ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	√		
Freeman	√		
Krevda	√		
Veleta	√		
Ziegner	√		

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF DUKE ENERGY INDIANA, LLC FOR SPECIAL CONTRACT AUTHORITY TO INCREASE ITS RATES AND CHARGES FOR STEAM SERVICE TO INTERNATIONAL PAPER COMPANY UNDER THE AGREEMENT FOR HIGH PRESSURE STEAM SERVICE, DATED JUNE 1, 1974, AS SUPPLEMENTED AND AMENDED, AND TO MAKE OTHER REVISIONS TO SUCH SUPPLEMENTED AND AMENDED AGREEMENT PURSUANT TO IND. CODE §§ 8-1-2-24 AND -25	)	**CAUSE NO. 45740** **APPROVED: JAN 18 2023**

ORDER OF THE COMMISSION

Presiding Officers:
Stefanie Krevda, Commissioner
Carol Sparks Drake, Senior Administrative Law Judge

On June 30, 2022, Duke Energy Indiana, LLC ("Duke Energy Indiana" or "Petitioner") filed a Verified Petition seeking approval of the Fifth Amendment to the Third Supplemental Agreement dated as of April 18, 2022, (the "Fifth Amendment") to the Agreement for High Pressure Steam Service between Duke Energy Indiana and International Paper Company (formerly TIN, Inc. (Temple-Inland) and Inland Container Corporation) ("International Paper"). Under the Fifth Amendment, Duke Energy Indiana's rates and charges for steam service increase. Petitioner concurrently prefiled the testimony of Maria T. Diaz, Petitioner's Director, Rates and Regulatory, and filed a motion for protection of confidential and proprietary information that was preliminarily granted on July 11, 2022.

On July 12, 2022, Citizens Action Coalition of Indiana, Inc. ("CAC") petitioned to intervene. Over the objection of Duke Energy Indiana, CAC's intervention was granted on August 1, 2022, via a docket entry in which the scope of the issues in this proceeding were limited to those reasonably related to the special contract authority being requested.

On September 14, 2022, the Indiana Office of Utility Consumer Counselor ("OUCC") prefiled the testimony of Kaleb G. Lantrip, a Utility Analyst in the OUCC's Electric Division, and CAC prefiled the testimony of Ben Inskeep, CAC's Program Director.

Petitioner prefiled rebuttal testimony on October 3, 2022, for Ms. Diaz and John D. Swez, the Managing Director, Trading and Dispatch for Duke Energy Carolinas, LLC, a utility affiliate of Duke Energy Indiana.

On October 5, 2022, Duke Energy Indiana filed motions to strike portions of CAC's and the OUCC's testimony, contending such testimony fell outside the scope of this proceeding and Petitioner's case-in-chief testimony. CAC filed a response on October 17, 2022, to which Duke Energy Indiana replied on October 20, 2022. On October 24, 2022, at the outset of the evidentiary hearing, Duke Energy Indiana's motions to strike were denied.

A public evidentiary hearing was held in this Cause on October 24, 2022, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner, the OUCC, and CAC appeared at the hearing, by counsel, and their respective prefiled testimony was admitted into the record without objection.

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

1. Notice and Jurisdiction. Notice of the hearing was given and published by the Commission as required by law. Petitioner is a public utility and an electricity supplier within the meaning of the Indiana Public Service Commission Act, as amended. Under Ind. Code §§ 8-1-2-24 and -25, the Commission is responsible for evaluating and determining whether agreements or arrangements between a public utility and its customers should be approved; therefore, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. Petitioner's Characteristics. Duke Energy Indiana is a public utility organized and existing under Indiana law with its principal office at 1000 East Main Street in Plainfield, Indiana. Petitioner is engaged in the business of supplying electric utility service in Indiana and has supplied high pressure steam service for the paper manufacturing facility directly adjacent to Petitioner's Cayuga Generating Station ("Cayuga") since 1974. This facility is now operated by International Paper. Petitioner also provides steam service to Purdue University.

3. Background. Duke Energy Indiana supplies International Paper with high pressure steam service from Cayuga under an Agreement for High Pressure Steam Service dated June 1, 1974, as supplemented by the Supplemental Agreement dated November 21, 1977, the Second Supplemental Agreement dated March 14, 1983, and the Third Supplemental Agreement dated June 18, 1992, as amended by the First, Second, Third, and Fourth Amendments to the Third Supplemental Agreement dated June 28, 1994, July 1, 1996, July 1, 1999, and August 26, 2011 (collectively, as supplemented and amended, the "Steam Supply Agreement"). Petitioner executed the Fifth Amendment on April 18, 2022, and it is approval of the Fifth Amendment that is at issue. Petitioner's current rates and charges for steam service to International Paper are increased in the Fifth Amendment to better reflect Petitioner's costs. The Commission approved rate increases for Duke Energy Indiana's electric retail customers in the Order approved on June 29, 2020, in Cause No. 45253 (the "45253 Order"), and in seeking approval of the Fifth Amendment, rate increases for International Paper will also be implemented. Petitioner's investment in plant allocable to the provision of steam service to International Paper and its costs of producing and transporting steam have increased, making its current rates and charges to International Paper inadequate.

Petitioner and International Paper have negotiated and agreed upon the Fifth Amendment to continue to meet the steam energy needs of International Paper but better reflect Petitioner's steam service costs and plant investment.

4. Relief Requested. Duke Energy Indiana submits that the steam rates and charges agreed upon in the Fifth Amendment are just and reasonable, will enable Petitioner to recover its costs to provide steam service, and are consistent with the purposes of Ind. Code ch. 8-1-2. Petitioner seeks Commission approval, pursuant to Ind. Code §§ 8-1-2-24 and -25, of the Fifth Amendment. Petitioner also requests the Commission find, under Ind. Code § 8-1-2-29 and Ind Code ch. 5-14-3, that certain provisions of the Fifth Amendment related to pricing and other negotiated competitive terms are trade secrets and should remain exempt from public access and disclosure.

5. Petitioner's Case-in-Chief. Ms. Diaz testified that International Paper has operated a paper manufacturing facility adjacent to Cayuga since 1974 and currently has approximately 180 employees at this facility. She stated International Paper is one of Petitioner's top 20 electric service customers as measured in kilowatt-usage. Through the years, Petitioner and International Paper have worked together to make adjustments in the Steam Supply Agreement, presenting these amendments and supplements to the Commission for approval under Ind. Code §§ 8-1-2-24 and -25. Ms. Diaz testified as to the confidential nature of the pricing and other competitive terms in the Fifth Amendment. She explained that the Fifth Amendment will enable International Paper to continue its paper manufacturing operations in Cayuga, Indiana, while updating Petitioner's rates for demand and energy, including base fuel up to the term specified, using Petitioner's 2020 cost of service study approved in the Compliance Step 2 Filing in Cause No. 45253, along with consideration of 2020 actual billing determinants and other agreed-to and stepped-in pricing.

Ms. Diaz testified the substantive changes and clarifications in the Fifth Amendment include: (1) stepped-in demand rate charges over the term; (2) energy rate charges stratified per year over the term, with an updated base cost of fuel of $2.921922 per 1,000 pounds of steam based on Duke Energy Indiana's approved $26.955 mills per kwh base cost of fuel for retail customers; (3) updates to the fuel clause section to memorialize the fuel cost recovery mechanism based on system average fuel costs, similar to retail electric customers, with monthly billing of a fuel cost adjustment; (4) updates to the Tax Adjustment section to include the assessment or repeal of any applicable utility use tax on the demand charges, energy cost of steam, and fuel cost adjustment amounts; (5) a provision for withdrawal from the Fifth Amendment by Petitioner or International Paper with advance notice if the Fifth Amendment is not approved by the Commission before September 30, 2023; (6) modifications to the term section to provide for a new term length coinciding with the anticipated retirement of Cayuga and commencing the first day of the calendar month following the Commission's approval and allowing for termination for convenience upon notice by Petitioner and early termination upon notice by International Paper, with termination charges payable by International Paper if terminated before the end of the term. She stated Duke Energy Indiana and International Paper have discussed the need to have a new steam supply contract based on a generation source other than Cayuga and will be discussing this replacement agreement before the Fifth Amendment expires. In the interim, Ms. Diaz testified no additional facilities need to be installed by Petitioner under the Fifth Amendment.

Ms. Diaz stated the continuing demand charge applicable to International Paper's steam load wiill recover the demand costs, thereby benefiting Petitioner and its customers, as relied upon in Petitioner's most recent retail rate case, Cause No. 45253. Under the Fifth Amendment Petitioner will also recover a contribution towards non-fuel, energy costs while recovering full fuel costs from Cause No. 45253. Ms. Diaz also noted benefits to the State of Indiana from retaining International Paper in Vermillion County, including the employment by International Paper that will be retained and various Indiana tax revenues that will be collected from International Paper, its employees, and suppliers. She stated that retaining International Paper with the Fifth Amendment will allow for future increased production by this customer under the future replacement agreement with Petitioner to be sourced from alternative generation.

Ms. Diaz described how the average demand and energy rates were developed and testified that Petitioner and International Paper agreed to step into the proposed demand and energy average rates. This results in less than average rates in the early months and higher than average rates in the latter months of the Fifth Amendment's term. She also summarized how International Paper is charged for fuel costs for steam service through a Fuel Adjustment Clause ("FAC") mechanism that has been in place since this customer began operations at the site and the Commission approved the Steam Supply Agreement. Ms. Diaz stated International Paper is charged its share of fuel costs associated with its steam service using rates developed and approved in Petitioner's FAC filings but with calculations specific to steam service. A base fuel amount of $2.921922 per 1,000 pounds of steam is the updated base fuel rate included in the FAC calculation.

Ms. Diaz concluded by testifying the Fifth Amendment is reasonable, just, practical, and advantageous to Petitioner and International Paper, in the public interest, and not inconsistent with the purposes of the Public Service Commission Act, as amended.

6. **OUCC's Direct Evidence.** Mr. Lantrip testified International Paper has relied on steam supplied by Cayuga since 1974 under a special contract agreement for high pressure steam service, as supplemented and amended. The Fifth Amendment revises the end of term to coincide with the anticipated retirement of Cayuga, with the parties to discuss a new supply contract from an alternative generation source prior to the Fifth Amendment's expiration. He testified that according to Duke Energy Indiana's discovery responses, alternative generation options Petitioner is considering include installing a dedicated combined heat and power unit or constructing a new natural gas combined cycle unit. Mr. Lantrip testified Petitioner's data responses also indicate Duke Energy Indiana is held to a reasonable diligence standard to provide a regular and uninterrupted supply of steam, and if Petitioner does not fulfill this service, International Paper can request resolution by the Commission and/or a state court.

Mr. Lantrip relayed concerns about how the demand and energy charges are calculated under the Fifth Amendment because the parties agreed to phased-in rates. He stated a lower rate on the front end and higher in the latter years raises the issue of rate equity because Petitioner accepts a cost of service shortfall in the near term. Mr. Lantrip expressed concern that Petitioner may seek to recoup this revenue shortfall from its other rate classes, but he acknowledged Petitioner's position is that the revenue shortfall experienced during the first 24 months will not impact Petitioner's other retail customers' revenue requirement. Mr. Lantrip recommended the Commission approve the Fifth Amendment, but he also recommended Petitioner provide a separate schedule in its quarterly FAC proceedings detailing under-recovery and eventual over-recovery to confirm the revenue requirement of other retail customers is not being impacted. He also recommended Duke Energy Indiana show how Petitioner is accounting for the shortfall to ensure Petitioner's other customers are not subsidizing International Paper. Per Mr. Lantrip, the OUCC and the Commission should be able to track and determine whether International Paper has paid its share of Petitioner's fixed costs.

Mr. Lantrip also discussed Petitioner's testimony in Cause No. 38707 FAC 132 ("FAC 132". He noted Duke Energy Indiana is required to run at least one of the two units at Cayuga to meet International Paper's steam requirements, and from December 17, 2021, through March 21, 2022, coal was diverted from Petitioner's Edwardsport generating plant to Cayuga; consequently, Petitioner operated Edwardsport during this time on one gasifier and supplemented the station with natural gas, prompting increased costs that were ultimately borne by all of Petitioner's ratepayers since recovery of fuel costs in FACs is treated as a pass-through of fuel expense to Petitioner's entire ratepayer base. Thus, he testified this decision affected Petitioner's fuel costs due to Edwardsport being more expensive to operate on natural gas than on syngas, although it also increased the coal inventory at Cayuga. Mr. Lantrip testified Petitioner's contract to serve International Paper's load has impacted Petitioner's fuel expenses and its Midcontinent Independent System Operation, Inc. ("MISO") commitment status, thereby impacting ratepayers who are not parties to the contract; however, he recommended the Commission approve the Fifth Amendment because Petitioner's current rates for steam service to International Paper do not reflect the costs to serve this customer.

7. <u>CAC's Direct Evidence</u>. Mr. Inskeep testified that under the special contract with International Paper, Petitioner must always operate at least one of its two Cayuga units, which means the unit will operate even if it is not economic to do so. He testified that he sees no mechanism in the Fifth Amendment that will allocate uneconomic Cayuga commitment and dispatch costs specifically to International Paper. Mr. Inskeep stated that although in discovery Petitioner pointed to the cost assignment determined in its 2020 cost of service study as the basis for cost allocation of the Cayuga units, the 2020 cost of service study did not identify and allocate costs that have occurred since then and are likely to reoccur. Mr. Inskeep stated these costs are recovered from all ratepayers through the FAC proceedings. He opined that Petitioner provided no evidence that it has or will operate Cayuga in an economic manner or prevent other customers from paying for uneconomic costs caused by Cayuga operating to satisfy Petitioner's agreement with International Paper.

Mr. Inskeep reviewed the Commission's determination in Cause No. 38707 FAC 123 S1 ("FAC 123 S1") concerning Petitioner's unit commitment decisions for Cayuga. He testified the Commission in its Order in FAC 123 S1 approved on March 17, 2021, ("FAC 123 S1 Order") stated:

> We further note that [Duke Energy Indiana] has indicated it will be working with the steam customer to renegotiate the agreement. **Any docket that flows from a new agreement with the steam customer would be the appropriate forum to weigh the merits of the steam contract.** As for this subdocket, we believe [Duke Energy Indiana] has been committing the Cayuga units in a manner that **complies with the terms of the Commission-approved steam contract**. It is reasonable that the units will not always realize a financial gain and [Duke Energy Indiana] may need to commit the units as Must Run- to ensure that the steam customer can maintain its operations and Duke Energy Indiana may **service its approved contract** in good faith. **Complying with the terms of the agreement** or committing the Cayuga units as Must Run, even when it results in a financial loss, is not proof of inappropriate commitment decisions by Duke Energy Indiana. Intervenors have offered no additional evidence other than the fact the agreement may sometimes require [Duke Energy Indiana] to commit one of the Cayuga units, when the economics might suggest not committing it. We find [Duke Energy Indiana's] approach to committing Cayuga Station is **reasonable given the contractual requirements of the steam agreement**. (emphasis as shown in CAC Exhibit 1 at p. 9)

CAC Exhibit 1 at p. 9. Mr. Inskeep asserts the Commission was clear in the FAC 123 S1 Order that this docket upon the Fifth Amendment is the appropriate forum in which to address the merits of the steam contract prospectively, but Petitioner has failed to address those concerns. Mr. Inskeep testified that when Petitioner commits a Cayuga unit as Must Run solely to supply steam, regardless of its economic potential in the energy market, Petitioner puts customers at a higher risk that the production cost of the Cayuga unit will exceed its MISO energy market revenues.

Mr. Inskeep opined that the Fifth Amendment is likely to produce customer rates that are higher than they otherwise would have been over the contract period. He testified Petitioner's reliance on a Must Run designation for the benefit of International Paper and the detriment of other customers is contrary to the principles behind the MISO wholesale power market that is designed to help ensure load is served through the most reliable and economic generation available.

Per Mr. Inskeep, Duke Energy Indiana provided no evidence demonstrating or quantifying any benefit from the Fifth Amendment for ratepayers. He stated Petitioner's ratepayers will likely be harmed by the deal with International Paper because it exposes other customers to considerable price risk as a result of Cayuga needing to operate regardless of its economics. Mr. Inskeep testified the Fifth Amendment locks in Petitioner's continued use of Cayuga through 2027, preventing alternative potential cost-effective solutions such as Cayuga's early retirement, shifting to seasonal operations, or using an economic commitment status. He hypothesized that it is "possible" that discontinuing steam operations at Cayuga could result in reduced customer demand, producing a net benefit to customers by allowing Duke Energy Indiana to pursue more economic resources and reduce uneconomic Cayuga operations, resulting in lower fuel costs. CAC Exhibit 1 at p. 13, line 9. Mr. Inskeep was critical of Petitioner not analyzing these potential impacts, characterizing Petitioner's contractual arrangement with International Paper as a "sweetheart" deal that exposes other customers to price risk.[1] CAC Exhibit 1 at p. 12. Mr. Inskeep testified that stakeholders, including CAC, should be allowed to participate in the discussions between Duke Energy Indiana and International Paper regarding Petitioner's future alternative generation resources that will replace the coal-fired Cayuga generation.

Mr. Inskeep stated that while the Fifth Amendment may serve the private interests of Petitioner and International Paper, that does not make it in the public interest. If the Commission approves the Fifth Amendment, he recommended Petitioner provide certain additional reporting on each Cayuga unit in its quarterly FAC applications, including: (1) hourly unit commitment designation; (2) the rationale for each hour with a Must Run designation; (3) Daily Profit and Loss Analyses conducted in the week prior to any hour with a Must Run designation; and (4) Actual Daily Profit and Loss results for each hour with a Must Run designation. Additionally, Mr. Inskeep recommended that if the rationale given is not reasonable, the Commission reduce Petitioner's authorized FAC charge. He also recommended that where the Must Run designation is related to providing steam to International Paper, the Commission require economic losses be assigned to International Paper and/or borne by Duke Energy Indiana's shareholders.

Mr. Inskeep recommended the Commission not approve the Fifth Amendment; however, if the Fifth Amendment is approved, he recommended the following safeguards and reporting requirements: (1) Petitioner be required to assign losses incurred due to the uneconomic operation of Cayuga to Petitioner and/or International Paper; (2) Petitioner be required to report in future FAC applications its unit commitment decisions; and (3) stakeholders be invited, including CAC, to participate in any discussions between Petitioner and International Paper regarding replacement generation resources at Cayuga.

8. Petitioner's Rebuttal Evidence. Ms. Diaz testified in rebuttal that contract revenues over or under the revenue requirement for a given year for International Paper's steam service will not impact the revenue requirement of other retail customers. She stated Duke Energy Indiana has not recovered, nor is it seeking, additional cost recovery from other customers as a result of the Fifth Amendment. She explained that the allocation of costs to International Paper occurred in Petitioner's last rate case, Cause No. 45253, and the allocation of those costs was removed from the rates the Commission approved in Cause No. 45253 for Duke Energy Indiana's other customers. Per Ms. Diaz, the cost allocation in Cause No. 45253 and the subsequent revenue collection as part of the Fifth Amendment are separate and distinct processes. Additionally, any actual underage or overage in a particular year compared to the average revenue requirement calculated in this proceeding and the eventual actual billing determinants is borne by the shareholders. She testified Petitioner's other retail customers have been paying increased rates since mid-2020 as a result of Cause No. 45253, and Petitioner's shareholders have borne the risk of International Paper's steam rates not increasing pending the outcome of this proceeding.

[1] The record affords no evidentiary basis for characterizing the long-standing, approved Agreement for High Pressure Steam Service effective as of June 1, 1974, as well as the related supplemental agreements and amendments up to and including the Fifth Amendment at issue as a "sweetheart deal with International Paper." The Commission respects the need for parties and counsel to advocate in presenting their positions, but such advocacy crosses the line when it includes wreckless innuendo that the facts presented do not support, as is the case here.

Ms. Diaz testified the additional FAC reporting requirement Mr. Lantrip recommended to show the variance from the forecasted recovery to establish whether International Paper paid its share of Petitioner's fixed costs is not necessary and will add no beneficial information as it is known that the proposed demand pricing is lower than the average in the early years and above average in the latter years. Also, because the billing determinants over any given year will vary, recovery of the demand costs will vary. She testified the Fifth Amendment is not a "new" contract, but rather, a pricing amendment, and no after-the-fact, supplementary report has been required in Petitioner's FAC since the inception of the Steam Supply Agreement. She opined that there is no need to institute a new reporting requirement as a result of the Fifth Amendment, particularly when the cost allocations were administered in the context of Petitioner's last retail base rate case. Ms. Diaz testified it is also not necessary, as recommended by Mr. Lantrip, for Duke Energy Indiana to show how Petitioner is accounting for the shortfall in order to verify Petitioner's other customers are not subsidizing International Paper. She stated other retail customers are not impacted by the proposed Fifth Amendment pricing as International Paper was separated out in the 2020 jurisdictional and cost of service study. Further, Petitioner will not be recording any reserves for shortfalls or overages due to the Fifth Amendment's stepped-in pricing. Instead, Duke Energy Indiana records the revenues from International Paper based on the steam invoices, and these are already available to the OUCC for review during Petitioner's FAC proceedings.

In response to Mr. Inskeep's testimony, Ms. Diaz testified the Fifth Amendment is not a "new agreement;" therefore, the merits of the steam contract do not need to again be evaluated in this proceeding. The steam supply arrangement's operational terms are not modified in the Fifth Amendment and remain the same as when this issue was litigated in FAC 123 S1 and the Commission stated, "It is reasonable that the units will not always realize a financial gain and [Duke Energy Indiana] may need to commit the units as Must Run- to ensure that the steam customer can maintain its operations and Duke Energy Indiana may service its approved contract in good faith. … We find that [Duke Energy Indiana's] approach to committing Cayuga Station is reasonable given the contractual requirements of the steam agreement." (Petitioner's Exhibit 2 at p. 6 quoting FAC 123 S1 Order at p. 23). Ms. Diaz testified that while Petitioner and International Paper will be discussing a new steam contract, as contemplated in FAC 123 S1, that new agreement will include operational changes due to the alternative generation to be selected and constructed, with the Fifth Amendment merely bridging the gap between the existing Steam Supply Agreement and this new contract.

Ms. Diaz disagreed with Mr. Inskeep's recommendation that CAC and other stakeholders participate in the future discussions between Petitioner and International Paper concerning prospective alternative generation at Cayuga. She opined that inserting other stakeholders into special contract discussions and negotiations is not warranted or necessary, that these matters should be between the parties executing the replacement agreement. Ms. Diaz testified the proper venue in which to vet any replacement contract that may impact other retail customers and determine whether it is in the public interest is the docketed proceeding upon that contract. Additionally, the Integrated Resource Planning ("IRP") process is the proper forum in which to discuss the selection of proposed generation, and any Certificate of Public Convenience and Necessity regulatory proceeding that flows from the IRP process affords a forum for evaluating the merits of constructing the alternative generation.

Ms. Diaz opined that the Fifth Amendment is reasonable and just, practicable and advantageous to the parties, in the public interest, and not inconsistent with the purposes of the Public Service Commission Act, as amended. She stated the benefits of the Fifth Amendment are the same as the Commission has acknowledged with respect to the Steam Supply Agreement in prior proceedings. These include, but are not limited to, contributing to Petitioner's fixed costs and continued employment of Indiana workers. Ms. Diaz testified that contrary to Mr. Inskeep's position, although the Fifth Amendment has a pre-determined expiration date, it does not limit the parties' actions to terminate should conditions and circumstances associated with providing and receiving steam service change. She stated the Fifth Amendment does not lock-in the continued use of Cayuga through 2027 and, therefore, does not limit the optionality of earlier retirement and future operational changes.

Mr. Swez testified in rebuttal that although Petitioner experienced a slightly higher cost at Edwardsport due to operating partially on natural gas during December 17, 2021, to March 21, 2022, as Mr. Lantrip stated, Duke Energy Indiana reacted to the Cayuga coal inventory situation in the most economical manner given the constraints, including the requirement to run one Cayuga unit to supply steam. He testified there was no evidence in FAC 132 that demonstrated or calculated how much, if any, of this action was caused by the steam supply requirement, that it may have been economic to run the Cayuga unit(s) absent the steam supply requirement.

Mr. Swez testified that because the Fifth Amendment is an amendment to the Commission-approved Steam Supply Agreement and not a new agreement, the following Commission determinations from the FAC 123 S1 Order still ring true: 1) Petitioner has been committing Cayuga in a manner compliant with the Steam Supply Agreement; 2) it is reasonable that the Cayuga units will not always realize a financial gain, and Petitioner may need to commit a unit as Must Run to ensure steam to International Paper; and 3) Petitioner's commitment approach at Cayuga is reasonable given the approved Steam Supply Agreement requirements. He stated Mr. Inskeep ignored the FAC 123 S1 Order approved on March 17, 2021, offering no additional evidence and only renewing arguments the Commission rejected in FAC 123 S1. He stated the Commission has historically and again recently in FAC 123 S1 found the Steam Supply Agreement is just and beneficial. Mr. Swez testified that CAC provided no substance to support its recommendation for a wholesale denial of the Fifth Amendment which, in effect, would be a complete departure from years of Commission precedent.

Mr. Swez testified that under most circumstances, the Cayuga units are not dispatched differently due to the Steam Supply Agreement. They will be committed by Petitioner or MISO regardless of the commitment status the Steam Supply Agreement requires. Only in low power price periods would Cayuga be uneconomic to run, and Petitioner only needs one unit online at 300 MW to meet its contractual obligations. During these periods, he stated MISO will economically ramp down the unit, minimizing any cost to customers. Mr. Swez explained that the inability to take both Cayuga units off-line for economic shutdown, as well as the increase to the operating unit's minimum load capability from 230 to 300 MW, does not always mean there is an impact to the station's operations and an impact to Duke Energy Indiana's electric customers. He testified that given the increase in power prices experienced recently and the current coal contracts in place, operation of Cayuga is a clear economic choice for Duke Energy Indiana's customers.

Mr. Swez also responded to Mr. Inskeep's recommendation that if Petitioner's Daily Profit and Loss Report reveals the unit supplying steam to International Paper was committed as Must Run while projected to have an economic loss for the day, the Commission should review the rationale for the Must Run decision and, if not considered reasonable, reduce the authorized FAC charge accordingly. He stated no evidence was presented demonstrating the Commission needs to be reviewing the hourly dispatch decisions at Cayuga. The Steam Supply Agreement provides benefits to all Petitioner's customers, and as the Commission has previously found, also provides economic development and employment benefits for the State. Mr. Swez also explained there are inherent problems in hindsight review of hourly dispatch decisions, as Mr. Inskeep proposed, including not having the tools necessary to perform a re-commitment or re-dispatch of the MISO market. Additionally, the Daily Profit and Loss Reports inform the commitment decision but do not determine the commitment decision. Mr. Swez testified there are additional considerations of non-economic or qualitative factors and risks that when appropriately considered also would have influenced the decision to commit or de-commit a Cayuga unit absent the requirement to supply steam. He stated the Commission and the OUCC have the ability to review and ask questions regarding dispatch practices in any FAC proceeding when circumstances warrant. Other factors, including the realities and risks of operating actual generating units in the real world and the liquidity and ability to hedge Petitioner's energy position, must also be considered. Mr. Swez noted CAC may intervene in Petitioner's FAC proceedings and request the information outlined through appropriate discovery channels.

9. Commission Discussion and Findings. When considering approval of the Fifth Amendment under Ind. Code §§ 8-1-2-24 and -25, Ind. Code § 8-1-2-24(a) provides, in pertinent part:

> Nothing in this chapter shall be taken to prohibit a public utility from entering into any reasonable arrangement with its customers or consumers … for the division or distribution of its surplus profits, or providing for a sliding scale of charges or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the commission, after investigation, to be reasonable and just and not inconsistent with the purpose of this chapter. Such arrangement shall be under the supervision and regulation of the commission.

Ind. Code § 8-1-2-25 also provides as follows:

> The commission shall ascertain, determine and order such rates, charges and regulations as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges and regulations as the commission may ascertain and determine to be necessary and reasonable, and the right to revoke its approval and amend or rescind all orders relative thereto, is reserved and vested in the commission, notwithstanding any such arrangement and mutual agreement.

Thus, customer-specific contracts, including tailored-rate amendments such as the Fifth Amendment, may be approved if the Commission finds their provisions are reasonable and just, practicable and advantageous to the parties, in the public interest, and not inconsistent with the purposes of Ind. Code ch. 8-1-2.

The Commission finds Petitioner has shown the Fifth Amendment between Duke Energy Indiana and International Paper satisfies the requirements under Ind. Code §§ 8-1-2-24 and -25. Based on the evidence presented, the Fifth Amendment will update Petitioner's rates for demand and energy, including base fuel up to the term specified, using the output of the most recent Commission-approved pricing and structure from the Compliance Filing Step 2 in Cause No. 45253 based on the 2020 cost of service study and rate design for the provision of steam service to International Paper, along with consideration of 2020 actual billing determinants and other agreed-to and stepped-in pricing. We find the record establishes the Fifth Amendment is beneficial to Petitioner, International Paper, and to Petitioner's other retail electric customers. The Fifth Amendment offers continued steam service at rates and terms acceptable to Petitioner and International Paper and facilitates ongoing operation of International Paper's paper mill and the attendant employment of Indiana workers. Additionally, the Fifth Amendment will benefit Duke Energy Indiana and its customers by recovering Petitioner's demand costs, as relied upon in Petitioner's last retail rate case, Cause No. 45253.

Additionally, the Commission finds the State of Indiana will benefit from the employment retained and created by International Paper, as well as the various Indiana tax revenues collected from International Paper, its employees, and the suppliers providing services to International Paper's plant. To this end, the Commission finds Duke Energy Indiana and International Paper engaged in good faith, arms-length negotiations regarding the Fifth Amendment and agreed upon an amendment extending the term of the existing Steam Supply Agreement to efficiently meet the steam energy needs of International Paper, facilitate its continued operations, and better reflect Petitioner's steam service costs and plant investment. Accordingly, the Commission finds the rates, charges, terms, and conditions in the Fifth Amendment are just and reasonable, practicable and advantageous to the parties, and are not inconsistent with the purposes of Ind. Code ch. 8-1-2; therefore, the Commission also finds the Fifth Amendment was shown by Petitioner to be in the public interest and is approved.

We reject CAC's assertion that this proceeding upon the Fifth Amendment is the appropriate docket in which to address Petitioner's commitment and dispatch practices at Cayuga. The Commission found otherwise in the FAC 123 S1 Order in 2021, stating, "We further note that the [Duke Energy Indiana] has indicated it will be working with the steam customer to renegotiate the agreement. Any docket that flows from a new agreement would be the appropriate forum to weigh the merits of the steam contract." CAC relies on this language as support for its position that this Cause is the proper forum to debate the economics of Petitioner's Cayuga commitment and dispatch approach, an approach the Commission determined in the FAC 123 S1 Order complies with the Steam Supply Agreement and, ultimately, is reasonable. The Fifth Amendment modifies the Commission-approved Steam Supply Agreement to increase the rates and charges for steam services as contemplated in Petitioner's last rate case. The Fifth Amendment is not a new agreement. The operational terms of the approved Steam Supply Agreement remain the same. Petitioner's evidence reflects Duke Energy Indiana and International Paper will be discussing a new steam supply agreement, i.e., the new agreement the Commission referenced in the FAC 123 S1 Order, with an alternative generation source anticipated, but in the meantime, the Fifth Amendment provides a rate adjustment to the approved Steam Supply Agreement. The Commission already addressed in the FAC 123 S1 Order why it is reasonable for the Cayuga units to not always realize a financial gain, noting Petitioner may need to commit the Cayuga units as Must Run to ensure the steam customer can maintain its operations and Duke Energy Indiana may service the approved Steam Supply Agreement in good faith. That determination is not properly revisited in this proceeding upon the Fifth Amendment. Further, as Mr. Swez testified, under most circumstances, the Cayuga units would be committed by Petitioner or MISO regardless of the commitment status required by the Steam Supply Agreement, and the inability to take both units off-line for economic shutdown, as well as the increase to the operating unit's minimum load capability, does not necessarily equate to an impact to the station's operations and an impact to Duke Energy Indiana's electric customers.

The OUCC recommends that if the Fifth Amendment is approved, the Commission require certain reporting. Specifically, Mr. Lantrip recommended Petitioner report under-recovery and, eventually, over-recovery in its FAC filings to confirm any shortfall in Petitioner's cost to serve International Paper does not impact other retail customers' revenue requirement. As Ms. Diaz testified, it is known that the proposed demand pricing in the early years is lower than the average and the demand pricing in the later years is above average. Importantly, because International Paper was separated out of the 2020 jurisdictional and cost of service study, other retail customers are not impacted by the Fifth Amendment pricing for International Paper. Additionally, Duke Energy Indiana does not record reserves for shortfalls or overages due to the Fifth Amendment's stepped-in pricing but records the revenues from International Paper based on the steam invoices—invoices the OUCC may review during its audit in the quarterly FAC proceedings; therefore, the Commission finds the additional reporting the OUCC recommended is not necessary.

CAC recommends, if the Commission approves the Fifth Amendment, that certain additional reporting be required in Petitioner's FAC filings, including hourly unit commitment designations, the rationale for each hour with a Must Run designation, and Daily Profit and Loss Analyses conducted in the week prior to any hour with a Must Run designation. As Mr. Swez testified, CAC may intervene in Petitioner's FAC proceedings and request information through appropriate discovery channels. The information identified is not required for the Commission to resolve Petitioner's FAC filings; consequently, the Commission declines to order this additional reporting.

CAC also recommends that CAC and other stakeholders be allowed to participate in discussions upon generation alternatives that may impact the replacement of Petitioner's coal-fired generation at Cayuga should such replacement resources also provide electricity to Duke Energy Indiana's other retail customers, but CAC and other stakeholders will not be signatories to the prospective contracts between Petitioner and this special contract customer. Accordingly, the Commission finds the venue for CAC and other stakeholders to vet a new contract replacing the Steam Supply Agreement that may impact other retail customers is more properly the docketed proceeding upon the replacement contract as opposed to participating in the pre-agreement discussions CAC identified. Additionally, the IRP process affords a forum in which to discuss

Petitioner's proposed generation selection, and any Certificate of Public Convenience and Necessity regulatory filing resulting from the IRP process also provides a forum in which to evaluate the merits of the construction of alternative generation. The Commission, therefore, finds the participation requirement CAC recommends should not be ordered.

9. Confidential Information. Petitioner filed its motion for protection of confidential and proprietary information on June 30, 2022, with a supporting affidavit demonstrating certain information to be submitted to the Commission constitutes trade secret information under Ind. Code § 24-2-3-2 and should be treated as confidential in accordance with Ind. Code §§ 5-14-3-4 and 8-1-2-29. A docket entry was issued on July 11, 2022, in which such information was preliminarily found to be confidential. After reviewing the information and consideration of the affidavit, the Commission finds the information is trade secret information as defined in Ind. Code § 24-2-3-2, is exempt from public access and disclosure under Ind. Code §§ 5-14-3-4 and 8-1-2-29, and shall be held confidential and protected from public access and disclosure by the Commission.

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

1. Pursuant to Ind. Code §§ 8-1-2-24 and -25, the Fifth Amendment between Duke Energy Indiana, LLC and International Paper Company is approved.

2. Petitioner is authorized to adopt the new base cost of fuel and tariff language, as specified in the Fifth Amendment, in future fuel clause filings.

3. The material submitted to the Commission under seal pursuant to Petitioner's request for confidential treatment is determined to be confidential trade secret information as defined in Ind. Code § 24-2-3-2, and shall continue to be held as confidential and exempt from public access and disclosure under Ind. Code §§ 5-14-3-4 and 8-1-2-29.

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

HUSTON, FREEMAN, KREVDA, VELETA, AND ZIEGNER CONCUR:

APPROVED: JAN 18 2023

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

Dana Kosco Digitally signed by Dana Kosco
Date: 2023.01.18 10:14:39
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Dana Kosco
Secretary of the Commission