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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF INDIANA)
MUNICIPAL POWER AGENCY ("IMPA"))
FOR COMMISSION APPROVAL TO) CAUSE NO. 44898
ASSUME THE OBLIGATION OF CERTAIN)
JURISDICTIONAL IMPA MEMBERS TO)
PURCHASE ENERGY AND CAPACITY) APPROVED: JUN 28 2017
OFFERED BY A QUALIFYING FACILITY)
PURSUANT TO 170 IAC 4-4.1-5(A))

ORDER OF THE COMMISSION

Presiding Officers:
Angela Rapp Weber, Commissioner
Carol Sparks Drake, Administrative Law Judge

On January 17, 2017, the Indiana Municipal Power Agency ("IMPA" or "Petitioner") filed its Verified Petition in the above-captioned Cause pursuant to 170 IAC 4-4.1-5(a). IMPA requests authority from the Indiana Utility Regulatory Commission ("Commission") to assume the obligations of certain IMPA members under the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), to purchase energy and capacity offered by a Qualifying Facility ("QF").

IMPA also filed its case-in-chief on January 17, 2017, which included the direct testimony of the following IMPA employees:

- Jack F. Alvey, Senior Vice President of Generation,
- J. Christian Rettig, Senior Vice President and Chief Financial Officer, and
- Lawrence A. Brown, Vice President Resource Planning.

On April 24, 2017, the Indiana Office of Utility Consumer Counselor ("OUCC") filed its Notice of Intent Not to File Testimony. That same date IMPA filed an Unopposed Notice of Exhibit Substitution with the revised direct testimony of Lawrence A. Brown.

Pursuant to notice given and published as required by law, proof of which was incorporated into the record, an evidentiary hearing was held in this Cause in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana, at 1:30 p.m. on May 15, 2017. Petitioner and the OUCC were present at the hearing and participated. No members of the general public appeared or sought to testify.

Based on the evidence and the applicable law, the Commission now finds:

1. **Notice and Commission Jurisdiction.** Proper legal notice of the hearing in this Cause was given and published by the Commission as required by law. IMPA is subject to the

jurisdiction of the Commission in the manner and to the extent provided in Ind. Code ch. 8-1-2.2. Because IMPA is not a “public utility” as defined in Ind. Code § 8-1-2-1, it is not subject to rate regulation by the Commission, but the Commission has jurisdiction to approve IMPA’s issuance of bonds to finance generation and transmission system projects under Ind. Code § 8-1-2.2-19, to issue certificates of public convenience and necessity under Ind. Code § 8-1-8.5-1(a)(2), and to require IMPA to file an Integrated Resource Plan (“IRP”) under 170 IAC 4-7-3(a)(2). Among IMPA’s members are the municipal electric utilities of Anderson, Crawfordsville, Frankfort, Kingsford Heights, Knightstown,¹ Lebanon, Richmond, and Tipton (collectively the “Jurisdictional Members”), which are regulated by and under the jurisdiction of the Commission pursuant to Ind. Code ch. 8-1.5-3.

Each Jurisdictional Member, except Knightstown, has authorized IMPA to seek approval for authority to meet certain PURPA obligations on its behalf. All QFs and electric utilities, including the Jurisdictional Members, are subject to the Commission’s Cogeneration and Alternate Energy Production Facilities Rules (the “Cogeneration Rules”) at 170 IAC 4-4.1-1 to -13. Pursuant to 170 IAC 4-4.1-5, IMPA seeks to “stand in the shoes” of its Jurisdictional Members for purposes of meeting those members’ PURPA obligations to purchase power from QFs under the Cogeneration Rules (“PURPA Purchase Obligations”).

Accordingly, the Commission has jurisdiction over Petitioner, its Jurisdictional Members, and the subject matter of this Cause.

2. Petitioner’s Characteristics. IMPA is a joint agency within the meaning of Ind. Code § 8-1-2.2-2(c) and is a political subdivision of the State of Indiana. IMPA has its principal office at 11610 North College Avenue in Carmel, Indiana. IMPA provides all of the electric power and energy requirements of its 60 municipal members who serve over 330,000 customers in municipalities across Indiana and one town in Ohio. IMPA and its Jurisdictional Members are subject to Section 210 of PURPA and the Federal Energy Regulatory Commission (“FERC”) regulations thereunder at 18 C.F.R. § 292.303(a) and 292.303(b).

3. Relief Requested. PURPA requires all electric utilities, including IMPA and its Jurisdictional Members, to purchase power from and sell power to QFs. 16 U.S.C. § 824a-3. The FERC requires utilities to purchase from QFs at rates equal to their full avoided cost, defined as “the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility of qualifying facilities, such utility would generate itself or purchase from another source.” 18 C.F.R. § 292.101(b)(6). The Cogeneration Rules provide that “[i]f a utility purchases all of its power from a single supplier, such that its avoided cost, as defined in this rule, is derived from the single supplier, the supplier may assume the obligation to purchase the energy and capacity offered by a qualifying facility.” 170 IAC 4-4.1-5(a).

IMPA requests authority pursuant to 170 IAC 4-4.1-5(a) to assume the obligation of certain Jurisdictional Members to purchase energy and capacity offered by a QF. If this relief is granted, IMPA requests that the Commission join Petitioner in making appropriate filings at the FERC for

¹ On April 26, 2017, Knightstown submitted notice to the Commission that it has begun the process of withdrawing its electric and water utilities from the Commission’s jurisdiction.

waiver, pursuant to 18 C.F.R. § 292.402, to transfer IMPA's members' PURPA Purchase Obligations to IMPA and IMPA's PURPA sales obligation to its members.

4. Petitioner's Testimony.

A. Jack F. Alvey, Senior Vice President of Generation. Mr. Alvey testified that IMPA currently provides all the electric power requirements of its 59 municipal members in Indiana and one town in Ohio with whom IMPA also has a long-term full requirements power supply agreement. IMPA is responsible for delivering power to each member's local distribution system. Mr. Alvey testified that IMPA serves this load using a diverse portfolio of generating resources, including a combination of IMPA- and member-owned generation with long-term, firm power purchases and some seasonal market purchases and that since 1993, IMPA has performed 24-hour power system coordination and scheduling to serve its members. IMPA participates in both the Midcontinent Independent System Operator and PJM Interconnection markets. Mr. Alvey explained that IMPA forecasts its members' combined energy and capacity needs in its biennial IRP filed with the Commission and provides additional services to its members on an agency-wide basis.

Mr. Alvey presented IMPA's Joint PURPA Implementation Plan ("PURPA Plan"). Under the PURPA Plan, IMPA will purchase all energy and capacity offered by QFs to IMPA or any of its members, except from QFs greater than 20 megawatts (MW) for which the FERC grants IMPA a waiver of its purchase obligation. Under the PURPA Plan, because Ind. Code § 8-1-2.2-9(a)(11) does not authorize IMPA to sell energy at the retail level, its members will sell, at retail, all energy and capacity required by QFs located in their electric service territories. If a QF seeks to interconnect with IMPA-owned transmission facilities that are not located within the retail electric service territory of a member, upon request, IMPA will assist the QF in locating a supplier of supplemental, backup, maintenance, and interruptible power. Mr. Alvey explained that the PURPA Plan allows IMPA to offer a standard purchase rate or a negotiated rate for energy and capacity produced by QFs interconnected with IMPA or a member. This standard purchase rate is to be determined by IMPA based on its avoided costs—the costs to IMPA of the electric energy that IMPA would otherwise generate or purchase if not purchased from the QF.

Mr. Alvey testified that the PURPA Plan allows QFs to interconnect with the electric system of IMPA and its members, to sell electric energy and capacity to IMPA, and to purchase retail electric service from members. Mr. Alvey opined that the PURPA Plan reflects an integrated approach to meeting IMPA's and its members' obligations under PURPA and the FERC rules while maintaining the function of IMPA as a wholesale supplier to its members and the retail service function of the members. Mr. Alvey testified that IMPA's PURPA Plan will promote greater integration of renewable energy resources consistent with PURPA's goals. He also testified it might be difficult for some IMPA members to meet PURPA obligations on their own, given local variations in size, financial resources, and technical expertise.

Mr. Alvey further testified that absent IMPA standing in the shoes of its members, the Jurisdictional Members could be forced to charge QFs for avoided cost for capacity differently than each other and differently than the 52 non-jurisdictional IMPA members, resulting in inefficiencies and potentially discouraging QFs from operating in IMPA member territories. Mr.

Alvey also reviewed the history of entities similar to IMPA that have assumed certain PURPA Purchase Obligations of their members, including Hoosier Energy Rural Electric Cooperative, Inc.

B. Lawrence A. Brown, Vice President Resource Planning. In his substitute testimony, Mr. Brown testified that IMPA's PURPA Plan is consistent with the FERC's longstanding policy that an all-requirements customer's avoided costs (here, the IMPA member's cost) is that of its all-requirements supplier. Because IMPA's members purchase all of their power from IMPA, Mr. Brown opined that it is appropriate under the Commission's Cogeneration Rules for IMPA to assume the PURPA Purchase Obligations of its Jurisdictional Members.

Mr. Brown testified that because IMPA is not included in the definition of an "electric utility" under 170 IAC 4-4.1-2, the Commission's Cogeneration Rules do not apply to IMPA; therefore, IMPA is not subject to 170 IAC 4-4.1, including the provisions related to the filing of rate data, the rate calculations for energy purchases and capacity purchases from QFs, and the filing of a standard offer and standard contract. However, Mr. Brown testified that IMPA must comply with all applicable PURPA requirements in establishing rates for QF purchases. Mr. Brown further testified that QF rates must equal the utility's full avoided costs, as defined in 18 C.F.R. §292.101(b)(6). He said that under PURPA, IMPA cannot discriminate against co-generators or small power producers through its rate structure or interconnection requirements. Mr. Brown testified that a form of contract is not included in IMPA's PURPA Plan because the purchases and sales rates will be calculated pursuant to PURPA requirements or negotiated on a case-by-case basis as permitted under PURPA. Mr. Brown further testified that IMPA and its members intend to require each QF to execute a contract providing the detailed terms and conditions, including interconnection requirements, metering, rates, and terms necessary to accommodate safety and reliability concerns.

Mr. Brown testified that IMPA's assumption of its Jurisdictional Members' PURPA obligations is in the public interest. He noted that IMPA's Jurisdictional Members will follow the same PURPA requirements as IMPA's non-jurisdictional members. QF sales negotiations, interconnection arrangements, and other matters will be centrally handled by IMPA, whose staff is knowledgeable about PURPA compliance requirements, while IMPA's Jurisdictional Members will focus their resources on providing retail electric service. Mr. Brown testified that all of IMPA's members will benefit from granting the relief requested because consolidating PURPA compliance efforts should reduce total regulatory compliance costs through specialized centralization and associated economies of scale not currently available to individual Jurisdictional Members.

Within IMPA's IRP, Mr. Brown testified that contracts IMPA enters into with QFs will be treated as resources in IMPA's modeling. He opined that the uniform approach IMPA will follow in PURPA compliance efforts should make it easier for QFs to decide whether to pursue interconnection in areas served by IMPA's members and that no state-level review and approval would be required for future QF interconnection requests and enforcement of those contract terms. Mr. Brown testified that disputes between IMPA and a QF would be resolved in the future by the FERC, decreasing Commission filings.

Mr. Brown clarified that Knightstown is the only Jurisdictional Member that has not executed IMPA's PURPA Plan and has not responded to communications from IMPA regarding the relief requested in this Cause. If Knightstown (or a new member) decides to enter into IMPA's PURPA Plan in the future, IMPA proposes that a notice filing in a sub-docket of this Cause be made with the Commission when such a decision is made, acknowledging the Jurisdictional Member has agreed to enter into the same arrangement as the Commission approved in this Cause. It would be thus unnecessary for the Commission to conduct further regulatory proceedings on QF interconnection and contract terms.

C. J. Christian Rettig, Senior Vice President and Chief Financial Officer.

Mr. Rettig testified regarding how IMPA's financial structure and rate structure impact QFs. He explained that IMPA is a non-profit, funded with tax exempt bonds issued under its state statutory authority and that these bonds are secured by a senior pledge of IMPA's net revenues derived from members' all-requirements power sales agreements. Mr. Rettig testified that the requirements for IMPA's rate structure are set forth in Ind. Code § 8-1-2.2-13 and that the power sales contracts IMPA enters into with its members follow these requirements. Mr. Rettig testified that IMPA's rates are regulated by IMPA's Board of Commissioners ("Board"), established pursuant to Ind. Code § 8-1-2.2-8(d). Mr. Rettig explained that each IMPA member is represented by a Commissioner on the Board who holds one vote and represents the interests of the member municipality, and the Board annually approves IMPA's rates pursuant to Ind. Code § 8-1-2.2-9(a).

Mr. Rettig testified that neither the FERC nor the Commission has jurisdiction over IMPA's rates, pursuant to 16 U.S.C. § 824(c) and Ind. Code ch. § 8-1-2.2, but that IMPA substantially follows the Uniform System of Accounts prescribed by the FERC. Mr. Rettig further testified that it is common for state and federal regulatory authorities to not have jurisdiction over the ratemaking of municipalities and joint action agencies like IMPA. As a body corporate and politic and political subdivision of the State of Indiana, Mr. Rettig testified that IMPA is "deemed to be exercising a part of the sovereign powers of the state" in carrying out its duties under Ind. Code § 8-1-2.2-8(a).

Mr. Rettig stated that Ind. Code § 8-1-2.2-17 provides that so long as a joint agency like IMPA has bonds outstanding, the state will not limit its vested rights to establish rates and charges as provided in Ind. Code ch. 8-1-2.2 or impair the rights and remedies of its bondholders. He testified that IMPA had approximately \$1.16 billion in bonds outstanding as of January 5, 2017.

Mr. Rettig also testified that additional regulatory filings would largely duplicate data IMPA already includes in its rate studies and audited financial statements which are publicly available. From Mr. Rettig's perspective, additional rate filings with the Commission are unnecessary and would lead to significantly greater accounting and regulatory compliance costs while not increasing transparency and accuracy beyond what is already available under IMPA's ratemaking process

5. Commission Discussion and Findings. Based upon the evidence IMPA presented, the Commission finds IMPA is the "single supplier" of power for its members, and it is appropriate for IMPA to assume the obligation of its Jurisdictional Members to purchase energy and capacity offered by a QF pursuant to 170 IAC 4-4.1-5(a). The Commission is persuaded that both the

Jurisdictional Members and QFs will benefit from IMPA assuming this obligation because QF sales negotiations, interconnection agreements, and other related matters will be centrally handled by qualified personnel. Further, the unified approach IMPA will follow under the PURPA Plan should make it easier for QFs to decide whether to pursue interconnection in IMPA's Jurisdictional Members' service territories.

IMPA's PURPA Plan should also encourage cogeneration and small power production by QFs. The Commission finds that the relief IMPA requests will not adversely impact QFs because IMPA will stand in the shoes of its members with regard to their purchase obligation, and its members will stand in IMPA's shoes with regard to the retail sales obligation. Further, while IMPA is not an "electric utility" under 170 IAC 4-4.1-2 and the Commission's Cogeneration Rules do not apply to IMPA, IMPA must still comply with PURPA in establishing rates for QF purchases.

As set forth in IMPA's Verified Petition in this Cause, 18 C.F.R. § 292.402(a) permits a "State regulatory authority [with respect to any electric utility over which it has ratemaking authority] or nonregulated electric utility," after appropriate public notice, to apply for a waiver of 18 C.F.R. § 292.303(a) and (b). The Commission finds that following approval of this Order, the Commission's General Counsel, on the Commission's behalf, should file an appropriate waiver request at the FERC, which filing may be coordinated with IMPA as General Counsel deems appropriate. If granted, the effect of the FERC waiver will be to transfer the must-purchase obligation of the Jurisdictional Members (exclusive of Knightstown) to IMPA and the must-sell obligation of IMPA to those Jurisdictional Members. PURPA provides that the FERC will grant such a waiver if an applicant demonstrates compliance with the regulatory requirements "is not necessary to encourage cogeneration and small power production and is not otherwise required under section 210 of PURPA." 18 C.F.R. § 292.402(b). As set forth in the PURPA Plan, precedent exists for public power agencies like IMPA, which are prohibited from making retail sales, to be granted a FERC-approved waiver of the obligation to sell power to QFs when the local utility may make such retail sales. *See Missouri River Energy Servs.*, Docket No. EL13-80-000, 145 FERC ¶ 62,022 (2013).

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. IMPA's request to assume the obligations of its Jurisdictional Members (exclusive of Knightstown) to purchase energy and capacity offered by a QF pursuant to 170 IAC 4-4.1-5(a) is approved.

2. Additional IMPA members under the ratemaking authority and jurisdiction of the Commission that adopt IMPA's PURPA Plan shall be subject to the terms of this Order upon filing notice with the Commission in a sub-docket of this proceeding (*e.g.*, "Cause No. 44898 S 1") affirming that the member agrees to the same arrangement with IMPA as approved in this Cause for Jurisdictional Members and will be subject to and comply with the terms of this Order. An Order will be issued in the sub-docket without requiring further evidentiary support or hearings unless specifically requested in writing by the OUCC or an interested party within 30 days of the filing of such notice.

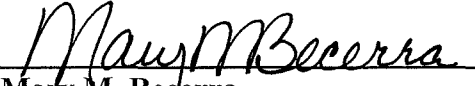
3. The Commission's General Counsel shall, consistent with Paragraph No. 5 above, file an application for a waiver from the FERC pursuant to 18 C.F.R. § 292.402 that transfers the Jurisdictional Members' (exclusive of Knightstown) PURPA purchase obligation from QFs to IMPA and IMPA's PURPA sales obligation to QFs to its members, which filing may be coordinated with IMPA as General Counsel deems appropriate.

4. This Order shall be effective on and after the date of its approval.

ATTERHOLT, FREEMAN, HUSTON, WEBER, AND ZIEGNER CONCUR:

APPROVED: JUN 28 2017

**I hereby certify that the above is a true
and correct copy of the Order as approved.**


Mary M. Becerra
Secretary of the Commission