

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

**PETITION OF DUKE ENERGY INDIANA, LLC            )**  
**FOR APPROVAL OF AN ELECTRIC                        )**       **CAUSE NO. 45253 S2**  
**TRANSPORTATION PILOT PROGRAM                    )**

**DUKE ENERGY INDIANA’S VERIFIED PETITION FOR RECONSIDERATION**

Pursuant to 170 IAC 1-1.1-22(e), Duke Energy Indiana, LLC (“Duke Energy Indiana”), by counsel, hereby respectfully petitions the Indiana Utility Regulatory Commission (“Commission”) to reconsider its July 22, 2020 Final Order (“Final Order”) in Cause No. 45253 S2. Duke Energy Indiana requests that the Commission reconsider its finding based on the evidence of record and approve the Electric Transportation Pilot (“ET Pilot”) as filed in the Settlement Agreement in this Cause, or in the alternative, portions of the ET Pilot, as outlined in this Petition.

On February 21, 2020, Duke Energy Indiana, the Indiana Office of Consumer Counselor (“OUCC”), Zeco Systems, Inc. d/b/a Greenlots (“Greenlots”), and Citizens Action Coalition of Indiana, Inc (“CAC”) (collectively the “Settling Parties”) filed a Settlement Agreement seeking approval of the ET Pilot. On July 22, 2020, the Commission issued its Final Order in Cause No. 45253. The Final Order was approved by three of the five Commissioners (“The Majority”). Accompanying the Final Order was the Dissenting Opinion of Commissioners Sarah E. Freeman and David L. Ober (“Dissent”). The Majority bases its decision to not approve the Settlement Agreement on three main issues 1) the lack of a “statewide policy for encouraging the development of EV projects”; 2) the size of the ET Pilot; and 3) the lack of customer protections. The Majority should reconsider its decision as the evidence of record fully demonstrates that 1) the Commission has a long history of approving electric transportation proposals; 2) the size of

the ET Pilot, as proposed in the Settlement Agreement, is reasonable; and 3) the Settlement Agreement contains significant customer protections. In the event the Majority does not approve the ET Pilot in its entirety, Duke Energy Indiana respectfully requests the Commission to modify the Settlement Agreement, consistent with previous Commission orders and approve the Residential EV Charging Rebate Program (“Residential Program”) and the Commercial EV Charging Rebate Program (“Commercial Program”). In support of this Petition, Duke Energy Indiana provides the following:

**I. The Commission has a long history of approving electric transportation proposals.**

As a basis for denying the Settlement Agreement, the Majority held that “the Indiana Legislature has not adopted any statewide policy for encouraging the development of EV projects.”<sup>1</sup> The Majority asserts that without a statewide policy it cannot approve a Settlement Agreement like the one proposed by the Settling Parties. The Dissenting opinion asserts “the Commission has a long history of approving transportation electrification proposals similar to the DEI program”.<sup>2</sup>

The Commission has approved various EV programs over the past 9 years, all without a legislatively directed statewide policy. In Cause No. 43960, the Commission approved a settlement agreement, with modification, approving new EV tariffs proposed by Indianapolis Power & Light Company (“IPL”) and deferral of costs associated with the installation of electric vehicle supply equipment (“EVSE”).<sup>3</sup> In Cause No. 44016, the Commission approved EV related tariffs, a regulatory asset and accounting treatment of EV programs proposed by Northern Indiana Public Service Company.<sup>4</sup> In Cause No. 44478, the Commission modified a settlement

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<sup>1</sup> Final Order at 16.

<sup>2</sup> *Id.*, at 19.

<sup>3</sup> See *Indianapolis Power & Light Co.*, Cause No. 43960 (IURC Nov. 22, 2011).

<sup>4</sup> See *Northern Indiana Public Serv. Co.*, Cause No. 44016 (IURC Feb 1., 2012).

agreement between IPL and the OUCC, approving “extension costs and other elements” associated with the BlueIndy Project.<sup>5</sup> Most recently, in Cause No. 45235, the Commission approved an EV Pilot Program, comprised of residential and commercial rebates, and deferral accounting, as proposed by Indiana Michigan Power (“I&M”).<sup>6</sup> Commission precedent demonstrates that it has a long history of approving ET Pilots, some with Commission modifications. Moreover, the various programs approved by the Commission in these Causes are similar to the individual programs that comprise the ET Pilot, as proposed by the Settling Parties in this case. Specifically, the ET Pilot contains residential and commercial rebate programs similar to I&M’s IM Plugged In Pilot (“I&M Pilot”). The Electric School Bus program is similar to the Commission’s modified BlueIndy Project, albeit on a much smaller scale. Additionally, the numerous tariff proposals approved by the Commission in these other dockets are similar to the tariff proposals associated with the Direct Current Fast Charge (“DCFC”) program in this case.

Finally, the Majority’s assertion that there is no statewide policy supporting the approval of an EV pilot overlooks the record in this cause. When the Indiana Department of Environmental Management (“IDEM”), an administrative agency under the auspices of the Governor, made a decision about how much to allocate to DCFC, the agency elected to allocate the maximum amount possible. Furthermore, Governor Holcomb has made appointments to the VW Trust Program Committee. This demonstrates that the State of Indiana is highly engaged in efforts supportive the proliferation of EVs and associated programs.

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<sup>5</sup> See *Indianapolis Power & Light Co.*, Cause No. 44478 (IURC Feb. 11, 2015).

<sup>6</sup> See *Ind. Mich. Power*, Cause No. 45235 (IURC Mar. 11, 2020).

## **II. Based on the probable evidence the size of the ET Pilot is reasonable.**

As additional basis for declining to approve the Settlement Agreement, the Majority asserts “Duke Energy Indiana is asking its captive customers for funding at a scale that is not consistent with the level of statewide support evidenced by the VW Trust Program funding level.”<sup>7</sup> While it is true the ET Pilot, as proposed by the Settlement Agreement, is larger in scale than the VW Trust Program, the comparison is misleading. As provided by Duke Energy Indiana Witness Lang Reynolds, Indiana was awarded a total of \$40.9 million from the national Volkswagen Trust Program.<sup>8</sup> This amount was based on Indiana’s pro-rata share of the affected VW vehicles sold in Indiana during the time VW employed diesel emissions cheat devices.<sup>9</sup> The \$6.15 million dedicated by IDEM to fund EV infrastructure projects represents the maximum 15% of a state’s Mitigation Trust funds that may be spent on EV infrastructure and has no relation to the need or addressable market for charging infrastructure in Indiana. Furthermore, the Commission’s analysis mistakenly combines the Electric School Bus program and DCFC funding. Specifically, electric school bus funding by the VW Trust Program would be drawn from the remaining 85% of the total \$40.9 million.<sup>10</sup> Regardless of how the calculation was made, comparing the size of the ET Pilot to the EV infrastructure portion of IDEM’s funding is arbitrary because the size of the VW Trust Program is not based on any measurement of need, but simply the sales of VW vehicles in Indiana.<sup>11</sup>

The Majority further asserted that no evidence was offered regarding how much Duke Energy Indiana was expecting to receive from the VW Trust Program. While this is true, Mr.

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<sup>7</sup> Final Order at 16.

<sup>8</sup> See Direct Testimony of Lang Reynolds at Page 20.

<sup>9</sup> *Id.* at footnote 2.

<sup>10</sup> *Id.* at 21.

<sup>11</sup> *Id.*

Reynolds clearly testified regarding the possible funding levels for school and DCFC and presented budgets as a worst-case scenario with no VW funding secured.<sup>12</sup> Mr. Reynolds further testified how the DCFC program budget could be reduced by as much as 50-80%, which should be given some weight given the robust joint utility VW proposal.<sup>13</sup>

### **III. Customers are appropriately protected.**

The Majority asserts that it is “unreasonable for all of Petitioner’s customers, who are overwhelmingly not EV owners, to be required to pay for programs that will provide them with little to no timely direct benefit”.<sup>14</sup> The narrow view of customer benefits, taken by the Majority, overlooks voluminous probable evidence admitted into the record. For example, in his direct testimony, Mr. Reynolds discusses and provided the M.J. Bradley & Associates, LLC Cost-Benefit Analysis which shows the significant benefits possible for all customers if EV growth increases from the current trend.<sup>15</sup> As the Dissent appropriately points out, program costs not placed in service by December 31, 2020 are “deferred until a future rate case, subject to full and thorough evaluation by the Commission and all statutory and interested parties”. The Dissent further highlights the fact that “any cost recovery requested in that adversarially litigated proceeding hinges on DEI having achieved specific “Measurements of Success” established in the Settlement Agreement and further defined by... a collaborative.”<sup>16</sup> This is an important feature of the Settlement Agreement. If the Measurements of Success are not met, as determined by parties to the collaborative process (including the OUCC and CAC), Duke Energy Indiana is not entitled to cost recovery of those unsuccessful investments.<sup>17</sup> Specifically, as delineated in

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Final Order at 17.

<sup>15</sup> Petitioner’s Exhibit 1-A(LWR).

<sup>16</sup> Final Order at 21.

<sup>17</sup> Settlement Testimony of Lauren M. Aguilar at Page 2.

the Settlement Agreement, “[a]ll signatories to this Settlement Agreement or their designee will be voting members of the Collaborative, whereas other interested stakeholders may attend and participate in the Collaborative meetings as nonvoting members of the Collaborative.”<sup>18</sup> This feature specifically protects customers and provides customer groups, such as the OUCC and CAC, an additional avenue to review the ET Pilot and associated investments.

#### **IV. The Commission has the authority to alter the Settlement Agreement.**

Duke Energy Indiana reaffirms its assertion that the Majority should reconsider its finding and the Commission should approve the Settlement Agreement, in its entirety. In the alternative, the Commission has a long history of modifying Settlement Agreements when it believes it is in the public interest.<sup>19,20</sup> For example, the Commission recently modified the Settlement Agreement filed in Cause No. 45159 and has previously modified Settlement Agreements in Duke Energy Indiana cases, specifically Cause No. 43114 IGCC 4S1. *Id.* At a minimum, the Commission has the authority to alter Settlement Agreements, in the public’s interest, to align with previously approved electric transportation programs, such as the I&M Pilot. Therefore, if unable to approve the Settlement Agreement in its entirety, the Company believes the Commission should modify the Settlement Agreement and approve the Residential Program and the Commercial Program, as filed in the Settlement Agreement. These programs are substantially similar to the I&M EV programs the Commission approved on March 11, 2020.<sup>21</sup>

Both the I&M Pilot and the Duke Energy Indiana Settlement Pilot propose Residential rebates, Commercial rebates, and Multi-Unit Dwelling L2 installs. The I&M Pilot costs \$2.1

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<sup>18</sup> Settlement Agreement at Page 5.

<sup>19</sup> See *Duke Energy Indiana*, Cause No. 43114 IGCC 4S1 (IURC Dec. 27, 2012)

<sup>20</sup> See *Northern Indiana Public Service Co.*, Cause No. 45159 (IURC Dec. 4, 2019)

<sup>21</sup> See *Ind. Mich. Power*, Cause No. 45235 (IURC Mar. 11, 2020).

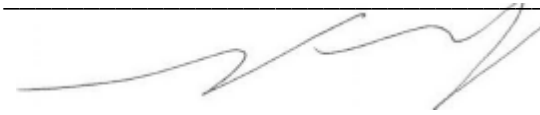
million over three years, while the Residential and Commercial Programs proposed by the Settling Parties costs less at \$1.65 million over three years. This is true despite the substantially larger customer base and service territory of Duke Energy Indiana. Another feature of the Residential and Commercial Programs is the detailed components of each program, particularly the specifically targeted customer groups. This will provide Duke Energy Indiana, the participants of the Collaborative process, and the Commission with targeted data that will not be gathered through the I&M Pilot.

## **V. Conclusion.**

The evidence of record fully demonstrates that 1) the Commission has a long history of approving electric transportation proposals; 2) the size of the ET Pilot, as proposed in the Settlement Agreement, is reasonable; and 3) the Settlement Agreement contains significant customer protections. Therefore, the Commission should reconsider its Final Order and approve the Settlement Agreement, in its entirety. In the alternative, the Commission should modify the Settlement Agreement, consistent with previous Commission orders and approve the Residential EV Charging Rebate Program (“Residential Program”) and the Commercial EV Charging Rebate Program (“Commercial Program”).

Respectfully submitted,

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### **VERIFICATION**

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

Signed:   
\_\_\_\_\_  
Andrew J. Wells

Dated: August 11, 2020

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was electronically delivered this 11th day of August, 2020 to the following:

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