

FILED  
January 12, 2024  
INDIANA UTILITY  
REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF DUKE ENERGY INDIANA, )  
LLC FOR APPROVAL OF A SPECIAL RETAIL )  
ELECTRIC SERVICE AGREEMENT, RENEWABLE )  
ENERGY PURCHASE AGREEMENT, AND TRANCHE )  
AGREEMENTS WITH BLOCKE, LLC ARISING FROM )  
OPERATION OF FACILITIES IN JEFFERSONVILLE, )  
INDIANA AND FOR ESTABLISHMENT OF )  
CONFIDENTIAL PROCEDURES )

CAUSE NO. 45975

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

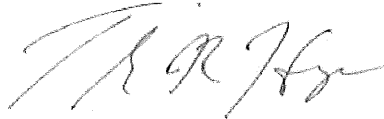
PUBLIC'S EXHIBIT NO. 1

TESTIMONY OF OUCC WITNESS  
DEREK J. LEADER

IURC  
PUBLIC'S 1  
EXHIBIT NO. 1  
2-13-24  
DATE REPORTER

January 12, 2024

Respectfully submitted,



Thomas R. Harper  
Atty. No. 16735-53  
Deputy Consumer Counselor

OFFICIAL  
EXHIBITS

**TESTIMONY OF OUCC WITNESS DEREK J. LEADER**  
**CAUSE NO. 45975**  
**DUKE ENERGY INDIANA, LLC**  
**I. INTRODUCTION**

1   **Q:   Please state your name, business address, and employment capacity.**

2   A:   My name is Derek J. Leader, and my business address is 115 West Washington St.,  
3       Suite 1500 South, Indianapolis, Indiana 46204. I am employed by the Indiana  
4       Office of Utility Consumer Counselor ("OUCC") as a Utility Analyst. My  
5       qualifications are set forth in Appendix A of this document.

6   **Q:   What is the purpose of your testimony?**

7   A:   My testimony evaluates Duke Energy Indiana, LLC's ("Duke," or "Petitioner")  
8       request for the Indiana Utility Regulatory Commission ("Commission") to approve  
9       a long-term Special Retail Electric Service Agreement ("Agreement") with Blocke,  
10      LLC ("Customer," or "Blocke"). The Agreement includes an attached Form  
11      Tranche Agreement and a form Renewable Purchase Power Agreement ("PPA").<sup>1</sup>  
12      Duke is seeking approval of the forms attached to the Agreement so that any  
13      subsequently executed Renewable PPA and Tranche Agreement consistent with  
14      those forms will conform to the requirements of the Agreement. Duke is also  
15      requesting the forms be approved in conjunction with its request that the  
16      Commission forgo further regulatory review or approval, when, and as, Duke

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<sup>1</sup> Petitioner's Exhibit 1, Direct Testimony of Brian P. Davey, page 3, lines 5-6

1 negotiates and executes such Renewable PPAs with renewable power providers and  
2 Customer (and associated Tranche Agreements with Customer).

3 **Q: Please describe the review and analysis you conducted to prepare your**  
4 **testimony.**

5 A: I reviewed Duke's Petition, prefiled testimony, exhibits, and workpapers in this  
6 proceeding. I met with other OUCC staff and discussed issues in the case. The  
7 OUCC issued a data request and reviewed the answers.

8 **Q: To the extent you do not address a specific item, issue, or adjustment, does this**  
9 **mean you agree with those portions of Duke's proposals?**

10 A: No. Excluding any specific adjustments or issues Duke proposes does not indicate  
11 my approval of those adjustments or issues. Rather, the scope of my testimony is  
12 limited to the specific items addressed herein.

13 **Q: Are you sponsoring any attachments?**

14 A: Yes, I am sponsoring OUCC Attachment DJL-1 (Duke's Response to OUCC Data  
15 Request Set Number 1, Question 1).

## **II. CUSTOMER AND AGREEMENT DETAILS**

16 **Q: Please describe Blocke.**

17 A: Blocke is a recently created company planning to put a new data center ("Project")  
18 in the River Ridge Commerce Center in Jeffersonville, Indiana. Duke Witness  
19 Brian P. Davey described Blocke's parent company as "a multi-national Fortune  
20 250 technology company, which owns various networking services, among other  
21 products and services." Witness Davey continued to explain that the parent  
22 company has many data centers like the planned Project.<sup>2</sup> Petitioner testified the

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<sup>2</sup> Davey, p. 3, ll. 15-20.

1 Project would “anticipate” creating 50 or more new high-paying jobs as a direct  
2 result.<sup>3</sup> The Project would be in Duke’s service area and require all-day, high load.<sup>4</sup>

3 **Q: Please describe the Agreement.**

4 A: Duke and Blocke worked on the Agreement to meet the load conditions and the  
5 Customer’s desire for renewable energy.<sup>5</sup> Under the Agreement, Customer would  
6 pay a special contracted rate structure that is not a currently available tariff option.  
7 The rate construct provided by the Agreement involves distinct renewable supply  
8 resources, structural protections to prevent adverse impacts on other customers, and  
9 incremental contributions to Duke’s fixed system costs.<sup>6</sup> The Agreement also  
10 specifies the necessary infrastructure to be in place ahead of Blocke’s operational  
11 date.<sup>7</sup> Under the agreement, a percentage of the load is to be provided by  
12 renewables, and Duke is to seek renewables specifically for the Agreement.<sup>8</sup> The  
13 Agreement will last for the later of 20 years or until termination or expiration of the  
14 last PPA.<sup>9</sup> According to Petitioner’s evidence, Blocke is entitled to the

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<sup>3</sup> Petition, page 2

<sup>4</sup> Davey, p. 4, l. 3

<sup>5</sup> Davey, p. 4, ll. 10-14

<sup>6</sup> Petition, p. 2

<sup>7</sup> Davey, p. 4, l. 9

<sup>8</sup> Davey, p. 5, ll. 2-6.

<sup>9</sup> Davey, p. 5, ll. 7-9.

1 environmental attributes including the Renewable Energy Credits ("RECs")  
2 associated with energy purchased under the Renewable PPAs.<sup>10</sup>

3 **Q: Please describe the Renewable PPA and Tranche Agreement forms.**

4 A: PPA and Tranche Agreement forms are attached to the Agreement. Petitioner  
5 requests the Commission approve all future agreements using these forms without  
6 further regulatory review or approval.<sup>11</sup>

7 **Q: Are these PPAs intended to be part of Duke's Integrated Resource Planning**  
8 **("IRP") process?**

9 A: No. These PPAs are not intended to be part of Duke's IRP process, as they are  
10 intended to meet the needs of a single customer and be paid for by that customer.<sup>12</sup>

### **III. CONCERNS**

11 **Q: Is the OUCC concerned about Blocke's contributions to fixed or marginal**  
12 **costs?**

13 A: No. In special contract cases, the OUCC begins by checking that the contract does  
14 not create additional costs for other consumers. The Agreement ensures Blocke  
15 bears all responsibility for costs it causes and makes some contribution to fixed  
16 costs.

17 **Q: Is the OUCC concerned about a utility entering into a PPA without**  
18 **Commission approval or OUCC review?**

19 A: Yes. Given the open terms to the form of PPA, including pricing, duration, and  
20 specific terms for termination, cancellation, or continuation, the OUCC does not  
21 find it reasonable for advance, blanket approval for future renewable PPAs. The

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<sup>10</sup> Davey, p. 5, ll. 10-11

<sup>11</sup> Davey, p. 6, ll. 6-9,

<sup>12</sup> Swez, p. 12, ll. 16-20

1 OUCC supports economic development projects, and therefore proposes an  
2 expedited filing process. The OUCC is proposing a 30-day filing schedule for PPAs  
3 entered under this Agreement. Such filings are expedited and are subject to  
4 approval in the absence of a valid objection. A 30-day filing gives the OUCC time  
5 to consider the specific pricing, duration, and terms for termination, cancellation,  
6 or continuation, and would allow the Commission to address any inappropriate  
7 terms, if necessary.

8 **Q: Does the OUCC have remaining concerns about the burden of these PPAs**  
9 **falling on other consumers?**

10 A: No, the protections of a 30-day filing procedure in the context of Petitioner's  
11 responses to DR 1-1 in this case would alleviate the OUCC's concerns. The OUCC  
12 was initially concerned about the burden of PPAs if Blocke went out of business,  
13 but responses to DR 1-1 have largely alleviated our concerns. Should Blocke  
14 become unable to pay for the PPAs, Duke would have the option to cancel or  
15 repurpose the PPAs immediately.<sup>13</sup>In addition, with the protections of a 30-day  
16 filing procedure for the Renewable PPAs, inappropriate terms, due to error,  
17 omission, or other reason, could be reviewed and addressed, if and when they arise.

#### **IV. RECOMMENDATIONS**

18 **Q: What do you recommend?**

19 A: I recommend approving the Agreement, with the modification that Duke file the  
20 PPAs for approval under the Commission's 30-day filing procedure, to allow the

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<sup>13</sup> OUCC Attachment DJL-1

1 Commission and OUCC to review and respond to any concerns if and when they  
2 occur.

3 **Q: Does this conclude your testimony?**

4 **A: Yes.**

**APPENDIX A**  
**QUALIFICATIONS OF DEREK J. LEADER**

1    **Q:    Please describe your educational background and experience.**

2    A:    I graduated with a Bachelor of Art degree in Economics from Trinity University in  
3           San Antonio, Texas, in 2012, and acquired a second bachelor's degree in Math from  
4           Western Governors University out of Salt Lake City, Utah in 2016. I worked as an  
5           accountant for Defense Finance and Accounting from May 2011 to August 2011. I  
6           was a student trainee at Fort Carson's U.S. Army Dental Activity from July 2012  
7           to September 2012. I worked at Rose-Hulman Institute of Technology as a  
8           recreation assistant from August 2013 to November 2013.

9                 I did my student teaching at Northview High School of Clay County from  
10           August to November of 2015. I taught high school math at Shiloh CUSD#1 in  
11           Hume, Illinois from August 2016 to July 2017. I taught math, science, and social  
12           studies at George W. Julian 57 from August 2017 to July 2018. I taught math and  
13           robotics at Woodrow Wilson Middle School from August 2018 to January 2019. I  
14           taught math at Marion High School from August 2019 to July 2021. I taught math  
15           at Riverton Parke Jr/Sr High School from August 2021 to July 2022.

16                 I began my career with the OUCC in August 2022. As part of my continuing  
17           education, I have attended the Michigan State University Institute of Public Utilities  
18           Annual Regulatory Studies Program - Fundamentals Course on August 8-12, 2022,  
19           and the Advanced Cost Allocation and Rate Design Course on November 14-17,  
20           2022. I have also taken Fundamentals of Utility Law presented by Scott Hempling  
21           and NARUC Regulatory Training Initiative.



OUCC  
IURC Cause No. 45975  
Data Request Set No. 1  
Received: December 12, 2023

OUCC 1.01

**Request:**

Assume that Blocke ceases operations, or otherwise defaults, before the end of the Purchased Power Agreements (PPA) Duke Energy Indiana (DEI) will have executed to supply Blocke's renewable power needs, and further assume that any or all performance assurance(s) and remedies for default, respectively, are inadequate to cover the costs of the PPA; please address the following:

1. Please identify the entity that is liable for the remaining life of the PPA.
2. If DEI is responsible for the remaining life of the PPA, how will DEI handle the remaining life of the PPA? For instance:
  - a. Would DEI seek to pass these costs onto Indiana ratepayers through retail rates?
  - b. Would DEI intend to sell the power into the wholesale market?
  - c. If DEI would pursue other remedy(ies) or solution(s), please explain.

Please provide detailed explanations.


**Response:**

1. In the event the Special Contract is terminated and a Renewable PPA has also been executed, per the terms of the Form Renewable PPA, Duke Energy Indiana has the right to terminate the Renewable PPA. In addition, Duke Energy Indiana also has the option to utilize the Renewable PPA for the purpose of serving Duke Energy Indiana Native Load in the event of a customer default.
2.
  - a. If the PPA is determined to be an economic resource to serve Duke Energy Indiana's customers, Duke has the option to do so with appropriate generator revenue and cost allocation.
  - b. If serving the Duke Energy Indiana customer, yes, then the generator would operate in the MISO Energy, Ancillary Services, and Capacity Markets and Duke Energy Indiana would monetize the value of the PPA as well as pursue appropriate cost assignment recovery.
  - c. It is speculative to determine today the value of an executed Renewable PPA in the event of a potential termination of the Slugger Special Contract. In the event of termination of the Special Contract, the executed Renewable PPA may provide value to Duke. To the extent there is risk with the Renewable PPA, Duke Energy Indiana has mitigated this risk by providing several options detailed in the Slugger contract documents: 1) termination of the Renewable PPA in the event of a Slugger default and

Special Contract termination; 2) utilization of the Renewable PPA for Duke Energy Indiana native load if it is warranted; or 3) selling the purchased generation into the MISO market if determined to be economic.

**AFFIRMATION**

I affirm, under the penalties for perjury, that the foregoing representations are true.

A handwritten signature in black ink, appearing to read 'Derek J. Leader', written over a horizontal line.

Derek J. Leader  
Utility Analyst II  
Indiana Office of Utility Consumer Counselor

Cause No. 45975  
DEI, LLC

Date: January 12, 2024

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing *Indiana Office of Utility Consumer Counselor Public's Exhibit No. 1 Testimony of OUCC Witness Derek J. Leader* has been served upon the following counsel of record in the captioned proceeding by electronic service on January 12, 2024.

Andrew J. Wells  
Liane K. Steffes  
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A handwritten signature in black ink, appearing to read 'T R Harper', is written over a horizontal line.

Thomas R. Harper  
Deputy Consumer Counselor

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