ORIGINAL

| Commissioner | Yes | No | Not Participating |
|---|---|---|---|
| Huston | √ | | |
| Bennett | √ | | |
| Freeman | √ | | |
| Veleta | | | √ |
| Ziegner | √ | | |

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

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| **PETITION OF DUKE ENERGY INDIANA, LLC SEEKING APPROVAL OF AN ADJUSTMENT TO ITS RATES THROUGH ITS ENVIRONMENTAL COMPLIANCE ADJUSTMENT STANDARD CONTRACT RIDER NO. 62 IN ACCORDANCE WITH IND. CODE 8-1-8.4 AND 8-1-8.8 AND 170 I.A.C. 4-6** | ) ) ) ) ) ) ) | **CAUSE NO. 42061 ECR 41**<br><br>**APPROVED: JUL 24 2024** |

**ORDER OF THE COMMISSION**

**Presiding Officers:**
**David E. Veleta, Commissioner**
**Loraine L. Seyfried, Chief Administrative Law Judge**

On March 21, 2024, Duke Energy Indiana, LLC ("Petitioner" or "Duke Energy Indiana") filed a Petition with the Indiana Utility Regulatory Commission ("Commission") seeking approval of an adjustment to its rates through its Environmental Compliance Adjustment Standard Contract Rider No. 62 ("Rider 62"). On that same day, Petitioner filed its case-in-chief testimony.

On March 26, 2024, Duke Energy Indiana Industrial Group ("Industrial Group"), an ad hoc group of industrial users of electricity, filed its petition to intervene in this proceeding, which was subsequently granted by the Presiding Officers on April 19, 2024.[1]

On May 9, 2024, the Indiana Office of Utility Consumer Counselor ("OUCC") filed its case-in-chief testimony.

An evidentiary hearing was held on June 17, 2024, at 1:30 p.m. in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Counsel for Petitioner, the OUCC, and Industrial Group participated in the hearing, and the evidence of all parties was admitted without objection.

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

**1. Notice and Jurisdiction.** Due, legal, and timely notice of the evidentiary hearing was given and published by the Commission. Petitioner is a public utility as defined in Ind. Code § 8-1-2-1 and requests relief pursuant to Ind. Code §§ 8-1-2-6.6, 8-1-2-6.8, 8-1-2-42(a), Ind. Code chs. 8-1-8.7 and -8.8, and 170 IAC 4-6. The Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

[1] The Industrial Group consists of Arconic, Inc.; Elanco; General Motors LLC; Harrison Steel Castings Co.; Haynes International, Inc.; International Paper Co.; Primient; Stellantis; Subaru of Indiana Automotive Inc.; and USG Corporation.

**2. Petitioner's Characteristics.** Duke Energy Indiana is a public utility organized and existing under the laws of the State of Indiana and has its principal office at 1000 East Main Street, Plainfield, Indiana. It is engaged in rendering electric utility service in the State of Indiana and owns, operates, manages, and controls, among other things, plant and equipment used for the production, transmission, delivery, and furnishing of such electric service to the public.

**3. Petitioner's Electric Generating Properties.** As of the date of the Petition in this proceeding, Petitioner's electric generating properties consist of: (1) two syngas/natural gas-fired combustion turbines ("CT") and one steam turbine located at Edwardsport; (2) four solar-powered facilities; (3) steam capacity located at two stations comprised of seven coal-fired generating units; (4) combined cycle capacity located at one station comprised of three natural gas-fired CTs and two steam turbine-generators; (5) a run-of-river hydroelectric generation facility comprised of three units; (6) one combined heat and power ("CHP") facility located at Purdue University; and (7) peaking capacity consisting of four oil-fired diesels and 24 natural gas-fired CTs, one of which has oil back-up.

**4. Background to this Proceeding.**

**A. Federally Mandated Compliance Requirements.** On December 19, 2014, the U.S. Environmental Protection Agency finalized its rule regarding Coal Combustion Residuals ("CCR"), offering two main regulatory regimes for CCRs: (1) as a special waste listed under the Resource Conservation and Recovery Act ("RCRA") Subtitle C Hazardous Waste Regulations; and (2) as a solid waste under RCRA Subtitle D Non-Hazardous Waste Regulations. The final rule was effective October 19, 2015. In accordance with the Commission's Order in Cause No. 45253 ("45253 Order"), Petitioner continues to track the CCR plan development costs and post-in-service carrying costs as part of Rider 62. The 45253 Order also authorized Petitioner to defer its past and future Clean Water Act Section 316(a) and (b) and National Pollutant Discharge Elimination System study costs for timely recovery as federally mandated costs in Petitioner's Environmental Cost Recovery ("ECR") proceedings.

**B. Emission Allowance Adjustment.** In Cause Nos. 42411 and 42359, the Commission approved the recovery of nitrogen oxide emission allowance ("EA") costs in Petitioner's then-existing sulfur dioxide EA adjustment mechanism. In consolidated Cause Nos. 42622 and 42718, the Commission approved the inclusion of mercury EA costs in this same mechanism. Petitioner used the Commission's 30-day filing process to implement these adjustments quarterly in accordance with the Order in Cause No. 42411 but elected to include future updates in these proceedings beginning with Cause No. 42061 ECR 10.

In accordance with the 45253 Order, Petitioner continues to track the gains and losses on EA sales and prepare a final reconciliation for EA costs as part of Rider 62 in Petitioner's ECR proceedings.

**C. Environmental Compliance-Related Reagents.** The 45253 Order authorized Petitioner to include a representative level of environmental compliance-related reagents into base rates. Due to the variability of reagent expense, Petitioner was further authorized

to track its reagent expense, both up and down from the amount included in base rates, through its ECR proceedings.

**5. Relief Sought in this Proceeding.** In its Petition, Duke Energy Indiana requests: (1) recovery of 80% of the costs associated with the federally mandated coal ash compliance projects as of December 31, 2023, with carrying costs, and estimated amortizations and coal ash management costs associated with the federally mandated coal ash compliance projects, with carrying costs, as approved in Cause No. 45253 S1; (2) approval of estimated expenses for reagent costs and approval of the reconciliation of reagent costs compared to the base rate amounts as of the December 31, 2023 cut-off; and (3) approval to refund costs incurred prior to the November 2021 Order in Cause No. 45253 S1 ("45253 S1 Order") that were previously approved in Cause No. 42061 ECR 38 ("ECR 38").

**6. Petitioner's Direct Evidence.** Petitioner presented the case-in-chief testimony of Mr. William C. Luke, Vice President of Midwest Generation for Duke Energy Business Services LLC; Mr. Timothy S. Hill, Vice President of Coal Combustion Products Projects and Operations for Duke Energy Business Services LLC; and Ms. Kathryn C. Lilly, Manager, Rates & Regulatory Strategy for Petitioner.

Pursuant to the Commission's Order in Cause No. 45276, Mr. Luke provided information related to the two Purdue CHP islanding events that occurred during 2023. He testified that the equipment performed as expected. Mr. Luke also testified actual environmental compliance-related reagent costs during July 2023 through December 2023 were $19.3 million, which is $3.6 million lower than estimated due to decreased reagent mitigation requirements for this period. He stated the forecasted reagent costs for July 2024 through December 2024 before ratemaking adjustments are $15.6 million and are below the level built into rates. Therefore, Petitioner included these decreases in its proposed rates in this proceeding.

Mr. Hill described the coal ash management and closure activities, and associated costs incurred by Petitioner from July 2023 through December 2023, along with the forecasted costs for July 2024 through December 2024. He testified there are no revisions to projected closure dates for the basins and ash management areas included in this proceeding. Mr. Hill noted that Petitioner's compliance project estimate removes costs incurred prior to the 45253 S1 Order, in accordance with the Commission's Order in Cause No. 42061 ECR 39 ("ECR 39 Order").

Ms. Lilly explained the changes for Petitioner's environmental riders (Riders 62, 63, and 71) authorized by the 45253 and 45253 S1 Orders. She also explained that pursuant to the ECR 39 Order, Petitioner is proposing to refund the costs incurred prior to the 45253 S1 Order that were included in ECR 38 rates from July 2023 through September 2023.

Ms. Lilly testified, in accordance with the 45253 S1 Order, Petitioner is requesting approval of the investment amount of coal ash closure and coal ash carrying costs as of December 31, 2023, for which Petitioner is authorized to earn a return, and that Rider 62 be adjusted to include the revenue effect of the investment. She testified that included in the jurisdictional revenue requirements is 80% of coal ash closure expenditures amortized over the remaining years

(by 2038) and carrying costs amortized over the next three years, which results in the annual revenue requirement to be recovered from retail customers of $4,618,371.

She explained how the weighted average cost of capital was calculated, in accordance with 170 IAC 4-6-14. She stated Petitioner adjusted the accumulated deferred income tax balances to remove deferred taxes associated with impairments taken for accounting books purposes but are not used for tax purposes. Petitioner also excluded deferred income taxes associated with the amount of the integrated gasification combined cycle ("IGCC") capital investment in excess of the hard cost cap for the IGCC project, plus additional allowance for funds used during construction. In addition, Petitioner included the balance of the excess deferred income tax regulatory liability amount as a zero-cost source of capital so customers will continue to benefit from the Tax Cuts and Jobs Act of 2017. She stated that separate revenue conversion factors are developed for the debt and equity components of the after-tax return to reflect the different tax treatments for each component. An effective rate is included for applicable state and federal taxes, public utility fees, and uncollectible accounts expense.

As it relates to coal ash costs, Ms. Lilly testified Petitioner is requesting approval to recover: (1) estimated amortization through December 2024 of 80% of coal ash closure costs over remaining years (as of June 2038), recovery of which was approved in the 45253 S1 Order, along with carrying costs from November 2021 through December 2023 over three years; (2) estimated expenses for July 2024 through December 2024 of 80% of federally mandated coal ash management expenses, as approved in the 45253 S1 Order; and (3) estimated incremental operation and maintenance expenses for the period July 2024 through December 2024, such that Rider 62 be adjusted to include the revenue effect of these net expenses in accordance with the 45253 and 45253 S1 Orders.

She explained separate revenue factors for debt and equity were used in the revenue requirements as approved in Cause No. 42061 ECR 22. Further, she explained which of the environmental expenses were allocated on a demand basis and which were allocated on an energy basis based on the allocation factors approved in the 45253 Order. In addition, estimated reagents for July 2024 through December 2024 were compared to amounts in base rates for recovery. Ms. Lilly testified actual net expenses for July 2023 through December 2023 were requested for recovery and included interest related to the refunds in accordance with the ECR 39 Order and reagent expenses compared to amounts in base rates. Ms. Lilly also explained the revenue requirement was reconciled to collections for July 2023 through December 2023. She stated that the six-month revenue requirement allocated on a demand basis totaled ($4,539,758) and the six-month revenue requirement allocated on an energy basis totaled ($10,897,568).

Ms. Lilly testified the typical residential customer using 1,000 kilowatt-hours per month will experience a decrease of $0.10 or 0.1% on his or her total electric bill when compared to the factor approved in Petitioner's prior ECR filing (excluding state sales tax), including the effect of the various rate adjustment components in this Rider.

**7. OUCC's Evidence.** The OUCC presented the testimony of Ms. Brittany L. Baker, Utility Analyst in the Electric Division.

Ms. Baker discussed the effect of the 45253 Order on this proceeding, which includes: (1) continued recovery in Rider 62 of environmental compliance plant not in-service at the end of the Cause No. 45253 test period; (2) consolidation of Riders 63 and 71 into Rider 62; (3) rolling of Rider 71 environmental project operating expenses and associated depreciation expenses into base rates; (4) discontinued tracking of EA costs in Rider 63, with a final reconciliation in the first consolidated Rider 62 filing; and (5) tracking of chemical reagent costs above or below the amount embedded in base rates.

Ms. Baker explained the basic revenue requirement elements, noting that all major qualified pollution control property previously tracked in Petitioner's ECR is now rolled into base rates. Unamortized regulatory assets, including plan development costs and post-in-service carrying costs associated with CCR projects will be amortized over the next several ECR proceedings until fully amortized. Ms. Baker discussed the effects of the Indiana Court of Appeals' decision in the appeal of the 45253 S1 Order and Petitioner's refund to customers of costs incurred prior to that Order. She testified there is nothing to indicate Petitioner's estimated ECR adjustment factors for the relevant period are unreasonable.

**8. Commission Discussion and Findings.** Based on the evidence presented as discussed in this Order, the Commission finds that Petitioner's requested relief in this proceeding is reasonable, consistent with regulatory requirements and prior Commission Orders, and should be approved.

Accordingly, as included in the Attachments to Petitioner's Exhibit 3, Petitioner is authorized to recover of 80% of the costs associated with the federally mandated coal ash compliance projects as of the December 31, 2023, cut-off date with carrying costs, in Rider 62, and estimated amortizations and coal management costs associated with the federally mandated coal ash compliance projects with carrying costs.

Petitioner shall refund to customers the revenue requirement associated with costs incurred prior to the 45253 S1 Order that were included in rates under ECR 38 through the reconciliation period in the amount of $3 million, as described in Petitioner's Exhibit 3, including interest at the rate of 4.71% pursuant to the ECR 39 Order. Additionally, in accordance with the Commission's June 26, 2024 Order in Cause No. 42061 ECR 39 S1, Petitioner is authorized to net the approved attorney award of $96,244.50 to Lewis & Kappes against the reduction in revenue requirements to be implemented in this Cause.

Petitioner is authorized to recover estimated reagent costs through December 31, 2024, compared to amounts in base rates and the reconciliation of reagent costs compared to base rate amounts as of December 31, 2023.

The impact of the Rider 62 rates for a typical residential customer using 1,000 kilowatt-hours will be a decrease of $0.10 or 0.1% when compared to the last approved factors, as established in Duke Energy Indiana's schedules.

**9. Confidential Information.** On March 21, 2024, Petitioner filed a motion requesting protection of confidential and proprietary information along with supporting affidavits. On April 2, 2024, the Presiding Officers made a preliminary determination that trade secret information consisting of: (1) cost and cost estimates for federally mandated projects; (2) detailed project milestones; and (3) coal combustion projects reports should be subject to confidential procedures, as supported by Petitioner's affidavits. The Commission finds such information is trade secret as defined by Ind. Code § 24-2-3-2, is exempt from public access and disclosure pursuant to Ind. Code §§ 5-14-3-4 and 24-2-3-2, and should be held as confidential by the Commission and protected from public access and disclosure.

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

1. Petitioner's proposed updated Rider 62, including investment values for federally mandated coal ash compliance projects as of December 31, 2023, is approved.

2. Petitioner's proposed recovery of estimated amortization of coal ash closure, coal ash management expenses through December 31, 2024, and actual carrying costs through December 31, 2023 is approved.

3. Petitioner's proposed recovery of estimated reagent expenses from July 2024 through December 2024 is approved.

4. Petitioner's reconciliation of reagent operation and management expense for July 2023 through December 2023, CCR post-in-service carrying costs as of December 31, 2023, are approved.

5. Petitioner's proposed refund in this proceeding of $3 million, reflecting the revenue requirement as associated with costs incurred prior to the 45253 S1 Order that were included in Cause No. 42061 ECR 38 through the reconciliation period, is approved, with simple interest accruing from the date Petitioner began collecting the overpayment amounts at the rate of 4.71%. Such refund shall be implemented net of the approved attorney fee award of $96,244.50 to Lewis & Kappes in accordance with the Commission's Order in Cause No. 42061 ECR 39 S1.

6. Prior to implementing the rates authorized herein, Petitioner shall file the tariff and applicable rate schedules under this Cause for approval by the Commission's Energy Division. Such rates shall be effective on or after the Order date subject to Division review and agreement with the amounts reflected.

7. The information submitted by Petitioner pursuant to a preliminary finding of confidentiality is determined to be confidential trade secret information and therefore excepted from public access.

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

**HUSTON, BENNETT, FREEMAN, AND ZIEGNER CONCUR; VELETA ABSENT:**

**APPROVED: JUL 24 2024**

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

Dana Kosco

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Date: 2024.07.24 10:15:34 -04'00'

**Dana Kosco**
**Secretary of the Commission**