

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF DUKE ENERGY INDIANA,)
LLC FOR APPROVAL OF A RETAIL)
SERVICE AGREEMENT WITH WABASH)
VALLEY RESOURCES, LLC ARISING FROM) CAUSE NO. 45395
OPERATION OF FACILITIES IN TERRE)
HAUTE, INDIANA AND FOR)
ESTABLISHMENT OF CONFIDENTIAL)
PROCEDURES)

**PETITIONER'S OBJECTION TO PETITION TO INTERVENE OF
CITIZENS ACTION COALITION OF INDIANA, INC.**

Petitioner Duke Energy Indiana, LLC (“Duke Energy Indiana” or “Company”), by counsel, hereby objects to the Petition to Intervene (“CAC Petition”) filed by Citizens Action Coalition of Indiana, Inc. (“CAC”) and requests its denial. Intervention before the Commission is not a matter of right. It is a matter governed by the Commission's rule. 170 IAC 1-1.1-11 (“Rule 11”). This rule permits intervention where a proposed intervenor has a “substantial interest” in the specific subject matter of the proceeding provided that the proposed intervention will not unduly broaden the issues or result in unreasonable delay of the proceeding. The CAC’s filing fails to demonstrate a “substantial interest”, other than the conclusionary statement that it has a “substantial interest”. Without further indication of what substantial interest CAC has in the instant proceeding, there is a concern that CAC’s intervention will unduly broaden the scope of the proceeding and unnecessarily delay the relief sought. The CAC Petition should be denied.

I. IURC Cause No. 45395 is a narrowly focused proceeding and CAC seeks to expand the scope.

Cause No. 45395 is a narrowly focused proceeding seeking the approval of a special contracted electric rate structure for a single economic development Duke Energy Indiana customer.

Any party seeking to intervene in this proceeding should have a substantial interest in and be limited to the narrow scope.

Without an explanation for its desire to intervene in the instant cause, Duke Energy Indiana has a concern CAC will raise issues outside the scope of the proceeding, such as positions CAC has taken in prior proceedings adverse to use of fossil fuel and carbon capture and sequestration. In any event, without more explanation, CAC has not demonstrated a substantial interest in the instant proceeding and its Petition should therefore, be denied. CAC asserts as its basis for intervention that some of its members pay Duke Energy Indiana “rates and charges”, rely on Duke Energy Indiana “facilities, equipment, programs and personnel”, and “any changes would impact them” (emphasis added).¹ CAC further asserts that it has “regularly appeared on behalf of their members before the Commission”². Although it may be true that CAC regularly intervenes in Commission proceedings, it does not routinely participate in electric special contact proceedings, which do not impact or change rates for Duke Energy Indiana’s other customers. This is understandable considering the precise issues CAC pursues in other proceedings are not at issue in this cause. Granting the Petition has the potential to unduly broaden the scope of this narrow proceeding, and unfairly delay WVR’s economic activity, impeding job growth and tax base expansion in Indiana and Vigo County.

II. CAC's Petition Fails to Demonstrate a “Substantial Interest” in the “Subject Matter of this Proceeding.”

As basis for its intervention, CAC asserts it has a “substantial interest”, because it has unnamed members that are residential retail customers.³ Although Duke Energy Indiana does not dispute that some of the CAC’s membership may be Duke Energy Indiana customers, CAC fails to

¹ CAC Petition at 2.

² Id.

³ Id.

assert a basis for intervention appropriate for a special contract proceeding. CAC is not subject to the Commission's jurisdiction and the Commission's order in this Cause cannot impose requirements on CAC. CAC indicates it is a "non-profit corporation" principally located in Indianapolis,⁴ which is not within Duke Energy Indiana's service territory. The pending special contract will not impact the rates for other retail electric customers, for CAC or for Indianapolis. Thus, the CAC itself does not have a "substantial interest" in the WVR's special contract, the sole subject matter of this proceeding.

III. The Interests of Duke Energy Indiana Customers are Represented by the OUCC.

The interests of Duke Energy Indiana's customers and the public are already represented in the proceeding by the OUCC.⁵ The CAC Petition fails to identify any members who allegedly are Duke Energy Indiana residential customers, let alone those with a "substantial interest", *i.e.* a real and tangible interest of considerable importance, which is not already represented by the OUCC. The Petition merely sets forth the conclusory allegation: "members'... have a substantial interest in the proceeding."⁶ This is particularly important given the narrow context of this proceeding.

The OUCC has considerable experience in special contract proceedings. The CAC's assumption that no other party (*i.e.*, not the OUCC) can adequately represent its unnamed members, that are also Duke Energy Indiana customers, is unsubstantiated in its Petition. CAC fails to make any representation, much less show that the unidentified residential consumers have elected to be represented by CAC, instead of the OUCC. Furthermore, as mentioned above, this proceeding does not address any of the issues the CAC has historically addressed in Commission proceedings. Therefore, the Commission should reject CAC's assertion that any Duke Energy Indiana residential

⁴ Id at 1.

⁵ Ind. Code § 8-1-1.1-4.1.

⁶ CAC Petition at 2.

customer is not already adequately represented in this Cause by the OUCC.

IV. At a minimum, CAC's intervention should be limited in scope.

Notwithstanding Duke Energy Indiana's objection, if the Commission grants the CAC Petition, it should do so on a limited basis. In Cause No. 38702 FAC 83, Sierra Club petitioned to intervene in Indiana Michigan Power's ("I&M") FAC proceeding. Although the Commission ultimately granted the petition, it did so on a limited basis. The Commission held, in pertinent part, as follows:

However, contrary to Sierra Club's assertions that its intervention will not unduly broaden the issues, both the Petition and Sierra Club's prefiled testimony contain assertions and arguments that go well beyond the issues to be addressed in this FAC proceeding. Ind. Code § 8-1-2-42(d) provides that, "the commission shall conduct a formal hearing *solely* on the fuel cost charge requested in the petition subject to the notice requirements of IC 8-1-1-8 and *shall* grant the requested fuel cost charge if its finds" certain requirements are met-one of which is that the utility has made every reasonable effort to acquire fuel and generate or purchase power "so as to provide electricity to its retail customers at the lowest *fuel* cost reasonably possible." Ind. Code§ 8-1-2-42(d)(1) (emphasis added). Therefore, our review in this proceeding is limited to I&M's fuel costs and its proposed FAC charge.⁷

If the Commission determines it is appropriate to allow CAC's intervention, it should do so in a similarly limited manner. Specifically, CAC's participation should be narrowly focused to how the special contract would impact its members, that are also Duke Energy Indiana customers (if it can identify any), and not delve into other issues that are outside that scope.

V. Conclusion

The Commission should deny CAC's Petition. This proceeding is expressly limited in scope and narrowly focused on the special contract between Duke Energy Indiana and its new customer, WVR, and CAC has not demonstrated a substantial interest in the matter that cannot be adequately represented by the OUCC. Allowing CAC's intervention would unduly broaden the issues pending

⁷ Commission's August 26, 2019 Docket Entry in Cause No. 38702 FAC 83.

before the Commission in this docket and has the potential to unreasonably delay this proceeding, negatively impacting WVR and economic development in West Central Indiana.

Respectfully submitted,

DUKE ENERGY INDIANA, LLC

A handwritten signature in dark ink, appearing to read "Kelley Karn", with a long horizontal flourish extending to the right.

By: _____
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Petitioner's Objection to Petition to Intervene of Citizens Action Coalition of Indiana, Inc. was electronically delivered or mailed, postage prepaid, in the United States Mail, this 7th day of July, 2020 to:

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