

ORIGINAL

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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE COMPLAINT OF)
 NUCOR STEEL-INDIANA, A DIVISION OF)
 NUCOR CORPORATION AGAINST DUKE) CAUSE NO. 43754
 ENERGY INDIANA, INC. FOR)
 DETERMINATION OF REASONABLE AND)
 JUST CHARGES AND CONDITIONS FOR) APPROVED:
 ELECTRIC SERVICE AND REQUEST FOR)
 EXPEDITED ADJUDICATION.)
)
)
 RESPONDENT: DUKE ENERGY INDIANA, INC.)

FEB 24 2010

BY THE COMMISSION:

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

On August 6, 2009, Nucor Steel-Indiana, a division of Nucor Corporation (“Nucor” or “Complainant”) filed its Complaint against Duke Energy Indiana, Inc. (“Duke Energy Indiana” or “Respondent”) with the Indiana Utility Regulatory Commission (“Commission”) in this Cause. The Complaint concerns the establishment of reasonable and just charges and conditions for electric service by Duke Energy Indiana to Nucor at Nucor’s Crawfordsville, Indiana thin-slab steel mill (“Crawfordsville Plant”). Nucor currently receives electric service from Duke Energy Indiana pursuant to long-term electric supply agreements executed between Nucor and Duke Energy Indiana consisting of the *Electric Supply Agreement* dated July 31, 1987 (the “1987 Agreement”), the *As-Available Supplemental Energy Service Agreement* dated April 4, 1994 (the “1994 Agreement”) and the *First Amendment to the July 31, 1987 Electric Supply Agreement* dated June 20, 1996 (collectively, the “Nucor Electric Supply Agreements”), as extended by a *Three-Month Extension of Electric Supply Agreements* dated April 20, 2009 (“Three-Month Extension Agreement”) and a *Four-Month Extension Agreement* dated September 9, 2009 (“Four-Month Extension Agreement”).

At the August 31, 2009 Prehearing Conference, an informal discussion was held between Nucor, Duke Energy Indiana, and the Office of Utility Consumer Counselor (“OUCC”) regarding procedural matters in this Cause. In addition, the Parties discussed the ensuing expiration of the Nucor Electric Supply Agreements, which are at issue in Nucor’s Complaint in this Cause. The Parties agreed that in addition to the Three-Month Extension Agreement approved by the Commission on June 10, 2009 in Cause No. 43676 (by which the Nucor Electric Supply Agreements were extended to and including October 31, 2009), an additional four-month extension of the Nucor Electric Supply Agreements was necessary. The Presiding Officers established a new procedural schedule for filings and hearing dates related to the disputed issues. The Prehearing Conference Order dated September 10, 2009 scheduled an Evidentiary Hearing to consider issues raised by the Complaint for December 14, 2009 and continuing on December 18, 2009, if necessary. The Presiding Officers also continued the Prehearing Conference on the

record until September 14, 2009 to allow presentation of evidence in support of the Four-Month Extension Agreement to the Nucor Electric Supply Agreements.

On September 14, 2009, the Prehearing Conference reconvened at 10:30 a.m. in Room 222 of the National City Center, 101 West Washington Street, Indianapolis, Indiana. At that hearing, Duke Energy Indiana, Nucor, and the OUCC were present and participated. No members of the general public were present. Duke Energy Indiana and Nucor offered evidence in support of the Four-Month Extension Agreement. On October 21, 2009, this Commission issued an Interim Order in this Cause approving the Four-Month Extension Agreement and extending the term of the Nucor Electric Supply Agreements up to and including February 28, 2010.

On October 27, 2009, Duke Energy Indiana filed a Motion to Modify Procedural Schedule. Pursuant to a Docket Entry dated October 30, 2009, the Presiding Officers established a new procedural schedule for this matter including the schedule for filings and the hearing dates. The Evidentiary Hearing remained scheduled for December 14, 2009, continuing on December 18, 2009 if necessary. However, prior to the December 14, 2009 Evidentiary Hearing, the Parties informally notified the Presiding Administrative Law Judge that they would like to negotiate a settlement in this matter and requested that the December 14, 2009 Evidentiary Hearing commence on December 18, 2009. The Presiding Administrative Law Judge continued on the record the Evidentiary Hearing to December 18, 2009.

On December 17, 2009, the Parties informally notified the Presiding Administrative Law Judge that they had reached an agreement in principle in this matter. Therefore, pursuant to a Docket Entry dated December 17, 2009, the Evidentiary Hearing scheduled for December 18, 2009 was continued to January 26, 2010 for a hearing on the settlement, and a schedule for filing the Settlement Agreement and supporting testimony pursuant to the agreement of the Parties was established. On January 14, 2010, Nucor filed the verified testimony of Mr. Ron Dickerson and Duke Energy Indiana filed the redacted testimony of Mr. Jeffrey R. Bailey, along with a redacted Settlement Agreement. Complainant and Respondent also filed their Joint Motion for Protection of Confidential and Proprietary Information and the supporting affidavits of Mr. Bailey and Mr. Dickerson. On January 20, 2010, the Presiding Administrative Law Judge issued a Docket Entry in this proceeding finding a sufficient basis for a determination that certain portions of the testimony of Mr. Bailey and the Settlement Agreement should be held as proprietary and confidential by the Commission on a preliminary basis. The confidential testimony of Mr. Bailey and the confidential terms of the Settlement Agreement were then submitted by Duke Energy Indiana to the Commission under seal on January 20, 2010.

On January 21, 2010, the Presiding Officers issued a Docket Entry requesting responses from Nucor and Duke Energy Indiana. On January 25, 2010, Nucor and Duke Energy Indiana filed their separate confidential responses to such Docket Entry with the Commission. On January 26, 2010, the Presiding Officers issued an additional Docket Entry with a follow-up question related to Duke Energy Indiana's confidential response submitted to the Commission on January 25, 2010. Mr. Bailey responded to this Docket Entry on the witness stand during the Evidentiary Hearing on January 26, 2010.

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 January 26, 2010 at 1:00 p.m. in Room 222 of the National City Center, 101 West Washington Street, Indianapolis, Indiana for the purpose of receiving into the record the Settlement Agreement reached by the parties and any supporting evidence. The pre-filed settlement testimonies and exhibits of Mr. Dickerson and Mr. Bailey were offered and admitted into evidence. In the case of Mr. Bailey, portions of his settlement testimony and Exhibit A to the Settlement Agreement were admitted under seal subject to the Commission's preliminary finding of confidentiality protection. In addition, the confidential responses of Nucor and Duke Energy Indiana to the Commission's Docket Entry dated January 21, 2010 were admitted into evidence. Mr. Bailey was also briefly questioned by the Presiding Judge. At the Evidentiary Hearing, the Presiding Administrative Law Judge also took administrative notice of all of the affidavits submitted by Nucor and Duke Energy Indiana in support of their separate or joint motions for protection of confidential information.¹

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 Prehearing Conference in this Cause was given and published by the Commission as required by law. Nucor owns and operates the Crawfordsville Plant, which is a steel production facility near the City of Crawfordsville, Indiana. Duke Energy Indiana is a public utility within the meaning of the Public Service Commission Act, as amended, and is subject to the jurisdiction of the Commission in the manner and to the extent provided in Ind. Code § 8-1-2 *et seq.* The Nucor Electric Supply Agreements are special contractual arrangements between Nucor and Duke Energy Indiana, approved by the Commission pursuant to Ind. Code §§ 8-1-2-24 and 8-1-2-25. The Commission has jurisdiction over Nucor and Duke Energy Indiana and this proceeding.

2. **Background and Relief Sought by Nucor's Complaint.** Nucor currently receives electric service from Duke Energy Indiana (formerly known as PSI Energy, Inc. and Public Service Company of Indiana, Inc.) pursuant to long-term electric supply agreements between Nucor and Duke Energy Indiana consisting of the Nucor Electric Supply Agreements. As further described in this Order, the Nucor Electric Supply Agreements were extended by two different agreements approved by the Commission. The Nucor Electric Supply Agreements and extensions to those agreements are described further below.

After nearly two years of negotiations, Nucor and Duke Energy Indiana have concluded a Settlement Agreement in this matter. Nucor and Duke Energy Indiana request that the Commission approve the proposed Settlement Agreement, which settles the disputes detailed by the Parties and provides that Duke Energy Indiana would continue serving Nucor in accordance with the Settlement Agreement. Nucor and Duke Energy Indiana also request that the

¹ Specifically, the Presiding Administrative Law Judge took administrative notice of the affidavit of Mr. Dickerson, in support of Nucor's Motion for Protection of Proprietary Information dated September 18, 2009, the affidavit of Mr. Bailey in support of Duke Energy Indiana's Motion for Protection of Proprietary Information dated November 6, 2009, and the affidavits of Mr. Dickerson and Mr. Bailey in support of the Joint Motion for Protection of Confidential Information filed by Nucor and Duke Energy Indiana dated January 14, 2010.

Commission determine that the Confidential Settlement Terms to the Settlement Agreement, a copy of which is attached hereto, and the redacted portions of Mr. Bailey's settlement testimony discussing the confidential terms of the Settlement Agreement should continue to be treated as confidential, proprietary, and a trade secret, as preliminarily ruled by this Commission.

3. Evidence in Support of Proposed Settlement Agreement. Duke Energy Indiana presented the settlement testimony of Mr. Jeffrey R. Bailey, Director of Pricing and Analysis for Duke Energy Business Services LLC. Mr. Bailey first summarized the history of Nucor's relationship with Duke Energy Indiana. Mr. Bailey then summarized some of the terms included in the 1987 Agreement. Following Commission approval of the 1987 Agreement on August 26, 1987, Nucor constructed the Crawfordsville Plant near Crawfordsville, Indiana, and it has significantly expanded such facilities over the last twenty years.

Mr. Bailey also described the 1994 Agreement, its terms, and its intended purpose. The Commission approved the 1994 Agreement in its conference minutes on June 8, 1994. Mr. Bailey briefly described the 1996 Amendment to the 1987 Agreement. This agreement amended the 1987 Agreement to provide for four scheduled maintenance periods (instead of two days) of not more than sixteen days duration (instead of fourteen days). The 1996 Amendment was approved by the Commission on August 28, 1996.

Mr. Bailey testified that Nucor is currently Duke Energy Indiana's largest customer based on both total electric load and megawatt hours used each year. He summarized the service provided to the Crawfordsville Plant by Respondent. Mr. Bailey also described the events that led to this proceeding. The Parties were unable to reach an agreement before the July 31, 2009 expiration date of the Nucor Electric Supply Agreements. To allow additional time for the Parties to continue to negotiate the terms for provision of service, the Commission approved the Three-Month Extension Agreement and the Four-Month Extension Agreement. Mr. Bailey explained the events that lead up to the execution of the Three-Month and Four-Month Extension Agreements. The Three-Month Extension Agreement established October 31, 2009 as the expiration date of the Nucor Electric Supply Agreements, while the Four-Month Extension Agreement extended the expiration to February 28, 2010.

Mr. Bailey sponsored and described the proposed Settlement Agreement that Duke Energy Indiana and Nucor submitted to the Commission, which resolves Nucor's Complaint and all issues presented in this proceeding and brings to a conclusion the lengthy negotiations of Nucor and Duke Energy Indiana. Mr. Bailey noted Nucor's and Duke Energy Indiana's Joint Motion for Protection of Confidential and Proprietary Information filed with Mr. Bailey's pre-filed testimony, requesting the Commission to protect from public disclosure the confidential, commercial terms set forth in Exhibit A to the Settlement Agreement. Mr. Bailey then testified that the proposed Settlement Agreement is the result of good faith, arms-length negotiations, conducted in the context of this contested proceeding between Duke Energy Indiana and Nucor to facilitate Nucor's continued operation of its Crawfordsville Plant.

Subject to Commission approval of the proposed Settlement Agreement, Duke Energy Indiana will provide electric utility service for Nucor's electrical load at the Crawfordsville Plant under the rates provided in the proposed Settlement Agreement. The rates cover variable costs caused by the Nucor load and make a contribution to Duke Energy Indiana's fixed costs, while

meeting Nucor's needs for reliable, cost-effective, electric power supply at its Crawfordsville Plant. In addition, the proposed Settlement Agreement includes a new demand charge assessed on Nucor's interruptible load that will assist Duke Energy Indiana in meeting its operating revenue requirements.

Mr. Bailey described the role electricity prices played in the discussions with Nucor concerning service to the Crawfordsville Plant because a competitive electric rate was critical for its continued operation and success. The cost of electricity is a significant input cost to the operation of its steel production facility. He added that the rendition of electric service to Nucor under the proposed Settlement Agreement will not require the installation of any new facilities. Mr. Bailey also described the term of the proposed Settlement Agreement and the electric utility service and confidential pricing to be provided pursuant to the proposed Settlement Agreement.

Mr. Bailey testified that the proposed Settlement Agreement will benefit all customers in several ways. For example, the interruptible portion of Nucor's load shall be used to satisfy a portion of Duke Energy Indiana's Resource Adequacy Requirements with the Midwest Independent Transmission System Operator ("Midwest ISO"). This helps reduce the need for capacity to satisfy Midwest ISO reliability standards. Similarly, Nucor's interruptible load will be used to reduce Duke Energy Indiana's peak load for purposes of Duke Energy Indiana's integrated resource planning. Mr. Bailey stated that a new demand charge applied to Nucor's interruptible load will contribute to Duke Energy Indiana's fixed production costs thereby benefiting Duke Energy Indiana and all other customers following Duke Energy Indiana's next rate case.

Mr. Bailey next explained the Midwest ISO's Resource Adequacy Requirements. He testified that ReliabilityFirst has adopted Resource Adequacy Requirements that impacts the reliability criteria Duke Energy Indiana uses for short-term and long-term planning. As part of the Midwest ISO's Resource Adequacy Requirements, Load Serving Entities can register Load Modifying Resources such as Demand Resources to fulfill a part of their resource obligation. Demand Resources have the added benefit of reducing the amount of reserves required as well as the total load to be served. The proposed Settlement Agreement makes clear that Duke Energy Indiana will register Nucor's interruptible load as a Demand Resource with the Midwest ISO, which will decrease the amount of total resources required to meet Duke Energy Indiana's Resource Adequacy Requirement, to the benefit of all customers.

Mr. Bailey also pointed out, as described in Mr. Dickerson's testimony, that under the proposed Settlement Agreement, Nucor will benefit from relatively long-term power supply and stability, while continued interruptible service from Duke Energy Indiana mitigates Nucor's cost exposure. The proposed Settlement Agreement facilitates the continued operation of the Crawfordsville Plant with its existing work force, as well as future possible increase of production at or expansion of the Crawfordville Plant, with the resulting economic benefits locally and state wide. The State of Indiana will continue to benefit from the employment created and retained by Nucor's production at the Crawfordsville Plant, as well as from the various Indiana tax revenues that are collected from Nucor, satellite businesses, and its employees and firms providing services to the Crawfordsville Plant.

Mr. Bailey explained that the continued provision of electric service to Nucor's Crawfordsville Plant will not adversely affect the provision of service to other Duke Energy Indiana customers. Mr. Bailey opined that the proposed Settlement Agreement is reasonable, practical, and advantageous to the Parties, in the public interest, and not inconsistent with the purposes of the Public Service Commission Act, as amended. Mr. Bailey concluded that the proposed Settlement Agreement creates material economic benefits and the interruptible provisions benefit all customers.

Nucor presented the settlement testimony of Mr. Ron Dickerson, Nucor's Vice President and General Manager. Mr. Dickerson briefly described Nucor Corporation and the multi-state search leading to the selection of the Crawfordsville site for construction of the Crawfordsville Plant. He also provided an overview of the Crawfordsville Plant's operations and production.

Mr. Dickerson then described the electric service provided by Duke Energy Indiana to the Crawfordsville Plant. He observed that Nucor is Duke Energy Indiana's largest retail customer in Indiana and one of the largest retail customers on Duke Energy Indiana's entire system. Mr. Dickerson pointed out that the Nucor Electric Supply Agreements permit Duke Energy Indiana to interrupt the majority of the electric service to Nucor under specified conditions (with buy-through of the interruptions permitted in some circumstances). Mr. Dickerson testified that production at the Crawfordsville Plant requires the consumption of considerable amounts of electricity. Nucor's total annual cost of electricity is in the neighborhood of \$50 million. Therefore, Nucor makes a concerted effort to secure a predictable, fair, cost-based rate and to use energy efficiently.

Mr. Dickerson explained that despite good faith negotiations for nearly two years concerning the rates, charges, terms, and conditions of a new electric supply agreement, Nucor and Duke Energy Indiana had been unable to reach a mutually-acceptable agreement. Because the Parties were unable to reach a resolution and the Nucor Electric Supply Agreements were nearing their termination date, Nucor filed its Complaint requesting the Commission to establish rates. However, Nucor and Duke Energy Indiana continued their negotiations and reached an agreement on a mutually acceptable settlement. Mr. Dickerson testified that the proposed Settlement Agreement comprehensively resolves all issues presented in Nucor's Complaint.

Mr. Dickerson testified that he reviewed Mr. Bailey's testimony related to Nucor's operations, the Settlement Agreement, and confidential settlement terms and believed them to be accurate. He stated that the Nucor Electric Supply Agreements as modified by the Settlement Agreement provide Nucor with relatively long-term power supply and stability and that the continued interruptible service from Duke Energy Indiana mitigates Nucor's cost exposure. He testified that the Settlement Agreement facilitates the continued operation of the Crawfordsville Plant with its existing work force, as well as future possible increase of production at or expansion of the Crawfordsville Plant with resulting economic benefits locally and state wide.

Mr. Dickerson concluded by affirming his belief that the proposed Settlement Agreement is fair and reasonable to Nucor and Duke Energy Indiana, and he stated that Nucor joins in Duke Energy Indiana's request for the Commission's approval of the Settlement Agreement.

On January 20, 2010, the OUCC filed its notice of intent not to file testimony in this matter. The OUCC noted in its filing that it had fully reviewed the Settlement Agreement and testimony filed in support thereof by the parties and had come to the conclusion that the Settlement Agreement is in the public interest.

4. **Discussion and Findings.** Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Id.* Furthermore, any Commission decision, ruling, or order—including the approval of a settlement—must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission’s own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement in this Cause, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement meets and serves the public interest.

When reviewing a contract between a public utility and its customers for utility service at rates other than the rates allowed in that utility’s tariff, the Commission’s charge pursuant to Ind. Code §§ 8-1-2-24 and 8-1-2-25 is to determine whether the contract is reasonable and just, practicable and advantageous to the parties, and not inconsistent with the purposes of the Public Service Commission Act. Ind. Code § 8-1-2-24 provides:

Nothing in this chapter shall be taken to prohibit a public utility from entering into any reasonable arrangement with its customers or consumers, or with its employees, or with any municipality in which any of its property is located, for the division or distribution of its surplus profits, or providing for a sliding scale of charges or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the commission, after investigation, to be reasonable and just and not inconsistent with the purpose of this chapter. Such arrangement shall be under the supervision and regulation of the commission.

Ind. Code § 8-1-2-25 provides:

The commission shall ascertain, determine and order such rates, charges and regulations as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges and regulations as the commission may ascertain and determine to be necessary and reasonable, and the right to revoke its approval and amend or rescind all orders

relative thereto, is reserved and vested in the commission, notwithstanding any such arrangement and mutual agreement.

The Commission is satisfied that the evidence submitted in support of the Settlement Agreement meets the requirements of Ind. Code §§ 8-1-2-24 and 8-1-2-25 with respect to the contractual arrangement between Nucor and Duke Energy Indiana. In making such a determination, two considerations are important: whether the rates negotiated between the utility and its customer are sufficient for the utility to cover the incremental cost of providing the service to the customer while still enabling the customer to make some contribution to the utility's recovery of its fixed costs and whether the utility has sufficient capacity to meet the customer's needs. The Commission finds that the evidence presented satisfies these criteria.

Nucor expects to benefit from the rate structure of the proposed Settlement Agreement, which will provide Nucor with a relatively long-term power supply and stability while mitigating its cost exposure. The proposed Settlement Agreement may be conducive to Nucor's potential future expansion of production and/or operations. The continued operation of Nucor's Crawfordsville Plant, in turn, is beneficial to the local economy in terms of jobs for Nucor's employees and suppliers and payment of taxes.

The Settlement Agreement benefits Duke Energy Indiana's other customers by allowing the interruptible portion of Nucor's load to satisfy a portion of Duke Energy Indiana's Resource Adequacy Requirements with the Midwest ISO. Nucor's interruptible load will be used to reduce Duke Energy Indiana's peak load for purposes of its integrated resource planning.

The Commission notes that the Settlement Agreement also provides a new demand charge applied to Nucor's interruptible load that will contribute to Duke Energy Indiana's fixed production costs thereby benefiting Duke Energy Indiana and its customers when Duke Energy Indiana's base rates are reset as the result of a Commission Order in Duke Energy Indiana's next base rate case. However, as identified in the January 21, 2010 Docket Entry, Duke Energy Indiana's initial pre-filed testimony in this proceeding identified concerns with respect to Nucor's lack of contribution of costs for Duke Energy Indiana's pollution control facilities and specifically to Commission-approved Riders that allow Duke Energy Indiana to recover for costs associated with environmentally compliant projects. The Commission recognizes the issues raised by Duke Energy Indiana as significant.

As a result, the Presiding Officers' January 21, 2010 Docket Entry sought further explanation as to how the Settlement Agreement addressed these issues. Duke Energy Indiana's Response, for which it seeks confidential treatment, led the Commission to issue a Docket Entry on January 26, 2010 that sought further information and explanation as to Duke Energy Indiana's intentions on apportioning the new demand charge revenue. In Response, Mr. Bailey testified *in camera* at the Evidentiary Hearing.

The Commission finds that Mr. Bailey's *in camera* testimony and responses provided to the January 21, 2010 Docket Entry failed to explain how Nucor's payment of the new demand charge discussed in this Order addresses the issues identified in the Docket Entry. Therefore, based on the evidence presented, the Commission finds that Term 7 of the Settlement Agreement is not in the public interest. Accordingly the Settlement Agreement is hereby modified by

deleting Term 7. The Commission also finds that Duke Energy Indiana shall present a methodology in each of its next Rider 61, Rider 62, and Rider 71 proceedings to reasonably apportion revenue from Nucor's new demand charge to the base rate or each specific Rider's retail revenue requirement.

The Commission finds that the proposed Settlement Agreement, as modified herein, represents a reasonable and just arrangement between Nucor and Duke Energy Indiana negotiated in good faith and at arms-length. The Settlement Agreement is consistent with the requirements of Ind. Code §§ 8-1-2-24 and 8-1-2-25, provides enhanced revenue contribution by Nucor, and is in furtherance of the economic wellbeing of Indiana. Accordingly, having reviewed the proposed Settlement Agreement and the evidence in this Cause, the Commission finds that the proposed Settlement Agreement, as modified herein, for service to Nucor is in the public interest and should be approved.

5. Confidential Treatment. In order to protect certain detailed pricing information for electric service from Duke Energy Indiana to Nucor, Nucor filed a *Motion for Protection of Confidential and Proprietary Information*. On September 23, 2009 the Presiding Officers granted Nucor's motion and made a preliminary finding of confidentiality. On November 6, 2009, Duke Energy Indiana filed a separate *Motion for Protection of Confidential and Proprietary Information*. On November 13, 2009, the Presiding Officers granted Duke Energy Indiana's motion on a preliminary basis. On January 14, 2010, Nucor and Duke Energy Indiana filed a *Joint Motion for Protection of Confidential and Proprietary Information* in conjunction with their Settlement Agreement, settlement testimony, and exhibits. The Settlement Agreement, settlement testimony, and exhibits contain certain pricing information and other competitive provisions, some of which were provided to the Commission under its previous preliminary findings of confidentiality on September 23, 2009 and November 13, 2009, and some of which are new and specific to the negotiated pricing and competitive terms contained in the Settlement Agreement. On January 20, 2010, the Presiding Officers issued a Docket Entry granting protection of the confidential and proprietary information on a preliminary basis.

Upon review of the confidential information submitted pursuant to the Presiding Officers' preliminary determinations, the Commission confirms its prior preliminary finding. The Commission concludes that the information for which Petitioner sought confidential treatment contains confidential, proprietary, competitively sensitive trade secret information that has economic value to Duke Energy Indiana and Nucor. It should be protected from being known to, or ascertainable by, its competitors and other persons who could obtain economic value from the knowledge and the use of such information. In addition, the Commission finds that the public disclosure of such information would have a substantial detrimental effect on Duke Energy Indiana and Nucor, and the information is subject to their efforts to maintain its secrecy that are reasonable under the circumstances. Accordingly, the Confidential Information submitted to the Commission, including that contained in Petitioner's Confidential 1, Respondent's Confidential 1-A, and Respondent's Confidential 1-B is exempt from the public access requirements of Ind. Code §§ 5-14-3-3, 8-1-2-29, and 24-2-3-1 and shall continue to be held as confidential by the Commission, except to the limited extent that any such redacted information concerning Nucor's demand charge has been disclosed by these Parties in their Joint Proposed Order and included in this Final Order.

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

1. The proposed Settlement Agreement, a copy of which is attached hereto, between Duke Energy Indiana, Inc. and Nucor Steel-Indiana, a division of Nucor Corporation, as modified herein, is hereby approved and shall take effect as of March 1, 2010.

2. Duke Energy Indiana shall present a methodology in each of its next Rider 61, Rider 62 and Rider 71 proceedings to reasonably apportion revenue from the new demand charge to the base rate or each specific Rider's overall retail revenue requirement.

3. The redacted portions of the testimony of Mr. Bailey and of the Settlement Agreement, as reflected in Petitioner's Confidential 1 and Respondent's Confidential 1-A and 1-B, 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 5-14-3.5.

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

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

APPROVED: FEB 24 2010

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



**Brenda A. Howe
Secretary to the Commission**

**SETTLEMENT AGREEMENT
BETWEEN DUKE ENERGY INDIANA, INC. AND
NUCOR CORPORATION
CAUSE NO. 43754**

THIS SETTLEMENT AGREEMENT (hereinafter referred to as "Settlement Agreement") is dated as of the 14th day of January 2010 by and between Duke Energy Indiana, Inc. (hereinafter referred to as "Company" or "Duke Energy Indiana"), an Indiana corporation having an office in the Town of Plainfield in Hendricks County, Indiana, and Nucor Corporation (hereinafter referred to as "Customer" or "Nucor"), a Delaware corporation having an office in or near the City of Crawfordsville, in Montgomery County, Indiana.

WITNESSETH:

WHEREAS, Customer operates a steel production facility located near the City of Crawfordsville, Indiana ("Crawfordsville Plant");

WHEREAS, Company (formerly known as PSI Energy, Inc. and Public Service Company of Indiana, Inc.) and Customer previously through confidential negotiations agreed to an Electric Supply Agreement dated July 31, 1987, an As-Available Supplemental Energy Service Agreement dated April 4, 1994, and a First Amendment to the July 31, 1987 Electric Supply Agreement dated June 20, 1996 (collectively, such agreements, as amended, hereinafter referred to as the "Nucor Electric Supply Agreements");

WHEREAS, the Indiana Utility Regulatory Commission ("IURC" or "Commission") previously approved the 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, thereby authorizing the Company to supply electricity to Customer pursuant to such Nucor Electric Supply Agreements;

WHEREAS, the Nucor Electric Supply Agreements were to terminate as of July 31, 2009;

WHEREAS, Customer and Company negotiated in good faith concerning the rates, charges, terms, and conditions of a new electric supply agreement, but did not agree upon a new electric supply agreement;

WHEREAS, in order to allow additional time to negotiate and agree upon a new electric supply agreement, the Company and Customer agreed, and the Commission approved in Cause No. 43676, a three-month extension to the Nucor Electric Supply Agreements, thereby providing for their termination as of October 31, 2009;

WHEREAS, on August 6, 2009, Customer filed a Complaint ("Nucor Complaint") thereby initiating Cause No. 43754 requesting the Commission establish and order a separate rate schedule containing such reasonable and just charges and conditions for electric service by Company to Customer following the termination of the Nucor Electric Supply Agreements;

WHEREAS, on September 10, 2009, Company filed its Answer contesting the Nucor Complaint, Nucor filed its Response on September 21, 2009, and thereafter the Parties presented adversarial positions in pre-filed testimony to the Commission;

WHEREAS, Company and Customer agreed to extend the termination date of the Nucor Electric Supply Agreements by an additional four months to and including February 28, 2010, to allow time for additional negotiations and time for the Commission to process the proceeding in Cause No. 43754 and the Commission approved such extension by Order dated October 21, 2009; and

WHEREAS, Company and Customer have continued their negotiations and wish to resolve their dispute through compromise and settlement so as to avoid the additional cost, delay, uncertainty, and inconvenience of adversarial proceedings.

NOW, THEREFORE, and in consideration of the mutual covenants and agreements in the Nucor Electric Supply Agreements and the provisions set forth herein, Customer and Company hereby agree and stipulate as follows:

1. Scope of Settlement Agreement. This Settlement Agreement, subject to approval by the Commission, comprehensively resolves the Nucor Complaint and all issues presented in Cause No. 43754 before the Commission.

2. Settlement Terms - Confidentiality. Attached hereto as Exhibit A is the Confidential Settlement Terms ("Settlement Terms") setting forth additional provisions of this Settlement Agreement that is intended by the Parties to resolve all pending issues between Duke Energy Indiana and Nucor in this proceeding. Duke Energy Indiana and Nucor specifically request that such Settlement Terms be afforded confidential treatment by the Commission. The Settlement Terms reflect a confidential negotiated compromise settlement effort that resolves pending litigation. In addition, the pricing information and competitive negotiated terms contained therein are of the type normally kept confidential by both parties and are only internally made available on a need-to-know basis. If such information were publicly disclosed, Duke Energy Indiana would be harmed in future contract negotiations and placed in a less competitive negotiation position with the resulting loss of revenue eventually also harming its other customers. With respect to Nucor, disclosure of this information to its competitors would reveal production cost information of a key production element normally kept confidential by Nucor and thereby diminish Nucor's competitive position causing it risk of economic harm. Duke Energy Indiana and Nucor will request protection from public disclosure of the Settlement Terms in accordance with a Joint Motion for Protection of Confidential and Proprietary Information to be filed with the Commission in conjunction with this Settlement Agreement.

3. IURC Approval. This Settlement Agreement is contingent upon its full approval through a final Order of the Commission. Duke Energy Indiana and Nucor shall jointly present this Settlement Agreement to the Commission for approval and shall each sponsor supporting testimony. This Settlement Agreement, including the Settlement Terms in Exhibit A, is not severable and shall be accepted or rejected by the Commission in its entirety without modification or further condition that may be unacceptable to Duke Energy Indiana or Nucor. Approval of this Settlement Agreement constitutes approval of the Settlement Terms attached hereto as Exhibit A.

4. Effect and Use of Stipulation and Agreement.

(a) The terms of this Settlement Agreement, including the Settlement Terms in Exhibit A, represent a reasonable resolution of disputed issues by negotiation and compromise. As set forth in the Order in *Re Petition of Richmond Power & Light*, Cause No. 40434 at page 10, as a term of this Settlement Agreement, the Commission must assure the Parties that it is not the Commission's intent to allow this Settlement Agreement, or the Order approving it, to be cited as precedent by any person or deemed an admission by any Party in any other proceeding except as necessary to enforce its terms before the Commission, or any court of competent jurisdiction on these particular issues. This Settlement Agreement, including the Settlement Terms in Exhibit A, is solely the result of compromise in the settlement process of adversarial proceedings. Nothing contained herein is to be construed or deemed an admission, liability or wrongdoing on the part of Duke Energy Indiana or Nucor. Each of the parties hereto has entered into this Settlement Agreement solely to avoid further disputes and to avoid the continuing expense, inconvenience, and uncertainty of contested proceedings and any subsequent appeal.

(b) The evidence presented (and to be presented) by Nucor and Duke Energy Indiana in this Cause shall constitute substantial evidence sufficient to support this Settlement Agreement and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the full approval of this Settlement Agreement, as filed.

(c) The terms of the Settlement Agreement are reasonable and further the public interest.

(d) The issuance of a final Order by the Commission approving this Settlement Agreement, including the Settlement Terms in Exhibit A, without modification, shall terminate this proceeding (subject to any appeal).

(e) The undersigned represent and agree that they are fully authorized to execute this Settlement Agreement on behalf of their designated clients who will be bound thereby.

(f) Nucor and Duke Energy Indiana shall not appeal the final Order or any subsequent Commission order to the extent such order specifically implements, without modification unacceptable to either party, the provisions of this Settlement Agreement, including the Settlement Terms in Exhibit A, and the Parties shall not otherwise support any appeal of any such order by a person not a party to this Agreement.

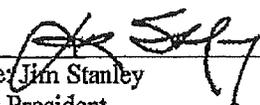
(g) The provisions of this Settlement Agreement, including the Settlement Terms in Exhibit A, shall be enforceable by any signatory, at the Commission or any court of competent jurisdiction, whichever is applicable.

(h) The communications and discussions during the negotiations and conferences which produced this Settlement Agreement, including the Settlement Terms in Exhibit A, have been conducted on the explicit understanding that they are or relate to offers of settlement and shall therefore be confidential.

(i) This Settlement Agreement is without prejudice to the positions the signatories may take in negotiations or regulatory or other proceedings related to a new or modified electric supply agreement between Nucor and Duke Energy Indiana leading up to, at the time of, or after the Nucor Electric Supply Agreements (as modified by this Settlement Agreement) terminate.

ACCEPTED AND AGREED as of this 14th day of January 2010.

Duke Energy Indiana, Inc.

By: 

Name: Jim Stanley

Title: President

Nucor Corporation

By: 

Name: Ron Dickerson

Title: Vice President and General Manager

Exhibit A

CONFIDENTIAL SETTLEMENT TERMS

REDACTED

REDACTED

REDACTED



VERIFICATION

I hereby verify under the penalties of perjury that the foregoing representations are true to the best of my knowledge, information and belief.

Signed: Jeffrey R. Bailey Dated: 1/13/10
Jeffrey R. Bailey