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INDIANA UTILITY  
REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

APPLICATION OF INDIANA MICHIGAN )  
POWER COMPANY, AN INDIANA )  
CORPORATION, FOR APPROVAL OF 20 )  
MW<sub>AC</sub> CLEAN ENERGY SOLAR PROJECT; )  
FOR APPROVAL OF RELATED )  
ACCOUNTING AND RATEMAKING )  
INCLUDING: TIMELY RECOVERY OF COSTS )  
INCURRED DURING CONSTRUCTION AND )  
OPERATION OF THE PROJECT THROUGH )  
I&M'S BASIC RATES OR A SOLAR POWER )  
RIDER, APPROVAL OF DEPRECIATION )  
PROPOSAL, AND AUTHORITY TO DEFER )  
COSTS UNTIL SUCH COSTS ARE )  
REFLECTED IN RATES; AND FOR )  
APPROVAL OF SALE OF RENEWABLE )  
ENERGY CREDITS. )

CAUSE NO. 45245

**INDIANA MICHIGAN POWER COMPANY'S REPLY TO  
OUCC POST HEARING BRIEF AND PROPOSED ORDER**

The proposed South Bend Solar Project ("SBSP") will locate a 20 MW<sub>AC</sub> Clean Energy Solar facility in the Michiana area, in close proximity to the Indiana Toll Road and the University of Notre Dame, one of our country's premier educational institutions and the first I&M customer to make a substantial long-term financial commitment in support of renewable energy in I&M's service area. This solar resource is part of the Company's Integrated Resource Plan, is responsive to customer requests for renewable energy, and is reasonably expected to support economic development in the Michiana area for the benefit of all I&M customers because new companies provide a larger base over which I&M's cost of service is spread and this in turn reduces customer bills. The estimated cost of the SBSP reflects the results of the Company's competitive bidding process and negotiated EPC contract.

The Indiana Office of Utility Consumer Counselor ("OUCC") urges the Commission to reject the Project, arguing that this Michiana area investment is excessive, nonsensical, and a poor location choice.<sup>1</sup> As explained below, the OUCC's post hearing filings rest on a distorted presentation of the record evidence; its technical arguments do not withstand scrutiny; and its overall conclusion is contrary to the state policy to encourage public utility development of local renewable energy resources.

Many of the matters asserted by the OUCC have been addressed in the Company's Proposed Order, including the OUCC's arguments regarding the Company's proposed ratemaking for the SBSP. Other matters, such as the OUCC arguments regarding the draft agreements are further refuted in the rebuttal testimony of Company witnesses Lucas and DeRuntz and the Company's response to the OUCC's motion to dismiss. See *a/so* July 25, 2019 Docket Entry granting OUCC request to withdraw Motion to Dismiss and denying request to extend procedural schedule. The absence of a specific additional reply herein does not indicate the Company accepts the OUCC position.

Therefore, for the reasons set forth herein, in I&M's Proposed Order and in I&M's evidence in this Cause, the Commission should enter an Order approving the SBSP as proposed by Indiana Michigan Power Company ("I&M").

**1. The OUCC Attack On The Veracity of I&M's Evidence Should Be Rejected.**

I&M provided sworn testimony regarding its understanding of existing and potential customer interest in being served via locally sited renewable energy and the value of the SBSP for purposes of economic development, education and research. See Thomas

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<sup>1</sup> OUCC Brief in Support of Proposed Order ("OUCC") at 2, 5. The OUCC Proposed Order is cited herein as "OUCC PO").

Direct at 5-8, 10-15, 16-17 (discussing heightened public interest in, and increasing customer demand for, home grown renewable energy particularly with respect to attraction of new customers to service area; enumerating customer benefits); Lucas Rebuttal at 9-23.

The OUCC post hearing filings urge the Commission to dismiss the Company's data and sworn testimony until it is independently verified.<sup>2</sup> Nevertheless, "the law has long recognized that good faith is to be presumed on the part of the managers of a public utility like I&M." *Re Indiana Michigan Power Company*, (IURC 11/12/93), Cause No. 39314 at 5; also *Oaktown Telephone Co. v. Miller* (Ind. Ct. App. 1935), 194 N.E. 741, 742 ("in the absence of any showing to the contrary, we assume that the officers of the appellant [public utility] made a true and honest report . . . "). In other words, the OUCC suggestion that the Commission may simply disregard sworn testimony of knowledgeable Company's officials and subject matter experts is erroneous.

Moreover, I&M corroborated its testimony with extensive Company specific, Indiana and industry support, much of which was ignored or mischaracterized by the OUCC. The corroborating evidence includes the following:

- Corporate Renewable Energy Buyers' Principles relied on by Mr. Haselden;<sup>3</sup>
- US EPA;<sup>4</sup>

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<sup>2</sup> See OUCC Brief at 11-13 (referring to economic development, education/research and other evidence as "speculative", "completely without support", asking for information regarding who, when and in what context, and characterizing I&M evidence to be based on "mystery companies").

<sup>3</sup> Lucas Rebuttal at 18-19 (quoting principles and providing web link to same).

<sup>4</sup> Lucas Rebuttal at 15; Attachment DAL-6R (I&M Response to OUCC 3-22).

- Commission precedent;<sup>5</sup>
- S&P 500;<sup>6</sup>
- Statistics from a recent report published on a Harvard Law School Forum;<sup>7</sup>
- a sample of requests for renewable energy from South Bend residents who spoke at the field hearing and provided comments as part of the IRP stakeholder process;<sup>8</sup>
- testimony offered by the City of South Bend in Cause No. 44967 encouraging I&M to invest in Indiana-based renewable energy generation;<sup>9</sup>
- quotes from the Mayor of South Bend and the South Bend Municipal Energy Office supporting renewable energy;<sup>10</sup>
- a letter from Repower Indiana to I&M, the OUCC and the Commission showing Fort Wayne's support for a transition to renewable energy for I&M customers;<sup>11</sup>
- information regarding petitions to the Mayor of Fort Wayne asking for more investment in renewable energy;<sup>12</sup>
- an article from the Fort Wayne Journal Gazette regarding support for more energy from renewable sources such as solar and wind and noting that South Bend and Muncie had already signed on to petitions to increase the renewable energy in I&M's generation portfolio;<sup>13</sup>
- information from Ball State University and IUPUI corroborating Notre Dame and I&M's view that the SBSP will support research and education;<sup>14</sup> and
- examples of how states like Iowa, which ranks in the top ten in job growth, attribute access to renewables as a key factor in its ability to attract progressive companies.<sup>15</sup>

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<sup>5</sup> Lucas Rebuttal at 17, Attachment DAL-6R referring to Cause Nos. 45086 and 43097 as acknowledging that renewable resources are beneficial in efforts to retain and attract industrial and commercial customers seeking to meet renewable energy goals.

<sup>6</sup> Lucas Rebuttal at 17 (referring to I&M response to OUCC DR 5-03) (included with OUCC testimony as Attachment LMA-1).

<sup>7</sup> Lucas Rebuttal at 21, Attachment DAL-6R (I&M response to OUCC DR 5-04).

<sup>8</sup> Lucas Rebuttal at 21, Attachments DAL-6R & 7R (Response to OUCC DR 3-22, DR 5-01 & 5-02).

<sup>9</sup> Attachment DAL-6R (I&M Response to OUCC DR 3-22).

<sup>10</sup> Lucas Rebuttal at 14-15, Attachment DAL-7R (I&M Response to OUCC 5-02).

<sup>11</sup> Attachment DAL-6R (I&M response to OUCC 3-22).

<sup>12</sup> Attachment DAL-7R (I&M Response to OUCC 5-02).

<sup>13</sup> Lucas Rebuttal at 15; Attachment DAL-7R (discussing article and providing link to same).

<sup>14</sup> Lucas Rebuttal at 14 supported by web links identified in footnotes 4 and 6.

<sup>15</sup> Lucas Rebuttal at 16-17 n. 10 providing link to Iowa website.

The OUCC has failed to explain why additional context and other information such as dates of meetings and identities of the meeting participants is necessary. Nor has it shown why the absence of such details warrants the rejection of the Company's sworn testimony. If the OUCC desired such information it could have sought it through the discovery process or by accepting I&M's offers to hold informal meetings to facilitate the OUCC review of the Company's filing. See I&M Response to OUCC Motion to Dismiss at 3 (explaining OUCC had declined I&M offers to facilitate OUCC understanding of Company's filing through informal technical discussions); Lucas Rebuttal at 8 (same).

Finally, the OUCC's criticism of the Company's case-in-chief and the Company's reliance on information it provided to the OUCC in discovery lacks merit. The purpose of discovery is to allow the OUCC to probe the Company's case-in-chief. The OUCC contention otherwise amounts to a *de facto* shifting of the burden of proof. It is not necessary for I&M to prove a *prima facie* case by a "clear and convincing" evidentiary standard, let alone a "beyond a reasonable doubt" standard as suggested by the OUCC arguments. *Re Indiana Michigan Power Co.*, Cause No. 39314 (IURC 11/12/1993) at 5. The Commission re-affirmed this position in *Re NIPSCO*, Cause No. 43526 (IURC 8/25/2010) at 76, stating:

As we have said before, a petitioner's obligation is to submit "substantial evidence" sufficient for a *prima facie* case, not to satisfy a "clear and convincing" or "beyond a reasonable doubt" standard.

"A 'prima facie case' is one which presents 'such evidence as is sufficient to establish a given fact and which if not contradicted will remain sufficient.'" *Re Indiana Michigan Power Co.*, Cause No. 39314 (IURC 11/12/1993) at 4; *Plough v. Farmers State Bank of Henry County*, 437 N.E.2d 471, 475 (Ind. Ct. App. 1982); *Floyd v. Jay County*

*Rural Elec. Membership Corp.*, 405 N.E.2d 630, 633 (Ind. Ct. App. 1980); *Rene's Restaurant Corp. v. Fro-Du-Co Corp.*, 210 N.E.2d 385, 387 (Ind. Ct. App. 1965). Once I&M has presented a prima facie case for relief, the opponents of the requested relief, such as the OUCC, have the burden of going forward with their evidence. *City of Terre Haute v. Terre Haute Water Works Corp.* (1962), 133 Ind. App. 232, 180 N.E.2d 110, 117, 43 PUR 3d 278 citing *Cleveland, etc., R. Co. v. Miller* (1905), 165 Ind. 381, 385, 74 N. E. 509, 510 ("The general rule in Indiana is that 'a prima facie case must always stand until it is broken by the defendant's evidence.'"); also *Zakutansky v. State Bd. of Tax Comm'rs*, 758 N.E.2d 103, 2001 Ind. Tax LEXIS 40 ("Once the taxpayer carries the burden of establishing a prima facie case, the burden shifts to the State Board to rebut the taxpayer's evidence and justify its decision with substantial evidence," (citing *Clark v. State Bd. of Tax Comm'rs*, 634 N.E.2d 822, at 1233)). In other words, neither the presumption of good faith nor the sworn testimony of the Company's witnesses is overcome by opposing testimony that argues merely that the Company's case-in-chief is not sufficient.

**2. Substantial Evidence, Ignored Or Mischaracterized In The OUCC Filings, Demonstrates The OUCC Attack On The SBSP Cost And Merits Should Be Rejected.**

A. EIA Table. The OUCC post hearing filing rests on the contention that the cost of the SBSP is excessive. OUCC Brief at 2-9. Yet, the record shows the SBSP cost falls within the range of utility-scale solar project costs identified in the NIPSCO research and EIA tables relied on by the OUCC. DeRuntz Rebuttal at 6. The OUCC contends the SBSP cost should still be viewed as excessive because it falls near the high end of the

LCOE range and above the simple average and capacity-weighted average. OUCC Brief at 3.

In his rebuttal, Mr. DeRuntz identified the full range, identified where the SBSP cost falls within this range, and included the EIA reference, including the averages noted in the OUCC filing. DeRuntz Rebuttal at 6; Attachment JGD-7R. Consequently, the OUCC contention that Mr. DeRuntz hid or otherwise failed to "point out" relevant information is meritless. OUCC Brief at 3.

Furthermore, OUCC witness Haselden is the witness who introduced the use of the EIA and Lazard reference points as a means to assess the SBSP cost. In doing so, Mr. Haselden cited the EIA and Lazard "cost ranges". Haselden at 16-17. He did not rely on or contend project cost reasonableness should be assessed based on the simple average or the weighted average. Mr. DeRuntz simply pointed to the correct cost range and demonstrated that the SBSP falls within that range.

Moreover, the averages OUCC now seeks to rely on represent the "average across the U.S. supply regions of the NEMS [National Energy Modeling System] electricity market module." OUCC JEH-5, p. 5 of 50. The cost inputs used to calculate the LCOE vary regionally. *Id.* As a result, the averages identified by the OUCC are heavily weighted by the greater number solar projects in the Southwest and California. No record evidence demonstrates that it is reasonable to use a national average to assess the cost of a solar resource in the South Bend Indiana area. Quite the opposite. Mr. DeRuntz testified that a solar project's LCOE is highly dependent on the amount of solar radiation reaching a given geographical area (insolation), making the geographical location of a solar project a major influence on a generating unit's capacity factor. DeRuntz Rebuttal at 4. The

OUCC recommendation that the Commission rely on these national averages fails to consider the differences in generating capacity and geographical location or the negative impact this recommended benchmark would have on the ability to achieve the Chapter 8.8 objectives to develop renewable energy and support Indiana economic development and energy security. In other words, using the averages identified by the OUCC as the benchmark for approval of Indiana solar would effectively preclude the development of homegrown Indiana solar in the South Bend area, if not the entire state. Therefore, the OUCC proposal that the Commission judge the SBSP based on these averages lacks merit and should be rejected.

B. NIPSCO Presentation. The discussion of the NIPSCO presentation solar costs in the OUCC's Brief (p. 3) does not accurately reflect the record evidence. More specifically, the OUCC contends that Mr. DeRuntz "does not provide any evidence to show why the SBSP costs are almost 60% higher than seen with NIPSCO." OUCC Brief at 3. This contention is erroneous. Mr. DeRuntz explained that the \$1,151/kW data point used by Mr. Haselden reflected an "average bid price" for five projects with a total capacity of 669 MW, whereas the SBSP is a much smaller 20 MW facility. DeRuntz Rebuttal at 4. Mr. DeRuntz explained that capital costs are influenced by the scale of a solar project. *Id.* Thus, in addition to Mr. Haselden's data point reflecting an "average", his average reflects the cost of substantially larger solar projects. Mr. DeRuntz explained that larger projects are less expensive due to the economies of scale. *Id.* Finally, Mr. DeRuntz explained that the OUCC reliance on the NIPSCO average bid price as a basis for comparison was flawed because the NIPSCO bids were labeled "Preliminary-Subject to Due Diligence" meaning that the information had not yet been fully vetted and was subject



to change during the course of negotiations for an actual project. *Id.* In contrast, the SBSP has been fully vetted and has secured final EPC contract pricing.

Finally, the OUCC's Brief suggests the record does not adequately explain why I&M "is not seeking to achieve greater economies of scale by constructing a larger facility or in a location with a more suitable climate". OUCC Brief at 3; see also OUCC Brief at 4 (begging question why I&M is not constructing the Project in an area away from lake-effect snowfall and suggesting that supporting the Michiana area by locating near the Indiana Toll Road is a "nonsensical" "poor location" choice). Nevertheless, the record demonstrates that:

- the size of the SBSP matches the Company IRP which identified a 20 MW project in 2020;<sup>16</sup>
- Indiana's energy security policy supports the development of Indiana located renewable resources;<sup>17</sup>
- a location that benefits local economies and communities is consistent with the Corporate Renewable Energy Buyers' Principles relied on by the OUCC;<sup>18</sup>
- customers want to be located near the renewable projects they support;<sup>19</sup>
- this specific location is reasonable because it is in close proximity to the first I&M customer to step up and make a significant financial commitment of this nature for the benefit of all I&M customers;<sup>20</sup>
- this specific location near the highly traveled Indiana Toll Road provides proximity and visibility beneficial to economic development in the Michiana area and beyond;<sup>21</sup>

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<sup>16</sup> *E.g.* Thomas Direct at 9.

<sup>17</sup> *E.g.* Thomas Direct at 7-8.

<sup>18</sup> Lucas Rebuttal at 24.

<sup>19</sup> Thomas Direct at 12.

<sup>20</sup> *E.g.* Thomas Direct at 13-14. Given the competition for a university's resources, Notre Dame's commitment is quite substantial. The OUCC's effort to disparage this commitment as a "small fraction" should be rejected. OUCC Brief at 5.

<sup>21</sup> Lucas Rebuttal at 20, 25).

- economic development in I&M's service area is important and beneficial because attracting new companies to I&M's service area allows cost of service to be spread over more units of consumption and this in turn allows customer bills to be lower than they otherwise would be;<sup>22</sup> and
- Indiana policy as well as recent Commission precedent from Cause No. 45052 supports smaller projects and maintaining flexibility.<sup>23</sup>

Accordingly, the OUCC's proposal that the Commission "find that the actual [NIPSCO] RFP results are a more accurate comparison" and "form a sufficient basis to find the project cost to be unreasonable" (OUCC PO at 15) should be rejected.

C. Lazard Analysis. OUCC witness Haselden compared the cost of the SBSP to the cost of a larger solar system in a high insolation jurisdiction, e.g. Southwest U.S. Haselden at 16-17. DeRuntz JGD-8R footnote 2. Mr. DeRuntz refuted Mr. Haselden's cost comparison, explaining in particular that the OUCC comparison of the SBSP cost to the Lazard data point disregards the difference in capacity between the 50 MW Lazard project and the 20 MW SBSP and the "higher insolation for the projects in the Lazard data verses the relatively low degree of insolation for the SBSP." DeRuntz Rebuttal at 6. Mr. DeRuntz explained why a comparison of capacity factors between solar generating units with different degrees of insolation is inappropriate and does not yield meaningful results. DeRuntz Rebuttal at 4-5.

The OUCC identifies no record evidence contradicting the points made in Mr. DeRuntz's testimony. Rather, the OUCC proposes the Commission sweep Mr. DeRuntz's rebuttal aside by finding that "even accounting for the size and capacity factor

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<sup>22</sup> Thomas Direct at 8, 10, 12).

<sup>23</sup> Thomas Rebuttal at 5-7.

difference", DeRuntz provides no evidence as to why I&M's calculated LCOE is so much higher than range [sic] in the Lazard analysis." OUCC Brief, at 4.

The Commission must consider the record as a whole. It cannot ignore the unimpeached sworn testimony of Mr. DeRuntz. Mr. DeRuntz showed that the OUCC's proposed cost comparison is neither appropriate nor meaningful *because of* the differences in insolation, size and capacity. In other words, these are the reasons why the cost of the SBSP differs from the Lazard data point. These key differences cannot be simply dismissed as urged by the OUCC. Moreover, the OUCC identifies no record evidence demonstrating that the SBSP LCOE is "so much higher" than the Lazard range when these differences are considered. OUCC Brief at 4. Therefore, the OUCC's proposed finding is not supported by the record evidence and must be rejected.

D. Land Costs. The OUCC argues that the SBSP is located in a "high cost" urban or suburban area. OUCC Brief at 5. Yet, the rebuttal testimony of I&M witness Lucas shows I&M did not pay a premium for the SBSP land. Lucas Rebuttal at 24. While the cost of land in a rural location may be less, this does not demonstrate that the price paid for the SBSP land, which is located near the Indiana Toll Road and in close proximity to the University of Notre Dame, is excessive given the benefits associated with this desirable location.

The OUCC argument that the location will not benefit the Michiana community should be rejected. The record, including the Corporate Renewable Energy Buyers' Principles relied on by Mr. Haselden, establishes that customers want the renewable energy projects they support to be located near them. Lucas Rebuttal at 18, 24. A key strategy from the Principles the OUCC fails to mention states:

Where possible, we would like to procure renewable energy from projects near our operations and/or on the regional energy grids that supply our facilities so our efforts benefit local economies and communities as well as enhance the resilience and security of the local grid.

Lucas Rebuttal at 18 (quoting Buyers' Principles). Having a visible solar facility in the area will provide a significant benefit to economic development efforts in the region as such facilities are one of a number of different factors that ultimately determine the location of new companies to the region. Attachment DAL-6R (see Response to OUCC 3-22).

I&M's support for the Project's benefit to economic development does not rest on speculation as suggested by the OUCC. OUCC Brief at 12. The record shows that I&M has been in contact with no fewer than five confidential companies considering placing a new facility in the I&M service area that have requested I&M to include a renewable generation solution as part of its proposal to provide electric service. Lucas Rebuttal at 16. Moreover, as a part of normal business and customer service, I&M has had dialogue with a number of customers in the Michiana area that have inquired about renewables, sustainability, and future plans around solar. Attachment DAL-6R (see Response to OUCC 3-22). These companies do not want to simply purchase RECs as suggested in the OUCC Brief (at 5), they want to support a local and visible renewable energy project. Other information provided by I&M, including US EPA's Green Power Partnership program, corroborates the Company's view that benefits for customers participating in green energy include the following:

- Potential to serve as a brand differentiator;
- Generate customer, investor, and stakeholder loyalty and employee pride;
- Create positive publicity and enhance an organization's public image; and

- Demonstrate civic leadership.

*Id.* The SBSP provides the opportunity for the Michiana area to bring these benefits to existing businesses in the area as well as attract new businesses. *Id.*

Seventy-eight percent of S&P 500 companies issue annual sustainability reports with environmental performance metrics. Of those companies that issued sustainability reports, ninety-five percent provide environmental performance metrics and sixty-seven percent set quantified and time-bound environmental goals. In many instances, these goals are now beginning to contain certain expectations for communities where the companies are located and for companies that provide products and services in the supply chain for these larger companies. This is beginning to become the case with a number of automotive companies, which is critical to businesses in I&M's service area that provide parts to that industry. Lucas Rebuttal at 17.

The OUCC argues that I&M customers could pursue self-generation, independent acquisition of RECs or other non-I&M products or services. OUCC Brief at 11. This contention underscores the importance of the Commission supporting the Company's efforts to retain and grow its customer base by serving customers the way they want to be served, because doing so benefits all customers. As noted above, attracting new companies to I&M's service area allows cost of service to be spread over more units of consumption and this in turn allows customer bills to be lower than they otherwise would be.

The site location criteria were developed, based on the substantial interest of a large I&M customer in supporting a solar resource that I&M has planned for 2020. The Company should not be penalized, as suggested in the OUCC Proposed Order (p. 15),

for being responsive to its customer needs, particularly given that I&M did so by using a resource that is part of the Company's IRP and designing the Project in such a way that it benefits not only the broader Michiana area but all of I&M's customers.

The Commission's recent order approving a solar project for Vectren recognized the testimony in that case showed that renewable resources are beneficial in efforts to retain and attract industrial and commercial customers seeking to meet renewable energy goals. Lucas Rebuttal at 17 citing *Petition of Southern Indiana Gas & Electric Co.*, Cause No. 45086 (IURC 3/20/2019) p. 26. The OUCC proposed rejection of the SBSP and its important benefits is inconsistent with both substantial record evidence and Commission precedent. Furthermore, the OUCC has identified no credible reason for the Commission to reject the value of renewable resources with respect to the efforts to retain and attract industrial and commercial customers in I&M's service area. The OUCC suggestion that the Commission should accept this premise for other utilities but reject it in the case of I&M's service territory is illogical. Therefore, the OUCC contention that the SBSP location is an excessive and poor choice should be rejected.

E. Risks. OUCC argues that the SBSP should be rejected because of the risk that the ITC benefit may not be achieved immediately and other costs – namely property taxes and O&M, may differ from I&M's best cost estimate. OUCC Brief at 6-8. The potential for the future to vary from the Company's cost forecast is not a legitimate basis to reject the SBSP. Chapter 8.8 encourages public utility investment in renewable energy resources by providing for pre-approval by the Commission. As a result, the Commission necessarily must assess the proposed Project costs based on an estimate. As discussed

below, the OUCC arguments rest on a flawed analysis and ignore substantial record evidence showing that the Company's Project cost estimate is reasonable.

More specifically, the record reflects that I&M is forecasting to be able to utilize ITCs in the future, beginning in 2019, and the ITC amortization associated with I&M's solar generation plants has been included in base rates in I&M's pending Cause No. 45235. Auer Rebuttal at 6-7. If there is a year(s) in the future where AEP does not have sufficient taxable income to utilize the ITCs, I&M will amortize that year's ITC amount over the remaining life of the asset. In other words, the ITC will be an offsetting component of the revenue requirement for the life of the facility. *Id.* Moreover, the OUCC "time value of money" argument is not accurate. OUCC Brief at 7. The record shows that if the Project is placed into base rates, the Company will reflect the benefits associated with the Accumulated Deferred Federal Income Tax ("ADFIT") related to accelerated depreciation at a zero cost of capital in the Company's capital structure. This serves to reduce the overall cost of capital for revenue requirement calculations regardless of whether recovery occurs through base rates or through a rider. Auer Rebuttal at 7. Thus, the OUCC ITC risk concern is overstated and does not justify the rejection of the SBSP.

The record shows that Mr. Haselden's property tax calculations are in error for various reasons, including his treatment of the SBSP as if it were a "standalone project" when it is not; his reliance on the wrong section of the Indiana code; and his use of the wrong depreciated basis. Auer Rebuttal at 8-9. I&M reasonably did not increase the land value because it is not known and estimable at this point in time. While there is a likelihood that its value will increase toward the sale price over time, historically land is not assessed at the sale price. *Id.* at 10.

I&M has not downplayed the O&M risk to ratepayers. OUCC Brief at 8. To the contrary, the Company demonstrated that OUCC arguments are seriously flawed. In particular, the OUCC's concern about O&M risk is based on an isolated *capital expenditure* for a type of equipment that will not be used for the SBSP. The occurrence of a single, atypical historical *capital expenditure* is not a sound basis to reject the Company's estimated O&M for the SBSP. If the Company were to propose a project's forecasted spending requirement based on this premise, it would most certainly be rejected. Additionally, the OUCC's concern about the interconnection cost estimate fails to acknowledge that the cost of interconnection constitutes less than five percent of the total Project cost and consequently is not a source of significant cost overrun risk. OUCC Brief at 8; DeRuntz Rebuttal at 7-8.

Finally, the OUCC identifies no legal or policy support for its proposal that the Commission cap cost recovery if it approves the SBSP and disallow land costs. OUCC Brief at 9. Ind. Code § 8-1-8.8-11(a) directs the Commission to provide financial incentives, including timely recovery of costs incurred during construction *and* operation where a project is found to be reasonable and necessary. Disallowing or capping ongoing O&M or other costs is not consistent with this statutory directive. Therefore, the OUCC argument that risk is both excessive and grounds to reject the SBSP or cap/disallow the Project cost recovery is flawed as a matter of fact and is contrary to governing statute.

**3. The OUCC Contention That The Project Is Not Needed Ignores Substantial Record Evidence Demonstrating Otherwise.**

As shown in I&M's Proposed Order, substantial record evidence, including the testimony of I&M witnesses Thomas and Torpey, shows the SBSP is consistent with the Company's two most recent IRPs. IMPO at 3-4; 11-12. The 2015 IRP identified a 20 MW



solar project in 2020. The 2020 20 MW project is reasonably reflected as a “going in resource” in the most recent IRP and the competitively bid cost for the SBSP is reasonable for a 2020 solar project. Torpey at 5. Regardless of when the Rockport Unit 2 lease terminates, I&M will face a capacity gap of approximately 500 MW and the 20 MW SBSP is a modest step towards closing that gap. *Id.* The expectation that solar resource costs may continue to trend downward in the future is not a reasonable basis to defer the 2020 solar resource identified in the Company’s IRP. Waiting to add a larger solar facility in the future constrains flexibility, reduces (if not eliminates) the ability to locate the facility in the community as desired by customers, and sends precisely the wrong message vis-à-vis economic development in I&M’s service area.

**4. Substantial Record Evidence Refutes The OUCC Contention That There Is No Support for Alleged Benefits Of The SBSP.**

In addition to the testimony provided in the Company’s case-in-chief, I&M witness Lucas provided a detailed and substantiated account of why the SBSP benefits are not speculative. Lucas Rebuttal at 9-24; Attachments DAL-3R-8R. The OUCC contends this evidence is insufficient – arguing for example that this evidence should be ignored because confidential information (such as the name of companies making inquiries about locating in the I&M service area) has not been disclosed and other details, such as the date and participants in conversations, were not provided in the testimony. OUCC Brief at 11-12. It is hardly unusual for companies to keep their expansion and other plans to compete in the marketplace confidential. Furthermore, a utility’s practice of not disclosing customer specific information is well established.

Mr. Haselden and Mr. Lucas disagreed with each other regarding the educational benefit and value of the Project. The OUCC urges the Commission sweep aside the

Company's evidence with a Commission "note . . . that the SBSP is a conventional commercial operation and is not an experimental or research project". OUCC PO at 16; see also Lucas Rebuttal at 11-12. This proposal should be rejected because this wholly mischaracterizes the evidence establishing the Project, including the Project operational data, being used for and in connection with education and research. *Id.*

When reviewed impartially, the detailed information provided in Mr. Lucas' testimony and attachments cannot reasonably be characterized as speculative. To the contrary, Notre Dame has already made a substantial financial commitment and the addition of this modest amount of solar energy is consistent with the Company's IRP. And with respect to economic development, substantial evidence demonstrates there is a reasonable and credible basis to conclude that "if you build it, they will come" or at least not leave. *Cf.* OUCC Brief at 12.

## **5. Other Issues.**

A. I&M has not argued that the governing law should be "read as providing a blank check for a utility". OUCC Brief at 12. I&M has devoted significant resources to developing the SBSP for the benefit of its customers. The Company has secured the site, issued the RRP, negotiated and executed agreements with the EPC and major REC purchaser (Notre Dame), initiated interconnection, and otherwise undertaken to define and solidify the Project for Commission review. The OUCC contentions otherwise are incredulous and should be rejected. OUCC Brief at 12-13.

B. The substantive legal standard applicable to filing under Ind. Code § 8-1-8.8-11 is whether the proposed Project is reasonable and necessary. I&M presented substantial evidence in the form of prefiled testimony showing the South Bend Solar

Project is reasonable and necessary and otherwise in accordance with Ind. Code § 8-1-8.8-11. As discussed above, once I&M presented its prima facie case, other parties, like the OUCC, “have the burden of going forward with their evidence.” *Id.* The OUCC contention otherwise appears to blur the distinction between the burden of going forward with the evidence by filing a prima facie case and the ultimate burden of persuasion. I&M carried its burden of going forward with the evidence by presenting evidence sufficient to establish the given relevant facts. Through its rebuttal testimony and attachments, the Company has refuted the OUCC opposition, including its extensive discussion of the draft agreements. The Company has also cooperated in discovery. Therefore, the Commission should reject the OUCC suggestion that the Commission order in this Cause should admonish the Company with respect to its case presentation and participation. OUCC Brief at 17; OUCC PO at 17.

C. The Company's Proposed Order explains why Mr. Haselden's recommendation that the Commission mandate that the Company monetize all unused RECs would not serve the public interest and should be rejected. IMPO at 23. The arguments presented in the OUCC post hearing filings are red herrings, not grounds to reach a different conclusion. OUCC Brief at 13-14. The manner and extent to which the Company markets its green energy position is beside the point, as it is clear that the Company could not engage in any such activity once its RECs are all gone.

D. Finally, the Company's Proposed Order is not lengthy. Yet, the OUCC has proposed the Commission delete much of the material regarding the Company's evidence, including Mr. DeRuntz's rebuttal regarding the flawed nature of Mr. Haselden's cost comparison, Mr. Torpey's clarification regarding the Company's most recent IRP

analysis, the Company's evidence regarding the benefits of owning a Clean Energy Project versus entering into a PPA, and the evidence establishing that the Company reasonably expects to utilize the ITC. While a party may be reasonably expected to file a Proposed Order that expands the summary of its own evidence, the OUCC's deletion of references to key Company evidence creates a distorted picture of the record evidence.

The OUCC's deletion of I&M's evidentiary references does not make this evidence go away. Nor does it relieve the Commission of the requirement that it must base its decision on the record as a whole and make detailed findings covering all material basic and ultimate facts. *Ind. Bell Tel. Co. v. Office of Util. Consumer Counselor*, 717 N.E.2d 613, 620, 624 (Ind. Ct. App. 1999), *modified on other grounds on reh'g*, 725 N.E.2d 432 (2000). Because the OUCC has not justified its proposed revisions to the sections of the I&M Proposed Order that summarize and discuss the Company's evidence, the OUCC's revisions should be rejected.

## CONCLUSION

The Commission should reject the OUCC arguments that the SBSP is located in one of the worst areas of the state and is otherwise excessive. OUCC Brief at 18. Locating the Project in the Michiana area is responsive to customer demand, consistent with the Company's IRP and structured, through the arrangement with Notre Dame, to benefit all Company customers. The OUCC's proposal that the Commission reject the SBSP or cap/disallow Project cost recovery would create a disincentive to utility investment and would not further the State's policy of using financial *incentives* to encourage Indiana public utilities to develop Indiana renewable energy generation in "support of the state's economic development efforts" and allow Indiana "to continue to

be successful in attracting new businesses and jobs." Ind. Code § 8-8.8-1(a)(2), (b)(1).  
Therefore, the Commission should reject the OUCC recommendations and issue an order  
approving the SBSP as proposed by I&M.

Respectfully submitted,



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### CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served upon the following via electronic email, hand delivery or First Class, United States Mail, postage prepaid this 30th day of September, 2019 to:

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