

**STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION**

**PETITION OF DUKE ENERGY INDIANA, LLC
PURSUANT TO IND. CODE §§ 8-1-2-42.7 AND 8-1-2-61,
FOR (1) AUTHORITY TO MODIFY ITS RATES AND
CHARGES FOR ELECTRIC UTILITY SERVICE
THROUGH A STEP-IN OF NEW RATES AND CHARGES
USING A FORECASTED TEST PERIOD; (2) APPROVAL
OF NEW SCHEDULES OF RATES AND CHARGES,
GENERAL RULES AND REGULATIONS, AND RIDERS;
(3) APPROVAL OF A FEDERAL MANDATE
CERTIFICATE UNDER IND. CODE § 8-1-8.4-1; (4)
APPROVAL OF REVISED ELECTRIC DEPRECIATION
RATES APPLICABLE TO ITS ELECTRIC PLANT IN
SERVICE; (5) APPROVAL OF NECESSARY AND
APPROPRIATE ACCOUNTING DEFERRAL RELIEF;
AND (6) APPROVAL OF A REVENUE DECOUPLING
MECHANISM FOR CERTAIN CUSTOMER CLASSES**

FILED
September 16, 2019
INDIANA UTILITY
REGULATORY COMMISSION

CAUSE NO. 45253

:

THE INDIANA LABORERS DISTRICT COUNCIL'S REPLY IN
SUPPORT OF PETITION TO INTERVENE

The Indiana Laborers District Council "ILDC", by its counsel, hereby asserts that Duke Energy's Objection to the ILDC's Petition to Intervene should be denied and that the ILDC should be granted status as an Intervenor in this matter. Duke Energy's Objection contravenes the existing Commission practice of allowing Labor Unions to intervene, ignores the ILDC's unique and substantial interest in the safety and reliability of the proposed Duke Energy infrastructure investments presented in this substantial rate increase request, and conflicts with the decisions of other state public service commissions.

In opposition to Duke Energy's Objection, and in support of the ILDC's Intervenor status, the ILDC states as follows:

A. The ILDC Has a Substantial Interest in Duke Energy's Rate Increase Request.

1. Duke Energy erroneously asserts that the ILDC lacks a substantial interest in the current rate increase in order to justify the ILDC's intervention. Duke Energy has not objected to any other proposed intervenor, including retailers, environmental groups, and coal companies. Instead, Duke Energy has arbitrarily and improperly objected to the participation of a labor organization which represents over 12,000 Hoosier workers, including members who are currently working for contractors at Duke Energy facilities.

2. The ILDC has a real and current substantial interest in the issues present in Duke Energy's rate increase request. First, according to Christopher M. Jacobi's direct testimony, Duke's construction capital spending forecasts for 2019 and 2020 are \$825 million and \$797 million respectively. As previously explained, the amount of planned construction spending on infrastructure directly impacts the employment opportunities of ILDC members who are employed by construction contractors on Duke's system. If lower forecast spending is approved, ILDC members could face fewer employment opportunities. If spending is found to be imprudent, ILDC members' future employment opportunities could also be impacted.

3. ILDC's understanding, according to John Spanos's direct testimony, is that a significant cost component of this rate case is related to proposed depreciation changes, most notably for the company's generation assets such as R. Gallagher, Cayuga, and Gibson Generation Stations. It is hard to understand how Duke Energy Indiana ("DEI") can say that ILDC's members, who will lose contracted-out maintenance jobs at coal fired generation facilities due to earlier closer of DEI coal generation facilities are not directly and uniquely affected by decisions in this rate case. Included in Mr. Spanos's testimony and depreciation study are construction costs for decommissioning /demolition of these facilities. ILDC members

perform this type of construction. Duke Energy fails to dispute or challenge the fact that the ILDC is the exclusive bargaining representative, under the National Labor Relations Act. 29 U.S.C. §§ 151 *et seq.*, for workers currently or recently employed by contractors, such as Pullman Power, Spirtas Wrecking, W.B. Koester, J.T. Thorpe & Son, Bowen Engineering, BMWC Constructors, Sterling Boiler & Mechanical, and Kokosing Construction at Duke Energy facilities, such as the R. Gallagher Generating Station, Cayuga Generating Station, Wabash River Station, Edwardsport Power Station, Gibson Generating Station and the District Energy Station North at Ball State University.

5. ILDC has a current and substantial interest in the safety and training standards adopted by Duke Energy for the coal ash remediation project. Moreover, the public interest is also served by ensuring that highly trained workers, who follow established safety standards, perform this environmentally sensitive coal ash remediation.

6. Duke Energy challenges the ILDC's intervention on the grounds that the ILDC's Petition did not state that its members performed coal ash remediation in Indiana. ILDC Indiana members undergo forty hours of hazardous material handling training, which is directly relevant to coal ash remediation, at the two LIUNA joint-labor management training centers in Bedford and Logansport, Indiana and are anticipated to perform this Duke Energy work when such bids are awarded to contractors. Consequently, the ILDC's participation in the coal ash remediation aspect of this rate increase proposal is substantial and is not speculative, as ILDC has information regarding average worker training costs that may be of use both to the Commission and other parties.

7. ILDC has a substantial interest in the safety and training standards adopted by Duke Energy for the infrastructure projects encompassed in the rate increase request. Internal

procurement standards for work performed by external contractors is critical. The Commission need only look at the direct testimony of DEI witness T.K. Christie who specifically draws a nexus between this rate case, safety and reliability, and Duke's ability to attract, retain, and staff qualified contractors and their construction personnel. ILDC members work for hundreds of construction employers across the state, including those who serve multiple utilities regulated by the Indiana Utility Regulatory Commission ("IURC"). The ILDC could offer insight to the Commission on the construction labor market that no other intervenor can offer.

8. Moreover, trained traffic control workers are critical to eliminate real and substantial hazards to pedestrians, the general public and workers on Duke Energy infrastructure projects. In the past year, Indiana has tragically had 24 crashes with 28 fatalities in work zones which highlight the critical need for available and skilled traffic control employees.

Additionally, the ILDC currently represents traffic control employees at Roadsafe Traffic Systems who work on Duke Energy projects. The ILDC thus possesses valuable information on both the construction labor market and training requirements for these essential workers.

9. Duke Energy's procurement policies regarding its potential contractors for both the coal ash remediation and other infrastructure projects will have substantial impact on whether Duke Energy will be able to successfully obtain the necessary trained workforce to properly complete these projects in a timely, cost-effective manner. Duke has already shown that its cost estimates for vegetation management have changed drastically due to failure to properly implement a procurement policy that made it an employer of choice.

10. The ILDC shall provide a valuable and unique perspective in this matter since it possesses significant knowledge regarding training programs and safety standards applicable to work encompassed by Duke Energy's rate increase proposal.

11. ILDC has already stated that it will not unduly broaden the issues or otherwise burden the proceedings (Petition to Intervene of the Indiana Laborers District Council, ¶ 7). Duke Energy's allegation of such a potential result is thus unfounded speculation which is not supported by any factual evidence.

B. Duke Energy's Objection to the ILDC Petition is Contrary to IURC Precedent.

12. When objecting to the ILDC's Petition to Intervene, Duke Energy fails to cite any IURC decisions limiting the ability of a labor organization to intervene in a rate increase matter.

13. The Commission, in *Petition of Northern Indiana Public Service Company, LLC*, Cause No. 45159 granted the United Steel Workers of America's Petition to Intervene. The United Steelworkers had asserted a substantial interest in the case since its members were employed by NIPSCO and were also NIPSCO ratepayers. The ILDC possesses similar interests in this case.

14. The Commission, in *Petition of Northern Indiana Public Service Company, LLC*, Cause No. 44468 granted the United Steel Workers of America's Petition to Intervene. The United Steelworkers had asserted a substantial interest in the case since its members were employed by NIPSCO and were also NIPSCO ratepayers. The ILDC possesses similar interests in this case.

15. The Commission, in *Petition of Indiana Gas Company, Inc.*, Cause No. 43298 granted the International Brotherhood of Electrical Workers Local Union No. 1393's Petition to Intervene. The IBEW had asserted a substantial interest in the case since its members were employed by Indiana Gas. The ILDC possesses similar interests in this case.

17. The sole case referenced by Duke Energy in its Objections, *Petition of Indiana Michigan Power Company*, Cause No. 45235, lacks any relevance to the ILDC's Petition. The

coal company in the Indiana Michigan Power case had not submitted a bid for the utility's work for the past four to five years. By contrast, the ILDC currently represents a number of Duke Energy's contracted-out employees working on the system currently.

18. As noted earlier, Duke Energy has not objected to any other Petitions to Intervene in this case. The other entities allowed to intervene include customers such as Walmart and Kroger, environmental groups such as the Sierra Club and the Environmental Working Group and the Indiana Coal Council. The selective denial of the ILDC's Petition to Intervene would thus contravene the practice of allowing a union which represents a utility's employees, or in the case of ILDC the contracted-out employees, to participate in rate proceedings and improperly treat the ILDC in a disparate manner.

C. Other Utility Commissions Across the Nation Have Repeatedly Granted Labor Organizations' Petitions to Intervene.

19. Other Utility Commissions across the nation have repeatedly granted labor organizations' Petitions to Intervene in public proceedings, recognizing the importance of the participation of the individuals who help provide safe and reliable utility service to customers.¹ In these proceedings, Commissions have consistently found in favor of labor organizations' direct and substantial interest in the outcome of these public proceedings. *See Commonwealth Telephone Co. and Citizens Communications Co.*, Docket No. A-311225F0003, Order Disposing of Preliminary Objections, Pennsylvania Public Utility Commission (Dec. 14, 2006), at 6-7 ("It is clear that the union . . . has a substantial, direct and immediate interest in the outcome of this case. The very livelihood of the [] members rests on the management decisions made by [the employer], and the myriad of decisions made by that management . . . are vital to the

¹ Copies of these Utility Commission decisions are included in an Appendix which the ILDC has filed with this Reply.

members.”); *Merger of Altagas LTD. And WGL Holdings Inc.*, Formal Case No. 1142, Order Granting Intervention, Public Service Commission of the District of Columbia, (May 17, 2017) (granting Petition to Intervene of Laborers Union under substantial interest standard); *Verizon New England Inc.*, ME PUC, Docket No. 2007-00067, Procedural Order, Maine Public Utilities Commission (Mar. 14, 2007), at 7-8 (“Labor’s members will be directly and substantially impacted by the Commission’s decisions in this proceeding.”).

20. Additionally, Commissions have frequently noted that labor organizations provide invaluable information to these proceedings regarding the economic effects of their employer’s decisions. See *Verizon New England Inc.*, ME PUC, Docket No. 2007-00067, Procedural Order, Maine Public Utilities Commission (Mar. 14, 2007), at 7-8 (“Specifically, I find that Labor’s participation in this proceeding will help ensure that the Commission has access to first-hand knowledge concerning [their employer]’s operations . . .”); *Verizon New England Inc.*, NH PUC, Case No. 07-011, Order No. 24, 823, New Hampshire Public Utilities Commission (Feb. 25, 2008), at 88 (“Among the key participants in this protracted proceeding have been two labor unions that represent [the employer]’s highly experienced workforce in the three states. Their skepticism, and the evidence they produced, raised important questions about the economics of the transaction. Although they did not endorse the settlement agreement, in our judgment the Labor Intervenors’ participation was key to the improved outcome.”).

21. Moreover, Utility Commissions have granted the Petitions to Intervene of other Laborers International Union of North America (“LIUNA”) unions across the country, including Commissions in Maryland, the District of Columbia, Missouri and Oregon. *Merger of Altagas LTD. And WGL Holdings Inc.*, MD PSC, Case No. 9449, Order No. 88233, Maryland Public Utilities Commission (May 31, 2017); *Empire District Electric Co.*, MO PSC, File No. EM-

2016-0213, Order Re Application to Intervene, Missouri Public Service Commission (April 27, 2016); *Merger of Altagas LTD. And WGL Holdings Inc.*, WA DC PSC, Case No. FC 1142-2017-G-26, Order Granting Intervention (May 17, 2017); *Hydro One Ltd and Avista Co. Merger*, OR PUC, Case No. UM 1897, Prehearing Conference Memorandum, Oregon Public Utility Commission (Oct. 6, 2017).

CONCLUSION

WHEREFORE, the ILDC respectfully requests that the Commission deny Duke Energy's Objection, grant the ILDC's Petition to Intervene and provide all other necessary relief.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2019, the foregoing was filed with the Indiana Utility Regulatory Commission using the Commission's electronic filing system and was served by electronic mail on the following parties:

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