

FILED  
October 31, 2023  
INDIANA UTILITY  
REGULATORY COMMISSION

IURC  
PETITIONER'S  
EXHIBIT NO. 2-13-24  
DATE REPORTER

PETITIONER'S EXHIBIT 1  
IURC CAUSE NO. 45975  
DIRECT TESTIMONY OF BRIAN P. DAVEY  
FILED OCTOBER 31, 2023

**DIRECT TESTIMONY OF BRIAN P. DAVEY  
VICE PRESIDENT, RATES AND REGULATORY STRATEGY, INDIANA  
ON BEHALF OF DUKE ENERGY INDIANA, LLC  
CAUSE NO. 45975  
BEFORE THE INDIANA UTILITY REGULATORY COMMISSION**

**I. INTRODUCTION**

- 1
- 2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**
- 3 A. My name is Brian P. Davey, and my business address is 1000 East Main Street,  
4 Plainfield, Indiana.
- 5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**
- 6 A. I am employed by Duke Energy Indiana LLC (“Duke Energy Indiana” or  
7 “Petitioner”) as Vice President, Rates and Regulatory Strategy, Indiana.
- 8 **Q. PLEASE STATE YOUR EDUCATIONAL AND PROFESSIONAL**  
9 **BACKGROUND.**
- 10 A. I received a Bachelor of Science Degree in Accounting from Indiana University in  
11 Indianapolis. I joined Duke Energy Indiana (formerly Public Service Company of  
12 Indiana, Inc. and formerly Cinergy Corp.) as a staff accountant. I have held  
13 various positions in the Rates Department, Corporate Accounting, and Financial  
14 Forecasting. In 1994, I was promoted to Cinergy Corp.’s Financial Forecast  
15 manager and subsequently held manager and director positions in the Commercial  
16 Business Unit with Accounting, Budgeting, and Forecasting responsibilities. In  
17 2003, I was promoted to Assistant Controller. In 2005, I became General Manager  
18 of Budgets and Forecasts. In 2006, I became Duke Energy’s General Manager of

**OFFICIAL  
EXHIBITS**

1 Financial Planning for U.S. Franchised Electric and Gas. In late 2006, my  
2 responsibilities were specifically related to the Midwest jurisdictions of U.S.  
3 Franchised Electric and Gas. In 2009, I assumed my current responsibilities. I am  
4 a Certified Public Accountant and a member of the Indiana CPA Society.

5 **Q. PLEASE DESCRIBE YOUR DUTIES AS VICE PRESIDENT, RATES &**  
6 **REGULATORY STRATEGY, INDIANA.**

7 A. As Vice President, Rates and Regulatory Strategy, Indiana, I am responsible for  
8 regulated rate matters, including Duke Energy Indiana's various rider filings.

9 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**  
10 **PROCEEDING?**

11 A. The purpose of my testimony in this proceeding is to explain and support certain  
12 key provisions contained in the Special Retail Electric Service Agreement  
13 ("Agreement") dated October 2, 2023, between Duke Energy Indiana and Blocke  
14 LLC ("Customer"), including describing the Agreement, providing an overview  
15 of the rate structure and regulatory requirements associated with the Agreement,  
16 and describing the benefits to Duke Energy Indiana's customers and to the State  
17 of Indiana. Witness Mr. John D. Swez supports the procurement of renewable  
18 power and the Midcontinent Independent System Operator, Inc. ("MISO") power  
19 provisions in detail, explaining the mechanics of how Duke Energy Indiana  
20 intends to administer the Agreement and the impacts to retail customers.

1 Q. PLEASE BRIEFLY DESCRIBE THE ATTACHMENTS TO YOUR  
2 TESTIMONY.

3 A. I am sponsoring my testimony as Petitioner's Exhibit 1, with Attachment 1-A  
4 (BPD), a copy of the Verified Petition in this Cause, and Petitioner's Confidential  
5 Attachment 1-B (BPD), the Agreement. The Agreement includes, among other  
6 attachments, a Tranche Agreement, and a form Renewable PPA.

7 Q. WHAT RELIEF IS DUKE ENERGY INDIANA SEEKING IN THIS  
8 PROCEEDING?

9 A. Duke Energy Indiana is seeking the Indiana Utility Regulatory Commission's  
10 ("Commission") approval of the Agreement, including the attachments, the  
11 protection of related confidential information pursuant to the Motion for  
12 Confidential Treatment filed concurrently, and approval of proposed rate making.

13 **II. BACKGROUND**

14 Q. PLEASE DESCRIBE THE BACKGROUND FOR THE AGREEMENT.

15 A. Customer's parent is a multi-national Fortune 250 technology company, which  
16 owns various networking services, among other products and services.  
17 Customer's parent's fleet of enterprise data centers enable the collection, storage,  
18 processing, distribution, and access of large amounts of data and services to  
19 support the other services that the parent provides to the public. As of 2023, the  
20 parent has multiple data center locations around the world. In March of 2019,  
21 Duke Energy Indiana was engaged by Customer to evaluate the River Ridge  
22 Commerce Center industrial park in Jeffersonville, Indiana as a possible site.

1 After extensive good faith, arm's length negotiations, the site was short-listed for  
2 future opportunities. The Customer continually seeks to identify locations  
3 globally that can meet their business needs. In light of their 24/7, 365-day high  
4 load factor operation, the terms for energy supply were a highly material factor in  
5 their decision to locate in Indiana. In August of 2021, the Customer re-engaged to  
6 propose a hyperscale data center project at River Ridge. Duke Energy Indiana has  
7 worked closely with Customer to develop the pricing included in the Agreement,  
8 including a customized rate structure involving renewables, and a strategy to build  
9 the infrastructure necessary to serve the load by the projected operational date.  
10 The terms provide Customer with access to renewable energy from new  
11 renewable energy facilities and long-term energy certainty, each of which are  
12 necessary requirements for the Customer to locate the data center in Indiana and  
13 to invest in the Petitioner's service territory, while ensuring that the Customer  
14 covers the costs of the services it receives from Duke Energy Indiana and  
15 protecting other customers from price or service risk.

16 **III. AGREEMENT TERMS**

17 **Q. PLEASE DESCRIBE THE KEY TERMS OF THE AGREEMENT.**

18 A. The recitals and Article 2 (Conditions Precedent) of the Agreement reflect that  
19 Duke Energy Indiana intends to provide service to Customer and that Customer  
20 intends to develop, construct, own and operate a data center that includes one or  
21 more facilities at a site within the Petitioner's service territory, provided that the  
22 Commission approves the Agreement on its included terms. The recitals also

1 specify that the Customer desires Duke Energy Indiana to supply approximately  
2 <CONFIDENTIAL> [REDACTED] <CONFIDENTIAL> of the Customer's annual load  
3 with renewable energy from new renewable resources through purchased power  
4 Agreements ("Renewable PPAs") in the form attached to the Agreement, with the  
5 Petitioner's costs under the Renewable PPAs recovered from the Customer as  
6 provided in the Tranche Agreements in the form attached to the Agreement.

7 Article 3 sets forth the term, which ends on the later of (i) 20 years after  
8 the Agreement start date or (ii) the termination or expiration of the last Renewable  
9 PPA to terminate or expire and establishes the sale and purchase obligations.

10 Article 3 also requires Duke Energy Indiana use the Renewable PPAs to meet  
11 Customer's hourly energy needs and explains that in hours when the renewable  
12 energy from the Renewable PPAs is not sufficient to meet the Customer needs,  
13 the additional energy will be served through the MISO market. Witness Swez'  
14 testimony provides details on the MISO market pricing and scheduling process.

15 Article 4 describes Customer notification requirements for projected  
16 demand and renewable energy to meet the Customer needs during its ramp up  
17 period commencing with construction and continuing to increase as buildings are  
18 completed and equipment is brought online, enabling the Petitioner to procure the  
19 new renewable resources in coordination with Customer's increasing load. Article  
20 4 describes the timing and the process between Customer and Duke Energy  
21 Indiana to select the renewable facility or facilities to enable the subsequent  
22 Renewable PPA execution and Tranche Agreement. The forms of the Renewable

1 PPA and Tranche Agreement are attached to the Agreement. The Tranche  
2 Agreement form includes the Renewable PPA product price, source, and  
3 anticipated size of the renewable facility and includes any other obligations of  
4 Customer needed to backstop the Petitioner's obligations under the Renewable  
5 PPA. The Tranche Agreement and any Renewable PPAs will be executed only  
6 after final Commission approval of the Agreement. Duke Energy Indiana and  
7 Customer are seeking approval of the forms attached to the Agreement so that any  
8 subsequently executed Renewable PPA and Tranche Agreement consistent with  
9 those forms will not require further regulatory review or approval. Customer is  
10 entitled to the environmental attributes including the Renewable Energy Credits  
11 ("RECs") associated with energy purchased under the Renewable PPAs. Capacity  
12 from the PPAs will be used to meet capacity obligations per MISO resource  
13 adequacy requirements. If the capacity is insufficient, the shortfall will be filled  
14 via the MISO capacity auction, bilateral capacity purchases,

15 <CONFIDENTIAL> [REDACTED]

16 [REDACTED]

17 [REDACTED] <CONFIDENTIAL>. Customer will reimburse Duke  
18 Energy Indiana for all costs for acquiring the capacity on its behalf.

19 Article 5 provides that transmission upgrades to Duke Energy Indiana's  
20 transmission system and associated costs may be required to serve the additional  
21 Customer load at Customer's facility. Notably, Article 5 prohibits self-generation  
22 or other services to reduce Customer's obligations to purchase electric services

1 from Duke Energy Indiana, except for emergency backup generation.

2 Article 6 provides for termination by Duke Energy Indiana in the event of  
3 material load reductions as specified.

4 **Q. PLEASE DESCRIBE THE MONTHLY CHARGES IN THE PROPOSED**  
5 **AGREEMENT.**

6 A. Article 7 sets forth the following charges that will be billed to Customer:

7 1. A market service demand fee / charge based on Customer's highest  
8 demand in the billing period multiplied by demand fee of  
9 <CONFIDENTIAL> [REDACTED] <CONFIDENTIAL> per kilowatt-month.

10 2. A market service energy charge based on the energy consumed in the  
11 billing period.

12 a. <CONFIDENTIAL> [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

16 b. [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

19 c. [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

1 [REDACTED].

2 d. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 e. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED] <CONFIDENTIAL>.

9 3. Customer's allocated share of transmission costs, including the MISO  
10 OATT Rate Charge plus the monthly MISO Schedules 26 and 26-A  
11 charges.

12 4. Any third-party cost incurred by Duke Energy Indiana for capacity  
13 shortfalls will be reimbursed by Customer.

14 **Q. IS THE PRICING TO CUSTOMER FOR THE PROCUREMENT OF**  
15 **RENEWABLE POWER AND MISO POWER COST-BASED? PLEASE**  
16 **EXPLAIN.**

17 A. Yes. The pricing, as it relates to the pass-through costs via the procurement  
18 structure for the renewable energy and/or the MISO market, is cost-based, over  
19 the length of the Agreement. However, the market service demand fee/charge and  
20 the Renewable PPA fee were negotiated between the parties and fixed over the  
21 length of the Agreement. Because the demand charge revenues and Renewable  
22 PPA fee revenues for Customer are not based on the traditional cost of service

1 used in rate setting, and because Petitioner's native load is not impacted by the  
2 Renewable PPA used to supply the Customer, the Petitioner will administer the  
3 demand revenues and the Renewable PPA fee revenues as non-jurisdictional and  
4 will exclude them from the Petitioner's earnings test pursuant to Indiana Code §  
5 8-1-2-42(d)(3).

6 With respect to production costs, because this Agreement, if approved,  
7 will result in the addition of a large taxpayer to the State of Indiana, and because  
8 the Agreement will result in no adverse impact to Duke Energy Indiana's native  
9 load customers for the procurement of renewable resources, it is appropriate for  
10 Duke Energy Indiana to retain the associated demand revenues and Renewable  
11 PPA fee revenues as part of the overall duties and obligations of Duke Energy  
12 Indiana under the Agreement. Finally, the demand revenues and Renewable PPA  
13 fee revenues will not be part of future rate case revenue requirements.

14 **Q. ARE THERE NON-NETWORKED COSTS ASSOCIATED WITH THIS**  
15 **PROJECT?**

16 A. Yes, the non-networked costs incurred by the Petitioner will be reimbursed by  
17 Customer per the terms of the Reimbursement Agreement.

18 **Q. WILL THERE BE NETWORKED COSTS INCURRED AS WELL?**

19 A. Yes, there will be networked/grid transmission costs in the River Ridge  
20 Commerce area that will be incurred in connection with the Facilities Agreement.  
21 The network upgrades will be coordinated with Customer's load ramp up as the  
22 project is completed.

1 Q. DO PROTECTIONS EXIST TO MITIGATE OR ALLEVIATE IMPACTS  
2 TO RETAIL CUSTOMERS IN THE EVENT THE CUSTOMER DOES  
3 NOT COMPLETE THE PROJECT IN ACCORDANCE WITH THE  
4 AGREEMENT?

5 A. Yes, the Facilities Service Agreement includes a provision for reimbursing the  
6 Company for infrastructure costs incurred if the customer does not complete the  
7 project.

8 Q. WHAT IS THE REGULATORY TREATMENT OF THE NETWORKED  
9 TRANSMISSION COSTS?

10 A. After the transmission facilities are completed, the transmission projects will be  
11 included in Petitioner's Attachment O, filed at MISO and subject to Federal  
12 Energy Regulatory Commission ("FERC") jurisdiction. The Company will  
13 propose in the next retail rate case to credit retail customers for Attachment O  
14 revenues, consistent with the handling of such third-party transmission revenues  
15 in the most recent rate case in Cause No. 45253, thereby compensating the retail  
16 customers for the networked transmission costs assigned to the retail customers in  
17 the rate case. As explained previously, the Customer will pay its share of  
18 transmission costs through the OATT charge, which will include these network  
19 upgrades.

1 Q. HOW DOES THIS PROJECT RELATE TO THE TARGETED  
2 ECONOMIC DEVELOPMENT (“TED”) PROJECT THE IURC  
3 APPROVED IN CAUSE NO. 45647-S1?

4 A. As a result of Customer’s investment at the River Ridge Commerce Center, Duke  
5 Energy Indiana’s previously approved TED Project will be updated with the  
6 expanded TED Project. This will be addressed in more detail in a future  
7 proceeding, to be filed under Cause No. 45647.

8 Q. PLEASE CONTINUE SUMMARIZING SIGNIFICANT PROVISIONS IN  
9 THE AGREEMENT.

10 A. Article 8 provides that Duke Energy Indiana is the exclusive provider of electric  
11 service, states that the obligations in the Agreement require final approval by the  
12 Commission and prescribes the timing for the regulatory filing and the  
13 preservation of confidential information. Article 8 defines when the electric  
14 service begins. It further sets forth the parties’ next steps in the event the IURC  
15 does not approve the Agreement “as-is.” Any ensuing modified Agreement  
16 between the parties is to be filed at the Commission for approval.

17 Article 9 prescribes the Customer’s credit support amounts and the forms  
18 of acceptable credit support by the Customer or the Parent as it relates to  
19 performance assurance requirements. Article 10 addresses rights and actions of  
20 the parties in the event of a force majeure situation.

1 Q. DOES THE AGREEMENT CONTAIN PROVISIONS THAT PROTECT  
2 DUKE ENERGY INDIANA AND ITS OTHER INDIANA RETAIL  
3 CUSTOMERS FROM ADVERSE IMPACTS IN THE CASE OF  
4 CUSTOMER DEFAULT AND EARLY TERMINATION?

5 A Yes. Article 11.1 includes events that would constitute a default by Customer of  
6 its obligations under the Agreement (“Events of Default”) including, among other  
7 events, an uncured failure to perform a material covenant, Customer’s failure to  
8 comply with system operations requirements, and Customer’s failure to maintain  
9 credit support as required by the Agreement. Article 11.2 provides Duke Energy  
10 Indiana the right to early termination upon an Event of Default. Article 11.3.2  
11 provides Duke Energy Indiana remedies and damages in an Event of Default,  
12 which may include transferring service to the standard Retail Electric Tariff and  
13 recovery thereof, including the right to future remaining payments and obligations  
14 due under the renewable PPAs, and damages for non-payment. Notably, there is  
15 the condition in Article 11.6.2 that if Commission final approval is not obtained  
16 by July 31, 2024, and the parties do not agree to a revised approval date, then the  
17 Agreement will terminate. Article 11.7 provides that if there is failure for  
18 Customer non-payment, Duke Energy Indiana is entitled to terminate the electric  
19 service. The default and early termination provisions are in addition to the  
20 “Limitations of Liabilities” provision in Article 12 and “Indemnification”  
21 provisions in Article 15. Collectively, these provisions adequately protect Duke  
22 Energy Indiana and its other Indiana retail customers from any adverse impacts in

1 the event of Customer default and early termination of the Agreement.

2 **Q. IS THE TERM OF THE AGREEMENT IN THE PUBLIC INTEREST?**

3 A. Yes, because of the large investment of capital and other resources over a long  
4 period of time which the Customer needs to make to construct and operate a new  
5 data center, the Customer requires greater degree of regulatory certainty in the  
6 form of a long-term contract. There is substantial competition in securing data  
7 center load given the other potential locations available to and considered by the  
8 Customer. Supporting the decision to locate the data center in Indiana requires  
9 flexibility on the part of Duke Energy Indiana in terms of contract length, price,  
10 and renewable energy options, and that flexibility is important to attract the major  
11 capital investment and direct and indirect job creation associated with this project.

12 **IV. RENEWABLE ENERGY PROCUREMENT**

13 **Q. WHAT ARE THE PLANS FOR DUKE ENERGY INDIANA TO OBTAIN**  
14 **THE RENEWABLE RESOURCES NEEDED FOR THE CUSTOMER?**

15 A. Duke Energy Indiana and the Customer will work collaboratively and  
16 expeditiously in the procurement of the renewable resources with an issuance of  
17 request for proposal with both parties agreeing upon which renewable resources  
18 to select to supply the Customer's needs, which include a commitment to  
19 renewable energy resources. The expectation is that all the renewable projects will  
20 be sourced via Renewable PPAs versus self-build by the utility.<sup>1</sup> The eventual

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<sup>1</sup> Article 4.7 of the Agreement provides for the future possibility of utility-owned renewable energy facilities for power supply.

1 renewable procurements by the Petitioner on behalf of the Customer will be filed  
2 at the Commission but would not require further regulatory approval provided  
3 that they are made through a Renewable PPA in substantially the form attached to  
4 the Agreement, as approved, and the entire costs of the Renewable PPAs will be  
5 borne by the Customer.

6 **Q. DOES THE FORM ATTACHED TO THE AGREEMENT FOR THE**  
7 **RENEWABLE ENERGY PURCHASE CONTAIN TYPICAL TERMS AND**  
8 **CONDITIONS?**

9 A. Yes, the terms and conditions of the form renewable energy purchase agreement  
10 are typical in that the price will be determined through competitive solicitation  
11 and contains similar terms and conditions generally found in other long-term  
12 Renewable PPAs.

13 **V. BENEFITS AND ECONOMIC DEVELOPMENT**

14 **Q. HOW WILL THE STATE OF INDIANA BENEFIT FROM THE**  
15 **CUSTOMER?**

16 A. If Customer locates in Duke Energy Indiana's service territory, Customer is  
17 projected to invest a minimum of some \$800 million in the new data center,  
18 resulting in significant economic benefits to the state. There will be the creation of  
19 50 or more new high-paying jobs and hundreds of indirect jobs to support  
20 development and construction of the data center. Adding this new customer  
21 benefits not only the future employees of Customer, but also the businesses in the  
22 region that will experience increased demand to serve workers employed in the

1 construction and operation of the data center.

2 The 2021 retirement of Gallagher Generating Station in this region caused  
3 a reduction in taxes and jobs. This data center will strengthen the region and the  
4 state in both areas. Also, once the data center locates in Indiana, there is the  
5 potential for supply chain vendors to locate in the area to serve Customer. There  
6 is every reason to expect the Customer to be involved philanthropically in the  
7 communities in which it is located.

8 **Q. ARE THERE OTHER POTENTIAL BENEFITS OF THIS AGREEMENT**  
9 **FOR CUSTOMERS AND THE STATE OF INDIANA?**

10 A. Yes. The commitment to using new renewable resources to supply this large  
11 customer furthers public policies favoring a planned transition to renewables. The  
12 State of Indiana will benefit from the employment gained in Clark County, as well  
13 as from the various Indiana tax revenues which will be collected as a result of the  
14 Customer, its employees, and suppliers providing services to the data center  
15 project. The ramp up in the Customer's load allows for planned economic growth  
16 in the State of Indiana. Building additional networked transmission assets  
17 necessary to serve the Customer will also attract additional load from customers  
18 who will benefit from the in-place infrastructure for their electric needs. In sum,  
19 the Agreements are reasonable, just, practical, and advantageous to the Parties, in  
20 the public interest, and consistent with the purposes of the Public Service  
21 Commission Act, as amended.

1 Q. IS DUKE ENERGY INDIANA SEEKING AN ORDER FROM THE  
2 COMMISSION IN THIS PROCEEDING THAT WOULD ESTABLISH  
3 ANY PRECEDENT FOR TERMS OR TYPES OF BENEFITS OFFERED  
4 BY THIS AGREEMENT?

5 A. No. Duke Energy Indiana is not seeking a precedential order on any issue unique  
6 to the Agreement in this proceeding. Duke Energy Indiana is simply seeking the  
7 approval of the Agreement and its attachments for the Renewable PPA and  
8 Tranche Agreement based on the unique characteristics and facts involved for its  
9 specified terms, facilitating the Customer's development and operation of a data  
10 center at this location.

11 **VI. CONCLUSION**

12 Q. IN YOUR OPINION, IS THE PROPOSED RATE STRUCTURE AND  
13 TERMS CONTAINED IN THE AGREEMENT (INCLUDING ITS  
14 ATTACHMENTS), REASONABLE, JUST, AND IN THE PUBLIC  
15 INTEREST?

16 A. Yes, I believe the Agreement and attached form of Renewable PPA and Tranche  
17 Agreement are reasonable, just, and in the public interest and should be approved  
18 by the Commission. The Agreement and form of Renewable PPA and Tranche  
19 Agreement were a result of lengthy negotiations with the Customer, with the  
20 active engagement of the Indiana Economic Development Corporation, River  
21 Ridge Development Authority, and City of Jeffersonville, working in tandem to  
22 reach fair compromise on the pricing and other contractual terms associated with

PETITIONER'S EXHIBIT 1

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1 the Agreement and its attachments. The Agreement enables a long-term business  
2 relationship with a new, large customer. The proposed agreed-to rate structure and  
3 timing result in increased revenues to Duke Energy Indiana and provides the  
4 Customer with agreed upon pricing for energy needed to construct and operate its  
5 data center and protects other Indiana ratepayers from cost impact or supply risks.  
6 Further, the Agreement includes certain termination provisions to protect Duke  
7 Energy Indiana and its Indiana retail customers in certain circumstances. In  
8 closing, for this Customer to select the River Ridge Commerce area instead of  
9 other locations, price stability and Duke Energy Indiana's ability to obtain the  
10 renewable energy in a timely matter are important, and both criteria were  
11 achieved in this proposed Agreement. The decision by the Customer to locate its  
12 data center in Duke Energy Indiana's service territory in Indiana will provide  
13 economic development benefits to Indiana and its residents.

14 **Q. ARE YOU FAMILIAR WITH ATTACHMENT 1-A (BPD), AND**  
15 **CONFIDENTIAL ATTACHMENT 1-B (BPD)?**

16 A. Yes, I am.

17 **Q. DOES THIS CONCLUDE YOUR PREPARED DIRECT TESTIMONY?**

18 A. Yes, it does.

BRIAN P. DAVEY

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF DUKE ENERGY )  
INDIANA, LLC FOR APPROVAL OF A )  
SPECIAL RETAIL ELECTRIC SERVICE )  
AGREEMENT, RENEWABLE ENERGY )  
PURCHASE AGREEMENT, AND TRANCHE ) CAUSE NO.  
AGREEMENTS WITH BLOCHE, LLC )  
ARISING FROM OPERATION OF FACILITIES )  
IN JEFFERSONVILLE, INDIANA AND FOR )  
ESTABLISHMENT OF CONFIDENTIAL )  
PROCEDURES )

**VERIFIED PETITION**

Duke Energy Indiana, LLC (“Petitioner” or “Duke Energy Indiana” or “Company”) respectfully requests and shows the Indiana Utility Regulatory Commission (“Commission”) that:

1. **Duke Energy Indiana’s Corporate and Regulated Status.** Duke Energy Indiana is a public utility corporation organized and existing under the laws of the State of Indiana with its principal office at 1000 E. Main Street, Plainfield, Indiana 46168, and is a wholly-owned subsidiary of Duke Energy Indiana Holdco, LLC. It has the corporate power and authority to engage in the business of supplying electric utility service to the public in the State of Indiana. Accordingly, Petitioner is a “public utility” as defined in Ind. Code § 8-1-2-1 and Ind. Code § 8-1-8.5-1, and an “electricity supplier,” as defined in Ind. Code § 8-1-8.5-10 (“Section 10”), and is subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Indiana, including Ind. Code § 8-1-2-1 et seq.

2. **Petitioner’s Electric Utility Service.** Duke Energy Indiana owns, operates, manages, and controls plant, property, and equipment used and useful for the production, transmission, distribution, and furnishing of electric utility service to the public in the State of

Indiana. It directly supplies electric energy throughout its 23,000 square mile service area to approximately 870,000 customers located in 69 counties in the State of Indiana, and supplies steam service to one customer from its Cayuga Generating Station and to another customer via a combined heat and power facility. Petitioner also sells electric energy for resale to other electric utilities that in turn supply electric utility service to numerous customers in areas not served directly by Petitioner.

3. **Background and Relief Sought by this Petition.** Blocke, LLC (“Customer”) plans to invest around \$800 million in a new data center in the River Ridge Commerce Center in Jeffersonville, Indiana, resulting in significant economic benefits to the state. Customer anticipates the creation of 50 or more new high-paying jobs and hundreds of indirect jobs to support development and construction of the data center at a site located in Petitioner’s service area.

Duke Energy Indiana has negotiated a long-term Special Retail Electric Service Agreement (“Agreement”), which includes an attached Tranche Agreement and Renewable PPA Form, with Customer. Under the Agreement, Customer would pay a special contracted rate structure that is not a currently available tariff option. The rate construct provided by the Agreement involves distinct renewable supply resources, structural protections to prevent adverse impacts on other customers, and incremental contributions to Duke Energy Indiana’s fixed system costs. The terms of the Agreement are materially essential to support Customer’s decision to select Indiana as a location for the planned facility and are necessary and appropriate to secure the associated economic development benefits for the State of Indiana.

Petitioner submits that, as required by Ind. Code § 8-1-2-4, the Agreement represents a reasonable and just negotiated arrangement between the parties, is practicable and advantageous

to both Duke Energy Indiana and Customer, and is consistent with the purposes of the Indiana Public Service Commission Act.

4. **Need for Trade Secret Protection.** In addition, pursuant to Ind. Code § 5-14-3-4(a)(4), Petitioner respectfully requests the Commission find that certain provisions of the proposed Agreement and attachments, including prefiled testimony and any exhibits to be submitted in this proceeding, 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. The Agreement and attachments contain confidential and proprietary terms regarding costs and pricing and other negotiated, competitive provisions of service that were negotiated between Duke Energy Indiana and Blocke, LLC. Duke Energy Indiana will make such information available to the Indiana Office of Utility Consumer Counselor (“OUCC”) pursuant to an executed confidentiality agreement between the parties.

5. **Proposed Procedural Schedule.** Pursuant to 170 IAC 1-1.1-9, Petitioner and the OUCC are in agreement with the following proposed procedural schedule:

- (i) October 31, 2023 – Duke Energy Indiana files its case-in-chief testimony;
- (ii) January 12, 2024 – OUCC and intervenors shall file their respective cases-in-chief;
- (iii) January 22, 2024 – Duke Energy Indiana shall file its rebuttal testimony;
- (iv) If the Commission’s schedule allows, Petitioner and the OUCC request that the

Commission schedule an evidentiary hearing during the week of February 5, 2024.

Any response to formal discovery should be made within ten (10) calendar days of the receipt of such request. Responses to formal discovery shall be made within five (5) calendar days after. Any discovery requests received after 5:00 p.m. EDT Monday through Thursday or noon on a Friday or before a state holiday shall be deemed received on the following business day.

Petitioner and the OUCC agree that there will be blackout dates for discovery from November 23, 2023 through November 27, 2023, and December 22, 2023 through January 2, 2024. Dates designated as “blackout dates” shall not be included in determining the number of days provided for responding to a discovery request. Petitioner and the OUCC consent to electronic discovery.

6. **Applicable Law.** The following provisions of the Indiana Code are, or may be deemed to be, generally relevant to this Petition: Ind. Code §§ 8-1-2-4, 8-1-2-24, 8-1-2-25, 8-1-2-29, 8-1-2-38, and 8-1-2-39, 5-14-3-4, 5-14-3-3.5, and 24-2-3-2.

7. **Duke Energy Indiana’s Counsel.** Andrew J. Wells and Liane K. Steffes, Duke Energy Business Services LLC, 1000 East Main Street, Plainfield, Indiana 46168, are counsel for Duke Energy Indiana in this matter, and are duly authorized to accept service of papers in this Cause on behalf of Duke Energy Indiana.

8. **Timing Considerations.** Petitioner respectfully requests that the Commission promptly make such investigation and hold such hearings as it may deem necessary and advisable in this Cause. In addition, Duke Energy Indiana respectfully requests that the Commission complete its review and consideration of this request and issue an order by April 30, 2024, to help support Blocke, LLC’s decision to proceed with the planned investments and the necessary infrastructure. Duke Energy Indiana commits to working with the OUCC to help expedite the Commission’s review of this proposal.

**WHEREFORE,** Petitioner respectfully prays that the Commission promptly commence public hearings and issue an order:

- (1) approving the proposed Agreement between Duke Energy Indiana and Blocke, LLC, including the attachments, along with the rates and charges and terms and conditions

- for electric utility service thereunder, finding it a reasonable and just arrangement and not inconsistent with the purpose of the Indiana Public Service Commission Act;
- (2) finding that certain provisions of the proposed Agreement and attachments contain trade secret information as defined in Ind. Code § 24-2-3-2, which, along with prefiled testimony and exhibits submitted in this proceeding concerning such information, is exempted from the public disclosure requirements contained in Ind. Code §§ 5-14-3-3 and -3.5; and
- (3) granting such other relief as the Commission may deem necessary.

Respectfully submitted,

**DUKE ENERGY INDIANA, LLC**

By:



\_\_\_\_\_  
Counsel for Petitioner

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**VERIFICATION**

I hereby verify under the penalties of perjury that the foregoing representations are true to the best of my knowledge, information and belief.

Signed:   
Stan C. Pinegar

Dated: October 31, 2023

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing *Verified Petition* was electronically delivered this 31<sup>st</sup> day of October 2023, to the following:

Randall C. Helmen  
Lorraine Hitz  
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By:   
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**PETITIONER'S ATTACHMENT 1-B IS CONFIDENTIAL**

## VERIFICATION

I hereby verify under the penalties of perjury that the foregoing representations are true to the best of my knowledge, information and belief.

Signed: Brian P. Davey  
Brian P. Davey

Dated: October 31, 2023