

IN THE INDIANA SUPREME COURT

CAUSE NO. _____

MICHAEL A. MULLETT, PATRICIA N. MARCH,	)	Appeal from the Indiana Utility Regulatory Commission
)	
Appellants (intervenors below)	)	IURC Cause No. 38707 FAC 113
)	
v.	)	Honorable James Atterholt
	)	Commission Chair
)	
DUKE ENERGY INDIANA, LLC, NUCOR STEEL-INDIANA, INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR	)	Honorable Sarah Freeman
	)	Honorable James Huston
	)	Honorable Angela Weber
	)	Honorable David Ziegner
	)	Commissioners
)	
Appellees (applicant/petitioner, intervenor, statutory party below).	)	Honorable David Veleta
	)	Senior Administrative Law Judge

MOTION TO APPEAR AS AMICI CURIAE AND TO FILE BRIEF IN SUPPORT OF APPELLANTS’ PETITION TO TRANSFER

Pursuant to Rule 41 of the Indiana Rules of Appellate Procedure, Citizens Action Coalition of Indiana, Energy Matters Community Coalition, Environmental Law & Policy Center, Hoosier Environmental Council, Indiana Community Action Association, Indiana Distributed Energy Alliance, Save the Valley, and Valley Watch (collectively, “Movants”) move for leave to appear as amici curiae and to file the proposed amici curiae brief, which accompanies this motion, in support of the Petition to Transfer of Appellants Michael A. Mullett and Patricia N. March. In support of this motion, Movants state as follows:

1. On October 27, 1917, Appellants filed a Notice of Appeal from the Final Order of the Indiana Utility Regulatory Commission (the “Commission”) in Cause No. 38707 FAC 113. On June 19, 2018, Appellants filed a Petition for Rehearing of Appellants. On August 2, 2018,

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the Indiana Court of Appeals denied the Petition for Rehearing of Appellants. Appellants' Petition to Transfer is due on or before September 4, 2018.

2. The issue presented by Appellants on appeal is whether Duke Energy LLC's shareholders or its customers must pay the \$29 million in damages for Duke Energy's fully and finally adjudicated breach of a contract with the Benton County Wind Farm caused by Duke Energy's failure to reserve transmission required with the result that the Wind Farm could not produce and Duke Energy's customers could not receive the contracted wind energy.

3. Movants' organizations are aligned with Appellants and agree that the Commission and the Indiana Court of Appeals erred in allowing Duke Energy to charge the \$29 million in damages to Indiana consumers insofar as the Commission failed to consider and the Court of Appeals failed to review the reasonableness of Duke Energy's actions in breaching its contract with the Benton County Wind Farm. That failure precluded the Commission from making the required finding whether Duke Energy's actions in breaching the contract were just and reasonable. In turn, the Court of Appeals failed to review the Commission's order for its failure to make this required finding. Movants' organizations are concerned that these rulings reward Duke Energy and penalize its customers such that, as precedents, they will encourage monopoly, investor-owned electric utilities to follow Duke Energy's lead and establish a pattern of behavior that will encourage unfair actions and behaviors by monopoly electric utilities. Moreover, the ruling will discourage and distort the market for development of clean, renewable energy.

4. Citizens Action Coalition of Indiana ("CAC") is a statewide nonprofit organization founded in 1974. CAC's mission is to initiate, facilitate and coordinate citizen action directed to improving the quality of life of all inhabitants of the State of Indiana through

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principled advocacy of public policies to preserve democracy, conserve natural resources, protect the environment, and provide affordable access to essential human services. To this end, CAC advocates for just and reasonable rates for its members who are customers of Indiana's electric monopoly utilities, including those customers of Duke Energy Indiana.

5. The Environmental Law & Policy Center ("ELPC") is a not-for-profit public interest environmental quality and economic development advocacy organization with staff based in Indianapolis and at its headquarters in Chicago. ELPC focuses on accelerating clean renewable energy and energy efficiency, and improving air quality and protecting clean water in Indiana and in other Midwestern states. ELPC staff has engaged in many cases and issues over the past 25 years before the Commission and other Indiana agencies, federal agencies, and the federal and Indiana state courts.

6. Energy Matters Community Coalition ("EMCC") is a non-profit organization of citizens residing in and around Columbus, Indiana focusing on public education and local actions that support sustainability, with a special emphasis on energy conservation, renewable energy, and climate change. EMCC has established itself as a group of community members partnering with businesses, schools, and other civic groups to educate the public, activate citizens, and improve the world beginning with the community in which its members live. Most of its members are residential customers of Duke Energy Indiana.

7. The Hoosier Environmental Council ("HEC") is a non-profit organization that focuses on addressing environmental challenges in Indiana. Some of these challenges include: transitioning to a clean energy economy, modernizing transportation, preserving open spaces, making farming more sustainable and healthier, and protecting public health. HEC uses a

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combination of education, advocacy, and sometimes, litigation, to address those challenges. HEC's members include individuals who are residential customers of Duke Energy Indiana.

8. The Indiana Community Action Association, Inc. ("INCAA") is a statewide not-for-profit membership corporation. INCAA's network is comprised of Indiana's 22 Community Action Agencies (CAAs), which serve all of Indiana's 92 counties. It is INCAA's mission to help the state's Community Action Agencies address the conditions of poverty through: training and technical assistance; developing models for service delivery; and providing resources to help increase Network capacity. Community Action Agencies operate an array of programs which include, but are not limited to: Head Start, Energy Assistance Program, Weatherization Program, Individual Development Accounts, Homeownership Counseling, Owner Occupied Rehabilitation, Housing Development, Foster Grandparents, Child Care, and many more programs and services. Its members operate with residential customers of Duke Energy Indiana. Many of its members serve customers of Duke Energy Indiana and virtually all of its members serve customers of one or more investor-owned Indiana utilities.

9. The Indiana Distributed Energy Alliance ("IndianaDG") is an Indiana organization that works to promote renewable energy and distributed generation through participation in Indiana Utility Regulatory Commission proceedings, involvement in the integrated resource planning process of Indiana investor-owned utilities, and legislative advocacy at the Statehouse. IndianaDG's members include business and residential customers of Duke Energy Indiana.

10. Save the Valley ("STV") is a non-profit organization of individuals who reside in and around Madison, Indiana focusing on protection of the natural environment of the Ohio River Valley in southern Indiana and northern Kentucky. STV has established itself as an

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organization which partners with businesses, schools, and other civic groups to educate the public, activate citizens, and improve the world beginning with the community in which its members live. Most of its members are residential customers of Duke Energy Indiana.

11. Valley Watch (“VW”) is a non-profit organization of citizens residing in southwestern Indiana, northwestern Kentucky, and southeastern Illinois focusing on public education and local actions to protect the natural environment of the Ohio River Valley in the tri-state area. VW has established itself as a group of community members partnering with businesses, schools, and other civic groups to educate the public, activate citizens, and improve the world beginning with the communities in which its members live. Virtually all of its members are residential customers of Vectren Energy Delivery of Indiana - South and could be affected in the future by the precedents set by the *Mullett v. Duke Energy Indiana, LLC* decisions of the Indiana Utility Regulatory Commission and Court of Appeals.

12. An amicus curiae brief is desirable and will be helpful to the Court in resolving the issues presented in this appeal. In the Brief of Proposed Amici Curiae in Support of Appellants, submitted herewith, Movants—who collectively represent thousands of people across the State—present additional important information and argument that they believe will be helpful to the Court. Movants represent varied perspectives of local, state, and regional organizations engaged in efforts to protect the health, environment, and economic well-being of Indiana communities and the public from unjust regulatory decisions that can harm the growth of renewable energy in Indiana and are unfair to consumers. Movants’ brief explains how the Indiana Utility Regulatory Commission’s approval of Duke Energy’s request to shift its breach of contract damages to consumers focused only on the amount of the settlement, ignoring Duke Energy’s actions which caused the damages. The Commission’s legally flawed approach

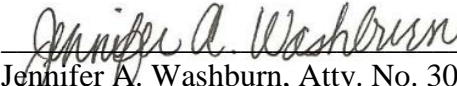
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ignored the fundamental issue in the case: whether Duke Energy acted reasonably and prudently when it breached its purchased power contract with the result that its consumers did not receive the benefit of the clean, renewable energy called for in the contract yet are being ordered to pay the damages paid for Duke Energy's breach.

13. Pursuant to Rule 46(E)(2) of the Indiana Rules of Appellate Procedure, counsel for Movants has consulted with counsel for Appellants and has sought to avoid repetition or restatement of the arguments made in Appellants' brief.

For the foregoing reasons, Movants respectfully request leave to appear as amici curiae and for leave to file the accompanying Brief of Proposed *Amici Curiae* in Support of Appellants.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing have been served on Public Service Contacts through E-Service using the IEFS this 4th day of September, 2018, on the following:

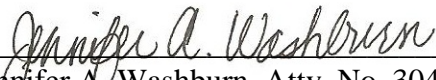
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