

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 MULTI-STEP RATE IMPLEMENTATION)
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)
REVISED ELECTRIC DEPRECIATION RATES)
APPLICABLE TO ITS ELECTRIC PLANT IN SERVICE,) CAUSE NO. 46038
AND APPROVAL OF REGULATORY ASSET)
TREATMENT UPON RETIREMENT OF THE)
COMPANY'S LAST COAL-FIRED STEAM GENERATION)
PLANT; (4) APPROVAL OF AN ADJUSTMENT TO THE)
COMPANY'S FAC RIDER TO TRACK COAL)
INVENTORY BALANCES; AND (5) APPROVAL OF)
NECESSARY AND APPROPRIATE ACCOUNTING)
RELIEF, INCLUDING AUTHORITY TO: (A) DEFER TO A)
REGULATORY ASSET EXPENSES ASSOCIATED WITH)
THE EDWARDSPORT CARBON CAPTURE AND)
SEQUESTRATION STUDY, (B) DEFER TO A)
REGULATORY ASSET COSTS INCURRED TO ACHIEVE)
ORGANIZATIONAL SAVINGS, AND (C) DEFER TO A)
REGULATORY ASSET OR LIABILITY, AS APPLICABLE,)
ALL CALCULATED INCOME TAX DIFFERENCES)
RESULTING FROM FUTURE CHANGES IN INCOME)
TAX RATES.)

**REQUEST FOR RULING ON INDUSTRIAL GROUP AND OUCC
OBJECTIONS TO DUKE COMPLIANCE FILING**

The Duke Industrial Group ("Industrial Group") and the Indiana Office of Utility
Consumer Counselor ("OUCC"), by counsel, respectfully request a ruling by the Commission on
the Objection to Compliance Filing raised in their joint filing on February 28, 2025 ("Joint
Objection"). The Commission's April 9, 2025 Nunc Pro Tunc Order confirmed that the
Industrial Group and OUCC correctly interpreted the Commission's Final Order regarding the

scope of the disallowance associated with Duke's proposed migration adjustment, but the Commission has not yet ordered any rate adjustment to reflect that error in Duke's compliance filing. The Joint Objection also raised another discrepancy between the disallowance in the Final Order relating to Edwardsport depreciation and Duke's compliance filing, yet the April 16, 2025 Order on Reconsideration simply denied Duke's petition without addressing that objection. The Industrial Group and OUCC, accordingly, seek a ruling and rate relief on those pending objections, or in the alternative a clear determination that those issues are preserved for decision in connection with Duke's Step 2 compliance filing.

In support of this Request for Ruling, the Industrial Group and OUCC state:

1. The Commission's Final Order was issued on January 29, 2025, and corrected with a Nunc Pro Tunc Order on February 3rd.
2. Duke submitted its Step 1 compliance filing on February 7, 2025, followed on February 18th with a Petition for Rehearing and Reconsideration or, Alternatively, Commission Clarification and/or Modification. In that Petition, Duke admitted that its compliance filing did not match the revenue increase identified in the Final Order as modified in the February 3rd Nunc Pro Tunc Order, and sought revisions to the Final Order to conform to the February 7th compliance filing.
3. In addition, Nucor Steel-Indiana ("Nucor") filed an Objection to Duke's Compliance Filing on February 17, 2025, followed by a Motion for Clarification and Reconsideration on February 18th.
4. By Entry dated February 25, 2025, the Commission notified the parties that Duke's compliance filing was being approved on an interim basis, subject to refund, based on the outcome of the pending motions for reconsideration and/or clarification.

5. The Industrial Group and OUCC then jointly filed their Response in Opposition to Duke's Petition for Rehearing and Objection to Compliance Filing on February 28, 2025. That submission was presented as both an Opposition to Duke's petition as well as an Objection to Compliance Filing. Id. at 1 ("as well as its Objection to the Compliance Filing"); id. at 2 ("and object to Duke's compliance filing"). The Industrial Group and OUCC identified and explained two specific respects in which Duke's compliance filing deviated from the terms of the Final Order (id. at 2-8), and specifically sought rate relief arising from those errors in the compliance filing. Id. at 6 ("The Commission should order Duke to submit revised depreciation rates"); id. at 7 ("The Commission should order Duke to remove the entirety of its rate migration adjustment" except the approved \$1.25M); id. at 8 ("The Commission should order Duke to reflect the migration adjustment in proforma revenues, and submit revised rates based on the resulting approved revenue increase").

6. Duke filed its Reply on March 7, 2025. In that filing, Duke argued the issues raised in the Industrial Group and OUCC joint Response and Objection (as well as a separate response filed by Kroger Co.) were untimely, but only to the extent that any petition for rehearing or reconsideration must be filed within 20 days of the Final Order. Id. at 4 ¶8. However, the Industrial Group and OUCC were not seeking any revision to the Final Order, and hence rehearing or reconsideration was not the relief being sought. By objecting to the compliance filing, rather, the Industrial Group and OUCC challenged two specified respects in which Duke's proposed tariff submission deviated from the Commission's findings and conclusions. The rehearing deadline is inapplicable to an objection that a compliance filing is inconsistent with the Final Order.

7. Duke's Reply further presented arguments on the merits of the objections to the compliance filing raised by the Industrial Group and OUCC. See 3/7/25 Reply at 5-7.¹ The merits of those objections, consequently, were properly briefed by both the consumer parties and Duke, and are ripe for a decision by the Commission.

8. On April 9, 2025, the Commission issued a second Nunc Pro Tunc Order, addressing one of the two objections raised by the Industrial Group and OUCC. Specifically, the Commission agreed that Duke misapplied the migration adjustment by limiting the disallowance under the Final Order to the residential and small commercial classes, without reflecting the corresponding disallowance for *all* customer classes. Id. at 2. The Commission found that Duke consequently overstated its revenue adjustment by an additional \$8.4 million. Id. at 3 ¶2. The Nunc Pro Tunc Order, however, did not order Duke to revise its compliance filing to reflect that change, or provide for any associated rate relief. Consequently, the Step 1 rates now being charged by Duke reflect the inclusion of the additional \$8.4 million that the Commission has determined to be improperly included by Duke in the authorized revenue increase.

9. On April 16, 2025, the Commission issued its Order on Reconsideration, denying both the Duke and the Nucor requests for reconsideration or clarification. Duke's Petition was denied without findings or commentary. Id. at 3. The Order on Reconsideration did not call for any revision to Duke's compliance filing to account for the April 9th Nunc Pro Tunc Order, and did not address the other objection raised by the Industrial Group and OUCC (concerning the net

¹ Aside from the point resolved in the April 9, 2025 Nunc Pro Tunc Order, Duke also asserted that the overstated migration adjustment was a rate design issue rather than a revenue question, but only insofar as Duke designed its rates to collect more than the authorized revenue requirements. As for the Edwardsport depreciation issue, Duke did not deny in its March 7th Reply that the Commission rejected its proposed interim survivor curves for that facility, which necessarily alters the corresponding net salvage rate, yet Duke adjusted only the interim survivor curve but not the net salvage rate for Edwardsport in its compliance filing.

salvage rate for Edwardsport) at all. By denying Duke's Petition, the Commission rejected Duke's proposals to reformulate the Final Order to support the rate computations reflected in the Step 1 compliance filing. Nevertheless, the deviations from the Final Order in Duke's compliance filing, as identified by the Industrial Group and OUCC, remain in place.

10. The Commission's authority to provide relief on objections to a utility's compliance filing is long established. Objections to a NIPSCO compliance filing in 2010 led to the commencement of a new rate case, with the consequence that the rates proposed in the 2010 compliance filing never went into effect. See NIPSCO, Cause No. 43969 (Dec. 21, 2011) at 3. Further, in Airco Industrial Gases v. Indiana Michigan Power Co., 614 N.E.2d 951 (Ind. App. 1993), the Court of Appeals reviewed a Commission order on an objection to a compliance filing, and held that a deviation from the underlying order is an unreasonable act or practice within the scope of Ind. Code 8-1-2-69, warranting a refund remedy. Id. at 954 ("Thus IMP collected and retained monies from ratepayers to which it would not have been entitled but for IMP filing an inappropriate tariff."). That is exactly what is happening here: Duke is currently over-collecting rate revenue that includes the \$8.4 million disallowance confirmed by the Commission in the April 9th Nunc Pro Tunc Order. The ongoing over-collection also reflects the other error raised by the Industrial Group and OUCC, relating to the net salvage rate for Edwardsport, which the Commission to date has not addressed or corrected. The only lawful rates are those authorized by the Commission, yet Duke is currently collecting rate revenue in excess of the levels allowed by the Commission's findings and conclusions.

11. In the alternative, both the Final Order (at pp. 84-85) and the February 25th Entry stated that a review period is not necessary for the Step 1 compliance filing, but a 30-day period is available to address objections to the Step 2 compliance filing in early 2026. In addition, the

Final Order adopted the proposal put forward by Duke witness Christa Graft, who “explained the difference between jurisdictional revenues approved in the Commission’s Order in this proceeding and the Step 2 jurisdictional revenues will be credited to customers in Rider No. 67 rates.” By denying Duke’s Petition without providing relief on the objections raised by the Industrial Group and OUCC, it may be the Commission’s expectation that the objections already raised in connection with the Step 1 compliance filing will be resolved in connection with the planned Step 2 review. An error in a compliance filing already identified by the Commission, and another apparent on the face of Duke’s submission, should be corrected promptly and not await a remedy next year following an accumulation of unlawful overcharges. In the event, however, that the Commission expects to address the outstanding objections at the Step 2 stage, the Industrial Group and OUCC request that the Commission so specify, in order to avoid unproductive debate at that juncture as to whether those objections have been properly preserved.

WHEREFORE, the Industrial Group and OUCC respectfully request a ruling on their pending objections to Duke’s compliance filing, including the provision of rate and refund relief, or in the alternative, confirmation by the Commission that the merits of those objections are preserved for determination in connection with the Step 2 compliance filing in early 2026.

Respectfully submitted,

/s/ Todd A. Richardson

Todd A. Richardson, Atty. No. 16620-49

LEWIS & KAPPES, P.C.

One American Square, Suite 2500

Indianapolis, IN 46282-0003

Telephone: (317) 639-1210

Facsimile: (317) 639-4882

Email: TRichardson@Lewis-Kappes.com

ASchmoll@Lewis-Kappes.com

TBalzer@Lewis-Kappes.com

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing document was served via electronic mail, this 22nd day of April, 2025:

DUKE ENERGY

Elizabeth A. Heneghan
Andrew J. Wells
Liane K. Steffes
DUKE ENERGY BUSINESS SERVICES LLC
1000 East Main Street
Plainfield, IN 46168
beth.heneghan@duke-energy.com
andrew.wells@duke-energy.com
liane.steffes@duke-energy.com

Nicholas K. Kile
Hillary J. Close
Lauren M. Box
Lauren Aguilar
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, IN 46204
Nicholas.kile@btlaw.com
Hillary.close@btlaw.com
Lauren.box@btlaw.com
Lauren.aguilar@btlaw.com

OUC

Thomas R Harper
Adam J. Kashin
OFFICE OF UTILITY CONSUMER COUNSELOR
115 West Washington Street, Suite 1500 South
Indianapolis, IN 46204
ThHarper@oucc.in.gov
AKashin@oucc.in.gov
infomgt@oucc.in.gov

SIERRA CLUB

Kim E. Ferraro
CONSERVATION LAW CENTER, INDIANA
UNIVERSITY
116 S Indiana Ave, Suite 4
Bloomington, IN 47408
kimferra@iu.edu

CAC

Jennifer A. Washburn
CITIZENS ACTION COALITION OF INDIANA, INC.
1915 West 18th Street, Suite C
Indianapolis, IN 46202
jwashburn@citact.org
rkurtz@citact.org

NUCOR

Anne E. Becker
LEWIS & KAPPES, P.C.
One American Square, Suite 2500
Indianapolis, IN 46282-0003
abecker@lewis-kappes.com
atyler@lewis-kappes.com

WVPA

Jeremy L. Fetty
PARR RICHEY
% Wabash Valley Power Alliance
6720 Intech Blvd.
Indianapolis, IN 46278
jfetty@parrlaw.com

L. Robyn Zoccola
PARR RICHEY
251 N. Illinois Street, Suite 1800
Indianapolis, IN 46204
rzoccola@parrlaw.com

BLOCKE

Joseph P. Rompala
LEWIS & KAPPES, P.C.
One American Square, Suite 2500
Indianapolis, IN 46282-0003
jrompala@lewis-kappes.com
atyler@lewis-kappes.com

KROGER

Kurt J. Boehm
Jody Kyler Cohn
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
KBoehm@BKLawfirm.com
JKylerCohn@BKLawfirm.com

Justin Bieber
ENERGY STRATEGIES, LLC
Parkside Towers
111 E. Broadway Street, Suite 1200
Salt Lake City, UT 84111
jbieber@energystrat.com

John P. Cook
JOHN P. COOK & ASSOCIATES
900 W. Jefferson Street
Franklin, IN 46131
John.cookassociates@earthlink.net

WALMART

Eric E. Kinder
SPILMAN THOMAS & BATTLE, PLLC
300 Kanawha Boulevard, East
PO Box 273
Charleston, WV 25321
ekinder@spilmanlaw.com

Barry A. Naum
Steven W. Lee
SPILMAN THOMAS & BATTLE, PLLC
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
bnaum@spilmanlaw.com
slee@spilmanlaw.com

RIVER RIDGE POA**ROLLS ROYCE****RRDA**

Nikki G. Shoultz
Kristina K. Wheeler
Alexandra L. Jones
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
nshoultz@boselaw.com
kwheeler@boselaw.com
lbood@boselaw.com
ajones@boselaw.com

CITY OF WESTFIELD

Nikki G. Shoultz
Alexandra L. Jones
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
nshoultz@boselaw.com
lbood@boselaw.com
ajones@boselaw.com

SDI

Clayton C. Miller
CLAYTON MILLER LAW, P.C.
PO Box 441159
Indianapolis, IN 46244
clay@claytonmillerlaw.com

/s/ Todd A. Richardson

Todd A. Richardson
LEWIS & KAPPES, P.C.
One American Square, Suite 2500
Indianapolis, IN 46282-0003