

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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PETITION OF DUKE ENERGY INDIANA,)
 INC. FOR APPROVAL OF AN EXTENSION) CAUSE NO. 43676
 OF THE ELECTRIC SUPPLY)
 AGREEMENTS BETWEEN DUKE ENERGY) APPROVED: JUN 1 0 2009
 INDIANA AND NUCOR CORPORATION)

BY THE COMMISSION:

David E. Ziegner, Commissioner
Angela Rapp Weber, Administrative Law Judge

On April 24, 2009, Duke Energy Indiana, Inc. ("Duke Energy Indiana" or "Petitioner") filed its Verified Petition and supporting testimony and exhibits with the Indiana Utility Regulatory Commission ("Commission"). The Verified Petitioner requested approval of a three-month contract Extension Agreement ("Nucor Extension Agreement") to its current Electric Supply Agreements with Nucor Steel-Indiana, a division of Nucor Corporation ("Nucor"). On April 29, 2009 Nucor filed its Petition to Intervene. On April 30, 2009, Petitioner and the Indiana Office of Utility Consumer Counselor ("OUCC") filed a Joint Motion for Approval of Agreed to Procedural Schedule ("Joint Motion"). Also on April 30, 2009, the Presiding Officers issued a docket entry approving the Joint Motion and setting the procedural schedule of this Cause. On May 11, 2009, the OUCC filed its Response to Duke Energy Indiana's Petition and Case-In-Chief Testimony ("OUCC's Response") with the Commission.

On May 19, 2009, Duke Energy Indiana and Nucor filed a Joint Motion for Protection of Confidential and Proprietary Information ("Motion for Confidential Treatment") pursuant to 170 IAC 1-1.1-4 and Ind. Code §§ 8-1-2-29 and 5-14-3. The Motion for Confidential Treatment requested that the Commission treat as confidential and proprietary the following agreements entered into by Petitioner and Nucor: the Electric Supply Agreement executed on July 31, 1987, the As-Available Supplemental Energy Service Agreement executed on April 4, 1994 and the First Amendment to the 1987 Electric Supply Agreement executed on June 20, 1996 (collectively, "Nucor Electric Supply Agreements").

At the May 21, 2009 evidentiary hearing, the Presiding Officers agreed to take the Motion for Confidential Treatment under advisement so Petitioner and Nucor could file with the Commission legal support for it. On June 4, 2009, Duke Energy Indiana and Nucor filed a Joint Withdrawal of Joint Motion for Protection of Confidential and Proprietary Information ("Joint Motion"). After reviewing the Joint Motion, the Presiding Officers hereby grant it.

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, a public evidentiary hearing in this Cause was held on May 21, 2009 at 1:30 p.m. in Room 224 of the National City Center, 101 W. Washington Street, Indianapolis, Indiana. At the evidentiary hearing, Duke Energy Indiana, Nucor and the OUCC were present and participated at the hearing. No members of the public at large were present at the hearing.

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

1. **Notice and Jurisdiction.** Due, legal, and timely notice of the evidentiary hearing in this Cause was given and published by the Commission as required by law. Proofs of publication for legal notices made by Duke Energy Indiana were offered and admitted into evidence. Petitioner is a public utility within the meaning of the Public Service Commission Act, as amended, Ind. Code § 8-1-2 *et seq.* Accordingly, the Commission has jurisdiction over the Petitioner and the subject matter of this proceeding.

2. **Petitioner's Characteristics and Business.** Duke Energy Indiana is a public utility organized and existing under the laws of the State of Indiana and has its principal office at 1000 E. Main Street, Plainfield, Indiana. Duke Energy Indiana is engaged in rendering electric utility service in the State of Indiana and owns, operates, manages and controls, among other things, plants and equipment within the State of Indiana used and useful for the production, transmission, delivery and furnishing of electric service to the public. Duke Energy Indiana directly supplies electric energy to approximately 780,000 customers located in sixty-nine counties in the central, north central and southern parts of Indiana.

3. **Background and Requested Relief.** According to the Verified Petition, Nucor operates a steel production facility located near the City of Crawfordsville, Indiana ("Crawfordsville Plant"). The provisions governing electric service to the Crawfordsville Plant are important to Nucor's successful operation of the Crawfordsville Plant. Petitioner (formerly known as PSI Energy, Inc. and Public Service Company of Indiana, Inc.) and Nucor previously agreed to the Nucor Electric Supply Agreements. The Commission previously approved the 1987 Electric Supply Agreement by an Order issued in Cause No. 38344 on August 26, 1987, approved the As-Available Supplemental Energy Service Agreement on June 8, 1994 and approved the First Amendment to the July 31, 1987 Electric Supply Agreement on August 28, 1996. The Commission's approval in each Cause authorized Duke Energy Indiana to supply electricity to Nucor pursuant to such Nucor Electric Supply Agreements. The Nucor Electric Supply Agreements terminate on July 31, 2009.

The Verified Petition stated that Petitioner and Nucor negotiated in good faith concerning the rates, charges, terms and conditions of a new, replacement electric supply agreement, but they have not concluded a new agreement. Petitioner and Nucor agreed pursuant to the Extension Agreement that Petitioner will continue to furnish electric service to Nucor's operation at the Crawfordsville Plant pursuant to the same terms and conditions and rates and charges established in the Nucor Electric Supply Agreements. Service will be supplied for a period of three months, up to and including October 31, 2009 and will not affect service provided to Petitioner's other customers. Petitioner and Nucor will continue to negotiate concerning the rates, charges, terms and conditions pursuant to which Petitioner will provide electric supply to Nucor in the future.

The Verified Petition requested that the Commission approve the proposed Extension Agreement executed between Duke Energy Indiana and Nucor. The Verified Petition also

requested expedited treatment so that Petitioner may register Nucor's interruptible load with the Midwest Independent Transmission System Operator ("Midwest ISO") as a Load Modifying Resource for the months of August, September and October 2009. In order to do this, Petitioner must receive Commission approval of the Extension Agreement by June 12, 2009.

4. **Petitioner's Evidence.** Mr. Bailey testified on behalf of Duke Energy Indiana. Mr. Bailey provided the historical background for the Duke Energy Indiana-Nucor relationship and the Nucor Electric Supply Agreements enumerated in Paragraph Three. He explained key terms of the Nucor Electric Supply Agreements and the Nucor Extension Agreement also detailed in Paragraph Three. Mr. Bailey testified that based on historical power usage, the hourly peak electrical load at the Crawfordsville Plant is approximately 250 megawatts of demand. In addition, the plant consumes in excess of one million megawatt-hours per year. A significant portion of Nucor's average load is interruptible. This allows Duke Energy Indiana to plan for and meet resource requirements and lowers Nucor's overall cost of service.

According to Mr. Bailey, Nucor informed Duke Energy Indiana that a competitive electric rate for the Crawfordsville Plant was critical for the ongoing operation and success of the Crawfordsville Plant. The price of electricity significantly affects the cost to produce steel. Therefore, the cost of electricity played a significant role in the negotiations between Petitioner and Nucor.

Mr. Bailey explained that the proposed Nucor Extension Agreement has a term of three months beginning August 1, 2009 and continues through and includes October 31, 2009. It does not contain a provision for automatic continuation upon expiration. He testified that with the exception of certain provisions in the proposed Nucor Extension Agreement related to Nucor's interruptible load, all the terms of service remain unchanged from those currently approved.

Mr. Bailey testified that the proposed Nucor Extension Agreement notes that Petitioner registered the interruptible portion of the electric service provided to Nucor with the Midwest ISO as a Load Modifying Resource (as defined by the Midwest ISO's tariff filed with the Federal Energy Regulatory Commission) for the months of June and July 2009. Duke Energy Indiana also intends to register Nucor's interruptible load as a Load Modifying Resource under the Midwest ISO for the months of August, September and October 2009. He explained that The Midwest ISO requires registration forty-five days prior to the month the resource is to be used. Consequently, Mr. Bailey stated that the proposed Nucor Extension Agreement must be approved by the Commission on or before June 12, 2009, which is the last date Nucor's interruptible load may be registered with the Midwest ISO as a Load Modifying Resource for August 2009.

If Commission approval of the Nucor Extension Agreement is not received in time to permit registration of Nucor's interruptible load as a Load Modifying Resource for August, September or October, Petitioner may request that Nucor curtail its load. If this happens, Nucor agreed to curtail its load to its firm load level of 18 MW with no rights of buy-through. Mr. Bailey stated that Petitioner will label events without available buy-through rights as such when (1) the Midwest ISO directs an emergency curtailment of other Load Modifying Resources in the region, or (2) Petitioner in good faith anticipates reaching the peak load for the applicable month and needs to curtail Nucor's load to avoid exceeding its peak load forecast with the Midwest ISO

for the applicable month. Nucor agreed that Duke Energy Indiana shall be entitled to interrupt Nucor for 100 hours down to its firm load level during the period of the Nucor Extension Agreement (August 1, 2009 through October 31, 2009).

Mr. Bailey noted that if Commission approval occurs after June 12th but before June 22nd, Duke Energy Indiana will submit its August load forecast to the Midwest ISO net of the Nucor interruptible load to keep from having to make purchases to replace this resource. While this is not against Midwest ISO rules, it will cause Petitioner to interrupt Nucor without a buy-through option on the peak-setting days in August to prevent Petitioner's forecast from being insufficient. Mr. Bailey testified that each month the Midwest ISO performs an after-the-fact weather-normalized comparison of Petitioner's actual peak load to its forecasted peak load. If Duke Energy Indiana has under-forecasted its peak load by more than one standard deviation, the Midwest ISO will report Petitioner to the Commission.

Mr. Bailey also described what happens if the proposed Nucor Extension Agreement is not approved prior to June 22, 2009. He stated Duke Energy Indiana will assume that the Commission will not approve the Nucor Extension Agreement prior to July 1st. Therefore, it will submit a bid to the Midwest ISO voluntary capacity auction on June 22nd in order to purchase sufficient capacity to cover the amount of Nucor's interruptible load for August. Mr. Bailey explained that June 22nd is the last day Duke Energy Indiana can submit a bid to participate in this capacity auction. Under this approach, Duke Energy Indiana would treat the Nucor interruptible demand as firm load and make purchases to replace the Nucor interruptible demand resource in order to be in compliance with Midwest ISO requirements. Consequently, Duke Energy Indiana's customers would incur additional power purchase costs pursuant to Petitioner's Summer Reliability Adjustment tracker—Standard Contract Rider No. 70.

Mr. Bailey stated that if, after June 22nd and prior to July 1st the Commission approved the Nucor Extension Agreement and Petitioner purchased capacity to cover Nucor's load, Duke Energy Indiana could still net Nucor's interruptible load against its load forecast for August. If Duke Energy Indiana purchased additional capacity for August, Petitioner would have excess capacity and could attempt to sell the excess capacity. Presumably, revenue from such sale would be a credit to Rider No. 70 capacity purchase costs.

Mr. Bailey explained that while approval of the proposed Nucor Extension Agreement sometime after June 22, 2009 would allow Duke Energy Indiana to register Nucor with the Midwest ISO as a Load Modifying Resource for the months of September and October (depending on the timing of the Commission's approval), such later approval would not be helpful for the month of August. Additionally, Mr. Bailey stated that September and October are less critical because Duke Energy Indiana is not as likely to be short of capacity in those months, with or without the Nucor resource. Under the proposed Nucor Extension Agreement, interruption provides the greatest potential value to Petitioner's customers in August 2009.

Mr. Bailey stated the continued provision of electric service to the Crawfordsville Plant will not adversely affect the provision of service to other Duke Energy Indiana customers. The proposed Nucor Extension Agreement will not alter any of Duke Energy Indiana's other existing rates or charges. In Mr. Bailey's opinion, the proposed Nucor Extension Agreement is

reasonable and just, practical and advantageous to the parties, in the public interest and not inconsistent with the purposes of the Public Service Commission Act, as amended.

5. **OUCC's and Intervenor's Evidence.** The OUCC's Response indicated that, according to the OUCC's attorney, the OUCC believed the Nucor Extension Agreement to be in the public interest. In addition, the OUCC supported the requested relief and did not file testimony in this Cause. Intervenor Nucor did not file testimony in this Cause.

6. **Discussion and Findings.** The evidence in this Cause supports the proposed three-month extension of Duke Energy Indiana's electric supply contract with Nucor. The record demonstrates that the proposed rates allow recovery of Duke Energy Indiana's fixed costs and a contribution to variable costs without adversely harming the cost or reliability of service to other customers. The record also demonstrates that the proposed three-month extension of the Nucor Electric Supply Agreements will allow additional time for negotiations so that the parties may reach a consensus on a new electric service agreement, which is critical to the ongoing operation and success of the Crawfordsville Plant.

Moreover, the timely approval of the Nucor Extension Agreement will allow Duke Energy Indiana to register Nucor's load as a Load Modifying Resource with the Midwest ISO for the months of August, September and October, 2009, which will potentially benefit all customers. Accordingly, having reviewed the proposed Nucor Extension Agreement and the evidence in this Cause, the Commission finds that the proposed Nucor Extension Agreement for service to Nucor should be approved.

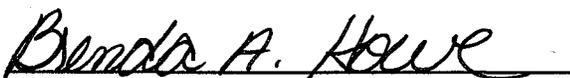
IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The requested three-month Nucor Extension Agreement executed between Duke Energy Indiana, Inc. and Nucor Corporation is hereby approved.
2. This Order shall be effective on and after the date of its approval.

HARDY, GOLC, LANDIS, AND ZIEGNER CONCUR:

APPROVED: JUN 1 0 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