

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

PETITION OF DUKE ENERGY INDIANA, LLC PURSUANT :
TO IND. CODE §§ 8-1-2-42.7 AND 8-1-2-61, FOR (1) :
AUTHORITY TO MODIFY ITS RATES AND CHARGES FOR :
ELECTRIC UTILITY SERVICE THROUGH A MULTI-STEP :
RATE IMPLEMENTATION OF NEW RATES AND CHARGES :
USING A FORECASTED TEST PERIOD; (2) APPROVAL OF :
NEW SCHEDULES OF RATES AND CHARGES, GENERAL :
RULES AND REGULATIONS, AND RIDERS; (3) APPROVAL :
OF REVISED ELECTRIC DEPRECIATION RATES :
APPLICABLE TO ITS ELECTRIC PLANT IN SERVICE, AND :
APPROVAL OF REGULATORY ASSET TREATMENT UPON :
RETIREMENT OF THE COMPANY'S LAST COAL-FIRED :
STEAM GENERATION PLANT; (4) APPROVAL OF AN :
ADJUSTMENT TO THE COMPANY'S FAC RIDER TO TRACK :
COAL INVENTORY BALANCES; AND (5) APPROVAL OF :
NECESSARY AND APPROPRIATE ACCOUNTING RELIEF, :
INCLUDING AUTHORITY TO: (A) DEFER TO A :
REGULATORY ASSET EXPENSES ASSOCIATED WITH THE :
EDWARDSPORT CARBON CAPTURE AND :
SEQUESTRATION STUDY, (B) DEFER TO A REGULATORY :
ASSET COSTS INCURRED TO ACHIEVE ORGANIZATIONAL :
SAVINGS, AND (C) DEFER TO A REGULATORY ASSET OR :
LIABILITY, AS APPLICABLE, ALL CALCULATED INCOME :
TAX DIFFERENCES RESULTING FROM FUTURE CHANGES :
IN INCOME TAX RATES :

CAUSE NO. 46038

THE KROGER CO's REPLY TO DUKE ENERGY INDIANA'S
RESPONSE TO KROGER'S OBJECTION TO COMPLIANCE FILING

The Kroger Co. ("Kroger") by counsel, hereby files its Reply to Duke Energy Indiana, LLC's ("Duke") Response to Kroger's Objection To Compliance Filing as follows:

1. Duke states that Kroger's Objection should be denied because "[t]he Commission's rules provide a clear process for seeking reconsideration of an order when a party believes further modifications are necessary. The appropriate procedural mechanism in this scenario would have been timely filing a petition for rehearing and reconsideration under 170 IAC 1-1.1-22, which Kroger failed to pursue."¹ Duke's argument misses the mark because Kroger does not dispute the **Commission's Order**. **The Commission's Order**

¹ Duke Response at Paragraph 5.

appropriately rejected Duke's proposed 50% migration adjustment.² Kroger's Objection is to Duke's incorrect application of the rejected 50% migration adjustment to several rate schedules in violation of the Commission's Order. Kroger therefore filed an Objection to Duke's Compliance Filing rather than seeking reconsideration of the Order.

2. **Despite Duke's contention that Kroger's Objection is "procedurally improper," it does not cite any statute, rule or Commission Order preventing parties from objecting to its Compliance Filing. Duke's claim that the Commission's discussion on page 85 of its Final Order somehow prevents parties from objecting to mistakes in Duke's Compliance Filing is also unfounded. The Commission's Order contains no such prohibition.**
3. **Duke suggests that the parties' only recourse to contest mistakes in its Compliance Filing is to file a petition for reconsideration of the Commission's Order within 20 days of the Final Order.³ However, Duke filed its Step 1 Compliance Filing 9 days after the Commission's Order was issued. So in Duke's view, parties would have only 11 days to review the Compliance Filing for errors. Following this 11-day period they would be required to file a petition for reconsideration of the Commission's Order even if their objection is not to the Order itself, but rather the Compliance Filing's misapplication of the Order. This is clearly not the process envisioned by the Commission for dealing with mistakes contained in the Compliance Filing.**
4. **Duke's Response does not address the substance of Kroger's Objection to the Compliance Filing.**

For these reasons, Kroger respectfully requests that the Commission require Duke to amend its rates to comply with its Order regarding the migration adjustment and, if appropriate, issue a refund for any excess rates already billed under the approved Compliance Filing.

Respectfully submitted,

/s/ Kurt J. Boehm

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

BOEHM, KURTZ & LOWRY

425 Walnut Street, Suite 2400

Cincinnati, Ohio 45202

Telephone: 513-421-2255 Fax: 513-421-2764

E-Mail: KBoehm@bkllawfirm.com

jkylercohn@bkllawfirm.com

² See Final Order at pages 106-112.

³ Duke Response at Paragraph

John P. Cook, Esq.
JOHN P. COOK & ASSOCIATES
900 W. Jefferson Street
Franklin, Indiana 46131
Telephone: 317-738-3007 Fax: 317-738-3117
E-Mail: john.cookassociates@earthlink.net

COUNSEL FOR THE KROGER CO.

March 12, 2025

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or regular U.S. mail, postage prepaid (unless otherwise noted), this 12th day of March, 2025 to the parties listed below.

/s/ Kurt J. Boehm

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

John P. Cook, Esq.

OUCG

Thomas R. Harper

Adam J. Kashin

Indiana OUCG

115 W. Washington St., Suite 1500S

Indianapolis, IN 46204

ThHarper@oucc.IN.gov

AKashin@oucc.IN.gov

infomgt@oucc.IN.gov

Copy to: AParonish@oucc.IN.gov

Duke Industrial Group

Todd Richardson

Aaron A. Schmoll

Tabitha L. Balzer

Lewis & Kappes, P.C.

One American Square, Suite 2500

Indianapolis, IN 46282-0003

trichardson@lewis-kappes.com

ASchmoll@lewis-kappes.com

TBalzer@lewis-kappes.com

Copy to: ETennant@lewis-kappes.com

Acadian Consulting Group

Michael Deupree

Callie Scheuermann

Emily Mouch

MichaelDeupree@acadianconsulting.com

CallieScheuermann@acadianconsulting.com

[m](mailto:EmilyMouch@acadianconsulting.com)

EmilyMouch@acadianconsulting.com

Resolve Utility Consulting PLLC

David Garrett

Heather Garrett

Garrett Group LLC

DGarrett@resolveus.com

HGarrett@garrettgroupllc.com

Nucor Steel-Indiana

Anne E. Becker

Lewis & Kappes, P.C.

One American Square, Suite 2500

Indianapolis, IN 46282-0003

abecker@lewis-kappes.com

Copy to: Atyler@lewis-kappes.com

Shaun C. Mohler

Stone Mattheis Xenopoulos & Brew, PC

1025 Thomas Jefferson Street

NW 8th Floor, West Tower

Washington, DC 20007-5201

smohler@smxblaw.com

Wabash Valley Power Alliance

Jeremy L. Fetty

Parr Richey

6720 Intech Blvd.

Indianapolis, IN 46278

Jfetty@parrlaw.com

L. Robyn Zoccola

Parr Richey

251 N. Illinois St., Suite 1800

Indianapolis, IN 46204

rzoccola@parrlaw.com

Citizens Action Coalition of Indiana, Inc.

Jennifer A. Washburn

Citizens Action Coalition of Indiana, Inc.

1915 West 18th Street, Suite C

Indianapolis, IN 46202

jwashburn@citact.org

Copy to: Rkurtz@citact.org

Sierra Club
Kim E. Ferraro
Conservation Law Center Indiana Univ.
116 S. Indiana Avenue, Ste. 4
Bloomington, IN 47408
kimferra@iu.edu

Duke Energy Indiana, LLC
Elizabeth A. Heneghan
Andrew J. Wells
Liane K. Steffes
Duke Energy Business Services LLC
1000 East Main Street
Plainfield, IN 46168
Beth.heneghan@duke-energy.com
Andrew.wells@duke-energy.com
Liane.steffes@duke-energy.com

Nicholas K. Kile
Hillary J. Close
Lauren M. Box
Lauren Aguilar
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, IN 46204
Nicholas.kile@btlaw.com
Hillary.close@btlaw.com
Lauren.box@btlaw.com
Lauren.aguilar@btlaw.com

River Ridge Property Owners'

Association, Inc.
Nikki G. Shoultz
Kristina K. Wheeler
Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
nshoultz@boselaw.com
kwheeler@boselaw.com

Walmart Inc.
Eric E. Kinder
SPILMAN THOMAS & BATTLE, PLLC
300 Kanawha Boulevard, East
P. O. Box 273
Charleston, WV 25321
ekinder@spilmanlaw.com

Barry A. Naum
Steven W. Lee
SPILMAN THOMAS & BATTLE, PLLC
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
bnaum@spilmanlaw.com
slee@spilmanlaw.com