

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

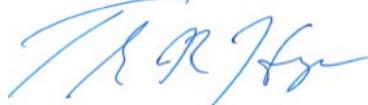
PETITION OF DUKE ENERGY INDIANA, LLC PURSUANT)
TO IND. CODE §§ 8-1-2-42.7 AND 8-1-2-61, FOR (1))
AUTHORITY TO MODIFY ITS RATES AND CHARGES FOR)
ELECTRIC UTILITY SERVICE THROUGH A MULTI-STEP)
RATE IMPLEMENTATION OF NEW RATES AND CHARGES)
USING A FORECASTED TEST PERIOD; (2) APPROVAL OF)
NEW SCHEDULES OF RATES AND CHARGES, GENERAL)
RULES AND REGULATIONS, AND RIDERS; (3) APPROVAL)
OF REVISED ELECTRIC DEPRECIATION RATES)
APPLICABLE TO ITS ELECTRIC PLANT IN SERVICE, AND)
APPROVAL OF REGULATORY ASSET TREATMENT UPON)
RETIREMENT OF THE COMPANY'S LAST COAL-FIRED)
STEAM GENERATION PLANT; (4) APPROVAL OF AN)
ADJUSTMENT TO THE COMPANY'S FAC RIDER TO TRACK)
COAL INVENTORY BALANCES; AND (5) APPROVAL OF)
NECESSARY AND APPROPRIATE ACCOUNTING RELIEF,)
INCLUDING AUTHORITY TO: (A) DEFER TO A)
REGULATORY ASSET EXPENSES ASSOCIATED WITH THE)
EDWARDSPORT CARBON CAPTURE AND)
SEQUESTRATION STUDY, (B) DEFER TO A REGULATORY)
ASSET COSTS INCURRED TO ACHIEVE ORGANIZATIONAL)
SAVINGS, AND (C) DEFER TO A REGULATORY ASSET OR)
LIABILITY, AS APPLICABLE, ALL CALCULATED INCOME)
TAX DIFFERENCES RESULTING FROM FUTURE CHANGES)
IN INCOME TAX RATES.)

CAUSE NO. 46038

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR
PUBLIC'S EXHIBIT NO. 5
REDACTED TESTIMONY OF OUCC WITNESS
CYNTHIA M. ARMSTRONG

July 11, 2024

Respectfully submitted,



Thomas R. Harper
Atty. No. 16735-53
Deputy Consumer Counselor

**REDACTED TESTIMONY OF OUCC WITNESS CYNTHIA M. ARMSTRONG
CAUSE NO. 46038
DUKE ENERGY INDIANA, LLC**

I. INTRODUCTION

1 **Q: Please state your name and business address.**

2 A: My name is Cynthia M. Armstrong, and my business address is 115 W. Washington
3 St., Suite 1500 South, Indianapolis, IN, 46204.

4 **Q: By whom are you employed and in what capacity?**

5 A: I am employed as an Assistant Director in the Electric Division for the Indiana
6 Office of Utility Consumer Counselor ("OUCC"). A summary of my qualifications
7 can be found in Appendix A.

8 **Q: Have you previously provided testimony to the Indiana Utility Regulatory
9 Commission ("Commission")?**

10 A: Yes.

11 **Q: What is the purpose of your testimony in this proceeding?**

12 A: I address several environmental compliance costs Duke Energy Indiana, LLC
13 ("Duke", "Petitioner", or "the Company") is seeking approval to recover in this
14 proceeding. Specifically, I discuss Duke's request to recover past and future Coal
15 Combustion Residuals ("CCR") closure costs. I explain the OUCC's
16 recommendation to deny Duke's recovery of previously disallowed CCR closure
17 costs in Cause No. 45253 S1 through traditional depreciation accounting methods
18 in this rate case. I review Duke's estimate of future closure costs and its inclusion
19 of those costs in estimated decommissioning costs for its generating plants and
20 request to recover these costs through traditional depreciation accounting methods.

1 I also address Duke's proposal to credit ratepayers with proceeds from
2 recent insurance settlements it secured. I discuss Duke's ongoing capital and
3 operations & maintenance ("O&M") related to environmental compliance, which
4 include reagent costs and ongoing CCR disposal costs. I oppose including the
5 Cayuga Restricted Waste Site ("RWS") II Landfill Cell 3 ("Cayuga Landfill Cell")
6 capital costs in rate base because the landfill will not be used and useful by the end
7 of the Test Year. Finally, I discuss Duke's proposed changes in the source of
8 Renewable Energy Credits ("RECs") for its GoGreen program and note concerns
9 regarding the transfer and retirement of RECs.

10 **Q: What did you do to prepare your testimony?**

11 A: I reviewed the Verified Petition, Direct Testimony, Exhibits, and Confidential
12 Documents Duke submitted in this Cause. I issued data requests ("DR") and
13 reviewed DR responses Duke submitted to the OUCC and other parties in this
14 Cause. I discussed case issues with other OUCC staff as part of the OUCC's normal
15 internal review process. I also reviewed past cases regarding Duke's CCR closure
16 plans and activities and relevant appellate decisions.

17 **Q: If you do not address a specific topic, issue, or item in your testimony, should**
18 **it be construed to mean you agree with Duke's proposal?**

19 A: No. My silence on any issue should not be construed as an endorsement. Also, my
20 silence in response to any actions or adjustments stated or implied by Petitioner
21 should not be construed as an endorsement.

II. PREVIOUSLY DISALLOWED PAST CCR CLOSURE COSTS

22 **Q: What past CCR Unit Closure Costs is Duke requesting to recover in this**
23 **proceeding?**

1 A: Duke seeks to recover \$92,075,402 in CCR closure costs incurred prior to the
2 Commission issuing its Final Order in Cause No. 45253 S1.¹ While the
3 Commission originally approved recovery of these costs as part of the overall Coal
4 Ash Compliance Plan Duke presented, the Indiana Court of Appeals reversed that
5 Order, finding these costs were ineligible for recovery under the applicable Federal
6 Mandate Statute.² Following that reversal, Duke calculated the refunds owed to its
7 ratepayers under the Court of Appeals' Opinion that were erroneously collected and
8 agreed to begin refunding these dollars upon approval of the Commission's Order
9 in Cause No. 42061 ECR 39 ("ECR 39"). The refund was calculated by computing
10 the CCR amounts collected in Duke's ECR proceedings between November 3,
11 2021 (when the Commission approved the 45253 S1 Order) and February 23, 2023
12 (when the Court of Appeals reversed the Commission's 45253 S1 Order). The
13 refund of this amount has been substantially completed through Duke's subsequent
14 ECR proceedings.

15 Duke now proposes to again recover the same costs at issue in Cause No.
16 45253 S1 through traditional cost of removal accounting in base rates.³ Duke has
17 charged these expenditures to Accumulated Depreciation or included them as the
18 cost of removal component of annual depreciation rate accruals.⁴

19 **Q: Did Duke confirm these costs were specifically approved in Cause No. 45253**
20 **S1?**

¹ Petitioner's Exhibit No. 19, Direct Testimony of Timothy S. Hill, p. 11, ll. 1-15, including Table 1.

² *Ind. Off. of Util. Consumer Couns. v. Duke Energy Ind., LLC*, 204 N.E.3d 947 (Ind. Ct. App. 2023), *reh'g den.*

³ Petitioner's Exhibit No. 13, Direct Testimony of Sean P. Riley, p. 34, l. 19 – p. 36, l. 3.

⁴ *Id.*, p. 36, ll. 1-3. See also, OUCC Attachment CMA-1, Duke's Responses to OUCC Data Requests 24.02 and 24.03.

1 A: Yes. Petitioner confirmed the costs for which Duke now seeks rate recovery are the
2 same as those Duke sought and the Commission approved in Cause No. 45253 S1.⁵
3 However, Duke noted it inadvertently escalated the \$92.1 million when these costs
4 were included in its depreciation study.⁶ The total escalated amount included in the
5 depreciation study is \$122,575,419. Duke stated in discovery that this amount will
6 be corrected in its rebuttal testimony,⁷ but that correction will not alter the
7 impropriety of Duke now seeking the same dollars from its ratepayers that Duke is
8 simultaneously almost done refunding by agreement after the Court's appellate
9 opinion. The 'do over' Duke now asks the Commission to approve - to collect
10 dollars from ratepayers a second time - is unfair and unprecedented.

11 **Q: Are these costs reasonable to recover?**

12 A: No, the OUCC opposes Duke's proposed second recovery of these costs. Although
13 I am not an attorney, it is my understanding the recovery of these costs has already
14 been litigated and rejected by the Indiana Court of Appeals. Duke did not file a
15 petition to transfer to the Indiana Supreme Court, so the Court of Appeals' Opinion
16 is final. As noted above, Duke has already refunded most of the refund dollars due
17 through its ECR filings and is refunding the remainder in its currently pending ECR
18 41 filing.⁸ Duke is almost done refunding dollars occasioned by the Court of
19 Appeals' reversal, and it now wants to recover the same costs again. The OUCC

⁵ OUCC Attachment CMA-2, Duke's Responses to OUCC Data Requests 24.01 and 26.01.

⁶ OUCC Attachment CMA-1.

⁷ *Id.*

⁸ A portion of the \$92.1 million had been recovered from ratepayers at the time of the Court's decision; therefore, the amount refunded through Duke's Cause No. 42061 ECR 39, 40 and 41 is less than the total \$92.1 million Duke is requesting again. Dollars that would have been collected in Cause No. 42061 ECR 39 were, instead, not collected when Duke began implementing the Court's Opinion by beginning refunds in that proceeding.

1 objects to any recovery of these costs as proposed by Duke, and I defer the legal
2 arguments, which, in my understanding, the OUCC will separately address.

3 **III. FUTURE CCR CLOSURE COSTS**

4 **Q: What does Duke propose regarding future CCR Closure costs?**

5 A: Duke seeks to include \$131,408,311 in future CCR closure costs in
6 decommissioning costs.⁹ These costs were not included in Duke's Federally
7 Mandated Certificate of Public Convenience and Necessity ("CPCN") requests in
8 Cause Nos. 45253 S1 and 45940.¹⁰ Duke expects to incur these costs when it retires
9 the associated generating plants and equipment, with the earliest closure activities
10 beginning in 2031 and the latest occurring in 2045.¹¹ Duke includes these costs in
11 the cost of removal component of annual depreciation rate accruals.¹²

12 **Q: Are the estimates for future CCR closure costs reasonable?**

13 A: No. The estimates Mr. Hill provides in his Direct testimony contain various
14 amounts of contingency costs.¹³ As OUCC witness David Garrett explains in his
15 testimony, it is inappropriate to include contingency costs in decommissioning
16 costs. As an additional consideration, since Duke does not expect to incur these
17 costs until the 2031-2045 timeframe, there is sufficient time to address these costs
18 in future rate cases. Therefore, adding contingency costs would be both speculative
19 and unnecessary while making customer rates less affordable. The cost risks that

⁹ Hill Direct, p. 10, ll. 11-18, and p. 25, Table 9.

¹⁰ OUCC Attachment CMA-3 (CONFIDENTIAL), Duke's Response to OUCC Data Request 5.01. The Citizens Action Coalition has appealed the Commission's decision in Cause No. 45940. *Citiz. Act. Coal. Of Ind. v. Ind. Util. Regul. Comm'n*, 24A-EX-01348 (Ind. Ct. App.).

¹¹ OUCC Attachment CMA-3 (CONFIDENTIAL).

¹² Riley Direct, p. 35, l. 12 – p. 36, l. 3. See also, OUCC Attachment CMA-1.

¹³ OUCC Attachment CMA-3 (CONFIDENTIAL), Duke's Response to OUCC DR 5.01, CONFIDENTIAL Attachment OUCC 5.1-A, and OUCC Attachment CMA-4 (CONFIDENTIAL), Duke's Response to OUCC 24.4, CONFIDENTIAL Attachment OUCC 24.4-A.

1 contingency is intended to address can be ameliorated through any adjustments to
2 decommissioning costs in future rate cases. Therefore, I recommend removing
3 <CONFIDENTIAL> \$ [REDACTED]¹⁴ <CONFIDENTIAL> in contingency costs
4 from the future CCR decommissioning estimates Mr. Hill presents, which adjusts
5 the future CCR costs included in decommissioning costs to <CONFIDENTIAL>
6 \$ [REDACTED].¹⁵ <CONFIDENTIAL> Mr. Garrett reflects this removal in his
7 depreciation study and calculations.

8 **Q: Is Duke's proposed accounting treatment of these costs otherwise reasonable?**

9 A: Yes. Traditional depreciation accounting is the standard way future
10 decommissioning costs are recovered. This allows Duke to collect the amount
11 necessary to close these sites and build up an appropriate depreciation reserve.
12 Traditional depreciation accounting also reduces intergenerational equity issues
13 and better aligns costs with customers who received the benefits associated with
14 these assets.

15 **IV. INSURANCE PROCEEDS**

16 **Q: Has Duke pursued claims for CCR closure or remediation costs under past or**
17 **current insurance policies?**

18 A: Yes. Although Duke is still in the process of pursuing reimbursement for several
19 policies, it has reached major settlements with two insurance providers, AEGIS and
20 AmRe. AEGIS's settlement resolves all past, present, and future policy claims for

¹⁴ OUCC Attachment CMA-5 (CONFIDENTIAL). Duke provided differing contingency costs in its Responses to OUCC Data Requests 5.01 and 24.4. When comparing these estimates, the discrepancy seems to mainly lie with the Noblesville Legacy CCR costs. Duke confirmed in a follow-up data response, Response to OUCC Data Request 26.03, that the OUCC should rely on the contingency costs provided in OUCC Attachment CMA-4. (See OUCC Attachment CMA-6.).

¹⁵ OUCC Attachment CMA-5.

1 <CONFIDENTIAL> [REDACTED], <CONFIDENTIAL> and AmRe's also settles all
2 past, present, and future claims for <CONFIDENTIAL> [REDACTED]
3 [REDACTED] <CONFIDENTIAL> Duke received these settlements in lump sum
4 payments. <CONFIDENTIAL> [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] <CONFIDENTIAL>

10 **Q: Does Duke intend to credit ratepayers with a share of the proceeds from these**
11 **insurance settlements?**

12 **A:** Yes. Duke proposes to credit retail customers with their proportionate share of
13 insurance proceeds, net of related expenses, through future ECR proceedings.¹⁸ In
14 determining the amount of proceeds allocated to customers, Duke intends to first
15 credit customers with insurance policy costs that were included in retail rates at the
16 time those policies were in effect.¹⁹ Then it will ascertain its overall closure-related
17 expenses incurred in the past and determine the portion of those costs that were
18 included in retail customers' rates.²⁰ This portion is the amount Duke will allocate
19 to its ratepayers to receive as a credit through a future Environmental Cost

¹⁶ Hill Direct, p. 26, ll. 14-23 - p. 27, ll. 1-2. See also OUCC Attachment CMA-7 (CONFIDENTIAL), Duke's Response to OUCC Data Request 5-2.

¹⁷ OUCC Attachment CMA-7, CONFIDENTIAL Attachments OUCC 5.2-A and 5.2-B. <CONFIDENTIAL> [REDACTED]

¹⁸ Hill Direct, p. 27, ll. 3-22 - p. 28, ll. 1-2.

¹⁹ *Id.*

²⁰ *Id.*

1 Recovery (“ECR”) proceeding.²¹ In the case of the AEGIS and AmRe settlements,
2 Duke intends to credit customers in the ECR tracker immediately following a rate
3 order in this proceeding.²² Duke will apply the remaining portion, or the portion of
4 costs not included in past retail customer rates, to its shareholders’ allocation of the
5 proceeds.²³

6 **Q: Does the OUCC find Duke’s proposal to share insurance settlement proceeds**
7 **acceptable?**

8 A: No. Duke’s ratepayers should receive the full proceeds of these settlements.
9 Ratepayers previously paid for the premiums associated with these insurance
10 policies in past rates and paid for these risks. Therefore, ratepayers bore the burden
11 of the costs to cover the risks which the proceeds now cover. Shareholders bear no
12 risk in this regard and should not be given a windfall in the form of insurance
13 proceeds. Ratepayers should be entitled to the full benefit of those costs incurred.
14 It would be inequitable to return premiums to a party and deprive the party of the
15 proceeds, in essence, purchased with those premiums. Ratepayers are not receiving
16 return of premiums where the risks insured against were not realized, and proceeds
17 of insurance were not received. They should not now be deprived of the proceeds
18 of insurance resulting from the payment of the premiums.

19 Although Duke’s proposal attempts to address this issue by crediting
20 ratepayers for these past premiums, they pale in comparison to the hundreds of
21 millions in CCR costs Duke will recover from ratepayers. These policies were not

²¹ *Id.*

²² OUCC Attachment CMA-7.

²³ Hill Direct, p. 27, ll. 3-22 - p. 28, ll. 1-2.

1 rescinded, and Duke did not receive a return of the premiums; it should not now be
2 permitted to act as though that were the case to enhance shareholder profit at the
3 detriment of ratepayers.

4 Duke's ratepayers are currently paying, and will continue to pay for several
5 more years, significant CCR closure costs through rates, and these proceeds will
6 alleviate the impact of these costs and address utility rate affordability. In fact, Duke
7 committed to providing any net proceeds from future insurance claims related to
8 the CCR or Indiana Department of Environmental Management ("IDEM") Rule
9 compliance to its customers to help mitigate the expenses of closure plans in Cause
10 No. 45253 S1.²⁴ The Commission acknowledged this in its findings and required
11 Duke to provide regular status updates on insurance claims in ECR filings.²⁵

12 Should Duke pursue and receive insurance claims or settlements greater
13 than the amount of CCR closure costs recovered from ratepayers, then it may be
14 reasonable for the Company to seek approval to share some portion of the excess
15 proceeds in a separate proceeding. However, additional environmental costs related
16 to <CONFIDENTIAL> [REDACTED]
17 <CONFIDENTIAL> that Duke may be permitted to recover from ratepayers²⁶
18 should also be considered in this determination, as <CONFIDENTIAL> [REDACTED]
19 [REDACTED] <CONFIDENTIAL>.

²⁴ Cause No. 45253, Final Order at p. 14.

²⁵ *Id.*, p. 20.

²⁶ This statement should not be interpreted as the OUCC agreeing that such potential costs would be recoverable from ratepayers. The OUCC is simply noting that if the Commission rules in the future that additional costs related to <CONFIDENTIAL> [REDACTED] <CONFIDENTIAL> are recoverable from ratepayers, these should be included in any future determination of insurance settlement credits and the portion Duke shareholders may be permitted to receive.

1 **Q: Does the OUCC recommend ratepayers receive the full proceeds of any future**
2 **settlements as well?**

3 A: Yes. The same issues I discussed previously also apply to any future settlements
4 Duke may reach with previous or current insurers.

5 **Q: Did Duke provide regular status updates on insurance claims in ECR filings,**
6 **as it promised in Cause No. 45253 S1?**

7 A: Not to the OUCC's expectations. In Cause Nos. 42061 ECRs -38 and -39, Mr. Hill
8 testified that Duke filed a civil action in Indiana in Superior Court against insurance
9 providers seeking declaratory relief with respect to coverage for CCR-related
10 expenses and liabilities under past third-party liability insurance policies in June
11 2022.²⁷ He indicated he would continue to provide updates on litigation as it
12 proceeded.²⁸ However, when Duke reached the settlement with

13 <CONFIDENTIAL> [REDACTED]
14 [REDACTED], <CONFIDENTIAL> Mr. Hill provided no update in his
15 testimony in ECR-40.²⁹ He also did not provide an update of the settlement

16 <CONFIDENTIAL> [REDACTED]
17 [REDACTED] <CONFIDENTIAL> in his testimony in ECR-41.³⁰

18 The OUCC is disappointed that Duke waited to inform the Commission, the
19 OUCC, and other interested parties of these settlements until this rate case. Because
20 of this delay, Duke's ratepayers are unlikely to see the benefits of these settlements
21 until 2025, <CONFIDENTIAL> [REDACTED]

²⁷ Cause No. 42061 ECR-38, Petitioner's Exhibit 2, Direct testimony of Timothy S. Hill, p 8., ll. 1-8, and Cause No. 42061 ECR-39, Petitioner's Exhibit 2, Direct testimony of Timothy S. Hill, pp. 8, ll. 17-18, - 9, ll. 1-3.

²⁸ *Id.*

²⁹ Cause No. 42061 ECR-40, Petitioner's Exhibit 2, Direct Testimony of Timothy S. Hill.

³⁰ Cause No. 42061 ECR-41, Petitioner's Exhibit 2, Direct Testimony of Timothy S. Hill.

1 [REDACTED] <CONFIDENTIAL>. Since Duke has benefited financially
2 from retaining these funds, it should also include interest³¹ in its calculation of the
3 credit to appropriately compensate ratepayers with the full benefits of the
4 settlements.

5 **Q: What do you recommend regarding Duke's insurance settlement proceeds?**

6 A: I recommend Duke credit ratepayers as it committed to do with 100% of the
7 proceeds from these settlements and any future settlements. Additionally,

8 <CONFIDENTIAL> [REDACTED]
9 [REDACTED]

10 <CONFIDENTIAL>, Duke should also include carrying costs or interest in this
11 credit to account for this delay.

12 **V. ONGOING CCR DISPOSAL CAPITAL AND O&M COSTS**

13 **Q: Does Duke include costs for ongoing CCR disposal in the forecasted Test**
14 **Year?**

15 A: Yes. Duke forecasts \$21,425,540 in annual O&M expense and \$25,174,754 in
16 capital expenditures for ongoing CCR handling and disposal costs associated with
17 its currently operating coal units.

18 **Q: Is Duke's forecasted O&M expense for ongoing CCR handling and disposal**
19 **reasonable?**

20 A: No. Duke has not adequately shown how it forecasted O&M costs for its generating
21 units' ongoing CCR handling and disposal. Although Duke provided a more
22 detailed breakdown of these costs and capacity factors used in its forecast in
23 response to OUCC data requests, it did not provide formulas, calculations, or

³¹ It is my understanding that Indiana Code §24-4.6-1-102 applies 8% interest on monetary judgments.

1 contract rates as to how these numbers were derived, despite the OUCC requesting
2 this information twice.³² Duke states that the historical CCR costs are considered
3 and then evaluated against the modeled Capacity Factors of the generating units.³³
4 But this cannot be verified without the formula showing how these capacity factors
5 are applied to historical costs in calculating the test year forecasted O&M costs.
6 Furthermore, there appears to be conflicting information between these data
7 requests regarding the Environmental Health and Safety (“EHS”) costs allocated to
8 the budget.³⁴ In the absence of this information, and in the absence of sufficient
9 evidence, I recommend a four-year historical average to determine Duke’s Test
10 Year ongoing CCR handling and disposal O&M costs.

11 **Q: What amount do you recommend for ongoing CCR handling and disposal**
12 **costs?**

13 **A:** Based on the historical CCR costs Duke provided, I calculated the four-year
14 historical average for currently-operating generation units based on 2020-2023
15 data. I included the total values associated with the Cayuga, Edwardsport Integrated
16 Gasification Combined Cycle (“IGCC”), and Gibson plants. After seeking
17 additional information regarding the Operating Units listed in Duke’s historical
18 CCR costs, it was still not clear what costs were included in the “DEI Other”
19 category. I am concerned that there are other non-CCR-related costs or CCR costs

³² OUCC Attachment CMA-8 (CONFIDENTIAL), Duke’s Response to OUCC Data Request 5.7, Attachment 5.7a (CONFIDENTIAL), and OUCC Attachment CMA-9, Duke’s Responses to OUCC Data Requests 26.04, and 26.05 (which includes Attachments OUCC 26.5-A, 26.5-B, and 26.5-C).

³³ OUCC Attachment CMA-9, Response to OUCC 26.05(g).

³⁴ OUCC Attachments CMA-8 and CMA-9. Duke’s Response to OUCC DR 5.7, Attachment 5.7a, shows <CONFIDENTIAL> \$ [REDACTED] <CONFIDENTIAL> for EHS Support and Allocations, but Duke’s Response to OUCC DR 26.5, Attachment OUCC 26.5-C shows <CONFIDENTIAL> \$ [REDACTED] <CONFIDENTIAL> for EHS costs.

1 not related to ongoing operations,³⁵ so I did not include any costs in the “DEI Other”
2 category. While I have the same concerns that non-CCR related costs are included
3 in the “Non-RRE” costs, Duke’s description of these costs seems to indicate they
4 would qualify as EHS or other general administrative costs allocated to these
5 activities. Therefore, I am including the four-year average for historical Non-RRE
6 costs. When reviewing the past four years of historical data for the Cayuga, Gibson,
7 and Edwardsport IGCC facilities and Non-RRE costs, the average annual ongoing
8 CCR handling and disposal costs equate to <CONFIDENTIAL>
9 \$ ██████████ <CONFIDENTIAL>.³⁶ This results in a reduction to test year O&M
10 of <CONFIDENTIAL> \$ ██████████ <CONFIDENTIAL>.³⁷

11 **Q: Are Duke’s forecasted CCR capital expenditures reasonable?**

12 A: No, not all forecasted CCR capital expenditures are reasonable to include in rate
13 base in this Cause. The OUCC objects to including the construction costs associated
14 with the Cayuga Landfill Cell.

15 **Q: Why does the OUCC challenge Duke’s proposal to include the capital**
16 **expenditures associated with the Cayuga Landfill Cell?**

17 A: Although Duke is beginning construction of the Cayuga Landfill Cell during the
18 Test Year, it will not be complete and in service until 2026.³⁸ Since Duke cannot

³⁵ Some of these costs may be related to closure activities or associated with facilities that have been retired and are no longer burning coal. This adjustment should only include currently operating units and the associated handling and disposal costs necessary for these units’ continued operations.

³⁶ OUCC Attachment CMA-10, Calculation of OUCC’s recommended ongoing CCR O&M costs.

³⁷ *Id.*

³⁸ Petitioner’s Exhibit 26, Revenue Requirement Model (April 04, 2024), Rate Base, Workpaper RB3, line 46, and OUCC Attachment CMA-8. Please note the OUCC’s amount differs from the <CONFIDENTIAL> ██████████ <CONFIDENTIAL> that Duke provided in its response to OUCC Data Request 5.07. The OUCC used the test year rate base additions to the Cayuga 1-2 Common Plant recorded under FERC Account 312 – Boiler Plant Equipment as this account is where the OUCC would expect Duke to reflect this addition to test year rate base.

1 begin disposing CCR into the landfill cell until it is complete and IDEM certifies it
2 meets all conditions of the operating permit,³⁹ it will not be used and useful for
3 providing electric service by the test year's end.

4 **Q: What does the OUCC recommend regarding Duke's forecasted CCR capital**
5 **expenditures?**

6 A: The OUCC recommends removing the capital expenditures associated with the
7 Cayuga Landfill Cell from the forecasted test-year rate base. This results in a
8 \$1,862,074⁴⁰ reduction to rate base.

9 **VI. REAGENT COSTS**

10 **Q: What is Duke's proposal for reagent costs?**

11 A: Duke proposes to continue tracking process chemicals and reagent costs associated
12 with operating generating units' environmental controls through the ECR. Duke
13 proposes embedding \$27.4 million in test year O&M for process chemical and
14 reagent costs and will track actual costs above and below this amount.⁴¹

15 **Q: Is this proposal reasonable?**

16 A: Yes. In its last rate case, Duke embedded \$48.5 million for environmental chemical
17 and reagent costs. However, over the last three years, Duke's actual chemical and
18 reagent costs were much lower, resulting in significant credits in the ECR.⁴² The
19 test year amount of \$27.4 million is more consistent with actual reagent costs over
20 the past three years⁴³ and is a reasonable amount to include in the Test Year.

21 **VII. GOGREEN REC SUPPLY CHANGES**

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Petitioner's Exhibit No. 5, Direct Testimony of Kathryn C. Lilly, p. 26, ll. 1-15.

⁴² OUCC Attachment CMA-11, Duke's past reagent costs included in ECR filings.

⁴³ *Id.*

1 **Q: What is the Duke GoGreen Program?**

2 A: The Duke GoGreen Program is a voluntary program that allows customers to
3 supplement all or a portion of their electricity usage with renewable energy. For an
4 additional fee to their monthly bills, Duke procures and retires RECs on behalf of
5 participating customers. One REC represents one megawatt hour (“MWh”)
6 generated from renewable resources such as wind, solar, hydroelectric, and
7 biomass, and represents the beneficial environmental attributes of such energy. To
8 claim electricity as renewable or green energy, a source must hold and retire the
9 equivalent amount of RECs.

10 **Q: Please describe the changes Duke proposes with respect to the GoGreen**
11 **Program.**

12 A: Instead of sourcing RECs for the GoGreen program from market purchases, Duke
13 is proposing to transfer RECs generated by the Speedway Solar Purchase Power
14 Agreement (“PPA”) and any future renewable PPAs or Duke-owned renewable
15 assets to the GoGreen program at the 12-month average market price for National
16 voluntary wind/solar RECs.⁴⁴ The proceeds for the transfer to the GoGreen
17 program would be credited to all ratepayers through the Fuel Adjustment Clause
18 (“FAC”).

19 Duke witness Suzanne Sieferman also stated “any Speedway Solar PPA
20 RECs remaining for the prior vintage year *could* be retired on behalf of all Duke
21 Energy Indiana customers and those customers would be able to claim the
22 environmental benefits for the renewable power.”⁴⁵ (Emphasis added.) The OUCC

⁴⁴ Petitioner’s Exhibit No. 4, Direct Testimony of Suzanne E. Sieferman, p. 42, ll. 1-7, and p. 43, ll. 2-4.

⁴⁵ *Id.*, p. 43, ll. 13-15.

1 confirmed that it is Duke's intention to retire any Speedway Solar RECs remaining
2 from the prior vintage year that were not sold through the GoGreen Program.⁴⁶
3 Essentially, Duke's proposal would stop any external monetization of RECs from
4 the Speedway Solar PPA, future PPAs, and future owned renewable generating
5 assets.

6 **Q: Does the OUCC have concerns with Duke's proposal for the sourcing of RECs**
7 **for the GoGreen program?**

8 A: Yes. While the OUCC does not take issue with the concept of transferring RECs
9 from renewable PPAs or future renewable assets, it should be done at the
10 appropriate market rate for the REC generating source. In the past, renewable
11 generating facilities sited in Indiana have qualified for other regulated REC markets
12 that generally trade at a higher price than National voluntary REC markets. For
13 example, Duke sold RECs into <CONFIDENTIAL> [REDACTED]
14 [REDACTED] <CONFIDENTIAL> markets over the past several years at a higher market
15 price than would have been attainable in the voluntary market.⁴⁷ If Duke transfers
16 RECs that could be sold into another REC market to GoGreen customers at a lower
17 price, Duke's ratepayers forfeit the full value of offsets of generation resource costs
18 reflected in their rates and, in effect, would be subsidizing GoGreen customers.

19 **Q: What is Duke's explanation for using National REC market prices for the**
20 **GoGreen program?**

21 A: Duke states that it expects the Speedway Solar's RECs will only be eligible for sale
22 into the National Voluntary market or the Ohio REC market, and current spot prices

⁴⁶ OUCC Attachment CMA-12, Duke's Response to OUCC Data Request 17.3.

⁴⁷ *Id.*, Confidential Attachment OUCC 17.3 A.

1 for Ohio RECs are comparable to spot prices for the National Voluntary market.⁴⁸

2 Duke also notes the Ohio REC market is currently planned to be phased out after

3 2026.⁴⁹

4 **Q: Does Duke's explanation alleviate the OUCC's concerns with GoGreen REC**
5 **transfer pricing?**

6 A: Not completely. Although Speedway Solar may not currently qualify for other REC

7 markets, states could always change their renewable portfolio standards ("RPSs")

8 to allow Speedway Solar or other Indiana-sited sources to qualify for compliance

9 and eligibility to participate. The OUCC does not want to limit the price to National

10 voluntary market if Duke's RECs from PPAs or renewable generating assets

11 become eligible to sell into another market at a higher value. Duke should be

12 monitoring REC markets and their respective requirements and selling its RECs at

13 the maximum price its sources can receive. Any RECs transferred to the GoGreen

14 program should reflect this price.

15 **Q: What if this price dissuades interested customers from participating in the**
16 **GoGreen program?**

17 A: If the highest market price would increase to a level that would be undesirable for

18 GoGreen customers, then Duke should procure RECs from alternative sources to

19 cover GoGreen customers' elected renewable energy usage. As an alternative

20 proposal, Duke could sell RECs in its inventory at the highest market price possible.

21 The proceeds from this sale could then be used to purchase lower-cost National

22 voluntary RECs for GoGreen customers. Any sales to GoGreen customers

23 associated with these REC purchases would then be credited to all ratepayers

⁴⁸ OUCC Attachment CMA-11.

⁴⁹ OUCC Attachment CMA-11.

1 through the FAC. GoGreen customers would also be responsible for any brokerage
2 and retirement fees associated with REC purchases made using proceeds from the
3 other Duke REC sales. This would be a reasonable compromise to ensure all Duke's
4 ratepayers receive the full value of RECs associated with renewable energy or
5 generating assets they are paying for in rates while giving GoGreen customers
6 access to lower-priced RECs.

7 **Q: Is Duke's proposal to exclusively sell RECs from future resources to the**
8 **GoGreen program and retire any unused RECs "on behalf of all customers"**
9 **reasonable?**

10 A: No. As with the OUCC's concerns regarding the transfers to the GoGreen program,
11 Duke's proposal would result in ratepayers forfeiting valuable offsets to the costs
12 associated with the Speedway Solar PPA and future renewable PPAs and
13 generating assets. Since Indiana does not currently have mandatory RPSs, retiring
14 RECs associated with all ratepayers' energy use are not mandated under current
15 regulatory requirements. However, Duke's proposal would be treating these RECs
16 similar to how they would be treated under mandatory RPS requirements while
17 sacrificing the benefits of REC sales for customers.

18 **Q: What is Duke's reason for retiring unused RECs on behalf of all Duke**
19 **customers?**

20 A: Petitioner's witness Suzanne E. Sieferman claims retiring these RECs reduces
21 "greenwashing" concerns and allows all retail customers to claim solar in the
22 residual mix.⁵⁰ Duke indicates its proposal to sell exclusively to the GoGreen
23 program and retire any remaining RECs on behalf of all Duke customers supports

⁵⁰ Sieferman Direct, p. 43, ll. 10-17.

1 the Company's best practices to ensure environmental claims are not double
2 counted.⁵¹

3 **Q: Is this a valid reason for not selling unused RECs or those transferred to**
4 **GoGreen customers?**

5 A: No. While it is true that Federal Trade Commission ("FTC") rules prohibit Duke
6 from representing to its customers that it is supplying them with renewable energy
7 if it sells the RECs associated with the energy generated from these resources,⁵²
8 there are ways to communicate this information to customers without violating
9 these claims. Duke can refer to the energy or capacity supplied by these resources
10 as "null" energy or capacity. Furthermore, if Duke is appropriately registering
11 RECs, it should be able to track and demonstrate which RECs have been sold and
12 which RECs remain in inventory.

13 The value gained in claiming the benefits associated with renewable energy
14 must outweigh the loss of the monetary benefits of REC sales. In the absence of
15 RPS or other compliance requirements mandating a utility obtain and supply
16 customers with renewable electricity, this value is difficult to quantify monetarily
17 and will vary for each person or entity receiving the benefits of such claims. Since
18 supporting renewable generation tends to have a positive message publicly, Duke's
19 ability to claim it is supplying renewable energy to its customers is valuable to its
20 public image. However, the value to customers in claiming environmental benefits
21 associated with renewable power likely differs among customers and customer
22 classes. Renewable energy claims are likely more valuable to large industrial or

⁵¹ OUCC Attachment CMA-12.

⁵² 16 C.F.R. §260.15.

1 commercial customers with corporate sustainability goals and may be subject to
2 new U.S. Securities and Exchange Commission (“SEC”) climate risk disclosure
3 requirements. On the other hand, residential customers may see these claims as an
4 unimportant image building endeavor and would prefer their monthly bill be
5 lowered by selling the RECs associated with the electricity supplied to them.

6 Duke’s proposal creates a situation where all ratepayers are subsidizing the
7 costs of a service that is more valuable to a subset of customers. The GoGreen
8 program is available for any customer who values claiming the renewable attributes
9 associated with their electricity usage and serves as a reasonable option for this
10 subset of customers.

11 **Q: Are there other factors to consider regarding Duke’s proposal for retiring**
12 **RECs “on behalf of all customers?”**

13 A: Yes. As I previously mentioned, the SEC finalized new rules in March 2024 to
14 enhance and standardize climate-related disclosures by public companies and in
15 public offerings.⁵³ The final rules require a registrant to disclose material climate-
16 related risks, activities to mitigate or adapt to such risks, and information on any
17 climate-related targets or goals that are material to the registrant’s business, results
18 of operations, or financial condition, and other items important for investors’
19 assessment of climate-related risks.⁵⁴ The rule requires large accelerated filers

⁵³ 89 *Federal Register* 21,668 (Mar. 28, 2024).

See also, (OUCC Attachment CMA-13) U.S. SEC (March 6, 2024). SEC Adopts Rules to Enhance and Standardize Climate-Related Disclosures for Investors. Accessible at: <https://www.sec.gov/newsroom/press-releases/2024-31>.

(OUCC Attachment CMA-14) U.S. SEC (March 6, 2024). Fact Sheet: The Enhancement and Standardization of Climate-Related Disclosures: Final Rules. Also accessible at: <https://www.sec.gov/newsroom/press-releases/2024-31>.

⁵⁴ 89 FR 21,673–676. *See also*, OUCC Attachments CMA-13 and CMA-14.

1 (“LAFs”) or accelerated filers (“AFs”) that are not otherwise exempted to report
2 their Scope 1 and Scope 2 emissions.⁵⁵ The SEC has stayed the effective date of
3 the final rules pending the outcome of litigation from legal challenges to the rules⁵⁶
4 but has indicated it would continue “vigorously defending” its climate disclosure
5 rule.⁵⁷

6 **Q: What are Scope 1 and Scope 2 emissions?**

7 A: Scope 1 emissions are direct greenhouse gas (“GHG”) emissions from operations
8 that are owned or controlled by a registrant.⁵⁸ This would include emissions from
9 owned or controlled boilers, furnaces, vehicles, chemical production, or other
10 company processes.⁵⁹

11 Scope 2 emissions are indirect GHG emissions from the generation of
12 purchased or acquired electricity, steam, heat, or cooling that is consumed by
13 operations owned or controlled by a registrant.⁶⁰ Scope 2 emissions physically
14 occur at the electricity generation facility owned by a company’s electricity
15 provider. One way a company’s Scope 2 emissions can decrease is if its electric
16 utility or electricity provider increases the amount of renewable generation it
17 supplies to its customers.

⁵⁵ 89 FR 21,674 and 21,916-917.

⁵⁶ 89 FR 25804 – 25805 (Apr. 12, 2024).

⁵⁷ OUCC Attachment CMA-15. Naishadham, S. (Apr. 5, 2024). *Amid legal challenges, SEC pauses its climate rule.* Associated Press. Accessible at: <https://apnews.com/article/sec-climate-disclosure-rule-climate-change-lawsuits-35f464a554a5173e76c279e6ce399592>.

⁵⁸ 89 FR 21,915.

⁵⁹ The Greenhouse Gas Protocol. *A Corporate Accounting and Reporting Standard*, p. 25. Accessible at: <https://ghgprotocol.org/corporate-standard>.

⁶⁰ 89 FR 21,915.

1 **Q: Do these standards provide motivation for Duke to retire excess RECs instead**
2 **of selling them?**

3 A: Yes. By retaining and retiring these RECs, Duke can lower its Scope 1 emissions
4 by claiming a greater percentage of its energy is supplied through zero-emission
5 renewable generation sources. Additionally, since many of its larger customers
6 likely qualify as LAFs, they would be able to lower their Scope 2 emissions if Duke
7 can claim it is providing all customers with more renewable energy by not selling
8 these RECs. Both Duke and its larger customers subject to these disclosure
9 requirements would benefit from retiring RECs as they would be able to report
10 lower climate-related risks to their investors. Essentially, this risk would be
11 socialized across all of Duke's customer classes to the detriment of residential and
12 smaller customers that would benefit from the REC sales proceeds.

13 **Q: What is the value associated with these RECs?**

14 A: Speedway Solar is expected to produce 426,000 RECs per year once it is online,
15 but the GoGreen Program's total needs have not exceeded 55,000 RECs per year
16 since 2020.⁶¹ If the recent average National voluntary REC market price of
17 \$3.00/REC were applied, this would result in Duke foregoing over \$1.1 million
18 annually in REC proceeds.⁶² However, this is a conservative estimate, as some
19 National REC future vintages are nearly double this amount, and National
20 voluntary prices have reached as high as \$7.00/REC within the last three years. This
21 estimate also assumes that Duke is unable to sell into another regulated state REC
22 market at a higher price than the National voluntary market. Finally, this amount

⁶¹ OUCC Attachment CMA-16, Duke's Responses to OUCC Data Request 26.06.

⁶² OUCC Attachment CMA-17, REC value calculations.

1 only represents the potential value associated with Speedway Solar's RECs. If
2 Duke obtains more renewable PPAs or generation assets, the number of RECs
3 available to sell will also increase. OUCC Attachment CMA-17 provides an
4 estimated annual value range for the Speedway Solar RECs.

5 **Q: What are your recommendations regarding Duke's proposals impacting the**
6 **sale and retirement of RECs from Speedway Solar and future renewable PPAs**
7 **or generating assets?**

8 A: Regarding Duke's proposed changes for RECs, I recommend the Commission
9 require Duke to:

- 10 1. Make all efforts to sell current and future RECs received through PPAs or
11 generated by its owned renewable assets at the highest market price possible.
12 The proceeds of these sales would continue to be credited through the FAC.
- 13 2. Make all efforts to sell RECs for retail customers and avoid retiring them.
14 Furthermore, absent state or federal mandatory RPSs, any retirement fees
15 associated with RECs retired on behalf of all retail customers should not be
16 recoverable. REC retirement fees for GoGreen customers are recoverable from
17 GoGreen customers and should be reflected in the GoGreen subscription fees.
- 18 3. Record the price of the RECs it transfers to GoGreen customers to reflect the
19 highest market price Duke could have obtained for those RECs if it were to
20 have sold them into the highest value market. The proceeds for these transfers
21 would be credited through the FAC.
- 22 4. As an alternative proposal, Duke could sell the RECs into a higher value market
23 and use the proceeds to purchase National voluntary RECs for GoGreen
24 customers. The proceeds from GoGreen customers should then be credited to

1 all ratepayers through the FAC, with the GoGreen customers paying for any
2 brokerage and retirement fees associated with such transactions.

3 **VIII. RECOMMENDATIONS**

4 **Q: Please summarize your recommendations.**

5 **A:** I recommend:

6 1. Duke's request to recover pre-Cause No. 45253 S1 Order CCR closure costs
7 should be denied.

8 2. Regarding future CCR closure costs:

9 a. Duke's request to recover future CCR closure costs through traditional
10 cost of removal accounting should be approved.

11 b. Contingency costs (the "risk contingency" costs) included in future
12 CCR closure decommissioning cost estimates should be removed. This
13 results in a decrease of <CONFIDENTIAL> \$ [REDACTED]
14 <CONFIDENTIAL> to Duke's estimate, resulting in a total future CCR
15 closure cost estimate of <CONFIDENTIAL>
16 \$ [REDACTED] <CONFIDENTIAL> .

17 3. Regarding insurance settlement proceeds, Duke should credit ratepayers with
18 100% of the proceeds from insurance settlements for CCR closure costs as it
19 committed to do and other environmental liabilities through the ECR. The credit
20 should also reflect carrying costs or interest to account for the delay between
21 Duke's receipt of the proceeds from the AEGIS and AmRe settlements when
22 the credit is applied in the ECR following a rate order in this Cause.

- 1 4. Duke's test year O&M expense for ongoing CCR handling and disposal costs
2 should be reduced by <CONFIDENTIAL> ██████████ <CONFIDENTIAL>
3 to reflect an annual O&M expense of <CONFIDENTIAL> ██████████
4 <CONFIDENTIAL>.
- 5 5. The forecasted test year rate base should be reduced by \$1,862,074 to remove
6 the capital costs associated with the Cayuga Landfill Cell included in Duke's
7 capital expenditure forecast.
- 8 6. Duke's request to track process chemicals and reagents O&M expense above
9 and below the test year amount of \$27.4 million through the ECR is reasonable.
- 10 7. Regarding Duke's procurement of RECs for the GoGreen Program:
- 11 a. Duke's request to transfer RECs from renewable PPAs and assets to the
12 GoGreen program at a fair market price and credit the proceeds from
13 this transfer through the FAC is reasonable.
- 14 b. The Commission should require Duke to make all efforts to sell RECs
15 received through PPAs or generated by its owned assets at the highest
16 market price possible.
- 17 c. The Commission should require Duke to make all efforts to sell RECs
18 for retail customers and avoid retiring them. Furthermore, absent a state
19 or federal mandatory RPS, any retirement fees associated with RECs
20 retired on behalf of all retail customers should not be recoverable. REC
21 retirement fees for GoGreen customers are recoverable from GoGreen
22 customers and should be reflected in the GoGreen subscription fees.

1 d. The Commission should require Duke to set the price it transfers RECs
2 to GoGreen customers to reflect the highest market price Duke could
3 obtain for those RECs if it were to sell them into the highest value
4 market. If the highest market price results in an undesirable price point
5 for GoGreen customers, Duke should obtain RECs from alternative
6 sources within its desired price range.

7 e. As an alternative proposal, Duke could sell the RECs into a higher value
8 market and use the proceeds to purchase National voluntary RECs for
9 GoGreen customers. The proceeds from GoGreen customers should
10 then be credited to all ratepayers through the FAC, with the GoGreen
11 customers paying for any brokerage and retirement fees associated with
12 such transactions.

13 **Q: Does this conclude your testimony?**

14 **A: Yes.**

APPENDIX A

1 **Q: Summarize your professional background and experience.**

2 A: I graduated from the University of Evansville in 2004 with a Bachelor of Science
3 degree in Environmental Administration. I graduated from Indiana University,
4 Bloomington in May 2007 with a Master of Public Affairs degree and a Master of
5 Science degree in Environmental Science. I have also completed internships with
6 the Environmental Affairs Department at Vectren in the spring of 2004, with the
7 U.S. Environmental Protection Agency in the summer of 2005, and with the U.S.
8 Department of the Interior in the summer of 2006. During my final year at Indiana
9 University, I served as a research and teaching assistant for a Capstone course
10 offered at the School of Public and Environmental Affairs. I also have obtained my
11 OSHA Hazardous Operations and Emergency Response ("HAZWOPER")
12 Certification. I have been employed by the OUCC since May 2007. During my
13 time at the OUCC, I was promoted to a Senior Utility Analyst in 2012, to a Chief
14 Technical Advisor in June 2022, and to an Assistant Director in August 2023. As
15 part of my continuing education at the OUCC, I have attended both weeks of the
16 National Association of Regulatory Utility Commissioners' ("NARUC") seminar
17 in East Lansing, Michigan, the Indiana Chamber of Commerce's ("Indiana
18 COC's") Environmental Permitting Conference, and the Indiana COC's annual
19 Environmental Conferences since 2014.

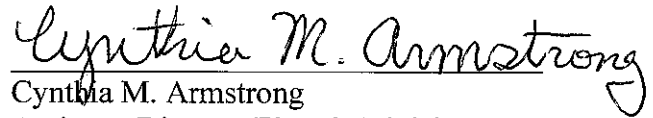
20 **Q: Describe some of your duties at the OUCC.**

21 A: I review and analyze utilities' requests and file recommendations on behalf of
22 consumers in utility proceedings. Depending on the case at hand, my duties may

1 also include analyzing state and federal regulations, evaluating rate design and
2 tariffs, examining books and records, inspecting facilities, and preparing various
3 studies. Since my expertise lies in environmental science and policy, I assist in
4 many cases where environmental compliance is an issue.

AFFIRMATION

I affirm, under the penalties for perjury, that the foregoing representations are true.



Cynthia M. Armstrong
Assistant Director-Electric Division
Indiana Office of Utility Consumer Counsel

Cause No. 46038
DEI, LLC

Date: July 11, 2024

Office of Utility Consumer Counselor
IURC Cause No. 46038
Data Request Set No. 24
Received: May 24, 2024

OUCC 24.2

Request:

Please refer to the Direct testimony of Petitioner's witness Sean P. Riley at page 35, line 12 through page 36, line 3.

- a. Please identify each exhibit, schedule, workpaper, and the sponsoring witness for such, showing how these Future CCR Closures costs and Cause 45253 Pre-Order Costs costs, respectively, were accounted for using the traditional cost of removal accounting Mr. Riley describes.
- b. Please explain in detail how these costs, respectively, were accounted for prior to being accounted for using the traditional cost of removal accounting Mr. Riley describes; please include in your response detailed descriptions of all accounting entries, including without limitation, the dates made and the dates to which they apply. Please also provide all documentation and supporting documentation showing such accounting.
- c. Please provide the total amount charged to Accumulated Depreciation for the CCR Ash Pond costs Mr. Riley shows on page 35 to date. Please identify how much of these charges was associated with the Cause No. 45253 S1 Pre-Order CCR Ash Pond costs.
- d. Please provide the total amounts estimated to be charged to Accumulated Depreciation by the end of the test year for the CCR Ash Pond costs. Please identify how much of these charges was associated with the Cause No. 45253 S1 Pre-Order CCR Ash Pond costs.
- e. What is the discrete revenue requirement impact of accounting for the Cause No. 45253 S1 Pre-Order CCR Ash Pond costs using the traditional cost of removal accounting Mr. Riley describes? Please provide supporting exhibits, schedules, workpapers, and calculations for this amount. Please also indicate each witness that sponsors or contributes to this response.

Response:

- a. The Future CCR Closure costs have not been incurred and so have not yet been accounted for. As to the Cause No. 45253 S1 Pre-Order Costs, it is Petitioner's proposal in this case to account for such costs pursuant to traditional cost of removal accounting as described by Mr. Riley. Such accounting has not yet occurred and is awaiting an Order in this Cause confirming the proposed regulatory treatment.
- b. Future CCR Closure costs have not been incurred so have not yet been recorded. For the Cause 45253 S1 Pre-Order Costs, prudently incurred expenditures were incurred between January 2019 – October 2021.

Entry recorded each month:

Debit to regulatory asset for the retail portion of the expenditures (account 182)
Credit to cash (131)

Entry recorded in December 2022 to impair the costs

Debit to expense (account 426)
Credit to regulatory asset for the retail portion of the Pre-order costs
(account 182)

- c. Future CCR Closure costs have not yet been incurred so no amount has been charged to Accumulated Depreciation. As to Cause No. 45253 S1 Pre-Order Costs, please see the Company's response to OUCC 24.03.
- d. Future CCR Closure costs are not expected to be incurred before the end of the test year so there would not be any charges to accumulated depreciation during this period. For Cause No. 45253 S1 Pre-Order Costs, please see the Company's response to OUCC 24.03.
- e. See the Company's response to OUCC 24.03.

Witness: Kathryn C. Lilly

Office of Utility Consumer Counselor
IURC Cause No. 46038
Data Request Set No. 24
Received: May 24, 2024

OUCC 24.3

Request:

Please refer to page 14, lines 1-11, of Petitioner's witness John J. Spanos' Direct testimony.

- a. Please provide the amount Mr. Spanos allocated to depreciation reserve to account for the Cause No. 45253-S1 costs reversed by the Indiana Court of Appeals.
- b. Please quantify the impact these costs have in establishing the depreciation accrual rates Mr. Spanos recommends.

Response:

Upon review of the depreciation study filed in this proceeding, it appears that the \$92.1 million was inadvertently escalated when it was added to the depreciation study. Please refer to page 297 of Attachment 12-A(JJS) for the escalated figure of \$122,575,419. Petitioner will correct this in its rebuttal testimony in this proceeding.

Office of Utility Consumer Counselor
IURC Cause No. 46038
Data Request Set No. 24
Received: May 24, 2024

OUCC 24.1

Request:

Please refer to the Direct testimony of Petitioner’s witness Timothy S. Hill, Attachment 19-A (TSH).

- a. Please confirm whether the Cause No. 45253 S1 Pre-Order costs were all specifically included in the estimated federally mandated projects the Commission approved in Cause No. 45253 S1 prior to the Indiana Court of Appeals decision disallowing their recovery under Ind. Code ch. 8-1-8.4 (Federally Mandated Costs Statute). Please provide documentation that these costs were approved in Cause No. 45253 S1 prior to their disallowance under Ind. Code ch. 8-1-8.4.
- b. Do any of the Cause No. 45253 S1 Pre-Order costs include dollars or costs not approved in Cause No. 45253 S1?
- c. If the response to (b) is affirmative, please provide:
 - i. A description of the project and activities associated with the additional costs for each generating site and CCR unit.
 - ii. The total amount of costs incurred for each project and activity listed in (c)(i) for each generating site.
 - iii. Monthly costs incurred from January 1, 2019, through November 3, 2021, for each project and activity listed in (c)(i).
- d. Please provide a detailed breakdown of the costs incurred for each CCR Unit included in the Cause No. 45253 S1 Pre-Order costs. Please also provide these costs on a monthly basis from January 1, 2019, through November 3, 2021, and fully explain how these costs were monthly shown in Petitioner’s books and records from January 1, 2019, through November 3, 2021, including whether and how these costs were shown changed in the books and records during this time period and, if so, when such change or changes occurred and why.
- e. Please state whether the Cause No. 45253 S1 Pre-Order costs include costs associated with Allowance for Funds Used During Construction (“AFUDC”) or other carrying costs. If so, please provide these costs for each generating station recorded each month from January 1, 2019, through November 3, 2021.

Objection:

Duke Energy Indiana objects to subpart a of this request as vague and ambiguous, specifically the portion seeking the Company to “provide documentation that the costs were approved” without explanation or definition.

Duke Energy Indiana further objects to the request on the grounds and to the extent the request seeks information that is trade secret or other proprietary, confidential, and competitively sensitive business information of Duke Energy Indiana, its customers, or third parties. Duke Energy Indiana has made reasonable efforts to maintain the confidentiality of this information. Such information has independent economic value and disclosure of the requested information would cause an identifiable harm to Duke Energy Indiana, its customers, or third parties. The responses are “trade secret” under law (Ind. Code § 24-2-3-2) and entitled to protection against disclosure. See also Indiana Trial Rule 26(C)(7). All responses containing designated confidential information are being provided pursuant to nondisclosure agreements between Duke Energy Indiana and the receiving parties.

Response:

Subject to and without waiving or limiting its objections, Duke Energy Indiana responds as follows:

- a. Confirmed. The Pre-Order costs included in this proceeding were all previously approved by the Commission. Please refer to the Commission’s November 3, 2021 Order in Cause No. 45253-S1, which approved the referenced costs. Additional documentation that the costs were approved can be found in Cause No. 42061 ECR 37 through ECR 40, specifically reference Petitioner’s Exhibit 2 of ECR 40 page 8 lines 13-18, which discusses removing the referenced costs.
- b. No.
- c. N/A.
- d. Please see Confidential Attachment OUCC 24.1-A which is Mr. Hill’s Confidential Workpaper 7-TSH from Cause No. 42061 ECR-40, specifically Tab “2.DEI Subdkt 2-B (Asset&Rates)” column GO. This value calculates the 1/1/19 through 11/2/21 costs by CCR Unit / month (information available by month on the same tab). Note these reflect total Company costs not specific retail costs. These costs were booked as a regulatory asset from January 1, 2019 through November 2, 2021.
- e. No. There were no carrying costs or AFUDC costs included.

Witness: Timothy S. Hill / Kathryn C. Lilly

Office of Utility Consumer Counselor
IURC Cause No. 46038
Data Request Set No. 26
Received: June 20, 2024

OUCC 26.01

Request:

Please refer to DEI's Response to OUCC Data Request 24.1(d) and Confidential Attachment 24.1-A.

- a. In Confidential Attachment 24.1-A, Tab "DEI Subdkt 2-B (Assets&Rates)," Cell GO91 Shows total actual Compliance Project costs spent from January 1, 2019, through November 2, 2021, at \$118,880,548. Even if the retail jurisdictional factor of approximately 91.6% is applied (Approximately \$108.9 million), this amount differs from the \$92,075,402 in Cause No. 45253 S1 Pre-Order actual costs Mr. Hill quotes in his testimony. Please explain this difference.
- b. Please confirm the retail jurisdictional factor that should be applied to the total Compliance Project costs.
- c. In Confidential Attachment 24.1-A, Tab "ECR40 Att 2-A," Cell E39 Shows Compliance Project Actual Costs (1/1/19 – 11/2/21) at \$100,516,931. Would this be the correct Total Company amount for Cause No. 45253 S1 Pre-Order actual costs? Please explain why or why not.
- d. In Confidential Attachment 24.1-A, Tab "ECR40 Att 2-A," Cell 24 Shows Dresser Basin Closure actual costs from 1/1/19 – 11/2/21 as \$1,558,459. The cell formula references Tab "DEI Subdkt 2-B (Assets&Rates)," Cell GO16. This formula in Cell G016 does not appear to include 2019 or 2020 Dresser Basin Closure costs. Please explain why 2019 and 2020 Dresser Basin Closure costs are not included in the Cause No. 45253 S1 pre-order costs presented in Tab "ECR40 Att 2-A." If your response relies on previous Commission orders or legal decisions determining that these costs should not be included in the Dresser basin closure costs, please provide the legal citation for this case and explain DEI's basis for this determination.
- e. Besides accounting for the retail jurisdictional portion of the Cause No. 45253 S1 Pre-Order actual Compliance Project costs, does the exclusion of the 2019 and 2020 Dresser Basin Closure costs explain the difference between the \$118,880,548 presented in Tab "DEI Subdkt 2-B (Assets&Rates)," Cell GO91 and the \$92,075,402 in retail jurisdictional Pre-Order costs DEI seeks recovery of in this Cause? Please explain.

Response:

- a. The total company spend was \$118,880,548. The retail portion (see response to subpart b below for %) is 108,946,600. There were then the following three adjustments made:
 - Remove retail Dresser and Gibson East 2019 and 2020 (see response to subpart d below) – (\$16,878,324);
 - Correct a portion of Cayuga that should not have been included – (\$577,377); and

- Subtract amounts previously collected through rates for depreciation (\$588,229).
- b. The retail jurisdictional factors are as follows:
- 1/2019 through 7/2020 – 91.79%.
 - 8/2020 through 11/2021 - 91.52%. This factor will remain in effect until new rates are approved in this proceeding.
- c. Yes – this amount excludes the Dresser and Gibson East 2019 and 2020 expenditures (see response to subpart d below).
- d. Because the Dresser 2019 and 2020 forecasted expenditures were included in Cause No. 45253. Please also see Cause No 45253, Remand Petitioner’s Exhibit 61 Testimony of Brian P. Davey.
- e. Please see the Company’s response to subpart a above.

Witness: Kathryn C. Lilly

OUCC Attachment CMA-2 includes an Excel File which is CONFIDENTIAL.
File name: "46038_OUCC Attachment CMA-2_CONFIDENTIAL.xlsx"

Office of Utility Consumer Counselor
IURC Cause No. 46038
Data Request Set No. 5
Received: April 23, 2024

CONFIDENTIAL RESPONSE
OUCC 5.01

Request:

Please refer to Petitioner's Attachment 19-A (TSH).

- a. Are all future closure costs related to new CCR closure projects that have not previously been approved by the Commission in a Federal Mandate Certificate of Public Convenience and Necessity (CPCN) or other rate proceedings?
- b. Do any future closure costs contain cost overruns for CCR closure project costs approved in Cause Nos. 45253 S1 and 45940? If affirmative, please indicate the amount associated with previous cost overruns for each project.
- c. Please provide a detailed cost breakdown of the future closure cost estimates for all CCR units listed. In the detailed breakdown for each project, please provide, at a minimum, direct costs, indirect costs, Owner's costs, contingency, and escalation. Please provide supporting studies, contracts, work orders, or other supporting documentation for each detailed project cost estimate.
- d. Please provide a Gaant chart or detailed project timeline of all activities for each future closure project.
- e. Please provide the anticipated annual spend for each future closure project over the project's timeline.
- f. Has DEI incurred any costs associated with future closure costs? If affirmative, please indicate how much DEI has spent to date for each future closure project listed.

Objection:

Duke Energy Indiana objects to subparts c-e to the extent they seek information that Duke Energy Indiana has not compiled and to which it objects compiling. Duke Energy Indiana further objects to subparts c-e to the extent they seek information that Duke Energy Indiana does not maintain in the normal course of business.

Duke Energy Indiana objects to the Request on the grounds and to the extent the Request seeks information that is trade secret or other proprietary, confidential, and competitively sensitive business information of Duke Energy Indiana, its customers, or third parties. Duke Energy Indiana has made reasonable efforts to maintain the confidentiality of this information. Such information has independent economic value and disclosure of the requested information would cause an identifiable harm to Duke Energy Indiana, its customers, or third parties. The responses are "trade secret" under law (Ind. Code § 24-2-3-2) and entitled to protection against disclosure. See also Indiana Trial Rule 26(C)(7). All responses containing designated confidential information are being provided pursuant to nondisclosure agreements between Duke Energy Indiana and the receiving parties.

Response:

Subject to and without waiving or limiting its objections, Duke Energy Indiana responds as follows:

- a. No future closure projects are included in any previously approved or pending CPCNs.
- b. No future closure costs contain any costs from Cause Nos. 45253 S1 and 45940.
- c. See below and Confidential Attachment OUCC 5.1-A.

Cayuga West Ash Fill Area:

Estimate of \$47,758,570 is based on station retiring in 2028, followed by demolition, site preparation and management, capping of 64 acres, plus contingency.

Cayuga RWS I Landfill:

Estimate of \$10,189,000 is based on site preparation and management, capping of 34 acres, plus contingency and labor.

Gibson South Ash Fill Area Phase 2:

Estimate of \$17,500,000 is based on site preparation and management, capping of 56 acres, plus contingency and labor.

Gibson South Aggregate Landfill - Cells 1-5:

Estimate of \$34,845,875 is based on site preparation and management, capping of 190 acres, plus contingency and labor.

Gibson North & South Settling Basin Service Roads:

Estimate of \$2,703,125 is based on site preparation and management, capping of 8 acres, plus contingency and labor.

Wabash River North Ash Pond - Future - Pet Coke Area:

Estimate of \$11,250,000 is based on site preparation and management, capping of 10 acres, plus contingency and labor.

Noblesville Legacy CCR at Transmission and Gas ROW:

Estimate of \$5,911,741 is based on site preparation and management, capping of 4 acres, plus contingency and labor. Estimate also includes decommissioning of gas line and transmission infrastructure.

Edwardsport Phase 2 - Railroad track closure area:

Estimate of \$1,250,000 is based on station retiring in 2045, followed by decommissioning of rail infrastructure, site preparation and management, capping of 4 acres, plus contingency and labor.

- d. See objection. Costs are expected to be incurred in the following years as shown below. Years are based on plant retirement dates and pre-cursor activities required to access the areas:

Cayuga West Ash Fill Area:
Estimated timeline is 2031 to 2035.

Cayuga RWS I Landfill:
Estimated timeline is 2031.

Gibson South Ash Fill Area Phase 2:
Estimated timeline is 2038 to 2039.

Gibson South Aggregate Landfill - Cells 1-5:
Estimated timeline is 2038 to 2040.

Gibson North & South Settling Basin Service Roads:
Estimated timeline is 2043.

Wabash River North Ash Pond - Future - Pet Coke Area:
Estimated timeline is 2032.

Noblesville Legacy CCR at Transmission and Gas ROW:
Estimated timeline is 2037 to 2038.

Edwardsport Phase 2 - Railroad track closure area:
Estimated timeline is 2045.

e. See below:

<BEGIN CONFIDENTIAL>

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
<END CONFIDENTIAL>

f. No.

Witness: Timothy S. Hill

OUCC Attachment CMA-3 includes an Excel File which is CONFIDENTIAL.
File name: "46038_OUCC Attachment CMA-3_CONFIDENTIAL.xlsx"

Office of Utility Consumer Counselor
IURC Cause No. 46038
Data Request Set No. 24
Received: May 24, 2024

OUCC 24.4

Request:

Please refer to Direct testimony of Petitioner's witness Timothy S. Hill at page 25, Table 9.

- a. Please confirm whether any of the Estimated Future Closing Costs include any contingency or escalation.
- b. If so, please provide the amount of contingency and/or escalation included in the respective estimate for each site.
- c. Please identify each exhibit, schedule, workpaper, and the sponsoring witness for such, supporting the estimates, and please provide any such items not previously provided with cells unlocked and formulas intact.

Objection:

Duke Energy Indiana objects to the request on the grounds and to the extent the request seeks information that is trade secret or other proprietary, confidential, and competitively sensitive business information of Duke Energy Indiana, its customers, or third parties. Duke Energy Indiana has made reasonable efforts to maintain the confidentiality of this information. Such information has independent economic value and disclosure of the requested information would cause an identifiable harm to Duke Energy Indiana, its customers, or third parties. The responses are "trade secret" under law (Ind. Code § 24-2-3-2) and entitled to protection against disclosure. See also Indiana Trial Rule 26(C)(7). All responses containing designated confidential information are being provided pursuant to nondisclosure agreements between Duke Energy Indiana and the receiving parties.

Response:

Subject to and without waiving or limiting its objections, Duke Energy Indiana responds as follows:

- a. Future closure costs include contingency based on the project scope. See Confidential Attachment OUCC 24.4-A for each project. Costs are not escalated but in 2023 dollars.
- b. See the Company's response to subpart c.
- c. See Confidential Attachment OUCC 24.4-A for a breakdown of the future costs.

Witness: Timothy S. Hill

OUCC Attachment CMA-4 includes an Excel File which is CONFIDENTIAL.
File name: "46038_OUCC Attachment CMA-4_CONFIDENTIAL.xlsx"

OUCC Attachment CMA-5 is attached as an Excel File which is
CONFIDENTIAL.

File name: "46038_OUCC Attachment CMA-5 (CONFIDENTIAL).xlsx"

Office of Utility Consumer Counselor
IURC Cause No. 46038
Data Request Set No. 26
Received: June 20, 2024

OUCC 26.03

Request:

Please refer to DEI's Responses to OUCC Data Request 5.1, Confidential Attachment 5.1 A, and OUCC Data Request 24.4, Confidential Attachment 24.4 A.

- a. The "Risk Contingency" for the Noblesville Legacy ROW in Confidential Attachment 5.1 A shows \$1,094,766, but the "Contingency – Risk EMV" in Confidential Attachment 24.4 A shows \$656,860.
 - i. Please explain the reason for this difference.
 - ii. Is the difference due to a portion of these costs being assigned to Duke Labor and Indirects?
 - iii. Please indicate which contingency figure is the most accurate to date.
- b. If there are any other differences between the "Risk Contingency" amounts for the Future CCR Closure projects shown in Confidential Attachment 5.1 A and the "Contingency – Risk EMV" amounts shown in Confidential Attachment 24.4 A, which document should the OUCC rely on as being the most accurate cost estimate for contingency and other project estimate sub-components?

Response:

- a.
 - i. Please refer to sections ii. and iii. below.
 - ii. Yes
 - iii. \$656,860 as shown in Confidential Attachment OUCC 24.4-A.
- b. There are no other differences between the "Risk Contingency" amounts for the Future CCR Closure projects shown in Confidential Attachment OUCC 5.1-A and the "Contingency – Risk EMV" amounts shown in Confidential Attachment OUCC 24.4-A.

Please rely on Confidential Attachment OUCC 24.4-A for project estimate at sub-components level. The prime difference between Confidential Attachment OUCC 5.1-A and Confidential Attachment OUCC 24.4-A is breakdown of consolidated view to sub-component details.

Witness: Timothy S. Hill

Office of Utility Consumer Counselor
IURC Cause No. 46038
Data Request Set No. 5
Received: April 23, 2024

OUCC 5.02

Request:

Regarding the AEGIS and AmRe insurance settlements Mr. Timothy S. Hill discusses on pages 26-28 of his direct testimony.

- a. Please provide the settlement agreements or terms with each insurance provider. If DEI cannot provide these agreements or terms under the OUCC's Confidentiality Agreement with DEI, please explain why. Please also indicate if the OUCC could gain access to these through additional Confidentiality agreements.
- b. Will DEI receive the settlement amounts in a lump sum payment or will payments be graduated?
- c. Please indicate the time period(s) when DEI received or will receive settlement payments. If payments are graduated, please indicate the payment schedule.
- d. Please provide the dates when each policy was active.
- e. Please provide the monthly and annual premiums associated with each policy at the time they were active.
- f. Please provide the insurance policy costs associated with the AEGIS and AmRe policies included in retail rates at the time they were in effect. Please provide supporting calculations and documentation to determine these costs.
- g. Please provide the portion of overall closure-related expenses DEI incurred included in retail customers' rates. Please provide supporting calculations and documentation to determine this amount.
- h. If DEI applies the methodology for determining customers' proportionate share of insurance proceeds that Mr. Hill describes, what amount of the AEGIS and AmRe settlement amounts will customers be credited?
- i. Please explain in detail how DEI proposes to credit customers for the amount of insurance policy costs, including without limitation:
 - i. whether such costs to be credited will be presented in the ECR as a lump sum;
 - ii. whether such costs would be credited over a period of time;
 - iii. and when such costs would first be presented in the ECR.
- j. Please explain in detail how DEI proposes to credit customers for the proportionate share of insurance proceeds, including without limitation:
 - i. whether such proceeds to be credited will be presented in the ECR as a lump sum;
 - ii. whether such costs would be credited over a period of time;
 - iii. for each ECR, the period within which proceeds would be received in order to be included as a credit in the ECR;
 - iv. the manner in which related expenses would be netted; and
 - v. when such proceeds would first be presented in the ECR.

- k. Admit or deny: If DEI applies the methodology Mr. Hill describes for determining customers' share of the insurance proceeds, DEI's shareholders will receive the majority of the AEGIS and AmRe settlement proceeds. Please explain your response.

Objection:

Duke Energy Indiana objects to this request to the extent it seeks information no longer in the possession of Duke Energy Indiana. Duke Energy Indiana objects to subparts h., i., j. as requiring speculation in order to respond.

Duke Energy Indiana objects to the Request on the grounds and to the extent the Request seeks information that is trade secret or other proprietary, confidential, and competitively sensitive business information of Duke Energy Indiana, its customers, or third parties. Duke Energy Indiana has made reasonable efforts to maintain the confidentiality of this information. Such information has independent economic value and disclosure of the requested information would cause an identifiable harm to Duke Energy Indiana, its customers, or third parties. The responses are "trade secret" under law (Ind. Code § 24-2-3-2) and entitled to protection against disclosure. See also Indiana Trial Rule 26(C)(7). All responses containing designated confidential information are being provided pursuant to nondisclosure agreements between Duke Energy Indiana and the receiving parties.

Response:

Subject to and without waiving or limiting its objections, Duke Energy Indiana responds as follows:

- a.) See Confidential Attachments OUCC 5.2-A and OUCC 5.2-B.
- b.) Duke Energy Indiana has received lump sum settlements from the two insurance companies it has settled with to date.
- c.) Duke Energy Indiana received payment in 2023 from the settlements.
- d.) Regarding the AEGIS policy, it was effective from October 31, 1984 to October 31, 1985. Regarding the two AmRe policies, they were effective from December 31, 1969 to January 31, 1974.
- e.) Regarding the AEGIS policy, it had an annual premium of \$446,300. Regarding the AmRe policies, one had an annual premium of \$8,500 and the second had an annual premium of \$7,500.
- f.) See objection. Duke Energy Indiana does not maintain business records going back that far. The Company has reasonably assumed that the actual cost of the premiums were included in rates.
- g.) The closure-related expenses Duke Energy Indiana incurred included in retail customer rates include: From Cause No. 45253, Gibson East and Dresser - \$2,399,000. From Cause No. 45253-S1, approved expenses from November 2021 thru December 2023 are \$91,985,843 (total company). Included in the ECR Rider is 80% of the retail portion of that amount (using 91.52%) - \$67,348,255. Please refer to Duke Energy Indiana's ECR 41 proceeding for Workpaper 1-KCL, Page 1a, as support for this amount.

- h.) See objection. Duke Energy Indiana proposed to determine the allocation following this rate order so it will know what incurred closure-related costs will be included in rates. At this time, the Company does not know what cost recovery will be approved by the Commission in this proceeding so cannot accurately determine the allocation to be used.
- i.) See objection. Duke Energy Indiana intends to propose to credit customers through the next ECR following an order in this proceeding. ECR rates generally remain in effect over a six month period.
- j.) See objection. Please also see the Company's response to subpart i.
- k.) Deny. Regardless of what the Commission determines in this proceeding regarding the incurred costs removed from rates due to the Indiana Court of Appeals decision in the appeal of Cause No. 45253-S1, Duke Energy Indiana estimates that the majority of closure-related expenses incurred have been included in rates.

OUCC Attachment CMA-7, Pages 4 through 85 are CONFIDENTIAL

Office of Utility Consumer Counselor
IURC Cause No. 46038
Data Request Set No. 5
Received: April 23, 2024

CONFIDENTIAL RESPONSE
OUCC 5.07

Request:

Please refer to Table 10 on page 28 of Mr. Hill's Direct Testimony, which includes forecasted test year power production O&M and capital expenditures associated with Coal Combustion Products (CCP) management and disposal.

- a. Please provide all supporting data, calculations, assumptions, methodology, and documents forming the basis of DEI's forecasted CCP-related Power Production test year O&M expense. Please also provide the breakdown of CCP-related forecasted O&M expenses by generating unit and plant.
- b. Please provide DEI's monthly O&M expenses associated with Coal Combustion Products (CCP) management and disposal over the past four calendar years for each generating unit and plant. As 2024 monthly expense data becomes available, please continue to provide monthly data until the discovery response cut-off date prior to the evidentiary hearing.
- c. Please provide a detailed breakdown by generating plant of test year CCP-related capital expenditures.
- d. Mr. Hill states on page 29, lines 17-18, that the capital expenditures include costs to begin construction of cell 3 of the RWS II landfill. Will the cell's construction be complete by the end of the test year? Please explain why or why not.
- e. If the Cayuga RWS II landfill cell 3 will not be complete by the end of the test year, when will construction be completed?
- f. Will DEI begin or be able to begin disposing CCP in the Cayuga RWS II landfill cell 3 if it is not completed by the end of the test year? Please explain.

Objection:

Duke Energy Indiana objects to subpart a. of this request as overly broad and unduly burdensome, particularly the portion of the request seeking "all supporting data . . ." without limitation. Duke Energy Indiana also objects to subpart b. of this request as unduly burdensome, particularly the portion seeking the Company to provide monthly expense data as it becomes available.

Duke Energy Indiana further objects to the Request on the grounds and to the extent the Request seeks information that is trade secret or other proprietary, confidential, and competitively sensitive business information of Duke Energy Indiana, its customers, or third parties. Duke Energy Indiana has made reasonable efforts to maintain the confidentiality of this information. Such information has independent economic value and disclosure of the requested information would cause an identifiable harm to Duke Energy Indiana, its customers, or third parties. The

responses are “trade secret” under law (Ind. Code § 24-2-3-2) and entitled to protection against disclosure. See also Indiana Trial Rule 26(C)(7). All responses containing designated confidential information are being provided pursuant to nondisclosure agreements between Duke Energy Indiana and the receiving parties.

Response:

Subject to and without waiving or limiting its responses, Duke Energy Indiana responds as follows:

- a. See objection. Duke Energy Indiana utilizes historical expenses by expense type and station to develop baseline budget forecasts. The largest contributor to O&M expense is typically costs to haul production CCR material to the on-site landfill, and the maintenance and operation of those landfills. Duke Energy Indiana bases these expected costs on modeled capacity factors for each unit and the unit rate contracts for CCR disposal. See Confidential Attachment OUCC 5.7-A for capacity factors used that support the 2025 test year and a breakdown of the major cost categories / units.
- b. See objection. See Confidential Attachment OUCC 5.7-A.
- c. See below:

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<END CONFIDENTIAL>

- d. No. Construction will be complete in 2026. It takes more than 12 months to complete the construction.
- e. See the Company’s response to subpart d.
- f. No. CCR materials cannot be placed in the landfill until IDEM certifies all conditions of the operating permit.

Witness: Timothy S. Hill

OUCC Attachment CMA-8 includes an Excel File which is CONFIDENTIAL.
File name: "46038_OUCC Attachment CMA-8_CONFIDENTIAL.xlsx"

Office of Utility Consumer Counselor
IURC Cause No. 46038
Data Request Set No. 26
Received: June 20, 2024

OUCC 26.04

Request:

Please refer to DEI's Response to OUCC Data Request 5.7, Confidential Attachment 5.7 A, Tab "5.7 a Breakdown of O&M Costs."

- a. Please provide all assumptions, inputs, supporting documentation, including, but not limited to, contract rates, tons of ash produced, transport and tipping fees, labor, etc., with formulas intact used to calculate the forecasted costs shown for:
 - i. Transport/place costs;
 - ii. Maintenance costs;
 - iii. Loading, transport, and placement of slag for Edwardsport to Gibson;
 - iv. Cleanout/maintenance of process water ponds;
 - v. EHS Costs in support of CCP; and
 - vi. Base O&M CCP – EHS Forecast for each site listed, including:
 1. Cayuga 1-2;
 2. Gibson 1-5;
 3. Edwardsport 1; and
 4. DEI Fleet.
- b. As part of the response provided in (a), please show how the capacity factors provided in Tab "5.7 (a) Capacity Factors," are factored in the calculations for the forecasted costs shown in Tab "5.7 a Breakdown of O&M Costs."

Response:

- a. Please refer to Duke Energy Indiana's response to OUCC 26.5 subparts g and h, and Attachment OUCC 26.5-C.
- b. Please refer to Duke Energy Indiana's response to OUCC 26.5 subparts g and h, and Attachment OUCC 26.5-C.

Witness: Timothy S. Hill

Office of Utility Consumer Counselor
IURC Cause No. 46038
Data Request Set No. 26
Received: June 20, 2024

OUCC 26.05

Request:

Please refer to DEI's Response to OUCC Data Request 5.7, Confidential Attachment 5.7 A, Tab "5.7 (b) Historical Costs by Unit."

- a. Please define every Op Unit listed in Column A. For example, please define what unit "ALLI" under "DEI Other" stands for.
- b. Please define "Non-RRE" costs.
- c. Please identify every unit listed that DEI would include to determine its the 2025 forecasted Base O&M costs.
- d. Please explain the difference between "Wabash River" costs and "Wabash River Coal" costs and why they are separated into different categories.
- e. Please describe all activities and costs, by type, included in the historical annual costs provided.
- f. Do the historical annual costs provided contain combined transport, placement, maintenance, cleanout/maintenance of process water ponds, and EHS costs, or do these amounts include a subset of these costs? Please explain.
- g. Were any of the historical annual costs provided used in calculating the 2025 Base O&M – CCP/EHS Forecast costs presented in Tab "5.7 a Breakdown of O&M Costs?" If so, please indicate and show how the costs shown in Tab "5.7(b) Historical Costs by Unit" were used to calculate the forecasted O&M CCP costs.
- h. If possible, please provide a detailed breakdown of the historical annual costs for each operating unit by:
 - i. Transport/Place costs;
 - ii. Maintenance costs;
 - iii. Loading, transport, and placement of slag from Edwardsport;
 - iv. Cleanout/maintenance of process water ponds; and
 - v. EHS Costs in support of CCP.

Response:

- a. See Attachment OUCC 26.5-A for operating unit descriptions.
- b. Costs from all other business units that charge the operating units listed either directly or indirectly.
- c. See Attachment OUCC 26.5-B.
- d. The differences were established to track costs for individual operating units or different areas of responsibility at the generating station. Typically, different operating units were used to distinguish between common facilities that served all generating units or those that served a specific unit of property. In the case of Wabash River and Wabash River

Coal – the operating units distinguished between coal plant supporting assets and gas fired (CT) assets or assets common to both.

- e. See Attachment OUCC 26.5-C.
- f. Yes.
- g. Yes. The historical costs are considered and then evaluated against the modeled (forecast) Capacity Factor of the generating units versus the actual capacity factors. Impacts are assessed and budgets are estimated accordingly. In general, capacity factor reductions at the coal units were assumed for the 2025 base year going forward using the modeled and actual capacity factors for the coal units.
- h. See Attachment OUCC 26.5-C for each category.

Witness: Timothy S. Hill

OUCC Attachment CMA-9 includes 3 Excel Files

File names:

“46038_OUCC Attachment CMA 9_Attachment OUCC 26.5-A.xlsx”

“46038_OUCC Attachment CMA 9_Attachment OUCC 26.5-B.xlsx”

“46038_OUCC Attachment CMA 9_Attachment OUCC 26.5-C.xlsx”

OUCC Attachment CMA-10 is attached as an Excel File which is
CONFIDENTIAL.

File name: "46038 OUCC Attachment CMA-10 (CONFIDENTIAL).xlsx"

OUCC Attachment CMA-11 is attached as an Excel File.
File name: "46038 OUCC Attachment CMA-11.xlsx"

Office of Utility Consumer Counselor
IURC Cause No. 46038
Data Request Set No. 17
Received: May 17, 2024

OUCC 17.03

Request:

Please refer to the changes DEI is proposing to the GoGreen program on pages 42-43 of Ms. Sieferman's testimony.

- a. Would all RECs generated by the Speedway Solar PPA be transferred to the GoGreen program, or would some still be sold on the market to other potential buyers?
- b. Since Speedway Solar is located in Indiana, has DEI investigated the possibility of selling these RECs into the Ohio REC market? Please explain why or why not.
- c. Has DEI investigated selling RECs from its renewable investments or PPAs into markets other than the national voluntary market?
- d. If DEI has investigated selling RECs into other markets, what were the results of that investigation and what conclusions did DEI draw from this information?
- e. Please indicate whether DEI has sold RECs generated by its renewable investments or PPAs into REC markets other than the national voluntary market within the past five years. Please provide the following information related to these sales:
 - i. including the date of transaction,
 - ii. the source or type of RECs (i.e. wind or solar),
 - iii. the number of RECs sold,
 - iv. the market into which they were sold,
 - v. the sale price for each REC, and
 - vi. any brokerage or certification fees incurred for the transaction(s).
- f. If Speedway Solar's RECs are eligible to be sold into other markets at a higher price, please explain why DEI finds the appropriate price to set REC transfers to the GoGreen program would be based on the national voluntary market.
- g. Is it DEI's intention to retire any Speedway Solar PPA RECs remaining from the prior vintage year in excess of what was needed for the GoGreen Program?
- h. Please explain why DEI would retire the remaining RECs exceeding the GoGreen program's needs instead of selling them in the appropriate REC market.

Objection:

Duke Energy Indiana objects to the request on the grounds and to the extent the request seeks information that is trade secret or other proprietary, confidential, and competitively sensitive business information of Duke Energy Indiana, its customers, or third parties. Duke Energy Indiana has made reasonable efforts to maintain the confidentiality of this information. Such information has independent economic value and disclosure of the requested information would cause an identifiable harm to Duke Energy Indiana, its customers, or third parties. The responses are "trade secret" under law (Ind. Code § 24-2-3-2) and entitled to protection against disclosure. See also Indiana Trial Rule 26(C)(7). All responses containing designated confidential

information are being provided pursuant to nondisclosure agreements between Duke Energy Indiana and the receiving parties.

Response:

Subject to and without waiving or limiting its objections, Duke Energy Indiana responds as follows:

- a) Duke Energy Indiana proposes that all RECs generated and issued from the Speedway Solar PPA would be offered for sale to Duke Energy Indiana customers through the GoGreen program.
- b) Yes, Duke Energy Indiana has investigated the possibility of selling RECs from renewable investments into the Ohio REC market, and currently does so for some of these investments. However, for the RECs associated with the Speedway Solar PPA (and for other new renewable assets in the future), Duke Energy Indiana's position is that the proposed method of selling the RECs exclusively to Duke Energy Indiana customers and retiring them in the customers' names supports Duke Energy's current best practices to ensure environmental claims are not double counted.
- c) Duke Energy Indiana has sold RECs from its renewable investments into markets other than the national voluntary market, as detailed below in subpart (e). Moving forward for new renewable assets, Duke Energy Indiana will consider managing the sale of RECs in a similar fashion to its proposal for the Speedway Solar PPA RECs.
- d) See responses to subparts (b) and (c) above, which cover all eligible REC markets.
- e) See Confidential Attachment OUCC 17.3-A for the requested information for 2022 through 2024 to-date.
- f) Duke Energy Indiana expects that Speedway Solar's RECs will only be eligible for sale into the Ohio Renewables market and the National Voluntary market. There is no Indiana-specific REC market nor is Duke Energy Indiana aware of any other regional or state REC markets for which the Speedway Solar PPA resource would be eligible. Current spot REC prices for the Ohio Renewables market are comparable to spot prices for the National Voluntary market. Also, it is currently planned that the Ohio Renewables market will be phased out after 2026.
- g) It is Duke Energy Indiana's intention to retire any Speedway Solar PPA RECs remaining from the prior vintage year that were not sold through the GoGreen Program.
- h) Duke Energy Indiana plans to retire any remaining RECs from the prior vintage year on behalf of all Duke Energy Indiana customers as a best practice so the RECs will factor into the annual residual (load-based) generation mix.

Witness: Suzanne E. Sieferman

OUCC Attachment CMA-12 includes an Excel File which is CONFIDENTIAL.
File name: "46038_OUCC Attachment CMA-12_CONFIDENTIAL.xlsx"



U.S. Securities and Exchange Commission

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PRESS RELEASE

SEC Adopts Rules to Enhance and Standardize Climate-Related Disclosures for Investors

FOR IMMEDIATE RELEASE | 2024-31

Washington D.C., March 6, 2024 — The Securities and Exchange Commission today adopted rules to enhance and standardize climate-related disclosures by public companies and in public offerings. The final rules reflect the Commission’s efforts to respond to investors’ demand for more consistent, comparable, and reliable information about the financial effects of climate-related risks on a registrant’s operations and how it manages those risks while balancing concerns about mitigating the associated costs of the rules.

“Our federal securities laws lay out a basic bargain. Investors get to decide which risks they want to take so long as companies raising money from the public make what President Franklin Roosevelt called ‘complete and truthful disclosure,’” said SEC Chair Gary Gensler. “Over the last 90 years, the SEC has updated, from time to time, the disclosure requirements underlying that basic bargain and, when necessary, provided guidance with respect to those disclosure requirements.”

Chair Gensler added, “These final rules build on past requirements by mandating material climate risk disclosures by public companies and in public offerings. The rules will provide investors with consistent, comparable, and decision-useful information, and issuers with clear reporting requirements. Further, they will provide specificity on what companies must disclose, which will produce more useful information than what investors see today.

They will also require that climate risk disclosures be included in a company's SEC filings, such as annual reports and registration statements rather than on company websites, which will help make them more reliable."

Specifically, the final rules will require a registrant to disclose:

- Climate-related risks that have had or are reasonably likely to have a material impact on the registrant's business strategy, results of operations, or financial condition;
- The actual and potential material impacts of any identified climate-related risks on the registrant's strategy, business model, and outlook;
- If, as part of its strategy, a registrant has undertaken activities to mitigate or adapt to a material climate-related risk, a quantitative and qualitative description of material expenditures incurred and material impacts on financial estimates and assumptions that directly result from such mitigation or adaptation activities;
- Specified disclosures regarding a registrant's activities, if any, to mitigate or adapt to a material climate-related risk including the use, if any, of transition plans, scenario analysis, or internal carbon prices;
- Any oversight by the board of directors of climate-related risks and any role by management in assessing and managing the registrant's material climate-related risks;
- Any processes the registrant has for identifying, assessing, and managing material climate-related risks and, if the registrant is managing those risks, whether and how any such processes are integrated into the registrant's overall risk management system or processes;
- Information about a registrant's climate-related targets or goals, if any, that have materially affected or are reasonably likely to materially affect the registrant's business, results of operations, or financial condition. Disclosures would include material expenditures and material impacts on financial estimates and assumptions as a direct result of the target or goal or actions taken to make progress toward meeting such target or goal;
- For large accelerated filers (LAFs) and accelerated filers (AFs) that are not otherwise exempted, information about material Scope 1 emissions and/or Scope 2 emissions;
- For those required to disclose Scope 1 and/or Scope 2 emissions, an assurance report at the limited assurance level, which, for an LAF, following an additional transition period, will be at the reasonable assurance level;

- The capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions, such as hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures, and sea level rise, subject to applicable one percent and de minimis disclosure thresholds, disclosed in a note to the financial statements;
- The capitalized costs, expenditures expensed, and losses related to carbon offsets and renewable energy credits or certificates (RECs) if used as a material component of a registrant's plans to achieve its disclosed climate-related targets or goals, disclosed in a note to the financial statements; and
- If the estimates and assumptions a registrant uses to produce the financial statements were materially impacted by risks and uncertainties associated with severe weather events and other natural conditions or any disclosed climate-related targets or transition plans, a qualitative description of how the development of such estimates and assumptions was impacted, disclosed in a note to the financial statements.

Before adopting the final rules, the Commission considered more than 24,000 comment letters, including more than 4,500 unique letters, submitted in response to the rules' proposing release issued in March 2022.

The adopting release is published on SEC.gov (<https://www.sec.gov/files/rules/final/2024/33-11275.pdf>) and will be published in the Federal Register. The final rules will become effective 60 days following publication of the adopting release in the Federal Register, and compliance dates for the rules will be phased in for all registrants, with the compliance date dependent on the registrant's filer status.

###

Last Reviewed or Updated: March 6, 2024

RESOURCES

- **Rule Details** (<https://www.sec.gov/rules/2022/03/enhancement-and-standardization-climate-related-disclosures-investors>).

- **Fact Sheet**



FACT SHEET

The Enhancement and Standardization of Climate-Related Disclosures: Final Rules

On March 6, 2024, the Securities and Exchange Commission adopted final rules to require registrants to disclose certain climate-related information in registration statements and annual reports. The Commission [proposed the rules](#) on [March 21, 2022](#). The public comment file is [available online](#).

The final rules require a registrant to disclose, among other things: material climate-related risks; activities to mitigate or adapt to such risks; information about the registrant's board of directors' oversight of climate-related risks and management's role in managing material climate-related risks; and information on any climate-related targets or goals that are material to the registrant's business, results of operations, or financial condition.

Further, to facilitate investors' assessment of certain climate-related risks, the final rules require disclosure of Scope 1 and/or Scope 2 greenhouse gas (GHG) emissions on a phased-in basis by certain larger registrants when those emissions are material; the filing of an attestation report covering the required disclosure of such registrants' Scope 1 and/or Scope 2 emissions, also on a phased-in basis; and disclosure of the financial statement effects of severe weather events and other natural conditions including, for example, costs and losses.

The final rules include a phased-in compliance period for all registrants, with the compliance date dependent on the registrant's filer status and the content of the disclosure.

Background

The importance of climate-related disclosures for investors has grown as investors, companies, and the markets have recognized that climate-related risks can affect a company's business and its current and longer-term financial performance and position. The Commission has amended its disclosure requirements many times over the last 90 years based on the determination that the required information would be important to investment and voting decisions. The Commission for the last 50 years has also required disclosure about various environmental matters. More recently, the Commission published the 2010 Guidance, explaining how the Commission's existing disclosure rules may require disclosure of the impacts of climate change on a registrant's business or financial condition. The final rules are a continuation of the Commission's efforts to respond to investor need for more consistent, comparable, and reliable information about the financial effects of climate-related risks on a registrant's business, as well as information about how the registrant manages those risks.

Content of the Disclosures

The final rules will require a registrant to disclose:

- Climate-related risks that have had or are reasonably likely to have a material impact on the registrant's business strategy, results of operations, or financial condition;
- The actual and potential material impacts of any identified climate-related risks on the registrant's strategy, business model, and outlook;
- If, as part of its strategy, a registrant has undertaken activities to mitigate or adapt to a material climate-related risk, a quantitative and qualitative description of material expenditures incurred and material impacts on financial estimates and assumptions that directly result from such mitigation or adaptation activities;
- Specified disclosures regarding a registrant's activities, if any, to mitigate or adapt to a material climate-related risk including the use, if any, of transition plans, scenario analysis, or internal carbon prices;
- Any oversight by the board of directors of climate-related risks and any role by management in assessing and managing the registrant's material climate-related risks;
- Any processes the registrant has for identifying, assessing, and managing material climate-related risks and, if the registrant is managing those risks, whether and how any such processes are integrated into the registrant's overall risk management system or processes;
- Information about a registrant's climate-related targets or goals, if any, that have materially affected or are reasonably likely to materially affect the registrant's business, results of operations, or financial condition. Disclosures would include material expenditures and material impacts on financial estimates and assumptions as a direct result of the target or goal or actions taken to make progress toward meeting such target or goal;
- For large accelerated filers (LAFs) and accelerated filers (AFs) that are not otherwise exempted, information about material Scope 1 emissions and/or Scope 2 emissions;
- For those required to disclose Scope 1 and/or Scope 2 emissions, an assurance report at the limited assurance level, which, for an LAF, following an additional transition period, will be at the reasonable assurance level;
- The capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions, such as hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures, and sea level rise, subject to applicable one percent and de minimis disclosure thresholds, disclosed in a note to the financial statements;
- The capitalized costs, expenditures expensed, and losses related to carbon offsets and renewable energy credits or certificates (RECs) if used as a material component of a registrant's plans to achieve its disclosed climate-related targets or goals, disclosed in a note to the financial statements; and

FACT SHEET | The Enhancement and Standardization of Climate-Related Disclosures: Final Rules

- If the estimates and assumptions a registrant uses to produce the financial statements were materially impacted by risks and uncertainties associated with severe weather events and other natural conditions or any disclosed climate-related targets or transition plans, a qualitative description of how the development of such estimates and assumptions was impacted, disclosed in a note to the financial statements.
-

Presentation of the Disclosures

The final rules will require a registrant (including a foreign private issuer) to:

- File the climate-related disclosure in its registration statements and Exchange Act annual reports filed with the Commission;
 - Provide the Regulation S-K mandated climate-related disclosures either in a separate, appropriately captioned section of its registration statement or annual report or in another appropriate section of the filing, such as Risk Factors, Description of Business, or Management's Discussion and Analysis, or, alternatively, by incorporating such disclosure by reference from another Commission filing as long as the disclosure meets the electronic tagging requirements of the final rules; and
 - Electronically tag climate-related disclosures in Inline XBRL.
-

Phase-In Periods and Accommodations

The final rules will be phased in for all registrants with the compliance date dependent upon the status of the registrant as an LAF, an AF, or non-accelerated filer (NAF), smaller reporting company (SRC), or emerging growth company (EGC), and the content of the disclosure and provides several accommodations, including:

- Additional phase-in periods for disclosures pertaining to material expenditures, GHG emissions, the assurance requirement, and the electronic tagging requirement if the registrant is an LAF (see compliance date table);
- A safe harbor from private liability for climate-related disclosures (excluding historical facts) pertaining to transition plans, scenario analysis, the use of an internal carbon price, and targets and goals;
- An exemption from the GHG emissions disclosure requirement for SRCs and EGCs; and
- An accommodation that allows Scope 1 and/or Scope 2 emissions disclosure, if required, to be filed on a delayed basis as follows:
 - If a domestic registrant, in its Form 10-Q for the second fiscal quarter in the fiscal year immediately following the year to which the GHG emissions disclosure relates;

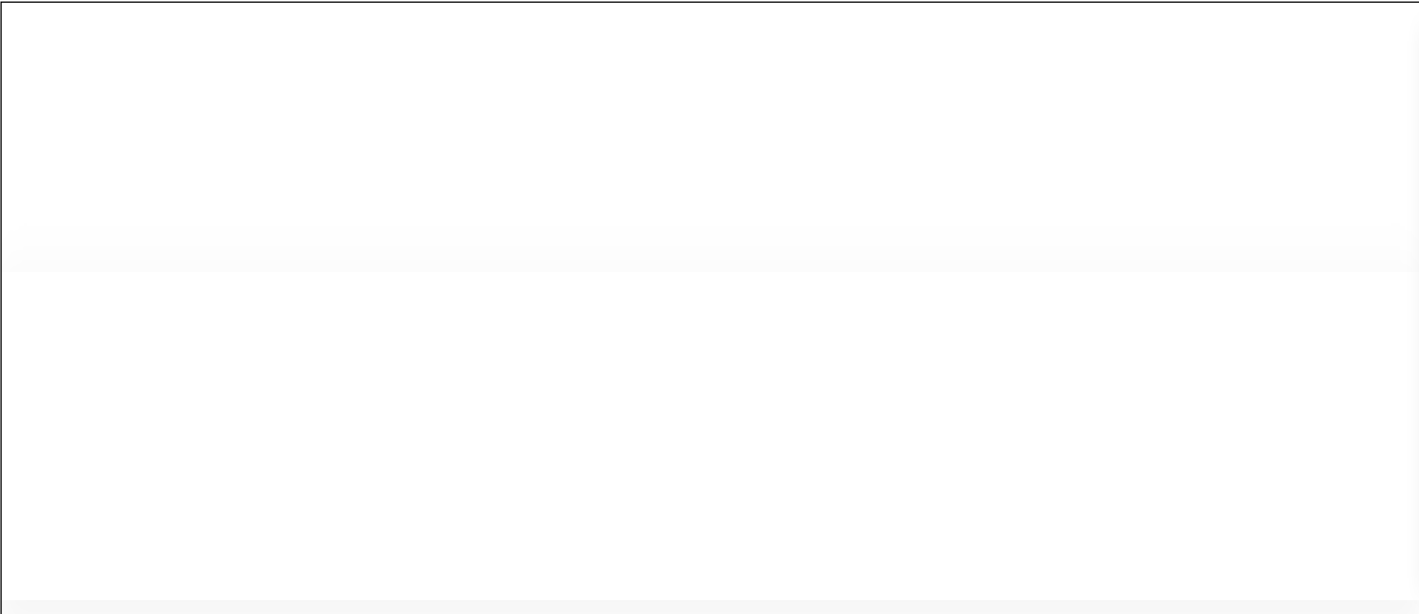
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- If a foreign private issuer, in an amendment to its annual report on Form 20 F, which shall be due no later than when such disclosure would be due for a domestic registrant; and
- If filing a Securities Act or Exchange Act registration statement, as of the most recently completed fiscal year that is at least 225 days prior to the date of effectiveness of the registration statement.

What's Next

The final rules will become effective 60 days after publication in the Federal Register, and compliance will be phased in as follows:

Compliance Dates under the Final Rules ¹						
Registrant Type	Disclosure and Financial Statement Effects Audit		GHG Emissions/Assurance			Electronic Tagging
	<i>All Reg. S-K and S-X disclosures, other than as noted in this table</i>	<i>Item 1502(d)(2), Item 1502(e)(2), and Item 1504(c)(2)</i>	<i>Item 1505 (Scopes 1 and 2 GHG emissions)</i>	<i>Item 1506 - Limited Assurance</i>	<i>Item 1506 - Reasonable Assurance</i>	<i>Item 1508 - Inline XBRL tagging for subpart 1500²</i>
LAFs	FYB 2025	FYB 2026	FYB 2026	FYB 2029	FYB 2033	FYB 2026
AFs (other than SRCs and EGCs)	FYB 2026	FYB 2027	FYB 2028	FYB 2031	N/A	FYB 2026
SRCs, EGCs, and NAFs	FYB 2027	FYB 2028	N/A	N/A	N/A	FYB 2027
¹ As used in this chart, "FYB" refers to any fiscal year beginning in the calendar year listed. ² Financial statement disclosures under Article 14 will be required to be tagged in accordance with existing rules pertaining to the tagging of financial statements. See Rule 405(b)(1)(i) of Regulation S-T.						



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CLIMATE

Amid legal challenges, SEC pauses its climate rule

FILE - The sun sets behind an idle pump jack near Karnes City, Texas, April 8, 2020. The U.S. Securities and Exchange Commission paused on Thursday, April 4, 2024, the implementation of its new climate disclosure rule while it defends the regulation in court. (AP Photo/Eric Gay, File) [Read More](#)



BY **SUMAN NAISHADHAM**
Updated 1:48 PM EDT, April 5, 2024

WASHINGTON (AP) — The U.S. Securities and Exchange Commission is pausing the implementation of its [new climate disclosure rule](#) while it defends the regulation in court.

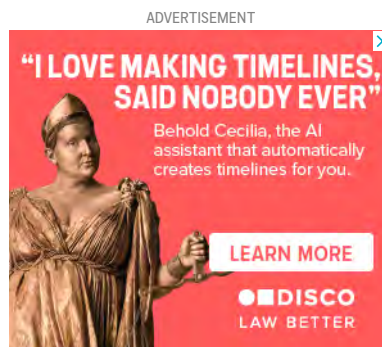


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Wall Street's top regulator voted in March on the final rule, which requires some public companies in the U.S. to report their greenhouse gas emissions and climate risks. The measure faced [legal challenges](#) almost immediately.

The SEC said Thursday it had stayed the rule in part to avoid regulatory uncertainty for companies that might have been subject to the rule while litigation against it proceeds. The rule is pending review in the U.S. Court of Appeals for the Eighth Circuit.

The rule adopted in early March was watered down from what the nation's top financial regulator had proposed two years ago, after it faced lobbying and criticism from business and trade groups and Republican-led states that argued the SEC had overstepped its mandate. But that didn't stave off lawsuits. After the final rule was approved, environmental groups including the Sierra Club also sued, saying the SEC's weakened rule did not go far enough.



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The SEC said it would continue “vigorously defending” the validity of its climate rule and believes that it had acted within its authority to require disclosures important to investors. A stay would “allow the court of appeals to focus on deciding the merits,” the SEC said in a statement.

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Michael Littenberg, an attorney with Ropes & Gray and the head of the firm's environmental, social and governance or ESG division, said the stay was unlikely to be a factor in the ultimate fate of the SEC's regulation.

And while some companies may delay efforts to comply with the SEC's measure, "it's not pencils down on climate disclosure more generally," Littenberg said.

Companies are already collecting data and climate-related information to comply with similar rules in other jurisdictions, such as California and the European Union, which recently moved ahead with their own disclosure requirements. California's rule has also been challenged in court.

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Jon Solorzano, an attorney with Vinson & Elkins who advises companies on ESG topics, said the uncertainty surrounding the SEC's rule presents more challenges for smaller companies than large ones.

"That's where it gets tricky because they don't have unlimited resources," Solorzano said. "This is at a genuine cost to their business ... how much they should be investing in something that may or may not come to pass."

In addition to reporting greenhouse gas emissions, the SEC rule requires U.S.-listed companies to publicly report their [climate-related risks](#) and information about their plans to transition to a low-carbon economy.

The agency dropped a requirement that would have had companies report some indirect emissions known as Scope 3. Those don't come from a company or its operations, but happen along its supply chain — for

example, in the production of the fabrics that make a retailer's clothing.

The SEC's reporting requirements would not have taken effect until 2026.

The Associated Press' climate and environmental coverage receives financial support from multiple private foundations. AP is solely responsible for all content. Find AP's [standards](#) for working with philanthropies, a list of supporters and funded coverage areas at [AP.org](#).



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Naishadham is a reporter on the AP climate and environment team. She mainly covers water in the American West, the Colorado River and environmental policy.
✕ ✉

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Office of Utility Consumer Counselor
IURC Cause No. 46038
Data Request Set No. 26
Received: June 20, 2024

OUCC 26.06

Request:

Regarding DEI's proposal for its ongoing management of Renewable Energy Credits (RECs) and the GoGreen Program as described by DEI Witness Suzanne Sieferman:

- a. Will GoGreen customers pay only for the RECs used under the program, or will the RECs from Speedway Solar and all future DEI renewable PPAs and assets be charged to the program as a cost for participation regardless if GoGreen customers use them? Please explain.
- b. Please indicate the method of tracking RECs that DEI plans to use for both GoGreen customers and general customer REC inventory:
 - i. A certificate-based tracking system, where DEI or the renewable generator registers and retires RECs with an electronic REC tracking system such as MRETS or PJM-GATS;
 - ii. A contract-path tracking method where DEI would verify RECs through a third-party audit supported by declarations, sworn statements, contract receipts, and other proof of generation and transfer of ownership.
 - iii. Another method (please describe); or
 - iv. Any combination of the above methods.
- c. If DEI retires any RECs on behalf of all DEI customers because the GoGreen program participants did not consume all RECs in DEI's annual inventory, will DEI incur retirement fees or audit costs (in the case of a contract-path tracking method) that would be charged to all retail customers? Please explain and indicate how DEI would recover these costs from ratepayers (i.e. through the FAC).
- d. Does DEI anticipate that participation in the GoGreen program will increase to the point where GoGreen customers consume all RECs generated by Speedway Solar, future renewable PPAs, and future DEI-owned renewable generation assets? If so, please explain the basis for this expectation.

Objection:

Duke Energy Indiana objects to subparts a and d to this request to the extent they call for speculation regarding future renewable PPAs and assets.

Response:

Subject to and without waiving or limiting its objections, Duke Energy Indiana responds as follows:

- a. Customers that choose to participate in the GoGreen program will only pay for the RECs they choose to purchase under the program. RECs from Speedway Solar will not be charged to the GoGreen program unless the RECs are used for customer participation.
- b. RECs retired on behalf of the GoGreen program participants will continue to be retired in a certificate-based tracking system as has been done in the past. GoGreen program participants will continue to receive documentation supporting the RECs retired under the program. Duke Energy Indiana does not plan to track Speedway Solar PPA RECs in excess of what is needed for the GoGreen program in a certificate-based tracking system. Any retirement of these excess Speedway Solar PPA RECs on behalf of all Duke Energy Indiana customers will be made through a self-certifying process in which RECs are tracked and accounted for to prevent the possibility of double counting environmental claims.
- c. Since the Speedway Solar PPA RECs in excess of what is needed for the GoGreen program will be retired through the self-certifying process described above, no incremental costs will be incurred that would be charged to all retail customers.
- d. Based on historic GoGreen participation, Duke Energy Indiana does not believe it is likely that the REC needs for the GoGreen program will be greater than what is generated by the Speedway Solar PPA. As discussed in direct testimony, Speedway Solar is expected to produce 426,000 RECs per year once it is online. Since 2020, the GoGreen program needs have not exceeded 25,000 RECs per year for the subscription component of the program, or 55,000 RECs per year for the subscription and large business customer component of the program in total.

Witness: Suzanne E. Sieferman

OUCC Attachment CMA-17 is attached as an Excel File.
File name: "46038 OUCC Attachment CMA 17.xlsx"

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing *Indiana Office of Utility Consumer Counselor Public's Exhibit No. 5 Redacted Testimony of OUCC Witness Cynthia M. Armstrong* has been served upon the following counsel of record in the captioned proceeding by electronic service on July 11, 2024.

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