

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF DUKE ENERGY)
 INDIANA, INC. FOR (1) PERMANENT RE-)
 APPROVAL OF THE VOLUNTARY GOGREEN)
 RIDER NO. 56 WITH MINOR REVISIONS; (2))
 CONSOLIDATING CURRENT CARBON CREDIT)
 RIDER PARTICIPANTS INTO THE GOGREEN) CAUSE NO. 44283
 RENEWABLE ENERGY CERTIFICATE ("REC"))
 PROGRAM; AND (3) CONTINUATION OF) APPROVED: JUL 03 2013
 ALTERNATIVE REGULATORY PLAN ("ARP"))
 FLEXIBILITY PURSUANT TO IND. CODE § 8-1-)
 2.5-1, ET SEQ., INCLUDING THE FLEXIBILITY)
 TO MODIFY THE PRICE, BLOCKS AND)
 PARTICIPATION)

ORDER OF THE COMMISSION

Presiding Officers:
David E. Ziegner, Commissioner
Aaron A. Schmoll, Senior Administrative Law Judge

On December 13, 2012, Duke Energy Indiana, Inc. ("Duke Energy Indiana" or "Petitioner" or "Company") filed its Verified Petition requesting the Indiana Utility Regulatory Commission ("Commission") to reapprove with minor revisions its GoGreen Rider No. 56 including Alternative Regulatory Plan ("ARP") flexibility.

Pursuant to notice as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, an evidentiary hearing was held on May 1, 2013 in this Cause at 10:30 a.m. in Room 224 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana. At the hearing, Duke Energy Indiana and the Indiana Office of Utility Consumer Counselor ("OUCC") appeared. Duke Energy Indiana and the OUCC presented their respective evidence, including evidence in support of the Settlement Agreement. No members of the public at large were present at the hearing.

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

- 1. Notice and Jurisdiction.** Due legal and timely notice of the hearing in this Cause was given and published by the Commission. Duke Energy Indiana owns and operates a "public utility" as defined in Ind. Code § 8-1-2-1, which is subject to the jurisdiction of this Commission as provided in the Public Service Commission Act, as amended. In its Verified Petition, Duke Energy Indiana indicates that as an "Energy Utility," it has elected to be subject to the provisions of Ind. Code §§ 8-1-2.5-5 and 8-1-2.5-6 for purposes of flexibly pricing its requested GoGreen Rider. Thus, Duke Energy Indiana's Verified Petition, testimony, and revised GoGreen Rider submitted in this proceeding constitute Duke Energy Indiana's ARP for purposes of this proceeding.

2. **Petitioner's Characteristics.** Duke Energy Indiana is an Indiana Corporation with its principal office in Plainfield, Indiana. Duke Energy Indiana is engaged in the business of generating and supplying electric utility service to approximately 780,000 customers located in 69 counties in the central, north central, and southern parts of Indiana.

3. **Relief Requested.** Duke Energy Indiana requested permanent approval of and minor revisions to GoGreen Rider No. 56. Duke Energy Indiana requests declination of Commission jurisdiction through an ARP to provide flexibility in pricing and participation in the GoGreen Program and in adjusting the size of the green power kWh blocks to be marketed.

4. **Summary of Duke Energy Indiana's Direct Evidence.** Walter B. (Casey) Mather, IV, Director of Mass Marketing Strategy and Market Plans for Duke Energy Business Services LLC, an affiliate of Duke Energy Indiana, Inc., sponsored his prefiled case-in-chief testimony. He first described the history of GoGreen. In December 2005, the Company sought Commission approval to revise Standard Contract Rider No. 56 Green Power Rider and name it "GoGreen Power." Thereby the Green Power Rider changed from a voluntary fund contribution program to an actual green power rate whereby customers could choose to purchase the greenness or "green tag" for a specific level of their energy consumption. GoGreen was initially priced to customers at \$2.50 per 100 kWh block for residential and commercial customers, with a minimum purchase of two blocks for a monthly payment of \$5.00, thereby funding GoGreen and the purchase of Renewable Energy Credits ("RECs"),¹ and Carbon Credits.²

Mr. Mather testified the Company requested and was granted ARP flexibility in the pricing of and the size of green power kWh blocks for several reasons. The market price of RECs and Carbon Credits fluctuates. As such it is reasonable that the price charged to customers for these commodities can be adjusted to reflect market conditions. Similarly, adjusting the price and/or size of the green power blocks can be a tool to enhance interest in green power participation. With below the line accounting of GoGreen expenses and revenues, the Company was left at risk to recover the cost of the program.

On March 22, 2006, the Commission issued its Order in Cause No. 42966 wherein it approved a Settlement Agreement with the OUCC. Therein, the Commission stated many potential benefits to be derived from implementation of GoGreen including benefits to the environment, customer awareness of green power, and increased participation in the green power market that in turn can drive demand for investment in new green power renewable generation. As interest and participation in the renewable energy market grows, Indiana's economy stands to potentially benefit as additional Indiana renewable energy projects create new employment opportunities.

Mr. Mather testified GoGreen provided valuable green power program experience to the Company, provided benefits and satisfaction to Petitioner's customers, improved our environment, and helped Indiana's economic development. GoGreen has provided a readily accessible simple green power opportunity for customers who want to voluntarily and conveniently participate in a green power program through their monthly electric utility bill.

¹ An REC is a tradable commodity unit which represents the generation of one MWh of renewable or environmentally friendly generation.

² A Carbon Credit is a tradable commodity unit which represents one ton of CO₂ reduction or its equivalent.

Mr. Mather testified that Petitioner had previously reduced the GoGreen block price for 100 kWh from \$2.50 to \$2.00 and more recently had again reduced it to \$1.00. He testified that the most recent National Renewable Energy Lab 2011 report shows the national average price was \$1.67 per 100 kWh with a range for utility programs of \$0.14 to \$6.50 per 100 kWh. This is down from the 2009 average utility green power premium of \$1.75 per 100 kWh for residential customers. At \$1.00 per block GoGreen is below the national average, with Petitioner continuing to assume the risk of GoGreen financial loss. Mr. Mather explained that GoGreen may not offer the absolute lowest possible price for RECs available to retail customers on the open competitive market, but it does offer access to bona fide RECs through an easy, voluntary election to support green power and the convenience of payment in monthly electric bills, all at a reasonable price.

Mr. Mather explained the Company generally proposes to continue GoGreen in compliance with the terms stated in the most recent Settlement Agreement approved in Cause No. 43617. The only changes he proposed are: (i) that the few participants in the Carbon Credit side of GoGreen be rolled into the REC side of the program, with their option to withdraw completely if they so chose; (ii) that the Carbon Credit program be discontinued or expire; (iii) that the provision for GoGreen special contract sales to rates HLF and LLF be dropped; (iv) that customers continue to receive 60 days notice of any price increase, but need not receive advance notice of any price decrease; and (v) that GoGreen be approved on a permanent basis. He testified these changes will simplify and make GoGreen more efficient and better able to support the decreased price of participation. Combining Carbon Credit participants with REC participants will make the GoGreen REC program more efficient. Similarly, dropping the unused REC special contract option to HLF and LLF customers will simplify GoGreen. GoGreen would remain a quick convenient means by which customers can voluntarily support green power.

Mr. Mather explained that as proposed GoGreen would continue its ARP flexibility in pricing and sales block size with the Company left at risk to recover GoGreen costs. Accounting of GoGreen expenses and revenues would remain below the line. The Company would retain its right to sell RECs (and excess Carbon Credits to wind down that program) not purchased by customers to an affiliate or any other outside party with revenues below the line. The Company would continue to provide participants the same semi-annual customer reports regarding program sales, program source of RECs, and a green energy message. The Company would continue its annual report to the Commission and to the OUCC. The Company would not disconnect electric service to its customers due to their failure to pay the GoGreen amount on their monthly bill, and it would continue to provide the OUCC with an opportunity to preview all new GoGreen promotional and educational documents. The Company would continue to have the ability to self certify RECs from small Indiana green power projects of 3MWs or less and those and all RECs certified by another entity will continue to be accurately calculated, accurately matched to participating customer load, and the resulting records kept.

Mr. Mather explained that closure of the Carbon Credit program is appropriate because it has very little customer participation. The Company believes that folding the small number of Carbon Credit participants into the separate and somewhat competing GoGreen REC program will allow those customers to continue their support for the environment and carbon reduction through the purchase of RECs, while resulting in a more efficient GoGreen. For those Carbon Credit participants that may not want to be moved to the REC side of the program, they may opt to withdraw from the program.

Mr. Mather testified as to why it is appropriate that GoGreen retain the ARP flexibility to modify the price and sales block sizes. He explained the market price for RECs fluctuates. Accordingly REC prices paid by GoGreen fluctuate. It is reasonable that the Company reserve the right to be certain the amount it charges is sufficient to purchase a load matching level of RECs and to continue supporting the GoGreen service offering. Mr. Mather testified that the market for RECs is open and competitive and the Company's customers can directly purchase RECs from other sources, including over the internet. Thus, if they do not like the price offered by GoGreen, customers may financially support the green power movement through a competitive supplier. However, just as other green power marketers and generators will base their price for RECs on market conditions, so too GoGreen needs the flexibility to adjust its price. This pricing flexibility may allow GoGreen to decrease prices in order to encourage greater participation, and symmetrically, if the market price for these commodities increases, the Company needs the flexibility to increase the price voluntarily paid by customers. Currently the changes in price and block size of participation in GoGreen only take effect after 60 days notice to customers. The Company proposes that a price decrease to customers should not be mandatorily delayed by 60 days and should be allowed to proceed as quickly as reasonably possible.

Mr. Mather explained that it is appropriate that accounting of GoGreen expenses and revenues continue to be below the line. He testified that with revenues and expenses below the line, the Company is left at risk to recover all of the costs of GoGreen. Mr. Mather testified that below the line accounting eliminates any concern that voluntary participation in GoGreen may be subsidized by non-participating customers.

Mr. Mather testified that Certification of RECs by entities such as Green-e[®], located in California, can be rather costly, particularly for small renewable energy projects. Green-e is the nation's leading independent certification and verification program for renewable energy and greenhouse gas emission reductions in the retail market, which has two certifications and one verification program. Green-e Energy is the nations' leading independent certification and verification provider for renewable energy. Green-e Marketplace is a program that allows companies to display the Green-e logo when they have purchased a qualifying amount of renewable energy and passed the Green-e verification standards.

For a small, local renewable energy project, REC certification services can represent a large expense. For example, Green-e Climate has an annual base certification fee of \$6,000 per year. In addition, volumetric fees and other fees may be added. Mr. Mather observed that if such costs do not inhibit a small, local project, they will be recovered through the price charged for RECs generated by the project. Continued authority to self-certify Hoosier Homegrown renewable generation projects of 3 MW or less may help encourage the growth of such projects. Accordingly, the Company again proposes that RECs purchased from the open market through marketers will be certified by Green-e. However, for RECs purchased from local, small, renewable generators or from customer cogeneration of 3 MW or less, the Company may self-certify or certification may be done locally by third parties. In addition, allowing the opportunity for renewable certification of small projects locally may stimulate new Indiana small business growth in renewable certification. He concluded that while self-certification of RECs has not yet occurred in GoGreen, it is an appropriate program element to retain.

Mr. Mather described, and in the GoGreen annual report sponsored, examples of GoGreen marketing efforts. These include bill inserts, print ads, green power educational video, thank you

letters, refer a friend cards, and e-newsletters to participants. He also explained how GoGreen Power continues to satisfy each of the statutory ARP criteria.

The Company proposed that GoGreen Standard Contract Rider No. 56 remain as that tariff is currently approved with the exceptions that there would be no termination date, and the customer charge for the Green Power rate will be reduced from \$2.00 to \$1.00 per 100 kWh. Petitioner's Exhibit B, the testimony of Mark E. Musick, and Exhibit B-1 identify the proposed changes to the Rider.

5. Summary of OUCC Evidence. Ms. Cynthia Armstrong, a Senior Utility Analyst for the Electric Division of the OUCC, testified on behalf of the OUCC. She noted that GoGreen participation has declined since 2009, possibly due to the economic recession. However, participation increased in the fourth quarter of 2012. She pointed out that the GoGreen REC program has collected more than the total program costs while the Carbon Credit side of GoGreen has consistently collected less than its program costs. The result was a net GoGreen loss of approximately \$8,000 since 2009. Ms. Armstrong expressed a concern that Petitioner may not spend its projected GoGreen budget resulting in profits to GoGreen. She also expressed concern that the projected GoGreen budget levels for administrative and marketing expenses may be too high.

Additionally, Ms. Armstrong addressed self-certification of RECs for Hoosier Homegrown renewable energy projects of 3 MWs or less within Petitioner's service area. She testified the OUCC recognizes that without self-certification, some small, local, renewable projects could be prevented from receiving Green-e certification that would provide the environmental benefits that GoGreen participants find desirable. The OUCC does not oppose DEI's request to self-certify RECs if it provides the OUCC and the Commission more information about the process DEI plans to follow to certify RECs from small, local projects. Ms. Armstrong expressed a preference that GoGreen be operated as a tariffed program on a financial break even basis. However, she did not oppose continuation of GoGreen as an ARP if participants are provided information on GoGreen's expenses and losses or profits. Ms. Armstrong opposed Petitioner's proposal for permanent approval of GoGreen and instead suggested an extension term of three years.

6. Settlement Agreement and Supporting Testimony. On April 15, 2013, Petitioner and the OUCC submitted a Settlement Agreement in this Cause along with supporting testimony.

Mr. Mather testified that, as provided in Section II.A of the Settlement Agreement, GoGreen's term will be only three years from the date the Settlement Agreement is approved, with an opportunity for an agreed automatic two year extension, rather than the permanent approval originally sought by the Company.

Mr. Mather testified that Section II.B sets forth the information to be provided in the GoGreen annual report to the Commission and the OUCC. The information to be provided is essentially the same as is provided currently in the GoGreen annual report. The annual report will provide information useful in observing the operation of GoGreen. The Parties recognize that certain contents of the annual report may be confidential and those portions may require confidential protection. However, GoGreen costs and revenues will not be treated as confidential in the annual report.

Mr. Mather testified that Section II.C calls for an annual, collaborative meeting of the OUCC and the Company following the filing of the GoGreen annual report. Additionally, after the second year of GoGreen, if the OUCC has concerns over material substantive issues in the program and cannot informally resolve those issues with the Company, such issues may be filed with the Commission for review and resolution. Such issue resolution process will not require reapproval of GoGreen. Rather, it provides the OUCC with an opportunity to pursue Commission resolution of program issues that cannot otherwise be resolved through good faith, collaborative discussions. He also testified that, during the stated term of the settlement agreement, the OUCC agreed not to take the position that GoGreen should be operated without a profit.

Mr. Mather testified Section II.D provides for the end of the Carbon Credit side of GoGreen with the Carbon Credit customers rolled into GoGreen as the Company proposed.

He explained that Section II.E provides the continued opportunity for the self-certification of RECs created from small, renewable energy projects within the Company's service territory. The REC quantification from such customer owned generation will be based on the meter reads from those generation units. Mr. Mather testified that such self certification may help promote Hoosier Homegrown Energy. He indicated these self certification provisions may help stimulate small Hoosier Homegrown renewable energy projects by lowering the cost of certification and in turn lowering the cost of locally produced RECs available for purchase by GoGreen.

Mr. Mather testified that Section II.F acknowledges there is an open, competitive national market for retail purchase of RECs by electric utility customers. ARP treatment of GoGreen price and block size will allow the Company to continue to adjust the price charged and block size for GoGreen REC participation. This pricing and block size flexibility exists currently, as previously approved by the Commission. Mr. Mather indicated this flexibility is reasonable and useful in the Company's efforts to encourage customer participation, to respond to changing market conditions, and to position itself to assume the risk that insufficient revenue may result from this below-the-line voluntary program. One agreed change in pricing flexibility would allow the Company to implement block price decreases without customer notice. However, price increases will require thirty (30) days advance customer notice. Currently all price adjustments, including decreases, require sixty (60) days advance notice to customers. Dropping that notice period for GoGreen price decreases will allow customers to realize potential savings more quickly. As part of the ARP pricing flexibility, the Company has agreed to follow its recent fifty percent (50%) per block GoGreen price reduction (from \$2.00 to \$1.00), with another ten percent (10%) price reduction unless GoGreen does not have sufficient profit to allow the proposed decrease. Specifically, by March 31, 2014, the GoGreen REC program block price will be further reduced to \$0.90 if there are sufficient GoGreen profits to offset the decrease. Mr. Mather explained that the Settlement Agreement has other provisions essentially the same as current provisions previously approved by the Commission. Those provisions relate to below the line accounting, the continued provision of semi-annual customer reports, customers' electric service not being disconnected for failure to pay the GoGreen charges, and an opportunity for OUCC to review new customer communication material before such material is disseminated to customers. One agreed addition to the current program is in Section J.4, whereby the GoGreen Customer Reports will include a website for the GoGreen annual report filed with Commission. In that way, customers that want even more detailed information about GoGreen operations may conveniently access it on the web. Finally, the Settlement Agreement recognizes the current GoGreen expires July 16, 2013. So that there is not an interruption in GoGreen, the OUCC and the Company agree that GoGreen, as currently approved in

Cause No. 43617, should be extended pending a final, non-appealable order in this Cause if a final order approving the Settlement Agreement is not issued by July 16, 2013.

Mr. Mather explained the recent fifty percent REC block price decrease and possible ten percent decrease next year present a challenge to the Company. Since the REC program and a carbon credit program were first offered in 2009, GoGreen has resulted in a net loss of approximately \$8,000 to the Company. While the Company proposes to close the Carbon Credit program, that will result in savings of only about \$9,500 annually, nowhere near enough to offset the 50% price reduction in the GoGreen REC participation. Mr. Mather observed that from the perspective of non-participating customers, all the risk of such loss remains on the Company through below the line accounting.

Mr. Mather testified there is a wide open, voluntary, easily accessible, highly competitive market through which the public, including the Company's residential customers, can participate in the green power movement. He listed eleven retail customer REC vendors selling RECs over the internet. He noted that GoGreen's current price of \$0.01 per kWh is lower than those vendors' average price of \$0.02 per kWh and lower than all but one of the listed vendors.

Mr. Mather testified the Settlement Agreement is in the public interest. It is the result of lengthy, collaborative, arms length discussions and negotiations between the Company and the OUCC. He stated the Settlement Agreement creates a balanced framework by which the same collaborative discussions that led to resolution of this proceeding will continue in the future. It provides for periodic, transparent reporting of information useful to the OUCC and the Commission in understanding the Company's GoGreen's operation. Non participants are protected by the Company, which assumes the risk of any losses through below the line accounting. Mr. Mather indicated the Settlement Agreement reaches a reasonable result that protects the interest of the Company, the OUCC, the voluntary participants in this program, and nonparticipants. GoGreen will continue to allow customers to voluntarily participate in the green power market at a reasonable cost conveniently included on participating customers' monthly electric bill. Finally, Mr. Mather pointed out that customers will continue to be able to enter and leave the program without an entrance fee or departure penalty.

Ms. Armstrong's testimony in support of the settlement also summarized the substantive high points and echoed Mr. Mather's support for approval of the Settlement Agreement. She testified the Settlement Agreement addresses and resolves all of the OUCC's concerns. First, the Settlement Agreement addresses the OUCC's price concern by providing for an additional GoGreen block price reduction to \$0.90 per 100 kWh by March 31, 2014, provided there are sufficient GoGreen profits by then to offset that reduction. She also observed that participation in GoGreen is voluntary, so customers can easily avoid GoGreen costs by not joining or by ending their participation in the program at any time. The second issue the OUCC raised was the amount of program collections that went to GoGreen's administrative and marketing costs rather than to purchase RECs. The Settlement Agreement reflects a reasonable compromise, with the OUCC agreeing not to challenge GoGreen's ability to earn a profit on this voluntary program, but requiring that participating customers be provided a specific web site reference to the public version of the most recent annual GoGreen report, containing information on all program revenue and costs during the last year. Also, if the OUCC believes GoGreen is earning an unreasonable profit, the OUCC may seek Commission review and recommend program changes at the end of the second program year and/or withhold OUCC consent to extend the life of the program beyond the agreed three year

term. Ms. Armstrong noted that, if the Settling Parties agree, the term of the Settlement Agreement may be extended automatically for an additional two years by filing notice of an agreed extension, without requiring any further Commission proceedings, for a total potential program term of five years.

Ms. Armstrong concluded the Settlement Agreement represents a reasonable and fair result of arms length negotiations between the Settling Parties. She testified that Commission approval of the Settlement Agreement will serve the public interest and therefore recommended its approval, as jointly filed.

7. **Commission Discussion and Findings.** We note that settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. 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.” *Citizens Action Coalition*, 664 N.E.2d at 406.

Furthermore, any Commission decision, ruling, or order - including the approval of a settlement - must be supported by specific findings of fact and sufficient evidence. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Pub. Serv. 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, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Indiana Code ch. 8-1-2, and that such agreement serves the public interest.

The evidence indicates that GoGreen provides benefits to the Company’s customers, including education on the availability of and environmental benefits from green power. GoGreen presents a convenient, reasonably priced opportunity for customers to voluntarily choose to support the use of green power. Customer awareness of green power and customer participation in the green power marketplace not only improves the environment, it also drives demand for and investment in new green power renewable generation. As the number of renewable generation projects built in Indiana in recent years demonstrates, as interest and participation in renewable energy grows, Indiana’s economy stands to benefit from the creation of new employment and revenue opportunities. The Settlement Agreement creates a balanced framework, allowing for ongoing, collaborative discussions of potential improvements to the GoGreen program. The annual reporting of information will be beneficial to all stakeholders in understanding the details of GoGreen operations. Non-participants are protected from subsidizing GoGreen by its below-the-line accounting treatment. Accordingly, the Commission finds the Settlement Agreement is in the public interest as it reaches a reasonable result that provides benefits and protections to all stakeholders. Accordingly, the Settlement Agreement is approved.

Although we approve the Settlement Agreement, we note that the administrative cost issue raised by Ms. Armstrong is one that should be addressed by Petitioner going forward. Other investor owned electric utilities in Indiana offer similar programs with much lower administrative costs. High administrative costs may deter customers from participating in GoGreen, which may

explain why participation within Duke Energy Indiana's service territory trails that for other utilities.

Pursuant to the terms of the Settlement Agreement, the Parties agree that the Settlement should not be used as precedent in any other proceeding or for any other purpose except to the extent necessary to implement or enforce its terms. Consequently, with regard to future citations of the Settlement, we find that our approval of the Settlement herein should be recognized in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (IURC March 19, 1997).

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

1. The Settlement Agreement attached hereto shall be and hereby is approved and incorporated into this Order.
2. The revised GoGreen Standard Contract Rider No. 56 shall be effective upon filing with and approval by the Commission's Electricity Division.
3. This Order shall be effective on and after the date of its approval.

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

APPROVED: JUL 03 2013

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



Shala M. Coe
Acting Secretary to the Commission

SETTLEMENT AGREEMENT

This Settlement Agreement, dated as of the 15th day of April, 2013, is made and entered into by and between the duly authorized representatives of Duke Energy Indiana, Inc. ("Duke Energy Indiana") and the Indiana Office of the Utility Consumer Counselor ("OUCC")(individually referred to as "Party" and collectively referred to as "Parties" or "Settling Parties").

WITNESSETH:

WHEREAS Duke Energy Indiana has filed a Verified Petition in Cause No. 44283 with the Indiana Utility Regulatory Commission ("IURC") seeking permanent approval of and certain modifications to the GoGreen Power Rider previously approved for a three-year term in Cause No. 43617 and 42966; and

WHEREAS the Parties to this Cause have engaged in good faith negotiations and exchange of information in an effort to amicably resolve the issues presented; and

WHEREAS subject to the conditions set forth in this Settlement Agreement, including the approval and acceptance by the IURC of this Settlement Agreement, in its entirety, without any change or condition that is unacceptable to any Party to this Settlement Agreement, and with the understanding that each and every term of this Settlement Agreement is in consideration and support of each and every other term, the Parties hereto agree and stipulate as follows:

I. GENERAL CONDITIONS

This Settlement Agreement (the terms of which are also referred to herein as the "GoGreen Program") is expressly conditioned upon and subject to the following general conditions:

- A. This Settlement Agreement is the result of compromise by the Parties within the settlement process. Neither the making of this Settlement Agreement nor any of the individual provisions or stipulations herein shall constitute an admission or waiver by any Party in any other proceeding; nor shall they constitute an admission or waiver in this proceeding if the Settlement Agreement is not accepted by the Commission. The Parties hereto shall not use this Settlement Agreement or the resulting Commission Order as precedent and shall not offer the same as an admission in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. In the event this Settlement Agreement or the resulting Commission Order is offered for any purpose prohibited by this Agreement, the Parties agree that objections by the non-offering party are proper.

- B. The communications and discussions had and the materials produced and exchanged during the negotiation of this Settlement Agreement all relate to offers of settlement and compromise and, as such, are privileged and confidential and shall not be used for any other purpose in this or any other proceeding without the agreement of all Settling Parties.
- C. This Settlement Agreement is conditioned upon and subject to IURC acceptance and approval in its entirety, without any change or condition that is unacceptable to any Party to this Settlement Agreement.
- D. If this Settlement Agreement is not accepted and approved by the IURC in accordance with its terms, then it will be withdrawn and not made a part of the evidentiary record or used for any other purpose.

II. SUBSTANTIVE TERMS

- A. Term of GoGreen. Duke Energy Indiana requested and would prefer authority for permanent approval of the GoGreen Power Rider ("GoGreen"). However, OUCC and Duke Energy Indiana agree that GoGreen should be approved for a three-year term starting from the date this Settlement Agreement is approved by the Commission, with the possibility of a further agreed automatic two-year extension, without requiring additional Commission review or approval. During the initial three-year term (and, if applicable, during any additional agreed two-year extension), the Parties may jointly seek Commission approval of other agreed changes to the terms of the GoGreen Program. Nine (9) months before the expiration of the initial three-year term, the Parties shall file a joint notice with the Commission indicating whether the Parties agree to extend the GoGreen Program for an additional two years, without change. In that event, the GoGreen Program will continue in effect for an additional two years, without requiring any further action or order from the Commission.
- B. Annual Report to IURC and OUCC. The GoGreen Annual Report to be provided to the Commission and the OUCC shall continue to include the following information:
 - 1. A detailed marketing plan, including how Duke Energy Indiana will co-market programs and target marketing plans, current GoGreen customer demographics, and the customer retention rate;
 - 2. A log of REC purchases, including, for each purchase or sale: the date of purchase, type of renewable generation source, name of third-party marketer used, administrative fee paid, generator location, number of MWhs purchased, price per MWh, the total purchase cost, and any certification used.

3. Number of active GoGreen customers by month, including breakdown of residential and commercial/industrial customers;
4. Number of blocks of Green Power purchased, including breakdown of blocks sold (a) to residential customers and (b) to commercial/industrial customers;
5. An itemized breakdown and total of Duke Energy Indiana's actual marketing expenses in the most recent GoGreen Program year;
6. An itemized breakdown and total of Duke Energy Indiana's actual administrative costs in the most recent GoGreen Program year;
7. GoGreen Program revenues billed to Duke Energy Indiana's customers in the most recent GoGreen Program year;
8. Estimated GoGreen Program sales in kWhs for the next program year;
9. Forecasted costs of RECs per kWh, including those in inventory;
10. Copies of materials sent to program participants; and
11. Any other relevant information agreed to by the parties.

The Parties recognize that some information to be produced may be confidential and require protection. Such information shall be identified as specified by the Standard Form Nondisclosure Agreement entered into by Duke Energy Indiana and the OUCC. GoGreen costs and revenues will not be treated as confidential in the Annual Report.

- C. Annual Discussion and Possible Program Adjustments. Following the filing of each annual report, OUCC will meet with Duke Energy Indiana, to provide feedback and discuss the possible need for additional information from Duke during the OUCC's review. Both Parties will collaboratively discuss their observations and thoughts regarding the GoGreen Program and possible agreed program changes as provided in Section II A above.

Following the Annual Discussion of the Annual Report submitted after the second program year of GoGreen's herein agreed three-year term, if the OUCC has material, substantive concerns regarding GoGreen operations, which the OUCC and Duke Energy Indiana cannot informally resolve, and those unresolved material substantive concerns have been presented to Duke Energy Indiana in writing, thereafter upon two weeks written notice to Duke Energy Indiana the OUCC may seek Commission review and resolution before the end of the agreed three-year term or any subsequent two-year extension thereof. While such a Commission review is pending, GoGreen will continue to be offered as agreed to in this Settlement.

The OUCC hereby agrees that it will not seek termination of profits from the GoGreen Program any time during the agreed three-year term or any subsequent agreed two-year extension period. However, the OUCC

reserves the right to ask the Commission to reduce the GoGreen fee before the end of the term if the OUCC believes the level of profits Duke Energy Indiana is receiving from the GoGreen Program is no longer fair or reasonable.

- D. Carbon Credit Program. The Carbon Credit Program shall be terminated with its participants rolled into the GoGreen REC program.
- E. Certification of RECs. Duke Energy Indiana may self certify RECs created from new, renewable projects of 3 MW or less located within Duke Energy Indiana's service territory. The REC quantification from such customer-owned generation will be based on the meter reads from those generation units. Such self certification may promote Home Grown Hoosier energy.

To help reduce operating costs, GoGreen need not be Green-e certified, but Duke Energy Indiana may disclose to its customers when it uses purchased Green-e certified RECs, provided such disclosure is made in a manner that does not make improper use of the Green-e logo or trade marks.

Whether certified by Duke Energy Indiana or by a recognized independent authority (e.g., Green-e), Duke agrees to accurately calculate all RECs and accurately match them to participating customer load. Duke further agrees that the resulting records will be readily susceptible to audit and will be made available for OUCC review upon request.

- F. ARP Status. Due to existing retail competition in the sale of RECs within the United States and the voluntary nature of GoGreen participation, the Parties agreed that Petitioner's current Alternative Regulatory Plan ("ARP") should be extended, subject to agreed changes specified in this Settlement Agreement. This ARP authority includes flexibility in retail pricing and block size. The Parties agree that Duke Energy Indiana's requested and herein agreed to flexibility in retail pricing and block size are reasonable in light of the voluntary nature of Duke's offering, the voluntary participation of interested Duke customers, and the existence of competitive alternative sources of RECs. The agreed pricing flexibility will allow Duke Energy Indiana to more effectively respond to changing market conditions and allow Duke to adjust pricing if revenues from this voluntary, below-the-line program are too low.

The Parties also agree that block price increases under the ARP require at least thirty (30) days advance notice to participating customers; but that decreases in block prices may be made without advance notice to Duke's customers, whether by providing participants with proportionately larger blocks of RECs or by reducing block prices.

As further consideration for the compromises made under this Settlement Agreement, if GoGreen profits are sufficient to offset the ten cent decrease Duke Energy Indiana will use its ARP pricing flexibility to reduce its GoGreen block price to \$0.90 by March 31, 2014, through proportionately larger blocks of RECs or by reducing block prices.

- G. No Additional Flexibility or Incentives. The Parties agree that the ARP pricing flexibility only applies to the GoGreen portion of participating customers' bills and not to any other tariff rates and charges.
- H. Below the Line Accounting. All expenses and revenues from the GoGreen Power Program will be originally accounted for "below-the-line". Thus there will be no need to transfer costs and revenues from above-the-line to below-the-line under this Settlement Agreement. Accounting/Work codes will be used to allow the tracking of revenues and expenses charged below-the-line. Duke Energy Indiana assumes the risk of recovering the costs of the GoGreen through RECs sold under GoGreen. As such, the costs and revenues of RECs will not be included in the calculation of the quarterly FAC expense and earnings tests under Ind. Code § 8-1-2-42(d)(2) and (d)(3). Duke Energy Indiana also reserves its right to sell RECs not purchased by Duke Energy Indiana customers to an affiliate or other outside parties at market prices, to be treated "below-the-line", as described above.
- I. FAC Below-the-Line Amounts. Duke Energy Indiana is willing to document for the OUCC that the GoGreen power revenues and expenses are, in fact, below-the-line and are not in the Section 42(d)(2) and (d)3 calculations.
- J. Customer Reports. Duke Energy Indiana will provide semi-annual reports to participating GoGreen customers specifying the certification and source for the GoGreen Power purchased during the preceding six months. To minimize program expense, those customers who have provided Duke Energy Indiana with their e-mail address may receive their semi-annual report via e-mail.

GoGreen customer reports will include, at a minimum:

1. Program Sales
 - Amount of kWh purchased by participating GoGreen customers
 - Amount of RECs purchased by participating GoGreen customers
2. Program Source
 - Identity and location of green power supplies
 - Amount of power purchased from each identified source

3. Green Energy Message
A general educational message on greenhouse gas, CO₂, or energy efficiency designed to increase the customer's understanding of green energy alternatives and their environmental impacts.
 4. A specific web site reference at which the GoGreen Annual Report filed with the Commission can be reviewed by interested customers.
- K. Confidentiality. Duke Energy Indiana will only require confidential treatment of information and documents that are confidential or of a competitive or proprietary nature. Otherwise Duke Energy Indiana will provide data concerning its GoGreen Power program to the OUCC upon request, without a confidentiality agreement.
- L. Customer Disconnection. Any payment made by a GoGreen Power customer will first be applied toward the total amount due for power purchased under Duke's standard tariff rate. Failure to pay charges under the GoGreen Power Program would be a sufficient basis for removal from the program, but is not a basis for disconnecting electric service.
- M. Customer Communication. Duke Energy Indiana will provide the OUCC with a reasonable opportunity to preview all new or substantively revised GoGreen Power promotional and educational documents and activities so the OUCC has an opportunity to recommend revisions and improvements.
- N. Continuation of Current Program. The current GoGreen Program expires on July 16, 2013. If an order approving this Settlement is not issued by then, the OUCC and Duke Energy Indiana agree that the current program should be extended pending a final, non-appealable order from the Commission in this Cause.
- O. Requested Relief Granted as Modified Above. The relief requested by Duke Energy Indiana in its Verified Petition in this Cause and described in Duke Energy Indiana's supporting testimony shall be granted with only the agreed to changes and clarifications set forth in this Section II of this Settlement Agreement.

III. PROCEDURAL TERMS

- A. The Parties agree to jointly request IURC acceptance and approval of this Settlement Agreement in its entirety, without any change or condition that is unacceptable to either Party to this Settlement Agreement.
- B. Duke Energy Indiana may introduce into evidence in this Cause testimony and exhibits in support of the terms of this Settlement Agreement, after

providing the OUCC a reasonable opportunity to review and comment on Duke's draft settlement testimony and exhibits.

- C. OUCC may offer prefiled testimony or exhibits into evidence in this Cause in support of the Settlement Agreement, after providing Duke a reasonable opportunity to review and comment on the OUCC's draft testimony and exhibits before they are filed. OUCC and Duke Energy Indiana agree to waive cross-examination of each others' witnesses in this proceeding.
- D. Duke Energy Indiana and the OUCC shall work together to finalize and file an agreed upon proposed order with the IURC as soon as possible, consistent with the terms of this Settlement Agreement. The Parties will support an agreed proposed order and will request that the IURC issue an order promptly accepting and approving the same in accordance with its terms.
- E. The Parties either will support or will not oppose on rehearing, reconsideration and/or appeal an IURC Order accepting and approving this Settlement Agreement in accordance with its terms, including the submission of any applicable briefs and pleadings. The Parties will also either support or not oppose the relief outlined in this Settlement Agreement in any other forum or tribunal.
- F. Duke Energy Indiana and the OUCC agree to refrain from issuing any news releases concerning this Settlement Agreement until each has consulted with the other, provided that Duke Energy Indiana shall be able to issue such releases as necessary to comply with disclosure requirements.

Agreed and accepted this 15th day of April, 2013:

Duke Energy Indiana, Inc.

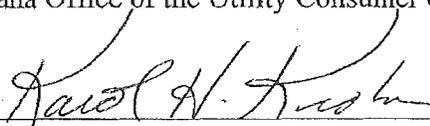
By: 

Robert M. Glennon
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Agreed and accepted this 15th day of April, 2013:

Indiana Office of the Utility Consumer Counselor

By: 

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[This is a signature page to a Settlement Agreement between Duke Energy Indiana, Inc. and the Indiana Office of the Utility Consumer Counselor. The remainder of this page has intentionally been left blank.]