

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Indiana Municipal Power Agency and  
Indiana Utility Regulatory  
Commission

Docket No. EL18-\_\_\_\_-000

**REQUEST FOR PARTIAL WAIVER OF THE  
PURPA OBLIGATIONS OF ELECTRIC UTILITIES  
TO PURCHASE AND SELL ENERGY AND  
CAPACITY FROM AND TO QUALIFYING  
FACILITIES**

Pursuant to Section 292.402 of the regulations of the Federal Energy and Regulatory Commission (the “Commission”),<sup>1</sup> Indiana Municipal Power Agency (“IMPA”) on behalf of itself and its authorizing member municipal cities (“Authorizing Members”) that are nonregulated electric utilities, and the Indiana Utility Regulatory Commission (“Indiana Commission”) on behalf of those Authorizing Members subject to Indiana Commission rate regulation, respectfully submit this joint request for a partial waiver of certain obligations imposed on IMPA and its Authorizing Members through the Commission’s regulations<sup>2</sup> implementing Section 210 of the Public Utility Regulatory Policies Act of 1978, as amended (“PURPA”).<sup>3</sup>

As explained in greater detail below, the Commission should grant this request because compliance with the proposed partially waived requirements is not necessary to encourage cogeneration and small power production and is not otherwise required under

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<sup>1</sup> 18 C.F.R. § 292.402.

<sup>2</sup> 18 C.F.R. § 292.303(a), .303(b).

<sup>3</sup> 16 U.S.C. § 824a-3.

Section 210 of PURPA. In support of this request, the Indiana Commission and IMPA (“Joint Petitioners”) state as follows:

**I. DESCRIPTION OF THE INDIANA COMMISSION, IMPA, AND THE AUTHORIZING MEMBERS**

The Indiana Commission is a state commission as defined in Section 1.101(k) of the Commission’s Rules of General Applicability, 18 C.F.R. § 1.101(k). The Indiana Commission regulates public utilities in the State of Indiana as well as municipal utilities that have not opted out of its jurisdiction over their rates and charges, including some of IMPA’s Authorizing Members. These rate regulated Authorizing Members (“Rate-regulated Members”) are the City of Anderson, IN; the City of Frankfort, IN; the City of Crawfordsville, IN; the Town of Kingsford Heights, IN; the City of Lebanon, IN; the City of Tipton, IN; and the City of Richmond, IN.

IMPA is a political subdivision of the State of Indiana and a body politic and corporate created by statute and authorized by statute to jointly plan, finance, own, and operate electric power supply facilities.<sup>4</sup>

IMPA acts as the full-requirements wholesale power supplier to sixty municipalities in the State of Indiana and one community in Ohio. Of these, fifty-five have agreed to the PURPA policy described herein<sup>5</sup> and authorized IMPA or the Indiana Commission (as applicable) to file this waiver on their behalf. They are referred to herein as the “Authorizing Members” and are listed in Appendix A. IMPA meets its power-supply obligations to its members using generation owned by IMPA, contractual

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<sup>4</sup> See Ind. Code ch. 8-1-2.2.

<sup>5</sup> The IMPA Joint PURPA Implementation Plan, which is attached hereto as Appendix B.

entitlements to generating capacity owned by some of its members, and through various purchase agreements.

## II. COMMUNICATIONS

Communications regarding this matter should be addressed to the following persons:<sup>6</sup>

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## III. INTRODUCTION

### A. *General Description of Waiver Request*

In general, Sections 292.303(a)<sup>7</sup> and 292.303(b)<sup>8</sup> of the Commission's regulations require electric utilities (including IMPA and its Authorizing Members)<sup>9</sup> to purchase energy and capacity from, and sell energy and capacity to, Qualifying Facilities ("QFs"). However, Section 292.402<sup>10</sup> of the Commission's regulations permits any "State

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<sup>6</sup> Joint Petitioners request a waiver of Commission Rule 203(b)(3) (18 C.F.R. § 385.203(b)(3)) so that each named person may be included on the official service list.

<sup>7</sup> 18 C.F.R. § 292.303(a).

<sup>8</sup> 18 C.F.R. § 292.303(b).

<sup>9</sup> "Electric utility" is defined as "any person, State agency, or Federal agency, which sells electric energy." 16 U.S.C. § 2602(4).

<sup>10</sup> 18 C.F.R. § 292.402.

regulatory authority (with respect to any electric utility over which it has ratemaking authority) or nonregulated electric utility,”<sup>11</sup> after appropriate public notice, to apply for a waiver of Sections 292.303(a) and 292.303(b). Section 292.402 also provides that the Commission will grant such a waiver if an applicant demonstrates that compliance with any of the regulatory requirements “is not necessary to encourage cogeneration and small power production and is not otherwise required under section 210 of PURPA.”<sup>12</sup>

The Indiana Commission has jurisdiction over IMPA’s Rate-regulated Members, and no State regulatory authority has ratemaking authority over IMPA or its Authorizing Members that are nonregulated electric utilities. Therefore, pursuant to 18 C.F.R. 292.402(a), the Indiana Commission is submitting this application for waiver of certain obligations under the Commission’s PURPA regulations for the Rate-regulated Members, and IMPA is submitting this application on behalf of itself and the Authorizing Members that are nonregulated electric utilities.

Compliance with Sections 292.303(a)<sup>13</sup> and 292.303(b)<sup>14</sup> are not necessary here to encourage cogeneration and small power production. In place of the Authorizing Members’ purchases from QFs, IMPA will make such purchases at its full avoided cost. Likewise, in place of retail sales to QFs by IMPA (which IMPA is not authorized to make), the Authorizing Members will make such sales. As a result, QFs interconnected with IMPA and its Authorizing Members will continue to have the ability to make sales at avoided cost rates as well as assurance of a source of retail power for their operations.

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<sup>11</sup> The term “nonregulated electric utility” is defined as “any electric utility other than a State regulated electric utility.” 16 U.S.C. § 2602(9).

<sup>12</sup> 18 C.F.R. § 292.402(b).

<sup>13</sup> 18 C.F.R. § 292.303(a).

<sup>14</sup> 18 C.F.R. § 292.303(b).

**B. PURPA Implementation Plan**

The IMPA Joint PURPA Implementation Plan (“Implementation Plan”), attached as Appendix B, reflects the policy of IMPA and its Authorizing Members, consistent with the intent and requirements of PURPA, to implement programs to encourage cogeneration and small power production. The Implementation Plan was adopted by a resolution of the IMPA Board of Commissioners, and each Authorizing Member has adopted the plan through written authorization. The Implementation Plan is in furtherance of the basic structure adopted in the Power Sales Contracts between IMPA and each of the Authorizing Members, which provide for IMPA to negotiate with and purchase energy from QFs on behalf of Authorizing Members (the Power Sales Contract is attached as Appendix C<sup>15</sup>). The Implementation Plan is also consistent with Indiana law requiring the Authorizing Members to provide power on a nondiscriminatory basis to any energy consumer within their respective service territories, including QFs.<sup>16</sup> The Implementation Plan is intended to add further detail to these basic concepts and advise the public of the guidelines for enabling QFs to interconnect with the electric utility systems of IMPA and the Authorizing Members, sell energy and capacity to IMPA, and purchase retail electric services from the Authorizing Members.

Specifically, the Implementation Plan provides that:

- (i) Any QF is permitted to interconnect with the electric systems of IMPA or any Authorizing member;
- (ii) Any QF is permitted to sell energy and capacity to IMPA at rates equal to IMPA’s full avoided costs or at a negotiated rate;

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<sup>15</sup> The template for the Power Sales Contract is included as Appendix C; with regard to basic structure, all of IMPA’s Power Sales Contracts with its members are substantively identical.

<sup>16</sup> Ind. Code ch. 8-1-2.4, §§ 8-1.5-3-8, 8-1.5-3-10.

- (iii) Any QF is permitted to purchase supplemental, back-up, and maintenance power from an Authorizing Member on either a firm or interruptible basis, at rates that are nondiscriminatory, just and reasonable, and in the public interest; and
- (iv) No QF will be subject to duplicative charges for interconnection or wheeling as a result of selling to IMPA and buying from an Authorizing Member.

The Implementation Plan allows IMPA and the Authorizing Members to implement their policy of encouraging QFs, while maintaining the functional division of power-supply responsibilities between IMPA and its Authorizing Members. Granting this waiver request will be consistent with the waiver provision of the PURPA Regulations, which authorizes the Commission to waive any of the requirements of its regulations (other than Section 292.302, requiring the availability of avoided cost data) if a non-regulated utility, after giving notice in the area it serves, “demonstrates that compliance with any of the requirements of subpart C is not necessary to encourage cogeneration and small power production and is not otherwise required under section 210 of PURPA.”<sup>17</sup> The Commission has granted materially similar waivers in similar circumstances, and this waiver request is supported by well-established precedent.<sup>18</sup>

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<sup>17</sup> 18 C.F.R. § 292.402(b).

<sup>18</sup> See *Oglethorpe Power Corp.*, 32 FERC ¶ 61,103 (1985), *reh'g granted in part and denied in part*, 35 FERC ¶ 61,069 (1986), *aff'd sub nom. Greensboro Lumber Co. v. FERC*, 825 F.2d 518 (D.C. Cir. 1987); *Okla. Mun. Power Auth.*, 156 FERC ¶ 62,015 (2016); *Mo. River Energy Servs.*, 145 FERC ¶ 62,022 (2013); *Ark. Pub. Serv. Comm'n*, Docket No. EL09-37-000, Letter Order (Apr. 30, 2009), eLibrary No. 20090430-3048; *Mo. Basin Mun. Power Agency*, Docket No. EL09-13-000, Letter Order (Feb. 6, 2009), eLibrary No. 20090206-3039; *W. Farmers Elec. Coop.*, 115 FERC ¶ 61,323 (2006); *Mo. Basin Mun. Power Agency*, 69 FERC ¶ 62,250 (1994); *Corn Belt Coop.*, 68 FERC ¶ 62,249 (1994); *S. Ill. Power Coop.*, 66 FERC ¶ 62,010 (1994); *Nw. Iowa Power Coop.*, 57 FERC ¶ 62,079 (1991); *Soyland Power Coop., Inc.*, 50 FERC ¶ 62,072 (1990); *Seminole Elec. Coop., Inc.*, 39 FERC ¶ 61,354 (1987).

#### IV. JUSTIFICATION FOR WAIVER

**A. *Waiver of Authorizing Members' purchase obligation is consistent with the PURPA statutory mandate.***

The Commission should waive the Authorizing Members' purchase obligations under Section 292.303(a) of its regulations<sup>19</sup> because those obligations will be fully assumed by IMPA. Under the Implementation Plan, IMPA is obligated to purchase power from any QF from which an Authorizing Member would be obligated to purchase, and QFs are permitted to sell energy and capacity to IMPA at its full avoided costs or at a negotiated rate.<sup>20</sup>

IMPA was established for the purpose of providing an adequate, reliable, and affordable supply of electrical power and energy to its members. In order to carry out this function, it must predict the power-supply needs of its members, prepare system-wide load forecasts, coordinate and plan the resources it will use to meet those needs, and perform all necessary tasks to meet their energy requirements. The Authorizing Members rely on IMPA to perform these functions and do not engage in independent planning to meet their power-supply needs. Consequently, integration of its supply resources is essential to IMPA's ability to perform this primary function.

Further, QFs will not be subject to duplicative charges for interconnection or wheeling as a result of selling to IMPA rather than to individual Authorizing Members. The Implementation Plan makes clear that a QF interconnecting with an Authorizing

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<sup>19</sup> 18 C.F.R. § 292.303(a).

<sup>20</sup> The Commission has granted waivers of the purchase obligation where a generating and transmission cooperative committed to paying full avoided cost, even where avoided cost of certain members is higher. *Oglethorpe Power Corp.*, 35 FERC ¶ 61,069, at 61,136 (1986) (“[E]ven if Greensboro were able to demonstrate that in a particular case an [electric membership corporation’s] avoided cost would exceed Oglethorpe’s we would still hold that granting this waiver is appropriate.”), *aff’d sub nom. Greensboro Lumber Co. v. FERC*, 825 F.2d 518 (D.C. Cir. 1987).

Member and selling to IMPA will not be subject to duplicative interconnection or wheeling charges. To the extent that additional costs of wheeling (*i.e.*, beyond the Authorizing Member's facilities) are necessitated by the fact that IMPA is the purchaser rather than the Authorizing Member, such costs will be borne by IMPA and not the QF. Thus, a QF interconnecting with an Authorizing Member will be subject to the same charges if it sells to IMPA as it would be if it were selling to the interconnecting Authorizing Member.

Finally, the Commission has granted waivers of the purchase obligation of municipal members of a joint-action agency and distribution cooperative members of a generation and transmission cooperative under nearly identical circumstances. For example, in *Oglethorpe Power Corp.*, the Commission granted a waiver of the purchase obligation and explained that:

where [the generation and transmission cooperative] is ready and willing to stand in the shoes of [its distribution participating members], waiving the [participating members'] purchase obligation will not frustrate Congress' intent, because no QF will be deprived of a market for its power and each will receive a rate established as sufficient to encourage QFs.

32 FERC at 61,285. *See also, e.g., Heartland Consumers Power Dist.*, 154 FERC ¶ 61,203 (2016).

Here, IMPA is similarly ready and willing to stand in the shoes of its Authorizing Members by paying QFs its full avoided cost for their power. As a result, a waiver will not discourage cogeneration and small power production, and the requested waiver should be granted.



***B. Waiver of IMPA's sale obligation is consistent with the PURPA statutory mandate.***

Similarly, the Commission should waive IMPA's purchase obligation under Section 292.303(b) of its regulations<sup>21</sup> because this obligation will be undertaken by its Authorizing Members. The Authorizing Members are already obligated under Indiana law to provide retail electric service at nondiscriminatory, reasonable, and just rates.<sup>22</sup> Moreover, IMPA is not authorized to sell energy at the retail level.<sup>23</sup> Statutory prohibition aside, retail service by IMPA would result in operational and administrative problems. As a wholesale power supplier, IMPA currently lacks the organizational structure and personnel necessary to make retail sales. However, the Authorizing Members are retail entities already possessing the experience, staff, distribution facilities, and other attributes necessary to provide reliable retail service.

Under the terms of the Implementation Plan, upon request by a QF located within an Authorizing Member's retail service territory, that Authorizing Member shall sell energy and capacity to the QF under the Authorizing Member's applicable retail tariff or at rates equal to the Authorizing Member's other customers with similar load and other cost-related characteristics. In addition, upon request by a QF located within an Authorizing Member's retail service territory, the Authorizing Member shall offer supplemental, back-up, and maintenance power on a firm or interruptible basis. Thus, Authorizing Members will simply stand in the shoes of IMPA by providing QFs with retail service on reasonable terms and conditions. The Implementation Plan is consistent

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<sup>21</sup> 18 C.F.R. § 292.303(b).

<sup>22</sup> Ind. Code § 8-1.5-3-8.

<sup>23</sup> *Id.* § 8-1-2.2-9(a)(11).

with PURPA's mandate because the Authorizing Members' supply of these services would encourage cogeneration and small power production.

Further, under the Implementation Plan, QFs will not be subject to duplicative charges for interconnection associated with retail service. QFs will also not be subject to additional charges associated with building separate facilities to enable the Authorizing Members to deliver retail service in excess of charges that would have been incurred had IMPA delivered service. Likewise, QFs will not incur additional wheeling charges by purchasing from the Authorizing Members as opposed to purchasing from IMPA. Thus, a QF will be subject to the same interconnection, facilities, and wheeling charges if it purchases from IMPA or from any of its Authorizing Members.

Finally, the Commission has previously granted waivers of the sale obligation under virtually identical circumstances. The Commission has approved waivers of the sale obligation where members have agreed to offer supplementary, backup, and maintenance service on an interruptible basis to QFs, upon request, at rates that are nondiscriminatory, just and reasonable, and in the public interest.<sup>24</sup> Applicants in these cases have also agreed that QFs will not be subject to duplicative charges for interconnection or wheeling.<sup>25</sup> In approving such waivers, the Commission has explained that separate sale requirements by joint-action agencies or generating and transmission cooperatives were unnecessary to encourage cogeneration and small power production.<sup>26</sup>

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<sup>24</sup> See, e.g., *Okla. Mun. Power Auth.*, 156 FERC ¶ 62,015; *Heartland Consumers Power Dist.*, 154 FERC ¶ 61,203; *W. Farmers Elec. Coop.*, 115 FERC ¶ 61,323.

<sup>25</sup> 156 FERC ¶ 62,015; 154 FERC ¶ 61,203; 115 FERC ¶ 61,323.

<sup>26</sup> 154 FERC ¶ 61,203, P 27 (citing *Seminole Elec. Power Coop.*, 39 FERC at 62,112).

Accordingly, the Commission should waive the QF sales obligation of IMPA because IMPA's compliance with this obligation is not necessary to encourage cogeneration and small power production.

## **V. PROCEDURAL/NOTICE MATTERS**

Pursuant to 18 CFR § 292.402(a), IMPA caused to be published its Notice of Intent to File with the Federal Energy Regulatory Commission for Approval of a Joint PURPA Implementation Plan. The notices were published on September 12, 2017 and September 19, 2017 in the *Indianapolis Star* and Indystar.com and on September 18, 2017 and September 25, 2017 in the *Cincinnati Enquirer* and Cincinnati.com. Both the *Indianapolis Star* and *Cincinnati Enquirer* are newspapers of statewide circulation, and together provide complete regional coverage over the Authorizing Members' service territories. Copies of the Affidavits of Publication are attached hereto, and incorporated herein by reference as Appendix D.

## **VI. CONCLUSION**

For the reasons stated above, Joint Petitioners request that the Commission grant a waiver, on behalf of IMPA and its Authorizing Members, of the PURPA obligations described above. Granting such a waiver will not undermine the PURPA statutory mandate of encouraging cogeneration and small power production by QFs. The Implementation Plan advances the policies of Section 210 of PURPA in a manner consistent with shared responsibilities under state law and the existing Power Sales Contracts between IMPA and its Authorizing Members. No QF will be disadvantaged, because IMPA will stand in the shoes of its Authorizing Members with regard to the purchase obligation, and the Authorizing Members will stand in the shoes of IMPA with regard to the sales obligation.

Furthermore, IMPA and its Authorizing Members have included in their Implementation Plan those elements that the Commission has determined to be necessary for the grant of similar waivers. Specifically, the Implementation Plan ensures that QFs will (1) have a market for their power at IMPA's full avoided cost rate; (2) be offered back-up, supplementary, and maintenance power, upon request, on either a firm or interruptible basis, at rates that are nondiscriminatory, just and reasonable, and in the public interest; (3) be protected from duplicative interconnection charges or wheeling charges as a result of dealing with an individual Authorizing Member for retail service and IMPA for purchases of QF capacity and energy.

Wherefore, on behalf of the Rate-regulated Members, the Indiana Commission respectfully requests waiver of Sections 292.303(a) and 292.303(b) of the Commission's Regulations implementing PURPA in order to effect IMPA and its Authorizing Members' Implementation Plan. On behalf of itself and Authorizing Members who are nonregulated electric utilities, IMPA respectfully requests waiver of Sections 292.303(a) and 292.303(b) of the Commission's Regulations implementing PURPA in order to effect IMPA and its Authorizing Members' Implementation Plan.

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Respectfully submitted,

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# APPENDIX A

Appendix A to IMPA Application for PURPA Waivers  
List of Authorizing Members<sup>1</sup>

Authorizing Members that are rate-regulated utilities under Indiana Utility Regulatory Commission jurisdiction are denoted by \*

Advance Municipal Light & Power	Ladoga Light & Power
Anderson Municipal Light & Power*	Lawrenceburg Municipal Utilities
Argos Utilities	Lebanon Utilities*
Bainbridge Municipal Utilities	Lewisville Electric Utility
Blanchester Utilities	Linton Municipal Utilities
Bremen Electric Light & Power	Montezuma Municipal Utilities
Brooklyn Electric Department	Pendleton Light & Power
Centerville Municipal Utilities	Peru Utilities
Chalmers Municipal Utilities	Pittsboro Municipal Utilities
Coatesville Power & Light	Rensselaer Electric Utility
Columbia City Municipal Utilities	Richmond Power & Light*
Covington Municipal Electric Utility	Rising Sun Municipal Utilities
Crawfordsville Electric Light & Power*	Rockville Municipal Utilities
Darlington Light & Power	Scottsburg Municipal Electric Department
Dublin Municipal Electric Utilities	South Whitley Municipal Electric
Dunreith Municipal Utilities	Spiceland Municipal Utilities
Edinburgh Municipal Power & Light	Straughn Municipal Electric
Etna Green Municipal Utilities	Tell City Electric Department
Flora Municipal Electric Utilities	Thorntown Utilities
Frankfort City Light & Power*	Tipton Municipal Utilities*
Frankton Municipal Light & Water	Troy Utilities
Gas City Municipal Utilities	Veedersburg Utilities Department
Greendale Utilities	Walkerton Municipal Utilities
Greenfield Power & Light	Washington Electric Light & Power
Huntingburg Municipal Electric Utility	Waynetown Electric Utility
Jamestown Municipal Light & Power	Williamsport Light & Water
Jasper Municipal Electric Utility	Winamac Municipal Utilities
Kingsford Heights Municipal Electric Utility*	

1. Six IMPA members (Bargersville, Brookston, Knightstown, Middletown, New Ross, and Paoli) have not authorized IMPA's Joint PURPA Implementation Plan and are thus are not "Authorizing Members" for the purpose of this filing.

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# APPENDIX B



## INDIANA MUNICIPAL POWER AGENCY

## JOINT PURPA IMPLEMENTATION PLAN

## Overview of Plan

This Joint PURPA Implementation Plan (“Plan”) sets forth the manner in which the Indiana Municipal Power Agency (“IMPA”) and its authorizing member municipalities (“authorizing Members”<sup>1</sup>) plan to implement the requirements imposed upon them under Section 210 of the Public Utility Regulatory Policies Act of 1978, as amended (“PURPA”), and the rules adopted by the Federal Energy Regulatory Commission (“FERC”) thereunder.

IMPA has drafted these rules to develop and coordinate implementation of a plan for meeting the obligations imposed on IMPA and its Members under Section 210 of PURPA and FERC’s Regulations thereunder. Before this Plan goes into effect with regard to any Member, a Member must adopt the Plan through written authorization. Appendix I to this Plan is a list of the authorizing Members. This list will be updated to include additional authorizing Members as necessary.

IMPA and its Members are electric utilities subject to the purchase and sale obligations under PURPA. IMPA is a political subdivision of the State of Indiana and a body politic and corporate created by statute and authorized by statute to jointly plan, finance, own and operate electric power supply facilities.<sup>2</sup> IMPA was created with the purpose of providing adequate, reliable and economic sources of electric power and energy to Indiana municipalities operating municipal electric systems. IMPA acts as a wholesale power supplier to 59 municipalities in the State of Indiana and one community in Ohio. IMPA meets its power-supply obligations to its

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<sup>1</sup> For purposes of this Plan, the term “Members” includes the municipal electric utility for the Village of Blanchester, Ohio, which purchases full-requirements energy service from IMPA. The term “Members” likewise includes any future municipal electric utilities that may choose to obtain full-requirements energy service from IMPA.

<sup>2</sup> See Ind. Code 8-1-2.2-1, *et seq.*

Members using generation owned by IMPA, contractual entitlements to generating capacity owned by some of its Members, and through various power purchase agreements.

Through IMPA's Power Sales Contracts with its Members, the IMPA Members have previously agreed to allow IMPA to negotiate with and purchase energy from Qualifying Facilities ("QFs") on the Members' behalf. Additionally, Indiana law requires IMPA's Members to provide power on a non-discriminatory basis to any energy consumers located within their respective service territories, including QFs. *See* Ind. Code § 8-1-2-4 and 8-1.5-3-8.

In keeping with these contractual and statutory obligations, the Plan reflects the policy of IMPA and the authorizing Members to provide a program to facilitate cogeneration and small power production. The Plan is intended to advise the public of the basic approach and general guidelines for allowing QFs to interconnect with the electric utility systems of IMPA and the authorizing Members, to sell electric energy and capacity to IMPA, and to purchase retail electric service from the authorizing Members.

Under the Plan:

- IMPA will purchase all energy and capacity offered by QFs to IMPA or any of the authorizing Members (except with respect to QFs of greater than 20 MW as to which FERC grants IMPA waiver of its purchase obligation);
- Because Indiana Code § 8-1-2.2-9(a)(11) does not authorize IMPA to sell energy at the retail level, the authorizing Members will sell, at retail, all energy and capacity required by QFs located in their retail electric service territories; and
- If a QF seeks to interconnect with IMPA-owned transmission facilities that are not located within the retail electric service territory of an authorizing Member, upon request IMPA will assist the QF in locating a supplier of supplemental, backup,

maintenance, and interruptible power.

IMPA will offer a standard purchase rate or a negotiated rate for energy and capacity (if avoided) produced by QFs interconnected with IMPA or an authorizing Member. This standard purchase rate will be determined by IMPA based on its “avoided cost,” *i.e.*, the costs to IMPA of the electric energy that IMPA would otherwise generate or purchase from another source if not purchased from the QF. The rate and methodology will be reviewed periodically, and will be subject to revision based on future changes to various factors, which may include IMPA’s delivered cost of fuel, plant generation characteristics, capacity needs, cost of purchased power, transmission costs, operating experience with QFs, IMPA’s (or MISO’s or PJM’s) ability to dispatch to the QF, the expected or demonstrated reliability of the QF, the terms of any legally enforceable obligation, the extent to which the QF’s scheduled outages can be usefully coordinated with those of IMPA, the usefulness of the QF’s energy and capacity during system emergencies and the QF’s ability to separate its load from its generation, the individual and aggregate value of energy and capacity from QFs, the smaller capacity increments and shorter lead times available with additions of capacity from QFs. IMPA reserves the right to analyze each QF’s cost impact and adjust rate provisions to reflect power supply characteristics.

Upon request by a QF located within an authorizing Member’s retail service territory, the Member shall offer supplemental, back-up, and maintenance power on a firm or interruptible basis. The authorizing Members will sell energy and capacity to QFs located within their retail service territories under their applicable retail tariffs or at rates equal to the rates to the authorizing Members’ other customers with similar load and other cost-related characteristics. Each authorizing Member has undertaken to sell energy and capacity at rates that are nondiscriminatory, just and reasonable, and in the public interest.

By implementing the purchase and sale requirements in this manner, the QFs will have a

market for their power at rates comparable to the rates the authorizing Members could offer and will meet the needs of QFs for supplementary, back-up, and maintenance power in a manner consistent with the retail functions of the authorizing Members.

IMPA has not included a form of contract in the Plan since the purchases and sales rates will be calculated pursuant to the standard purchase rate, identified by tariff, or negotiated on a case-by-case basis. However, IMPA and the authorizing Members intend to require a contract be executed by each QF. Such contract will provide detailed terms and conditions including interconnection requirements, metering, rates, and those terms necessary to accommodate safety and reliability concerns.

IMPA intends to file with FERC, on behalf of IMPA and the authorizing Members, a petition seeking waiver of Sections 292.303(a) and 292.303(b) of FERC's Regulations<sup>3</sup> to permit the Plan to be placed in effect as proposed. If granted, the effect of the waiver will be to transfer the must-purchase obligation of the authorizing Members to IMPA. Additionally, IMPA intends to file with FERC one or more applications seeking waiver of IMPA's must-purchase obligation for QFs greater than 20MW pursuant to Section 292.309(a) of FERC's Regulations,<sup>4</sup> and waiver of IMPA's obligation to make sales of retail power to QFs, in recognition of the statutory prohibition against such sales by IMPA.

FERC has granted waivers under Section 202.303(a) and 292.303(b) in other similar situations.<sup>5</sup> IMPA and its authorizing Members are promulgating a Plan similar to those adopted

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<sup>3</sup> 18 CFR §§ 292.303(a) and (b) (2014).

<sup>4</sup> 18 CFR § 292.309(a).

<sup>5</sup> See *Oglethorpe Power Corp.*, 32 FERC ¶ 61,103 (1985), *reh'g granted in part and denied in part*, 35 FERC ¶ 61,069 (1986), *aff'd sub nom. Greensboro Lumber Co. v. FERC*, 825 F.2d 518 (D.C. Cir. 1987); *Seminole Electric Cooperative, Inc.*, 39 FERC ¶ 61,354 (1987); *Missouri Basin Municipal Power Agency*, 69 FERC ¶ 62,250 (1994); *Corn Belt Cooperative*, 68 FERC ¶ 62,249 (1994); *Southern Illinois Power Cooperative*, 66 FERC ¶ 62,010 (1994); *Northwest Iowa Power Cooperative*, 57 FERC ¶ 62,079 (1991); *Soyland Power Cooperative, Inc.*, 50 FERC ¶ 62,072 (1990); *Western Farmers Electric Cooperative*, 115 FERC ¶ 61,323 (2006); *Missouri Basin Municipal Power Agency*, Docket No. EL09-13-000, Letter Order (Feb. 6, 2009); *Arkansas Public Service Comm'n, et al.*, Docket No. EL09-37-000, Letter Order (April 30, 2009); *Missouri River Energy Servs.*, 145 FERC ¶ 62,022 (2013).

by other cooperatives and joint action agencies and their members, with such additions as were deemed necessary to meet the PURPA requirements and FERC regulations. FERC has also granted waivers of must-purchase obligations with respect to QFs greater than 20 MW pursuant to Section 292.309(a)(1) in MISO and PJM on grounds that these RTOs operate “Day 2” markets and thus QFs have adequate access to purchasers of output of their facilities.<sup>6</sup> If the requested waivers are not granted, IMPA and the authorizing Members will take such other actions, if any, as may be required to comply with PURPA and the rules adopted thereunder by FERC.

IMPA and the authorizing Members believe that the integrated approach to PURPA implementation as described herein will not adversely affect QFs. Indeed, IMPA and the authorizing Members believe the proposed approach will facilitate the development of QFs.

## I. Introduction

### A. Intent of Plan

The Plan is intended to set forth the basic approach and general guidelines for allowing QFs to interconnect with IMPA and authorizing Members’ electric utility systems in accordance with rules adopted by FERC implementing PURPA Section 210.

### B. Utilities Subject to Plan

IMPA and all Members that adopt this Plan through written authorization, as listed in Appendix I, are subject to the Plan. The Plan addresses purchases from and sales to all QFs seeking to interconnect to transmission or distribution facilities owned by IMPA or any authorizing Member.

## II. Statement of Policy

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<sup>6</sup> *E.g.*, *Missouri River Energy Servs.*, 145 FERC ¶ 62,023 (2013) (approving a joint action agency’s request to waive the must-purchase obligation for resources greater than 20 MW in MISO).

A. The Joint Policy

It is the policy of IMPA and the authorizing Members: (i) to permit any QF to interconnect with the electric systems of IMPA or any authorizing Member; (ii) to permit any QF to sell energy and capacity to IMPA at rates equal to IMPA's full avoided costs or at a negotiated rate; and (iii) to permit any QF to purchase supplemental, back-up and maintenance power from an authorizing Member on either a firm or interruptible basis, at rates that are nondiscriminatory, just and reasonable, and in the public interest. To effectuate this policy, IMPA and the authorizing Members expressly undertake the following obligations as a condition to the joint policy: (a) IMPA will be ready and willing to purchase power from any QF from which an authorizing Member would otherwise be required to purchase; (b) no QF will be subject to duplicative interconnection charges or duplicative charges for wheeling power to IMPA across the lines of an authorizing Member; (c) no QF will be subject to duplicative charges or additional fees as a result of IMPA's purchase of QF power that would otherwise be purchased by an authorizing Member; (d) no QF will be subject to duplicative interconnection charges or duplicative charges for wheeling of supplemental, back-up, or maintenance power from an authorizing Member; and (e) no QF interconnected directly with IMPA and purchasing supplemental, back-up, or maintenance power from an authorizing Member will be charged for the cost of facilities required to receive such power other than the cost of such facilities had the QF purchased such power from IMPA. IMPA and the authorizing Members' undertakings expressed above are, in each case, subject to the other express and implied terms and conditions of the Plan and the other requirements imposed by law.

Because this Plan outlines the basic approach that IMPA and the authorizing Members intend to use to fulfill their separate obligations under PURPA, IMPA and/or a given authorizing Member may modify it to the extent authorized by law if such utility determines that the modification is reasonably necessary. In addition, this Plan shall be modified as necessary or

appropriate to comply with requirements imposed by FERC or any other governmental entity having jurisdiction over IMPA and/or the authorizing Members, or any other entity with authority to establish reliability requirements applicable to, or impose such requirements on, IMPA and/or the authorizing Members.

This Plan reflects an integrated approach to implementing IMPA's and the authorizing Members' obligations under PURPA and the FERC Rules. This approach recognizes the function of IMPA as wholesale supplier to the authorizing Members and the retail service function of the authorizing Members, while assuring each QF of a market for its power and any necessary back-up, maintenance, and supplemental service, on either a firm or interruptible basis. Pursuant to Section 292.303(a) of FERC's Regulations,<sup>7</sup> an electric utility is obligated to purchase only the energy and capacity which is "made available" from a QF. Section 292.304(d) of FERC's Regulations<sup>8</sup> clarifies that each QF shall have the option to determine the amount of energy or capacity "available" for purchase. Accordingly, the Plan does not require a QF to sell all of its energy and capacity to IMPA, but rather just the amount the QF wishes to make "available" for such purchases.

No QF will be permitted to interconnect and operate in parallel with the electric system of IMPA or an authorizing Member without the prior knowledge and approval of such utility and without entering into a satisfactory written contract. A QF interconnecting with an authorizing Member and selling to IMPA will not be subject to duplicative interconnections or wheeling charges. To the extent that additional costs of wheeling (*i.e.*, beyond the authorizing Member's facilities) are necessitated by IMPA's purchases of the QF's power (rather than the authorizing Member's purchases), such costs will be borne by IMPA (rather than the QF). The Plan does not require any authorizing Member to transmit QF output in connection with sales to a purchaser

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<sup>7</sup> 18 CFR §292.303(a).

<sup>8</sup> 18 CFR §292.304(d).

other than IMPA.

Where a QF is interconnected to transmission or distribution facilities owned by IMPA or an authorizing Member and located within the retail service territory of an authorizing Member, the purchase of capacity and energy by the QF will be made pursuant to separate arrangements between the QF and the applicable authorizing Member and shall be in accordance with applicable law and the authorizing Member's applicable rates, rules, and regulations governing retail service. The terms of the arrangement between IMPA, the authorizing Member, and the QF shall be consistent with the authorizing Member's tariff or consistent with rates to the authorizing Member's other customers with similar load or other cost-related characteristics.

Where a QF seeks to interconnect with IMPA-owned transmission facilities that are not located within the retail service territory of an authorizing Member, upon request IMPA will assist the QF in locating a supplier of supplemental, backup, maintenance, and interruptible power. IMPA makes no commitments regarding the availability of such suppliers, nor their rates and charges or terms of service.

#### B. Metering Requirements

IMPA and the authorizing Members require as a condition to the purchase of capacity and energy from a QF the installation of proper metering equipment to permit inclusion of the quantities in IMPA's monthly energy and capacity accounting. The amount of energy and capacity purchases from the QF by IMPA shall not normally be netted against the energy and capacity purchased by the QF from the authorizing Members, unless required by applicable rules and regulations adopted by entities having jurisdiction over IMPA and the authorizing Members.

IMPA shall adopt nondiscriminatory policies and procedures concerning metering requirements applicable to QFs as required. IMPA shall make such policies and procedures available to QFs for review.



### C. Additional Interconnection Requirements

The following additional requirements shall apply to all purchases from QFs under the Plan:

- (i) The operator of the QF shall be responsible for all costs associated with electric interconnection of the QF to IMPA's or the authorizing Member's system, including such automatic relaying and system protection which IMPA or the authorizing Member believes necessary for safety reasons, electric wiring and apparatus, protective equipment and an interconnection switch. IMPA and the authorizing Members have the right to refuse to interconnect or to discontinue the QF's connection if wiring and apparatus do not meet appropriate safety requirements and all applicable codes, including, but not limited to, the National Electrical Code, National Electrical Safety Codes, or other local, state, or national codes.
- (ii) IMPA or the authorizing Members shall own, install and maintain the required metering equipment to integrate the input quantities into IMPA's monthly source energy and power accounting. The operator of the QF shall be responsible for all reasonable costs for purchase, installation and maintenance of such metering equipment and shall provide adequate access to its premises so that IMPA or the authorizing Members may install and maintain such metering equipment. IMPA or the authorizing Members may assess interconnection costs against a QF on a nondiscriminatory basis with respect to other customers with similar load characteristics and shall determine how such payments are to be made.
- (iii) Neither IMPA nor any authorizing Member will permit interconnection between its system and a QF unless the QF meets the applicable standards and/or regulations, rules and policies for interconnection, safety, and operating reliability, as the same may

be amended from time to time. Further, in order to remain interconnected, the QF must continue to satisfy appropriate safety and reliability standards.

(iv) IMPA and the authorizing Members reserve the right to adopt additional nondiscriminatory policies and procedures concerning interconnection requirements applicable to QFs. IMPA shall make such policies and procedures available to QFs for review.

### III. Request for Waiver

The FERC Rules require each wholesale electric utility, such as IMPA, and each retail electric utility, such as the authorizing Members, to buy energy and capacity from, and to sell energy and capacity to, QFs. As stated above, IMPA and the authorizing Members will adopt an integrated approach to implementing their obligations under PURPA, and the FERC Rules, under which (1) IMPA would purchase energy and capacity from QFs of 20 MW or less and the authorizing Members would provide retail service to QFs located within their retail service territories, (2) IMPA will seek a waiver of the obligation to sell retail power to any QF in light of the statutory prohibition against such sales by IMPA, and (3) the authorizing Members will seek a waiver of their obligations to purchase from any QFs located within their retail service territories. In addition, IMPA will request a waiver of the mandatory purchase requirement with respect to QFs of greater than 20MW located within MISO or PJM.

In order to adopt this integrated approach, IMPA and the authorizing Members will request waivers of certain of the FERC Rules implementing PURPA in order to allow IMPA and the authorizing Members to continue to operate, for wholesale supply purposes, as a single integrated entity. IMPA and the authorizing Members have concluded that, given the benefits of the proposed integrated approach to PURPA implementation, requiring the authorizing Members to purchase from QFs and IMPA to sell to QFs is not necessary to facilitate cogeneration and small power production. IMPA and the authorizing Members have determined that purchases by

IMPA on behalf of the authorizing Members will adequately facilitate cogeneration and small power production in part because each authorizing Member's avoided costs should be equal to IMPA's avoided costs. Therefore, by centralizing purchases from QFs, QFs will be afforded a greater market for their power while at the same time receiving the same price for their power as they would have by selling to an individual authorizing Member.

This Plan is written on the assumption that the waivers previously mentioned will be granted. Because this integrated approach will not adversely affect QFs and is intended to facilitate cogeneration and small power production, IMPA and the authorizing Members intend to operate under this Plan during the pendency of the waiver requests. If FERC denies any of the requested waivers, this Plan will be revised or may be terminated. Any revision required as a result of a denial of a waiver request, or upon order of FERC as a condition to the waiver, will be made available as soon as practicable. IMPA and the authorizing Members do not contemplate that an additional notice and comment period will be conducted prior to making such changes.

Persons desiring information about this waiver request, including a copy of the waiver request filed by IMPA and the authorizing Members with FERC, may contact:

Peter J. Prettyman, Vice President & General Counsel  
Indiana Municipal Power Agency  
11610 N. College Avenue  
Carmel, IN 46032  
Phone: 317-573-9955  
Fax: 317-575-33372  
E-mail: pprettyman@impa.com

#### IV. Additional Information

Persons requiring additional information concerning the interconnection of a QF with IMPA or an authorizing Member, or the rates, terms and conditions of purchases from or sales to QFs, should contact:

Raj Rao, President & CEO  
Indiana Municipal Power Agency  
11610 N. College Avenue  
Carmel, IN 46032  
Phone: 317-573-9955  
Fax: 317-575-33372  
E-mail: [rajr@impa.com](mailto:rajr@impa.com)

APPENDIX I AUTHORIZING MEMBERS

[TO BE ADDED AS MEMBERS AUTHORIZE THE RULES]

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# APPENDIX C

**INDIANA MUNICIPAL POWER AGENCY  
POWER SALES CONTRACT**

This Contract entered into as of the \_\_\_ day of \_\_\_\_\_, 2016, between **INDIANA MUNICIPAL POWER AGENCY**, a body corporate and politic and a political subdivision of the State of Indiana, organized and existing under the laws of the State of Indiana (the “Agency”), and the **CITY OF \_\_\_\_\_, INDIANA** (the “Member”).

**W I T N E S S E T H:**

WHEREAS, the Agency was organized under IC 8-1-2.2 (the “Act”) to provide a method for those Indiana cities and towns which own facilities for the distribution of electric power and energy to jointly plan, finance, develop, own and operate electric generation and transmission facilities located within the State of Indiana that are appropriate to the present and projected electric energy needs of such cities and towns; and

WHEREAS, the Agency is empowered by the Act (i) to study, plan, finance, construct, reconstruct, acquire, improve, enlarge, better, own, operate and maintain individually or jointly with one or more municipalities, joint agencies or public utilities one or more plants, works, systems or facilities necessary or convenient in the generation, transmission, transformation, purchase, sale, exchange or interchange of electric power and energy by any means whatsoever or to acquire any interest therein or any rights to the use, output or capacity thereof, and (ii) to generate, produce, transmit, deliver, exchange, purchase or sell for resale only, electric power or energy, and (iii) to make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the Agency under the Act, and (iv) to do all acts and things necessary, convenient or desirable to carry out the purposes of, and to exercise the powers granted to, the Agency under the Act; and

WHEREAS, the Member owns and operates a municipal electric utility (and owned and operated the same on January 1, 1980) which furnishes retail electric service to the public and is authorized under the Act and the laws of the State of Indiana to contract to purchase from the Agency power and energy and related services; and

WHEREAS, the Member currently purchases its wholesale power supply pursuant to the Legacy Firm Energy and Capacity Agreement, and the Member and the Agency will enter into an assignment with respect to the Legacy Firm Energy and Capacity Agreement; and

WHEREAS, in order to secure an adequate, reliable and economical supply of electric power and energy for the Member’s municipal electric utility, the Agency and the Member have determined that the Agency will sell to the Member, and the Member will purchase from the Agency, power and energy on the terms and conditions set forth herein; and

WHEREAS, the Agency intends to acquire power and energy for sale and delivery to the Member and is now providing power and energy to its other members contracting with the Agency therefor through whatever means it deems advisable, including, without limitation, the purchase thereof from other public utilities and the ownership of generation and transmission facilities or any interest therein or output therefrom; and

WHEREAS, in order to enable the Agency to continue to issue its revenue bonds to pay the cost of acquiring and constructing such generation, transmission or other facilities as are useful in meeting its obligations hereunder, it is necessary for the Agency to have binding

contracts with the Member and each of the other Participating Members (as defined herein) and to pledge the payments required to be made under such contracts as security for the payment of such bonds;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, it is agreed by and between the parties hereto as follows:

### **SECTION 1. Definitions.**

**Bond Resolution** shall mean any one or more resolutions, trust agreements, loan agreements or other similar instruments providing for the issuance of Bonds.

**Bonds** shall mean electric utility revenue bonds, notes or other evidences of indebtedness, without regard to the term thereof, whether or not any issue of such Bonds shall be subordinated as to payment to any other issue of Bonds, from time to time issued by the Agency to finance any cost, expense or liability paid or incurred or to be paid or incurred by the Agency in connection with the investigating, studying, planning, engineering, designing, financing, installing, constructing, acquiring, operating, maintaining, retiring, decommissioning or disposing of any part of the System or otherwise paid or incurred or to be paid or incurred by the Agency in connection with the performance of its obligations under the Power Sales Contracts or for any other lawful purpose permitted under the Act for the System.

**Legacy Firm Energy and Capacity Agreement** means that certain "Agreement for Firm Energy and Capacity" dated and entered into between the Member and \_\_\_\_\_, as of \_\_\_\_\_, as the same may be amended, assigned, succeeded, or otherwise modified.

**Participating Members** shall mean the Member and those members of the Agency that are, or hereafter become, parties to Power Sales Contracts.

**Point of Delivery** shall mean any point at which the Agency shall be required to deliver power and energy to the Member as set forth in paragraph 2 of Schedule A hereto, as amended from time to time.

**Point of Measurement** shall mean any point at which the Agency shall be required to meter power and energy delivered to the Member as set forth in paragraph 3 of Schedule A hereto, as amended from time to time. It is understood that paragraph 3 of Schedule A shall include as a Point of Measurement the point of interconnection between any generating facility owned by the Member and the Member's distribution system.

**Power Sales Contracts** shall mean this Contract and other contracts providing for the sale of power and energy by the Agency to other Members, as amended from time to time, provided that it shall not include any such contract which expressly provides that it is not to be considered a Power Sales Contract.

**Power Supply Resources** shall mean those resources for the production of electric power and energy included in the System to the extent the same are employed by the Agency to supply electric power and energy sold under the Power Sales Contracts.

**Prudent Utility Practice** shall mean, at a particular time, any of the practices, methods and acts which, in the exercise of reasonable judgment in the light of the facts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto) known at the time the decision was made, would have



been expected to accomplish the desired result at a reasonable cost consistent with reliability and safety. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be a number of possible practices, methods or acts.

**Rate Schedule** shall mean the rate schedule setting forth the rate for payments by the Member for electric power and energy delivered hereunder attached hereto as Schedule B, which Schedule B may be revised from time to time by a new schedule adopted by the Agency, including, without limitation, any amendment, change, deletion or addition to any of the billing components, terms or conditions, or any adjustment set forth therein, including, but not limited to, amending billing demand to provide for minimum demand whether or not based on prior demand measurements.

**Revenue Requirements** shall mean all costs and expenses paid or incurred or to be paid or incurred by the Agency resulting from the ownership, operation, maintenance, termination, retirement from service and decommissioning of, and repairs, renewals, replacements, additions, improvements, betterments and modifications to, the System or otherwise relating to the acquisition and sale of power and energy and transmission services and performance by the Agency of its obligations under the Power Sales Contracts, including, without limitation, the following items of cost:

- (1) payments of principal of and premium, if any, and interest on all Bonds issued by the Agency and payments which the Agency is required to make into any debt service reserve fund or account under the terms of any Bond Resolution or other contract with holders of Bonds;
- (2) amounts required under any Bond Resolution to be paid or deposited into any fund or account established by such Bond Resolution (other than funds and accounts referred to in clause (1) above), including any amounts required to be paid or deposited by reason of the transfer of monies from such funds or accounts to the funds or accounts referred to in clause (1) above;
- (3) amounts required to make derivative product payments under the Bond Resolution;
- (4) amounts which the Agency may be required to pay for the prevention or correction of any loss or damage or for renewals, replacements, repairs, additions, improvements, betterments, and modifications which are necessary to keep any facility of the System in good operating condition or to prevent a loss of revenues therefrom;
- (5) costs of operating and maintaining the System and of producing and delivering power and energy therefrom (including fuel costs, administrative and general expenses and working capital, for fuel or otherwise, and taxes or payments in lieu thereof) not included in the costs specified in the other items of this definition and costs of power supply planning and implementation associated with meeting the Agency's power supply obligations;
- (6) the cost of any electric power and energy purchased for resale by the Agency under the Power Sales Contracts and the cost of transmission service for delivery of electric power and energy under the Power Sales Contracts;

- (7) all costs incurred or associated with the salvage, discontinuance, decommissioning and disposition or sale of properties;
- (8) all costs and expenses relating to injury and damage claims required to be paid by the Agency;
- (9) any reserves the Agency shall determine to be necessary for the payment of those items of costs and expenses referred to in clauses (1) through (7) above to the extent not already included in such clauses;
- (10) additional amounts which must be realized by the Agency in order to meet the requirement of any rate covenant with respect to coverage of principal of and interest on Bonds contained in any Bond Resolution or contract with holders of Bonds or which the Agency deems advisable in the marketing of its Bonds; and

**System** shall mean all properties, rights and interests in properties of the Agency, including all electric production, transmission, delivery facilities, general plant and other related facilities and any mine, well, pipeline, plant, structure or other facility for the development, production, manufacture, storage, fabrication or processing of fossil, nuclear or fuel of any kind or any facility or rights with respect to the supply of water, in each case for use, in whole or in major part, in any of the Agency's generating plants, now existing and hereafter acquired by lease, contract, purchase or otherwise or constructed by the Agency, including any interest or participation of the Agency in any such facilities, together with all additions, betterments, extensions and improvements to said system or any part thereof hereafter made and together with all lands, easements and rights of way of the Agency and all other works, property or structures of the Agency and rights to the use of any thereof or the output, products or services therefrom or other contract rights, including, without limitation, rights for the purchase of power and energy, transmission or other services from others, and other tangible and intangible assets of the Agency used or useful in connection with or related to said system.

Notwithstanding the foregoing definition of the term System, such term shall not include any properties or interests in properties of the Agency which the Agency determines shall not constitute a part of the System for the purposes of this Contract.

## **SECTION 2. Term.**

This Contract shall become effective upon a date to be determined by the Board of Commissioners of the Indiana Municipal Power Agency, which date shall follow the delivery and acceptance of the opinions and certificates required pursuant to Section 19 of this Contract. The Contract shall remain in effect until April 1, 2042. On April 1, 2032, and on each April 1st thereafter, the Contract term shall be extended automatically for an additional one year period (*i.e.*, on April 1, 2032, the Contract term shall extend until April 1, 2043). Notwithstanding the foregoing, this Contract may be terminated by the Member on April 1, 2042, or on any subsequent April 1st thereafter, upon the Member having given prior written notice to the Agency pursuant to Section 21 of the Contract at least ten (10) years prior to the then current date of termination. In addition, this Contract may be terminated by the Member at such time that all Bonds shall have been paid or provision for such payment shall have been made therefor pursuant to the Bond Resolution and all contractual obligations entered into by the Agency for the generation, purchase, transmission or transformation of power and energy have been

terminated and provision has been made for the payment of any residual costs thereof. In no event shall the term of this Contract exceed the maximum term permitted by law.

Notwithstanding anything to the contrary set forth in the Contract, the Agency may set the rates charged to the Member from time to time pursuant to the provisions of Section 5 of the Contract so as to amortize the Member's proportionate share of the debt service and associated costs incurred subsequent to the effective date of this Contract over the term of the Contract. The foregoing approach to establishing rates under Section 5 shall not be considered a pattern of adverse distinction or a pattern of undue discrimination for purposes of Section 27 of the Contract.

### **SECTION 3. Sale and Purchase of Electricity**

- (a) The Agency hereby agrees to sell and deliver to the Member, and the Member hereby agrees to purchase and receive from the Agency, commencing on the effective date of this Contract and extending through the term hereof, all electric power and energy which the Member shall require for the operation of its municipal electric system.

In the event that, pursuant to the Public Utility Regulatory Policies Act of 1978 or other provisions of law, electric power is required to be purchased from a small power production facility, a cogeneration facility or other facility, the Member and the Agency shall use their best efforts to arrange for such purchases to be made by the Agency. If such arrangements cannot be made, then the Member shall make the required purchases and sell the power purchased to the Agency at a price equal to the price paid by the Member. The Member appoints the Agency to act as its agent in all dealings with the owner of any such facility from which power is to be purchased and in connection with all other matters relating to such purchases.

- (b) The Member hereby commits itself to take and pay for all of the electric power and energy which it is required to take and receive under paragraph (a) of this Section 3 and which is made available to the Member hereunder at its Points of Measurement, such payments to be made at rates set forth in the Rate Schedule, as revised from time to time by the Agency.
- (c) The Agency is hereby authorized by the Member (i) to undertake projects from time to time which, in the sole discretion and exclusive judgment of the Agency, are necessary or desirable to enable the Agency to fulfill satisfactorily its obligations to use its best efforts to supply power and energy to the Member pursuant to this Contract, and (ii) to issue Bonds for the purpose of paying all or any part of the costs of any of the projects or purposes authorized by the Act.

### **SECTION 4. Electric Characteristics, Points of Delivery and Measurement.**

Electricity to be furnished hereunder shall be three phase, sixty hertz alternating current. The Member shall make and pay for all connections between the system of the Member and the system of the Agency at the Points of Delivery. The Points of Delivery, the Points of Measurement and the delivery voltage shall be as set forth in Schedule A attached hereto, which Schedule may be amended from time to time to include such other Point or Points of Delivery and Point or Points of Measurement and delivery voltage as may be agreed upon by the Agency

and the Member. Other provisions of Schedule A may be amended from time to time by the Agency in accordance with Prudent Utility Practice.

The Member shall install, own and maintain any necessary substation equipment at the Points of Delivery and shall install, own and maintain switching and protective equipment of adequate design and sufficient capacity on the Member's side of such Points of Delivery to enable the Member to take and use the power and energy supplied under this Contract without hazard to the System.

The Agency shall not be responsible for the transmission, control, use or application of power and energy provided under this Contract on the Member's side of the Point of Delivery.

The Member shall not be responsible for the transmission, control, use or application of power and energy provided under this Contract on the Agency's side of the Point of Delivery.

When Electricity is measured at more than one Point of Measurement, the maximum total coincident demand of the Member's system shall be determined by combining the recorded demand at each Point of Measurement during the same 60 minute interval.

#### **SECTION 5. Rates**

- (a) The Member shall pay the Agency for all electric power and energy furnished at the Points of Measurement hereunder at the rates and on the terms and conditions set forth in the Rate Schedule. The Agency may revise and place into effect new Rate Schedules from time to time. The Member agrees to pay the rates and charges set forth in the revised Rate Schedules from the effective date established by the Agency. In the event that, during any portion of any billing period, electric power is made available to the Member by the Agency in accordance with this Contract which the Member is required to take and receive pursuant to Section 3 hereof but which the Member fails to take and receive, the Member shall pay the Agency for such availability in an amount equal to the product of the demand charge in the Rate Schedule and the billing demand computed as provided in the Rate Schedule except that, for such purpose, the kilowatts of demand for such billing period shall be based upon the kilowatts that would have otherwise been taken as evidenced by the total electric power consumed by the Member's customers during the billing period. Payments made by the Member under the Rate Schedule shall be treated as an operating expense from the revenues of the Member's electric utility system, or other integrated utility system of the Member of which the Member's electric utility system may be a part, to the extent permitted by law, and from other funds of such system legally available therefor and shall be in addition to and not in substitution for any other payments whether on account of dues or otherwise owed by the Member to the Agency. The obligation of the Member to make payments under the Rate Schedule shall not constitute a general obligation of the Member and the Member shall not be required to make such payments from any source other than the revenues and funds referred to in the next preceding sentence. The obligation of the Member to make payments under the Rate Schedule shall not be subject to any reduction, whether by offset, counterclaim, recoupment or otherwise, and shall not be otherwise conditioned upon the performance by the Agency under this or any other agreement or instrument; provided, however, that nothing contained herein

shall be construed to prevent or restrict the Member from asserting any rights which it may have against the Agency under this Contract or under any provision of law, including the institution of legal proceedings for specific performance or recovery of damages.

The Member's electric utility system shall be deemed to be a part of an integrated utility system for purposes of Sections 5(a) and 7(a) hereof if the revenues of the electric utility system (i) are commingled with the revenues of one or more other utility systems owned by the Member, or (ii) are utilized to pay operating expenses of the Member's electric utility system and one or more other utility systems owned by the Member, or (iii) are pledged to secure bonds issued to finance one or more other utility systems owned by the Member. For purposes of this paragraph, the term "commingled" shall not be deemed to include the keeping of funds in one bank account so long as such funds are separately accounted for on the books and records of the Member.

- (b) The Agency shall establish and maintain rates in the Rate Schedule hereunder and under the other Power Sales Contracts which will provide revenues which are sufficient, but only sufficient, together with other available funds of the Agency, to meet the estimated Revenue Requirements of the Agency. In determining the rates necessary to produce sufficient revenues, the Agency shall take into account any anticipated delinquency or default in payments by Members under the Power Sales Contracts. The ratemaking methods used by the Agency to establish rates shall be consistent with Prudent Utility Practice.

At such intervals as it shall determine appropriate, but in any event not less frequently than once each calendar year, the Board of Commissioners of the Agency shall review and, if necessary, revise the Rate Schedule to insure that the rates thereunder continue to cover its estimate of the Revenue Requirements.

- (c) In connection with any revision of the Rate Schedule, the Agency shall cause a notice in writing to be given to all Members which shall set out any proposed revision of the Rate Schedule with the effective date thereof, which shall be not less than sixty days after the date of the mailing of the notice, and which shall be accompanied by an analysis of the estimated Revenue Requirements for which the Rate Schedule is proposed to be revised and the derivation of the proposed rates. The Member agrees to pay for electric power and energy made available by the Agency to it hereunder after the effective date of any revision in the Rate Schedule in accordance with the Rate Schedule as so revised. Revisions of the Energy Cost Adjustment, and the Control Area Cost Differential Factors set forth in Schedule B hereto or any substitutes or replacements thereof shall not require submission of the analysis of estimated Revenue Requirements and the derivation of the proposed adjustment to the Members.

#### **SECTION 6. Covenants of the Agency**

- (a) After satisfying, to the extent provided for herein, the total requirements of all Participating Members, the Agency shall use its best efforts to market and dispose of, under the most economically advantageous terms and conditions obtainable, all its surplus electric power and energy which in the sole judgment of the Agency

can be disposed of without adversely affecting performance by the Agency under this Contract so long as it shall not result in the breach of any Agency covenant or contract.

- (b) The Agency shall use its best efforts while following Prudent Utility Practice to provide a constant and uninterrupted supply of electric power and energy under this Contract. In the event that the Agency is not able to supply all of the electric power and energy requirements of all of the Participating Members that it is required to supply hereunder, it shall use its best efforts to allocate its electric power and energy available from its Power Supply Resources during any billing period among the Member and the other Participating Members as follows: Such allocation shall be made pro rata in accordance with their respective electric power and energy requirements supplied hereunder during the corresponding billing period of the preceding calendar year. During any period the Agency is unable to supply all of the Member's electric power and energy requirements that it is required to supply hereunder, the Agency shall not in any case be liable to the Member for damages resulting from such interruption of service and the Member shall be permitted to acquire from other sources such amount of electric power and energy which is not supplied by the Agency; provided, however, that at such time as the Agency is thereafter again able to supply all of the Member's electric power and energy requirements that it is required to supply hereunder, the Member shall be required to take and pay for such electric power and energy in accordance with the provisions hereof.
- (c) The Agency shall use its best efforts to acquire, by purchase or otherwise, and to deliver or cause to be delivered to the Points of Delivery, power and energy in the manner determined by the Agency to be most economical, dependable and otherwise feasible.
- (d) In addition to the delivery of power and energy pursuant to this Contract and the performance of all acts and actions incident thereto, the Agency agrees that it will perform or cause to be performed services, including, but not limited to: (i) coordinating and monitoring the investigating, studying, planning, engineering, designing, financing, installing, constructing, acquiring, operating, maintaining, retiring, decommissioning or disposing of any part of the System; (ii) issuing and selling Bonds; (iii) planning, undertaking, coordinating and monitoring the economic dispatching and scheduling of power and energy to the Members, but only to the extent that the Agency possesses at the time its own load control capability; and (iv) providing such other services as the Agency from time to time shall determine to be appropriate or necessary to provide an adequate, reliable and economical supply of power and energy to the Members.

#### **SECTION 7. Covenants of the Member**

- (a) The Member agrees to maintain rates for electric power and energy to its consumers subject to the approval of the Indiana Utility Regulatory Commission under and pursuant to the provisions of IC 8-1-2, to the extent the Member is subject thereto, which shall provide to the Member revenues sufficient to meet its obligations to the Agency under this Contract; to pay all other operating expenses;

to pay all obligations, whether now outstanding or incurred in the future, payable from, or constituting a charge or lien on, the net revenues of its electric system; and to make any other payments required by Indiana law; and, at the option of the Member, to provide any additional revenues permitted under Indiana law. The Member agrees to use its best efforts to take all actions necessary or convenient to fulfill its obligations under this Section 7(a), including, but not limited to, making timely applications for rate increases and processing such applications with diligence.

The Member further covenants and agrees that if it maintains or establishes an integrated utility system of which its electric system is a part for its electric, water, gas, cable television, telephone and sanitary sewer systems (or any combination of two or more thereof which includes its electric system), it will establish, maintain and collect rates and charges for the services provided by its integrated utility system which shall produce revenues at least sufficient to enable the Member to pay all expenses attributable to the integrated utility system, including the expenses incurred in the operation and maintenance of the integrated utility system (including the obligations under this Contract), to pay the debt service requirements on any bonds, notes or other evidences of indebtedness, whether now outstanding or incurred in the future, secured by such revenues and issued to finance improvements to the integrated utility system and to make any other payments required by Indiana law.

The Member shall not be required to make payments under this Contract except from the revenues of the Member's electric utility system, or other integrated utility system of the Member of which the electric utility system is a part, and from other funds of such system legally available therefor. In no event shall the Member be required to make payments under this Contract from tax revenues.

- (b) The Member shall not sell at wholesale any of the electric power and energy delivered to it hereunder to any customer of the Member or any other entity for resale by that customer or entity, unless it has first given the Agency 60 days written notice of its intent to sell such power and energy. The Agency, after receipt of such notice, shall have 30 days in which to impose limits on the amount of power and energy to be sold or to veto such sale if the sale will jeopardize the Agency's availability of resources to serve its Members or increase the cost of power and energy to the Agency.
- (c) The Member shall not sell, lease or otherwise dispose of all or substantially all of its electric system except on 90 days prior written notice to the Agency and, in any event, shall not so sell, lease or otherwise dispose of the same unless the following conditions are met: (i) the Member shall assign this Contract and its rights and interest hereunder to the purchaser or lessee of the electric system and such purchaser or lessee shall assume all obligations of the Member under this Contract; (ii) if and to the extent necessary to reflect such assignment and assumption, the Agency and such purchaser or lessee shall enter into an agreement supplemental to this Contract to clarify the terms on which power and energy are to be sold hereunder by the Agency to such purchaser or lessee; (iii) the senior debt of such purchaser or lessee shall be rated in one of the four

highest whole rating categories by at least one nationally-recognized bond rating agency; (iv) the Agency shall have received an opinion of counsel of recognized standing in the field of law relating to municipal bonds selected by the Agency stating that such sale, lease or other disposition will not adversely affect the value of this Contract as security for the payment of Bonds and the interest thereon or jeopardize the tax-exempt status of the interest on any Bond or Bonds issued by the Agency as that status is governed by Section 103(a) of the Internal Revenue Code of 1954, as amended, and the Treasury Regulations or any ruling as promulgated thereunder or as affected by a decision of any court of competent jurisdiction; (v) an opinion shall be obtained from counsel of assignee and the Agency that the assignment is lawfully permitted under IC 8-1-2.2; and (vi) the rates to be paid by the assignee, if a public utility, have been approved by the Indiana Utility Regulatory Commission.

- (d) The Member covenants and agrees that it shall take no action the effect of which would be to prevent, hinder or delay the Agency from the timely fulfillment of its obligations under this Contract, any outstanding Bonds or any Bond Resolution of the Agency.
- (e) The Member covenants and agrees that it shall not use or permit to be used any of the power and energy acquired under this Contract in any manner or for any purpose or take any other action or omit to take any action which would result in the loss of the tax-exempt status of the interest on any Bond or Bonds issued by the Agency as that status is governed by Section 103(a) of the Internal Revenue Code of 1954, as amended, and the Treasury Regulations or any rulings promulgated thereunder or as affected by a decision of any court of competent jurisdiction. The Member covenants that, prior to entering into any contract whereby a person agrees to take, or to take or pay for, power and energy provided to the Member under this Contract, the Member shall notify the Agency of its intent to enter into such contract. As soon as practicable after receipt of such notice, the Agency shall advise the Member as to whether, in the opinion of counsel of recognized standing in the field of law relating to municipal bonds selected by the Agency, the entering into of such contract would result in a violation of the covenant contained in this subsection. The Member agrees that if the Agency advises the Member that such a violation will or might result, the Member will not enter into such contract.
- (f) The Member covenants and agrees that it shall, in accordance with Prudent Utility Practice, (1) at all times operate the properties of its electric system and the business in connection therewith in an efficient manner, (2) maintain its electric system in good repair, working order and condition and (3) from time to time make all necessary and proper repairs, renewals, replacements, obligations, additions, betterments and improvements with respect to its electric system so that all times the business carried on in connection therewith shall be properly and advantageously conducted; provided, however, this covenant shall not be construed as requiring the Member to expend any funds which are derived from sources other than the operation of its electric system and provided further that nothing herein shall be construed as preventing the Member from doing so.



- (g) The Member covenants and agrees that it shall not issue bonds, notes or other evidences of indebtedness or incur lease obligations which are payable from the revenues derived from its electric system superior to the payment of the operating expenses of its electric system; provided, however, that nothing herein shall limit the Member's present or future right to issue bonds, notes or other evidences of indebtedness or incur lease obligations which are payable on a parity with operating expenses or payable from revenues after payment of operating expenses.

#### **SECTION 8. Meter Readings and Payment of Bills.**

- (a) The Agency shall read meters or cause meters to be read at monthly intervals which coincide with the billing period established by the Agency in accordance with the Rate Schedule.

The Member shall pay for electric power and energy furnished hereunder at the office of the Agency, 11610 North College Avenue, Carmel, Indiana 46032 within 30 days of the bill; provided, however, that if said 30th day is a Sunday or legal holiday in the State of Indiana, the next following business day shall be the day on which such payment shall be due. In the event that the Member fails to make payment when due of any amount owing hereunder, the Agency may impose a late payment charge as provided in the Rate Schedule. The Agency shall bill the Member on a prompt and timely basis in accordance with a schedule to be determined by the Agency. The Agency may, whenever any amount due remains unpaid after the due date, take all steps available to it under applicable law to collect such amount and, after giving 15 days advance notice in writing of its intention to do so, discontinue service hereunder if permitted by law. The Agency may, whenever any amount due remains unpaid for 120 or more days after the due date and after giving 30 days advance notice in writing of its intention to do so, terminate this Contract. No such discontinuance or termination shall relieve the Member from liability for payment for electric power and energy furnished hereunder.

- (b) In the event the Member desires to dispute all or any part of a bill, the Member shall nevertheless pay the full amount of the bill when due and notify the Agency in writing of the grounds on which any charges in the bill are disputed and the amount in dispute. The Member will not be entitled to any adjustment on account of any disputed charges which are not brought to the attention of the Agency in the manner herein specified. Such adjustment shall be for the time period for which it can be established a billing error took place but in no event shall the adjustment period extend past 365 days or, in the event of meter errors, the date of the last meter test.

#### **SECTION 9. Metering**

- (a) The Agency shall furnish or cause to be furnished, install and maintain the necessary metering equipment required at each Point of Measurement of the Member to measure and record the electric power and energy furnished hereunder at such Point of Measurement. Such metering equipment shall provide a continuous record of the 60-minute integrated total demand of the Member at

such Point of Measurement during each billing period throughout the term of this Contract. Such records shall be available at all reasonable times to authorized agents of the Member. The Member may, at its own cost, install additional metering equipment to provide a check on the Agency's metering equipment, as long as the Member's additional metering equipment does not interfere with the functioning, operation, or maintenance of the Agency's metering.

- (b) The Agency shall test and calibrate meters or cause meters to be tested and calibrated by comparison with accurate standards at intervals of not less than twelve months. The Agency shall also make or cause to be made special meter tests at any time at the Member's request. The cost of all tests shall be borne by the Agency except that if any special meter test made at the Member's request shall disclose that the meters are recording accurately, the Member shall reimburse the Agency for the cost of such test. Meters registering not more than two percent above or below normal shall be deemed to be accurate. The readings for any meter which shall have been disclosed by test to be inaccurate shall be corrected in accordance with the percentage of inaccuracy found by such test from the beginning of the first billing period which began after the next preceding meter test but in any case for no period longer than 365 days. Should any meter fail to register, the electric power and energy delivered during such period of failure shall for billing purposes be estimated by the Agency after consultation with the Member from the best information available. The Agency shall notify the Member or cause the Member to be notified in advance of the time of any meter reading or test so that the Member's representative may be present at such meter reading or test.
- (c) For a fractional part of a billing period at the beginning or end of service, demand charges under the Rate Schedule shall be proportionately adjusted by the Agency in the ratio that the number of hours that electric service is furnished to the Member (in such fractional billing period) bears to the total number of hours in the billing period involved. Except as provided in this paragraph (c) of this Section 9 with respect to fractional billing periods at the beginning and end of service, there shall be no proration of demand charges under the Rate Schedule for any billing period during any part of which power is made available to the Member.
- (d) Neither the Agency nor the Member shall be responsible for the transmission, control, use or application of electric power provided under this Contract on the other side of the Point of Delivery therefor and shall not, in any event, be liable for damage or injury to any person or property whatsoever arising, accruing, or resulting from, in any manner, the receiving, transmission, control, use, application, or distribution by the Agency or the Member of said electric power.

#### **SECTION 10. Right of Access**

Duly authorized representatives of the Agency and Member shall be permitted to enter the other's premises at all reasonable times in order to carry out the provisions of this Contract.

### **SECTION 11. Uncontrollable Forces**

Neither the Agency nor the Member shall be considered to be in default in respect to any obligation hereunder (other than the obligation of the Member to pay for electric power and energy made available hereunder to the extent payment is required by Section 5(a) hereof) if prevented from fulfilling such obligations by reason of uncontrollable forces, the terms uncontrollable forces being deemed for the purposes of this Contract to mean any cause beyond the control of the party affected, including, but not limited to, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, pestilence, war, riot, civil disturbance, labor disturbances, sabotage, and restraint by court or public authority, which by due diligence and foresight such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

### **SECTION 12. Power Factor**

The Member shall maintain its system power factor in accordance with paragraph 4 of Schedule A hereto.

### **SECTION 13. Cooperation**

If it becomes necessary by reason of any emergency or extraordinary condition for either the Agency or the Member to request the other party to furnish personnel, materials, tools, or equipment for the accomplishment of its obligations hereunder, the party so requested shall cooperate with the requesting party and render such assistance as the party so requested may determine to be available. The party making such request, upon receipt of properly itemized bills from the other party, shall promptly reimburse the other party for all costs properly and reasonably incurred by it in providing such assistance. The cost shall include an amount not to exceed ten percent (10%) for administrative and general expenses; such costs are to be determined on the basis of current charges or rates used in its own operations by the party rendering the assistance.

### **SECTION 14. Construction, Operation and Maintenance Standards**

The Member shall own, install and maintain electrical protective relaying equipment at each point of interconnection with the Agency's transmission system. The design and operating characteristics of such equipment shall be coordinated with the Agency and subject to the Agency's approval, which approval shall not be unreasonably withheld.

### **SECTION 15. Assignment of Power Sales Contract**

- (a) This Contract shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties to this Contract; provided, however, that, except for the assignment by the Agency authorized by clause (b) of this Section 15 and except for any assignment in connection with the sale, lease or other disposition of all or substantially all of the Member's electric system as provided in Section 7(c) hereof, neither this Contract nor any interest herein shall be transferred or assigned by either party hereto except with the consent in writing of the other party hereto, which consent shall not be unreasonably withheld. No assignment or transfer of this Contract shall relieve the parties of any obligation hereunder.

- (b) The Member acknowledges and agrees that the Agency may assign and pledge to any trustee or similar fiduciary designated in any Bond Resolution all of, or any interest in, its right, title and interest in and to all payments to be made to the Agency under the provisions of this Contract as security for the payment of the principal (including sinking fund installments) of, premium, if any, and interest on any Bonds and may deliver possession of this Contract to such trustee in connection therewith, and, upon such assignment, pledge and delivery, the Agency may grant to such trustee any rights and remedies herein provided to the Agency and thereupon any reference herein to the Agency shall be deemed, with the necessary changes in detail, to include such trustee which shall be a third party beneficiary of the covenants and agreements of the Member herein contained. Upon any such assignment, pledge and delivery, such trustee shall fulfill all of the obligations with respect to the Member that the Agency was required to fulfill prior to such assignment, pledge and delivery.

#### **SECTION 16. Records and Accounts**

The Agency shall keep accurate records and accounts of its properties and its operations in accordance with or so as to permit conversion to the Federal Energy Regulatory Commission Uniform System of Accounts prescribed for Class A and Class B Public Utilities and Licensees as in effect from time to time. Should the Federal Energy Regulatory Commission be modified or cease to exist, the records shall be maintained under the Uniform System of Accounts as adopted or used by whatever agency succeeds or takes over the duties of the Federal Energy Regulatory Commission. The Member shall have the right at any reasonable time to examine such accounts. The Agency shall cause such accounts to be audited annually by a firm of independent public accountants of national reputation and shall supply copies of such audits to the Member.

#### **SECTION 17. Information**

The Agency and the Member will promptly furnish to each other such information as may be reasonably requested from time to time in order to carry out more effectively the intent and purpose of this Contract or as may be reasonably necessary and convenient in the conduct of the operations of the party requesting such information. Without limiting the generality of the foregoing, the Member shall, upon request, furnish to the Agency all such information, certificates, engineering reports, feasibility reports, information relating to load forecasts and generation and transmission expansion plans, financial statements, opinions of counsel (including the opinion required by Section 19 hereof), official statements and other documents as shall be reasonably necessary in connection with financings of the Agency. The Agency shall furnish the Member with those reports required to be furnished pursuant to IC 8-1-2.2-25 and such other information reasonably available to it which may be requested by the Member.

#### **SECTION 18. Amendment**

Except as provided for expressly herein, neither this Contract nor any terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing executed by each party to this Contract.

## **SECTION 19. Opinions and Certificates as to Validity**

Upon request by the Agency upon the execution and delivery of this Contract and upon request by the Agency after the effective date hereof, the Member shall furnish the Agency, in form and substance satisfactory to the Agency, with (i) an opinion of its City attorney or attorney employed by the Member, and (ii) a certificate from the Member as to each of subparagraphs (a) through (g) hereinbelow, and (iii) an opinion of IMPA's Bond Counsel as to the substance of subparagraphs (b) and (d) hereinbelow.

- (a) The Member is a municipal corporation duly created and validly existing pursuant to the Constitution and statutes of the State of Indiana and its "governing body" (as defined in Section 2(d) of the Act) is the City Council of the City of Logansport.
- (b) The Member has full legal right and authority to enter into this Contract and to carry out its obligations hereunder.
- (c) The City Council duly approved this Contract and its execution and delivery on behalf of the Member by ordinance duly and lawfully adopted at a meeting or meetings duly called and held at which quorums were present and acting throughout and such meeting or meetings were called pursuant to necessary public notice.
- (d) This Contract has been duly authorized, executed and delivered by the appropriate officers of the Member; and, assuming that the Agency has all the requisite power and authority to execute and deliver, and has duly authorized, executed and delivered, this Contract, this Contract constitutes the legal, valid and binding obligation of the Member in accordance with its terms subject, however, to the effect of, and to restrictions and limitations imposed by or resulting from, bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally. No opinion need be rendered as to the availability of any particular remedy.
- (e) The execution and delivery of this Contract by the Member, the performance by the Member of its obligations hereunder and the consummation of the transactions contemplated herein do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule or regulation of any court or administrative agency having jurisdiction over the Member or its property or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond ordinance, trust agreement, indenture, mortgage, deed of trust or other agreement to which the Member is a party or by which it or its property is bound.
- (f) All approvals, consents or authorizations of, or registrations or filings with, any governmental or public agency, authority or person required on the part of the Member in connection with the execution, delivery and performance of this Contract have been obtained or made.
- (g) To the knowledge of such attorney or firm of attorneys after due inquiry, there is no litigation or other proceedings pending or threatened in any court or other tribunal of competent jurisdiction (either state or federal) questioning the creation,

organization or existence of the Member or the validity, legality or enforceability of this Contract.

### **SECTION 20. Relationship to and Compliance with Other Instruments**

It is recognized by the parties hereto that, in undertaking, or causing to be undertaken, the planning, financing, construction, acquisition, operation and maintenance of the System, the Agency must comply with the requirements of any Bond Resolution, any agreement with any owner or co-owner of or participant or co-participant in any facility included in the System relating to the construction, operation or maintenance thereof and all licenses, permits and regulatory approvals necessary for such planning, financing, construction, acquisition, operation and maintenance, and it is therefore agreed that this Contract is made subject to the terms and provisions of any Bond Resolution, any such agreement and all such licenses, permits, and regulatory approvals.

### **SECTION 21. Notices**

Any notice, demand or request required or authorized by this Contract shall be properly given if mailed, postage prepaid, to the Agency at:

Indiana Municipal Power Agency  
11610 North College Avenue  
Carmel, Indiana 46032  
Attention: President

and to the Member at:

City of \_\_\_\_\_  
[Address]  
[City, State Zip]

The foregoing addresses may be changed by similar notice at any time.

### **SECTION 22. Waivers**

- (a) Any waiver at any time by either party hereto of its rights with respect to a default or any matter arising in connection with this Contract shall not be deemed to be a waiver with respect to any subsequent default or matter.
- (b) The failure of either party hereto to enforce at any time any of the provisions of this Contract or to require at any time performance by the other party hereto of any of the provisions hereof shall in no way be construed to be a waiver of such provisions nor in any way to affect the validity of this Contract or the right of such party thereafter to enforce each and every provision hereof.

### **SECTION 23. Severability**

In the event that any of the terms, covenants or conditions of this Contract, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction under the circumstances, the remainder of this Contract and the application of its terms, covenants or conditions to such persons or circumstances shall not be affected thereby.

#### **SECTION 24. Applicable Law**

This Contract shall be governed by and construed in accordance with the laws of the State of Indiana.

#### **SECTION 25. Effectiveness**

This Contract shall not be effective until a Member has obtained an agreement in writing and provided a copy thereof of its wholesale power supplier to cancel or assign to the Agency the Member's current wholesale power supply contracts, interconnection agreements, or any other wholesale power supply arrangements currently in effect.

#### **SECTION 26. Survivorship of Obligations**

The termination of this Contract shall not discharge either party thereto from any obligation it owes to the other party under this Contract by reason of any transaction, loss, cost, damage, expense, or liability which shall occur or arise (or the circumstances, events, or basis of which shall occur or arise) prior to such termination. It is the intent of the parties hereby that any such obligation owed (whether the same shall be known or unknown at the termination of this Contract or whether the circumstances, events, or basis of the same shall be known or unknown at the termination of this Contract) shall survive the termination of this Contract.

#### **SECTION 27. No Adverse Distinction**

The Agency agrees that there shall be no pattern of adverse distinction and no pattern of undue discrimination in carrying out its obligations under this Agreement relating to the Member as compared to other Members; provided, however, that differences in treatment between Members under Schedule A and Schedule B of this Contract based upon variances in cost of service shall not be considered a pattern of adverse distinction or a pattern of undue discrimination for purposes of this Section.

#### **SECTION 28. Indemnification**

The Agency and the Member shall defend and hold each other harmless from any and all claims, liability and expense, including attorneys' fees, litigation expenses and any judgment arising out of any bodily injury, death or damage to property (other than bodily injury, death or damage to property proximately caused by the other party or its servants or employees), occurring on their respective sides of the Point of Delivery, including such injury, death or damage as may be suffered by the Agency or the Member or by third parties, except that the Agency and the Member shall each be responsible for all claims of its respective employees, agents and servants under workmen's compensation laws or any similar statutes. In no event shall either the Agency or the Member be liable to each other for any indirect, special, incidental or consequential damages with respect to any claim arising out of this Contract whether based on contract, tort, strict liability or otherwise.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their proper officers, respectively, being thereunto duly authorized, and their respective corporate seals to be hereto affixed, as of the day, month and year first above written.

INDIANA MUNICIPAL POWER AGENCY

By: \_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Secretary

(SEAL)

CITY OF \_\_\_\_\_, INDIANA

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Clerk-Treasurer

(SEAL)



**SCHEDULE A**  
**INDIANA MUNICIPAL POWER AGENCY**  
**SERVICE SPECIFICATIONS**

MEMBER: CITY OF LOGANSFORT, INDIANA

1. **Applicability.** These service specifications are applicable to the Power Sales Contract covering the supply and delivery of electric power and energy by the Agency to Logansport, Indiana (Member).
2. **Points of Delivery.** The Agency is obligated to deliver electric power and energy contracted for by the Member at the following points and voltages as shown in the diagram under paragraph 6 hereof:

Delivery Point Identity and Location	Delivery Voltage
--	---------------------

[To come.]

3. **Points of Measurement.** The Agency shall meter electric power and energy delivered to the Member as follows as shown in the diagram under paragraph 6 hereof:

Metering Point Identity and Location	Delivery Voltage
--	---------------------

[To come.]

4. **Power Factor.** The Member shall maintain its system leading and lagging power factor within the limits established for Reactive Billing Demand in Schedule B as measured at its Point or Points of Delivery.
5. **Adjustments.** (a) Where electric power and energy are metered on the low side of the transformer but the Point of Delivery is on the high side of the transformer, meter readings for all electric power and energy supplied by the Agency at such metering point will be increased by a factor or factors determined by the Agency Staff which are based upon a Transformer Test Report showing the no-load and full-load losses of the transformer and upon the load characteristics at the metering point; provided, however, that the factor used to increase meter readings may not be lower than the corresponding factor, if any, used by the Agency's supplier in rendering billing to the Agency for power and energy supplied at the same Point of Delivery. In the absence of such a Transformer Test Report, the meter readings will be increased as follows: demand (kW) readings will be increased by one percent (1%) and energy readings (kWh) will be increased by one and one-half percent (1-1/2%). These increases will compensate for transformer losses between the delivery voltage and the metering

voltage. If there are other losses between any Point of Measurement and any Point of Delivery, an appropriate loss factor will be used to compensate for losses. (b) Where the Agency delivers electric power and energy to the Member at a Point of Delivery at a voltage less than 138,000 volts, the Billing Rates shown in Schedule B hereof shall be adjusted to compensate the Agency for costs incurred in making available transformation facilities necessary to provide service below 138,000 volts as provided therein.

6. **Diagrams.** Following is a one-line diagram of the facilities at each Point of Delivery and Point of Measurement.

[To come.]

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# APPENDIX D

**RECEIPT**



Star Media  
 130 S. Meridian Street  
 Indianapolis, In 46225

INDIANA MUNICIPAL POWER AGENCY  
 11610 NORTH COLLEGE AVE  
 CARMEL IN 46032-

<u>Account</u>	<u>AD#</u>	<u>Net Amount</u>	<u>Tax Amount</u>	<u>Total Amount</u>	<u>Payment Method</u>	<u>Payment Amount</u>	<u>Amount Due</u>
3175739955INDI	0002398862	\$213.68	\$0.00	\$213.68	Credit Card	\$213.68	\$0.00

Sales Rep: adolph

Order Taker: adolph

Order Created 09/11/2017

<u>Product</u>	<u>Placement</u>	<u>Classification</u>	<u># Ins</u>	<u>Start Date</u>	<u>End Date</u>
INI-Indianapolis Star	INI-Public Notices	Legal Notices	2	09/12/2017	09/19/2017
INI-indystar.com	INIW-Public Notices	Legal Notices	2	09/12/2017	09/19/2017

\* ALL TRANSACTIONS CONSIDERED PAID IN FULL UPON CLEARANCE OF FINANCIAL INSTITUTION

Text of Ad: 09/11/2017

INDIANA MUNICIPAL POWER AGENCY AND  
INDIANA UTILITY REGULATORY COMMISSION**NOTICE OF INTENT****TO FILE WITH THE FEDERAL ENERGY REGULATORY COMMISSION  
FOR APPROVAL OF A JOINT PURPA IMPLEMENTATION PLAN**

Indiana Municipal Power Agency ("IMPA") on behalf of itself and its member communities listed below (the "Participating Members") hereby gives notices of its intent to file with the Federal Energy Regulatory Commission ("FERC") requesting approval of a proposed Joint PURPA Implementation Plan ("Joint Plan") to jointly implement their respective obligations under Part 292 of the FERC's Regulations. Further, pursuant to its order in Cause No. 44898, the Indiana Utility Regulatory Commission ("IURC") on behalf of IMPA and the seven Participating Members that are also rate-regulated utilities under IURC jurisdiction (the "Rate-Regulated Participating Members") gives notice of the IURC's intent to join IMPA's filing with FERC discussed herein. The Joint Plan provides that (1) the Participating Members will interconnect with any Qualifying Facility ("QF") that appropriately requests interconnection with their respective distribution systems in accordance with PURPA, (2) IMPA will purchase the energy and capacity offered by the interconnected QFs at rates that comply with the requirements of PURPA, and (3) the Participating Members will supply QFs with backup and supplementary power at rates that comply with PURPA. In the filing with FERC, IMPA (on behalf of itself and the Participating Members) and the IURC (on behalf of IMPA and the Rate-Regulated Participating Members), plan to apply for waiver of certain obligations under Section 292.303 of FERC's Regulations which, if granted, would result in all purchases from QFs being made by IMPA and all sales to QFs interconnected with the Participating Member electric distribution systems being made by the Participating Members.

Copies of the proposed Joint Plan will be sent to interested parties upon request. IMPA will also accept written comments on the proposed Joint Plan. IMPA intends to file for approval of the Joint Plan with FERC on or after October 2, 2017. FERC will publish notice of IMPA's and the IURC's filing in the Federal Register following receipt of the filing. That notice will specify that any person desiring to be heard in this matter can make the appropriate filing with FERC.

Inquiries concerning this matter should be addressed to:

Peter J. Prettyman, General Counsel  
Indiana Municipal Power Agency  
11610 N. College Ave.  
Carmel, IN 46032  
317-573-9955

The Participating Members (Rate-Regulated Participating Members are denoted by \*):

Advance Municipal Light & Power	Jasper Municipal Electric Utility
Anderson Municipal Light & Power*	Kingsford Heights Municipal Electric Utility*
Argos Utilities	Ladoga Light & Power
Bainbridge Municipal Utilities	Lawrenceburg Municipal Utilities
Blanchester Utilities	Lebanon Utilities*
Bremen Electric Light & Power	Lewisville Electric Utility
Brooklyn Electric Department	Linton Municipal Utilities
Centerville Municipal Utilities	Montezuma Municipal Utilities
Chalmers Municipal Utilities	Pendleton Light & Power
Coatesville Power & Light	Peru Utilities
Columbia City Municipal Utilities	Pittsboro Municipal Utilities
Covington Municipal Electric Utility	Rensselaer Electric Utility
Crawfordsville Electric Light & Power*	Richmond Power & Light*
Darlington Light & Power	Rising Sun Municipal Utilities
Dublin Municipal Electric Utilities	Rockville Municipal Utilities
Dunreith Municipal Utilities	Scottsburg Municipal Electric Department
Edinburgh Municipal Power & Light	South Whitley Municipal Electric
Etna Green Municipal Utilities	Spiceland Municipal Utilities
Flora Municipal Electric Utilities	Straughn Municipal Electric
Frankfort City Light & Power*	Tell City Electric Department
Frankton Municipal Light & Water	Thorntown Utilities
Gas City Municipal Utilities	Tipton Municipal Utilities*
Greendale Utilities	Troy Utilities
Greenfield Power & Light	Veedersburg Utilities Department
Huntingburg Municipal Electric Utility	Walkerton Municipal Utilities
Jamestown Municipal Light & Power	Washington Electric Light & Power
	Waynetown Electric Utility
	Williamsport Light & Water
	Winamac Municipal Utilities

(5 - 9/12/17, 9/19/17 - 0002398862)

hspaxlp



**CONFIRMATION**

INDIANA MUNICIPAL POWER AGENCY  
 11610 N COLLEGE AVE  
 CARMEL IN 46032-

<u>Account</u>	<u>AD#</u>	<u>Net Amount</u>	<u>Tax Amount</u>	<u>Total Amount</u>	<u>Payment Method</u>	<u>PO#</u>	<u>Payment Amount</u>	<u>Amount Due</u>
CIN-331296	0002404741	\$2,524.68	\$0.00	\$2,524.68	Invoice		\$0.00	\$2,524.68

Sales Rep: cmatuszak

Order Taker: cmatuszak

Order Created 09/13/2017

<u>Product</u>	<u>Placement/Classification</u>	<u># Ins</u>	<u>Start Date</u>	<u>End Date</u>
CIN-EN Cincinnati Enquirer	CIN-Public/Legal Notices	2	09/18/2017	09/25/2017
CIN-EN Cincinnati.com	CINW-Publi/Legal Notices	2	09/18/2017	09/25/2017
CIN-EN Kentucky Enquirer	CIN-Public/Legal Notices	2	09/18/2017	09/25/2017

\* ALL TRANSACTIONS CONSIDERED PAID IN FULL UPON CLEARANCE OF FINANCIAL INSTITUTION

Text of Ad: 09/13/2017

**INDIANA MUNICIPAL POWER AGENCY AND INDIANA  
UTILITY REGULATORY COMMISSION NOTICE OF  
INTENT TO FILE WITH THE FEDERAL ENERGY  
REGULATORY COMMISSION FOR APPROVAL OF A  
JOINT PURPA IMPLEMENTATION PLAN**

Indiana Municipal Power Agency ("IMPA") on behalf of itself and its member communities listed below (the "Participating Members") hereby gives notices of its intent to file with the Federal Energy Regulatory Commission ("FERC") requesting approval of a proposed Joint PURPA Implementation Plan ("Joint Plan") to jointly implement their respective obligations under Part 292 of the FERC's Regulations. Further, pursuant to its order in Cause No. 44898, the Indiana Utility Regulatory Commission ("IURC") on behalf of IMPA and the seven Participating Members that are also rate-regulated utilities under IURC jurisdiction (the "Rate-Regulated Participating Members") gives notice of the IURC's intent to join IMPA's filing with FERC discussed herein. The Joint Plan provides that (1) the Participating Members will interconnect with any Qualifying Facility ("QF") that appropriately requests interconnection with their respective distribution systems in accordance with PURPA, (2) IMPA will purchase the energy and capacity offered by the interconnected QFs at rates that comply with the requirements of PURPA, and (3) the Participating Members will supply QFs with backup and supplementary power at rates that comply with PURPA. In the filing with FERC, IMPA (on behalf of itself and the Participating Members) and the IURC (on behalf of IMPA and the Rate-Regulated Participating Members), plan to apply for waiver of certain obligations under Section 292.303 of FERC's Regulations which, if granted, would result in all purchases from QFs being made by IMPA and all sales to QFs interconnected with the Participating Member electric distribution systems being made by the Participating Members.

Copies of the proposed Joint Plan will be sent to interested parties upon request. IMPA will also accept written comments on the proposed Joint Plan. IMPA intends to file for approval of the Joint Plan with FERC on or after October 2, 2017. FERC will publish notice of IMPA's and the IURC's filing in the Federal Register following receipt of the filing. That notice will specify that any person desiring to be heard in this matter can make the appropriate filing with FERC.

Inquiries concerning this matter should be addressed to:  
Peter J. Prettyman, General Counsel  
Indiana Municipal Power Agency  
11610 N. College Ave.  
Carmel, IN 46032  
317-573-9955

The Participating Members (Rate-Regulated Participating Members are denoted by \*):  
Advance Municipal Light & Power  
Anderson Municipal Light & Power\*  
Argos Utilities  
Bainbridge Municipal Utilities  
Blanchester Utilities  
Bremen Electric Light & Power  
Brooklyn Electric Department  
Centerville Municipal Utilities  
Chalmers Municipal Utilities  
Coatesville Power & Light  
Columbia City Municipal Utilities  
Covington Municipal Electric Utility  
Crawfordsville Electric Light & Power\*  
Darlington Light & Power  
Dublin Municipal Electric Utilities  
Dunreith Municipal Utilities  
Edinburgh Municipal Power & Light  
Etna Green Municipal Utilities  
Flora Municipal Electric Utilities  
Frankfort City Light & Power\*  
Frankton Municipal Light & Water  
Gas City Municipal Utilities  
Greendale Utilities  
Greenfield Power & Light  
Huntingburg Municipal Electric Utility  
Jamestown Municipal Light & Power  
Jasper Municipal Electric Utility  
Kingsford Heights Municipal Electric Utility\*  
Ladoga Light & Power  
Lawrenceburg Municipal Utilities  
Lebanon Utilities\*  
Lewisville Electric Utility  
Linton Municipal Utilities  
Montezuma Municipal Utilities  
Pendleton Light & Power  
Peru Utilities  
Pittsboro Municipal Utilities  
Rensselaer Electric Utility  
Richmond Power & Light\*  
Rising Sun Municipal Utilities

Rockville Municipal Utilities  
Scottsburg Municipal Electric Department  
South Whitley Municipal Electric  
Spiceland Municipal Utilities  
Straughn Municipal Electric  
Tell City Electric Department  
Thorntown Utilities  
Tipton Municipal Utilities\*  
Troy Utilities  
Veedersburg Utilities Department  
Walkerton Municipal Utilities  
Washington Electric Light & Power  
Waynetown Electric Utility  
Williamsport Light & Water  
Winamac Municipal Utilities  
CIN,Sep18,25,'17#2404741



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