STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF DUKE ENERGY INDIANA, LLC PURSUANT TO IND. CODE §§ 8-1-2-42.7 AND 8-1-2-61, FOR (1) AUTHORITY TO MODIFY ITS RATES AND CHARGES FOR ELECTRIC UTILITY SERVICE THROUGH A STEP-IN OF NEW RATES AND CHARGES USING A FORECASTED TEST PERIOD; (2) APPROVAL OF NEW SCHEDULES OF RATES AND CHARGES, GENERAL RULES AND REGULATIONS, AND RIDERS; (3) APPROVAL OF A FEDERAL MANDATE CERTIFICATE UNDER IND. CODE § 8-1-8.4-1; (4) APPROVAL OF REVISED ELECTRIC DEPRECIATION RATES APPLICABLE TO ITS ELECTRIC PLANT IN SERVICE; (5) APPROVAL OF NECESSARY AND APPROPRIATE ACCOUNTING DEFERRAL RELIEF; AND (6) APPROVAL OF A REVENUE DECOUPLING MECHANISM FOR CERTAIN CUSTOMER CLASSES	)	CAUSE NO. 45253

<u>INDUSTRIAL GROUP'S CROSS-ANSWERING BRIEF</u>

Intervenor Duke Industrial Group ("Industrial Group"), by counsel, submits this cross-answering brief to address three points raised in the post-hearing submission of Joint Intervenors ("JI"): (1) JI oppose the cost of service methodology presented by Duke Energy Indiana ("Duke") and instead advocate the energy-based Equivalent Peaker method, contrary to longstanding Commission precedent; (2) JI contend no reduction at all should be required to inter-class subsidies, even though the Rate HLF class currently pays $96 million annually above cost-based rates; and (3) JI raise a concern, without a developed record or a clear ratemaking proposal, about Duke's operation of the Cayuga power plant that also supplies an industrial steam customer. In all three respects, the arguments offered by JI should be rejected.

Alone among the many and diverse parties in this proceeding, the JI submission is the only post-hearing filing to contest the 4 CP cost of service study used by Duke to allocate production and transmission costs. The thrust of the JI analysis is that such costs should be treated predominantly as energy-related rather than demand-related. The Commission has rejected that perspective time and again, and has consistently concluded such investments are fixed costs that vary with demand, not relative energy consumption. The Commission's long-established determination on this point is not a mistake as JI suggest, but rather is a proper application of cost causation principles and sound ratemaking policy.

With scant analysis, JI further oppose any reduction at all to the existing level of inter-class subsidies in Duke's rates. The record shows the Rate HLF class is currently paying $96 million annually above parity, but JI nevertheless take the position that "[n]ow is simply not the time to try to remedy the subsidies of the past." The issue does not concern only a past disparity, but rather an ongoing subsidized rate structure that JI seek to preserve intact into the future. Again, the JI position conflicts with consistent Commission precedent, which for many years has adhered to the principle of cost-based rates by requiring substantial reductions to subsidies in each rate case. The suggestion that the proposed residential increase is too high already to accommodate any progress toward cost-based rates fails to account for the substantial revenue reductions supported by all consumer parties, in light of which the existing subsidies can be largely eliminated while still mitigating the residential increase.

Finally, JI with some support from Sierra Club raise a vague challenge to the operation of Duke's Cayuga generating station, which produces power for the system and also steam to supply an industrial customer. The question is undeveloped on this record, in the absence of any supporting JI testimony and with only equivocal cross-examination at the hearing. Despite the asserted concern, furthermore, JI and Sierra Club do not put forward any corresponding ratemaking proposal, beyond suggesting further investigation in a future proceeding. The issues presented for decision in this case are complicated enough without injecting speculative questions that do not require a Commission determination.

A. The JI Proposal for an Energy-Based Allocation Methodology Defies Consistent and Longstanding Commission Precedent

There were ten separate post-hearing submissions filed by distinct parties on March 30, 2020, but the JI filing was the only one that contested the 4 CP cost of service study presented by Duke. As the sole opposing entity, JI instead propose the Commission adopt the Equivalent Peaker method to allocate production costs, while admitting that approach would treat 70% of those costs as energy-related with only 30% as demand-related. See JI Exceptions at 235. The JI submission fails to acknowledge, however, that the Commission has consistently and repeatedly determined such fixed costs should be allocated based on demand, rejecting energy-based methodologies like the Equivalent Peaker method.

Neither the JI post-hearing submission nor the testimony of the JI witness cited any Commission order endorsing an energy-weighted approach such as the Equivalent Peaker method. As other witnesses noted, the Commission has consistently rejected such proposals in numerous orders over many years. See Duke Ex. 38 at 7; IG Ex. 3 at 2-7, 10; Tr. at C48. The Commission did so again in the recent I&M rate order, explaining:

> The record shows the energy-weighted demand allocation methodologies the OUCC and CAC-INCAA proposed do not recognize production plant costs are fixed in nature and exist regardless of how much energy customers consume. Because production plant capacity is required to meet peak demand requirements, we find plant capacity costs are appropriately allocated to customers based on their contribution to peak demands since there is a direct relationship to the demand that customers place on the system.

In re Indiana Michigan Power Co., Cause No. 45235 (IURC March 11, 2020) at p.86. The record here equally supports the same conclusion: Duke's investment in production facilities is a fixed cost that does not vary with the amount of energy consumed, and instead is a function of the system demand that Duke must be prepared to meet. See Duke Ex. 38 at 7-8; IG Ex. 3 at 6-7, 10-11; Tr. at C48; JI CX5 at 28.4(a). Allocating on the basis of peak demand, therefore, properly reflects the nature of the fixed costs and comports with cost causation principles.

The Commission, moreover, has specifically rejected the Equivalent Peaker method that JI advocate here. See Duke Ex. 38 at 7; IG Ex. 3 at 2-5; Tr. at C48. The JI submission and JI testimony do not cite any Commission order endorsing that approach. The record shows the underlying theory is inconsistent with actual system planning by utilities, and is premised on an assumption that baseload capacity investment revolves on reducing operating costs, contrary to prevailing practice and Duke's history with Edwardsport in particular. See IG Ex. 3 at 2-4, 8-9, 11-12. Allocating fixed costs based on energy consumption, as proposed by JI, would penalize efficient usage by high load factor customers, reduce the incentive to shift load to off-peak periods, and aggravate rate volatility. See Duke Ex. 38 at 7-8; IG Ex. 3 at 2-4, 7, 12-14.

In the absence of any Commission precedent supporting their position, JI rely on selective quotes from a NARUC manual. See JI Exceptions at 234-35. The quoted passages, however, are taken from a section that surveys alternative methodologies and explains the rationale of each approach. See IG Ex. 3 at 5. Contrary to the JI implication, the manual does not endorse energy-based allocations or the Equivalent Peaker method as a matter of regulatory guidance or ratemaking policy. The same manual equally explains demand-based methodologies and equally supports the Commission's established conclusion. Id.

In addition to proposing that the bulk of Duke's capacity costs be allocated on the basis of energy consumption, JI also argue that the demand-based portion should utilize 12 CP rather than 4 CP allocators. See JI Exceptions at 235-37. Again, the JI submission is the only post-hearing filing to take that position. While referencing prior PSI orders that approved 12 CP allocations, JI fail to confront or rebut the substantial record of material changes in circumstance that support Duke's 4 CP study in this case.

The evidence shows, unlike the last PSI case, that Duke is now a peaking utility with distinct periods of higher demand, in contrast to the flat load pattern across the year that would correlate to a 12 CP approach. See Duke Ex. 38 at 2-3, 6 & Ex. 38-D; IG Ex. 2 at 13-14 & Att. NP-1; Tr. at C49-C50; JI CX5 at 28.3(b). Duke's system planning and operational experience confirm the presence of identifiable periods of peak demand that drive capacity investment. See Duke Ex. 38 at 4; IG Ex. 2 at 13. In particular, the establishment of MISO and its role in determining capacity and reserve requirements for member utilities is a development subsequent to the last PSI rate case. See IG Ex. 2 at 14; Tr. at A45-A46; JI CX5 at 28.1(a). Duke's capacity needs are now a function of its contribution to MISO's summer peaks, indicating a 4 CP rather than a 12 CP approach is the better match for purposes of cost causation. Id.

Without refuting that record of changed circumstances, JI insinuate the 4 CP study was only presented by Duke in this case in order to comply with a 2006 settlement agreement. See JI Exceptions at 236. What the record shows, however, is that the settling parties recognized in 2006 that Duke had become a peaking utility, and further that current system status confirms that 4 CP is the correct methodology. In the 2006 proceeding, Duke agreed that its monthly load, which had been relatively flat, was exhibiting consistent peaking characteristics, and that status was corroborated by evidence that capacity purchases were needed during the summer peak period. See IG Ex. 2 at 14. Notably, the OUCC also agreed in that settlement not to oppose a 4 CP allocation in Duke's next rate case. See Duke Ex. 7 at 6; IG Ex. 2 at 15. In this case, Duke was quite clear in explaining that 4 CP is the appropriate basis for allocation of capacity costs in light of current operational characteristics and system planning criteria. See Duke Ex. 38 at 3-6, 8; Tr. at C48-C50; JI CX5 at 28.3(b). The implication that Duke presented a 4 CP study merely to comply with a settlement obligation is inaccurate.

The record fully supports the 4 CP allocation of capacity costs as proposed by Duke. The alternative put forward only by JI, without the support of any other party, is contrary to the record, is inconsistent with Commission precedent, and should be rejected.

B. JI Provided No Justification for the Proposal to Preserve the Massive Subsidies in Duke's Current Rate Structure

The record establishes that Duke's current rates incorporate a high level of inter-class subsidies, with the Rate HLF class in particular providing some $96 million in annual revenue above equalized return and Rate RS conversely providing $97 million in revenue below parity. See Duke Ex. 38-B; Tr. at C50-C51; IG Ex. 2 at 23 & Att. NP-2 p.2. Despite that enormous deviation from cost-based rates, Duke proposed only a nominal reduction of 5.1% in existing subsidy levels, which would still leave Rate HLF burdened with about $91 million in excess revenue. See IG Ex. 2 at 22-23; Tr. at C52. According to JI, however, even the token subsidy reduction proposed by Duke is too much. The JI position is that the massive subsidies paid by HLF customers should be retained in their entirety. See JI Exceptions at 238.

The JI submission offers little analysis or explanation supporting the opposition to any subsidy reduction at all. The rationale, in full, consists of the following proposed finding:

> Furthermore, we are concerned about the Company's proposal for reducing the current "subsidy" to the residential class. After so many years without a rate case, residential customers are facing overwhelming rate shock even without the increase necessary to reduce the alleged current "subsidy." Now is simply not the time to try to remedy the subsidies of the past.

See JI Exceptions at 238. That bare recitation misconstrues the issue, conflicts with established Commission policy, and amounts to a proposal to abandon cost-based rates.

In the first place, the need to correct Duke's subsidized rate structure is not an effort to "remedy the subsidies of the past." This is not a point that has already been resolved and now has historical significance only. The question, rather, concerns *ongoing* disparities that JI seek to retain in *future* rates. Under JI's position, the Rate HLF class would be forced to *continue* paying $96 million annually in excess of its cost-based share, in order to support corresponding underpayments by other customers. See IG Ex. 3 at 16. Reducing the existing subsidies would be forward-looking relief to better align Duke's rate structure with principles of cost-based ratemaking, addressing the problem prospectively, not retroactively.

Neither the JI exceptions nor the JI witness cited any Commission order in a contested case that refused altogether to mitigate rate subsidies. Indeed, no party has pointed to a case where the Commission ordered only a token reduction at the level proposed by Duke. That is because the Commission for many decades has adhered to the fundamental principle that rates should be predicated on cost of service, and with each rate case the Commission has consistently required significant reductions in inter-class subsidies and meaningful movement toward cost-based rates. See IG Ex. 2 at 24; IG Ex. 3 at 16-18. Even the Duke witnesses admitted that inter-class subsidies conflict with the established policy that rates should be based on cost of service. See Duke Ex. 32 at 9; Duke Ex. 38 at 12; Tr. at A50, C54-C55. The JI position opposing any reduction at all directly conflicts with the Commission's longstanding efforts to eliminate subsidies, and amounts to a proposal to abandon the commitment to achieve cost-based rates.

The JI submission also engages in hyperbole by asserting that residential customers are facing "overwhelming rate shock" even without any subsidy reduction. See JI Exceptions at 238. That assertion echoes Duke's rationale for limiting subsidy reduction in order to keep the residential rate increase below 20% (see Duke Ex. 1 at 17; Duke Ex. 32 at 10; Duke Ex. 2 at 16;

Tr. at A54, C52), but it makes much less sense in the context of the revenue mitigation proposed by JI and other consumer parties. After all, if the consumer parties are fully successful, Duke will not be entitled to any revenue increase at all. In that instance, moving the residential class to cost-based rates will not threaten "overwhelming rate shock" as JI contend.

The Industrial Group seeks a 50% reduction in inter-class subsidies, and fully expects that such relief will satisfy the criterion applied by Duke keeping the residential increase well below 20%. See IG Ex. 2 at 25; IG Ex. 3 at 17. The post-hearing submissions by Walmart and Kroger, notably, suggest an alternative by which one half of all reductions to Duke's proposed revenues that are granted by the Commission should be devoted to the elimination of subsidies. See Walmart Exceptions at 233; Kroger Brief and Proposed Order at 2-3. That approach is consistent with the testimony of the Industrial Group witness, Mr. Phillips, who noted that, if a revenue decrease is ordered as proposed by the OUCC, "there is no principled reason why existing subsidies should not be eliminated altogether." See IG Ex. 3 at 17. Whether on a sliding scale as recommended by Walmart and Kroger, or as a specified percentage, the Commission should require substantial movement towards cost-based rates and reject the JI position seeking full retention of the massive subsidies in Duke's current rates.

C. JI's Asserted Concerns About the Operation of Cayuga Are Speculative, Undefined and Unsupported by the Record

JI offered the testimony of three witnesses, none of whom raised any concerns about the operation of the Cayuga generating station or the provision of steam service to an industrial customer. Nevertheless, in the post-hearing filings, JI present an equivocal critique in that regard, relying primarily on the cross-examination of a Duke witness at the hearing. See JI Brief at 17-21; JI Exceptions at 298-300. The JI position is also supported by the Sierra Club. See Sierra Club Brief at 34-38; Sierra Club Exceptions at 13. The concerns raised by JI and Sierra

Club are undeveloped in the record, have undefined significance to the ratemaking issues in this case, and do not require any Commission determination here.

The thrust of the asserted concern is that Duke operates one unit at Cayuga on a must-run basis, in part to provide steam service to an industrial customer, with the suggestion being that such operation may result in higher than necessary fuel costs. The steam customer, notably, covers its share of the facility costs as accounted for in Duke's jurisdictional separation study (see Duke Ex. 7 at 13), and there has been no showing of any misallocation in that study. The most JI can assert is a suspicion it is "likely" that Duke incurs higher fuel costs and "if" losses are passed through to electric customers it "would" be unreasonable. See JI Brief at 18-19. In lieu of a record substantiating that concern, JI propose that the Commission establish a "presumption" that Duke would have to overcome in future FAC proceedings. Id. at 19 n.8. Sierra Club, similarly, describes Cayuga as "economically on the bubble" and suggests a docket to determine "whether" and "if" Duke is operating imprudently. See Sierra Club Brief at 34, 38.

Lacking a record that would support any defined ratemaking adjustment, JI and Sierra Club essentially flag the issue for future consideration and propose only that the Commission conduct further investigation in other proceedings. See JI Exceptions at 300 (stating it "appears" the operation of Cayuga "may" be uneconomic, though "[t]here is no evidence in this record" as to the sufficiency of payments by the steam customer, and therefore "[f]urther investigation of this issue should occur" in the FAC subdocket); Sierra Club Exceptions at 13 (proposing despite concerns that the Commission approve the O&M and forward capital maintenance for Cayuga, subject to establishing an annual tracker docket to determine "if" Duke is operating prudently in order to protect customers from the "possibility" of imprudence).

In short, JI and Sierra Club raise speculative concerns without a clear record and, in the end, do not propose that the Commission provide any ratemaking relief in this proceeding. This is a case, of course, raising many rate issues of great complexity, with high financial stakes for Duke and its ratepayers. The Commission already has more than enough determinations to make on matters of consequence to the rate proposals presented here, without adding unnecessary commentary on potential concerns that some parties wish to explore in future proceedings. If such issues are presented in other dockets, they can be better resolved then without premature findings based only on suspicion and inference in this case.

D. Conclusion

In the three respects addressed in this brief, the positions put forward in the JI post-hearing submission should be rejected by the Commission: (1) the 4 CP cost of service study presented by Duke is sound and should be approved; (2) the enormous inter-class subsidies in Duke's current rates should be substantially eliminated; and (3) the unsubstantiated concerns about the operation of Cayuga do not warrant any findings here.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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