

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

APPLICATION OF DUKE ENERGY INDIANA, LLC )  
FOR APPROVAL OF A CHANGE IN ITS FUEL )  
COST ADJUSTMENT FOR ELECTRIC SERVICE )  
AND FOR APPROVAL OF A CHANGE IN ITS FUEL )  
COST ADJUSTMENT FOR HIGH PRESSURE ) CAUSE NO. 38707-  
STEAM SERVICE, IN ACCORDANCE WITH ) FAC132  
INDIANA CODE §8-1-2-42, INDIANA CODE )  
§8-1-2-42.3, AND VARIOUS ORDERS OF THE )  
INDIANA UTILITY REGULATORY COMMISSION )

**DUKE ENERGY INDIANA, LLC'S RESPONSE TO  
CONSUMER PARTIES' MOTION FOR SUBDOCKET**

Duke Energy Indiana, LLC ("Duke Energy Indiana"), by counsel, respectfully files its response opposing the Motion for Subdocket ("Motion") filed by the Indiana Office of Utility Consumer Counselor ("OUCC") and the Duke Industrial Group ("IG"), and joined by Steel Dynamics, Inc. ("SDI") (collectively, "Consumer Parties"). In support hereof, Duke Energy Indiana states as follows:

**1. The summary nature of this FAC has not prevented the record from being sufficiently developed.**

In justifying their subdocket request, the Consumer Parties argue that "[t]his Commission has regularly ordered subdockets where 'the summary nature of proceedings with statutory time constraints such as the FAC do not lend themselves' to sufficient record development." Motion at 27. However, the aforementioned quote is taken out of context. Absent from the quotation is language that provides important color to the Commission's findings in the cited case:

*The Commission must base its decisions solely on the evidentiary record and when appropriate may seek supplemental evidence to foster reasoned decision making. At times the summary nature of proceedings with statutory time constraints such as the FAC do not lend themselves to such record development.*

*Duke Energy Ind., LLC*, Cause No. 38707 FAC 111, at \*8 (IURC Apr. 26, 2017) (emphasis added).

As indicated by the Commission in Duke Energy Indiana's FAC 111 proceeding, not all contested FAC issues are reviewed by the Commission separately in a subdocket. Rather, subdockets are used sparingly and strategically by the Commission after consideration of the evidence presented in an FAC to foster reasoned decision making in the event of insufficient record development. In the instant Cause, as charted in paragraph 2 below and discussed further herein, the record is sufficiently developed to foster reasoned decision making and is presently ripe for Commission review. As such, referring the issues of this Cause to a subdocket is unnecessary.

**2. There are no remaining issues in this proceeding that warrant further discovery in a subdocket.**

The Consumer Parties contend that a subdocket is justified to afford the parties "sufficient time" to examine the impacts of coal delivery on fuel procurement, contracting and hedging, and potential modifications to proposed and future fuel factors. Motion at ¶ 27. The Consumer Parties assert further discovery would: a) improve the record of decision by allowing additional investigation into Duke Energy Indiana's coal procurement, hedging, and market offers; and b) aid the Commission's oversight of Duke's procurement efforts and its energy market commitment decision making. Motion at ¶¶ 27-28.

FAC proceedings are meant to be a summary proceeding by nature; however, such proceedings do allow for discovery and audit, and both were conducted in this proceeding. The Consumer Parties have had ample time and opportunity to investigate Duke Energy Indiana's coal procurement, hedging, and market offers. The Consumer Parties issued extensive discovery related to these topics, and Duke Energy Indiana provided timely answers to that discovery. The auditor for the OUCC and OUCC staff conduct multi-day audits in every FAC proceeding. In this

FAC, technical staff from Duke Energy Indiana met with the auditor and staff from the OUCC and specifically discussed Duke Energy Indiana’s coal procurement, hedging, and market offers, among other topics. To the extent the OUCC wants more information on the topics identified in the Motion, such information can be provided during the OUCC’s audits going forward.

Further, as stated above, the issues have been sufficiently developed and are ripe for Commission review. The Motion largely reiterates the positions taken in the prefiled testimony of OUCC witnesses Mr. Michael D. Eckert and Mr. Gregory T. Guerrettaz (neither IG nor SDI filed any testimony in this Cause), all of which have been addressed through the rebuttal testimony of Duke Energy Indiana witnesses Brett Phipps, John D. Swez, and Wenben (Michael) Chen. The chart below details the assertions raised in the Motion and cites where Duke Energy Indiana has addressed such assertions.

<b>Assertion</b>	<b>Where Addressed in Rebuttal Testimony</b>
<i>Coal Supply Chain</i>	
¶ 12 - Further investigation is needed in order to investigate how long Duke’s problems with coal delivery will continue.	<p>Phipps Rebuttal at 8, discussing that while Duke Energy Indiana does not speculate on how long these constraints will persist, based on current trends, Duke Energy Indiana anticipates that coal delivery constraints will continue into 2023.</p> <p>Phipps Rebuttal at 5, discussing Duke Energy Indiana’s commitment to provide updates regarding rail performance in subsequent FAC proceedings, to continue to explain its efforts to encourage rail providers to improve their performance, and to continue to review rail performance, along with the STB required performance reporting, with the OUCC during the audit process.</p> <p>Phipps Rebuttal at 7, discussing Duke Energy Indiana’s agreement with OUCC’s suggestion to keep the Commission updated on coal transportation issues.</p>

	<p>Phipps Rebuttal at 7, discussing plan to continue including coal transportation trends in his fuels testimony, which he began to do in FAC 131.</p> <p>Phipps Rebuttal at 7, discussing Duke Energy Indiana's agreement to work with the OUCC during the audit process to ensure the OUCC has the information needed to complete its fuel audit, including as it relates to transportation, supply constraints, and coal procurement.</p> <p>See also discussion at paragraph 4.</p>
<p>¶ 12 - Further investigation is needed in order to investigate whether Duke has taken effective action to mitigate the risk of reduced coal deliveries.</p> <p>¶ 13 - A subdocket is needed to adequately review Duke's efforts to contract adequate coal delivery.</p>	<p>Swez Rebuttal at 5-7, discussing operating Edwardsport on one gasifier and supplementing the station with natural gas in order to help meet winter inventory targets and maintain a reliable amount of coal inventory throughout the winter, and how doing so resulted in additional planned deliveries of coal to Cayuga.</p> <p>Phipps Rebuttal at 3, discussing the contractual terms and conditions of Duke Energy Indiana's rail contract and common railroad contracting practices, including Duke Energy Indiana's requests that performance assurance language be added to its rail contracts during its negotiations, despite terms and conditions being standard in the industry with limited to no negotiability, and Duke Energy Indiana's captivity to specific rail providers.</p> <p>Phipps Rebuttal at 3-4, discussing Duke Energy Indiana's negotiations with its rail transportation providers, including discussion of incentives to improve performance, frequent and direct communications with rail providers to maintain pressure, including at the leadership level, Duke Energy Indiana's evaluation of options, including the option of filing a complaint with the Surface Transportation Board (STB), and Duke Energy Indiana's awareness and monitoring of the ongoing STB</p>

	<p>proceedings, as well as the current status thereof.</p> <p>Phipps Rebuttal at 5-6, discussing Duke Energy Indiana’s decision to begin trucking coal to Cayuga, and the myriad of timing considerations and logistical and operational challenges related thereto, and the reallocation of coal from Edwardsport to Cayuga.</p> <p>Phipps Rebuttal at 7, discussing Duke Energy Indiana’s decision to purchase Utah coal during this FAC period to fill a projected supply need that was unable to be met by Indiana production, which allowed for an increased diversity of supply at the lowest total delivered cost for non-Illinois Basin (“ILB”) coal.</p> <p><i>Note:</i> The Consumer Parties were provided copies of Duke Energy Indiana’s rail and coal contracts during discovery in this proceeding. See Phipps Rebuttal at 3.</p> <p>See also discussion at paragraph 4.</p>
¶ 13 - A subdocket is needed to consider whether Duke has made every effort to acquire fuel at the lowest possible price.	<p>Phipps Rebuttal at 3, discussing Duke Energy Indiana’s negotiations with rail transportation providers to ensure customers are receiving the lowest reasonably possible transportation rates.</p> <p>Phipps Rebuttal at 6, discussing Duke Energy Indiana’s efforts to maintain reliable coal supply in the least reasonable cost manner possible for customers.</p> <p>Swez Rebuttal at 5, discussing value to customer in retaining coal inventory in exchange for purchasing power given the current conditions.</p> <p>See also discussion at paragraph 3.</p>

<i>Supply Offer Adjustment</i>	
<p>¶ 16 - A subdocket is needed to fully review and quantify the cost impact Duke's supply offer adjustment has had on ratepayers.</p>	<p>Swez Rebuttal at 3-5, discussing challenges in quantifying the impact of the increment on the FAC factor or customers in current or future periods, including no way to determine if the increment has direct impact on MISO Locational Marginal Prices, no way to assume how MISO would have cleared/deployed ancillary services any differently, potential for other market participants engaging in similar actions, and lack of access to MISO's optimization software; discussing impossibility of predicting future impacts from using the increment or assessing cost of reliability risk to customers if Duke Energy Indiana does not have enough inventory to operate its coal units in future; discussing risk of customers to pay higher power prices and assume more reliability risk if Duke Energy Indiana does not have enough coal inventory.</p> <p>See also discussion at paragraph 4.</p>
<i>Hedging</i>	
<p>¶ 22 - A subdocket is needed to provide sufficient time for stakeholders to review and modify Duke's hedging plan, which is ultimately subject to Commission review and approval.</p>	<p>Chen Rebuttal at 2-4, discussing Cause No. 38707-FAC 68S1, which was resolved by the Commission approving the settlement agreement between Duke Energy Indiana and the OUCC containing certain hedging terms, and Cause No 38707-FAC 99, in which the Commission approved extending the hedging horizon for both native and non-native power hedging programs to current month plus six months based on the recommendation of an OUCC hedging consultant; as testified by Chen, Duke Energy Indiana has continued to follow these hedging parameters, as well as its internal corporate risk limits and guidelines.</p> <p>Chen Rebuttal at 11, discussing Duke Energy Indiana's willingness to meet with the OUCC and its industrial customers to review its hedging program, and, should the Commission believe it is warranted, its willingness to engage</p>

	<p>a third party-consultant to review the current hedging program and potentially offer suggestions or modifications.</p> <p>Chen Rebuttal at 11, discussing Duke Energy Indiana's willingness to meet with the OUCC, Commission staff, and its industrial customers and discuss the price volatility risks Duke Energy Indiana faces, the price risk tolerances of its customers, and the appropriate objectives for Duke Energy Indiana's hedging strategy.</p>
<i>Examination of Timeframe Beyond FAC 132</i>	
¶ 23 - The summary timeframe in an FAC proceeding, which only examines a very narrow window of time, is insufficient to evaluate the many issues identified above both now and in the future. A subdocket is needed to analyze all of the drivers for the current increase, and evaluate whether Duke is making reasonable efforts to manage the risks in order to provide electricity at the lowest reasonable cost, not only in this FAC, but in the future FACs in which Duke already estimates substantial increases.	See discussion at paragraph 5.

As illustrated above, Duke Energy Indiana has adequately addressed the Consumer Parties' bases for the subdocket request in the instant proceeding. There are no remaining issues that warrant further discovery or investigation. The record is sufficiently developed in this Cause to allow the Commission to assess the concerns raised by the Consumer Parties.

**3. The record is sufficiently developed to permit the Commission to render a finding on Duke Energy Indiana's satisfaction of the (d)(1) test.**

In its Motion, the Consumer Parties remind Duke Energy Indiana of its burden in satisfying the statutory requirements of Ind. Code § 8-1-2-42(d)(1), which requires Duke Energy to make every reasonable effort to acquire fuel and generate or purchase power, or both, to provide electricity to its retail customers at the lowest fuel cost reasonably possible. Motion at ¶ 30. In

calling for a subdocket “to adequately review Duke’s efforts to contract adequate coal delivery and consider whether Duke Energy Indiana has made every effort to acquire fuel at the lowest possible price” (Motion at ¶ 13), the Consumer Parties misstate the (d)(1) test by omitting the reasonableness standard. Per the (d)(1) test, Duke Energy Indiana is required to make every *reasonable* effort to acquire fuel and generate and/or purchase power, at the lowest fuel cost *reasonably* possible, not “every effort” at the “lowest possible price.”

In determining whether a utility acted prudently, the Commission reviews the circumstances as they existed considering what was known or should reasonably have been known by the utility at the time of its actions. *See Duke Energy Ind., Inc.*, Cause No. 38707 FAC 76 S1 at \*17 (IURC Oct. 21, 2009). The record is sufficiently developed to allow the Commission to consider the Consumer Parties’ broad challenge to the (d)(1) test and conclude that the test is satisfied in light of the supply chain and transportation challenges, as well as the need to make decisions with imperfect information about future market conditions, that Duke Energy appropriately factored into its fuel procurement and supply offer processes in order to provide customers with the lowest fuel costs reasonably possible.

The Consumer Parties have not disputed the reasonableness of the cost Duke Energy Indiana paid for the acquisition of the fuel at issue in this proceeding. Neither the Consumer Parties in their Motion nor the OUCC in its prefiled testimony in this proceeding have established or alleged that the fuel costs at issue are improper. Rather, in the direct testimony of OUCC witnesses Mr. Eckert and Mr. Guerrettaz, the OUCC ultimately recommends that the Commission approve Duke Energy Indiana’s proposed fuel cost factors (with the FAC 132 variance to be spread over four FAC periods instead of the two proposed by Duke Energy Indiana). Eckert Rebuttal at 17-18; Guerrettaz Rebuttal at 15-16.



**4. The Commission has determined FAC proceedings are an appropriate venue to review the reasonableness of supply offer adjustments, status of coal inventories and purchases, coal procurement strategy, significant coal contracts, and Duke Energy Indiana's hedging program.**

The Commission has determined the FAC is an appropriate mechanism for reviewing the concerns raised by the Consumer Parties in the Motion. In Cause No. 38707 FAC 130, the Commission held that Duke Energy Indiana is to provide support for the reasonableness of any supply offer adjustment and an update on the status of its coal inventories in its next FAC filing. *Duke Energy Ind., Inc.*, Cause No. 38707 FAC 130 at \*12 (IURC Dec. 28, 2021). In Cause No. 38707 FAC 68S1, the Commission approved Duke Energy Indiana's hedging principles as set forth in the settlement agreement between Duke Energy Indiana and the OUCC. *Duke Energy Ind., Inc.*, Cause No. 38707 FAC 68S1 at \*9 (IURC June 25, 2008). In Cause No 38707 FAC 99, the hedging horizon for both native and non-native power hedging programs was extended to current month plus six months based on recommendation of an OUCC hedging consultant and was approved by the Commission. *Duke Energy Ind., Inc.*, Cause No. 38707 FAC 99 at \*7 (IURC Apr. 2, 2014).

In weighing FAC subdocket requests, the Commission has considered the sufficiency and robustness of routinely provided testimony. In Cause No. 38707 FAC 125, in denying the Citizens Action Coalition of Indiana, Inc. and Sierra Club's Joint Motion for Subdocket to Investigate Duke Energy Indiana's Coal Decrement Pricing and Fuel Procurement Practices, the Commission found it was a "reasonable expectation" that Duke Energy Indiana continue to present a discussion of its coal procurement strategy and significant coal contracts, among other practices, in subsequent FAC filings. *Duke Energy Ind., Inc.*, Cause No. 38707 FAC 125 at \*19 (IURC Sept. 29, 2020). In declining the request that a subdocket be commenced to investigate Duke Energy Indiana's fuel procurement practices in FAC 125, the Commission relied upon the

fact that Duke Energy Indiana's routinely provides testimony on the topic: "in each FAC proceeding, Mr. Phipps provides an update on Applicant's procurement strategy as well as an update on activity with existing contracts." *Id.*

In keeping with the above, Duke Energy Indiana continues to provide sufficient details in its FAC proceedings about the reasonableness of its supply offer adjustments, which is not a new process, the status of coal inventories, and its hedging program. In every FAC, Duke Energy Indiana provides testimony on its hedging program and discusses the same with the OUCC during the OUCC audit. Duke Energy Indiana has begun to include coal transportation trends in its FAC proceedings as well, and, as Mr. Phipps has explained, it plans to continue doing so on a going forward basis. Phipps Rebuttal at 7. Further, as testified to by Mr. Phipps, Duke Energy Indiana agrees to work with the OUCC during the audit process to ensure the OUCC has the information needed to complete its fuel audit, including as it relates to transportation, supply constraints, and coal procurement, to keep the Commission updated on coal transportation issues, and to continue to update the Commission on its coal inventory situation, its current year actual coal burns, and coal purchases. *Id.* Mr. Phipps also testified to Duke Energy Indiana's commitment to provide updates regarding rail performance in subsequent FAC proceedings, to continue to explain its efforts to encourage rail providers to improve their performance, and to continue to review rail performance along with the STB required performance reporting with the OUCC during the audit process. Phipps Rebuttal at 5.

Additionally, as Mr. Chen testified, Duke Energy Indiana agrees further to meet with the OUCC and its industrial customers to review its hedging program, and, should the Commission believe it is warranted, is willing to engage a third party-consultant to review the current hedging program and potentially offer suggestions or modifications. Furthermore, Mr. Chen testified that

Duke Energy Indiana is willing to meet with the OUCC, Commission Staff, and other interested stakeholders, and discuss the price volatility risks Duke Energy Indiana faces, the price risk tolerances of its customers, and the appropriate objectives for Duke Energy Indiana's hedging strategy. *Id.* To the extent the identified concerns present in FAC 132 persist, Duke Energy Indiana will continue presenting evidence for Commission review in future FAC proceedings.

The establishment of a subdocket, in this instance, would provide neither additional value nor additional information. Duke Energy Indiana has been and continues to provide information on supply offer adjustments, coal inventory and supply, and its hedging program as part of each FAC and is willing to provide even more information, such as information on its coal transportation issues, as detailed above. It is unclear what additional information the Consumer Parties seek that they have not already been privy or would otherwise be privy to during the course of this proceeding or future FAC proceedings. The FAC process is clearly defined, detailed, and requires Duke Energy Indiana to provide the information at issue on a quarterly basis. A subdocket would be duplicative, repetitive, an inefficient use of resources, and would only frustrate the routine FAC proceedings by creating a process that would provide neither additional value nor additional information.

**5. A Commission investigation is not necessary and imposes an undue burden on the docket.**

The Consumer Parties encourage the Commission to “assert its jurisdiction and investigate [Duke Energy Indiana’s coal procurement, hedging, and market offers].” Motion at ¶ 31. For the same reasons cited above, a Commission investigation is not warranted. The Consumer Parties have had the opportunity to conduct discovery and review, analyze, and file testimony regarding Duke Energy Indiana’s coal procurement, hedging, and market offers. Duke Energy Indiana has provided rebuttal testimony addressing all concerns raised in the Motion, and

in its rebuttal testimony, has agreed to keep the Commission apprised on an ongoing basis of on coal transportation issues, to continue including coal transportation trends in its quarterly fuels testimony, to meet with the OUCC and its industrial customers to review its hedging program, to work with a third-party consultant to evaluate its hedging program should the Commission find it is warranted, to provide updates regarding rail performance in subsequent FAC proceedings, to continue to explain its efforts to encourage rail providers to improve their performance, and to continue to review rail performance with the OUCC during the audit process. The Consumer Parties have not provided adequate evidence that further investigation is required nor raised any issues that cannot be effectively and fully addressed in the normal course of this proceeding.

Duke Energy Indiana files its FAC every quarter with the Commission. Although the FAC proceedings themselves are summary in nature, the issues identified within the proceedings can be analyzed at any time. Through the quarterly fuel clause filings, the Commission provides an adequate forum for the Consumer Parties to timely and transparently debate and for the Commission to review and oversee Duke Energy Indiana's coal procurement, hedging, and market offers. The opening of any new investigation or subdocket would be an unnecessary and an inefficient use of the resources of the Commission and the parties. A subdocket would also divert resources from other matters pending before the Commission.

Should the Commission determine it needs more time to render a final decision than is allotted by the FAC process, because the record is already sufficiently developed, it need not open a subdocket for such purpose. The Commission could opt instead to issue a preliminary order approving Duke Energy Indiana's requested fuel factor (on an interim, subject to refund basis), which would allow Duke Energy Indiana to timely implement new rates, instruct Duke Energy Indiana to provide more information in the next FAC on items the Commission

determines warrant further review, and then proceed to issue a final order once it completes its review.

While the Commission should deny the motion for subdocket, if the Commission concludes otherwise, the Commission should limit the scope of any such subdocket to the reconciliation period in this proceeding, and the scope should not be broadened by other parties.

## **6. Conclusion**

For the foregoing reasons, Duke Energy Indiana respectfully requests that the Commission deny the Consumer Parties' Motion.

Respectfully submitted,

**DUKE ENERGY INDIANA, LLC**

By:

A handwritten signature in black ink, appearing to be 'Andrew J. Wells', is written over a solid black horizontal line.

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## **CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing Submission electronically this 9th day of June 2022 to the following:

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