

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF DUKE ENERGY INDIANA, INC.)
FOR APPROVAL OF A NEW ELECTRIC)
SUPPLY AGREEMENT WITH STEEL)
DYNAMICS, INC. ARISING FROM OPERATION)
OF THE BAR STEEL MILL IN PITTSBORO,)
INDIANA FOR COST RECOVERY)
ASSOCIATED WITH CERTAIN CAPACITY AND)
ENERGY PAYMENTS UNDER SUCH ELECTRIC)
SUPPLY AGREEMENT AND FOR)
ESTABLISHMENT OF CONFIDENTIAL)
PROCEDURES)

CAUSE NO. 43737

APPROVED: OCT 21 2009

BY THE COMMISSION:

David E. Ziegner, Commissioner

Aaron A. Schmoll, Administrative Law Judge

On July 14, 2009, Duke Energy Indiana, Inc. ("Duke Energy Indiana," "Company" or "Petitioner") filed its Verified Petition and supporting testimony and exhibits with the Indiana Utility Regulatory Commission ("Commission") for approval of a new Electric Supply Agreement ("SDI Electric Supply Agreement") dated June 25, 2009, between Petitioner and Steel Dynamics, Inc. ("SDI" or "Customer") governing Petitioner's electric utility service to SDI's steel production facility located near the Town of Pittsboro, Hendricks County, Indiana ("the Pittsboro Plant" or "Plant"). The Verified Petition also requested a finding that certain portions of the SDI Electric Supply Agreement constitute trade secret information, as defined in Ind. Code § 24-2-3-2, and are exempted from public disclosure and access to public records requirements contained in Ind. Code §§ 5-14-3-3 and 3.5. Along with its Verified Petition, Duke Energy Indiana also filed its Motion for Protection of Confidential and Proprietary Information (supported by the verified testimonies of Mr. Jeffrey R. Bailey and Mr. Barry T. Schneider). On July 24, 2009, the Presiding Officer issued a Docket Entry in this proceeding finding sufficient basis for a determination that certain portions of the SDI Electric Supply Agreement contained confidential information that should be held as confidential by the Commission on a preliminary basis. On July 24, 2009, Petitioner and the Indiana Office of Utility Consumer Counselor ("OUCC") filed their Joint Motion for Approval of Agreed to Procedural Schedule with the Commission. On September 2, 2009, the Presiding Officers granted SDI's Petition to Intervene.

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 September 16, 2009 in Room 222 of the National City Center, 101 W. Washington St., Indianapolis, Indiana. At the evidentiary hearing, Duke Energy Indiana, SDI, and the OUCC appeared and presented their respective evidence. No members of the public

at large were present at the hearing. On September 24, 2009, Petitioner filed its Motion to Correct Record.

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. Petitioner is a public utility within the meaning of the Public Service Commission Act, as amended, Ind. Code § 8-1-2. 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 46168. 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 775,000 customers located in 69 counties in the central, north central, and southern parts of Indiana.

3. **Relief Requested.** On May 12, 2004, in Cause No. 42565, the Commission approved an Electric Supply Agreement for the provision of electric service to SDI's steel mill in Pittsboro, Indiana by Duke Energy Indiana. That Agreement had a three-year term and provided that Petitioner and SDI would negotiate in good faith regarding a subsequent Agreement. In Cause No. 43243, Petitioner sought a one-year extension of that Agreement. The Commission issued its Order approving a one-year extension on May 9, 2007. By its Verified Petition in this Cause, Petitioner seeks approval of a new Electric Supply Agreement with SDI and a finding that portions of the SDI Electric Supply Agreement contain trade secret information, as defined in Ind. Code § 24-2-3-2, which is exempt from public disclosure and access to public records requirements contained in Ind. Code § 5-14-3-3 and 3.5.

4. **Petitioner's Case-in Chief.** Mr. Jeffery R. Bailey, Director, Pricing and Analysis, testified on behalf of Duke Energy Indiana. He sponsored Petitioner's Redacted Exhibit A, a redacted version of his prefiled Verified Testimony, Petitioner's Confidential Exhibit A, pages 13-15, an unredacted version of those pages from his redacted prefiled Verified Testimony; Petitioner's Exhibit A-1, the Verified Petition in this Cause; Petitioner's Redacted Exhibit A-2, a redacted version of the SDI Electric Supply Agreement and Petitioner's Confidential Exhibit A-2, an unredacted version of the SDI Electric Supply Agreement.

Mr. Bailey first testified as to the background of the SDI facilities in Pittsboro. He described the original three-year Electric Supply Agreement between Petitioner and SDI that was approved by this Commission on May 12, 2004, in Cause No. 42565 and its one-year extension as approved on May 9, 2007, in Cause No. 43243. He testified that the new SDI Electric Supply Agreement for which Commission approval is requested in this Cause has

resulted from Petitioner and SDI's good faith, protracted, arms-length negotiations concerning the provisions governing electric utility service to the Pittsboro Plant. Mr. Bailey testified that Petitioner was informed by SDI that a competitive electric rate for the Pittsboro plant is critical for the ongoing operation and success of the Plant because the cost of electricity is a significant input into the production of steel bar. He explained that Petitioner will not have to install any additional facilities at the Pittsboro Plant in order to provide the contemplated service. He also testified SDI is responsible for the cost of electrical facilities used to serve the Pittsboro Plant and owns the dedicated substation at the Plant. Mr. Bailey described the initial three-year term of the SDI Electric Supply Agreement and how it will continue in one-year increments provided neither Party submits a Notice of Termination six-months prior to the then effective termination date.

Mr. Bailey explained that the SDI Electric Supply Agreement is premised on SDI's ownership of the substation, which SDI had an option to purchase under the prior Electric Supply Contract, as did SDI's predecessor Qualitech. By owning the substation which SDI recently purchased from Petitioner on February 4, 2009, it will qualify for a lower demand and energy rate under Rate HLF. He explained that although SDI owns the substation, Petitioner has retained an easement and a non-revocable license in the substation granting it the right to use the substation to serve SDI and the neighboring Air Liquide plant and to operate certain equipment, which Petitioner will continue to own in the substation. Petitioner will continue to be the exclusive electricity provider to both SDI and Air Liquide at the Pittsboro Plant.

Mr. Bailey testified the proposed SDI Electric Supply Agreement incorporates a modified Rate HLF or Rate LLF structure for part of SDI's load, combined with a real time pricing element (based on day-ahead prices under the Midwest ISO day-ahead market) for additional load, and enhanced demand response incentives akin to the Company's PowerShare® offering. The enhanced demand response incentive payments are offered in return for a shorter curtailment notice, more flexibility in the use of curtailments, and an increase of interruption hours available per year. These provisions have essentially been custom designed to accommodate the flexibility of SDI's steel production load.

Mr. Bailey testified the proposed SDI Electric Supply Agreement provides that in lieu of the Rate HLF or LLF kVar charges, the measurement of kVar demand shall be adjusted during periods when the Company requests SDI's harmonic filters be de-energized for system voltage reasons. During periods when these requests are accommodated by SDI, the Company will not bill SDI for its peak kW coincident kVar demand.

Mr. Bailey explained the confidential aspects of the rates and charges contained in the proposed SDI Electric Supply Agreement. Mr. Bailey testified a key pricing feature of the proposed contract is that all power supplied above the HLF or LLF Standard Tariff Load Cap will be billed at the Midwest ISO's Day Ahead Locational Marginal Price (LMP) as posted on the MISO web site, plus a fixed adder per kWh. This price is subject to adjustment based on Duke Energy Indiana's Rider 68 (related to certain Midwest ISO costs and revenues) and Rider 70 (which includes reliability capacity purchases, reconciliation of Duke Energy Indiana's PowerShare® costs, and sharing of Duke Energy Indiana's non-native sales profits), as well as pursuant to future modifications of existing riders or any new riders approved by

the Commission. He explained that by using the Midwest ISO's Day Ahead Pricing, SDI has significant price transparency, which will allow it to make informed decisions about its power usage. Load above the HLF or LLF Standard Tariff Load Cap will also be subject to transmission and ancillary service charges that were approved by the Commission in the previous agreement in Cause No. 42565.

Mr. Bailey testified another important pricing feature of the proposed SDI contract consists of the demand response incentive provisions. He explained that, similar to Duke Energy Indiana's PowerShare® program, the proposed contract includes premiums payable to SDI for capacity SDI agrees to interrupt a certain number of times for a certain number of hours each year. On those occasions when SDI does interrupt at Duke Energy Indiana's request, SDI would also receive energy credits during the interruption. The amount of the premiums and energy credits varies depending on whether the interruption is pursuant to a 30-minute or a 4-hour notification by the Company, with the 30-minute notification receiving a higher premium per kW, but a lower energy credit. He further explained that Duke Energy Indiana may not request interruption (except in the case of an emergency) for the load level SDI has designated as firm power pursuant to an annual election. Initially the firm load level is 8,000 kW. SDI also has the right to designate annually the amount of load above the firm load level that is subject to the 30-minute notification interruption. The load between the firm load level and the 30-minute notification interruptible load constitutes the 4 hour notification option load. After being notified of an interruption, SDI has the right to buy-through (thereby foregoing the energy credits) at the Midwest ISO's real time LMP plus an adder, provided, however, buy-through is not unavailable due to operational issues, emergency conditions or other circumstances reasonably determined by Duke Energy Indiana. He further stated SDI is subject to various penalties if it takes energy when buy-through is unavailable.

Mr. Bailey described how the company proposes to recover the response incentive payments to SDI. He testified the effectiveness of the proposed SDI Electric Supply Agreement is contingent upon approval of the entire agreement without modification unacceptable to the parties by the Commission, including, without limitation, approval of the Company recovering the demand response incentive payments made to SDI through Standard Contract Rider No. 70 (or a similar successor rider). See Petitioner's Redacted Exhibit A-2, Section VI, p. 6. He stated that such recovery is appropriate because the Company's long-run capacity costs avoided by the ability to interrupt SDI exceed the cost of the incentives. The demand response that results from the proposed incentives to SDI benefits all customers by reducing system demand during peak periods.

Mr. Bailey testified there are two aspects of the contract that will benefit all customers. The first concerns the interruptible portion of SDI's load which can be used to satisfy a portion of Duke Energy Indiana's resource adequacy requirements with the Midwest ISO. In addition, the pricing provisions which incentivize SDI to shift a portion of its demand from the on peak period to the off peak period will both reduce the amount of capacity resources required and result in lower average fuel costs for all customers by shifting usage to off peak where energy prices are typically lower than they are on peak.

Mr. Bailey went on to describe the Midwest ISO's resource adequacy requirements. He testified ReliabilityFirst Corporation has adopted a resource adequacy requirement that impacts the reliability criteria Duke Energy Indiana uses, both for short-term and long-term planning. The Midwest ISO has also made changes to its Tariff including a long-term resource adequacy requirement similar to the ReliabilityFirst requirement. Beginning with the Midwest ISO planning year June 1, 2009 – May 31, 2010, the resource adequacy requirements became enforceable under the Midwest ISO's Tariff and there are financial consequences for failure to meet these requirements. If the load, sales and reserve requirements are in excess of the Company's available resources, then Duke Energy Indiana would have a capacity deficit and would need to seek additional capacity purchases in order to stay in compliance.

Mr. Bailey testified that the Planning Reserve Margin ("PRM") that is assigned to each load serving entity ("LSE") will be on a UCAP (i.e., unforced capacity) basis, such that the PRM on an ICAP (i.e., installed capacity) basis will be translated to PRM_{UCAP} . For the 2009/10 Midwest ISO Planning Year, Duke Energy Indiana is required to meet a PRM_{UCAP} of 5.35%, which is the equivalent of a Reserve Margin of approximately 14.3% on an ICAP basis (the historical method used by Duke Energy Indiana).

Mr. Bailey testified that as part of the Midwest ISO's resource adequacy requirements, LSEs can register Load Modifying Resources ("LMRs") such as demand resources to fulfill a part of their resource obligation. Demand resources are subtracted from the demand forecast of the LSE prior to multiplying it by 1 plus PRM_{UCAP} , so demand resources have the added benefit of reducing the amount of reserves required as well as the total load to be served. Thus, he stated the interruptible provisions of the SDI Electric Supply Agreement will allow Duke Energy Indiana to register this contract as a demand resource with the Midwest ISO, which will decrease the amount of total resources required to meet the Company's Resource Adequacy Requirement, to the benefit of all customers.

In addition, Mr. Bailey described how Petitioner will bill SDI and Air Liquide now that SDI owns the substation that serves the Pittsboro plant. He stated SDI and Air Liquide will continue to be metered and billed separately just as they are today. He further noted that the proposed SDI Electric Supply Agreement, as well as the Bill of Sale by which the Pittsboro substation was sold to SDI, provide that the Company may continue to use the substation to provide electric service to Air Liquide or other entities that require electric service at the SDI plant.

Mr. Bailey testified the rates and charges contained in the proposed SDI Electric Supply Agreement will be subject to certain adjustments. He stated the rates and charges in the proposed SDI Electric Supply Agreement are based upon Duke Energy Indiana's rates approved in Cause No. 42359, with the previously noted exception of an on and off-peak provision, and as further adjusted based on all applicable charges and credits previously approved by the Commission for various Company tariff provisions, such as (but not limited to) Standard Contract Rider No. 60 for fuel adjustment and Standard Contract Rider 68 for certain Midwest ISO charges and credits. In addition, he testified the proposed SDI Electric Supply Agreement provides that the rates and charges to SDI for service under standard tariffs

and service under the provision of the Agreement will be revised in the future by order of the Commission, and as applicable Standard Contract Riders are modified or added.

Mr. Bailey described the benefits which will flow from the proposed SDI Electric Supply Agreement. He stated the revenues received from SDI will cover all of the incremental costs of Duke Energy Indiana serving SDI's electrical load at the Pittsboro Plant, plus provide a contribution to the recovery of Duke Energy Indiana's fixed costs. As described in more detail in Mr. Schneider's prefiled testimony, SDI will benefit from the competitive rates for electric service. The State of Indiana will benefit from the employment created and retained by SDI's production at the Pittsboro Plant, as well as from the various Indiana tax revenues which are collected from SDI, satellite businesses and its employees and firms providing services to the SDI plant.

Mr. Bailey testified that Duke Energy Indiana can continue to serve SDI's electrical load at the Pittsboro Plant reliably without adversely affecting other retail electric customers. In sum, he opined the proposed SDI Electric Supply 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. He stated the proposed SDI Electric Supply Agreement is in the public interest; the proposed SDI Electric Supply Agreement creates material economic benefits and the interruptible provisions benefit all customers.

Finally, Mr. Bailey testified that Duke Energy Indiana is not seeking a precedential order on the issue of buy-through of electricity during interruptions or any other issue unique to the special contract in this proceeding. Duke Energy Indiana is simply seeking the approval of the proposed SDI Electric Supply Agreement.

In its September 14, 2009 docket entry, the Commission asked Duke Energy Indiana and SDI to explain confidential Section II.B.2 of the proposed SDI Electric Supply Agreement given the general prohibition against retroactive ratemaking. In response, Petitioner submitted Duke Energy Indiana's Confidential Response to Commission's Docket Entry Question, which was sponsored by Mr. Bailey at the hearing and admitted into evidence as Petitioner's Confidential Exhibit C. In this response, Duke Energy Indiana explained the business justification for these provisions and how this section was part of the overall agreement, negotiated at arms-length. Duke Energy Indiana also pointed out that Ind. Code § 8-1-2-24 authorizes a public utility and a customer to conclude a reasonable arrangement that is "practical and advantageous to the parties interested..." Among other matters, the Company also affirmed that no customers would be harmed by the provisions in question and one of its customers, SDI, would be benefited. Mr. Bailey affirmed the confidential nature of Section II.B.2 of the proposed SDI Electric Supply Agreement and Duke Energy Indiana's request to maintain the confidentiality of its response to the Commission's docket entry inquiry.

Duke Energy Indiana also presented the testimony of SDI's plant manager Mr. Barry Schneider in support of the SDI Electric Supply Agreement. See Petitioner's Redacted Exhibit B, Mr. Schneider's prefiled verified testimony, along with Petitioner's Confidential

Exhibit B, pages 9-10, an unredacted version of those pages from his prefiled redacted testimony. Mr. Schneider described the background of the Pittsboro Plant and the many modifications and improvements that were required and have been made to bring it to its current level of operating efficiency.

Mr. Schneider also described how the proposed SDI Electric Supply Agreement will enable SDI to competitively operate the Pittsboro plant within the steel manufacturing industry. He testified SDI plans its operations to melt steel mainly at times when electric power prices are the lowest, i.e., to have more off peak consumption than on peak consumption. Thus, SDI expects to benefit from a low average power price from the proposed SDI Electric Supply Agreement rate structure. In addition, Mr. Schneider described the direct and collateral stimulus to the Hendricks County and State of Indiana economy resulting from the operation of the Pittsboro Plant. Mr. Schneider testified that a competitive electric rate is critical to the ongoing operation of the Pittsboro Plant.

Mr. Schneider described SDI's relationship with its industrial gas supplier, Air Liquide. He explained the Air Liquide Plant is located next to SDI's Pittsboro Plant solely for its opportunity to sell a large portion of its gas output to the Pittsboro Plant. He testified that if the SDI Electric Supply Agreement is approved, Air Liquide will continue to obtain its supply of electricity the same as it is today. The Company will continue to separately meter and bill Air Liquide for service. The only change is that SDI now owns the substation. He explained that if SDI were to fail to pay the Company's bill for electricity, SDI could be disconnected at the substation and Air Liquide can remain connected. He stated SDI has agreed, and will cooperate with the Company in such unusual circumstances, to allow the continued provision of service to Air Liquide or any subsequent entity.

Mr. Schneider concluded by affirming his belief that the proposed SDI Electric Supply Agreement is fair and reasonable to SDI and Duke Energy Indiana and he stated that SDI joins in the Company's request for approval of the agreement by the Commission.

5. OUC's Case-in-Chief. The OUC sponsored the testimony of Mr. Greg Foster. He recommended the Commission approve the SDI Electric Supply Agreement. He testified that other ratepayers will benefit from the resulting contribution to fixed costs as well as the economic benefit from continued operation of the SDI facility. He also pointed out that the provisions regarding interruptible electric service may provide additional operational and fuel cost benefits to Petitioner that would flow to other ratepayers. Finally, with regard to the evergreen provision of the contract, he testified that external circumstances might change during the evergreen period, which might alter the balance of impact on other ratepayers and could cause the contract to no longer be in the public interest. Accordingly, he recommended that the contract be approved as submitted, with the OUC reserving the right to review it after the initial three-year term.

6. Discussion and Findings. The evidence in this Cause supports approval of the proposed SDI Electric Supply Agreement between Duke Energy Indiana and SDI and the associated recovery through Standard Contract Rider No. 70 (or a similar successor rider) of the demand response incentive payments made to SDI. SDI expects to benefit from a lower

average power price resulting from the rate structure of the proposed SDI Electric Supply Agreement, which is intended to enable SDI to competitively operate the Pittsboro Plant. The continued operation of SDI's Pittsboro Plant, in turn, is beneficial to the local economy in terms of jobs for SDI's employees and suppliers, payment of taxes and SDI's beneficial involvement in the community. Two specific aspects of the proposed SDI Electric Supply Agreement benefit the Company's other customers. First, the interruptible aspects of the proposed service to SDI will assist Duke Energy Indiana in meeting its Resource Adequacy Requirements with the Midwest ISO. Second, the pricing provisions, which incentivize SDI to shift a portion of its demand from peak to non-peak periods, will both likely reduce the amount of capacity resources required and result in lower average fuel costs for all customers (by shifting usage to off peak when energy prices are typically lower). SDI affirmed that the demand incentives SDI will receive under the proposed SDI Electric Supply Agreement will impact plant operations. The record also clearly demonstrates that the proposed rates allow recovery of Duke Energy Indiana's incremental costs for serving SDI's load and a contribution to the Company's fixed costs without adversely harming the cost or reliability of service to other customers. In addition, the proposed SDI Electric Supply Agreement makes provision for the continued supply of electricity by Duke Energy Indiana to Air Liquide (or its successors), which is a company conducting operations on the premises of SDI's Pittsboro Plant. Moreover, the agreement makes provision for SDI's cooperation with respect to the Company's continued service to Air Liquide.

With respect to the issue of retroactive ratemaking raised in the Commission's September 14, 2009 docket entry, Petitioner has affirmed that no other customers would be harmed by Petitioner's credit included in Section II.B.2 of the proposed SDI Electric Supply Agreement. Accordingly, Petitioner is directed to record this credit as a below-the-line expense for ratemaking purposes.

We find that the proposed SDI Electric Supply Agreement (including all of the commercial terms) represents a reasonable contractual arrangement between SDI and Duke Energy Indiana negotiated in good faith and at arms-length, whereby Duke Energy Indiana will provide electric service to SDI. We also find the provisions of the proposed SDI Electric Supply Agreement pertaining to continued electric service by the Company to Air Liquide to be reasonable. Accordingly, having reviewed the SDI Electric Supply Agreement and the evidence in this Cause, the Commission finds that the proposed SDI Electric Supply Agreement for service to SDI should be approved, as modified herein. As part of this approval, the Commission recognizes that the interruptible service features of the SDI Electric Supply Agreement are premised on the ability of Duke Energy Indiana to recover the demand response incentive payments provided for under Exhibit A to the Agreement under its Standard Contract Rider 70. We find that Duke Energy Indiana should reflect a change to its Rider 70 to allow explicitly for recovery of the demand response incentive payments attributable to the SDI Electric Supply Agreement and the Company should present such change in its pending Rider 70 case, Cause No. 43715. Finally, the OUCC may, following the initial three-year term of the SDI Electric Supply Agreement, review the contract's impact on other customers and the Company and SDI have agreed to cooperate in any such review.

With respect to the term of the SDI Electric Supply Agreement, Duke Energy Indiana and SDI have agreed to an initial three-year term that automatically extends for additional

one-year terms if neither party provides written notice to the other party at least six months prior to the expiration of the SDI Electric Supply Agreement. Contracts that continue in perpetuity with no periodic Commission oversight may result in terms that are no longer in the public interest even if the parties to the contract do not object to ongoing terms. In the event that the Duke Energy Indiana and SDI choose to automatically extend the SDI Electric Supply Agreement, the parties shall file notice with the Commission, under this Cause, six months prior to the expiration of the contract. We find that the total term of the SDI Electric Supply Agreement shall not extend beyond five years. If the parties wish to continue operating under terms of a special contract, Duke Energy Indiana and SDI shall file a petition with the Commission for approval of a new electric supply agreement at least six months prior to the expiration of the SDI Electric Supply Agreement.

Finally, on September 24, 2009, Petitioner filed its *Motion to Correct Record* ("Motion"), which sought to correct an error in Mr. Bailey's testimony--specifically, to delete an incorrect recitation of the formula for planning reserve margin. In order for a party to modify the administrative record after the record has closed, a party is required to file a petition to reopen the record pursuant to 170 IAC 1-1.1-22. The Motion does not comply with the requirements of Section 22, and is therefore denied. Rather than having Petitioner seek leave to reopen the record and have the Commission conduct a second hearing to correct this minor error, the Commission simply notes that Mr. Bailey's testimony referenced in the Motion is erroneous, and the correct formula for the conversion of planning reserve margin discussed by Mr. Bailey is as follows:

$$PRM_{UCAP} = (1 - \text{MISO Average XEFOR}_d)(1 + PRM_{ICAP}) - 1.$$

See MISO, BUSINESS PRACTICE MANUAL RESOURCE ADEQUACY, Manual No. 011, at 3-18 (effective date June 1, 2009), viewed at http://www.nerc.com/docs/pc/ris/MISO_Resource_Ade-quacy_TP-BPM-003-r3.pdf.

7. **Confidential Treatment.** Mr. Bailey's testimony and the testimony of Mr. Schneider, substantiate why the redacted portions of Mr. Bailey and Mr. Schneider's testimony, the SDI Electric Supply Agreement and related redacted evidence in this proceeding should continue to be treated as confidential, proprietary, and a trade secret, as previously ruled by this Commission in Cause No. 42565 and as preliminarily ruled in this Cause.

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

1. The proposed SDI Electric Supply Agreement between Duke Energy Indiana, Inc. and Steel Dynamics, Inc. is hereby approved as modified herein and shall take effect in accordance with its terms upon the effective date of this Order.

2. The demand response incentive payments included in the SDI Electric Supply Agreement are properly includable costs under Duke Energy Indiana's Standard Contract

Rider 70. Duke Energy Indiana shall revise it Rider 70 to reflect this change in its pending Rider 70 case, Cause No. 43715.

3. Duke Energy Indiana shall treat transactions directly related to Term II.B.2 of the SDI Electric Supply Agreement as a below-the-line expense for ratemaking purposes.

4. The redacted portions of the testimonies of Mr. Bailey and Mr. Schneider and the SDI Electric Supply Agreement, including redacted portions of supporting exhibits, as reflected in Petitioner's Confidential Exhibit A, Petitioner's Confidential Exhibit A-2 and Petitioner's Confidential Exhibit B, together with Duke Energy Indiana, Inc.'s Confidential Response to Commission's Docket Entry Question are hereby declared to constitute trade secrets, as defined by Ind. Code § 24-2-3-2, and are hereby exempted from the public disclosure and access to public record requirements contained in Ind. Code §§ 5-14-3-3 and 3.5.

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

HARDY, GOLC, LANDIS, AND ZIEGNER CONCUR; ATTERHOLT ABSENT:

APPROVED: OCT 21 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**