

FILED  
August 12, 2019  
INDIANA UTILITY  
REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

APPLICATION OF INDIANA MICHIGAN POWER )  
COMPANY, AN INDIANA CORPORATION, FOR )  
APPROVAL OF 20 MWAC 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

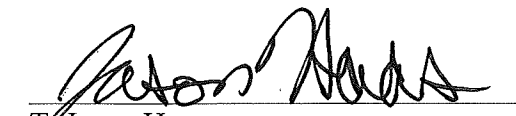
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

TESTIMONY OF

LAUREN M. AGUILAR – PUBLIC'S EXHIBIT NO. 1

AUGUST 12, 2019

Respectfully submitted,

  
\_\_\_\_\_  
T. Jason Haas  
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Deputy Consumer Counselor

**TESTIMONY OF OUCC WITNESS LAUREN M. AGUILAR**  
**CAUSE NO. 45245**  
**INDIANA MICHIGAN POWER COMPANY**

**I. INTRODUCTION**

1 **Q: Please state your name, business address, and employment capacity.**

2 A: My name is Lauren M. Aguilar, and my business address is 115 W. Washington St., Suite  
3 1500 South, Indianapolis, IN, 46204. I am employed as a Utility Analyst in the Indiana  
4 Office of Utility Consumer Counselor's ("OUCC") Electric Division. See Appendix A for  
5 a summary of my qualifications.

6 **Q: Briefly summarize Petitioner's request in this proceeding.**

7 A: Indiana Michigan Power Company ("I&M" or "Petitioner") requests the Indiana Utility  
8 Regulatory Commission ("Commission") enter an order under I.C. § 8-1-8.8-11 for  
9 approval to construct, own, and operate a 20 megawatt ("MW") solar facility in Granger,  
10 Indiana (referred to as the South Bend Solar Project ("SBSP" or "Project")). I&M also  
11 requests ratemaking treatment for the Project. I&M proposes all Project costs be  
12 implemented in its pending base rate case, Cause No. 45235. If the SBSP is incomplete by  
13 the end of 2020 (I&M's forward-looking test year in Cause No. 45235), I&M proposes to  
14 track and recover the costs until its next base rate case.

15 **Q: What is the purpose of your testimony in this proceeding?**

16 A: I present the OUCC's recommendation to deny I&M's request to construct, own, and  
17 operate the 20 MW SBSP.

1 **Q: Are there additional witnesses testifying on the OUCC's behalf?**

2 A: Yes. Mr. John E. Haselden discusses the SBSP's specific characteristics, lack of cost-  
3 effectiveness, and image-building activities the OUCC does not support. Mr. Wes R.  
4 Blakley discusses I&M's proposed ratemaking treatment.

5 **Q: What did you do to evaluate issues presented in this Cause?**

6 A: I reviewed all materials presented in this docket, including the Petition initiating this  
7 proceeding, Petitioner's pre-filed verified direct testimony and exhibits, and Petitioner's  
8 responses to various discovery requests. I also reviewed the compliance statutes for new  
9 generation projects in I.C. Title 8.

10 **Q: Does the OUCC support renewable generation facilities that are reasonable,  
11 necessary, and cost-effective?**

12 A: Yes. For more than a dozen years, the OUCC has supported increased use of renewable  
13 energy in a number of different cases and contexts.<sup>1</sup> However, a project's "renewable"  
14 categorization does not necessarily mean there should be automatic approval of the project.  
15 The OUCC evaluates every case with the same scrutiny and integrity regardless of the  
16 generation type, and supports the deployment of renewable generation projects when found  
17 reasonable, necessary, and cost-effective.

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<sup>1</sup> See, e.g., *Indianapolis Power & Light Company* ("IPL"), Cause No. 43623 Phase I, which launched multi-stakeholder negotiations to (a) update IPL's net metering tariff, its interconnection agreement, and to develop procedures for processing interconnection requests for customers requesting net metering arrangements and for customers or developers seeking approval of rates under a pilot feed-in-tariff program, interconnection requests, and (b) develop Indiana's first "feed-in tariff" (IPL's "Rate REP") to encourage deployment of non-utility-owned, distributed renewable generation. (c) See also *Northern Indiana Public Service Company*, Cause Nos. 43922 and 43993 in which the Commission approved net metering and feed-in tariffs established as pilot programs under a settlement reached with a number of different stakeholders representing a full range of varied, and sometimes conflicting, interests. See also *Indy Solar I, LLC, Indy Solar II, LLC, and Indy Solar III, LLC*, Cause No. 44304 (Order eff. May 29, 2013).

The OUCC also supported recent regulated public utility initiatives to deploy utility-scale solar projects in Cause No. 44511, Order February 4, 2015; Cause No. 44578, Order August 19, 2015; Cause No. 44734, Order July 6, 2016; Cause No. 44909, Order August 16, 2017; and Cause No 44953, Order November 21, 2017.

II. **THE COMMISSION MUST CONSIDER PROJECT COSTS WHEN  
EVALUATING UTILITY PROJECTS**

1 **Q: What do utility regulation statutes say about project cost considerations?**

2 A: The title of I.C. § 8-1-2-0.5 is “State policy to promote utility investment in infrastructure  
3 while protecting affordability of utility service,” and was added to the utility governance  
4 statute in 2016. This section specifies it is the policy of the state “to create and maintain  
5 conditions under which utilities plan for and invest in infrastructure necessary for operation  
6 and maintenance *while protecting the affordability of utility services for present and future*  
7 *generations of Indiana citizens.*” (Emphasis Added) This statute declares the Indiana  
8 General Assembly’s intent to focus on the need for affordability when Indiana utilities plan  
9 for electric generation. This is directly relevant to whether I&M’s proposal to construct,  
10 own, and operate a solar project is the most economical and cost-effective generation  
11 choice. As I will discuss below, Notre Dame is the sole customer driving the need for this  
12 project and I&M has not substantiated any of its claims of additional benefits to other  
13 captive ratepayers. OUCC Witness Haselden discusses how the project is not cost  
14 effective.

15 **Q: What do you recommend regarding the applicability of I.C. § 8-1-2-0.5 to this**  
16 **proceeding?**

17 A: I recommend the Commission consider the Indiana General Assembly’s emphasis on  
18 affordability as it considers utility generation plans. While I&M may be exempted from  
19 the generation certification requirements of Ind. Code ch. 8-1-8.5 by meeting the criteria  
20 in Ind. Code § 8-1-8.5-7(4), I&M is not exempted from all statutory declarations pertaining

1 to its request. This includes charges being “reasonable and just,”<sup>2</sup> and that the project be  
2 “reasonable and necessary.”<sup>3</sup> In this case, the Commission should consider the impact on  
3 captive consumers when evaluating a project that is not cost-effective and is designed to  
4 serve the image of one particular I&M customer. See OUCC Witness John Haselden’s  
5 testimony for further discussions related to the Project’s costs.

6 **Q: Did I&M provide sufficient evidence in its case-in-chief to allow the OUCC and the**  
7 **Commission to fully evaluate the cost-effectiveness of the project?**

8 A: No. As I will explain in my testimony, I&M did not file essential information in its case-  
9 in-chief by way of “the agreement” set forth between Notre Dame and I&M, referenced  
10 throughout Petitioner’s case-in-chief. I&M provided insufficient evidence and  
11 misrepresented certain attributes of the project. Nonetheless, as OUCC Witness Haselden  
12 explains, the Project is not cost effective nor is it in the best interests of I&M’s ratepayers.

### III. INSUFFICIENCY OF I&M’S CASE-IN-CHIEF EVIDENCE

13 **Q: Please explain I&M’s burden of proof in this case.**

14 A: It is incumbent upon I&M to present all necessary supporting evidence in its case-in-chief.  
15 This provides the OUCC all information it needs to analyze the relief requested and make  
16 a recommendation to the Commission regarding the request’s reasonableness. This also  
17 provides the Commission sufficient evidence to support its decision to grant or deny the  
18 utility’s request.

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<sup>2</sup> I.C. § 8-1-2-4.

<sup>3</sup> I.C. § 8-1-8.8-11.

1 **Q: What has the Commission said regarding a petitioning utility's burden of proof?**

2 A: The Commission recently emphasized the importance of a petitioning regulated utility  
3 meeting its burden of proof in its case-in-chief when it wrote:

4 ...[A Utility] is reminded that it bears the burden of proof in  
5 demonstrating it is entitled to its requested relief. The OUCC should  
6 not have to request or otherwise seek basic supporting  
7 documentation that should have been provided with Petitioner's  
8 case-in-chief to support its requested relief. Further, even if the  
9 OUCC is able to ascertain through discovery the information  
10 necessary to support Petitioner's requested relief, the Commission,  
11 which is the entity that must ultimately render a decision on the  
12 matter, would still lack the necessary information to make its  
13 determination because it is not privy to the parties' discovery.<sup>4</sup>

14 **Q: Does the evidence I&M presents in its case-in-chief meet its burden of proof?**

15 A: No. I&M's petition and case-in-chief testimony present information related to the purpose,  
16 location, cost, and public benefits of the SBSP, which relied on the "Purchase and Sale  
17 Agreement for Renewable Energy Credits Transaction Confirmation" agreement ("REC  
18 Agreement") with Notre Dame and the draft Engineering Procurement Construction  
19 ("EPC") contract. However, I&M failed to provide these essential elements specifically  
20 referred to in its petition and accompanying case-in-chief testimony. If I&M believed the  
21 claims supported by these documents were essential to the case, it should have provided  
22 them in their case-in-chief.

23 **Q: Did the OUCC seek further documentation and clarity from Petitioner?**

24 A: Yes. Even though it is not the OUCC's burden to do so, it issued multiple discovery  
25 requests seeking additional documents and specificity on issues I&M raised in its case-in-  
26 chief.

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<sup>4</sup> *Evansville Municipal Water Utility*, Cause No. 45073, Order at p. 8 (December 5, 2018).

1 **Q: What basic supporting documentation did the OUCC seek through discovery?**

2 A: The OUCC inferred from statements within Petitioner's testimony the agreement between  
3 Notre Dame and I&M was *fully executed*, supporting the many beneficial claims put forth  
4 in its case-in-chief.<sup>5</sup> However, when OUCC staff requested the fully executed agreement,  
5 I&M initially did not provide it, stating: "The agreement with Notre Dame, while agreed  
6 to in principle, remains under negotiations between the Parties and is not available at this  
7 time. Once the agreement is fully executed, I&M will supplement this response subject to  
8 confidentiality considerations."<sup>6</sup>

9 This directly conflicts with how I&M referred to the agreements in its case-in-chief.  
10 On July 2, 2019, only *after* the OUCC filed its Motion to Dismiss or, in the Alternative,  
11 Motion to Stay Proceeding, I&M provided *draft* copies of the REC Agreement with Notre  
12 Dame and the draft EPC contract.<sup>7</sup> In addition, on July 12, 2019, I&M provided yet another  
13 unexecuted agreement to the OUCC, a draft "Alliance Agreement" between I&M and  
14 Notre Dame, in response to OUCC DR 3-4. This "Alliance Agreement" provided  
15 additional terms between I&M and Notre Dame. The Alliance Agreement was not  
16 provided in I&M's response to the Commission on the same day. The OUCC further notes  
17 that the unexecuted draft agreements did not match all the terms I&M described in its case-

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<sup>5</sup> See Direct Testimony of Toby L. Thomas, p. 13, lines 5-12. Mr. Thomas states "I&M and Notre Dame have engaged in lengthy and arms-length discussions..." and provided terms between I&M and Notre Dame "[u]nder a 30-year agreement..."

<sup>6</sup> Attachment LMA-1, I&M Response to OUCC DR 1-10.

<sup>7</sup> These agreements were provided to the Commission on July 12, 2019, in response to the Docket Entry of July 3, 2019, as IURC DR 1-1 Attachment 1, and IURC DR 1-2 Attachments 1, 2 and 3.

1 in-chief. I discuss I&M's misrepresentations further in my testimony. OUCC Witness  
2 Haselden more specifically addresses the EPC contract.

3 **Q: Please elaborate further upon whether it is critical to review Notre Dame's potential**  
4 **involvement in the proposed project.**

5 A: In testimony, I&M indicates Notre Dame agreed to purchase RECs, which I&M would  
6 credit through the fuel adjustment cost ("FAC") rider to offset the cost of this project.<sup>8</sup> It  
7 is critical the OUCC and Commission have certainty in this claimed transaction. A legally  
8 enforceable contract provides certainty regarding Notre Dame's involvement in the project  
9 and the credits I&M would provide its ratepayers. I&M further claims this particular  
10 project is not only about the energy generated, but also about other valuable attributes for  
11 Notre Dame and possibly for the greater South Bend area, which speaks to potential public  
12 interest. Including the documents I&M refers to within its case-in-chief is essential to and  
13 necessary for the OUCC and the Commission's review.

14 **Q: Why is it necessary for Petitioner to provide fully executed agreements in its case-in-**  
15 **chief?**

16 A: The OUCC and the Commission cannot rely upon unexecuted draft agreements, as they  
17 are not legally enforceable. I&M presents Notre Dame's involvement with this particular  
18 project as critical to the site selection and claims Notre Dame will be buying RECs to offset  
19 the costs of the project. Given these critical elements, the OUCC cannot base its analysis  
20 on unexecuted draft agreements, as the terms may change before execution and the  
21 OUCC's opinion on a draft document may influence the parties' relationship in an

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<sup>8</sup> Verified Direct Testimony of I&M Witness Toby L. Thomas at 13, lines 21 to 22; Direct Testimony of Brent A. Auer at 12, lines 1-12.



1 unforeseen way. Given I&M's assertion that the relationship with Notre Dame is a critical  
2 influence on this Project, it is especially important in this case. I&M claims Notre Dame  
3 agreed to purchase renewable energy credits ("RECs") to offset the costs of this expensive  
4 project.<sup>9</sup> Whether this actually occurs affects the OUCC and Commission's analyses of  
5 the Project's cost-effectiveness. As described in Witness Haselden's and my testimony,  
6 cost-effectiveness is critical to the evaluations as decreed by Indiana Statute. As I describe  
7 below, given the current terms of the draft agreements the OUCC does not support this  
8 project, as it is not cost-effective and designed only benefit Notre Dame.

IV. **UNCERTAINTIES AND MISREPRESENTATIONS MADE BY I&M  
THROUGHOUT ITS CASE-IN-CHIEF**

9 **Q: Please provide some examples of the language I&M uses when discussing the**  
10 **agreements with Notre Dame.**

11 A: In its case-in-chief, Petitioner references *one* agreement between I&M and Notre Dame  
12 and said the agreement has been *entered* into, giving the impression that the *one* agreement  
13 had been fully executed. (Emphasis Added) However, there were other agreements,  
14 namely, a REC Agreement and an Alliance Agreement between I&M and Notre Dame.

15 Petitioner's application, in part, states:

16 I&M and the University of Notre Dame ("Notre Dame"), an I&M  
17 customer, *have entered* into a 30-year agreement whereby I&M will  
18 designate to Notre Dame eight MWs of the renewable attributes of  
19 the South Bend Solar Project (representing 40% of the overall  
20 Project). In exchange, Notre Dame will compensate I&M for the  
21 Renewable Energy Certificates (RECs) associated with 40% of the  
22 output of the Project.<sup>10</sup>  
23

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<sup>9</sup>*Id.*

<sup>10</sup> Verified Application, at page 4.

1 -and-

2  
3 The University of Notre Dame *has entered* into a long term  
4 agreement associated with the SBSP whereby Notre Dame will  
5 procure RECs based on 8MW, or 40%, of the South Bend solar  
6 facility output. [...] *The agreement is priced* [...] <sup>11</sup>

7  
8 (Emphasis Added)

9  
10 I&M Witness Mr. Toby Thomas further states:

11 Under a 30-year agreement, I&M will provide educational  
12 opportunities for Notre Dame's students and faculty, jointly create  
13 an awareness campaign for the community, and provide Notre Dame  
14 with naming rights for the Project. *In exchange*, Notre Dame will  
15 compensate I&M for Renewable Energy Certificates (RECs) in an  
16 amount based on 40% of the output of the Project.<sup>12</sup>

17 (Emphasis Added)

18 **Q: Can the OUCC or the Commission rely on the agreements when evaluating the cost-**  
19 **effectiveness of the Project?**

20 A: No. The Agreements are not executed and the terms within the drafts do not fully match  
21 the purported benefits cited in I&M's case-in-chief.

22 **Q: What terms did I&M describe in its case-in-chief that do not appear in any of the**  
23 **unexecuted draft agreements provided in discovery?**

24 A: I&M Witness Thomas, in part, states: "[The Agreement] provide[s] Notre Dame with  
25 naming rights for the Project." However, terms for "naming rights" are not discussed in  
26 any of the unexecuted draft agreements provided in discovery. Therefore, there is no  
27 support for Mr. Thomas' statement.

28 **Q: Can the Commission impose conditions on how I&M negotiates the agreements to**  
29 **protect I&M ratepayers?**

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<sup>11</sup> Verified Direct Testimony of I&M's Witness Brent E. Auer at page 11, line 23 – page 12, line 5.

<sup>12</sup> Thomas Direct at 13, lines 7 to 12.

1 A: No. As a party to the agreements, I&M must be able to negotiate at arm's length. The  
2 OUCC, the Commission, and other interested parties are not a party to these agreements  
3 and have no control over the terms. With fully executed agreements, the Commission is  
4 better positioned to make informed determinations. However, as previously addressed in  
5 my testimony, the agreements are not in final form and, therefore, the final terms are  
6 unknown. The Commission can, however, deny I&M's request until the agreements are  
7 fully executed and available for review.

8 **Q: Did I&M make any misrepresentations regarding the EPC contract?**

9 A: Yes. I&M Witness Joseph DeRuntz states: "Negotiations with the selected bidder were  
10 *completed* on May 2, 2019.<sup>13</sup> (Emphasis Added) Yet I&M's response to discovery  
11 indicates: "The EPC contract, while agreed to in principle, *remains under negotiations*  
12 *between the Parties and is not yet available at this time.*"<sup>14</sup>

V. **I&M DOES NOT SUPPORT STATEMENTS ABOUT POTENTIAL BENEFITS  
OF THE PROJECT**

13 **Q: What methodology did I&M use to determine the project site?**

14 A: In response to OUCC discovery regarding its property search methodology, I&M stated:  
15 "The Real Estate Group then developed a map that established an initial targeted zone of  
16 properties based on various distances from Notre Dame (see "OUCC 3-11, Attachment  
17 1.pdf"). The Real Estate group then evaluated what property options were available within

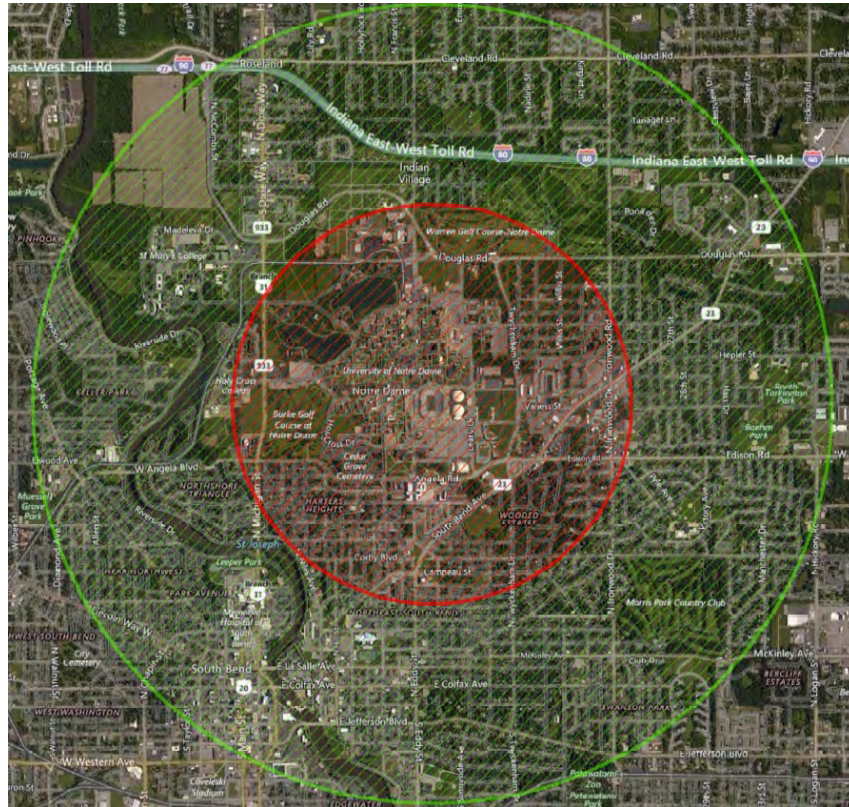
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<sup>13</sup> The Verified Direct Testimony of Joseph G. DeRuntz at 10, lines 6 to 7.

<sup>14</sup> Attachment LMA-1, I&M Response to OUCC DR 1-25.

1 the targeted zone that met the specified criteria for the property.”<sup>15</sup> Figure 1. below is  
2 OUC 3-11, Attachment 1.pdf.

3 **Figure 1. I&M’s search radius around Notre Dame<sup>16</sup>**



4 **Q: Will I&M ratepayers, other than Notre Dame, benefit from the Project’s chosen**  
5 **location?**

6 **A:** No. Many of the potential ratepayer benefits I&M describes are unsupported and are  
7 discounted by the exceedingly high cost of the project, as explained by OUC Witness  
8 Haselden. Unsupported statements include:

9 (1) The SBSB will “enhance economic development, attract new business to the  
10 area, provide educational benefits, and increase local pride.”<sup>17</sup>

1 (2) Communities in I&M service territory “want to differentiate themselves and  
2 include electric supply alternatives in their sustainability and climate action  
3 plans.”<sup>18</sup>

4 (3) “[I&M] offering more renewable resources also is of interest to existing  
5 customers that have sustainability goals to achieve. Many customers these days  
6 are seeking to meet their energy needs with a greater percentage of renewable  
7 energy.”<sup>19</sup>

8 **Q: Did I&M provide any analysis supporting its decision to place such significance on**  
9 **the benefits to Notre Dame over the exceedingly high costs of the project?**

10 A: No. I&M claims the SBSP will enhance economic development, attract new business to  
11 the area, provide educational benefits, and increase local pride. In an attempt to justify  
12 the assumed benefits I&M relied upon to support the project, the OUCC issued  
13 discovery.<sup>20</sup> In response, the OUCC received unsupported statements with no actual  
14 evidence supporting the decision to have all I&M ratepayers pay for such a costly project.  
15 I discuss some examples of these unsupported statements below.

16 **Q: Did I&M substantiate its claim that communities, such as South Bend, want access to**  
17 **renewable energy?**

18 A: No. I&M Witness Thomas states: “[s]ome of our communities want to differentiate  
19 themselves and include electric supply alternatives in their sustainability and climate action

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<sup>15</sup> Attachment LMA -1, I&M’s response to OUCC DR 3-11.

<sup>16</sup> *Id.*, attachment 1.

<sup>17</sup> Attachment LMA -1, I&M’s response to OUCC DRs 1-21.

<sup>18</sup> Thomas Direct at 6, lines 17 to 19.

<sup>19</sup> Thomas Direct at 12, lines 17 to 19.

<sup>20</sup> Attachment LMA -1, I&M’s response to OUCC DRs 1-21, 1-23, 5-02, 5-03, 5-04, 7-06, and 7-07.

1 plans."<sup>21</sup> However, when the OUCC inquired about documentation to support this claim,  
2 I&M was unable to show any major communities within its service area were participating  
3 in any of I&M's current renewable offerings, such as buying RECs.<sup>22</sup>

4 **Q: Did I&M substantiate its claim that existing customers, such as Target and Walmart,  
5 want access to renewable energy?**

6 A: No. I&M Witness Thomas states: "[o]ffering more renewable resources also is of interest  
7 to existing customers that have sustainability goals to achieve. Many customers these days  
8 are seeking to meet their energy needs with a greater percentage of renewable energy."<sup>23</sup>

9 Again, when the OUCC inquired about documentation to support this claim, I&M was  
10 unable to show any major commercial entities within its service area were participating in  
11 any of I&M's current renewable offerings, such as buying RECs.<sup>24</sup>

12 **Q: Must communities and companies within I&M's service territory support renewable  
13 energy with I&M directly?**

14 A: No. There are many markets, and any individual or organization can purchase renewable  
15 energy credits – not just utility providers. For example, Green-e is an organization that  
16 certifies REC providers and provides a list of organizations offering direct purchases.<sup>25</sup>  
17 Companies may co-generate using a renewable energy source or enter into a purchase  
18 power agreements with renewable generators located in Indiana. Recently, in Cause No.  
19 45202, an Indiana wind energy generator applied for declination of jurisdiction for its wind  
20 project. The project involved a virtual power purchase agreement with Walmart and

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<sup>21</sup> Thomas Direct at 6, lines 17 to 19.

<sup>22</sup> Attachment LMA -1, I&M's response to OUCC DRs 5-02 and 7-06.

<sup>23</sup> Thomas Direct at 12, lines 17 to 19.

<sup>24</sup> Attachment LMA -1, I&M's response to OUCC DRs 5-04 and 7-07.

<sup>25</sup> See <https://www.green-e.org/certified-resources>.

1 Facebook. The applicant explained the benefits of the program, stating “[t]he long-term  
2 contract also enables Facebook and Walmart to mitigate risk from electric price volatility,  
3 while assisting those companies to achieve their respective and increasingly important  
4 sustainability goals.”<sup>26</sup>

5 **Q: Does I&M sufficiently support the SBSP’s benefits?**

6 A: No. The Commission should treat the above statements by I&M as unreliable and not  
7 supportive of Petitioner’s requested relief in this case. I&M cannot substantiate its own  
8 claims about the benefits of locating such an expensive project in this particular area. After  
9 discounting all the illusory benefits to the South Bend area, Notre Dame remains the only  
10 factor driving the desire for this project and, as explained below, Notre Dame is not paying  
11 its share of the costs. The OUCC is concerned I&M is willing to use captive ratepayers’  
12 funds to provide image building for the benefit of one customer.

13 **Q: If I&M and Notre Dame were to execute the draft agreements without further**  
14 **modifications, will the monetary contributions provided by Notre Dame outweigh the**  
15 **high cost of this Project?**

16 A: No. As further explained by OUCC Witness Haselden, this project is very expensive  
17 compared to other projects. I&M claims Notre Dame will purchase the equivalent to 8  
18 MW, or 40%, of the SBSP facility output (actual output of the SBSP will determine the  
19 actual number of RECs purchased).<sup>27</sup> REC prices will be evaluated annually, and the  
20 current market price of PJM REC’s is \$6 a credit.<sup>28</sup> Using the information provided by

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<sup>26</sup> Attachment LMA-2, The Verified Direct Testimony of Ryan J. Brown, Cause No. 45202 at page 17, line 21 to page 18, line 2.

<sup>27</sup> Thomas, page 13, lines 14 to 22.

<sup>28</sup> *Id* at lines 17 to 19.

1 I&M, Notre Dame will be paying I&M approximately \$86,619 for RECs, to be re-  
2 evaluated annually based on current REC market price. Using I&M's \$36.77 million total  
3 projected cost, and assuming Notre Dame's contribution remains the same, Notre Dame  
4 would pay \$2.59 million, or 7% of the project's capital costs. I&M cannot substantiate its  
5 claims of additional ratepayer values to justify its use of ratepayer funds for this project.  
6 Rather than concentrating on what is best for all of its ratepayers, I&M's is concentrating  
7 on only Notre Dame's goals. Notre Dame's potential contributions in no way overcome  
8 the burden I&M proposes to place on its ratepayers.

## VI. CONCLUSIONS AND RECOMMENDATIONS

9 **Q: Please state your conclusion.**

10 A: I&M's evidence does not sufficiently support the reasonableness of the SBSP. I&M  
11 referred to certain agreements, potential monetary benefits, and potential public interest  
12 benefits and did not provide supporting evidence at the time of its filing. Additionally, the  
13 responses to numerous discovery requests, including the unexecuted draft agreements,  
14 failed to provide support for its supposed public benefits and do not support all claims  
15 made by I&M in its case-in-chief; leaving the OUCC and the Commission at a severe  
16 informational disadvantage in trying to analyze the reasonableness and necessity of this  
17 proposed Project. Further, I&M should not be allowed to offer additional direct evidence  
18 in its rebuttal to attempt to substantiate its case. It is not the OUCC's responsibility to  
19 ensure petitioning utilities provide the essential elements of its case.

20 **Q: Does the OUCC support I&M's requested relief in this cause?**

21 A: No. The OUCC recommends I&M's requested relief be denied for the following reasons:



1 (1) I&M failed to meet its burden of proof by not providing sufficient evidence in its  
2 case-in-chief;

3 (2) I&M made conflicting statements about the relationship Notre Dame has to the  
4 project;

5 (3) I&M provides very little support for the supposed benefits of the SBSP to I&M's  
6 other captive ratepayers; and

7 (4) I&M's SBSP is expensive and lacks evidence showing it is cost effective for its  
8 captive ratepayers.

9 **Q: In the event the Commission rejects the OUCC's recommendation to deny I&M's**  
10 **request, does the OUCC recommend making changes or placing additional conditions**  
11 **on I&M's proposal?**

12 A: Yes. Although the OUCC recommends the Commission deny I&M's project as proposed,  
13 should the Commission decide to approve the SBSP, the OUCC recommends the  
14 Commission condition such approval on recommendations made within the pre-filed  
15 testimony of OUCC Witnesses Haselden and Blakley.

16 **Q: Does this conclude your testimony?**

17 A: Yes.

## APPENDIX A

1 **Q: Summarize your professional background and experience.**

2 A: I graduated from Michigan State University in 2008 with a Bachelor of Science degree in  
3 Environmental Science and Management. I graduated from Florida State University  
4 College of Law, in May 2011 with a Juris Doctorate and Environmental Law certificate. I  
5 spent over 2 years while in law school as a certified legal intern, providing pro bono legal  
6 services to poverty level residents of Tallahassee. I worked in the legal department of  
7 Depuy Synthes, a Johnson & Johnson Company, where I assisted with patent filings and  
8 nondisclosure agreements. Starting in 2013, I worked for the Indiana Department of  
9 Environmental Management as a rule writer. I worked extensively with the public at large,  
10 special interests groups, and affected regulated entities to understand the rulemaking  
11 process and to respond to their comments on ongoing rules. I joined the OUCC in July of  
12 2017.

13 **Q: Describe some of your duties at the OUCC.**

14 A: I review and analyze utilities' requests and file recommendations on behalf of consumers  
15 in utility proceedings. As applicable to a case, my duties may also include analyzing state  
16 and federal regulations, evaluating rate design and tariffs, examining books and records,  
17 inspecting facilities, and preparing various studies. The majority of my expertise is in  
18 environmental science, environmental state and federal regulation, and state agency  
19 administration.

20 **Q: Have you testified before the Indiana Utility Regulatory Commission?**

1 A: Yes. I have previously testified in Cause Nos. 42170 ECR -30, 44340 FMCA-9, 44340  
2 FMCA-10, 44963, 44978, 44981, 44998, 45010, 45047, 45052, 45071, 45145, 45159,  
3 45194, and 45197.

INDIANA MICHIGAN POWER COMPANY  
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR  
DATA REQUEST SET NO. OUCC DR 1  
IURC CAUSE NO. 45245

DATA REQUEST NO OUCC 1-10

REQUEST

Mr. Toby Thomas; Referencing page 13, lines 7-10:

Please provide the agreement with Notre Dame.

RESPONSE

The agreement with Notre Dame, while agreed to in principle, remains under negotiations between the Parties and is not available at this time. Once the agreement is fully executed, I&M will supplement this response subject to confidentiality considerations.

INDIANA MICHIGAN POWER COMPANY  
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR  
DATA REQUEST SET NO. OUCC DR 1  
IURC CAUSE NO. 45245

DATA REQUEST NO OUCC 1-25

REQUEST

Mr. Joseph DeRuntz;

Referencing page 10, please submit the EPC Contract and the scoring summary.

RESPONSE

I&M objects to the request on the grounds and to the extent the request seeks information that is confidential, proprietary, competitively sensitive and/or trade secret. Subject to and without waiver of the foregoing objection, I&M provides the following response.

Please see "OUCC 1-25\_Confidential\_Attachment\_1.pdf", for the SBSP bid evaluation matrix. The EPC contract, while agreed to in principle, remains under negotiations between the Parties and is not yet available at this time. Once the agreement is fully executed, I&M will supplement this response subject to confidentiality considerations.

INDIANA MICHIGAN POWER COMPANY  
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR  
DATA REQUEST SET NO. OUCC DR 3  
IURC CAUSE NO. 45245

DATA REQUEST NO OUCC 3-11

REQUEST

Mr. Joseph DeRuntz

Referencing page 7, lines 11-21,

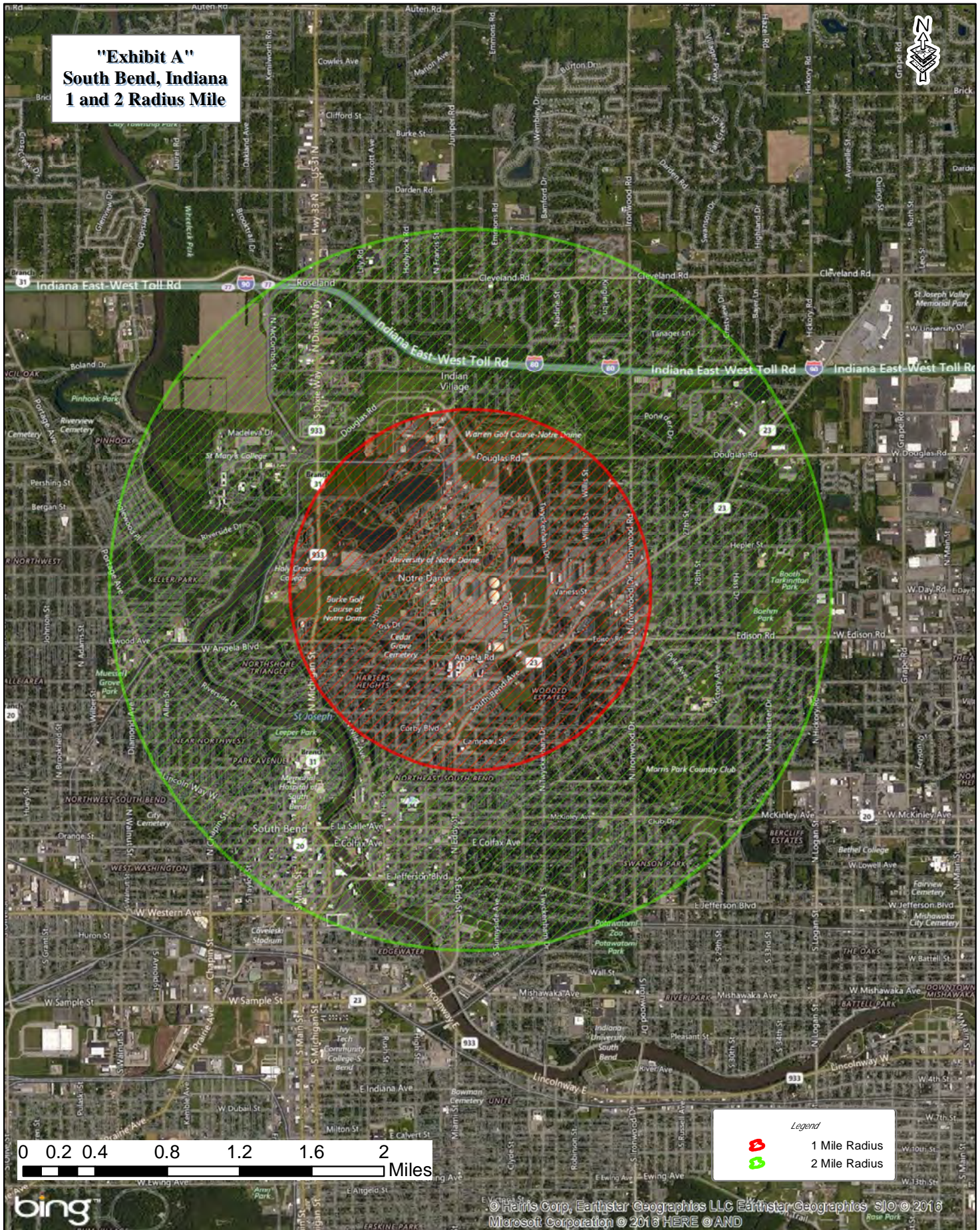
Please provide the list of candidate sites examined by the Company's Real Estate Management group.

RESPONSE

I&M objects to the request on the grounds and to the extent the request seeks information that is confidential, proprietary, competitively sensitive and/or trade secret. Subject to and without waiver of the foregoing objection, I&M provides the following response.

In 2016, when the company began looking for potential properties for the South Bend Solar Project, the Company's Real Estate Management began their process by identifying the specified criteria for properties they would be evaluating (DeRuntz p.7 lines 11-14). The Real Estate Group then developed a map that established an initial targeted zone of properties based on various distances from Notre Dame (see "OUCC 3-11, Attachment 1.pdf"). The Real Estate group then evaluated what property options were available within the targeted zone that met the specified criteria for the property. At the time this search was conducted in 2016, the options were very limited. See "OUCC 3-11, Confidential Attachment 2.pdf" for additional details.

**"Exhibit A"**  
**South Bend, Indiana**  
**1 and 2 Radius Mile**



May 27th, 2016

Disclaimer: This drawing is not an actual survey,  
and is for general information purposes only.

Cartography: AEP Real Estate Asset Management Dept.  
Tavis Thomson

INDIANA MICHIGAN POWER COMPANY  
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR  
DATA REQUEST SET NO. OUCC DR 1  
IURC CAUSE NO. 45245

DATA REQUEST NO OUCC 1-21

REQUEST

Mr. Joseph DeRuntz; referencing page 7:

Why was “highly visibility from a public roads” one of the site criteria requirements?

RESPONSE

The location of the SBSP facility is a critical element of the Company's strategy around the solar project. In addition to the value the Project has as a renewable generation resource, the Project also has value in economic development, customer education, and can be a source of pride for the South Bend and the Michiana region. At the proposed location, thousands of cars will pass by the SBSP facility every day. Customers in the area will have a visible facility that they can relate to and will have the ability to participate in the project through the Company's proposed IM Green program. Companies that are considering locations for their businesses will be able to see the commitment that the Michiana region has made to renewable energy as they travel by this location. The visibility of this site unlocks the potential for significant value that can benefit all customers as it attracts more companies to the Michiana area.



INDIANA MICHIGAN POWER COMPANY  
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR  
DATA REQUEST SET NO. OUCC DR 1  
IURC CAUSE NO. 45245

DATA REQUEST NO OUCC 1-23

REQUEST

Mr. Joseph DeRuntz; referencing page 7:

Why were sites only considered in the South Bend area?

RESPONSE

As described in Company witness Thomas' direct testimony p. 13, I&M and Notre Dame have been engaged in lengthy and arms-length discussions about the opportunity to partner on a project that supports both the Company's and Notre Dame's goals for renewable energy. This relationship was a significant driver in I&M focusing on sites in the South Bend area that could be accessible by Notre Dame for education and research purposes. Notre Dame and I&M are also both committed to utilizing the SBSP facility as an economic development asset for the South Bend and Michiana region.

INDIANA MICHIGAN POWER COMPANY  
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR  
DATA REQUEST SET NO. OUCC DR 05  
IURC CAUSE NO. 45245

DATA REQUEST NO OUCC DR 05-03

REQUEST

Please refer to the direct testimony of Toby Thomas, page 12, lines 5-16.

- a. Please provide any documentation to support the statement that "[m]ore and more companies that are considering locating in I&M's service area are asking about the availability of renewable resources to meet their energy needs."
- b. Please provide any documentation supporting the statement that a "key component to achieving that recognition is the ability to site a project in close proximity to the interested customers."
- c. Please provide any documentation supporting the statement that "[b]eing able to answer the question positively and meaningfully makes I&M more attractive to these prospective customers..."

RESPONSE

For all parts please see Company's response to OUCC 3-22.

The Company also offers the following additional information:

a. In 2019, I&M's Economic Development team 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.

b. and c. Seventy-eight percent of S&P 500 companies issue annual sustainability reports with environmental performance metrics and that rate for the world's largest companies is as high as ninety-three percent. Of those companies that issued sustainability reports, ninety-five percent offer environmental performance metrics and sixty-seven percent set quantified and time-bound environmental goals. Lukomnik, Jon. "State of Integrated and Sustainability Reporting 2018." *Harvard Law School Forum on Corporate Governance and Financial Regulation*. <https://corpgov.law.harvard.edu/2018/12/03/state-of-integrated-and-sustainability-reporting-2018/> December 3, 2018

These statistics are consistent with AEP and I&M's recent experience that companies are increasingly considering access to renewable energy that will support their environmental goals as a significant consideration in the where they choose to locate their facilities. I&M, AEP, Notre Dame, and local economic development partners will be able to use the SBSP project as a visible sign of Michiana's commitment to renewable energy and sustainability which will help in recruiting companies that value sustainability to the Michiana region.

INDIANA MICHIGAN POWER COMPANY  
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR  
DATA REQUEST SET NO. OUCC DR 05  
IURC CAUSE NO. 45245

DATA REQUEST NO OUCC DR 05-04

REQUEST

Please refer to the direct testimony of Toby Thomas, page 12, lines 17-19. Please provide any documentation to support the statement that "[o]ffering more renewable resources also is of interest to existing customers that have sustainability goals to achieve. Many customers these days are seeking to meet their energy needs with a greater percentage of renewable energy."

RESPONSE

Please see Company's response to OUCC 3-22.

I&M would offer the following additional examples of customers in our service territory that have sustainability goals to achieve, however it should be noted that it is not possible to identify all customers due to the significant number of companies that have similar goals.

Target plans to power 100% of its US operations with renewable generation by 2030, including stores, distribution centers and offices (7 stores in I&M service area). Source: <https://corporate.target.com/article/2019/06/renewable-electricity>

Walmart has a goal to be supplied by 100% renewable energy (21 stores in I&M service area) including various types of renewable energy sources - most notably solar and wind - as well as several types of arrangements with energy providers, such as utilities and proprietary installations. Scaling renewables drive the production of procurement of 7 billion kilowatt hours (kWh) of renewable energy globally by December 31, 2020. Source: <https://corporate.walmart.com/media-library/document/walmarts-approach-to-renewable-energy>

Grupo Bimbo, the largest baking company in the world, announced its commitment to use 100 percent renewable energy for its electricity throughout the world by 2025 (also known as Allen Foods, 3 facilities in I&M service area). Source: <https://grupobimbo.com/en/press-room/release/grupo-bimbo-joins-re100-and-commits-being-100-percent-renewable-2025>

Fifth Third Bank is the first publicly traded company worldwide - and first U.S. bank and Fortune 500 company, to adopt a goal to purchase 100 percent renewable energy , a fact confirmed by the independent RE100 Global Energy Initiative (10 locations in the I&M service area). Source: <https://www.53.com/content/fifth-third/en/personal-banking/about/in-the-community/sustainability.html>

INDIANA MICHIGAN POWER COMPANY  
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR  
DATA REQUEST SET NO. OUCC DR 05  
IURC CAUSE NO. 45245

Ball State University is signatory to the Climate Leadership Commitment, the American College and University Presidents Climate Commitment, and the Talloires Declaration. They are also a charter school member of the Sustainability Tracking Assessment and Rating System. Ball State has integrated sustainability into their strategic plans for the University and is working directly with I&M on a number of areas to achieve their sustainability goals. Source: <https://www.bsu.edu/academics/centersandinstitutes/cote/sustainability>

INDIANA MICHIGAN POWER COMPANY  
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR  
DATA REQUEST SET NO. OUCC DR 7  
IURC CAUSE NO. 45245

DATA REQUEST NO OUCC 7-06

REQUEST

As a follow-up to OUCC DR 5.2:

- a. Please list the amount of RECs, by year, that the City of South Bend has purchased through I&M's Green Power Rider or Renewable Energy Option.
- b. Please list the amount of RECs, by year, that the City of Muncie has purchased through I&M's Green Power Rider or Renewable Energy Option.
- c. Please explain specifically in what ways the City of South Bend and I&M have worked collaboratively regarding the SBSPP.

RESPONSE

- a. None
- b. None

c. I&M met with the City of South Bend in April 2019 to review the details of the project and discuss strategic opportunities for the City to participate in obtaining benefits for the project. This discussion included an overview of the project details including the size and location of the solar facility, and the timing of when the project is projected to be completed. I&M also discussed the University of Notre Dame's (UND) engagement in the project and provided a high level overview of the agreement for UND to purchase renewable energy credits (RECs) from the project. I&M and City discussed a number of potential strategic opportunities to collaborate and use the solar facility to benefit future efforts in economic development, demonstrating a local commitment to sustainability, and working to together to identify ways for local citizens and businesses to participate in renewable energy. The City expressed their support of the project and both parties agreed to work collaboratively in the future, with UND, to capitalize on the strategic benefits a local, visible renewable resource can bring to the region.

INDIANA MICHIGAN POWER COMPANY  
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR  
DATA REQUEST SET NO. OUCC DR 7  
IURC CAUSE NO. 45245

DATA REQUEST NO OUCC 7-07

REQUEST

As a follow-up to OUCC DR 5.4:

- a. Please list the amount of RECs, by year, that Target has purchased through I&M's Green Power Rider or Renewable Energy Option.
- b. Please list the amount of RECs, by year, that Walmart has purchased through I&M's Green Power Rider or Renewable Energy Option.
- c. Please list the amount of RECs, by year, that Grupo Bimbo/Allen Foods has purchased through I&M's Green Power Rider or Renewable Energy Option.
- d. Please list the amount of RECs, by year, that Fifth Third Bank has purchased through I&M's Green Power Rider or Renewable Energy Option.
- e. Please list the amount of RECs, by year, that Ball State University has purchased through I&M's Green Power Rider or Renewable Energy Option.

RESPONSE

- a. None
- b. None
- c. None
- d. None
- e. None

**VERIFIED DIRECT TESTIMONY  
OF RYAN J. BROWN**

**INTRODUCTION**

1 **Q1. Please state your name and business address.**

2 A. My name is Ryan J. Brown, and my business address is 129 E. Market Street,  
3 Suite 600, Indianapolis, Indiana 46204.

4 **Q2. By whom are you employed and in what capacity?**

5 A. I am employed by EDP Renewables North America LLC ("EDPR") as Executive  
6 Vice President, Eastern Region and Canada. I have been delegated responsibility  
7 for the development of phase two of the Headwaters Wind Farm ("Phase II" or  
8 the "Project") by Headwaters Wind Farm II LLC ("Petitioner"). I am responsible  
9 for EDPR's business in the eastern U.S., including the State of Indiana, and  
10 Canada. EDPR is a global leader in the renewable energy sector and the world's  
11 fourth-largest wind energy producer, with a presence in 12 countries. EDPR's  
12 business comprises the development, construction and operation of wind farms  
13 and solar plants to generate and deliver clean electricity.

14 **Q3. Please summarize your educational and professional background.**

15 A. I received my Bachelor's Degree in Economics from the University of Chicago in  
16 2001. I have 15 years of experience in the energy sector, including work at the  
17 Indiana Office of Energy Development from 2004-2008 and at EDPR since 2008  
18 in several roles, including Development Project Manager, Senior Development  
19 Project Manager, Director of Development-Canada, and my current position as

1 Executive Vice-President since January 2015. I also have previous work  
2 experience in corporate finance and education and volunteer work in Mexico and  
3 Ecuador.

4 **Q4. Have you previously testified before government bodies or agencies?**

5 A. Yes. I have recently provided testimony at the Indiana Utility Regulatory  
6 Commission in Cause No. 44998 and Cause No. 45010. I have also previously  
7 testified before the Maine Public Utility Commission in a 2015 docket pertaining  
8 to our wind and transmission developments in that state.

9 **Q5. What is the purpose of your direct testimony in this proceeding?**

10 A. The purpose of my direct testimony is to discuss the relief sought by Petitioner in  
11 this proceeding and to provide the Commission with information regarding the  
12 Petitioner and Phase II of the Headwaters Wind Farm.

13 **Q6. Please describe EDPR.**

14 A. EDPR is a Delaware limited liability company, and its ultimate parent company is  
15 Energias de Portugal, S.A. ("EDP"), a major Portuguese utility headquartered in  
16 Lisbon, Portugal. EDPR is a wholly-owned subsidiary of EDP Renováveis, S.A.  
17 ("EDP Renováveis"), a Spanish company and subsidiary of EDP. EDPR has over  
18 600 employees and is headquartered in Houston, Texas, with regional offices  
19 throughout the United States.

20 **Q7. What relief does Petitioner request of the Commission in this Cause?**

21 A. Petitioner is requesting that the Commission decline to exercise jurisdiction  
22 pursuant to Ind. Code § 8-1-2.5-5 over Petitioner's construction, ownership and



1 operation of, and any other activity in connection with Phase II, and determine  
2 that the public interest will be served by the Commission's declining to exercise  
3 jurisdiction over Petitioner.

4

5

**PROJECT BACKGROUND**

6 **Q8. Please describe the Headwaters Wind Farm?**

7 A. The Headwaters Wind Farm is a multi-phase wind energy generation project  
8 located in Randolph County, Indiana. The first phase of Headwaters Wind Farm  
9 received declination of Commission jurisdiction for approximately 200 megawatts  
10 ("MW") of nameplate electric generation in Cause No. 43358, and achieved  
11 commercial operation on December 23, 2014. This Cause involves only Phase II,  
12 for which all wind turbines will be located in Randolph County, Indiana.  
13 Transmission and switchyard facilities for Phase II are planned to be situated in  
14 Randolph County. Phase II is expected to generate approximately 200 MW in  
15 nameplate capacity, and major construction is set to commence in summer 2019.

16 **Q9. Is the Project similar to other electric generating plants for which the  
17 Commission has previously declined to exercise jurisdiction?**

18 A. Yes. As I previously mentioned, the Commission has already declined to exercise  
19 jurisdiction over the construction, ownership and operation of the first phase of  
20 Headwaters Wind Farm, with the exception of specifically stated conditions set  
21 out in the Commission's declination of jurisdiction order. *See In the Matter of the  
22 Petition by Headwaters Wind Farm, LLC*, Cause No. 44358 (Sept. 19, 2013). The

1 Commission further declined to exercise much of its jurisdiction over the project  
2 entities for EDPR's other Indiana wind farm, the Meadow Lake Wind Farm. *In*  
3 *the Matter of the Petition by Meadow Lake Wind Farm II, LLC*, Cause No. 43678  
4 (Aug. 19, 2009); *In the Matter of the Petition of Meadow Lake Wind Farm III,*  
5 *LLC*, Cause No. 43759 (Nov. 24, 2009); *In the Matter of the Petition of Meadow*  
6 *Lake Wind Farm IV, LLC*, Cause No. 43758 (Nov. 24, 2009); *Joint Petition of*  
7 *Meadow Lake Wind Farm IV, LLC and Meadow Lake Wind Farm V, LLC*, Cause  
8 No. 43876 (Sept. 15, 2010); *In the Matter of the Petition of Meadow Lake Wind*  
9 *Farm VI, LLC*, Cause No. 45010 (Feb 28, 2018). The Commission also issued  
10 orders declining much of its jurisdiction over electric generating facilities  
11 proposed by other wind farms. *See In the Matter of the Petition by Benton County*  
12 *Wind Farm, LLC*, Cause No. 43068 (Dec. 6, 2006); *In the Matter of the Petition*  
13 *by Fowler Ridge Wind Farm, LLC*, Cause No. 43338 (Nov. 20, 2007) (and  
14 subsequent related Cause Nos. 43443 and 43444); *In the Matter of the Petition by*  
15 *Hoosier Wind Project, LLC*, Cause No. 43484 (Oct. 1, 2008); *NextEra Energy*  
16 *Bluff Point, LLC*, Cause No. 44299 (April 3, 2013). This Commission has also in  
17 recent years issued several other orders declining much of its jurisdiction over  
18 electric generating facilities proposed by independent power producers. Typical of  
19 these other orders are those issued to *Tenaska Indiana Partners, L.P.* (IURC  
20 Cause No. 41823) and *Duke Energy Vermillion, LLC* (IURC Cause No. 41388).  
21 The proposed Project is similar to these electric generating facilities in the sense

1 that it will be a generator of electricity for sale in the wholesale power market,  
2 and represents an increase in the amount of electricity generated in Indiana.

3 **Q10. Where will Phase II be located?**

4 A. The Headwaters Wind Farm is located in Randolph County approximately 15  
5 miles Southwest of Winchester, Indiana. Phase II is located directly West of and  
6 nearby Headwaters Wind Farm Phase I and is spread out over approximately  
7 15,000 acres in Randolph County. A preliminary site map depicting the  
8 approximate turbine and facility locations for Phase II is attached as Petitioner's  
9 Attachment RJB-1.

10 **Q11. How will Phase II generate electricity?**

11 A. Phase II will generate electricity using wind turbines mounted on steel towers.  
12 The wind turbine generator voltage of approximately 650V will be stepped up to  
13 34.5 kV by transformers located in the turbine nacelle or near each wind turbine.  
14 Electricity produced by the turbines will then be delivered to an electric substation  
15 via 34.5 kV power collection lines, which will be located substantially  
16 underground. The collection lines will feed into a new Phase II substation  
17 adjacent to the existing 345 kV Losantville Substation. From the new Phase II  
18 substation, the electricity will feed directly into the Losantville Substation and  
19 then to AEP's 345 kV transmission line.

20 **Q12. Have the component pieces to construct Phase II been secured?**

21 A. Petitioner has secured some of the components, including all of the "safe harbor"  
22 components needed to qualify for the production tax credit. Orders for all

1 component pieces will be made to facilitate completion of construction on or  
2 before December 31, 2020.

3

4

**PROJECT SITE**

5 **Q13. What information or exhibits have been collected to demonstrate the**  
6 **appropriateness of the site?**

7 A. Based upon our due diligence and permitting work to date, no environmental  
8 issues are foreseen that would delay or prevent the permitting and construction of  
9 the Project within the timeline listed herein. Petitioner retained KTA Associates,  
10 Inc. ("KTA") to complete a Phase I Environmental Site Assessment in accordance  
11 with ASTM Standard E-1527-13. KTA found that there are currently no known,  
12 existing on-site recognized environmental conditions that would require a formal  
13 cleanup under Federal or State regulatory programs or that would potentially have  
14 a negative impact on the feasibility of the development of Phase II. The executive  
15 summary of KTA's report is attached as Petitioner's Attachment RJB-2.

16

17 Petitioner also contracted with Ecology and Environment, Inc., to perform a Site  
18 Characterization Study. The Site Characterization Study reviewed land use and  
19 biological resources within the Phase II project area and a 2-mile area  
20 immediately surrounding the Project. The executive summary of the Site  
21 Characterization Study is attached as Petitioner's Attachment RJB-3. As noted in  
22 the Site Characterization Study, there are federal and state protected species that

1 have the potential to occur within the Project area. In particular, the Indiana bat,  
2 and the northern long-eared bat have the potential to occur in the area.

3  
4 Petitioner contracted with Western EcoSystems Technology, Inc. ("WEST") to  
5 conduct wildlife surveys. The Petitioner has been coordinating with U.S. Fish and  
6 Wildlife Service ("USFWS") and Indiana Department of Natural Resources  
7 ("IDNR") regarding wildlife studies since early in the development process.  
8 Wildlife surveys began in December 2016 with avian use surveys. The first year  
9 of avian use surveys was completed in November 2017, and a second year of  
10 avian use surveys began in December 2017 and was completed in November  
11 2018. Bald eagles have been observed during surveys. Ground-based raptor nest  
12 surveys were conducted in March 2017. No eagle nests were observed during  
13 ground-based surveys, and one eagle nest was identified during the aerial surveys.  
14 Three eagle nests were confirmed later in 2018 within 10 miles of the Project, two  
15 of which are within 500 m (1,640 ft) of an already known nest and likely occupied  
16 by the same pair. All eagle nests were located farther than 2 miles from the  
17 Project within riparian habitat along the West Fork of the White River. No eagles  
18 were observed during the avian use surveys during the nesting season and,  
19 therefore, eagle use at the Project does not seem to be influenced by these nests.  
20 Overall, few bald eagles were observed during the two years of surveys, and risk  
21 of impact to this species from construction or operation of Phase II is likely low.

22

1 WEST conducted a desktop habitat assessment followed by acoustic surveys to  
2 determine whether the Project area was used by Indiana bats and/or northern long-  
3 eared bats during the summer maternity season outside of areas already known to  
4 be occupied by these species, following a study plan approved by USFWS.  
5 Probable presence of Indiana bats was confirmed at ten of the 14 sites and was  
6 also confirmed for northern long-eared bats at two of 14 sites. Petitioner will  
7 obtain a Technical Assistance Letter from USFWS stating that the standard of  
8 insignificant or discountable take of the Indiana bat and northern long-eared bat  
9 will be met by the implementation of certain minimization measures and  
10 monitoring efforts by Petitioner in the Project area. In addition, Petitioner is  
11 developing a Habitat Conservation Plan in order to obtain an Incidental Take  
12 Permit from USFWS. The Habitat Conservation Plan will cover the spring,  
13 summer, and fall seasons to account for all times in which Indiana and northern  
14 long-eared bats may be at risk of impact from the Project. This permit will govern  
15 ongoing operation of the Project with respect to federally-listed bat species.  
16 EDPR's more than ten year track record of wind development in Indiana without  
17 incident further demonstrates that the foregoing minimization and monitoring  
18 efforts are successful and effective.

19 **Q14. Will the Project use water and will there be any impact on local water**  
20 **supplies?**

21 A. The Project will not use water in any significant quantities, and it will have  
22 negligible or no impact on local water supplies. Water will be used during

1 construction, reconstruction and removal of Project facilities, primarily for dust  
2 control and concrete mixing. After construction is completed, small quantities of  
3 water will also be used for the Project's operations and maintenance control  
4 building, which will most likely be drawn from local wells. Petitioner will obtain  
5 storm water permits as necessary.

6 **Q15. Will the Project have any substantial negative impact on any groundwater  
7 rights and obligations, or any streams or wetlands?**

8 A. No, the Project will not have any substantial negative impact on any groundwater  
9 rights, streams or wetlands.

10 **Q16. With regard to aesthetics and noise from the wind turbines in the Project,  
11 what impact will they have on nearby citizens?**

12 A. Petitioner expects the sound and aesthetic impacts to be comparable to those of  
13 other utility scale wind farms in the State of Indiana. However, wind turbine  
14 technology is constantly improving, resulting in turbines that are both quieter and  
15 more efficient than ever before, and the Project will utilize turbines from this  
16 latest generation of wind turbines that have been designed with both sound and  
17 aesthetic concerns in mind.

18

19 **PUBLIC UTILITY STATUS AND PERMITTING ISSUES**

20 **Q17. Will Petitioner qualify as a public utility under Indiana law?**

21 A. The Indiana legislature has defined "public utility" to include any entity that  
22 owns, operates, manages or controls any plant or equipment within the state for

1 the production of electricity. As described above, Petitioner intends to develop,  
2 own, and operate an electric generating facility, so even though it does not intend  
3 to sell electricity directly to retail customers, it may fall within this very broad  
4 definition of “public utility” under Indiana law. As a public utility, Petitioner  
5 would then also meet the definition of an “energy utility” for purposes of Ind.  
6 Code § 8-1-2.5-5. This Code section permits an energy utility electing to be  
7 subject to this section to request the Commission to decline to exercise its  
8 jurisdiction with respect to the energy utility, which prompted the Petition in this  
9 case.

10 **Q18. Has Petitioner applied for and obtained, or will Petitioner apply for and**  
11 **obtain, all necessary federal, state, and local permits needed for construction**  
12 **and operation of the Project?**

13 A. Yes.

14 **Q19. What local permits are required for the Project?**

15 A. County and municipal building, construction, grading, and wastewater permits are  
16 required, as they apply in Randolph County.

17 **Q20. Please describe the requirements of the various zoning ordinances with**  
18 **respect to the Project facilities to be installed in Randolph County.**

19 A. Randolph County has specific project design, setback, and noise standards with  
20 which the Project will comply. Petitioner will sign a Road Use Agreement with  
21 Randolph County. Petitioner anticipates that the Road Use Agreement entered  
22 into for the first phase of the Headwaters Wind Farm. Under the Road Use



1 Agreement, Petitioner anticipates that it and Randolph County will agree to a set  
2 of roads that will be utilized by the Petitioner, and Petitioner will be responsible  
3 to fund any road upgrades required to deliver the wind turbines and associated  
4 equipment. Petitioner also anticipates that under the Road Use Agreement the  
5 Petitioner will be responsible to either repair or pay for repairs necessary due to  
6 Petitioner's use of the roads. Petitioner will also enter into an Economic  
7 Development Agreement with Randolph County. Petitioner anticipates this  
8 agreement will be similar to the economic development agreement that  
9 Headwaters Wind Farm LLC entered into with Randolph County for the  
10 development of the first phase of the Headwaters Wind Farm.

11 **Q21. Will the Project require an Improvement Location Permit?**

12 A. Yes, to be issued by Randolph County prior to erection of each wind turbine and  
13 construction of Project facilities.

14 **Q22. Will the Project have a decommissioning plan?**

15 A. Yes. Petitioner will have its decommissioning plan approved in accordance with  
16 the Randolph County ordinance.

17 **Q23. What is the purpose of the decommissioning plan?**

18 A. The decommissioning plan provides assurance that the Project facilities are  
19 properly decommissioned at the end of the Project's useful life or upon facility  
20 abandonment. Each applicant must provide a cost estimate for demolition and  
21 removal of the Project facilities. To guard against the worst-case possibility that  
22 the Project will be unable to meet its obligation to dismantle the wind project, a

1 decommissioning security will be established. The decommissioning security is  
2 intended primarily to cover the cost of removing project infrastructure, of  
3 restoring the leased premises to their original condition, and of removing the  
4 foundation pedestals to a depth of 48 inches. Detail regarding the type and amount  
5 of the security and method of calculating it will be specified in the  
6 decommissioning plan.

7 **Q24. What State permits are required for the Project?**

8 A. State requirements for this Project include the following:

- 9 • A NPDES general permit is required under Title 327 of the Indiana  
10 Administrative Code for the discharge of construction-related storm water  
11 (“Rule 5 permit”). Petitioner will submit a written construction plan to the  
12 local county Soil and Water Conservation District office in Randolph County.  
13 Once the plan is approved, Petitioner will submit a Notice of Intent to the  
14 Indiana Department of Environmental Management (“IDEM”) at least 48  
15 hours prior to starting land-disturbing activities. After IDEM determines that  
16 Petitioner's activity is covered by Rule 5, it will issue a notice of sufficiency to  
17 Petitioner, the Notice of Intent applicant.
- 18 • A determination by the Indiana Department of Transportation (“INDOT”) that  
19 the Project and its location will not present any Indiana-specific air navigation  
20 hazards. Under Indiana law, after INDOT makes or is deemed to have made a  
21 no-hazards finding, the Federal Aviation Administration’s (“FAA”) permits  
22 (as discussed later in my testimony) are deemed valid Indiana tall structure

1 permits and not additional permits are issued or required to be issued by  
2 INDOT. At present, Petitioner has not engaged INDOT on any issues  
3 pertaining to Phase II but will do so consistent with past wind farm  
4 development practice.

- 5 • Permits, as needed, from INDOT to allow Project electric lines and other  
6 facilities to cross state highways and for driveways, road exits, etc. Petitioner  
7 will apply for these permits as they become necessary.
- 8 • Isolated wetlands are regulated by the IDEM under the State Isolated  
9 Wetlands Law and development activities conducted within the floodway of  
10 any waterway of the State are regulated by the IDNR under the Flood Control  
11 Act and the Floodplain Management Rule. Petitioner, consistent with the past  
12 wind farm development activities of EDPR, will make efforts to avoid and  
13 minimize impacts to wetlands and surface water features within the Project  
14 area. The Project as designed does not require an isolated wetland permit from  
15 IDEM. The Petitioner intends to avoid construction activity within state  
16 regulated floodways. However, if construction within floodways cannot be  
17 avoided, Petitioner will obtain appropriate IDNR floodway permits, if  
18 necessary for the Project.

19 **Q25. What federal requirements apply to the Project?**

- 20 A. Several federal requirements apply to the Project, and Petitioner will comply with  
21 all of them. The Project will comply with the following requirements:

- 1           • Petitioner will obtain Determinations of No Hazard to Air Navigation from  
2           the FAA for structures that exceed 200 feet in height, including all turbines in  
3           the Phase II project site.
- 4           • Petitioner intends to self-certify as an exempt wholesale generator and apply  
5           for market-based rate authority under Federal Energy Regulatory Commission  
6           ("FERC") rules and regulations.
- 7           • Petitioner will prepare a federal spill prevention, control and countermeasure  
8           ("SPCC") plan for oil spill contingencies.
- 9           • Development activities that affect wetlands and other waters of the U.S. in the  
10          State of Indiana are regulated by the U.S. Army Corps of Engineers  
11          ("USACE"). A Water Quality Certification from IDEM is also required when  
12          applying for a federal permit. Again, Petitioner, consistent with the past wind  
13          farm development activities of EDPR, will make efforts to avoid and  
14          minimize impacts to wetlands and surface water features within the Project  
15          area. Based on the nature and extent of the anticipated impacts to wetlands or  
16          waters of the U.S., Phase II is eligible for authorization under a USACE  
17          Nationwide Permit ("NWP"). The Section 401 Water Quality Certification  
18          from IDEM is pre-authorized under the NWPs #12, 33, and 51.
- 19          • As described above, the Site Characterization Study identified potentially  
20          effected species in the Project area, including the Indiana bat and northern  
21          long-eared bat. Petitioner will secure a Technical Assistance Letter from the

1 USFWS, and the Project will prepare a Habitat Conservation Plan in order to  
2 obtain an Incidental Take Permit from USFWS for Phase II.

3  
4 **INTERCONNECTION**

5 **Q26. How will the Project interconnect with the wholesale electric transmission**  
6 **grid?**

7 A. The Project is expected to interconnect with AEP's 345 kV transmission system at  
8 AEP's existing 345 kV Losantville Substation in Randolph County, Indiana. The  
9 Project's electrical system will consist of: (i) a 34.5 kV collection system, which  
10 will collect energy generated by each wind turbine at approximately 650 volts,  
11 then will increase voltage to 34.5 kV through step-up transformers located in the  
12 turbine nacelle or near each wind turbine, and deliver it via electric cables, which  
13 will be entirely underground, to (ii) a substation transformer, where the collection  
14 system voltage of 34.5 kV will be increased to the transmission system voltage of  
15 345 kV, for delivery to (iii) a new Phase II substation that will interconnect with  
16 the adjacent (iv) AEP 345 kV transmission system at the existing Losantville  
17 Substation.

18 **Q27. Does the Project need a new transmission line?**

19 A. No. As previously discussed, the collection system will interconnect to a new  
20 Phase II substation that is adjacent to the existing Losantville Substation, so no  
21 new transmission line is necessary.

1 **Q28. What studies have been done regarding the possible interconnection with**  
2 **AEP?**

3 A. A feasibility study for the Project has been completed and is attached as  
4 Petitioner's Attachment RJB-4. AEP's transmission system is part of the  
5 wholesale power grid controlled by PJM Interconnection, L.L.C. ("PJM").  
6 Petitioner's queue position with PJM is V3-007. A System Impact Study was  
7 completed by PJM for Phase II in June 2010. A copy of PJM's System Impact  
8 Study is attached as Petitioner's Attachment RJB-5.

9 **Q29. Can the Project be interconnected without negatively impacting system**  
10 **performance?**

11 A. Yes. The Feasibility Study and the System Impact Study indicate that the  
12 Project's interconnection with the AEP transmission system will not negatively  
13 impact system performance.

14 **Q30. Has Petitioner entered into an Interconnection Service Agreement?**

15 A. Yes. The Interconnection Service Agreement ("ISA") was fully executed by and  
16 among PJM, AEP and Petitioner on May 23, 2018. A copy of the ISA is attached  
17 as Petitioner's Attachment RJB-6.

18

19 **THE PROJECT WILL SERVE THE PUBLIC INTEREST**

20 **Q31. Is there a need for electricity generated by the Project?**

21 A. Yes. A growing number of companies have started to rely on renewable energy  
22 projects as a source for their electric needs or as a way to hedge against energy

1 price volatility, and Phase II is a good example of this. EDPR and Facebook Inc.  
2 (“Facebook”) recently entered into a 15 year virtual power purchase agreement  
3 (“VPPA”) for 139 MW of nameplate power generated by Phase II. In addition,  
4 Walmart, Inc. (“Walmart”) entered into a VPPA for 60 MW of nameplate power  
5 generated by Phase II for a term of 15 years.

6 **Q32. Please explain how a virtual power purchase agreement works.**

7 A. Under a VPPA, a company such as Facebook or Walmart agrees to pay a  
8 renewable energy developer a fixed rate for electricity during the term of the  
9 contract while continuing to buy electricity from the local electric utility. The  
10 renewable energy developer then sells the power it generates into the grid where it  
11 is bought by consumers in the wholesale power market. If the wholesale market  
12 price is higher than the VPPA contract price, the company is entitled to the  
13 difference as determined every month during the contract’s term. If the contract  
14 price is higher than the wholesale market price, the renewable energy developer  
15 bills the company for the difference. The VPPA results in the company  
16 guaranteeing a market for the electricity generated by the renewable energy  
17 developer.

18 The VPPA is a win-win for EDPR, Facebook and Walmart. The long-term  
19 contract affords EDPR the guaranteed market for the electricity generated, as well  
20 as the opportunity to make additional investments in clean energy in Indiana, and  
21 specifically, Randolph County. The long-term contract also enables Facebook and  
22 Walmart to mitigate risk from electric price volatility, while assisting those

1 companies to achieve their respective and increasingly important sustainability  
2 goals.

3 **Q33. Will the development of additional generating capacity serve the public**  
4 **interest?**

5 A. Yes, the public interest will be served in a number of important respects by the  
6 addition of the electric generating capacity represented by Phase II and  
7 Headwaters Wind Farm's other phase. First, the public needs electricity. Second,  
8 Petitioner's proposed wind farm represents one of the most environmentally  
9 friendly means of generating electricity. Wind energy helps reduce the negative  
10 effects of electricity generation on the environment by being a source of clean  
11 power. Wind farms do not release any pollutants, such as SO<sub>2</sub> (which causes acid  
12 rain), NO<sub>x</sub> (which causes smog), mercury (which causes neurological damage in  
13 fetuses and children), or CO<sub>2</sub> (a greenhouse gas that contributes to global climate  
14 change). Third, the public in Indiana will benefit from the efficiencies which flow  
15 from proximity to the source of generation; that is, because of the high cost of  
16 transmitting power over long distances, it is generally advantageous for load not  
17 to be located too far from its source. Fourth, landowners in Randolph County will  
18 receive economic benefits from the placement of wind farm facilities on their  
19 properties. Fifth, local taxing bodies will receive new tax revenues pursuant to the  
20 Economic Development Agreement for the Project. Sixth, up to 250 construction  
21 jobs and 13 full-time operations and maintenance jobs will be created by the  
22 Project. Seventh, wind energy provides greater energy security. It will diversify



1 Indiana's electricity generation portfolio, protecting against volatile price spikes  
2 and risks from relying too heavily on just a few sources of generation. The wind  
3 itself is a domestic source of fuel, harnessed in this case over Indiana lands, and  
4 not subject to the geopolitical complexities of foreign energy sources. The wind's  
5 renewable nature will help protect future generations from the risks of dwindling  
6 energy supplies. Finally, the Project benefits the public by providing a mechanism  
7 for businesses to hedge against electric price volatility.

8 **Q34. In past Commission orders declining, in part, jurisdiction over wind farms,**  
9 **petitioners have waived the right to use eminent domain and to be exempt**  
10 **from local zoning, but retained the right to use the public right-of-way,**  
11 **correct?**

12 A. Yes.

13 **Q35. Does Petitioner seek or need the power of eminent domain?**

14 A. No.

15 **Q36. Does Petitioner seek or need the power to be exempt from local zoning?**

16 A. No.

17 **Q37. Does Petitioner seek to retain the right to use public rights-of-way?**

18 A. Yes, in a limited manner. Petitioner seeks to retain the right to use the public  
19 right-of-way within the Project area. Retention of the use of the public right-of-  
20 way will allow Petitioner to place transmission lines and collector lines in the  
21 public right-of-way. Additionally, retention of this right will clarify issues  
22 surrounding use of the public right-of-way for road crossings. This is the

1 treatment given to other phase of the Headwaters Wind Farm and is similar to the  
2 treatment given to other wind projects in Indiana.

3 **Q38. Is Petitioner asking this Commission to designate a service territory or**  
4 **establish electric rates?**

5 A. No. By limiting its activities to the generation of electricity for sale in the  
6 wholesale market, Petitioner will not have any retail customers, nor will its sales  
7 be constrained by geography to the extent technology and the presence of  
8 transmission capacity allow. To the extent wholesale rates are not determined by  
9 the marketplace, they are regulated by FERC, which preempts the jurisdiction of  
10 state regulatory bodies to regulate wholesale rates for electricity.

11 **Q39. To whom will Petitioner sell the electricity generated by the Project?**

12 A. As noted above, Petitioner has entered into VPPAs with Facebook and Walmart,  
13 respectively for the entirety of the Project's nameplate capacity.

14

15 **PROJECT TIMELINE AND CONSTRUCTION**

16 **Q40. What is the Project's planning timeline (after receiving all required**  
17 **regulatory approvals)?**

18 A. Phase II is anticipated to achieve commercial operation by September 30, 2020.

19 **Q41. Will Petitioner advise the Commission through notice of any change in the**  
20 **in-service date, which the Commission may use to refine its integrated**  
21 **resource planning for Indiana retail utilities?**

22 A. Yes.

1 **Q42. Does Petitioner have the ability to construct the Project?**

2 A. Yes.

3 **Q43. Who will have construction responsibility?**

4 A. Petitioner is responsible for the construction of the Project, and it will hire  
5 experienced contractors to perform engineering, procurement, and construction  
6 activities.

7

8 **PROJECT OWNERSHIP AND OPERATION**

9 **Q44. Will Petitioner own the Project?**

10 A. Yes.

11 **Q45. Has Petitioner's owner, EDPR, or any of its other affiliates constructed or  
12 operated other electric generating facilities?**

13 A. Yes. EDPR's experience includes developing, owning and operating 50 wind  
14 farms and solar parks generating more than 6,000 MW in nameplate capacity.  
15 These projects are spread across 14 states, including Headwaters Wind Farm  
16 Phase I. EDPR is a global leader in the renewable energy sector and the world's  
17 fourth largest wind energy producer with a presence in 12 countries.

18 **Q46. Will Petitioner operate the Project in a commercially reasonable manner in  
19 accordance with good utility practice?**

20 A. Yes.

21 **Q47. Does Petitioner have the ability to finance the Project?**

1 A. Yes. Petitioner is a subsidiary of EDPR, which in turn is a wholly-owned  
2 subsidiary of EDP Renováveis. To demonstrate EDPR's financial strength and  
3 ability to finance the Project, EDP Renováveis' annual report for fiscal year 2017  
4 is attached as Petitioner's Attachment RJB-7 and is also available online at  
5 [https://www.edpr.com/sites/default/files/portal.edpr/documents/edpr\\_annualreport](https://www.edpr.com/sites/default/files/portal.edpr/documents/edpr_annualreport_2017.pdf)  
6 [2017.pdf](https://www.edpr.com/sites/default/files/portal.edpr/documents/edpr_annualreport_2017.pdf).

7 **Q48. Will EDPR and EDP Renováveis provide to Petitioner all the necessary**  
8 **financial, technical and managerial expertise to construct and operate the**  
9 **Project?**

10 A. Yes.

11 **Q49. What does Petitioner request with respect to any future transfer of its assets?**

12 A. Petitioner requests that this Commission grant it treatment similar to that which  
13 the Commission has afforded in other declination of jurisdiction orders, *i.e.*,  
14 decline to require prior Commission approval of any transfers of ownership of  
15 Project assets or ownership interests in Petitioner involving: (1) the grant of a  
16 security interest, mortgage, deed of trust or other encumbrance to a bank or other  
17 lender or collateral agent, administrative agent or other security representative, or  
18 a trustee on behalf of bondholders in connection with any financing or refinancing  
19 (including any lease financing), or any investor, guarantor, equipment supplier or  
20 financing entity; (2) EDPR or Petitioner becoming a debtor in possession; or (3) a  
21 foreclosure (or deed in lieu of foreclosure) on the property owned by Petitioner.

1 **Q50. Will Petitioner inform the Commission and the OUCC if and when Petitioner**  
2 **becomes an affiliate of a regulated Indiana retail utility?**

3 A. Yes.

4 **Q51. Will Petitioner establish and maintain a form of security to ensure that funds**  
5 **will be available in the event of abandonment, financial failure, and/or**  
6 **bankruptcy to return the Project site to its current condition?**

7 A. As I noted above, Petitioner is required by the applicable county ordinance to  
8 provide a decommissioning plan for the Project. This decommissioning plan must  
9 include a contractor estimate for demolition and removal of the Project. A form of  
10 security for decommissioning will be established in the event of abandonment,  
11 financial failure and/or bankruptcy.

12

13 **DECLINATION OF JURISDICTION**

14 **Q52. With regard to the requirements of Ind. Code § 8-1-2.5-5, do technological or**  
15 **operating conditions, competitive forces, or the extent of regulation by other**  
16 **state or federal regulatory bodies render the exercise, in whole or in part, of**  
17 **jurisdiction over Petitioner by the Commission unnecessary or wasteful?**

18 A. Yes. As I stated earlier in my testimony, the requirements imposed by Randolph  
19 County, the rules and regulations of the FERC, and other federal, state and local  
20 regulatory agencies adequately address the concerns the Commission should  
21 otherwise have and protect the public interest regarding the future operation and  
22 wholesale transactions involving the Project. In addition, competitive forces in the

1 wholesale power markets serve as an adequate check on these activities,  
2 particularly on the wholesale power price. Also, PJM is responsible for the safe  
3 and reliable operation and planning, including generation interconnection  
4 planning, of the electric transmission systems under their functional control,  
5 which includes the AEP transmission system to which Phase II will interconnect.  
6 Further regulation of these matters by the Commission would be unnecessary and  
7 wasteful of the Commission's resources, and burdensome for Petitioner.

8 **Q53. Will the Commission's declining to exercise, in whole or in part, its**  
9 **jurisdiction be beneficial for Petitioner, Petitioner's customers or Indiana,**  
10 **and promote the efficiency of Petitioner?**

11 A. Yes. Petitioner would benefit from the ability to devote its efforts and resources to  
12 complying fully with the requirements of the federal, local, and other state  
13 regulatory agencies with jurisdiction over its operations, as well as the  
14 requirements of the PJM, which would promote the efficiency of Petitioner's  
15 ongoing development and operation of Phase II. Indiana will benefit from the  
16 generation of electric power from wind power generally, and this Project  
17 specifically. The exercise of jurisdiction by the Commission would encumber  
18 Petitioner with duplicative requirements that are unnecessary in view of other  
19 regulatory requirements.

20 **Q54. Would the exercise of Commission jurisdiction inhibit Petitioner in**  
21 **competing with other providers of functionally similar energy services or**  
22 **equipment?**

1 A. Yes. Should the Commission not decline to exercise jurisdiction over Petitioner,  
2 the Commission will be placing Petitioner at a disadvantage with respect to other  
3 independent power producers over whom the Commission has declined to  
4 exercise jurisdiction. Such regulation would expose Petitioner to the risk of  
5 regulatory lag and hinder the quick implementation of business decisions in a  
6 highly competitive market, which would create a significant competitive  
7 disadvantage for Petitioner. In addition, the Commission's exercise of jurisdiction  
8 may compel Petitioner publicly to disclose proprietary information, to its  
9 disadvantage.

10 **Q55. Does Petitioner agree to the same reporting requirements as have been**  
11 **imposed on other wind farms in Indiana?**

12 A. Yes. Petitioner agrees to the following reporting obligations, which were  
13 agreed to by other phase of the Headwaters Wind Farm and which have  
14 generally been imposed on other wind energy developers:

15 (i) **Initial Report.** Petitioner agrees to file an initial quarterly report  
16 within 30 days of the issuance of an Order in this proceeding that  
17 will provide, to the extent such information is known and  
18 available, the following:

- 19 (1) Project ownership and name(s) of the facility (the  
20 "Facility");  
21 (2) Name, title, address, and phone number(s) for primary  
22 contact person(s) for the Facility;

- 1 (3) Number and location of wind turbines deployed;
- 2 (4) Anticipated total output of Facility;
- 3 (5) Manufacturer, model number and operational
- 4 characteristics of turbines;
- 5 (6) Connecting utility(s);
- 6 (7) Copy of any Interconnection System Impact Studies
- 7 prepared by the PJM;
- 8 (8) Expected in-service (commercial operation) date;
- 9 (9) An estimate of the engineering/construction timeline and
- 10 critical milestones for the Facility;
- 11 (10) The status of the Large Generator Interconnection
- 12 Agreement with the PJM; and
- 13 (11) The information listed below in the Subsequent Reports
- 14 section to the extent such information is available.

15  
16 (ii) **Subsequent Reports.** Petitioner agrees to file subsequent reports  
17 within 30 days of the end of each calendar quarter until the quarter  
18 that occurs after commercial operation is achieved and that  
19 immediately precedes the Annual Report filing date of April 30<sup>th</sup>  
20 of each year. Thereafter, Petitioner will file reports on or before  
21 April 30<sup>th</sup> of each year in this Cause. The reports would include the  
22 following:



- 1 (1) Any changes of the information provided in the Initial  
2 Report;
- 3 (2) Any reports of Interconnection System Impact Studies not  
4 previously submitted to the Commission;
- 5 (3) Copy of the Interconnection Service Agreement as filed  
6 with FERC;
- 7 (4) Notice of the establishment of an independent financial  
8 instrument, including its form and amount;
- 9 (5) Achievement of construction milestones described in the  
10 Interconnection Service Agreement and such events as the  
11 procurement of major equipment, the receipt of major  
12 permits material to the construction and operation of the  
13 Facility, construction start-up, initial energization and  
14 commercial operation; and
- 15 (6) When commercial operation is achieved, the nameplate  
16 existing for utility sales, contingency plans (if any)  
17 detailing response plans to emergency conditions as  
18 required by state or local units of government, the  
19 interconnecting transmission owner and/or PJM, and the  
20 Facility's certified (or accredited) dependable capacity  
21 rating.

1 **Q56. Does Petitioner also agree to the additional requirements concerning**  
2 **material change in Project output or project modification or suspension**  
3 **under the terms of the ISA?**

4 A. Yes. Petitioner agrees to the following additional requirements: In the event that  
5 Petitioner intends to materially increase or decrease or otherwise materially  
6 change the Project's capacity or operation, the owner must obtain the  
7 Commission's prior approval. Petitioner considers a material change to include an  
8 increase of greater than three (3) MW or a decrease of greater than twelve (12)  
9 MW in the Project's nameplate capacity; a change in operating entities; a transfer  
10 of assets; and changes identified in subsequent case law as constituting a material  
11 change. Petitioner will notify the Commission in the event that it modifies or  
12 suspends the Project under the terms of the ISA and does not reinstitute work  
13 within three (3) years following commencement of such suspension. In the event  
14 of a proposed increase greater than 3 MW, the Petitioner will provide the  
15 Commission with at least thirty (30) days' notice prior to the increase. If the  
16 Commission determines that the Petitioner has (a) failed to enter into an  
17 agreement pursuant to PJM's generator interconnection procedures; (b) suspended  
18 the project under the terms of the ISA and has not reinstated work within three (3)  
19 years following commencement of such suspension; or (c) has otherwise  
20 suspended its efforts to complete the Project within three (3) years of its Order,  
21 the Commission may, following notice to the Petitioner, proceed to issue an Order  
22 terminating the declination of jurisdiction set forth herein.

1 **Q57. Haven't prior Commission declination orders for wind projects included a 3**  
2 **MW materiality threshold for a decrease in nameplate capacity in contrast to**  
3 **the 12 MW threshold proposed for the Project?**


4 A. Yes, they have. In this case, however, while EDPR has made arrangements for all  
5 the "safe harbor" components for a nameplate capacity of approximately 200 MW  
6 for the Project, the federal production tax credit expires at the end of 2020.  
7 Petitioner projects a tight market for wind project components and despite  
8 securing contractual rights to components, some components might be difficult to  
9 physically obtain despite those contract rights. The end of the federal production  
10 tax credit requires Petitioner to seek a higher materiality threshold for a decrease  
11 in nameplate capacity. If the nameplate capacity of the Project is decreased at all  
12 within the materiality thresholds, Petitioner will, of course, report that decrease  
13 pursuant to the reporting obligations agreed to above in my testimony.  
14 Accordingly, Petitioner requests the ability to decrease the nameplate capacity of  
15 the Project by up to 12 MW without impacting the materiality threshold. Finally,  
16 a decrease of 12 MW will not cause the Project to require any new approvals.  
17 Petitioner will give notice to White County (pertaining to the Economic  
18 Development Agreement and building permits), the FAA and MISO, in addition  
19 to the Commission.

20 **Q58. Does this conclude your direct testimony?**

21 A. Yes, it does.

**VERIFICATION**

I hereby verify under the penalties of perjury that the foregoing representations are true to the best of my knowledge, information, and belief.

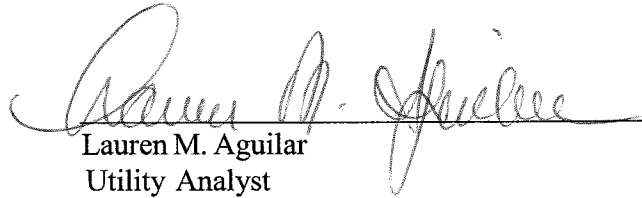
By:   
Ryan J. Brown

**LIST OF ATTACHMENTS**  
**FOR VERIFIED DIRECT TESTIMONY OF RYAN J. BROWN**

Attachment RJB-1	Preliminary Site Map
Attachment RJB-2	Executive Summary of Phase I Environmental Site Assessment
Attachment RJB-3	Site Characterization Study Executive Summary
Attachment RJB-4	Feasibility Study
Attachment RJB-5	System Impact Study
Attachment RJB-6	Interconnection Service Agreement
Attachment RJB-7	EDP Renováveis' 2017 Annual Report

**AFFIRMATION**

I affirm, under the penalties for perjury, that the foregoing representations are true.

A handwritten signature in cursive script, appearing to read "Lauren M. Aguilar", written over a horizontal line.

Lauren M. Aguilar

Utility Analyst

Indiana Office of Utility Consumer Counselor

August 12, 2019

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Date

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the *Indiana Office of Utility Consumer Counselor's Testimony of Lauren M. Aguilar* has been served upon the following parties of record in the captioned proceeding by electronic service on August 12, 2019.

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