

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

APPLICATION OF DUKE ENERGY)	
INDIANA, LLC FOR APPROVAL OF A)	
CHANGE IN ITS FUEL COST)	
ADJUSTMENT FOR ELECTRIC)	
SERVICE, FOR APPROVAL OF A)	
CHANGE IN ITS FUEL COST)	
ADJUSTMENT FOR HIGH PRESSURE)	CAUSE NO. 38707 – FAC123 S1
STEAM SERVICE, AND TO UPDATE)	
MONTHLY BENCHMARKS FOR)	
CALCULATION OF PURCHASED)	
POWER COSTS IN ACCORDANCE)	
WITH INDIANA CODE §8-1-2-42,)	
INDIANA CODE §8-1-2-42.3 AND)	
VARIOUS ORDERS OF THE INDIANA)	
UTILITY REGULATORY COMMISSION)	

**JOINT MOTION FOR LEAVE TO SUBMIT AS EVIDENCE AFFIDAVIT IN
RESPONSE TO DUKE ENERGY’S RESPONSE TO THE COMMISSION’S QUESTION
FROM THE OCTOBER 30, 2020 HEARING**

Sierra Club and Citizens Action Coalition (“CAC”) (collectively, “Joint Intervenors”) respectfully request leave to submit as a late filed exhibit into the evidentiary record in the above captioned proceeding the attached affidavit by Dr. Jeremy Fisher providing further information relevant to Duke Energy Indiana LLC’s (“Duke” or “DEI”) Response to the Indiana Utility Regulatory Commission’s (“Commission”) question from the October 30, 2020 evidentiary hearing in the above-captioned matter. Dr. Fisher’s affidavit is attached herein as Exhibit 1. Specifically, Dr. Fisher has learned through direct communication with Dr. David Patton, the author of the MISO Independent Market Monitor (“IMM”) Study that was the subject of the Commission’s October 30 question, that Edwardsport was not analyzed for purposes of the study. Fisher Affidavit at ¶5. In addition, the Study does not use actual or reported utility fuel costs, production costs, or offer prices in its analysis, and uses a different methodology than

Duke and other utilities use in assessing the economics of commitment practices. Fisher Affidavit at ¶¶ 6-10.

At the October 30, 2020 evidentiary hearing, the Commission asked Duke to contact the author(s) of the September 30, 2020 IMM Study to determine whether Duke was one of the five least efficient integrated utility owners of coal resources (or “Bottom 5”), as described in that publication. Both the Commission and CAC had previously requested this same information from Duke, through a Docket Entry and data request, respectively; in response to those earlier inquiries, Duke had denied it knew or had any basis to know whether it was among the “Bottom 5.” In response to the Commission’s oral request at the October 30 hearing, however, Duke submitted an affidavit from John Swez stating that Mr. Swez “confirmed with the author [of the IMM report] that Duke Energy Indiana was not identified as one of the five (5) least efficient owners of coal resources addressed in the IMM Study.” Affidavit of John Swez dated November 5, 2020 (“Swez Affidavit”) at ¶7. Mr. Swez’s affidavit did not provide any additional information as to how the IMM identified the five least efficient utilities or the identity of the individual who provided this information, and Mr. Swez was not made available for cross-examination with respect to this affidavit. Given the late and limited information offered by Mr. Swez, Joint Intervenors respectfully request leave to file the attached affidavit by Sierra Club’s expert Dr. Fisher, which provides pertinent information regarding what information about Duke’s commitment decisions was and was not considered by the IMM in identifying the five least efficient integrated utilities in the MISO market, most significantly that the Edwardsport IGCC plant was not included in this analysis.

1. Procedural History

On July 2, 2020, the Commission issued a Docket Entry with the operative procedural schedule for the above-captioned proceeding, setting July 31, 2020 as the deadline for the OUCC and all Intervenors to submit any pre-filed testimony and exhibits. Joint Intervenors timely filed testimony and associated exhibits in accordance with this Entry.

In September 2020, more than a month after the deadline for Joint Intervenors to pre-file testimony, the MISO IMM published the above-discussed Study, which was prepared by Potomac Economics and entitled, “A Review of the Commitment and Dispatch of Coal Generators in MISO.” Submission of Duke Energy Indiana, LLC’s Response to the Commission’s October 21, 2020 Docket Entry, October 26, 2020, at p. 1. The IMM Study discusses the use of “must run” commitment status by owners of coal units within the MISO market and presents the results of an economic analysis of the commitment and dispatch of these coal units. As part of this analysis, the IMM Study disaggregated “the [profit-loss] results of the integrated utilities by separately showing the five utilities that operated least efficiently in 2019.” IMM Study at p. 12. The Study concludes that these “five least efficient owners of coal resources accounted for almost 80 percent of the inefficient losses incurred by coal resources among all integrated utilities.” *Id.* at p. 13.

On October 16, CAC served Data Request 14.7 on Duke. Referring to the IMM Study, CAC Data Request 14.7(e) asked Duke to: “State whether Duke is one of the ‘five utilities’ identified as having ‘operated least efficiently in 2019’ as referenced” in the Study, and asked Duke to “[p]roduce any document or communication supporting your response.” In response to CAC’s request, Duke stated that it had “no basis to ascertain this information.” See Duke’s Response to CAC Data Request 14.7, attached herein as Exhibit 2. The other subparts of CAC

Data Request 14.7 addressed what information, if any, Duke had provided to the IMM and Potomac Economics regarding Duke's commitment, dispatch, and operating costs; in response, Duke stated that to its knowledge it had not communicated with or provided information to the IMM Study's author(s). *Id.*

On October 21, the Commission requested, via docket entry, that Duke provide "any studies or reports on the issue of coal unit commitments" by the MISO Independent Market Monitor. Duke responded on October 26, 2020, at which time it produced several documents, including the IMM Study. The following day, on October 27, 2020, the Commission issued an additional request, by Docket Entry, seeking the same information from Duke that CAC requested via Data Request 14.7(e); namely, the Entry directed Duke to, "[t]o the extent DEI is aware, please identify if DEI is one of the utilities in the Bottom 5." In response to the Commission's Docket Entry, Duke stated that it was "not aware which utilities were deemed as less efficient in the referenced Independent Market Monitor Report." Duke's Response to the Commission's October 27, 2020 Docket Entry, October 28, 2020.

The evidentiary hearing in the above-captioned proceeding was held on October 30 and November 9, 2020. During the October 30 hearing, the Commission directed Duke to perform additional research to determine whether Duke was, in fact, one of the five least efficient owners of coal resources identified in the IMM Study. On November 5, 2020, Duke filed its response and supporting affidavit by John Swez; the response and affidavit averred that Mr. Swez had "reached out to the author of the IMM study" and that Duke "confirmed with the author that Duke Energy Indiana was not identified as one of the five (5) least efficient owners of coal resources addressed in the IMM study." Swez Affidavit at ¶7. Duke's response and Mr. Swez's affidavit were admitted into evidence over objection at the evidentiary hearing on November 9,

2020. Mr. Swez was not made available for cross-examination about his November 5, 2020 affidavit when the evidentiary hearing resumed on November 9, 2020. At the same hearing, CAC sought Duke's agreement to introduce Duke's response to CAC Data Request 14.7; Duke declined to stipulate to its admission.

2. Admission of Dr. Fisher's affidavit will aid in answering the Commission's October 30, 2020 question and avoid prejudice to intervenors

Like Mr. Swez, Dr. Fisher spoke to the author of the IMM study, namely, Dr. David Patton, to discuss the Report findings regarding integrated utilities that own and operate coal units and the net operating revenues at those units, and has summarized what he learned through these discussions in an affidavit. Fisher Affidavit at ¶4 & Attachment 1. Dr. Fisher is also an expert in numerous aspects of energy economics with extensive experience in resource planning who has performed in-depth research and analysis into self-commitment practices at coal-fired power plants. Fisher Affidavit at ¶¶2-3. To the extent the Commission seeks to rely on the results of the IMM Study in assessing the reasonableness of Duke's commitment decisions at its coal-fired units, and at Edwardsport in particular, the additional facts about the Study's scope, methodology and underlying assumptions offered by Dr. Fisher provide necessary context for understanding what operational constraints and costs the IMM Study's "Bottom 5" determination does and does not reflect. Most significantly, Dr. Fisher has learned directly from Dr. Patton that Edwardsport IGCC was not analyzed in the IMM Study. Fisher Affidavit ¶5. Moreover, the Study does not use actual or reported utility fuel costs, production costs, or offer prices in its analysis, and that the IMM used a different methodology than Duke and other utilities use in assessing the economics of their commitment practices. Fisher Affidavit ¶¶ 6-10. As a result, the Study's conclusions regarding net operating expenses, profitability, and efficiency of coal resources and the integrated utilities that operate them do not reflect net operating losses at

Edwardsport at all or the actual results of Duke Energy Indiana's operation of its other coal units during the FAC 123 period. Fisher Affidavit at ¶ 4.

As summarized by Dr. Fisher in the attached affidavit, this additional information includes crucial facts regarding the methodology utilized to identify the "Bottom 5" and how these utilities were identified. Specifically, the author of the IMM Study did not evaluate the Edwardsport IGCC facility on the grounds that it is "not a conventional coal resource"; the net operational losses associated with Edwardsport were not included in the Study's assessment of Duke and its relative standing with other integrated utilities with respect to *coal*-fired efficiency. *See* Fisher Affidavit at ¶5. Moreover, as relevant to Cayuga and Gibson, the IMM did not use coal-fired units' actual fuel, variable O&M, and start up and shut down costs, or costs submitted by the utilities that operate those units. *Id.* at ¶¶7-8. Instead, the Report's Evaluation of Integrated Utilities' Net Operating Revenues, and its determination that five of these integrated utilities account for 80 percent of these losses, reflect only the IMM's own internal "reference case" data for production cost, based on IMM's market assumptions and what the IMM believes to be reasonable startup costs. *Id.* To the extent these generic costs differ from the actual costs of operation at Duke's coal-fired units—that is, the costs Duke seeks to recoup from ratepayers—the Report's conclusions are of limited usefulness for the prudence determination at issue in the subdocket. The IMM Study's backward-looking definition of "efficiency" is also incommensurate with Duke's own forward-looking commitment evaluation process. *Id.* at ¶¶9-10.

Although Joint Intervenors acknowledge that the admission of evidence after the conclusion of the evidentiary hearing is unusual, the timing of the IMM Study and filing of Mr. Swez's affidavit create a real risk of prejudice to Joint Intervenors absent an opportunity to

introduce additional relevant facts into the record. As set forth above, the IMM Study was published after the deadline for Joint Intervenors to file direct testimony, making it impossible for Joint Intervenors' respective experts to incorporate or address its findings. Once the Study was published, CAC sought additional information from Duke regarding what, if any, information Duke had provided to the IMM and inquiring as to whether Duke was one of the "Bottom 5." *See* Duke's Response to CAC Data Request 14.7, attached as Exhibit 2. Duke responded that it had provided no information to the IMM and stated that not only did it lack knowledge but had "no basis to ascertain" whether it was among the "Bottom 5." *Id.* Duke was similarly non-responsive to the Commission's inquiry as to whether Duke was one of the "Bottom 5" via docket entry prior to the evidentiary hearing. Only *after* Mr. Swez's cross-examination had concluded and the Commission renewed its request for Duke to obtain this information did Duke provide an answer via Mr. Swez's November 5 affidavit. Duke then declined to stipulate to the admission of its prior Response to CAC's Data Request 14.7 addressing the IMM Study or to make Mr. Swez available for additional cross-examination at the November 9 evidentiary hearing. Under these unusual circumstances—the Study's release after the deadline for intervenor testimony, Duke's refusal to perform the necessary outreach to the IMM in response to two requests to determine whether it was in fact in the "Bottom 5" prior to the October 30, 2020 evidentiary hearing, and Joint Intervenors' lack of opportunity to cross-examine Mr. Swez on the contents of his affidavit—there is serious risk of prejudice to Joint Intervenors if they are not able to introduce key facts relevant to an accurate understanding of the IMM Study and Mr. Swez's response to the Commission's question, particularly as commitment practices at the Edwardsport facility were both excluded from the IMM Study and are central to this subdocket proceeding.

Joint Intervenors therefore respectfully request leave to submit as late-filed evidence the attached affidavit of Dr. Fisher providing additional information in response to the Commission's question at the October 30, 2020 evidentiary hearing.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served by electronic mail this
12th day of November, to the following:

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