

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) CAUSE NO. 45740
SUPPLEMENTED AND AMENDED, AND TO MAKE)
OTHER REVISIONS TO SUCH SUPPLEMENTED AND)
AMENDED AGREEMENT PURSUANT TO IND. CODE)
§§ 8-1-2-24 AND -25)

CAC'S SUBMISSION OF EXCEPTIONS TO DEI'S PROPOSED ORDER

Citizens Action Coalition of Indiana, Inc. ("CAC"), hereby submits its Exceptions to Duke Energy Indiana, LLC's ("DEI") Proposed Order. CAC recommends denial of DEI and International Paper's request for approval of the Fifth Amendment on the basis that it is insufficiently supported and, unless substantial changes are made, would likely produce unjust and unreasonable rates and outcomes for Duke Energy Indiana's customers. However, CAC has crafted its Exceptions to DEI's Proposed Order to suggest language that should be incorporated in order to approve the Fifth Amendment.

Respectfully submitted,



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CERTIFICATE OF SERVICE

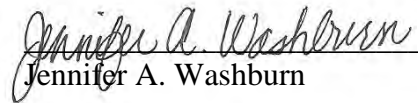
The undersigned hereby certifies that the foregoing was served by electronic mail or U.S.

Mail, first class postage prepaid, this 28th day of October, 2022, to the following:

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Respectfully submitted,


Jennifer A. Washburn

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MAKE OTHER REVISIONS TO SUCH)
SUPPLEMENTED AND AMENDED AGREEMENT)
PURSUANT TO IND. CODE §§ 8-1-2-24 AND -25)

ORDER OF THE COMMISSION

Presiding Officers:

Stefanie Krevda, Commissioner

Carol Sparks Drake, Administrative Law Judge

On June 30, 2022, Duke Energy Indiana, LLC (“Duke Energy Indiana,” “Company,” or “Petitioner”) filed its Verified Petition and case-in-chief testimony for approval of the Fifth Amendment to the Third Supplemental 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”), increasing the rates and charges for steam service to International Paper. Petitioner also filed a motion for protection of confidential and proprietary information, which was preliminarily granted on July 11, 2022. On July 12, 2022, Citizens Action Coalition of Indiana, Inc. (“CAC”) filed its Petition to Intervene. Over the objection of Duke Energy Indiana, the Presiding Officers granted CAC’s intervention on August 1, 2022, and limited the scope of issues in this proceeding to those reasonably related to the special contract authority requested by Petitioner in this Cause, while also noting the relationship between Duke Energy Indiana’s electric and steam service provision as acknowledged in Cause No. 38707 FAC 123-S1.

On September 14, 2022, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed the testimony of Kaleb G. Lantrip, Utility Analyst in the Electric Division, and the CAC filed the testimony of Ben Inskeep, Program Director. Petitioner filed its rebuttal testimony on October 3, 2022.

On October 5, 2022, Duke Energy Indiana filed motions to strike certain portions of the CAC’s and OUCC’s testimony ~~on the basis that such testimony fell outside the scope of this proceeding and beyond the case-in-chief testimony of Duke Energy Indiana.~~ The CAC filed its response on October 17, 2022, and Duke Energy Indiana filed its reply on October 20, 2022. On October 24, 2022, the Presiding Officers denied Duke Energy Indiana’s motions to strike.

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 offered their respective prefiled testimony into the evidentiary record without objection.

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

1. Notice and Jurisdiction. Notice of the hearing 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 Indiana Public Service Commission Act, as amended, Ind. Code ch. 8-1-2. Pursuant to Ind. Code §§ 8-1-2-24 and 8-1-2-25, the Commission has the responsibility to evaluate and determine whether to approve agreements between a public utility and its customers. 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 the laws of the State of Indiana and has its principal office at 1000 E. Main Street, Plainfield, Indiana 46168. Duke Energy Indiana is engaged in the business of supplying electric utility service in the State of Indiana. Duke Energy Indiana supplies high pressure steam service to International Paper. Petitioner also provides steam service to Purdue University via a combined heat and power facility.

3. Background. Duke Energy Indiana supplies high pressure steam service to International Paper from Petitioner's Cayuga Generating Station under a Special Contract 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's current rates and charges for steam service to International Paper are inadequate and must be increased in order to better reflect the costs to Duke Energy Indiana. Petitioner completed rate increases for electric retail customers from Cause No. 45253, and rate increases are needed for International Paper.

Petitioner and International Paper have negotiated in good faith and have agreed upon a Fifth Amendment to the Third Supplemental Agreement ("Fifth Amendment"), dated April 18, 2022, to continue to meet the steam energy needs of International Paper and better reflect Petitioner's steam service costs and plant investment. Petitioner submits that the steam rates and charges in the proposed Fifth Amendment are just and reasonable, cover Petitioner's costs of steam service, and are consistent with the purposes of Ind. Code ch. 8-1-2.

4. Relief Requested. Petitioner seeks Commission approval, pursuant to Ind. Code §§ 8-1-2-24 and 8-1-2-25, of the Fifth Amendment. Petitioner also requests that the Commission find, under Ind. Code § 8-1-2-29 and Ind Code ch. 5-14-3, that certain provisions of the Fifth Amendment relating to pricing and other negotiated, competitive terms in the Fifth Amendment

are trade secrets and should remain exempt from public access and disclosure.

5. Petitioner's Case-in-Chief. Petitioner presented the testimony of Ms. Maria T. Diaz, Director, Rates and Regulatory Planning. Ms. Diaz testified that International Paper has operated its paper manufacturing facility adjacent to Cayuga Station since 1974 and currently employs approximately 180 individuals at the facility. International Paper is one of Petitioner's top 20 electric service customers as measured in kilowatt-usage. She testified that the Steam Supply Agreement has been approved by the Commission under the provisions of Indiana Code §§ 8-1-2-24 and 8-1-2-25, and found to be reasonable, just, practicable, and beneficial to the parties. Ms. Diaz testified as to the confidential nature of the pricing and other negotiated, competitive terms contained in the Fifth Amendment. She testified the Fifth Amendment enables International Paper to continue its paper manufacturing operations in Cayuga, Indiana, and updates the rates for demand and energy, including base fuel, using the 2020 jurisdictional and cost of service study approved in the Compliance Step 2 Filing in Cause No. 45253, along with 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; (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 the Company-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 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 timing of the retirement of Cayuga Station and commencing the first day of the calendar month following Commission approval and allowing for termination for convenience upon notice by the Company and early termination upon notice by International Paper with termination charges payable by International Paper if terminated prior to the end of the term.

Ms. Diaz testified that the Company and International Paper will begin discussions on a replacement agreement prior to the expiration of the Fifth Amendment based on the need for an alternative generation source. She testified that no additional facilities will need to be installed by Petitioner under the Fifth Amendment. Ms. Diaz testified the continuing demand charge applicable to International Paper steam load recovers the demand costs, thereby benefiting Petitioner and its customers. Petitioner is recovering a contribution towards non-fuel, energy costs while recovering full fuel costs from Cause No. 45253. She also noted the benefits to the State of Indiana including the retained employment by International Paper and various Indiana tax revenues.

Ms. Diaz described how the average demand and energy rates were developed, and testified the parties agreed to step into the proposed demand and energy average rates resulting in less than average rates in the early months and higher than average rates in the latter months. She also summarized how International Paper is charged for fuel costs for steam service through a Fuel Adjustment Clause (FAC) mechanism, which has been in place since the customer began

operations at the site and the Commission approved the Steam Supply Agreement. A base fuel amount of \$2.921922 per 1000 pounds of steam is the updated base fuel rate included in the FAC calculation.

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

6. OUC's Direct Evidence. Mr. Lantrip testified the Fifth Amendment's revised end of term coincides with the anticipated retirement of Cayuga Station and that the parties will discuss a new supply contract from an alternative generation source prior to the expiration of the Fifth Amendment. He testified that according to Petitioner's discovery responses, alternative generation options being considered include installing a dedicated combined heat and power unit or constructing a new natural gas combined cycle unit. Mr. Lantrip testified further, if Petitioner fails to provide uninterrupted supply of steam International Paper can request resolution by the Commission and/or at a state court level.

Mr. Lantrip expressed concern about how the Fifth Amendment calculates demand and energy charges, stating that the phasing in of rates to be lower on the front end of the contract and higher in the latter years raises the issue of rate equity, where Petitioner accepts a cost of service shortfall in the near term. Mr. Lantrip was concerned that Petitioner might seek to recoup the revenue shortfall by recovering it from its other rate classes. Although Mr. Lantrip recommended the Commission approve the Fifth Amendment, he also recommended Petitioner provide a separate schedule in its quarterly FAC updates detailing both under-recovery and eventual over-recovery to confirm there is no impact to the revenue requirement of other retail customers. He also recommended Petitioner show how it is accounting for the shortfall to ensure Petitioner's other customers are not subsidizing International Paper.

Mr. Lantrip referenced Petitioner's testimony in Cause No. 38707 FAC 132, where Petitioner experienced low coal inventory at Cayuga during the period December 2021 through March 2022, which resulted in Petitioner diverting coal from its Edwardsport plant to Cayuga and operating Edwardsport on one gasifier, supplementing the station with natural gas for that period. Mr. Lantrip testified that this decision affected Petitioner's fuel costs, due to Edwardsport being more expensive to operate on natural gas than on syngas, although it did increase coal inventory at Cayuga. Mr. Lantrip testified that these increased costs borne by all Duke Energy Indiana ratepayers were outside the special contract, even though the costs were attributable in part to International Paper. Mr. Lantrip testified further that Petitioner's contract to serve International Paper has had impacts on its fuel expenses and Midcontinent Independent System Operation, Inc. (MISO) commitment status, impacting ratepayers who were not parties to the contract.

7. CAC's Direct Evidence. Mr. Inskeep testified that Petitioner must operate at least one of its Cayuga units at all times and dispatch the unit at a higher net capacity than it necessarily otherwise would have in order to provide steam to International Paper, which means the unit will operate even if it is not economic to do so. He testified the Fifth Amendment does not allocate uneconomic Cayuga commitment and dispatch costs to International Paper. ~~Although in~~ discovery While Petitioner pointed to the cost assignment determined in its 2020 cost of service

study as the basis for cost allocation of Cayuga units to serve International Paper, Mr. Inskeep testified Petitioner would not identify and allocate those costs from uneconomic Cayuga commitment and dispatch that have occurred since then and are likely to occur in the future; rather, ~~Mr. Inskeep testified that~~ these costs are recovered from all ratepayers through the FAC proceeding. Mr. Inskeep testified that Petitioner provided no evidence in this proceeding that it has or will operate Cayuga in an economic manner or prevent other customers from paying for uneconomic costs caused by the operation of Cayuga to meet its contractual requirements with International Paper.

Mr. Inskeep testified that the Commission ~~'s determination determined~~ in Cause No. 38707 FAC 123-S1 ("FAC 123-S1") that Petitioner's unit commitment decisions for Cayuga during the applicable FAC period were reasonable because they hinged on meeting the terms of the Steam Supply Agreement. Mr. Inskeep summarized the facts that emerged from the Commission proceeding investigating FAC 123-S1 regarding Duke Energy Indiana's operation of Cayuga, including that Duke Energy Indiana made Must-Run commitments despite its own projections showing that doing so would be a net loss to customers for significant periods of time during FAC 123, i.e., Duke Energy Indiana knew, or should have known, that its commitment decisions at the time it made those commitments decisions, were likely to harm its customers, resulting in increased electric charges to customers by \$1.4 million more than they otherwise would have been during the FAC 123 period. Mr. Inskeep stated the Commission was clear that the instant docket is the appropriate forum to address the merits of the steam contract going forward, and Mr. Inskeep testified that Petitioner failed to address those concerns in its case-in-chief testimony. Mr. Inskeep stated that Petitioner has not provided any analysis showing that a Must-Run commitment of one Cayuga unit is economic for its customers in FAC 123, nor has it demonstrated that this practice will be economic or otherwise beneficial to Duke Energy Indiana's customers over the term of the Fifth Amendment. Mr. Inskeep testified about the financial risks to Duke Energy Indiana's electric customers due to the Fifth Amendment, including Fuel-fuel costs for running the Cayuga unit that are recovered through FAC while other production costs are recovered through rates, all of which are paid by captive electric customers. He noted that Although-although MISO revenues can offset the production costs, when generation costs exceed revenues, electric customers must pay the difference. 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, it puts customers at a higher risk that the production cost of the Cayuga unit will exceed its MISO energy market revenues.

Mr. Inskeep ~~opined~~ testified 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 one large industrial customer to the detriment of other customers is contrary to the spirit of and principles behind the MISO wholesale power market, which is designed to ensure load is served through the most reliable and economic generator available. Although Mr. Inskeep does not suggest using an Economic commitment status offer at all times, there are instances when a Cayuga unit could reasonably use a different commitment status.

Mr. Inskeep testified Petitioner has not provided any evidence suggesting or quantifying a benefit to other ratepayers. Rather, he said ~~and~~ that Duke Energy Indiana ratepayers are likely to

be harmed by the deal with International Paper, which exposes other customers to considerable price risk as a result of needing the plant to operate regardless of its economics. Mr. Inskeep testified the Fifth Amendment [also](#) locks in the continued use of Cayuga through 2027, preventing potential cost-effective solutions such as early retirement, shifting to seasonal operations, or using an Economic commitment status. Further, Mr. Inskeep stated that it is possible that discontinued steam service at Cayuga could result in a reduction in customer demand, producing a net benefit to customers by allowing Petitioner to pursue more economic resources, reduce uneconomic operations at Cayuga, and resulting in lower fuel costs. Mr. Inskeep testified that Petitioner did not analyze these potential impacts.

Mr. Inskeep testified that stakeholders, including CAC, should be allowed to participate in discussions to evaluate other cost-effective alternative generation sources to the extent any new resources replacing coal-fired generation at Cayuga would provide electricity to and paid for by Duke Energy Indiana's customers. Mr. Inskeep stated that while the Fifth Amendment may serve the private interests of Petitioner and International Paper, it does not make it in the public interest. If the Commission approves the Fifth Amendment, Mr. Inskeep recommended Petitioner provide additional reporting on each Cayuga unit in its FAC application, which should include: (1) hourly unit commitment designation; (2) 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. Mr. Inskeep recommended the Commission reduce Petitioner's authorized FAC charge accordingly if the reporting reveals the rationale for Must Run decisions was not reasonable. He also recommended in cases 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 shareholders.

Mr. Inskeep recommended the Commission deny Petitioner's request for approval of the Fifth Amendment. However, if the Fifth Amendment is approved, he recommended the following safeguards and reporting requirements: (1) require Petitioner to assign losses incurred due to uneconomic operation of Cayuga to Petitioner and/or International Paper; (2) require Petitioner to report in future FAC applications its unit commitment decisions as described above; and (3) invite stakeholders, 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 any contractual revenues over or under the revenue requirement for a given year for International Paper steam will not impact the revenue requirement of other retail customers. She testified Petitioner has not recovered, nor is it seeking, additional cost recovery from other customers as a result of the Fifth Amendment. The allocation of costs to International Paper occurred in Petitioner's rate case in Cause No. 45253, and the allocation of those costs was removed from the rates set for Duke Energy Indiana's other customers. The cost allocation in Cause No. 45253 and the subsequent revenue collection as part of the Fifth Amendment are separate and distinct processes. Furthermore, any actual underage or overage in a particular year compared to the average revenue requirement calculated in this proceeding due to the negotiated pricing and the eventual actual billing determinants is borne by the shareholder. She also testified that Petitioner's other retail customers have been paying their respective increased rates since mid-2020 as a result of Cause No. 45253,

and the shareholder has borne the risk of not increasing International Paper's steam rates pending the outcome of this proceeding.

Ms. Diaz testified the additional FAC reporting requirement recommended by Mr. Lantrip to show the variance from the forecasted recovery is not necessary or beneficial as a hindsight schedule. 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. Ms. Diaz testified that the Fifth Amendment is not a "new" contract but rather a pricing amendment, and no after-the-fact, supplementary report has been required by the Commission in the FAC since inception of the Steam Supply Agreement. There is no need to deviate from past practices and institute a new reporting requirement as the result of a contract amendment, particularly when the cost allocations were administered in the context of a retail base rate case. Ms. Diaz testified it is also not necessary, as recommended by Mr. Lantrip, for Petitioner to show how it is accounting for the shortfall to verify Petitioner's other customers are not subsidizing International Paper. 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 does not record any reserves for shortfalls or overages due to the Fifth Amendment's stepped-in pricing, but instead records the revenues from International Paper based on the steam invoices, which are already available to the OUCC for review during its audit in the quarterly FAC proceedings.

Responding to Mr. Inskeep, Ms. Diaz testified the Fifth Amendment is not a "new agreement," and therefore the merits of the steam contract do not need to be evaluated again in this proceeding. The operational terms of the steam supply are not modified in the Fifth Amendment and remain the same as when this issue was litigated in FAC 123-S1 where the Commission acknowledged, "It is reasonable that the units will not always realize a financial gain and the Company 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 the Company's approach to committing Cayuga Station is reasonable given the contractual requirements of the steam agreement." (Order at p. 23). Ms. Diaz testified Petitioner and International Paper will be conducting discussions on a new steam contract, as contemplated in FAC 123-S1, which will include operational changes due to the nature of the alternative generation which will need to be selected and constructed. The Fifth Amendment merely serves to bridge the gap between the existing Steam Supply Agreement and the future new contract. Ms. Diaz disagreed with Mr. Inskeep's recommendation to allow CAC and other stakeholders to participate in future discussions between Petitioner and International Paper to evaluate alternative generation at Cayuga. Expanding discussions to insert other stakeholders into special contract negotiations is not warranted or necessary and is a matter between the parties executing the replacement agreement. She testified the proper venue to vet any replacement contract that may impact other retail customers and deciding whether it is in the public interest is through the docketed proceeding itself for the replacement contract. In addition, the Integrated Resource Planning ("IRP") process is the proper forum to discuss the proposed selection of generation. Any Certificate of Public Convenience and Necessity regulatory filings flowing from the IRP process are the proper forum in which to evaluate the merits of the construction of alternative generation.

Ms. Diaz opined the Fifth Amendment is reasonable and just, practicable and advantageous

to both parties, in the public interest, and not inconsistent with the purposes of the Public Service Commission Act, as amended. The benefits are the same and have been acknowledged by the Commission in prior Steam Supply Agreement proceedings and include, but are not limited to, contribution to fixed costs and continued employment of Indiana workers. Ms. Diaz testified, contrary to Mr. Inskeep, that although the Fifth Amendment has a pre-determined expiration date, it does not limit the parties' actions to terminate should conditions and circumstances involved in providing and receiving steam service change. The Fifth Amendment clearly 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. John D. Swez, Managing Director, Trading and Dispatch, testified in rebuttal that although Petitioner did experience a slightly higher cost at Edwardsport due to operating partially on natural gas during December 17, 2021, to March 21, 2022, as indicated by Mr. Lantrip, Petitioner reacted to the coal inventory situation at Cayuga in the most economical manner given the constraints, including the requirement to run one unit at Cayuga to supply steam. Further, there was no evidence provided in FAC 132 that determined if, nor calculated how much, if any, of this action was caused by the steam supply requirement at Cayuga, since it may have been economic to run the Cayuga unit(s) absent this steam supply requirement.

Mr. Swez testified that as the Fifth Amendment is only an amendment to the Commission-approved Steam Supply Agreement, and not a new agreement, and that the following Commission determinations from the FAC 123-S1 Final Order still ring true: 1) Petitioner has been committing Cayuga in a manner compliant with the existing Steam Supply Agreement; 2) it is reasonable that Cayuga will not always realize a financial gain and Petitioner may need to commit the units in a manner to ensure steam to International Paper; and 3) Petitioner's commitment approach at Cayuga is reasonable given the Steam Supply Agreement's requirements. Mr. Inskeep has offered no additional evidence and only its prior rejected arguments from FAC 123-S1 that the Fifth Amendment may sometimes require Petitioner to commit one of the Cayuga units when the economics might suggest not committing it. In addition, the Commission has historically and recently found the Steam Supply Agreement to be just and beneficial. Mr. Inskeep has provided no substance to support its recommendation for a wholesale denial of the Fifth Amendment, which would be a complete departure from years of Commission precedent.

Mr. Swez testified that, under most circumstances, the Cayuga units would be committed by Petitioner or MISO regardless of the commitment status required by the Steam Supply Agreement. Only in low power price periods of time would Cayuga be uneconomic to run, and Petitioner only needs one unit online at 300 MW to meet its contractual obligations. During these periods MISO would economically ramp down the unit, which minimizes any cost to customers. The inability to take both 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. Mr. Swez testified that given the increase in power prices experienced recently and with the current coal contracts in place, operation of Cayuga is a clear economic choice for Duke Energy Indiana's customers.

Mr. Swez responded to Mr. Inskeep's recommendation that if Petitioner's Daily Profit and

Loss Report reveals that the unit supplying steam to the customer 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. First, there has been no evidence presented that the Commission needs to be reviewing the hourly dispatch decisions at Cayuga since the Commission has previously found the Steam Supply Agreement includes economic development and employment benefits to the state. Mr. Swez also explained the problems inherent in the hindsight review of hourly dispatch decisions, as proposed by Mr. Inskeep, including not having the tools necessary to perform a re-commitment or re-dispatch of the MISO market. In addition, the Daily Profit and Loss Reports inform the commitment decision, but do not determine the commitment decision. Mr. Swez testified that there are additional considerations of non-economic or qualitative factors and risks that when considered appropriately, would have influenced the decision to commit or de-commit a Cayuga unit, absent the requirement to supply steam. Thus, further review, analysis, and judgment would be needed to get to the best overall result for customers. 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 be considered. As to Mr. Inskeep's recommended FAC reporting requirements, Mr. Swez testified CAC is entitled to intervene in Petitioner's FAC proceedings and request the outlined information through appropriate discovery channels.

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

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 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, including tailored-rate contracts such as the Fifth Amendment, are lawful if the Commission finds their provisions to be 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.

Based on the evidence presented, we find that the Fifth Amendment between Petitioner and International Paper satisfies the legal requirements imposed by Ind. Code §§ 8-1-2-24 and -25 only if certain modifications are put into place. With these modifications in place as discussed herein, we find the Fifth Amendment will update the rates for demand and energy, including base fuel up to the term specified, using the output of the most recently 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. *Direct Testimony Maria T. Diaz, page 7*. The record establishes that, while the Fifth Amendment is beneficial to Petitioner and, International Paper, we have concerns as to the benefit and to Petitioner's retail electric customers and thus put in place certain conditions in order to approve the Fifth Amendment to this agreement. The Fifth Amendment offers continued steam service at rates and terms acceptable to both Petitioner and International Paper and facilitates the ongoing operation of International Paper's paper mill and the attendant employment of Indiana workers. Additionally, the Fifth Amendment, as modified herein, will benefit Duke Energy Indiana and its customers by recovering the demand costs, as relied upon in the retail rate case in Cause No. 45253.

The State of Indiana will benefit from the employment retained and created by International Paper, as well as from the various Indiana tax revenues that are collected from International Paper, its employees, and the suppliers providing services to the International Paper plant for both steam and electrical service. *Direct Testimony of Maria T. Diaz, page 10*. As such, the Company and International Paper have engaged in lengthy and good faith, arms-length negotiations regarding this Fifth Amendment and have been able to reach an agreement to extend the term of the existing Steam Supply Agreement to efficiently meet the steam energy needs of International Paper, facilitate its operations, and better reflect Petitioner's steam service costs, and plant investment. *Verified Petition, page 2*.

Still, this Commission finds it necessary to make certain modifications to protect and ensure just and reasonable rates and outcomes for Duke Energy Indiana's remaining customers, given that Duke Energy Indiana must operate at least one of its Cayuga units at all times and dispatch the unit at a higher net capacity than it necessarily otherwise would have in order to provide steam to International Paper. CAC Ex. 1, p. 6 and Attachment BI-1 (Duke Energy Indiana Response to CAC Data Request 1.3). Given the absence of a mechanism in the plain language of the Fifth Amendment that would allocate uneconomic Cayuga commitment and dispatch costs specifically to International Paper or to Duke Energy Indiana shareholders, rather than customers generally, the Commission must act.

We reject Duke Energy Indiana's position that the 2020 cost of service study sufficiently allocates these losses from uneconomic Cayuga commitment and dispatch insofar as these costs are recovered from all customers through the Fuel Adjustment Clause. Thus, when Duke Energy Indiana commits a Cayuga unit as Must Run solely to supply steam regardless of its economic potential in the energy market, it puts customers at a higher risk that the production cost of the Cayuga unit will exceed its MISO energy market revenues. Without adequate safeguards in place,

the Fifth Amendment is likely to produce rates that are higher than they otherwise would have been over the period covered by the Fifth Amendment.

Although load-serving entities are allowed by MISO to use a Must-Run designation, Duke Energy Indiana's reliance on this practice so it can routinely benefit one large industrial customer to the detriment of its other customers is contrary to the spirit of and principles behind the MISO wholesale power market in which Duke Energy Indiana participates. When authorizing Indiana utilities to join MISO, the Commission recognized that the MISO market is designed to benefit customers by helping to ensure that load is served through "the most reliable and economic generator available." *In re Joint Petition of Indianapolis Power & Light Co. and the Indiana OUCC for Approval of Settlement Continuing Mechanism for Recovery of Jurisdictional Costs Incurred in Connection with MISO*, Cause No. 43664, Order, p. 6 (IURC, June 3, 2009). Furthermore, the MISO Independent Market Monitor has recently encouraged integrated utilities to allow the MISO market to guide operations more in order to allow for more efficient operations. CAC Exhibit 1, p. 11, lines 17-19. By always operating at least one Cayuga unit, and operating that unit well above its minimum load specifically to serve the needs of International Paper, Duke Energy Indiana subverts the MISO process and deprives customers of its benefits. The Must-Run designation, outside of conducting testing or in specific circumstances where it is clear that avoiding cycling costs would be a less costly option than the forecasted market losses of operating the plant, should not be used as such. CAC Exhibit 1, p. 12, lines 4-14.

For these reasons, we order the following reporting requirements and safeguards to protect customers from paying costs associated with any future uneconomic commitment and/or dispatch of Duke Energy Indiana's Cayuga units as a result of Duke Energy Indiana's contract with International Paper. Duke Energy Indiana shall report in each FAC application the following for each Cayuga unit for further consideration in Duke's FAC proceedings: (1) Hourly unit commitment designation (i.e. Must Run, Economic, Unavailable); (2) 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. If this reporting reveals that any units were committed as Must Run while projected to have economic losses, the Commission will review the rationale for the Must Run decision. If the rationale given is not considered to be reasonable, the Commission will reduce the authorized FAC charge accordingly. In cases where the Must Run designation is related to providing steam to International Paper, the Commission will require economic losses be assigned to International Paper and/or borne by Duke Energy Indiana shareholders. Thus, going forward, when financial losses are incurred due to the uneconomic operation of the Cayuga Generating Station because of the contract with International Paper, Duke Energy Indiana shall assign these losses to Duke Energy Indiana shareholders and/or International Paper, not the remaining customer base.

For these reasons, we find that the rates, charges, terms, and conditions contemplated in the Fifth Amendment, as modified by the Commission herein, are just and reasonable, practicable and advantageous to the parties, and are not inconsistent with the purposes of Ind. Code ch. 8-1-2. Accordingly, we find that the Fifth Amendment, as modified herein, is in the public interest and is therefore approved as submitted to this Commission.

~~We reject CAC's argument that this is the appropriate docket to address Petitioner's~~

~~commitment and dispatch practices at Cayuga. In the Commission's Final Order in Cause No. 38707 FAC 123 S1 ("FAC 123 S1 Order"), we stated, "We further note that the Company 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 to support its position that this docketed proceeding is the proper forum to debate the economics of Petitioner's Cayuga commitment and dispatch approach, an approach which this Commission determined, in the FAC 123 S1 Order, was compliant with the Steam Supply Agreement and was ultimately reasonable, irrespective of any lack of realized financial gain. However, the Fifth Amendment, the expiration of which coincides with the anticipated timing of the retirement of coal generation at Cayuga, is a modification to the current Commission-approved Steam Supply Agreement. It is not a new agreement; the operational terms of the Steam Supply Agreement remain the same. Petitioner has established that Petitioner and International Paper will be discussing a new steam supply contract agreement based on an alternative generation source in the future. The Fifth Amendment serves to bridge the gap between the Steam Supply Agreement and the new agreement that was contemplated in the FAC 123 S1 Order. Regardless, we acknowledged in the FAC 123 S1 Order that it is reasonable that Cayuga will not always realize a financial gain, and Petitioner may need to commit the Cayuga units as Must Run to ensure that the steam customer can maintain its operations and Duke Energy Indiana may service the Steam Supply Agreement in good faith. Further, as testified to by Mr. Swez, 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 always mean there is an impact to the station's operations and an impact to Duke Energy Indiana's electric customers.~~

~~The OUCC recommended, if the Commission were to approve the Fifth Amendment, that the Commission impose certain reporting requirements. Specifically, Mr. Lantrip recommended Petitioner report on both under-recovery and eventual over-recovery in its FAC filings to confirm that any shortfall in Petitioner's cost to serve International Paper would not impact the revenue requirement of other retail customers. As testified to by Ms. Diaz, it is known that the proposed demand pricing in the early years is lower than the average and the demand pricing in the latter years is above average; as such, an additional hindsight schedule is not necessary and would add no beneficial information. *Rebuttal Testimony of Maria T. Diaz, page 4*. Further, as 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 proposed for International Paper. *Id.* at 4-5. Lastly, Duke Energy Indiana does not record any 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, which the OUCC is able to review during its audit in the quarterly FAC proceedings. *Id.* at 5. Therefore, the Commission finds that such reporting, as recommended by the OUCC, is not necessary.~~

~~The CAC recommended, if the Commission were to approve the Fifth Amendment, that the Commission impose certain reporting requirements in Petitioner's FAC filings, including hourly unit commitment designation, 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 testified to by Mr. Swez, CAC is entitled to intervene in Petitioner's fuel clause proceedings and may request the outlined information through appropriate discovery channels. *Rebuttal Testimony of John D. Swez*, pp. 11-12. Therefore, the Commission finds that such reporting requirements, as recommended by CAC, are not necessary.~~

CAC also recommended that CAC and other stakeholders ~~should~~ be allowed to participate in discussions to evaluate other cost-effective alternatives that may impact the replacement of coal-fired generation at Cayuga should the replacement resources provide electricity to and be paid for by other retail customers. Given Duke Energy Indiana's admission that "[r]etaining International Paper in the near term with this Fifth Amendment allows for future, increased production by this customer in the subsequent replacement agreement sourced from alternative generation" (Petitioner's Ex. 1, p. 10, lines 11-14), we agree that, at a minimum, stakeholders should be allowed to participate in the discussions, as is done as part of the IRP process, to evaluate other cost-effective alternatives to the extent any new resources replacing coal-fired generation at Cayuga would provide electricity to and be paid for by Duke Energy Indiana's customers. However, the CAC and other stakeholders are not signatories to contracts between the utility and a special contract customer. The proper venue to vet any contract that replaces the Steam Supply Agreement that may impact other retail customers is through the docketed proceeding for the replacement contract. Indeed, Duke Energy Indiana admits that "[t]he IRP process is the proper forum to discuss the proposed selection of generation;". Thus, we find no harm in affirmatively requiring Duke Energy Indiana to include and seek consensus from stakeholders in the evaluation of and decision on the generation replacement for Cayuga in that IRP process first. Duke Energy Indiana shall not engage in negotiations with International Paper on this matter until it is first resolved and vetted by the IRP process in its entirety. It is this Commission's preference that consensus and transparency be the cornerstone for next steps related to any decisions regarding resource replacement of the Cayuga Generating Station.
~~and any Certificate of Public Convenience and Necessity regulatory filings, which flow from the IRP process, are the proper forum in which to evaluate the merits of the construction of alternative generation. Therefore, the Commission finds that such a participation requirement, as recommended by CAC, is not necessary.~~

10. Confidential Information. Petitioner filed its Motion for Protection of Confidential and Proprietary Information on June 30, 2022, with supporting affidavit asserting that certain information to be submitted to the Commission was trade secret information as defined by 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. *Direct Testimony of Maria T. Diaz*, page 6. The Presiding Officers issued a Docket Entry on July 11, 2022, finding such information to be preliminarily confidential, after which Petitioner submitted the information under seal. After review of the information and consideration of the affidavit, we find the information is trade secret information as defined in Ind. Code § 24-2-3-2, is exempt from public access and disclosure pursuant to 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 8-1-2-25, the Fifth Amendment between Duke Energy Indiana, LLC, and International Paper Company is approved [as modified herein](#).
2. Petitioner is authorized to adopt the new base cost of fuel and tariff language, as specified in the Fifth Amendment [as modified herein](#), 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 the public access and disclosure pursuant to 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:

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

**Dana Kosco
Secretary to the Commission**