

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF DUKE ENERGY INDIANA, LLC,)	
PURSUANT TO INDIANA CODE CHAPTER 8-1-8.4,)	
REQUESTING (1) A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY FOR FEDERALLY)	
MANDATED COAL COMBUSTION RESIDUALS (“CCR”))	
RULE COMPLIANCE PROJECTS AND COSTS; (2))	
APPROVAL OF ESTIMATED COSTS OF ITS FEDERALLY)	
MANDATED COMPLIANCE PROJECTS; (3) AUTHORITY)	
TO REFLECT COSTS AND CREDITS INCURRED FOR)	
THE FEDERALLY MANDATED PROJECTS THROUGH)	
ITS EXISTING STANDARD CONTRACT RIDER NOS. 62)	
AND 71 AND AUTHORITY TO MODIFY THE RIDER NOS.)	CAUSE NO. 44765
62 AND 71 TARIFFS TO REFLECT THE INCLUSION OF)	
SUCH COSTS; (4) RECOVERY OF 80% OF THE)	
FEDERALLY MANDATED COSTS ON A TIMELY BASIS)	
AND APPROVAL OF THE USE OF DEFERRAL)	
ACCOUNTING ON AN INTERIM BASIS UNTIL THE)	
COSTS ARE REFLECTED IN PETITIONER’S RATES; AND)	
(5) AUTHORITY TO DEFER 20% OF THE FEDERALLY)	
MANDATED COSTS ON AN INTERIM BASIS, WITH)	
CARRYING COSTS, UNTIL THE APPLICABLE COSTS)	
ARE REFLECTED IN PETITIONER’S BASE RETAIL)	
ELECTRIC RATES)	

**SUBMISSION OF SETTLEMENT AGREEMENT AND
 JOINT MOTION TO MODIFY PROCEDURAL SCHEDULE**

Petitioner, Duke Energy Indiana, LLC (“Duke Energy Indiana”), by counsel, respectfully submits to the Indiana Utility Regulatory Commission (“Commission”) a Settlement Agreement entered into by and among Duke Energy Indiana, the Indiana Office of Utility Consumer Counselor, the Duke Energy Indiana Industrial Group, Nucor Steel-Indiana, and the Citizens Action Coalition of Indiana, Inc. (collectively, “Settling Parties” or “Parties”) on January 24, 2017. The Parties respectfully request that the Commission revise the procedural schedule in this proceeding to allow for the submission of settlement-supporting testimony. In support of this Motion, the Parties state as follows:

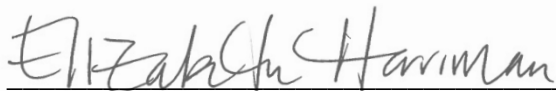
1. The Settling Parties have agreed to file testimony supporting the Settlement Agreement on or before February 9, 2017.

2. The evidentiary hearing in this proceeding is currently set for February 23, 2017. The Parties request the Commission retain the current evidentiary hearing date, unless the Commission would like additional time to review the Settlement Agreement and supporting testimony.

3. Duke Energy Indiana is authorized to file this motion on behalf of the Settling Parties.

WHEREFORE, the Parties respectfully request that the Commission modify the existing procedural schedule to allow for the filing of settlement supporting testimony on February 9, 2017, and for all other relief just and proper in the premises.

Respectfully submitted,

By: 
Counsel for Duke Energy Indiana, LLC

Elizabeth A. Herriman, Atty. No. 24942-49
Kelley A. Karn, Atty. No. 22417-29
Duke Energy Business Services LLC
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Plainfield, Indiana 46168
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beth.herriman@duke-energy.com
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CERTIFICATE OF SERVICE

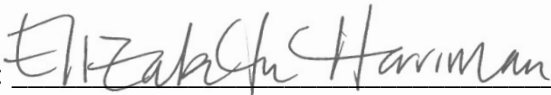
The undersigned hereby certifies that a copy of the foregoing Submission of Settlement Agreement and Joint Motion to Modify Procedural Schedule was electronically delivered this 24th day of January 2017, to the following:

Lorraine Hitz-Bradley
Indiana Office of Utility Consumer Counselor
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Jennifer A. Washburn
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Cause No. 44765 Settlement Agreement

1. Introduction

This Settlement Agreement (“Settlement”) is entered into by and between Duke Energy Indiana, LLC (and its successors), the Indiana Office of Utility Consumer Counselor (“OUCC”), the Duke Energy Indiana Industrial Group, Nucor Steel-Indiana, and the Citizens Action Coalition of Indiana, Inc. (collectively, the “Settling Parties” or “Parties”) solely for purposes of compromise and settlement. The Settling Parties agree that this Settlement resolves all potential disputes, claims and issues from Cause No. 44765, as filed before the Indiana Utility Regulatory Commission (“Commission”) regarding Duke Energy Indiana’s initial compliance projects mandated by the EPA’s Coal Combustion Residuals (“CCR”) rule (“CCR rule”). The term “CCR Compliance Construction Projects” shall mean Duke Energy Indiana’s Phase I CCR Compliance Projects as set forth on Petitioner’s Exhibit 3-A. The term “CCR Compliance Construction Project Costs” shall refer to the \$364.550 million for Plan Construction costs on Petitioner’s Exhibit 3-A. The Settling Parties desire to fully settle all disputes, claims and issues among them arising out of or relating to this proceeding, and do so, among other reasons, to avoid the continued time and expense of litigation and the inherent uncertainties and potential outcomes associated with such continued litigation. The Settling Parties agree that the rates associated with the initial compliance projects that will result from approval and implementation of this Settlement are just, reasonable and necessary. The Settling Parties further agree that this Settlement is a reasonable compromise and should be approved as just, reasonable and in the public interest.

2. Duke Energy Indiana’s Proposed Federally Mandated Projects

The Settling Parties agree that the CCR Compliance Construction Projects and operating and maintenance costs described in Duke Energy Indiana’s case-in-chief testimony are “compliance projects,” as that term is defined in Indiana Code 8-1-8.4. The Parties also agree that the costs and expenses described in Duke Energy Indiana’s case-in-chief testimony are “federally mandated costs” that have been or will be incurred in connection with a “federally mandated requirement,” namely the CCR rule, as those terms are defined in Indiana Code 8-1-8.4. In addition, the Settling Parties agree that the Commission should grant Duke Energy Indiana a certificate of public convenience and necessity pursuant to Indiana Code 8-1-8.4 for its proposed compliance projects and approve the federally mandated costs.

3. Ratemaking Agreements

A. To mitigate the near-term impact of the federally mandated costs on customer rates, the Settling Parties agree that Duke Energy Indiana’s CCR Compliance Construction Project Costs will be recovered as follows: sixty percent (60%) through Duke Energy Indiana’s existing Standard Contract Rider Nos. 62 and 71 (filed as part of Duke Energy Indiana’s “ECR”

rider proceedings); and forty percent (40%) will be deferred for future recovery in Duke Energy Indiana's next general rate case.¹

B. As an additional benefit to customers, the 40% in deferred capital costs will accrue carrying costs equal to Duke Energy Indiana's long-term debt rate of 4.73% (instead of its most recently-approved overall cost of capital) from the effective date the federally mandated costs are included in rates set in Duke Energy Indiana's ECR rider until the federally mandated costs are included in the rates set in Duke Energy Indiana's next general rate case. Once the federally mandated costs are included in the rates set in Duke Energy Indiana next general rate case, the compliance projects in this proceeding will receive Duke Energy Indiana's applicable rate of return.

4. Cap on Federally Mandated Costs to be Included in the ECR Rider or Deferred Pursuant to Indiana Code § 8-1-8.4-7(c)(2)

The Settling Parties agree that the Company's total company cost estimate of \$364.550 million (excluding AFUDC) constitutes a reasonable estimate of the Company's CCR Compliance Construction Project Costs described in Duke Energy Indiana's direct testimony in this Cause. Duke Energy Indiana agrees to cap the CCR Compliance Construction Project Cost rider recovery and deferral treatment at the agreed reasonable estimate total company amount of \$364.550 million, plus actual AFUDC. To the extent the total company CCR Compliance Construction Project Costs exceed \$364.550 million (excluding AFUDC), Duke Energy Indiana may propose to recover the book value as of the applicable cutoff dates in the Company's next retail base rate case.

5. Agreements Regarding Monitoring and Testing

A. Drinking water receptor surveys and testing: The Settling Parties agree that prior to June 30, 2017, Duke Energy Indiana shall offer to test all currently used private drinking water wells that are both downgradient of, and within a half-mile of, any surface impoundment at Wabash River, Gallagher, Gibson, Cayuga and Noblesville Generating Facilities ("Downgradient Properties"). This offer shall be made to owners of the Downgradient Properties, and the testing shall be conducted on or before September 30, 2017. The constituents that will be tested are identified in Exhibit A. In addition, Duke Energy Indiana agrees to submit the results of its drinking water testing to the Indiana Department of Environmental Management ("IDEM") and that such results shall be publicly available.

B. Groundwater monitoring: The Settling Parties agree that Duke Energy Indiana shall identify for the Settling Parties the locations of current groundwater monitoring wells, including state closure wells and CCR rule compliance wells, installed at Wabash River,

¹ Federally mandated operating and maintenance costs (whether expenses or capitalized) would be treated as proposed by Duke Energy Indiana in its case-in-chief testimony.

Gallagher, Gibson, Cayuga and Noblesville Generating Facilities (collectively, “Groundwater Monitoring Wells”), as well as Duke Energy Indiana’s anticipated schedule for providing groundwater data and accompanying reports associated with the Groundwater Monitoring Wells (or notice of their availability) to IDEM. In addition, Duke Energy Indiana shall provide, upon request, the Settling Parties with copies of all groundwater data and accompanying reports associated with the Groundwater Monitoring Wells at such time Duke Energy Indiana provides such data and reports to IDEM or notifies the State Director of the availability of such information as required by applicable law.

C. Surface impoundment dewatering: The Settling Parties agree that Duke Energy Indiana shall, when dewatering its surface impoundments at generating facilities with National Pollutant Discharge Elimination System (“NPDES”) permits (namely, Wabash River, Gallagher, and Cayuga Generating Stations), propose to IDEM to:

- i. Increase the sampling frequency of parameters in the NPDES-permitted ash pond outfall from the permit-specified monitoring frequency (generally quarterly, monthly or two times per month) to weekly during the period of dewatering;
- ii. During the period of dewatering, conduct monthly sampling for additional CCR-related priority pollutants (antimony, arsenic, beryllium, cadmium, chromium, copper, lead, mercury, nickel, selenium, silver, and zinc), as well as any additional pollutants reasonably determined by IDEM, that may not be monitored or limited in the NPDES permit;
- iii. Work with IDEM to establish, using Best Professional Judgment and the Waste Load Allocation process and otherwise applicable state and federal regulations, reasonable not-to-exceed limits where appropriate for the monitoring parameters during the period of dewatering. To the extent these not-to-exceed limits are exceeded, dewatering activities must cease and be modified so that the constituent levels comply with the not-to-exceed limits;
- iv. Limit dewatering in a surface impoundment to no more than a one foot drop per day during dewatering activities; and
- v. When dewatering directly to an outfall and dewatering activities have lowered the water levels in the surface impoundment to within three feet of the settled ash layer located directly below the pump suction intake, Duke Energy Indiana shall decrease the flow through the applicable outfall and increase the sampling frequency for Total Suspended Solids.

D. Duke Energy Indiana’s reasonable costs associated with Section 5 of this Settlement shall be considered “federally mandated costs,” as that term is defined in Indiana Code 8-1-8.4, and shall be recovered through Duke Energy Indiana’s ECR Rider.

6. Other

A. The Settling Parties agree that the evidence to be submitted in support of this Settlement, along with the evidence of record previously submitted in this Cause, together constitute substantial evidence to support this Settlement and provide a sufficient evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Settlement. The Settling Parties shall prepare and file with the Commission as soon as reasonably possible, testimony and proposed order(s) in support of and consistent with this Settlement.

B. This Settlement is a complete and interrelated package that is intended to resolve all issues related to Duke Energy Indiana proposed initial CCR compliance projects.

C. The Settling Parties will not appeal or seek rehearing, reconsideration or a stay of a Final Order approving this Settlement in its entirety or without change or condition(s) unacceptable to any adversely affected Party (or related orders to the extent such orders are specifically implementing the provisions of this Settlement).

D. The Settling Parties agree to support in good faith the terms of this Settlement before the Commission and further agree not to take any positions adverse to or inconsistent with the Settlement or any adverse positions against each other with respect to the Settlement before any trial courts, appellate courts, government agencies, or on rehearing, reconsideration, remand or subsequent or additional related proceedings before the Commission. The Settling Parties reserve their rights to take any positions before any trial courts, appellate courts, government agencies, or on rehearing, reconsideration, remand or subsequent or additional related proceedings before the Commission that are not adverse to or inconsistent with the Settlement.

E. The Settling Parties shall remain bound by the terms of this Settlement Agreement and shall continue to support or not oppose all the terms of the Settlement on appeal, remand, reconsideration, etc., even if the Commission rejects the Settlement. However, in the event that the Settlement is rejected by the Commission and such rejection is ultimately upheld on rehearing, reconsideration, and/or appeal, at the point when all such proceedings and appeals are complete, this Settlement Agreement shall become void and of no further effect (except for provisions which have already been fully implemented or which are explicitly stated herein to survive termination/voiding).

F. If the Commission approves the Settlement in its entirety, or approves the Settlement with modifications that are not unacceptable to affected Settling Parties, and such Commission approval is ultimately vacated or reversed on appeal, the Settling Parties agree to support or not oppose the terms of this Settlement in any additional proceedings before the Commission (as well as any subsequent appeals). In such situation, the Settling Parties agree not to take any positions adverse to or inconsistent with the Settlement or any adverse positions against each other with respect to the Settlement or the subject matters herein, on remand or in

additional related proceedings before the Commission. To the extent that the Commission and/or appellate courts ultimately and finally reject this Settlement, any provisions of this Settlement that remain to be implemented will then become void and of no further effect, unless explicitly stated herein.

G. The positions taken by the Settling Parties in this Settlement shall not be deemed to be admissions by any of the Settling Parties and shall not be used as precedent, except as necessary to implement the terms of this Settlement. This provision shall survive termination/voiding of this Agreement.

H. It is understood that this Settlement is reflective of a good faith negotiated settlement and neither the making of the Settlement nor any of its provisions shall constitute an admission by any Settling Party in this or any other litigation or proceeding except as necessary to implement or enforce this Settlement Agreement. It is also understood that each and every term of the Settlement Agreement is in consideration and support of each and every other term.

I. The Settling Parties will support this Settlement before the Commission and request that the Commission expeditiously accept and approve the Settlement. This Settlement is a complete, interrelated package and is not severable, and shall be accepted or rejected in its entirety without modification or further condition(s) that may be unacceptable to any Settling Party.

J. The Settling Parties will file this Settlement and testimony in support of this Settlement. Such supportive testimony will be agreed-upon by the Settling Parties and offered into evidence without objection by any Settling Party and the Settling Parties hereby waive cross-examination of each other's witnesses. The Settling Parties propose to submit this Settlement and evidence conditionally, and if the Commission fails to approve this Settlement in its entirety without any change or with condition(s) unacceptable to any adversely affected Settling Party, the Settlement and supporting evidence may be withdrawn and the Commission will continue to proceed to decision in the affected proceedings, without regard to the filing of this Settlement.

K. The communications and discussions during the negotiations and conferences and any materials produced and exchanged concerning this Settlement all relate to offers of settlement and shall be privileged and confidential, without prejudice to the position of any Settling Party, and are not to be used in any manner in connection with any other proceeding, agency, court matter or otherwise. This provision shall survive termination/voiding of this Agreement.

L. The undersigned Settling Parties have represented and agreed that they are fully authorized to execute the Settlement on behalf of their designated clients, and their successors and assigns, who will be bound thereby.

M. The provisions of this Settlement shall be enforceable by any Settling Party before the Commission and thereafter in any state court of competent jurisdiction as necessary.

N. This Settlement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

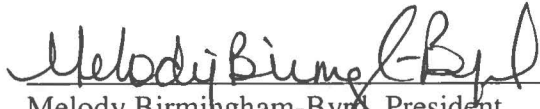
O. Within thirty (30) days of a final, non-appealable Commission order approving this Settlement in full without change or modification unacceptable to the Settling Parties, Duke Energy Indiana agrees to reimburse Lewis Kappes PC for actual attorney and consultant time billed to this proceeding in the actual amount up to a cap of \$30,000 to be funded by Duke Energy shareholders.

P. Within thirty (30) days of a final, non-appealable Commission order approving this Settlement in full without change or modification unacceptable to the Settling Parties, Duke Energy Indiana agrees to reimburse Citizens Action Coalition of Indiana, Inc. for actual attorney and consultant time billed to this proceeding in the actual amount up to a cap of \$30,000 to be funded by Duke Energy shareholders.

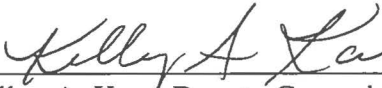
ACCEPTED AND AGREED TO THIS 24th DAY of JANUARY 2017:

[Signature pages to follow]

For Duke Energy Indiana, LLC:

A handwritten signature in cursive script, reading "Melody Birmingham-Byrd", written over a horizontal line.

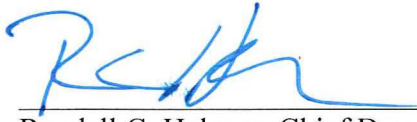
Melody Birmingham-Byrd, President
Duke Energy Indiana, LLC

A handwritten signature in cursive script, reading "Kelley A. Karr", written over a horizontal line.

Kelley A. Karr, Deputy General Counsel
Duke Energy Indiana, LLC

[This is a signature page for the Duke Energy Indiana CCR Settlement before the Indiana Regulatory Commission (Cause No. 44765). Remainder of page intentionally left blank.]

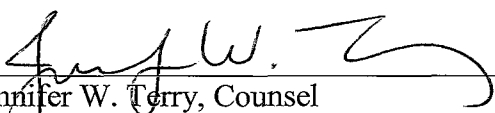
For the Indiana Office of Utility Consumer Counselor:



Randall C. Helmen, Chief Deputy Consumer Counselor
Indiana Office of Utility Consumer Counselor

[This is a signature page for the Duke Energy Indiana CCR Settlement before the Indiana Regulatory Commission (Cause No. 44765). Remainder of page intentionally left blank.]

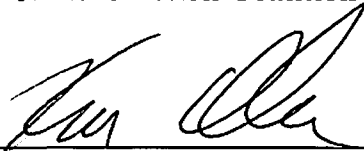
For the Duke Industrial Group:



Jennifer W. Terry, Counsel
Lewis & Kappes, P.C.

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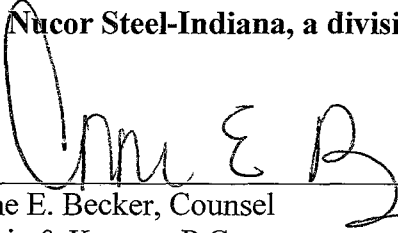
For the Citizens Action Coalition of Indiana, Inc.:

A handwritten signature in black ink, appearing to read "Kerwin Olson", is written over a horizontal line.

Kerwin Olson, Executive Director
Citizens Action Coalition of Indiana

[This is a signature page for the Duke Energy Indiana CCR Settlement before the Indiana Regulatory Commission (Cause No. 44765). Remainder of page intentionally left blank.]

For Nucor Steel-Indiana, a division of Nucor Corporation:

A handwritten signature in black ink, appearing to read "Anne E. Becker", written over a horizontal line.

Anne E. Becker, Counsel
Lewis & Kappes, P.C.

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Exhibit A: Drinking Water Well Sampling and Analysis Parameters

Alkalinity
Aluminum
Antimony
Arsenic
Barium
Beryllium
Bicarbonate Alkalinity
Boron
Cadmium
Calcium
Chloride
Chromium
Cobalt
Copper
Cyanide
Fluoride
Iron
Lead

Lithium
Magnesium
Manganese
Mercury
Molybdenum
pH
Potassium
Radium 226 & 228
Selenium
Silver
Sodium
Specific Conductance
Sulfate
Sulfide
Thallium
Total Dissolved Solids
Zinc

Both dissolved and total metals will be analyzed