

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF DUKE ENERGY INDIANA, LLC)
FOR APPROVAL OF A NEW ELECTRIC)
SUPPLY AGREEMENT WITH STEEL) CAUSE NO. 45466
DYNAMICS, INC. ARISING FROM)
OPERATION OF THE BAR STEEL MILL IN)
PITTSBORO, INDIANA)

SUBMISSION OF JOINT PROPOSED FORM OF ORDER

Duke Energy Indiana, LLC (“Duke Energy Indiana”) and the Indiana Office of Utility Consumer Counselor (“OUCC”) (“Parties”), hereby respectfully submit their Joint Proposed Form of Order in the above-captioned Cause to the Indiana Utility Regulatory Commission.

Respectfully submitted,

DUKE ENERGY INDIANA, LLC

By: 

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Submission of Joint Proposed Form of Order was electronically delivered this 25th day of June 2021 to:

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DYNAMICS, INC. ARISING FROM)	Approved:
OPERATION OF THE BAR STEEL MILL IN)	
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ORDER OF THE COMMISSION

Presiding Officers:

David Ziegner, Commissioner

Loraine Seyfried, Administrative Law Judge

On December 15, 2020, Duke Energy Indiana, LLC (“Duke Energy Indiana”, “Company”, or “Petitioner”) filed its Verified Motion on an Expedited Basis for Interim Order requesting the Indiana Utility Regulatory Commission (“Commission”) approve an Interim Order extending the current Steel Dynamics, Inc. (“SDI”) Electric Supply Agreements (“Agreement”), as approved in Cause No. 44662, for the period prior to the issuance of a Final Order in this Cause, as the SDI Agreement was set to expire on December 31, 2020. In support of its Motion, Duke Energy Indiana provided the Verified Declaration of Roger A. Flick, II, Manager, Rates and Regulatory Strategy for Duke Energy Indiana. Also, on December 15, 2020, Duke Energy Indiana filed its Verified Petition with the Commission initiating this Cause. In the Petition, Duke Energy Indiana advised that it and SDI had been extensively negotiating in good faith concerning the rates, charges, terms, and conditions of a replacement Agreement; however, they would not be able to finalize the terms of a new Agreement prior to the expiration of the current Agreements on December 31, 2020. As such, Duke Energy Indiana, in its Petition, requested that the Commission: (1) extend the rates, charges, terms, and conditions of the current Agreements set to expire on December 31, 2020, on an interim basis, until the issuance of a Final Order in this Cause or Petitioner withdraws its Petition, and (2) approve a new Agreement between Duke Energy Indiana and SDI, including the rates, charges, terms, and conditions for electric utility service there under.

On December 22, 2020, the Presiding Officers, having reviewed Duke Energy Indiana’s Motion, set this matter for a Prehearing Conference and Preliminary Hearing on January 14, 2021, at 1:30 p.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. On January 6, 2021, the Presiding Officers notified the Parties that due to the ongoing COVID-19 pandemic, the Prehearing Conference and Preliminary Hearing would be conducted virtually via Webex. On January 14, 2021, the Prehearing Conference and Preliminary Hearing was held with Petitioner and the OUCC present. On January 20, 2021, the Commission issued its Prehearing Conference and Interim Order of the Commission establishing a procedural schedule in this matter and granting Duke Energy Indiana authority to extend the rates, charges, terms, and conditions of

the current Agreements, which are set to expire on December 31, 2020, on an interim basis, until issuance of a Final Order in this Cause or Petitioner's withdrawal of its Petition.

In support of its Petition, on February 10, 2021, Duke Energy Indiana filed its Motion for Confidentiality and supporting Affidavit of Roger A. Flick, II, and the Direct Testimony of Roger A. Flick, II, Manager, Rates and Regulatory Strategy for Duke Energy Indiana.

On February 26, 2021, the Presiding Officers granted Duke Energy Indiana's Motion for Confidentiality by Docket Entry and Duke Energy Indiana filed its Notice of Submission of its Confidential Exhibits.

On May 14, 2021, the OUCC filed the Direct Testimony of Peter M. Boerger, Ph.D. and on May 28, 2021, Duke Energy Indiana filed the Rebuttal Testimony of Roger A. Flick, II.

On June 11, 2021, SDI filed its Petition to Intervene and the Commission issued a Docket Entry stating that any objections to SDI's Petition to Intervene needed to be filed on or before June 14, 2021.

The Commission set this matter for an Evidentiary Hearing on June 16, 2021, at 1:30 p.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. A Docket Entry was issued on June 9, 2021, advising that due to the ongoing COVID-19 pandemic, the hearing would be conducted via WebEx and providing related participation information. At the hearing, the Commission advised they had not received any objections to SDI's Petition to Intervene, and as such, granted SDI's intervention in the proceeding. Duke Energy Indiana, the OUCC, and SDI participated in the hearing via WebEx video, at which time the testimony and exhibits of Duke Energy Indiana and the OUCC were admitted without objection.

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

1. Notice and Jurisdiction. Due, legal, and timely notice of the evidentiary 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 Public Service Commission Act, as amended, Ind. Code ch. 8-1-2. Under Ind. Code §§ 8-1-2-24 and 25, the Commission has jurisdiction over Petitioner's rates and charges related to customer-specific service contracts. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. Petitioner's Characteristics and Business. 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 rendering electric utility service in the State of Indiana and owns, operates, manages, and controls, among other things, plants and equipment within the State of Indiana used and useful for the production, transmission, delivery, and furnishing of electric service to the public. Duke Energy Indiana directly supplies electric energy to approximately 855,000 customers

located in 69 counties in the central, north central, and southern parts of Indiana, and supplies steam service to an industrial customer whose manufacturing facility is located adjacent to Duke Energy Indiana's Cayuga Generating Station. Duke Energy Indiana also sells electric energy for resale to Wabash Valley Power Association, Inc., Indiana Municipal Power Agency and to other utilities which in turn supply electric utility service to numerous customers in areas not served directly by Petitioner.

3. Background and Relief Sought by this Petition. On January 14, 1998, in Cause No. 40893, the Commission approved an Electric Supply Agreement negotiated between Petitioner and Qualitech for the provision of electricity, the lease of the on-site electric substation to Qualitech, the establishment of confidential procedures, along with the approval of a special agreement between Petitioner and Hendricks County REMC (now known as Hendricks Power Cooperative) whereby Petitioner was authorized to be the electricity supplier for the new Qualitech bar mill located in Pittsboro, Indiana ("Pittsboro Plant"). Operation of the Pittsboro Plant requires a large supply of oxygen and other industrial gases. To provide a supply of oxygen and other industrial gases to the Pittsboro Plant, Air Liquide America Corporation ("Air Liquide") located a new oxygen manufacturing facility within the Qualitech industrial site. Accordingly, Petitioner and Air Liquide executed a special contract for the provision of electricity, which was approved on July 8, 1998, in Cause No. 41150.

While Qualitech did construct the bar mill, commercial operation was for a limited time and Qualitech soon filed for bankruptcy protection. After sitting vacant for approximately three years, the Pittsboro Plant was purchased by SDI in 2002. In 2004, SDI commenced operation of the significantly improved Pittsboro Plant, obtaining its oxygen supply from the on-site Air Liquide facility. To facilitate the economic development expected to arise from the SDI operation and to meet the Pittsboro Plant's anticipated electric load of up to 100 MW of demand, SDI and Petitioner entered into negotiations and agreed upon an Electric Supply Agreement. The term of that contract was three years from the latter of Commission approval or commercial operation of the Pittsboro Plant. On May 12, 2004, the Commission issued an Order in Cause No. 42565 approving the Electric Supply Agreement (as amended April 13, 2004) and establishing confidential procedures for certain information provided to the Commission. As a result, the Electric Supply Agreement was to terminate as of May 12, 2007.

Prior to the expiration of that three-year Electric Supply Agreement, Petitioner and SDI engaged in good faith, arms-length negotiations regarding a subsequent Agreement. As a result of those negotiations, the Parties agreed on a one-year extension of the Electric Supply Agreement. On May 9, 2007, in Cause No. 43243, the Commission approved the one-year extension of the Electric Supply Agreement and again provided protection of confidential information. Such Electric Supply Agreement expired in May 2008 and SDI began receiving electric service under Petitioner's Standard Rate HLF and participated in Petitioner's PowerShare® program. Petitioner and SDI continued their negotiations and executed a new Electric Supply Agreement on June 25, 2009 ("2009 Agreement"), which was approved by the Commission on October 21, 2009 in Cause No. 43737. The 2009 Agreement provided for a three-year term with opportunity for two one-year automatic extensions upon notice to the Commission. On April 18, 2012, Petitioner and SDI filed a Notice of Contract Extension with the Commission and noted therein that they were working on certain modifications to the 2009 Agreement. Petitioner and SDI negotiated a new November 30,

2012 Addendum to the SDI Electric Supply Agreement (“2012 Addendum”), concerning the provisions governing electric utility service to the Pittsboro Plant. The 2012 Addendum was approved by the Commission in Cause No. 44279, on June 19, 2013, and would expire October 31, 2015.

The prior special contract between Petitioner and Air Liquide was terminated by mutual agreement in 2008 and Air Liquide then began service under its otherwise applicable tariff, Rate HLF. Petitioner and Air Liquide negotiated a November 30, 2012 Electric Supply Agreement which was also approved in Cause No. 44279 on June 19, 2013. That Agreement also expired on October 31, 2015. Petitioner and Air Liquide have negotiated a new 2015 Addendum to the current Electric Supply Agreement (“2015 A.L. Addendum”) (The 2009 Electric Service Agreement, 2012 Addendum, 2015 SDI Addendum, and 2015 A.L. Addendum are collectively referred to as the “SDI Electric Supply Agreements”). The Commission approved the 2015 Addendum and 2015 A.L. Addendum on January 13, 2016, in Cause No. 44662. The current SDI Electric Supply Agreements are set to expire on December 31, 2020.

Petitioner and SDI have extensively negotiated in good faith concerning the rates, charges, terms, and conditions of a replacement electric supply agreement, and have concluded it is in their mutual best interests that a new Electric Supply Agreement be reached and filed with the Commission for approval. Petitioner and SDI advised that they were diligently working towards finalization of a new Electric Supply Agreement but would be unable to file it before the expiration of the then current Agreement on December 31, 2020. As such, Petitioner requested that the Commission approve an Interim Order extending the current SDI Supply Agreements’ terms, as approved in Cause No. 44662, for the period prior to issuance of a Final Order in this Cause or Petitioner withdraws its Petition. Petitioner further requested that the Commission approve a new Electric Supply Agreement between Duke Energy Indiana and SDI, including the rates, charges, terms, and conditions for electric utility service.

4. Evidence.

A. Petitioner’s Case-in-Chief. Petitioner presented the testimony of Mr. Roger A. Flick, II, Manager, Rates and Regulatory Strategy, in its case-in-chief testimony (entered into evidence as Petitioner’s Exhibit 1 and 1C). Mr. Flick also sponsored Petitioner’s Exhibit 1-A, a copy of the Verified Petition, and Petitioner’s Confidential Exhibit 1-B and Petitioner’s Public Exhibit 1-B, a copy of the Special Retail Electric Service Agreement dated as of February 3, 2021 (“Agreement”), by and between Duke Energy Indiana and SDI. Mr. Flick testified that Duke Energy Indiana is seeking the Commission’s approval of the Agreement and protection of related confidential information.

Mr. Flick testified as to the background regarding SDI’s operation of the Pittsboro Facility and the proposed Agreement. As he testified, SDI purchased Qualitech Steel Corporation’s Pittsboro site in 2002 as part of Qualitech’s bankruptcy proceedings. On May 12, 2004, the Commission approved the initial Electric Supply Agreement (“ESA”) between Duke Energy Indiana and SDI in Cause No. 42565. On May 9, 2007, the Commission also approved a one-year extension of the ESA in Cause No. 43243. Duke Energy Indiana and Air Liquide later terminated their previously approved special contract by mutual agreement on April 1, 2008, and Air Liquide

began receiving electric service under Petitioner's High Load Factor ("HLF") Service Rate Schedule. The ESA between Petitioner and SDI expired on May 1, 2008, and like Air Liquide, SDI began receiving electric service under Petitioner's HLF Service Rate Schedule. Petitioner and SDI later executed a new Electric Supply Agreement, which was approved by the Commission on October 21, 2009 in Cause No. 43737. The Commission's Order in 44279, dated June 19, 2013, approved an addendum to the ESA. Most recently, the Order in Cause No. 44662, dated January 13, 2016, approved an additional addendum to the ESA.

Mr. Flick also testified that Petitioner was seeking confidential treatment of the provisions relating to pricing and other negotiated and competitive terms in the proposed Agreement, as well as in the prefiled testimony and exhibits discussing these provisions. Mr. Flick testified that the reason Petitioner was requesting that the information be treated as confidential was knowledge of these provisions concerning pricing by other customers would establish a price ceiling, structure, or pricing methodology, thereby limiting the potential revenues and benefits that could accrue to Petitioner, its retail customers, and its shareholders. Also, knowledge of other competitive, negotiated terms could result in other entities demanding the same or more favorable terms in negotiations, even if not warranted by their operational characteristics or the facts of their circumstances. In addition, knowledge of the pricing and other negotiated competitive provisions by potential power supply competitors could enable them to gain unfair advantage in future competitive situations. As such, Petitioner requested, pursuant to Ind. Code § 5-14-3-4(a)(4), the Commission find that the redacted provisions of the proposed Agreement and the prefiled testimony and exhibits discussing these provisions contain "trade secrets," as that term is defined in Ind. Code § 24-2-3-2, and are thereby excepted from the access to public record provisions contained in Ind. Code §§ 5-14-3-3 and -3.5. Mr. Flick further testified that Petitioner and its affiliate, Duke Energy Business Services, LLC has not disclosed the confidential information, and will only be disclosed to individuals on a "need-to-know" basis subject to confidentiality protections. Mr. Flick further pointed to his Affidavit attached to the Motion for Protection of Confidential and Proprietary Information and that SDI has taken similar steps to maintain the confidentiality of the pricing provision of the proposed Agreement.

Mr. Flick testified as to the confidential substantive changes and clarifications to the proposed Agreement and outlined that SDI will comply with all necessary requirements for interruptible load to qualify as a Load Modifying Resource ("LMR") in accordance with current and any subsequent Midcontinent ISO ("MISO") requirements. The other terms of the Agreement are outlined in the proposed Agreement attached as Petitioner's Confidential Exhibit 1-B. Mr. Flick further testified that the proposed Agreement is to be effective for three (3) years from the Commencement Date of the proposed Agreement, with the opportunity for two automatic one-year extensions. Furthermore, if not extended by agreement of the Parties and approval by the Commission, SDI will shift back to Standard Rate HLF or another applicable tariff.

Mr. Flick testified as to the confidential estimated electrical requirements for the SDI Pittsboro Plant. He also testified that Petitioner would not need to install any additional facilities in order to provide the services outlined in the proposed Agreement. Mr. Flick testified that the proposed Agreement would benefit all customers as the interruptible portion of SDI's load can be used to satisfy a portion of Petitioner's Resource Adequacy Requirements with MISO and it provides for contribution to Petitioner's fixed costs, which effectively conveys benefits to all

customers by spreading those costs across more ratepayers. In addition, the relief requested encourages future load growth at SDI's Pittsboro facility. Mr. Flick further testified that the revenue received from SDI will cover all the incremental cost of Petitioner related to serving SDI's electrical load at the Pittsboro site, plus provide a contribution to the recovery of Petitioner's fixed costs. SDI will benefit from updated rates for electric service and the State of Indiana will benefit from the employment created and retained by SDI, as well as from the various Indiana tax revenues which are collected from SDI, its employees, and satellite businesses providing services to the SDI plant.

Mr. Flick testified that the continued provision of electric service to the Pittsboro Plant will not adversely affect service to other Duke Energy Indiana customers, because Petitioner can reliably serve SDI's electrical load at the Pittsboro Plant. The proposed Agreement also contains terms intended to prevent SDI's service from impacting other customers' power quality. Mr. Flick further testified that the proposed modifications to the pricing provisions of the proposed Agreement were intended to retain SDI's existing load and to incent increased future load at the Pittsboro site. Due to the volatile nature of the steel industry, the ultimate impacts of the proposed modifications to SDI and Petitioner's other customers are highly dependent on future circumstances and not easily quantified at this time.

Mr. Flick concluded his testimony by testifying that the proposed Agreement was in the public interest as it covers incremental costs, contributes to fixed cost recovery, creates material economic benefits, and the interruptible provision benefits all customers. He further testified that it was his opinion that the proposed Agreement was reasonable and just, practical and advantageous to the parties, and not inconsistent with the purposes of the Public Service Commission Act, as amended. Mr. Flick testified that Petitioner was not seeking any order from the Commission that would establish any precedent for terms or types of benefits offered by the Agreement. He testified that Petitioner considers this a unique situation and is simply seeking the approval of the proposed negotiated Agreement for its specified limited terms under the current unique factual circumstances. Mr. Flick testified that he believes the Commission should approve the proposed Agreement and should also recognize that without Commission approval, SDI would be subject to Standard Tariff pricing under HLF or other applicable tariff, eliminating the benefits of the proposed Agreement. As such, Petitioner requests that the Commission approve the proposed Agreement.

B. OUCC's Case-in-Chief. The OUCC presented the testimony of Senior Utility Analyst Peter M. Boerger, Ph.D. (entered into evidence as Public's Exhibit 1). Dr. Boerger testified that he proposes a small revision to the contract language needed to ensure a balance between the contracted parties and Duke Energy Indiana's other customers is retained, should SDI's option under Section 3.6 of the Agreement is struck. Beyond the proposed revision, he finds the Agreement to be reasonable and in the public interest.

Dr. Boerger testified that Section 3.6 of the proposed Agreement deals with SDI's ability to request conversion of a portion of its non-firm load to firm service over the course of the Agreement; however, the section does not address compensation for the amount of the converted load. It does not address how the conversion will affect the Native Load Service Cap or the Load Cap, as defined in the Agreement. Without addressing those terms, the other provisions of the Agreement will conflict with the intention of Section 3.6, which is to ensure converted load pays

the then-current retail tariffed rate for firm HLF service and SDI's obligation to MISO as a Load Modifying Resource be reduced by the amount of its converted load. To remedy this, he suggests adding the following sentence to the end of Section 3.6: "Any amount converted from non-firm to firm service under this Service shall increase the Native Load Service Cap and the Load Cap by the same amount." Dr. Boerger testified that this proposed change will ensure SDI pays full retail HLF rate for the increased firm service that it will receive by raising the Load Cap to reflect the increased level of firm service received as a result of the load conversion. Dr. Boerger believes that based on his reading of the contract, if the Native Load Service cap is not modified as he proposes, SDI would not have its obligations to MISO reduced by the amount of its converted load.

Dr. Boerger also testified that in the absence of his proposed language addition, or other language to the same effect, the contract would have conflicting provisions. Dr. Boerger further testified that the sentence he proposes be added to Section 3.6, or language to similar effect, will resolve the conflicts in contractual language and ensure all parties receive the benefit of the balance struck in the proposed Agreement. With this modification, Dr. Boerger finds that the proposed Agreement will be in the public interest and recommends the Commission approve the Agreement.

C. Petitioner's Rebuttal Testimony. Petitioner presented the rebuttal testimony of Mr. Roger A. Flick, II (entered into evidence as Petitioner's Exhibit 2 and 2C). Mr. Flick addressed Dr. Boerger's one concern and his requested modification to the proposed Agreement. Mr. Flick testified that he did not completely agree with Dr. Boerger's concern and felt the proposed Agreement adequately addressed compensation for any amount of non-firm load converted to firm load service outlined in Section 3.6. Mr. Flick further testified that Petitioner did understand and appreciate Dr. Boerger's concern; however, Petitioner did not agree with Dr. Boerger's recommended modification to the language in the proposed Agreement. Mr. Flick testified that Dr. Boerger's recommended modification to Section 3.6 of the proposed Agreement would not resolve the issue and could unintentionally contractually limit flexibility with respect to future changes to SDI's level of service.

Mr. Flick testified that Petitioner and SDI agreed to the following language modification in Section 3.6 to address Dr. Boerger's concern:

- 3.6. Conversion to Firm Service. Customer may determine that it desires that some or all of its service to be provided under this Agreement (including any extension of this Agreement) be provided as Company's Native Load service. Any such conversion to Company's Native Load service shall occur on a prospective basis only for the upcoming MISO planning year period, which is defined as the period starting June 1st of a calendar year to May 31st of the following calendar year ("MISO Planning Year"). If Customer desires conversion to Company's Native Load service, Customer shall provide written notice to Company by no later than January 15th for the upcoming MISO Planning Year, which notice shall include the amount of load for which Customer desires to be served as Company's Native Load service. Company's Native Load service

to Customer shall be provided and received in accordance with the then-applicable provisions of Company's Retail Electric Tariff for a duration not less than the remaining duration of this Agreement and Customer's remaining non-firm service shall be provided under this Agreement. Customer agrees that the opportunity to convert to Company's Native Load service is expressly intended to be exercised on occasion from time-to-time, and Company shall be entitled in its sole discretion to refuse or otherwise reject such requests from Customer if exercised more than three (3) times over the Term of this Agreement.

Mr. Flick testified that Duke Energy Indiana incorporated this language in the First Amended and Restated Special Retail Electric Service Agreement ("First Amended and Restated Agreement"), Petitioner's Confidential Exhibit 2-A (RAF) and Petitioner's Public Exhibit 2-A (RAF). As a result of this First Amended and Restated Agreement language modification to Section 3.6, other provisions of the contract had to be modified in order to reference the termination of the original proposed Agreement. Petitioner's Confidential Exhibit 2-B (RAF) and Petitioner's Public Exhibit 2-B (RAF), are the redlined versions of the First Amended and Restated Agreement, in order to identify the modifications to the original proposed Agreement.

Mr. Flick testified that these modifications address Dr. Boerger's concern and clarify the terminology surrounding the level and type of service discussed in Section 3.6, without unintentionally contractually limiting flexibility or adding redundant and potentially confusing additional language. Mr. Flick concluded his testimony testifying that the modified language in Petitioner's Confidential Exhibit 2-A (RAF) and Petitioner's Public Exhibit 2-A (RAF) is still reasonable and 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.

5. Commission Discussion and Findings. Duke Energy Indiana seeks approval of the proposed Agreement with SDI under the provisions of Ind. Code §§ 8-1-2-24 ("Section 24") and -25 ("Section 25"). *Petitioner's Verified Petition, Section 6.* Section 24 of the Act provides:

Nothing in this chapter shall be taken to prohibit a public utility from entering into any reasonable arrangement with its customers or consumers, or with its employees, or with any municipality in which any of its property is located, 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.

Section 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 that modify tariff provisions are lawful if the Commission finds the provisions to be reasonable and just, practicable and advantageous to the parties, in the public interest, and not inconsistent with the purposes of the Public Service Commission Act.

Based on the evidence presented, we find that this special contracted Agreement between Petitioner and SDI satisfies the legal requirements under Ind. Code §§ 8-1-2-24 and -25. We find this special contracted Agreement will extend the existing rates, which provide for the recovery of Petitioner's incremental costs, a contribution to fixed costs, and meet the customer's needs for electric power supply. *Direct Testimony of Roger A. Flick, II, page 6, lines 7-11*. Additionally, per the MISO tariff and terms of the Agreement, SDI will comply with all necessary requirements for interruptible load to qualify as an LMR in accordance with the current and subsequent MISO requirements. *Direct Testimony of Roger A. Flick, II, page 7, lines 1-4*. Further, we find that the interruptible portion of SDI's load can be used to satisfy a portion of Petitioner's Resource Adequacy Requirements with MISO and provides for contribution to Petitioner's fixed costs. This effectively conveys benefits to all customers by spreading those costs across more ratepayers and encourages future load growth at SDI's Pittsboro facility, which will benefit the local and state economies. *Direct Testimony of Roger A. Flick, II, page 8, lines 4-9*. We further find that the revenue received from SDI will cover all the incremental cost of Petitioner related to serving SDI's electrical load, plus provide a contribution to the recovery of Petitioner's fixed costs. SDI will benefit from updated rates for electrical service and the State of Indiana will benefit from the employment created and retained by SDI, as well as, from the various Indiana tax revenues which are collected from SDI, its employees, and satellite businesses providing services to the SDI plant. *Direct Testimony of Roger A. Flick, II, page 8, lines 22-23 through page 9, lines 1 through 5*. The evidence also demonstrates that the proposed Agreement is important to the ongoing operation of SDI's Pittsboro, Indiana facility. *Direct Testimony of Roger A. Flick, II, page 6, lines 11-13*.

The Commission reviewed the OUCC's testimony and its recommendation to add the following sentence to the end of Section 3.6: "Any amount converted from non-firm to firm service under this Section shall increase the Native Load Service Cap and the Load Cap by the same amount." *Direct Testimony of Peter M. Boerger, Ph.D., page 2, lines 13-16*. The Commission also reviewed Petitioner's rebuttal testimony addressing the OUCC's recommendation and Petitioner's proposed modification to the proposed Agreement in order to alleviate the OUCC's concern. *Rebuttal Testimony of Roger A. Flick, II, page 3, line 14 through page 4, line 14*. The Commission finds that the proposed Agreement, as modified in

the First Amended and Restated Special Retail Electric Service Agreement (attached to Mr. Flick's Rebuttal Testimony as Petitioner's Confidential Exhibit 2-A (RAF)) addresses the OUCC's concern as outlined in Dr. Boerger's testimony (*Direct Testimony of Peter M. Boerger, Ph.D., page 2, lines 2-16*) and clarifies the terminology surrounding the level and type of service discussed in Section 3.6, without unintentionally contractually limiting flexibility or adding redundant and potentially confusing additional language. *Rebuttal Testimony of Roger A. Flick, II, page 4, line 28 through page 5 line 2.*

Based on the evidence presented, we find and conclude that the terms and conditions contemplated in the First Amended and Restated Special Retail Electric Service Agreement entered into between Petitioner and SDI on May 28, 2021, ("First Amended and Restated Agreement") and entered into evidence as Petitioner's Confidential Exhibit 2-A (RAF), are just and reasonable, practicable and advantageous to the parties, and are not inconsistent with the purposes of the Public Service Commission Act, as amended. Accordingly, we find that the First Amended and Restated Agreement is in the public interest and is therefore approved as submitted to this Commission.

6. Confidential Information. Petitioner filed a Motion for Protection of Confidential and Proprietary Information on February 10, 2021, which was supported by affidavit showing certain information to be submitted to the Commission was trade secret information within the scope of Ind. Code § 5-14-3-4(a)(4) and defined by Ind. Code § 24-2-3-2. The Presiding Officers issued a Docket Entry on February 26, 2021, finding such information to be preliminarily confidential, after which Petitioner submitted such information under seal. We find all such information is confidential pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29, is exempt from public access and disclosure by Indiana law, 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. The requested First Amended and Restated Agreement between Duke Energy Indiana, LLC and Steel Dynamics, Inc. entered into on May 28, 2021, is hereby approved in its entirety.
2. The material submitted to the Commission under seal is declared to contain trade secret information as defined in Ind. Code § 24-2-3-2, and therefore, is exempt from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29.
3. This Order shall be effective on and after the date of its approval.

HUSTON, FREEMAN, KREVDA, OBER, 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**