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Indianapolis, Indiana
February 22, 2007
1:30 P.M. (EST)

JUDGE STORMS: This is a Prehearing Conference and Preliminary Hearing before the Indiana Utility Regulatory Commission in a cause docketed before the Commission as Cause No. 43114-S1, and the caption is "Verified petition of Duke Energy Indiana, Incorporated for authority, pursuant to an alternative regulatory plan authorized under Indiana Code Section 8-1-2.5 et seq. and Indiana Code Sections 8-1-2-6.1, 8-1-8.7 and 8-1-8.8, to defer and subsequently recover engineering and pre-construction costs associated with the continued investigation and analysis of constructing an integrated coal gasification combined cycle electric generating facility."

Notice of the time and place of the hearing was given as provided by law by publication in Marion County in the Indianapolis Star, in Hendricks County in the Weekend Flyer and in Vanderburgh County in the Courier & Press. Each of said newspapers is a

1 newspaper of general circulation, printed and
2 published in the English language in their
3 respective counties, and said publications
4 were made ten days prior to the date of the
5 Prehearing Conference and Preliminary Hearing.
6 The proofs of publication of the notices have
7 been received by the Commission and are now
8 incorporated into the record of this cause by
9 reference and placed in the official files of
10 the Commission. Notice has also been given to
11 the Office of Utility Consumer Counselor and
12 other interested parties.

13 May we have appearances of
14 counsel, please?

15 MS. KARN: Thank you, Your Honor.
16 On behalf of Duke Energy Indiana, Kelley Karn
17 and Bill DuMond, both at 1000 East Main
18 Street, Plainfield, Indiana, and James R. Pope
19 with Baker & Daniels in Indianapolis, Indiana.

20 MR. MCGILL: Your Honor, appearing
21 on behalf of Southern Indiana Gas and Electric
22 Company d/b/a Vectren Energy Delivery of
23 Indiana, Inc., Daniel W. McGill of the law
24 firm Barnes & Thornburg.

25 Your Honor, I might add that

1 Vectren Energy is a party to the main case and
2 the Joint Petitioner there but not requesting
3 the relief in the sub-docket that Duke is,
4 and, therefore, we filed a Petition to
5 Intervene in the sub-docket yesterday.

6 JUDGE STORMS: Thank you.

7 MR. POLK: Thank you, Your Honor.
8 On behalf of the Citizens Action Coalition,
9 Save the Valley, Valley Watch and the Hoosier
10 Chapter of the Sierra Club, Jerome Polk of the
11 law firm Polk, Hyman & Associates, LLC, 309
12 West Washington Street, Suite 233,
13 Indianapolis, Indiana, 46204.

14 MS. BECKER: On behalf of Nucor
15 Steel, a division of Nucor Corporation,
16 Richard E. Aikman, Jr. and Anne E. Becker with
17 the law firm Stewart & Irwin, 251 East Ohio
18 Street, Suite 1100, Indianapolis, Indiana,
19 46204.

20 MR. STEWART: Your Honor, on
21 behalf of the Indiana Industrial Group, Bette
22 J. Dodd and Timothy L. Stewart of the law firm
23 Lewis & Kappes, Indianapolis, Indiana.

24 MR. HELMEN: Good afternoon, Your
25 Honor. On behalf of the Public, Jeff Reed and

1 Randy Helmen from the OUCC.

2 JUDGE STORMS: Okay. Prior to
3 going on the record, we had a discussion on
4 procedural dates.

5 It's my understanding that the
6 parties have not been able to reach an
7 agreement on the date, and I believe there
8 were some concerns raised off the record with
9 respect to the timing and creation of this
10 sub-docket, but I will allow the parties to
11 convey those concerns on the record in just
12 one moment.

13 The one thing that I would like to
14 take care of is I do have three Petitions to
15 Intervene that are in front of me. Mr. Polk,
16 do you plan to file a separate Petition to
17 Intervene in this cause?

18 MR. POLK: Your Honor, I wasn't --
19 it wasn't clear to me whether the Commission
20 was simply going to make all of the parties in
21 the primary cause parties to the sub-docket or
22 not.

23 JUDGE STORMS: That's my feeling,
24 so I understand why it wasn't clear. The
25 remaining parties all have filed a Petition to

1 Intervene, and I think that's the approach
2 we've taken since I didn't affirmatively drag
3 everyone along in this proceeding.

4 MR. POLK: I will be filing
5 Petitions to Intervene on behalf of at least
6 one if not all four of my clients.

7 JUDGE STORMS: Is there going to
8 be any objection?

9 MS. KARN: No, Your Honor.

10 JUDGE STORMS: I will show -- at
11 least the three that I have -- the one from
12 Southern Indiana Gas and Electric Company, the
13 Industrial Group and Nucor Steel all granted
14 on the record today, and I think it is helpful
15 that there is not an objection to the CAC as I
16 will not have to ask for time to see if
17 there's an objection, and I will be able to
18 rule on that fairly promptly.

19 Mr. Polk, let me go to you first.
20 I know you raised some concerns off the record
21 regarding the procedural schedule in the
22 sub-docket, and if you could express those
23 concerns, please.

24 MR. POLK: Yes, thank you, Your
25 Honor.

1 We understand that there is some
2 relief being requested in the sub-docket which
3 was not requested in the primary docket and,
4 you know, understood that as a fair matter to
5 try and proceed on. It wasn't clear until we
6 saw the evidence or the testimony prefiled by
7 the Petitioner the extent of duplication of
8 issues between the primary docket and the
9 sub-docket and how much time has been set up
10 for the schedule. If we'd known we were going
11 to need to litigate three or four months
12 earlier than had been ordered by the
13 Commission, we would have objected to the
14 petition for a sub-docket, so we feel that
15 because of the duplication of testimony,
16 testimony that's going to be adopted as part
17 of the sub-docket, which has been prefiled but
18 not entered into the record in the primary
19 docket because of the lack of time to
20 thoroughly investigate that testimony, we feel
21 the proposed schedule from Petitioner, Duke,
22 is far too expedited and believe that there's
23 no reason to not proceed on the issues that
24 are in the primary docket on the schedule of
25 the primary docket, and we're not sure whether

1 that allows this proceeding on an expedited
2 schedule except to do it in line with the
3 hearing schedule we have for the primary
4 docket. There's only going to be a difference
5 of a couple of months, but those are critical
6 months for our people to prepare their
7 testimony and review all of the data.

8 JUDGE STORMS: Thank you, Mr.
9 Polk. Mr. Helmen?

10 MR. HELMEN: I do, Your Honor.
11 Thank you very much.

12 As you well know, this is the
13 third petition filed by Duke seeking
14 extraordinary relief in what looks to be an
15 extraordinary project, and we've tried to work
16 collaboratively with them in trying to resolve
17 as many issues with them as we can starting
18 with the FEED study, and we're pleased to work
19 with them.

20 In this particular case, again,
21 they're seeking relief that is extraordinary.
22 At the time that they filed their petition, we
23 even had some conversations with them, but
24 nothing in those conversations showed us the
25 scope of the request which we found out for

1 the first time when they filed the testimony
2 we received earlier this week.

3 There was also nothing in the
4 request for a sub-docket indicating they were
5 going to seek an expedited schedule. I
6 appreciate the need to address those issues,
7 but as we're bumped up here against the
8 already previously agreed to or ordered
9 schedule by the Commission, I'm struck by the
10 fact that, for example, we just had to move
11 back the proposed hearing date on this relief
12 from April 30th to May 7th because on the
13 11th, we're filing our testimony in the
14 underlying case. Why couldn't we file that on
15 that time -- at the same time as well? We're
16 talking about a hearing May 7th. As you know,
17 we have the hearing on the underlying case on
18 June 18th, and we're -- among everything else,
19 we're really making great efforts to try and
20 comply with those schedules, so while the OUCC
21 has and continues to try and work
22 collaboratively with the Petitioner on this
23 project, it just seems in light of everything
24 else that's going on, that there's nothing
25 about the original schedule including these

1 new issues raised by the sub-docket that
2 couldn't be addressed at that time.

3 MR. STEWART: Your Honor?

4 JUDGE STORMS: Yes, please.

5 MR. STEWART: Thank you. I would
6 just will adopt the comments that have already
7 been made. I understand the discussion that
8 we had prior to the -- going on the record
9 with respect to having filed objections to the
10 creation of the sub-docket, but I would note
11 that the fact that a sub-docket has been
12 created does not reflect or indicate that the
13 relief requested may be granted by this
14 Commission even if it wanted to grant that
15 relief, and I would object that they're asking
16 for under 6.1 the recovery of operating
17 expenses, pre-construction costs. They say
18 that you're authorized to do that under that,
19 but 6.1 requires that the Commission may only
20 allow that recovery of pre-construction costs
21 on a project if the Commission has awarded a
22 certificate under 8.7, and under 8.7, you have
23 to have found -- in order to award the
24 certificate, you have to have found that the
25 convenience and necessity will be served by

1 the construction of the project. I don't see
2 how we can get there outside of the regularly
3 docketed proceeding.

4 So, I acknowledge that we failed
5 to file, as we perhaps should have, an
6 objection to the creation of the sub-docket,
7 but I do think that there are still issues
8 that the Commission can consider in connection
9 with whether the relief should be requested.

10 JUDGE STORMS: Thank you. Ms.
11 Karn?

12 MS. KARN: Yes, thank you, Your
13 Honor.

14 First, Mr. Polk mentioned that
15 it's critical from their perspective in
16 preparing for this case, and clearly as the
17 petition or motion for a sub-docket and our
18 testimony point out, they're critical from the
19 Company's point of view as well. Otherwise,
20 we wouldn't be in here asking for an expedited
21 schedule. There are significant amounts of
22 money that need to be spent on the project
23 going forward, and because of the project
24 schedule, we're in a position where we need to
25 get this relief in a May/June order, in the

1 May/June time frame.

2 I will note that the motion for
3 the sub-docket as well as the petition in this
4 case did ask for expedited relief and asked
5 for an order to be issued by the June 1st time
6 frame, and that Motion and petition also
7 referenced the fact that we would be seeking a
8 clean coal technology certificate under
9 Section 8.7, and to the extent that there is a
10 good degree of overlap, and our request to
11 incorporate testimony from the CPCN case
12 acknowledges that, it's to the extent to get
13 to the clean coal technology certificate
14 findings. Most of the testimony we're relying
15 on for that is the testimony that has been
16 filed which the parties have had since the
17 October time frame, so I think our petition in
18 this case or testimony in this case, you know,
19 shows that there's a need for an expedited
20 schedule, and if the Commission wants, I have
21 a witness here that we could put on to better
22 explain why, in the Company's view, such a
23 schedule is needed.

24 JUDGE STORMS: Okay. What was
25 your proposed time frame that you have

1 developed or that was proposed or that was
2 discussed prior to going on the record?

3 MS. KARN: Okay. We worked with
4 the parties a little bit on these dates just
5 to try to get schedules in sync.

6 The OUCC and the Intervenors would
7 file their testimony on March 27th.

8 Duke Energy rebuttal would be due
9 April 10th.

10 The hearing would be May 7th, and
11 then I would also, because of the expedited
12 request, want to set some dates for proposed
13 orders as well, and my proposal, assuming the
14 hearing on May 7th works, would be that Duke
15 Energy's proposed order would be due May 9th.

16 The other parties' proposed orders
17 would be due May 22nd, and then a final reply
18 by Duke Energy would be due May 25th.

19 Just for the Commission's
20 information, this schedule that we've kind of
21 just worked out here is about a month later
22 than what we started with.

23 JUDGE STORMS: So, we're really
24 talking about picking up maybe a month or a
25 month-and-a-half. The other hearing is on

1 June 18th?

2 MS. KARN: June 18th.

3 JUDGE STORMS: It seems like it's
4 getting a little closer than when we first
5 started talking about it. You still need to
6 build in time for the Commission to develop an
7 order which is probably more than a week or
8 two, I would assume. If you would like to
9 talk about that for a few minutes, we can go
10 off the record.

11 MS. KARN: Thank you.

12 JUDGE STORMS: Let's go off the
13 record.

14

15 (Off-the-Record Discussion)

16

17 JUDGE STORMS: Let's go back on
18 the record.

19 It's my understanding that the
20 parties have reached an agreement on a
21 procedural schedule.

22 Ms. Karn, can you enter the
23 parties' agreement into the record, please?

24 MS. KARN: Sure. The parties have
25 agreed that for kind of prefilng and hearing

1 purposes, the sub-docket case would be
2 consolidated with the main docket, and the
3 dates for that would be the OUCC and
4 Intervenors file their testimony on May 1st.

5 Duke Energy files its rebuttal for
6 purposes of the sub-docket on May 15th, and
7 the hearing -- evidentiary hearing begins
8 June 18th and continues that week.

9 The parties have also agreed on an
10 expedited proposed order briefing schedule
11 which would make all proposed orders due on
12 July 6th with no opportunity for response.

13 JUDGE STORMS: Is that the
14 agreement of the parties?

15 MR. HELMEN: The only other point
16 that she didn't mention is that we have
17 cross-answering opportunities in the
18 underlying case.

19 MS. KARN: I believe I did. I
20 think it's the same day as rebuttal.

21 MR. HELMEN: So, May 15th would be
22 rebuttal and cross-answering.

23 JUDGE STORMS: May 15th?

24 MR. HELMEN: Yes, sir.

25 JUDGE STORMS: Okay. Is that the

1 same date as in the main docket?

2 MR. HELMEN: Yes.

3 JUDGE STORMS: I have a copy of
4 that, so thank you very much.

5 Is there anything else we need to
6 discuss?

7 MS. KARN: Nothing from
8 Petitioner, Your Honor.

9 MR. HELMEN: Nor from the Public.

10 MS. BECKER: No, Your Honor.

11 JUDGE STORMS: If not, I'd like to
12 thank the parties for their cooperation in
13 working through this. I know it wasn't easy,
14 but it seems to be an appropriate resolution.

15 This matter is hereby continued
16 until June 18, 2007 at 9:30.

17

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19

20 (PREHEARING CONFERENCE ADJOURNED)

21

22 (HEARING SET FOR JUNE 18, 2007 THROUGH AND
23 INCLUDING JUNE 22, 2007 AT 9:30 A.M. (EST) IN
24 ROOM CCR32 OF THE INDIANA GOVERNMENT CENTER
25 SOUTH, INDIANAPOLIS, INDIANA)