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INDIANA UTILITY
REGULATORY COMMISSION

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 DUKE INDUSTRIAL GROUP
<u>IN SUPPORT OF EXCEPTIONS AND PROPOSED ORDER</u>

The Duke Industrial Group (Industrial Group) submits this post-hearing brief to address deficiencies in the proposed order submitted by Duke Energy of Indiana, LLC ("Duke"), and in support of the exceptions and alternative proposed order submitted herewith.

I. INTRODUCTION

Prior to the completion of its first Electric TDSIC Plan, Duke is proposing a new Plan involving much higher spending in a shorter time period, for considerably less benefits to ratepayers. Even though Duke has already completed the most urgent work on its system, it seeks Commission approval to accelerate and intensify its investment in what it classifies as reliability and resiliency projects, with massive and long-lasting rate impacts on its customers. What is absent from Duke's presentation, however, is any reasonable explanation as to why the

prevailing level of spending requires a sharp increase, in pursuit of what are unmistakably diminishing returns for ratepayers. This is a juncture of considerable importance: Duke clearly envisions a future with larger and larger TDSIC Plans adding billions of dollars to rate base value, despite less and less improvement to system reliability and service quality. The TDSIC Statute, however, requires a proposed Plan to be cost-justified and reasonable. Duke's proposal in this case fails to meet those essential statutory requirements.

Under the earlier Plan, recoverable costs were capped at $1.4 billion over a 7-year period, for an annual average of $200 million. The new proposed Plan would increase the level of investment to $2.1 billion in a shorter 6-year period, averaging $350 million per year. That is an approximate 75% increase in annual spending. By 2029, the revenue requirement in the TDSIC tracker would be in excess of $173 million annually. The critical question here is what level of added value ratepayers will derive from the accelerated investment in T&D rate base. The answer is despite the aggressive spending that Duke proposes to force ratepayers to fund through rates, the projected SAIFI score will remain above one. Tr. at A-56.

The cost-benefit analysis put forward by Duke is deficient as well. Fifty-seven of Duke's proposed distribution projects have costs that outweigh the projected benefit. Further, Duke's cost calculation fails to include contingency, nor does it include potential cost escalations based on its AACE estimation class. Moreover, while Duke supported an Economic Impact Study to tout the benefits of Plan 2.0 for Indiana, as well as the Duke service territory, Duke did not study the negative economic impact the increased rates required to support Plan 2.0 would have on ratepayers. Duke relies on an economic impact analysis that treats costs imposed on ratepayers as a form of stimulus spending. Duke's proposals are unbalanced, unreasonable, and lacking in cost justification.

Duke contends only the overall Plan and not individual projects need to be cost-justified, a theory the Commission appeared to endorse in NIPSCO's TDSIC Plan approved in Cause No. 45557, which is currently on appeal. As the Industrial Group argued in that case, a total plan cost-benefit theory encourages utilities to pad TDSIC Plans with improvident projects.

Finally, Duke is proposing to include approximately $131 million of O&M expense through Plan 2.0. While Duke admitted that these O&M expenses are not capitalized, and would not be subject to a pretax return for purposes of tracking 80% of the costs through Duke's TDSIC tracker, Duke also admitted that the 20% of O&M expense that will be deferred will be subject to carrying charges. While the TDSIC statute authorizes deferral of carrying charges, Duke's proposal would essentially convert O&M expense into a capital item subject to recovery of a return on the resultant regulatory asset. The TDSIC statute does not authorize the deferral and recovery of carrying charges to some $26 million in costs that are not otherwise subject to carrying charges.

In short, Duke proposes a major increase in annual spending to achieve what are clearly diminishing benefits to ratepayers. There has been no showing of need for aggressive spending on intensified system work, where the highest priority projects have already been completed. In contrast, the evidence suggests that despite the substantial investment of $2.1 billion over the next six years, there would be measurable improvement in the frequency of outages per customer. The Commission should reject Duke's effort to institute a cycle of more and more expensive Plans fueling a rapid rise in rate base value, while identifiable ratepayer benefits become increasingly attenuated and elusive. The proposed Plan is not cost-justified, is unreasonable, and should not be approved.

II. ANALYSIS

A. Duke Proposes a Massive Increase in TDSIC Spending, with Enormous and Long-Lasting Impact on Rates

The TDSIC Statute was enacted in 2013 to address concerns about aging infrastructure and regulatory lag in recovering the costs of necessary improvements. Duke has already substantially completed its first Electric TDSIC Plan, covering the period from 2016 through 2022. In that prior Plan, Duke prioritized projects based on risk and consequence, in order to ensure that the highest priority system work would be included in the planned scope.

Duke is now proposing a second Electric TDSIC Plan, and having addressed most of its aging infrastructure, seeks to move towards improving reliability and resiliency. Even though the most pressing needs have already been addressed in the work completed under the prior Plan, Duke is proposing a substantial increase in spending levels to address this new focus.

Pursuant to the settlement approved by the Commission in Cause No. 44720, recoverable investment under the prior Plan was capped at $1.4 billion. See Duke Energy Indiana, Cause No. 44720, Settlement at 1-2 (IURC 6/29/2016). Through 2021, Duke forecast its total spend of $1.1557 billion under that Plan. See Duke Energy Indiana, Cause No. 44720 TDSIC 10, at 3 (IURC 3/16/2022). Since it was a 7-year Plan, the authorized spending level averaged $200 million per year, and actual expenditures were around $192.6 million annually. The new Plan proposed in this case, on the other hand, involves investments totaling $2.1 billion. See Tr. at B-2. That total with a budget that is $700 million higher than the prior Plan, moreover, is being proposed for a shorter period of 6 years, increasing the annual average spend to $350 million. The proposed shift from a spending level of $200 million annually to $350 million represents a 75% increase.

The benefits to Duke shareholders are expansive and clear – preapproval means that $2.1 billion in rate base investment will be subject to recovery through "automatic" periodic rate adjustments (see Ind. Code §8-1-39-9(a)), and even the deferred portion will be recoverable with carrying charges from the point of investment (id. §9(c)). Duke has every incentive to propose successively larger TDSIC Plans, as a preapproved method of continuing the steep increase in rate base value. The benefits for ratepayers, by contrast, are sloping in the other direction, with much higher annual spending proposed here for system work of declining priority and diminishing significance to service quality.

B. Duke Has Not Shown that the Proposed Plan Satisfies the Statutory Cost-Justification and Reasonableness Requirements

A proposed TDSIC Plan cannot be approved unless the utility demonstrates that "the estimated costs of the eligible improvements included in the plan are justified by incremental benefits attributable to the plan." See Ind. Code §8-1-39-10(b)(3). In addition, a Plan is subject to approval only if the Commission determines it is "reasonable." Id. §10(b).

Here, Duke's proposed Plan is comprised of transmission projects, that are focused on hardening and resiliency (39% of the planned expenditures); distribution projects, that are focused on modernization and replacement of aging infrastructure (54% of planned expenditures); and (3) Economic Development (the remaining 7%). See Duke Ex. 2-A at 1. The cost component of Duke's cost-benefit analysis does not include contingency (IG CX 7), and does not recognize the significant potential for cost increases in its AACE cost estimates, which for Class 4 estimates has a plus 50% overage range for projects that only have a project scope of 1% to 15%. Tr. at C-43. Further, while Duke only projected a 3% escalation for cost of materials, Duke's own analysis shows that the potential increases are much higher. OUCC CX 1-C. Finally, Duke presented a "monetization" analysis to demonstrate potential plan benefits in Indiana and

in Duke's service territory, but did not put any dollar value on the economic impact on increased costs to ratepayers. Tr. at C-5; IG CX 4.

The "incremental benefits" that must be cost-justified under Section 10(b)(3) relate to the utility services that the TDSIC Statute is designed to improve, for the benefit of the ratepayers who are funding the system work through rates. Cost justification cannot be established by reliance on financial benefits to contractors and equipment vendors, redirecting the purpose of TDSIC investments into a form of economic stimulus.

In all respects, Duke has failed to establish that the proposed Plan satisfies the statutory cost-justification and reasonableness requirements.

1. Duke's Cost-Benefit Analysis Would Result in Approval of Projects that Are Not Cost-Justified

Duke's cost-benefit analysis demonstrates that a number of projects have costs that exceed project benefits. Further, even for projects that have a benefit cost ratio of at least 1, Duke has ignored significant cost risks that are currently known, which if included, would further reduce the projects that have positive incremental benefits to ratepayers.

The requirement to demonstrate incremental benefits applies to "the eligible improvements included in the plan." See Ind. Code §8-1-39-10(b)(3). Accordingly, if it is an eligible improvement and is included in the Plan, it must meet the cost-justification requirement. Otherwise, utilities would be at liberty to treat TDSIC Plans as a repository for unnecessary or excessively costly projects, so long as the overall Plan produces a net benefit.[1] There is no

[1] The Industrial Group would note the Commission briefly addressed this issue in its Order in Cause No. 45557. NIPSCO, Cause No. 45557 at 61 (IURC 12/28/2021). That Order is currently under appeal, and the Industrial Group would respectfully request that the Commission reconsider its interpretation of Ind. Code § 8-1- 39-10(b)(3) and its application to the facts of this case. Under the 2019 statutory revisions, a utility may update its plan with new projects in a Section 9 tracker proceeding, so projects with questionable benefit cost ratios could be added once additional cost certainty is known. However, in the absence of an updated evaluation of the potential costs of projects, preapproval of projects, especially those based on Class 4 estimates, would be premature given the cost uncertainty.

predicate in the statutory language to support Duke's contrary view, that the legislature meant to encourage utilities to pad TDSIC plans with filler projects that are not themselves cost-justified. But the statute requires cost-justification (see Ind. Code §8-1-39-10(b)(3)) and the burden of satisfying that prerequisite is on Duke as petitioner. See Duke Industrial Group v. Northern Indiana Public Service 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).

At the outset, Duke's 4 kV Conversion project does not have incremental benefits to ratepayers. Based on Mr. Shield's testimony, the 4 kV Conversion project has projected benefits of only $41.3 million, versus projected costs of $67.6 million. This project does not meet the incremental benefit test of Ind. Code § 8-1-39-10(b)(3).

Further, Duke performed a project by project cost benefit analysis for all of its transmission and distribution projects. See IG CX 11-C and 12-C. Duke Witness Shields admitted that 57 of the projects listed in IG CX 11-C have costs that outweigh the quantified benefits of the project. Tr. at C-44; see also IG CX 6. Those projects with a benefit cost ratio less than 1 have projected costs that total $53.4 million, versus quantified benefits of only $31.7 million. While Duke appears to argue that there are other benefits that are not quantified (Duke PO at 26), those unquantified "benefits" are not in the record and cannot be considered by the Commission. Accordingly, those projects also fail to meet the incremental benefit test of Ind. Code § 8-1-39-10(b)(3).

Finally, Duke's calculation of projected costs that serves as the input for its cost-benefit analysis fails to include major cost components that are already known and included in Duke's evidence. First, Duke did not include contingency, which represents 15% of project cost in its

cost benefit analysis. Tr. at C-42 to C-43; see also IG CX 7. With contingency as a consideration, Duke admitted that the overall Plan benefit cost ratio was reduced from 2.8 to 2.4.

Second, Duke used the cost estimate based on a 0% level of its AACE cost estimates. Tr. at C-4. However, Duke's AACE estimates have ranges that would potential increase the cost attributed to a project by 20% (for a Class 2 estimate), 30% (for a Class 3 estimate), or 50% (for a Class 4 estimate). Pet. Ex. 2 at 38. Further, a majority of Duke's planned expenditures will occur in the 2025 through 2028 period, when most projects are classified as Class 4 estimates, subject to increase of 50%. Id. It is important to note that Class 4 estimates have a scope of only 1% to 15%. Id. Given that through year 2024 only $487,886,292 of Duke's T&D spend is projected to have occurred, the remaining $1,447,568,628 are based on Class 4 estimates, and would be subject to a 50% increase. Compare Pet. Ex. 2-A, page 2, line 12 (2024 Capital and O&M Total column) to page 4, line 12 (2028 Capital and O&M Total column).

Finally, Duke appears to have significantly underestimated the rapid increase in material costs using a base 3% increase to materials over time. See OUCC CX 1-C (showing a high scenario of 10% to 80% increases in material cost over Plan 2.0 period). Although material cost may make up approximately 20% of any project cost (Tr. at C-58), even a 50% increase of materials cost would represent a 10% increase in the overall cost of the project.

Since almost 75% of Duke's proposed TDSIC spend involves Class 4 estimates that could increase by 50%, plus an additional 15% contingency, plus a significant underestimation of material costs in today's inflationary environment, Duke's proffered cost-benefit analysis is flawed. As such, Duke has failed to adequately demonstrate that its proposed projects meet the incremental benefit test of Ind. Code § 8-1-39-10(b)(3). Duke Witness Pinegar stated during the hearing that if Duke's proposed Plan 2.0 executed only half of the projects at twice the cost, Plan

2.0 would not be considered a success. Tr. at B-4. Yet, as proposed, Duke included numerous projects that, when all costs are considered, certainly carry the risk of significant cost overruns that would put success of Plan 2.0 in jeopardy.

2. Duke's Projected Reliability Benefits Do Not Justify the Expense of Plan 2.0

Despite presenting its TDSIC proposals as enhancements to reliability, Duke did not support its position with the established and routinely monitored standards that the Commission has used for decades to measure system reliability. Duke regularly compiles the data for, and submits to the Commission, an Annual Reliability Reporting Form. See OUCC CX 2. The annual report requires data for three specified "electric reliability measures," computed both with and without major events: System Average Interruption Duration Index ("SAIDI"), Customer Average Interruption Duration Index ("CAIDI"), and System Average Interruption Frequency Index ("SAIFI"). Id. Duke's reported results from 2016, at the outset of TDSIC investments, through the most recent 2020 data, do not reflect any discernible reliability improvements notwithstanding the hundreds of millions spent annually on TDSIC projects over that period. See id.

Duke's case-in-chief did not include any SAIDI, CAIDI or SAIFI projections through the end of the new Plan in 2028. Instead, Duke calculated new metrics of Customer Interruptions and Customer Minutes Interrupted. But there is no record to support any assumption that the proposed Plan will improve system reliability, as measured by the established reliability indices that the Commission, in order to monitor reliability, requires Duke to report every year. Despite all that, Duke still ends up with a number that shows the new Plan yielding only a 17% improvement to SAIFI, despite a 75% increase in annual TDSIC spending. As noted during

cross-examination, even the 17% improvement in SAIFI does not yield a measureable benefit, since the SAIDI result would still be above 1. Tr. at A-56.

The statute requires a TDSIC Plan to be cost-justified and reasonable. Duke has failed to demonstrate any system reliability improvements that would justify a steep escalation of investment for what are undisputedly diminishing benefits.

3. Revenues from Duke's Economic Development Projects Should Benefit Ratepayers that Pay for the Investment

Duke's Economic Development projects are being driven by customers and businesses looking to grow. See Duke Ex. 2 at 10 ("projects . . . have the greatest potential to attract economic growth"). Added sales, of course, yield incremental revenues between rate cases, which Duke proposes to retain while ratepayers cover all of the associated system costs. By contrast, Northern Indiana Public Service Company's ("NIPSCO") *Gas* TDSIC Plan has long incorporated an offset under parallel circumstances. An element of the Gas Plan involves rural extensions, which require system investments but also result in customer growth and added load. In that corresponding situation, and at NIPSCO's instigation, the TDSIC costs for rural extensions are offset by 80% of the incremental revenues from new rural customers. See NIPSCO Cause No. 44403-TDSIC-1 at 19 (IURC 1/28/2015). In this case, however, Duke is not proposing any kind of ratemaking recognition of the added rate revenue supported by the TDSIC-funded system work.

The question here does not concern the limits of Commission authority. The issue is whether Duke's proposed Plan is cost-justified and reasonable. The treatment of rural extensions in NIPSCO's Gas TDSIC is certainly reasonable, balancing cost responsibility with the added rate revenue it supports. Duke's proposal here – to recover investment and return through the

TDSIC tracker for economic development projects arising from increased demand, while also retaining the entirety of the added rate revenue from that same load growth – is not reasonable.[2]

4. Duke's Proposed Accounting Treatment of Deferred O&M Expense is Contrary to Statute

Duke has proposed approximately $130 million of O&M costs be recovered under Plan 2.0. While 80% of those costs will be tracked without being subject to a pretax return, Duke is proposing to include the 20% for deferral in a regulatory asset that would be subject to carrying charges. Such an approach is contrary to statute.

The O&M expense Duke has proposed for recovery in this case is not a capital expense, and is not subject to a pretax return. Tr. at B-11. There is no dispute regarding what Duke is proposing. Duke responded to data requests indicating its proposed treatment of deferred O&M. See IG CX 1, 2, and 3. However, while the TDSIC statute allows carrying costs to be deferred, the statute does not provide that an expense item not otherwise subject to pretax return can be included in a regulatory asset that will ultimately be rate-based and subject to a return on, as well as the associated carrying charges before it is included in rate base.

As used in Section 9(c), "post in service carrying charges" may be deferred along with other TDSIC costs defined under Section 7, such as O&M. However, post in service carrying charges are applied to capital items, not expense items. As noted above, Duke Witness Diaz testified that the O&M costs are expense items only. As such, expense does not earn a return, and should not earn a return by virtue of being deferred for future recovery. Any deferral of non-capital expense as an approved TDSIC cost should be through a separate regulatory asset that is not subject to additional carrying charges. Further, the Commission should approve such a

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[2] To the extent the Commission does not interpret the TDSIC statute as providing it the authority to require Duke to track TDSIC revenues resulting from approved Economic Development projects, the Commission has explicit authority to adjust Duke's pretax return. Ind. Code § 8-1-39-13.

regulatory asset subject to the condition that it would not be included in rate base following approval of new base rates in Duke's next general rate case. Duke's proposal to recover deferred O&M with carrying charges and later subject to rate base treatment is unreasonable and contrary to the TDSIC statute.

III. CONCLUSION

Despite all of the shortcomings identified above, Duke asserts that it is entitled to approval of the Plan as proposed. Upon approval, the authorized expenditures would be subject to automatic recovery in rates, without further prudence review and regardless of Duke's success in achieving the projected benefits. See Section 10(b). That shift in risk, with immense ratemaking consequences, requires rigorous Commission scrutiny at the time a Plan is tendered for approval. The petitioning utility bears the burden to establish the Section 10(b) requirements, particularly cost-justification and reasonableness. Those prerequisites to Plan approval, however, have not been satisfied here.

Duke cannot deny that the proposed Plan involves a 75% increase in annual TDSIC spending for materially less value to ratepayers. Duke's risk computation exaggerates the impact on system reliability, and Duke's theory has no support in its actual performance under standard reliability indices. Duke seeks to force ratepayers to cover the costs of system upgrades for economic development investments, while it retains the entirety of the incremental revenue from increased demand. Duke has provided no good reason why it is important to implement a steep increase in TDSIC spending, to substantially reduced effect, after already completing the highest priority system work in its first Plan and now moving on to projects of lesser priority. The Plan as proposed fails to satisfy the statutory cost-justification and reasonableness requirements, and therefore should not be approved by the Commission.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing document was served via electronic mail, this 6th day of April, 2022, upon the following:

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