

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF DUKE ENERGY INDIANA, LLC)
("DUKE ENERGY INDIANA") PURSUANT TO IND. CODE)
CHS. 8-1-8.5, 8-1-8.8, AND IND. CODE §§ 8-1-2-0.6 AND 8-1-2-)
23 FOR (1) ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY ("CPCN") PURSUANT)
TO IND. CODE CH. 8-1-8.5 TO CONSTRUCT TWO)
COMBINED CYCLE ("CC") NATURAL GAS UNITS, AT)
APPROXIMATELY 738 MEGAWATTS (WINTER RATING))
EACH, AT THE EXISTING CAYUGA GENERATING)
STATION ("CAYUGA CC PROJECT"); (2) APPROVAL OF)
THE CAYUGA CC PROJECT AS A CLEAN ENERGY)
PROJECT AND AUTHORIZATION FOR FINANCIAL)
INCENTIVES INCLUDING TIMELY COST RECOVERY)
THROUGH CONSTRUCTION WORK IN PROGRESS) CAUSE NO. 46193
("CWIP") RATEMAKING THROUGH A GENERATION)
COST ADJUSTMENT ("GCA") TRACKER MECHANISM)
UNDER IND. CODE CH. 8-1-8.8; (3) AUTHORITY TO)
RECOVER COSTS INCURRED IN CONNECTION WITH)
THE CAYUGA CC PROJECT; (4) APPROVAL OF THE BEST)
ESTIMATE OF COSTS OF CONSTRUCTION ASSOCIATED)
WITH THE CAYUGA CC PROJECT; (5) APPROVAL OF)
CHANGES TO DUKE ENERGY INDIANA'S ELECTRIC)
SERVICE TARIFF RELATING TO THE PROPOSED GCA)
TRACKER MECHANISM; (6) APPROVAL OF SPECIFIC)
RATEMAKING AND ACCOUNTING TREATMENT; AND)
(7) ONGOING REVIEW OF THE CAYUGA CC PROJECT)

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR
PUBLIC'S EXHIBIT NO. 1
TESTIMONY OF OUCC WITNESS
BRIAN R. LATHAM

Respectfully submitted,

INDIANA OFFICE OF UTILITY CONSUMER
COUNSELOR



T. Jason Haas, Attorney No. 34983-29
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**TESTIMONY OF OUCC WITNESS BRIAN R. LATHAM
CAUSE NO. 46193
DUKE ENERGY OF INDIANA**

I. INTRODUCTION

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

2 A: My name is Brian R. Latham, and my business address is 115 West Washington
3 Street, Suite 1500 South, Indianapolis, Indiana 46204.

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

5 A: I am employed by the Indiana Office of Utility Consumer Counselor ("OUCC")
6 as the Electric Division Director. A summary of my educational background and
7 experience is included in Appendix A attached to my testimony.

8 **Q: Have you previously testified before the Indiana Utility Regulatory
9 Commission ("Commission")?**

10 A: Yes. I have testified before the Commission in major electric rate cases, including
11 Cause Nos. 46120, 46038, 45933, and 45990. I have also testified before the
12 Commission in Certificate of Public Convenience and Necessity ("CPCN") cases,
13 including Cause Nos. 45920, 46022, and 46113, and in Demand Side Management
14 and numerous additional dockets.

II. PURPOSE OF TESTIMONY

15 **Q: What is the purpose of your testimony?**

16 A: I address the "Five Pillars of Electric Utility Service" ("Five Pillars") as prescribed
17 by Ind. Code § 8-1-2-0.6. In addressing the Five Pillars, I discuss whether Duke

1 Energy Indiana, LLC (“Duke” or “Petitioner”) adequately considered customer
2 affordability, reliability, resiliency, stability, and environmental sustainability in
3 its case-in-chief with respect to Petitioner’s proposed construction of two new
4 combined cycle (“CC”) natural gas units. I also introduce the OUCC’s witnesses
5 and provide an overview of their testimonies. Additionally, I note the current status
6 of state and federal policy on coal and other generation resources and why, given
7 the current outlook, it is ill-advised to invest more than \$3.3 Billion of ratepayer
8 money in two new CC natural gas units with a 30-year life, particularly when the
9 public policy landscape is resoundingly reexamining environmental regulations,
10 coal unit retirements, and the status of alternative generation sources.

11 **Q: What relief is Duke seeking in this Cause?**

12 A: Duke seeks approval of a CPCN to construct two CC natural gas units capable of
13 generating approximately 738 megawatts (winter rating) each, at its existing
14 Cayuga generating station site (“the Project” or “the Cayuga CC Project”). The
15 first CC unit is projected to go into service in early 2030, the second in early 2031.
16 Duke plans to retire the coal-fired units currently operating at the Cayuga site and
17 replace them with new gas-fired CC units.

18 **Q: Please describe the review and analysis you conducted to prepare your**
19 **testimony.**

20 A: I reviewed relevant portions of Duke’s petition, testimony, exhibits, and
21 workpapers prefiled in this Cause. I also reviewed Duke’s discovery responses,
22 and I attended OUCC case team meetings and participated in discussions with the

1 OUCC's professional staff concerning this Cause. I also reviewed previous CPCN
2 filings. I analyzed Duke's request based on this review.

3 **Q: What is the OUCC's overall recommendation in this proceeding?**

4 A: The OUCC recommends the Commission deny Duke's requested CPCN for the
5 Cayuga CC Project as proposed. The OUCC also recommends Duke reexamine
6 the retirement schedule and related activities associated with the existing Cayuga
7 units and take appropriate measures to extend the lives of the existing units
8 consistent with this reevaluation. (OUCC witness Cynthia Armstrong discusses
9 this recommendation in greater detail).

10 **Q: To the extent you do not address a specific topic, issue, or item, should that**
11 **be construed to mean you agree with Duke's proposal?**

12 A: No. My silence regarding any topic, issue, or items Duke proposes does not
13 indicate my approval of those topics, issues, or items. Rather, the scope of my
14 testimony is limited to the specific items I address, and my silence in response to
15 an issue should not be construed as an endorsement.

III. OUCC WITNESSES

16 **Q: Please introduce the OUCC's witnesses in this Cause.**

17 A: The following OUCC witnesses are providing testimony on the issues
18 summarized:

19 **Ms. Cynthia Armstrong** challenges Duke's assumptions regarding
20 environmental regulatory costs driving the decision to retire the Cayuga coal units
21 and replace them with the Cayuga CC Project. She explains the U.S.
22 Environmental Protection Agency ("EPA") has announced plans to reconsider

1 many of the regulations driving the decision to retire Cayuga Units 1 and 2 and
2 that both the current federal and state administrations are advocating re-evaluating
3 coal-based electric generation planned retirements and extending their operating
4 lives (Public Exhibit No 2).

5 **Mr. John Hanks** discusses resource option alternatives to Duke's proposed CCs
6 at Cayuga that are considered within Duke's Integrated Resource Plan ("IRP").
7 Mr. Hanks highlights Duke's "No 111" scenario shows the possibility of saving
8 customers \$1.1 Billion annually if EPA Rule 111 is repealed. Mr. Hanks argues
9 that Duke's short-term action plan resulting from its IRP, which includes the
10 proposed Cayuga CC Project, should be re-evaluated, particularly in light of
11 regulatory developments (Public Exhibit No. 3).

12 **Mr. Jared Hoff** discusses Duke's proposal to use natural gas to supply the
13 proposed Cayuga CC Project. Mr. Hoff's testimony addresses Duke's fuel cost
14 and fuel cost per MWh (Public Exhibit No. 4).

15 **Ms. Roopali Sanka** addresses the sufficiency of Duke's support for the Cayuga
16 CC Project, including whether Petitioner thoroughly evaluated alternative
17 resources and conducted a competitive RFP bidding process to justify, the
18 necessity and affordability of pursuing its \$3.3 Billion project (Public Exhibit No
19 5).

20 **Mr. Patrick Kelley** testifies upon the lack of evidence to provide reasonableness
21 to Duke's best estimate, describing otherwise apparently significant overestimated
22 costs in Duke's estimate. Mr. Kelley discusses comparative estimates and costs
23 (Public Exhibit No. 6).

24 **Ms. Brittany Baker** presents the OUCC's position regarding the requested
25 accounting and ratemaking treatment for the Cayuga CC Project. She discusses the
26 Project's projected rate impact and its affordability. She also discusses the
27 proposed cost recovery for the IRP costs, the Request for Proposal costs, and
28 external support for potential property tax incentives. Ms. Baker presents the
29 OUCC's position on the proposed rate of return used to calculate financing costs
30 under the proposed Construction Work in Progress ratemaking. Additionally, Ms.
31 Baker recommends changing the name of Petitioner's proposed Generation Cost
32 Adjustment (GCA) to avoid confusion with the Gas Cost Adjustments filed
33 regularly by the state's natural gas utilities (Public Exhibit No. 7).

34 **Consumer Comments:** The OUCC is submitting more than 2,100 written
35 consumer comments that were received in this proceeding as Public's Exhibit No.
36 8.

IV. **AFFORDABILITY**

1 **Q: What is Duke's projected Project construction cost?**

2 A: Duke stated it expects the total Project cost to be approximately \$3.33 Billion
3 (including Allowance for Funds Used During Construction, property taxes, and
4 project reserve).¹ When total gross financing costs over the life of the Project are
5 included, the total cost is estimated to be \$5,303,888,000.²

6 **Q: Did Duke provide a comparison of its coal operating costs with projected gas**
7 **operating costs?**

8 A: Duke did not provide any projections comparing Cayuga gas operating costs with
9 its current coal operating costs in this case.

10 **Q: How will Duke's proposed \$3.3 Billion incremental revenue requirement**
11 **affect Petitioner's residential customers?**

12 A: Duke did not provide calculations estimating the total impact of its proposed
13 project on residential bills. Rather, Duke estimated the costs in the first tracker
14 filing after approval will result in an incremental charge of approximately \$1.87
15 for a typical residential customer using 1,000 kWh per month.³ If approved, these
16 periodic trackers will increase ratepayers' bills as the project is under construction.
17 Duke further estimated the overall revenue requirement increase for the five-year
18 period between April 2025 and March 2031 will be 5.4%.⁴ When the project is
19 included in rate base, OUCC witness Brittany Baker estimates the total bill impact

¹ Petitioner's Exhibit No. 3, Direct Testimony of John Robert Smith, page 18, lines 19-21.

² Petitioner's Exhibit No. 7, Direct Testimony of Justin G. Sufan, page 12, line 7.

³ Sufan Direct, page 21, lines 8-10.

⁴ Sufan Direct, Attachment 7-D, page 1.

1 of Duke's proposed CPCN to be \$19.37 per month for a residential customer using
2 1,000 kWh, in addition to the rates customers are currently paying.

3 **Q: Did Duke address affordability by considering lower cost generation options?**

4 A: Not adequately. As addressed in greater detail by OUCC witness Roopali Sanka,
5 Duke provided insufficient evidence to substantiate an investigation of lower cost
6 generation options.

7 **Q: In its case-in-chief, did Duke address the prospect that changing
8 environmental standards may impact both the short- and long-term
9 affordability of its proposed Cayuga CC Project relative to other options?**

10 A: No. However, changing environmental standards may make coal a more cost-
11 effective (affordable) option. Also, natural gas may become less cost effective as
12 environmental standards change. OUCC witnesses Armstrong and Hanks address
13 the potential effects that changing environmental standards may have on the
14 affordability of Duke's proposed Cayuga CC Project.

15 **Q: Is the OUCC concerned about the affordability of Duke's proposed Project?**

16 A: Considering the Project's costs and potential financial toll on ratepayers, the
17 OUCC has significant affordability concerns. Reliability, resiliency, and stability
18 do not excuse presenting an overstated cost estimate in lieu of a best estimate.
19 Doing so undermines the equally important pillar of affordability.

20 **Q: Is the Cayuga CC Project affordable for ratepayers?**

21 A: The Project, if approved as proposed, would have a significant negative effect on
22 ratepayer affordability. Duke filed a petition in Cause No. 46038 for a rate increase
23 last year on April 4, 2024, and received the Final Order on January 29, 2025. Now,

1 Duke is asking for ratepayers to pay an additional monthly charge from April 2026
2 through March 2031, starting at an estimated \$1.87 per 1,000 kWh, and increasing
3 substantially over time.⁵ Based on these factors, the Project will have a negative
4 effect on affordability for Duke's ratepayers.

V. RELIABILITY

5 **Q: What is reliability as it relates to electric generation?**

6 A: Under Ind. Code § 8-1-2-0.6, reliability is the adequacy of electric utility service,
7 including the ability of the electric system to always supply the aggregate electrical
8 demand and energy requirements of end use customers, taking into account
9 scheduled and reasonably expected unscheduled outages of system elements. In
10 Ind. Code § 8-1-2-0.6, reliability also includes the operating reliability of the
11 electric system, including the ability of the electric system to withstand sudden
12 disturbances such as electric short circuits or unanticipated loss of system
13 components.

14 **Q: Are both gas generation and coal generation reliable sources?**

15 A: Yes. Although no energy source is 100 percent reliable, both gas and coal are
16 reliable. Currently, coal and gas are more reliable than renewable energy as neither
17 are dependent on sunshine or wind to operate.

⁵ Sufan Direct, page 21, lines 8-10. *See also*, Direct Testimony of OUCC Witness Baker.

VI. RESILIENCY

1 **Q: What is resiliency as it relates to electric generation under the Five Pillars?**

2 A: Under Ind. Code § 8-1-2-0.6, resiliency is the ability of the electric system or its
3 components to adapt to changing conditions and withstand and rapidly recover
4 from disruptions or off-nominal events.

5 **Q: In your opinion, do coal generation and gas generation both satisfy this**
6 **attribute of electric utility service?**

7 A: Yes. Both coal generation and gas generation provide resiliency. The OUCC
8 recognizes Duke's IRP and updated analysis show additional replacement capacity
9 for retiring generation is needed to preserve resiliency, as well as reliability and
10 stability.

VII. STABILITY

11 **Q: What is stability as it relates to electric generation under the Five Pillars?**

12 A: Pursuant to Ind. Code § 8-1-2-0.6, stability includes the ability of the electric
13 system to maintain a state of equilibrium during normal and abnormal conditions
14 or disturbances and deliver a stable source of electricity consistent with industry
15 standards. This includes delivering a stable source of electricity, in which
16 frequency and voltage are maintained within defined parameters.

17 **Q: In your opinion, do both coal generation and gas generation meet the**
18 **definition of stability?**

19 A: Yes. Both coal-fired generation and gas-fired generation are stable resources for
20 electric generation as defined in the statute.

VIII. ENVIRONMENTAL SUSTAINABILITY

1 **Q: What is environmental sustainability as it relates to electric generation under**
2 **the Five Pillars?**

3 A: Environmental sustainability as described in Ind. Code § 8-1-2-0.6 includes
4 evaluating the impact of environmental regulations on the cost of providing
5 electric utility service and evaluating the demand from consumers for
6 environmentally sustainable sources of electric generation.

7 **Q: Did the OUCC consider environmental sustainability in its review of the**
8 **requested CPCN?**

9 A: Yes. Replacing coal generation with gas reduces greenhouse gas emissions.
10 However, natural gas generation facilities also produce greenhouse gases that
11 adversely impact the environment; consequently, the long-term environmental
12 sustainability of both gas and coal is unknown. Developing technologies and future
13 environmental regulations may prompt the obsolescence of both gas and coal due
14 to their environmental impacts.

15 Spending more than \$3.3 Billion on a gas generating plant designed to operate for
16 30-years during the current window of evolving regulations and technology
17 advancements, knowing the Cayuga CC Project is now limited from the outset to
18 operating at a 40% or lower annual capacity factor to comply with environmental
19 constraints, is imprudent. It is even more unreasonable since this gas plant may be
20 required to cease operations well before its projected 30-year life. Changing
21 regulatory conditions that would affect both coal generation and natural gas

1 generation must be considered when evaluating “the impact of environmental
2 regulations on the cost of providing electric utility service,” as required by Ind.
3 Code § 8-1-2-0.6.

4 **Q: Has the State of Indiana encouraged investigation and pursuit of emerging**
5 **energy generation alternatives?**

6 A: Yes. On April 10, 2025, Indiana Governor Mike Braun issued Executive Order
7 (“EO”) 25-48 establishing the “Nuclear Indiana Coalition” to advance the
8 development of nuclear energy, including small modular reactors. This EO
9 recognizes Governor Braun and the State of Indiana are committed to investigating
10 and pursuing energy generation alternatives. These energy alternatives have the
11 potential to render Duke’s proposed Cayuga CC Project obsolete prior to the end
12 of the Project’s planned useful life. This potentially could leave ratepayers
13 financially responsible for Duke’s stranded assets, if this Project is approved as
14 proposed. These stranded assets may continue to cost ratepayers material amounts
15 on their monthly bills long after the Project’s assets are no longer used and useful.

16 **Q: Does Duke’s proposal properly consider the environmental sustainability**
17 **Pillar⁶?**

18 A: No. In November 2024, Indiana voters elected Mike Braun Governor and helped
19 elect President Donald Trump. Both Governor Braun and President Trump have
20 recently issued executive orders supporting the continued use of coal. On April 8,

⁶ Ind. Code § 8-1-2-0.6(5).

1 2025, President Trump issued Executive Order 14261, titled “Reinvigorating
2 America’s Beautiful Clean Coal Industry and Amending Executive Order
3 14241.”⁷ On April 10, 2025, Governor Braun issued EO 25-50, directing Indiana’s
4 Secretary of Energy and Natural Resources to work with the Commission and the
5 Indiana Office of Energy Development to evaluate every remaining Indiana coal-
6 based generation plant to consider extending the life of that plant.⁸ In light of these
7 state and federal EOs, Duke’s proposal to spend \$3.3 Billion is premature.

8 **Q: Should the Commission consider the impact of changing federal and state**
9 **environmental positions?**

10 A: Yes. Indiana’s environmental sustainability Pillar requires decisions concerning
11 our state’s electric generation resource mix to consider “the impact of
12 environmental regulations on the cost of providing electric utility service.”⁹
13 Following the elections of President Trump and Governor Braun, the impact of
14 environmental regulations has changed dramatically, as exemplified by the
15 executive orders mentioned above.¹⁰ The prospect of the EPA re-evaluating and
16 potentially repealing environmental regulations that were steering utilities to retire
17 or at least evaluate retiring coal-fired generation plants creates a new regulatory

⁷ Executive Order 14261 (April 8, 2025), found at: <https://www.whitehouse.gov/presidential-actions/2025/04/reinvigorating-americas-beautiful-clean-coal-industry-and-amending-executive-order-14241/>

⁸ <https://www.in.gov/gov/files/EO-25-50-.pdf>.

⁹ Ind. Code § 8-1-2-0.6(5)(b).

¹⁰ See Fns. 7 and 8, above.

1 environment under which the environmental sustainability Pillar must be
2 considered anew. OUCC Witness Armstrong discusses this changing regulatory
3 landscape in her testimony.

IX. OUCC RECOMMENDATIONS

4 **Q: Please summarize the OUCC's recommendations.**

5 A: The OUCC recommends the Commission deny Duke's requested CPCN as
6 proposed. Public convenience and necessity neither require nor support
7 construction of the Project as filed in this Cause.

8 The OUCC also requests that Petitioner be directed to consider other alternatives,
9 including, but not limited to, continuing to operate Cayuga as a coal fired
10 generating plant or refueling and operating the existing Cayuga units with natural
11 gas. The OUCC recommends Duke complete a more current analysis of the
12 environmental regulations that will affect its generation fleet given federal and
13 state pronouncements.

14 If the Commission chooses to approve Duke's CPCN request, I recommend
15 adoption of the following recommendations from OUCC witness Baker:

- 16 1. Establishing the financing rate as the lower of Duke's approved cost of
17 debt or its most recently approved weighted average cost of capital;
- 18 2. Changing the name of Duke's proposed tracker from "GCA" (Generation
19 Cost Adjustment) to "GCT" (Generation Cost Tracker), to avoid confusion

1 with the Gas Cost Adjustment trackers used by the state's natural gas
2 utilities for more than 40 years;

3 3. Recovering only the incurred IRP and RFP costs associated with the
4 Cayuga CC Project over a five-year period; and

5 4. Recovering external support costs related to the Cayuga CC Project's
6 property tax incentives over a five-year period.

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

8 A: Yes, it does.

APPENDIX A

QUALIFICATIONS OF BRIAN R. LATHAM

1 **Q: Please describe your educational background and experience.**

2 A: I graduated from Northern Illinois University in DeKalb, Illinois, with a bachelor's
3 degree in accounting. I then attended Illinois State University in Normal, Illinois,
4 and obtained a master's degree in accounting. In addition, I have participated in
5 various continuing education programs sponsored by my current and former
6 employers.

7 I began my employment in 1992 as a Staff Accountant with OSI Industries (Aurora,
8 Illinois). In 1995, I was hired as a cost accountant at Rexnord in Milwaukee,
9 Wisconsin. In 1998, I was hired as a cost accounting manager at Morton Metalcraft
10 (Morton, Illinois) and eventually promoted to a Controller role at Illinois Machine
11 and Tool Works. In 2001, I was hired at Hamernik Associates, where I was a work-
12 out and bankruptcy consultant. I was an independent financial recruiter in 2007 and
13 2008. In March 2008, I was hired as Vice President of Finance for Junior
14 Achievement of Central Indiana. In 2009, I was hired as a Utility Analyst for the
15 Indiana Utility Regulatory Commission, where I worked as a member of the Water
16 Division Staff, reviewing water and wastewater utility filings and making
17 recommendations based on witness' testimony and Indiana law. In 2018, I was
18 hired as Controller for Aqua Indiana, where I was responsible for Aqua Indiana's
19 financial operations, and my roles included the oversight and accountability of the

1 monthly, quarterly, and annual financial closings and reporting, SOX and audit
2 compliance, budget, forecasting, and five-year planning, regulatory petitions,
3 acquisitions, and other strategic projects. After a short stint as Controller at Senior
4 Home Companions, I was hired at the OUCC as a Utility Analyst in October 2022.
5 I was promoted to Electric Division Director in December 2024.

6 At the OUCC I provide written testimony ranging from rate cases to clean energy
7 generation facilities and regional transmission organization adjustments. I work on
8 demand supply management relationships and commission investigation teams. I
9 attended the NARUC Staff Subcommittee on Accounting and Finance Spring
10 Conference in April 2023.

AFFIRMATION

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

A handwritten signature in black ink, appearing to read "B R Latham", written over a horizontal line.

Brian R. Latham
Utility Analyst II
Indiana Office of Utility Consumer Counselor

Cause No. 46193
Duke Energy Indiana, LLC

Date: May 8, 2025

CERTIFICATE OF SERVICE

This is to certify that a copy of the **Indiana Office of Utility Consumer Counselor Public's Exhibit No. 1 Testimony of OUCC Witness Brian R. Latham** has been served upon the following in the above-captioned proceeding by electronic service on May 8, 2025.

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