STATE OF INDIANA

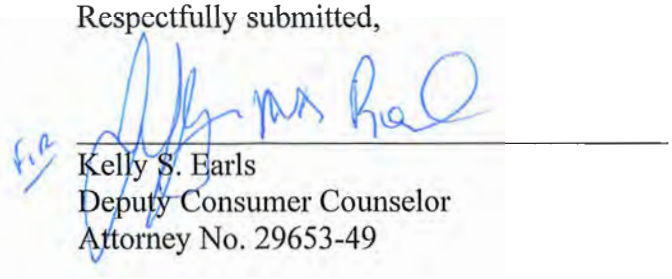
INDIANA UTILITY REGULATORY COMMISSION

-VERIFIED PETITION OF DUKE ENERGY INDIANA, LLC FOR; (1) APPROVAL OF PETITIONER'S 6-YEAR PLAN FOR ELIGIBLE TRANSMISSION, DISTRIBUTION AND STORAGE SYSTEM IMPROVEMENTS, PURSUANT TO IND. CODE § 8-1-39-10; (2) APPROVAL OF A TRANSMISSION AND DISTRIBUTION INFRASTRUCTURE IMPROVEMENT COST RATE ADJUSTMENT AND DEFERRALS, PURSUANT TO IND. CODE §§ 8-1-2-10, 8-1-2-12, 8-1-2-14, AND 8-1-39-1 *ET SEQ*; AND (3) APPROVAL OF A TARGETED ECONOMIC DEVELOPMENT PROJECT AND RECOVERY OF COSTS ASSOCIATED WITH THE PROJECT, PURSUANT TO IND. CODE §§ 8-1-39-10 AND 8-1-39-11	)	**CAUSE NO. 45647**

INDIANA OEFICE OF UTILITY CONSUMER COUNSELLOR'S BRIEF IN SUPPORT OF PROPOSED ORDER

The Indiana Office of Utility Consumer Counselor ("OUCC"), by counsel, submits its brief in support of its exceptions to Duke Energy Indiana's ("DEI") proposed order. To the extent that this brief does not expressly address any additional issues raised in this proceeding, the absence of discussion should not be construed as an endorsement of or acquiescence in the position taken by any other party. A Word version will be provided to the Administrative Law Judge and counsel of record.

Respectfully submitted,



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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF DUKE ENERGY INDIANA, LLC FOR; (1) APPROVAL OF PETITIONER'S 6-YEAR PLAN FOR ELIGIBLE TRANSMISSION, DISTRIBUTION AND STORAGE SYSTEM IMPROVEMENTS, PURSUANT TO IND. CODE § 8-1-39-10; (2) APPROVAL OF A TRANSMISSION AND DISTRIBUTION INFRASTRUCTURE IMPROVEMENT COST RATE ADJUSTMENT AND DEFERRALS, PURSUANT TO IND. CODE §§ 8-1-2-10, 8-1-2-12, 8-1-2-14, AND 8-1-39-1 *ET SEQ*; AND (3) APPROVAL OF A TARGETED ECONOMIC DEVELOPMENT PROJECT AND RECOVERY OF COSTS ASSOCIATED WITH THE PROJECT, PURSUANT TO IND. CODE §§ 8-1-39-10 AND 8-1-39-11	)	**CAUSE NO. 45647**

BRIEF OF INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR IN SUPPORT OF EXCEPTIONS AND PROPOSED ORDER

The Indiana Office of Utility Consumer Counselor ("OUCC") hereby submits this post-hearing brief to address deficiencies in the proposed order submitted by Duke Energy Indiana ("Company" or "Petitioner"), and in support of the exceptions and alternative proposed order submitted herewith.

I. INTRODUCTION

Petitioner proposes two billion dollars' worth of upgrades to its transmission and distribution system; however, Duke Energy Indiana fails to show the basic, minimal requirements for approval as required by Ind. Code § 8-1-39 (the "TDSIC[1] Statute"). Specifically, Ind. Code § 8-1-39-10 provides the guidelines of what Petitioner must prove, and the Indiana Utility

[1] "TDSIC" as used herein means eligible transmission, distribution, and storage system improvements charges, as defined in Ind. Code § 8-1-39-2.

Regulatory Commission ("Commission") must find to approve eligible transmission, distribution, and storage system improvements.

First, Duke Energy Indiana failed to show that its cost estimates provided in its case-in-chief are "the best estimate of cost," as required by Ind. Code § 8-1-39-10(b)(1). Petitioner instead first began pricing TDSIC projects in 2019 and 2020. When Petitioner became aware of the price increases, it partnered with PowerAdvocate to review escalating costs of various material components used in TDSIC projects. This study was completed before the Company filed its TDSIC Plan in this Cause. The study showed incredible price escalations of up to sixty percent in nearly all the required material components that will be used in Petitioner's TDSIC Plan. Yet, instead of delaying the projects, the Company merely added a three percent escalation rate over its base estimates. Additionally, Petitioner did not have any engineer testify that the cost estimates were "the best" estimate of costs. The only engineer to testify on behalf of the Company admitted that he only reviewed the cost estimates for "reasonableness" and did not review Petitioner and PowerAdvocate's "should cost" forecasting. For this reason, Petitioner cannot show that its cost estimates for its TDSIC Projects meet with the statutory obligation of "the best".

Second, Duke Energy Indiana failed to show the TDSIC individual projects were necessary to satisfy the public convenience and necessity requirement in Ind. Code § 8-1-39-10(b)(2). The Company failed to provide any historical evidence that most of the upgrades are necessary to provide safe and reliable service. Petitioner noted throughout its testimony that its "TDSIC 2.0" plan is different from its TDSIC 1 Plan,[2] in that TDSIC 1 focused on "aging infrastructure." Much of TDSIC 2.0 focuses on "modernization", which Petitioner asserted includes expansion of renewable generation, electric vehicles, and upgrades to its system to allow for – at some point in

[2] See Duke Energy Indiana, IURC Cause No. 44720.

the future – customer distributed energy. However, the Company did not show how such projects meet the statutory requirement that it must show "public convenience and necessity require or will require the eligible improvements included in the plan." (Ind. Code § 8-1-39-10(b)(2)). Duke Energy Indiana failed to show that most of its TDSIC projects are necessary. The Company could have provided evidence such as historical outage data or MISO recommendations for transmission reliability. It failed to provide such information. Additionally, as it relates to "upgrades" to its transmission system to allow for distributed energy resources ("DER"), Duke Energy Indiana failed to provide any evidence that customers want or need such upgrades. Petitioner only provided speculative hearsay, as it cannot show where customers will locate DER, or any connection requirements. Such speculative projects do not pass the fundamental requirement that such projects must be "used and useful" as required by Ind. Code § 8-1-2-6.

Third, Duke Energy Indiana failed to show its TDSIC Projects meet the statutory obligation that the project costs are justified by the incremental benefits of those costs as required by Ind. Code § 8-1-39-10(b)(3). Petitioner has attempted to implement a new cost-benefit analysis, which has never been approved by the Commission, in which the algorithms to achieve such numbers are unknown to any party or the Commission. Additionally, Petitioner and Black & Veatch ("B&V') include questionable "benefits" to which B&V assigned a monetary value in order to increase the "benefits" in the modeling. Such a model falls outside of the standard Risk Adjusted Project Prioritization (RAPP) analysis used in evaluating cost-benefits in other TDSIC projects, including Duke's TDSIC-1. Further, contingency is not included in the Company's cost-benefit analysis, which would certainly lower any cost-benefit result. Lastly, Petitioner did not perform any sensitivity analysis, despite knowing labor costs and material component costs far exceeded cost estimates. Several of the individual projects included in Petitioner's TDSIC 2.0 Plan do not meet

the cost-benefit analysis, even at the Company's unreliable lower projected costs, and with extra "benefits" added in. As such the Commission should deny these projects as not meeting the cost-benefit test.

Lastly, the Commission must consider the affordability of this Plan, in accordance with the Indiana General Assembly's stated policy in Ind. Code § 8-1-2-0.5. The policy states affordability should be protected. The way to ensure this protection for Indiana citizens is for the Commission to examine Petitioner's request in light of its financial impact on ratepayers. The legislature provided another layer of ratepayer protection by enacting this statutory requirement to consider affordability. This requirement that investment in infrastructure be affordable is in addition to the constraint of the two percent cap contained within the TDSIC statute. Given that the legislature added the affordability requirement subsequent to the enactment of the two percent cap shows that not exceeding the two percent cap, in and of itself, does not prove that the Plan meets the affordability requirement.[3] As such, the Commission should deny Petitioner's TDSIC Plan, in consideration of the unsurety of the costs of the Plan, the inflated and undefined benefits, the inability of any party or the Commission to replicate the Copperleaf findings, the failure to show the necessity of the projects, and general overall economic concerns of ratepayers. Unnecessary projects are never affordable.

Alternatively, if the Commission approves any portion of Petitioner's plan, the Commission should remove the transmission projects that Duke Energy Indiana did not present any evidence showing a need for replacement, namely those identified in Dr. Casey Shull's testimony. The Commission should remove all projects related to DER and renewable generation

[3] After the TSDIC Statute was enacted (Ind. Code § 8-1-39, *as added by P.L.133-2013, SEC.*5), the legislature enacted Ind. Code § 8-1-2-0.5 *(as added by added by P.L.104-2016, SEC.1*), to further address the legislature's concerns about the affordability of rates considering utilities' infrastructure projects.

that the Company cannot show a need for and cannot show will be used and useful. The Commission should also hold Petitioner to its word that it will delay any projects until commodities can be purchased at a price that is reasonable within its cost estimate, and if material component or labor costs do not decrease, that Petitioner be required to perform an additional cost-benefit analysis to determine if the TDSIC projects meet the statutory requirement that costs do not exceed benefits.

II. STATUTORY ANALYSIS

Duke Energy Indiana's TDSIC 2.0 Plan fails the three statutory requirements in Ind. Code § 8-1-39-10. First, the Company did not provide the "best estimate" of the costs. Second, the Company cannot show a need for the projects included in its TDSIC 2.0 Plan. Third, the Company has not demonstrated the costs are justified by the incremental benefits of the Plan. Additionally, considering the statutory directive that "affordability" must be considered when utilities invest in infrastructure, the Commission should determine that the Company's TDSIC 2.0 Plan is not affordable. These projects remain unnecessary, with costs far exceeding estimates, and an untested, unknown, and inflated cost-benefit model.

A. DUKE ENERGY INDIANA failed to provide the best estimate of the cost of the eligible improvements included in the plan.

The statutory language is very explicit. Petitioner must provide, and the Commission must find, that Petitioner presented "the ***best*** estimate of the cost of the eligible improvements included in the plan." (Ind. Code § 8-1-39-10(b)(1)). Petitioner agreed that "the best" means, "excelling all others", "the greatest degree of excellence", and "none can be better." [Cross Examination of Stan Pinegar, A-18:14-20.] Mr. Pinegar noted that Petitioner began its analysis in 2019. [A-19:1-2.] Mr.

Pinegar noted that he is aware of the rising commodity costs and testified that even after Petitioner noted the rising commodity costs, the Company did not perform a new cost estimate. [A-21:1-2.]

Indiana Courts have consistently held that "[w] hen a statute is clear and unambiguous, we apply the rules of statutory construction and interpret statutory language in its plain, ordinary, and usual sense." *Cty. of Lake v. Pahl*, 28 N.E.3d 1092, 1104 (Ind. Ct. App. 2015), *rehg denied, trans. denied*. In the case at hand, the statute requires a finding greater than the "reasonableness" of the cost estimates. Duke Energy Indiana fails in its proposed order to note the difference in the statute between a "reasonable" cost estimate, and "the best" estimate of the cost. (See Petitioner's proposed order, p. 24.) The statute is much more restrictive as it requires "the best." (Ind. Code § 8-1-39-10(b)(1)). The Company presented no testimony from any engineer that these cost estimates were "the best." Neither Mr. Lewis, nor Mr. Dickey, are engineers. The only engineer that testified regarding the cost-estimates on behalf of Petitioner was Mr. Shields, and Mr. Shields admitted in cross examination that he did not make a determination the Company's cost estimates were "the best", he only evaluated ***some*** of the projects based on "reasonability." [C-60:4-19.]

Dr. Shull testified Duke Energy Indiana did not provide the best estimate of costs, as material prices have escalated between 30-55% since Petitioner began pricing these projects. [OUCC Ex. 1, Direct Testimony of Dr. Casey Shull, 8:12-17.] Dr. Shull presented two graphs from the United States Bureau of Labor Statistics, the first showing the 40 percent increase in nonferrous wire and cable from mid-2020 through the end of 2021, when Petitioner filed this Plan. [OUCC Ex. 1, Direct Testimony of Dr. Casey Shull, p. 10.] The second graph showed roughly a 55% increase in metals and metal products from January 2020 through the end of 2021 when Petitioner filed its Plan and estimates. [*Id*.]

Additionally, in 2021, prior to filing its TDSIC 2.0 Plan, the Company met with PowerAdvocate to assess rising commodity prices. [See OUCC Ex. CX-4.] PowerAdvocate provided a document showing the projected prices for material components used in the Company's TDSIC 2.0 Plan far exceed the Company's 100% cost estimate. [See OUCC CX-1-C.] Therefore, Duke Energy Indiana had proof that its cost estimates were not the best and most accurate reflection of the costs of these material components at the time of filing its Plan. [See Cross Examination of Mr. Lewis; B-55:5-18.] Neither Mr. Lewis, nor Mr. Dickey, are engineers. the Company presented zero evidence from an engineer, or from an otherwise qualified witness, that these cost estimates are "the best" at the time of filing its Plan, or that these cost estimates were "the best" at the time of the evidentiary hearing. As such, the Commission is statutorily obligated to deny the Company's Plan as it failed to meet the statutory requirements in Ind. Code § 8-1-39-10(b)(1). The Commission should adopt the OUCC's proposed order language regarding the best estimate of cost.

B. DUKE ENERGY INDIANA failed to show a need to perform these projects, or that certain projects would be used and useful.

The TDSIC Statute requires Petitioner must show, and the Commission must determine, the "public convenience and necessity require or will require the eligible improvements included in the plan." (Ind. Code § 8-1-39-10(b)(2)). Notably, Mr. Pinegar acknowledged that Petitioner's system, as it is today, is reliable. [Cross Examination of Stan Pinegar, A-31:22-24.] Mr. Pinegar agreed that to meet the CPCN requirement in the TDSIC Statute, the Company must show a "need" for the TDSIC projects. [A-30:10-13.] Dr. Shull testified that Duke Energy Indiana failed to provide empirical evidence or support explaining why the public convenience and necessity require the replacement or rehabilitation of these proposed redundancy projects. [Public's Ex. 1,

p. 5:4-7.] Dr. Shull further testified Petitioner's proposed level of additional redundancy is unnecessary and not supported by evidence. Specifically, Dr. Shull stated Petitioner has not shown any historical data or other support demonstrating the need for this added layer of redundancy. [Public's Ex. 1, p. 6:5-6.] Indeed, as noted on cross examination of Petitioner's Witness Dickey, the Company admitted in data responses that it did not provide such outage data. Without such evidence Petitioner cannot show a need for these projects. [See OUCC CX-9.] This failure to provide such evidence should lead the Commission to reject Petitioner's analysis regarding the public convenience and necessity. (See Petitioner's Proposed Order at p. 25.)

The OUCC's greatest concern is with specific transmission line projects.[4] As Dr. Shull testified, Duke Energy Indiana failed to provide empirical evidence or support regarding the public convenience and necessity requiring the replacement or rehabilitation of these transmission lines to improve reliability. The projects referenced are not necessary replacements for improved reliability. The Company presented no direct evidence regarding any capacity changes or other upgrades. The projects are merely replacing undeteriorated transmission lines with the exact same type of equipment. Further, the Company provides no evidence that these specific projects will result in a reduction in customer interruption ("CI") or customer minutes interruption ("CMI") or improved reliability. [Public's Ex. 1, p. 7:9-16.]

Duke Energy Indiana also failed to show the projects that are focused on distributed energy resources ("DER") and renewable expansion were either wanted or needed by customers, or that any such projects will be used and useful. No customer filed testimony showing support for any of Petitioner's TDSIC projects. Additionally, despite Mr. Lewis testifying at length in his direct testimony regarding customer wants and needs [see Pet.'s Ex. 2], Mr. Lewis admitted on the stand

[4] These projects are referenced in groups of projects: See Public's Ex. 1-C, Confidential Attachment 3.

that he had never spoken with any customers regarding customer wants or needs. [B-32:25-B-33:9.] Mr. Lewis also admitted that he had not had communications with anyone at the Company to determine why Petitioner believes that such upgrades are necessary. [B-30:19-22.]

By statute, a utility must show that its property is used and useful. (Ind. Code § 8-1-2-6.) Petitioner fails to address this requirement at all in its proposed Order. Duke Energy Indiana has failed to provide any evidence that any DER upgrade will be used and useful and merely provides speculation on future customer wants and needs. [See Pet. Ex. 1, 9:19.] No consumer party – Industrial Group or otherwise – testified in support of any of these upgrades to implement DER or renewable generation. In *Indiana-Am. Water Co. v. Ind. Off. Of Util. Consumer Couns*., Indiana American requested rate recovery of five service pumps. The OUCC argued that only four service pumps were necessary to serve customers. 844 N.E.2d 106, 111 (Ind. Ct. App. 2006). The Commission agreed and removed one of the service pumps from rate base as not being necessary and failing the "used and useful" requirement. *Id.* Indiana American appealed that decision. The Court of Appeals, upon review, upheld the Commission's decision, finding that "[t]he Commission's 'used and useful' standard requires: (1) that the utility plant be actually devoted to providing utility service; and (2) that the plant's utilization be reasonably necessary to the provision of utility service." *Id.,* citing *City of Evansville v. S. Indiana Gas & Elec. Co.,* 167 Ind. App. 472, 516, 339 N.E.2d 562, 589 (1975). The Court of Appeals noted that "[u]nnecessary plant capacity is not used and useful for rate making purposes and should not be included." *Id*. at 111, citing *L.S. Ayres & Co. v. Indpls. Power & Light Co.,* 169 Ind. App. 652, 683, 351 N.E.2d 814, 834 (1976), *trans. denied.*

Indiana American provided testimony that the fifth pump was needed to meet peak demand and noted that the fifth pump had not yet been used but claimed it will be needed "***at some point***

in the future." *Id*. at 111 (Emphasis added.) The Commission in its findings noted that, despite previously allowing this pump into rate base, the Commission:

> [S]hall make our decision based on the evidence of record that we now have before us. We find that [IAWC] did not provide evidence to support the time frame within which this engineering feature will be used and useful. Further, we find [IAWC's] evidence lacked information that we deem necessary in order to allow this plant in rate base[.] *Id.*

This is the identical concern that the OUCC has regarding the DER "upgrades" to Petitioner's transmission system. As stated above, the Company provided zero evidence that these "upgrades" were necessary, or when or even if, these upgrades will be used and useful. the Company presented no evidence that customers demanded such upgrades to allow for customer distributed energy resources. Mr. Lewis on cross admitted that he had not even spoken to customers regarding distributed energy resources, despite sponsoring such testimony in his prefiled testimony. No consumer groups presented testimony requesting such upgrades. Duke Energy Indiana has failed to show that any such upgrades will be used and useful or provide evidence to support a timeframe in which such engineering features will be used and useful. As such the Commission must deny any costs for such upgrades and should adopt the language proposed by the OUCC in its proposed order.

C. DUKE ENERGY INDIANA has failed to show that the costs are justified by the incremental benefits of the TDSIC projects.

The TDSIC Statute requires that the estimated costs of the eligible improvements included in the plan are justified by incremental benefits attributable to the plan. (Ind. Code § 8-1-39-10(b)(3)). Petitioner utilized untested, unapproved, and non-transparent modeling to provide a cost-benefit analysis, namely, Copperleaf's Decision Analytics, and Black & Veatch's Value Model. [Pet. Ex. 2, p. 44:8-10.] Despite the OUCC's numerous requests to provide the algorithms to the Copperleaf model, Petitioner held that such information was proprietary. [OUCC Ex. 1, p.

3:13-18.] Indeed, on cross examination, Mr. Dickey admitted that he also did not know what algorithm is used in the Copperleaf model and Petitioner could not replicate it. [C-24:10-25.] Without access to the algorithms, it is impossible to verify whether Copperleaf's modeling logic is reasonable or the calculations are accurate. The Company states that the OUCC and the Commission can simply buy the Copperleaf model. That suggestion cannot be taken seriously, and the Commission cannot grant such leeway to utilities. Requiring consumer parties to purchase the modeling would be shifting the burden to show benefits outweigh the costs away from the Petitioner and puts the burden on consumer parties. The Court of Appeals has found that is not acceptable. *See, NIPSCO Indus. Grp. v. N. Ind. Public. Serv. Co.*, 31 N.E.3d 1, 8-9 (Ind. App. 2015) (holding Commission erred by creating a presumption in favor of the utility and shifting the burden to consumer parties).

Additionally, Black & Veatch's new "Value Model" has questionable "benefits" it attempts to monetize to inflate or pad the cost-benefit analysis. [Pet. Ex. 4, p. 3:6-14.] Black & Veatch's Value Model counts "customer satisfaction" and places a monetized value on such a concept, without even surveying if customers were satisfied with price. [Pet. Ex. 4, p. 9.] Such "benefits" are clearly overstated and duplicative. Under the new modeling proposed in this case by the Company, B&V's "Value Modeling" in conjunction with Copperleaf adds more "benefits" than a traditional cost-benefit analysis. Such benefits include things like "customer satisfaction" to which B&V assigned a monetary value. Mr. Shields' attempts to show all the additional "benefits" that B&V monetized seemingly to inflate the cost-benefit analysis. [*Id*.] Clearly, there are duplications of "benefits", in which "reliability" is counted and monetized separately from "customer satisfaction". As it relates to "customer satisfaction," increased cost was not a consideration. [C-52:2-11.] The Commission must scrutinize such unsupported theories and reject this type of

modeling. Mr. Shields admitted under cross examination he could not determine whether any of these programs would have passed the cost-benefit analysis used in Petitioner's TDSIC 1. [C-55:1-6.] The Commission should reject Duke Energy Indiana's Proposed Order as it relates to the benefits of its TDSIC 2.0 Plan, even though Petitioner acknowledges in its Proposed Order that it attempts to monetize non-financial "benefits", and that no party can verify or replicate the Copperleaf findings. (Petitioner's Proposed Order at 27.)

Additionally, Duke Energy Indiana has failed to use the proper indices to measure the performance of its transmission system. Repeatedly, Petitioner's witness Lewis, who is not an engineer, testified to measuring success of the transmission projects through System Average Interruption Duration Index ("SAIDI") and System Average Interruption Frequency Index ("SAIFI") [See Pet. Ex. 2, p. 48:19-21; 49] As pointed out by the OUCC, SAIDI and SAIFI are distribution indices, and cannot be used for transmission. [See OUCC CX-7, and OUCC CX-8.] Additionally, Petitioner's Witness Dickey discussed in his direct testimony that the hardening and resiliency of the BES [bulk electric system] does not have a direct impact on CI/CMI performance due to the inherent redundancy of the BES. [See Pet. Ex. 3; p. 10:2-3.] After realizing the Company has no measure of benefit to show performance improvement, Petitioner and Mr. Dickey created a new term, "Grid CMI", about which Mr. Dickey admitted on cross examination he has no indices or treatises that recognize "Grid CMI" as a proper measurement of transmission improvement. [See Pet. Ex. 8; p. 5:10-18; see also C-60:4-20.] As Mr. Dickey could not identify proper indices to measure improvement or "benefits" of transmission projects, the Commission should reject Petitioner's Proposed Order discussing reliability improvements. (Petitioner's Proposed Order at 27.)

As Duke Energy Indiana cannot show that these projects can pass a traditional cost-benefit analysis, and no results from the cost-benefit analysis can be replicated, the Commission must deny the Company's TDSIC 2.0 Plan.

D. Affordability

The Commission must consider whether this Plan protects affordability for ratepayers, in accordance with Ind. Code § 8-1-2-0.5. Duke Energy Indiana's TDSIC investment corresponds to a dramatic increase in the Company's rate base. As of December 31, 2018, Petitioner had a rate base of $10.2 billion, which included a portion of the Company's TDSIC 1 Plan of $1.4 billion. (*See* IURC Cause No. 45253.) Now Petitioner proposes to add an additional nearly two billion dollars into rate base over the next six years. In little more than a decade, the Company will have added more than 33% to its rate base from TDSIC alone.

While Duke Energy Indiana stated that customer affordability is a top priority, Petitioner could not state how affordability translates into the Company's policies. Mr. Pinegar stated that the TDSIC Statute's two percent cap is not Petitioner's way of addressing affordability. [A-27:23-25.] The OUCC agrees. As noted above, the statutory "affordability" requirement is in addition to the constraint of the two percent cap in the TDSIC statute. The legislature added the affordability protection requirement subsequent to the enactment of the two percent cap in the TDSIC statute. Therefore, it is clear that the Commission must consider "affordability" as separate from of the cap. (*See Cutchin v. Beard*, 171 N.E.3d 991, 997 (Ind. 2021"Under our surplusage canon, courts should give effect to every word and 'eschew those [interpretations] that treat some words as duplicative or meaningless.'" *quoting Estabrook v. Mazak Corp.*, 140 N.E.3d 830, 836 (Ind. 2020)).

Mr. Pinegar stated that his goal as Duke Energy Indiana's President was to cap the costs of this TDSIC Plan at one percent to make it more affordable. [A-40:2-5.] Mr. Pinegar stated that he does not view the TDSIC Projects as set in stone [A-40:8], and if costs continue to rise, Petitioner will consider delaying projects. [A-41:2-7.] Mr. Pinegar also stated that Petitioner would not "inch closer to the $4 billion mark;" and that it "would take Commission approval to add projects and inch closer to the 2 percent or $4 billion mark." [A-41:8-14.] If the Commission approves any part of the Company's plan, it should take Petitioner at its word and cap the Company's Plan at its estimate to consider customer affordability protection.

III. CONCLUSION

The Commission must consider the strict statutory language under which a utility seeking approval of a TDSIC plan must show that the estimates provided are the best estimate of costs. Duke Energy Indiana has failed to provide such estimates. Even in Petitioner's own forecasting projections, it shows material component costs far exceeding the Company's projected escalation, by margins of up to sixty percent. Petitioner provided no engineer to testify that such estimates are the best estimates. The OUCC did provide testimony from an engineer, Dr. Shull, who stated that these estimates were not the best estimates of cost. Petitioner simply does not have anyone qualified in the record to overcome Dr. Shull's testimony. Additionally, Petitioner cannot show a need for many of the proposed projects as they did not provide historical outage data, and most of the projects seeking replacement have not met the end of their useful lives. Petitioner cannot show that any of the DER upgrades will be used and useful at a specific point and provided no evidence from customers regarding DER wants or needs. Petitioner's cost-benefit analysis uses modeling that none of the parties, nor the Commission, can verify or replicate. Petitioner's benefit modeling is inflated with non-financial "benefits" that the Company and B&V monetize to bolster the

benefits in projects that would otherwise not pass a traditional cost-benefit analysis. Lastly, the Commission must consider the affordability of a two-billion-dollar plan, in which costs are certainly understated, and benefits are overstated. The Commission should deny Duke Energy Indiana's TDSIC 2.0 Plan.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of ***OUCC's Brief in Support of Proposed Order*** has been served upon the following parties of record in the captioned proceeding by electronic serve on April 6, 2022.

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