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ATTORNEYS FOR APPELLANT  
INDIANA OFFICE OF UTILITY  
CONSUMER COUNSELOR

William I. Fine  
Indiana Utility Consumer Counselor

Randall C. Helmen  
Chief Deputy Consumer Counselor

Lorraine Hitz-Bradley  
Deputy Consumer Counselor

Scott C. Franson  
Deputy Consumer Counselor  
Indianapolis, Indiana

ATTORNEYS FOR APPELLANT  
DUKE INDUSTRIAL GROUP

Todd A. Richardson  
Joseph P. Rompala  
Tabitha L. Balzer  
Aaron A. Schmoll  
Lewis & Kappes, P.C.  
Indianapolis, Indiana

ATTORNEY FOR APPELLANTS  
CITIZENS ACTION COALITION OF  
INDIANA, INC.,  
ENVIRONMENTAL WORKING  
GROUP, AND INDIANA  
COMMUNITY ACTION  
ASSOCIATION

Jennifer A. Washburn  
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE DUKE  
ENERGY INDIANA, LLC

Kelley A. Karn  
Melanie D. Price  
Elizabeth A. Heneghan  
Andrew J. Wells  
Duke Energy Business Services LLC  
Plainfield, Indiana

Derek R. Molter  
Jenny R. Buchheit  
Kay E. Pashos  
Mark R. Alson  
Ice Miller LLP  
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE  
INDIANA UTILITY REGULATORY  
COMMISSION

Beth E. Heline  
General Counsel

Jeremy Comeau  
Assistant General Counsel  
Indiana Utility Regulatory Commission  
Indianapolis, Indiana

Aaron T. Craft  
Section Chief, Civil Appeals  
Office of the Attorney General  
Indianapolis, Indiana

ATTORNEY FOR APPELLEE INDIANA  
COAL COUNCIL, INC.

Jeffery A. Earl  
Bose McKinney & Evans LLP  
Indianapolis, Indiana

---

ATTORNEY FOR APPELLANT  
SIERRA CLUB

Kathryn A. Watson  
Katz Korin Cunningham  
Indianapolis, Indiana

ATTORNEY FOR APPELLANT  
NUCOR STEEL-INDIANA

Anne E. Becker  
Lewis & Kappes, P.C.  
Indianapolis, Indiana

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IN THE  
COURT OF APPEALS OF INDIANA

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Indiana Office of Utility  
Consumer Counselor, Duke  
Industrial Group, Citizens  
Action Coalition of Indiana,  
Inc., Environmental Working  
Group, Indiana Community  
Action Association, Sierra Club,  
and Nucor Steel-Indiana,

*Appellants,*

v.

Duke Energy Indiana, LLC,  
Indiana Utility Regulatory  
Commission, and Indiana Coal  
Council, Inc.,

*Appellees.*

May 13, 2021

Court of Appeals Case No.  
20A-EX-1404

Appeal from the Indiana Utility  
Regulatory Commission

The Honorable James F. Huston,  
Chairman

The Honorable Sarah E.  
Freeman, Commissioner

The Honorable Stefanie Krevda,  
Commissioner

The Honorable David L. Ober,  
Commissioner

The Honorable David E. Ziegner,  
Commissioner

The Honorable David E. Veleta  
Senior Administrative Law Judge

Cause No.  
45253

**Baker, Senior Judge.**

## Statement of the Case

[1] Duke Energy Indiana, LLC (“Duke”), a utility company, filed with the Indiana Utility Regulatory Commission (“the IURC”) a petition to increase the rates it charges for electricity. After extensive proceedings, the IURC issued an order granting in part and denying in part Duke’s petition. The Indiana Office of Utility Consumer Counselor (“the OUCC”), along with a group of Duke’s industrial electricity customers (“the Group”), appeal the IURC’s order. We affirm.

## Issues

[2] The OUCC and the Group claim that the IURC erred in allowing Duke to recover from ratepayers money that Duke has spent to dispose of coal ash. The Group raises two additional issues: (1) whether the IURC erred in accepting Duke’s jurisdictional separation study allocating costs between Duke’s retail and wholesale electricity customers; and (2) whether the IURC erred in granting in full Duke’s request to recover operating and maintenance costs (“O&M costs”) at its Edwardsport, Indiana power plant.

## Facts and Procedural History

[3] Duke is a public utility that provides retail electric service to approximately 840,000 customers, including businesses and residences, across Indiana. It also sells electric energy to other utilities in a wholesale market. Duke owns a

number of electricity generating plants, which run on fuels including coal, natural gas, and natural gas synthesized from coal (“syngas”).

- [4] On July 2, 2019, Duke filed with the IURC a petition for authorization to increase its retail rates and charges (also known as base rates) for electric utility service. In the petition, Duke asked the IURC to investigate all aspects of its operations and to approve its suggested rate increases. The OUCC responded to Duke’s petition as the representative of “ratepayers, consumers, and the public.” *See* Ind. Code § 8-1-1.1-4.1 (1990). In addition, the IURC permitted numerous other parties to intervene in the case, including the Group,<sup>1</sup> Citizens Action Coalition of Indiana, Inc., the Environmental Working Group, Indiana Community Action Association, Sierra Club, Nucor Steel-Indiana, and the Indiana Coal Council, Inc.
- [5] The OUCC and many of the intervening parties opposed Duke’s rate petition in whole or in part. For example, the OUCC and the Group argued that Duke’s revenue requirements should be reduced rather than increased, resulting in lower electricity rates for Duke’s retail customers.
- [6] The IURC presided over eleven days of evidentiary hearings, during which the parties filed extensive evidence addressing every aspect of Duke’s operations,

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<sup>1</sup> The members of the Group on appeal are as follows: Arconic, Inc., Elanco, Harrison Steel Castings Co., International Paper Co., USG Corp., Fiat Chrysler Automobiles, General Motors, LLC, Haynes International, Inc., Subaru of Indiana Automotive, Inc., and Tate & Lyle Ingredients Americas, Inc.

but only three topics are pertinent to this appeal. The facts relevant to each topic are as follows:

### **A. Coal Ash Remediation**

- [7] Duke has operated coal-fueled electricity generating plants for decades. Coal combustion residuals (“CCR”), also known as coal ash, are solid wastes generated during the combustion process. Duke has historically disposed of its coal ash in surface impoundments, also known as ash ponds, on its properties.
- [8] In 2014, the Environmental Protection Agency promulgated a CCR Rule, which took effect in 2015. The CCR Rule set new standards for permanent disposal of coal ash in both active and inactive impoundments. Duke subsequently planned and began to implement remediation projects at four of its current or former generating plants to ensure that it complied with the new federal rule. The projects, which are still ongoing, involve either removal of coal ash from Duke’s properties or leaving the coal ash in place, covered by an impermeable cap and monitored for up to thirty years.
- [9] In December 2016, Duke submitted closure plans to the Indiana Department of Environmental Management (“IDEM”), requesting approval of its proposed remediation projects under the CCR Rule. IDEM had not yet approved any of the plans as of the date of the evidentiary hearings in this case. As a result, the remediation work Duke has done to this point has been preliminary in nature, pending IDEM’s approval of the closure plans.

- [10] In addition, beginning in 2010, IDEM notified Duke that some of its ash ponds violated Indiana’s solid waste management rules. Duke incurred costs addressing the issues IDEM has identified.
- [11] In this case, Duke asked the IURC to allow it to recover from ratepayers \$211 million in coal ash-related remediation costs it had incurred to comply with the federal CCR rule and the State of Indiana’s solid waste management rules. It further proposed to recover those costs, which Duke described as a “regulatory asset,” amortized over the next eighteen years. Tr. Ex. Vol. 39, p. 6. Duke presented evidence that it had tracked the remediation projects’ costs using an accounting practice known as Asset Retirement Obligation Accounting (“ARO Accounting”), Tr. Ex. Vol. 38, pp. 144, 237, and asked the IURC to allow it to recover these deferred costs.
- [12] Duke further requested reimbursement of coal ash remediation costs related to ongoing projects. The IURC determined that the recovery of future remediation costs would be addressed under a separate IURC cause number to allow “undivided consideration” of the nature and magnitude of those costs. Appellants’ App. Vol. IV, pp. 1-2. As a result, this appeal concerns only coal ash costs Duke incurred in the past.
- [13] The OUCC and several of the intervenors opposed Duke’s request to recover coal ash remediation costs. Among other arguments, they claimed it was inappropriate to allow recovery of past costs. They further argued Duke had

generated sufficient income over the past decade to absorb the remediation costs itself, rather than pass them on to ratepayers.

## **B. Allocation of Assets, Revenues, and Expenses Between Retail and Wholesale Customers**

- [14] As noted, Duke has both retail electric customers, including businesses and residences, and wholesale electric customers, which are other utilities. The IURC has regulatory jurisdiction over Duke's relationships with its retail customers, but not Duke's relationships with its wholesale customers.
- [15] Duke contracts with its wholesale customers for the sale of electrical power. Previously, Duke's wholesale customers entered into fifteen- or twenty-year sales contracts. In the last decade, changes in the wholesale electricity market have resulted in customers being less interested in long-term contracts. As a result, Duke has incorporated "short-term bundled sales of market-priced capacity and energy" into its wholesale sales strategy. Tr. Ex. Vol. 36, p. 86.
- [16] While preparing to file this petition, Duke performed a "jurisdictional separation study," ("the study") based on a forecasted test period of the year 2020, to determine how to allocate assets, revenues, and expenses between jurisdictional customers (that is, retail customers, which are protected by IURC regulations) and non-jurisdictional customers (wholesale purchasers). Tr. Ex. Vol. 17, p. 183.
- [17] In the study, Duke apportioned production costs and peak demand and usage of its system between wholesale and retail customers. The study demonstrated

that Duke's wholesale customers account for eight percent of the total demand and usage of Duke's electrical system. This percentage is approximately the same as in Duke's last base rate case, which the IURC adjudicated in 2004.

- [18] The Group objected to the study, claiming that Duke had failed to account for the decrease of its long-term wholesale business since 2013. The Group further argued that the loss of long-term wholesale contracts has resulted in excess wholesale electricity production capacity, and Duke's study was faulty because it allocated to retail customers financial responsibility for production capacity that they did not need.

### **C. The Edwardsport Generating Plant**

- [19] Duke's Edwardsport generating plant, which went into service in 2013, is an integrated gasification combined cycle ("IGCC") facility. It is designed to produce electricity using either natural gas or coal-derived syngas, but it has operated primarily on syngas since beginning service. The plant has specialized equipment that is used only to generate syngas and fuel the plant with it. Duke obtains coal for the plant under contract with a nearby mine. The Edwardsport plant is by far Duke's newest coal-fueled plant, and it has more sophisticated pollution control equipment than its other coal-fueled plants. Duke plans to operate the Edwardsport plant until 2045.
- [20] Duke asked the IURC to allow it to recover \$139 million in O&M costs for the plant during the forecasted test year of 2020, including the costs of running and maintaining syngas-related equipment. In response, the Group presented



evidence that the plant's O&M costs would be considerably lower, and thus be less of a rate burden on Duke's customers, if the plant operated exclusively on natural gas rather than syngas. As a result, the Group asked the IURC to bar Duke from recovering from ratepayers O&M costs for the operation of coal gasification and coal handling facilities at the plant, which might as a practical matter encourage Duke to mothball or permanently shutter those facilities.

### **D. The IURC's Final Judgment**

[21] The OUCC, the Group, and Duke filed proposed final orders after the evidentiary hearings ended. On June 29, 2020, the IURC issued a 175-page final order, granting in part and denying in part Duke's petition. Among other determinations, the IURC: (1) granted Duke's request to recover deferred costs related to the coal ash remediation projects; (2) approved Duke's proposed allocation of income and costs between its retail and wholesale customers, as set forth in the study; and (3) granted Duke's request to recover all of its requested O&M costs for the Edwardsport generating plant, including syngas-related operations. This appeal followed.<sup>2</sup>

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<sup>2</sup> We held oral argument remotely on April 8, 2021, and we thank the parties for their thorough presentations of the issues.

## Discussion

### A. Standard of Review

- [22] Indiana Code section 8-1-3-1 (1993) authorizes any person, corporation, or public utility “adversely affected by any final decision, ruling, or order of the [IURC]” to seek appellate review. In addition, the General Assembly has granted the OUCC specific statutory authority to appeal the IURC’s final decisions. Ind. Code § 8-1-1.1-4.1.
- [23] We apply three different levels of review to IURC orders. *NIPSCO Indus. Group v. N. Ind. Pub. Serv. Co.*, 125 N.E.3d 617, 623-24 (Ind. 2019). The first level of review is whether the order’s findings of fact “are supported by substantial evidence in the record.” *NOW!, Inc. v. Ind.-Am. Water Co., Inc.*, 117 N.E.3d 647, 653 (Ind. Ct. App. 2018), *trans. denied*. We neither reweigh the evidence nor assess the credibility of witnesses, and we consider only the evidence most favorable to the IURC’s findings. *Id.* Factual findings will stand unless no substantial evidence supports them. *Id.*
- [24] The second level of review, involving claims of insufficient findings to sustain the conclusions contained in the order, presents “mixed questions of law and fact.” *NIPSCO Indus. Group*, 125 N.E.3d at 624. We review the IURC’s conclusions for reasonableness, “giv[ing] more deference to orders on subjects within the [IURC’s] expertise and less deference to orders dealing with matters outside its expertise.” *Id.*

[25] The third level of review is for questions of law. We review questions of law de novo and grant no deference to the IURC. *NIPSCO Indus. Group. v. N. Ind. Pub. Serv. Co.*, 100 N.E.3d 234, 241 (Ind. 2018). Finally, regardless of which level of review is applied in a given case, the entity challenging the IURC’s decision bears the burden of proving the decision is contrary to law. *City of Fort Wayne v. Utility Ctr.*, 840 N.E.2d 836, 839 (Ind. Ct. App. 2006).

## **B. The IURC and Ratemaking**

[26] Utility regulation is premised on a “regulatory compact” in which the State of Indiana sanctions a utility’s monopoly within a defined service area but in turn subjects the utility to various regulatory restrictions and responsibilities. *NIPSCO Indus. Group*, 100 N.E.3d at 238. The General Assembly created the IURC primarily as a fact-finding body with the technical expertise to administer the regulatory scheme devised by the legislature. *NOW!, Inc.*, 117 N.E.3d at 652. The IURC’s assignment is to ensure that utilities provide constant, reliable, and efficient service to the citizens of Indiana. *Id.* In the process, the IURC “balances the public’s need for adequate, efficient, and reasonable service with the utility’s need for sufficient revenue to meet the cost of furnishing service and to earn a reasonable profit.” *NIPSCO Indus. Group*, 100 N.E.3d at 238.

[27] “Base utility rates are traditionally set or adjusted through a general ratemaking case (variously referred to as a general rate case or base rate case) before the [IURC].” *NIPSCO Indus. Group*, 125 N.E.3d at 620. Ratemaking is a legislative

rather than judicial function. *Hamilton Se. Utils., Inc. v. Ind. Util. Regul. Comm’n*, 101 N.E.3d 229, 233 (Ind. 2018). General ratemaking is a comprehensive process in which the IURC reviews “every aspect of the utility’s operations and the economic environment in which the utility functions to ensure that the data [the IURC] has received are representative of operating conditions that will, or should, prevail in future years.” *NIPSCO Indus. Group*, 100 N.E.3d at 238 (quoting *U.S. Gypsum v. Ind. Gas Co.*, 735 N.E.2d 797, 798 (Ind. 2000)). Ratemaking necessarily “involves innumerable technical determinations which are particularly within [the IURC’s] competence and expertise.” *L.S. Ayres & Co. v. Indianapolis Power & Light Co.*, 169 Ind. App. 652, 662, 351 N.E.2d 814, 822 (1976).

### **C. Coal Ash Remediation Costs**

[28] The OUCC and the Group argue the IURC should not have allowed Duke to recover costs arising from coal ash remediation projects Duke undertook to comply with federal and state regulations. Specifically, they claim the IURC was not authorized under traditional ratemaking principles to permit Duke to recover costs it incurred in the past.<sup>3</sup> The OUCC and the Group claim they are raising a question of law, while Duke and the IURC argue the issue is a mixed

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<sup>3</sup> The parties also dispute whether Duke was entitled to recover coal ash remediation costs under the procedures set forth in Indiana Code section 8-1-8.4-1 et seq., which the parties refer to as the “federal mandate statute.” But the IURC explained in its order that its decision was based on traditional ratemaking principles rather than the federal mandate statute, citing it as merely “collateral support” for its decision. Appellants’ App. Vol. II, p. 67. We decline to address the parties’ arguments under the federal mandate statute because it was not the basis for the IURC’s decision.

question of law and fact, for which the Court should defer to the IURC's expertise and conclude that the IURC properly allowed cost recovery.

[29] All parties agree that the IURC lacks the authority to retroactively set rates.

The Group cites Indiana Code section 8-1-2-68 (1984), which provides:

Whenever, upon an investigation, the commission shall find any rates, tolls, charges, schedules, or joint rate or rates to be unjust, unreasonable, insufficient, or unjustly discriminatory, or to be preferential or otherwise in violation of any of the provisions of this chapter, the commission shall determine and by order fix just and reasonable rates, tolls, charges, schedules, or joint rates to be imposed, observed, and followed in the future in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory or preferential or otherwise in violation of any of the provisions of this chapter.

*Id.* Thus, when the IURC determines that a previously set rate is unjust, the IURC can only set new rates going forward to correct the injustice. In the current case, the IURC did not alter any past rates or charges in connection with Duke's deferred coal ash cleanup costs.

[30] The Group also cites *Public Service Commission v. City of Indianapolis*, 235 Ind. 70, 131 N.E.2d 308 (1956) ("*PSC*"), as support for the principle that the IURC may not retroactively set rates. There, the City of Indianapolis challenged a rate-setting order that the Public Service Commission ("the Commission"), a forerunner of the IURC, had issued years prior to the case at issue. The Indiana Supreme Court determined that even if the prior rates were unjust to

the utility's customers, the City could not relitigate them at that late date. The Court stated:

Past losses of a utility cannot be recovered from consumers nor can consumers claim a return of profits and earnings which may appear excessive.

The chances of a loss or profit from operations is one of the risks a business enterprise must take. The Company must bear the loss and is entitled to the gain depending upon the efficiency of its management and the economic uncertainties of the future after a rate is fixed. Were it not so, a premium would be placed upon inefficiency, waste and negligence in management. It is better policy to encourage thriftiness, saving and frugality on the part of a utility management. Such incentive inures eventually to the benefit of the consumers in succeeding rate hearings.

235 Ind. at 88, 131 N.E.2d at 315 (citation omitted). In the current case, unlike in *PSC*, Duke did not ask the IURC to change previously set rates.

[31] Similarly, in *Indiana Bell Telephone Co., Inc. v. Office of Utility Consumer Counselor*, 717 N.E.2d 613 (Ind. Ct. App. 1999), *modified on reh'g*, 725 N.E.2d 432 (2000), the IURC set interim rates for a telephone utility. The OUCC argued the IURC erred in failing to issue the rates on a preliminary basis, subject to further review and subsequent refund to customers if necessary. A panel of this Court rejected that argument, concluding that rescinding interim rates and ordering overcharges to be returned to consumers would be a form of retroactive ratemaking, which is impermissible. *Id.* at 625. In the current case, the IURC did not set any interim rates.

- [32] Finally, The OUCC cites *Duke Energy Indiana, Inc. v. Office of Utility Consumer Counselor*, 983 N.E.2d 160 (Ind. Ct. App. 2012), in support of its claim that Duke should have requested approval to implement deferred accounting for coal ash remediation projects before beginning the projects. We disagree with the OUCC's reading of that case. In *Duke*, the utility experienced major damage to its electrical system caused by severe storms. Duke petitioned the IURC for approval to defer its accounting for the repair costs, asking that it be allowed to recover the costs in its next rate case. The IURC ultimately denied Duke's request after initially deciding in Duke's favor but subsequently reopening the case to receive new evidence.
- [33] The OUCC argues the *Duke* case demonstrates that Duke was "aware of the need to seek approval to defer costs." OUCC's Appellant's Br. p. 20. We read the case differently. Although Duke was not permitted to implement deferred accounting in that case, the *Duke* Court did not state that Duke could never seek or obtain approval for deferred accounting after the fact. Further, on appeal, the key issue was whether the IURC erred in reopening the case, not whether the IURC had engaged in retroactive rulemaking. 983 N.E.2d at 171.
- [34] In light of the parties' agreement that the IURC may not engage in retroactive rulemaking, and our determination that the cases cited by the OUCC and the Group are distinguishable from the circumstances of this case, we are not deciding a question of law but rather a mixed question of law and fact. The OUCC challenges the validity of the IURC's factual findings, claiming they

lack evidentiary support and are “inconsistent and factually inaccurate.”

OUCG Appellant’s Br. p. 21.

[35] The IURC’s order includes seventeen pages of factual findings on coal ash remediation costs, such as the following: (1) IDEM has not yet approved of Duke’s closure plans for its sites under the CCR Rule; (2) Duke’s remediation activities have prudently been limited to laying the groundwork for final closure of its sites, rather than full implementation of its plans, because IDEM may reject Duke’s closure plans and require different remediation activities; (3) Duke separated out the \$211.7 million in coal ash remediation costs and tracked them separately from other expenses in a dedicated account; (4) Duke’s tracking of the deferred costs as a regulatory asset complied with generally accepted standards of accounting, which do not require prior regulatory authorization; (5) the remediation costs are “significant and infrequent,” Appellants’ App. Vol. II, p. 67, meaning that the costs are high but will be incurred only once for each project; (6) removal of coal ash ponds will allow Duke to continue to use some of its utility property; (7) Duke could have also treated the remediation costs as part of the costs of depreciating and decommissioning its power plants, except that Duke submitted its last decommissioning study prior to the issuance of the CCR Rule; (8) recovery of remediation costs is consistent with historical practice in Indiana, as such costs are considered part of the reasonable and necessary expenses of dismantling generating plants; and (9) Duke generated the coal ash over a period of decades, during which using coal to fuel power



plants was considered necessary for Duke's provision of electrical service to its customers.

[36] Each of these findings has substantial factual support in the record and supports the IURC's conclusion that Duke should recover the coal ash remediation costs from ratepayers. The OUCC and the Group argue that the circumstances surrounding Duke's remediation projects do not justify the IURC's approval of Duke's deferred accounting procedures. As a mixed question of fact and law, the IURC "has the authority to determine accounting practices for rate regulated companies, and so long as they are within reason and prudence, courts may not interfere." *Ind. Gas Co. Inc. v. Off. of the Util. Consumer Couns.*, 675 N.E.2d 739, 747 (Ind. Ct. App. 1997), *trans. denied*. Duke chose to implement deferred accounting for these projects, and in so doing it ran the risk that the IURC might later disallow its request for recovery, as the IURC did in *Duke*. See 983 N.E.2d at 168-69. But under the facts and circumstances of this case, the IURC did not err in approving Duke's coal ash remediation costs.<sup>4</sup>

## **D. The IURC's Approval of Duke's Jurisdictional Separation Study**

[37] The Group claims that the IURC should not have accepted the study as the basis for allocating revenue and costs between wholesale and retail customers,

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<sup>4</sup> The Group and the OUCC argue that the IURC's decision in this case contravenes its decisions in other cases, and Duke and the IURC point to other IURC decisions that they claim support the outcome here. We decline to address this argument because we have resolved the coal ash issue based on Indiana statutes and appellate precedent.

arguing that the study inappropriately burdens Duke's retail customers with unneeded production capacity that Duke had previously dedicated to its wholesale customers.

[38] The Group states it is presenting a pure question of law, citing Indiana Code section 8-1-2-6 (2016). That statute provides that in a ratemaking case, the IURC “shall value all property of every public utility actually used and useful for the convenience of the public at its fair value, . . . .” The Group also directs our attention to *L.S. Ayres*, 169 Ind. App. at 683, 351 N.E.2d at 834, in which a panel of the Court stated: “Unnecessary plant capacity is not used and useful for rate making purposes and should not be included [in the rate base.]” The test for whether utility property is “used and useful” for retail customers has two elements: “(1) that the utility plant be actually devoted to providing utility service, and (2) that the plant’s utilization be reasonably necessary to the provision of utility service.” *City of Evansville v. S. Ind. Gas & Elec. Co.*, 167 Ind. App. 472, 516, 339 N.E.2d 562, 589 (1975).

[39] Duke and the IURC do not quarrel with the “used and useful” requirement for retail utility property or the two-element test. They instead argue that they presented sufficient evidence to support the IURC’s approval of the study. We agree with Duke and the IURC that the issue here is whether the findings are sufficient to support the IURC’s conclusion that the study was acceptable, which is a mixed question of fact and law. We defer to the reasonableness of the IURC’s decisions on mixed questions of fact and law when the decisions “involve a subject within the [IURC’s] special competence.” *IPL Indus. Group v.*

*Indianapolis Power & Light Co.*, 159 N.E.3d 617, 623 (Ind. Ct. App. 2020), *trans. denied*.

[40] With respect to Duke's study, the IURC issued the following findings of fact in the final order: (1) as part of the study, Duke developed demand and energy allocators for wholesale customers, and accordingly allocated production costs and related production expenses to those customers; (2) Duke also calculated the peak demand and usage of its total electrical production system, and the percentage used by wholesale customers; with the remainder going to retail customers; (3) wholesale demands and usage for Duke's system approximates eight percent, which is roughly the same amount from Duke's last base rate case; and (4) Duke's retail customers were allocated a lower percentage of production demand costs than in the last base rate case. There is substantial evidence in the record to support the IURC's findings, and the findings support IURC's conclusion to accept the study as a reasonable allocation of costs.

[41] The Group presented evidence that: (1) Duke has lost much of its long-term wholesale business since 2013; and (2), as a result, although Duke is trying to obtain more short-term sales to boost wholesale business, it now has excess wholesale generating capacity, which it is trying to force retail customers to cover. The Group further pointed to evidence that Duke's circumstances have substantially changed since its last base rate case and claims that the percentage of wholesale demands and usage from that case is not a useful comparison in calculating the current fairness of Duke's proposed allocation. The IURC, as the finder of fact, weighed the parties' evidence and credited Duke's analysis of

its production capacity over that of the Group. We will not second-guess the finder of fact. The IURC did not err on this issue. *See IPL Indus. Group*, 159 N.E.3d at 627 (affirming IURC’s approval of utility’s petition to charge ratepayers for improvements to transmission, distribution, and storage systems; IURC’s findings on a matter within its expertise were supported by the evidence).

### **E. O&M Costs at Edwardsport Plant**

[42] For its third and final claim of error, the Group challenges the IURC’s decision to allow Duke to recover full O&M costs, including expenses related to coal gasification, at the Edwardsport plant. The Group again claims that it is raising questions of law, under which it concludes the IURC’s decision is entitled to no deference.

[43] The IURC is authorized to disregard a utility’s “unnecessary or excessive” expenditures when it sets rates. Ind. Code § 8-1-2-48 (2002). Stated differently, a utility may incur any amount of operating expenses it chooses, but the IURC is invested with broad discretion to disallow for ratemaking purposes any excessive or imprudent expenditures. *Off. of Util. Consumer Couns. v. Ind. Cities Water Corp.* 440 N.E.2d 14, 15 (Ind. Ct. App. 1982). Duke and the IURC do not disagree with this principle, and the substance of the parties’ arguments are directed at the validity of the IURC’s findings. As a result, the question of whether the IURC properly rejected the Group’s challenge to the validity of the Edwardsport O&M expenses is a mixed question of fact and law.

[44] The IURC issued five pages of findings of fact on the Edwardsport plant’s O&M expenses, including the following: (1) the expenses cover basic operations and maintenance outages for the 2020 test year, including a major planned outage costing \$46.4 million that occurs once every seven years; (2) preventative maintenance of the plant’s equipment has resulted in improved plant performance every year since it began operation in 2013; (3) if the plant were to switch to natural gas for fuel, Duke would become oversupplied with coal under its contract with the nearby mine; (4) although natural gas is currently a cheaper fuel than coal, that could be a short-term situation; (5) once the plant switched to natural gas, it would be extremely difficult to switch back to syngas due to costs involved in shutting down the gasification equipment, including the loss of a trained workforce; and (6) Duke’s projected O&M costs are reasonable. There is substantial evidence in the record to support these findings.

[45] In addition, the General Assembly has determined Indiana needs “a robust and diverse portfolio of energy production or generating capacity, including coal gasification and the use of renewable energy resources, . . . .” Ind. Code § 8-1-8.8-1 (2011). As a result, “the state should encourage the use of advanced clean coal technology, such as coal gasification.” *Id.* In the final order at issue here, the IURC found: (1) shutting gasification equipment, either temporarily or permanently, would result in “under-utilization of a significant investment” (Appellants’ App. Vol. II, p. 114); and (2) Duke will retire its older coal-fueled plants relatively soon, so keeping the Edwardsport plant, which is still early in

its life cycle, fueled by syngas will contribute to long-term fuel diversity and promote grid reliability. These findings are also supported by sufficient evidence, and the IURC's decision follows through on the priorities set by the General Assembly.

[46] The Group argues that it presented evidence that operating the Edwardsport plant exclusively on natural gas rather than coal-derived syngas would save Duke (and, by extension, ratepayers) \$80 million in excessive O&M costs. In response, Duke and the IURC dispute the \$80 million figure, including pointing to evidence that Duke would have to continue to purchase coal regardless of whether Edwardsport is run on syngas. The IURC was authorized to determine which facts to credit. Further, the IURC, which was acting in a legislative rather than adjudicative capacity in this ratemaking case, was within its discretion to determine that the value of promoting fuel diversity and grid reliability outweighed any savings in O&M costs from switching to natural gas. When the IURC acts within its statutory authority, we give “great deference to the IURC’s rate-making methodology.” *Office of Util. Consumer Couns. v. Citizens Tel. Corp.*, 681 N.E.2d 252, 255 (Ind. Ct. App. 1997).

[47] The Group, in challenging the sufficiency of the IURC’s findings, cites *L.S. Ayres*, 169 Ind. App. 652, 351 N.E.2d 814. In that case, the Commission granted a rate increase to Indianapolis Power and Light Company (“IPALCO”). On appeal, L.S. Ayres & Co. claimed the IURC erred in concluding one of IPALCO’s plants was fully in service for retail electricity customers because IPALCO had sold some of the plant’s capacity to another

utility. A panel of the Court determined that the Commission’s findings failed to address the issue of the sale of a portion of the plant’s capacity, offering instead only “broad conclusions” unsupported by specific findings of fact. *Id.* at 683, 351 N.E.2d at 834. The Court remanded for further findings.

[48] The Group also cites *City of Evansville*, 167 Ind. App. 472, 339 N.E.2d 562. In that case, the Commission granted a rate increase to Southern Indiana Gas & Electric Company (“SIGECO”). The City of Evansville appealed, claiming the Commission erred in concluding the equipment at one of SIGECO’s generating plants was “reasonably necessary” for the efficient and reliable provision of electricity. *Id.* at 518, 339 N.E.2d at 590. The Commission’s findings on this issue consisted of one vague paragraph that did not refer to the plant, much less its equipment. A panel of the Court concluded the findings of basic fact were “wholly inadequate” and “effectively preclude[d] any principled review . . . .” *Id.* at 519, 339 N.E.2d at 590-91. The Court remanded for further proceedings.

[49] For the purposes of the question of Duke’s O&M expenses at Edwardsport, *Ayres* and *City of Evansville* are factually distinguishable. The IURC’s final order in this case considered the parties’ arguments in detail and directly addressed the question of whether Duke should be allowed to recover O&M costs, including gasification-related costs. By contrast, the Commission’s decisions in *Ayres* and *City of Evansville* did not address the claims at issue in depth, if at all. We conclude the IURC did not err in granting Duke’s request to recover in full its requested amount of O&M costs for the Edwardsport plant.

## Conclusion

[50] For the reasons stated above, we affirm the judgment of the IURC.

[51] Affirmed.

Pyle, J., and Tavitas, J., concur.