

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

PROPOSED ORDER

SEPTEMBER 24, 2019

Respectfully submitted,



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

STATE OF INDIANA

INDIANA 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) CAUSE NO. 45245
INCLUDING: TIMELY RECOVERY OF)
COSTS INCURRED DURING)
CONSTRUCTION AND OPERATION OF THE) APPROVED:
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.)

ORDER OF THE COMMISSION

Presiding Officers:

David E. Ziegner, Commissioner

Jennifer L. Schuster, Administrative Law Judge

On June 12, 2019, Indiana Michigan Power Company ("I&M" or "Company") filed its Verified Application with the Indiana Utility Regulatory Commission ("Commission") for approval of a 20 megawatt (MW)_{AC} Clean Energy Solar Project, referred to as the "South Bend Solar Project," ("SBSP" or "Project") and for associated accounting and ratemaking relief and sale of renewable energy credits ("RECs") as further detailed below. I&M also filed its case-in-chief on June 12, 2019.

On June 18, 2019 the Citizens Action Coalition of Indiana, Inc. ("CAC") filed its petition to intervene, which petition was granted by docket entry dated June 24, 2019. On June 27, 2019, I&M, the Indiana Office of Utility Consumer Counselor ("OUCC") and CAC filed a stipulation and agreed procedural schedule and associated terms in lieu of prehearing conference, which agreement was approved by docket entry dated June 27, 2019. On July 2, 2019, the OUCC filed a Motion to Dismiss or in the Alternative, Motion to Stay Proceeding ("OUCC Motion"), which I&M opposed. By docket entry dated July 3, 2019, the Commission requested information from I&M, which information was provided on July 12, 2019. The OUCC Motion was granted in part and denied in part by docket entry dated July 25, 2019.

On August 12, 2019, the OUCC filed its case-in-chief. CAC did not file testimony. On August 26, 2019, I&M filed its rebuttal evidence. Pursuant to notice as required by law, proof of which was incorporated into the record, a public hearing in this Cause was held on September 9, 2019, at 9:30 a.m. in Room 222, PNC Center, 101 W. Washington Street, Indianapolis, Indiana. Counsel for I&M, the OUCC and CAC appeared and participated at the hearing. At this time, evidence was admitted to the record and cross-examination was waived by the parties. Following the hearing, the parties filed post-hearing proposed orders and briefs in accordance with an agreed procedural schedule.

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

1. **Notice and Jurisdiction.** Due, legal, and timely notice of the evidentiary hearing in this Cause was given and published by the Commission as required by law. Petitioner is a “public utility” under Ind. Code § 8-1-2-1 and an “energy utility” as defined in Ind. Code § 8-1-2.5-2. I&M is an “eligible business” as defined in Ind. Code § 8-1-8.8-6. I&M is subject to the jurisdiction of the Commission in the manner and to the extent provided by the Public Service Commission Act, as amended, and other pertinent laws of the State of Indiana. The Commission has jurisdiction to approve financial incentives for clean energy projects under Ind. Code § 8-1-8.8-11. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

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

3. **Relief Requested.** I&M 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. The facility will be located east of South Bend, Indiana in close proximity to the University of Notre Dame. In accordance with Ind. Code § 8-1-8.8-11, I&M requests the Commission approve associated accounting and ratemaking treatment for the Project as discussed below. I&M and the University of Notre Dame (“Notre Dame” or “University”), an I&M customer, have entered into a 30-year agreement whereby I&M will sell to Notre Dame REC’s representing 40%, or eight MWs, of the overall Project output). I&M requests the Commission approve the sale of RECs. I&M will include the non-administrative fee revenues received through the sale of RECs in its fuel adjustment clause (“FAC”) proceedings as a credit.

4. The Parties' Evidence.

A. I&M's Case-in-Chief. I&M President and Chief Operating Officer, Toby Thomas described I&M's request for approval to construct, own, and operate the South Bend Solar Project. He claimed the need for the Project as part of I&M's continuing actions to transition its generation portfolio to include more renewable energy, and as part of I&M's efforts to support the economic development of the communities it serves. Mr. Thomas also described the arrangements made with the Notre Dame to further its sustainability goals.

1. Reasonableness of Project. Mr. Thomas claimed that I&M's interest in solar power arises from many reasons. Thomas, p. 5. He said I&M supports the use of solar energy as a means for creating a diverse portfolio of generating resources. Mr. Thomas explained that although solar generation is an intermittent energy resource, it provides a zero-carbon source of electricity that can further diversify I&M's generation portfolio, which now consists of coal, nuclear, solar, wind and hydro generation. *Id.* Mr. Thomas testified that I&M's customers are increasingly interested in, and demanding of, the use of more renewables to meet their needs. *Id.* at 6-7. He claimed it also provides I&M with the opportunity to continue the education of I&M's customers about renewable energy. *Id.* at 6.

Mr. Thomas testified that the Company is interested in serving customers in the manner in which they want to be served. He stated I&M has gained valuable experience with the Clean Energy Solar Pilot Project construction and operation, following the Commission's approval in Cause No. 44511 and the SBSP will enable I&M to become more proficient in operating solar generation and integrating it reliably into the PJM transmission grid. Thomas Direct at 9.

Mr. Thomas claimed that the SBSP is consistent with I&M's IRPs. Thomas Direct at 9. He testified I&M's request in this Cause is consistent with achieving the Preferred Portfolio Resource mix set forth in the Company's 2015 IRP, which identified annual solar nameplate capacity additions totaling 350 MWs by 2030 and 600 MWs by 2035. He said the 2015 IRP specifically identified 20 MWs of new solar capacity in 2020. He clarified that these amounts are in addition to the 15 MWs of solar capacity approved in Cause No. 44511 (Clean Energy Solar Pilot Project). Thomas Direct at 9. Thomas testified that to efficiently achieve 350 MW of installed solar investment by 2030, I&M needs to begin planning and installing resources in the near future. *Id.*

Mr. Thomas explained the benefits to I&M and its customers from I&M-owned solar generation Thomas Direct at 10-11. Mr. Thomas also testified that the SBSP will provide diversification of I&M's renewable portfolio. *Id.*

Mr. Thomas suggested that renewable energy projects, such as the SBSP, support the economic development of the communities in which I&M serves. Thomas Direct at 12. He stated that many customers these days are seeking to meet their energy needs with a greater percentage of renewable energy. *Id.* at 12-13. Mr. Thomas identified the Notre Dame arrangement (discussed below) as the first example of a partnership with a customer. *Id.*

2. Project Cost. Mr. Joseph G. DeRuntz, Project Director with AEP Service Corporation ("AEPSC"), explained the project management and technical aspects of I&M's

proposed SBSP. Mr. DeRuntz discussed: 1) I&M's experience with solar energy projects and technology; 2) a general overview of the Project; 3) the Engineering, Procurement and Construction ("EPC") request for proposals ("RFP") process and contract; 4) the estimated capital costs for the Project; 5) the Project schedule, including major milestones; and 6) the operation and maintenance of the Project.

I&M witnesses Thomas and DeRuntz explained that I&M seeks approval to invest approximately \$37 million through 2020 to develop the SBSP. Thomas Direct at 4; DeRuntz Direct at 10-12. The cost of the solar installation is based on a competitive procurement process, with expected issuance of a notice to proceed to the EPC contractor in April 2020 and project construction to start in or around May 2020. Thomas Direct at 4; DeRuntz Direct at 13. As stated by Mr. Thomas, this schedule ensures the Project will qualify for the 26% federal investment tax credit available to projects that begin construction in 2020. Thomas Direct at 4; DeRuntz Direct at 13.

Mr. DeRuntz claimed that based on the competitive bidding process used, the geographical location requirements, and the solar insolation available, the Project cost is reasonable. DeRuntz Direct at 13. He stated that the RFP process resulted in a solar facility cost of \$1,270/kW. He stated that considering the location, the land cost at \$21,500/acre is reasonable and will retain if not increase in value during the life of the Project. He stated that the 34.5 kV connection is a distribution-sized line, which reduces the connection costs. He asserted that the combined solar facility and land cost of \$1,838/kW and first year production of 36,787 MWh/year yield a levelized cost of energy ("LCOE") of \$82.38/MWh, for the 30-year life of the Project. He said the solar facility's expected capacity factor of 20.6% reflects the solar resource profile in northern Indiana. *Id.*

Mr. DeRuntz testified that the estimated cost to operate and maintain the SBSP is \$15/kW-year in 2018 dollars, escalating at 2% per year for the 30-year life of the facility. He said the estimate includes all material and labor needed to perform routine preventative and corrective maintenance, including inverter maintenance and added that the estimated annual operating and maintenance ("O&M") expense compares favorably with I&M's experience managing and operating its four Pilot Project sites, scaled to account for the economies associated with a single 20 MW_{AC} solar facility. DeRuntz Direct at 15.

3. Accounting and Ratemaking. Mr. Brent E. Auer, I&M Regulatory Analysis & Case Manager, explained I&M's requested accounting and ratemaking treatment for the proposed SBSP. Mr. Auer discussed I&M's proposed Solar Power Rider ("SPR"), which provides for timely recovery of the SBSP costs. In addition, he explained how REC sales will reduce the cost of service for all I&M customers. Finally, he discussed how this proceeding works in conjunction with I&M's base case filed on May 14, 2019 in Cause No. 45235.

I&M witness Auer stated that I&M is requesting the Commission approve the SPR tariff to allow for timely cost recovery of the SBSP, including depreciation expense, carrying costs on the post in-service investment, income and property taxes, O&M costs and gross revenue conversion factor ("GRCF") costs. *Id.* Mr. Auer discussed the extent to which the cost recovery will also be reduced by the amortization of the ITC associated with the SBSP. *Id.* at 3-4, 7-8. He

explained that I&M requests the Commission to authorize the depreciation of the South Bend Solar Project over a period of 30 years, which represents the expected life of the facility. *Id.* at 4, 6-7; DeRuntz Direct at 13, 15. Mr. Auer stated that I&M proposes to include the O&M costs associated with operating and maintaining the SBSP and property tax expense within its SPR if it becomes necessary to file SPR rates. *Id.* at 8-9. He said I&M also requests authority to create a regulatory asset to defer any costs associated with the SBSP until they are recovered through the ratemaking process, either through the SPR or base rates. *Id.* at 4, 6.

Mr. Auer noted that I&M filed a base case pending before the Commission as Cause No. 45235. *Id.* at 10. He explained that if cost recovery and rates are established in the base case proceeding and the SBSP project is placed into service prior to December 31, 2020, then I&M will not need to make an SPR filing to establish rates. *Id.* at 10; 12-13. He stated that an order in the base case is expected in the first or second quarter of 2020 and added that if Cause No. 45235 does not address cost recovery or the SBSP is not placed into service on or before December 31, 2020, then I&M proposes to file its first SPR filing shortly after the SBSP project goes into service. *Id.* at 10. Mr. Auer stated that the requested ratemaking treatment will continue until the SBSP is included in rate base in a proceeding that involves the establishment of I&M's basic rates and charges. Mr. Auer estimated a year one rate impact under a SPR filing of 0.17% if the SBSP is not reflect in rates established in Cause No. 45235. *Id.* at 11.

4. **RECs.** Mr. Thomas and Mr. Auer claimed that I&M and Notre Dame have engaged in lengthy and arms-length discussions and worked together to create an agreement that supports Notre Dame's environmental values and goals. Thomas Direct at 13; Auer at 11-12. Mr. Thomas testified that under a 30-year agreement, I&M will provide educational opportunities for Notre Dame's students and faculty, jointly create an awareness campaign for the community, and provide Notre Dame with naming rights for the Project. In exchange, Notre Dame will compensate I&M for RECs in an amount based on 40% of the output of the Project. Thomas Direct at 13; Auer at 12.

Mr. Thomas testified the REC compensation will be based upon the S&P Global Energy Credit Index for a New Jersey Class 1 Renewable Energy Certificate, plus a 20% program administrative fee. He stated that under this approach, the REC compensation will be reset annually in January based upon the average New Jersey Class 1 REC price for the prior calendar year. Mr. Thomas added that this compensation (excluding program administrative fees) will be used to offset the cost of the Project. *Id.*

Mr. Thomas said I&M anticipates that other customers within I&M's footprint may be interested in a similar arrangement to meet their needs by procuring RECs. *Id.* at 14; Auer at 12. Mr. Thomas claimed that while discussions with other customers have not progressed to the point the Company has reached with Notre Dame, I&M's IM Green Rider (IMG) proposal in Cause No. 45235 includes a contract option to address this potential demand. He asserted that under this option, I&M could enter into a multi-year agreement with a customer under which the customer would compensate I&M for a portion of the monthly energy generated by a renewable energy project, such as the SBSP. Thomas Direct at 14-15. He said I&M, in turn, will retire the RECs on behalf of the customer. *Id.* at 14.

Mr. Thomas and Mr. Auer testified that the compensation for the RECs (excluding program administrative fees) will be flowed through the FAC. Thomas Direct at 14; Auer Direct at 12. He stated that this proposal is consistent with the current practice of using the FAC as a vehicle to flow net proceeds from the Company's voluntary Renewable Energy Option to customers. Thomas Direct at 15.

Finally, Mr. Thomas explained that any RECs not subscribed to by customers will be maintained and counted toward I&M's compliance with RPS (Renewable Portfolio Standard) or GHG (Green House Gas) regulations to which it is, or may be, subject. Regardless of any future RPS or GHG mandates, receiving the RECs helps voluntarily reduce GHG emissions per megawatt hour.

B. OUC's Case-in-Chief. Ms. Lauren M. Aguilar, Utility Analyst in the OUC Electric Division, Mr. John E. Haselden, Senior Utility Analyst in the OUC Electric Division and Mr. Wes Blakley, Senior Utility Analyst in the OUC Electric Division, testified in support of the OUC's recommendation to deny I&M's request to construct, own and operate the 20 MW SBSP.

1. Reasonableness of Project. Ms. Aguilar discussed her evaluation of the issues, noted the OUC supports renewable generation facilities that are reasonable, necessary and cost-effective and discussed Ind. Code § 8-1-2-0.5. Public's Ex. 1 at 1-4. Ms. Aguilar stated I&M did not meet its burden of proof by presenting testimony discussing the agreements underlying the SBSP but I&M failed to provide copies of the agreements to support its position. *Id.* at 5. Rather, I&M only provided unexecuted copies of the documents after filing its Motion to Dismiss on July 2, 2019. *Id.* at 6-7. She testified the OUC cannot base its analysis on unexecuted draft agreements, as the terms may change before execution and the OUC's opinion on the draft document may influence the parties' relationship in an unforeseen way. *Id.* at 7-8, also 10. Ms. Aguilar also explained that the Company's case-in-chief included uncertainties and misrepresentations, citing language in testimony referring stating that "I&M and Notre Dame have engaged in lengthy and arms-length negotiations..." and describing terms "[u]nder a 30-year agreement...". *Id.* at 6. She explained that Mr. DeRuntz's statement that "Negotiations with the selected bidder were completed on May 2, 2019" was a misrepresentation because the contract document was still under negotiation at this time. *Id.* at 10. Ms. Aguilar stated that, given the importance of I&M's relationship with Notre Dame to the Project, the contracts are especially important in this case. *Id.* at 8.

Ms. Aguilar explained I&M's evidence did not sufficiently support the reasonableness of the SBSP. *Id.* at 15-16. She testified that the Company's responses to numerous discovery requests, including the unexecuted draft agreements, failed to provide support for its supposed public benefits and do not support all claims made by I&M in its case-in-chief; leaving the OUC and the Commission at a severe informational disadvantage in trying to analyze the reasonableness and necessity of this proposed Project. *Id.* at 12-15; Attachment LMA-1. Ms. Aguilar explained that after discounting the illusory benefits to the South bend area, Notre dame remains the only factor driving the desire for the project, and the OUC is concerned I&M is willing to use captive ratepayers' funds to provide image building for the benefit of one customer. *Id.* at 14. She explained the OUC recommends I&M's requested relief be denied and added should the Commission

approve the SBSP, the approval should be conditioned on the recommendations of OUCC witnesses Haselden and Blakley. *Id.* at 16.

Mr. Haselden discussed his concerns that I&M is overstating the role the SBSP may play in providing an opportunity to learn about renewable energy as the SBSP will be a conventional commercial operation that has well-defined expectations of performance. Public's Ex. 2, at 8. Mr. Haselden also explained that I&M currently has two green power-purchasing options. *Id.* at 9. Mr. Haselden explained that it is misleading to say that customers have the opportunity to participate in the SBSP as a customer would need to make a complicated and concerted effort to execute a contract with I&M for the RECs' specific source to achieve that goal. *Id.* at 9. He questioned whether purchasing RECs would satisfy the requirements of corporate customers that subscribe to the Corporate Renewable Energy Buyer's Principles, as the principles require incremental (new) resources and not the purchase of RECs from an existing source. *Id.* at 9. Mr. Haselden explained that I&M discussed how various municipal and commercial entities have renewable goals, but I&M has not specifically shown how the SBSP will lead to greater economic development and that I&M provided no concrete evidence that the presence of the SBSP will spur companies to move to this region. *Id.* at 9.

2. Project Cost. Mr. Haselden discussed that the SBSP is unreasonably expensive compared to responses to a recent NIPSCO RFP and other reference points for the LCOE of utility-scale solar, and not in the interest of ratepayers as proposed. Public's Exhibit 2 at 16-17, 21. The cost estimated for the SBSP of \$1,838.54/kW compared to the average cost of \$1,151.01/kW for utility-scale build-transfer projects reported in the NIPSCO RFP. Similarly, the average flat-priced PPA for solar reported by NIPSCO was \$35.67/MWh, compared to an LCOE of \$90/MWh for SBSP. Other reference points for LCOE published by the U.S. Energy Information Administration and Lazard show cost ranges of \$37.6 – 45.7/MWh and \$36 – 44/MWh, respectively. *Id.* at 16-17.

He explained his concerns about the role the SBSP plays in fulfilling I&M's 2015 and 2019 IRPs. He explained that the SBSP is far more expensive than the costs I&M used in its IRP's economic modeling, making the Project's selection unlikely if I&M had modeled it in its IRP. *Id.* at 4. Mr. Haselden explained that I&M declined to rerun its modeling based on updated numbers. *Id.* at 5. Mr. Haselden explained that I&M indicated that the cost assumed four years ago in its 2015 IRP are close to the current cost estimate for the SBSP. He stated that information to develop a price forecast for solar made four to five years ago is stale and does not justify ignoring current market conditions. *Id.* He explained that despite an assumption in its IRP that the Project is a "going-in" position, it does not remove the obligation that costs for the SBSP should be at least comparable to the market price of solar power assumed in the same IRP, nor does it relieve I&M of an obligation to construct a facility with a reasonable cost. *Id.* at 5-6. Citing a recent Commission order in Cause No. 45052, "[a] key consideration in long-term resource planning is the need to retain maximum flexibility in utility resource decisions to minimize risks. An IRP developed by a utility should be regarded as illustrative and not a commitment for the utility to undertake." Also, "[t]he credibility of the analysis is critical to the efforts of Indiana utilities to maintain as many options as possible, which includes *offramps*, to react quickly to changing circumstances and make appropriate changes in resources." *Id.* at 6. Mr. Haselden explained that I&M is demonstrating an inability to function in this manner. *Id.* He testified that I&M customers should not be required to pay for the project at a cost higher than I&M modelled in its most recent IRP and should arguably

be lower. *Id.* at 5. Mr. Haselden testified that the project would not represent a meaningful diversification of I&M's generating portfolio. *Id.* at 6-8.

Mr. Haselden stated there are four significant risks I&M is imposing on ratepayers that would not be present if the project was structured as a PPA, which are project costs and overruns, O&M costs and risks, ratemaking treatment of federal tax incentives, and uncertainty of I&M concerning the ability to monetize tax credits. *Id.* at 10-16. Mr. Haselden explained that, under a traditional PPA, I&M would pay for power produced and received on a \$/MWh basis and would not be exposed to financial risk should the project and associated interconnection costs be more than expected. Any overruns to the estimate will be borne by I&M ratepayers. *Id.* at 10-11. Mr. Haselden explains that I&M ratepayers would be subject to all O&M risks associated with the SBSP. If equipment fails or needs repair, I&M ratepayers pay for the costs to repair or replace equipment net of any warranties. Under a PPA, ratepayers are not liable for any of these costs or lost production. *Id.* at 11. Mr. Haselden cites an example of the ownership risk from I&M's Deer Creek solar facility, approved in Cause No. 44511, which has not produced power since July 2018 due to transformer failures. On a \$/kW basis, I&M spent the equivalent to \$153/kW in 2018 and \$95/kW so far in 2019. Comparing these costs to the \$15/kW/year estimate for the SBSP, one can see the magnitude of the O&M risk if something goes wrong. *Id.* Should the Commission approve the Project, Mr. Haselden recommended the Commission cap cumulative O&M expenses. *Id.* at 12.

Mr. Haselden explained that to date, I&M has been unable to take advantage of the federal ITC and tax accelerated depreciation tax benefits associated with its four solar projects approved in Cause No. 44511. Mr. Haselden explains that in the current case I&M discusses cost reductions though the ITC and includes the ITC in its LCOE calculations despite the fact that AEP may not be able to take advantage of the ITC. This is a serious cost risk for ratepayers. Based on his calculations, not being able to use the ITC yields an increased LCOE of \$98/MWh. *Id.* at 12-14. Further, Mr. Haselden explains that if I&M can realize the tax incentives in a timely manner, I&M will realize a significant improvement in cash flow by receiving the 26% tax credit immediately and tax effects of the accelerated depreciation over five years, while I&M will credit ratepayer revenue requirements over the subsequent 30 years, leaving ratepayers with no benefit for the time value of money associated with the tax incentives. *Id.* at 14-15. Mr. Haselden explained that I&M did not reflect increased property values on the land, which will go into effect approximately one year after the solar facility is built. Mr. Haselden provides an estimate of the LCOE which accounts for the property tax error. *Id.* at 15-16.

Mr. Haselden noted that Notre Dame will pay a 20% fee to cover customer specific aspects of the arrangement, and testified that to the extent administrative costs are greater than the fees collected from Notre Dame, I&M customers should not be required to pay the excess costs. *Id.* at 21, 22.

Mr. Haselden explains that a portion of high capital investment is due to the excessive land cost and the 4.5-mile line to I&M's substation. I&M's siting criteria as highly visible from public roads and in close proximity resulted in high-cost urban and suburban properties for which all I&M customers will pay. *Id.* at 17. He recommended the cost of the land not be included for cost recovery due to the image building nature of the cost. *Id.* at 17, 22.

Mr. Haselden explains that although the OUCC supports the development of renewable resources, I&M should develop it in a cost-effective manner, and the SBSP clearly falls short of satisfying reasonable criteria for being in the public interest, primarily due to its exorbitant cost. He recommended the Commission deny recovery of the SBSP costs in the manner I&M requests. Public's Ex. 2 at 1, 20-21. Mr. Haselden offered recommended conditions and an alternative method of cost recovery should the Commission decide to approve the Project including the above referenced cap on O&M cost recovery and a limitation on the per kWh cost recovery based on the value I&M used to model solar in its most recent IRP. *Id.* at 22-23.

3. **Accounting and Ratemaking.** Mr. Blakley addressed I&M's requested accounting and ratemaking treatment. Public's Exhibit 3. He stated that based on the testimony of OUCC witnesses Aguilar and Haselden, the OUCC recommends the Commission deny I&M recovery of the SBSP. *Id.* at 6. He added that if the Commission allows I&M to recover costs associated with the SBSP, a renewable energy project rider, which I&M proposes in the form of the SPR, best accomplishes this. *Id.* at 2, 6. He stated that if renewable energy projects are blended into a utility's rate base, the OUCC is concerned that the Commission and the OUCC will lose valuable cost information regarding different generating technologies or between different renewable energy projects. He referenced the settlement agreement approved in Cause No. 44734 as providing the type of information that could be valuable to the Commission and the OUCC. *Id.* at 3-4. Mr. Blakley discussed the benefits of tracking renewable energy projects and explained that cost recovery through a tracker strikes an appropriate balance between providing a customer benefit in the form of an annual reduction in revenue requirement, while also not harming I&M because the return "on" and "of" will still be matched with its renewable plant investment. *Id.* at 6. He added that in the future such a rider could be used for the recovery of other specific renewable energy projects where cost recovery treatment is requested and approved. *Id.*

4. **RECs.** Mr. Haselden discussed the proposed treatment of the RECs generated at the SBSP and I&M's RECs portfolio. *Id.* at 18-20. Mr. Haselden explained that the production of the SBSP is a metric used to calculate how many RECs will be retired, and, based on Mr. Auer's direct testimony, that Notre Dame will not receive RECs directly generated by the SBSP, but instead will receive RECs from I&M's general portfolio. *Id.* at 18. Mr. Haselden notes that majority of RECs in I&M's portfolio appear to be held until they expire. He recommended that customers could benefit more directly from the sale of RECs. However, I&M will not commit to doing so. The OUCC recommends monetizing all unused RECs in the market and crediting of proceeds through the SPR or FAC. *Id.* at 19-20, 22.

C. **I&M Rebuttal Evidence.**

1. **Reasonableness of Project.** Mr. Thomas claimed that the OUCC's recommendations are contrary to the State's energy policy, which not only supports the orderly deployment of renewable energy, but specifically encourages the very kind of project I&M is proposing here. He said the OUCC's recommendations would turn Indiana's "all-of-the-above" approach to energy into a shortsighted analysis that ignores the intangible merits of adding renewables to I&M's generation portfolio. He stated that the OUCC's recommendations would harm customers, the Company and the communities in which I&M provides service, and explained

that the OUCC's conclusion that this project was developed for and only benefits the University of Notre Dame is simply wrong. Thomas Rebuttal at 2-3, 4-5.

Mr. Thomas disagreed with the OUCC's view of the impact of the project on customers. He claimed that economic development is an important element of the filing because it is essential to increase the amount of load over which I&M's fixed costs of service can be recovered. He also asserted why the SBSP will be an important feature that attracts new customers who can keep rates lower for all customers. *Id.* at 4. Mr. Thomas testified that it is in the interest of I&M's customers that the Company will be able to move forward into the new reality of the energy world by successfully serving its customers as they want to be served. *Id.* at 5-6.

Mr. Thomas explained why he disagreed with the OUCC's suggestion that the policy of the State of Indiana does not differentiate between the review of large generation projects, such as recently proposed by NIPSCO and Vectren, and the small solar project being proposed in this case. He stated that the State expressly encourages projects like the SBSP and exempts them from the certificate of need requirements imposed on larger projects. *Id.* at 6. While he clarified that he was not suggesting that projects like the SBSP should receive "automatic approval", Mr. Thomas testified that the evaluation of a 20 MW solar facility encouraged by State policy should not be evaluated in the same manner as an 800 MW natural gas facility. *Id.*

John F. Torpey, AEPSC Managing Director – Resource Planning and Operational Analysis, responded to the OUCC testimony regarding I&M's IRPs. He testified that the OUCC's criticism fails to properly recognize that the IRP is a tool to help I&M's management make decisions about long-term resource planning and is not designed to model specific projects. Torpey Rebuttal at 3-4. He refuted Mr. Haselden's testimony regarding the impact of the Fifth Joint Modification to the Consent Decree and Rockport Unit 2 lease on I&M's capacity needs. He testified that regardless of when the Rockport Unit 2 lease terminates, I&M will face a capacity gap of approximately 500 MW and the 20 MW SBSP is a modest step towards closing that gap. *Id.* at 5.

Mr. Torpey also disagreed with Mr. Haselden's contentions regarding the cost of the SBSP compared to the cost assumed in I&M's current IRP. *Id.* at 5-7. Mr. Torpey testified that the 2018/19 IRP addresses a different timeframe, assumes larger installations than the current project and also assumes that solar resource cost will continue to trend downward during the future period modeled in the most recent IRP. *Id.* at 5-7. He noted that the SBSP was competitively bid and therefore represents the market price for a project of its size. *Id.* at 5, 7. He stated that the 2015 IRP solar cost estimates are comparable to the estimated cost of the SBSP with a 2020 in-service date. *Id.* at 6. He testified that the current and prior IRPs reflect the addition of significant amounts of solar over the planning horizons and noted that as discussed by I&M witness Thomas, these resources, which will further diversify the Company's generation, are reasonably obtained through incremental additions and doing so maintains flexibility. *Id.* at 5-7.

Mr. Lucas responded to the OUCC's contention that the Company did not adequately support the Project in its testimony. He clarified the status and provided copies of the executed agreements for the SBSP and explained the process used to negotiate these agreements is consistent with the normal business practices for projects of this type. Lucas Rebuttal at 4-5. Mr.

Lucas responded to the OUCC's criticism and showed that the Company's direct testimony accurately represented all of the essential elements of the final executed agreements with Notre Dame. *Id.* at 6-22. Mr. Lucas argued in detail why the SBSP benefits are not illusory or unsupported as suggested by the OUCC. *Id.* at 9. Finally, Mr. Lucas explained that information I&M produced through the discovery process and the many conversations I&M has had with its customers, site selectors, and communities refute OUCC suggestion that communities do not want to differentiate themselves with regard to sustainability and climate change plans. *Id.* at 14-17.

Mr. Lucas also discussed the factors that have made I&M's existing programs difficult to market to customers and stated that the IM Green proposal in the Company's pending rate case will align costs with a market index and reduce the cost to participate. Lucas Rebuttal at 19-20.

2. Project Cost. Mr. DeRuntz and Mr. Lucas responded to the OUCC testimony regarding the Project cost estimate with respect to the timing of the EPC contract execution. DeRuntz Rebuttal at 2-3; Lucas Rebuttal at 5-6. They explained that the Company's direct testimony was based on the completed negotiations and the fully executed EPC contract reflected no change to the Project scope or costs. *Id.*

Mr. DeRuntz also addressed the OUCC's testimony regarding the Project cost and the LCOE. He and Mr. Auer explained that Mr. Haselden's LCOE reflected an incorrect treatment of property taxes. DeRuntz Rebuttal at 3; Auer Rebuttal at 8-9.

Mr. DeRuntz also testified that Mr. Haselden's analysis reflected a selective use of project cost and LCOE information from a NIPSCO 2018 IRP presentation, explaining in particular that the NIPSCO presentation reflected an average bid price for a total capacity of 669 MWs. He stated that a direct comparison of multiple projects totaling 669 MWs to a single 20 MW project is inappropriate, because the larger projects are less expensive due to the economies of scale. DeRuntz Rebuttal at 2-4.

Mr. DeRuntz also explained why a direct comparison of costs between solar projects does not always yield meaningful results, noting in particular, the impact of project size and geographical location. *Id.* at 4. He added that even when the insolation is equal between two solar projects, capacity factor remains dependent on the number of solar panels installed. *Id.* at 5.

Mr. DeRuntz testified that while Mr. Haselden references only a single point out of the NIPSCO Presentation, the research in this same presentation produced a range of utility-scale solar build project costs from \$1,155/kW - \$2,370/kW. *Id.* at 6.

Mr. DeRuntz pointed out that Mr. Haselden did not offer any criticism of the Company's use of a competitive bidding process for the SBSP and stated that Mr. Haselden's suggestion that the SBSP has not been optimized for energy output reflects the tradeoff between the cost of additional solar panels and a facility's capacity factor. Mr. DeRuntz testified the bidders were free to optimize their proposals to balance the cost of the facility with the energy output. *Id.* at 7. Mr. DeRuntz stated that the interconnection cost is less than five percent of the total Project cost and thus disagreed with Mr. Haselden's claim that this cost is a significant portion of the total Project cost. *Id.* at 7-8.

Mr. DeRuntz responded to the OUCC concerns regarding “customer risks” associated with the Project’s initial cost and ongoing O&M expense. *Id.* at 9-10. He explained that the transformer replacement at the Company’s Deer Creek facility was an isolated capital expenditure, not an O&M expense. He explained that the Company’s Clean Energy Solar Pilot Project has provided valuable experience with owning solar generation, including lessons learned from Deer Creek’s transformer failure. Mr. DeRuntz stated that the use of an isolated historical capital expenditure to justify limiting future O&M expense is not appropriate. *Id.* at 9-10.

Mr. DeRuntz addressed the benefits of owning the SBSP versus entering into a PPA as suggested by OUCC witness Haselden. *Id.* at 10.

Finally, Mr. Lucas responded to Mr. Haselden’s criticism of the project location and land cost, showing among other things that I&M did not pay a premium for the land in the area and the proximity and visibility attributes of the SBSP location near the Indiana Toll Road and one of the premier educational institutions in the country, are not isolated to I&M, but rather benefit the area as a whole. Lucas Rebuttal at 25.

3. Accounting and Ratemaking. Mr. Auer addressed OUCC witness Blakley’s testimony and recommendation that the SBSP costs be recovered in an annual renewable energy project rider that will provide detailed cost information and kWh generated during the relevant period. Auer Rebuttal at 2. He testified that I&M’s proposal in this case is consistent with past practices of establishing a rider to initiate timely recovery and then incorporating those costs and plant in service balances into future base case proceedings. *Id.* at 3. Mr. Auer explained that the OUCC testimony in I&M’s previous base rate case supported a process that had fewer trackers and less frequent filings. *Id.* at 4.

Mr. Auer viewed the use of an annual rider filing to provide project performance data as inefficient and unnecessary and explained that I&M currently reports performance data as part of its annual collaborative performance metric reporting process, in which the OUCC is actively involved. *Id.* at 3.

Mr. Auer stated that I&M recommends that the Commission adopt the Company’s proposal. He concluded that the OUCC’s recommendation will increase administrative burden and is contrary to Commission practice. He added that the OUCC’s desire for renewable energy performance data can be more efficiently addressed through I&M’s existing performance metrics reporting process. *Id.* at 5.

Mr. Auer also explained why the Commission should not accept Mr. Haselden’s recommendation to place a cap on O&M. *Id.* at 5-6. He explained that a certain level of maintenance activities will be required and planned in the future to maintain the SBSP in a state to provide reliable, efficient, cost effective generation. He concluded therefore, that the Commission should reject the OUCC recommendation to cap O&M costs. *Id.* at 5-6.

Mr. Auer also responded to Mr. Haselden’s testimony regarding what the OUCC sees as risks associated with the ratemaking treatment of the federal ITC. Auer Rebuttal at 6. Mr. Auer

explained that Mr. Haselden's concern is overstated. He added that I&M expects to be able to utilize the ITC for the SBSP assuming it is completed prior to the end of 2020. *Id.* at 7.

Mr. Auer also addressed the OUCC position regarding the treatment of the ITC if the project is placed into base rates. *Id.* at 7. He explained that if the project is placed into base rates, in subsequent years, the Company will reflect the benefits associated with the Accumulated Deferred Federal Income Tax (ADFIT) related to accelerated depreciation at a zero cost of capital in the Company's capital structure. He explained that this serves to reduce the overall cost of capital for revenue requirement calculations regardless of whether recovery occurs through base rates or through a rider. *Id.*

4. **RECs.** Mr. Auer explained that it is the intent of I&M and Notre Dame that 40% of the RECs generated by the SBSP will be sold to Notre Dame. Auer Rebuttal at 10-11. Mr. Auer also confirmed that proposal to use the compensation (excluding the program administrative fees) from Notre Dame to offset the cost of the project for the benefit of all of I&M's customers, explaining the compensation received from Notre Dame will be flowed through the FAC. *Id.* at 11.

Mr. Auer also explained that mandating that I&M monetize (sell) RECs in the open market would not be in the best interest of customers and explained that by not monetizing unsubscribed RECs (RECs not sold to Notre Dame or to customers through the Renewable Energy Option or Green Power Rider), I&M and its customers are able to recognize that certain amounts of generation and energy consumption are carbon free. *Id.* at 11-12.

Mr. Auer testified that in the case for Notre Dame, I&M will sell RECs to Notre Dame and I&M will retire them on Notre Dame's behalf. He said this provides Notre Dame with the ability to recognize that they are using green energy. Mr. Auer added that retiring RECs on Notre Dame's behalf, means that the benefit of green energy will remain in Indiana. *Id.* at 12-13.

Mr. Auer explained that Mr. Haselden overstated the value of I&M's RECs in inventory because his analysis erroneously assumes that RECs with a vintage date of 2019 are equal in value to those with earlier vintage dates. He said RECs that are produced today have a greater market value than RECs produced several years ago. *Id.* at 13.

Mr. Auer stated that as I&M works with Notre Dame to provide educational prospects, research opportunities, sharing of information, signage, etc., Notre Dame will pay a 20% administrative fee to cover the customer specific aspects of the arrangement. Mr. Auer clarified that if in any year the costs incurred due to this arrangement with Notre Dame exceed the amount of the 20% administrative fee that I&M collects, I&M will not seek recovery of those excess costs from other customers. *Id.* at 14.

Finally, Mr. Auer explained why I&M does not agree with Mr. Haselden's proposal that the Commission impose a fixed price per kWh for recovery through the SPR. *Id.* at 15. Mr. Auer testified that at Mr. Haselden's proposed \$50/MWh, in the early years of the project, I&M would not be recovering its revenue requirement due to the high undepreciated value of the solar facility. Mr. Auer noted that Mr. Haselden's proposal is in direct conflict with the testimony of OUCC

witness Blakley that “[c]ost recovery through a tracker strikes an appropriate balance between providing a customer benefit in the form of an annual reduction in revenue requirement, while also not harming I&M because the return “on” and “of” will still be matched with its renewable plant investment.” *Id.* at 15. Mr. Auer also explained that Mr. Haselden’s fixed \$50/MWh proposal also assumes that a certain level of production from the SBSP is achieved. Mr. Auer stated that this is unreasonable because events outside of I&M’s control may impact SBSP production. *Id.* at 16.

5. Discussion and Findings. Indiana Code § 8-1-8.8-11 provides that “[a]n eligible business must file an application to the commission for approval of a clean energy project” and that “[t]he commission shall encourage clean energy projects by creating [certain] financial incentives for clean energy projects, if the projects are found to be reasonable and necessary.” As discussed below we find that I&M meets the definition of an “eligible business” and the SBSP meets the definition of a “clean energy project”. However, we do not find that the SBSP is reasonable or necessary, and therefore decline to approve the financial incentives for the project.

A. CPCN under Ind. Code 8-1-8.5. A certificate of public convenience and necessity (“CPCN”) is not required for the SBSP. Indiana Code § 8-1-8.5-7 contains an exemption from the requirement to obtain a CPCN for public utilities that install a clean energy project that is approved by the Commission and uses a clean energy resource with a nameplate capacity of 50,000 kW or less, given that the utility uses a contractor in the engineering, procurement, or construction of the project that is subject to Indiana unemployment taxes and is selected by the public utility through bids solicited in a competitive procurement process. I&M witness DeRuntz discussed the Company’s competitive procurement process and the Company’s selection of an EPC contractor for the Project. The record shows the facility being installed utilizes a clean energy resource, has a nameplate capacity of not more than 50,000 kW and uses an Indiana contractor who is subject to Indiana unemployment taxes and was selected through a competitive procurement process. The Company submitted the draft EPC contract in response to the Commission’s July 3, 2019 docket entry and the executed EPC contract was included with Mr. Lucas’ rebuttal testimony (Attachment DAL-2R and 2C). Thus, we find the SBSP falls within the statutory exemption and therefore a CPCN under Ind. Code 8-1-8.5 is not required.

B. Clean Energy Project and Eligible Business. The SBSP is a 20 MW_{AC} solar facility that I&M proposes to build, own, and operate near South Bend, Indiana. The facility is designed to use thin film solar panels with single axis tracking supports and will be electrically interconnected to PJM through a 34.5 kV line. Thomas Direct at 3; DeRuntz Direct at 6. “Solar energy” is specifically listed as one of the clean energy resources in Ind. Code § 8-1-37-4(a)(1) through Ind. Code § 8-1-37-4(a)(16), thus making it a “renewable energy resource” under Ind. Code § 8-1-8.8-10. Thomas Direct at 7. There is no dispute that I&M is a “public utility” within the meaning of Ind. Code § 8-1-2-1, a “utility” within the meaning of Ind. Code § 8-1-2-6.8, an “energy utility” within the meaning of Ind. Code § 8-1-2.5-2, and an “eligible business” within the meaning of Ind. Code § 8-1-8.8-6. There is also no dispute that the SBSP constitutes a “clean energy project” under Ind. Code § 8-1-8.8-2(2), and we so find.

C. Estimated Cost. The record reflects that the SBSP is a single site, 20 MW_{AC} solar generating facility. A competitive bidding process was used to solicit and evaluate three qualified

bidders. The selected bidder had the highest overall score of those submitting bids, and was also the lowest priced bid. The Project is eligible for the 26% ITC. DeRuntz Direct, p. 15.

Based on our review of the record, we find that Mr. Haselden raises valid concerns regarding the SBSP cost and are grounds to reject the Project based on the Project cost estimate. Mr. Haselden's contention was based on a comparison of the SBSP estimated cost to responses to a recent NIPSCO RFP and other reference points for the LCOE of utility-scale solar. As noted by Mr. Haselden, the SBSP is expected to cost significantly more than most other alternatives. The cost for the SBSP, as presented by I&M, of \$1838.454/kW compared to the average cost presented by the NIPSCO RFP of \$1,151.01/kW. Similarly, the LCOE for the SBSP, again as presented by I&M, was \$82.38/MWh compared to the price reported by NIPSCO of \$35.67/MWh. The other reference points from the U.S. Energy Information Administration ("EIA") and Lazard also show LCOE cost ranges significantly below the SBSP cost. As noted by Mr. DeRuntz, the information from the EIA report for projects going into service in 2021 provides a range of solar project LCOE costs from \$32.60/MWh - \$82.80/MWh. Mr. DeRuntz is correct that the SBSP within this range, although the SBSP estimated cost less than 1% from the high end of the range. The range shown in the Lazard analysis of \$36 - 44/MWh is roughly half the cost of the SBSP. Mr. DeRuntz argues that the comparison references reflect larger facilities which have lower cost on a per MW basis due to economies of scale. However, Mr. Deruntz provided no support to show how or why "economies of scale" results in such a large disparity between estimated costs based on the proposed size of a facility. While Mr. DeRuntz also points to other information in the NIPSCO presentation that shows research producing a range of utility-scale solar build project costs from \$1,155/kW - \$2,370/kW, the Commission finds that the actual RFP results are a more accurate comparison. We find that the cost comparisons form a sufficient basis to find the project cost to be unreasonable.

Mr. Haselden also criticized the cost of the SBSP based on project location. As an alternative, Mr. Haselden recommended the Commission exclude cost of the land from ratemaking recovery. Haselden Direct at 17, 22. While Mr. Lucas correctly asserts that Mr. Haselden did not demonstrate that the price is unreasonable for the area, we recognize that the site criteria resulted in a location that contributes to the excessive cost of the project. I&M specifically located the Project in the South Bend area due to its relationship with Notre Dame, which plausibly led to a premium paid for the land. A solar facility of 210 acres in an urban or suburban location will most likely cost more than a location in a rural area, a possibility acknowledged by Mr. Lucas. Lucas Rebuttal at 24. As we already find that the total cost of the Project is unreasonably excessive, we do not need to consider Mr. Haselden's recommendation to disallow the land costs. We also note Mr. Haselden's concern that I&M has not taken increased property tax into account into its LCOE. We find Mr. Haselden's argument credible that the land value will increase after the SBSP has been constructed, increasing the property tax amount, and increasing the LCOE further for the Project. This finding further reinforces our decision

The Legislature directed the Commission, under Indiana Code § 8-1-8.8-11(a), to make a finding that projects are reasonable and necessary. Based on the excessive cost of the SBSP compared to other references, we find that I&M's proposal is not reasonable and not eligible for financial incentives. As we noted in Cause No. 45052: "The pre-approval of long-lived power plant investment and the concurrent regulatory assurance of that investment's recovery is, at its

base, the creation of fixed costs that customers will be required to pay several years into the future, perhaps as long as 30 years or more into the future.” Approval of I&M’s proposal in this proceeding would unreasonably impose the excessive costs of the SBSP onto I&M ratepayers for up to 30 years.

Mr. Haselden raised additional concerns about I&M’s direct ownership of the SBSP are related to 1) cost overruns, 2) treatment of federal tax incentives, and 3) ongoing O&M risks. Public Ex. 2 at 9-10. While we find these issues concerning based on our review of the evidence, as we already find that the facility is unreasonable, we need not address these issues.

Accordingly, we find the \$37 million estimated cost of the SBSP is unreasonable and deny the request for financial incentives for the facility.

D. Project Is Not Reasonable. Mr. Haselden also raises valid concerns about the consistency of the Project with I&M’s IRP. IRPs are tools used by utilities to guide investments while allowing the utility to retain flexibility in the face of rapid change in the electric industry. As we found in Cause No. 45025, we find nothing in this proposal that provides any off-ramps that would allow I&M to react to changing circumstances and make appropriate changes. I&M acknowledges the decreasing cost to solar, as evidenced by the decrease in estimated cost between the 2015 and 2019 IRPs, but the proposal in this Cause was not modified to take this into account. I&M’s reliance on its 2015 IRP to support this proposal is misplaced. In order to retain the flexibility needed to provide adequate service at the lowest reasonable cost to consumers, I&M should take into account the future, lower cost for solar, and delay the development and construction of the facility for the benefit of its ratepayers, as shown in the 2019 IRP models for solar energy. Mr. Torpey acknowledges that the “estimate reflects the assumption that solar resource costs will continue to trend downward.” We find that I&M should follow the guidance provided in its latest IRP to provide more cost effective solar generation for its customers.

I&M speculates that locating the Project by the toll road and Notre Dame can showcase Michiana and the state of Indiana as leaders in innovation and sustainable energy and attract potential customers to the region. I&M also described how various municipalities and companies had sustainability objectives. However, I&M provided no direct evidence that the SBSP would lead to increased economic development by causing new companies to relocate to I&M’s service territory or cause existing companies to expand its operations. I&M’s evidence for the potential economic development was speculative, and, therefore, we find this argument does not provide substantial support for I&M’s proposal. I&M also states that the Project meets the expressions of interest by customers for I&M to obtain more renewable resources. However, the evidence showed that I&M retains a substantial REC portfolio, and to the extent that consumers wish to purchase renewable energy, the consumers have the opportunity to do so through I&M’s renewable offerings, and utilize RECs from its portfolio to meet those needs.

Mr. Haselden testifies that the potential educational opportunities are overstated. We note, as pointed out by Mr. Haselden, the SBSP is a conventional commercial operation and is not an experimental or research project. Additionally, although I&M argues that the SBSP will provide opportunity for customer education, we find that no examples of this education or specific support is provided for these claims.

We find I&M failed to demonstrate that approval of the SBSP will further economic development, enhance customer education, or meet customer's needs. The proposal Project is unreasonably expensive relative to other cost comparisons, and I&M failed to sufficiently support the other "intangible" benefits for the Project. Accordingly, we find that the Project is not reasonable or necessary and, therefore, not eligible for financial incentives under Indiana Code § 8-1.8.8-11.

E. Sufficiency of I&M's filing. As a final matter, we address the concerns raised by the OUCC regarding the information presented by I&M in this filing. We have previously noted the sufficiency of filings and our concern that sufficient evidence and supporting documentation is presented in a parties' case-in-chief. The contracts in this proceeding to construct the facility and between I&M and Notre Dame are essential to examining and supporting I&M's proposal. I&M made representations about the agreements in its testimony, and the agreements should have been included in the initial Petition. With regard to the reliance on discovery to support I&M's position, we reiterate our position stated in Cause No. 45073:

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.

As in Cause No. 45073, we strongly encourage I&M to consider ways to improve the presentation of its requested relief, including meeting with the OUCC and Commission staff prior to filing to discuss the type of information that should be included with its case-in-chief filing.

F. Conclusion. Based on the evidence presented, we find that the SBSP is not reasonable or necessary and should not be approved. This project is therefore not eligible for a financial incentive and I&M's petition shall be denied.

6. Confidentiality. On June 12 and August 26, 2019, I&M filed motions for protection and nondisclosure of confidential and proprietary information, each of which was supported by affidavit showing documents to be submitted to the Commission were trade secret information within the scope of Ind. Code §§ 5-14-3-4(a)(4) and (9) and Ind. Code § 24-2-3-2. The Presiding Officers issued docket entries dated June 19 and August 27, 2019 finding such information to be preliminarily confidential, after which such information was submitted under seal. There was no disagreement among the parties as to the confidential and proprietary nature of the information submitted under seal in this proceeding. We find all such information is confidential pursuant to Ind. Code §§ 5-14-3-4 and 24-2-3-2, is exempt from public access and disclosure by Indiana law and shall be held confidential and protected from public access and disclosure by the Commission.

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

1. I&M's proposed South Bend Solar Project is not reasonable or necessary and is denied for timely recovery of project costs under Ind. Code § 8-1-8.8-11 as set forth in this Order.

2. The information filed by I&M in this Cause pursuant to its Motions for Protective Order is deemed confidential pursuant to Indiana Code § 5-14-3-4 and Indiana Code § 24-2-3-2, is exempt from public access and disclosure by Indiana law, and shall be held confidential and protected from public access and disclosure by the Commission.

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

HUSTON, FREEMAN, KREVDA, OBER AND ZIEGNER CONCUR;

APPROVED:

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

Mary M. Becerra
Secretary of the Commission

CERTIFICATE OF SERVICE

This is to certify that a copy of the *Indiana Office of Utility Consumer Counselor's 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

Citizens Action Coalition of Indiana

Jennifer A. Washburn
Margo Tucker
CAC
jwashburn@citact.org
mtucker@citact.org

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



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