

ORIGINAL

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

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**VERIFIED PETITION OF DUKE ENERGY)
INDIANA, LLC FOR APPROVAL OF A SPECIAL)
RETAIL ELECTRIC SERVICE AGREEMENT,)
RENEWABLE ENERGY PURCHASE AGREEMENT,)
AND TRANCHE AGREEMENTS WITH BLOCHE,)
LLC ARISING FROM OPERATION OF FACILITIES)
IN JEFFERSONVILLE, INDIANA AND FOR)
ESTABLISHMENT OF CONFIDENTIAL)
PROCEDURES)**

CAUSE NO. 45975

APPROVED: APR 24 2024

ORDER OF THE COMMISSION

**Presiding Officers:
David E. Ziegner, Commissioner
Jennifer L. Schuster, Senior Administrative Law Judge**

On October 31, 2023, Duke Energy Indiana, LLC (“Duke Energy Indiana” or “Petitioner”) filed its Verified Petition and case-in-chief, initiating this Cause. On January 12, 2024, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its case-in-chief. On January 22, 2024, Duke Energy Indiana filed its rebuttal testimony.

The Indiana Utility Regulatory Commission (“Commission”) set this matter for an evidentiary hearing to be held at 9:30 a.m. on February 13, 2024, in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Attorneys for Petitioner and the OUCC participated in the evidentiary hearing. During the hearing, the testimony and attachments of Petitioner and the OUCC were admitted into the record without objection.

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

1. Notice and Jurisdiction. Due, legal, and timely notice of the hearings held in this Cause 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 Public Service Commission Act, as amended, Ind. Code ch. 8-1-2. Under Ind. Code §§ 8-1-2-24 and -25, the Commission has jurisdiction over Petitioner’s rates and charges related to customer-specific service contracts. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. Petitioner’s Characteristics and Business. Petitioner is a public utility organized and existing under Indiana law and has its principal office at 1000 East Main Street, Plainfield, Indiana. Petitioner is engaged in rendering electric utility service in Indiana, and owns, operates, manages, and controls, among other things, plant and equipment in Indiana used for the production, transmission, delivery, and furnishing of such electric service to the public. Petitioner directly supplies electric energy to more than 870,000 customers located in 69 counties in the central, north central, and southern parts of Indiana.

3. Background and Relief Sought. Blocke, LLC (“Blocke” or “Customer”), as further described below, plans to invest approximately \$800 million into a new data center in the River Ridge Commerce Center in Jeffersonville, Indiana. Customer anticipates the creation of 50 or more new high-paying jobs and hundreds of indirect jobs to support development and construction of the data center at a site located in Petitioner’s service area.

Duke Energy Indiana has negotiated a long-term Special Retail Electric Service Agreement (“Agreement”), which includes an attached Tranche Agreement and Renewable PPA Form, with Customer. Under the Agreement, Customer would pay a special contracted rate structure that is not a currently available tariff option. The rate construct provided by the Agreement involves distinct renewable supply resources, structural protections to prevent adverse impacts on other customers, and incremental contributions to Duke Energy Indiana’s fixed system costs. The terms of the Agreement are materially essential to support Customer’s decision to select Indiana as a location for the planned facility and are necessary and appropriate to secure the associated economic development benefits for the State of Indiana.

Petitioner posits that, as required by Ind. Code § 8-1-2-4, the Agreement represents a reasonable and just negotiated arrangement between the parties, is practicable and advantageous to both Duke Energy Indiana and Customer and is consistent with the purposes of the Indiana Public Service Commission Act.

Petitioner requests approval of: (1) the proposed Agreement between Duke Energy Indiana and Customer, including the Tranche Agreement and Renewable PPA Form, and potential changes, if any, along with the rates and charges and terms and conditions for electric utility service thereunder, finding it a reasonable and just arrangement and consistent with the purpose of the Indiana Public Service Commission Act; and (2) a Commission finding that certain provisions of the proposed Agreement and attachments contain trade secret information as defined in Ind. Code § 24-2-3-2, which, along with prefiled testimony and attachments submitted in this proceeding concerning such information, is exempted from the public disclosure requirements contained in Ind. Code §§ 5-14-3-4.

4. Petitioner’s Case-in-Chief.

A. Brian P. Davey. Mr. Davey, Vice President, Petitioner’s Rates and Regulatory Strategy, testified in support, and sponsored a copy, of the Agreement. Mr. Davey testified that Customer’s parent is a multi-national Fortune 250 technology company, which owns various networking services, among other products and services. Customer’s parent’s fleet of enterprise data centers enable the collection, storage, processing, distribution, and access of large amounts of data and services to support the other services that the parent provides to the public. As of 2023, the parent has multiple data center locations around the world. In March of 2019, Duke Energy Indiana was engaged by Customer to evaluate the River Ridge Commerce Center industrial park in Jeffersonville, Indiana as a possible site. He stated that, after extensive good faith, arm’s length negotiations, the site was short-listed for future opportunities. In light of the proposed 24/7, 365-day high load factor operation, the terms for energy supply were a highly material factor in Customer’s decision to locate in Indiana. Mr. Davey testified that Duke Energy Indiana worked closely with Customer to develop the pricing included in the Agreement, including a customized rate structure involving renewables, and a strategy to build the infrastructure

necessary to serve the load by the projected operational date. The terms provide Customer with access to renewable energy from new renewable energy facilities and long-term energy certainty, each of which are necessary requirements for Customer to locate the data center in Indiana and to invest in Petitioner's service territory, while ensuring that Customer covers the costs of the services it receives from Duke Energy Indiana and protecting other customers from price or service risk.

Mr. Davey summarized the key terms of the proposed Agreement. Among other things, the Agreement specifies that Customer desires Duke Energy Indiana to supply a percentage of Customer's annual load with renewable energy from new renewable resources through purchased power agreements ("Renewable PPAs") in the form attached to the Agreement, with Petitioner's costs under the Renewable PPAs recovered from Customer as provided in the Tranche Agreements. The Agreement requires Duke Energy Indiana use the Renewable PPAs to meet Customer's hourly energy needs and explains that in hours when the renewable energy from the Renewable PPAs is not sufficient to meet Customer needs, the additional energy will be served through the Midcontinent Independent System Operator ("MISO") market.

Mr. Davey testified that the Agreement also describes the timing and the process between Customer and Duke Energy Indiana to select the renewable facility or facilities to enable the subsequent Renewable PPA execution and Tranche Agreement. The Tranche Agreement form includes the Renewable PPA product price, source, and anticipated size of the renewable facility and includes any other obligations of Customer needed to backstop the Petitioner's obligations under the Renewable PPA. The Tranche Agreement and any Renewable PPAs will be executed only after final Commission approval of the Agreement. Duke Energy Indiana and Customer are seeking approval of the forms attached to the Agreement so that any subsequently executed Renewable PPA and Tranche Agreement consistent with those forms will not require further regulatory review or approval. Customer will reimburse Duke Energy Indiana for all costs for acquiring the capacity on its behalf. Article 5 provides that transmission upgrades to Duke Energy Indiana's transmission system and associated costs may be required to serve the additional Customer load at Customer's facility. Additional terms prohibit self-generation or other services to reduce Customer's obligations to purchase electric services from Duke Energy Indiana, except for emergency backup generation, and provide for termination in the event of material load reductions as specified.

Mr. Davey described the monthly charges in the proposed Agreement, including (1) a market service demand fee based on Customer's highest demand in the billing period multiplied by demand fee of an amount per kilowatt-month; (2) a market service energy charge based on the energy consumed in the billing period; (3) Customer's allocated share of transmission costs, including the MISO OATT Rate Charge plus the monthly MISO Schedules 26 and 26-A charges; and (4) any third-party cost incurred by Duke Energy Indiana for capacity shortfalls will be reimbursed by Customer.

Mr. Davey stated that the pricing, as it relates to the pass-through costs via the procurement structure for the renewable energy and/or the MISO market, is cost-based, over the length of the Agreement. However, the market service demand fee/charge and the Renewable PPA fee were negotiated between the parties and fixed over the length of the Agreement. Because the demand charge revenues and Renewable PPA fee revenues for Customer are not based on the traditional cost of service used in rate setting, and because Petitioner's native load is not impacted by the

Renewable PPA used to supply Customer, Petitioner will administer the demand revenues and the Renewable PPA fee revenues as non-jurisdictional and will exclude them from the Petitioner's earnings test pursuant to Ind. Code § 8-1-2-42(d)(3).

Mr. Davey also explained that non-networked costs incurred by Petitioner will be reimbursed by Customer. The network upgrades will be coordinated as the project is completed. Mr. Davey stated the Facilities Service Agreement includes a provision for reimbursing Petitioner for infrastructure costs incurred if Customer does not complete the project. Mr. Davey testified that the Agreement contains provisions that protect Duke Energy Indiana and its other Indiana retail customers from adverse impacts in the case of customer default and early termination.

Mr. Davey opined that the terms of the Agreement are in the public interest. He detailed Petitioner's plans to obtain the renewable resources needed for Customer for this project. He testified Duke Energy Indiana and Customer will work toward the procurement of the renewable resources with an issuance of request for proposal with both parties agreeing upon which renewable resources to select to supply Customer's needs, which include a commitment to renewable energy resources. Mr. Davey testified the eventual renewable procurements by Petitioner on behalf of Customer will be filed with the Commission, but proposed that they should not require further regulatory approval if they are made through a Renewable PPA in substantially the form attached to the Agreement, as approved, and the entire costs of the Renewable PPAs will be borne by Customer.

Mr. Davey testified the terms and conditions of the form renewable energy purchase agreement contain typical terms and conditions in that the price will be determined through competitive solicitation and contains similar terms and conditions generally found in other long-term Renewable PPAs.

Mr. Davey discussed the potential benefits of this Agreement for customers and the state, including a projected minimum of approximately \$800 million invested in a new data center, resulting in economic benefits to the state and the creation of 50 or more new high-paying jobs and hundreds of indirect jobs to support development and construction of the data center. He opined that this benefits not only the future employees of Customer, but also the businesses in the region.

B. John D. Swez. Mr. Swez, Petitioner's Managing Director, Trading and Dispatch, testified regarding the acquisition of renewable power and MISO power provisions in detail, explained the mechanics of how Petitioner intends to administer the Agreement and how it protects retail customers, and explained the key definitions and terms of the Agreement.

He described the basic structure of the relationship between Duke Energy Indiana, Customer, and Renewable Facilities. Customer is essentially a single customer served by Duke Energy Indiana, but outside of Petitioner's normal Fuel Adjustment Clause process. Petitioner will also contract specifically for the output from dedicated renewable facilities sufficient to serve a portion of Customer's load annually. During time periods where there is insufficient Renewable Facility Energy to serve the entirety of Customer's demand, Petitioner will procure the difference from MISO and charge Customer the MISO hourly price for such energy. Each day, Petitioner's personnel will submit Customer's hourly energy schedule as a fixed-demand bid with the hourly

amount specified by Customer. In addition, each Renewable Facility Owner or designee will submit an offer for its Renewable Facility Energy to MISO. After Day-Ahead and Real-Time market results are known, billing settlement calculations will be performed hourly and summed to a monthly total to determine the appropriate customer credit or charge for each hour. Finally, Mr. Swez described how the creation of a new asset owner and CPNode will allow for the separation of Customer load, supply resources, and associated pricing for Customer ensuring that the services provided by Petitioner for Customer will not impact the production costs or services for native load customers.

5. OUCC's Case-in-Chief. Derek J. Leader, Utility Analyst for the OUCC, evaluated Duke Energy Indiana's request for approval of its Agreement with Customer, which includes an attached Tranche Agreement and Renewable PPA. He testified Petitioner is requesting the Commission approve all future agreements using these forms without further regulatory review or approval and that these PPAs are not intended to be part of Duke Energy Indiana's integrated resource plan ("IRP") process.

Mr. Leader testified the OUCC's is not concerned about Customer's contributions to fixed or marginal cost, but does have concerns about a utility entering into a PPA without Commission approval or OUCC review. He explained that, given the open terms to the form of PPA, including pricing, duration, and specific terms for termination, cancellation, or continuation, the OUCC does not find it reasonable for the Commission to issue advance, blanket approval for future renewable PPAs. He stated that the OUCC supports economic development projects, and therefore proposes an expedited filing process. He testified the OUCC is proposing a 30-day filing schedule for PPAs entered under this Agreement. Such filings are expedited and are subject to approval in the absence of a valid objection. A 30-day filing would give the OUCC time to consider the specific pricing, duration, and terms for termination, cancellation, or continuation, and would allow the Commission to address any inappropriate terms, if necessary. He stated Petitioner's responses to data requests largely alleviated concerns about the burden of the PPAs potentially falling on other customers and that the OUCC does not have remaining concerns.

Mr. Leader concluded by testifying the OUCC recommends approving the Agreement, with the modification that Petitioner file the PPAs for approval under the Commission's 30-day filing procedure, to allow the Commission and the OUCC to review and respond to any concerns if any when they occur.

6. Petitioner's Rebuttal. Mr. Davey addressed the OUCC's concerns regarding the Form PPA and its proposal to use the Commission's 30-day filing process for future PPAs entered under the Agreement, through the Form PPA. Mr. Davey testified that the commercial terms that the OUCC desires to have reviewed in a 30-day filing are typically confidential, and confidential filings are prohibited under the Commission's administrative rules with respect to 30-day filings. He noted that the Tranche Agreement and Renewable PPA Form (Confidential Attachment 1-B) are confidential attachments in this docket. Mr. Davey testified that, in the event that the Commission desires that Duke Energy Indiana make this confidential information available to the OUCC, it could, in lieu of a 30-day filing pursuant to the 170 IAC 1-6 procedure, instead provide the OUCC notice that a PPA has been entered into and provide the OUCC the opportunity to review, pursuant to an executed non-disclosure agreement ("NDA"), the PPA's "open terms" that the OUCC outlined, within a 30-day window.

Mr. Davey testified that it is possible the PPAs could be used to serve retail customers at some point in the future, but only in limited circumstances. He explained that, in the event of default or termination of the Agreement, Duke Energy Indiana may terminate the PPAs or utilize the PPAs for retail service. If the PPAs would be needed to serve retail customers, additional Commission review of the PPAs would occur at that time. To the extent there is a period between termination and Commission approval of Duke Energy Indiana utilizing the PPAs to serve retail customers, Duke Energy Indiana will defer the associated costs and revenues. He stated that, otherwise, Duke Energy Indiana's retail customers are insulated from cost risk associated with the PPAs. To the extent generation is built in Indiana to support this Agreement, Mr. Davey stated that it will also presumably go before the Commission in the likely form of a certificate of public necessity and convenience request and declination of jurisdiction, giving the Commission and other parties continued insight into the generation side of this Agreement.

Mr. Davey stated that, to the extent the Commission feels additional oversight or notice is warranted, Duke Energy Indiana is requesting approval of the Form PPA, the Tranche Agreement and potential changes, if any, with the understanding that Duke Energy Indiana will submit the executed PPAs for review at a future date, for informal review by the OUCC of the PPA's open terms. This process would allow review by the OUCC of these confidential, commercially negotiated terms to the Form PPA to the extent the Commission agrees such additional review would be valuable.

7. Joint Evidence. At the evidentiary hearing of this Cause, the parties submitted Joint Exhibit 1, a document stating that, in lieu of a 30-day filing pursuant to the 170 IAC 1-6 procedure, the OUCC agrees with the informal review process described in Mr. Davey's rebuttal testimony that Duke Energy Indiana will provide the OUCC an opportunity to review the terms identified in the direct testimony of Derek J. Leader, pursuant to an executed NDA.

8. Commission Discussion and Findings. Duke Energy Indiana seeks approval of the Agreement with Blocke under the provisions of Ind. Code §§ 8-1-2-24 and -25. Ind. Code § 8-1-2-24(a) provides:

Nothing in this chapter shall be taken to prohibit a public utility from entering into any reasonable arrangement with its customers or consumers, or with its employees, or with any municipality in which any of its property is located, 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 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.

Therefore, customer-specific contracts that modify tariff provisions are lawful if the Commission finds the provisions to be 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, Ind. Code ch. 8-1-2.

The evidence submitted in this Cause satisfies us that the Agreement meets the requirements of Ind. Code §§ 8-1-2-24 and -25. In making such a determination, two considerations are important: whether the rates negotiated between the utility and its customer are sufficient for the utility to cover the incremental cost of providing the service to the customer and still make some contribution to the utility's recovery of its fixed costs, and whether the utility has sufficient capacity to meet the customer's needs. As explained by Mr. Davey, the Agreement requires that Customer cover the incremental costs of providing service to it, as well as contributing to Petitioner's recovery of fixed costs. Mr. Leader acknowledged that these requirements were met.

The Commission reviewed the OUCC's testimony recommending submission of the Form PPA through a 30-day filing, pursuant to 170 IAC 1-6. As noted by Petitioner, though, confidential submissions in a 30-day filing are prohibited under 170 IAC 1-6. We also share the OUCC's expressed concerns about blanket approval of future PPAs. Therefore, we find that Petitioner shall submit each future PPA entered into pursuant to the Agreement as a compliance filing in this Cause. If the OUCC files an objection or the Commission determines a need for further review within 30 days of the compliance filing, the Commission may docket the compliance filing as a subdocket to this proceeding.

In addition, due to the individualized nature of the Agreement with Customer, we approve Petitioner's request to exclude the Agreement from its overall IRP planning process.

Based on the evidence of record, we find and conclude that the terms and conditions contemplated in the Agreement are just and reasonable, practicable and advantageous to the parties, and are consistent with the purposes of the Public Service Commission Act. Therefore, we find that the Agreement is in the public interest and is, therefore, approved, including the Form PPA and Tranche Agreement.

9. Confidential Information. Petitioner filed a Motion for Protection of Confidential and Proprietary Information on October 31, 2023, which was supported by affidavit showing certain information to be submitted to the Commission was trade secret information as defined by Ind. Code § 24-2-3-2 and within the scope of Ind. Code §§ 5-14-3-4(a)(4) and 8-1-2-29. In a November 20, 2023 docket entry, the Presiding Officers found such information to be preliminarily confidential, after which Petitioner submitted such information under seal. We find all such information is confidential pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29, is exempt from public access and disclosure by Indiana law 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. The Agreement between Duke Energy Indiana and Blocke, LLC, and its attachments, along with the rates and charges and terms and conditions for electric utility service thereunder, is approved, consistent with our findings in this Order.

2. Duke Energy Indiana shall make a compliance filing in this Cause, as described above, regarding future PPAs entered into under the Agreement.

3. The material submitted to the Commission under seal is declared to contain trade secret information as defined in Ind. Code § 24-2-3-2, and therefore, is exempt from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29.

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

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

APPROVED: APR 24 2024

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

**Dana Kosco
Secretary to the Commission**