

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION AND APPLICATION OF DUKE ENERGY)
INDIANA ENERGY, INC., D/B/A DUKE ENERGY INDIANA,)
INC., AND SOUTHERN INDIANA GAS AND ELECTRIC)
COMPANY, D/B/A VECTREN ENERGY DELIVERY OF)
INDIANA, INC., PURSUANT TO INDIANA CODE CHAPTERS 8-)
1-8.5, 8-1-8.7, 8-1-8.8, AND SECTIONS 8-1-2-6.8, 8-1-2-6.7, 8-1-2-)
42(a) REQUESTING THAT THE COMMISSION: (1) ISSUE)
APPLICABLE CERTIFICATES OF PUBLIC CONVENIENCE)
AND NECESSITY AND APPLICABLE CERTIFICATES OF)
CLEAN COAL TECHNOLOGY TO EACH JOINT PETITIONER)
FOR THE CONSTRUCTION OF AN INTEGRATED)
GASIFICATION COMBINED CYCLE GENERATING FACILITY)
("IGCC PROJECT") TO BE USED IN THE PROVISION OF)
ELECTRIC UTILITY SERVICE TO THE PUBLIC; (2) APPROVE)
THE ESTIMATED COSTS AND SCHEDULE OF THE IGCC)
PROJECT; (3) AUTHORIZE EACH JOINT PETITIONER TO)
RECOVER ITS CONSTRUCTION AND OPERATING COSTS)
ASSOCIATED WITH THE IGCC PROJECT ON A TIMELY)
BASIS VIA APPLICABLE RATE ADJUSTMENT)
MECHANISMS; (4) AUTHORIZE EACH JOINT PETITIONER)
TO USE ACCELERATED DEPRECIATION FOR THE IGCC)
PROJECT; (5) APPROVE CERTAIN OTHER FINANCIAL)
INCENTIVES FOR EACH JOINT PETITIONER ASSOCIATED)
WITH THE IGCC PROJECT; (6) GRANT EACH JOINT)
PETITIONER THE AUTHORITY TO DEFER ITS PROPERTY)
TAX EXPENSE, POST-IN-SERVICE CARRYING COSTS,)
DEPRECIATION COSTS, AND OPERATION AND)
MAINTENANCE COSTS ASSOCIATED WITH THE IGCC)
PROJECT ON AN INTERIM BASIS UNTIL THE APPLICABLE)
COSTS ARE REFLECTED IN EACH JOINT PETITIONER'S)
RESPECTIVE RETAIL ELECTRIC RATES; (7) AUTHORIZE)
EACH JOINT PETITIONER TO RECOVER ITS OTHER)
RELATED COSTS ASSOCIATED WITH THE IGCC PROJECT;)
AND (8) CONDUCT AN ONGOING REVIEW OF THE)
CONSTRUCTION OF THE IGCC PROJECT)

CAUSE NO. 43114

VERIFIED PETITION OF DUKE ENERGY INDIANA, INC. FOR)
AUTHORITY PURSUANT TO AN ALTERNATIVE)
REGULATORY PLAN AUTHORIZED UNDER IND. CODE § 8-1-)
2.5 ET SEQ. AND IND. CODE §§ 8-1-2-6.1, 8-1-8.7, AND 8-1-8.8)
TO DEFER AND SUBSEQUENTLY RECOVER ENGINEERING)
AND PRECONSTRUCTION COSTS ASSOCIATED WITH THE)
CONTINUED INVESTIGATION AND ANALYSIS OF)
CONSTRUCTING AN INTEGRATED COAL GASIFICATION)
COMBINED CYCLE ELECTRIC GENERATING FACILITY)

CAUSE NO. 43114-S1

**Motion Requesting Disclosure of Ex Parte Communications under 170 IAC 1-1.5-6 and
Request for Leave to Respond**

Citizens Action Coalition (“CAC”), Save The Valley, Inc. (“STV”), Sierra Club, Inc., and Valley Watch, Inc. (collectively “Residential Customers”) by counsel, respectfully requests that the Commission tender to the record two (2) instances of written communications received by Indiana Utility Regulatory Commission (“IURC”) Staff and Commission members and grant CAC leave to respond. In support of its motion, Residential Customers would show the following:

1. The Edwardsport Electric Plant is currently the subject of IURC Cause Nos. 43114 and 43114-s1. Specifically, the issues involved in the proceedings include recovery of construction and operating costs, favorable rate treatment for the recovery of those costs, rising power plant construction costs, and a request for a Certificate of Public Convenience and Necessity (CPCN) in relation to Duke Energy’s plan to construct a 630 megawatt integrated coal gasification combined cycle plan at the Edwardsport location.
2. Cause Nos. 43114 and 43114-s1 are pending proceedings in which all parties have briefed the issues, proposed orders have been submitted, and await a final order of the commission. Such proceedings are “pending” under 170 Ind. Admin. Code § 1-1.5-2 (2007).
3. Cause Nos. 43114 and 43114-s1 are presided over by Chief Administrative Law Judge (“ALJ”) Scott Storms, and Commissioners David Ziegner and Greg Server.
4. Under 170 I.A.C. § 1-1.5-3, a person described in the rule
may not communicate, directly or indirectly, regarding any issue in
a proceeding while the proceeding is pending with any:
 - (1) member of the commission;
 - (2) administrative law judge (except a judge assigned as a settlement judge in a particular proceeding); or
 - (3) technical employee (except a technical employee directed to file a report in a particular proceeding)

without notice and opportunity for all parties to participate in the communication.

170 IAC § 1-1.5-3(b). Upon receipt of such communication, the ALJ, Commissioner or technical employee shall tender the communication to the record. 170 IAC § 1-1.5-6.

Each party to the proceeding must be given notice of the communication and the opportunity to participate in the communication. Ind. Code § 8-1-1-5(e) (2007); 170 I.A.C. § 1-1.5-3(b).

5. On September 25, 2007, Duke Energy, the Petitioner in Cause Nos. 43114 and 43114-s1, prepared and mailed two documents entitled “An Upward Climb,” an article discussing construction costs of utility infrastructure, and “Rising Utility Construction Costs: Sources and Impacts.” *See* Exhibit 2. Duke sent fifteen (15) copies of the reports, addressed to Chairman Hardy, with the purpose of having the reports distributed to IURC Commissioners and Staff (i.e., technical employees).
6. Each communication was sent to advocate Duke’s position that the Commission approve its request for recovery of construction costs for the Edwardsport plant. Each document discusses the rising costs of new infrastructure construction and advocates favorable rate treatment for utilities engaging in new construction.
7. Although Duke claims that the reports were sent because they were “of interest to the Commission and the Staff,” they also acknowledge the reports’ relevance to Cause Nos. 43114 and 43114-s1, and indicate that the parties to the proceedings were sent copies of these communications.
8. Sending copies of ex parte communications to parties to the proceedings does not satisfy 170 I.A.C. §1-1.5 *et seq.* The rules specifically require that “any communication, whether directly or indirectly, regarding any issue in a proceeding while the proceeding is

pending,” be disclosed in accordance with 170 I.A.C. § 1-1.5-6, including tendering to the record the communication, any written responses, and a memorandum detailing the substance, responses and identity of the persons involved. § 1-1.5-3(b). The party to whom the ex parte communication is made must advise all parties, and each party must have the opportunity to respond, on the record, to such communication. *Id.*

9. On August 30, 2007, IURC staff received via email a Press Release from Julie Aud in the Governor’s Office with the subject line “Governor’s Press Release re: Coal Gas Projects.” *See* Exhibit 2. This communication was from the Office of the Governor and the Office of Energy Defense and Development.
10. The communication, discussing progress on Governor Daniels’ “Hoosier Homegrown Energy” plan, advocated approval of the Edwardsport plant. Specifically, the release stated the Edwardsport plant “will be the first be the first new baseload plant to be built in Indiana in 20 years,” and advocated the governor’s position on the new plant, stating “‘We’ll use Indiana coal, a homegrown resource, in a clearer, state-of-the-art facility,” said the governor. ‘Clean coal technology has the potential to unlock the true value of this abundant Indiana resource and help satisfy Indiana’s future energy needs.’” Ex. 2.
11. The email was sent to all Agency Directors, including the IURC, and was forwarded to all agency staff.
12. The subject matter of the disclosure is directly related to Cause Nos. 43114 and 43114-s1, and advocates the Governor’s position on the Edwardsport plant.

WHEREFORE, Residential Customers respectfully request that the Commission to deem the above communications ex parte, provide disclosure under 170 I.A.C. 1-1.5-6, and grant the parties leave to file responses, on the record, to each communication.

Respectfully,

Jerome E. Polk, Atty. No. 23712-49
Polk & Associates, LLC
309 West Washington Street, Suite 233
Indianapolis, Indiana 46204
Phone: (317) 636-5165
Fax: (317) 636-5435
jpolk@polk-law.com