

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INDIANA UTILITY)
REGULATORY COMMISSION'S INVESTIGATION) CAUSE NO. 45032 S2
INTO THE IMPACTS OF THE TAX CUTS AND)
JOBS ACT OF 2017 AND POSSIBLE RATE)
IMPLICATIONS UNDER PHASE 1 AND PHASE 2) APPROVED: AUG 22 2018
FOR DUKE ENERGY INDIANA, LLC)

ORDER OF THE COMMISSION

Presiding Officers:
James F. Huston, Chairman
Lorraine L. Seyfried, Chief Administrative Law Judge

On December 22, 2017, the Tax Cuts and Jobs Act of 2017 ("Tax Act") became law.1
The Tax Act contains provisions that, among other things, reduces the corporate tax rate of 35%
to 21% and revising the federal tax structure. These new federal requirements affect the current
tax expense and deferred tax accounting methods.

When the Tax Act was passed, the rates being charged by most of Indiana's jurisdictional
rate-regulated, investor-owned utilities ("Respondents") were approved by the Commission and
included recovery of costs incorporating the federal corporate tax rate of up to 35%. On January
3, 2018, the Indiana Utility Regulatory Commission ("Commission") initiated an investigation
under Cause No. 45032 to review and consider the implications of the Tax Act on utility rates
and to determine what additional action, if any, is warranted. In the Order initiating Cause No.
45032 ("January 3 Order"), the Commission also ordered all Respondents to apply regulatory
accounting treatment, such as the use of regulatory assets and liabilities, for all estimated impacts
resulting from the Tax Act.

After holding an attorneys conference, the Commission issued an Order on February 16,
2018 ("February 16 Order"), creating two Phases to Cause No 45032. In Phase 1, all
Respondents were required to make 30-day filings reflecting the new tax rate for all rates and
charges pursuant to the Commission's 30-day filing rules. Respondents were then permitted to
withdraw their respective 30-day filings and request a subdocket to address the revision of their
respective rates and charges to reflect the new tax rate. The February 16 Order established a
procedural schedule to be followed upon approval of the subdocket.

The February 16 Order also set an Attorney's Conference to discuss the establishment of
a procedural schedule for Phase 2 to address all remaining issues including: (1) the amount and
amortization of normalized and non-normalized excess accumulated deferred income taxes and
the regulatory accounting being used by Respondents as required by the Commission's January 3

1 Pub. L. No. 115-97, 131 Stat 2054 (2017).

Order for estimated impacts resulting from the Tax Act, and (2) the timing and method for how these benefits will be realized by customers, whether directly or indirectly.

On March 26, 2018, Duke Energy Indiana, LLC (“Duke Energy Indiana”) submitted its 30-day filing to revise its rates and charges. On the same date, Duke Energy Indiana withdrew its 30-day filing and filed a Verified Request for Subdocket, which was subsequently granted.

On April 26, April 27, April 30, 2018, and May 16, 2018 Nucor Steel-Indiana, a division of Nucor Corporation (“Nucor”), the Indiana Industrial Group (“Industrial Group”), the Indiana Office of Utility Consumer Counselor (“OUCC”), and the Citizens Action Coalition of Indiana (“CAC”), respectively, filed Appearances in this subdocket.

On April 26, 2018, Duke Energy Indiana prefiled the direct testimony and exhibits of Stephen G. De May, Senior Vice President Tax And Treasurer for Duke Energy Business Services; and Brian P. Davey, Director Rates and Regulatory Strategy, Indiana, for Duke Energy Indiana.

On June 12, 2018, Duke Energy Indiana filed a Notice of Settlement Agreement in Principle and Motion to Vacate Testimony Filing Deadline and Phase 2 Procedural Schedule, which was subsequently granted by Docket Entry dated June 13, 2018.

On June 27, 2018, Duke Energy Indiana, the OUCC, Industrial Group, and Nucor (“Settling Parties”) filed a Settlement Agreement. Duke Energy Indiana prefiled testimony in support of the Settlement Agreement of Brian Davey, Stephen De May and John Panizza, Director Tax Operations, and the OUCC prefiled testimony in support of the Settlement Agreement of Wes Blakley, Senior Utility Analyst. No party filed testimony opposing the Settlement Agreement.

On July 11, 2018, Duke Energy Indiana filed its response to a Commission Docket Entry explaining how it intends to communicate approval of the Settlement Agreement and resulting bill impact to its customers.

The Commission conducted an evidentiary hearing in this Cause at 10:00 a.m. on July 13, 2018 in Hearing Room 222, 101 West Washington Street, Indianapolis, Indiana. Duke Energy Indiana, the OUCC, Nucor, and Industrial Group appeared by counsel and participated at the hearing.

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

1. Notice and Jurisdiction. Notice of the hearing in this Cause was given and published as required by law. Duke Energy Indiana is a public utility as that term is defined in Ind. Code § 8-1-2-1(a), and is subject to the jurisdiction of the Commission in the manner and to the extent provided by the Public Service Commission Act, as amended, and other pertinent laws of the State of Indiana. The Commission is authorized under Ind. Code § 8-1-2-42 to approve changes in the schedule of rates, tolls, and charges of Indiana public utilities. Such charges must be reasonable and just. Ind. Code § 8-1-2-4. The Commission also has authority to initiate an

investigation into all matters relating to any public utility pursuant to Ind. Code § 8-1-2-58. In addition, Ind. Code § 8-1-2-72 authorizes the Commission to alter or amend any order made by the Commission, upon notice and after opportunity to be heard. Accordingly, the Commission has jurisdiction over Duke Energy Indiana and the subject matter of this proceeding.

2. Duke Energy Indiana's Case-In-Chief Evidence. Mr. De May provided an overview of the Tax Act. He testified that the key provisions of the Tax Act impacting Duke Energy Indiana's customer rates are as follows:

1. Reduction of the corporate tax rate from 35% to 21%. This will lower a key component of utility cost of service, *i.e.*, income taxes.
2. Retention of net interest expense deductibility, without limitation, as was the case under pre-Tax Act rules.
3. Elimination of bonus depreciation.
4. Elimination of the manufacturing deduction.
5. Normalization of excess accumulated deferred income taxes ("ADIT") resulting from the Tax Act.

Mr. De May explained the concept of ADIT and the impact of the Tax Act on regulated utilities. He testified that with the Tax Act, deferred tax assets and liabilities on a company's books had to be revalued from a rate of 35% to a rate of 21%. For regulated utilities, if it is probable the difference will be included as a cost of service item for ratemaking, the difference is moved from the ADIT account to a regulatory asset or liability account. Mr. De May testified that at the end of 2017, Duke Energy Indiana had a significant net deferred tax liability, booked at the 35% corporate tax rate and driven overwhelmingly by accelerated and bonus depreciation of fixed assets for tax purposes. As the deferred tax liability represents taxes collected from customers but not yet paid to taxing authorities, and because the ultimate payment of these taxes will now occur at a 21% corporate tax rate, the balance of deferred tax liability was remeasured to a new, lower amount. Mr. De May testified that the resulting excess deferred tax balance became a regulatory liability.

Mr. De May testified that the Tax Act requires excess deferred taxes generally associated with property and specifically connected to the accelerated depreciation of property (generally known as "protected" excess ADIT) to be normalized into customer rates in a highly prescribed manner that mimics the remaining life of the underlying assets. He testified that the Tax Act provides for a reduction of the protected excess ADIT reserve with a corresponding reduction in the revenue that the utility collects from ratepayers no more rapidly than the reserve would be reduced under the Average Rate Assumption Method ("ARAM"). Mr. De May testified that all other excess deferred taxes may be treated by the Commission like any other regulatory liability in the rate-setting process.

Mr. De May testified that the Tax Act provisions will affect Duke Energy Indiana in several ways. The lower federal statutory tax rate would have the effect of reducing the amount of federal income tax expense that must be collected through rates. The revenue requirement will also be lowered through the amortization and normalization of excess deferred income taxes. Mr. De May testified that the amortization of excess ADIT balances will be reflected in Duke Energy

Indiana's capital structure, reducing deferred taxes, and any new deferred taxes will be included at a lower amount than would otherwise have been the case, absent the Tax Act, due to the tax rate change and the elimination of bonus depreciation, therefore driving a higher revenue requirement over time.

Mr. De May testified that it is reasonable that customers should benefit from the changes in Duke Energy Indiana's cost to serve as a result of the Tax Act, but consideration must be given to all aspects of the Tax Act, including the material reduction in cash flow. He testified that credit quality drives access to affordable capital and it is in the best interest of customers to prevent a weakening of Duke Energy Indiana's cash flow and credit quality from pre-Tax Act levels. Mr. De May testified that the Tax Act represents a unique opportunity to deliver savings to customers; however, the interests of customers and the utility must be balanced.

Mr. De May testified that the credit rating agencies view the Tax Act as having an overall negative credit impact on investor-owned utilities. Mr. De May stated that Duke Energy Corporation's rating outlook was changed from stable to negative in response to the financial impacts of the Tax Act and regulatory uncertainties related thereto. He testified that if unmitigated, the reduction in cash flows would erode Duke Energy Indiana's credit metrics. Mr. De May testified that Duke Energy Indiana's analysis of assumptions on how tax reform will be applied produces a result for the working capital to debt [FFO/Debt] credit metric that is at or below guidelines published by Moody's for Duke Energy Indiana's current credit rating level over the next three years. He testified that with the impacts of the Tax Act reflected in rates more expeditiously, the result is an even greater reduction to the forecasted FFO/Debt metric, to levels that introduce significant risk to Duke Energy Indiana's credit quality and ratings. Mr. De May testified that neither a downgrade nor a diminution of credit quality is in the best interest of Duke Energy Indiana or its customers.

Mr. De May testified that Duke Energy Indiana has created the necessary accounting entries to preserve the benefits of the Tax Act for customers, as directed by the Commission. He testified that to reduce and smooth out volatility in Duke Energy Indiana's customer rates over the short and long term, while maintaining Duke Energy Indiana's credit position and ability to provide safe, reliable, and affordable service, Duke Energy Indiana proposes to: (1) adjust its riders for the income tax rate reduction as they are filed throughout 2018; and (2) provide a partial offset of the expected rate increase covering the costs associated with its coal ash recovery plan, to be filed in mid-2018, by adjusting its base rates for the federal income tax rate reduction at the same time the expected increase is effective (in September 2019). Mr. De May testified that customers benefit directly from a strong balance sheet and strong investment grade credit ratings through low cost of capital and strong access to capital during all market conditions. He testified that Duke Energy Indiana's proposal offers a balanced solution by mitigating a future rate increase for customers while preserving its credit quality and access to low cost capital.

Mr. Davey explained how the Tax Act affects Duke Energy Indiana's rates. He testified that Duke Energy Indiana was required to revalue the balance of deferred income taxes as of December 31, 2017 as a result of the reduced income tax rate of 21%, creating excess ADITs, which were moved from the deferred income tax accounts to a net regulatory liability account.

He testified that these amounts would need to be returned to customers over time, subject to normalization rules and Commission approval.

Mr. Davey testified that the elimination of the Section 199 manufacturing deduction does not affect current rates because Duke Energy Indiana cannot take the deduction when it has a net operating loss, or, no taxable income. The elimination of this deduction will cause income taxes, and therefore revenue requirements, to be higher in the future once Duke Energy Indiana is out of its net operating loss position. Mr. Davey testified that Duke Energy Indiana's cost of capital and rate of return on rate base will be higher with the elimination of bonus depreciation because there will be less zero cost deferred taxes in its capital structure. He testified that with the reduction in federal tax rates and lower accelerated depreciation deductions, the after tax costs of future capital investments will be higher, putting upward pressure on Duke Energy Indiana's cost of service and future customer rates. He stated that the near term rate relief associated with tax reform to customers should be balanced with the future increase in cost of service in a manner that does not advantage customers today at the detriment of future customers.

Mr. Davey testified that Duke Energy Indiana has deferred the estimated impact the lower tax rate would have on customer rates, pursuant to the Commission's January 3 Order. He testified that Duke Energy Indiana proposes to reflect the 21% federal tax rate in the relevant riders as they are filed over the course of 2018. These relevant riders include a return on rate base or include recovery of depreciation expense or amortization of post-in-service carrying costs. He testified that between the environmental cost recovery ("ECR") and integrated gasification combined cycle ("IGCC") filings, approximately \$46.9 million of annual Tax Act benefits, or 97% of the approximately \$48.5 million total Tax Act benefits from riders, are already or expected to be reflected in customer rates by the end of April 2018. The remaining relevant riders have been filed with the benefits to be received by the end of October 2018. He testified that the total reduction in revenues from these riders, as a percentage of 2017 revenues, is approximately 1.9%. Mr. Davey testified that incorporating the federal income tax rate change into the riders allows customers to receive the benefits of the tax change in the normal course of operation of the riders.

Mr. Davey testified that Duke Energy Indiana requests approval of its revised base rates to reflect the 21% federal tax rate effective with the timing of implementation of rates to be filed under its Standard Contract Riders 62 and 71 ("ECR 33 Riders"), effective in September 2019. He testified that Duke Energy Indiana will file a request for recovery of coal ash costs and then include those costs in the ECR 33 Riders, which will be filed in April 2019. Mr. Davey testified that Duke Energy Indiana proposes to offset ECR 33 Rider costs by the base rate reduction from the Tax Act. He stated that if Duke Energy Indiana does not file a coal ash proceeding, Duke Energy Indiana proposes that the updated base rates and special contract rates be made effective September 2019. Mr. Davey provided an overview of Duke Energy Indiana's upcoming coal ash proceeding.

Mr. Davey testified that Duke Energy Indiana's proposal is in the public interest. It provides reduced rate volatility while maintaining Duke Energy Indiana's credit metrics, which benefits the customers over the long term. Mr. Davey included with his testimony the updated

base rate tariffs for approval. He also provided a preview of Duke Energy Indiana's planned Phase 2 proposal for customers to begin receiving excess ADIT.

3. Settlement Testimony.

A. Duke Energy Indiana. Mr. Davey presented an overview of the Settlement Agreement. He explained that the Settlement Agreement addresses all issues in this proceeding (both Phase 1 and Phase 2 issues), including the adjustment of base rates and riders, the regulatory liability created by the January 3 Order as well as the time periods and amounts of protected and unprotected ADIT to be returned to customers.

Mr. Davey explained that the Settlement Agreement provides that the 21% corporate income tax rate would be included in base rates and riders impacted by base rates no later than September 1, 2018 and that Duke Energy Indiana will submit a 30-day filing to accommodate this schedule. Mr. Davey also testified that Duke Energy Indiana's riders that are affected by the tax rate change will include the 21% corporate income tax rate as they are filed throughout 2018. He also explained that customers have already begun receiving 91% of the rider tax reduction via Duke Energy Indiana's ECR and IGCC Riders.

As to the regulatory liability created by the January 3 Order, Mr. Davey testified that, upon issuance of a final order in this Cause approving the Settlement Agreement, Duke Energy Indiana will make the necessary accounting entries to offset the base rate portion of the regulatory liability against certain regulatory assets on Duke Energy Indiana's accounting books that are currently accruing carrying costs. He testified that the relevant regulatory assets are the IGCC Carbon Capture Study (\$26.3 million) and NOx AFUDC Continuation Environmental Plant – Retail After Rate Case Cut-off, (\$9.8 million), for a total of approximately \$36 million (prior to revenue requirement gross-up). If there is any remainder, it shall be deferred, without carrying costs, until Duke Energy Indiana's next general base rate case.

Mr. Davey also explained how the Settlement Agreement provides for treatment of the regulatory liability relative to Duke Energy Indiana's rider filings. The Settling Parties agreed that a request to refund the regulatory liability associated with each rider will be incorporated into Duke Energy Indiana's case-in-chief testimony as those trackers are filed, except that Duke Energy Indiana committed to supplement its case-in-chief in IGCC 17, which is pending, to include the regulatory liability associated with the IGCC Rider. As a result, a complete refund of the regulatory liability in each tracker is expected to be fully refunded to customers by December 2020.

Mr. Davey testified that the Settling Parties propose to amortize the retail portion of excess protected ADIT over approximately 25.8 years as required under the normalization rules and to commence refunding this amount on January 1, 2020. The Settlement Agreement provides that the amortization for the amounts associated with 2018 and 2019 will be deferred in a regulatory liability to be included in the next base rate case. As to the unprotected amounts of excess ADIT, Mr. Davey testified that the Settling Parties propose that Duke Energy Indiana return it over a ten-year period commencing with the date of this Order. He explained that the

reduction of approximately \$106 million annually. As to excess ADIT, customers will start to see the return of the unprotected amount in 2018 over a ten-year period and begin to receive the excess protected ADIT in January 2020.

Mr. De May testified that the Settlement Agreement helps alleviate concerns with Duke Energy Indiana's credit metrics expressed in his direct testimony. He testified that the Settlement Agreement considers these potential adverse impacts and provides for key near-term credit supportive measures. Mr. De May testified that the combined impact of terms of the Settlement Agreement allows Duke Energy Indiana to adjust to the impacts of tax reform over time, providing a glide path into the Tax Act impacts, and returning all tax reform benefits to customers. He stated that the Settlement Agreement's approach to excess unprotected ADIT strikes a balance between Duke Energy Indiana's initial proposal for a 26-year flow back and the Intervenor's desire for a shorter flow back period. He explained that the first five years mimic a longer amortization period, enabling Duke Energy Indiana to absorb the impact without a significant erosion of cash flow. He stated that after the fifth year, Duke Energy Indiana should be in a better position to manage the Settlement Agreement's accelerated flow back of unprotected excess ADIT.

Mr. De May explained that credit stability is important because Duke Energy Indiana must be able to access capital markets to finance its capital projects. He testified that strong credit ratings result in lower debt costs for customers and greater assurance of access to capital, even in challenging market conditions.

Mr. Panizza testified regarding excess ADIT and the proposed treatment in the Settlement Agreement. He stated that at the end of 2017, Duke Energy Indiana had a significant ADIT liability driven overwhelmingly by accelerated and bonus depreciation of fixed assets, including the bonus depreciation of the Edwardsport IGCC plant, for federal income tax purposes. Mr. Panizza explained that ADIT liability represents taxes collected from customers but not yet paid to taxing authorities, and because the ultimate payment of these taxes will now occur at a 21% corporate tax rate pursuant to the Tax Act, the balance of ADIT must be remeasured. He stated that it is this resulting "excess" ADIT balance that became a regulatory liability to be refunded to customers.

Mr. Panizza explained the difference between protected and unprotected ADIT and the treatment of each. In essence, Mr. Panizza testified that protected excess ADIT must be returned in a highly prescribed method and that the Commission has discretion as to how to return the unprotected excess ADIT.

Mr. Panizza testified that Duke Energy Indiana estimates that 3.88% of the protected excess ADIT may be amortized in 2018, but the actual amount will not be known until Duke Energy Indiana's Federal Income Tax return is filed later in 2018. He testified that the estimated federal excess ADIT liability as of December 31, 2017 for Duke Energy Indiana is \$780 million and is comprised of \$613 million that is protected and \$167 million of unprotected. Mr. Panizza testified that revenue equivalent of the ADIT on a pretax grossed up basis is \$1,038 million on a total-company basis, the retail portion of which is \$976 million.

Mr. Panizza testified that the amortization of Duke Energy Indiana's protected excess ADIT will result in different amortization amounts each year, but that the Internal Revenue Service ("IRS") allows regulated utilities to set rates using the best estimate for ARAM at the time rates are set without violating normalization rules. He explained that the IRS allows regulated utilities to update the amounts to its best estimate in each subsequent rate case.

Mr. Panizza explained that, because the amounts in 2018 and 2019 of protected excess ADIT are deferred and not refunded until 2020, they take on the character of excess unprotected ADIT, and the Commission is free to approve an amortization term at that time as for any other regulatory liability.

Mr. Panizza testified that the average life of the assets comprising unprotected assets is approximately 22 years and that the Settling Parties agreed to refund the amount over ten years. He also testified that the terms of the Settlement Agreement are consistent with IRS guidelines.

B. OUC. Mr. Blakley described how the Settlement Agreement timely provides the Phase 1 tax benefit to Duke Energy Indiana's customers. He testified that Duke Energy Indiana has agreed to make a revised 30-day filing to reduce its base rates and any riders affected by base rate reductions such that implementation of the revised rates can be made no later than September 1, 2018. In addition, all of Duke Energy Indiana's riders will be reduced to reflect the new 21% corporate income tax rate as those riders continue to be filed in 2018, with all riders expected to be approved and implemented by the end of October 2018. Mr. Blakley testified that, in context with the other terms and concessions within the Settlement Agreement, reducing Duke Energy Indiana's base rates in September 2018 and all riders by the end of October 2018 is a reasonable outcome that provides a timely refund to ratepayers.

Mr. Blakley testified that the Settlement Agreement provides Phase 2 tax benefits to Duke Energy Indiana's customers in two ways: (1) amortization of the regulatory liability created by excess taxes embedded in base rates and riders since January 1, 2018; and (2) amortization of excess ADIT as of December 31, 2017. He explained that under the Settlement Agreement, Duke Energy Indiana will make accounting entries to offset approximately \$36 million of regulatory assets relating to the IGCC carbon capture project and the environmental allowance for funds used during construction costs for NOx plant that was included after the rate base cutoff date from its last rate case, both of which are currently accruing carrying charges, against the regulatory liability starting January 1, 2018, created by the difference between the 35% tax rate embedded in Duke's base rates and the new 21% corporate tax rate. He noted the Settling Parties agree that any remaining regulatory liability/asset after this offset will be deferred until Duke Energy Indiana's next base rate case without carrying charges. Mr. Blakley testified that Duke Energy Indiana has agreed to supplement its current Cause No. 43114 IGCC 17 proceeding to show evidence of the over-collection of taxes based on the tax rate differences that are being recorded in a regulatory liability, and it will refund that difference to customers as those rates become effective in February 2019. Mr. Blakley testified that for all other rider charges, which also contain income taxes with the tax rate differences being deferred in a regulatory liability, Duke Energy Indiana has agreed to refund the regulatory liability resulting from the tax rate change as these riders are filed with the refund of the regulatory liability to be made in full by December 2020.

Mr. Blakley described how the Settlement Agreement addresses the amortization of excess ADIT. Duke Energy Indiana will amortize over the next ten years its excess unprotected ADIT balance of \$210 million through its existing Rider 67, which will be renamed the Tax and Merger Credit Rider. The Settling Parties agree that the first five years will be refunded at approximately \$7 million annually, and the next five years (starting September 1, 2023) refunded at approximately \$35 million annually. Starting January 1, 2020, Duke Energy Indiana will also amortize its estimated \$766 million excess protected ADIT balance, which is \$29.7 million annually. The Settlement Agreement provides that the total initial amount of annual ADIT refund to Duke Energy Indiana customers will be approximately \$36.7 million, and after five years, the annual amount will increase to \$64.7 million.

Mr. Blakley testified that in consideration of the compromises made on key issues, the Settlement Agreement also includes an additional rate credit of \$1.9 million, to be refunded to Duke Energy Indiana customers in 2020 via Rider 67. He testified that the Settlement Agreement also creates an additional regulatory liability of approximately \$59.4 million, which includes the 2018 and 2019 amortizations of protected ADIT, that will be deferred until Duke Energy Indiana's next base rate case.

Mr. Blakley testified that the Settlement Agreement reflects compromises made by Duke Energy Indiana and creates a reasonable balance of the interests of ratepayers and those of Duke Energy Indiana and its shareholders.

4. Commission Discussion and Findings. Settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coal. of Ind., Inc. v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coal.*, 664 N.E.2d at 406.

Further, any Commission decision, ruling, or order, including the approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coal. of Ind., Inc. v. Pub. Serv. Co. of Ind., Inc.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission's own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Ind. Code ch. 8-1-2, and that such agreement serves the public interest.

In this case, the Commission has before it evidence with which to judge the reasonableness of the terms of the Settlement Agreement. Duke Energy Indiana presented its initial position on its proposal to mitigate the impacts of the Tax Act. Duke Energy Indiana then presented settlement testimony explaining how the Settling Parties' agreement addressed the

concerns laid out in its direct testimony. Both the OUCC and Duke Energy Indiana presented testimony explaining the Settlement Agreement, the issues addressed therein, and the reasonableness of the settlement terms. No party presented testimony challenging the reasonableness of the Settlement Agreement.

A. Change in base rates. The Settlement Agreement provides that Duke Energy Indiana shall file a revised 30-day filing reflecting the reduction in the corporate tax rate from 35% to 21%.² This filing will also include any riders that are impacted by the base rate reductions, including the lost revenue component of Rider 66 and certain credits in Riders 62 and 71. Duke Energy Indiana agreed to make this filing such that the change in base rates will be effective no later than September 1, 2018. We agree with the OUCC that such an immediate base rate reduction is in the public interest and reducing base rates in September is a reasonable outcome.

B. Tax Act changes reflected in Duke Energy Indiana's Riders. The Settlement Agreement provides that Duke Energy Indiana shall reflect the reduced corporate tax rate in all of the applicable riders as those riders are filed throughout 2018. Mr. Davey explained this term and testified that Duke Energy Indiana has already begun returning approximately 91% of the rider tax reductions through its ECR and IGCC rider filings that have been approved. Mr. Blakley agreed with Mr. Davey's description and explained that the remaining rider rates are expected to be approved and implemented by the end of 2018.

C. Regulatory Liability. The Settlement Agreement provides that Duke Energy Indiana will offset certain regulatory assets that have carrying costs against the regulatory liability created by the January 3 Order. To the extent there is any remainder, the Settlement Agreement provides that the amount shall be deferred, without carrying costs, until Duke Energy Indiana's next base rate proceeding. Mr. Davey testified that, upon issuance of a final order in this proceeding, Duke Energy Indiana will make the necessary accounting entries to offset approximately \$36 million (prior to gross-up) of previously authorized regulatory assets. He testified that the regulatory assets that are currently accruing carrying costs that will be offset are IGCC Carbon Capture Study, in the amount of \$26.3 million, and NOx AFUDC Continuation Environmental Plant – Retail After Rate Case Cut-off, in the amount of \$9.8 million. Mr. Davey also testified that Duke Energy Indiana will supplement its case-in-chief in Cause No. 43114 IGCC 17 to provide the necessary evidence to demonstrate how the regulatory liability accrued in that proceeding associated with the Tax Act rate change will be fully refunded to customers.

As to Duke Energy Indiana's remaining riders that are affected by the tax rate change, Duke Energy Indiana shall request approval to refund the regulatory liability associated with each rider as the rider is filed. Mr. Davey testified that the affected riders include Rider 62 – Environmental Compliance Investment; Rider 71 – Environmental Compliance Operating Cost; Rider 73 – Renewable Energy; Rider 72 – Federally Mandated Costs; Rider 65 – Transmission and Distribution Infrastructure Improvement, and; Rider 66-A – Energy Efficiency. Both Messrs. Blakley and Davey stated that customers will have received a full refund of the regulatory liability by December 2020.

² We note that Duke Energy Indiana made its 30-day filing on July 19, 2018.

D. Treatment of ADIT. The Settlement Agreement provides that Duke Energy Indiana shall amortize the protected ADIT using ARAM, commencing January 1, 2020. In addition, the 2018 and 2019 amortizations of protected ADIT (totaling approximately \$59.4 million) will be accounted for as deferred regulatory liabilities, with the repayment of those amounts to be addressed in Duke Energy Indiana's next base rate case.

The Settlement Agreement also provides that the unprotected ADIT will be refunded to customers over ten years, commencing on the date of this order. For the first five years, Duke Energy Indiana shall return \$7 million per year of the unprotected ADIT to customers and commencing September 1, 2023, Duke Energy Indiana will refund \$35 million per year to customers until the entire unprotected ADIT amount is refunded to customers.

Mr. Panizza testified that the terms of the Settlement Agreement relative to excess ADIT are consistent with IRS Guidelines. Mr. De May testified that the Settlement Agreement's approach to excess unprotected ADIT strikes a balance between Duke Energy Indiana's initial proposal for a 26-year return and the Intervenors' desire for a shorter refund period, enabling Duke Energy Indiana to absorb the impact without a significant erosion of cash flow.

Mr. Blakley explained that the Settlement provides for the use of allocation factors for the ADIT refunds in Rider 67 to be the Retail Original Cost Depreciated Rate Base from Duke Energy Indiana's last rate case in Cause 42359.

E. One Time Rate Credit. The Settlement Agreement provides that Duke Energy Indiana retail customers will receive a one-time rate credit for \$1.9 million. Mr. Davey testified that this rate credit will occur in a one-month period effective with the January 2020 bill cycle using Rider 67. Mr. Blakley testified that this rate credit is included in the Settlement Agreement in consideration of the compromises made on key issues, including the timing of when benefits from the Tax Act will be refunded to ratepayers.

F. Impact of the Settlement Agreement to Customers. Mr. Davey sponsored a table that summarized the customer impact of the various components of the Settlement Agreement. In addition to the one-time rate credit of \$1.9 million, the table demonstrates that customers will receive a 4.5% retail revenue decrease as of October 2018, a cumulative total of 5.6% retail revenue reduction as of January 2020, and a cumulative total of 6.7% as of September 2023.

Mr. De May testified that the Settlement Agreement also mitigates the potential adverse impacts to Duke Energy Indiana's credit metrics. He also stated that the terms of the Settlement Agreement moderate the negative impacts to cash flow and credit metrics from the Tax Act over the next five years. The combined impact of the Settlement Agreement also allows Duke Energy Indiana time to adjust to the impacts of the Tax Act by providing a glide path, while returning all tax reform benefits to customers. Such actions should be viewed by the rating agencies as constructive and equitable.

Mr. Blakley testified that the terms of the Settlement Agreement provide material financial benefits to Duke Energy Indiana's customers. He testified that the terms of the Settlement Agreement create a reasonable balance of the interests of the ratepayers and Duke Energy Indiana and its shareholders.

G. Communication to Customers. Duke Energy Indiana indicated that it would communicate the Commission's approval of the Settlement Agreement and resulting bill impact to its customers through: (1) a press release soon after any order approving the Settlement Agreement; (2) notice on its website; (3) communications to its large customers, small business customers, and members of the Indiana General Assembly; (4) email to residential customers; and (5) on social media. We also encourage Duke Energy Indiana to communicate the resulting bill impact to all of its customers directly on the billing statement or a bill insert.

H. Conclusion. Based on the evidence presented, we find that the Settlement Agreement presents a fair and equitable resolution of all issues related to the impacts of the Tax Act on Duke Energy Indiana and its customers. Therefore, the Commission finds the Settlement Agreement is in the public interest and approves it in its entirety.

We also note that in the Settlement Agreement, the parties agree that their agreement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. Consequently, with regard to future citation of the Settlement Agreement, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, 1997 WL 34880849 at *7-8 (IURC March 19, 1997).

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

1. The Settlement Agreement, a copy of which is attached to this Order, is approved.
2. Duke Energy Indiana is authorized to make the necessary accounting entries to offset two previously authorized regulatory assets that have carrying costs (the NOx AFUDC Continuation and IGCC Carbon Capture Study regulatory assets) against the regulatory liability associated with the Tax Act and created by the January 3 Order. Duke Energy Indiana shall also discontinue accruing additional carrying costs on these regulatory assets at the time of the netting.
3. Duke Energy Indiana is authorized to defer any remainder between the regulatory assets and regulatory liability, discussed above without carrying costs, for future recovery or refund in its next general base rate proceeding.
4. Duke Energy Indiana shall defer the refund of protected excess accumulated deferred income taxes until January 1, 2020, at which time it is authorized to commence refunding such amounts using the Average Rate Assumption Method. Duke Energy Indiana is authorized to defer the amortizations of protected ADIT from January 1, 2018 through December 31, 2019 as a regulatory liability until Duke Energy Indiana's next general base rate proceeding.

5. Duke Energy Indiana shall commence amortizing and refunding unprotected excess ADIT effective with this Order and will refund the entire amount over a ten-year period. Consistent with the terms of the Settlement Agreement, for the first five years, Duke Energy Indiana will amortize and refund to customers an amount of \$7 million per year; commencing September 1, 2023, Duke Energy Indiana shall refund \$35 million per year until the entire amount has been refunded to customers.

6. Until otherwise ordered by the Commission following a general base rate case, Duke Energy Indiana shall make an annual 30-day filing reducing its rates to reflect the excess ADIT amortizations in accordance with the terms of the Settlement Agreement. Duke Energy Indiana is authorized to use its existing Rider 67 to implement this reduction.

7. Duke Energy Indiana shall provide customers a one-time rate credit in the amount of \$1.9 million to commence on January 1, 2020 using Rider 67.

8. All excess ADIT and one-time rate credit amounts in the Settlement Agreement shall be refunded using the Retail Original Cost Depreciated Rate Base allocations from Cause No. 42359, until these allocations are updated in a subsequent base rate proceeding. Duke Energy Indiana is authorized to modify Rider 67 to reflect this change in allocation methodology for the tax refund amounts.

9. Duke Energy Indiana shall notify its customers of the Commission's approval of the Settlement Agreement in accordance with Respondent's Exhibit 6.

10. This Order shall be effective on and after the date of its approval.

HUSTON, FREEMAN, KREVDA, AND ZIEGNER CONCUR; OBER ABSENT:

APPROVED: AUG 22 2018

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



Mary M. Becerra
Secretary of the Commission

STIPULATION AND SETTLEMENT AGREEMENT

Duke Energy Indiana, LLC (“Duke”), the Indiana Office of Utility Consumer Counselor (“OUCC”), the Indiana Industrial Group (“IG”), and Nucor Steel – Indiana, a division of Nucor Corporation (“Nucor”), (collectively, the Settling “Parties”), for purposes of comprehensively resolving all of Duke’s Phase 1 and Phase 2 tax issues in Indiana Utility Regulatory Commission’s (“Commission”) Cause No. 45032-S2, agree to the following settlement terms:

1. Presentation of the Settlement Agreement.
 - A. The Settling Parties will jointly move the Commission for approval of the Settlement Agreement (“Agreement”) in its entirety.
 - B. If the Final Order of the Commission in this proceeding modifies or conditions this Agreement, only the Settling Parties to this Agreement may decide to accept or reject such modification or condition. If the Settling Parties do not unanimously accept the modified Agreement, then upon notice in writing by any Settling Party within fifteen (15) business days after the date of the Final Order that any modifications made by the Commission are unacceptable to such party, this Settlement Agreement shall become void in its entirety and have no effect. In the event the Agreement is withdrawn, the Settling Parties will request that an Attorneys’ Conference be convened to establish a procedural schedule for the continued litigation of this proceeding. If the Agreement is not approved in its entirety by the Commission, the Settling Parties agree that the terms herein shall not be admissible in evidence or discussed by any party in a subsequent proceeding.

2. Effect and Use of Agreement.
 - A. The terms of this Agreement, including the substantive terms in Paragraph 3 of this document, represent a fair, just and reasonable resolution by negotiation and compromise for the purpose of settlement, and is agreed upon without prejudice to the ability of any party to propose a different term, condition, amount, methodology or exclusion in future proceedings. As set forth in the order in *Re Petition of Richmond Power & Light*, Cause No. 40434, p. 10, the Settling Parties agree and ask the Commission to incorporate as part of its Final Order that this Agreement, or the Order approving it, not 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 substantive terms in Paragraph 3, 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 the Settling Parties. Each of the Settling 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 Settling Parties in this Cause constitutes substantial evidence sufficient to this Agreement and provides an adequate evidentiary basis upon which the Commission can make findings of fact and conclusions of law necessary for the approval of this Agreement, as filed. The Settling Parties agree to the admission into the evidentiary record of this Agreement, along with testimony supporting it, without objection.

- C. 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.
 - D. The Settling Parties shall not appeal the agreed Final Order or any subsequent Commission's order to the extent such order is specifically implementing, without modification or with approved modification, the provisions of the Agreement and the Settling Parties shall not support any appeal of any such order by a person not a party to this Agreement.
 - E. The provisions of this Agreement shall be enforceable by any Settling Party at the Commission or any court of competent jurisdiction, whichever is applicable.
 - F. The communications and discussions during the negotiations and conferences that produced this Agreement have been conducted on the explicit understanding that they are or relate to offers of settlement and shall therefore be privileged and nondisclosable.
3. Substantive Settlement Terms.
- A. Tracker Charges:

The Settling Parties agree that all of Duke's applicable tracker charges shall be reduced to reflect the 21% corporate income tax rate, as those trackers are filed with the Commission in 2018.
 - B. Base Rates:

The Settling Parties agree to implementation of reduced base rates and any riders impacted by base rate reductions (*i.e.*, Rider 66A (lost revenues only), and certain credits in Riders 62 and 71) via a revised 30-day filing submitted such that approval and implementation could be made no later than 9/1/18. The Settling

Parties agree that Duke's revised 30-day filing is inextricably linked with and part and parcel of the terms and commitments reflected below, incorporated into this comprehensive Settlement Agreement.

C. Tax Cut and Jobs Act of 2017 ("TCJA") Regulatory Liability:

- i. Upon issuance of a Final Order in Cause No. 45032-S2 approving the Settlement Agreement, Duke will make the necessary accounting entries to offset approximately \$36M (prior to gross-up) of regulatory assets that have carrying costs (IGCC Carbon Capture Study approx. \$26.3M and NOx AFUDC Continuation Environmental Plant – Retail After Rate Case Cut-off approx. \$9.8M) with the TCJA regulatory liability related to the statutory federal rate change from 35% to 21% associated with Duke's base rates as of the effective date of the order in this proceeding. Any remainder between the regulatory liability associated with the over-collection of federal income tax through base rates and the regulatory assets identified above shall be deferred, without carrying costs, until Duke's next general base rate case.
- ii. Pursuant to Paragraph 3D(i) below, the Settling Parties agreed that Duke would delay the initiation of the refund of excess protected ADIT until 1/1/2020. As such, Duke will defer the amortizations of protected ADIT from January 1, 2018 through December 31, 2019 as a regulatory liability until Duke's next general base rate case. Amortization of this regulatory liability will be addressed/determined in the next general base rate case.

- iii. Duke commits to supplement its case-in-chief in IGCC-17 to provide the necessary evidence showing how the TCJA regulatory liability associated with the statutory federal rate change from 35% to 21% and included in Duke's IGCC tracker will be refunded to customers as those rates become effective, which is expected to be by February 2019.
- iv. For Duke's remaining trackers that are affected by the statutory tax rate change (*i.e.*, Rider 62 – Environmental Compliance Investment, Rider 71 – Environmental Compliance Operating Cost, Rider 73 – Renewable Energy; Rider 72 – Federally Mandated Costs; Rider 65 – Transmission and Distribution Infrastructure Improvement, and; Rider 66-A – Energy Efficiency), a request to refund the TCJA regulatory liability associated with each rider will be incorporated into Duke's case-in-chief testimony as those trackers are filed, such that a complete refund of the TCJA regulatory liability in each tracker will be expected to be fully refunded to ratepayers by December 2020.

D. Excess Accumulated Deferred Income Taxes ("ADIT"):

- i. The excess protected ADIT allocated to retail customers is \$766M and will be refunded to customers starting 1/1/2020 using ARAM, which Duke currently estimates to be over approximately 25.8 years. The amortizations of excess protected ADIT for the years 2018 and 2019 shall be addressed as set forth in Paragraph 3C(ii) and will not be included in balance of excess protected ADIT to be refunded starting

1/1/2020. Nothing in this Agreement is to be construed to cause Duke Energy to be in noncompliance with all IRS normalization requirements.

- ii. The unprotected excess ADIT allocated to retail customers is \$210M and will be amortized and refunded to customers beginning with the Final Order in this Cause over a 10-year period. For the first five years, the amortization amount shall be \$7M annually. For the last five years, commencing on September 1, 2023 the amortization amount shall be \$35M annually.

To the extent an item that is classified as protected by IRS guidance is subsequently reclassified due to a change in IRS guidance as unprotected or vice versa, upon validation of any change by the Non-Duke Settling Parties, the \$35 million annual amortization will continue until the remaining unprotected excess ADIT balance is zero.

- iii. Until otherwise ordered by the Commission following a general base rate case, Duke will make an annual 30-day filing reducing its rates to reflect the excess ADIT amortization amounts set forth in Paragraph 3D(i) and (ii) in order to effectuate the amortization of excess ADIT (protected and unprotected) pursuant to the above terms. Such filings will be made via the Commission's 30-day filing process using Rider 67 to implement the reduction, renamed the Tax and Merger Credit. These amortizations will be allocated using the Retail Original Cost Depreciated Rate Base from Cause No 42359. The allocation method

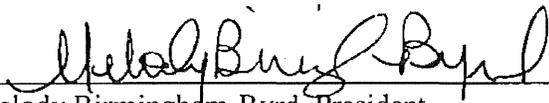
for the merger credit contained in Rider 67 shall remain the same.

Allocation factors for the excess ADIT amounts will be updated in the next general base rate case proceeding.

E. Additional Rate Credit:

While no party filed testimony in response to Duke Energy's case-in-chief in this Cause, the terms of this Settlement Agreement reflect all of the Settling Parties' compromises on key issues, including the timing of when benefits from the TCJA will be refunded to ratepayers. In consideration of these terms, Duke Energy Indiana commits to provide a one-time rate credit of \$1.9 million to retail electric customers, to commence on January 1, 2020, using Rider 67 discussed in Paragraph 3D(iii) above.

For Duke Energy Indiana, LLC



Melody Birmingham-Byrd, President
Duke Energy Indiana, LLC



Melanie D. Price, Associate General Counsel
Duke Energy Indiana, LLC

Duke Energy Business Services LLC
1000 East Main Street
Plainfield, Indiana 46168
Telephone: (317) 838-6877
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melanie.price@duke-energy.com

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For the Indiana Office of Utility Consumer Counselor:

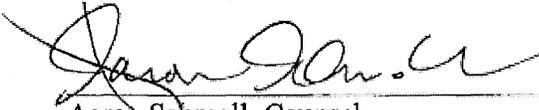


William Fine
Indiana Office of Utility Consumer Counselor

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For the Indiana Industrial Group:

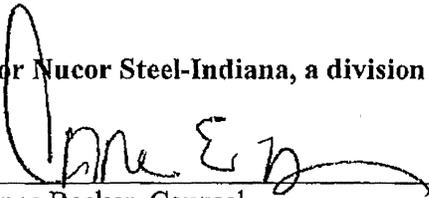


Aaron Schmoll, Counsel
Indiana Industrial Group

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Regulatory Commission. Remainder of page intentionally left blank.]

For Nucor Steel-Indiana, a division of Nucor Corporation:

A handwritten signature in black ink, appearing to read "Anne E. B.", written over a horizontal line.

Anne Becker, Counsel
Nucor Steel-Indiana, a division of Nucor Corporation

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One American Square, Suite 2500
Indianapolis, Indiana 46282
abecker@Lewis-Kappes.com

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VERIFICATION

I hereby verify under the penalties of perjury that the foregoing representations are true to the best of my knowledge, information and belief.

Signed: Brian P. Davey
Brian P. Davey

Dated: 6/27/18