STATE OF INDIANA

INDIANAN UTILITY REGULATORY COMMISSION

APPLICATION OF INDIANA MICHIGAN POWER COMPANY, AN INDIANA CORPORATION, FOR APPROVAL OF 20 MW_{AC} 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**

OFFICE OF THE UTILITY CONSUMERS COUNSELOR'S BRIEF IN SUPPORT OF PROPOSED ORDER

The Office of Utility Consumer Counselor ("OUCC"), by counsel, submits this Brief in Support of its Proposed Order, and would show the following:

I. INTRODUCTION

Indiana Michigan Power Company ("I&M" or "Petitioner") filed this Application pursuant to Ind. Code ch. 8-1-8.8. The Indiana General Assembly made several findings at the beginning of the chapter. One of those findings states: "Indiana has considerable natural resources that are currently underutilized and could support development of new energy production or generating facilities, including coal gasification facilities, at an affordable price." (Ind. Code § 8-1-8.8-1(a)(3) (Emphasis added). Thus, the General Assembly recognized that while encouraging clean energy projects with financial incentives, there are limits as to what constitutes an affordable price. It is within this framework the relief requested should be viewed.

I&M failed to sufficiently support its application requesting the approval of financial incentives under Ind. Code § 8-1-8.8-11 for its proposed South bend Solar Project ("SBSP" or "Project"). I&M has not shown that the project is "reasonable and necessary," as required under Ind. Code § 8-1-8.8-11(a). Based on the evidence presented, the SBSP is unreasonable because it is excessively expensive, I&M's ownership of the Project places unnecessary risks on ratepayers, and I&M has not sufficiently supported other purported benefits of the Project. The Commission should reject I&M's request as proposed because I&M failed to provide evidence that would support a Commission finding that the SBSP is reasonable and necessary.

II. STATUTORY CRITERIA

I&M requests the Commission to approve the Company's proposal to construct, own and operate a single site, 20 MW_{AC} name plate capacity solar facility. In accordance with Ind. Code § 8-1-8.8-11, I&M requests the Commission approve associated accounting and ratemaking treatment for the Project. Ind. Code § 8-1-8.8-11(a) provides: "The commission shall encourage clean energy projects by creating the following financial incentives for clean energy projects, if the projects are found to be reasonable and necessary…" Ind. Code § 8-1-8.8-11(b) provides, in part, that an "eligible business must file an application to the commission for approval of a clean energy project under this section." A "clean energy project" is defined under Ind. Code § 8-1-8.8-2, and an "eligible business" is defined under Ind. Code § 8-1-8.8-6. The OUCC does not dispute that the SBSP is a "clean energy project" and that I&M is an "eligible business" as defined.

III. I&M'S PROPOSAL IS NOT REASONABLE OR NECESSARY

A. SBSP is Excessively Expensive

The SBSP, as proposed, is expected to cost $36.77 million[1], or $1,838/kW. Based on I&M's calculations and production estimates, the levelized cost of energy ("LCOE") over the 30-year life of the facility would be $82.38/MWh.[2] While the dollar-per-kW and LCOE of this level is still expensive compared to other solar projects, OUCC witness John Haselden presents evidence that the LCOE is even higher. Mr. Haselden compared the SBSP dollar-per-kW cost to recent information provided by NIPSCO in its Integrated Resource Plan ("IRP").[3] NIPSCO showed an average bid price for solar projects of $1,151/kW, almost half the cost of the SBSP. While I&M witness Joseph DeRuntz attempts to explain that economies of scale are achieved with larger projects, he does not provide any evidence to show why the SBSP costs are almost 60% higher than seen with NIPSCO.[4] This comparison also begs the question of why I&M is not seeking to achieve greater economies of scale by constructing a larger facility or in a location with a more suitable climate. Mr. Haselden also points to a recent Energy Information Administration ("EIA") report for other solar project cost comparison.[5] Even looking at projects going into service in 2021, as Mr. DeRuntz does in his rebuttal, the SBSP is less than 1% from the high end of range shown, $82.38/MWh for the SBSP compared to $82.80/MWh in the EIA study.[6] However, Mr. DeRuntz does not point out, from that same table, the simple average of $47.4/MWh and a capacity-weighted average of $39.9/MWh, both far below the SBSP cost and in line with the average pricing NIPSCO received pursuant to its RFP. Finally, Mr. Haselden points to Lazard's Levelized Cost of Energy analysis from November 2018, showing a range for utility-scale solar projects from $36-

[1] Direct Testimony of Joseph DeRuntz, p. 10, l. 21.
[2] DeRuntz Direct, p. 13, l. 8-10.
[3] Direct Testimony of John Haselden, Attachment JEH-5, p. 3 of 50.
[4] Rebuttal Testimony of Joseph DeRuntz, p. 4, l. 13-22.
[5] Haselden Direct, Attachment JEH-5.
[6] DeRuntz Rebuttal, p. 6, l. 11-15, citing OUCC Attachment JEH-5, p. 22 of 50.

46/MWh.[7] Mr. DeRuntz replies that the Lazard study uses assumptions that are different than the SBSP, such as pricing for a larger, 50 MW facility in a higher insolation area.[8] Insolation is the amount of solar radiation received by a solar facility. Mr. DeRuntz provided a map, Attachment JGD-3R, showing the insolation levels for Indiana. Again, even accounting for the size and capacity factor differences, DeRuntz provides no evidence as to why I&M's calculated LCOE is so much higher than range in the Lazard analysis.

Mr. Haselden describes the capacity factor of the Project as lower than similar facilities, with a capacity factor of 20.6% for the SBSP compared to 23-24% for other facilities.[9] Mr. Haselden states that more solar panels may be added to a facility, due to lower-cost panels, such that the direct current capacity of the facility would be up to 35% higher than the alternating current nameplate rating. A facility may be optimized by balancing the additional costs of the panels to increase energy production against the value of the incremental production. A facility with lower capacity factor would result in lower energy production for a given amount of capacity and therefore increase the LCOE of the facility, such as seen with the SBSP. Mr. DeRuntz responds that optimization was taken into account in the bidding process and resulted in the most cost effective solution for optimizing energy output.[10] Mr. DeRuntz also notes that the other facilities referenced by Mr. Haselden are in areas with much higher insolation, and argues that the comparison is inappropriate.[11] The solar insolation map provided by Mr. DeRuntz shows that the South Bend area has some of the lowest insolation in the state, and other areas within I&M's service area that have much higher insolation values. Mr. Auer also states that lake-effect snowfall

[7] OUCC Attachment JEH-5, p. 33 of 50.
[8] DeRuntz Rebuttal, p. 6, l. 16 – p. 7, l. 2.
[9] Haselden Direct, p. 17, l. 15 – p. 18, l. 5.
[10] DeRuntz Direct, p. 7, l. 10-17.
[11] DeRuntz Direct, p. 5, l. 1-10.

can impact the output of the solar facility.[12] These negatives of the SBSP location also begs the question of why I&M is not constructing the project in an area of the state that has higher insolation, away from lake-effect snowfall, and where a higher capacity factor could be achieved. I&M's arguments that customers should pay more for the project because I&M, solely within its discretion, chose a poor location are nonsensical.

Finally, Mr. Haselden testifies the land costs for the facility site are excessive.[13] One of I&M's siting criteria for the facility was that it be "[l]ocated in the South Bend area with highly [sic] visibility from public roads."[14] I&M's initial targeted zone of properties was centered on the University of Notre Dame campus in South Bend.[15] As Mr. Haselden explains, this results in high-cost urban and suburban properties instead of locating the facility in more rural, and lower-cost, areas driven by the participation of Norte Dame in the Project. If Notre Dame simply wanted to purchase renewable energy or RECs, it has the ability to do so through other opportunities as described below by OUCC witness Aguilar. However, the co-branding agreement between I&M and Notre Dame[16] demonstrates that Notre Dame was specifically interested in this Project, and I&M's siting requirements were specifically tailored to that interest. Notre Dame's contribution for the RECs from the Project are a small fraction of the land cost, and does not cover the premium paid for the location. The co-branding for both Notre Dame and I&M, and associated image building for the Project, do not justify the premium cost that I&M customers must now bear.

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[12] Auer Rebuttal, p. 16, l. 2-3.
[13] Haselden Direct, p. 17, l. 4-14.
[14] DeRuntz Direct, p. 7, l. 12.
[15] Direct Testimony of Lauren Aguilar, Attachment LMA-1, I&M's response to OUCC DR 3-11.
[16] Lucas Rebuttal, p. 6, l. 9-14.

Mr. Lucas responds for I&M that the price paid for the location is not unreasonable "for the area" and that the price paid for the land was not demonstrated to be excessive "given its location."[17] However, this is precisely Mr. Haselden's point, the Project should not be located "in the area," with Mr. Lucas acknowledging that it "may be so" that the cost of land in a rural location would be less.[18] I&M only considered property in the South Bend area. If the Commission rejects the OUCC's primary recommendation to deny the Petition, the OUCC alternatively recommends that the land cost for the SBSP be disallowed because it is unreasonably excessive, due to I&M's requirement that the facility be located near South Bend in a highly visible location and the image building nature of the project.

B. The Project Presents Excessive Risks to Ratepayers

Mr. Haselden also discusses several risks that I&M imposes on ratepayers through the development and ownership of the Project. The first risk is that I&M will be unable to take advantage of the investment tax credit ("ITC"). Currently, the federal government allows entities to claim a credit on taxes for renewable generation technologies such as solar. An entity can only claim the credit if it has taxable income that can be reduced by the credits amount. Mr. Haselden explains that I&M, (and its parent company, American Electric Power), has been unable to take advantage of the ITC from previous renewable projects and has deferred the credit from previous years.[19] If I&M cannot take advantage of the ITC for the Project, this would increase the LCOE by $8/MWh, further increasing the costs of the facility imposed on ratepayers.[20] Mr. Auer responds

[17] Rebuttal Testimony of David Lucas, p. 24, l. 5-18.
[18] Lucas Rebuttal, p. 24, l. 7-8.
[19] Haselden Direct, p. 14, l.4-9, Attachment JEH-2, responses to OUCC DRs 1-34, 3-17, 3-18, and 3-19.
[20] Haselden Direct, p. 14, Table JEH-2.

that I&M is forecasting that it will be able to utilize the ITC, beginning in 2019.[21] Mr. Auer also responds that if I&M cannot utilize the ITC, I&M will amortize that year's ITC amount over the remaining life of the asset.[22] This means the project is an even worse deal for ratepayers than the $82.38/MWh estimated by I&M, because ratepayers do not gain the advantage of the time value of money by seeing an immediate benefit from the ITC. It is a better deal for I&M who will realize a return on the full investment without the discount of the ITC until such time as it can realize the deferred ITC.

Although the risk is smaller, in absolute value, Mr. Haselden also expressed concern that I&M did not take into account the increased cost due to higher property taxes on the Project.[23] The value of the land, for property tax purposes, will change when the use changes from agriculture. Mr. Auer confirmed in his rebuttal testimony that I&M did no increase the value of the land.[24] Mr. Auer explains that it is not known or estimable, but that there is a "likelihood" that the land price will increase. However, I&M does not take the likely increase into account at all. An increase in property taxes as calculated by Mr. Haselden using the current county tax rates, would increase the LCOE by almost $8/MWh.

Another risk imposed by I&M is the risk associated with potential Operation and Maintenance ("O&M") costs. Because I&M will own the facility, I&M ratepayers will pay for any equipment failures or repair, net of any warranties. As an example of this type of risk, Mr. Haselden notes that another I&M solar facility has not produced power since July 2018 due to a transformer failure.[25] Mr. Haselden calculates the cost spent so far on the other facility as $153/kW for 2018

[21] Auer Rebuttal, p. 6, l. 9 – p. 7, l. 10.
[22] Auer Rebuttal, p. 6, l. 9 – p. 7, l. 10.
[23] Haselden Direct, p. 15, l. 5 – p. 16, l. 3.
[24] Auer Rebuttal, p. 10, l. 1-4.
[25] Haselden Direct, p. 11, l. 11-17.

and $95/kW for 2019, compared to a projected $15/kW-year for the SBSP, shows the magnitude of the O&M risk. In addition, there has been no power output from the facility. I&M witness Auer argues that a certain level of maintenance will be needed, but that I&M needs to have the opportunity to recover O&M costs incurred for providing service to customers.[26] I&M witness DeRuntz also argues other than the one down facility (Deer Creek), other equipment has been reliable, and reliance on an isolated historical capital expenditure to justify limiting future O&M expense is not appropriate.[27] While, I&M may want to downplay the O&M risk to ratepayers, the risk to ratepayers is serious and should bear weight on any decision regarding the reasonableness and necessity of a facility. The risk exists and will be imposed on ratepayers as the SBSP will be an I&M owned facility.

Finally, Mr. Haselden explains that ratepayers would be subject to any risk if project costs exceed estimates.[28] Mr. DeRuntz responds that the EPC contract for the facility is fixed, removing uncertainty for the majority of the total Project cost.[29] While Mr. DeRuntz acknowledges the interconnection cost is based on a Class V estimate, with an accuracy of -50% and +100%, he is confident that the Project will be completed within the total estimated cost.[30] However, in Mr. DeRuntz's response to the process for managing project costs, he does not directly address whether there will be cost overruns.[31] Rather, he only states that AEPSC will track and project costs on a monthly basis, and if there is a cost change, it will be recorded, reviewed, and approved before any contingency is allocated.

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[26] Auer Rebuttal, p. 5, l. 16 – p. 6, l. 7.
[27] DeRuntz Rebuttal, p. 9, l. 14 – p. 10, l. 7.
[28] Haselden Direct, p. 10, l. 14 – p. 11, l. 5.
[29] DeRuntz Rebuttal, p. 8, l. 4-5.
[30] DeRuntz Rebuttal, p. 8, l. 9-12.
[31] DeRuntz Rebuttal, p. 9, l. 6-12.

If the Commission declines to adopt the OUCC's primary recommendation and finds the project reasonable and necessary Mr. Haselden alternatively recommends, in order to address the excessive cost of the SBSP and limit the risk to ratepayers, that cost recovery be limited to a flat $50/MWh over the life of the project, that O&M expenses be capped at $15/kW/year, and that the land costs be disallowed.

C. Project is Not Needed

Mr. Haselden raises concerns about how the Project is inconsistent with I&M's IRP. Currently, there is no indication of a capacity shortfall until 2023, as noted by Mr. Torpey, based on the assumption of not renewing the lease of Rockport 2.[32] However, it is not known at this time whether the lease will be extended based on the Fifth Joint Modification to Consent Decree.[33] Whether or not the lease is renewed, the SBSP is not immediately needed to address a capacity shortfall. Additionally, Mr. Haselden is concerned that the SBSP was included as a fixed assumption in the 2019 IRP and was not revised to account for changing conditions.[34] As noted by Mr. Haselden, an IRP should be flexible and allow for changing circumstances.[35] Although Mr. Torpey indicates the SBSP was included as a "going in resource" due to the amount of time it takes to develop, gain approval, and construct a project,[36] the fact remains that the project is not needed, at a minimum, for several years.

Importantly, Mr. Haselden notes that the 2019 IRP models solar prices are much lower than presented in this proceeding.[37] Mr. Torpey notes that the estimated price in the 2019 IRP is

[32] Torpey Rebuttal, p. 4, l. 12-14.
[33] Torpey Rebuttal, p. 14, l. 17 – p. 5, l. 1.
[34] Haselden Direct, p. 5, l. 8 – p. 6, l. 5.
[35] Haselden Direct, p. 6, l. 5-12.
[36] Torpey Rebuttal, p. 5, l. 11-14.
[37] Haselden Direct, p. 5, l. 3-5.

for projects in 2022.[38] However, Mr. Torpey acknowledges that the "estimate reflects the assumption that solar resource costs will continue to trend downward."[39] If I&M expects that solar prices will continue to decrease, and resources are not needed until 2023, then waiting to allow prices to fall further, and being flexible in its investment decisions, would reduce the excessive cost impact that the SBSP will put on I&M's ratepayers. I&M should follow the guidance provided in its latest IRP to provide more cost effective solar generation for its customers.

Finally, Mr. Haselden notes that I&M's current generation portfolio is dominated by nuclear and coal generation. The addition of the SBSP, given its size and capacity factor, will increase the amount of renewable energy for I&M by 0.1%, which does not represent meaningful diversification of resources.[40] I&M witness John Torpey notes that the 2015 IRP included the addition of solar resources in small increments, including 20 MW in 2020, to limit larger capital outlays.[41] It should be noted that PJM credits only approximately half of this amount towards I&M's resource reserve requirements. However, given the fact that smaller facilities do not achieve the economies of scale of larger facilities, as acknowledged by I&M witness Mr. DeRuntz, and therefore have higher capacity and energy costs, it seems inefficient to add smaller units when larger units would have a greater impact from both a cost and diversification perspective.

D. No Support for Alleged Benefits

I&M provides extensive testimony describing the "intangible" benefits of the SBSP, particularly that it will support economic development.[42] However, despite referencing the fact

[38] Torpey Rebuttal, p. 7, l. 1-5.
[39] Torpey Rebuttal, p. 7, l. 7-8.
[40] Haselden Direct, p. 6, l. 17 – p. 8, l. 2.
[41] Torpey Rebuttal, p. 6, l. 9-13.
[42] See e.g. Direct Testimony of Toby Thomas, p. 12, l. 3 – p. 13, l. 12; Rebuttal Testimony of Toby Thomas, p. 2, l. 19 – p. 4, l. 15; Lucas Rebuttal, p. 16, l. 7 – p. 17, l. 20.

that many companies are seeking renewable energy solutions,[43] I&M has not provided any evidence of a direct link between the SBSP and any company that would want to relocate or expand its operations in the I&M service area. I&M also testified that "it has been in contact with 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."[44] There is no discussion or evidence presented of how the approval of the SBSP will lead these mystery companies to locate in Indiana. There is no discussion of what kind of renewable generation solutions these companies are seeking, or how these companies would weigh the presence of the SBSP in their decision-making. I&M is merely stating that companies are interested in renewable generation solutions, then describing the assumed economic development potential of the SBSP, and then expecting the Commission to infer a connection between the two that is, at best, speculative and completely without support in I&M's testimony.

I&M provided examples of the sustainability goals of various companies,[45] but could not provide any examples of these companies participating in I&M's renewable energy programs.[46] OUCC witness Aguilar, on the other hand, provided several examples of communities and companies supporting renewable energy outside of I&M's products, acquiring RECs independently, self-generating using renewable generation, or entering into "virtual" PPAs with renewable generation as recently seen in Cause No. 45202. Additionally, I&M has described many "conversations" it has had with customers and stakeholders regarding renewable energy,[47] however no information was provided on who, when, and in what context these conversations took

[43] Thomas Direct, p. 12, l. 5-6, Lucas Rebuttal, p. 16, l. 10-14.
[44] Lucas Rebuttal, p. 16, l. 10-14.
[45] Aguilar Direct, Attachment LMA-1, I&M's response to OUCC DR 5-4.
[46] Aguilar Direct, Attachment LMA-1, I&M's response to OUCC DR 7-7.
[47] Lucas Rebuttal, p. 14, l. 11; p. 19, l. 14; p. 23, l. 12.

place. Merely stating that, from these "conversations," I&M claims people want visible projects they can "feel a part of"[48] but does not connect economic development to the SBSP. Rather than provide specific evidence of economic development resulting from the SBSP, I&M relies on speculation that business leaders will see the facility "that may have an interest in locating a business, starting a new business, or providing funding to support green energy efforts."[49] As referenced in Mr. Haselden's testimony, it is an "expensive, and incorrect, assumption that the SBSP will serve as a "Field of Dreams" proposition (i.e. 'If you build it, [they] will come')".[50]

Mr. Lucas responds that while customers have not participated in I&M's renewable programs, it does not invalidate the totality of the information provided in the responses, that customers and companies support renewable generation.[51] However, I&M dos not provide any direct support that these companies will do anything in response to the SBSP. I&M has not provided any connection between companies' statements of renewable goals, the SBSP, and locating/expanding in the I&M service area. I&M only provides statements on economic development that are conclusory, aspirational, and speculative.

E. Other issues

I&M argues it is State policy to support development of renewable energy, by specifically encouraging this type of generation, because small renewable generation does not need to meet the CPCN requirements. In this case, the IURC should afford the Project "deference, as intended by the legislature."[52] However, the statute does not authorize Commission "deference" for these types of projects. The statute should not be read as providing a blank check for a utility to pursue a

[48] Lucas Rebuttal, p. 19, l. 16.
[49] Lucas Rebuttal, p. 23, l. 6-9.
[50] Haselden Direct, p. 9, l. 15-17.
[51] Lucas Rebuttal, p. 22, l. 6-13.
[52] Thomas Rebuttal, p. 3, l. 4-6; p. 6, l. 10-20

project that is as seriously deficient as this one. The Commission should reject I&M's attempt to read legislative intent in a state where none exists, unless specifically stated in the statute.

Mr. Haselden testifies the potential educational opportunities are overstated.[53] He states that the SBSP is a conventional commercial operation and is not an experimental or research project. Mr. Lucas responds that the Alliance Agreement allows for the sharing of production data with Notre Dame for research and education projects, and the parties may research and develop additional projects.[54] While the agreement may provide the opportunity, no specifics are mentioned, and the goals seem speculative. As Mr. Haselden noted, the SBSP is a conventional resource with a well-defined expectation of performance.

Mr. Haselden raised the issue of how renewable energy credits ("RECs") generated by the SBSP are treated by I&M, along with a more general concern about I&M's overall REC strategy.[55] RECs are the environmental component of renewably generated energy, generally with one REC produced for one MWh of renewable energy. An entity can claim to be utilizing renewable energy by "retiring" the REC, or the REC can be bought or sold on various markets. Although a final decision on I&M's REC strategy may be addressed in I&M's pending rate case, Cause No. 45235, Mr. Haselden raised a concern that I&M has not monetized (sold) millions of dollars of RECs for the benefit of I&M's ratepayers.

In response to Mr. Haselden's concern, Mr. Thomas responds that selling the RECs would eliminate the ability of the SBSP to attract new or existing customers.[56] However, because RECs

[53] Haselden Direct, p. 8, l. 3-11.
[54] Lucas Rebuttal, p. 11, l. 15 – p. 12, l. 14.
[55] Haselden Direct, p. 18, l. 6 – p. 20, l. 2.
[56] Thomas Rebuttal, p. 5, l. 9-12.

would continuously be generated by the SBSP, it is unclear how selling unutilized RECs would eliminate the (speculative) opportunity of the SBSP to attract businesses. Also, related to the aspirational nature of the economic development described above is I&M's altruistic desire to meet "the interests of I&M's customers in being served with more renewable energy."[57] I&M claims that by selling RECs, I&M and I&M's customers would no longer be able to claim that they receive green energy.[58] This argument fails for two reasons. First, I&M has not provided any information on how it markets or advertises this general claim of green energy to its customers. Despite customers' desire that I&M generate more renewable energy, I&M has not provided any evidence that it is informing customers of the extent to which I&M generates renewable energy, which would be less than 6%, even with the inclusion of the SBSP.[59] Additionally, this "promoting" could be viewed as image building by I&M. Second, I&M currently has renewable energy programs for customers who wish to purchase renewable energy. I&M has even proposed the IM Green plan in its rate case to allow customers to purchase renewable energy. To the extent that customers participate in the renewable programs, I&M can retire RECs on the participants' behalf. To the extent that customers do not participate in the renewable programs, I&M can sell the unutilized RECs and return sale proceeds for the benefit of all I&M ratepayers.

One additional issue addressed by Mr. Haselden related to the 20% administrative fee paid Notre Dame to cover customer specific aspects of the arrangement. Mr. Haselden recommended, to the extent these administrative costs are greater than the fees collected from Notre Dame, I&M

[57] Thomas Rebuttal, p. 5, l. 5-6.
[58] Auer Rebuttal, p. 11, l. 10 – p. 13, l. 20.
[59] Haselden Direct, Table JEH-1.

customers should not be required to pay the excess costs.[60] I&M agrees it will not seek recovery of any administrative expenses over the 20% from other customers.[61]

IV. RATE RECOVERY

If the Commission finds this project reasonable and necessary, OUCC witness Wes Blakley recommends rate recovery for the SBSP occur through a renewable energy project rider.[62] Mr. Blakley testifies that the Commission and OUCC will be able to gain valuable cost information regarding different generating technologies or between different renewable energy projects through the rider that may be lost if the SBSP is blended into a utility's rate base.[63] Mr. Blakley also testifies that "[b]y recovering costs associated with renewable investments in a tracker, I&M will receive a return 'of' the renewable plant investment through depreciation and a return 'on' the renewable plant investment net of accumulated depreciation."[64]

I&M witness Brent Auer responds that collecting performance data is unnecessary because I&M reports performance data through its performance metric report.[65] However, the performance metrics included in the report only provide aggregated data for I&M's generating facilities. Projects included in the tracker will provide information for the individual facilities. In addition, the performance metric report does not capture cost information for the individual facilities. Mr. Auer also responds that this position represents a change in the OUCC's position from I&M's last rate case.[66] On this issue, the OUCC has the right to take a position based on the specifics of the case. In this proceeding, as shown by Mr. Blakley's testimony, the OUCC recommends rate

[60] Haselden Direct, p. 20, l. 13-17.
[61] Auer Rebuttal, p. 14, l. 16-25.
[62] Direct Testimony of Wes Blakley, p. 2, l. 16-18.
[63] Blakley Direct, p. 2, l. 18 – p. 3, l. 2.
[64] Blakley Direct, p. 6, l. 2-4.
[65] Auer Rebuttal, p. 3, l. 10-21
[66] Auer Rebuttal, p. 4, l. 11-12.

recovery though a renewable energy project rider. Finally, Mr. Auer asserts that Mr. Blakley's recommendation is contradictory to Mr. Haselden's recommendation to limit rate recovery.[67] However, these recommendations are not mutually exclusive, and are available to provide the Commission different options depending on the final decision reached in this Cause.

V. I&M'S CASE-IN-CHIEF

On another matter, the OUCC is concerned about the state of I&M's filing. I&M provided initial testimony indicating two contracts were complete that are central to this case, the EPC contract to construct the facility, and the agreement with Notre Dame that sets out the relationship between the University and I&M.[68] However, these contracts were not included with the initial filing, and were not provided, at first, when requested by the OUCC.[69] It was also determined in the DR response from I&M that the contracts were not executed, which was not indicated in I&M's initial testimony. The OUCC still maintains, as was raised in the Motion to Dismiss, a full analysis of the Petition was not possible without these contracts. It was only after the Motion to Dismiss was filed on July 2, 2019, that I&M provided copies of the contracts to the OUCC.[70] I&M also provided copies of the contracts to the Commission on July 12, 2019 in its Response to Docket Entry of July 3, 2019. It must be stressed, that even after providing those contracts, the filing was incomplete as the "Alliance Agreement" was not included. I&M also did not comply with the OUCC's outstanding discovery request to include the executed contracts upon execution. It was not until I&M filed its rebuttal testimony, that the executed contracts were provided, several weeks after the contracts were signed.

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[67] Auer Rebuttal, p. 15, l. 14-23.
[68] Initial Petition, p. 4, "I&M and the University of Notre Dame ("Notre Dame"), an I&M customer, have entered into a 30-year agreement…"; Direct Testimony of Toby Thomas, p. 13, l. 5-12; Direct Testimony of Joseph DeRuntz, p. 10, l. 6-10.
[69] Aguilar Direct, Attachment LMA-1, I&M's Response to OUCC DR 1-10.
[70] I&M Exhibit 10, I&M's Response to Docket Entry Dated July 3, 2019, p. 2.

The OUCC understands, in certain proceedings, a petitioner may describe the terms of a potential contract before the contract is executed. However, that is not what happened here. In this case, I&M represented in its testimony the agreements were completed, but failed to support these statements with the actual contracts that are fundamental elements of the proceeding. I&M notes, in defense of the failure to provide the contract, that there were no revisions between the end of negotiations and the date the contracts were executed. However, this was only known in hindsight, and should not be relied upon in defense of I&M's actions.

A related, but separate, issue is I&M's reliance on its own discovery responses to support its positions.[71] It is concerning a significant amount of information relied upon by I&M was only raised in discovery. Not having the information presented in the case-in-chief hinders the OUCC's and the Commission's ability to properly analyze the Petition. As noted by the Commission, and cited by the OUCC in the Motion to Dismiss:

> [The Petitioner] is reminded that it bears the burden of proof in demonstrating it is entitled to its requested relief. The OUCC should not have to request or otherwise seek basic supporting documentation that should have been provided with Petitioner's case-in-chief to support its requested relief. Further, even if the OUCC is able to ascertain through discovery the information necessary to support Petitioner's requested relief, the Commission, which is the entity that must ultimately render a decision on the matter, would still lack the necessary information to make its determination because it is not privy to the parties' discovery.[72]

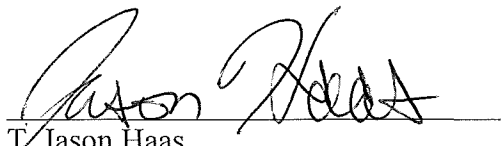
VI. CONCLUSION

[71] See Lucas Rebuttal, Attachment DAL-3R, I&M Response to OUCC DR 3-2 and 3-3; Attachment DAL-6R, I&M Response to OUCC DR 3-22; Attachment DAL-7R, I&M Response to OUCC DR 5-2; p. 13, l. 23 – p. 14, l. 1; p. 20, l. 17; p. 20, l. 20; p. 21, l. 2; p. 21, l. 6; p. 21, l. 18; p. 21, l. 21; DeRuntz Rebuttal, Attachment JDG-1R, I&M Response to OUCC DR 1-25; p. 3, l. 5; Torpey Rebuttal, Attachment JFT-1, I&M Response to OUCC 3-31; p. 5, l. 11; p. 6, l. 14; p. 7, l. 3; Auer Rebuttal, p. 6, l. 16; p. 7, l. 3.

[72] *City of Evansville, Indiana*, Cause No. 45073, Order of the Commission, at p. 8 (December 19, 2018).

Based on the evidence presented, and by I&M's own admission, the SBSP is not large enough to obtain better economies of scale, is located in one of the worst areas of the state in terms of solar insolation, and is located in an area of high land prices, in addition to being at the upper end or over the range of cost comparisons for other solar projects. The evidence also shows that the development of the Project will impose certain risks onto ratepayers, which I&M has not shown any willingness to alleviate. Additionally, I&M has not provided any direct evidence that the approval and construction of the SBSP will directly lead to economic development in I&M's service area. I&M has not supported the reasonableness and necessity of the SBSP, and, accordingly, the Commission should deny I&M's Petition. Alternatively, should the Commission find the project reasonable and necessary, the Commission should implement protections to limit the risks for ratepayers, that cost recovery be limited to a flat $50/MWh over the life of the project, that O&M expenses be capped at $15/kW/year, and that the land costs be disallowed.

Respectfully submitted,



T. Jason Haas
Attorney No. 34983-29
Deputy Consumer Counselor

CERTIFICATE OF SERVICE

This is to certify that a copy of the ***Indiana Office of Utility Consumer Counselor's Brief in Support of Proposed Order*** has been served upon the following parties of record in the captioned proceeding by electronic service on September 24, 2019.

Indiana Michigan
Teresa Morton Nyhart
Jeffrey M. Peabody
BARNES & THORNBURG LLP
tnyhart@btlaw.com
jpeabody@btlaw.com

Matthew S. McKenzie
AMERICAN ELECTRIC POWER SERVICE CORP.
msmckenzie@aep.com

Citizens Action Coalition of Indiana
Jennifer A. Washburn
Margo Tucker
CAC
jwashburn@citact.org
mtucker@citact.org

T. Jason Haas
Deputy Consumer Counselor

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR
PNC Center
115 West Washington Street
Suite 1500 South
Indianapolis, IN 46204
infomgt@oucc.in.gov
317/232-2494 – Telephone
317/232-5923 – Facsimile