the foregoing, the OUCC’s Motion for Clarification could be considered untimely and appropriately be denied on that basis under the Commission’s procedural rules. However, we do not deny the request on that basis and instead find that clarification of the specific treatment of DITs is not necessary. While the OUCC indicates in its Motion that the Commission’s Order on this issue does not explicitly state that DITs must continue over the depreciable life of the IGCC Project plant regardless of intervening base rate cases, this is not determinative as to how DITs may be addressed by the Commission in the future. In its response Duke Energy Indiana indicates that base rate cases are complex and involve all

facets of a utility's investment, costs, revenues and rate structure and that the Commission should not, today, agree to bind future Commissions regarding the treatment of IGCC project specific DITs in future rate cases. We agree.

The OUCC's Motion would have the Commission lock in the treatment of IGCC project DITs now, regardless of changes in circumstances, rather than addressing this subject in the context of specific conditions applicable to a future base rate case. This approach is not necessary because the Commission has the ability to consider its prior Orders as it assesses the appropriate relief in any future rate case filed by the Petitioner. Therefore, the Commission has the ability to fully consider the specific investment, costs, and ratemaking treatment related to the IGCC project, IGCC specific DITs, and all other investment, expenses and revenues of the Company in a future base rate case proceeding. Accordingly, the Commission finds that the OUCC's Motion for Clarification should be denied.

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

1. The Motion for Clarification filed by the Indiana Office of the Utility Consumer Counselor on January 27, 2009, is hereby denied by the Commission.
2. This Order shall be effective on and after the date of its approval.

HARDY, LANDIS, SERVER AND ZIEGNER CONCUR; GOLC ABSENT:
APPROVED: APR 01 2009

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


Brenda A. Howe
Secretary to the Commission