

**ORIGINAL**

Commissioner	Yes	No	Not Participating
Huston	√		
Freeman	√		
Krevda	√		
Veleta	√		
Ziegner	√		

**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**

**APPROVED: APR 12 2023**

**ORDER OF THE COMMISSION ON REMAND**

**Presiding Officers:  
James F. Huston, Chairman  
Sarah E. Freeman, Commissioner  
Carol Sparks Drake, Senior Administrative Law Judge**

The Indiana Utility Regulatory Commission (“Commission”) issued an Order in this Cause on June 29, 2020, (the “45253 Order”) that the Indiana Office of Utility Consumer Counselor (“OUCC”) and certain intervenors timely appealed. On appeal, the Indiana Court of Appeals affirmed the Commission’s 45253 Order. *Indiana Off. of Util. Consumer Couns. v. Duke Energy Indiana, LLC*, 169 N.E.3d 417, 420 (Ind. Ct. App. 2021). The OUCC and the aggrieved intervenors, including the Duke Industrial Group (“Industrial Group”), then sought transfer. The Indiana Supreme Court granted transfer, *Indiana Off. of Util. Consumer Couns. v. Duke Energy Indiana, LLC*, 173 N.E.3d 1028 (Ind. 2021), thus vacating the Indiana Court of Appeals’ Opinion.

On March 10, 2022, the Indiana Supreme Court reversed the portion of the 45253 Order in which the Commission approved recovery of Duke Energy Indiana, LLC’s (“Duke Energy Indiana” or “Petitioner”) past costs associated with closure of certain coal ash basins. The Court also summarily affirmed the Indiana Court of Appeals on the separation-study and Edwardsport plant issues and remanded this case to the Commission for further proceedings consistent with the

Indiana Supreme Court’s Opinion. *Indiana Off. of Util. Consumer Couns. v. Duke Energy Indiana, LLC*, 183 N.E.3d 266, 270 (Ind. 2022), *reh’g denied* (the “Supreme Court Opinion.”)

On August 18, 2022, Petitioner filed its remand direct testimony and related attachments. On September 23, 2022, the OUCC, on behalf of the OUCC and all intervenors and with the agreement of Duke Energy Indiana, filed a motion requesting the time for the OUCC and intervenors to file remand testimony be extended. In this motion, the Commission was asked to extend the deadline for the OUCC and intervenors to file their cases-in-chief, modify Duke Energy Indiana’s rebuttal filing date, and continue the evidentiary hearing to on or after January 17, 2023. A docket entry was issued on September 28, 2022, granting the relief requested, including continuing the evidentiary hearing to January 20, 2023.

On November 15, 2022, the OUCC and the Industrial Group filed their respective remand direct testimony and exhibits.<sup>1</sup> The OUCC filed a motion on November 16, 2022, for leave to substitute testimony. This motion was granted on November 30, 2022, and the OUCC filed revised remand direct testimony on December 5, 2022.

On December 12, 2022, Duke Energy Indiana filed its remand rebuttal testimony and attachments. On January 17, 2023, Petitioner filed a joint motion on behalf of the OUCC, the Industrial Group, and Duke Energy Indiana (collectively, the “Settling Parties”) advising the Settling Parties were engaged in settlement discussions and additional time was requested to finalize these discussions, complete a settlement agreement, and file supporting testimony. The Settling Parties requested the procedural schedule again be amended and the evidentiary hearing scheduled for January 20, 2023, be continued. On January 18, 2023, a docket entry was issued modifying the procedural schedule and continuing the evidentiary hearing to March 3, 2023, per the Settling Parties’ request.

On February 3, 2023, the Settling Parties filed their Stipulation and Settlement Agreement dated February 3, 2023, (the “Settlement Agreement”), and each filed testimony supporting the Settlement Agreement. This included the remand settlement testimony and attachments of Brian P. Davey, Vice President, Rates and Regulatory Strategy, Indiana for Duke Energy Indiana; Wes R. Blakley, OUCC Senior Utility Analyst; and Industrial Group witness Michael P. Gorman, a Managing Principal of Brubaker and Associates, Inc.

On March 1, 2023, a docket entry was issued requesting information about a calculation Mr. Davey sponsored. On March 2, 2023, Petitioner filed a response to this docket entry that included a Revised Attachment 63-B (BPD) to Mr. Davey’s settlement testimony.

The Commission conducted an evidentiary hearing in this matter on March 3, 2023, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Duke Energy Indiana, the OUCC, the Industrial Group, and Nucor Steel appeared, by counsel, and the Settling Parties’ remand testimony and exhibits were admitted into the record without objection.

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<sup>1</sup> On January 9, 2023, the Industrial Group filed revised testimony that included alternative interest calculations. The Industrial Group did not offer that testimony into evidence at the hearing.

Based upon the applicable law and the evidence, the Commission now finds:

1. **Notice and Commission Jurisdiction.** Due, legal, and timely notice of the public hearing on remand in this Cause was given and published by the Commission as required by law. Duke Energy Indiana is a public utility as defined in Ind. Code § 8-1-2-1(a) and is, therefore, subject to the Commission’s jurisdiction. The Commission also has subject matter jurisdiction with respect to the issues presented.

2. **Petitioner’s Characteristics.** Duke Energy Indiana is a public utility organized and existing under Indiana law with its principal office at 1000 East Main Street, Plainfield, Indiana. Petitioner is a wholly owned subsidiary of Duke Energy Indiana Holdco, LLC and an affiliate of Duke Energy Business Services LLC and Duke Energy Corporation. Petitioner renders electric utility service in Indiana and owns, operates, manages, and controls, among other things, plant and equipment within Indiana. Petitioner’s plant and equipment are used for the production, transmission, delivery, and furnishing of electric service to the public. Petitioner directly supplies electric energy to more than 870,000 customers located in 69 Indiana counties and supplies steam service to two customers. Petitioner also sells electric energy for resale to other electric utilities that supply electric utility service to numerous customers in areas Petitioner does not serve directly.

3. **Relief Requested.** The Indiana Supreme Court remanded this matter to the Commission to address certain past expenses Duke Energy Indiana had incurred. On remand, the Settling Parties request that the Commission find the Settlement Agreement is reasonable, equitable, supported by substantial evidence, is in the public interest, and should be approved. In addition, consistent with the Settlement Agreement, Petitioner requests the Commission: (1) approve the proposed annual reduction to Petitioner’s existing retail revenue requirement as supported by Attachment 61-A (BPD) (also referred to as the “Forward Credit” to be provided through Standard Contract Rider No. 67 (“Rider 67”)); (2) approve the retail revenue refund amount of \$70.25 million, as set forth in the Settlement Agreement; (3) approve a 12 month refund period; (4) approve adjustments to Duke Energy Indiana’s authorized operating revenue and operating expense amounts for purposes of the quarterly earnings test in Petitioner’s fuel adjustment clause proceedings that are consistent with the Order in this proceeding; (5) issue an Order approving the Settlement Agreement that allows for the Forward Credit and refund to first be reflected on Petitioner’s retail electric customers’ bills rendered June 2023 – Bill Cycle 1; and (6) approve the adjustment of Petitioner’s retail electric rates via Rider 67 to reflect the Settlement Agreement’s implementation.

4. **Remand Direct Testimony.**

A. **Duke Energy Indiana’s Remand Testimony.** After advising he is not an attorney, Mr. Davey testified concerning his review of the Supreme Court Opinion and his understanding of the Court’s intentions on remand. Mr. Davey testified the Commission approved Duke Energy Indiana’s coal combustion residuals (“CCR”) compliance related expenses incurred through 2018 and certain Indiana Department of Environmental Management (“IDEM”) project expenses forecasted to be incurred through 2020 as recoverable under traditional ratemaking as part of the 45253 Order. More specifically, the Commission approved recovery of Petitioner’s previously incurred and deferred CCR project costs including financing costs and IDEM project costs including financing costs as a regulatory asset to be included in rate base and amortized over

eighteen years. In the Supreme Court Opinion, per Mr. Davey, the Court only addressed the Commission's approval of Duke Energy Indiana's past CCR expenses, framing the issue as whether the Commission can approve reimbursement for a deferred asset, even one properly accounted for, without violating the statutory bar against retroactive ratemaking. *Ind. Office of Util. Consumer Counselor*, 183 N.E.3d at 269. Mr. Davey stated the Court found past utility losses cannot be recovered from consumers, and consumers cannot claim a return of profits and earnings that may appear excessive, consistent with *Pub. Serv. Comm'n v. City of Indianapolis*, 131 N.E.2d 308, 315 (Ind. 1956)). In applying this precedent to Duke Energy Indiana's past coal ash costs, the Court found recovery of the CCR expenses at issue would violate the prohibition against retroactive ratemaking, explaining its reasoning as follows:

[T]he commission established Duke's rate in 2004, which governed the period from 2010 until the current order in June 2020 [i.e., the 45253 Order]. Duke acknowledges that the commission already adjudicated depreciation rates for the cost of decommissioning its plan assets, including coal-ash costs, in its 2004 rate order. The actual costs turned out to be more than Duke expected. Duke then sought re-adjudication through its 2019 rate case. ... Here the commission violated the bar against retroactive ratemaking by readjudicating in 2020 coal-ash costs governed by its 2004 rate order.

183 N.E.3d at 270.

Mr. Davey concluded the Indiana Supreme Court determined that because the Commission set Duke Energy Indiana's depreciation rates (which include decommissioning or cost of removal expenses) in Petitioner's 2004 rate case, the Commission in the 45253 Order essentially allowed Duke Energy Indiana to re-adjudicate in 2020 coal ash costs governed by the 2004 rate order.

Mr. Davey testified the Supreme Court Opinion seems clear that the Court does not intend Duke Energy Indiana to recover the coal ash expenses approved in the 45253 Order that were incurred prior to that Order; therefore, on remand, Petitioner proposes to remove the coal ash costs incurred before the 45253 Order and related ratemaking impacts from Petitioner's retail rates going forward and to also refund the disallowed costs Petitioner has already recovered through retail rates through credits, using Rider 67. Mr. Davey provided an overview of Petitioner's proposed annual reduction to its retail base rates in Petitioner's Attachment 61-A. He testified this credit will remain in effect until new rates are in place following a future retail base rate case in which the amortization is removed from Petitioner's base rates.

Mr. Davey testified the net CCR compliance costs to be recovered through rates that Petitioner proposes to refund were calculated by determining the amount included in Petitioner's retail jurisdictional rates and multiplying this by the actual or projected usage from August 2020 through May 2023. Petitioner estimates a refund of \$64 million for this period, with the amount collected from each rate group to be refunded to the respective rate group. Mr. Davey explained the \$64 million will have been collected from customers over approximately three years between when the Cause No. 45253 rates became effective and when the rates are updated on remand; therefore, Petitioner proposes to refund \$64 million to customers over 18 months, representing about one-half of the collection period. Mr. Davey testified this will provide a timely refund without creating extreme volatility in rates. Additionally, Petitioner proposes to provide a monthly

credit to customers via Rider 67 until the refund is completed. At that time, Duke Energy Indiana's rates will be adjusted to remove the credit, and a final reconciliation will occur.

Mr. Davey also discussed Petitioner's proposed remand credit to existing retail rates as a result of the Supreme Court Opinion. He stated the factors Petitioner is proposing for a typical residential customer using 1,000 kilowatt-hours per month, for the first 18 months, represent a decrease of \$3.50 per month or 2.1% compared to what this customer pays today. Mr. Davey advised that after 18 months when the refund ends, the customer's bill will increase \$2.27 per month or 1.4%. A credit was calculated for the time Compliance Step 1 rates were effective and the time Compliance Step 2 rates were effective, as shown in Attachment 61-A.

Mr. Davey also testified regarding potential federal constitutional issues with the Commission implementing the Supreme Court Opinion on remand. He testified the Commission's disallowance of Petitioner's past CCR compliance expenses, as mandated by the Court, implicates three federal constitutional issues: (1) the Fifth and Fourteenth Amendments' Takings Clauses; (2) the Fifth and Fourteenth Amendments' Due Process Clauses; and (3) the Fourteenth Amendment's Equal Protection Clause. Mr. Davey projected Duke Energy Indiana's legal briefing on remand will outline these issues, but he also elaborated on his understanding of the taking that will occur if Duke Energy Indiana is not allowed to recover its past coal ash expenses, the due process violation that will also occur, and the equal protection violation under this scenario.

**B. OUCC's Remand Testimony.** Mr. Blakley, a Senior Analyst in the OUCC's Electric Division, also summarized the Supreme Court Opinion with respect to the inclusion of CCR costs in Petitioner's base rates. He testified the Court remanded this case to remove the CCR costs incurred prior to the 45253 Order from Petitioner's rates; consequently, this remand proceeding is to implement a refund to customers because of removing those amounts. Mr. Blakley discussed Petitioner's proposal to refund the disallowed costs and to credit existing rates going forward through Rider 67. He noted Duke Energy Indiana proposes to refund \$64 million over 18 months and that the going forward credit will be approximately \$23 million annually.

Mr. Blakley stated he reviewed the testimony of Industrial Group witness Gorman who raised issues related to Duke Energy Indiana's proposals to restate its capital structure to calculate the refund amount, to not include interest in its refund calculation, and to provide the credits over 18 months. Mr. Blakley stated the OUCC agrees the adjustments Mr. Gorman proposes are reasonable and should be approved; therefore, Petitioner should provide a refund and annual credits to ratepayers through Rider 67 with those adjustments.

**C. Industrial Group's Remand Testimony.** Mr. Gorman testified the Supreme Court Opinion has the following two primary impacts: (1) Duke Energy Indiana must remove from Petitioner's retail rates the annual costs associated with the coal ash deferral, with Petitioner estimating this annual credit revenue requirement to be \$23.2 million; and (2) Duke Energy Indiana must provide a refund of the coal ash deferral costs Petitioner has already recovered from customers, with Petitioner calculating these as approximately \$64 million, collected between August 2020 and May 2023. He raised concerns regarding Duke Energy Indiana's proposal to revise its capital structure for purposes of calculating the refund amount. Mr. Gorman also took issue with Petitioner not including accrued interest in its refund calculation, and he asserted the proposed 18-month refund period is excessive.

Mr. Gorman described Duke Energy Indiana's calculation to remove the coal ash deferral expense on a going forward basis. He agreed with and confirmed Petitioner's calculation of an annual amount of \$23.2 million associated with the coal ash deferral that Duke Energy Indiana will remove from rates going forward. Mr. Gorman also agreed with Duke Energy Indiana's proposal to implement the prospective rate adjustment and the refunds as rate credits using Rider 67. While Mr. Gorman did not dispute Petitioner's calculation that \$23.2 million should be removed prospectively from rates, he disagreed with Petitioner's proposal to revise its capital structure when calculating the refund of rates previously collected. Mr. Gorman proposed that any changes to Duke Energy Indiana's capital structure be reflected in the prospective rate adjustment but not in the computation of refunds.

Mr. Gorman raised multiple additional concerns with Petitioner's proposals. Specifically, he recommended the Commission include an interest component as part of the refund and opined that Duke Energy Indiana's proposed refund period is excessive. Mr. Gorman calculated accrued interest that he proposed adding to the principal amount of the refund, and he suggested using the statutory 8% interest rate. Applying his adjustments, Mr. Gorman recommended a refund, inclusive of interest, in the amount of \$80 million. He also stated actual sales should be utilized in calculating the refund, and Mr. Gorman recommended the Commission authorize no more than a six-month refund period. He characterized Petitioner's proposed 18-month period as excessive.

**5. Duke Energy Indiana's Remand Rebuttal Testimony.** In his rebuttal remand testimony, Mr. Davey addressed issues Mr. Gorman and Mr. Blakely raised. More specifically, Mr. Davey addressed why: (1) it is appropriate to exclude the impact of accumulated deferred income taxes associated with the coal ash costs no longer included in Petitioner's base rates from the refund calculation; (2) Duke Energy Indiana did not include interest on its refund amount; and (3) Petitioner's proposed 18-month refund period is reasonable.

**6. Settlement Agreement.** The Settling Parties entered into a Settlement Agreement resolving the issues on remand. The significant terms of the Settlement Agreement are as follows:

**A. Refund to Customers.** Duke Energy Indiana will provide \$70.25 million in refunds to Duke Energy Indiana's electric customers (the "Refund"). The Refund will be subject to final reconciliation to ensure customers receive the full Refund amount.

**B. Removal of Regulatory Asset from Base Rates.** In addition to the Refund of \$70.25 million, Duke Energy Indiana will provide a \$23.2 million annual credit, the Forward Credit, as proposed by Petitioner, to reflect the write-off of the balance of the regulatory asset and the removal of the disallowed costs from base rates. This credit will continue until new base rates that no longer include the disallowed costs are approved in Petitioner's next general rate case proceeding. Once an Order approving the Settlement Agreement is issued, the previously estimated impairment of the regulatory asset and provision for rate refund will be deemed final.

**C. Timing of Refund and Forward Credit.** The Settling Parties agreed the Refund shall be made over 12 months, and both the Refund and Forward Credit will first be reflected on Petitioner's retail electric customers' bills rendered June 2023 – Bill Cycle 1 or within

30 days of an Order approving the Settlement Agreement, if later, without a modification or condition that is unacceptable to the Settling Parties.

**D. Method of Refund and Forward Credit.** The Settling Parties agreed the Refund and Forward Credit shall be implemented through Rider 67, based on actual sales going forward.

**E. Other.** The Settling Parties agreed to several provisions concerning their support of, and intentions related to, the Settlement Agreement and its approval by the Commission. The Settling Parties also agreed that within 30 days of a final Commission Order on Remand that is no longer appealable and approves the Settlement Agreement without a modification or condition that is unacceptable to the Settling Parties, Duke Energy Indiana will pay to the Industrial Group's counsel, Lewis & Kappes, P.C., \$2.5 million for attorneys' fees and expenses, to be funded solely by Petitioner's shareholders.

## **7. Remand Settlement Testimony.**

**A. Duke Energy Indiana's Remand Settlement Testimony.** In supporting the Settlement Agreement, Mr. Davey provided an overview of the Settlement Agreement and affirmed it is the product of negotiations among the Settling Parties. He testified the Settlement Agreement is intended to resolve all disputes, claims, and issues that could have been raised on remand. He stated the Settlement Agreement includes an agreement among the Settling Parties on the credit and refund to be made to Petitioner's customers, the length of time for paying the refund, and an agreement on certain attorney fees. He advised the Settling Parties are not requesting that the Commission approve the attorney fee payment, as this payment is being funded by Petitioner's shareholders. The Settling Parties simply provided this information to the Commission in the interest of fully disclosing the settlement.

Mr. Davey stated he prepared updated attachments to his testimony that conform with the Settlement Agreement. He testified Attachment 63-B (BPD) is a revised calculation of the credit adjustment rate for the refund that reflects the Settlement Agreement, and he advised the \$70.25 million refund will be allocated based on the proposed estimated refund of \$64 million. He stated a reconciliation will occur to adjust for the difference between projected and actual sales. Mr. Davey's Attachment 63-C (BPD) includes tariff sheets for Duke Energy Indiana's Rider 67 reflecting proposed credit adjustment factors to be billed to customers and a revised summary of credit adjustment rates for the Forward Credit and Refund and a revised calculation of the projected rate impacts, all of which reflect the provisions of the Settlement Agreement and the expected timing for including the Forward Credit and Refund in Petitioner's rates.

In conclusion, Mr. Davey summarized the projected rate impacts of the agreed credit and refunds.

**B. OUC's Remand Settlement Testimony.** Mr. Blakley reviewed the ratepayer benefits the Settlement Agreement achieves. He testified the settlement provides benefits to Petitioner's customers by providing a refund of past over collections and a continuing credit until Duke Energy Indiana's next rate case. Mr. Blakley explained that the Settlement Agreement provides for a \$70.25 million refund to Petitioner's Indiana customers from shareholder funds to

be paid over 12-months, subject to final reconciliation and implementation through Rider 67 based on actual sales. In addition, Duke Energy Indiana will provide a \$23.2 million credit annually to reflect the removal of the disallowed costs prospectively from Petitioner's base rates. This credit will continue until new base rates are approved in Petitioner's next general rate case that no longer include the disallowed costs. Mr. Blakley stated the Settlement Agreement reflects compromises the Settling Parties made and reasonably balances the interests of Duke Energy Indiana's ratepayers with those of Duke Energy Indiana and its shareholders.

**C. Industrial Group's Remand Settlement Testimony.** Mr. Gorman described the Settlement Agreement's terms and stated the Settlement Agreement reasonably resolves the issues presented and provides substantial value to ratepayers. He testified that given the inherent uncertainty of litigation, the \$70.25 million credit through Rider 67 over a 12-month period is a reasonable resolution of the refund computation issues. In addition, Mr. Gorman stated the Forward Credit of \$23.2 million, which reflects the write-off and removal of the coal ash regulatory asset from Petitioner's rates, will provide additional ratepayer value. Mr. Gorman noted that upon a final Order by the Commission in this remand proceeding, the Settlement Agreement provides that the previously estimated impairment of the regulatory asset will be deemed final. He also noted the Settlement Agreement provides for payment of the Industrial Group's legal fees and expenses by Duke Energy Indiana's shareholders, ensuring Petitioner's ratepayers receive the full benefit of the \$70.25 million refund. Mr. Gorman opined that the Settlement Agreement is reasonable, in the public interest, well within the range of potential litigated outcomes, and provides substantial value to Petitioner's customers. He recommended the Commission approve the Settlement Agreement.

**8. Commission Discussion and Findings.** The Settling Parties reached a negotiated agreement resolving the issues in this remand proceeding, as reflected in the Settlement Agreement. The Settlement Agreement is attached to this Order, and its terms and conditions are incorporated into and made a part of this Order by reference.

In evaluating the Settlement Agreement, the Commission is mindful that settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. Gas Co.*, 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 Coal. 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 Coal.*, 644 N.E.2d at 406.

Any Commission decision, ruling, or order, including approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coal. v. Public Serv. Co.*, 582 N.E.2d 330, 333 (Ind. 1991)). The Commission's procedural rules also require settlements to be supported by probative evidence. 170 IAC 1-1.1-17(d). Before the Commission can approve the Settlement Agreement, the Commission must determine whether the evidence in this Cause sufficiently supports the conclusion that the agreement is reasonable, just, and consistent with the purpose of Ind. Code ch. 8-1-2 and serves the public interest.



A. **Refund Amount.** The Settlement Agreement provides for \$70.25 million in refunds to Duke Energy Indiana’s electric customers. The Refund is subject to final reconciliation based on Petitioner’s actual sales to ensure Petitioner’s customers receive the full Refund amount. The agreed Refund falls within the range of refund amounts the Settling Parties supported with evidence and proposed in their remand direct testimony; therefore, based on the record, the Commission finds the amount of the Refund is reasonable.

B. **Going Forward Credit to Base Rates.** The Settlement Agreement also provides for a \$23.2 million annual Forward Credit to reflect Petitioner’s write-off of the balance of the regulatory asset and removal of the disallowed costs from Duke Energy Indiana’s base rates. As agreed, this credit will continue until new base rates that no longer include the disallowed costs are approved in Petitioner’s next general rate case proceeding. There was no dispute concerning the amount of the Forward Credit or its treatment, and such amount was supported with evidence; consequently, the Commission finds this credit and its treatment are reasonable.

C. **Refund Period and Timing.** The Settlement Agreement provides for the Refund to be made over 12 months, with the Refund and Forward Credit to first be reflected on Petitioner’s retail electric customers’ bills rendered June 2023 – Bill Cycle 1 or within 30 days of the Commission’s Order approving the Settlement Agreement without modifications or conditions unacceptable to the Settling Parties if that is later. The timing of the refund payments reflected in the Settlement Agreement falls within the range of time Duke Energy Indiana, the OUCC, and the Industrial Group proposed and is more favorable to ratepayers than Petitioner’s remand proposal. The Commission finds the 12-month refund period and the related implementation timing are reasonable.

D. **Refund and Credit to Customers Through Rider 67.** The Settlement Agreement provides that the Refund and Forward Credit shall be implemented through Rider 67, based on actual sales going forward. There was no dispute over the use of Rider 67 to reflect the credit to ratepayers, and the Commission finds this is reasonable.

E. **Other Issues.** The Settlement Agreement also provides for the payment of attorney fees and expenses to the Industrial Group’s counsel in the amount of \$2.5 million, all of which shall be borne by Duke Energy Indiana’s shareholders. Consistent with our Order in *Duke Energy Indiana, Inc.*, Cause No. 43114 IGCC 4S1 at 121 (IURC December 27, 2012), *aff’d*, 9 N.E.3d 260, 2014 WL 1092210 (Ind. Ct. App.), *transfer denied*, 19 N.E.3d 764 (Ind. 2014), the Commission notes the Settling Parties agreed to this term, but this payment agreement does not require—and is not receiving—Commission approval or other Commission action.

Consistent with the discussion above and the evidence presented, the Commission finds the Settlement Agreement filed in this remand proceeding, attached to this Order, and incorporated by reference is just, reasonable, in the public interest, and should be approved.

9. **Effect of Settlement Agreement.** The Settling Parties agree the Settlement Agreement should not be used or cited as precedent in any other proceeding or for any purpose except to the extent necessary to implement or enforce its terms. Accordingly, with regard to future citation of the Settlement Agreement or of this Order, the Commission finds our approval of the

Settlement Agreement should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, 1997 WL 34889849 at 7-8 (IURC March 19, 1997).

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

1. The Settlement Agreement among Duke Energy Indiana, the OUCC, and the Industrial Group, a copy of which is attached to this Order and incorporated by reference, is approved.

2. Duke Energy Indiana shall provide \$70.25 million in refunds to its electric customers, subject to final reconciliation, as described above in Finding No. 8 and in the Settlement Agreement.

3. Duke Energy Indiana shall annually provide a \$23.2 million Forward Credit, as described above in Finding No. 8 and in the Settlement Agreement, to reflect the write-off of the balance of the regulatory asset and removal of the disallowed costs from Petitioner's base rates. This credit shall continue until new base rates that no longer include the disallowed costs are approved in Duke Energy Indiana's next general rate case proceeding.

4. This Order shall be effective on and after the date of its approval.

**HUSTON, FREEMAN, KREVDA, VELETA, AND ZIEGNER CONCUR:**

**APPROVED: APR 12 2023**

**I hereby certify that the above is a true and correct copy of the Order as approved.**

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**Dana Kosco**  
**Secretary of the Commission**

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 )  
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APPROVAL OF A FEDERAL MANDATE ) CAUSE NO. 45253  
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 )

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement (“Agreement”) is entered into as of this 3rd day of February 2023, by and between Duke Energy Indiana, LLC (“Duke Energy Indiana”), the Duke Industrial Group (“Industrial Group”), and the Indiana Office of Utility Consumer Counselor (the “OUCC”) (collectively, the “Settling Parties,” and, individually, a “Settling Party”). The Settling Parties, solely for purposes of compromise and settlement, stipulate and agree that the terms and conditions of this Agreement represent a fair, just, and reasonable resolution of the matters set forth below and are in the public interest, subject to their incorporation into a final, non-appealable order of the Indiana Utility Regulatory Commission (“Commission”) without modification or further condition that may be unacceptable to any

Settling Party. The terms and conditions of the Agreement are as follows:

1. **Refund to Customers.** Duke Energy Indiana agrees to provide \$70.25 million in refunds to Duke Energy Indiana's electric customers (the "Refund"). The Refund will be subject to final reconciliation to ensure customers receive the full Refund amount.

2. **Removal of Regulatory Asset from Base Rates.** In addition to the \$70.25 million in refunds, Duke Energy Indiana will provide a \$23.2 million annual credit ("Forward Credit"), as proposed by Duke Energy Indiana, to reflect the write off of the balance of the regulatory asset and the removal of the disallowed costs from base rates. This credit will continue until new base rates that no longer include the disallowed costs are approved in Duke Energy Indiana's next general rate case proceeding. Once a Commission Order approving the Settlement Agreement is issued, the previously estimated impairment of the regulatory asset and provision for rate refund will be deemed final.

3. **Timing of Refund and Forward Credit.** The Settling Parties have agreed that the Refund shall be made over a period of twelve months, and both the Refund and Forward Credit will first be reflected on its retail electric customers' bills rendered June 2023 – Bill Cycle 1 or within thirty days of a Commission order approving this Agreement in full without modification or condition unacceptable to the Settling Parties, if later.

4. **Method of Refund and Forward Credit.** The Settling Parties have agreed that the Refund and Forward Credit shall be implemented through Duke Energy Indiana's Rider No. 67, based on actual sales going forward.

5. **Presentation of Agreement to the Commission; Procedural Matters.**

A. The Settling Parties agree to collectively present this Agreement to the Commission for approval in this proceeding and request that the Commission issue a Final Order by such date that would allow for the Refund and Forward Credit to first be reflected on Duke Energy Indiana's retail electric customers' bills rendered June 2023 – Bill Cycle 1. The Settling Parties agree to assist and cooperate in the preparation and presentation of supplemental testimony as necessary to provide an appropriate factual basis for such approval.

B. The Settling Parties propose to submit this Agreement and supporting evidence conditionally, and that, if the Commission fails to approve this Agreement in its entirety without any change or approves it with modification or condition unacceptable to any Settling Party, the Agreement and supporting evidence may be withdrawn, and the Commission will continue to proceed to decision in the affected proceedings, without regard to the filing of this Agreement and supporting evidence.

C. The Settling Parties agree that the evidence submitted in support of this Agreement, along with the evidence of record previously submitted in this Cause, together constitute substantial evidence to support this Agreement and provide a sufficient evidentiary basis upon which the Commission can make any finding of fact and conclusion of law necessary for the approval of this Agreement. The Settling Parties agree to the admission into the evidentiary record of this Agreement, along with testimony supporting it, without objection. The Settling Parties further agree that the respective cases-in-chief of each Settling Party may be admitted into the evidentiary record and each of the Settling Parties waives cross-examination with respect thereto.

6. **Effect, Scope, and Approval of Agreement.**

A. The Settling Parties have entered into this Agreement, among other reasons, to avoid the continued time and expense of further proceedings and the inherent uncertainties and potential outcomes associated with such proceedings.

B. The Settling Parties agree that this Agreement fully resolves all disputes, claims, and issues among the Settling Parties arising out of or relating to Cause No. 45253, as remanded to the Commission by the Indiana Supreme Court in *Indiana Office of Util. Consumer Counselor v. Duke Energy Indiana, LLC*, 183 N.E.3d 266 (2022) (reversing the portion of the Commission's June 2020 order in this Cause that permitted Duke Energy Indiana to recover coal ash costs and remanding it to the Commission for proceedings consistent with that opinion). This Agreement does not apply to any dispute, claim, or issue among the Settling Parties arising out of or relating to Cause No. 45253 S1.

C. The Settling Parties agree that this Agreement and each term, condition, amount, methodology, and exclusion contained herein reflects a fair, just, and reasonable resolution and compromise for the purpose of settlement and is agreed upon without prejudice to the ability of any party to propose a different term, condition, amount, methodology, or exclusion in any future proceeding.

D. The concurrence of the Settling Parties with the terms of this Agreement is expressly predicated upon the Commission's approval of the Agreement in its entirety without modification or condition deemed unacceptable to any Settling Party.

E. If the Commission does not approve the Agreement in its entirety or approves it with modification or condition unacceptable to any Settling Party, and such rejection or modification is ultimately upheld on rehearing, reconsideration, and/or appeal,

at the point when all such proceedings and appeals are complete, this Agreement shall become void and of no further effect.

F. If the Commission approves the Agreement in its entirety or approves the Agreement with modification or condition that are not unacceptable to any Settling Party, and such Commission approval is ultimately vacated or reversed on appeal, the Settling Parties agree to support or not oppose the terms of this Agreement in any additional proceedings before the Commission (as well as any subsequent appeals). In such situation, the Settling Parties agree not to take any positions adverse to or inconsistent with the Agreement or any adverse positions against each other with respect to the Agreement or the subject matters herein on remand or in additional related proceedings before the Commission. To the extent that the Commission and/or appellate courts ultimately and finally reject this Agreement, this Agreement shall become void and of no further effect.

G. Consistent with *Re Petition of Richmond Power & Light*, Cause No. 40434, the Settling Parties agree and ask the Commission to incorporate, as part of its Final Order, that this Agreement, and the Final Order approving it, not be cited as precedent by any person or deemed an admission by any party in any other proceeding except as necessary to enforce its terms and conditions before the Commission or any court of competent jurisdiction.

H. The Settling Parties will not appeal or seek rehearing, reconsideration, or a stay of a Final Order approving this Agreement in its entirety or approving it without modification or condition unacceptable to any Settling Party (or related orders to the extent such orders are specifically implementing the provisions of this Agreement).

I. The Settling Parties agree to support, in good faith, the terms of this

Agreement before the Commission and further agree not to take any positions adverse to or inconsistent with the Agreement or any adverse positions against each other with respect to the Agreement before any trial court, appellate court, government agency, or on rehearing, reconsideration, remand, or subsequent or additional related proceedings before the Commission. The Settling Parties reserve the right to take any position before any trial court, appellate court, government agency, or on rehearing, reconsideration, remand, or subsequent or additional related proceedings before the Commission that are not adverse to or inconsistent with the Agreement.

7. **Attorneys' Fees and Expenses.** Within thirty days of a final, non-appealable Commission order approving this Agreement in full without modification or condition unacceptable to the Settling Parties, Duke Energy Indiana agrees to make a payment to Lewis & Kappes, P.C. in the amount of \$2.5 million, for attorneys' fees and expenses, to be funded by Duke Energy Indiana shareholders.

8. **General Terms and Conditions.**

A. The undersigned represent and agree that they are fully authorized to execute the Agreement on behalf of their designated clients, and their successors and assigns, who will be bound thereby.

B. The provisions of this Agreement shall be enforceable by any Settling Party before the Commission and thereafter in any court of competent jurisdiction as necessary.

C. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

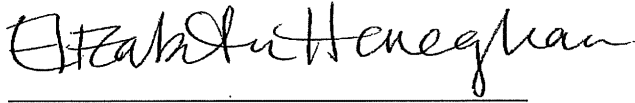
D. The communications and discussions during the negotiations and conferences and any materials produced and exchanged concerning this Agreement all relate to offers of settlement



and shall be privileged and confidential, without prejudice to the position of any Settling Party, and are not to be used in any manner in connection with any other proceeding, agency, court matter or otherwise.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

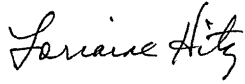
DUKE ENERGY INDIANA, LLC ("DUKE ENERGY INDIANA")

A handwritten signature in black ink, appearing to read "Elizabeth A. Heneghan". The signature is written in a cursive style with a large initial 'E' and 'H'.

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Elizabeth A. Heneghan

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR ("OUCC")



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Lorraine Hitz

**DUKE INDUSTRIAL GROUP (“INDUSTRIAL GROUP”)**

A handwritten signature in black ink, appearing to read "Aaron Schmoll", written over a horizontal line.

Aaron A. Schmoll