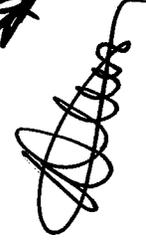


ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION


JLG



VERIFIED PETITION OF DUKE ENERGY)
INDIANA, INC. SEEKING: (1) 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 CERTAIN)
EXTERNAL COSTS THROUGH ITS INTE-)
GRATED 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; AND (2))
APPROVAL OF AN ONGOING REVIEW)
PROGRESS REPORT PURSUANT TO IND. CODE)
SECTION 8-1-8.7)

CAUSE NO. 43114 IGCC 2

APPROVED: MAY 13 2009

BY THE COMMISSION:

David E. Ziegner, Commissioner
Scott R. Storms, Chief Administrative Law Judge

On November 3, 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. In its Petition, Duke Energy Indiana requested: (1) the authority to reflect costs incurred for the Edwardsport Integrated Gasification Combined Cycle Generating Facility ("IGCC Project" "Project" or "Edwardsport Project") property under construction in its rates and the authority to recover certain external costs through its Integrated Coal Gasification Combined Cycle Generating Facility Cost Recovery Adjustment, Standard Contract Rider No. 61 ("Rider 61" or "IGCC Rider"); and (2) the approval of an ongoing review progress report.

Pursuant to notice as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, an Evidentiary Hearing was held in this Cause on March 9, 2009, at 9:30 a.m. EST in Room 222 of the National City Center, 101 West Washington Street, Indianapolis, Indiana. The parties to this proceeding, other than Duke Energy Indiana, included the Indiana Office of Utility Consumer Counselor ("OUCC"), the Citizens Action Coalition of Indiana, Inc., Save the Valley, Inc., Valley Watch, Inc., the Sierra Club, Hoosier Chapter, the Indiana Wildlife Federation, and the Clean Air Task Force. CAC, STV, Valley Watch and Sierra Club are collectively referred to as "CAC." Each of the parties, other than the OUCC, are collectively referred to as "Intervenors" throughout this Order.

At the Evidentiary Hearing in this matter the Petitioner presented its Verified Petition, together with the testimony and exhibits of Mr. W. Michael Womack, Vice President, Edwardsport IGCC Project (Pet. Ex. A, A-1 and Confidential A-2) and Ms. Diana L. Douglas, Director of Rates for Duke Energy Indiana (Pet. Ex. B, B-1, B-2, and B-3) for its case-in-chief. For its rebuttal case, Duke Energy Indiana presented the testimony and exhibits of Mr. John L. Stowell, Vice President, Environment, Health and Safety Policy (Pet. Reb. Ex. C and C-1); Dr. Richard G. Stevie, Managing Director, Customer Market Analytics, (Pet. Reb. Ex. D, D-1, D-2 and D-3); Mr. M. Allen Carrick, General Manager, Corporate Finance and Assistant Treasurer (Pet. Reb. Ex. E); and, Ms. Diane L. Jenner, Director, Regulatory Strategy (Pet. Reb. Ex. F, F-1 and F-2). The OUCC presented the testimony of Mr. Wes R. Blakley, Senior Utility Analyst. CAC presented the testimony of Mr. Grant S. Smith, its Executive Director, and Mr. James P. Gignac, Midwest Director of Sierra Club's "Move Beyond Coal" Campaign. The Indiana Wildlife Federation and the Clean Air Task Force did not present testimony in this matter.

Following the Evidentiary Hearing in this matter, the parties were provided with an opportunity to file proposed orders with the Commission pursuant to an agreed upon post hearing briefing schedule. On April 1, 2009, the Petitioner filed its Proposed Order in this matter. On April 15, 2009, the CAC filed its Proposed Order in this Cause. On April 22, 2009, the Petitioner filed a Response to the CAC's Proposed Order.¹

Based upon applicable law and the evidence presented herein, the Commission finds as follows:

1. **Notice and Jurisdiction.** Due, legal, and timely 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 by Ind. Code § 8-1-2-1, and is subject to regulation by the Commission to the extent provided in the Public Service Commission Act, as amended. Accordingly, the Commission has jurisdiction over Duke Energy Indiana and the subject matter of this proceeding.

2. **Petitioner's Characteristics.** Duke Energy Indiana is an Indiana corporation with its principal office located at 1000 East Main Street, Plainfield, Indiana. Duke Energy Indiana is engaged in the business of supplying electric utility service to the public in the State of Indiana. The Company owns, operates, manages and controls plant property and equipment used and useful for the production, transmission, distribution and furnishing of electric utility service to the public in the State of Indiana. Duke Energy Indiana directly supplies electric energy to over 780,000 customers located in 69 counties in the central, north central and southern parts of the State of Indiana. The Company also sells electric energy for resale to municipal utilities, Wabash Valley Power Association, Inc., Indiana Municipal Power Agency, and to other public utilities that in turn supply electric utility service to numerous customers in areas not served directly by Duke Energy Indiana.

¹ On April 15, 2009, the CAC also filed a Motion for Administrative Notice with the Commission. This Motion was not contemplated or addressed in the post hearing briefing schedule; is untimely under the Commission's procedural rules; and, is hereby denied by the Commission.

3. **Relief Requested.** In its Verified Petition, Duke Energy Indiana requested: (1) the authority to add to the valuation of its utility property for ratemaking purposes the actual Project costs incurred through September 30, 2008, and approve for recovery the financing costs and its external costs through its IGCC Rider; and (2) the approval of an ongoing review progress report pursuant to Ind. Code § 8-1-8.7.

4. **Prior Proceedings.** In its November 2007 Order in Cause Nos. 43114 and 43114-S1 (the "CPCN Order"), the Commission issued certificates of public convenience and necessity and clean coal technology ("CPCNs") authorizing Petitioner to construct the 630 megawatt Edwardsport integrated gasification combined cycle plant in Knox County, Indiana near the location of the Company's existing Edwardsport generation station. The CPCN Order approved Petitioner's estimated construction cost for the IGCC Project of \$1.985 billion and Petitioner's proposed IGCC Rider, which provides for the timely recovery of costs in connection with the IGCC Project. The Commission also directed Petitioner to file semi-annual IGCC Rider and ongoing review progress report proceedings.

On May 1, 2008, Petitioner filed its first semi-annual IGCC Rider and ongoing review progress report proceeding related to the Project, designated as Cause No. 43114 IGCC-1. In addition to the ongoing review process approved by the Commission in its CPCN Order, the first semi-annual IGCC filing also included an additional request by the Company to revise the projected cost estimate of the Project from \$1.985 billion, and a request for approval to undertake studies related to carbon capture at the IGCC Project and for cost recovery for such studies. On January 7, 2009, the Commission issued its order in Cause No. 43114 IGCC 1 (the "IGCC-1 Order") in which it approved, Petitioner's revised projected construction cost estimate for the Project of \$2.350 billion and its ongoing review progress report; the timely recovery of construction and operating costs through the IGCC Rider reflecting actual expenditures through February 29, 2008; and studies related to carbon capture at the IGCC Project and cost recovery for such studies.

5. **Ongoing Review of IGCC Project.**

A. **Testimony Presented by the Petitioner.** Mr. W. Michael Womack testified that since receiving the CPCN Order for the IGCC Project, the Company has taken major steps toward construction of the Project. Pet. Ex. A, at 3 (Womack Direct). In December 2007, Duke Energy Indiana signed a definitive contract with General Electric Company ("GE") to furnish engineered equipment for the Project. *Id.* Since that time, GE began fabrication of several major components, including the radiant syngas coolers and the gasifiers. GE is in the process of designing and manufacturing other long-lead proprietary equipment such as the gas turbines and steam turbine and it has awarded contracts for all major, long-lead, non-proprietary equipment. *Id.* Mr. Womack stated that progress regarding manufacturing of all GE provided equipment is satisfactory to support the project schedule. *Id.*

Mr. Womack also reported that in April 2008, Duke Energy Indiana finalized a commercial term sheet with Bechtel Power Corporation ("Bechtel") outlining the framework of an Engineering, Procurement, and Construction Management ("EPCM") Agreement. *Id.* In June 2008, the Company signed a Technical Services Agreement ("Limited Notice to Proceed Agreement"), allowing Bechtel to continue moving forward with work on the IGCC Project while negotiations proceeded on the EPCM Agreement. *Id.* at 4. Negotiations with Bechtel were

concluded in early November and the parties executed the contract on December 15, 2008. *Id.* Bechtel has steadily progressed with its detailed design work under the Limited Notice to Proceed Agreement consistent with Project requirements and will now move forward with its work under the EPCM Agreement. *Id.* According to Mr. Womack, through the end of October, 2008, Bechtel was 22% complete with engineering for its scope of the Project. *Id.* In addition, Sargent & Lundy is progressing with its detailed design of peripheral systems that are not in Bechtel's scope of work. *Id.* At the time of Mr. Womack's pre-filed testimony, Sargent & Lundy was approximately 37% complete with engineering for its scope of the Project. *Id.*

Mr. Womack also provided an update on the status of the procurement of major equipment for the Project. He stated that the GE contracts provide for the supply of equipment designed and manufactured by GE, including the gas turbines, the steam turbine, and distributed control system. *Id.* GE also supplies major equipment that it designed, but is manufactured by others, including the radiant syngas coolers. *Id.* In addition, GE supplies major equipment specified by GE, but designed and manufactured by others such as the air separation unit, the heat recovery steam generators, and the slag crusher and slurry charge pump. *Id.* Mr. Womack testified that GE has placed orders for all of this equipment and design, and in some cases manufacturing, is underway. *Id.*

Mr. Womack reported that the contract for the long-term supply of natural gas to the IGCC Plant, which requires natural gas as a start-up fuel, has been concluded with Southern Indiana Gas & Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren"). *Id.* at 5. According to Mr. Womack, Vectren will build a gas pipeline connecting the IGCC Project to an interstate gas transmission pipeline approximately five miles from the Project. *Id.* Vectren requested approval of this contract with the Commission on November 3, 2008, in Cause No. 43601 and the request was subsequently approved by the Commission in an Order issued in that matter on March 4, 2009.

Mr. Womack also testified that more than thirty (30) engineered equipment purchase orders, totaling over \$100 million, have been issued for various equipment, which represents approximately half the total Bechtel engineered equipment for the Project. *Id.* at 5-6. In addition, installation contracts have been awarded for underground utilities, foundation support piling, field erected tanks, and the administration/control building. *Id.* at 6. According to Mr. Womack, bids have been received and awards are imminent for bulk structural steel, bulk piping, and ready-mix concrete supply. *Id.*

Mr. Womack provided an update on construction at the Project site stating that grouting of underground mine tunnels has been completed; temporary project offices have been erected; construction of a permanent warehouse is ongoing; a 10,000 feet deep waste water injection test well is complete; and, that general site preparation work is ongoing. *Id.* Mr. Womack also presented Petitioner's Exhibit A-1, an aerial photo of the Project site, that depicted the temporary site offices; the location of the warehouse under construction; the deep waste water test well; and, other aspects of the eventual Project layout. *Id.*

Mr. Womack also testified on the status of construction or relocation of transmission lines for the project and he noted that work on a transmission system interconnecting substation had begun. Mr. Womack also stated that acquisition of railway right-of-way for purposes of a rail spur for the Project was progressing. *Id.* at 6-7.

Mr. Womack testified that there has not been any change to the current schedule or cost estimate for the Project. *Id.* at 7. Mr. Womack sponsored Petitioner's Confidential Exhibit A-2, which compares the Project cost estimate by major category of expense, as of November 1, 2008, and as of May 1, 2008. *Id.* Mr. Womack also stated that over the next 6 months, the Company will continue its procurement of engineered and bulk materials, including structural steel, piping materials, rebar, and ready mix concrete, and it will continue its progress on underground utility and foundation support piling installation, as well as begin the concrete foundation installation. *Id.* at 8.

B. Intervenor's Testimony and Petitioner's Response on this Issue. No witnesses directly addressed Mr. Womack's testimony concerning the status of the IGCC Project. However, the CAC presented testimony that due to the current recession electricity usage is has decreased and the Commission should conduct a full hearing on whether the CPCN should be revoked as the Project is no longer needed. In addition, CAC presented testimony that with the new administration of President Obama, climate change legislation or EPA regulations addressing carbon dioxide emissions are more likely to become reality. CAC contended that the CPCN was issued without regard to the probability of laws or regulations regarding climate change and therefore the Commission should conduct a full hearing on the CPCN on the basis that the cost estimate does not take into account the probability of the regulation of CO₂. The evidence presented on each of these issues is separately addressed below.

1. Continuing Need for the IGCC Plant.

a. Testimony Presented by the CAC on this Issue. Mr. Grant Smith testified that construction of the IGCC Project should be put on hold and that a full and comprehensive review of the Project should be conducted pursuant to the Utility Powerplant Construction Act, Ind. Code § 8-1-5-5, *et seq.*, due to the decline in electricity usage nationally; declines in national gross domestic product ("GDP"); increases in the unemployment rate in Indiana; declines in net generation in Indiana; and, declines in energy usage for the Duke Energy Midwest area. CAC Ex. A, pgs. 3-5 (Smith Direct).

Mr. Smith testified that, according to a recent U.S. Bureau of Labor Statistics report, Indiana's unemployment rate increased to 8.2 percent in December from 7.1 percent the month before, tying Indiana with South Carolina for the largest unemployment rate increase in the nation. *Id.* at 4. The two sectors hit the hardest were manufacturing and construction, with 18,700 jobs lost in just those two sectors. Mr. Smith opined that the declines in those sectors would suggest even further decreases in electricity usage and in customer growth. He also testified that in Indiana, net generation was down in October 2008 by 4.9 percent over October 2007, and net generation for Indiana utilities for that period was down by 3.9 percent. Year to date electric generation from coal through October 2008 was down 1.1 percent. *Id.* Mr. Smith testified that Duke's third-quarter electricity sales were down 5.9% in the Midwest from the year earlier, including a 9% drop among residential customers. *Id.* at 5. He cited to Duke's CEO Jim Rogers who publicly stated that Duke was in a period where growth is going to be challenged and that even in places where prices were flat to declining Duke still saw lower consumption. *Id.* Mr. Smith noted further that Mr. Rogers told investors that he believes something fundamental is going on and that, in Indiana, Duke has seen weaknesses in the transportation, paper, stone, clay, and the glass industries. *Id.*

Mr. Smith testified that the future load growth used to support the need for the IGCC Project is suspect at best. *Id.* at 3-5. Mr. Smith concluded that given the recent decline in energy usage and the prospect for further reductions before recovery begins, the Commission should put a hold on further construction of the IGCC Project and require a full and comprehensive examination of the need for future base load generation. *Id.* at 8.

Mr. Smith also testified that even though Duke may maintain that its cost estimate has not changed, Duke's cost estimate understates the true cost to ratepayers of completing the Edwardsport IGCC project in light of the election of President Obama, changes at the Environmental Protection Agency ("EPA") and Department of Energy, changes in Congress, and many other changes. *Id.* at 5.

Mr. Smith testified that the stimulus packages in both the US House of Representatives and Senate emphasize energy efficiency and renewable energy as a means to bolster economic activity and create jobs in the short term. *Id.* at 8. He noted that the House legislation, as of January 31, 2009, earmarked \$18.5 billion in support for energy efficiency and renewable energy. The Senate version at that time earmarked \$14.4 billion for that purpose. The measures included energy efficiency block grants for states, a substantial increase in low-income weatherization funding up to 200% of poverty, support for smart grid pilots, support for retrofitting federal government buildings and increasing the efficiency of HUD housing. Both bills also included support for connecting wind resources in remote areas to load centers. *Id.*

b. Petitioner's Rebuttal Testimony. Duke Energy Indiana witness Dr. Stevie responded to Mr. Smith's testimony regarding recent changes in electricity usage due to the current economic downturn. Pet. Reb. Ex. D, p. 4 (Stevie Rebuttal). Dr. Stevie disagreed with Mr. Smith's opinion that the Commission should review the need for the IGCC Project. *Id.* at 5. He stated that though he generally agreed with Mr. Smith that economic activity, both locally and nationally has softened, which has impacted electricity usage, one must be careful in citing statistics on changes in raw energy usage from one year to the next. *Id.* at 5. Dr. Stevie testified that although electricity use on a weather normal basis was lower during the last half of 2008 relative to 2007, this does not mean that sales growth will not return as the economy rebounds. *Id.* Dr. Stevie stated that Mr. Smith's testimony also fails to address the Company's significant need for additional generating resources to replace Wabash River Units 2, 3 and 5, when these units are planned to be retired in 2012. *Id.* at 5-6.

Dr. Stevie further testified that the Company relies on economic projections from Moody's Economy.com., which indicates a rebound beginning late 2009. *Id.* at 6. Dr. Stevie provided a table with his testimony that showed that economic growth is expected to begin rebounding in the 3rd quarter of 2009 and build in strength over time. *Id.* In addition, Dr. Stevie sponsored Petitioner's Rebuttal Exhibit D-1, a table from the National Bureau of Economic Research, which provides information on business cycles dating back to 1854. *Id.* This table shows the average length of an economic contraction across all business cycles, which is in line with the projection of the rebound for the current economic downturn from Economy.com. *Id.* In addition, Dr. Stevie noted that the passage of the federal stimulus bill (the American Recovery and Reinvestment Act of 2009) bolsters support for a rebound, though it is too early to determine if the stimulus plan will accelerate the timing of the rebound. *Id.* at 6-7.

Dr. Stevie also sponsored and discussed Petitioner's Rebuttal Exhibit D-2, which provides data on how Duke Energy Indiana weather normal retail sales have performed during past business cycles. *Id.* at 7. This exhibit demonstrates that in each of the past business cycles, declines in power sales are eventually followed by increases. *Id.* In fact, Dr. Stevie noted that it appears that when a decline is longer and deeper, the rebound is stronger. *Id.* He further commented that the historical track record shows that once an economic contraction comes to an end, economic growth rebounds and electrical sales increase and he fully expects this to occur in this business cycle. *Id.*

Dr. Stevie also discussed Petitioner's Exhibit D-3, which includes information comparing the forecasts of energy and peak load prepared in 2007 and the fall of 2008, and provides a new forecast prepared in December 2008 that reflects a contemporary outlook on the economy prepared by Moody's Economy.com. *Id.* The table shows the differences in energy and peak load forecasts relative to each of the prior forecasts. *Id.* at 7-8. The new forecast is lower by about 2% over the next few years. *Id.* at 8. Dr. Stevie said the latest load forecast was provided to Ms. Jenner for her use in her analysis of the need for the Edwardsport IGCC plant, along with revised estimates of expected demand response. *Id.* According to Dr. Stevie, estimates of demand response for the near-term were lowered consistent with the near-term reductions in industrial activity reflected in the lower load forecast. *Id.*

Dr. Stevie also responded to CAC witness Smith's comments regarding the impact of the recently enacted stimulus package on energy efficiency. According to Dr. Stevie, the Company believes that stimulus funds directed to energy efficiency can be effectively used to support cash-strapped customers' initial investments for the up-front costs of new equipment, which in turn allows the incentives that the Company has proposed in its application to be used to help buy down the incremental cost for higher energy efficiency equipment. *Id.* at 8-9. Dr. Stevie concluded his testimony by reiterating that he had provided the projected load impacts of the Company's proposed energy efficiency programs to Ms. Jenner for her analysis of the need for the IGCC Project and that he did not agree that the incentives for energy efficiency funded by the stimulus package support the need for a new, comprehensive review of the need for the Project. *Id.* at 9.

Duke Energy Indiana witness Ms. Jenner also presented rebuttal testimony in response to CAC witness Smith's assertion that due to decreased electricity sales, a full and comprehensive examination of the need of future baseload generation should be performed. Pet. Reb. Ex. F, p. 3 (Jenner Rebuttal). Ms. Jenner pointed out that in the original CPCN case, Cause Nos. 43114/43114-S1, the Company presented its 2007 integrated resource plan ("IRP") showing the need for the IGCC Plant to meet the Company's service requirements in 2011 and beyond. *Id.* Petitioner's IRP also demonstrated a need for IGCC capacity, as well as additional peaking and intermediate capacity in 2012 and beyond. *Id.* With the recession already in progress, the Company's Spring 2008 load forecast showed a lower level of expected load and the Company determined that it would not need to acquire generation in addition to the IGCC plant in the 2012 through 2015 timeframe, unless some of the Wabash River units were retired, due to the enactment of more stringent environmental requirements or as a result of the jury verdict in the new source review ("NSR") litigation.² *Id.* at 3-4. However, according to Ms. Jenner, the

² *U.S. v. Cinergy Corp. et al.*, No. IP99-1693-C-M/S, (S.D. Ind. May 22, 2008). The Company is awaiting an order in the remedy phase of the trial that took place during the first week of February 2009.

Company would still have a need for additional peaking capacity in the near term, *i.e.* 2009-2011. Ms. Jenner further noted that in the first IGCC tracker case she had testified that even with a higher level of anticipated demand and energy savings from the Company's pending energy efficiency proposal, the Company still would require more capacity to meet customers' needs in a reliable manner. *Id.* at 4.

Ms. Jenner observed that neither the CAC nor any other party seriously questioned the need for the IGCC Plant prior to or at the time of the August 22, 2008 Evidentiary Hearing in Cause No. 43114 IGCC-1, although the recession discussed in Mr. Smith's testimony in this proceeding was well underway. *Id.* at 5. She further noted that this Commission stated in its January 7, 2009 Order in Cause No. 43114 IGCC-1 that:

Even with an updated lower load forecast and additional IRP analysis, the Company has a need for approximately 590 MWs in summer of 2012 and beyond. As Ms. Jenner testified, this significant need will remain even with the addition of increased energy efficiency programs and/or increased wind resources to Petitioner's resource portfolio.

Order in Cause No. 43114 IGCC-1, at 12.

Ms. Jenner then discussed the fact that retirement of Wabash River Units 2, 3 and 5 had become more of a certainty than a mere possibility. *Id.* She explained that in the remedy phase of the NSR litigation involving these units that occurred in early February 2009, the plaintiffs requested that the Company be ordered to install additional emission control devices on these units by 2013 or retire these units within 30 days of the judge's order. *Id.* at 5-6. The Company instead proposed a remedy of waiting to retire the units until the Edwardsport IGCC and its associated transmission system upgrades could be completed. *Id.* at 6. In the interim, these units would be operated under an emissions cap. *Id.* Ms. Jenner said the from the Company's perspective, the best case scenario is that these units would be retired on September 1, 2012, while the worst case scenario for the Company would be a requirement that the units be retired in the summer of 2009. *Id.*

Ms. Jenner concluded that the Company continues to need the Edwardsport IGCC plant to meet its customers' electricity needs in 2012, as reflected on Petitioner's Exhibit F-1, which shows the supply versus demand balance for the Company for 2009-2018 with the addition of the IGCC plant in 2012 and the retirement of Wabash River Units 2, 3 and 5 by 2013. *Id.* Ms. Jenner noted that this exhibit includes the updated load forecast and demand response impacts reflecting the current economic downturn provided by Dr. Stevie. *Id.* at 6-7. Ms. Jenner said that in addition to the continuing near-term need for peaking capacity in the 2009-2011 period, the Company will need to purchase or acquire additional capacity beginning in 2013 to meet its required reserve margin. *Id.* at 7.

Ms. Jenner also discussed the updated reserve margin of 12.69% she used for purposes of her analysis (and included in Petitioner's Rebuttal Exhibit F-1), which was brought about as a result of the addition of a long-term resource adequacy requirement in the Midwest ISO's tariff. *Id.* This reserve margin is lower than the 15% reserve margin used by the Company for modeling in the original IGCC CPCN case and the first update case. However, even with the

lower reserve margin and the lower load forecast, Ms. Jenner affirmed that the IGCC plant is still needed. *Id.* at 8.

2. Potential Impact of Carbon Legislation.

a. Testimony Presented by the CAC on this Issue. Mr. Smith also testified that a review of the Project is warranted pursuant to Ind. Code § 8-1-8.7-5 because the cost estimate represented by the Company is not the true cost to ratepayers of completing the IGCC Project in light of impending carbon legislation. CAC Ex. A, at 5 (Smith Direct). Mr. Smith opined that the Commission should continue to review the costs of the IGCC Project, pursuant to Ind. Code. § 8-1-8.7, *et seq.*, to determine if public convenience and necessity will be served by the construction of the IGCC Project. *Id.* According to Mr. Smith, even though the Company maintains that its cost estimate for the Project is unchanged, the cost of carbon compliance is becoming more certain and more expensive and the cost of carbon compliance has never been included in an analysis of the IGCC Project. *Id.* at 5-6.

Mr. Smith testified that the prospect of greenhouse gas regulations has created uncertainty in the Energy Information Administration (“EIA”) projections and, as a result, energy companies are being encouraged to shift investments toward less greenhouse gas intensive technologies. *Id.* at 5. According to Mr. Smith, EIA 2009 Annual Energy Outlook has represented this behavior with a 3% cost of capital penalty when evaluating investments in greenhouse gas intensive technologies. *Id.* Mr. Smith also referred to *The Carbon Principles, climate change guidelines for advisors and lenders to power companies in the United States* (“Carbon Principles”), stating that even Wall Street financial institutions are questioning whether new coal baseload generation makes sense, especially without including the cost of capture and storage of CO₂. *Id.* at 6-7.

Mr. Smith also testified that the recent stimulus package increases incentives for energy efficiency and renewable energy as a means to bolster economic activity and create jobs and makes this approach a better choice for meeting power requirements than the IGCC Project. *Id.* at 8. Mr. Smith concluded that the current cost estimate is not accurate with respect to the true costs to ratepayers in light of ever more certain and costly carbon compliance and new incentives for clean, renewable generation and energy efficiency. *Id.* at 8.

CAC witness James P. Gignac testified that CO₂ is a pollutant subject to regulation under the Clean Air Act, which means that EPA has a duty to limit emissions from coal plants and that President Obama has the authority to order EPA to act on carbon dioxide. CAC Ex. B, at 4 (Gignac Direct). Mr. Gignac further testified that President Obama understands the urgency of enacting federal policies to deal with greenhouse gas emissions. *Id.* One reason Mr. Gignac expects President Obama will act on greenhouse gas emissions is that dealing with this issue is not only a centerpiece of the President’s environmental agenda, but also a key part of his economic agenda. *Id.* at 5. Mr. Gignac reported that one of the key drivers for Congress to act this year is that U.S. negotiators will be participating in global climate talks in Copenhagen in December and it is critical that the U.S. be in a position to sign on to any agreements that emerge as a result of the Copenhagen conference. *Id.* at 6.

Mr. Gignac also testified that several states are taking action on carbon regulation and indicated that several coal plant permits have been denied or abandoned over the last few years due to rising concerns over the cost of complying with carbon regulation. *Id.* at 7-9. Mr. Gignac concluded his testimony stressing the need to act on reducing greenhouse gas emissions. *Id.* at 9.

b. Duke Energy Indiana's Rebuttal Testimony on this Issue. Duke Energy Indiana witness John L. Stowell responded to Mr. Smith's and Mr. Gignac's testimony regarding the developments related to greenhouse gas legislation and his assessment of the future direction and scope of greenhouse gas legislation. Pet. Reb. Ex. C, p. 3 (Stowell Rebuttal).

Mr. Stowell testified that the fact that carbon legislation may be imminent is not surprising or new information in the context of the various IGCC proceedings. *Id.* at 12. Mr. Stowell noted that he previously testified in the underlying CPCN proceeding (Cause No. 43114/43114-S1), that he believed that climate change legislation would likely be passed in the 2009/2010 time frame. *Id.* Moreover, Mr. Stowell disagreed with Mr. Smith's statement that impending carbon restrictions had not been included in the planning and analysis of the IGCC Project. *Id.* at 14. Mr. Stowell explained that in the underlying CPCN proceeding the Company presented the results of the IRP modeling showing that the IGCC Project would be economic even if it became necessary to purchase carbon emissions credits. In addition, Ms. Jenner testified in Cause No. 43114 IGCC-1 that when the Company used the mid-range prices for carbon emissions put forward by the CAC witness, the Edwardsport IGCC Project remained a robust and reasonable choice for the Company to meet its native load power supply obligations. *Id.* Further, Mr. Stowell testified that the IRP modeling for carbon prices that Ms. Jenner used in the summer of 2008 in evaluating the Edwardsport IGCC plant were in line with Mr. Stowell's expectations of new carbon restrictions that may be forthcoming. *Id.* at 15. Accordingly, the Company has considered regulation of carbon emissions for some time and reasonably evaluated such possibility in its economic analyses of the IGCC Project. *Id.* at 14-15.

Mr. Stowell disagreed with the statement by Mr. Smith that "the cost of carbon compliance has become more certain – and more expensive," given that there is no pending climate change bill before the 111th Congress to analyze. *Id.* at 9. Mr. Stowell also underscored Mr. Gignac's lack of testimony with respect to the form, scope, content and timing of climate change legislation or regulations. *Id.* at 11-12. Mr. Stowell further stated that neither Mr. Smith nor Mr. Gignac had presented any new information related to potential climate change legislation that warranted further economic modeling of the IGCC Project and re-evaluation of the CPCNs issued. *Id.* at 15.

Mr. Stowell explained in detail why he believes Congress will pass climate change legislation that is balanced so as not to shock and disrupt the economy. *Id.* at 6. In support of his opinion that Congress will take a practical approach to climate change legislation, Mr. Stowell cited the fact that in June of 2008, a climate change bill sponsored by Senators Lieberman and Warner reached the Senate floor for debate but failed on cloture because many senators were concerned about the cost implications of the bill for citizens and businesses. *Id.* at 7. Mr. Stowell also sponsored Petitioner's Rebuttal Exhibit C-1, consisting of a letter by 10 Democratic senators (whose ranks later grew to 16) sent to Majority Leader Harry Reid and to the Senate Environment Committee Chair Barbara Boxer, explaining the conditions that would have to be addressed before the "Group of 16" could support any final climate change legislation. *Id.* Cost containment was crucial to these senators' concerns. *Id.*

Mr. Stowell also noted that President Obama, before and after the election, has called himself a pragmatist who seeks a new climate of bi-partisanship in dealing with major issues. *Id.* at 9. Mr. Stowell further noted that President Obama has consistently supported clean coal technology and that the President recognizes the importance of coal in the electric generation sector. *Id.* at 9-10. In fact, the recently passed American Recovery and Reinvestment Act of 2009 includes \$3.4 billion for development and deployment of clean coal technologies, including carbon capture and storage. *Id.* at 9.

Mr. Stowell also responded to Mr. Gignac's testimony that the EPA has the power to issue and establish carbon regulations and that it may do so without the benefit of new federal legislation. *Id.* at 10. Mr. Stowell observed that Ms. Carol Browner, President Obama's special adviser on climate change, recently indicated in an interview that though the EPA will move forward with regulation of carbon dioxide, the administration prefers that Congress draft legislation that could more deftly regulate carbon dioxide through a cap-and-trade system. *Id.* at 10-11. Mr. Stowell does not believe that President Obama, who comes from the Senate, will want the EPA to issue new comprehensive regulations on carbon emissions without the benefit of climate change legislation and Mr. Gignac seemed to acknowledge the administration's preference that carbon regulations come via Congressional climate legislation. *Id.* at 10. In any event, Mr. Stowell noted that the regulatory process, which requires public comment, coupled with the inevitable lawsuits dealing with environmental rules, would likely take years to resolve. *Id.* Mr. Stowell further testified that, assuming a climate change bill is passed and signed by the President in 2010, he expects the earliest year for the start of the program to be 2013. *Id.* at 13. Mr. Stowell went on to describe Duke Energy's position regarding the appropriate targets for reductions in greenhouse gases as those described in the USCAP Blueprint for Legislative Action. *Id.* at 13-14.

Mr. M. Allen Carrick presented responsive testimony to CAC witness Smith's testimony regarding the so-called "Carbon Principles." Pet. Reb. Ex. E, p. 2 (Carrick Rebuttal). Mr. Carrick stated that Mr. Smith's quoting of a few select sentences is one-sided. *Id.* at 3. Mr. Carrick explained that the Carbon Principles were developed by three financial institutions and other parties as guidelines for them to consider as they review financing for new power projects. *Id.* These guidelines do not establish any specific performance criteria that companies or their projects should meet in terms of planning for potential climate change legislation, nor do they specify types of transactions that financial institutions should avoid. *Id.* Instead, these guidelines encourage financial institutions to look for evidence that the financing entity's management recognizes climate change related risks and is responding effectively. *Id.* at 3-4. Mr. Carrick opined that under this criteria Duke Energy Indiana has performed well as an industry leader in recognizing the importance of the global climate change issues as outlined by Mr. Stowell. *Id.* at 4.

Mr. Carrick further testified that Duke Energy Indiana had gone to the capital markets in recent months and borrowed funds with competitive interest rates and terms, notwithstanding that the underwriters were well aware of the Company's primary reliance on coal-fired generation to produce electricity and the Company's ongoing construction of the IGCC Project. *Id.* at 4-5. Mr. Carrick explained that lenders and underwriters look at a company's credit ratings for long-term debt as a generally accepted measure of financial strength. *Id.* at 5. The major credit rating agencies analyze a number of measures, particularly as they relate to liquidity,

stability of cash flows, the ability to meet fixed obligations and the general risk profile of the Company and the industry sector in which it operates. *Id.* at 6. Mr. Carrick went on to state that investors, investment analysts, and credit rating agencies regard the regulatory environment as one of the most important factors in assessing a utility's financial strength. In this regard, Indiana is viewed positively by the credit agencies as a reasonable regulatory environment. *Id.*

With respect to potential carbon cost issues presented by the CAC in this matter, Ms. Jenner indicated that she did not do any additional modeling based on different assumptions for carbon prices compared to the modeling she performed in the summer of 2008 in the first IGCC update case because of her reliance on Mr. Stowell's expertise and testimony that Congress will not pass climate change legislation that will shock or disrupt the US economy. Pet. Reb. Ex. F, p.10 (Jenner Rebuttal). Moreover, she said that given the current economic crisis, there was even more reason to believe Congress and the administration would not pass climate change legislation that would create additional economic hardship on particular sectors of the economy or particular regions, such as the Midwest, which relies heavily on coal-fired generation. *Id.* She cited Mr. Stowell's testimony that the carbon prices assumed by the Company for purposes of modeling the IGCC plant, which Ms. Jenner has previously described in the prior cases, are consistent with the climate legislation that the Company expects to be enacted. *Id.*

Ms. Jenner also pointed out that Mr. Gignac's testimony does not begin to address the substance of climate legislation, but simply argues that restrictions are coming. *Id.* at 10-11. She concluded that the probability of carbon restrictions has already been considered and taken into account in prior proceedings and therefore no justification exists for additional modeling of the IGCC Project or for re-opening the CPCN for further review based on this issue. *Id.*

6. Discussion and Findings of the Commission Regarding the Continuing Need for the IGCC Plant; the Potential Impact of Anticipated Carbon Legislation; and the Ongoing Progress Report.

A. Continuing Need for the IGCC Plant. In its testimony the CAC raised the issue of the continued need for the IGCC Plant due to the current economic recession. In presenting this issue to the Commission, the CAC cited Ind. Code § 8-1-8.5-5.5, which states:

When, in the opinion of the commission, changes in the estimate of the probable future growth of the use of electricity so indicate, the commission shall commence a review of any certificate granted under this chapter to determine whether the public convenience and necessity continues to require the facility under construction. If the commission finds that completion of the facility under construction is no longer in the public interest, the commission may modify or revoke the certificate.

The Company agreed with the CAC that electricity usage has been impacted by the current state of the economy, but indicated that it believes that the reduction in load is temporary and that load demand will resume its upward trend once the recession passes. The evidence provided by Company witness Dr. Stevie demonstrates that in past business cycles, declines in sales are eventually followed by increases. Dr. Stevie stated that historical track records show that once the contraction comes to an end, economic growth rebounds and electrical sales increase.

We find Dr. Stevie's testimony credible on this issue and recognize that planning and constructing new generation capacity must appropriately look to long term trends and projections to ensure that capacity is planned and constructed in a manner that will result in its timely availability to meet future demand. To stop construction of the IGCC Project in response to an economic downturn, without clear projections of a long term corresponding overall decline in electricity demand as suggested by the CAC, would be inconsistent with this approach. In addition, we also note that Ms. Jenner provided evidence in this proceeding that the Company's overall need for baseload capacity, that will be provided by the Edwardsport Project, has not changed even with an updated lower load forecast and lower Reserve Margin. We find Ms. Jenner's assessment on this issue to be reasonable.

Based on the evidence presented in this matter, we conclude that the Petitioner has demonstrated the IGCC Project is still needed by the Company for baseload capacity, despite the current downturn in the economy, and that public convenience and necessity continues to require the construction and completion of the IGCC Project.

B. Expected Carbon Legislation. In its testimony, the CAC also indicated that a separate review of the Project by the Commission is warranted pursuant to Ind. Code § 8-1-8.7-5 as the cost estimate represented by the Company is not the true cost to ratepayers of completing the IGCC Project in light of impending carbon legislation. Ind. Code § 8-1-8.7-5 states that:

When, in the opinion of the Commission, changes in the estimate of the cost or the need for clean coal technology occur, the Commission shall immediately commence a review of the certificate granted under this chapter to determine if public convenience and necessity will be served by the implementation of the technology. If the Commission finds that implementation of the technology will not serve the public convenience and necessity, the Commission may modify or revoke the certificate.

As discussed further herein, we decline to take such action based on the testimony presented in this matter. No party disputed the fact that carbon restrictions, in some form, will likely become law in the not too distant future. The anticipated regulation of CO₂ is not a new issue as it has been considered by the Commission in its underlying CPCN Order and in the initial filing in these ongoing review proceedings in Cause No. 43114 IGCC 1. While the CAC again discusses the anticipated regulation of CO₂ in its testimony in this proceeding, it does not offer additional information that has not previously been considered by the Commission in prior proceedings involving the IGCC Project.

The evidence presented by the CAC with respect to expected carbon legislation or regulations does not justify conducting a full review of the underlying CPCN for the Project. The Petitioner has previously adequately evaluated the possibility of carbon emission restrictions and the Project remains reasonable for meeting the Company's baseload capacity needs. Therefore, consistent with our findings in the CPCN Order; the IGCC-1 Order; and, our review of the testimony presented on this issue in this Cause, we find that the IGCC Project continues to represent a viable baseload generating unit and is in the public interest.

C. Ongoing Review Progress Report. While none of the parties questioned the specific information presented by Mr. Womack regarding the ongoing review progress report for the IGCC Project, we note that in our Order in Cause No. 43114 IGCC 1 we specifically found that a more formalized reporting and communication process should be implemented with respect to the Edwardsport Project. As indicated in that Order, the Commission believes that such an approach is consistent with Indiana's statutory scheme and with our additional efforts to monitor the Edwardsport Project. Cause No. 43114 IGCC 1, at 13.

The Commission further indicated in Cause No. 43114 IGCC 1, that in subsequent IGCC proceedings, testimony and exhibits should be presented in a manner that includes, at a minimum, the following information with respect to the Edwardsport Project:

- (1) The Projected In-Service Date and Status of Permits and Licenses including the status specific issues in any pending permit appeals;
- (2) The Projected/Estimated Cost to Complete;
- (3) Critical Path, Major Milestones, and Overall Schedule. This should include a review of milestones achieved since the last ongoing review proceeding and those milestones projected to be achieved prior to the next IGCC proceeding;
- (4) Construction Plan, Budget, Actual Expenditures to Date, and Projected Costs to Complete including Projected Expenditures to Date and the Identification and Discussion of any Construction Cost Control Issues that may result in Deviations from the Critical Path, and a recovery plan to correct or minimize any such deviations;
- (5) Commodity curves for items such as but not limited to High Pressure Piping Welds Completed, Electrical and Instrument Cable Installed, Electrical and Instrument Terminations Completed, Tons of Steel Erected, Cubic Feet of Concrete Poured;
- (6) Engineering Plan, Schedule and Progress;
- (7) Material Procurement Plan/Progress;
- (8) Craft Labor Procurement Plan/Progress;
- (9) Connection to the MISO and any System Reinforcement;
- (10) Vendor Warranties and Warranty Administration;
- (11) Contingency Planning;
- (12) Safety Procedures, Training, and Statistics;
- (13) Vendor and Construction Quality Control;
- (14) Plant Operations Staff Training;
- (15) Test and Startup Procedures; and
- (16) Any Additional Issues Relevant to the Proceeding.

Additionally, the Commission indicated that in subsequent ongoing review proceedings the Company shall develop templates to effectively communicate this information to the Commission in a manner that allows for comprehensive and effective ongoing review and tracking of each issue as construction of the IGCC Project proceeds. *Id.* at 13-14.

Without modifying the process outlined in Cause No. 43114 IGCC 1, we note that in order to provide for effective ongoing review by the Commission, the template developed in response to the Commission's directive in 43114 IGCC 1, must begin with the presentation of an integrated reliable construction schedule for the Edwardsport IGCC Project. The integrated construction schedule should then serve as the basis for the overlay of a critical path that includes the identification of all major milestones necessary to allow for ongoing review in every subsequent IGCC proceeding. In order to further facilitate review by the Commission and the parties, the template shall identify each system by its common name, without the use of acronyms; include a timeline that demonstrates the percentage of the system completed; and, fully track the progress toward completion of each system compared to the initial projected construction timeline. Templates shall also include an indication of the corresponding amounts budgeted to be spent on each system along with an indication of actual expenditures to date on each system. Duke Energy Indiana should also identify any and all contingencies that may impact the critical path, major milestones, or any potential deviations in budgetary amounts, even if such potential deviations are projected to ultimately remain within the \$2.350 billion projected cost of the IGCC Project.³

While we approve the ongoing review progress report in this proceeding, as it was prepared and submitted to the Commission prior to the issuance of its Order in 43114 IGCC 1, it is our expectation that the submission presented by the Company in its forthcoming Cause No. 43114 IGCC 3 filing will include fully developed templates that will provide the Commission with the ability to monitor and verify issues as the construction of the IGCC Project proceeds.

7. Ratemaking Issues Presented in this Matter.

A. Petitioner's Testimony on this Issue. On behalf of Duke Energy Indiana Ms. Diana Douglas requested that the Commission approve the following in this proceeding: (1) the value of the IGCC Project; (2) authorization for the Company to earn a return on such value; (3) the amount and recovery of Duke Energy Indiana's expenditures for the IGCC Project incurred through September 30, 2008; (4) recovery of amortized regulatory filing expenses (related to the IGCC CPCN proceeding); and, (5) adjustment of Petitioner's retail electric rates, via the IGCC Rider, to include the revenue effect of such investment and cost recovery. Pet. Ex. B, p. 3 (Douglas Direct). The Company specifically requested approval of Petitioner's Exhibit B-1, consisting of its updated Rider 61, which Ms. Douglas noted includes changes approved by the Commission in Cause No. 43114 IGCC 1. *Id.* The revenue adjustment factors by retail rate group for this proceeding based on data as of September 30, 2008, are set forth on page 3 of Exhibit B-1. *Id.* at 4.

Ms. Douglas testified regarding Exhibit B-2 and indicated that the first page of this Exhibit sets forth data for the IGCC Project, including the approved updated estimated cost of completing the Project; the current stage of completion; the estimated in-service date; total expenditures for the Project as of September 30, 2008; Project expenditures applicable to

³ At the Evidentiary Hearing in this matter, Mr. Womack committed to update the Commission in each subsequent IGCC proceeding regarding the current status of the projected cancellation costs of the project.

wholesale and retail customers as of September 30, 2008; and, the amount of retail allowance for funds used during construction (“AFUDC”) included in the cost of the Project. *Id.*

Ms. Douglas further stated that the jurisdictional balance of the Company’s investment in the IGCC Project subject to CWIP ratemaking treatment of \$291,644,000 multiplied by the Company’s overall weighted average cost of capital of 8.24% as of September 30, 2008, results in a six month after tax return in the amount of \$12,016,000. *Id.* at 5. She further explained that the after tax return is converted to the revenue requirement by using the applicable revenue conversion factors applied to the debt and equity components of the after tax return. *Id.* The jurisdictional revenue requirement requested for the six-month filing based on the qualified investment as of September 30, 2008, is \$16,947,000. *Id.* at 6.

Ms. Douglas also explained the calculation of the jurisdictional revenue requirement applicable to external costs incurred in the development of retail regulatory filings associated with the IGCC Project. *Id.* at 6-7. IGCC retail regulatory filing expenditures, excluding employee expenses, through December 31, 2007, totaled \$632,571. *Id.* at 7. Six months’ worth of amortization of this amount over the amortization period of 48 months (\$79,074) was included in the calculation of the total revenue to be recovered from retail customers in this semi-annual filing. After application of the revenue conversion factor, the total to be recovered in this filing is \$80,770. *Id.*

After briefly explaining the IGCC Cost Recovery Adjustment Factors set forth in Page 4 of Petitioner’s Exhibit B-2, Ms. Douglas discussed the derivation of the Company’s weighted average cost of capital as of September 30, 2008, as provided in Petitioner’s Exhibit B-2, Page 5. *Id.* at 8. Ms. Douglas said the weighted average cost of capital was calculated consistent with the Commission’s administrative rules and the CPCN Order. *Id.* Based on the CPCN Order, deferred taxes were excluded from the capital structure for purposes of the IGCC revenue requirements calculation. *Id.*

Ms. Douglas also discussed the AFUDC related to the Project and included for recovery in this proceeding for the period March through September 2008, as shown on Page 6 of Exhibit B-2. *Id.* at 8-9. Ms. Douglas indicated that AFUDC is accrued on the IGCC Project expenditures, including previously computed AFUDC amounts, until such expenditures and AFUDC amounts begin earning a return through Rider 61 or through base rates. *Id.* at 9. Ms. Douglas also opined that the Company’s AFUDC rates were computed in compliance with FERC guidance. *Id.*

Ms. Douglas noted that the IGCC Project includes costs for several transmission projects and she stated (consistent with the Company’s evidence in Cause Nos. 43114 and 43114-S1) that for those IGCC related transmission projects that qualify as part of the Midwest Independent Transmission System Operator’s (“Midwest ISO”) transmission expansion plan and are recognized by the Midwest ISO as RECB projects, the Company will first seek reimbursement of costs from the Midwest ISO and through the Company’s Rider 68. *Id.* at 10-11. Page 1 of Petitioner’s Exhibit B-2 shows the reduction in IGCC Project expenses by the value of RECB transmission project expenditures as of September 30, 2008. *Id.*

Ms. Douglas commented that consistent with 170 IAC § 4-6-22 and in accordance with the Commission’s CPCN Order, the IGCC Project will be deemed to be under construction and Duke Energy Indiana will continue to receive revenues through Rider 61 until the Commission

determines that this Project is used and useful in a proceeding that involves the establishment or investigation of Duke Energy Indiana's base electric rates and charges. *Id.* at 10.

Ms. Douglas also sponsored and discussed Petitioner's Exhibit B-3 which shows the impact of the proposed IGCC Project ratemaking treatment on the monthly bill of a typical residential customer using 1,000 kilowatt hours. *Id.* at 11. The monthly bill of a residential customer using 1,000 kilowatt hours will increase by \$0.91 or approximately 1.2% if this factor is approved. *Id.*

B. OUC's Testimony on this Issue. OUC witness Wes Blakley testified that the OUC concurs with Petitioner's calculations for the IGCC Rider. Pub. Ex. 1, p. 4 (Blakley Direct). Mr. Blakley sponsored Exhibit WRB-1, which calculates three different capital structures. According to Mr. Blakley, Capital Structure III of that exhibit shows that this Commission's approval of deferred tax treatment related to the IGCC Project results in a premium equity return to Petitioner of 12.79%, which is 2.29% on top of the cost of equity that was approved in Petitioner's last rate case of 10.5%. No witness other than Ms. Douglas or Mr. Blakley presented any evidence on the ratemaking issues.

8. Commission Discussion and Findings on Ratemaking Issues. Based on our review of the evidence presented on this issue, we find that Duke Energy Indiana's IGCC Rider (Standard Contract Rider No. 61), as sponsored by the testimony of Duke Energy Indiana witness Ms. Douglas, reflects the actual Project costs incurred through September 30, 2008, and should be approved by the Commission.

9. Petitioner's Request for Confidential Treatment. On November 24, 2008, Petitioner filed a *Motion for Protection of Confidential and Proprietary Information* ("Motion") in this Cause. In its Motion, Duke Energy Indiana requested that certain details of the cost estimate for the IGCC Project that it intends to include as a confidential exhibit, the details of forecasted operations and maintenance expenses of the IGCC Project, confidential information provided to Duke Energy Indiana by its two primary contractors, General Electric Company and Bechtel Power Corporation and confidential information provided to Duke Energy Indiana by other IGCC contractors and vendors be treated as confidential and a trade secret and not subject to public disclosure (collectively referred to as "Confidential Information"). In support of its Motion, the Petitioner includes sworn Affidavits supporting the Petitioner's request for confidential treatment from Michael W. Womack, Vice President, Edwardsport IGCC Project, Duke Energy Indiana; Monte R. Atwell, General Manager, Engineering, General Electric Company through its GE Energy business, GE Energy (USA), LLC; and Dennis Lear, Project Manager IGCC, of Bechtel Power Corporation.

In a December 17, 2008 Docket Entry, the Presiding Officers made a preliminary finding that the Confidential Information should be subject to confidential treatment. Pursuant to Ind. Code § 5-14-3-4(a)(4), we find that the Confidential Information submitted in this Cause is a "trade secret" and should continue to be held as confidential by the Commission.

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

1. The ongoing review progress report for the IGCC Project is hereby approved by the Commission based on the evidence of record.

2. Duke Energy Indiana's IGCC Rider (Standard Contract Rider No. 61) as reflected in the exhibits and testimony of Duke Energy Indiana witness Ms. Douglas and consistent with our findings above, including the actual Project costs incurred through September 30, 2008, is hereby approved. The Rider 61 shall go into immediate effect for all bills rendered upon the filing of the final Rider 61 with the Commission's Electricity Division.

3. Petitioner's Confidential Exhibit A-2 presented in this proceeding is found to be confidential and a trade secret, excepted from public access, and will continue to be held as confidential by the Commission.

4. This Order shall be effective on an after the date of its approval.

HARDY, GOLC, LANDIS, SERVER AND ZIEGNER CONCUR:

APPROVED: MAY 13 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**