

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF DUKE ENERGY)
INDIANA, INC. FOR; (1) APPROVAL OF)
PETITIONER'S 7-YEAR PLAN FOR)
ELIGIBLE TRANSMISSION,)
DISTRIBUTION AND STORAGE SYSTEM)
IMPROVEMENTS, PURSUANT TO IND.)
CODE § 8-1-39-10; (2) APPROVAL OF A) CAUSE NO. 44720
TRANSMISSION AND DISTRIBUTION)
INFRASTRUCTURE IMPROVEMENT COST)
RATE ADJUSTMENT AND DEFERRALS,)
PURSUANT TO IND. CODE § 8-1-39-9; (3))
APPROVAL OF CERTAIN REGULATORY)
ASSETS; (4) APPROVAL OF VOLUNTARY)
DYNAMIC PRICING RIDERS; AND (5))
APPROVAL OF A NEW DEPRECIATION)
RATE FOR ADVANCED METERS)

INDUSTRIAL GROUP'S SUBMISSION OF SETTLEMENT REBUTTAL TESTIMONY

The Duke Industrial Group, by counsel, hereby submits its Settlement Rebuttal
Testimony of Nicholas Phillips, Jr.

Respectfully submitted,

LEWIS & KAPPES, P.C.

/s/ Timothy L. Stewart

Timothy L. Stewart, Atty No. 2189-49

Tabitha L. Balzer, Atty No. 29350-53

LEWIS & KAPPES, P.C.
One American Square, Suite 2500
Indianapolis, IN 46282-0003
Telephone: (317) 639-1210
Facsimile: (317) 639-4882
Email: TStewart@Lewis-Kappes.com
TBalzer@Lewis-Kappes.com

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing document was served via electronic mail, hard copies available upon request, this 19th day of April, 2016, upon the following:

Kelley A. Karn
Casey M. Holsapple
DUKE ENERGY BUSINESS SERVICES LLC
1000 East Main Street
Plainfield, IN 46168
Kelley.karn@duke-energy.com
Casey.holsapple@duke-energy.com

Jennifer A. Washburn
CITIZENS ACTION COALITION OF INDIANA, INC.
603 East Washington Street, Suite 502
Indianapolis, IN 46204
jwashburn@citact.org

Anne E. Becker
LEWIS & KAPPES, P.C.
One American Square, Suite 2500
Indianapolis, IN 46282-0003
abecker@lewis-kappes.com

Robert K. Johnson
2454 Waldon Drive
Greenwood, IN 46143
rjohnson@utilitylaw.us

John Watson
122-3 South Meridian Street
PO Box 430
Sunman, IN 47041
Jhw8831701@gmail.com

John Finnigan
128 Winding Brook Lane
Terrace Park, OH 45174
jfinnigan@edf.org

Randall Helmen
Jeffrey Reed
OFFICE OF UTILITY CONSUMER COUNSELOR
115 West Washington Street, Suite 1500 South
Indianapolis, IN 46204
rhelmen@oucc.in.gov
jreed@oucc.in.gov
infomgt@oucc.in.gov

Randolph G. Holt
PARR RICHEY OBREMSKEY FRANDSEN &
PATTERSON LLP
% Wabash Valley Power Association, Inc.
722 North High School Road
Indianapolis, IN 46214
R_holt@wvpa.com

Jeremy L. Fetty
Aleasha J. Boling
Liane K. Steffes
PARR RICHEY OBREMSKEY FRANDSEN &
PATTERSON LLP
201 North Illinois Street, Suite 300
Indianapolis, IN 46204
jfetty@parrlaw.com
aboling@parrlaw.com
lsteffes@parrlaw.com

Nikki G. Shoultz
BOSE MCKINNEY & EVANS, LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
nshoultz@boselaw.com

Peter J. Prettyman
INDIANA MUNICIPAL POWER AGENCY
11610 N. College Avenue
Carmel, IN 46032
pprettyman@impa.com

Emily Atwood
INDIANA MUNICIPAL POWER AGENCY
11610 N. College Avenue
Carmel, IN 46032
emilya@impa.com

Christopher M. Goffinet
HUBER GOFFINET & HAGEDORN
727 Main Street
Tell City, IN 47586
cgoffinet@hepn.com

Mike Mooney
Manager, Corporate Planning
HOOSIER ENERGY RURAL ELECTRIC
COOPERATIVE, INC.
PO Box 908
Bloomington, IN 47402-0908
mmooney@hepn.com

/s/ Timothy L. Stewart

Timothy L. Stewart

LEWIS & KAPPES, P.C.
One American Square, Suite 2500
Indianapolis, IN 46282-0003
Telephone: (317) 639-1210
Facsimile: (317) 639-4882

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF DUKE
ENERGY INDIANA, INC. FOR;
(1) APPROVAL OF PETITIONER'S
7-YEAR PLAN FOR ELIGIBLE
TRANSMISSION, DISTRIBUTION
AND STORAGE SYSTEM
IMPROVEMENTS, PURSUANT TO
IND. CODE § 8-1-39-10;
(2) APPROVAL OF A TRANSMISSION
AND DISTRIBUTION
INFRASTRUCTURE IMPROVEMENT
COST RATE ADJUSTMENT AND
DEFERRALS, PURSUANT TO IND.
CODE § 8-1-39-9; (3) APPROVAL OF
CERTAIN REGULATORY ASSETS;
(4) APPROVAL OF VOLUNTARY
DYNAMIC PRICING RIDERS; AND
(5) APPROVAL OF A NEW
DEPRECIATION RATE FOR
ADVANCED METERS

CAUSE NO. 44720

Settlement Rebuttal Testimony of

Nicholas Phillips, Jr.

On behalf of

Duke Energy Industrial Group

April 19, 2016



STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

| | | |
|----------------------------------|---|-----------------|
| <hr/> |) | |
| VERIFIED PETITION OF DUKE |) | |
| ENERGY INDIANA, INC. FOR; |) | |
| (1) APPROVAL OF PETITIONER'S |) | |
| 7-YEAR PLAN FOR ELIGIBLE |) | |
| TRANSMISSION, DISTRIBUTION |) | |
| AND STORAGE SYSTEM |) | |
| IMPROVEMENTS, PURSUANT TO |) | |
| IND. CODE § 8-1-39-10; |) | |
| (2) APPROVAL OF A TRANSMISSION |) | |
| AND DISTRIBUTION |) | |
| INFRASTRUCTURE IMPROVEMENT |) | CAUSE NO. 44720 |
| COST RATE ADJUSTMENT AND |) | |
| DEFERRALS, PURSUANT TO IND. |) | |
| CODE § 8-1-39-9; (3) APPROVAL OF |) | |
| CERTAIN REGULATORY ASSETS; |) | |
| (4) APPROVAL OF VOLUNTARY |) | |
| DYNAMIC PRICING RIDERS; AND |) | |
| (5) APPROVAL OF A NEW |) | |
| DEPRECIATION RATE FOR |) | |
| ADVANCED METERS |) | |
| <hr/> |) | |

Settlement Rebuttal Testimony of Nicholas Phillips, Jr.

1 **Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A Nicholas Phillips, Jr. My business address is 16690 Swingley Ridge Road, Suite 140,
3 Chesterfield, MO 63017.

4 **Q WHAT IS YOUR OCCUPATION?**

5 A I am a consultant in the field of public utility regulation and a Managing Principal of
6 Brubaker & Associates, Inc., energy, economic and regulatory consultants. Our firm
7 and its predecessor firms have been in this field since 1937 and have participated in
8 more than 1,000 proceedings in forty states and in various provinces in Canada. We

1 have experience with more than 350 utilities including many electric utilities, gas
2 pipelines and local distribution companies ("LDCs"). I have testified in many electric
3 and gas rate proceedings on virtually all aspects of ratemaking.

4 **Q ON WHOSE BEHALF ARE YOU APPEARING IN THIS PROCEEDING?**

5 A I am appearing on behalf of the Duke Industrial Group ("Industrial Group"). The
6 Industrial Group members purchase substantial quantities of electric energy from
7 Duke Energy Indiana, Inc. ("Duke" or "Company.")

8 **Q ARE YOU THE SAME NICHOLAS PHILLIPS, JR. SUBMITTED TESTIMONY ON**
9 **MARCH 17, 2016 SUPPORTING THE SETTLEMENT FILED IN THIS**
10 **PROCEEDING?**

11 A Yes, I am.

12 **Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

13 A The purpose of my testimony is to address one statement by Mr. Olson relating to the
14 effect of issuance of a Certificate of Public Convenience and Necessity ("CPCN") in a
15 TDSIC case. My silence on any other issue does not indicate agreement or
16 acquiescence.

17 **Q WHAT IS THE STATEMENT TO WHICH YOU ARE REFERRING?**

18 A On page 6 of his testimony, Mr. Olson states that:

19 "First of all, the issuance of a CPCN and the associated cost recovery
20 allows utilities to recover costs from ratepayers for projects, which are not,
21 and may never be, used and useful in providing actual utility service to
22 ratepayers. This pre-approval process shifts a great deal of the burden of

1 proving that costs were prudently incurred onto the public, and shifts the
2 majority of the investment risk onto captive ratepayers and away from the
3 Company's voluntary investors."

4 **Q DO YOU AGREE WITH THIS STATEMENT?**

5 A No. I am not an attorney, and I am not providing a legal opinion. However, based on
6 my experience with the "used and useful" standard as applied in Indiana, CPCN and
7 TDSIC cases in Indiana, and my read of the statute, I do not agree.

8 Mr. Olson seems to be repeating his understanding of the effect of issuance of
9 a CPCN granted pursuant to Indiana Code Chapter 8-1-8.5 ("Chapter 8.5") and
10 Indiana Code Chapter 8-1-8.7 ("Chapter 8.7"). He then appears to apply the effect of
11 a CPCN under these chapters to a CPCN issued under the TDSIC statute in Indiana
12 Code Chapter 8-1-39 ("Chapter 39" or "TDSIC statute"). However, I do not believe
13 that the effect of the issuance of a CPCN under Chapters 8.5 and 8.7 is the same as
14 the effect of a CPCN issued under Chapter 39.

15 **Q PLEASE EXPLAIN.**

16 A Chapters 8.5 and 8.7 provide that a utility that has been granted a CPCN can recover
17 costs within the approved cost estimate in the absence of "fraud, concealment, and
18 gross mismanagement." IC § 8-1-8.5-6.5; § 8-1-8.7-6; § 8-1-8.7-7(d). Chapter 8.7
19 also provides that "[i]f the commission approves the construction and the cost of the
20 part of the clean coal technology system under review, the approval forecloses
21 subsequent challenges to the inclusion of that part of the clean coal technology
22 system in the public utility's rate base on the basis of excessive cost, inadequate
23 quality control, or inability to employ the technology." IC § 8-1-8.7-7(c).

1 In contrast, the TDSIC statute does not contain any similar language like that
2 quoted above. I would also note that IC § 8-1-39-16(b)(2) provides that the TDSIC
3 chapter does not limit “the commission’s valuation of utility property under IC 8-1-2-
4 6.”¹ IC § 8-1-2-6 provides that the Commission values “used and useful” property.
5 As such, I do not believe the effect of the issuance of a CPCN in the TDSIC statute is
6 the same as the effect of issuance of a CPCN under Chapter 8.5 and 8.7, and that
7 the “used and useful” requirement still applies to TDSIC costs.

8 Finally, I would point that Section 7(e) of the Settlement Agreement provides
9 that recovery of TDSIC costs will be subject to a “normal prudence review” in the rider
10 proceedings.

11 **Q DO YOU BELIEVE THE COMMISSION NEEDS TO MAKE A FINDING ON**
12 **WHETHER THE “USED AND USEFUL” STANDARD APPLIES TO A TDSIC CASE**
13 **AT THIS TIME?**

14 **A**No, I believe that this issue can be addressed if and when it arises in the future. I am
15 merely pointing out that the Industrial Group does not accept Mr. Olson’s conclusion
16 on this point, and that the Industrial Group does not believe that it presents a reason
17 to reject the Settlement Agreement in this case.

18 **Q DOES THIS CONCLUDE YOUR TESTIMONY?**

19 **A**Yes.

¹ IC § 8-1-8.5-8 contains similar language to IC § 8-1-39-16(b)(2). However, IC § 8-1-8.5-8 is limited by the clause “except as otherwise provided in this chapter,” whereas IC § 8-1-39-16(b)(2) contains no such limitation.

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

| | | |
|----------------------------------|---|-----------------|
| VERIFIED PETITION OF DUKE |) | |
| ENERGY INDIANA, INC. FOR; |) | |
| (1) APPROVAL OF PETITIONER'S |) | |
| 7-YEAR PLAN FOR ELIGIBLE |) | |
| TRANSMISSION, DISTRIBUTION |) | |
| AND STORAGE SYSTEM |) | |
| IMPROVEMENTS, PURSUANT TO |) | |
| IND. CODE § 8-1-39-10; |) | |
| (2) APPROVAL OF A TRANSMISSION |) | |
| AND DISTRIBUTION |) | |
| INFRASTRUCTURE IMPROVEMENT |) | CAUSE NO. 44720 |
| COST RATE ADJUSTMENT AND |) | |
| DEFERRALS, PURSUANT TO IND. |) | |
| CODE § 8-1-39-9; (3) APPROVAL OF |) | |
| CERTAIN REGULATORY ASSETS; |) | |
| (4) APPROVAL OF VOLUNTARY |) | |
| DYNAMIC PRICING RIDERS; AND |) | |
| (5) APPROVAL OF A NEW |) | |
| DEPRECIATION RATE FOR |) | |
| ADVANCED METERS |) | |
| |) | |

VERIFICATION

I, Nicholas Phillips, Jr., a Consultant and Managing Principal of Brubaker & Associates, Inc., affirm under penalties of perjury that the foregoing representations are true and correct to the best of my knowledge, information and belief.



Nicholas Phillips, Jr.
April 19, 2016