**STATE OF INDIANA**

FILED

February 22, 2019

INDIANA UTILITY

REGULATORY COMMISSION

**INDIANA UTILITY REGULATORY COMMISSION**

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| **PETITION OF DUKE ENERGY INDIANA, LLC SEEKING APPROVAL TO REFLECT COSTS INCURRED FOR THE EDWARDSPORT INTEGRATED GASIFICATION COMBINED CYCLE GENERATING FACILITY PROPERTY, INCLUDING POST-IN-SERVICE ONGOING CAPITAL EXPENDITURES, IN ITS RATES AND TO REFLECT APPLICABLE RELATED COSTS AND CREDITS, INCLUDING OPERATING EXPENSES, DEPRECIATION, TAX CREDITS, RECONCILIATION, AND CERTAIN 2016 SETTLEMENT AGREEMENT PROVISIONS, THROUGH ITS STANDARD CONTRACT RIDER NO. 61 PURSUANT TO INDIANA CODE §§ 8-1-8.8-11 AND -12** | **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **) CAUSE NO. 43114 IGCC-17**  **)**  **)**  **) APPROVED:**  **)**  **)**  **)**  **)** |

**SETTLING PARTIES’**

**PROPOSED FORM OF ORDER**

**BY THE COMMISSION:**

**David E. Ziegner, Commissioner**

**David E. Veleta, Administrative Law Judge**

# On March 29, 2018, Duke Energy Indiana, LLC (“Duke Energy Indiana”) filed its Petition with the Indiana Utility Regulatory Commission (“Commission”) in this Cause. In its Petition, Duke Energy Indiana requested: (a) approving the value of the Edwardsport Generating Facility (“Edwardsport”), including the value of related ongoing capital project expenditures, upon which the Company is requesting authorization to earn a return, incorporating the 2016 Settlement Agreement’s retail caps on additional investment in ongoing capital projects; (b) approving recovery of expenditures and depreciation for Edwardsport and related ongoing capital projects incurred through December 31, 2017, incorporating the 2016 Settlement Agreement caps on additional ongoing capital project expenditures and the $76.8 million cap on operation and maintenance (“O&M”) expenditures incurred from January through December 2017; (c) approving recovery of the estimated operating expenses (including O&M, fringe benefits, payroll taxes and property insurance), net of the annual credit of $5,756,000 approved in the Commission’s certificate of public convenience and necessity (“CPCN”) Order, and property tax expense that are forecasted to be incurred from January through December 2019; (d) approving the recovery of the estimated depreciation that will be incurred from January through December 2019, including depreciation of in-service ongoing capital projects, subject to the 2016 Settlement Agreement cap on additional investment; (e) inclusion of a $35.175 million annual credit to retail customers via Standard Contract Rider No. 61 (“Rider 61” or “IGCC Rider”) to reflect the jurisdictional impact of a January 1, 2013 change in depreciation rates for non-Edwardsport in-service plant[[1]](#footnote-1); (f) the inclusion of a credit for the retail portion of the $15 million annual Indiana Coal Gasification Technology Investment Tax Credit (“State Tax Credit”); (g) the inclusion of a $20 million annual charge for amortization of the Regulatory Asset as agreed to pursuant to the terms of the 2016 Settlement Agreement; (h) the inclusion of a $13,358,576 annual credit to fully refund the Regulatory Liability by the end of August 2018 in its proposed interim rates within the two-year amortization period required by the 2016 Settlement Agreement and removal of the credit in rates to be billed following a final Commission Order in this proceeding; (i) the inclusion of a $4,685,139 charge associated with the amortization of the December 31, 2017 balance of post-in-service allowance for funds used during construction (“AFUDC”); (j) the inclusion of amounts related to the reconciliation through December 31, 2017, for items to be reconciled per the terms of the Rider 61 tariff to amounts collected from customers during 2017; and (k) approving an adjustment to Petitioner’s retail electric rates via Rider 61 in a two-step rate implementation approach, utilizing interim rates as required by the 2016 Settlement Agreement.

# On September 20, 2018, Duke Energy Indiana, the Indiana Office of Utility Consumer Counselor (“OUCC”), the Duke Energy Indiana Industrial Group (“IG”), and Nucor Steel-Indiana (“Nucor”) submitted to the Commission their Settlement Agreement (“2018 Settlement Agreement”). The Citizens Action Coalition of Indiana, Inc. (“CAC”), who intervened in this proceeding on April 17, 2018, did not participate in the 2018 Settlement Agreement.

# Pursuant to notice as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, an Evidentiary Hearing was held in this Cause on December 14, 2018, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana.

# Based upon applicable law and the evidence presented herein, the Commission finds as follows:

1. **Notice and Jurisdiction**. Notice of the hearing in the Cause was given and published by the Commission as required by law. Petitioner is a public utility as defined in Ind. Code § 8-1-2-1, and is subject to regulation by the Commission to the extent provided in the Public Service Commission Act, as amended. In its November 2007 Order in Cause Nos. 43114 and 43114 S1 (“CPCN Order”), the Commission issued Duke Energy Indiana a CPCN and a clean coal technology CPCN. Under Indiana Code chapters 8-1-8.5, 8-1-8.7*,* and 8-1-8.8*,* the Commission has jurisdiction to approve ongoing review progress reports and cost recovery associated with a public utility’s capital investment and its ongoing operating and maintenance expense.Accordingly, the Commission has jurisdiction over Duke Energy Indiana and the subject matter of this proceeding.
2. **Petitioner’s Characteristics**. Duke Energy Indiana is an Indiana limited liability company with its principal office located at 1000 East Main Street, Plainfield, Indiana. Duke Energy Indiana is engaged in the business of supplying electric utility service to the public in the State of Indiana. The Company 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. Petitioner directly supplies electric energy to over 820,000 customers located in 69 counties in the central, north central and southern parts of the State of Indiana. Duke Energy Indiana also sells electric energy for resale to municipal utilities, Wabash Valley Power Association, Inc. and Indiana Municipal Power Agency, and to other public utilities that in turn supply electric utility service to numerous customers in areas not served directly by Duke Energy Indiana.

# **Relief Requested**. In its Petition, Duke Energy Indiana requested approval of: (1) the value of the Edwardsport Generating Facility, including the value of related ongoing capital project expenditures, upon which the Company is requesting authorization to earn a return, incorporating the 2016 Settlement Agreement’s retail caps on additional investment in ongoing capital projects; (2) the amount of Duke Energy Indiana’s expenditures and depreciation for Edwardsport, including related ongoing capital projects, incurred through December 31, 2017, for which cost recovery is requested, incorporating the aforementioned 2016 Settlement Agreement caps on additional ongoing capital project expenditures and the $76.8 million (retail) cap on O&M expenditures incurred during 2017; (3) recovery of the estimated operating expenses (including O&M, fringe benefits, payroll taxes and property insurance), net of the annual credit of $5,756,000 approved in the Commission’s CPCN Order, and property tax expense that are forecasted to be incurred during calendar year 2019[[2]](#footnote-2); (4) recovery of the estimated depreciation to be incurred during calendar year 2019, including depreciation of in-service ongoing capital projects, subject to the aforementioned cap on additional investment expenditures; (5) the inclusion of a $35.175 million annual credit to retail customers in Rider 61 to reflect the jurisdictional impact of a January 1, 2013 change in depreciation rates for non-Edwardsport in-service plant, which was approved by the Commission in its December 27, 2012 Subdocket Order; (6) the inclusion of a credit for the retail portion of the $15 million annual State Tax Credit; (7) the inclusion of a $20 million annual charge for amortization of the Regulatory Asset as agreed to pursuant to the terms of the 2016 Settlement Agreement; (8) the inclusion of a $13,358,576 annual credit to fully refund the Regulatory Liability by the end of August 2018 in its proposed interim rates within the two-year amortization period required by the 2016 Settlement Agreement and removal of the credit in rates to be billed following a final Commission Order in this proceeding; (9) the inclusion of a $4,685,139 charge associated with the amortization of the December 31, 2017 balance of post-in-service AFUDC; (10) the inclusion of amounts related to the reconciliation through December 31, 2017, for items to be reconciled per the terms of the Rider 61 tariff (*i.e.* operating expenses, amortizations and related costs and credits) to amounts collected from customers during 2017; and (11) that Petitioner’s retail electric rates be adjusted, via Rider 61, in a two-step process, utilizing interim rates as required by the 2016 Settlement Agreement, to include the revenue effect of such investment, cost recovery, credits, and amortizations.

1. **Duke Energy Indiana’s Case-in-Chief Evidence**. Mr. Gurganus provided a high level description of 2017 operations at Edwardsport. He testified that at the beginning of this reporting period, gasifier 1 was operating with gasifier 2 returning from its fall outage on January 11, 2017.

Mr. Gurganus testified that the station had strong operations during 2017, with several new operating metric records being set, including a new record net capacity factor of 88.07% in February 2017, which was surpassed in November 2017, when the station demonstrated a net capacity factor of 88.40%. Additionally, a new net generation record was set in March 2017 of 402,039 MWh.

Mr. Gurganus explained that his maintenance crew successfully executed a new “modular outage” during the spring and fall maintenance at Edwardsport. This maintenance approach allows portions of the station to remain operational while maintenance is being performed on other portions of the station. There will be times in the future when the entire station will need to be shut down for maintenance, but he was pleased at being able to execute an entire year’s worth of maintenance activity while still allowing the station to produce energy for customers.

Mr. Gurganus explained that the main areas of focus in 2017 were improving reliability, execution of planned maintenance, and reducing expenses. He again discussed the improved operations in 2017 in the station’s increased output, improved net capacity factor, availability, gasifier availability, and equivalent availability factor. Mr. Gurganus opined that the station’s improved operational metrics show that the targeted maintenance projects were successful at improving reliability.

Mr. Gurganus discussed that his team has been working to find areas to reduce O&M expenses at the station while continuing to provide safe and reliable operations at a reasonable cost.

Mr. Gurganus testified that the spring maintenance was performed using the new “modular” approach, which allowed better control over the work scope and helped to maintain appropriate oversight because fewer contractors are on site. Combustion turbine 1 was taken off line on April 21, 2017, to perform spring maintenance work and summer prep work with it being brought back online on April 27, 2017. On May 15, 2017, the planned combustion turbine 2 outage began for its summer prep work and was brought back online on May 22, 2017. Gasifier 2 was shut down on May 6, 2017, and brought back online on May 15, 2017, and maintenance on gasifier 1 was brought forward to May 10, 2017, due to a performance heater leak tubing repair. Both gasifiers were down for an overlap of five days, and gasifier 1 was brought back online on May 21, 2017. The planned maintenance was completed 54 hours earlier than expected and under budget.

Mr. Gurganus testified that the Company will attempt to perform its planned maintenance using the modular approach whenever possible so that the station can continue to produce energy for customers while still performing its planned maintenance. He explained that the modular approach allows for additional oversight of the work, limiting scope creep[[3]](#footnote-3), and reduces the need for contractors, which results in reduced expense and time needed to manage them. Mr. Gurganus discussed that there will be times when planned maintenance on certain systems and equipment will require the entire site to be down in order for the work to be completed safely and effectively.

Mr. Gurganus testified that fall maintenance work was completed using the modular approach. On September 8, 2017, gasifier 1 was brought down for winter prep work and replacement of the throat and sidewall refractory bricks, and it was back online on October 16, 2017. Combustion turbine 1 was brought down on September 16, 2017, for winter prep work and was back online September 21, 2017. Combustion turbine 2 was shut down on October 6, 2017, for planned winter prep work and was back online on October 16, 2017. Gasifier 2 was shut down on October 10, 2017, prior to its planned maintenance, because of a leak. The leak was resolved, and the winter prep work was performed, allowing gasifier 2 to be back online on October 24, 2017. The refractory replacements for gasifier 2 will be performed in April 2018.

Mr. Gurganus testified that in December 2017, an internal component of the radiant syngas cooler broke loose from its attachment points requiring the station to bring down gasifier 2 in order to perform the needed repairs, including slag clean up, welding, and strengthening of attachment points. To prevent the same operational issue from occurring in the future, the station has established inspection criteria for the area and plans to perform the same strengthening of attachment points on gasifier 1 in the spring.

Mr. Gurganus described the operational statistics provided in Petitioner’s Exhibit 1-C.[[4]](#footnote-4) He testified that the team has made great strides over the past two years to improve operational performance and that he was pleased, but as with any major generating facility there is always more work to be done. He explained that the focus will be to continue improved planning and execution of planned maintenance, prioritizing safety and reducing O&M expenses.

Next, Mr. Gurganus discussed the 2016 Settlement Agreement and operating costs. He testified that there are two operating expense caps included in the 2016 Settlement Agreement: one on O&M expenses and another on post-in-service ongoing capital expenditures. In 2017, the O&M cap was $76.8 million, which was the figure used to set the present level of O&M in rates. The 2016 Settlement Agreement allows for Duke Energy Indiana to recover the lower of its actual O&M and the cap levels. In 2018, the O&M cap discontinues and the Company can again propose to recover its actual maintenance expenses. He explained that the Company is proposing to use its forecast of O&M expenses for 2019 as the basis for setting rates with that forecast reconciled in the IGCC-19 filing such that customers pay only the actual O&M from the station. The company is also proposing rates based on the ongoing capital expenditure cap amount of $16.9 million for 2017 added to the December 31, 2016 balance presently included in rates.

Mr. Gurganus continued his testimony discussing the types of expenses incurred at the station during 2017. He testified that Duke Energy Indiana incurred normal power plant expenses during O&M activities, such as labor, chemicals, and maintenance parts. Mr. Gurganus explained that Edwardsport’s actual O&M expenses exceeded the 2017 set cap due to the necessary Process Safety Management and safety-related projects, and the station’s reliability improvement projects.

Mr. Gurganus testified that the O&M cap amount included in rates was reasonable and prudently incurred, even though expenses were higher than the cap. He stated that the station was operated in a reasonable and prudent manner, and the projects performed were necessary and important. He explained that while the entire amount of O&M was reasonably and prudently incurred, Duke Energy Indiana’s customers will only pay rates set on the cap amount because of protections of the 2016 Settlement Agreement.

Mr. Gurganus testified that the O&M budgets for 2018 and 2019 are similar, with 2019 being slightly lower, and the 2019 budget was being used as the forecast in this proceeding. The budgeted O&M for 2018 and 2019 is an increase over the $76.8 million cap for 2017, but reflects the station’s anticipated expenses. He explained that an expected 44 day, dual unit outage in April 2018 is expected to be performed to allow the station to complete needed maintenance on the flare and refractory replacement on gasifier 2, as well as summer preparations. Modular maintenance, including needed inspections and winter prep work, will be performed in the fall to safely minimize the station’s downtime. Similar modular outages are planned for the spring and fall of 2019, with budgets approximating the 2018 levels. The next large maintenance period is expected to be in 2020, when the station will need to perform hot gas path inspections on the combustion turbines, refractory replacements on both gasifiers, and the steam turbine will be due for its first major maintenance since operations began. Continuous improvements will be made on the company’s day to day operations, as well as their outage execution. Improvement to O&M expenses are expected as the company continues to transition to scheduled maintenance rather than addressing emergent issues.

Mr. Gurganus testified that the recoverability of ongoing capitalized repairs and maintenance projects at the station have been capped, similar to O&M, in the 2016 Settlement Agreement at $16.9 million or its actual capital additions, whichever is less, for the 2017 time period. In 2017, the Company spent approximately $19.7 million on ongoing capitalized maintenance and additions, net of credits for the return of parts to inventory, during this period. Mr. Gurganus explained that, as further discussed in the testimony of Ms. Douglas, the Company is proposing rates based on the ongoing capital expenditure cap amount of $16.9 million added to the December 31, 2016 balance presently in rates. During this period, the station worked on or planned and procured materials for various projects, including OSHA Process Safety Management compliance, refractory replacement, and projects to improve reliability. Mr. Gurganus testified that he considers these types of projects to be part of routine maintenance that will be performed at the plant on a routine basis, particularly the expenses up to the ongoing capital cap. Certain types of equipment, such as the CTs, the falsifier refractory brick, piping, and valves are types of equipment that have and will experience significant run times and must be replaced or repaired from time to time. The company seeks to strike the right balance between ongoing O&M expenses and ongoing maintenance capital expenses for the continued efficient and reliable operation of the Plant.

Mr. Gurganus described the O&M expenses that the Company expects to incur in 2018 and 2019. He testified that Edwardsport will incur normal O&M expenses including a combination of fixed[[5]](#footnote-5) and variable costs[[6]](#footnote-6).

Mr. Gurganus explained that the Company forecasted the expected O&M expenses involved with operating the plant in 2019. He testified that costs will vary depending on the timing of maintenance cycles, unexpected costs, operating characteristics, and station operating time. The company’s forecast in this proceeding is less than actual expenditures in 2017, with that trend expected to continue. The exception will be in 2020, when a major outage is planned. Mr. Gurganus testified that the current budget includes labor for identified and planned outage work and for chemical consumption based on 85% availability in the following months. He explained that his team will be working to improve coordination of the expected maintenance cycles on the various station components.

Mr. Gurganus testified that the coal handling system has been receiving train deliveries and has performed as expected.

Concluding his direct testimony, Mr. Gurganus testified that Duke Energy Indiana is committed to the safe, reliable and efficient operation of the Plant. He discussed that station personnel had a keen focus on providing safe and reliable service in early years of operations, but that it came at a cost and he believes those costs are paying dividends today with increased reliability and lowering of ongoing costs. He explained that advanced technology at the station allows greater flexibility in operations and that focus on cost management will continue as improvements are made to make operations more efficient each year.

Ms. Douglas testified on behalf of the Company with respect to ratemaking issues. She discussed that the purpose of her testimony was to explain the Company’s request for timely recovery of costs in connection with Edwardsport. Her testimony shows the calculations used to develop the Company’s proposed IGCC Revenue Adjustment Factors and includes an updated set of retail electric tariff pages applicable to Rider 61.

Ms. Douglas noted that her calculations were based on data recorded on the Company’s books and records as of December 31, 2017. Her testimony: (1) provided an overview of the ratemaking terms included in the 2016 Settlement Agreement that affect this filing; (2) explained that the Company is proposing two sets of IGCC-17 rates for approval in this proceeding, one to be effective as interim rates upon Commission approval in a filing (“Thirty-Day Filing”)[[7]](#footnote-7) pursuant to the 2016 Settlement Agreement provision requiring interim implementation of rates when revenue requirements are lower than those currently being billed to customers (“Step 1 Rates”), and another one to be effective upon the Commission’s final order in this proceeding (“Step 2 Rates”); (3) provided certain information to establish the value of the investments applicable to the IGCC facility; (4) showed the computation of the jurisdictional revenue requirement associated with the investments and applicable operating expenses, costs, and credits; and (5) determined the allocation of the resulting jurisdictional revenue requirement to various retail customer groups and the proposed Rider 61 rates for each. She also discussed a change in the allocation factors used in the rider incorporating an additional change in the amount of the HLF/LLF rate migration resulting from the completion of the Company’s 2016 rate migration study and an additional special contract-related migration.

Ms. Douglas’ testimony requested that the Commission approve: (1) the value of the Edwardsport IGCC facility, including the value of related Ongoing Capital Project expenditures, upon which the Company is requesting authorization to earn a return, incorporating the 2016 Settlement Agreement’s retail cap on additional investment in Ongoing Capital Projects; (2) the amount of Duke Energy Indiana’s expenses and depreciation for the IGCC facility and related Ongoing Capital Projects incurred through December 31, 2017, for which cost recovery is requested, incorporating the aforementioned 2016 Settlement Agreement cap on additional Ongoing Capital Project expenditures and the $76.8 million (retail) cap on O&M expenditures incurred during 2017; (3) recovery of the estimated operating expenses (including O&M, fringe benefits, payroll taxes, and property insurance), net of the annual credit of $5,756,000 approved in the CPCN Order, and property tax expense that are expected to be incurred during calendar year 2019[[8]](#footnote-8)3; (4) recovery of the estimated depreciation that will be incurred during calendar year 2019, including depreciation of in-service Ongoing Capital Projects, subject to the aforementioned cap on additional investment; (5) the inclusion of a $35.175 million annual credit to retail customers in Rider 61 to reflect the jurisdictional impact of a January 1, 2013 change in depreciation rates for non-IGCC in-service plant, which was approved by the Commission in its Subdocket Order; (6) the inclusion of a credit for the retail portion of the $15 million annual State Tax Credit; (7) pursuant to the terms of the 2016 Settlement Agreement, the inclusion of a $20 million annual charge for amortization of the Regulatory Asset; (8) the inclusion of a $13,358,576 annual credit to fully refund the Regulatory Liability by the end of August 2018 in its Step 1 Rates to be implemented on an interim basis and removal of the credit in its Step 2 Rates to be billed upon a final Commission Order in this proceeding; (9) the inclusion of a $4,685,139 annual charge associated with amortization of the December 31, 2017 balance of post-in-service AFUDC; (10) the inclusion of amounts related to the reconciliation through December 31, 2017, for items to be reconciled per the terms of the Rider 61 tariff (*i.e*., operating expenses, amortizations and related costs and credits) to amounts collected from customers during 2017; and (11) that Petitioner’s retail electric rates be adjusted, via Rider 61, in a two-step process, to include the revenue effect of such investment, cost recovery, credits, and amortizations.

Ms. Douglas described the following 2016 Settlement Agreement provisions that affect this filing:

1. Schedule and Timing: She testified that IGCC-17 will use actual data as of December 31, 2017, and be subject to the 2016 Settlement Agreement caps. The filing must be filed in the first quarter of 2018, and annually in the first quarter thereafter using actual December 31 data as of each prior calendar year. Ms. Douglas explained that this proceeding covers operations from January 1, 2017 through December 31, 2017, and subsequent annual filings will cover operations during the prior calendar year. In addition, 12 months of kWh sales or demand data will be used to determine rates.
2. Interim Implementation of Rates: Ms. Douglas explained that the 2016 Settlement Agreement contained a provision regarding interim implementation of rates if the proposed retail revenue requirements in this proceeding were lower than the IGCC-16 retail revenue requirements. Because the proposed retail revenue requirements were lower, the Company was required to make a Thirty-Day Filing for approval of IGCC-17 rates on an interim basis – Step 1 Rates[[9]](#footnote-9). This provision was intended to give customers the benefit of the lower revenue requirements prior to the conclusion of the IGCC-17 proceeding. Ms. Douglas explained the Company’s proposal for a second set of IGCC-17 rates (Step 2 Rates) to be effective upon the Commission’s final order in the IGCC-17 proceeding, and she explained that the revenue requirements in both Step 1 and Step 2 are less than the IGCC-16 revenue requirements currently effective. She explained that the Company’s proposal avoids a large reconciliation variance that would otherwise arise due to the early, interim implementation of proposed rates in April 2018, rather than at the end of a normal proceeding schedule. Ms. Douglas testified that the early implementation of IGCC-17 rates, along with an expected procedural schedule and normal rate implementation of IGCC-18 rates, means that IGCC-17 rates will likely be in effect for 21 months.
3. Regulatory Asset/Regulatory Liability: Ms. Douglas described that the 2016 Settlement Agreement also affected the amount of amortization for the Regulatory Asset and Regulatory Liability. As described in IGCC-15 and IGCC-16, the Company deferred into a Regulatory Asset the retail jurisdictional portion of Edwardsport operating costs in excess of the amount included in the rates billed to customers from the time of the Plant’s June 7, 2013 in-service date to the date IGCC-15 rates went into effect for September 2016 billing cycles. The 2016 Settlement Agreement provision reduced the amount of the Regulatory Asset by the impacts of the retail jurisdictional share of $87.5 million shareholder funding of O&M expenses, setting the Regulatory Asset amortization amount at $20 million per year, thereby effecting a change in the amortization schedule for the Regulatory Asset from three to approximately eight years. She also explained that the 2016 Settlement Agreement required the Company to return the full $26,717,145 Regulatory Liability amount via rates over the agreed upon 24-month period, which began in September 2016 with the implementation of IGCC-15 rates and which will be completed in August 2018.

Ms. Douglas explained that the Company’s proposal for Step 1 and Step 2 IGCC-17 rates will ensure the return of the full $26,717,145 amount via rates over the agreed upon 24-month period without the need for either additional proceedings or creating a built-in large under-billing situation due to the expected extra-long billing period of IGCC-17 rates through the end of calendar year 2019. The Company proposed that the rates including a Regulatory Liability amortization amount sufficient to fully refund the Regulatory Liability to customers by the end of August 2018 be implemented upon Commission approval of the Step 1 Rates. The Company proposed that Step 2 Rates, which remove the Regulatory Liability amortization amount, replace the Step 1 Rates effective with the Commission’s final order in this proceeding, reducing the Regulatory Liability amortization amount to zero. Therefore, the Company requested that the Commission review both sets of rates in this IGCC-17 proceeding and approval of this approach.

1. O&M: Continuing her testimony, Ms. Douglas explained that the forecasted O&M amount that was included in the IGCC-16 revenue requirements was the 2017 O&M cap of $76.8 million (retail) and that the 2016 Settlement Agreement called for a reconciliation to be made for 2017 to ensure customers would only be billed for the lesser of the actual retail jurisdictional portion of the 2017 O&M expenses and the 2017 cap. Under these provisions, any amount of the 2017 retail portion of O&M in excess of the $76.8 million 2017 cap will be excluded from rider recovery and from future retail rate case recovery. Because the retail portion of actual O&M expenses incurred for 2017 exceeded the 2017 cap amount, the Company has included the $76.8 million 2017 O&M cap amount in the reconciliation for this period instead of actual O&M expenses. The 2016 Settlement Agreement did not provide for a cap on the amount of forecasted O&M expenses in the IGCC-17 filing, so the most recent 2019 forecast has been included to coincide with when IGCC-17 rates are expected to be effective.
2. Ongoing Capital Projects: Ms. Douglas explained that the 2016 Settlement Agreement provided for a cap of $16.9 million on the amount of additional retail investment during 2017 that could be included in the IGCC-17 filing.[[10]](#footnote-10) She explained that the amount of additional retail investment to be included will be the lower of this cap amount or the retail portion of actual capital investment additions.[[11]](#footnote-11) Any amount of 2017 Ongoing Capital Project retail investment over the $16.9 million cap will be excluded from rider recovery and future retail rate case recovery. Ms. Douglas stated that because the actual capital investment additions exceeded the $16.9 million retail cap, Petitioner is including the $16.9 million cap amount as additional net investment for the Ongoing Capital Projects in this filing.

Ms. Douglas testified that she complied with the 2016 Settlement Agreement ratemaking provisions when she computed the proposed rates for this filing.

Ms. Douglas testified that the proposed rates reflect the lower 21% federal income tax rate signed into law, the Tax Cuts and Jobs Act (“Tax Act”), on December 22, 2017. Due to the passage of the Tax Act, the Company was able to provide customers with approximately $30 million of tax benefits in the form of lower revenue requirements in this proceeding than what they would have been with the previous 35.0% rate. She explained that the lower tax rates affected the amount of revenue requirements included for return on investment, as well as for depreciation and post-in-service AFUDC. Interim implementation of Step 1 Rates will return the tax benefit to customers more quickly.

Ms. Douglas described her Exhibit 2-A, Duke Energy Indiana’s Rider 61, of which the Company is requesting two-step approval. Rider 61 was last updated and approved by the Commission on January 3, 2018, in IGCC-16. Rider 61 includes definitions of the various components of the formula used to develop the IGCC Revenue Adjustment Factors, a formulaic representation of the calculations used to develop the proposed factors, revenue adjustment factors by retail rate group based on data as of December 31, 2017, a listing of retail allocation factors used to allocate the jurisdictional revenue requirement to various rate groups (based on data from the Company’s cost of service study approved in Cause No. 42359, as adjusted to reflect the impact of customer migrations between the HLF and LLF industrial rate classes and also between certain lighting rate classes), and the billing cycle kWh and/or non-coincident peak demands used to develop the proposed IGCC Revenue Adjustment Factors.

Ms. Douglas also explained Petitioner’s Exhibit 2-B, which sets forth schedules that support and develop the Step 1 Rates and includes data consistent with the requirements of 170 IAC 4-6 and the Commission’s orders, including the orders approving the 2012 and 2016 Settlement Agreements. Exhibit 2-B includes schedules supporting (1) total revenue requirements as allocated to customer classes; (2) jurisdictional revenue requirements for return on the net jurisdictional investment in the IGCC Plant and Ongoing Capital Projects; (3) net investment for the IGCC Plant and Ongoing Capital Projects; (4) jurisdictional revenue requirements for operating expenses; (5) actual and forecasted depreciation and O&M amounts, including a comparison of 2017 O&M to the cap; (6) a comparison of actual Ongoing Capital expenditures to the 2016 Settlement Agreement cap amounts and how the Ongoing Capital additions cap was considered in determining the depreciation expense included for Ongoing Capital Projects; (7) the calculation of reconciliation amounts to be included in revenue requirements; (8) the capital structure and development of the cost of capital used in computing revenue requirements; and (9) the Company’s AFUDC rates applicable to Ongoing Capital Projects under construction during calendar year 2017.

Continuing her testimony, Ms. Douglas explained the calculation of the IGCC Revenue Adjustment Factors developed to recover the total revenue requirements of $345,467,759 for Step 1 Rates. She explained that this is a decrease of $14,294,661 from the revenue requirements included in IGCC-16 and results in a rate reduction of 0.57% from 2017 revenues. Rate HLF was developed on a non-coincident peak demand basis and the other rate groups were divided by actual kilowatt-hour sales for the period ending December 31, 2017.

Ms. Douglas testified regarding the investment amounts used in computing the return included in this filing. She explained that the investment amount was calculated in compliance with the Commission’s IGCC 4S1 Order by including only the retail portion of the $2.595 billion June 30, 2012 Hard Cost Cap amount plus AFUDC accrued from July 2012 through the June 7, 2013 in-service date. The total retail investment of $2,460,027,000 has not changed from what was filed in IGCC-12 through IGCC-16. The major project investment amount includes the production plant and certain transmission plant at Edwardsport, including transmission projects that qualify as part of the Midcontinent Independent System Operator, Inc.’s (“MISO”) transmission expansion plan and are recognized by MISO as Regional Expansion and Criteria Benefit (“RECB”) projects and are subject to 50% reimbursement from MISO. Consistent with the terms of the 2016 Settlement Agreement, for the Ongoing Capital Projects, the retail jurisdictional portion of actual expenditures from April 2015 through December 2016, and for calendar year 2017 exceeded the cap, resulting in a reduction of the retail investment by $11,814,909. Also, in connection with several of the Ongoing Capital Projects, the investment was reduced to give customers credit for the cost of certain parts which were removed from service and transferred to inventory for future use as spare parts.

Ms. Douglas explained that the capped investment amounts were also used to compute depreciation and accumulated depreciation amounts used in developing the revenue requirements. She testified that the total allowable retail depreciable balance amount as of December 2017 is more than the actual retail depreciable balance as of December 2017 because not all of the Ongoing Capital Projects were in-service by December 31, 2017. Once the Ongoing Capital Projects are put in service in 2018 or later, the $11,814,909 reduction in retail investment eligible to earn a return due to the Ongoing Capital caps for the April 2015 through December 2017 period will need to be considered in determining depreciable plant balances, thereby reducing depreciation expense at that time and going forward. In addition, reductions to the original capital project for retirements through December 31, 2017, have been reflected in computing the depreciation expense and net investment accounts and have been reflected in the tracker as they are handled on the accounting books and records.

Ms. Douglas continued her testimony stating that page 2 of Petitioner’s Exhibit 2-B shows that the return calculation was computed by using the capped investment for the original capital project adjusted for the impact of accumulated depreciation and retirements through December 31, 2017, and adding the net amount of the investment in the Ongoing Capital Projects, as adjusted for the impact of reductions due to the 2016 Settlement Cap, accumulated depreciation, and credits for return of parts to inventory through December 31, 2017. She explained that the net retail investment amount of $2,068,756,000 was multiplied by the overall weighted average cost of capital of 6.13% as of December 31, 2017, including deferred income taxes as a zero cost source of capital in the cost of capital calculation. The deferred income tax amount includes the net impact of any income tax benefits or liability associated with the portion of the plant that customers will pay for pursuant to the 2012 Settlement Agreement but excludes the net impact of any tax benefits or liabilities associated with the portion of the plant that shareholders will pay for pursuant the 2012 Settlement Agreement.

Ms. Douglas testified that as a result of the Tax Act reducing the federal income tax rate from 35% to 21%, the amounts collected from customers when the federal income tax rate was 35% that were included in the deferred income tax accounts were recalculated using the new, lower 21% federal rate, with the difference reclassified into a separate regulatory liability account. On Page 9 of Exhibit 2-B, the Company has included the balance of the excess deferred income tax regulatory liability account in with the deferred income tax amount as a zero cost source of capital so that the customers will continue to get the benefit for return calculation purposes in this rider resulting from the Tax Act until the excess deferred income taxes are returned to customers.

Ms. Douglas testified that separate revenue conversion factors were developed for the debt and equity components of the after tax return to reflect the different tax treatments for each component. An effective rate is computed for each component, including statutory rates for applicable state and federal taxes, public utility fees, and uncollectible accounts expense. The new, lower 21% federal income tax rate was used in the determination of the conversion factors found on the bottom of Page 2 of Petitioner’s Exhibit 2-B.

Next, Ms. Douglas explained that Page 2 of Petitioner’s Exhibit 2-B shows that the annual jurisdictional revenue requirement is $160,633,000 for return on qualified investment as of December 31, 2017, after revenue conversion using the applicable revenue conversion factors applied to the debt and equity components of the after tax return. This amount is a $34,596,000 decrease from the amount in IGCC-16.

Ms. Douglas testified to the calculation of the jurisdictional revenue requirement applicable to operating expenses, depreciation expense, tax credits, and amortizations for the Step 1 Rates proposed in this filing. The revenue requirement for these items for Step 1 Rates was calculated using inputs of: (1) the estimated amount for calendar year 2019 of the retail jurisdictional portion of operating expenses; (2) the estimated retail jurisdictional depreciation expense for the calendar year 2019 forecast period for the Project and for in-service Ongoing Capital Projects; (3) a credit to retail customers of the $35,175,000 annual amount approved by the Commission in its Subdocket Order to reflect the jurisdictional impact of a change in depreciation rates for in-service plant (other than IGCC plant and certain environmental plant) that became effective January 1, 2013; (4) a credit for the retail jurisdictional portion of the $15,000,000 annual amount of the estimated State Tax Credit; (5) an annual amortization amount of $20,000,000 of the 2016 Settlement Agreement Regulatory Asset and an annual amortization credit amount of $13,358,576 to ensure the refund of the remaining balance for the Regulatory Liability by the end of August 2018; and (6) $4,685,139 for the amortization of post-in-service AFUDC. The total of these items after conversion to revenue requirements resulted in an annual jurisdictional revenue requirement of $168,814,541 for operating expenses, depreciation expense, tax credits, and amortizations.

Continuing, Ms. Douglas described the conversion of operating expense amounts to revenue requirements using the conversion factor found on Page 5 of Petitioner’s Exhibit 2-B. Next, she explained that Petitioner’s Exhibit 2-B, page 6 provided a summary of the retail jurisdictional amount of actual depreciation and O&M expense amounts for calendar year 2017, subject to the 2016 Settlement Agreement caps, and of forecasted expenses for 2019. As required by the 2016 Settlement Agreement, she provided a comparison of actual retail O&M expenditures for calendar year 2017 to the $76.8 million prorated cap amount used to set IGCC-16 rates, with a result of the cap amount being the lesser of the two amounts. She explained that customer rates therefore included the $76.8 million cap amount in performing the 2017 reconciliation. The property tax amounts reflect 100% of the calendar year 2017 benefit for the ten-year property tax abatement from Knox County and the thirty-year reimbursement due to designation of Edwardsport as a Tax Increment Financing District.

Page 7 of Petitioner’s Exhibit 2-B was described by Ms. Douglas as the comparisons of actual amounts to the 2016 Settlement Agreement cap amounts for Ongoing Capital, as well as showing how the Ongoing Capital additions cap was considered in determining the depreciable balance used to calculate the depreciation expense.

Ms. Douglas explained that Page 1 of Petitioner’s Exhibit 2-B shows a reconciliation amount for the difference between amounts collected from customers during the calendar year 2017 to actual expenses incurred. She explained that this reconciliation amount, which is supported by Page 8 of Petitioner’s Exhibit 2-B, includes the portion of the IGCC-16 cumulative reconciliation revenue requirement amount applicable to all customers that is expected to be uncollected when IGCC-16 rates are replaced with IGCC-17 rates and that this adjustment considers that IGCC-17 rates will likely be in effect through calendar year 2019. Ms. Douglas testified that this reconciliation resulted in an under-collection of $15,438,374. Page 1 also shows an amount of $581,844 calculated similarly for the amount of IGCC-16 cumulative reconciliation amounts applicable only to HLF customers related to an HLF rate adjustment made in previous IGCC filings.

Ms. Douglas discussed the derivation of the Company’s weighted average cost of capital as of December 31, 2017, as shown on Page 9 of Petitioner’s Exhibit 2-B. Ms. Douglas stated that the weighted average cost of capital was calculated consistent with 170 IAC 4-6-14 using a December 31, 2017 cut-off date. The Company included the balance of the regulatory liability for the excess deferred income tax amounts resulting from the Tax Act and from other previous state and federal tax changes in the deferred income tax amount as a zero cost source of capital component in the calculation.

Ms. Douglas also summarized AFUDC rates for the period January 2017 through December 2017, which were used in determining the amounts of AFUDC included in the Ongoing Capital Projects and in determining the amount of post-in-service AFUDC accrued on the retail jurisdictional IGCC Project (Hard Cost Cap plus Additional AFUDC) and previously accrued post-in-service carrying costs from January 2017 through December 2017.

Ms. Douglas testified that Petitioner’s Exhibit 2-D represents an updated Rider 61, which was last updated and approved by the Commission in its January 3, 2018 IGCC-16 Order. The Company is requesting approval to implement this update, the Step 2 Rates, of Rider 61 upon a final order from the Commission in this proceeding. The only changes made in this tariff from the tariff for Step 1 Rates, Petitioner’s Exhibit 2-A, is the revision numbering, the effective date, and the proposed Step 2 Rates. The Step 2 Rates were developed in Petitioner’s Exhibit 2-E by removing the amount included in the Step 1 Rates for the Regulatory Liability amortization.

Next, Ms. Douglas testified that Petitioner’s Exhibit 2-E includes the pages from Petitioner’s Exhibit 2-B that changed due to removal of the Regulatory Liability amortization amount in IGCC Rider factor development. Revenue requirements for the Step 2 Rates are $358,826,335, which is less than the revenue requirements in the current IGCC-16 rates. It is an increase of $13,358,576 from revenue requirements for the Step 1 Rates, reflecting the removal of the Regulatory Liability amortization credit. The revenue requirement impact for total retail of this increase from Step 1 Rates to Step 2 Rates is approximately 0.5% of total billed 2017 revenues.

Continuing, Ms. Douglas explained when CWIP ratemaking treatment for Edwardsport will cease. She stated that consistent with 170 IAC 4-6-22 and in accordance with the Commission’s CPCN Order, Edwardsport will be deemed to be under construction, and Duke Energy Indiana will continue to receive revenues through Rider 61, until the Commission determines that Edwardsport is used and useful in a proceeding that involves the establishment or investigation of Duke Energy Indiana’s retail electric base rates and charges.

Ms. Douglas referenced her Exhibit 2-F which shows the rate impact for both Step 1 Rates and Step 2 Rates. She stated that although revenue requirements for both the Step 1 Rates and the Step 2 Rates are less than the revenue requirements currently being billed, because the kwh usage billing determinants used for rate development for the residential customer class in IGCC-17 are less than the kwh usage billing determinants included in IGCC-16 rate development, residential customers will see a slight rate increase. Upon approval and implementation of the proposed Step 1 Rates, the monthly bill of a residential customer using 1,000 kilowatt-hours will increase by $0.01 or approximately 0.0% from the March 1, 2018, total monthly bill and upon approval and implementation of the proposed Step 2 Rates, the monthly bill of a residential customer using 1,000 kilowatt-hours will increase an additional $0.58 or 0.5%.

Ms. Douglas testified that Duke Energy Indiana is proposing to update its Rider 61, Tenth Revised Sheet No. 61, Pages 1 through 5 on an interim basis to be effective upon Commission approval of the tariff via a Thirty-Day filing[[12]](#footnote-12) and to remain effective until a final Order approving Step 2 Rates is received in this proceeding. The Company is also proposing to update its Rider 61 with Step 2 Rates, Eleventh Revised Sheet No. 61, Pages 1 through 5 upon Commission approval of the rates in a final Order this proceeding.

Ms. Douglas concluded by testifying that the Company completed its 2016 annual review of the changes in the number of customers and sales to HLF and LLF and has updated the level of migrations in this proceeding. In addition, a customer previously under a special contract rate moved to a standard LLF rate effective July 31, 2017. The Company has proposed in previous filings to use these adjustments on a going-forward basis in this and other riders using historical demand allocations, and the adjustments were most recently approved for use in Riders 62 and 71 in Cause No. 42061-ECR 30 in the Commission’s February 28, 2018 Order. The Company will continue to monitor the rate migrations between HLF and LLF each year and if there is a net change of greater than 10 MW from the current level, the Company would propose an update to the factors at that time.

1. **CAC’s Case-in-Chief Evidence**. Mr. Schlissel testified on behalf of the CAC. Mr. Schlissel testified to the following principal conclusions: (1) Edwardsport was planned and proposed to the Commission as an IGCC plant that would burn gasified coal; (2) Edwardsport’s operating performance to date has been significantly worse than the Company repeatedly told the Commission it would be in all of the IGCC subdockets; (3) during the IGCC-17 review period:

(a) the 60 percent capacity factor achieved by Edwardsport on syngas and the 73 percent capacity factor achieved on all fuels remained significantly below the 82 percent average capacity factor projected by the Company; (b) when operating on syngas, the plant consumed 28 percent of its gross generation to serve auxiliary load that was used to run onsite equipment and that, therefore, was not available to be sent into the grid. This was much higher than the parasitic loads of typical baseload coal and natural gas combined cycle plants; (c) Edwardsport’s actual average heat rate in 2017 was slightly above 11200 BTU/KWh, which was significantly higher than the 9,313 BTU/KWh heat rate forecasted by the Company, which meant it was more expensive to produce power, raised the fuel costs that Duke Energy Indiana’s customers must pay, and made the plant significantly less competitive in the MISO energy markets; (d) the Plant’s operating performance remained inconsistent in 2017, never achieving its 618 MW full power net capacity rating at any time during the year; (e) the plant experienced a 13.6 percent equivalent forced outage rate (“EFOR”) during 2017, which was more than twice the EFOR of the industry comparison group that Duke Energy Indiana self-identified; (4) although Edwardsport’s operations improved in 2017, performance was not strong or close to what was projected by Duke Energy Indiana and approved by the Commission in the CPCN proceeding; (5) Edwardsport’s operating performance, especially on syngas should not be expected to improve significantly in the foreseeable future; (6) no evidence that operating performance is improving; (7) Edwardsport is very expensive to operate and maintain; (8) high cost of producing power has been due to its extremely high non-fuel O&M; (9) not reasonable to expect that the plant will produce a net economic benefit for ratepayers at any time in the foreseeable future; (10) Edwardsport has been an economic catastrophe for ratepayers and will continue to be unless the Commission takes actions to protect them; (11) as more renewable resources are added to the MISO grid, they will make continued operation of Edwardsport less economically viable; (12) Edwardsport cannot be considered used and useful without both gasifiers working with the combustion turbines and the steam turbine to produce electricity economically dispatched by MISO.

Based on these conclusions, Mr. Schlissel testified that approving the cost caps in the 2016 Settlement Agreement was a good step in the right direction, but recommended that the Commission take stronger actions and that the Commission: (1) modify or revoke the CPCN; (2) require Duke Energy Indiana to file a rate case to determine how much of the investment in Edwardsport is actually used and useful; (3) initiate a special proceeding to consider options that would ensure that the fully embedded cost of electricity from Edwardsport is comparable to the cost of alternative sources; (4) remove any approved incentive if the Commission finds that Edwardsport no longer complies with Ind. Code § 8-1-8.8-15; and (5) limit the recovery of non-fuel O&M expenditures, and restrict the Company’s ability to recover capitalized maintenance expenditures in 2018 and 2019 to the same limit it approved in IGCC-15 for 2017.

Mr. Schlissel agreed with Mr. Gurganus that there has been some improvement in operations, but would not characterize the plant’s performance as strong, or what was projected by Duke Energy Indiana and relied upon the Commission in approving the initial CPCN, and that operating performance should not be expected to significantly improve in the foreseeable future. Mr. Schlissel, agreeing with prior testimony of Duke Energy Indiana witness Mr. Jack Stultz, stated that it was better to assess the performance of Edwardsport of a longer period of time versus focusing on 2017. He testified that during 2017 Edwardsport did not achieve the 82 percent capacity factor and has yet to achieve the 82 percent capacity factor any sustained period of time.

Next, Mr. Schlissel testified that ratepayers are continuing to pay very high fixed costs for the plant. He discussed that the high EFOR and the parasitic load have contributed to the inconsistent and unreliable operation of the gasification equipment. Mr. Schlissel discussed Edwardsport’s high heat rate, how this makes the plant less economic for consumers, and less competitive with other plants in the wholesale market. He stated that Edwardsport did not achieve its 618 MW net full capacity rating at any time during the year.

Mr. Schlissel discussed the seasonal derate of the plant and that Duke Energy Indiana did not consistently offer Edwardsport into the MISO Day Ahead or Real Time markets at full capacity. He stated that while Mr. Gurganus testified that Edwardsport set or equaled a new record for gasifier availability in February 2017, the average was 78.34 percent, below the 85 percent average availability on syngas that the Company forecasted. Edwardsport’s gasifier availability reached or exceeded 85 percent in 13 of 55 months from June 2013 through December 2017. Mr. Schlissel stated that it is not reasonable to expect that the plant would achieve the forecasted level of gasifier availability in every month.

Mr. Schlissel next discussed the high O&M costs at the plant. While fuel costs at Edwardsport have been relatively low, it is the non-fuel O&M expenses that make the plant more expensive than the Company’s coal-fired plants, buying power in the MISO market, or new natural gas-fired combined cycle plants built by Duke affiliates. He explained that these high non-fuel O&M costs were due to operation and maintenance of the gasification systems. Mr. Schlissel opined that it is not reasonable to expect that the plant will produce a net economic benefit for ratepayers any time in the foreseeable future.

1. **The 2018 Settlement Agreement.**

A. Summary of Settlement. On September 20, 2018, the Settling Parties finalized the 2018 Settlement Agreement and filed it with the Commission. A copy of the Settlement is attached to this Order.

The Settling Parties agree that this Settlement resolves IGCC ratemaking issues for calendar years 2018 and 2019 regarding Duke Energy Indiana’s Edwardsport IGCC Generating Facility. Settlement at 1 (Settlement Introduction).

The Settlement includes caps on Duke Energy Indiana’s retail operating expenses for

2018 and 2019, reduces the Company’s Regulatory Asset by $30 million dollars (with a corresponding reduction of the amount of amortization of the regulatory asset included in rates

by $10 million annually beginning with the implementation of final IGCC 17 rates), and provides

funding for low income assistance and clean energy projects. Id. Specifically:

* O&M shall be capped for 2018 and 2019 at the Company’s budgeted retail O&M amounts as follows:
  + 2018: $97.6 million
  + 2019: $96.0 million

To the extent Duke Energy Indiana’s actual expenses exceed these capped amounts, the difference will not be deferred for future recovery. To the extent Duke Energy Indiana’s actual expenses are less than these capped amounts, Duke Energy Indiana shall only recover the actual O&M incurred. If Duke Energy Indiana over-collects, the difference will be reconciled in the final IGCC Rider reconciliation, as discussed in Para 2(C) of the Settlement.

* Duke Energy Indiana agrees that retail customers shall receive a $30 million credit by

reducing the balance of the Regulatory Asset. (The 2016 Settlement Agreement provided for this Regulatory Asset to be amortized in the amount of $20 million annually and recovered through rates over approximately eight years without carrying costs.) This $30 million credit will be implemented as follows:

i. The interim IGCC-17 rates currently include $20 million of annual

Regulatory Asset amortization expenses and this will be reduced by $10 million in the final IGCC-17 rates to be proposed under the terms of this Settlement Agreement.

ii. In the next rate case, consistent with the 2016 Settlement Agreement, Duke Energy Indiana will propose base rates that continue to include an annual amortization of the Regulatory Asset of $20 million without carrying costs until the Regulatory Asset is recovered. However, the Company’s ECR rider will include a $10 million annual credit (or $5 million in each semi-annual ECR Rider) until the total $30 million credit provided for in this Settlement Agreement has been refunded.

* The OUCC and Duke Energy Indiana will cooperate to use $1.7 million of shareholders’

funds for low income assistance (e.g., Duke Energy Indiana’s Helping Hand Fund) and/or clean energy-related projects/programs (unless this Settlement is voided in its entirety pursuant to Para. 9 of the Settlement). The other Settling Parties may participate in the discussions as desired.

The Settlement also provides that certain issues will be addressed in Duke Energy

Indiana’s next retail base rate case (anticipated being filed in mid-2019) (herein “next rate

case”). Specifically, post-in-service ongoing capital project costs incurred from January 1, 2018,

through the Company’s next rate case test period cutoff date will be addressed in the next rate

case. In addition, Duke Energy Indiana’s operating expenses for January 1, 2020, onward will

also be addressed in the next rate case. Settlement at 1 (Settlement Introduction). The Settlement specifies that:

* IGCC-17 rates reflecting post-in-service ongoing capital costs incurred through December 31, 2017, will remain in effect until the Company’s retail base rates are updated after issuance of a final order in its next rate case. Post-in service ongoing capital costs at Edwardsport for Calendar Year 2018 and through the Company’s next rate case test period rate base cutoff date will be reviewed in that next rate case. The non-Duke Settling Parties reserve all rights to make any and all arguments regarding the amount of and Duke Energy Indiana’s ability to recover post-in-service ongoing capital costs incurred after January 1, 2018.
* Except as expressly provided herein or as otherwise provided in prior Edwardsport-related settlement agreements, the Settling Parties reserve all rights to raise any and all arguments regarding the treatment of Edwardsport including, but not limited to, costs and expenses in Duke’s next rate case and in other future proceedings.
* Duke Energy Indiana’s O&M incurred from January 1, 2020, onward will be addressed in its next rate case. Duke Energy Indiana expects the O&M in 2020 to be greater than the 2019 level because of a scheduled major outage in 2020 of the entire station. Duke Energy Indiana reserves the right to propose deferral treatment for the 2020 outage, separate and distinct from the proposed amount for base rates, in the next rate case. The non-Duke Settling Parties reserve all rights to make any and all arguments regarding the appropriate amount of and Duke Energy Indiana’s ability to recover O&M incurred after January 1, 2020.
* IGCC-17 rates will continue after January 1, 2020, until the Commission issues a final order in Duke Energy Indiana’s next rate case. The difference between the amount of O&M that Duke Energy Indiana has recovered after January 1, 2020, via the IGCC Rider and the amount that Duke Energy Indiana is authorized to recover in the next rate case will be reconciled in the final IGCC Rider reconciliation, discussed in Para 2(C) of the Settlement.

As a result of this Settlement, Duke Energy Indiana will not file an IGCC Rider proceeding in either 2019 or 2020, and the Settling Parties intend for the Company to petition to include Edwardsport investment and operating expenses in base rates in its next rate case and to

discontinue the tracking of Edwardsport via the IGCC Rider thereafter. Settlement at 1 (Settlement Introduction). The Settlement specifies the following:

* The Settling Parties also agree that the return on and of investment amounts established in IGCC-17 for Edwardsport will remain in effect until retail base rates are updated after a final order in the Company’s next rate case, assuming such filing occurs in 2019. Absent a retail rate case filing in 2019, the IGCC-17 Rider will remain in effect until mid-2020. A final reconciliation of the IGCC Rider will be made as part of the first

practicable ECR Rider filed following the Commission’s issuance of the Company’s next rate case order.

* The Settling Parties further agree that Duke Energy Indiana shall not include in the ECR

Rider more than $10 million annually (or $5 million in each semi-annual ECR Rider) of costs associated with this IGCC Rider reconciliation. The Company shall continue to include IGCC reconciliation amounts in future ECR Riders until the reconciliation amount (without carrying costs) is fully collected or refunded. The ECR Rider reconciliation cap amount shall be calculated without consideration of the $30 million credit discussed in Para 4 of the Settlement.

B. Duke Energy Indiana’s 2018 Settlement Supporting Testimony. Ms. Douglas provided testimony supporting the 2018 Settlement Agreement. She testified that the 2018 Settlement Agreement is reasonable and in the public interest. Ms. Douglas explained that Duke Energy Indiana is requesting that the Commission approve: (1) the 2018 Settlement Agreement in its entirety; (2) remove the interim status of the Step 1 rates which were implemented on an interim basis beginning with bills rendered May 2018 Cycle 17 following the Commission’s approval in Thirty-Day filing No. 50180; and (3) approve the proposed Step 2 rates beginning after the Commission’s approval in this proceeding and until the establishment of new base rates which will include Edwardsport investment and operating expenses.

Ms. Douglas testified that the 2018 Settlement Agreement resolves all IGCC ratemaking issues among the Settling Parties for 2018 and 2019. She explained that the 2018 Settlement Agreement: (1) includes caps on recoverable operating expenses for 2018 and 2019; (2) provides for review of ongoing capital costs for 2018 through the next retail base rate case test period cutoff date; (3) reduces the value of the Company’s regulatory asset containing deferred operating expenses addressed in the Commission’s Order approving the 2016 Settlement Agreement in IGCC-15 by $30 million, with a corresponding reduction in the amount of amortization of the regulatory asset included in rates of $10 million annually beginning with the implementation of the Step 2 rates; and (4) provides funding for low income assistance and clean energy projects. The Settling Parties also agreed that Duke Energy Indiana will not file an IGCC Rider proceeding in either 2019 or 2020, and that it is intended for Edwardsport’s investment and operating expenses to be included in its next retail base rate case and to discontinue the tracking of Edwardsport via the IGCC Rider.

Ms. Douglas discussed Term 2 of the 2018 Settlement Agreement. She stated that the 2018 Settlement Agreement provides for a cap on recovery of O&M[[13]](#footnote-13) at the budgeted retail O&M amounts of $97.6 million for 2018 and $96.0 million for 2019. The Step 1 Rates used the $96.0 million 2019 budget amount and the proposed Step 2 rates also use this same amount pursuant to the 2018 Settlement Agreement terms. To the extent actual expenses incurred in 2018 or 2019 exceed the budgeted amounts, the difference will be borne by Duke Energy Indiana shareholders. If actual expenses incurred are less than the budgeted amounts, the difference will be addressed in the final IGCC Rider reconciliation.

Ms. Douglas testified that the 2018 Settlement Agreement provides that the 2020 O&M costs incurred or deferred for future recovery will be addressed in the Company’s rate case and that ratemaking treatment for the difference in revenue requirement for the period of January 1, 2020 until base rates are approved in the rate case will be addressed in the next rate case.

Ms. Douglas testified that final IGCC-17 rates will remain in effect until the Company’s retail base rates are updated in its next rate case and that IGCC Rider filings will not be filed in March 2019 or March 2020. The Settling Parties also agreed that the return on and of investment amounts established in IGCC-17 will remain in effect until retail base rates are updated in the next rate case.[[14]](#footnote-14) Ms. Douglas explained that the final reconciliation of the IGCC Rider will be made as part of the first practicable ECR Rider[[15]](#footnote-15) filed following issuance of the Company’s next retail base rate case order. She noted an annual cap of $10 million on the amount of the final IGCC Rider reconciliation that can be included in the ECR Rider filings. Ms. Douglas explained that the only exceptions to application of the O&M caps are for force majeure events[[16]](#footnote-16) beyond the control and without the fault or negligence of Duke Energy Indiana. Continuing, she stated that Duke Energy Indiana may only propose to recover O&M expenditures above the caps set in the 2018 Settlement Agreement for the periods of time covered by the settlement in the event of a force majeure event and to the extent the Company proposes to recover O&M expenditures over the caps due to a force majeure event, the non-Duke Settling Parties reserve all rights to make arguments in response to the Company’s request.

Next, Ms. Douglas discussed Term 3 of the 2018 Settlement Agreement, specifically that the IGCC-17 rates reflecting the post-in-service ongoing capital costs incurred through December 31, 2017 will remain in effect until base rates are updated in the next rate case. Post-in-service ongoing capital costs for 2018 through the rate case test period rate base cutoff date will be reviewed in the rate case.

Term 4 of the 2018 Settlement Agreement, as explained by Ms. Douglas, states that customers will be provided with a $30 million credit by reducing the balance of the Regulatory Asset. She explained that the 2016 Settlement Agreement provided for this Regulatory Asset to be amortized and to recovered through rates over approximately eight years in the amount of $20 million annually. The $30 million credit is provided to customers by reducing the amortization amount to $10 million annually. Term 4 explains that the implementation will include a reduction in the amortization amount in the final IGCC-17 rates from $20 million to $10 million. She explained that the Company will propose base rates with an annual amortization amount of $20 million, including an annual $10 million credit in ECR Rider filings until the total $30 million has been credited to customers.

Continuing, Ms. Douglas discussed Term 5 that a supplemental filing be made in the IGCC-17 proceeding to propose rates that reflect the required changes from Cause No. 45032-S2[[17]](#footnote-17), Cause No. IGCC-15S1[[18]](#footnote-18), and the reconciliation of the Commission-Ordered Regulatory Liability. She stated that the IGCC-17 rates will be adjusted to reduce the amortization of the Regulatory Asset from $20 million per year to $10 million per year, and to recognize the final IGCC-17 Step 2 Rates under the terms of the 2018 Settlement Agreement will be in effect longer than the normal one-year period.

Ms. Douglas testified that Term 7 of the 2018 Settlement Agreement related to funding for low income assistance and clean energy projects. She explained that the OUCC and the Company will use $1.7 million of shareholder funds for low income assistance and clean energy-related projects/programs and that together they would determine the allocation of the funding, with participation of other Settling Parties as desired. The Settlement Agreement also provides that Non-Duke Settling Parties will also be reimbursed attorney and consultant fees from shareholder funds, not to exceed $300,000, with any remaining amount to be used for the low income and clean energy-related projects and programs to the extent actual attorney and consultant fees are less than $300,000.

Ms. Douglas explained that the Company is requesting approval of the new proposed Step 2 Rates, which were based on the same data used in the Step 1 Rates, subject to the same 2012 and 2016 Settlement Agreement terms and calculations, with rate calculations adjusted by terms in the 2018 Settlement Agreement. The billing of the Step 2 Rates, along with the Step 1 Rates are intended to work together to recover the agreed upon costs of Edwardsport through the date of implementation of revised base rates in mid-2020. Ms. Douglas noted that the current Step 1 Rates and the proposed Step 2 Rates reflect the lower federal income tax rate due to the passage of the Tax Act and that the benefits of this reduction on IGCC Rider revenues from January 1, 2018 through May 23, 2018, is being returned to customers via Step 2 Rates.

Ms. Douglas next discussed the proposed revenue requirements, rate calculations, and retail rate impacts. She explained that Exhibit 3-C includes the pages from Petitioner’s Exhibit 2-B that changed pursuant to the terms of the 2018 Settlement Agreement. She explained that revenue requirements for these proposed Step 2 rates are $332,666,578, which is $12,801,181 less than the revenue requirements in the current IGCC-17 Step 1 rates. She also stated that upon approval, the IGCC-17 Step 2 rates for each revenue class will be less than the current IGCC-17 Step 1 rates.

Ms. Douglas stated that Petitioner’s Exhibit 3-D shows the rate impact of the proposed ratemaking should the Commission approve the 2018 Settlement Agreement. She stated that upon approval of the Step 2 Rates, the monthly bill of a typical residential customer using 1,000 kilowatt-hours will decrease by $0.53, or approximately 0.5%.

Ms. Douglas concluded by noting that Duke Energy Indiana is proposing to replace its current Step 1 Rates, approved in Thirty-Day filing 50180, with the Step 2 Rates shown in Petitioner’s Exhibit 3-B on an updated Rider 61, Eleventh Revised Sheet No. 61, Pages 1 through 5. Upon Commission approval and upon Duke Energy Indiana’s filing of the updated Rider 61 with the Commission’s Energy Division, the proposed factor will be billed to customers for all bills rendered beginning with the first bill cycle 1 following the Commission’s Order in this proceeding.

1. OUCC’s 2018 Settlement Supporting Testimony. Wes Blakley, Senior Utility Analyst, presented settlement supporting testimony on behalf of the OUCC discussing the financial benefits and other terms of the 2018 Settlement Agreement. He testified that the 2018 Settlement Agreement is in the public interest, addresses the O&M concerns held by the OUCC, and provides financial concessions to Duke Energy Indiana ratepayers that reduce the revenue requirement related to the Regulatory Asset.

Mr. Blakley explained that the 2018 Settlement Agreement also protects ratepayers from potentially large increases in operating expenses that could occur in 2018 and 2019 and maintains capital expenditures at the 2017 level until the issuance of a rate order in the Company’s next base rate case.

1. IG’s 2018 Settlement Supporting Testimony. Mr. Michael P. Gorman presented settlement supporting testimony on behalf of the Industrial Group membership. Mr. Gorman provided a brief history of the IGCC proceedings, including the 2012 Settlement Agreement[[19]](#footnote-19) and the 2016 Settlement Agreement that required the Company to write off $87.5 million of the regulatory asset and placed a $67.2 million cap on O&M for the 12 months ending March 31, 2015 which increased to $76.8 million by calendar year 2017.

Mr. Gorman discussed Duke Energy Indiana’s initial O&M request in this proceeding and that IG had concerns with respect to both the amount and recovering it via the IGCC rider. He also testified that IG had concerns related to recovery of overall rate of return including authorized return on equity, duration of the IGCC riders, and recovering costs outside a base rate case.

Next, Mr. Gorman discussed the 2018 Settlement Agreement, specifically the customer benefits such as the $30 million reduction to the regulatory asset, the O&M cap, the preservation of rights, and the Company’s contribution for low- income assistance and clean energy-related projects.

With respect to the reservation of rights, Mr. Gorman explained that the existing post in-service capital cost cap will continue to be reflected in the IGCC-17 factors, but any new post in-service capital costs after January 1, 2018 will be considered in Duke’s next rate case. The consumer parties reserve all rights to make any and all arguments regarding the amount of and Duke’s ability to recover post-in-service capital costs incurred after January 1, 2018. In addition, Mr. Gorman explained that the Settlement provides that O&M incurred after January 1, 2020, will be addressed in the next rate case. The consumer parties reserve all rights to make any and all arguments regarding the appropriate amount of and Duke’s ability to recover O&M incurred after January 1, 2020. Third, Mr. Gorman explained that the Settlement contains a general reservation of rights. Specifically, the Settlement states that “Except as expressly provided herein or as otherwise provided in prior Edwardsport-related settlement agreements, the Settling Parties reserve all rights to raise any and all arguments regarding the treatment of Edwardsport including, but not limited to, costs and expenses in Duke’s next rate case and in other future proceedings.”

Mr. Gorman testified that the 2018 Settlement Agreement contains compromises on several issues about which the IG was concerned. He opined that as a complete and interrelated package, the Settlement is a reasonable resolution, especially in light of the significant costs and uncertainty inherent in litigation. Gorman further stated that the Settlement provides a bridge to the next rate case. Mr. Gorman continued stating that the base rate case will allow an accurate calibration of Duke Energy Indiana’s tariff rate charges using a complete review of all its cost of service and rate revenues to ensure that total charges to customers provide fair consideration for a reasonable and prudent cost of service increase to provide high quality and reliable electric service. He explained that consumer parties have reserved all rights to address issues related to Edwardsport cost recovery in the rate case.

Next, Mr. Gorman explained that the $30 million write off is a reasonable compromise given the inherent risks and costs of litigation, and that fact that Duke Energy Indiana anticipates bring a rate case in 2019. He testified that a rate case offers a better forum than a tracker proceeding to examine Edwardsport as a whole and in the context of Duke Energy Indiana’s entire system. Further, he stated that in the absence of settlement, ratepayers are at risk of Duke Energy Indiana charging for O&M costs above the amounts projected for 2018 and 2019.

Concluding his testimony, Mr. Gorman testified that he recommends that the Commission approve the 2018 Settlement Agreement and that it resolves issues in a balanced and constructive manner. He explained that the settlement terms will allow a complete review of Duke Energy Indiana’s cost of service and recalibration of all of its charges to retail customers to ensure that the Company receives fair compensation, but at just and reasonable prices to customers.

1. **CAC’s Testimony in Opposition to the 2018 Settlement Agreement.**

Mr. Schlissel provided testimony addressing the 2018 Settlement Agreement. He testified that he did not see any evidence that demonstrates that Edwardsport’s performance to date in 2018 was close to what the Company projected it to be. Mr. Schlissel discussed Edwardsport’s net capacity factor (“NCF”) and that they have been and will continue to be significantly lower than projected by the Company.

As in prior proceedings, Mr. Schlissel criticized the operating performance and the parasitic load of Edwardsport. He stated that the performance of the plant has been inconsistent and unreliable due to equipment problems, and that the EFOR has been very high. Mr. Schlissel explained that the plant’s net power level has remained inconsistent during 2018 and has yet to achieve the 618 MW full power net capacity rating. Continuing, Mr. Schlissel testified that Edwardsport’s auxiliary load when operating on syngas is much higher than those for typical baseload coal and natural gas-fired combined cycle units and that ratepayers suffer. He also discussed that Edwardsport was not offered into the MISO markets at full capacity, the economic dispatch of the plant, the plant’s high heat rate, and critiqued the gasifier availability. For these reasons, Mr. Schlissel testified that operating performance of Edwardsport, especially on syngas, should not be expected to improve significantly in the foreseeable future.

Next, Mr. Schlissel discussed the claimed benefits of the 2018 Settlement Agreement. He stated that even under the settlement, Edwardsport will continue to have very high O&M expenses. He opined that the Company’s budgeted non-fuel O&M costs were far higher than the average cost of buying the same energy at the MISO Indiana hub. Ms. Schlissel testified the cost of producing power at Edwardsport has been significantly higher than the cost of purchasing power in the competitive wholesale MISO markets and that it is unlikely that producing power at the plant will become less expensive than purchasing that power from the MISO wholesale markets any time in the future. He discussed that it is not reasonable to expect the plant to produce a net economic benefit for ratepayers at any time in the foreseeable future. He opined that the non-fuel O&M caps do provide protection for ratepayers.

Mr. Schlissel testified that the $30 million reduction in the regulatory asset does not provide a net benefit to customers because it must be evaluated in the context of other provisions in the settlement. He stated that this reduction allows only one-third of the Tax Act reduction benefit to be flowed to customers and allows Duke Energy Indiana to retain two-thirds to offset the increased non-fuel O&M expenses in 2018 and 2019 and deferral of recovery of non-fuel O&M expenses in 2020 and capital maintenance costs in 2018 through 2020.

Mr. Schlissel stated that approving the cost caps in the settlement would be a good step in the right direction, however the settlement does not address the fact that Edwardsport is a catastrophe for customers and that the Commission must take additional action. He recommended that the Commission modify or revoke the CPCN; require Duke Energy Indiana to file a rate case; initiate a special proceeding to compare the fully embedded cost of electricity from Edwardsport with alternative sources; remove any incentive if the plant is found to no longer comply with provisions of the incentive order; and, review whether Edwardsport is “used and useful”, limiting recovery of non-fuel O&M expenditures to an average of Duke plants for the years 2014-2017 and restricting capitalized Edwardsport maintenance expenditures recovered through rates until that “used and useful” review occurs.

1. **Rebuttal Testimony in Support of the 2018 Settlement Agreement.**

Mr. Gurganus provided rebuttal testimony in response to the testimony of Mr. Schlissel. He provided a high-level overview of the 2018 Settlement Agreement and agreed with Mr. Schlissel that approving the cost caps are a step in the right direction. He testified that the Settling Parties agree that the 2018 Settlement Agreement balances the interest of customers and the Company, providing a planned end to the IGCC Rider, and an additional reduction in rates. Mr. Gurganus testified that customers will benefit from rate certainty until the IGCC Rider is discontinued.

Mr. Gurganus disagreed with Mr. Schlissel that Edwardsport would remain or is a catastrophe without further action from the Commission above and beyond approval of the 2018 Settlement Agreement. Mr. Gurganus discussed the Settling Parties’ desire to reach agreement in order to resolve ratemaking issues for 2018 and 2019, leaving issues beyond that timeframe for determination in the Company’s next retail base rate case. He explained that the agreement was reached only after careful consideration of the same issues raised by Mr. Schlissel in his testimony and that the Settling Parties believe the 2018 Settlement Agreement offers important consumer benefits, including a $30 million benefit to consumer parties through the reduction in the regulatory asset, as well as $1.7 million for low income assistance and/or clean energy related projects.

Next, Mr. Gurganus responded to Mr. Schlissel’s multiple criticisms of the operating performance and costs of Edwardsport. Mr. Gurganus noted that the Company has responded to these criticisms multiple times over the short operating history of Edwardsport and emphasized again that the performance metrics should not be judged over a short period of time, but rather over a longer period, given that the asset will be available for thirty years. He explained that performance metrics demonstrate year after year improvement of performance and reliability. Mr. Gurganus testified that Edwardsport has not been through a full maintenance cycle yet[[20]](#footnote-20) and that he believes that there are no known equipment or operational issues that will prevent the plant from performing as expected in the long term. This is a long-lived asset, which has experienced improving reliability and output and recent reductions in station operation expenses, and his team is committed to get the plant to operating at its optimal reliability and efficiency.

Mr. Gurganus addressed Mr. Schlissel’s critique of the auxiliary load and explained that the plant was constructed with the knowledge that it would have a larger auxiliary load than other generating units and that they have been disclosed to the Commission and parties.

Continuing his testimony, Mr. Gurganus responded to Mr. Schlissel’s statement that MISO has dispatched Edwardsport below its maximum offer in many hours. He testified that this was not correct and that MISO has only dispatched Edwardsport down when operating on syngas.

Mr. Gurganus described Edwardsport’s performance since going in-service in 2013 stating that it has performed increasingly well with improving reliability and generation output year after year. As with other generating facilities there have been equipment issues to resolve and maintenance outages to perform, but it is difficult to have a view into a generating station’s long-range operations until they can be reviewed over the timeframe of a typical maintenance cycle, and until enough data has been accumulated to represent the full extent of typical forced and planned events, the data is not sufficiently representative of the long-term operations of the station.

Mr. Gurganus described several graphs in his testimony that represent that station’s annual NCF and EFOR from 2013 through October 2018 that visually depict the year over year improvements achieved by the plant, and the variability due to planned events.

Mr. Gurganus also explained that comparing Edwardsport’s performance to other generating facilities in the Company’s fleet is not a true comparison due to the different operating components of Edwardsport as compared to a traditional coal-fired plant. With that said, he provided a comparison of Edwardsport’s EFOR, equivalent availability factor (“EAF”) and NCF for January – October 2018 to the Company’s large, mature coal units. After five years of operation, Edwardsport is performing in line with Duke Energy Indiana’s largest, most established coal units.

Mr. Gurganus next addressed the reasonableness of the 2017 O&M expenses. He testified that while the station was capped in 2017 on the recovery of both its O&M expenses and ongoing capital costs, the expenses were reasonable and prudently incurred. He explained that the decision was made to spend additional expenses above the 2016 Settlement Agreement caps to work on Process Safety Management and other safety-related and reliability improvement projects.

Continuing, Mr. Gurganus opined that the O&M budgets for 2018 and 2019 are reasonable and include important and necessary funds for planned maintenance, ongoing operations and both summer and winter preparations. He explained that the 2018 Settlement Agreement protects customers from any increase in expense over budgeted amounts, and that the budget amounts represent a decrease in the amounts spent in 2016 and 2017, and that he expects that trend to continue.

Mr. Gurganus next addressed Mr. Schlissel’s testimony comparing Edwardsport’s O&M to the average cost of buying energy at the MISO Indiana hub. He testified that while his job is focused on safe, reliable and efficient operations of the plant, comparing the O&M cost of any unit to a Locational Marginal Price (“LMP”) is misleading and does not represent the price of power that customers pay to meet load requirements. Mr. Gurganus believes that this is an apples to oranges comparison designed to portray Edwardsport as not providing value to customers.

Mr. Gurganus also responded to Mr. Schlissel’s comparison of Edwardsport’s all in cost to MISO energy and capacity prices explaining that it isn’t a valid comparison. He explained that greater than 90% of the generation supply in MISO is supported by cost of service ratemaking, where investment decisions are made with state regulators to support long-term planning objectives resulting in the majority of costs being recovered through rates (not through markets) and MISO economically dispatches the units to minimize fuel and other marginal costs for all customers.

Mr. Gurganus concluded his testimony stating that he believes the Company has managed the operating expenses for Edwardsport reasonably, and the O&M and additional capital requested in this proceeding are reasonable and necessary. He testified that his team will continue to improve the economics and efficiency of the plant and believes the station will ultimately benefit customers with clean and reliable energy for the remainder of its expected thirty-year life.

Ms. Douglas provided rebuttal testimony to the settlement testimony of Mr. Schlissel, specifically his characterization of the 2018 Settlement Agreement’s $30 million reduction of the regulatory asset and how the Company reflected the passage of the Tax Act, stating that his attempt to link the regulatory asset to how the Company is flowing the federal tax rate reduction benefit to customers is unfounded and not based on fact. As Ms. Douglas explained in her Direct Testimony[[21]](#footnote-21), the IGCC-17 proposed rates reflected the Tax Act’s reduction in federal income tax rates from 35% to 21% and resulted in providing customers with approximately $30 million of tax benefits in the form of lower revenue requirements. Customers began receiving this annual benefit in their IGCC rider rates after the Commission’s approval of interim implementation of the Step 1 rates[[22]](#footnote-22) and continue to receive this benefit today.

Ms. Douglas explained that the 2018 Settlement Agreement does not change how the annual Tax Act benefit is reflected in the IGCC Rider rates or how the benefit is flowing back to customers. She again explained her prior Settlement Testimony, page 11, testifying that the IGCC-17 rates proposed for approval used the lower 21% federal income tax rate from the Tax Act in computing revenue requirements, as did the approved Step 1 rates. With approval of the proposed Step 2 rates, customers will continue to receive the $30 million annual tax benefit from the Tax Act through the IGCC Rider. She also referenced her prior discussion in her Settlement Testimony that pursuant to both the Settlement Agreement in Cause No. 45032-S2 and Paragraphs 4 and 5 of the 2018 Settlement Agreement, the proposed IGCC-17 Step 2 rates included an additional refund of the IGCC Rider-related Tax Act benefits which were deferred in the Tax Act regulatory liability from January 2018 through May 23, 2018, when customers began receiving the Tax Act benefits in IGCC-17 Step 1 rates. Paragraph 5 of the 2018 Settlement Agreement does not change the ratemaking treatment established by Cause No. 45032-S2.

Ms. Douglas testified that the Company is not retaining two-thirds of the annual Tax Act benefit to offset increased non-fuel O&M expenses in 2018 and 2019. She explained that the approved Step 1 rates and the proposed Step 2 rates flow the full annual benefit back to customers.

Ms. Douglas described that the $30 million reduction in the regulatory asset does provide a real benefit to customers because shareholders will cover an additional $30 million of operating expenses previously incurred and deferred in the Regulatory Asset instead of recovering those costs from customers as previously approved in the 2016 Settlement Agreement. She explained that the amortization included in the proposed Step 2 rates was reduced annually and customers will therefore pay $10 million less annually over a three year period.

Concluding her rebuttal testimony, Ms. Douglas reiterated that the $30 million reduction in the regulatory asset was not related in any way to the $30 million of annual Tax Act benefits.[[23]](#footnote-23)

Mr. Gorman also provided rebuttal testimony in response to Mr. Schlissel’s settlement testimony. He stated that Mr. Schlissel’s concern that the 2018 Settlement Agreement is not designed to resolve all issues for the foreseeable future is misplaced because the 2018 Settlement Agreement is not designed to resolve all issues for the foreseeable future, but to resolve ratemaking issues for calendar years 2018 and 2019 only.

Mr. Gorman addressed Mr. Schlissel’s concern that the $30 million reduction in the regulatory asset is insufficient, does not include non-fuel O&M cost caps after January 2020, and does not cap post-in-service capital maintenance costs in 2018 or 2019. Mr. Gorman explained that the 2018 Settlement Agreement does not stipulate that the Company can recover these costs after 2020, but instead that these issues will be part of an upcoming rate case.

Mr. Gorman also addressed Mr. Schlissel’s misguided understanding of the settlement regarding the benefit of the Tax Act. He explained that the tax savings and credits to customers were resolved in Cause No. 45032-S2 and that the IGCC Rider has been adjusted for the current federal tax rate and reduced income tax expense associated with the return gross-up. The excess accumulated deferred income tax will be recorded in liability accounts and amortized back to customers per the Commission’s order in Cause No. 45032-S2 and customers will receive the full cost reduction associated with the Tax Act.

Mr. Gorman disagreed with Mr. Schlissel’s concern regarding the O&M caps in the settlement and his recommendation to reject the 2018 Settlement Agreement. He explained that the settlement is not intended to resolve all issues, but is a compromise on non-fuel O&M expenses and allows reasonable charges to customers preceding the 2019 rate case filing. He described the 2018 Settlement Agreement as a bridge to the rate case. Mr. Gorman agreed with Mr. Schlissel that Edwardsport costs and operating performance should be carefully reviewed in the Company’s next rate case. Mr. Gorman testified that in the rate case, all parties will have a forum to do a detailed assessment of the economic costs of Edwardsport and make recommendations that best reflect reasonable and prudent costs to be included in Duke Energy Indiana’s rates.

Mr. Gorman addressed Mr. Schlissel’s discussion on the O&M expense for 2020 and post-in-service capital costs incurred after January 1, 2018. He explained that these issues are not resolved in the settlement in favor of any party, but allows these issues to be addressed in the context of a comprehensive analysis during a rate case proceeding.

Mr. Gorman also testified that the Settlement anticipates a rate case filing in mid-2019 where these specific issues related to the IGCC will be included in a base rate case filing for Duke Energy Indiana, and that as such, the Settlement creates a bridge to Duke Energy Indiana’s next base rate case. Mr. Gorman explained that in the rate case, all stakeholders will be provided an opportunity to address all issues concerning Edwardsport and all other aspects of Duke Energy Indiana’s cost of service. The Settlement specifically reserves the rights of the parties to raise any and all arguments regarding the treatment of Edwardsport, except where the Settlement (or a previous Settlement) expressly provides otherwise. Mr. Gorman testified that this reservation of rights includes, but is not limited to, assessment of reasonable costs of service in Duke Energy Indiana’s next rate case that will reflect rates to be changed in the future.

Mr. Gorman opined that reviewing these issues in a rate case will allow the Commission to set rates based on a complete record of Duke Energy Indiana’s cost to serve customers. Specifically, he explained that because a Settlement is designed to temporarily resolve these issues until a base rate case can be filed by Duke Energy Indiana in 2019, the Commission can make an informed decision on appropriate ratemaking treatment once it has a fully developed record on these specific issues to set base rates appropriate for Duke Energy Indiana for future periods. In such an analysis, not only will Edwardsport be subject to thorough scrutiny, but all of Duke Energy Indiana’s cost of service, including revenue at current rates, production, transmission and distribution costs, and other cost of service components, will be addressed in a complete record for the Commission’s benefit.

Concluding his testimony, Mr. Gorman testified that in the event Duke Energy Indiana does not file a rate case, the 2018 Settlement Agreement protects ratepayers via sunset provisions limiting the scope of the commitments of the Non-Duke Settling Parties. Mr. Gorman explained that the Settlement contains the following key limitations: (1) the non-Duke settling parties are free to challenge O&M incurred after January 1, 2020[[24]](#footnote-24); (2) the Settlement includes no agreement on post-in-service capital costs incurred after January 1, 2018[[25]](#footnote-25); (3) the Settlement’s agreement on the return expires in mid-2020 if there is no rate case filing in 2019[[26]](#footnote-26); and (4) the Settlement’s agreement that the settling parties will oppose or not support any attempt to create additional proceedings or phases of Commission proceedings expires if there is no rate case filing in 2019[[27]](#footnote-27).

1. **Cross Examination Exhibits**

In lieu of cross-examination at the evidentiary hearing, several data request responses and related attachments were admitted into the record, without objection, as cross-examination exhibits. These documents, generally speaking, fall into two categories.

The first category contains documents which CAC asserts provides support for CAC Witness Schlissel’s conclusions regarding Edwardsport’s excessive costs and continued performance issues. These documents include: Duke’s Generating Availability Data System (“GADS”) reports to the North American Electric Reliability Corporation (“NERC”) for Edwardsport, describing Edwardsport’s derating events for each month from August 2018 through October 2018 (CAC-CX-1, p. 5; CAC-CX-1-C (Confidential Attachment 6.1-A)); descriptions of the operational status and offers Duke made to the MISO Real Time and Day Ahead Markets for Edwardsport for all hours of each month from August – October 2018 (CAC-CX-1, pp. 6-7; CAC-CX-1-C (Confidential Attachment 6.2-A)); descriptions of the events of the Fall 2018 Edwardsport maintenance outage (CAC-CX-1, p. 9); a total for Duke’s allocation of Rider 61 revenues collected from customers from 2009 through 2018 amounting to $1,630,483,326 just for CWIP (CAC-CX-3); the total fuel costs for Edwardsport for October 2018 (CAC-CX-1, p. 11); 2019 forecast, projections, budgets or plans, as well as related reports and correspondence on this subject (CAC-CX-1, pp. 13-14; CAC-CX-2; CAC-CX-1-C); and further details about the planned 2020 major outage (CAC-CX-7, p. 11). They also include clarifications and definitions of words and phrases used in Mr. Gurganus’ Rebuttal testimony and documents Duke claims supports certain assertions. CAC-CX-4, pp. 5-7; CAC-CX-5-C; CAC-CX-6.

The second category is comprised of admissions of certain facts and statements from Duke and the Duke Industrial Group. CAC-CX-7; CAC-CX-8. Admissions included confirming: a difference of $34,596,000 between IGCC 15’s approved CWIP revenue requirement for Rider 61 and the proposed total here in IGCC-17; the tax refund amounting to approximately $30 million; an $18,812,095 difference between the IGCC-[15] revenue requirement for operating expenses, depreciation expense, amortizations and tax credits and the corresponding IGCC-17 amount from Exhibit 3-C, page 1 of 3; and, the a $20 million difference between the caps proposed in this Cause for Edwardsport O&M expenses for 2018 and 2019 and the approved O&M cap in the 2016 Settlement approved in Cause No. 43114 IGCC-15. *Id*. Duke and the Duke Industrial Group also confirmed their understanding of certain terms and mechanics resulting from the proposed Settlement like Duke’s continued burden of proof for certain items and the parties’ reservation of rights and arguments that can be asserted in future proceedings. *Id*.

1. **Commission Discussion and Findings.**

The primary dispute between CAC and the Settling Parties is CAC’s position that the Settlement Agreement does not go far enough in terms of protecting customers. Overall, we approve the Settlement Agreement but agree with CAC that certain modifications should be made to enhance customer protections in the Settlement Agreement until the Commission is able to fully evaluate whether and how much of the cost of Edwardsport should be incorporated into customers’ rates.[[28]](#footnote-28)

Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Ind. Gas. Co*.*, Inc.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id*. (quoting *Citizens Action Coalition v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather, [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coalition*, 664 N.E.2d at 406 (internal citation omitted).

Further, any Commission decision, ruling or order – including the approval of a settlement – must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Pub. Serv. Co.,* 582 N.E.2d 330, 333 (Ind. 1991)). The Commission’s own procedural rules require that settlements be supported by probative evidence. 170 IAC § 1-1.1-17(d). Therefore, before the Commission may approve the 2018 Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the 2018 Settlement Agreement is reasonable, just, consistent with the purpose of the Indiana Public Service Commission Act (as amended) and the Utility Generation and Clean Coal Technology Act, and serves the public interest.

We have previously observed that Indiana law strongly favors settlement as a means of resolving contested proceedings. *Indianapolis Power & Light Co*., Cause No. 39936, at p. 7 (Ind. Util. Reg. Comm’n, Aug. 24, 1995). This policy is consistent with expressions to the same effect by the Supreme Court of Indiana. *See, e.g., Mendenhall v. Skinner & Broadbent Co*.*, Inc.*, 728 N.E.2d 140, 145 (Ind. 2000) (“The policy of the law generally is to discourage litigation and encourage negotiation and settlement of disputes.”) (internal citation omitted); *In re Assignment of Courtrooms, Judge’s Offices and Other Facilities of St. Joseph Superior Court*, 715 N.E.2d 372, 376 (Ind. 1999) (“Without question, state judicial policy strongly favors settlement of disputes over litigation.”) (internal citations omitted). A settlement that is found based on substantial evidence to establish just and reasonable rates can resolve the merits of the underlying case. *N. Ind. Pub. Serv. Co.*, Cause No. 43969, 2011 Ind. PUC LEXIS 369 at \*186 (December 21, 2011) (quoting *Mobil Oil Corp. v. F.P.C.*, 417 U.S. 283, 314 (1974)).

In addition, we have observed in the past, and reaffirm here, that the propriety of regulatory settlements is enhanced when the settlement is supported by the OUCC, and that settlements may be approved even where contested by a party. *S. Ind. Gas and Elec. Co.*, Cause No. 42596, 236 P.U.R.4th 153, 2004 Ind. PUC LEXIS 262 at \*32 (2004); *American Suburban Utils*., Cause No. 41254 at p. 4-5 (Ind. Util. Reg. Comm’n, April 14, 1999).

In this case, the Commission has more than sufficient evidence from which to judge the reasonableness of the terms of the 2018 Settlement Agreement and whether additional protections for ratepayers are needed. The Settling Parties filed testimony supporting the 2018 Settlement Agreement. The CAC filed testimony clearly explaining their objection to the 2018 Settlement Agreement insofar as additional protections are needed (or that the entire Certificate for Edwardsport requires modification or revocation), in response to which the Settling Parties filed rebuttal evidence. The Commission has carefully analyzed the evidence presented in this docket and the proposed 2018 Settlement Agreement to evaluate whether the proposed outcome is reasonable, just, and properly balances the interests of Duke Energy Indiana, its customers, and the overall public interest. The Commission has also considered whether additional ratepayer protections are required on top of what was agreed to in the 2018 Settlement Agreement.

1. The Settlement Agreement. Before we evaluate the overall reasonableness of the 2018 Settlement Agreement and whether additional protections are needed, we find it is important to address the CAC’s key arguments in response to the 2018 Settlement Agreement. It should be noted that CAC witness Schlissel conceded that the 2018 Settlement Agreement is a step in the right direction, but encouraged the Commission to take action to protect ratepayers where the Settlement Agreement falls short.

(1) Station Operations and Costs. First, as discussed above, Mr. Schlissel found, in his expert opinion, that the operating performance of Edwardsport was not strong in 2017 or in the first nine months of 2018. In particular, he found that the capacity factor is still significantly below the average capacity factor projected by Duke, especially when looking at it just for syngas operation; that the parasitic load, meaning the plant’s consumption of its own gross generation to run onsite equipment, was much higher than those of typical baseload coal and natural gas combined cycle plants; that the gasification systems, which make Edwardsport an IGCC plant, continue to operate inconsistently and unreliably with declining availability figures; that overall operating performance remains inconsistent; and that the plant is experiencing equivalent forced outage rates at more than twice that of the industry comparison group that Duke itself identified.

Mr. Gurganus argued that “comparing a little over five years of data for Edwardsport with the historical performance of the Company’s mature, coal-fired generating facilities” and that “[t]here is no true comparable out there.” Gurganus Rebuttal, p. 9, lines 1-11. However, when CAC asked Duke to point out any errors in CAC witness Schlissel’s tables and charts comparing Edwardsport with other plants, Duke objected and refused to validate the data, noting that Mr. Gurganus’ testimony “does not speak to the accuracy of Mr. Schlissel’s charts/tables, nor does it purport to.” CAC-CX-4, p. 11. A similar interplay occurred with regard to Mr. Gurganus’ rebuttal testimony related to Mr. Schlissel’s expert analysis comparing Edwardsport’s non-fuel O&M to the average cost of buying energy at the MISO Indiana hub. Mr. Gurganus said that “comparing the non-fuel O&M cost of any unit to a Locational Marginal Price (‘LMP’) is an inappropriate and misleading analysis” because “this energy market representation does not represent the price of power that Duke Indiana customers, or any customers, pay to meet load requirements.” Petitioner’s Exhibit 4, p. 11, line 20—p. 12, line 8. Yet, Duke offered no other “apples to apples” comparison to Edwardsport, instead objecting to the request, refusing to validate the data in Mr. Schlissel’s testimony, and generally referring back to Mr. Gurganus’ rebuttal. CAC-CX-4, pp. 13-14.

Duke’s defense of Edwardsport follows the same pattern as in past proceedings: IGCC technical operations are tough, and the Company is trying to incrementally improve the situation for ratepayers by focusing on reliability and reducing expenses. CAC argues that a number of factors show, however, that Edwardsport’s operating performance, especially on syngas which is what makes Edwardsport an integrated gasification combined cycle plant, should not be expected to improve significantly in the foreseeable future and that ratepayers have paid and should not have to continue to pay for this project gone wrong. For instance, CAC witness Schlissel points out that the plant continues to lose a significant portion of its potential generation due to gasifier equipment problems, continues to operate at an extremely high heat rate, and continues its pattern of frequent and expensive maintenance outages. This results in excessive and continued sunk costs to ratepayers, while the price of wind and solar resources continue to plummet.

It is undisputed that problems continue at the plant, and ratepayers are concerned. Public Exhibit 1S, p. 2, lines 16-17; IG Exhibit 1S. While Duke presents an argument that more time is needed to show Edwardsport’s value, the question is how long must ratepayers wait and at what point does the Commission refund and stop providing ratepayer monies insofar as operational, technical, economical, and environmental milestones continue to be missed in a big way and with big consequences for ratepayers. The Commission takes this issue seriously, especially considering the all-in cost of Edwardsport, including Rider 61 revenues and fuel costs, averaged $140.84 per MWh for since Edwardsport’s in-service date of June 2013 through September 2018. As a point of comparison, Mr. Schlissel found, and Duke did not dispute the accuracy of his calculations, that the same amounts of energy and capacity could have been purchased from the MISO markets at a price that is $1.63 billion less than what Duke’s ratepayers paid for Edwardsport.

The non-Duke Settling Parties provided support for the Settlement and certainly demonstrated their desire to provide financial concessions for ratepayers. We agree that the Settlement provides several customer benefits, including (1) a $30 million reduction to the regulatory asset that would otherwise be recovered from customers in IGCC charges; (2) caps on O&M for 2018 and 2019; (3) preservation of rights of consumer parties to raise other issues in Duke Energy Indiana’s next rate case; and (4) a Duke Energy shareholder contribution of $1.7 million to low income assistance and clean energy-related projects. Still, we feel we must act to impose additional requirements to the 2018 Settlement to provide a backstop layer of protection for ratepayers, including a capital maintenance cost cap for 2018-2020 at the 2017 level in the IGCC-15 settlement and an O&M cost cap for 2020 at the 2019 level agreed to in the current Settlement Agreement, as described below.

We review the settlement as a complete and interrelated package, but are mindful that settlements before this Commission must protect the public interest and may require Commission modification. With the addition of the 2020 O&M cap (and the 2018-2020 capital maintenance cap) as described herein, we find Duke Energy Indiana’s actual and forecasted O&M reasonable as provided for, under the terms of the 2018 Settlement Agreement.

(2) Ratemaking Issues. CAC disagreed that the $30 million reduction in the regulatory asset, spread out over three years, as called for in the proposed Settlement Agreement represents a net benefit insofar as: (1) the non-fuel O&M cap is being increased by approximately $20 million per year in 2018 and 2019, compared to the 2017 cap level; (2) there is no cap in the proposed Settlement Agreement on capital maintenance costs in 2018 or 2019, with the recoverable level of those costs deferred until Duke’s next retail base rates case; (3) there is no cap placed on either non-fuel O&M or capital maintenance costs in 2020, even though 2020 costs are likely to be higher with a major outage expected that year; and (4) other factors being equal, the 2018, 2019, 2020 annualized Rider 61 revenue requirements would have been approximately $30 million less than the 2017 revenue requirement due to the new 21% income tax rate from the Tax Cuts and Jobs Act enacted in late 2017.

The Commission agrees that it must address the absence of a capital maintenance cost cap in 2018, 2019, and 2020 in the proposed Settlement Agreement, especially considering the prior institution of a cap from the approved IGCC-15 Settlement and the admission that capital maintenance costs are expected to rise. Instead, the Settlement provides that the Company’s recovery of “post-in service ongoing capital costs at Edwardsport for Calendar Year 2018 and through the Company’s next rate case test period rate base cutoff date will be reviewed in that next rate case but the Settlement sets no cap on those costs”. CAC-CX-7. Even though we reserve our authority and jurisdiction to review the appropriateness of any capital maintenance cost recovery, we feel it is warranted at this time to place a cap on capital maintenance expenditures to be recovered through rates in 2018 and 2019 to the same limit we approved in IGCC-15 for 2017: the lesser of $16,900,000 or actual expenditures.

The Commission also feels compelled to act in the absence of an O&M cost cap for 2020, considering the projected increase in this cost for 2020. . We agree and are concerned that the 2018 and 2019 O&M cost caps are higher than the 2017 cost cap, and 2020 O&M costs are expected to increase even more of those levels yet the Settlement does not provide for a 2020 O&M cap. We recognize that the proposed Settlement reserves the rights of the non-Duke Settling Parties to challenge this cost recovery in Duke’s planned 2019 rate case, that Duke retains the burden of proof to demonstrate the reasonableness of any O&M expense occurred after January 1, 2020, and that there are other limitations put in place in the proposed Settlement in case Duke does not file a rate case in 2019. CAC-CX-8, pp. 5-6; Gorman Settlement Rebuttal, p. 5. However, there are a number of circumstances that could delay or otherwise impede customers’ and Commission’s ability to review the reasonableness of these 2020 O&M costs. For example, base rate cases now must follow a 300-day timeline before interim rates are imposed on ratepayers, which limit resources and the ability of all to adequately examine matters, especially in this case where Duke has not been in for a rate case since 2002, and that was when Duke was Public Service Indiana. Thus, it is reasonable, prudent and in the public interest for the Commission to hereby impose a cap on the O&M cost recovery for 2020 at the 2019 level in the proposed Settlement as a backstop protection for customers on this matter.

(3) Request to Modify or Revoke the Certificate for the Plant, or Require Duke Energy Indiana to File a Rate Case to Evaluate How Much Investment in Edwardsport Is “Used and Useful” or Initiate a Special Proceeding. CAC’s primary request in this proceeding is that the Commission “modify or revoke the certificate” for the Plant per Indiana Code § 8-1-8.7-5, stating the Commission should find that continued “implementation of the [clean coal] technology will not serve the public convenience and necessity”. Although the Commission is not granting the request at this time, the Commission will continue to consider this option afforded to it by the legislature to protect ratepayers.

Alternatively, CAC asks that Duke either file a rate case to determine how much of the investment in Edwardsport is actually fully “used and useful” or to initiate a special proceeding to consider options that would ensure that the fully embedded cost of electricity from Edwardsport is comparable to the cost of alternative sources, such as the MISO markets and/or other generating facilities on the Company’s system. IGCC generation technology brings complexities that are fully appreciated by this Commission, but the Commission continues to be concerned about the escalating costs and will take seriously its forthcoming evaluation of whether Edwardsport is “used and useful” for purposes of ratemaking. Given that Duke Energy Indiana has already announced that it will be filing a rate case in 2019, we decline CAC’s request at this time to order Duke to come in for a rate case or to initiate a special proceeding; however, should Duke not file this rate case in 2019, the Commission retains the authority and discretion to initiate, on its own motion pursuant to Ind. Code § 8-1-2-51 or the petition of non-Settling Parties meeting the standing requirements of Ind. Code § 8-1-2-54, additional Commission proceedings or phases of Commission proceedings to further examine Edwardsport irrespective of when DEI files its next rate case. CAC-CX-8.

1. Evaluation of the Reasonableness of the 2018 Settlement Agreement. After hearing and considering the evidence, we conclude that the terms and conditions of the 2018 Settlement Agreement, along with the additional requirements we have ordered herein, offer a fair, just and reasonable resolution of the matters at issue in this proceeding. We also find that the 2018 Settlement Agreement, with the addition of the 2020 O&M cap and the 2018-2020 capital maintenance cap we have ordered herein, will result in just and reasonable rates, will provide significant benefits to customers and is in the public interest until we have our “used and useful” evaluation of Edwardsport.

Under the 2018 Settlement Agreement and with the additional protections ordered by the Commission: Duke Energy Indiana will not propose to recover (absent a *force majeure* situation) retail operating expenses over certain defined levels for 2018, 2019, and 2020; post-in-service ongoing capital project costs incurred from January 1, 2018 through 2020 will be capped at the same level it was for 2017 in the 2016 Settlement, i.e. the lesser of $16,900,000 or actual expenditures; and that the value of the Company’s regulatory asset containing deferred operating expenses will be reduced by $30 million, with a corresponding reduction in the amount of amortization of the regulatory asset included in rates of $10 million annually beginning with the implementation of the proposed Step 2 Rates. We find that these settlement provisions and the Commission-ordered 2020 O&M cap and 2018-2020 capital expenditures cap are supported by substantial evidence in the record, and will result in just and reasonable rates. Together these provisions with the additional requirements we have ordered herein benefit customers by reducing the amount of O&M and ongoing capital that Duke Energy Indiana would otherwise seek to include in rates, and also provide for mitigation of the rate impact associated with the recovery of the deferred operating expenses through the reduction in the balance in the Regulatory Asset and the reflection of the passage of the Tax Act.

Various provisions are contained in the 2018 Settlement Agreement that reflect compromise between the Settling Parties and provide benefits to customers such as the additional reduction of the regulatory asset by $30 million, the O&M caps, and the Duke shareholder contribution to low income assistance and clean energy related projects. The Commission added more protections for ratepayers, including a capital expenditure cap from 2018-2020 at the IGCC-15 2017 level and an O&M cap for 2020 at the amount agreed to for 2019 in the 2018 Settlement Agreement.

The 2018 Settlement Agreement also contains commitments made by the Settling Parties that do not need to be approved by the Commission. Those provide for certain payments by Duke Energy Indiana shareholders to provide funding for low income assistance and clean energy projects. While we do not need to approve these provisions, we find that these provisions do not alter our conclusion that the 2018 Settlement Agreement will produce just and reasonable rates. We also hope the Settling Parties will continue to discuss the implementation of these provisions in particular with CAC. In addition, the 2018 Settlement Agreement provides that Duke Energy Indiana will not file an IGCC Rider proceeding in 2019 or 2020, and that the Settling Parties intend for the Company to include Edwardsport investment and operating expenses in base rates in its next retail base rate case and to discontinue the tracking of Edwardsport via the IGCC Rider. We approve of the Settlement Agreement’s provision that the Company not file an IGCC Rider in 2019 or 2020, and will consider Duke Energy Indiana’s request to include Edwardsport in base rates during our consideration of the Company’s next retail rate case filing.

Based on the evidence presented and for the reasons set forth herein, we find that the 2018 Settlement Agreement, taken with the Commission’s additional requirements described herein, produces a fair, just and reasonable result that balances the interests of the various stakeholders and the overall public interest.

In addition, there are several other findings for this Commission to make as part of the approval of the 2018 Settlement Agreement. First, we find that Duke Energy Indiana has adequately satisfied the information reporting requirements to the Commission for purposes of these review proceedings as specified in our Orders in IGCC-1 and IGCC-2, and subsequently amended in IGCC-8. Accordingly, we find and conclude that Duke Energy Indiana’s ongoing review progress reports on the Plant should be approved.

Second, we find that the Plant costs, specifically the actual Plant and ongoing capital investment through December 31, 2017, up to the amount of the hard cost cap and additional AFUDC and reflected in the testimony and exhibits of Ms. Douglas, are approved consistent with our findings herein.

Third, we find the O&M costs Duke Energy Indiana will recover under the terms of and as part of the 2018 Settlement Agreement are reasonable.

Therefore, the Commission approves: (1) the 2018 Settlement Agreement as modified by the Commission herein; (2) the removal of the interim status of the Step 1 Rates; and (3) the implementation of the Step 2 Rates filed with the settlement testimony of Ms. Douglas. The Commission orders Duke to file within 30 days revised documentation reflecting the necessary changes to institute the 2020 O&M cap and the 2018-2020 capital expenditures cap.

Finally, the Commission, pursuant to its authority and discretion under Ind. Code §§ 8-1-2-23, 26, 48, 51, 52 and other applicable provisions of Indiana law, hereby directs Duke Energy Indiana to make monthly informational filings regarding Edwardsport operations and related costs incurred from January 2018 until the date of the Commission’s final order in a Duke Energy Indiana proceeding removing Edwardsport from the Commission’s jurisdiction, irrespective of when DEI files its next rate case. *See* CAC-CX-8, pp. 19-20.

1. **Duke Energy Indiana’s Request for Confidential Treatment.**

On March 29, 2018, and August 3, 2018, Petitioner filed Motions for Protection of Confidential and Proprietary Information (“Motions”) in this Cause. In their Motions, Duke Energy Indiana requested that certain details of various pricing and operating characteristic information for the Edwardsport Generating Facility, load and price information concerning a special contract customer, and dispatch information be treated as confidential and a trade secret and not subject to public disclosure (collectively referred to as “Confidential Information”). In support of its Motions, the Petitioner included sworn Affidavits of Cecil Gurganus, Diana L. Douglas, and John D. Swez.

In Docket Entries issued on April 11, 2018, and August 6, 2018, the Presiding Officers made preliminary findings that the Confidential Information should be subject to confidential treatment. Pursuant to Indiana Code § 5-14-3-4(a)(4), we find that the Confidential Information submitted in this Cause is a “trade secret” and should continue to be held as confidential by the Commission.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION, that:**

1. The 2018 Settlement Agreement, as modified herein with the addition of a 2020 cap for O&M costs and a 2018-2020 capital maintenance cost cap, is in the public interest, results in just and reasonable rates and is approved.
2. Duke Energy Indiana’s ongoing progress reports are approved.
3. Duke Energy Indiana is directed to modify its tariffs consistent with the ratemaking proposed in the Step 2 Rates filed with its settlement testimony and file the tariff and applicable rate schedules for the first Bill Cycle 1 after the effective date of this Order, under this Cause for approval by the Commission’s Energy Division.
4. CAC’s request for the Commission to initiate a special proceeding to investigate costs of alternative sources of electricity comparable to the costs of Edwardsport is denied at this time.
5. The confidential information presented in this proceeding is found to be confidential and trade secret, excepted from public access, and will continue to be held as confidential by the Commission.
6. 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 a true**

**And correct copy of the Order as approved.**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Mary M. Becerra**

**Secretary of the Commission**

1. This was approved by the Commission in its December 27, 2012 order in Cause No. 43114 IGCC 4S1 (“Subdocket Order”). [↑](#footnote-ref-1)
2. To minimize future reconciliation amounts, the forecast period of 2019 was used to sync up the timing of the forecast with the expected time period the rates will be billed to customers. [↑](#footnote-ref-2)
3. Scope creep is when the station decides to perform additional projects while the plant is down for planned maintenance. [↑](#footnote-ref-3)
4. Petitioner filed a revised Exhibit 1-C on April 26, 2018. [↑](#footnote-ref-4)
5. Fixed costs include employee labor, air permit testing, and NPDES sampling and reporting costs. [↑](#footnote-ref-5)
6. Variable costs are associated with the operation costs for the plant and include consumed chemicals, maintenance of equipment, and contractor costs. Overheads and allocations are also O&M budget expense items. [↑](#footnote-ref-6)
7. The Commission approved Duke Energy Indiana’s Thirty-Day Filing on May 23, 2018 in filing number 50180. [↑](#footnote-ref-7)
8. 3 To minimize future reconciliation amounts, the forecast period of 2019 is being used to synch up the timing of the forecast with the expected time period the rate will be billed to customers. This returns the rider to a traditional forecast methodology. [↑](#footnote-ref-8)
9. As noted above, the Company’s Thirty-Day filing for the Step 1 Rates was approved on May 23, 2018 in filing number 50180. [↑](#footnote-ref-9)
10. The Ongoing Capital 2016 Settlement Caps for 2016 and 2017 were set in the 2016 Settlement Agreement using budgeted capital investment additions net of forecasted credits for the cost of certain parts expected to be removed from service and transferred to inventory for future use as spare parts (“spare parts salvage credits”). [↑](#footnote-ref-10)
11. Net of spare parts salvage credits. [↑](#footnote-ref-11)
12. As noted above, Step 1 Rates were approved via a Thirty-Day filing on May 23, 2018. [↑](#footnote-ref-12)
13. O&M is defined in the 2018 Settlement Agreement to include O&M expenses, payroll taxes, property taxes, property insurance and net of the credit for operating expenses of the retired Edwardsport coal plant (excluding fuel and depreciation). [↑](#footnote-ref-13)
14. This assumes a rate case filing in 2019. Absent a rate case filing in 2019, IGCC-17 rates will remain in effect until mid-2020. [↑](#footnote-ref-14)
15. The Company’s ECR Rider is presently filed under Cause No. 42061. [↑](#footnote-ref-15)
16. Force majeure events include acts of God, the public enemy, or any governmental or military entity. [↑](#footnote-ref-16)
17. Inclusion of the IGCC Rider related regulatory liability resulting from the Tax Act. [↑](#footnote-ref-17)
18. Reflection of the $1.1 million common fund attorney’s fees. [↑](#footnote-ref-18)
19. The 2012 Settlement Agreement was reached in Cause No. 43114 IGCC 4S1. [↑](#footnote-ref-19)
20. The final outage in the first maintenance cycle will be executed in 2020. This outage will also be the first time the steam turbine has had major scheduled maintenance. [↑](#footnote-ref-20)
21. See page 13 of Ms. Douglas’ Direct Testimony. [↑](#footnote-ref-21)
22. The Commission approved the interim implementation of the Step 1 rates on May 23, 2018 in Thirty-Day filing number 50180. [↑](#footnote-ref-22)
23. The Tax Act benefits were the subject of a separate, litigated proceeding in Cause No. 45032-S2. [↑](#footnote-ref-23)
24. 2018 Settlement ¶ 2(B). [↑](#footnote-ref-24)
25. 2018 Settlement ¶ 3. [↑](#footnote-ref-25)
26. 2018 Settlement ¶ 2(C), [↑](#footnote-ref-26)
27. 2018 Settlement ¶ 9(B), [↑](#footnote-ref-27)
28. CAC first advances its argument that the Commission should “modify or revoke the certificate” for Edwardsport insofar as the Commission should find that continued “implementation of the [clean coal] technology will not serve the public convenience and necessity” per Ind. Code § 8-1-8.7-5, an option afforded to the Commission by the legislature to protect ratepayers in situations just like this where excessive costs and ongoing operating performance have and are likely to continue to harm ratepayers. Considering the totality of the circumstances, CAC urges the Commission to take this route. In the redlines herein, however, CAC has effectuated its secondary, alternative argument, asking for certain modifications to the Settlement, but this argument assumes the Certificate remains in place. [↑](#footnote-ref-28)