

STATE OF INDIANA
BEFORE THE
INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF DUKE ENERGY INDIANA,)
INC. SEEKING (1) APPROVAL OF AN ONGOING)
REVIEW PROGRESS REPORT PURSUANT TO I.C. 8-)
1-8.5 AND 8-1-8.7; (2) AUTHORITY TO REFLECT)
COSTS INCURRED FOR THE EDWARDSPORT)
INTEGRATED GASIFICATION COMBINED CYCLE)
GENERATING FACILITY ("IGCC PROJECT"))
PROPERTY UNDER CONSTRUCTION IN ITS RATES)
AND AUTHORITY TO RECOVER APPLICABLE)
RELATED COSTS THROUGH ITS INTEGRATED)
COAL GASIFICATION COMBINED CYCLE)
GENERATING FACILITY COST RECOVERY)
ADJUSTMENT, STANDARD CONTRACT RIDER NO.)
61 PURSUANT TO I.C. -1-8.8-11 AND -12; AND (3))
ESTABLISHMENT OF A SUBDOCKET PROCEEDING)
TO REVIEW THE COST ESTIMATE FOR THE IGCC)
PROJECT)

CAUSE NO. 43114 IGCC 4 S

SETTLEMENT AGREEMENT

September 17, 2010

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into this 17th day of September, 2010, by and between Duke Energy Indiana, Inc. ("Duke Energy Indiana"), Nucor Steel, a division of Nucor Corporation ("Nucor"), the Duke Energy Indiana Industrial Group ("Industrial Group"), and the Indiana Office of the Utility Consumer Counselor (the "OUCC") (together "the Parties").

NOW, THEREFORE, the Parties agree as follows:

1. Scope of Agreement. This Agreement, comprehensively resolves all issues between the Parties associated with Duke Energy Indiana's Edwardsport Integrated Gasification Combined Cycle Project ("IGCC" or "Project") as filed in Cause No. 43114 IGCC 4S. Attached hereto as Exhibit A is a Term Sheet setting forth specific provisions of the settlement ("Settlement Terms") that is intended by the Parties to resolve all pending issues relating to Cause No. 43114 IGCC 4S (as well as address other matters). The terms of the Agreement are effective upon approval by the Indiana Utility Regulatory Commission ("Commission").
2. Integration. Approval of this Agreement constitutes approval of the Settlement Terms attached hereto as Exhibit A.
3. Presentation of the Agreement.
 - a. The Parties will jointly move the Commission for approval of this Agreement. The Agreement, including the Settlement Terms in Exhibit A, is not severable and shall be accepted or rejected by the Commission in its entirety without modification or further condition that may be unacceptable to any Party.
 - b. The Parties agree to support or not oppose the approval in its entirety of

the Agreement. The Parties shall submit their respective cases-in-chief and Duke Energy Indiana shall submit its rebuttal testimony. Duke Energy Indiana, the Industrial Group and the OUCC shall file testimony in support of this Agreement on or before the due date established in the procedural schedule at the September 17 hearing. Other settling parties may file supportive testimony or join in the testimony of another party.

c. If the Order of the Commission in this proceeding modifies or conditions approval of this Agreement, only the parties to this Agreement may decide to accept or reject such modification or condition.

4. Effect and Use of Stipulation and Agreement.

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

b. The evidence presented by the Parties in this Cause, or that will be

presented, constitutes substantial evidence sufficient to support this Agreement and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Agreement, as filed.

c. The issuance of a final Order by the Commission approving this Agreement, including the Settlement Terms in Exhibit A, without modification shall terminate all proceedings in regard to this Agreement.

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

e. The Parties shall not appeal the agreed final Order or any subsequent Commission order to the extent such order is specifically implementing, without modification, the provisions of this Agreement, including the Settlement Terms in Exhibit A, and the Parties shall not support any appeal of any such order by a person not a party to this Agreement.

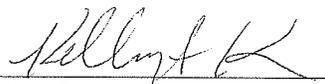
f. The provisions of this Agreement, including the Settlement Terms in Exhibit A, shall be enforceable by any party at the Commission or any court of competent jurisdiction, whichever is applicable.

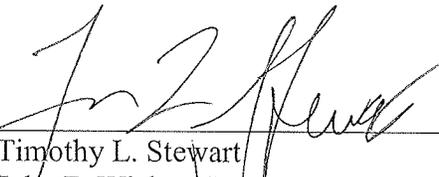
g. The communications and discussions during the negotiations and conferences which produced this Agreement, including the Settlement Terms in Exhibit A, have been conducted on the explicit understanding that they are or relate to offers of settlement and shall therefore be privileged.

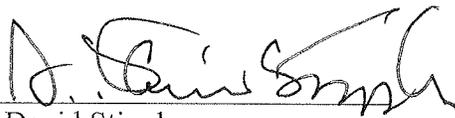
ACCEPTED AND AGREED this 17th day of September, 2010.

By: 
James L. Turner
Group Executive,
President,
U.S. Franchised Electric & Gas
Duke Energy Corporation

By: 
Anne E. Becker
Attorney for Nucor

By: 
Kelley Karn
Attorney for Duke Energy Indiana

By: 
Timothy L. Stewart
John F. Wickes, Jr.
Attorneys for Duke Energy Indiana
Industrial Group

By: 
A. David Stippler
Abby R. Gray
Indiana Office of the Utility
Consumer Counselor

Settlement Term Sheet
IURC Cause No. 43114 – IGCC 4S

1. Base Rate Case Moratorium:

Duke Energy Indiana will not file a petition for a retail electric base rate case before March 1, 2012.

2. Deferred Taxes:

Duke Energy Indiana will include, consistent with traditional Indiana ratemaking, deferred taxes in the capital structure used in Standard Contract Rider No. 61 (“IGCC Rider”) prospectively beginning with the Indiana Utility Regulatory Commission (“Commission”) Order in Cause No. 43114 IGCC-5 (if possible within procedural schedule) or IGCC-6. Duke Energy Indiana estimates this will reduce the IGCC Rider costs by approximately \$25 million annually in the near term.

3. Depreciation Rates:

Duke Energy Indiana agrees to update its depreciation rates for production, transmission, distribution and general plant and equipment. The Settling Parties agree not to challenge the new depreciation rates including the negative net salvage values. The approximately \$35 million annual credit to retail customers for these depreciation rate changes will be flowed through the IGCC Rider. Duke Energy Indiana agrees that it will file the full depreciation study used to develop the depreciation factors reflected in this Settlement Agreement in its next retail electric base rate case, and will seek continued Commission approval of such factors; provided, however, that the Company shall have the right to propose updates to these depreciation factors and its depreciation study for any material changes in law, regulation, or accounting rules, or material changes to the Duke Energy Indiana system. All Settling Parties may present evidence regarding appropriate depreciation rates in such Duke Energy Indiana retail electric base rate case, and may challenge any updates proposed by the Duke Energy Indiana. Duke Energy Indiana reserves the right to file new depreciation rates for any retail electric base rate case subsequent to its next retail electric base rate case.

4. IGCC Project Cost Recovery and Return on Equity:

- a. Duke Energy Indiana accepts a hard cap of \$2.975 billion on the construction cost of the Edwardsport Integrated Gasification Combined Cycle Project (“IGCC Project”)¹, meaning there will be no cost recovery from retail electric customers for the IGCC Project construction costs above the hard cap. The hard cap can only be increased due to (1) force

¹ The hard cap applies to the construction costs of the IGCC Project. “Construction costs” means the costs of construction of the IGCC Project including start-up and testing costs (or necessary costs identified in start-up and testing) and does not include, for example, subsequent ongoing capital spent on the IGCC Project for normal capitalized repairs or maintenance expenditures or additional plant and equipment necessary for the continued operation of the IGCC Project, nor does the cap apply to orders of the Commission approving cost recovery related to carbon capture and storage (including study costs) involving the IGCC Project.

Exhibit A

majeure events² and (2) increases in AFUDC in excess of the \$160 million of AFUDC included in the \$2.88 billion IGCC Project cost estimate filed in Duke Energy Indiana's case-in-chief in this proceeding, if such increases are outside of Duke Energy Indiana's control. The \$160 million of AFUDC assumed (for purposes of computation) Commission approval to include additional CWIP amounts in retail electric rates within six months after the IGCC Rider CWIP cutoff dates.

- b. Duke Energy Indiana accepts a soft cap of \$2.76 billion. The IGCC Rider will continue based on six-month update proceedings for amounts up to the hard cap limit and will continue in place collecting CWIP at the hard cap level until a Commission order is issued in a subsequent Duke Energy Indiana retail electric base rate case. However, all IGCC Project costs in excess of \$2.76 billion are subject to a prudence review in Duke Energy Indiana's next retail electric base rate case and shall be recovered through the IGCC Rider subject to refund. IGCC Project costs at or below \$2.76 billion are only subject to disallowance based on the standard for disallowance in the CPCN statute applicable to costs at or below an IURC approved cost estimate.³ The soft cap can only be increased by the AFUDC increases identified in section 4.a. above.
- c. Duke Energy Indiana accepts a 150 basis point reduction in its then applicable authorized return on equity on IGCC Project construction costs above \$2.35 billion for the life of asset, subject to the limitations in footnote 1. Duke Energy Indiana will not attempt to recover the economic effect of this 150 basis point compromise through subsequent rate actions.

5. Commercial Value/Benefits:

Retail electric customers will receive the retail jurisdictional share of any net funding (federal, state or otherwise) received for the IGCC Project.

Retail electric customers will receive the retail jurisdictional share of any net by-product or co-product revenues from the IGCC Project.

Duke Energy Indiana shall retain any intellectual property commercial benefits related to the IGCC Project.

² The hard cap may be increased due to an increase in construction costs for the IGCC Project due to a force majeure event beyond the control and without the fault or negligence of Duke Energy Indiana or its suppliers or contractors involved in the Project, such as, by way of example, the following: acts of God, the public enemy, or any governmental or military entity.

³ See Ind. Code §8-1-8.5-6.5. . Approval of the settlement agreement shall be deemed to be approval of \$2.76 billion as the revised, Commission approved cost estimate for the IGCC Project, subject to increase and the other provisions of paragraph 4.b.

6. Vendor Payments /Claims:

Retail electric customers will receive 60% of the retail jurisdictional share of any net amounts received from Bechtel, General Electric or other vendors associated with the design, construction and start-up and testing of the IGCC Project through agreement with such party or through litigation pursued by Duke Energy Indiana or any affiliate following completion of the IGCC Project. Duke Energy Indiana shall retain the remainder of any such recoveries.

7. Miscellaneous:

Parties agree that any subject to refund designations or similar language in Cause No. 43114-IGCC-4 and any subsequent IGCC Rider proceedings approved prior to the order approved in this docket will be removed when this settlement is approved.

Duke Energy Indiana will agree to pay certain reasonable, cost-based attorneys' fees and expenses to the Duke Energy Indiana Industrial Group, in an amount to be negotiated.