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*Internal Audit of Duke Energy Cases*  
*Presided over by Former*  
*Administrative Law Judge Storms*

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December 7, 2010  
Prepared By: DeAnna L. Poon, Assistant General Counsel



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To: David Phippen, General Counsel to the Governor

From: Chairman James D. Atterholt

cc: David Thomas, Indiana Inspector General

**Overview:** On October 5, 2010, you directed the Indiana Utility Regulatory Commission (“Commission”) to investigate the conduct of then General Counsel Scott Storms in his function as Administrative Law Judge (“ALJ”) over cases involving Duke Energy Indiana, Inc. (“Duke”). Specifically, you instructed, “The administrative opinions over which the ALJ presided regarding Duke will be reopened and reviewed to ensure no undue influence was exerted in the decisions.” This review is being performed by the Commission separate and distinct from the ethics investigation currently being conducted by the Indiana Inspector General.

Pursuant to your directive, this report includes the legal and technical audit of cases on which former General Counsel Scott Storms presided as ALJ in cases involving Duke. This audit spans from January 1, 2010 through September 30, 2010. In addition, because the foundation for the current Duke Edwardsport Integrated Gasification Combined Cycle (“IGCC”) Generating Facility (“IGCC Project”) proceedings is related to prior Commission Orders regarding the IGCC plant, six additional Duke cases were reviewed. By including these cases, the Commission’s review encompasses the history of the Edwardsport IGCC Project from its inception. For your convenience, an acronym table is included at the end of this document for ease of reading and comprehension.

**Auditor Information:** The lead auditor and author of this report who reviewed these cases is current Assistant General Counsel DeAnna Poon. Ms. Poon’s entire legal career has been spent in service to State government. First a law clerk, she was promoted to Deputy Attorney General working directly under then section chief Greg Zoeller in 2004. After three years, she transitioned to the Indiana State Department of Agriculture as Chief Counsel before coming to the Commission. Ms. Poon’s role at the Commission has focused primarily on rulemakings, advising the Consumer Affairs Division, and some casework. Ms. Poon was never previously assigned to any Duke proceedings.

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## **Audit Overview**

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## Audit Process

The audit process consisted of reviewing both decisions that were autonomous (such as bench rulings) and group decisions (such as final Orders) to determine if ALJ Storms exerted any undue influence over the proceedings in favor of Duke. Specifically, the following process was followed to determine if any activity by ALJ Storms did not follow normal processes or failed to be supported by evidence or another legal basis.

1. Staff reports,<sup>1</sup> which are drafted after prefiled testimony but prior to the evidentiary hearing with cross examination and redirect, were compared to Orders. If there were differences between the preliminary recommendations made by staff and the outcome in the Order, the following process occurred:
  - a. Transcripts were reviewed to determine if evidence was filed after the staff report that led to conclusions in the Order that differed from the staff report.
  - b. Staff was asked whether there were other reasons the staff report differed from the Order.
2. Transcripts of each hearing were reviewed to identify each time ALJ Storms ruled from the bench. His hearing rulings were evaluated as described above.
3. All of his rulings on written motions were then evaluated as described above.
4. If the staff report included suggested questions to pose to Duke, those were compared to docket entries<sup>2</sup> and hearing testimony to determine whether staff questions were answered by the witnesses. If questions were not answered, a determination was made to see if there were other appropriate reasons the questions were not asked.

In addition to reviewing ALJ Storms' decisions in the case, this audit reviewed his email communications with Duke to determine if any improper ex parte communications<sup>3</sup> specifically addressing the cases at issue occurred. In addition to emails found on ALJ Storms' State email account, the Commission asked for and Duke provided emails from January 1, 2010 through September 30, 2010 from Mr. Storms to or from any Duke employee. The audit did not review emails where all parties to the case were included, as these would not be considered ex parte communications. Also, this audit did not review emails of a personal nature or emails regarding employment and does not opine on the propriety of those communications. That determination is properly within the purview of the Inspector General.

The Commission also requested Duke's investigative report on Mr. Storms as part of this audit. However, counsel for Duke stated, "Duke Energy is not producing the report from the Gibson Dunn & Crutcher law firm because it is subject to attorney-client privilege and constitutes attorney work product. It includes privileged legal conclusions and advice from an outside law firm hired for the specific purpose of conducting an investigation and providing legal advice."

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<sup>1</sup> Generally, a staff report is a document issued by technical staff to the Presiding Officers, division staff, and the Commissioners and Chairman. The report usually includes background information, case analysis, recommendations, and staff questions.

<sup>2</sup> A docket entry is issued by the Presiding Officer(s) of a case either to inform the parties of information (such as continuing a case) or requesting one of the parties file information (such as their response to a Commission question).

<sup>3</sup> For more information on ex parte communications, see the Commission's ex parte rule located at 170 IAC 1-1.5. Generally, an improper ex parte communication occurs where a Commission employee assigned to a case and an interested party communicate, directly or indirectly, regarding any issue in a case while that case is pending.

## Case Audits

The following cases are those in which former General Counsel Scott Storms was the presiding ALJ over a Duke matter. As stated above, most of the cases contain Orders issued from January 1, 2010 through September 30, 2010. This time frame was chosen because it begins well before April 6, 2010, the date the Duke position was first posted. In addition, prior Edwardsport IGCC cases dating back to 2005 were added for completeness.

When a party files a Petition with the Commission, it is assigned a five-digit number, which is known as its “Cause Number.” This number stays with the case throughout its procedural schedule. In some instances, a subdocket<sup>4</sup> may be opened. When this occurs, the new case retains the original five-digit case number, but is given a suffix (e.g., “S1”) to show that it is distinct from the original case. This is true for several of the cases listed below. Some additional terms contained in this audit may be unfamiliar to those outside the utility industry. Therefore, an acronym table is provided on Page 86. It lists the terms most commonly used throughout the report. Some of those acronyms are used in the case summaries here.

1. *Cause Number 42693 S1.* On December 9, 2009, the Commission issued an Order instructing the state’s jurisdictional electric utilities to create core demand-side management (“DSM”) programs and achieve an annual energy savings goal of two percent (2%) within ten (10) years with interim savings goals for years one (1) through nine (9). Cause No. 42693 S1 was initiated to implement the Commission’s December 9, 2009 Order, which is still pending and was reassigned to a different ALJ.
2. *Cause Number 42736 RTO 21.* In Cause No. 42359, the Commission approved Duke’s request to recover costs incurred through the company’s affiliation with the Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”).<sup>5</sup> Since that Order was approved in 2004, Duke has filed quarterly reports with the Commission updating its request for cost recovery. Before the company is allowed to pass these costs onto ratepayers, the Commission must grant final approval. This case was decided on March 31, 2010.
3. *Cause Number 43501.* On May 23, 2008, Duke filed a petition with the Commission requesting approval to deploy “Smart Grid”<sup>6</sup> and advanced metering infrastructure to its customer base. In addition to requesting permission to implement this program, Duke also requested cost recovery. Based on information presented by the utility and other parties to the case, the Commission determined there was insufficient evidence showing that consumers would benefit from this initiative. Therefore, the Commission issued an Order on November 4, 2009 denying Duke’s request. After the Commission denied the initial settlement, the utility filed additional testimony supporting its revised request. This case is still pending and has been reassigned to a different ALJ.

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<sup>4</sup> A subdocket is a separate proceeding created within an existing case to address issue(s) that have arisen and require additional time beyond the normal case scope to resolve.

<sup>5</sup> The Midwest ISO is a fully integrated, non-profit regional transmission organization that assures industry consumers of unbiased regional grid management and open access to the transmission facilities.

<sup>6</sup> According to the U.S. Department of Energy, the Smart Grid is the electric delivery network from electrical generation to end-use customer integrated with the latest advances in digital and information technology to improve electric-system reliability, security and efficiency.

4. *Cause Number 43653.* On January 7, 2009 in Cause No. 43114 IGCC 1, the Commission ordered Duke to initiate a proceeding “for consideration of and cost recovery for studies related to the storage of carbon for IGCC Project.” IGCC Project refers to the Edwardsport power plant, which was approved in Cause No. 43114 with ALJ Storms presiding. Duke complied with the Commission’s request and filed its petition on March 6, 2009. This case is still pending and has been reassigned to a different ALJ.
5. *Cause Number 43743.* On July 14, 2010, the Commission granted Duke the ability to seek cost recovery for storm damages, incurred during the January 27, 2009 ice storm, in its next rate case. The Order notes that the Commission does not reach a determination in this Cause regarding the reasonableness of the deferred amount. The Commission will consider the reasonableness and appropriateness of any actual recovery of the amount deferred in this proceeding in Duke’s next rate case in which all parties may present evidence with respect to the issue.
6. *Cause Numbers 42894, 43114, 43114 S1, 43114 IGCC 1, 43114 IGCC 2, 43114 IGCC 3, 43114 IGCC 4, 43114 IGCC 4 S1, and 43114 IGCC 5.* These are the Edwardsport cases from inception to the present, with the exception of 43114 IGCC 6, which was initiated after ALJ Storms left the employment of the Commission. In 2006, the Commission approved Duke’s request in Cause No. 42894 to study the feasibility of constructing the IGCC plant. The settlement also allowed Duke to recover costs associated with the study on a deferred basis and recovered under specific conditions.
7. In Cause Nos. 43114 and 43114 S1, the Commission, with Storms as the presiding ALJ, granted Duke a Certificate of Public Convenience and Necessity and approved a construction cost estimate of \$1.985 billion. The Commission also established subdockets to address ongoing cost recovery associated with construction work in progress, giving rise to Cause Nos. 43114 IGCC 1 through 43114 IGCC 5.

In Cause No. 43114 IGCC 1, the construction cost estimate was updated by Duke and approved by the Commission at \$2.35 billion. The company has since filed another revised construction cost estimate under Cause No. 43114 IGCC 4 S1. On September 17, 2010, the company reached a Settlement Agreement with the Office of Utility Consumer Counselor (“OUCC”), the Duke Energy Indiana Industrial Group (the “IG”), and Nucor Steel for, among other things, a soft cap of \$2.76 billion and a hard cap of \$2.975 billion on total costs. This case is still pending and has been reassigned to a different ALJ.

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## **Commission Function and Structure**

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## **Commission Function and Structure**

The Indiana Utility Regulatory Commission is an administrative “court” that hears evidence in cases filed before it and makes decisions based on the evidence presented in those cases. An advocate of neither the public nor the utilities, the Commission is required by state statute to make decisions that balance the interests of all parties to ensure the utilities provide adequate and reliable service at reasonable prices.

The Commission receives its authority from Indiana Code Title 8. Numerous court decisions further define the Commission’s function. The Commission also promulgates its “Rules and Regulations Concerning Practice and Procedure” as well as “Rules and Regulations and Standards of Service” to govern each type of utility.

In Commission proceedings, there are several individuals involved – from attorneys to accountants to engineers. While the Commissioners and Administrative Law Judges assigned to the cases are the most visible, the Commission has additional staff members who thoroughly review and analyze the evidence presented by all parties. These staff members provide their confidential technical analyses through staff reports that are presented to the Presiding Officers and circulated to the remaining Commissioners.

Commissioners are appointed and serve staggered four-year terms. No more than three of the five Commissioners may be of the same political party as the Governor. Candidates for the Commissioner position are screened by an independent body known as the Utility Regulatory Commission Nominating Committee<sup>7</sup> that is comprised of seven members, four of which are legislative appointments and three of which are gubernatorial appointments. The Nominating Committee reviews each of the candidates and then selects three qualified candidates for the Governor’s consideration. The Governor then selects one candidate for appointment or rejects all the candidates and the process starts over. Two of the four standing Commissioners were appointed and/or reappointed by a Governor of a different political party than their affiliation. With regard to final decisions or Orders, at least three Commissioners must approve them. Each Commissioner has one vote, including the Chairman.

Whereas the Commission is charged with balancing the interests of the public and the utilities, the OUCC is the only agency that is granted the authority through state statute to represent all consumers in cases before the Commission. It also has its own team of attorneys and analysts who prepare testimony and participate in legal proceedings. By participating in virtually all cases pending before the Commission, the OUCC ensures that the public interest is well represented. Intervenors who wish to appear before the Commission also have the opportunity to express their unique viewpoints and testimony.

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<sup>7</sup> See IC 8-1-1.5-1, *et seq.* for more information.

Because multiple parties participate in cases, there are checks and balances. All parties have the opportunity to file testimony and then respond to the testimony of others, which may differ from their own. Further, all parties have the opportunity to consult with experts who may refute or support case testimony and evidence. In addition, the Commission has developed numerous internal and external safeguards to ensure access to unbiased information as well as provide legal remedies for all parties so that they may defend their positions and object to Commission decisions if they so choose. Several examples of these internal and external safeguards, as they relate to the Duke cases, follow this section.

### ***Internal Safeguards***

There are multiple internal safeguards to protect the process from any undue influence in the cases from any one individual, including ALJ Storms. For example, a Commissioner was assigned to every Duke case. This Commissioner, and sometimes additional Commissioners, participated in every hearing with ALJ Storms and had the authority as the Presiding Commissioner<sup>8</sup> to dispute any of his rulings or questions.

In addition, the assigned Commissioner signed the majority of docket entries in tandem with ALJ Storms. Even if the Commissioner did not sign them, it is Commission policy only to send out a docket entry without a Commissioner's signature if it is a noncontroversial routine matter or the Commissioner is absent and the docket entry is essential to the case.

Finally, with regard to Orders, an ALJ never has the authority to approve an Order. Only the Commissioners, by majority vote, may approve it. Internally, before an Order is even circulated to all of the Commissioners for review, the Order is first reviewed by the Commissioner on the case and technical staff. In cases of the magnitude of these Duke proceedings, multiple technical staff related to the industry involved are assigned; at minimum, two technical staff are assigned to each case.

### ***External Safeguards***

In addition to internal safeguards, the parties themselves have numerous appellate remedies available to them if they believe any of the parties are being treated unfairly or with bias. First, any party can express an objection to the Presiding Officers (the ALJ and assigned Commissioner) during any part of the evidentiary hearing. In addition, the party can file a written motion in the proceeding. If the party disagrees with the Presiding Officer(s)' ruling at the hearing or through a docket entry, they can appeal to the full Commission.<sup>9</sup> If the party is still dissatisfied, they can appeal the ruling to the Indiana Court of Appeals.<sup>10</sup> Orders may be appealed to the court as well.

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<sup>8</sup> Generally, on larger and more complex Commission cases, there are at least two Presiding Officers assigned to the case, one ALJ and one Commissioner. They have equal weight in the proceeding.

<sup>9</sup> See 170 IAC 1-1.1-25.

<sup>10</sup> See IC 8-1-3-1.

In this audit of cases where former General Counsel Storms functioned as ALJ, issues were raised at the objection and motion stage of the hearings. However, no rulings were appealed to the full Commission.<sup>11</sup> On November, 19, 2007, however, the Citizens Action Coalition of Indiana, Inc. (“CAC”), Save the Valley, Inc. (“Save the Valley”), Valley Watch, Inc. (“Valley Watch”), and the Sierra Club, Inc. (“Sierra Club”) did appeal to the full Commission to reopen the record in Cause Nos. 43114 and 43114 S1 to take additional evidence. In that instance, the Commission denied the Motion, finding that it did not satisfy the criteria set forth in 170 IAC 1-1.1-22.<sup>12</sup> The appellants then challenged the Commission's grant of Duke’s petition by appealing to the Indiana Court of Appeals. The court, however, affirmed the Commission's grant of Duke's petition.<sup>13</sup> Another case was also appealed to the Indiana Court of Appeals – Cause Number 43743 was appealed by the OUCC.<sup>14</sup> No briefs were filed and therefore, the reason for the OUCC’s appeal cannot be certain. However, in the underlying case, the OUCC argued that Duke failed to present sufficient evidence in support of its requested relief and that the granting of such relief would constitute single-issue and retroactive ratemaking. Therefore, it appears the OUCC appealed on substantive, not procedural, grounds. Because the OUCC believed the Commission’s determination in its audit may materially affect the matters at issue in their appeal, they filed a Verified Motion for Stay of Appeal and Remand. On November 15, 2010, the Court of Appeals granted this motion, dismissing the appeal without prejudice and remanding the case back to the Commission.

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<sup>11</sup> While not challenging a ruling, the OUCC did file a Motion for Clarification in Cause No. 43114 IGCC 1, claiming that implicit in the testimony and exhibits is the use of project-related deferred income taxes as an offset to rate base. The OUCC believed the Order should explicitly address the matter. Duke responded that it was already stated and the OUCC’s request would be more appropriately addressed in future rate cases. The Presiding Officers denied the OUCC’s Motion, finding that the November order was clear regarding deferred income taxes. In addition, the Commission did not want to bind itself regarding IGCC project-specific deferred income taxes in future rate cases.

<sup>12</sup> See pg. 4 of the November 20, 2007 Order.

<sup>13</sup> For more information, see *Citizens Action Coal. of Ind. Inc. et al. v. PSI Energy, Inc., d/b/a Duke Energy Ind., Inc. et al.*, 984 N.E.2d 1055 (Ind. Ct. App. 2008).

<sup>14</sup> No briefs were filed and therefore, the reason for the OUCC’s appeal cannot be certain. However, in the underlying case, the OUCC argued that Duke failed to present sufficient evidence in support of its requested relief and that the granting of such relief would constitute single-issue and retroactive ratemaking. Therefore, it appears the OUCC appealed on substantive, not procedural, grounds.

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## **Summary of Audit Findings**

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## **Summary of Audit Findings**

### ***Internal Review***

To ensure ALJ Storms exerted no undue influence over each proceeding, this audit determined whether the actions of ALJ Storms comported with at least one of the following:

1. Commission statute or rule.
2. Commission policy or procedure.
3. Indiana trial or evidence rules.
4. Common and acceptable legal practice.

First, staff reports were compared to Orders. As noted above, if there were differences, transcripts were reviewed to determine if evidence was filed after the staff report that led to conclusions in the Order that differed from the staff report, and staff were asked whether there were other reasons the staff report differed from the Order. Finally, if a staff report contained questions, the audit confirmed that the questions were raised and answered either through a docket entry or hearing testimony. If not, a determination was made to see if there were other reasons the questions were not asked, such as the answer coming out later in testimony. After that, transcripts were reviewed, and every instance where ALJ Storms ruled on admitting evidence, responded to objections, or asked questions from the bench was noted. Next, rulings on motions and other docket entries were evaluated. With regard to email communications, this audit reviewed all email communications between ALJ Storms and Duke to determine if he violated the ex parte prohibitions found in 170 IAC 1-1.5.

### ***Executive Summary***

First, the Orders issued by the Commission in Duke cases where General Counsel Storms presided as ALJ were compared to the staff reports. This audit does not reveal any significant material deviation from the recommendations of staff in their reports that would indicate a bias towards Duke by ALJ Storms. The Orders appear to be responsive to staff positions, concerns and questions; Storms consistently addresses these either at the hearing or are reflected in the Orders at issue. The only potential exception can be found in Cause No. 43743 where the staff took a neutral position on the relief requested, but the Order granted the relief.

Second, the individual evidentiary rulings by ALJ Storms in the Duke cases at issue are isolated from the hearing transcripts and reviewed in this audit. The audit review of these rulings indicates that ALJ Storms' rulings are supported by sound legal reasoning consistent with the Indiana Rules of Evidence and historical practice and procedures of the IURC. Furthermore, Storms' rulings appear to be balanced and consistent among the parties. The audit does not reveal bias or a resultant unfair advantage obtained by Duke as a result of ALJ Storms' evidentiary rulings.

Third, all docket entries by ALJ Storms in the Duke cases that directly affect Duke are identified and reviewed in the audit. The entries dealing primarily with prehearing procedural matters appear to be consistent with Commission's practice and procedures, Indiana Rules of Trial Procedure, and Indiana statutes and rules. The audit does not indicate that ALJ Storms' docket entries in the cases at issue favored Duke or impaired the ability of other parties to obtain a fair and unbiased hearing.

Finally, emails were specifically reviewed to determine if inappropriate ex parte communications took place between solely ALJ Storms and Duke regarding the Duke cases at issue. Again, this review did not determine whether ethical violations may have occurred. That is within the purview of the Inspector General and not within the scope of this audit. There were only four (4) emails identified that could be linked to a particular Duke case in which Storms was the ALJ and other parties to the case were excluded. In each communication, the matter being discussed was an undisputed administrative or procedural matter that did not violate the Commission's rules on ex parte communications.

In conclusion, no evidence was found that undue influence was exerted by General Counsel Storms in his decisions while presiding as ALJ on Duke cases. As previously noted, issues were raised at the objection and motion stage of the hearings. However, no parties appealed rulings to the full Commission. Two Orders were appealed to the Indiana Court of Appeals; one was affirmed and the other has been remanded back to the Commission.

**1. Cause No. 42693 S1 (DSM)**

The audit found no anomalies in this case. No Orders were drafted or circulated by ALJ Storms in this case. No staff reports have been issued. The docket entry review showed rulings consistent with normal legal and Commission practice. Please note, the proceeding encompassed the DSM plans for all electric utilities subject to Commission jurisdiction. Therefore, some docket entries were made regarding DSM that had no effect on Duke. Docket entries regarding utilities other than Duke are noted in the audit, but a legal analysis was not conducted.

**2. Cause No. 42736 RTO 21 (Midwest ISO Adjustment)**

The audit found no anomalies in this case. The review of the Order shows that it was consistent with the technical notes from the staff report. The transcript was not reviewed in this proceeding, as ALJ Storms was absent for the hearing; another ALJ presided in his absence. Also, there were no docket entries issued.

**3. Cause No. 43501 ("Smart Grid")**

The audit found no anomalies in this case. The review of the Order shows that it was consistent with the technical notes from the staff report. The transcript and docket entry reviews showed rulings consistent with normal legal and Commission practice. The initial Order in this case was issued on November 4, 2009. This case is still pending, in consideration of a revised Smart Grid proposal (pilot). No Order has been issued for the remainder of the case.

**4. Cause No. 43653 (Alternative Regulatory Plan and Approval of Edwardsport Carbon Disposal Study Cost Recovery)**

The audit found no anomalies in this case. No Order was circulated to the Commissioners for review. Staff questions in the staff report have been addressed by the new ALJ. The transcript and docket entry reviews showed rulings consistent with normal legal and Commission practice.

**5. Cause No. 43743 (Deferred Accounting for Storm Damage)**

This audit found no anomalies in this case; however, this was the sole case in the audit where a party formally appealed the Order. The review of the Order shows that it was consistent with the technical notes from the staff report. However, the staff report did not advocate for a particular decision on the requested relief, whereas the Order granted the requested relief. The transcript and docket entry reviews showed rulings consistent with normal legal and Commission practice.

Please note, on August 13, 2010, the OUCC appealed this case to the Indiana Court of Appeals in Cause No. 93A02-1008-EX-888. In the underlying case, the OUCC argued that Duke failed to present sufficient evidence in support of its requested relief and that the granting of such relief would constitute single-issue and retroactive ratemaking. Therefore, it appears the OUCC appealed on substantive, not procedural, grounds. Because the OUCC believed the Commission's determination in its audit may materially affect the matters at issue in their appeal, they filed a Verified Motion for Stay of Appeal and Remand. On November 15, 2010, the Court of Appeals granted this motion, dismissing the appeal without prejudice and remanding the case back to the Commission.

**6. Cause No. 42894 (Recovery of Feasibility Study and Preconstruction of Edwardsport)**

The audit found no anomalies in this case. The review of the Order shows that it was consistent with the technical notes from the staff report. The transcript and docket entry reviews showed rulings consistent with normal legal and Commission practice.

**7. Cause Nos. 43114 & 43114 S1 (Certificates of Public Convenience and Necessity, Approve Costs, Recovery and Deferral of Edwardsport)**

The audit found no anomalies in this case. One Order was issued for both Cause Nos. 43114 and 43114 S1. The review of the Order shows that it was consistent with the technical notes from the staff report. The transcript and docket entry reviews showed rulings consistent with normal legal and Commission practice and the case was affirmed by the Indiana Court of Appeals.

**8. Cause No. 43114 IGCC 1 (Cost Recovery, Updated Cost Estimate, Ongoing Review Process of Edwardsport)**

The audit found no anomalies in this case. The review of the Order shows that it was consistent with the technical notes from the staff report. The transcript and docket entry reviews showed rulings consistent with normal legal and Commission practice.

**9. Cause No. 43114 IGCC 2 (Cost Recovery and Ongoing Review Process of Edwardsport)**

The audit found no anomalies in this case. The review of the Order shows that it was consistent with the technical notes from the staff report. The transcript and docket entry reviews showed rulings consistent with normal legal and Commission practice.

**10. Cause No. 43114 IGCC 3 (Cost Recovery and Ongoing Review Process of Edwardsport)**

The audit found no anomalies in this case. The review of the Order shows that it was consistent with the technical notes from the staff report. The transcript and docket entry reviews showed rulings consistent with normal legal and Commission practice.

**11. Cause Nos. 43114 IGCC 4 & 43114 IGCC 4 S1 (Cost Recovery and Ongoing Review Process of Edwardsport, Subdocket for Review of Cost Estimate)**

The audit found no anomalies in this case. The review of the Order for 43114 IGCC 4 shows that it was consistent with the technical notes from the staff report. The transcript and docket entry reviews showed rulings consistent with normal legal and Commission practice. Please note, the Order for 43114 IGCC 4 S1 has yet to be issued.

**12. Cause No. 43114 IGCC 5 (Cost Recovery and Ongoing Review Process of Edwardsport)**

ALJ Storms removed himself early in the case. He was screened off the case prior to any hearings and did not participate in drafting any Orders. The only docket entries he issued were standard ones setting out the procedural schedule and permitting one of the interested parties to intervene in the case. The audit determined that there were no anomalies or legal errors in this case.

**13. Review of Emails Between ALJ Storms and Duke**

The audit found no emails of an ex parte nature that violated Commission rules. Emails between Storms and Duke employees were reviewed where language identifying a case was found and other parties to that case were not included.<sup>15</sup> The emails reviewed included both those found on the Commission's email server and those provided to the Commission by Duke. Any emails between Storms and Duke employees were either general Commission business, emails of a personal nature, or case-related emails that conformed to the Commission's ex parte rules found at 170 IAC 1-1.5. As noted above, this review did not determine whether ethical violations may have occurred. That is within the purview of the Inspector General and not within the scope of this audit.

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<sup>15</sup> It was not necessary to review emails where all parties to the case were included, as these could not have contained ex parte communications (i.e. communications where a party is excluded).

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## **Detailed Audit**

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## Detailed Audits

### Cause No. 42693 S1 (DSM)

#### Orders & Staff Report Review

The subdocket Cause No. 42693 S1 was initiated to implement the Commission's December 9, 2009 Order in Cause No. 42693. No Orders or staff reports have been issued in this case.

#### Transcript Review

No evidentiary hearings were conducted in this case.

#### Docket Entries

Date	Nature of Docket Entry	Proper Legal Basis
07/27/10	<i>The Presiding Officers tendered to the record a letter sent to the Commission from Harrison County REMC and Jackson County REMC.</i>	
06/18/10	<i>Granting the Motion for Leave to Withdraw Individual Appearance and Appearance of Counsel for Indianapolis Power &amp; Light.</i>	
05/17/10	<i>Granting the Motion of the Indiana Municipal Power Agency for Approval of the Agency's Participation in DSM Core Programs and Request for Extension of Time to File DSM Report.</i>	
05/14/10	Regarding the compliance filing; clarifies filing requirements.	Yes. This is consistent with Commission procedure to clarify filing requirements when needed.
04/22/10	Regarding the third Report of DSM Coordination Committee and DSM Coordination Committee Response to Commission's docket entry dated March 22, 2010; approves requests for proposal ("RFPs").	Yes. This is consistent with the December 9, 2010 Order issued in Cause No. 42693 requiring submission of RFPs for Commission review.
04/16/10	Granting the DSM Coordination Committee's Motion for Protective Order.	Yes. This is consistent with 170 IAC 1-1.1-4 and Commission procedure to grant a motion for confidential treatment where the filing contains trade secrets.

03/22/10	<ul style="list-style-type: none"> <li>- Regarding the Third Party Administrator RFP, the EM&amp;V Administrator RFP, and the DSMCC Organizational Structure.</li> <li>- Motions were filed by the IG, the OUCC, and the CAC to modify the RFP to change “Motors &amp; Pumps” to “Motors, Pumps, and Drives.” The utility group objected to the modification, stating it was better suited for inclusion in a custom program offering.</li> <li>- Presiding Officers note that the RFP was not to limit, expand, or create uncertainty regarding the Phase II Order’s objectives. To clarify to potential applicants that the core programs are not limited to the items expressly listed, and preserving Commission flexibility, a subheading was to be added – “Proposed Efficiency Measures can include, but are not limited to...” In addition, the Presiding Officers made additional modifications and clarifications to the RFP for consistency, simplicity, flexibility and to require liability insurance and web interface.</li> </ul>	Yes. This is consistent with Commission practice and the December 9, 2009 Order issued in Cause No. 42693.
01/06/10	Setting an Attorneys’ Conference.	Yes. This is consistent with 170 IAC 1-1.1-15 to address procedural issues.

**Cause No. 42736 RTO 21 (Midwest ISO Adjustment)**

**Orders & Staff Report Review**

<b>Information from Staff Report</b>	<b>In Order or Proper Basis to Exclude or Change</b>
Contains graph of “net amount by quarterly filing” for the current and past RTO filings.	Yes. While the graph was not specifically in the Order, it does contain some discussion of past proceedings. Pgs. 2-3.
Indicates that proposal is in compliance with Order in Cause No. 43426.	Yes. Order approves charges in accordance with Order in Cause No. 43426. Pg. 5.

**Transcript Review**

No transcript was reviewed in this case, as ALJ Storms was absent on March 12, 2010, the day of the hearing. Another ALJ presided over the hearing in his absence.

**Docket Entries**

There were no docket entries issued in this case.

## Cause No. 43501 (“Smart Grid”)

### Orders & Staff Report Review

An initial Order in this case was issued on November 4, 2009. That Order is reviewed below. This case is still pending, in consideration of a revised Smart Grid proposal (pilot). No Order has been issued for the remainder of the case.

Information from Staff Report	In Order or Proper Basis to Exclude or Change
<p>Summarizes Smart Grid benefits outlined in the testimony, including, outage time reduction, reduction in distribution losses due to optimal power factor performance and load balancing, voltage monitoring and control, reduction in residential peak demand energy consumption through real time pricing and in-home technologies, distributed generation, environmental footprint improvements, efficiency and end use peak demand and energy savings, reduction in fuel and emission allowance costs, and remote reconnection/disconnections.</p>	<p>Yes. The Order includes Smart Grid benefits in the summary of the testimony and settlement.</p>
<p>Summarizes the technology outlined in the testimony, including intelligent (smart) meters, distribution automation, information technology components, distribution system sensors, transmitting Smart Grid data, and use of meter data. Briefly describes what some of the technology will enable, what some components of the technology consist of, how some of the technology works, and mentions meters cost \$130 per residential unit.</p>	<p>Yes. The Order includes description of Smart Grid technology in the summary of the testimony and settlement. States part of the plan is for the deployment, and timely cost recovery through a tracking mechanism, of new metering technology and distribution automation throughout the service territory at a total estimated capital cost of \$445 million. Pg. 33.</p>
<p>Discusses communications plan.</p>	<p>Yes. A communications plan was not specifically addressed in the Order because the Alternative Regulatory Plan was not accepted. Footnote 13 states, “As the Commission has rejected the Alternative Regulatory Plan presented as the central request in this proceeding, the Commission has not considered additional issues related to this request that were presented in this matter.” Pg. 36.</p>

<p>Discusses the Indiana Telecommunications Association’s (“ITA”) concerns over the potential of Duke to enter the communications/broadband business and Duke’s response.</p>	<p>Yes. The ITA’s concerns were not addressed in the Order because the Alternative Regulatory Plan was not accepted. Footnote 13 states, “As the Commission has rejected the Alternative Regulatory Plan presented as the central request in this proceeding, the Commission has not considered additional issues related to this request that were presented in this matter.” Pg. 36.</p>
<p>Provides a brief summary and analysis of the cost/benefit study, expressing concern with the benefits.</p>	<p>Yes. The Order provides, “Based on the agreement presented to us in this proceeding the Commission cannot find that the Alternative Regulatory Plan (as presented in the Settlement Agreement) will offer long term benefits to Indiana ratepayers.” Pg. 36.</p>
<p>Discusses the proposed recovery mechanisms; the formula rate (DFR) and the more traditional tracker (SGT).</p>	<p>Yes. The cost recovery mechanisms were not addressed in the Order because the Alternative Regulatory Plan was not accepted. Footnote 13 states, “As the Commission has rejected the Alternative Regulatory Plan presented as the central request in this proceeding, the Commission has not considered additional issues related to this request that were presented in this matter.” Pg. 36.</p>
<p>Discusses the meter replacement and depreciation proposals and response testimonies.</p>	<p>Yes. The issues were not addressed in the Order because the Alternative Regulatory Plan was not accepted. Footnote 13 states, “As the Commission has rejected the Alternative Regulatory Plan presented as the central request in this proceeding, the Commission has not considered additional issues related to this request that were presented in this matter.” Pg. 36.</p>
<p>Discusses the proposal for waiver to enable remote disconnection.</p>	<p>Yes. The issues were not addressed in the Order because the Alternative Regulatory Plan was not accepted. Footnote 13 states, “As the Commission has rejected the Alternative Regulatory Plan presented as the central request in this proceeding, the Commission has not considered additional issues related to this request that were presented in this matter.” Pg. 36.</p>

<p>Discusses voltage reduction, conservation, and lost revenue; describes Duke’s plan, briefly how it works, and lost revenue recovery proposals.</p>	<p>Yes. The issues were not addressed in the Order because the Alternative Regulatory Plan was not accepted. Footnote 13 states, “As the Commission has rejected the Alternative Regulatory Plan presented as the central request in this proceeding, the Commission has not considered additional issues related to this request that were presented in this matter.” Pg. 36.</p>
<p>Discusses the distributed renewable generation proposals, objectives, and specific types of technologies.</p>	<p>Yes. The issues were not addressed in the Order because the Alternative Regulatory Plan was not accepted. Footnote 13 states, “As the Commission has rejected the Alternative Regulatory Plan presented as the central request in this proceeding, the Commission has not considered additional issues related to this request that were presented in this matter.” Pg. 36.</p>
<p>Notes the lack of a detailed deployment plan; also notes that Duke committed to make quarterly operational and implementation filings.</p>	<p>Yes. The issues were not addressed in the Order because the Alternative Regulatory Plan was not accepted. Footnote 13 states, “As the Commission has rejected the Alternative Regulatory Plan presented as the central request in this proceeding, the Commission has not considered additional issues related to this request that were presented in this matter.” Pg. 36.</p>
<p>Discusses the lack of detail given on pricing programs; describes proposals and notes the lack of a specific forecast of savings that might be achieved, which is dependent on how much customers embrace these programs.</p>	<p>Yes. The Order states, “Remaining issues that could ultimately address the overall efficacy and utilization of the meters in a way that will make them “smart” are left for another day to be considered in working collaborative between the parties.” Also, “nothing else is assured under the plan, nothing more than the installation of the meters and cost recovery for the meters will be forthcoming.” Pg. 35.</p>

Comments on the possibility of federal Department of Energy (“DOE”) funding.	Yes. The Order indicates that certain aspects of record may now be stale, specifically the potential funding through the federal American Recovery and Reinvestment Act of 2009 (the “ARRA”). The Commission recognizes the receipt of stimulus funds could have a direct impact on underlying proposal and finds that the procedural schedule developed by parties should provide for Petitioner to supplement the record regarding funding received under the ARRA. Pg. 36.
Comments on the equipment and security standards for Smart Grid and progress being made in that area.	Yes. The issues were not addressed in the Order because the Alternative Regulatory Plan was not accepted. Footnote 13 states, “As the Commission has rejected the Alternative Regulatory Plan presented as the central request in this proceeding, the Commission has not considered additional issues related to this request that were presented in this matter.” Pg. 36.
Discusses concerns with the size of the Smart Grid project occurring at the same time as IGCC Project.	Yes. The Order encourages the consideration of “small scale pilot or phased-in options.” Pg. 35.
Summarizes the provisions of the Settlement Agreement. Raises concerns with the Alternative Regulatory Plan and offers preliminary staff recommendations and a range of outcomes, including denial of the Plan.	Yes. The Order finds, “The Petitioner’s proposed Alternative Regulatory Plan, as contained in the Settlement Agreement, is hereby rejected.” Pg. 37. The Order encourages the parties to continue the collaborative process outlined in the Settlement Agreement or consider smaller scale pilot or phased-in options to arrive at a fully developed alternative regulatory plan that could be considered by the Commission. Pg. 35.

**Transcript Review**

<b>Pg.</b>	<b>Nature of Issue</b>	<b>Proper Legal Basis</b>
9	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.

15	The CAC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
16	The ITA exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
17	The Kroger Co. exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
18	The IG and Wal-Mart Stores East, LP exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
20	The Wal-Mart Stores East, LP exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
21	The OUCC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
26 - 27	The ALJ questions Duke's witness where the witness is discussing the transparency of ramp-ups of the deployment. The ALJ asks how that works functionally – "I guess my concern is, in particular, for the Commission. The other parties are going to be involved in the collaboratives and so forth and have the opportunity to interact and discuss with Duke on an ongoing basis. How does the Commission even know to raise an issue? How would Duke advise them or the parties advise them or what process is in place to advise the Commission of what's going on other than just the approval that's proposed in this Cause?"	Yes. This is a reasonable question to ask. It seeks input on how the Commission stays properly informed and can provide input.
28	The witness is discussing providing information to the Commission. The ALJ questions Duke's witness – how will the information be given to the Commission?	Yes. This is a reasonable question to ask as a follow-up question clarifying how Commission will receive information.

29 - 30	ALJ question to Duke witness – references docket entry regarding settlement. “There is not a process in this Settlement Agreement that allows the Commission to say stop, is there?”	Yes. This is a reasonable question to ask. It seeks an understanding of the parties’ intent and operation of the terms of the Agreement.
33 - 34	ALJ reads questions from docket entry for Duke’s response.	Yes. This is consistent with normal Commission procedure for either counsel or ALJ to read docket entry questions to witness.
35	ALJ reads questions from docket entry for Duke’s response.	Yes. This is consistent with normal Commission procedure for either counsel or ALJ to read docket entry questions to witness.
36	ALJ question to Duke witness – where the witness is discussing that in the Settlement Agreement, all proposals would come to Commission for rulings. ALJ asks if that is in the Settlement Agreement or just understood.	Yes. This is consistent with normal Commission questioning to ask to clarify authority of Commission under the Settlement Agreement.
36	ALJ question to Duke witness after he answers above question – “Can we safely assume that if any of the parties disagreed with what you just said, that they would raise that to the Commission now?”	Yes. This is consistent with normal Commission questioning to ask to prompt rebuttal (no response from other parties).
38 - 39	ALJ reads questions from docket entry for Duke’s response.	Yes. This is consistent with normal Commission procedure for either counsel or ALJ to read docket entry questions to witness.
40 - 41	ALJ reads questions from docket entry for Duke’s response.	Yes. This is consistent with normal Commission procedure for either counsel or ALJ to read docket entry questions to witness.

42 - 43	ALJ paraphrases questions from docket entry for Duke's response.	Yes. This is consistent with normal Commission procedure for counsel or ALJ to read or paraphrase the docket entry questions.
45	ALJ question to Duke witness – if there were problems, is there a preferred way to present them to the Commission?	Yes. This is a proper question to determine requested procedure to follow for problems.
45	ALJ paraphrases questions from docket entry for Duke's response.	Yes. This is consistent with normal Commission procedure for either counsel or ALJ to read or paraphrase docket entry questions to witness.
AA6 - AA7	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
AA21	Duke's docket entry response states security initiatives apply to all contractors. The ALJ asks Duke witness to clarify their response, asking if there is a specific contract provision with Verizon.	Yes. There is no leading question or question outside the scope.
AA33 - AA34	<ul style="list-style-type: none"> <li>- CAC asks Duke's witness – "Assuming the Edwardsport Plant is completed and fully functioning...is Duke still in need of additional base load generation...?"</li> <li>- Duke objects as outside the scope of his testimony; the witness does not refer to the Edwardsport IGCC.</li> <li>- The CAC responds that the witness refers to the need for base load generation and whether renewables will match the generation the company needs. The CAC assumed Edwardsport would be installed as base load generation, based on Duke's integrated resource plan ("IRP").</li> <li>- Duke responds that the witness's testimony discusses the ability of energy storage and wind/solar to be a viable replacement for base load generation. The witness does not discuss Duke's base load generation needs or the IRP.</li> <li>- ALJ sustains the objection.</li> </ul>	Yes. Pursuant to Ind. Rules of Evidence 611(b), the scope of cross-examination should be limited to the subject matter of the direct examination and matters of witness credibility. This cross-examination question went outside the scope of the witness's direct testimony.

AA40 - AA41	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
AA42 - AA43	ALJ question to Duke witness – confirms numbering.	Yes. It confirms information.
AA43	ALJ question to Duke witness – asks how baseline is determined.	Yes. There is no leading question or a question outside the scope. It seeks to understand the information provided.
AA46	The ITA exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
AA49	Duke notes corrections to exhibit(s) to be filed. ALJ permits reflecting corrections in the record.	Yes. This is consistent with normal Commission procedural action.
AA49	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.

**Docket Entries**

<b>Date</b>	<b>Nature of Docket Entry</b>	<b>Proper Legal Basis</b>
07/23/10	Ordering Response from Duke on the following matters: <ul style="list-style-type: none"> <li>- Tariff provision regarding the critical peak rebate program.</li> <li>- Rates mapping where the testimony did not match the work papers.</li> <li>- Confirm assumed typographical error.</li> <li>- Clarify testimony regarding distinct capital investments in-service.</li> <li>- Clarify Duke’s request for relief.</li> <li>- Expound on testimony submitted regarding Duke’s security plan.</li> </ul>	Yes. This is consistent with Commission procedure and authority. It is reasonable to ask clarifying questions.
07/15/10	Regarding Confidential Information.	Yes. This is consistent with 170 IAC 1-1.1-4 to grant protection of confidential information.

07/14/10	Granting the Motion for Leave to File Supplemental Rebuttal Testimony.	Yes. This is consistent with Commission procedure and 170 IAC 1-1.1-12.
07/09/10	Requesting Referenced Information. The Petitioner indicated it would file what the Commission wanted.	Yes. This is consistent with Commission procedure and authority.
06/25/10	Granting Duke's Motion for Extension of Time.	Yes. This is consistent with Commission procedure for extension of time. 170 IAC 1-1.1-12.
04/29/10	Granting the Motion for Modification of Procedural Schedule.	Yes. This is consistent with Commission procedure to modify procedural schedule. 170 IAC 1-1.1-12.
04/27/10	Granting Duke's Motion to Substitute a Page in its Supplemental Testimony.	Yes. This is consistent with Commission procedure and authority. 170 IAC 1-1.1-12.
04/19/10	Regarding Confidential Information.	Yes. This is consistent with 170 IAC 1-1.1-4 to grant protection of confidential information.
04/06/10	Granting the Motion to Modify Procedural Schedule.	Yes. This is consistent with Commission procedure to modify procedural schedule. 170 IAC 1-1.1-12.
02/17/10	Granting the Motion to Modify Procedural Schedule.	Yes. This is consistent with Commission procedure to modify procedural schedule. 170 IAC 1-1.1-12.
01/20/10	Granting the Motion to Modify Procedural Schedule.	Yes. This is consistent with Commission procedure to modify procedural schedule. 170 IAC 1-1.1-12.

12/08/09	Regarding Procedural Schedule agreed upon by the parties.	Yes. This is consistent with Commission procedure to modify procedural schedule. 170 IAC 1-1.1-15.
11/20/09	Granting the Motion for Technical Conference.	Yes. This is consistent with Commission procedure and authority to schedule a Technical Conference. 170 IAC 1-1.1-12 and 1-1.1-15.
06/26/09	Ordering Responses to Issues by All Parties.	Yes. This is consistent with Commission procedure and authority. It seeks clarification of the evidence submitted.
06/11/09	Granting the Motion to Modify Procedural Schedule.	Yes. This is consistent with Commission procedure to modify procedural schedule. 170 IAC 1-1.1-12.
04/22/09	Granting the Motion to Modify Procedural Schedule.	Yes. This is consistent with Commission procedure to modify procedural schedule.
03/19/09	Granting Notice of Substitution of Counsel and Appearance and Motion to Withdraw Appearances of Robert L. Hartley and Carrie G. Doehrmann.	Yes. This is consistent with Commission procedure. 170 IAC 1-1.1-12.
03/16/09	Granting for Extension of Time.	Yes. This is consistent with Commission procedure for extension of time. 170 IAC 1-1.1-12.
02/03/09	Granting the Motion for Approval of Second Amended Verified Petition.	Yes. This is consistent with Commission procedure and 170 IAC 1-1.1-8 and 1-1.1-12.
01/27/09	Regarding Petitioner's Second Motion for Protection of Confidential and Proprietary Information.	Yes. This is consistent with 170 IAC 1-1.1-4 to grant protection of confidential information.

12/30/08	Granting the Motion to Modify Procedural Schedule.	Yes. This is consistent with Commission procedure to modify procedural schedule.
11/25/08	Granting the Motion for Protection of Confidential and Proprietary Information.	Yes. This is consistent with 170 IAC 1-1.1-4 to grant protection of confidential information.
09/09/08	Granting Second Motion for Extension of Time.	Yes. This is consistent with Commission procedure for extension of time. 170 IAC 1-1.1-12.
08/22/08	Granting the Motion for Extension of Time.	Yes. This is consistent with Commission procedure for extension of time to file testimony if no parties object. 170 IAC 1-1.1-12.
07/31/08	Granting the Petition to Intervene of Citizens Action Coalition of Indiana.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.
07/24/08	Granting the Motion for Admission Pro Hac Vice <sup>16</sup> of Holly Rachel Smith as Attorney for Intervenor, Wal-Mart Stores East, LP.	Yes. This is consistent with 170 IAC 1-1.1-7(c) to grant temporary admission to qualifying attorneys.
07/10/08	Granting Indiana Exchange Carrier Association, Inc. Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.
06/26/08	Granting the Kroger Co.'s Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.

<sup>16</sup> A Motion for Admission Pro Hac Vice means an attorney who is licensed in another state applies to appear before the Commission with counsel admitted in Indiana.

06/26/08	Granting the Motion for Admission Pro Hac Vice of Michael L. Kurtz, as Attorney for Intervenor and Motion for Admission Pro Hac Vice of Kurt J. Boehm, as Attorney for Intervenor.	Yes. This is consistent with 170 IAC 1-1.1-7(c) to grant temporary admission to qualifying attorneys.
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**Cause No. 43653 (Alternative Regulatory Plan and Approval of Edwardsport Carbon Disposal Study Cost Recovery)**

**Orders & Staff Report Review**

No Order was circulated to the Commissioners for review. Staff questions in the staff report have been addressed by the new ALJ and an Order will be drafted.

**Transcript Review**

<b>Pg.</b>	<b>Nature of Issue</b>	<b>Proper Legal Basis</b>
A7	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
A8	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
A90	ALJ question to Duke witness – Regarding the DOE funding, Duke presented a scenario satisfying DOE funding. What happens if Commission deviates from that? Is there “an underlying concern” that the Commission will “impact the DOE funding in some sort of negative fashion, or is the Commission free to make a decision that it believes is appropriate based on the record.”	Yes. It looks into the ability of the Commission to make decisions independent of what Duke requests.
A91	ALJ question to Duke witness – Witness testifies about receiving DOE funding. ALJ asks where Duke is in the application process and for a general update.	Yes. This was a reasonable follow-up question to determine status.
A91 - A92	ALJ question to Duke witness about whether there was an expectation of how to convey that information to the Commission.	Yes. This was a reasonable follow-up question to determine status.

B7 - B11	<ul style="list-style-type: none"> <li>- The CAC objects to the admission of confidential Duke exhibit(s) on Nov. 9<sup>th</sup> because the delivery on Nov 2<sup>nd</sup> provided insufficient time for the CAC to prepare cross-examination.</li> <li>- Duke responds that the exhibit(s) was sent within time specified for service; also no discovery was issued by the CAC.</li> <li>- The CAC specifically objects to the net present value analysis. The CAC testified about not having done a cost benefit analysis in the case-in-chief. Because it was submitted as rebuttal without ample time to do discovery, there was no time to prepare for cross-examination of that exhibit.</li> <li>- ALJ asks the CAC why this issue was not raised prior to this hearing.</li> <li>- The CAC states counsel was out of the office, and he did not realize confidential documents were going to be in there until that evening. Nothing in Prehearing Conference Order about raising objections in advance, and it “skipped his mind.”</li> <li>- ALJ rules the exhibit(s) are admitted. There were provisions in Prehearing Conference Order contemplating objections being made, and there were no objections.<sup>17</sup> Discovery was not submitted and did not result in a compressed time frame or the inability to respond.</li> </ul>	<p>Yes. There is no evidentiary basis to object to the admission of this evidence. The 10/9/09 docket entry modified the procedural schedule to make Duke’s rebuttal filing date 10/30/09 (Friday), the date Duke filed the evidence. Duke then hand-delivered the confidential material to counsel on the following Monday, 11/2/09. The hearing was held on November 9, 2009. The CAC did not object to the motion to modify the procedural schedule.</p> <p>The proper remedy if counsel felt he lacked sufficient time to prepare for cross-examination was to seek a continuance of the hearing or ask to modify the order of witnesses to allow him additional time to prepare. Therefore, the objection was properly overruled.</p>
B61	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
B66 - B67	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.

<sup>17</sup> Finding Paragraph 7 of the Prehearing Conference Order states, “Discovery is available for all parties and shall be conducted on an informal basis. Any response or objection to a discovery request shall be made within ten (10) calendar days of the receipt of such request. Following the submission of rebuttal testimony, discovery shall be responded to within five (5) calendar days.”

B70	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
B83	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
B85 - B86	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
B134 - B135	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
B136 - B137	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
B159	<ul style="list-style-type: none"> <li>- On B-143, the witness is asked about incremental costs on cross-examination. The witness states that the only incremental cost that has been identified to her has been the possibility of Davis Bacon. On redirect, Duke counsel asks, "If, say, the DOE requires a consultant to be hired for NEPA reviews...and they require the company to pay for that, would that be a type of incremental cost?"</li> <li>- The IG objects to this question as leading.</li> <li>- Duke counsel states she was "just trying to provide another example for her consideration."</li> <li>- The ALJ overrules the objection.</li> </ul>	Yes. This is not a leading question, but rather a hypothetical question posed to an expert witness. The question does not attempt to elicit a factual response, but the witness's opinion as to whether a particular type of expense would be considered an incremental cost.
B161	The OUCC requests they stipulate "one minor number" they can change on the record (rather than file a corrected exhibit).	Yes. No objection to stipulation by any party to the proceeding.
B161 - B162	The OUCC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.

B165 - B166	ALJ explains there was an off-the-record discussion regarding a vehicle to get information on the Clean Coal Power Initiative Round Three filing submitted to the DOE. The parties reached an agreement to allow a late-filed exhibit(s) for that information and an opportunity for the intervenors and the OUCC to respond to the filing and Duke to file a document in reply. "Does that sound fair so far? Have I missed anything?"	Yes. There was no objection to admission by any party to the proceeding and it is consistent with 170 IAC 1-1.1-18.
B167 - B168	ALJ asks again if any parties have concerns about the agreement.	Yes. No objections are raised.

### **Docket Entries**

<b>Date</b>	<b>Nature of Docket Entry</b>	<b>Proper Legal Basis</b>
02/15/10	Regarding ex parte communications; docket entry noting that an ex parte file was created for inspection by the parties and takes administrative notice of the file.	Yes. This is a reasonable way to store and access information. This is consistent with 170 IAC 1-1.5-6 requiring disclosure of ex parte contacts.
01/22/10	The Presiding Officers tendered to the record a communication from Kenneth L. Pierpont.	Yes. This is consistent with Commission rule 170 IAC 1-1.5-6 and Commission practice to publish anything that could reasonably be construed as ex parte communications.
01/14/10	The Presiding Officers tendered to the record the communications of Sandy Eck and Carol Collins.	Yes. This is consistent with Commission rule 170 IAC 1-1.5-6 and Commission practice to publish anything that could reasonably be construed as ex parte communications.
12/18/09	The Presiding Officers tendered to the record communications of Ellen Salmon and Danielle Nolan.	Yes. This is consistent with Commission rule 170 IAC 1-1.5-6 and Commission practice to publish anything that could reasonably be construed as ex parte communications.

12/16/09	The Presiding Officers tendered to the record the communication of Nancy Marsh.	Yes. This is consistent with Commission rule 170 IAC 1-1.5-6 and Commission practice to publish anything that could reasonably be construed as ex parte communications.
10/09/09	Granting OUCC's second Motion to Modify the Procedural Schedule.	Yes. This is consistent with Commission procedure to modify the schedule if no parties object. 170 IAC 1-1.1-12.
10/01/09	Granting the IG's Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.
09/03/09	Granting the OUCC's Motion to Modify the Procedural Schedule.	Yes. This is consistent with Commission procedure to modify the schedule if no parties object. 170 IAC 1-1.1-12.
08/27/09	Granting Nucor Steel and the CAC's Petitions to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.
08/26/09	Regarding Agenda for Technical Conference; Granting the Motion for Technical Conference; the Presiding Officers approved Duke's Technical Conference agenda, including project overview and information on sequestration.	Yes. Consistent with Commission procedure, 170 IAC 1-1.1-12 and 1-1.1-15, the agenda items are relevant to the case.
07/31/09	Granting Duke's Motion for Technical Conference to address Duke's carbon management proposal, including its site assessment and characterization plan.	Yes. Commission practice to approve Technical Conferences where the subject matter is confusing, new, or overly technical. 170 IAC 1-1.1-12 and 1-1.1-15.

07/09/09	Granting Duke's Motion for Protection of Confidential and Proprietary Information.	Yes. This is consistent with 170 IAC 1-1.1-4 and Commission procedure to grant a motion for confidential treatment where the filing contains trade secrets.
04/13/09	Granting the Indiana Wildlife Federation ("IWF") and Clean Air Task Force's ("CATF") Joint Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.

## **Cause No. 43743 (Deferred Accounting for Storm Damage)**

A point of clarification is in order with regard to this case. It appears to be a case authorizing Duke to collect storm damage costs from ratepayers. However, in actuality, this case simply gave Duke the ability to raise this issue in their next rate case. If that occurs, the Commission will only then consider allowing those costs to be included in rates.

### **Orders & Staff Report Review**

Please note, on August 13, 2010, the OUCC appealed this case to the Indiana Court of Appeals in Cause No. 93A02-1008-EX-888. As set forth in the OUCC's proposed order in the underlying case, the OUCC opposed the relief requested by Duke on the grounds that Duke failed to present sufficient evidence in support of its requested relief and assessed that the granting of such relief would constitute single-issue and retroactive ratemaking. Although briefs have not been filed, it appears likely that the OUCC's appeal is based on substantive, rather than procedural, issues with the Commission's Order in this case.

On October 14, 2010, the Commission announced its intent to undertake this audit. Because the OUCC believed the Commission's determination in the audit may materially affect the matters at issue in their appeal, they filed a Verified Motion for Stay of Appeal and Remand. On November 15, 2010, the Court of Appeals granted this Motion, dismissing the appeal without prejudice and remanding the appeal back to the Commission.

<b>Information from Staff Report</b>	<b>In Order or Proper Basis to Exclude or Change</b>
Contains a table which summarizes some of the effects (duration, affected customers, field resources, employees, costs) of the ice and wind storms.	Yes. This table is contained in the Order, with minor rewording (but the same numbers). Pg. 16.
Briefly summarizes the cases mentioned by Duke which went before the Ohio and Kentucky State Commissions regarding requests to defer costs from Hurricane Ike. Briefly states what was requested in each case, and what the corresponding Commission's response was.	Yes. In summarizing Duke's testimony, the Order mentions the Ohio and Kentucky requests for special ratemaking treatment associated with the wind storm. Pgs. 3 and 10.
Contains a summary of the Order in Cause No. 39195 and the basis given for the decision in that Order.	Yes. The Order includes a reference to Cause No. 39195 contained in the OUCC's testimony. Pg. 8. It is also specifically addressed by the Commission in its analysis and conclusion. Pgs. 12-14, 16.

<p>Comments that the circumstances surrounding the 2009 ice storm in this case seem similar to those in Cause No. 39195, except that in the latter case, the Petitioner was earning more than it was allowed and was therefore crediting customers.</p>	<p>Yes. The Order states, “[W]hile our decision in the 1992 Storm Case may guide us generally in our consideration of the issues presented in this matter, it need not predict the outcome if the facts in this proceeding merit an exception to the general prohibition against retroactive ratemaking in a manner consistent with Narragansett.” Pgs. 13-14. The Order distinguishes the situation in Cause No. 39195 by stating, “Unlike the 1992 Storm case, the request in the present proceeding is the product of the overall expenses from the two most damaging storms in a decade occurring within a four-month period.”</p>
<p>Raises concern that Duke failed to provide sufficient evidence demonstrating this specific storm was “extraordinary.” Also notes that Duke did not directly address the Cause No. 39195 Order and how it relates to this proceeding in its testimony. Raises concerns that an argument could be made that if the Commission allows rates to increase due to this storm that we consider refunding ratepayers for years in which storm damage was less than the corresponding amount embedded in rates. Also, allowing recovery for years in which storm damage is high may have the effect of lowering Duke’s business risk, which arguably should result in a lower allowed return.</p>	<p>Yes. The Order mentions topics of staff concern in various places in the testimony summary provided in the Order. The Commission findings section also addresses these topics. Examples include: “The chance of a loss or profit from operations is one of the risks a business enterprise must take. This requires the utility to bear losses and allows the utility to reap gains depending upon its managerial efficiency and how it weathers economic uncertainties after rates are fixed.” Pg. 12; “Single issue ratemaking is disfavored because, between general base rate filings, there are many revenues and expenses that can fluctuate and change.” Pg. 12.</p>

Notes that taken collectively, storm damage cost for 2008 and 2009 was indeed high – in 2008 Duke incurred \$26.2 million in storm damages and in 2009 (up until July) it has incurred \$16 million in storm cost, for a combined total of \$42.2 million. Notes that according to Duke’s Exhibit B-3, a select historical major storm summary dating back to 2001, the collective total cost for 2001 through 2007 was only \$15.9 million. However, the exhibit also shows no major storms in 2002, 2003, 2005, and 2007. Recommends that if the Commission decides to grant Duke’s request, it do so in relation to the collective storm damages incurred by Duke for 2008 and 2009 combined, instead of basing such a decision on just the ice storm being labeled extraordinary. If only considering the ice storm in relation to Duke’s request, staff would recommend the request be denied; however, the two most damaging storms in a decade occurring within four months of each other borders on being labeled “extraordinary.”

Order goes beyond the staff report. Where the staff report is neutral, the Order states, “The testimony presented in this proceeding demonstrates that although the Ice Storm, by itself, was not the worst storm damage ever encountered by the Company, the unprecedented occurrence of the Wind Storm and Ice Storm within a four month period at a collective cost of \$32 million makes this case unique. Although the Company has limited its request in this matter to recovery of the costs related to the Ice Storm, reviewing the overall financial impact caused by both storms is relevant to our consideration of the issues in this matter.” (pg. 14). It also states, “In considering the request in this matter we find the testimony persuasive that the unprecedented magnitude and proximity in time between the two storm events created an extraordinary situation,” and that Petitioner’s approach, “recognizes the substantial cost and severity of both storms while attempting to strike a reasonable balance between the utility’s shareholders and customers.” Pg. 16. The staff report notes that “if” the Commission grants the request, the staff recommends tying it to collective storm damages. However, the staff report is silent on whether the requested relief should be granted. The Order actually provides that Duke may seek recovery of the damages in their next rate case.

<p>Notes according to exhibits supplied by Duke’s witness Douglas, using data from Duke’s FAC 82, Duke’s total major storm restoration expenses for the 12 months ended August 31, 2009 was \$36.2 million. In considering whether the requested relief is warranted due to extraordinary circumstances and the risk Duke should have to bear, suggests considering the following (while realizing Duke is not asking for the full \$36.2 million expense; it is asking to defer \$11.6 million): the amount of storm damage expense contained in the authorized non-fuel expense compared to the actual 12 months ended August 2009 amount of storm expense; the amount of the variance between authorized and actual non-fuel expense for the 12 months ended August 31, 2009 due to the actual and authorized level of storm expense; and the effect the amount of storm expense above what is authorized has on the authorized net operating income and rate of return, holding all else equal.</p>	<p>Yes. In regard to the financial impact, in addition to what is contained in the testimonial summaries, the Order provides that Duke is unlikely to have overearnings in the future (pursuant to fuel adjustment cost tests, see Pgs. 14-15). The Order states, “Petitioner has demonstrated the gravity of the financial event involved and its impact upon the utility.” Pg. 15. It indicates, “While the total expense associated with both storm events is more than \$32 million, Duke Energy Indiana’s request is for approval to defer \$11.6 million in retail jurisdictional incremental operating expenses resulting from the Ice Storm.” Pg. 16. The Order also states that Duke’s approach recognizes the “substantial” cost. Pg. 16.</p>
<p>Suggests a question for actual incurred storm damage expense for each year dating back at least ten years, and the corresponding amount embedded in base rates for such expense.</p>	<p>Yes. The Commission already has information concerning the amount embedded in base rates.</p>

**Transcript Review**

<b>Pg.</b>	<b>Nature of Issue</b>	<b>Proper Legal Basis</b>
A3	ALJ sets the hearing date.	Yes. ALJ has the authority to choose date. In addition, the parties agreed to the date. 170 IAC 1-1.1-15.
B3 - B4	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
B7	The OUCC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.

**Docket Entries**

<b>Date</b>	<b>Nature of Docket Entry</b>	<b>Proper Legal Basis</b>
11/22/10	Regarding the Order from the Court of Appeals of Indiana; notifies parties of the Order.	Yes. The Order from the Court of Appeals required the Commission to file a copy in the record.
05/24/10	Minutes of the executive session held on May 20, 2010; notifies parties of the subject matters and attendees of the executive session.	Yes. This appears to meet the requirements of IC 8-1-1-5(f) and 5-14-1.5-6.1.
05/21/10	Minutes of the executive session held on May 11, 2010; notifies parties of the subject matters and attendees of the executive session.	Yes. This appears to meet the requirements of IC 8-1-1-5(f) and 5-14-1.5-6.1.

**Cause No. 42894 (Recovery of Feasibility Study and Preconstruction of Edwardsport)**

**Orders & Staff Report Review**

<b>Information from Staff Report</b>	<b>In Order or Proper Basis to Exclude or Change</b>
Indicates that the IGCC Study seems to be a reasonable and logical preliminary step given the limited commercial operation of IGCC facilities; it will allow for reliable cost data.	Yes. The Order mentions other generation options may have provided more cost certainty. Pg. 8.
Indicates that settlement appears to be fair with regard to the allocation of costs under a variety of possible outcomes.	Yes. The Order states that the Settlement is just, reasonable, and in the public interest, and is therefore approved. Pg. 8.
Notes the CAC's position based on its public policy position that more should be invested in energy efficiency and renewables regardless of the costs. Notes that the CAC offers no evidence that this could meet the growing energy requirements of Duke and Southern Indiana Gas & Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren").	Yes. The Order states that the CAC's opposition seems based primarily on a fundamental disagreement regarding the scope and direction reflected in the IRPs, which can be addressed in any subsequent certificate of public convenience and necessity proceeding. Pg. 8.

**Transcript Review**

<b>Pg.</b>	<b>Nature of Issue</b>	<b>Proper Legal Basis</b>
4 - 6	The Duke exhibit(s) were admitted.	Yes. The parties stipulated to admission.
10	The CAC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
13	The OUCC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.

42 - 43	<ul style="list-style-type: none"> <li>- Duke objects to the IG's question to the Duke witness. The witness mentions a must-run unit. The IG then asks about the Midwest ISO's process for must-run units.</li> <li>- Duke objects as outside the scope of direct and the subject of another proceeding.</li> <li>- The IG responds that it relates to whether there are better options with respect to the need to build a plant.</li> <li>- The ALJ overrules the objection.</li> </ul>	Yes. It is reasonable to permit a question about other options when the proceeding is about the necessity of building a new plant.
73	<ul style="list-style-type: none"> <li>- Vectren objects to the IG's question to the Vectren witness – The IG asks if the witness would be willing to commit that if they were authorized to charge ratepayers under the Settlement Agreement, they would agree not to seek any additional return under the statute.</li> <li>- Vectren objects that the question is outside the scope of the proceeding.</li> <li>- The ALJ sustains the objection.</li> </ul>	Yes. A proceeding to determine feasibility costs normally would not limit the utility from seeking additional statutorily authorized returns.
101	<ul style="list-style-type: none"> <li>- Duke objects to the IG's question to Duke's witness – the justification the company is giving is that they did not have a representative amount in the last rate case so Duke should be allowed to recover more now, correct?</li> <li>- Duke objects that the witness testified he is not familiar with ratemaking.</li> <li>- The IG responded that he specifically reference the \$1.5 million in his testimony.</li> <li>- The ALJ overrules the objection and allows the witness to answer if he is able.</li> </ul>	Yes. It is reasonable for the ALJ to permit the witness to answer to the extent he can where his prior testimony indicates he may be able to answer.
107	The CAC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
109	The CAC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.

116	<ul style="list-style-type: none"> <li>- Duke objects to the CAC’s question to Duke’s witness as calling for a legal conclusion.</li> <li>- The CAC responds that the witness is an expert and would be able either to give the legal conclusion or at least be aware of the risks.</li> <li>- The ALJ overrules the objection.</li> </ul>	Yes. This is a proper question for an expert witness.
120	<ul style="list-style-type: none"> <li>- The OUCC objects to the CAC’s question to the OUCC’s witness – does the OUCC support ratepayer funding of studying energy efficiency and conservation?</li> <li>- The OUCC objects that this is a policy question and she is not the proper witness to answer that question.</li> <li>- The ALJ sustains the objection.</li> </ul>	Yes. It is not appropriate to pose a policy question to a non-policy maker.
129	<ul style="list-style-type: none"> <li>- The OUCC objects to the IG’s question to the OUCC witness – is it your understanding that under Indiana law, normally a utility would only recover costs that are being approved by your office in the Settlement Agreement as in the public interest if they came in under another statute and go the Commission to approve the project by issuance of a certificate of public convenience and necessity?</li> <li>- The OUCC objects to the question as calling for a legal conclusion.</li> <li>- The ALJ overrules the objection.</li> </ul>	Yes. It is proper to ask a question that may call for a legal conclusion where the witness should, by the nature of her work, know the answer. Here, she works for the OUCC and is asked a question about the legality of an OUCC Settlement Agreement.
131 - 132	<ul style="list-style-type: none"> <li>- The OUCC objects to the IG’s question to the OUCC witness asking if ratepayers should fund studies on wind, solar, and various types of projects.</li> <li>- The OUCC objects as outside the scope of the proceeding.</li> <li>- The ALJ sustains the objection.</li> </ul>	Yes. The question is outside the scope of the proceeding about a limited type of IGCC Projects.
132	<ul style="list-style-type: none"> <li>- The OUCC objects to the IG’s question to the OUCC witness asking that in the instance where this rate study shows the project is not beneficial, if ratepayers should fund an additional study later?</li> <li>- The OUCC objects as outside the scope of the proceeding.</li> <li>- The ALJ sustains the objection.</li> </ul>	Yes. The question is outside the scope of the proceeding as they are talking about a possible next study in a new proceeding.

136 - 137	<ul style="list-style-type: none"> <li>- The OUCC objects to the IG's question to the OUCC witness asking a hypothetical question regarding a provision of the Agreement.</li> <li>- The OUCC objects as calling for a legal conclusion.</li> <li>- The IG responds the witness supports the Agreement and testified regarding the clause.</li> <li>- The ALJ sustains the objection as a hypothetical that goes beyond what is in the clause.</li> </ul>	Yes. While the witness may testify about the language of the Agreement, as a non-attorney, she cannot be expected to answer legal hypotheticals on the Agreement language.
142 - 143	<ul style="list-style-type: none"> <li>- The OUCC objects to the IG's statement to the OUCC witness asking about prior testimony about employee costs.</li> <li>- The OUCC objects that there is no foundation that the witness would have independent knowledge of it.</li> <li>- The ALJ overrules the objection, noting he is unsure if counsel posed a question yet. He state that the witness can answer to the extent she knows.</li> </ul>	Yes. No question was posed to the witness.
146	<ul style="list-style-type: none"> <li>- The IG objects to the OUCC's question to the OUCC witness asking whether shareholders paying 50% of the front-end engineering and design study, based on her opinion and testimony, gives Duke incentives to keep costs down.</li> <li>- The IG objects as misstating her testimony and the Settlement Agreement.</li> <li>- The OUCC disagrees.</li> <li>- The ALJ overrules the objection.</li> </ul>	Yes. The OUCC is not restating her testimony or the Agreement, but simply asking a question.

**Docket Entries**

<b>Date</b>	<b>Nature of Docket Entry</b>	<b>Proper Legal Basis</b>
04/13/06	Granting the CAC Motion for Extension of Time of 1 day to file responsive testimony.	Yes. This is consistent with Commission procedure to grant an extension if no parties object.
03/29/06	Granting the CAC and Indiana Industrial Customers' Joint Motion to Modify Procedural Schedule.	Yes. This is consistent with Commission procedure to modify the schedule if no parties object. 170 IAC 1-1.1-12.

03/27/06	Granting the CAC and Indiana Industrial Customers' Joint Motion to Modify Procedural Schedule where the OUCC and Duke were in discussions that may result in resolution of the issues between them. Movants requested an extension to file response testimony.	Yes. It is necessary to provide sufficient response time for all parties. 170 IAC 1-1.1-12.
02/07/06	Granting the OUCC Motion to Modify Procedural Schedule to allow time for possible settlement.	Yes. This is consistent with Commission procedure to permit time for settlement. 170 IAC 1-1.1-12.
12/27/05	Granting the Motion for Leave to Withdraw the Appearance of Counsel for Duke because he is no longer counsel for them.	Yes. It is normal legal practice to permit withdraw where counsel no longer represents the party.
12/20/05	Granting the IG's Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.
11/03/05	Granting PSI Energy's unopposed Motion for Extension of Procedural Schedule.	Yes. This is consistent with Commission procedure to modify the schedule if no parties object. 170 IAC 1-1.1-12.

**Cause No. 43114 & 43114 S1 (Certificates of Public Convenience and Necessity, Approve Costs, Recovery and Deferral of Edwardsport)**

**Orders & Staff Report Review**

Please note that one Order was issued for both Cause Nos. 43114 and 43114 S1. On November, 19, 2007, the CAC, Save the Valley, Valley Watch, and the Sierra Club appealed to the full Commission to reopen the record in Cause Nos. 43114 and 43114 S1 to take additional evidence. In that instance, the Commission denied the Motion, finding that it did not satisfy the criteria set forth in the posthearing relief rule, 170 IAC 1-1.1-22. The appellants then challenged the Commission's grant of Duke's petition by appealing to the Indiana Court of Appeals. The court, however, affirmed the Commission's grant of Duke's petition.<sup>18</sup>

<b>Information from Staff Report</b>	<b>In Order or Proper Basis to Exclude or Change</b>
Addresses Petitioner's proposed 150 basis point adder to its return on equity. Discusses Cause No. 42718, in which the utility did not seek a revenue increase as a result of the adder, but an alternative was sought which increased the authorized NOI for earnings test purposes by an equivalent adder amount. Suggests a question on whether alternative proposals were considered.	Yes. The Order cites from the 42359 Order, which stated that trackers reduce risk and therefore must be considered in determining cost of equity. It also recognizes that the timely cost recovery being granted provides a significant incentive which enhances the regulatory environment and is attractive to credit rating agencies. Since shareholder risk has already been reduced or eliminated, the Order finds that it is not appropriate or necessary to approve an enhanced return on equity in this case. Pg. 60. The question posed by staff is asked during the hearing. Transcript, Pgs. D85-D86.
Suggests a question concerning how many years into the planning period before IGCC becomes the lowest cost.	Yes. The issue was generally addressed at the hearing. Transcript, Pgs. K76-77, H38.
Suggests question asking if Duke considered oxy-fuel adaption in evaluating carbon constrained operating scenarios. As explained by staff, the purpose in asking this was to explore if other options besides IGCC were considered, such as oxy-fuel.	Yes. It was not necessary to ask this question, as the answer came out in testimony. Witness Moreland's prefiled testimony discusses why IGCC is preferable to pulverized coal and what other energy supplies were considered (Prefiled testimony, Pgs. 13, 16-19) and Witness Jenner discusses energy supplies considered (Prefiled testimony, Pgs. 10-16).

<sup>18</sup> For more information, see *Citizens Action Coal. of Ind. Inc. et al. v. PSI Energy, Inc., d/b/a Duke Energy Ind., Inc. et al.*, 984 N.E.2d 1055 (Ind. Ct. App. 2008).

In response to a Commissioner inquiry to staff, contains reference to existing testimony identifying where the witness briefly mentioned the nature of construction materials.	Yes. The Order notes Mr. Roebel stated that Bechtel performed take offs which produce more accurate estimates of quantities that will be needed and obtained on current pricing for 90% of equipment and quantities. Pg. 35.
Suggests asking if Duke is willing to supply the Electric Power Research Institute Technical Assessment Guide and other Electric Power Research Institute reports utilized for screening analysis in conjunction with the IRP.	Yes. Staff question is asked at the hearing. Transcript, Pg. E139-E140.
Suggested questions concerning Duke's direct case include: estimated capacity and efficiency penalties associated with CO2 removal; and need for Midwest utility to build new capacity now.	Yes. The issues were addressed on cross-examination of the OUCC witness Smith, who agreed it made sense for the Company to further study carbon capture so as to fully understand the impacts to the plant (Pg. 44) and in the cross-answering testimony of the IG's witness Phillips indicating the current uncertainty of the economic impact of adding carbon capture and sequestration to the plant makes it impossible to determine if CCS would be an economic means to meet needs. Pg. 45. The issue of penalties (Transcript, Pg. E123) and need (Transcript, Pgs. D22-D23, D33-D34, D43-D44, D74, and D 79) were addressed at the hearing as well.
Suggests questions concerning Duke's analysis of alternatives to IGCC plant.	Yes. The Order sets forth evidence Duke adequately considered reasonable alternatives. Pgs. 21-22. In regard to the IRP process, Duke considered a wide range of alternatives using established methodologies and a reasonable approach. Duke adequately considered alternative options to meet capacity needs. Pg. 30.

### **Transcript Review**

<b>Pg.</b>	<b>Nature of Issue</b>	<b>Proper Legal Basis</b>
D9	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.

D55	The CAC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
E4	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
E73	The CAC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
E75	The CAC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
E107	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
F5	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
F76	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
G2	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
G3	ALJ admits counsel for Duke, pro hac vice.	Yes. This is consistent with 170 IAC 1-1.1-7(c) to grant temporary admission to qualifying attorneys.
G100	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.

H3	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
H22	The Duke witness states he does not know whether the demolition cost is included in the estimated cost of the Edwardsport IGCC Project. ALJ asks him who would know the answer to that question.	Yes. This could help elicit useful testimony.
H25	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
H26	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
H47	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
H55	The Duke exhibit(s) were admitted.	Yes. The parties stipulated to admission.
H59	Indiana Coal Council exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
H87	The CATF and IWF exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
I3	The CAC exhibit(s) were admitted.	Yes. The parties stipulated to admission.
I9	The CAC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
I27	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.

I33 - I34	<ul style="list-style-type: none"> <li>- The IG objected to admission of the Duke exhibit(s) based on relevancy of admitting an engrossed bill that was not passed by the Legislature.</li> <li>- Duke responded that the witness and other witnesses have testified that there is a substantial amount of wind resources available outside Indiana; the bill's relevance is that in this legislative session, a bill introduced in Indiana would require a renewable portfolio; many of those resources would not count towards Duke's requirements under the bill.</li> <li>- ALJ asked the CAC and others if there were any further objections. The CAC said no.</li> <li>- ALJ admits exhibit(s) over objections, stating, "I think it's more appropriate to go to the weight of the evidence as opposed to the admissibility of the document itself."</li> </ul>	<p>Yes. A judge has wide discretion to rule on the relevance of evidence. This line of questioning involves cross-examination of statements made in the CAC witness's direct testimony regarding the ability to substitute wind power for the additional capacity of the Edwardsport Plant. The IG's counsel did not object to the direct testimony. The offering of the engrossed bill regarding the amount of credit to be extended to an out-of-state wind power source for the purposes of a renewable energy portfolio calculation is tangential to the issues in the case (the study of carbon storage at IGCC plant); however, the evidence is not so irrelevant as to make its admission an abuse of discretion. In addition, the admission of the evidence would not have materially aided Duke's case.</p>
I47	The OUCC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.

I51 - I52	<ul style="list-style-type: none"> <li>- The OUCC objected to the question posed by the CAC based on the fact that it violates the deliberative process of agencies and the executive branches, and it is not relevant.</li> <li>- The CAC responded that the OUCC has represented that it represents the public, so deliberative privilege does not apply.</li> <li>- ALJ sustained the OUCC's objection.</li> </ul>	<p>Yes. Under the government deliberative process privilege, state governments are entitled to preserve the confidences of their decision makers in the sphere in which their authority is retained under the Constitution. <i>Gov. Suppliers Consol. Srvs. Inc. v. Bayh</i>, 133 F.R.D. 531 (U.S. Dist 1990).</p>
I75	<p>ALJ grants the OUCC's Motion for Leave to file late-filed confidential testimony.</p>	<p>Yes. There was no objection to admission by any party to the proceeding, and it is consistent with 170 IAC 1-1.1-18.</p>
J6 - J7	<ul style="list-style-type: none"> <li>- The IG objects to Duke's question – it “is not clear to me how this is cross-examination of [the witness's] testimony. She proposes something specific going forwards for the Edwardsport Plant, and I just – I don't know how what came out of the last rate Order and what's existing relates as far as cross-examination as opposed to asking Ms. Soller what it is she's proposing and how that might differ.”</li> <li>- ALJ overrules the objection, but tells counsel for Duke to “get to the point.”</li> </ul>	<p>Yes. That was reasonable where the purpose of the objection is not clear.</p>
J7 - J9	<ul style="list-style-type: none"> <li>- The IG objects to cross-examination question to the witness regarding Duke's fuel clause proceedings where it was not raised in direct testimony.</li> <li>- Duke responds that the witness's testimony included an off-system sales sharing mechanism; it is fair to review how the mechanism works.</li> <li>- ALJ overrules the objection.</li> </ul>	<p>Yes. Questions on cross can include subjects raised in direct testimony.</p>
J11 - J12	<p>The OUCC exhibit(s) were admitted.</p>	<p>Yes. There was no objection to admission by any party to the proceeding.</p>

J15 - J16	The OUCC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
J26 - J27	<ul style="list-style-type: none"> <li>- The OUCC objects to the CAC's question to the OUCC's witness as speculative – If you had continued to work at Vectren, would you have been a Vectren witness in this proceeding?</li> <li>- The CAC responds that it may be speculation if the witness has no information, but Vectren may have discussed with her whether she would be a witness or not.</li> <li>- ALJ sustains the objection.</li> </ul>	Yes. It is common legal practice to sustain objections to questions where the answer is speculative in nature.
J31 - J32	<ul style="list-style-type: none"> <li>- The OUCC objects to the CAC's question to the OUCC's witness as calling for a legal conclusion – Can you tell me legal liabilities are associated with storing CO<sub>2</sub> underground?</li> <li>- The CAC counsel responds that he will rephrase the question.</li> <li>- ALJ sustains the objection.</li> </ul>	Yes. It is common legal practice that unless the witness is functioning as an attorney or legal expert (not the case here), he or she cannot provide a legal conclusion.
J32	<ul style="list-style-type: none"> <li>- The OUCC again objects – Can you tell me what liabilities a company would face with respect to storing CO<sub>2</sub> underground?</li> <li>- The CAC responds that liability can be discussed by insurance people; it can be an economic or market liability. There are all sorts of liabilities.</li> <li>- ALJ sustains the objection.</li> </ul>	Yes. It is common legal practice that unless the witness is functioning as an attorney or legal expert (not the case here), he or she cannot provide a legal conclusion. It was reasonable for the ALJ to consider that asking about liabilities constituted asking for a legal conclusion.
J32 - J33	<ul style="list-style-type: none"> <li>- The OUCC again objects – Are you aware of any laws or regulations in place addressing the legal liabilities of carbon capture and sequestration?</li> <li>- ALJ overrules the objection and allows the witness to answer “to the extent that she knows.”</li> </ul>	Yes. It is reasonable to let her respond to the extent she has knowledge where the question is not asking for a legal conclusion, but simply awareness of the law.
J42	The OUCC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.

J46	<ul style="list-style-type: none"> <li>- The OUCC objects to Duke’s question to the OUCC witness calling for a legal conclusion – Would you agree with me that one thing that does make asking for an IGCC plant versus coal-fired generation different is that the Legislature has passed a statute that specifically encourages coal gasification?</li> <li>- Duke responds that it does not ask for a legal conclusion; the witness mentioned the fact the statute existed, so he is familiar with it.</li> <li>- ALJ overrules objection.</li> </ul>	Yes. It is reasonable to let her respond to the extent she has knowledge where the question is not asking for a legal conclusion.
J52 - J53	<ul style="list-style-type: none"> <li>- The OUCC objects to Duke’s question to the OUCC witness as irrelevant. Duke asked whether a document refreshed the witness’s recollection “as to whether the 8 percent fixed ROE in the settlements that we were discussing before in the Orders approved by the Commission still remains?” Irrelevant because that was Vectren, and the settlement document Duke showed the witness deals with net operating income, not return on equity.</li> <li>- ALJ asks if the settlement document was acted on by the Commission. The OUCC confirms it is pending, not final.</li> <li>- ALJ sustains the objection.</li> </ul>	Yes. It is reasonable to consider a settlement document as irrelevant when it is for another utility and has not been formally recognized by the Commission.
J60 - J61	The CATF and the IWF exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
J62	The CAC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
J67	The CATF and the IWF exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
J102 - J103	<ul style="list-style-type: none"> <li>- Duke objects to the CAC’s question to the CATF/IWF’s witness as only a partial characterization of the testimony.</li> <li>- The CAC agrees it is only a partial characterization, used as a “stepping-off point to get this witness’s views...”</li> <li>- ALJ overrules the objection.</li> </ul>	Yes. It is reasonable to use a partial characterization to determine the witness’s views.

K2	The IG exhibit(s) were admitted.	Yes. The parties stipulated to admission.
K7 - K8	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
K18	The CAC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
K21	The CAC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
K26	The CAC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
K41	The IG exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
K46	<ul style="list-style-type: none"> <li>- Duke objects to the IG’s question to Duke’s witness as speculative – “If after say a year of proceeding with the project and if the costs had materially increased, and for whatever reason, the Commission found that the costs were not prudently incurred, at that time, do you think Duke would discontinue the project?”</li> <li>- The IG responds that the witness has testified there would be a lot of factors involved. She is in a policy making position with Duke, and it is within an area where she could provide some insight.</li> <li>- ALJ overrules the objection.</li> </ul>	Yes. It is reasonable to let her respond to the extent she has knowledge where the question is not asking for her to speculate but to indicate factors and possible policy making.
K75	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
K80	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.

K106	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
K124	<ul style="list-style-type: none"> <li>- Duke objects to the CAC's question to Duke's witness regarding a confidential document. The CAC asks Duke witness about whether a purchased power agreement resulted in a price higher or lower than \$48 per megawatt hour.</li> <li>- The CAC responds that he just wishes to ask if the price was higher or lower without getting into specific prices.</li> <li>- Duke recalls objection.</li> </ul>	Yes. There was no remaining objection on which to rule.
K126 - K127	<ul style="list-style-type: none"> <li>- Duke objects to the OUCC's question to Duke's witness as outside the scope of direct testimony. The OUCC asked if a reporting mechanism, similar to the Benton County mechanism, would be helpful to operations at the Edwardsport Plant.</li> <li>- The OUCC responds that the witness previously testified in the Benton County wind case. The OUCC is simply exploring other elements of that case.</li> <li>- ALJ overrules the objection.</li> </ul>	Yes. It a proceeding where a reporting mechanism may be appropriate, it is reasonable to ask about how reporting mechanisms worked in other instances.
L2	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
L15	The CAC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
L24	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
L53 - L57	ALJ questions Duke witness about the status of Duke's Indiana Department of Environmental Management air permits and the time frame to complete them.	Yes. It was reasonable when determining whether to permit a facility and the costs to determine the status of permits needed from other State agencies.

L59 - L60	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
L92 - L93	<ul style="list-style-type: none"> <li>- Duke objects to the OUCC's question to Duke's witness as mischaracterizing what the witness stated – "[W]hether or not the Company has performed impact evaluations that would back up your contention that Ms. Soller's numbers exclude the continuing impacts of savings...?"</li> <li>- ALJ overrules.</li> </ul>	Yes. It is difficult to determine if the question mischaracterizes what the witness stated. However, even if it did, she could still reasonably answer the question.
L96	<ul style="list-style-type: none"> <li>- The witness is asked how he would characterize the efforts of Duke with regard to DSM and energy efficiency programs in relation to other utilities in this area.</li> <li>- The OUCC objects to Duke's question to Duke's witness as outside the scope of cross, but acknowledges that the CAC did ask about energy savings in other areas.</li> <li>- Duke responds that the implication of the CAC's question was to compare how Duke is doing compared to other utilities.</li> <li>- ALJ overrules objection.</li> </ul>	Yes. It is reasonable to overrule an objection where the ALJ determines the redirect is within the scope of the cross-examination, as he did here.
L98	<ul style="list-style-type: none"> <li>- Duke asks the Duke witness several questions where counsel quotes from a document regarding industrial rates across the country.</li> <li>- The CAC objects to the questions as outside the scope of cross-examination where the CAC's questions were about Residential Customers.</li> <li>- Duke responds that counsel is asking generally about rates in Indiana versus other states.</li> <li>- The OUCC also objects that while the witness can be asked questions about the document, counsel cannot just read the results of the document.</li> <li>- ALJ sustains the objection by the OUCC.</li> </ul>	Yes. Counsel cannot testify in the proceeding, but only ask relevant questions of the witness.

L99	<ul style="list-style-type: none"> <li>- The OUCC objects that counsel is leading the witness where Duke asks Duke's witness on redirect – "Would you agree ...those states have much higher residential electricity rates than the State of Indiana."</li> <li>- ALJ sustains the objection.</li> </ul>	<p>Yes. According to Indiana Rules of Evidence, Rule 611, leading questions on re-direct can be used only where it "may be necessary to develop the witness's testimony." It is not necessary when the question could be phrased in a non-leading way and elicit the same response.</p>
L102	<ul style="list-style-type: none"> <li>- The CAC objects as outside the scope of cross-examination where Duke's question to Duke's witness is regarding how Duke's DSM and energy efficiency programs compare to those in the testimony of Witness Mosenthal.</li> <li>- Duke responds that the CAC's questioning centered on Duke not doing enough for DSM and energy efficiency.</li> <li>- ALJ asks Duke about the Mosenthal issue.</li> <li>- Duke responds that they believe the witness did refer to Mosenthal in one of the responses.</li> <li>- ALJ overrules the objection.</li> </ul>	<p>Yes. It is difficult after many days of testimony to recall witness's previous testimony. If Duke said that the witness previously referenced Mosenthal in cross-examination, it is reasonable of ALJ to rely on counsel's representations.</p>
L105 - L108	<ul style="list-style-type: none"> <li>- The CAC objects as outside the scope of cross-examination where Duke refers to the CAC asking about Duke's 2007 load forecast. The CAC claims they have never seen the load forecast or asked about it.</li> <li>- Duke responds that the witness's rebuttal testimony notes the load forecast was prepared.</li> <li>- ALJ asks if the document was attached to the testimony and notes that he does not remember the CAC asking about it. He notes the appropriate way to include the document is admitting it as an exhibit.</li> <li>- Duke offers exhibit.</li> <li>- Nucor, the OUCC, and the IG object.</li> <li>- Duke responds that when the CAC was cross-examining the witness, he referred to a page from the testimony of Mr. Biewald which had the 2006 forecast. Admitting the forecast helps clarify the record.</li> <li>- ALJ sustains the objection and does not admit exhibit.</li> </ul>	<p>Yes. It was reasonable not to admit an exhibit(s) where there are objections noting the rebuttal exhibit(s) is not within the scope of the cross-examination.</p>

L111	ALJ asks Duke’s witness about a scenario from his previous testimony – what happens when someone replaces their refrigerator, but places the old one in their basement?	Yes. This is a reasonable question to ask based on previous testimony. It gets to the question of actual energy savings by replacing old appliances with energy-efficient ones.
L111 - L112	ALJ asks Duke’s witness about the market potential study and whether there is a collaborative effort for that purpose and whether the Commission will be asked to implement it.	Yes. This is a reasonable question to ask based on previous testimony. Also, it is reasonable to ask if an issue will come before the Commission.
L113	ALJ asks Duke’s witness about how the report will be structured.	Yes. This is a reasonable question to ask based on previous testimony. Also, it is reasonable where the issue will come before the Commission.
L114	ALJ notes that Duke witness’s testimony talked about energy savings being about 1% of revenues. How will Duke evaluate the effectiveness of expenditures?	Yes. It went to the heart of the case – is there energy efficiency that can be quantified.
L115	Should the Commission refrain from setting a certain level of energy efficiency requirements?	Yes. It went to the heart of the case and clarifies the witness’s previous testimony.
L-116	ALJ notes that Duke witness’s testimony includes a low-impact, high-impact, and ultra-high impact DSM case. ALJ asks – where would 1% expenditures place Duke in that continuum?	Yes. It went to the heart of the case and clarifies the witness’s previous testimony.
M2	The CAC exhibit(s) were admitted.	Yes. The parties stipulated to admission.
M6	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
M12	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.

M38	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
M58	The OUCC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.

**Docket Entries**

<b>Date</b>	<b>Nature of Docket Entry</b>	<b>Proper Legal Basis</b>
11/05/07	Granting the CAC, Save the Valley, Valley Watch, and Sierra Club's Motion For Extension of Time to Respond To Ex Parte Communications of Duke (Unopposed).	Yes. This is consistent with Commission procedure to extend time to file testimony if no parties object.

10/30/07	<p>Granting in part the CAC, Save the Valley, Sierra Club, and Valley Watch’s (the “Movants”) Motion Requesting Disclosure of Ex Parte Communications under 170 IAC 1-1.5-6 and Request for Leave to Respond.</p> <ul style="list-style-type: none"> <li>- The Movants contend the following are ex parte communications: <ol style="list-style-type: none"> <li>1. A cover letter from Mr. Keith Trent of Duke referencing the case and articles “An Upward Climb” regarding construction costs of utility infrastructure and “Rising Utility Construction Costs: Sources and Impacts.”</li> <li>2. A press release from the Governor sent to all agencies and the public generally discussing the Governor’s “Hoosier Homegrown Energy” plan and specifically referencing Edwardsport.</li> </ol> </li> <li>- Duke responded that the documents were not ex parte but that they did not object to their admission into the record or the parties having an opportunity to respond to the matters raised in the material.</li> <li>- The Presiding Officers found that #1 should be tendered to the record as ex parte because the qualifications expressed in the letter and the specific reference to the proceeding may be perceived as raising issues as to whether the submission is inconsistent with the ex parte rule.</li> <li>- The Presiding Officers found that #2 should not be tendered to the record because it did not advocate a position in the proceeding and the author was not a party to the proceeding.</li> </ul>	<p>Yes. This is consistent with 170 IAC 1-1.5-6, which requires tendering to the record ex parte communications. The Governor’s press release does not violate the ex parte rules as outlined in 170 IAC 1-1.5-3.</p>
08/27/07	<p>The Presiding Officers tendered to the record correspondence from Tim Shier.</p>	<p>Yes. This is consistent with Commission rule 170 IAC 1-1.5-6 and Commission practice to publish anything that could reasonably be construed as ex parte communications.</p>

08/06/07	Granting the CAC, Save the Valley, Sierra Club, and Valley Watch's unopposed Motion for Extension of Time.	Yes. This is consistent with Commission procedure to extend time for filings if no parties object. 170 IAC 1-1.1-12.
07/25/07	Granting the IG's Unopposed Motion for Extension of Time.	Yes. This is consistent with Commission procedure to modify the schedule if no parties object. 170 IAC 1-1.1-12.
06/20/07	Granting Verified Petition for Limited Admission to Practice Before the Commission Pro Hac Vice (John J. Finnigan, Jr.).	Yes. This is consistent with 170 IAC 1-1.1-7(c) to grant temporary admission to qualifying attorneys.
06/15/07	Granting the CAC, Save the Valley, Valley Watch, and Sierra Club's Motion for Leave to Late File Confidential Testimony and Exhibits Under Seal where the confidential documents were previously served on the parties. This contains the corrections.	Yes. It is reasonable to permit late filing testimony and exhibits to correct the documents where no party objects or would be prejudiced by accepting the late filing. 170 IAC 1-1.1-12.
06/15/07	Granting the OUCC's Motion for Leave to Late File Inadvertently Omitted Testimony.	Yes. It is reasonable to permit late filing testimony to include inadvertently omitted testimony where no party objects or would be prejudiced by accepting the late filing. 170 IAC 1-1.1-12.
06/13/07	Granting the Post Hearing Briefing Schedule; Vectren's Motion for Suspension of Procedural Schedule as it Relates Only to Vectren Energy's Request for Relief and Duke's Motion Concerning Procedural Agreement.	Yes. It is Commission practice to accept the parties agreed upon post-hearing briefing schedule where the schedule does not cause undue delay or burden.
06/13/07	Granting Nucor Corporation's Motion for Admission Pro Hac Vice of Shaun C. Mohler.	Yes. This is consistent with 170 IAC 1-1.1-7(c) to grant temporary admission to qualifying attorneys.

06/05/07	Granting the CAC, Save the Valley, Sierra Club, and Valley Watch's the Joint Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.
06/01/07	Granting Vectren's Uncontested Motion for an Extension of Time in Which to File Rebuttal Evidence.	Yes. This is consistent with Commission procedure to modify the schedule if no parties object. 170 IAC 1-1.1-12.
05/02/07	Regarding Notice of Name Change. The IG's name was incorrect on the Petition to Intervene they filed. The Presiding Officers grant the name change.	Yes. It is reasonable to permit name change for clarification where name was erroneously labeled previously.
04/27/07	Granting the IG's Motion for Extension of Time to prefile their case-in-chief.	Yes. This is consistent with Commission procedure to modify the schedule if no parties object. 170 IAC 1-1.1-12.
04/17/07	Granting Duke and Vectren's Joint Motion for Protection of Confidential and Proprietary Information.	Yes. This is consistent with 170 IAC 1-1.1-4 and Commission procedure to grant a motion for confidential treatment where the filing contains trade secrets.
04/03/07	Granting the Coal Council's Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.
03/27/07	Granting the IWF and the CATF's Joint Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.

02/23/07	Granting the Sierra Club's Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.
01/29/07	Granting Duke's Motion for Subdocket for interim relief.	Yes. This is consistent with Commission procedure to grant a motion for subdocket where additional time is necessary to address other issues.
12/15/06	Granting Valley Watch, Save the Valley, and the IG's Petitions to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.
11/01/06	Granting Duke and Vectren's Motion for Protection of Confidential and Proprietary Information.	Yes. This is consistent with 170 IAC 1-1.1-4 and Commission procedure to grant motion for confidential treatment where the filing contains trade secrets.
11/01/06	Granting Duke's Motion for Continuance of Prehearing Conference and Preliminary Hearing for additional time to try to narrow the issue and reach agreement on an acceptable procedural schedule.	Yes. This is consistent with Commission procedure to modify the schedule if no parties object. 170 IAC 1-1.1-12.
11/01/06	Granting Duke and Vectren's Motion for Administrative Notice of Vectren's 2005 IRP, Duke's 2005 IRP, and Duke's petition for confidential treatment.	Yes. This is consistent with Commission practice and rule 170 IAC 1-1.1-21 to take administrative notice of relevant documents previously filed with the Commission.

**Cause No. 43114 IGCC 1 (Cost Recovery, Updated Cost Estimate, Ongoing Review Process of Edwardsport)**

**Orders & Staff Report Review**

The OUCC filed a Motion for Clarification of this Order, claiming that implicit in the testimony and exhibits is the use of project-related deferred income taxes as an offset to rate base. The OUCC believes the Order should explicitly address the matter. Duke responded that it was already stated and the OUCC’s request would be more appropriately addressed in future rate cases. The Presiding Officers denied the OUCC’s Motion. They found that the original Order was clear regarding deferred income taxes. In addition, the Commission did not want to bind itself regarding IGCC Project-specific deferred income taxes in future rate cases.

<b>Information from Staff Report</b>	<b>In Order or Proper Basis to Exclude or Change</b>
<p>Discusses market effects on supply options and DSM compensation based on avoided cost, and notes a worldwide economic slowdown and reduced expansion of energy infrastructure would decrease pressure for further price escalation.</p>	<p>Yes. The Order reflects that the Duke witness references the rise in commodity prices as a reason for the cost increase and state that the cost increases are not unique to Edwardsport. Pg. 11. The witness states that evidence places the updated cost estimate in line with other utilities’ projects cost increases, and in line with Electric Power Research Institute’s revised estimate, and the Commission realizes commodity prices impacts the relative cost of supply side options. Pg. 11. The witness acknowledges some costs and externalities may be beyond the control of the Company. Pg. 13.</p>
<p>Notes additional modeling runs presented in rebuttal testimony with higher CO<sub>2</sub> prices provide a present value revenue requirement for the IGCC plan with Wabash Units retirement and 75% percentile gas prices was 0.2% lower than the plan without IGCC Project. Indicates that the Wabash unit 2-5 removal seems plausible.</p>	<p>Yes. The Order discusses some of the IRP present value revenue requirement findings. Pg. 12.</p>
<p>Notes if canceled, the stranded costs at this time are in excess of \$300 million, a cost with no return for ratepayers.</p>	<p>Yes. The Order states that the utility included a cancellation cost estimate as of 7/31/08 of \$343.4 million. Pg. 16.</p>
<p>Indicates that ratemaking treatment appears consistent with the 43114 Order.</p>	<p>Yes. The Order states that no party took issue with proposed implementation of IGCC Rider or the associated calculations. Pg. 20.</p>

Notes the reasoning for the various ratemaking incentives in Cause No. 43114 are still applicable and should not be altered for the previously approved \$1.985 million estimate.	Yes. The Order states that the 11/20/07 Order concluded the excluding deferred income tax from capital structure and applying it to offset rate base was reasonable and does not need to be revisited in this initial ongoing review proceeding. Pg. 20.
Discusses the possible alternative treatments for the incremental \$365 million project costs, including removing the deferred income tax treatment.	The Order states that the deferred income tax incentive is tied to performance and must be, to fullest extent possible, based on an accurate estimate of the costs to be incurred. Incentive treatment for deferred income taxes is limited to the original estimate for the Edwardsport Project and not extended to costs that exceed that amount. Pg. 21.

### **Transcript Review**

<b>Pg.</b>	<b>Nature of Issue</b>	<b>Proper Legal Basis</b>
A4	ALJ grants the CATF and the IWF's Petition to Intervene and waives 5-day filing requirement because they have functioned as de facto intervenors.	Yes. No objection to intervention by any of the parties.
A34 - A35	The Residential Customers exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
A38	The Residential Customers exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
A44	Duke objects to the question by the CAC asking the Duke witness his salary. ALJ sustains the objection as irrelevant.	Yes. The line of questioning was about why the witness did not personally pay for a CO <sub>2</sub> study. His salary is irrelevant.
A98 - A99	ALJ questions to Duke witness – what are the total tax benefits and incentives and how do they work?	Yes. It is a relevant question in a rate proceeding to determine cost savings.
A100	ALJ questions to Duke witness – “of what value is it to have the Commission approve this number [project cost] in this proceeding moving forward?”	Yes. It is reasonable to ask about relevancy of project cost determination now versus later.

B2	The Industrial Intervenor Group exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
B23 - B24	<ul style="list-style-type: none"> <li>- After witness says he cannot characterize what another witness's comfort level was, the IG attorney responded that witness's comfort level was "very confident." Duke objected to the IG's characterization.</li> <li>- The IG responds that the record would demonstrate that the witness was very confident.</li> <li>- ALJ sustains the objection because counsel failed to state a question.</li> </ul>	Yes. Counsel may not testify, only ask questions of the witness.
B31	ALJ question to Duke witness – does the witness plan to continually utilize the price status format established in this proceeding?	Yes. It is reasonable to ask about consistency of logging and reporting information.
B37	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
B49	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
B64	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
B68	The CAC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
B70 - B71	The OUCC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
B74 - B75	The OUCC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.

B77	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
B86	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
B94	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
B109	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.

**Docket Entries**

<b>Date</b>	<b>Nature of Docket Entry</b>	<b>Proper Legal Basis</b>
12/04/08	Granting Duke's Supplemental Motion for Protection of Confidential and Proprietary Information.	Yes. This is consistent with 170 IAC 1-1.1-4 and Commission procedure to grant a motion for confidential treatment where the filing contains trade secrets.
11/14/08	Granting Duke's Motion for Protection of Confidential and Proprietary Information.	Yes. This is consistent with 170 IAC 1-1.1-4 and Commission procedure to grant a motion for confidential treatment where the filing contains trade secrets.
09/22/08	Granting Duke, the OUCC, and the Intervening Parties' Agreed Upon Motion for Extension of Time requesting a 3-day extension of time for the simultaneous filing of proposed orders and a 3-day extension of time for the simultaneous filing of replies.	Yes. This is consistent with Commission procedure to extend time to file testimony if no parties object. 170 IAC 1-1.1-12.

09/22/08	Granting Duke's Motion for Protection of Confidential and Proprietary Information.	Yes. This is consistent with 170 IAC 1-1.1-4 and Commission procedure to grant a motion for confidential treatment where the filing contains trade secrets.
08/22/08	Granting Duke's Motion for Protection of Confidential and Proprietary Information.	Yes. This is consistent with 170 IAC 1-1.1-4 and Commission procedure to grant a motion for confidential treatment where the filing contains trade secrets.
08/11/08	Granting Duke's Motion for Protection of Confidential and Proprietary Information.	Yes. This is consistent with 170 IAC 1-1.1-4 and Commission procedure to grant a motion for confidential treatment where the filing contains trade secrets.
08/01/08	Granting the IG's Motion to Modify Procedural Schedule.	Yes. This is consistent with Commission procedure to modify the schedule if no parties object. 170 IAC 1-1.1-12.
07/31/08	Granting the CAC, Sierra Club, Save the Valley, and Valley Watch's Joint Motion to Modify the Procedural Schedule to add a day to the evidentiary hearing to call a witness who is unavailable during the currently scheduled hearing.	Yes. This is consistent with normal legal procedure to modify hearing to accommodate witness testimony, where unopposed.
07/21/08	Granting Nucor Steel and the IG's Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.
06/09/08	Granting the CAC, Save the Valley, Sierra Club, and Valley Watch's Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.

06/03/08	Granting Duke's Motion for Protection of Confidential and Proprietary Information.	Yes. This is consistent with 170 IAC 1-1.1-4 and Commission procedure to grant a motion for confidential treatment where the filing contains trade secrets.
06/03/08	Regarding the Compliance Filing. In Cause No. 43114, the Commission granted Duke's request for ongoing project review with Duke to file IGCC Rider proceedings semi-annually. To facilitate oversight, the Presiding Officers find that Duke shall retain Black & Veatch to oversee the project at the Commission's direction. The docket entry orders Duke to submit a compliance filing advising the status of compliance.	Yes. It is normal Commission practice to require compliance filing on large cases to update the Commission on ongoing status.

**Cause No. 43114 IGCC 2 (Cost Recovery and Ongoing Review Process of Edwardsport)**

**Orders & Staff Report Review**

<b>Information from Staff Report</b>	<b>In Order or Proper Basis to Exclude or Change</b>
Notes that the total estimated cost of \$2.35 billion did not change, but some of the underlying costs which made up the \$2.35 billion did change.	Yes. The Order requires Duke to make available additional data in its progress reports, identifying any deviations in budgeted amounts, even if such deviations are projected to ultimately remain within the \$2.35 billion estimate. Pgs. 14-15.
Notes that some reputable sources feel the recent demand decrease is only temporary.	Yes. The Order states that the Duke testimony is credible on this issue and that in planning and constructing, new generation must look at long term trends and projections. Pgs. 12-13.
Suggests requesting an updated projection of cancellation costs.	Yes. Footnote 3 of the Order states that Duke witness Womack committed to update in each subsequent proceeding the status of projected cancellation costs. Pg. 15. At the hearing, he responded that the general range was about \$500 million.

**Transcript Review**

<b>Pg.</b>	<b>Nature of Issue</b>	<b>Proper Legal Basis</b>
B8	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
B13	ALJ questions Duke witness, noting that in IGCC 1, another Duke witness provided an estimate of project cancellation costs as of 7/31/08. Is the witness the proper person to provide that updated number?	Yes. This is a reasonable question to ask to determine cost/benefit of continuing the project.
B17	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
B23	The Residential Customers exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.

B25	The OUCC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
B26	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding and one exhibit(s) was stipulated to by the parties.
B30	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
B35 - B38	<ul style="list-style-type: none"> <li>- Duke objects to the CAC because counsel referenced a television show transcript and provided a narrative.</li> <li>- The CAC responds that it was a publicly available transcript.</li> <li>- ALJ overrules the objection.</li> <li>- Duke then objects to admission because the transcript is hearsay and witness said he has no idea what the document is.</li> <li>- The CAC responds that the document is a discussion of witness Rogers similar to what Rogers testified to in this case a week ago. Because there is no transcript, the CAC must rely on other documents. The CAC was using it to refresh the witness's recollection of what transpired at the hearing.</li> <li>- ALJ denies because the witness cannot identify it. The exhibit is not admitted into evidence.</li> </ul>	Yes. There was not a proper foundation for admission of the exhibit(s) where the witness cannot authenticate the document. Indiana Rules of Evidence, Rule 901.
B39	ALJ permits the CAC to subsequently seek administrative notice of the transcript of witness Rogers' testimony from a week ago. ALJ notes that he will allow for responses to subsequent requests made prior to ruling on the request.	Yes. This is normal Commission procedure.

B40	<ul style="list-style-type: none"> <li>- The CAC objects to Duke witness's answer. The CAC phrased a yes or no question and the witness testified outside the scope of the question.</li> <li>- Duke responds that the witness was trying to respond to the question.</li> <li>- ALJ rules that witness should "please just respond to the question that was asked."</li> </ul>	Yes. It is normal Commission procedure.
B42 - B43	<ul style="list-style-type: none"> <li>- Duke objects to the CAC arguing with the Dukewitness.</li> <li>- ALJ rules that the witness "simply respond to the question that was asked."</li> </ul>	Yes. It is normal Commission procedure.
B44	<ul style="list-style-type: none"> <li>- The CAC interrupts the question posed by Duke counsel regarding the impact of carbon legislation. The question is a mischaracterization of the question the CAC asked.</li> <li>- ALJ overrules to permit the question to be presented (the CAC does not object to the completed question).</li> </ul>	Yes. It is reasonable to hear the entire question before objections are considered.
B45 - B46	<ul style="list-style-type: none"> <li>- The CAC objects to question regarding Save-A-Watt, claiming it is the subject of another proceeding pending before the Commission and outside the scope of his cross-examination in this proceeding.</li> <li>- ALJ sustains the objection.</li> </ul>	Yes. Questions on redirect should be limited to those raised on cross-examination.
B48 - B49	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
B53	ALJ confirms the schedule for the submission of Proposed Orders.	Yes. No objection to schedule by any party to the proceeding.

**Docket Entries**

<b>Date</b>	<b>Nature of Docket Entry</b>	<b>Proper Legal Basis</b>
01/14/09	Granting the Residential Customers' Joint Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.

12/23/08	Granting the IWF and the CATF's Joint Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.
12/17/08	Granting Duke's Motion for Protection of Confidential and Proprietary Information.	Yes. This is consistent with 170 IAC 1-1.1-4 and Commission procedure to grant a motion for confidential treatment where the filing contains trade secrets.

**Cause No. 43114 IGCC 3 (Cost Recovery and Ongoing Review Process of Edwardsport)**

**Orders & Staff Report Review**

<b>Information from Staff Report</b>	<b>In Order or Proper Basis to Exclude or Change</b>
Contains a plot of the historic total revenue requirements for the IGCC tracker and the revenue requirement being proposed in IGCC 3.	Yes. While not specifically included in the Order, there is discussion of prior proceedings. Pg. 3.
Notes that the total estimated cost of \$2.35 billion did not change, but some of the underlying costs which made up the \$2.35 billion did change.	Yes. As noted in the Order, the Presiding Officers asked Duke witness Womack a series of questions at the evidentiary hearing, which included information about aspects of the cost estimate. Pgs. 17-18.

**Transcript Review**

<b>Pg.</b>	<b>Nature of Issue</b>	<b>Proper Legal Basis</b>
A6	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
A12	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
A14	The Residential Customers exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
A15	The OUCC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
A30	The ALJ questions the Duke witness – is a schedule completed; there was a sense from the testimony that it was unfinished.	Yes. This was a reasonable clarifying question to ask.
A31	The ALJ questions Duke witness after she notes schedule is a work in progress – What are the deficiencies that were addressed?	Yes. This was a reasonable clarifying question to ask.

A33 – A34	The ALJ questions the Duke witness. The 43114 IGCC 2 Order of 5/13/09 states on pg. 15 that for effective ongoing Commission review, the template must begin with the presentation of an integrated reliable construction schedule. The schedule should serve as the critical path with all major milestones. Is Duke there yet?	Yes. It is reasonable to reiterate what was required in prior Order and ask a question to determine if that requirement has been met.
A48 - A49	The ALJ questions the Duke witness. Witness's rebuttal testimony pg. 4 states that certain construction bids are coming in higher than expected, and then packages are referenced. The witness is asked to describe the process.	Yes. It was a reasonable clarifying question to ask, in particular to question if cost saving opportunities are available.
A59	The ALJ questions the Duke witness – Again regarding the schedule, can Duke provide a copy of the completed schedule to Commission?	Yes. After Duke testified a document exists, it is reasonable to ask for a copy of the document.
A60 - A61	The ALJ reiterates the dates from the Prehearing Conference Order for Proposed Order and exceptions to Proposed Order.	Yes. No objections from any of the parties.

### **Docket Entries**

<b>Date</b>	<b>Nature of Docket Entry</b>	<b>Proper Legal Basis</b>
09/22/09	Granting Duke's Motion for Leave to Late-File Confidential Exhibit(s) of W. Michael Womack.	Yes. This is consistent with Commission practice to permit a late filed exhibit(s) where no parties object. 170 IAC 1-1.1-22.
07/02/09	Granting the CAC, Save the Valley, and Valley Watch's Joint Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.
06/12/09	Granting the IWF and the CATF's Joint Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.

06/12/09	Granting Nucor Steel's Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.
06/04/09	Granting Duke's Motion for Protection of Confidential and Proprietary Information.	Yes. This is consistent with 170 IAC 1-1.1-4 and Commission procedure to grant a motion for confidential treatment where the filing contains trade secrets.

**Cause Nos. 43114 IGCC 4 & 43114 IGCC 4 S1 (Cost Recovery and Ongoing Review Process of Edwardsport, Subdocket for Review of Cost Estimate)**

**Orders & Staff Report Review**

Please note, the Order in Cause No. 43114 IGCC 4 was issued on an interim basis, pending the outcome of 43114 IGCC 4 S1. A new ALJ has been assigned to this matter.

<b>Information from Staff Report</b>	<b>In Order or Proper Basis to Exclude or Change</b>
Contains a plot of the historic total revenue requirements for the IGCC tracker and the revenue requirement being proposed in IGCC 4.	Yes. While not specifically included in the Order, it does contain a discussion of prior proceedings. Pg. 3.
Discusses updated supply/demand balance forecasts submitted by Duke witness Jenner, including their supply/demand position in some of the scenarios presented.	Yes. The Order states that the Commission has previously addressed the continuing need issue and finds the testimony presented in this matter does not support modification to prior findings. Pg. 15.
Notes that the Petitioner indicated the estimated cost will increase, but the report does not address the issue, as a subdocket has been opened to do so. Notes a statement made in a recent 10-K filing by Petitioner states that the increase would be significantly higher than the \$150 million previously identified.	Yes. The Order states all issues related to the cost estimate will be addressed in the subdocket proceeding. Pg. 15.
Notes some of the individual costs contained in Duke’s cost estimate. Comments on the allowance for funds used during construction, and notes individual budget items that increased by at least 25% or decreased by at least 10%. Also comments on contingency.	Yes. The Order contains a summary of evidence on the \$2.5 billion estimate, contingency, and primary reasons for cost growth. Pgs. 6-7.
Suggests the progress report in this filing be approved contingent on the Commission’s finding in the IGCC 4 subdocket.	Yes. The Order states that because additional issues will be addressed in the subdocket, the findings in this Order are made on interim basis pending the outcome of 43114 IGCC 4 S1. Pg. 16. The Order also notes that IGCC Rider is approved on an interim basis. Pg. 21.

Suggests that updates on the status of the air permit modification and updates on the awarding of construction contracts be provided.	Yes. The Presiding Officers asked multiple questions of witness Womack at the evidentiary hearing, including questions on the status of the air permit. Pgs. A14-A15, A31-A32. Construction contractors were discussed numerous times in the hearing. Transcript, Pgs. A22-A24, A27, and A47-48.
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### Transcript Review

<b>Pg.</b>	<b>Nature of Issue</b>	<b>Proper Legal Basis</b>
A10 - A11	Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
A26	<ul style="list-style-type: none"> <li>- Duke objects to the CAC's question to Duke's witness as outside the scope of the case where the CAC asks a series of questions about the use of Chinese steel. The CAC asks – are you also aware of past instances where lead and cadmium were used in children's jewelry exported from China to the U.S.?</li> <li>- the CAC responds that this was part of a series of questions that he will tie together.</li> <li>- ALJ sustains the objection.</li> </ul>	Yes. That particular question does not appear relevant to the proceeding or get to the reliability of Chinese steel.
A31	ALJ question to Duke's witness regarding his prior testimony in this case and whether certain numbers are applicable in this case or the subdocket.	Yes. It is helpful for the ALJ to clarify testimony.
A31 - A32	ALJ question to Duke's witness regarding his prior testimony in this case about air – where are you in the permitting process?	Yes. It is helpful to the proceeding to determine the status of permits that could hold up construction or execution of the project.
A33	ALJ question to Duke's witness who stated that they are in the same place in the process as 6 months ago – how does that impact the overall schedule of the project?	Yes. It is a reasonable follow up question.
A33 - A34	ALJ question to Duke witness regarding his prior testimony in this case about cost estimates. The ALJ notes the numbers have been growing and asks how this occurs.	Yes. It is reasonable to ask why cost estimates are increasing where the Commission is tasked with determining if the costs will be approved.

A33 - A34	ALJ question to Duke's witness regarding cost estimates – was the front-end engineering and design study initiated to capture that information?	Yes. Again, it is reasonable to ask why cost estimates are increasing where the Commission is tasked with determining if the costs will be approved.
A53	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
A63	The OUCC exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
A65	The Residential Customers exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
A67 - A68	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
A81	The Duke exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
A86 - A87	<ul style="list-style-type: none"> <li>- The CAC asks Duke's witness a yes or no question and asks her to respond with a yes or no when she begins to refer to prior testimony.</li> <li>- Duke's counsel argues she should be permitted to answer the question.</li> <li>- The ALJ rules that she should respond to the yes or no question, with Duke permitted to ask question to convey any additional information that is needed.</li> </ul>	Yes. The witness should only be responding to the question asked during cross-examination, not going outside the scope of the question.

A88	<ul style="list-style-type: none"> <li>- Duke’s witness testifies that “just saying that energy efficiency could fill the need of the Edwardsport Plant without presenting any evidence...is not a serious challenge.” The CAC asks – “So, in your mind, it is not a serious challenge if you don’t like the evidence the other party puts in?”</li> <li>- Duke objects that the question mischaracterizes the witness’s testimony.</li> <li>- ALJ sustains the objection.</li> </ul>	Yes. Here, counsel did mischaracterize the witness’s position, which is not permissible.
A93 - A94	Residential Customers exhibit(s) were admitted.	Yes. There was no objection to admission by any party to the proceeding.
A95	<ul style="list-style-type: none"> <li>- The CAC wishes to utilize an exhibit for the witness, but not offer the exhibit into evidence.</li> <li>- ALJ notes that this is problematic. The exhibit needs to be offered into evidence to give the other parties an opportunity to object.</li> <li>- The CAC offers exhibit into evidence.</li> <li>- Duke objects because the witness has stated she has not seen the exhibit before.</li> <li>- ALJ does not admit the exhibit, as the witness cannot identify it and indicated she has not seen it previously.</li> </ul>	Yes. Under Rule 901 of the Indiana Rules of Evidence, evidence must be authenticated or identified before it can be admitted. The witness could neither authenticate nor identify the exhibit.

**Docket Entries for Cause No. 43114 IGCC 4 S1**

<b>Date</b>	<b>Nature of Docket Entry</b>	<b>Proper Legal Basis</b>
07/23/10	Granting Hoosier Energy’s Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.
07/16/10	Granting the IG and Nucor Steel’s Joint Motion to Modify Procedural Schedule.	Yes. This is consistent with Commission procedure to modify the schedule if no parties object. 170 IAC 1-1.1-12.

06/18/10	Adding another day for the conduct of the Evidentiary Hearing	Yes. This is consistent with Commission procedure to schedule sufficient time for the hearing. 170 IAC 1-1.1-18.
06/17/10	Granting Duke's Motion to Modify Procedural Schedule.	Yes. This is consistent with Commission procedure to modify the schedule if no parties object. 170 IAC 1-1.1-12.
06/04/10	Granting the IG's Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.
05/07/10	Granting Wabash Valley Power Association, Inc.'s Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.
04/22/10	Granting Duke's Motion for Administrative Notice and Motion for Protection of Confidential and Proprietary Information.	Yes. This is consistent with 170 IAC 1-1.1-4 and Commission treatment of Confidential Information and 170 IAC 1-1.1-21 regarding administrative notice.
04/19/10	Granting Nucor Steel's Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.
04/05/10	Granting Duke's Motion to Modify Procedural Schedule.	Yes. This is consistent with Commission procedure to modify the schedule if no parties object. 170 IAC 1-1.1-12.

**Docket Entries for Cause No. 43114 IGCC 4**

06/04/10	Regarding the CAC Motion for Leave to Late File Response to Proposed Order and Duke Energy Indiana Petition to Reopen the Record and Submit Late Filed Exhibit(s).	Yes. This is consistent with 170 IAC 1-1.1-22 and Commission procedure.
02/10/10	Granting the Residential Customers' Joint Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.
01/12/10	Granting Duke's Motion for Protection of Confidential and Proprietary Information.	Yes. This is consistent with 170 IAC 1-1.1-4 and Commission treatment of Confidential Information.

**Cause No. 43114 IGCC 5 (Cost Recovery and Ongoing Review Process of Edwardsport)**

**Orders & Staff Report Review**

No Orders were drafted or circulated by ALJ Storms in this case. Staff questions in the staff report have been or will be addressed by the new ALJ in the matter.

**Transcript Review**

There was no transcript in this matter. ALJ Storms was screened off the case prior to any hearings.

**Docket Entries**

<b>Date</b>	<b>Nature of Docket Entry</b>	<b>Proper Legal Basis</b>
7/23/10	Granting Duke, the OUCC, and Wabash Valley Power Association's Agreed Procedural Schedule and Other Matters.	Yes. The timing of the procedural schedule is consistent with the provisions of 170 IAC 1-1.1.
6/14/10	Granting Wabash Valley Power Association, Inc. Petition to Intervene.	Yes. This is consistent with Commission procedure to grant a motion to intervene by interested parties. 170 IAC 1-1.1-11.

All docket entries issued in the case after this date were issued by the new ALJ.

## Email Review

This section reviews all case-related emails where a specific case could be identified between ALJ Storms and Duke where Duke was the only party to the email. Emails where all parties were included and therefore had an opportunity to participate in the communication were not reviewed, as they would not violate the Commission's ex parte rule. *See* 170 IAC 1-1.5-3(a).

<b>Date &amp; Cause No.</b>	<b>Nature of Email</b>	<b>Proper Legal Basis</b>
01/20/10 No. 43501	<ul style="list-style-type: none"> <li>- Duke emailed ALJ Storms, "Thoughts on a new hearing date? Sorry to have so few options – when I circulated those two weeks we discussed to the parties, only those three days worked for everyone! Geez! Please let me know when you have a moment."</li> <li>- Stormed replied back, "It is set for March 4, 2010. The Docket Entry is on the way out the door."</li> </ul>	Yes. 170 IAC 1-1.5-3(c) does not prohibit any person from communicating ex parte with any employee of the Commission with respect to undisputed administrative or procedural matters in connection with a proceeding. This email string is regarding the hearing date, a procedural matter.
02/16/10 No. 43653	<ul style="list-style-type: none"> <li>- Storms emailed Duke after Duke sent an email to all the parties noting a reply brief and proposed order were attached. Storms wrote, "I did not receive a 'word' version of the document. Can you send a copy to me?"</li> </ul>	Yes. 170 IAC 1-1.5-3(c) does not prohibit any person from communicating ex parte with any employee of the Commission with respect to undisputed administrative or procedural matters in connection with a proceeding. This email string is requesting an attachment that was supposed to be sent to all the parties, an undisputed administrative matter.

<p>02/16/10 No. 43653</p>	<p>- Duke emails Storms after Duke sent an email to all the parties noting a reply brief and proposed order were attached. Duke wrote, "Hi Judge. Sorry if this WORD version of the proposed order didn't come through." Duke also attached the documents referenced.</p>	<p>Yes. 170 IAC 1-1.5-3(c) does not prohibit any person from communicating ex parte with any employee of the Commission with respect to undisputed administrative or procedural matters in connection with a proceeding. While the other parties are not copied, assumedly Duke did send the document to the other parties. However, even if Duke did not send the proposed order to the other parties, it was a document sent by Duke to the Commission, not from Storms to Duke. Further, a proposed order is only a proposal for what should be included in the final Commission Order. It is nothing that would have been binding or given Duke a case advantage. It is important to note, an Order has not yet been issued in this case.</p>
<p>06/17/10 No. 43114 IGCC 4 S1</p>	<p>- Duke emails Storms, "Scott – I noticed our request to change the schedule was not on the IURC website, yet. We filed it on Monday morning, just wanted to make sure it was received and wondered when it would be posted to the electronic document service." - Storms replied, "It will be posted and sent out today."</p>	<p>Yes. 170 IAC 1-1.5-3(c) does not prohibit any person from communicating ex parte with any employee of the Commission with respect to undisputed administrative or procedural matters in connection with a proceeding. This email string is requesting and confirming receipt of a document, an undisputed administrative matter.</p>

## Acronym Table

Administrative Law Judge.....	ALJ
Citizen’s Action Coalition.....	CAC
Clean Air Task Force.....	CATF
Demand Side Management.....	DSM
Duke Edwardsport Integrated Gasification Combined Cycle Generating Facility.....	IGCC Project
Duke Energy Indiana, Inc.....	Duke
Duke Energy Indiana Industrial Group.....	IG
Enhanced Automation Electric Distribution System.....	Smart Grid
Federal American Recovery and Reinvestment Act of 2009.....	ARRA
Federal Department of Energy.....	DOE
Indiana Telecommunications Association.....	ITA
Indiana Utility Regulatory Commission.....	Commission
Indiana Wildlife Federation.....	IWF
Integrated Gasification Combined Cycle.....	IGCC
Integrated Resource Plan.....	IRP
Midwest Independent Transmission System Operator.....	Midwest ISO
Office of Utility Consumer Counselor.....	OUCC
Requests for Proposal.....	RFP
Save the Valley, Inc.....	Save the Valley
Sierra Club, Inc.....	Sierra Club
Southern Indiana Gas & Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc.....	Vectren
Valley Watch, Inc.....	Valley Watch