

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. AND A NEW ELECTRIC ) CAUSE NO. 44279  
 SUPPLY AGREEMENT WITH AIR LIQUIDE )  
 AMERICA CORPORATION ARISING FROM )  
 OPERATION OF THE BAR STEEL MILL IN ) APPROVED:  
 PITTSBORO, INDIANA AND FOR ) JUN 19 2013  
 ESTABLISHMENT OF CONFIDENTIAL )  
 PROCEDURES )

ORDER OF THE COMMISSION

**Presiding Officers:**

**David E. Ziegner, Commissioner**

**Gregory R. Ellis, Administrative Law Judge**

On December 6, 2012, 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 an Addendum to the currently approved Electric Supply Agreement (“Electric Supply Agreement” and “Addendum Agreement”) between Duke Energy Indiana and Steel Dynamics, Inc. (“SDI” or “Customer”) regarding 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”). Duke Energy Indiana also seeks approval of an Electric Supply Agreement with Air Liquide America Corporation (“Air Liquide” and “Air Liquide Agreement”) regarding Petitioner’s electric utility service to Air Liquide’s location at the Pittsboro Plant. Petitioner also seeks findings that certain portions of the Addendum Agreement and Air Liquide 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 ch. 5-14-3. The Presiding Officers issued a Docket Entry in this proceeding on December 27, 2012 finding sufficient basis for a determination that redacted portions of the Addendum Agreement, Air Liquide Agreement and supporting exhibits contain confidential information that should be held as confidential by the Commission on a preliminary basis. The Indiana Office of Utility Consumer Counselor (“OUCC”) prefiled prepared testimony and exhibits constituting its case-in-chief on February 27, 2013. Petitioner prefiled its rebuttal testimony on March 12, 2013.

Pursuant to notice given and published 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 was held in this Cause at 10:30 a.m. on March 20, 2013, in Room

224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Duke Energy Indiana and the OUCC were present and participated. The testimony and exhibits of Duke Energy Indiana and the OUCC were admitted into the record without objection. No members of the general public appeared or sought to testify at the hearing.

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

1. **Notice and Jurisdiction.** Notice of the hearing in this Cause was given and published by the Commission as required by law. Duke Energy Indiana is a public utility as defined in Ind. Code ch. 8-1-2. Pursuant to Ind. Code §§8-1-2-4 and 8-1-2-25, the Commission has jurisdiction over special contracts for utility service between a public utility and its customers. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

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, plant and equipment within the State of Indiana used for the production, transmission, delivery and furnishing of such service to the public. Duke Energy Indiana directly supplies electric energy to over 790,000 customers located in 69 counties in the central, north central, and southern parts of Indiana.

3. **Relief Requested.** Duke Energy Indiana seeks approval of the Addendum Agreement with SDI and the new Air Liquide Agreement. Duke Energy Indiana also seeks a determination that designated confidential information involved in this proceeding be exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3.

4. **Background.** On January 14, 1998 in Cause No. 40893, the Commission approved an Electric Supply Agreement negotiated between Duke Energy Indiana and Qualitech Steel Corporation ("Qualitech") for the provision of electricity to its new steel bar mill located in Pittsboro, Indiana. The Commission also approved, on July 8, 1998 in Cause No. 41150, a special contract between Duke Energy Indiana and Air Liquide for the provision of electricity to Air Liquide's oxygen manufacturing facility located within the Qualitech industrial site.

SDI purchased the Qualitech steel bar mill while it was in bankruptcy proceedings in 2002 and commenced operation of the plant in 2004. On May 12, 2004, the Commission approved the Electric Supply Agreement between Duke Energy Indiana and SDI in Cause No. 42565. On May 9, 2007, the Commission approved a one-year extension of the Electric Supply Agreement in Cause No. 43243. Duke Energy Indiana and Air Liquide terminated their previously approved special contract by mutual agreement on April 1, 2008 and Air Liquide began receiving electric service under Duke Energy Indiana's High Load Factor ("HLF") Service Rate Schedule. The Electric Supply Agreement between Duke Energy

Indiana and SDI expired on May 1, 2008 and SDI also began receiving electric service under Duke Energy Indiana's HLF Service Rate Schedule. Duke Energy Indiana and SDI executed a new Electric Supply Agreement on June 25, 2009, which was approved by the Commission on October 21, 2009 in Cause No. 43737. That Agreement remains in effect and by its terms can be extended until October 31, 2014.

**5. Petitioner's Case-in-Chief.**

**A. Jeffrey R. Bailey.** Mr. Jeffery R. Bailey, Director, Pricing and Analysis, testified on behalf of Duke Energy Indiana. He sponsored Petitioner's Redacted Exhibit A, his prefiled Verified Testimony, Petitioner's Confidential Exhibit A Unredacted, Petitioner's Exhibit A-1 Redacted and Exhibit A-1 Unredacted, the proposed Addendum Agreement, Petitioner's Exhibit A-2 the redacted version of the currently effective 2009 SDI Electric Supply Agreement, Petitioner's Exhibit A-3 Redacted, the proposed Air Liquide Agreement, Petitioner's Confidential Exhibit A-3 Unredacted Air Liquide Agreement and Petitioner's Exhibit A-4 the Verified Petition in this Cause.

Mr. Bailey testified as to the background of the SDI facilities in Pittsboro. He described how in 1997 state and county economic development efforts were made to attract a steel bar mill, Qualitech, to the Pittsboro, Indiana area. He noted operation of the bar steel mill requires a large supply of oxygen and other industrial gases. Air Liquide located a new oxygen manufacturing facility within Qualitech's Pittsboro site to provide a supply of oxygen and other industrial gases to the bar mill and also to further state and county economic development. Mr. Bailey explained that Qualitech's commercial operations lasted only a limited time and was purchased in bankruptcy by SDI after sitting vacant for approximately three years. He described the many modifications and improvements SDI had to make in order for the steel bar mill to be properly operable.

Mr. Bailey 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 and the subsequent SDI Electric Supply agreement approved October 21, 2009.

Mr. Bailey explained the prior Electric Supply Agreement between Duke Energy Indiana and Air Liquide was terminated by mutual agreement in 2008. Air Liquide was then billed under Duke Energy Indiana's HLF Service Rate Schedule. He testified SDI leases the land which Air Liquide's facilities are located upon to Air Liquide. Air Liquide receives electricity from the same substation that serves SDI which is owned by SDI. He described the relationship between the two facilities as integrated and symbiotic.

Mr. Bailey testified that the proposed Addendum Agreement is the result of protracted, good faith, arms-length negotiations conducted between Duke Energy Indiana and SDI to enable SDI to continue production of bar steel at the Pittsboro Plant and facilitates the expansion of the SDI's Pittsboro facility through the installation of another rolling mill. He indicated Duke Energy Indiana 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.

Mr. Bailey explained that the Addendum Agreement would implement limited changes from the current 2009 Electric Supply Agreement. It would also facilitate SDI's and the Company's desire to have the Addendum Agreement remain in effect for up to the currently approved term of October 31, 2014, and an opportunity for an agreed to single one year extension thereafter. He explained the terms of service to the Pittsboro Plant allow for the recovery of the Company's costs and provide a contribution to fixed costs and meet the customers' need for power supply. He explained that SDI is installing a new rolling mill at the Plant, creating new jobs, new economic development and increasing electricity sales to Petitioner. Mr. Bailey explained confidential aspects of the rates and charges contained in the proposed Addendum Agreement.

Mr. Bailey described the benefits to other customers from these proposed contracts. The two aspects of the SDI contract that the Commission previously found beneficial in the October 21, 2009 Order, remain the same. One is 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 Midcontinent Independent System Operator, Inc. ("MISO"). The other is the pricing provisions which incentivize SDI to shift a portion of its demand from the on peak period to the off peak period which 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. In addition the relief requested in this Cause facilitates economic development through SDI's installation of a new rolling mill.

Mr. Bailey testified the revenues received from SDI will cover all of the incremental costs of Duke Energy Indiana serving SDI's electrical load at the Pittsboro site, plus provide a contribution to the recovery of Duke Energy Indiana's fixed costs. 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 and its planned new mill, as well as from the various Indiana tax revenues which are collected from SDI, its employees, and satellite businesses providing services to the SDI plant and its employees.

The proposed Addendum Agreement will not alter any of Duke Energy Indiana's other existing rates or charges, and therefore, from a rate perspective, will not adversely impact the provision of service to other Duke Energy Indiana customers. Moreover, Duke Energy Indiana can reliably serve SDI's electrical load at the Pittsboro Plant without adversely affecting other retail electric customers. Mr. Bailey concluded the proposed SDI Addendum 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.

Mr. Bailey also testified regarding the proposed Air Liquide Agreement. The proposed Air Liquide Agreement is the result of, good faith, arms-length negotiations between SDI and Air Liquide. Through this Agreement, Air Liquide is expected to continue

to receive the level and quality of electrical service it needs for its gas operations at the Pittsboro site. The term of the Air Liquide Agreement is for three years from its commencement date, and is coterminous with the proposed SDI Addendum Agreement. The parties have agreed that neither the proposed SDI Addendum Agreement nor the Air Liquide Agreement will be effective unless both agreements become effective following approval by the Commission. Mr. Bailey also explained the proposed Air Liquide Agreement will not alter any of Duke Energy Indiana's other existing rates or charges, and therefore, from a rate perspective, will not adversely impact the provision of service to other Duke Energy Indiana customers. Moreover, Duke Energy Indiana can reliably serve Air Liquide's electrical load at the Pittsboro site without adversely affecting other retail electric customers. He concluded that the proposed Air Liquide 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.

Mr. Bailey provided testimony in support of Petitioner's request that certain designated information be found to contain trade secrets and exempted from public disclosure. He testified that Duke Energy Indiana will need to negotiate other similar electric supply contracts and if the provisions of these negotiated agreements became generally known or readily ascertainable to the other entities with which Duke Energy Indiana is negotiating, this knowledge would provide considerable economic value to such entities, to the detriment of Duke Energy Indiana and its other retail electric customers. In addition, knowledge of the pricing and other negotiated competitive provisions by potential power supply competitors could enable them to gain unfair advantage in future competitive situations. Mr. Bailey indicated the provisions that are redacted concern information about pricing structure and negotiated competitive terms. These sections also contain provisions and sensitive commercial terms that could be injurious to the parties should they be made available to the public. These provisions of the proposed agreements have been redacted as proprietary commercial terms that should be kept confidential. He also testified that pricing matters and other confidential aspects of the proposed agreements have been the subject of reasonable efforts to maintain their confidentiality between the parties and this information has been, and will be disclosed, on a need-to-know basis only. For these reasons, Duke Energy Indiana is requesting that, pursuant to Ind. Code § 5-14-3-4(a)(4), the Commission find (as it has previously done with SDI agreements in Cause Nos. 42565 and 43243) that the redacted provisions of the Addendum Agreement, the Air Liquide Agreement and the testimony and exhibits discussing these provisions contain trade secrets, as defined in Ind. Code § 24-2-3-2, and are thereby excepted from the access to public record provisions contained in Ind. Code ch. 5-14-3.

Finally, Mr. Bailey testified that Duke Energy Indiana is not seeking a precedential order on any of the benefits of these proposals or any other issue unique to the special contracts in this proceeding. The Company considers this a unique factual and economic development situation. The negotiated and agreed upon resolution of the parties' various financial and economic development interests, and the special contracts offered for approval here, are based on the unique facts and opportunities that present themselves in this particular situation and at this particular time. Duke Energy Indiana is simply seeking the approval of

the proposed negotiated agreements for their specified limited terms under the current unique factual circumstances.

**B. Barry Schneider.** Mr. Barry Schneider, Vice President and General Manager of Steel Dynamics, Inc. for the Pittsboro Plant, also presented 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. He testified SDI is moving forward with installation of a new \$76 million bar rolling mill at the Pittsboro Plant. The expansion is expected to increase the Pittsboro Plant's output by approximately 50% to about 950,000 tons annually and add approximately 50 new employees. He explained how the proposed SDI Addendum Agreement and the Air Liquide Agreement helped facilitate this Pittsboro Plant expansion.

Mr. Schneider described the process by which SDI uses electricity to make steel. He testified it is critical to the ongoing operation of the Pittsboro Plant that SDI obtain a competitive electric rate. The financial success and continued operation of the Pittsboro Plant is contingent upon the price of energy, including power. He testified the Addendum Agreement is intended to enable SDI to more competitively operate the Pittsboro Plant and that SDI expects to benefit from operational savings from the Addendum. He noted the continued operation of the Pittsboro Plant provides significant employment benefits as it employs approximately 400 to 450 people with total incomes for those employees better than the average in Hendricks County. He testified the beneficial ripple effect of such an economic engine can be material to the local and state economies.

He testified SDI and Air Liquide are located next to each other at the Pittsboro Plant, with Air Liquide located on land leased to it by SDI. Air Liquide provides SDI with various industrial gases including oxygen, hydrogen, and argon which SDI uses in steel production at the bar mill. The sole reason that Air Liquide is located directly adjacent to SDI is for the synergistic opportunity for it to sell a large portion of its gas output to a contiguous steel mill. Because a reliable and affordable supply of industrial gases is essential to the steel bar mill's production, SDI wants to facilitate the continued reliable and affordable provision of electricity to Air Liquide.

Mr. Schneider indicated that the SDI Addendum Agreement and the Air Liquide Agreement are both in the public interest and will result in operational savings to both SDI and Air Liquide. These savings facilitate Pittsboro Plant operations and expansions, such as the new rolling mill. Duke Energy Indiana receives increased sales from the mill expansion and increased likelihood of continuing sales to SDI. Air Liquide also receives operational savings. In total, all these synergies serve to enhance the local and state economies by increasing revenue flows, new tax receipts, new jobs and increased commerce. He testified these proposed arrangements bode well for future SDI economic expansion at the Pittsboro site.

Mr. Schneider testified that SDI considers the provisions regarding pricing and energy management of the Addendum Agreement to be confidential, proprietary and a trade secret.

He indicated the cost of electric energy is one of the most significant costs for the Pittsboro Plant and if SDI's competitors are able to learn the price that SDI is paying, or is willing to pay, for electric energy, or the underlying pricing mechanisms, these competitors will be able to discern a large portion of SDI's production costs, to SDI's competitive disadvantage. Public knowledge of the pricing provisions in the Addendum Agreement will help set energy pricing targets which current and future competitors of SDI will try to achieve with their respective energy providers. He noted that within SDI this information has been disclosed only on a need-to-know basis and the pricing provisions of the Addendum Agreement have only been furnished to third parties on a need-to-know basis and with appropriate confidentiality agreements, or other appropriate means to protect the confidentiality of such information. SDI requests the Commission find such information to be confidential, proprietary and a trade secret, as it did in Cause No. 43737.

6. **The OUCC's Case-In-Chief.** The OUCC sponsored the testimony of Mr. Erick Hand, Utility Analyst in its Electric Division. He testified the OUCC does not object to the requested relief and supports reasonable opportunities for Indiana economic development and job creation. He noted that SDI and Air Liquide have previously been approved for service under special utility contracts and each has unique characteristics which make them eligible for consideration for special utility contracts. He indicated Duke Energy Indiana's testimony indicates that other customers will not be harmed and the OUCC has found no evidence to the contrary.

7. **Discussion and Findings.**

A. **The SDI Addendum Agreement and the Air Liquide Agreement.** Ind. Code § 8-1-2-4 and Ind. Code § 8-1-2-71 provide that the Commission must approve all rates and charges for electric utility service, and that all such rates and charges approved by the Commission must be just and reasonable. Ind. Code § 8-1-2-24 provides in pertinent part that:

Nothing in this chapter shall be taken to prohibit a public utility from entering into any reasonable arrangement with its customers or consumers 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.

Ind. Code § 8-1-2-25 provides as follows:

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.

Therefore, customer-specific contracts, including tailored-rate contracts are lawful if the Commission finds their provisions to be reasonable and just, practicable and advantageous to the parties, and not inconsistent with the purposes of the Public Service Commission Act.

The Commission finds the SDI Addendum Agreement and the Air Liquide Agreement satisfy the above legal requirements. The testimony of Mr. Bailey and Mr. Schneider, in conjunction with the review of the unredacted SDI Addendum Agreement and the Air Liquide Agreement and related workpapers, demonstrate that the rates provide for the 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. Further, Mr. Bailey presented testimony on the Company's various approved rate trackers will be applied to SDI and Air Liquide. Significantly, the shifting of peak use and interruptible load incentives of the service arrangements provide benefits not only to the contract parties but to the Company's other customers as well. In addition, the record demonstrates the proposals are important to the successful ongoing operation of the Pittsboro Plant and provide economic development benefits to the local and statewide economy through the increased production of steel from the new mill, new employment, and new tax revenues.

The OUCC indicated in its testimony that it does not object to the requested relief or oppose the utilization of special utility contracts to encourage economic development. The OUCC noted that SDI and Air Liquide have previously been approved for service under special utility contracts and each has unique characteristics which make them eligible for consideration for special utility contracts. The OUCC also indicated that other customers will not be harmed by the agreements.

Based upon the evidence, we find and conclude that the rates and charges and terms and conditions contemplated by the SDI Addendum Agreement and the Air Liquide Agreement are just and reasonable, practicable and advantageous to the parties, and are not inconsistent with the purposes of the Public Service Commission Act. Accordingly, we find that the proposed SDI Addendum Agreement and the Air Liquide Agreement are in the public interest and should therefore be approved.

**B. Confidential Treatment.** Duke Energy Indiana sought a determination that designated confidential information involved in this proceeding should continue to be treated as confidential, proprietary, and a trade secret, and be exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3. The request was supported by the direct testimony of Jeffery R. Bailey and Barry Schneider. After reviewing the designated confidential information, we find all such information qualifies as confidential trade secret information pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 24-2-3-2. This information has independent economic value from not being generally known or readily ascertainable by proper means. Duke Energy Indiana, SDI and Air Liquide take reasonable steps to maintain the secrecy of the information and disclosure of such information would

cause harm to Duke Energy Indiana, SDI and Air Liquide. Therefore, we find this information should be exempted from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29, and held confidential and protected from public disclosure by this Commission.

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

1. The proposed SDI Electric Supply Agreement Addendum and the Air Liquide Electric Supply Agreement shall be and hereby are in all respects approved.
2. The material submitted to the Commission under seal is declared to contain trade secret information as defined in Ind. Code § 24-2-3-2 and therefore is exempted from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29.
3. This Order shall be effective on and after the date of its approval.

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

**APPROVED: JUN 19 2013**

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

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