

ORIGINAL

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

APPROVED: FEB 19 2020

ORDER OF THE COMMISSION

**Presiding Officers:**

**David E. Ziegner, Commissioner**

**Jennifer L. Schuster, Administrative Law Judge**

On June 12, 2019, Indiana Michigan Power Company (“I&M” or “Petitioner”) filed its Verified Application with the Indiana Utility Regulatory Commission (“Commission”) for approval of a 20-megawatt alternating current (“MW<sub>AC</sub>”) clean energy solar project, also known as the South Bend Solar Project (“SBSP”), and for associated accounting and ratemaking relief and the sale of renewable energy credits (“RECs”). I&M also prefiled its case-in-chief on June 12, 2019.

On August 12, 2019, the Indiana Office of Utility Consumer Counselor (“OUCC”) prefiled its case-in-chief. Intervenor Citizens Action Coalition of Indiana, Inc. (“CAC”)<sup>1</sup> did not prefile any evidence. On August 26, 2019, I&M prefiled its rebuttal evidence. The Commission held an evidentiary hearing in this Cause on September 9, 2019 at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. I&M, the OUCC, and CAC appeared and participated at the hearing, and the evidence of I&M and the OUCC was admitted into the record without objection.

On October 29, 2019, I&M, the OUCC, and CAC filed a Joint Verified Petition to Reopen Proceeding and for Leave to Submit Settlement Agreement and Supporting Evidence, which was granted by the Presiding Officers on October 31, 2019. On November 18, 2019, I&M and the OUCC filed their settlement evidence. The Commission held a settlement hearing in this Cause on December 10, 2019 at 1:30 p.m. in Room 224 of the PNC Center, 101 West Washington Street,

<sup>1</sup> The CAC filed its Petition to Intervene on June 18, 2019, and the Presiding Officers granted it via docket entry on June 24, 2019.

Indianapolis, Indiana. I&M, the OUCC, and CAC appeared and participated at the hearing, and the settlement evidence of I&M and the OUCC was admitted into the record without objection.

Based upon applicable law and the evidence presented, the Commission finds:

1. **Notice and Jurisdiction.** Due, legal, and timely notice of the hearings in this Cause was given and published by the Commission as required by law. Petitioner is a “public utility” under Ind. Code § 8-1-2-1, an “energy utility” as defined in Ind. Code § 8-1-2.5-2, and an “eligible business” as defined in Ind. Code § 8-1-8.8-6. The Commission has jurisdiction to approve financial incentives for clean energy projects under Ind. Code § 8-1-8.8-11. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Petitioner’s Characteristics.** I&M, a wholly owned subsidiary of American Electric Power Company, Inc. (“AEP”), is a corporation organized and existing under the laws of the state of Indiana with its principal office at Indiana Michigan Power Center, Fort Wayne, Indiana. I&M is engaged in, among other things, rendering electric service in the states of Indiana and Michigan. In Indiana, I&M provides retail electric service to approximately 468,000 customers.

3. **Relief Requested.** I&M has requested that the Commission approve its proposal to construct, own, and operate a single-site, 20 MW<sub>AC</sub> nameplate capacity solar facility. The facility will be located east of South Bend, Indiana near the University of Notre Dame (“Notre Dame”). In accordance with Ind. Code § 8-1-8.8-11, I&M requests that the Commission approve associated accounting and ratemaking treatment for the SBSP, as discussed below. I&M and Notre Dame have entered into a 30-year agreement (“Notre Dame Contract”) whereby I&M will designate to Notre Dame 8 MW of the renewable attributes of the SBSP (40% of the overall project output). In exchange, Notre Dame will compensate I&M for the RECs associated with 40% of the output of the SBSP. I&M requests that the Commission approve the sale of RECs and proposes to include the non-administrative fee revenues received through the sale of RECs in its fuel adjustment clause (“FAC”) proceedings as a credit.

4. **The Parties’ Evidence.**

A. **I&M’s Case-in-Chief.**

i. **Reasonableness of Project.** Toby Thomas, I&M’s President and Chief Operating Officer, testified that I&M’s customers are increasingly interested in the use of renewable energy sources. He stated that adding a modest amount of solar energy to I&M’s generation portfolio at this time allows I&M to meet customer expectations with a relatively small impact on customers’ overall electricity bills.

Mr. Thomas testified that I&M gained experience through the construction and operation of its clean energy solar pilot projects that were approved by the Commission in Cause No. 44511. He stated that the SBSP will enable I&M to become more proficient in operating solar generation and integrating it reliably into the transmission grid.

Mr. Thomas stated that the SBSP is consistent with I&M's 2015 and 2019 IRPs, including the preferred portfolio resource mix set forth in I&M's 2015 IRP. The 2015 IRP also specifically identified I&M's goal of adding 20 MW of new solar capacity in 2020 (the projected capacity of the SBSP).

Mr. Thomas explained the benefits to I&M and its customers from I&M-owned solar generation, which include obtaining cost efficiency through the deployment of larger-scale solar resources; exercising quality control over the construction, operation, and maintenance of solar projects; utilizing I&M's experience in operating existing generation assets for future solar generation projects; locating utility-owned solar photovoltaic facilities close to load centers, potentially reducing the need for energy delivery infrastructure development; providing support for meeting summer peak loads; contributing to I&M's PJM capacity obligations; lowering I&M's variable cost of fuel by displacing fossil-fired generation; and obtaining investment tax credits ("ITCs").

**ii. Project Cost.** Joseph G. DeRuntz, Project Director with AEP Service Corporation ("AEPSC"), testified that I&M seeks approval to invest approximately \$37 million through 2020 to develop the SBSP. The cost of the solar installation is based on a competitive procurement process, with expected issuance of a notice to proceed to the engineering, procurement, and construction contractor in April 2020 and project construction to start in or around May 2020. This schedule ensures that the SBSP will qualify for the 26% ITC available to projects that begin construction in 2020.

Mr. DeRuntz opined that, based on the competitive bidding process used, the geographical location requirements, and the insolation available at the proposed project location, the SBSP cost of \$1,270/kW is reasonable. He also opined that the land cost of \$21,500/acre is reasonable and that the land will retain its value (if the value does not increase) during the life of the SBSP. He stated that the 34.5 kV connection is a distribution-sized line, which reduces the connection costs. He explained that the combined solar facility and land cost of \$1,838/kW and first-year production of 36,787 MW yield a levelized cost of energy ("LCOE") of \$82.38/MWh for the 30-year life of the SBSP. He said that the SBSP's expected capacity factor of 20.6% reflects the solar resource profile in northern Indiana. He added that this expected capacity factor is stipulated in the engineering, procurement, and construction contract ("EPC Contract"), which imposes liquidated damages if the contractor fails to achieve the contract capacity. Mr. DeRuntz stated that any increase in actual facility capacity from the EPC Contract capacity would benefit I&M's customers.

Mr. DeRuntz testified that the estimated cost to operate and maintain the SBSP is \$15/kW-year in 2018 dollars, escalating at 2% per year for the 30-year life of the facility. He said that this estimate includes all materials and labor needed to perform routine preventative and corrective maintenance, including inverter maintenance. He added that the estimated annual operating and maintenance ("O&M") expense is comparable to I&M's four solar pilot project sites, after accounting for the larger scale of the SBSP.

**iii. Accounting and Ratemaking.** Brent E. Auer, Regulatory Analysis and Case Manager for I&M, testified that I&M is requesting that the Commission approve a solar

power rider (“SPR”) to allow for timely cost recovery of the SBSP, including depreciation expense, carrying costs on the post in-service investment, income and property taxes, O&M costs, and gross revenue conversion factor (“GRCF”) costs.

According to Mr. Auer, if cost recovery and rates are established in I&M’s current base rate case, Cause No. 45235, and the SBSP project is placed into service prior to December 31, 2020, then I&M will not need to make an SPR filing to establish rates. If necessary, I&M proposes to file its first SPR filing shortly after the SBSP project begins commercial operation. The SPR factors would be based upon the forecasted costs for the following 12-month period. After that, I&M proposes to file SPR proceedings on an annual basis. Mr. Auer explained that the form and content of these filings (such as schedules) will be consistent with I&M’s previous SPR filings in Cause No. 44511. Mr. Auer stated that the requested ratemaking treatment will continue until the SBSP is included in I&M’s rate base in a base rate case. He estimated a year-one rate impact under an SPR filing of 0.17% if the SBSP is not reflected in the rates established in Cause No. 45235.<sup>2</sup>

Mr. Auer discussed the extent to which cost recovery will be reduced by the amortization of the ITC associated with the SBSP. He explained that I&M requests the Commission to authorize the depreciation of the SBSP over a period of 30 years, which represents the expected life of the facility. He also discussed the accrual of allowance for funds used during construction and explained that carrying costs to be recovered in the SPR will be computed by applying I&M’s pre-tax weighted average cost of capital (“WACC”) to I&M’s investment when the solar project is placed in service. For the SPR, the return on equity portion of the WACC will utilize the rate approved by the Commission in I&M’s most recent base case, and GRCF costs will be calculated consistent with the methodology approved by the Commission for I&M’s current riders.

Mr. Auer stated that I&M proposes to include the O&M costs associated with operating and maintaining the SBSP and property tax expense in its SPR. I&M also proposes to perform traditional over/under-recovery accounting in its SPR, consistent with I&M’s current rider reconciliations. I&M is also requesting authority to create a regulatory asset to defer any costs associated with the SBSP until they are recovered through the ratemaking process, either through the SPR or base rates.

**iv. RECs.** Mr. Thomas and Mr. Auer testified that I&M and Notre Dame have engaged in lengthy, arms-length discussions and worked together to create an agreement that supports Notre Dame’s environmental values and goals. Under the Notre Dame Contract, I&M will provide educational opportunities for Notre Dame’s students and faculty, work with Notre Dame to create an awareness campaign for the community, and provide Notre Dame with naming rights for the SBSP. In exchange, Notre Dame will compensate I&M for RECs in an amount based on 40% of the output of the SBSP.

Mr. Thomas testified that I&M proposes to use a variable rate approach over the 30 years of the Notre Dame Contract. He said that the REC compensation will be based upon the S&P Global Energy Credit Index for a New Jersey Class 1 Renewable Energy Certificate, plus a 20% program administrative fee. For example, if the current market price for a PJM Class 1 REC is

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<sup>2</sup> In response to the Presiding Officers’ December 2, 2019 docket entry, I&M stated that the overall year-one customer rate impact of I&M’s investment in the SBSP under the terms of the Settlement Agreement is 0.13%.

\$6.00, a 20% administrative fee would result in a REC price of \$7.20 ( $\$6.00 + (.20 * \$6.00)$ ). The REC compensation will be reset annually in January based upon the average New Jersey Class 1 REC price for the prior calendar year. Mr. Thomas added that this compensation (excluding program administrative fees) will be used to offset the cost of the SBSP.

Mr. Thomas said that I&M anticipates that other customers within its footprint may be interested in obtaining RECs. I&M's IM Green Rider proposal in Cause No. 45235 includes a contract option to address this potential demand, whereby I&M could enter into a multi-year agreement in which a customer would compensate I&M for a portion of the monthly energy generated by a renewable energy project such as the SBSP. He said that the monthly sale price would be determined by the number of RECs produced by the facility, a set annual price for each REC, and a negotiated administrative fee.

Mr. Thomas and Mr. Auer testified that the compensation for the RECs (excluding program administrative fees) will flow through I&M's FAC tracker, reducing the fuel rates charged to I&M's customers. Mr. Thomas opined that this proposal is consistent with the current practice of using the FAC as a vehicle to flow net proceeds from I&M's voluntary renewable energy option to customers. He added that this will allow for timely reflection of the associated credits in customer rates without filing separate docketed proceedings. Any unsold RECs would be maintained and counted toward I&M's compliance with renewable portfolio standard or greenhouse gas regulations to which it may be subject.

**B. OUCC's Case-in-Chief.**

**i. Reasonableness of Project.** Lauren M. Aguilar, Utility Analyst in the OUCC's Electric Division, opined that I&M's evidence did not sufficiently support the reasonableness of the SBSP. Ms. Aguilar explained that the OUCC is concerned that I&M is willing to use its customers' funds to provide image building for the benefit of one customer, Notre Dame.

John E. Haselden, Senior Utility Analyst in the OUCC Electric Division, testified that he is concerned that I&M is overstating the role the SBSP may play in providing an opportunity to learn about renewable energy, as the SBSP will be a conventional commercial operation that has well-defined expectations of performance. Mr. Haselden also observed that many of I&M's customers may not be able to obtain power from the SBSP due to the complexity of purchasing RECs. In addition, he stated that I&M has not specifically shown how the SBSP will lead to greater economic development in the South Bend area or provided concrete evidence that the presence of the SBSP will spur companies to move to the area.

**ii. Project Cost.** Mr. Haselden opined that the SBSP is unreasonably expensive compared to responses to a recent NIPSCO request for proposal ("RFP") and other reference points for the LCOE of utility-scale solar. He concluded that the SBSP is not in the interest of customers as proposed. The cost estimated for the SBSP is \$1,838.54/kW, significantly higher than the average cost of \$1,151.01/kW for utility-scale build transfer projects reported in the NIPSCO RFP. Similarly, the average purchased power agreement ("PPA") flat price for solar reported by NIPSCO was \$35.67/MWh, as compared to the LCOE of \$90/MWh for the SBSP.

Other reference points for LCOE from the U.S. Energy Information Administration and Lazard's Levelized Cost of Energy Analysis Version 12.0 show cost ranges of \$37.6 – 45.7/MWh and \$36 – 44/MWh, respectively.

Mr. Haselden explained that the SBSP is far more expensive than the costs I&M used in the economic modeling for its recent IRPs, making the SBSP's selection unlikely if I&M had modeled it in its IRPs. He testified that I&M's customers should not be required to pay for the SBSP at a higher cost than that I&M modeled in its most recent IRP. Mr. Haselden also opined that the SBSP would not represent a meaningful diversification of I&M's generating portfolio.

Mr. Haselden stated that there are four significant areas creating risk that would not be present if the project was structured as a PPA: project costs and overruns, O&M costs and risks, ratemaking treatment of federal tax incentives, and I&M's ability to monetize tax credits. He explained that, under a traditional PPA, I&M would pay for power produced and received on a \$/MWh basis and would not be exposed to financial risk should the project and associated interconnection costs be more than expected. Here, if equipment fails or needs repair, I&M customers will pay for the costs to repair or replace equipment net of any warranties. For example, I&M's Deer Creek solar facility, approved in Cause No. 44511, has not produced power since July 2018 due to transformer failures, requiring I&M to spend the equivalent to \$153/kW in 2018 and \$95/kW in 2019 on that facility. To date, I&M has been unable to take advantage of the federal ITC and tax accelerated depreciation tax benefits associated with the four solar pilot projects approved in Cause No. 44511, resulting in an increased LCOE of \$98/MWh. Should the Commission approve the SBSP, he recommended the Commission cap cumulative O&M expenses.

Mr. Haselden recommended that the cost of the land not be included in cost recovery due to the image-building nature of the cost. He explained that a significant portion of the SBSP's high cost is due to the excessive land cost and the 4.5-mile line to I&M's substation. He also noted an error by I&M in calculating property value and property tax. Finally, he opined that, to the extent administrative costs are greater than the 20% administrative fee collected from Notre Dame, I&M customers should not be required to pay the excess costs.

Although the OUCC supports the development of renewable resources, Mr. Haselden concluded that the SBSP is not in the public interest as proposed, primarily due to its high cost, and recommended that the Commission deny recovery of the SBSP costs as requested by I&M. Mr. Haselden offered recommended conditions and an alternative method of cost recovery should the Commission approve the SBSP, including a cap on O&M cost recovery and a limitation on the per-kWh cost recovery based on the value I&M used to model solar in its most recent IRP.

**iii. Accounting and Ratemaking.** Wes Blakley, Senior Utility Analyst in the OUCC's Electric Division, testified that, if the Commission allows I&M to recover costs associated with the SBSP, it should require I&M to file a renewable energy project tracker, such as an SPR. If renewable energy projects are blended into a utility's rate base, the OUCC is concerned that the Commission and the OUCC will lose valuable cost information regarding different renewable energy projects or technologies. Mr. Blakley discussed the benefits of tracking renewable energy projects and explained that cost recovery through a tracker strikes an appropriate

balance by providing a customer benefit in the form of an annual reduction in revenue requirement, while also not harming I&M because its return will still be matched with its renewable plant investment.

iv. **RECs.** Mr. Haselden explained that, based on Mr. Auer's direct testimony, it appears that Notre Dame will not receive RECs directly generated by the SBSP, but instead will receive RECs from I&M's general portfolio. Mr. Haselden stated that the OUCC recommends monetizing all unused RECs in the market and crediting proceeds from REC sales through the SPR or FAC trackers.

C. **I&M's Rebuttal Evidence.** On rebuttal, I&M's witnesses disagreed with the OUCC's assessment that it had not provided sufficient evidence to justify the relief it is seeking in this matter. Among other things, they reiterated their testimony that the SBSP would provide needed economic development to the area and attract new customers; that it is consistent with I&M's 2015 and 2019 IRPs; that I&M has correctly estimated the project's costs; that its proposal for the sale of RECs to Notre Dame and other potential customers is sound; and that its cost recovery proposal, including recovery through base rates and/or an SPR, is sound.

Mr. DeRuntz responded to the OUCC's concerns regarding customer risks associated with the SBSP's initial cost and ongoing O&M expense, distinguishing the SBSP from I&M's Deer Creek facility. He testified that the type of transformer that failed at Deer Creek will not be used for the SBSP. With the exception of the transformer failure at Deer Creek, I&M has only invested \$29,000 in its four solar pilot project facilities since the first unit went into service in December 2015. He stated that the use of an isolated historical capital expenditure to justify limiting future O&M expense is not appropriate.

Mr. DeRuntz also addressed the benefits of owning the SBSP, as opposed to entering into a PPA. As the owner of the SBSP, I&M will have control over operations throughout the life of the facility and will be able to respond to market changes, which might not be possible under a PPA. I&M will also control whether the facility's expected useful life is extended or the site repowered. It will also be able to take advantage of new or existing generation technologies when economically beneficial.

David A. Lucas, Vice President of Finance and Customer Experience for I&M, responded to the OUCC's criticism of the SBSP's proposed location and land cost. He testified that I&M did not pay a premium for the land and opined that the benefits of the project's location near the Indiana Toll Road and Notre Dame are not limited to I&M, but, rather, flow to the entire area.

Mr. Auer testified about why the Commission should not cap O&M expenses, as recommended by Mr. Haselden. He testified that not all events and maintenance activities are foreseeable and stated that I&M needs to have the opportunity to recover the O&M costs incurred for providing service to customers. Mr. Auer opined that utilizing one data point (the Deer Creek transformer failure) to argue that O&M costs should be capped is unpersuasive.

Mr. Auer also responded to the OUCC's concerns about potential risks associated with the ratemaking treatment of the federal ITC. He stated that I&M anticipates utilizing ITCs beginning

in 2019 and has included ITC amortization associated with I&M's solar generation plants in its proposed base rates in Cause No. 45235. In addition, if AEP does not have sufficient taxable income to utilize the ITCs in the future, I&M plans to 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. However, Mr. Auer testified that AEP expects to have sufficient taxable income in both 2019 and 2020 to begin amortizing prior years' deferred ITCs related to solar projects, and I&M expects to be able to utilize the ITC for the SBSP, assuming that it is completed prior to the end of 2020.

Mr. Auer also explained that, if the SBSP is included in base rates as proposed by I&M, I&M will receive benefits associated with the accumulated deferred federal income tax related to accelerated depreciation at a zero cost of capital in I&M's capital structure. He explained that this will reduce the overall cost of capital for revenue requirement calculations, regardless of whether recovery occurs through base rates or through a rider.

Mr. Auer also responded to the OUCC's concerns regarding I&M's arrangement with Notre Dame. He testified that, as I&M works with Notre Dame to provide educational prospects, research opportunities, information, signage, and the like, Notre Dame will pay a 20% administrative fee to cover the customer-specific aspects of the arrangement. If the costs incurred in any year due to this arrangement with Notre Dame exceed the amount of the 20% administrative fee that I&M collects that year, I&M will not seek recovery of those excess costs from its other customers.

**5. Settlement Agreement and Evidence.** Marc E. Lewis, I&M's Vice President of Regulatory and External Affairs, testified in support of the parties' Settlement Agreement. He said that the main areas of disagreement in this Cause were the recovery mechanism for SBSP costs, RECs, land and contingency costs, and the ITC. He said the parties reached a comprehensive settlement of their disagreements through the Settlement Agreement, which balances concerns raised by the OUCC with I&M's desire to move forward with the SBSP on a schedule that will ensure that the SBSP will qualify for the ITC available to projects that begin construction in 2020.

Mr. Lewis explained that the parties agreed to track and recover costs of the SBSP by utilizing an SPR that will be in place for at least five years following the commercial operation date of the SBSP. After five years, any party to this Cause may request that the Commission allow the rider to expire. He stated that the Settlement Agreement also provides that the revenue requirement of the SBSP will be reduced by the non-administrative-fee revenues that I&M receives for the sale of RECs to Notre Dame under the Notre Dame Contract. For the first five years after the commercial operation date of the SBSP, the credit to the revenue requirement will be either the actual non-administrative-fee revenues that I&M receives from Notre Dame or \$120,000, whichever is greater. In addition, I&M will use reasonable efforts to monetize any Indiana jurisdictional RECs generated by the SBSP that are not specifically sold to Notre Dame or another I&M customer.

Mr. Lewis testified that the Settlement Agreement establishes that the cost of land will not be included in the rate base in the SBSP revenue requirement. I&M will not earn a return on its investment in the property, and I&M will not seek recovery of the cost of the land in this or any

future case associated with the SBSP. He said that the Settlement Agreement also provides that any proceeds from the disposition of the land may not be included in any future revenue requirement, unless it relates to a use subsequent to its use for the SBSP. With respect to contingency costs, Mr. Lewis stated that I&M agreed to exclude all contingency costs that are currently included in the SBSP cost estimate from the SBSP revenue requirement and to not seek the recovery of those contingency costs.

Mr. Lewis concluded that the Settlement Agreement is in the public interest because it reasonably addresses the concerns raised in this proceeding and provides a balanced, cooperative outcome. He opined that approval of the Settlement Agreement will allow I&M to continue to transition its generation fleet to renewable sources and is consistent with the interest of I&M's customers who want to be served with more renewable energy.

Mr. Blakley testified on behalf of the OUCC in support of the Settlement Agreement. He explained that the Settlement Agreement addresses the reduction of costs to be recovered from customers by removing the land and contingency costs from the revenue requirement of the SBSP and providing a specific amount of non-administrative-fee revenues recovered from Notre Dame, reducing the impact of the SBSP on I&M's customers. He said that the Settlement Agreement also provides certainty that the recovery mechanism through an SPR will be in place for at least the first five years of operation. The Settlement Agreement also includes a commitment from I&M to use reasonable efforts to monetize RECs produced by the SBSP, which could potentially further reduce costs for customers.

Mr. Blakley concluded by stating the OUCC accepts the terms of the Settlement Agreement. He opined that the Settlement Agreement is in the public interest and recommended that the Commission approve the Settlement Agreement.

**6. Discussion and Findings.** Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). Any settlement agreement that is approved by the Commission “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition of Indiana, Inc. v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather, [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coalition*, 664 N.E.2d at 406. Any Commission decision, ruling, or order—including the approval of a settlement—must be supported by specific findings of fact and sufficient evidence, as well as a determination that the decision, ruling, or order is not contrary to law. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition of Indiana, Inc. v. Public Service Co. of Indiana, Inc.*, 582 N.E.2d 330, 331 (Ind. 1991)). Therefore, before this Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusion that the Settlement Agreement is reasonable, just, and consistent with the purpose of applicable law, is not contrary to law, and serves the public interest.

At the same time, Indiana law strongly favors settlement as a means of resolving contested proceedings. *See, e.g., Georgos v. Jackson*, 790 N.E.2d 448, 453 (Ind. 2003) (“Indiana strongly

favors settlement agreements.”); *Mendenhall v. Skinner & Broadbent Co.*, 728 N.E.2d 140, 145 (Ind. 2000) (“The policy of the law generally is to discourage litigation and encourage negotiation and settlement of disputes.”) (citation omitted). A settlement agreement “may be adopted as a resolution *on the merits*, if [the Commission] makes an independent finding supported by substantial evidence on the record as a whole that the proposal will establish just and reasonable rates.” *Mobil Oil Corp. v. Fed. Power Comm’n*, 417 U.S. 283, 314 (1974) (emphasis in original) (internal quotation marks omitted); *see also, e.g., Indianapolis Power & Light Co.*, Cause No. 39938, 1995 WL 735722 (IURC Aug. 24, 1995) (quoting *Mobil Oil Corp.*, 417 U.S. at 314).

Ind. Code § 8-1-8.8-11 provides that “[a]n eligible business must file an application to the commission for approval of a clean energy project” and that “[t]he commission shall encourage clean energy projects by creating [certain] financial incentives for clean energy projects, if the projects are found to be reasonable and necessary.” The Settlement Agreement reflects the parties’ agreement that the SBSP should be approved. As discussed below, substantial evidence shows, and we find, that the SBSP meets the definition of a “clean energy project” and is eligible for financial incentives.

**A. Completeness of I&M’s Case-in-Chief.** The OUCC was initially frustrated by what it determined to be an incomplete case-in-chief from I&M, which resulted in the OUCC issuing multiple discovery requests and filing a Motion to Dismiss or, in the Alternative, Motion to Stay Proceeding (“Motion to Dismiss”) on July 2, 2019. The OUCC ultimately sought to withdraw the Motion to Dismiss once it received drafts of the Notre Dame Contract and the EPC Contract from I&M. Thus, the Motion to Withdraw the OUCC’s Motion to Dismiss was granted in part and denied in part (to the extent the OUCC requested an extension of the procedural schedule) by the Presiding Officers via docket entry on July 25, 2019. As noted in that docket entry, the dispute over the completeness of I&M’s case-in-chief likely could have been resolved informally or through an attorneys’ conference with the Presiding Administrative Law Judge. We remind the parties of the importance of attempting to resolve disputes prior to motion practice if possible.

The OUCC’s witnesses correctly noted that I&M bore the burden of proof in its case-in-chief, and we agree with the OUCC that Petitioner’s case-in-chief was initially incomplete. Specifically, I&M’s witnesses made certain claims in support of the SBSP based on the terms of the Notre Dame Contract and the EPC Contract, neither of which were included with Petitioner’s case-in-chief and neither of which had been finalized or executed yet when I&M’s case-in-chief was filed. Thus, we also remind I&M of the importance of submitting a complete case-in-chief to facilitate OUCC and Commission review and to avoid unnecessary discovery and motion practice.

**B. Clean Energy Project.** The SBSP is a 20 MW<sub>AC</sub> solar facility that I&M proposes to build, own, and operate near South Bend, Indiana. The facility is designed to use thin-film solar panels with single-axis tracking supports and will be interconnected to the PJM grid through a 34.5 kV line. “Solar energy” is specifically listed as one of the clean energy resources in Ind. Code § 8-1-37-4(a), thus making it a “renewable energy resource” under Ind. Code § 8-1-8.8-10. There is no dispute that I&M is a “public utility” within the meaning of Ind. Code § 8-1-2-1, an “energy utility” within the meaning of Ind. Code § 8-1-2.5-2, and an “eligible business”

within the meaning of Ind. Code § 8-1-8.8-6. There is also no dispute that the SBSP constitutes a “clean energy project” under Ind. Code § 8-1-8.8-2, and, therefore, we so find.

**C. Project Is Reasonable and Necessary.** A certificate of public convenience and necessity (“CPCN”) is not required for the SBSP. Ind. Code § 8-1-8.5-7 contains an exemption from the requirement to obtain a CPCN for public utilities that install a clean energy project that is approved by the Commission and uses a clean energy resource with a nameplate capacity of 50,000 kW or less, provided that the utility uses a contractor in the engineering, procurement, or construction of the project that is subject to Indiana unemployment taxes and is selected by the public utility through bids solicited in a competitive procurement process.

Mr. DeRuntz discussed I&M’s competitive procurement process and I&M’s selection of an EPC contractor for the SBSP. The evidence of record demonstrates that the SBSP utilizes a clean energy resource, has a nameplate capacity of less than 50,000 kW, and uses an Indiana contractor who is subject to Indiana unemployment taxes and was selected through a competitive procurement process. I&M submitted the draft EPC Contract in response to the Commission’s July 3, 2019 docket entry and the executed EPC Contract was included with Mr. Lucas’s rebuttal testimony (Attachment DAL-2R and 2C). Thus, we find the SBSP falls within the statutory exemption, and, therefore, a CPCN under Ind. Code ch. 8-1-8.5 is not required.

Even though a CPCN is not required in this case, Ind. Code § 8-1-8.8-11 provides that the Commission shall encourage clean energy projects by creating financial incentives for such projects, if found to be reasonable and necessary. The Commission has previously considered factors enumerated under Ind. Code ch. 8-1-8.5 and Ind. Code ch. 8-1-8.7 as appropriate considerations in determining whether a clean energy project under Ind. Code ch. 8-1-8.8 is reasonable and necessary. *See Indiana Michigan Power Co.*, Cause No. 44511, 2015 WL 575934, at \*7 (IURC Feb. 4, 2015). In this case, we find that considering the reasonableness of the costs for constructing, implementing, and operating the SBSP and the consistency of the SBSP with the goals set forth in I&M’s 2015 and 2019 IRPs is appropriate. After analyzing these factors, as explained further below, we find that the SBSP is reasonable and necessary.

**i. Reasonableness of Cost.** The record reflects that the SBSP is a single-site, 20 MW<sub>AC</sub> solar-generating facility being developed using the experience gained from I&M’s solar pilot projects. A competitive bidding process was used to solicit and evaluate three qualified bidders for the SBSP. The selected bidder had the highest overall score of those submitting bids and the lowest-priced bid. The SBSP utilizes modern solar technology and economies of scale to reduce capital and O&M costs and is also eligible for the 26% ITC.

The OUCC’s witnesses initially raised concerns about I&M’s cost estimate—in particular, the inclusion of land and contingency costs. Based on our review of the record, we find that the concerns raised by the OUCC regarding the SBSP cost have been sufficiently addressed by the Settlement Agreement. The Settlement Agreement provides that the cost of the land on which the SBSP is located will not be included in the rate base of the SBSP revenue requirement, and I&M will not seek recovery of the cost of the land in this or any future case associated with the SBSP. Under the terms of the Settlement Agreement, if the cost of the land is never put in rate base, any proceeds from the ultimate disposition of the land after the SBSP is decommissioned may not be

included in any revenue requirement setting I&M's rates. In addition, the Settlement Agreement provides that contingency costs currently included in the SBSP estimate (approximately \$1.2 million) will not be reflected in the SBSP revenue requirement. I&M further agreed that it will not seek recovery of any contingency costs associated with the SBSP. We find that these provisions are reasonable and in the public interest, as they preserve the proximity and visibility benefits of the SBSP location and provide additional customer benefits.

As noted above, the SBSP was competitively bid and therefore represents the market price for a project of its size. Additionally, the record reflects that the 2015 IRP solar cost estimates are comparable to the estimated cost of the SBSP with a 2020 in-service date. Therefore, we find that the \$30.442 million estimated cost of the SBSP (reflecting the removal of land and contingency costs) is reasonable and is approved. We also find that I&M shall start construction on the SBSP in 2020, as currently planned, and shall place the SBSP into service before January 1, 2024 so that it will be eligible for the 26% ITC. For these reasons, the Commission finds that the estimated cost of the SBSP is reasonable.

ii. **Consistency with I&M's IRPs.** The record also reflects that the SBSP is consistent with the goals set forth in I&M's 2015 and 2019 IRPs. The 2015 IRP specifically identified I&M's goal to add 600 MW of utility-owned solar resources beginning with 20 MW in 2020 (the anticipated capacity of the SBSP) and 30 MW in 2021. In its 2019 IRP, I&M noted that it planned to install 64 MW of solar resources by 2023.

I&M's goals to add more solar resources is consistent with the express recognition in the Indiana statutory and regulatory scheme that the addition of renewable energy resources in the state is both beneficial and necessary. The SBSP provides I&M and its customers an opportunity to add more solar power to I&M's generation portfolio. As we have recently stated:

We continue to believe fuel diversity and the addition of local renewable resources is important to protect electric utilities and their customers from contingencies such as fuel price fluctuations, and changes in regulatory practices that can drive up the cost of a particular fuel (*e.g.*, environmental regulations). Fuel diversity also can help ensure stability and reliability of electricity supply and can strengthen national security.

*S. Ind. Gas & Elec. Co.*, Cause No. 45086, 2019 WL 1332234, at \*27 (IURC March 20, 2019). Thus, we find that the addition of solar resources through the SBSP is consistent with I&M's 2015 and 2019 IRPs and is part of an overall plan to meet the current and future need for electricity.

**D. Financial Incentives.** I&M's request for financial incentives under Ind. Code ch. 8-1-8.8 is limited to timely recovery of the costs incurred during the construction and operation of the SBSP. The Settlement Agreement provides that the costs of the SBSP will be tracked and recovered through an SPR. This rider will be in place for at least five years following the commercial operation date of the SBSP, and, after that time, any party to this Cause may request that the Commission permit the rider to expire. The Settlement Agreement's proposed cost recovery through the SPR is consistent with the rider the Commission approved for I&M's

previous solar pilot projects. We find that the use of an SPR as set forth in the Settlement Agreement is reasonable and supported by the evidence of record.

As discussed above, the Settlement Agreement resolves the parties' disagreement regarding cost recovery related to the land on which the SBSP is located and the contingency included in the cost estimate by removing both items from the revenue requirement. Therefore, we find and conclude that I&M's proposed accounting and ratemaking for the SBSP under the Settlement Agreement is consistent with Commission practice and reasonable and is therefore approved.

**E. REC Sales.** Forty percent of the RECs generated by the SBSP will be sold to Notre Dame pursuant to the Notre Dame Contract. The price of the RECs to be sold will be reset annually based on the S&P Global Energy Credit Index for a New Jersey Class 1 Renewable Energy Certificate for the prior year, plus a 20% program administrative fee. I&M proposed to flow the compensation for the RECs (excluding program administrative fees) through its FAC to reduce the fuel rates charged to all customers.

The OUCC recommended that costs incurred by I&M for the Notre Dame arrangement that are in excess of the 20% administrative fee paid to I&M by Notre Dame should not be included in the SPR, and I&M agreed. Thus, if in any year the costs incurred due to this arrangement with Notre Dame exceed the amount of the 20% administrative fee that I&M collects, we find that I&M shall not seek recovery of those excess costs from other customers.

The Settlement Agreement provides that the revenue requirement of the SBSP will be reduced by the non-administrative-fee revenues that I&M receives for the sale of RECs to Notre Dame. In addition, for the first five years after the commercial operation date of the SBSP, the reduction to the revenue requirement will not be less than \$120,000. The Settlement Agreement further provides that, after five years, the reduction to the SBSP revenue requirement will be the actual non-administrative-fee revenues that I&M receives from Notre Dame under the Notre Dame Agreement.

The OUCC also recommended that the Commission require that I&M monetize all unused RECs in the market and credit proceeds to the SPR or FAC. The Settlement Agreement provides that I&M will use reasonable efforts to monetize any Indiana jurisdictional RECs generated by the SBSP that are not sold to Notre Dame or another I&M customer. To the extent the SPR remains in place, the revenue requirement reduction will be reflected in the rider. Mr. Lewis clarified that I&M will use reasonable efforts to use the remaining RECs either to sell into a REC market or to offer to existing or potential customers that may be interested in a specific REC purchase.

We find the provisions of the Settlement Agreement addressing REC revenue and monetizing RECs are reasonable, supported by the evidence of record, and are therefore approved.

**F. Conclusion.** Based on the evidence presented, we find that the SBSP is reasonable and necessary and should be approved. This project is therefore eligible for a financial incentive, and we find that the accounting and ratemaking proposed in the Settlement Agreement

is reasonable and is approved. We further find that the Settlement Agreement is just, reasonable, and in the public interest, and it is approved in its entirety.

The parties agree that the Settlement Agreement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. Consequently, with regard to future citation of the Settlement Agreement, we find our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, 1997 WL 34880849, at \*7-8 (IURC March 19, 1997).

7. **Confidentiality.** On June 12, 2019 and August 26, 2019, I&M filed motions for protection and nondisclosure of confidential and proprietary information, which were supported by the Affidavits of Joseph G. DeRuntz and Brent E. Auer, respectively, showing that certain information to be submitted to the Commission contained trade secret information that is not known or readily available to persons outside of I&M. The Presiding Officers issued docket entries on June 19, 2019 and August 27, 2019 finding that this information should be held confidential on a preliminary basis, after which the information was submitted under seal. After reviewing the information, we find this information qualifies as confidential trade secret information pursuant to Ind. Code §§ 5-14-3-4 and 24-2-3-2. This information shall be held as confidential and protected from public access and disclosure by the Commission and is exempted from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29.

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

1. The attached Settlement Agreement signed by I&M, the OUCC, and CAC is approved in its entirety.
2. The SBSP is approved as a “clean energy project” under Ind. Code § 8-1-8.8-2 and qualifies for timely recovery of project costs under Ind. Code § 8-1-8.8-11, as set forth herein.
3. I&M’s has demonstrated that the SBSP is reasonable and necessary.
4. I&M’s proposed accounting and ratemaking treatment to recover the cost of the SBSP through its Solar Power Rider is approved, consistent with the Settlement Agreement. Any Solar Power Rider filings shall be docketed as Cause No. 45245 SPR X. I&M shall file the first SPR proceeding within 30 calendar days of the date the SBSP begins commercial operation.
5. I&M is authorized to defer costs associated with the SBSP until such costs are reflected in I&M’s retail rates and charges.
6. I&M’s proposal to depreciate the SBSP over a period of 30 years is approved.
7. I&M’s proposed methodology for selling RECs to Notre Dame is approved.
8. I&M’s proposed methodology for future REC sales is approved.
9. The net proceeds from any sale of RECs stemming from the approved solar facilities shall flow back to I&M’s customers as set forth in the Settlement Agreement.

10. I&M will use reasonable efforts to monetize any Indiana jurisdictional RECs generated by the SBSP that are not sold to Notre Dame or another I&M customer.

11. I&M shall begin construction on the SBSP in 2020, and the SBSP shall be placed in service before January 1, 2024 so that it will be eligible for the 26% ITC.

12. The information submitted under seal in this Cause pursuant to I&M's motions seeking protection and nondisclosure of confidential and proprietary information is determined to be confidential trade secret information pursuant to Ind. Code §§ 5-14-3-4 and 24-2-3-2 and shall continue to be held as confidential and exempt from public access and disclosure pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29.

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

**HUSTON, FREEMAN, OBER, AND ZIEGNER CONCUR; KREVDA ABSENT:**

**APPROVED: FEB 19 2020**

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

  
\_\_\_\_\_  
**Mary M. Becerra**  
**Secretary of the 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 ) CAUSE NO. 45245  
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. )

STIPULATION AND SETTLEMENT AGREEMENT

Indiana Michigan Power Company ("I&M" or "Company"), the Indiana Office of Utility Consumer Counselor ("OUCC"), and the Citizens Action Coalition of Indiana, Inc. ("CAC") (collectively the "Settling Parties" and individually "Settling Party"), solely for purposes of compromise and settlement and having been duly advised by their respective staff, experts and counsel, stipulate and agree that the terms and conditions set forth below represent a fair, just and reasonable resolution of the matters set forth below, subject to their incorporation by the Indiana Utility Regulatory Commission ("Commission") into a final, non-appealable order ("Final Order")<sup>1</sup> without modification or further condition that may be unacceptable to any Settling Party. If the Commission does not approve this Stipulation and Settlement Agreement ("Agreement"), in its entirety, the entire Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Settling Parties.

I. TERMS AND CONDITIONS.

- A. Rider. The costs of the South Bend Solar Project ("SBSP") will be tracked and recovered through a rider. This rider will be in place for at least five years following the Commercial Operation Date ("COD") of the SBSP. After that five years, any Settling Party may request to the Commission that the rider be allowed to expire.
- B. REC Revenue from Notre Dame. The revenue requirement of the SBSP will be reduced by the non-administrative-fee revenues that I&M receives for the sale of Renewable Energy Credits (RECs) to the University of Notre Dame ("Notre

<sup>1</sup>"Final Order" as used herein means an order issued by the Commission as to which no person has filed a Notice of Appeal within the thirty-day period after the date of the Commission order.

Dame”) under the Purchase and Sale Agreement for Renewable Energy Credits Confirmation (“REC Agreement”).

1. For the first five years after the COD of the SBSP, the reduction to the revenue requirement under this Paragraph I.B will not be less than \$120,000 annually.
  2. After five years, the reduction to the SBSP revenue requirement under this Paragraph I.B will be the actual non-administrative-fee revenues that I&M receives from Notre Dame under the REC Agreement.
  3. To the extent the rider established in Paragraph I.A remains in place, the revenue requirement reduction in this Paragraph I.B will be reflected in that rider.
- C. Monetizing RECs. I&M will use reasonable efforts to monetize any Indiana jurisdictional RECs generated by the SBSP that are not sold to Notre Dame or another I&M customer. To the extent the rider established in Paragraph I.A remains in place, the revenue requirement reduction in this Paragraph I.C will be reflected in the rider.
- D. Land Cost. The cost of the land (\$5,128,852) on which the SBSP is located will not be included in the rate base in the SBSP revenue requirement. I&M will not seek recovery of the cost of the land in this or any future case associated with the SBSP. If the cost of the land is never put in rate base, any proceeds from the ultimate disposition of the land after the SBSP is decommissioned will not be includable in any revenue requirement setting I&M’s rates.
- E. Contingency Costs. Contingency costs currently included in the SBSP cost estimate (approximately \$1.2 million) will not be reflected in the SBSP revenue requirement. I&M will not seek recovery of any contingency costs associated with the SBSP.
- F. Investment Tax Credit (“ITC”). The Settling Parties reserve the right to raise issues concerning the ITC associated with the SBSP in future SBSP tracker filings or base cases.
- G. Remaining Issues. Any matters not addressed by this Agreement will be adopted as proposed by I&M in its case-in-chief.

## II. PRESENTATION OF THE AGREEMENT TO THE COMMISSION.

- A. The Settling Parties shall support this Agreement before the Commission and request that the Commission expeditiously accept and approve the Agreement. This Agreement is not severable and shall be accepted or rejected in its entirety without modification or further condition(s) that may be unacceptable to any Settling Party.

- B. The Settling Parties agree to the admission of the following evidence in support of the Agreement: the direct, rebuttal, and any settlement evidence prefiled by I&M and Intervenor. The Settling Parties will work collaboratively in the preparation of the testimony supporting the settlement agreement. Such evidence shall be admitted into evidence without objection and the Settling Parties hereby waive cross-examination of their respective witnesses. If the Commission fails to approve this Agreement in its entirety without any change or with condition(s) unacceptable to either Settling Party, the Agreement shall be withdrawn and the Commission will continue to hear Cause No. 45245 with the proceedings resuming at the point immediately prior to the filing of this Agreement.
- C. A Commission Order approving this Agreement shall be effective immediately, and the agreements contained herein shall be unconditional, effective and binding on all Settling Parties as an Order of the Commission.
- D. The Settling Parties shall jointly agree on the form, wording and timing of public/media announcement (if any) of this Stipulation and Settlement Agreement and the terms thereof. No Settling Party will release any information to the public or media prior to the aforementioned announcement. The Settling Parties may respond individually without prior approval of the other Settling Parties to questions from the public or media, provided that such responses are consistent with such announcement and do not disparage any of the Settling Parties. Nothing in this Stipulation and Settlement Agreement shall limit or restrict the Commission's ability to publicly comment regarding this Stipulation and Settlement Agreement or any Order affecting this Stipulation and Settlement Agreement.

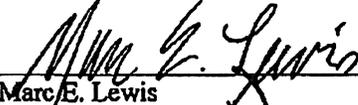
### **III. EFFECT AND USE OF AGREEMENT**

- A. It is understood that this Agreement is reflective of a negotiated settlement and neither the making of this Agreement nor any of its provisions shall constitute an admission by either Settling Party to this Agreement in this or any other litigation or proceeding except to the extent necessary to implement and enforce its terms. It is also understood that each and every term of this Agreement is in consideration and support of each and every other term.
- B. Neither the making of this Agreement (nor the execution of any of the other documents or pleadings required to effectuate the provisions of this Agreement), nor the provisions thereof, nor the entry by the Commission of a Final Order approving this Agreement, shall establish any principles or legal precedent applicable to Commission proceedings other than those resolved herein.
- C. This Agreement shall not constitute and shall not be used as precedent by any person in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce this Agreement.

- D. This Agreement is solely the result of compromise in the settlement process and except as provided herein, is without prejudice to and shall not constitute a waiver of any position that any Settling Party may take with respect to any or all of the items resolved here and in any future regulatory or other proceedings.
- E. The evidence in support of this Agreement constitutes substantial evidence sufficient to support this Agreement and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Agreement, as filed. The Settling Parties shall prepare and file an agreed proposed order with the Commission as soon as reasonably possible after the filing of this Agreement.
- F. The communications and discussions during the negotiations and conferences and any materials produced and exchanged concerning this Agreement all relate to offers of settlement and shall be privileged and confidential, without prejudice to the position of either Settling Party, and are not to be used in any manner in connection with any other proceeding or otherwise.
- G. The undersigned Settling Parties have represented and agreed that they are fully authorized to execute the Agreement on behalf of their designated clients, and their successor and assigns, who will be bound thereby.
- H. The Settling Parties shall not appeal or seek rehearing, reconsideration or a stay of the Commission Order approving this Agreement in its entirety and without change or condition(s) unacceptable to any Settling Party (or related orders to the extent such orders are specifically implementing the provisions of this Agreement).
- J. The provisions of this Agreement shall be enforceable by any Settling Party before the Commission and thereafter in any state court of competent jurisdiction as necessary.
- K. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ACCEPTED and AGREED this 28 day of October, 2019.

INDIANA MICHIGAN POWER COMPANY    INDIANA    OFFICE    OF    UTILITY  
CONSUMER COUNSELOR

  
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