STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF SOUTHERN INDIANA GAS AND ELECTRIC COMPANY d/b/a CENTERPOINT ENERGY INDIANA SOUTH ("CEI SOUTH") FOR (1) ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO IND. CODE CH. 8-1-8.4 FOR COMPLIANCE PROJECTS TO MEET FEDERALLY MANDATED REQUIREMENTS ("CBR PROJECT"); (2) APPROVAL OF THE ESTIMATED FEDERALLY MANDATED COSTS ASSOCIATED WITH THE CBR PROJECT; (3) AUTHORITY TO TIMELY RECOVER 80% OF THE FEDERALLY MANDATED COSTS ASSOCIATED WITH THE CBR PROJECT THROUGH CEI SOUTH'S ENVIRONMENTAL COST ADJUSTMENT ("ECA") MECHANISM; (4) AUTHORITY TO DEFER 20% OF THE FEDERALLY MANDATED COSTS ASSOCIATED WITH THE CBR PROJECT UNTIL SUCH COSTS ARE REFLECTED IN RETAIL ELECTRIC RATES; (5) APPROVAL OF THE SPECIFIC RATEMAKING AND ACCOUNTING TREATMENT DESCRIBED HEREIN; AND (6) IN THE ALTERNATIVE, APPROVAL TO INCLUDE THE CBR PROJECT IN RATE BASE PURSUANT TO IND. CODE § 8-1-2-23.	)	**CAUSE NO. 45795**

POST HEARING SUBMISSION OF CITIZENS ACTION COALITION OF INDIANA

Citizens Action Coalition of Indiana, Inc. ("CAC"), by counsel, respectfully submits the attached portions of a proposed form of order for the Indiana Utility Regulatory Commission's consideration.

Respectfully submitted,

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SUMMARY OF CAC EXHIBIT 1

Witness Inskeep, CAC's Program Director, filed expert testimony responding to CenterPoint's proposed F.B. Culley East ash pond closure and associated cost recovery.

Mr. Inskeep addressed CenterPoint's selection of closure by removal for the Culley East ash pond, describing the closure of the 10-acre ash pond by dewatering the pond, excavating the CCR material in the pond, and transporting and disposing of the excavated material in an off-site landfill. Mr. Inskeep noted how the CCR Rule allows utilities to opt for one of two methods of closure for a CCR unit: (1) closure by removal or (2) closure in place. The CCR Rule establishes separate requirements for each method. Closure by removal is governed by 40 C.F.R. § 257.102(c). Closure in place is governed by 40 C.F.R. § 257.102(d), which is what CenterPoint elected to use. Mr. Inskeep agreed that if the material cannot be used in an encapsulated beneficial use, then closure by removal is the most appropriate given the alternative closure in place option would insufficiently protect the environment, particularly given the Culley plant's location abutting the Ohio River.

Mr. Inskeep then addressed CenterPoint's estimated costs for the Culley East ash pond closure of $49,702,000 and $133,000 in annual O&M expense. Mr. Inskeep commented on the unreasonableness of the fact that CenterPoint shareholders are not contributing to the costs of the Culley East ash pond closure, even though CenterPoint has known, or should have known, that storing toxic coal ash in an insufficiently lined pond at its site directly abutting the Ohio River for decades could result in releases of harmful materials into groundwater. Mr. Inskeep stated how CenterPoint and other utilities have been on notice for decades that disposal of coal ash in unlined ponds is dangerous and puts them at risk for significant cleanup liability, citing to an Electric Power Research Institute ("EPRI") report published in 1981 as evidence (Attachment BI-1).

Particularly in light of this history of dangerous and risky conduct, Mr. Inskeep disagreed with CenterPoint's request that it be allowed to earn a return "on" this project based on its weighted average cost of capital, recommending instead that disposal of waste streams like coal ash be treated as operations and maintenance ("O&M") given these are costs related to operating a coal plant. He noted how CenterPoint's cost estimate includes costs like transporting coal ash and landfill (tipping fee) costs, which are directly related to coal plant operations. It is not akin to the construction of a power plant, poles, or wires that would provide years of benefits to customers. He stated that because CenterPoint is generally allowed to earn a return "on" capital investments, whereas it can only earn a return "of" O&M expenses, allowing CenterPoint to recover all of these costs as a capital project would inappropriately allow CenterPoint to earn a significant profit on this project. He said this in turn creates a perverse incentive for CenterPoint to not address toxic pollution like coal ash sooner or to pursue the lowest cost options for addressing it, as CenterPoint would earn a higher profit from delaying action, capitalizing the resulting clean-up projects, and selecting higher-cost options. He explained how this also creates intergenerational equity concerns, as the customers benefiting from the electricity associated with the coal ash should be the customers paying for the costs of safe disposal of that coal ash at the time they use that electricity.

Mr. Inskeep then addressed how CenterPoint's requested revenue requirement includes 15% contingency within its Owner Costs category and additional contingency within its Target Cost / Target Price category (Table WDG-2), resulting in a sizable identified contingency budget for this $47.702 million project. Mr. Inskeep stated that this is inappropriate to include this

contingency budget in the estimated costs as CenterPoint has not justified the inclusion of these costs, which are not known and measureable. To the extent CenterPoint incurs actual, prudent costs above its estimate, it will be able to update its cost recovery request in the future. Mr. Inskeep recommended the Commission not approve cost estimates in this proceeding for amounts that CenterPoint cannot reasonably know or measure at this time. Mr. Inskeep noted too that the Federal Mandate Statute already allows CenterPoint to recover prudent costs up to 25% above its estimate. And even then, CenterPoint would only need to provide specific justification to the Commission to recover costs that are in excess of more than 25% of the approved costs of the Culley East ash pond closure. In this case, 25% of the project cost is approximately $12.4 million – a substantial additional contingency amount above that requested by CenterPoint that it would be able to recover without providing specific justification. Mr. Inskeep stated that CenterPoint's inclusion of contingency in its cost estimate is unnecessary and duplicative of the considerable contingency already built into the Federal Mandate Statute as well as the authorized mechanism for cost recovery beyond that. Including duplicative contingency could result in CenterPoint having less motivation to efficiently manage the closure project and reasonably minimize costs to ratepayers.

Mr. Inskeep then addressed the proposed cost allocation of the Culley East ash pond closure and explained why using an energy allocator instead of a demand allocator is a more appropriate and reasonable method of allocating costs. He noted that CenterPoint is proposing that 80% of project costs will be recovered annually through the Environmental Cost Adjustment ("ECA") filing with the remaining 20% will be recovered through the next CenterPoint electric rate case. He stated how CenterPoint is proposing to allocate costs recovered through the ECA filing using its four coincident peak ("4CP") demand allocator, which allocates more than 40% of costs to the residential customer class. He explained that energy allocators are developed and used by utilities to allocate energy-related costs, such as fuel costs (e.g., coal purchases), based on the customer class's proportion of electricity usage. Thus, customer classes that use a larger share of total electricity sales are allocated a proportionately higher share of costs that vary based on electricity usage. On the other hand, he explained how demand allocators are developed and used to allocate demand-related costs, like costs related to equipment that is sized based on meeting peak demand can be allocated using a demand allocator. Thus, customer classes that are responsible for a higher proportion of CenterPoint's peak demand are allocated a higher share of CenterPoint's costs that vary based on demand. Mr. Inskeep stated that CenterPoint has inappropriately selected a demand allocator, instead of using an energy allocator, for assigning costs of the Culley East coal pond closure, which has the effect of shifting a substantial portion of coal ash costs that were, from a cost causation perspective, caused by Large Power Service ("LP") customers onto Residential Service ("RS") customers, among other rate classes.

Mr. Inskeep further noted that even if a demand allocator in part or in whole was appropriate to use in this instance, the 4CP demand allocator is especially inappropriate to use for several reasons. First, he found that the 4CP methodology in particular completely ignores which customer class "caused" coal ash costs in 8 non-peak months in the year, as well as in all hours of the peak month that fall outside of the 4 monthly peak hours. In other words, by focusing on usage in only 4 hours, the 4CP allocator completely ignores customer class usage in the remaining 8,756 hours (99.95%) of the year. Second, he explained how CenterPoint is planning to meeting *seasonal* capacity planning requirements under the Midcontinent Independent System Operator's ("MISO") recently modified resource adequacy construct, switching from a single annual resource adequacy

requirement based on meeting summer peak demand with 4 seasonal resource adequacy requirements. Mr. Inskeep calculated that, under CenterPoint's proposal to use demand allocators, LP customers would receive a windfall cross-subsidy of $10.1 million in reduced class revenue requirements—the costs of which would be shifted to other rate classes—compared to using energy allocators. Mr. Inskeep also commented on the previous settlement agreement reached by some other entities regarding cost allocation of the ECA charge, but noted how the settlement agreement does not predetermine cost allocation for the costs adjudicated in this proceeding.

Mr. Inskeep finally addressed Indiana's statutory prohibitions on retroactive ratemaking and explained how that applies to this proceeding. Mr. Inskeep explained Indiana's statutory prohibition against retroactive ratemaking, highlighting how the Federal Mandates Statute at issue in the instant proceeding uses future-tense phrasing, the plain language of which would suggest cost recovery under the statute pertains to future costs incurred by the utility and that retroactive ratemaking is not allowed. See Indiana Code Sections 8-1-8.4-6(a), 6(b), 6(b)(1), 7(b)(1), and 7(b)(2). He also summarized the recent Supreme Court of Indiana's decision on retroactive ratemaking, wherein the Court denied $212 million for coal ash closure, remediation, and financing costs that it had incurred during the 2010-2018 period, prior to the Commission's June 2020 order. Given that CenterPoint similarly has incurred certain costs prior to a final Commission order, those costs should be disallowed.

DISCUSSION & FINDINGS

Request to Earn a Return "On" the Project

CenterPoint is requesting that it be allowed to earn a return "on" this project based on its weighted average cost of capital. CAC argues the Culley East ash pond closure project should not be considered a capital project for ratemaking purpose, given that disposal of waste streams like coal ash is more appropriately treated as O&M expense of a coal plant as these are costs related to operating a coal plant. For instance, CenterPoint's cost estimate includes costs like transporting coal ash and landfill (tipping fee) costs, which are directly related to coal plant operations. We agree that it is not akin to the construction of a power plant, poles, or wires that would provide years of benefits to customers. Because CenterPoint is generally allowed to earn a return "on" capital investments, whereas it can only earn a return "of" O&M expenses, allowing CenterPoint to recover all of these costs as a capital project would inappropriately allow CenterPoint to earn a significant profit on this project. Moreover, as CAC Witness Inskeep pointed out, CenterPoint and its predecessor companies have been aware of the risks of coal ash disposal for decades, making it particularly inappropriate that CenterPoint now be rewarded with a return on this project.

We find CAC's proposal convincing to treat these costs as O&M and order shareholders to bear part of the cost necessitated by CenterPoint's imprudent disposal of coal ash for decades. CenterPoint's rebuttal on the matter was wanting, simply pointing to the availability of a statute. This does not mean the Commission is without its discretion to order costs be collected from ratepayers as O&M rather than capital costs or without its discretion to order shareholder contribution to these costs. CenterPoint shall recover these costs solely as O&M, and CenterPoint's shareholders shall bear 30% of the costs.

* * *

Contingency Costs

CenterPoint's cost estimate includes a 15% contingency within its Owner Costs category and an additional contingency amount within its Target Cost/Target Price category, resulting in a sizeable requested amount for contingency. We find CAC's argument against contingency compelling and CenterPoint's rebuttal on the matter was unconvincing and did not go to the heart of CAC's concern. The Federal Mandate Statute already allows CenterPoint to recover costs under 25% in excess without any specific justification and above 25% with specific justification and approval by the Commission. In this case, 25% of the project cost is approximately $12.4 million, a substantial additional contingency amount above that requested by CenterPoint that it would be able to recover without providing specific justification. CenterPoint's inclusion of contingency in its cost estimate is unnecessary and duplicative of the considerable contingency already built into the Federal Mandate Statute as well as the authorized mechanism for cost recovery beyond that. Including duplicative contingency could result in CenterPoint having less motivation to efficiently manage the closure project and reasonably minimize costs to ratepayers. We therefore deny CenterPoint's request for contingency costs.

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Allocation Factors

There was also a dispute in this Cause regarding how CenterPoint's federally mandated costs should be allocated amongst the rate classes for purposes of structuring each class's ECA rate. CenterPoint is proposing that 80% of project costs will be recovered annually through the Environmental Cost Adjustment ("ECA") filing. The remaining 20% will be recovered through the next CenterPoint electric rate case. CenterPoint is proposing to allocate costs recovered through the ECA filing using its four coincident peak ("4CP") demand allocator, which allocates more than 40% of costs to the residential customer class. CAC witness Inskeep argued coal ash costs should be treated similarly to fuel costs, which are allocated on an energy basis, and testified that using CenterPoint's 4CP methodology creates a large cross-subsidy in rates. (Inskeep, pp. 17-18.) CenterPoint witness Rice's rebuttal testimony stated that their allocation proposal is how it has been done the past and that new allocation proposals can be addressed in a forthcoming rate case.

We agree with CAC that coal ash costs are properly allocated on an energy basis. CenterPoint was unable to articulate a compelling reason for why the costs related to coal ash should be allocated on the basis of demand. CenterPoint asserted that coal ash costs are "associated" with its coal generation facilities, which are allocated on a demand basis. (See, e.g., Rice Rebuttal, p. 8, lines 9-10). A merely asserted "association" is not a sound basis for determining cost allocation. For example, the cost of coal purchases that are then stockpiled at CenterPoint's generating stations and combusted to generate electricity at these generating stations are undoubtedly "associated" with CenterPoint's generating production facilities, yet these costs are routinely allocated using energy allocators for all of Indiana's investor-owned utilities, including CenterPoint. In contrast, Mr. Inskeep's testimony directly tied the project costs to energy-related costs by clearly explaining how coal ash is generated as a function of

electricity generation—a fact that went unrebutted by CenterPoint. Mr. Inskeep also presented compelling evidence that cost allocation using demand allocators does not adhere to sound cost allocation principles because it would create large cross-subsidies benefiting some rate classes while significantly harming others, contrary to cost causation. The Commission is further mindful that residential customers in particular would be harmed by CenterPoint's proposed demand allocators at a time when many families are already struggling to cope with an acute affordability crisis. We therefore find that the coal ash costs are unrelated to demand or meeting CenterPoint's capacity obligations, and that allocating project costs on the basis of demand would create rates that are neither just nor reasonable. As such, we deny CenterPoint's proposed 4CP demand allocation factors for costs associated with the project and direct CenterPoint to allocate costs on the basis of energy as proposed by CAC. We note that if CenterPoint believes the MCRA 21 S1 Settlement Agreement approved by the Commission could foreclose the use of an energy allocator for the Culley East ash pond closure costs if these costs were to be recovered through the ECA mechanism, then CenterPoint shall create a new tracker mechanism for collecting Culley East ash pond closure cost recovery using the appropriate energy allocator.

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Retroactive Ratemaking

We view this case in light of the decision in *Office of Utility Consumer Counselor v. Duke Energy Indiana, LLC*, 183 N.E.3d 266 (Ind. 2022) in which the Indiana Supreme Court reaffirmed Indiana's longstanding prohibition on retroactive ratemaking. We consider that case controlling in this matter. In *Duke Energy*, the Court explained that the prohibition on retroactive ratemaking is grounded in the Commission's statutory authority as reflected in Indiana Code § 8-1-2-68, which permits us to set only rates to be followed "in the future." *Duke Energy*, 183 N.E.3d at 268.

The decision in *Duke Energy* made clear that the dividing line for purposes of determining whether rates are retroactive, and therefore unlawful, and those which are prospective, and therefore lawful (provided they are just and reasonable), lies at the date of the Commission's order, not at the date of the utility's initiation of the case. *See Id*. at 268 and 270. The Court's decision in *Duke Energy* reversed that portion of our order in Cause No. 45253 permitting Duke to recover environmental costs incurred between rate cases, and prior to the date of our final order, which authorized adjustment of Duke's base rates to permit recovery of those costs from ratepayers. Conforming our decision here to the Supreme Court's holding in *Duke Energy*, we must reject CenterPoint's request to recover costs associated with the Project incurred prior to the date of this order.

CenterPoint acknowledges in rebuttal that this issue is even more squarely at issue in the appeal of IURC Cause No. 45253-S1, and that the Indiana Court of Appeals issued an opinion reversing that Commission order on February 21, 2023. While the appeal remains pending (in that a party may file a rehearing or transfer petition), we must adhere to the Court of Appeals' guidance. Costs incurred prior to the issuance of a CPCN pursuant to Federal Mandates Statute are ineligible for recovery through the ECA Mechanism. Therefore, we deny CenterPoint's request in this proceeding for recovery of pre-order costs. Any depreciation accounting changes would need to be considered in a new rate case.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served by electronic mail this 21st day of March, 2023, to the following:

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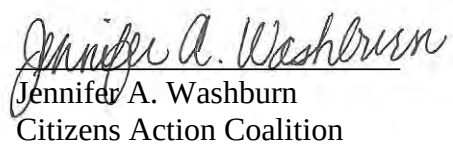

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