

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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VERIFIED PETITION OF DUKE ENERGY INDIANA, )  
INC. SEEKING (1) APPROVAL OF AN ONGOING )  
REVIEW PROGRESS REPORT PURSUANT TO IND. )  
CODE §§8-1-8.5 AND 8-1-8.7; AND (2) 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 APPLICABLE RELATED COSTS )  
THROUGH ITS INTEGRATED COAL )  
GASIFICATION COMBINED CYCLE GENERATING )  
FACILITY COST RECOVERY ADJUSTMENT, )  
STANDARD CONTRACT RIDER NO. 61 PURSUANT )  
TO IND. CODE §§ 8-1-8.8-11 AND -12. )

CAUSE NO. 43114 IGCC 6

APPROVED: DEC 27 2012

ORDER OF THE COMMISSION

**Presiding Officers:**  
**David E. Ziegner, Commissioner**  
**David E. Veleta, Administrative Law Judge**

On November 5, 2010, Duke Energy Indiana, Inc. ("Duke", "Petitioner" or "Company") filed its Verified Petition with the Indiana Utility Regulatory Commission ("Commission") in this Cause. In its Petition, Duke requested: (1) approval of an ongoing review progress report; and (2) authority to reflect costs incurred for the Edwardsport Integrated Gasification Combined Cycle Generating Facility ("IGCC Project") property under construction in its retail electric rates, and authority to recover certain other applicable related costs through its Integrated Coal Gasification Combined Cycle Generating Facility Cost Recovery Adjustment, Standard Contract Rider No. 61 ("Rider 61" or "IGCC Rider").

On March 7, 2011, the Presiding Officers issued a Docket Entry providing that the Commission's review of the progress report submitted in this proceeding should be considered in Phase I of Cause No. 43114 IGCC-4S1 ("IGCC-4S1"), and its review of any allegations of fraud, concealment and/or gross mismanagement relative to the ongoing review progress report presented in IGCC-6 shall be considered in Phase II of IGCC-4S1.

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 April 24, 2012, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Duke, the Sierra Club, Citizens Action Coalition of Indiana, Save the Valley, and Valley Watch (collectively "Joint Intervenors"), and

the Indiana Office of Utility Consumer Counselor (the “OUCC”) appeared and participated. No members of the general public were present or sought to testify.

At the evidentiary hearing, Petitioner presented the case-in-chief testimony and exhibits of Ms. Diana L. Douglas, Director of Rates for Duke Energy Indiana in support of its petition. Petitioner also presented the Verified Petition in this Cause. The testimony and exhibits offered by the Petitioner were admitted into evidence without objection. The OUCC presented the testimony of Mr. Wes R. Blakley, Senior Utility Analyst, which was admitted into evidence without objection. Joint Intervenors presented the testimony and exhibits of Mr. Kerwin L. Olson, Program Director for the Citizens Action Coalition, which were also admitted into evidence without objection. For its rebuttal case, Duke presented the testimony and exhibits of Ms. Diana L. Douglas.

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 evidentiary hearing in this Cause was given and published by the Commission as required by law. Duke is a public utility as defined by Indiana Code § 8-1-2-1, and is subject to regulation by the Commission to the extent provided for in the Public Service Commission Act, as amended. Accordingly, the Commission has jurisdiction over Duke and the subject matter of this proceeding.

2. **Petitioner’s Characteristics.** Duke is an Indiana corporation with its principal office located at 1000 East Main Street, Plainfield, Indiana. Duke 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 directly supplies electric energy to approximately 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.

3. **Relief Requested.** In its Verified Petition, Duke requested: (1) approval of an ongoing review progress report pursuant to Indiana Code §§ 8-1-8.5-6 and 8-1-8.7-7; and (2) authority to add to the valuation of its utility property for ratemaking purposes the actual IGCC Project costs incurred through September 30, 2010, and authority to recover the financing costs and its other applicable related costs through its IGCC Rider. However, pursuant to the Presiding Officers’ March 7, 2011 Docket Entry, the review of the Company’s ongoing review progress report submitted in this proceeding was conducted as a component of the IGCC-4S1 proceeding. Further, the timing of the IGCC-4S1 and subsequent IGCC Rider proceedings have rendered the implementation of an IGCC Rider factor in this proceeding moot.

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 IGCC 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 incurred 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 IGCC 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 a request by the Company to revise the cost estimate of the IGCC Project from \$1.985 billion to \$2.350 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 construction cost estimate for the IGCC Project of \$2.350 billion and its ongoing review progress report. In the IGCC-1 Order, the Commission also approved the timely recovery of construction and operating costs through the IGCC Rider reflecting actual expenditures through February 28, 2008. Finally, the Commission approved the Company's request for authority to undertake studies related to carbon capture at the IGCC Project and deferral of reasonable and prudent costs for such studies.

On November 3, 2008, Petitioner filed its second semi-annual IGCC Rider and ongoing review progress report proceeding related to the IGCC Project, designated as Cause No. 43114 IGCC-2. On May 13, 2009, the Commission issued its order in Cause No. 43114 IGCC-2 (the "IGCC-2 Order"), in which it approved the Company's updated ongoing progress report for the IGCC Project, as well as the Company's request for recovery under the IGCC Rider of the additional actual costs of the IGCC Project through September 30, 2008, and certain external costs related to the IGCC Project.

On May 1, 2009, Petitioner filed its third semi-annual IGCC Rider and ongoing review progress report proceeding related to the IGCC Project, designated as Cause No. 43114 IGCC-3. On December 2, 2009, the Commission issued its order in Cause No. 43114 IGCC-3 (the "IGCC-3 Order"), in which it approved the Company's updated ongoing progress report for the IGCC Project, as well as the Company's request for recovery under the IGCC Rider of the additional actual costs of the IGCC Project through March 31, 2009, and for certain external costs related to the IGCC Project.

On November 24, 2009, Petitioner filed its fourth semi-annual IGCC Rider and ongoing review progress report proceeding, designated as Cause No. 43114 IGCC-4. In that proceeding, Petitioner requested approval of: (1) the Company's updated ongoing progress report for the IGCC Project; (2) recovery under the IGCC Rider of the additional actual costs of the IGCC Project through September 30, 2009, and for certain other applicable related costs; and (3) the establishment of a subdocket proceeding to provide a further review of the cost estimate for the IGCC Project. On July 28, 2010, the Commission issued its interim order in Cause No. 43114 IGCC-4 (the "IGCC-4 Order") in which it approved the requested relief on an interim and subject to refund basis, pending the outcome of the 4S1 Subdocket proceeding. As requested by

the Company, the Commission also approved the Company's request for a subdocket to review the cost estimate, designated as Cause No. 43114 IGCC-4S1 ("the 4S1 Proceeding").

On June 2, 2010, Petitioner filed its fifth semi-annual IGCC Rider and ongoing review progress report proceeding, designated as Cause No. 43114 IGCC-5. In that proceeding, Petitioner requested approval of: (1) the Company's updated ongoing progress report for the IGCC Project; (2) recovery under the IGCC Rider of the additional actual costs of the IGCC Project through March 31, 2010, and for certain other applicable related costs.

**5. Ratemaking Issues Presented in this Matter.**

**A. Petitioner's Testimony on this Issue.** On behalf of Duke, Ms. Diana Douglas requested that the Commission approve the following: (1) the value of the IGCC Project (as of September 2010) upon which the Company is requesting authorization to earn a return; (2) the amount of Duke's expenditures for the IGCC facility incurred through September 30, 2010; (3) recovery of amortized regulatory filing expenses (related to the IGCC CPCN proceeding); (4) recovery of incremental fees and expenses of Black & Veatch (the Commission's independent engineering firm for the IGCC Project, paid for by the Company), incurred by the Company from April 2010 through September 2010; (5) reconciliation of actual depreciation expense incurred from April 2010 through September 2010 to the estimated depreciation expense amount previously included in IGCC-4 on the portion of the IGCC Project that has been placed into service (certain IGCC Project-related transmission facilities); (6) recovery of estimated depreciation expense from April 2011 through September 2011 on the portion of the IGCC Project that has been placed in service (certain IGCC Project-related transmission facilities); (7) reconciliation of revenue requirements for operating expenses approved for collection in Cause No. 43114 IGCC-4 to actual collections from April 2010 through September 2010; and (8) adjustment of Petitioner's retail electric rates, via the IGCC Rider (Rider 61), to reflect the revenue effect of such investment and cost recovery. The Company also specifically requested approval of Petitioner's Exhibit B-1, consisting of its updated Rider 61.

Ms. Douglas explained that Petitioner's Exhibit B-1 include definitions of the components of the formula used to develop the IGCC Revenue Adjustment Factors, a formulaic representation of the calculations used in developing the factors, revenue adjustment factors by retail rate group, a listing of retail allocation factors (based on the allocation factors approved in the Company's last general retail electric base rate case), and the billing cycle kilowatt hour ("kWh") and/or non-coincident peak demands used to develop the proposed IGCC Cost Recovery Adjustment.

In addition, Ms. Douglas' testimony explained Petitioner's Exhibit B-2, indicating that this exhibit sets forth schedules for the IGCC Project and includes the following data, consistent with the requirements of 170 IAC 4-6-12 and the Commission's Orders in Cause Nos. 43114 and 43114-S1 and 43114 IGCC 1: the estimated cost of completing the IGCC Project; the construction start date; the current stage of completion; the estimated or actual in-service date; total expenditures for the IGCC Project as of September 30, 2010; IGCC Project expenditures applicable to the Company's wholesale jurisdictional customers; retail IGCC facility investment

as of September 30, 2010; and the amount of retail allowance for funds used during construction (“AFUDC”) included in the cost of the IGCC Project as of September 30, 2010.

Ms. Douglas testified that the jurisdictional balance of the Company’s investment in the IGCC Project subject to Construction Work in Progress (“CWIP”) ratemaking treatment per the Company’s accounting books and records was \$1,879,872,000 as of September 30, 2010.

Ms. Douglas also provided an update on the costs of four IGCC Project-related transmission projects, which are included in the Commission-approved IGCC Project estimate and listed on Petitioner’s Exhibit B-2, page I. Ms. Douglas explained that for the two transmission projects that qualify as part of the Midwest Independent Transmission System Operator’s (“MISO”) transmission expansion plan and are recognized by the MISO as Regional Expansion and Criteria Benefit (“RECB”) projects, the Company will first seek cost recovery for such projects pursuant to its Rider No. 68 and the MISO’s Schedule 26, consistent with the Commission’s June 25, 2008 Order in Cause No. 42736-RTO14. If and to the extent that costs for an IGCC-related transmission project are not eligible for recovery through Rider No. 68 and Schedule 26, then the Company will seek cost recovery for such project (or portion of a project) through the IGCC Rider. In previous IGCC Rider proceedings, the Company excluded these transmission projects from CWIP ratemaking treatment, and instead accrued AFUDC on such projects during construction, in order to ensure that the full financing costs of such projects would be accrued and considered as a part of the RECB reimbursement of MISO. Now that the projects are in-service, and the Company expects a 50% reimbursement for such RECB projects, the Company has included 50% of the value of the projects in its IGCC Project valuation for CWIP ratemaking purposes (representing the 50% of the projects that are not expected to receive MISO RECB reimbursement). Accordingly, Page 1 of Petitioner’s Exhibit B-2 shows the expenditures for the two RECB projects, including the reduction in IGCC Project expenses by the 50% amount for which the Company expects to be reimbursed by MISO through the RECB process. The retail jurisdictional IGCC Project investment at September 30, 2010 (before netting of accumulated depreciation) was \$1,879,872,000, as shown on Petitioner’s Ex. B-2, page 3.

Ms. Douglas’ testimony presented the calculation of the jurisdictional revenue requirement applicable to the IGCC Project investment through September 30, 2010, net of accumulated depreciation. Ms. Douglas explained that page 2 of Petitioner’s Ex. B-2 shows the amount of accumulated depreciation as of September 30, 2010, applicable to the IGCC Project investment. Currently, the only portions of the IGCC Project that have been placed in service and are being depreciated are the four transmission projects. The retail jurisdictional accumulated depreciation applicable to the jurisdictional IGCC Project investment as of September 30, 2010, was \$200,764, which reflects the reduction due to the anticipated 50% MISO RECB reimbursement amount. The net retail jurisdictional IGCC Project investment at September 30, 2010 was, therefore, \$1,879,671,000.

Ms. Douglas noted that the CPCN Order (ordering paragraph 9, on page 63) provided an incentive ratemaking treatment in regards to deferred income taxes, requiring that deferred taxes be excluded from the capital structure used in the IGCC rider and that the deferred tax balance related to the IGCC Project be included as an IGCC rate base offset. The IGCC-1 Order reaffirmed this treatment, but limited application of this deferred tax incentive to \$1.985 billion

of IGCC Project expenditures. As of September 30, 2010, the IGCC Project expenditures exceeded the \$1.985 billion level. Accordingly, page 3 of Petitioner's Exhibit B-2 determined the percentage of IGCC Project expenditures that are eligible for incentive ratemaking treatment with regards to deferred income taxes and applied this percentage to the retail jurisdictional investment, accumulated depreciation, and IGCC-specific accumulated deferred income taxes to determine the retail jurisdictional values that are eligible for the deferred income tax incentive. Page 3 also computed the retail plant not eligible for deferred income tax incentive ratemaking treatment and the retail accumulated depreciation allocable to the ineligible plant.

Ms. Douglas explained that in order to determine the appropriate portion of the net retail jurisdictional IGCC Project applicable to the deferred tax incentive, the percentage that \$1,985,000,000 represents of total IGCC Project expenditures was computed on Page 3 of Petitioner's Exhibit B-2. This percentage, 97.33% as of September 30, 2010, was applied to the retail CWIP investment as of September 30, 2010, to obtain the amount of retail plant expenditures applicable to the deferred income tax incentive -- \$1,829,679,000. The remainder of the retail expenditures, \$50,193,000, is not eligible for the incentive treatment. This percentage was also applied to the retail accumulated depreciation and deferred income tax amounts.

Page 4 of Petitioner's Exhibit B-2 shows the calculation of the jurisdictional revenue requirement for the return on the net jurisdictional IGCC Project investment. The \$1,829,679,000 of retail plant expenditures, to which the deferred income tax incentive applies, was reduced by \$196,000 of retail accumulated depreciation allocable to the plant eligible for incentive treatment and by the allocated IGCC specific deferred income tax rate base deduction of \$174,000. The resulting net plant amount of \$1,829,309,000 was multiplied by the Company's overall weighted average cost of capital of 7.77% as of September 30, 2010, which was computed in accordance with the Commission's IGCC-1 Order by excluding deferred income taxes, resulting in a six-month after tax return in the amount of \$71,069,000. After application of the revenue conversion factor, the amount of jurisdictional revenue requirements for the portion of the IGCC net book value to which the deferred income tax incentive applies is \$102,654,000.

The \$50,193,000 of jurisdictional net investment to which the deferred income tax incentive does not apply, was reduced by the retail accumulated depreciation allocable to the retail net plant not eligible for the deferred income tax incentive, to obtain the retail net plant not eligible for the deferred income tax incentive as of September 30, 2010. This value, \$50,188,000, was multiplied by the Company's overall weighted average cost of capital of 6.99% as of September 30, 2010, which was computed by including deferred income taxes. This resulted in a six-month after-tax return of \$1,754,000. After application of the revenue conversion factors, the amount of jurisdictional revenue for the portion of the IGCC net book value to which the deferred income tax incentive does not apply is \$2,534,000. The six-month jurisdictional revenue requirements for both the portion of the IGCC net book value to which the deferred income tax incentive applies, and the portion to which it does not apply, equals \$105,188,000.

Ms. Douglas discussed the derivation of the Company's weighted average cost of capital as of September 30, 2010, as shown on Petitioner's Exhibit B-2, pages 9 and 10. Ms. Douglas stated that the weighted average cost of capital has been calculated consistent with the Commission's administrative rules, the Commission's CPCN Order, and the Commission's IGCC-1 Order. Page 9 shows the derivation of the weighted average cost of capital applicable to the retail portion of the first \$1.985 billion of plant investment. This calculation excludes deferred income taxes. Page 10 shows the derivation of the weighted average cost of capital applicable to the remainder of the retail investment which is not eligible for the deferred income tax incentive treatment. This calculation includes deferred income taxes, and amounts not used to reduce IGCC rate base have been valued as a zero cost source of funds in the calculation.

Ms. Douglas also summarized AFUDC applied to the Project for the period April 2010 through September 2010, as shown on page 11 of Petitioner's Exhibit B-2. Ms. Douglas said 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.

Ms. Douglas noted 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 retail electric base rates and charges.

Ms. Douglas explained the calculation of the jurisdictional revenue requirement applicable to Project-related operating expenses. These operating expenses included: external costs associated with the IGCC CPCN retail regulatory filing; fees and expenses incurred by the Company for services by Black & Veatch relating to Project oversight for the Commission; actual depreciation expense, reconciled against forecasted depreciation expense; and forecasted depreciation expense.

The Company's external costs associated with the IGCC CPCN retail regulatory filing, excluding employee expenses, through December 31, 2007, totaled \$632,571. The Commission's CPCN and IGCC-1 Orders authorize the Company to amortize and recover these external costs over a 48-month amortization period. Ms. Douglas' testimony demonstrated that six months' worth of amortization of this amount over the amortization period of 48 months totaled \$79,074.

Ms. Douglas' testimony also demonstrated that the fees and expenses incurred by the Company from April 2010 through September 2010, for services by Black & Veatch for Project oversight, totaled \$396,111.

Ms. Douglas stated that actual retail jurisdictional depreciation expense during the April 2010 through September 2010 period totaled \$90,659. This amount was reconciled with the estimated amount of depreciation for the same period that was included in IGCC-4 (\$29,993), and the variance of \$60,666 was included in this filing.

Ms. Douglas testified that the estimated depreciation expense for the April 2011 through September 2011 six-month forecast period was \$102,903.

The total of all these operating expense items, \$638,754, was included in the calculation of the total revenue to be recovered from retail customers. After application of the revenue conversion factor, the total retail jurisdictional amount to be recovered for operating expenses in this filing is \$652,449.

Finally, Ms. Douglas explained that she had reconciled the retail jurisdictional revenue requirements approved for recovery in IGCC-4 applicable to operating expenses, to actual collections through retail rates received from April 2010 through September 30, 2010. This reconciliation resulted in an over collection of \$562, which amount has also been included in the development of the IGCC rider factors proposed in the current proceeding.

Ms. Douglas also described the impact of the proposed IGCC Project ratemaking treatment on the monthly bill of a typical residential customer using 1,000 kilowatt-hours. If the factor proposed in this proceeding were approved, the monthly bill of a residential customer using 1,000 kilowatt-hours would increase by \$2.61 or approximately 3.2%, over the factor proposed in IGCC-5.

**B. OUC's Testimony.** Mr. Wes Blakley, Senior Utility Analyst for the OUC, testified that the OUC found the figures used in the calculation of the IGCC Rider supported by the exhibits filed by the Company. Mr. Blakley explained that the weighted average cost of capital utilized by the Company in this filing was calculated by excluding approximately \$798 million of zero cost deferred income taxes from the capital structure, producing a rate of return of 7.77%. Mr. Blakley reported that the Company excluded zero cost deferred income taxes from its capital structure consistent with the Commission's IGCC-1 order. However, Mr. Blakley noted that the Company's overall rate of return including the deferred taxes is equal to 6.99%. According to Mr. Blakley, this effective "incentive" return on equity equates to an increased revenue requirement of approximately \$10,300,000 in this six month period. Mr. Blakley recommended that the Commission utilize a weighted cost of capital including, rather than excluding, the deferred taxes for the Rider 61 proceedings.

**C. Joint Intervenors' Testimony.** CAC witness Mr. Kerwin L. Olson testified that the purpose of his testimony was to address whether CWIP provides a benefit to customers. Mr. Olson emphasized that the limited nature of his testimony did not signal agreement with Petitioner's positions or its requested relief.

Mr. Olson explained that according to the FERC Uniform System of Accounts, the CWIP account on a utility's books includes the total balances of work orders for plant that is in the process of construction. Work orders are cleared from this account after the construction is completed. Traditionally, the ratemaking principles of "used and useful" and "interperiod equity" have resulted in regulatory commissions refusing to allow CWIP in rate base. In effect, the rationale for the traditional treatment is that present utility customers should not be required to pay for a plant that is not providing or capable of providing their specific service. Also, present utility customers should not be required to pay for a plant under construction because

that plant is for the benefit and use of future customers. Thus, rather than violate the regulatory principles of used and useful and interperiod equity, CWIP has generally been excluded from rate base. By excluding CWIP from rate base, the utility does not earn a return on the capital it has expended for the construction. In order to allow the utility an opportunity to earn a return on capital expended for construction and also to defer actual payment by the ratepayers of that return until the plant is in service, the accounting entry known as AFUDC is utilized and capitalized and added to the construction costs in the CWIP account upon the in-service date of the plant in question. This increases the size of the addition to rate base when the project comes online.

According to Mr. Olson, many regulatory jurisdictions still do not permit CWIP in the rate base and very few allow 100% of CWIP in the rate base for major construction projects. Others, like Indiana, allow CWIP in rate base in some amount in some circumstances, for example: (1) for certain projects; (2) for projects being constructed by financially distressed utilities; or (3) on some part of the CWIP balance. In support of this assertion, Mr. Olson referred to CAC Exhibit KLO-1, the *Current Return on CWIP versus AFUDC Regulatory Survey Results*, March 2006, which was produced by the Wisconsin Public Service Commission and reports the varying regulatory treatment for CWIP in the limited number of jurisdictions that completed the survey.

Mr. Olson stated that CAC has consistently opposed the inclusion of CWIP in rate base, except for pollution control projects. Mr. Olson explained that CAC opposes CWIP in rate base for several reasons including that it: (1) converts consumers into involuntary investors; (2) costs consumers more, sooner than AFUDC; (3) exacerbates the weak financial position of many ratepayers, especially coming out of the recent economic recession; (4) insulates utilities from marketplace discipline on controlling costs and uses of capital; and (5) rewards utilities for their inability to control construction costs.

Mr. Olson concluded by summarizing Joint Intervenors' position that Duke Energy Indiana is not entitled to recovery through current rates of a return on the costs of the additional construction work in progress investment made by the Company during the six-month ongoing review period covered by this proceeding unless and until the Commission affirmatively finds that those costs were prudent and unaffected by fraud, concealment and gross mismanagement.

**D. Petitioner's Rebuttal Testimony.** With respect to Mr. Blakley's testimony, Ms. Douglas explained that the Commission's CPCN and IGCC-1 Orders provided incentive treatment pursuant to Indiana Code § 8-1-8.8-11 for deferred income taxes. This treatment allowed the Company to remove deferred income taxes from the capital structure for the first \$1.985 billion of plant for IGCC tracker purposes and instead required that the IGCC rate base included in the tracker be reduced by IGCC-specific deferred taxes. The rates presented in Petitioner's Exhibits B-1 through B-3 were developed in accordance with these orders.

Ms. Douglas emphasized that in compliance with the Commission's Orders, the Company computed the rates in both this proceeding and in IGCC-5 (as well as in other prior IGCC Rider proceedings) in accordance with those Orders and applied the incentive treatment for deferred income taxes only to the retail portion of the \$1.985 billion amount of the initial

estimate approved in the CPCN order. Even with the increase in costs in IGCC-1, the Commission's Order affirmed that the incentive deferred tax treatment was still reasonable for the amount of the original cost estimate when the Commission reiterated, "in light of our recognition in the underlying proceeding that '[a]n increased rate of return early in the life of the project provides for the availability of the additional funds to pay debt capital costs and is supportive of credit equality.'"

Ms. Douglas noted that Mr. Blakley did not take exception with the accuracy of the calculation of rates shown in Exhibits B-1 through B-3, nor did he testify that the rates proposed were not computed in accordance with the Commission's order in IGCC 1. In fact, he stated that "[t]he figures used in the calculation of its IGCC adjustment factor are supported by the exhibits filed by Petitioner."

Ms. Douglas explained that the Commission is addressing the issue of the increased cost estimate in the IGCC-4S1 proceeding. The Commission's IGCC-4 Order, which was issued while IGCC-4S1 was pending, approved rates which the Company had calculated in accordance with the Order in the IGCC-1 case, subject to refund pending its order in IGCC-4S1 proceeding. In the Company's view, the same practice should apply in this and the IGCC-5 proceeding, should the Commission issue an order in this and the IGCC-5 proceeding prior to issuing an order in the IGCC-4S1 proceeding.

Ms. Douglas stated that Mr. Olson's testimony provided a history and explanation of CWIP ratemaking treatment, including a statement explaining that customers would pay less if AFUDC were accrued than they would under CWIP ratemaking treatment because the cost of capital customers pay under CWIP ratemaking treatment "invariably" includes the cost of both debt and equity capital, while AFUDC accruals include only debt capital due to "the usually applicable accounting rules." Ms. Douglas emphasized that the Indiana legislature has already made the decision that "clean coal and energy projects" and "eligible businesses" building "new energy producing and generating facilities" should be eligible for CWIP ratemaking treatment. The Commission has determined that the Project meets the statutory definitions set forth in Indiana Code Chapter 8-1-8.8, and as such, has appropriately approved CWIP ratemaking treatment for the IGCC Project in Cause Nos. 43114/43114-S1 and reaffirmed it in IGCC-1 and in each of the periodic IGCC update proceedings (IGCC-2 through IGCC-4).

Moreover, Ms. Douglas noted that Mr. Olson did not question the accuracy of the Company's rate calculations as presented in Petitioner's Exhibits B-1 through B-3, nor did he testify that the rates proposed were not computed in accordance with the Commission's IGCC-1 Order.

**6. The Commission's Order in the IGCC-4S1 Proceeding.** On April 30, 2012, Duke Energy Indiana, the OUCC, the Duke Energy Indiana Industrial Group, and Nucor Steel-Indiana, a division of Nucor Corporation, presented a settlement agreement to the Commission in the 4S1 Subdocket proceeding (the "Settlement Agreement") The Joint Intervenors did not join in this Settlement Agreement, and in fact opposed the Settlement Agreement at the July 16-19, 2012, evidentiary hearing held in the 4S1 Subdocket proceeding on the Settlement Agreement.

With regard to this IGCC-6 proceeding, the Settlement Agreement contemplates that, if the Commission approves the Settlement Agreement, and if the Commission finds that the Project costs incurred and presented in the IGCC Rider proceedings – up to the Hard Cost Cap as defined therein are reasonable and necessary in light of the Settlement Agreement’s Hard Cost Cap, then the Commission should promptly “restart” the IGCC Riders, consistent with the Settlement Agreement.

Given the timing of the hearings in the pending IGCC-4S1 and this IGCC-6 proceeding, the parties to the Settlement Agreement have suggested that the simplest and most efficient approach for restarting the IGCC Riders would be for the Commission to issue orders in the IGCC-5 through IGCC-8 Rider proceedings contemporaneously with approval of the Settlement Agreement. Under this proposal, as a practical matter, although orders would be issued in IGCC-5, IGCC-6 and IGCC-7, the proposed rates in those three rider proceedings would not be implemented. Rather, only the relatively more recent proposed rates in IGCC-8 would be implemented, as defined therein.

However, it should be noted that the IGCC Rider 6 proposed rates contain operating expense items, such as depreciation expenses related to the Edwardsport transmission line projects and other Operations and Maintenance (“O&M”) expenses, that the Company believes should be approved (and ultimately recovered through the Rider reconciliation process in future Rider proceedings). For example, in this IGCC-6 proceeding, the Company’s filing reflects the following depreciation and O&M expenses: \$90,659 in depreciation expenses (related to transmission investments) for the six months ended September 2011 (retail jurisdictional portion); \$79,074 in amortization of regulatory filing expenses (retail jurisdictional portion); and \$396,111 in Black & Veatch expenses (retail jurisdictional portion). We note that no party has opposed the reasonableness or ultimate recovery of these depreciation and O&M expenses.

Contemporaneous with the issuance of this Order, we are issuing an Order in the IGCC-4S1 proceeding approving the Settlement Agreement subject to some modifications, and IGCC-6, 7 and 8. Accordingly, the factors as proposed in IGCC-6 will not be implemented. In our IGCC-4S1 Order, we among other things approved the ongoing review progress report for IGCC-6.

7. **Commission Discussion and Findings on Ratemaking Issues.** Joint Intervenors cross-examined Ms. Douglas as to the implementation of the updated IGCC Rider (Standard Contract Rider 61) and the associated calculations and assumptions contained in that Rider. However, Joint Intervenors did not present evidence of any miscalculations or propose any alternative calculations. The OUCC found the figures used in the calculation of the Rider to be supported by the exhibits of the Company.

Based on our review of the evidence presented on this issue, we find the testimony of Ms. Douglas, accurately reflects the net retail jurisdictional IGCC Project investment as of September 30, 2010 and the net retail jurisdictional amount of operating expenses incurred with respect to the IGCC Project from the period from April 1, 2010 through September 30, 2010.

However, in light of our contemporaneous Order approving the requested IGCC-8 Rider rates the implementation of the IGCC-6 Rider rates is unnecessary. To the extent required, we find the requested IGCC-6 costs calculations for the transmission project-related depreciation expenses and the other O&M costs identified in the testimony to be reasonable and approved for ratemaking purposes.

**8. Appeal to the Full Commission.** On February 9, 2011, the Joint Intervenors, filed an Appeal to Full Commission and Verified Motion for Stay of Presiding Officers' Docket Entry of February 8, 2011 ("Appeal"). The Appeal argued that in order for the issues in this proceeding to be fairly adjudicated, the testimony and hearings must occur in the proper sequence. On March 7, 2011, the Presiding Officers issued a Docket Entry providing that the Commission's review of the progress report submitted in this proceeding should be considered in Phase I of Cause No. 43114 IGCC-4S1 ("IGCC-4S1"), and its review of any allegations of fraud, concealment and/or gross mismanagement relative to the ongoing review progress report presented in IGCC-6 shall be considered in Phase II of IGCC-4S1. Thus, the proper sequence of testimony was maintained by the evidence being presented together in one proceeding. Furthermore, the remaining portions of the evidentiary hearings in IGCC-5 and 6 occurred after the hearing in IGCC-4S1. Therefore, the Commission finds it unnecessary to address Joint Intervenor's Appeal as it is now moot.

**9. Petitioner's Request for Confidential Treatment.** On November 5, 2010, Petitioner filed a Motion for Protection of Confidential and Proprietary Information ("Motion"). The affidavit of Mr. Womack indicates that such confidential information ("Confidential Information") constitutes a trade secret and that the Petitioner has taken all reasonable steps to protect the confidential information from disclosure. On November 18, 2010, the Presiding Officers issued a Docket Entry granting confidential treatment to the Confidential Information on a preliminary basis.

Based on the foregoing, pursuant to Indiana Code § 5-14-3-4(a)(4), we find that the IGCC Project cost and cost estimate information set forth in Petitioner's Confidential Exhibit B-2 presented in this proceeding constitute a "trade secret" and should be afforded confidential treatment. Accordingly, this information is exempted from public disclosure and will be held as confidential by the Commission.

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

1. The costs and rates presented in 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 IGCC Project costs incurred through September 30, 2010, are hereby approved as reasonable. However, due to our contemporaneous approval of the proposed rates in the Company's IGCC-8 Rider filing (up to the 4S1 Subdocket Settlement Agreement Hard Cost Cap), we decline to authorize the implementation of the proposed IGCC-6 Rider 61 rates.

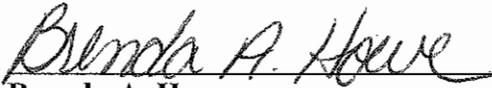
2. Petitioner's Confidential Exhibit B-2, pp. 1, 2, and 6 presented in this proceeding, as well as the Confidential Cross-Examination Exhibits are found to be confidential and a trade secret, excepted from public access, and will continue to be held as confidential by the Commission.

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

**ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:**

APPROVED: DEC 27 2012

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



Brenda A. Howe  
Secretary to the Commission