

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Duke Energy Indiana, LLC
GIC Infra Holdings Pte. Ltd.

Docket No. EC21-56

Joint Protest of Public Citizen, Sierra Club and Citizens Action Coalition

Public Citizen, Sierra Club and Citizens Action Coalition protest two issues with the February 25 Section 203 application in which Applicants seek permission for an affiliate of the Government of Singapore to acquire a 19.9% indirect ownership interest in Duke Energy Indiana, LLC (“Duke Indiana”).

First, we have concerns about the impact of rates charged to consumers stemming from the Government of Singapore’s current control of Genesee & Wyoming Inc. railroad and its supply of coal to Duke Indiana’s power plants.

Second, the Application is incomplete until the *Form of DEI Holdco A&R LLC Agreement* referenced in the application is submitted to the docket.

Third, despite the fact that the sale is for a 19.9% interest in Duke Indiana for a total purchase price of \$2.05 billion, there is no commitment in the Application to dedicate a specific, and significant, amount of the proceeds from the \$2.05 billion sale to its operations and investments in Indiana.

Fourth, Duke Energy has committed publicly to utilizing the proceeds of this sale to accelerate its clean energy transition, yet there is no commitment of such in the Application.

About Public Citizen, Sierra Club and Citizens Action Coalition

Established in 1971, Public Citizen is a national, not-for-profit, non-partisan, research and advocacy organization representing the interests of household consumers. Public Citizen is active before FERC promoting just and reasonable rates, and supporting efforts for utilities to be accountable to the public interest. Our financial details are located on our web site.¹

¹ www.citizen.org/about/annual-report/

Founded in 1892, the Sierra Club is a national organization with more than 60 chapters and over a million members and supporters. The Sierra Club's purpose is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments. To promote affordable and clean energy, Sierra Club frequently advocates before FERC on issues of market design, fair participation, and just and reasonable rates. This proceeding raises issues which are important to the environmental, public health, and affordability interests that Sierra Club, particularly its Indiana Chapter, seeks to advance.

Established in 1974, Citizens Action Coalition has advocated on behalf of Hoosiers on issues regarding energy policy, utility reform, health care, pollution prevention, and family farms. In order to achieve the objective to protect consumers in Indiana, CAC's activities include performing research, carrying out public education campaigns, organizing citizens, creating public awareness, lobbying legislators, intervening in utility cases before the Indiana Utility Regulatory Commission, and litigating when necessary.

Protest

Page 17 of the Application notes that the Government of Singapore is affiliated with Genesee & Wyoming Inc. railroad, and that “[t]wo of Duke Indiana's coal-fired generating facilities (i.e., Edwardsport and Gibson) are served (directly or indirectly) by a G&W railroad. While these two Duke Indiana generating facilities will become affiliated with G&W, **there is no incentive for G&W to raise costs or to withhold supplies to an affiliate.**” [emphasis added]

Applicants should elaborate how a railroad affiliate supplying coal to its power generation affiliate does not present an incentive for cross-subsidization or other abuses that present rate risks to consumers. Typically coal deliveries by affiliates of generating units present significant opportunities to expose consumers to uncompetitive costs due the lack of arm's length bargaining. Applicants should be required to provide far more detail to defend their contention that the G&W affiliate does not present risks to

consumers. A potential resolution would be for the Government of Singapore to relinquish its financial interest in the G&W railroad.

Second, Exhibit I of the Application (*Contract with Respect to the Transaction: Investment Agreement*) notes in its Table of Contents an Exhibit A: *Form of DEI Holdco A&R LLC Agreement*. But Exhibit I omits this *LLC Agreement*. Until the Application is supplemented to include the *Form of DEI Holdco A&R LLC Agreement*, it should be considered deficient.

Third, the sale is for a 19.9% interest in Duke Energy Indiana for a total purchase price of \$2.05 billion, which Duke has touted as “a significant premium to Duke Energy’s current public equity valuation.”² Yet, Applicants have not committed to keeping any certain amount of the proceeds from this transaction in its Indiana service territory. There is no disclosure as to whether Duke could transfer any part of the \$2.05 billion to the Duke Holding Company or any of its affiliates. For example, Duke’s affiliates in the Carolinas face significant cash flow requirements to address their recent coal waste cleanup settlement, and it would be inappropriate for Duke to use proceeds generated from the sale of their Indiana franchise to address challenges that were at no fault of any ratepayers, let alone Indiana ratepayers.

The sale at issue here is a sale of Duke Energy Indiana’s regulated monopoly market, meaning much of the value in this sale is because Duke Energy Indiana faces no competition to provide an essential life service, has an exclusive franchise granted by the State of Indiana, and has a right to charge rates required by Indiana statutes and Constitution. Applicants should commit a specific, and significant, amount of the proceeds from the \$2.05 billion sale to its operations and investments in Indiana.

² Duke Energy partners with GIC to secure minority investment in Duke Energy Indiana, increases long-term EPS growth rate. January 28, 2021. Available at: <https://news.duke-energy.com/releases/duke-energy-partners-with-gic-to-secure-minority-investment-in-duke-energy-indiana-increases-long-term-eps-growth-rate>

Finally, despite Duke's press release vaguely committing to utilizing the proceeds to accelerate its clean energy transition,³ there is no commitment of such in the Application. Applicants should disclose in no uncertain terms what these proceeds will be used for and commit a substantial part of the \$2.05 billion for investment in non-fossil fuel strategies for its claimed clean energy transition.

Respectfully submitted,

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³ *Id.*