FILED
December 10, 2019
INDIANA UTILITY
REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF INDIANA MICHIGAN POWER COMPANY, AN INDIANA CORPORATION, FOR AUTHORITY TO INCREASE ITS RATES AND CHARGES FOR ELECTRIC UTILITY SERVICE THROUGH A PHASE IN RATE ADJUSTMENT; AND FOR APPROVAL OF RELATED RELIEF INCLUDING: (1) REVISED DEPRECIATION RATES; (2) ACCOUNTING RELIEF; (3) INCLUSION IN RATE BASE OF QUALIFIED POLLUTION CONTROL PROPERTY AND CLEAN ENERGY PROJECT; (4) ENHANCEMENTS TO THE DRY SORBENT INJECTION SYSTEM; (5) ADVANCED METERING INFRASTRUCTURE; (6) RATE ADJUSTMENT MECHANISM PROPOSALS; AND (7) NEW SCHEDULES OF RATES, RULES AND REGULATIONS.	)	**CAUSE NO. 45235**

<u>PETITIONER'S REPLY BRIEF</u>

<u>IN SUPPORT</u>

<u>OF</u>

<u>I&M PROPOSED ORDER</u>

Table of Contents

Page

A. INTRODUCTION

Petitioner, Indiana Michigan Power Company ("Petitioner", "I&M" or "Company"), by counsel, hereby replies in support of its Proposed Order and requested accounting and ratemaking relief. The post hearing filings of the OUCC and Intervenors are voluminous and many of their claims are refuted in I&M's Proposed Order and the record evidence. This Reply does not purport to address each and every disputed issue or error in these filings. Rather, I&M, in reply to the Consumer Parties' Brief on Legal Issues, first identifies the fundamental legal and regulatory principles which are ignored or violated by the other parties' proposals, and then discusses many of the disputed issues by reference to the relevant findings in I&M's Proposed Order, cited herein as "IMPO".

B. REPLY TO CONSUMER PARTY BRIEF[1] ON LEGAL ISSUES

While titled the Consumer Party "Brief on Legal Issues", this filing appears intended to serve as a vehicle to cast I&M in a poor light through unrelenting aspersions and the presentation of numerous falsehoods as "I&M themes" or "I&M's lopsided approach". CPLB at 2, 4.

The Company's filings demonstrate that I&M has not claimed that the Commission should "blindly defer to" the Company's position. Nor has the Company implied that the Commission has "no choice but" to approve I&M's requests. *Id.* at 1. Rather, the Company has simply explained that departures from established policy or precedent must be explained – a legal principle with which the consumer parties agree. *Id.* at 2. And the Company has shown that its proposals rest on a sound factual, policy and legal foundation.

[1] Cited herein as "CPLB."

Likewise, the Company has not argued that the Commission must authorize cost recovery at the level requested by I&M. CPLB at 2. Nor does the Company contend that it is entitled to cost recovery "provided that it makes the request." CPLB at 3. Rather, the Company asserts (as do the consumer parties) that the appropriate standard to be applied to I&M's expenses is whether they are "unnecessary or excessive" in amount. Ind. Code § 8-1-2-48. With respect to rate base the standard is "used and useful." Ind. Code §§ 8-1-2-6, 23.

Furthermore, the Company has not sought an excessive profit or Commission approval of exorbitant prices. To the contrary, through substantial evidence and in the IMPO, I&M showed its requested relief is reasonable and necessary to allow I&M a true opportunity to maintain and improve its financial health and provide resources enabling I&M to continue to meet the needs of its customers going forward. The record also reflects the Company is a well-managed and efficient provider of reliable service.

The other parties ask the Commission to reject I&M's Proposed Order and its evidence. Their filings urge antagonistic, asymmetric action, as if the Commission's duty focuses on avoiding rate increases for current customers and punishing both utility investors and tomorrow's customers. These filings reflect the view that all matters addressed by I&M and its witnesses are presumed to be disbelieved, ignored or swept aside as insufficient proof. This, the Commission *should not do* and *cannot do*. As the Indiana Supreme Court made clear in 1929:

> We repeatedly hear the expression that it is the duty of the Commission to represent the public alone. If, by this remark, it is meant that the Commission is organized but for one purpose, that of antagonistic action toward utilities under any and all circumstances, then one of the great purposes of the law, adequate service by the utility at the least cost to the consumer, might be entirely defeated. The theory of the law creating the Commission body composed of a personnel especially qualified by knowledge, training and experience pertaining to the subject-matter committed to it for award consonant with reasonable fairness and substantial justice according to legislative mandate, and the circumstances shown relative to its effect in the

> future on the utility's ability to serve the interest and convenience of the public, the cost and expense to the parties interested being an element for consideration.

In Re Northwestern Indiana Tel. Co., 201 Ind. 667, 674-675, 171 N.E. 65, 67-68 (1929).

The OUCC and Intervenors repeatedly urge the Commission to disallow I&M's costs, but these parties fail to justify the exclusion based on probative record evidence or governing law. The Commission may not presume the figures presented by I&M are erroneous. I&M's Proposed Order correctly adheres to the long-standing legal principle that when a given level of revenue, expense or rate base is supported by the testimony of knowledgeable Company officials or duly qualified outside expert witnesses, the Commission cannot disregard the sworn testimony of such witnesses. *Re Indiana Michigan Power Co.*, Cause No. 39314 at 5, 1993 WL 602559 (IURC 11/12/1993). More importantly, the burden of proof may not be manipulated in such a way as to compel the Commission merely to disregard the Company's sworn testimony and evidence.

The repeated suggestions that the Company has not met its burden of proof are hollow arguments based on the false premise that the Commission can or should ignore the long-standing presumption of good faith which must attach to the activities of a public utility. Furthermore, it is not necessary for I&M to prove a prima facie case by a "clear and convincing" evidentiary standard, let alone a "beyond a reasonable doubt" standard as suggested by the other parties' arguments. *Id.* The Commission re-affirmed this position in *Re NIPSCO,* Cause No. 43526 at 76, 2010 WL 3444546 (IURC 8/25/2010), stating:

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

"A 'prima facie case' is one which presents 'such evidence as is sufficient to establish a given fact and which if not contradicted will remain sufficient.'"[2] Once I&M has presented a prima facie case for relief, the opponents of the requested relief, such as the OUCC and intervenors, have the burden of going forward with their evidence.[3] In other words, neither the presumption of good faith nor the sworn testimony of the Company's witnesses is overcome by opposing testimony that argues merely that the Company's case-in-chief is not sufficient.

While the Commission may weigh the evidence, refusing to consider competent, uncontradicted evidence and making reasoned findings upon it is not weighing it, it is ignoring it. *Hancock Rural Tel. Corp. v. Public Serv. Comm'n*, 137 Ind. App. 14, 201 N.E.2d 573, 588 n.1 (Ind. Ct. App. 1964) (en banc), *reh'g denied* 203 N.E.2d 204 (Ind. Ct. App. 1964). Adjustments and analysis based upon personal judgment without a consistent rationale are not probative. Additionally, testimony raising concerns, speculation, or questions does not demonstrate that all or part of a particular expense is unnecessary or excessive. Similarly, mere reliance on standards from other states does not justify a departure from the policies and procedures applied in Indiana general rate cases. Moreover, where questions are raised by other parties, the utility has the opportunity to explain or rehabilitate its position and rebut the evidence submitted by its opposition.

---

[2] *Re Indiana Michigan Power Co.*, Cause No. 39314 at 4, 1993 WL 602559 (IURC 11/12/1993); *Plough v. Farmers State Bank of Henry County*, 437 N.E.2d 471, 475 (Ind. Ct. App. 1982); *Floyd v. Jay County Rural Elec. Membership Corp.*, 405 N.E.2d 630, 633 (Ind. Ct. App. 1980); *Rene's Restaurant Corp. v. Fro-Du-Co Corp.*, 210 N.E.2d 385, 387 (Ind. Ct. App. 1965).

[3] *City of Terre Haute v. Terre Haute Water Works Corp.*, 133 Ind. App. 232, 180 N.E.2d 110, 117, 43 PUR 3d 278 (1962), citing *Cleveland, etc., R. Co. v. Miller* (1905), 165 Ind. 381, 385, 74 N.E. 509, 510 ("The general rule in Indiana is that 'a prima facie case must always stand until it is broken by the defendant's evidence.'"); also *Zakutansky v. State Bd. of Tax Comm'rs*, 758 N.E.2d 103, 2001 Ind. Tax LEXIS 40 (Ind. Tax Ct. 2001) ("Once the taxpayer carries the burden of establishing a prima facie case, the burden shifts to the State Board to rebut the taxpayer's evidence and justify its decision with substantial evidence." (quoting *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998))).

The OUCC and Intervenor post hearing filings are not based on the record as a whole and fail to provide detailed findings covering all material basic and ultimate facts. *Ind. Bell Tel. Co. v. Office of Util. Consumer Counselor*, 717 N.E.2d 613, 624 (Ind. Ct. App. 1999), *modified on other grounds on reh'g*, 725 N.E.2d 432 (2000) ("The requirement of detailed findings covering all material basic and ultimate facts is essential, as it enables the court 'to review intelligently the Commission's decision' and thereby ensure that the agency has stayed within its legal authority and jurisdiction.") citing *General Tel. Co. of Ind., Inc. v. Public Serv. Comm'n of Ind.*, 238 Ind. 646, 653, 150 N.E.2d 891, 895 (1958); *Perez v. U.S. Steel Corp.*, 426 N.E.2d 29, 31-32 (Ind. 1981). The other parties' invitation for the Commission to disregard its duty to weigh the totality of the probative evidence should be rejected. Agencies bear the responsibility of making specific findings to protect parties' "legal right to know the evidentiary bases upon which the ultimate finding rests." *Perez*, 426 N.E.2d at 32 (citing Davis, 2 Administrative Law Treatise § 16.05 p. 448 (1958)).

Public utilities, including I&M, depend upon a stable regulatory framework; capital markets place significant weight on that stability; and decisions are made based upon it. The OUCC and intervenor proposals are at odds with established principles, decisions from this Commission, and Indiana law. If granted, their proposed orders would throw Indiana into a sea of uncertainty where results would become essentially unpredictable.

Finally, the OUCC and intervenors seek a final return figure that does not pass the "end result" test of *Bluefield* and *Hope.*[4] By excluding costs necessarily incurred to provide service and

[4] *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm'n of West Virginia*, 262 U.S. 679 (1923) ("Bluefield"); *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) ("Hope"). Bluefield and Hope, as reinforced in *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989) ("Duquesne"), set the general standard for judging the lawfulness of returns allowed to public utilities by ratemaking agencies under Federal Constitutional principles. Under the Bluefield-Hope standard, the return must be sufficient to enable the utility to attract additional capital on reasonable terms ("the capital attraction standard"), and also to realize a return on equity commensurate with the returns earned

comply with regulatory mandates, by disallowing assets that were procured with investor capital and which directly benefit the service I&M provides; by applying flawed assumptions to drive low results in their cost of equity recommendations; by pushing cost recovery into the future; and by terminating rate adjustment mechanisms that are vital to the ongoing financial health of the Company, the other parties recommend a bottom line result that, if adopted, would be confiscatory and jeopardize the Company's ongoing provision of adequate and reliable service at reasonable rates. "When a business disintegrates, there is damage to the stockholders, but damage also to the customers in the cost or quality of service." *West Ohio Gas Co. v. Pub. Utils. Comm'n.*, 294 U.S. 63, 72 (1935).

Therefore, as further discussed below, I&M respectfully urges the Commission to adopt the findings in the IMPO.

C. REPLY TO EXCEPTIONS TO I&M'S PROPOSED ORDER

1-5. <u>Notice And Jurisdiction, Petitioner's Organization And Business, Existing Rates, Test Year, I&M's Requested Relief.</u> The other parties took little to no exception to these sections of the IMPO. The IMPO should be adopted.

6. <u>Opposition, Cross-Answering And Rebuttal.</u> The OUCC proposes the Commission expand this section to incorporate OUCC Witness Eckert's policy testimony, which was rebutted by I&M Witness Thomas. The OUCC's proposed insert is out of sync with the

---

by enterprises of comparable risks (the "comparable earnings standard"). In "reaffirming these teachings of Hope", the Duquesne Court noted that "[o]ne of the elements always relevant to setting the rate under Hope is the return investors expect given the risk of the enterprise." *Duquesne*, 488 U.S. at 314. It is the end result of the Commission deliberations on rate base and fair return which must pass federal constitutional muster. See also Hevert Direct at 22-23.

overall organization of the IMPO and other Commission rate case orders. That aside, the policies identified by the OUCC support the adoption of the IMPO, not the rejection of it.

First, Ind. Code § 8-1-2-.05 is titled "State policy to promote utility investment in infrastructure while protecting affordability of utility service." This policy is intended to "create and maintain conditions under which utilities plan for and invest in infrastructure necessary for operation and maintenance while protecting the affordability of utility services for present and future generations of Indiana citizens." *Id.* This is precisely what I&M is seeking to do through its Distribution Management Plan, including advanced metering infrastructure ("AMI") deployment and other capital expenditures in this case. While I&M works hard to do "more with less", the OUCC suggestion that the Commission should push important infrastructure investment off into the future is not in the best interest of present and future generations of Indiana citizens and does not safeguard the affordability of service. Addressing infrastructure issues on an emergent basis is more costly than taking the planned approach to investment presented here by I&M. The statute refers to the conditions "under which utilities plan for and invest in infrastructure". *Id.* Thus, the General Assembly acknowledges and supports the good utility planning and prioritization of resources as a means for promoting affordability. Substantial record evidence demonstrates that this is precisely what the Company proposes to continue doing.

The OUCC's policy arguments confuse 1) the fundamental concept that the utility's cost of providing service is necessarily recognized in the rates for service with 2) the ability of the Commission to mitigate rate impact via use of tools such as a phase-in plan. The standard applicable to the "cost" of providing service is whether an expense is "unnecessary or excessive" (Ind. Code § 8-1-2-48) and whether investment is "used and useful" (Ind. Code §§ 8-1-2-6, -23). Costs incurred to provide service should not be swept into the future as suggested by the OUCC.

Finally, the OUCC's reliance on *S. Ind. Gas & Elec. Co.,* Cause No. 45052 (IURC Apr. 24, 2019) is misplaced. Cause No. 45052 was not a general rate case. Rather, Cause No. 45052 concerned a request to construct an 850 MW CCGT under Ind. Code ch. 8-1-8.5. This decision in no way conflicts with the relief sought by I&M in this basic rate case. The infrastructure investment at issue in the instant case is an important step forward into Indiana's energy future.

7. <u>Petitioner's Rate Base.</u>

A. <u>Advanced Metering Infrastructure ("AMI").</u> The other parties suggest that I&M proposes to 'truncate' its AMR meters prematurely. IG Exceptions at 3; Auburn at 1-2. Nevertheless, the record demonstrates otherwise. As of December 31, 2018, I&M's existing meters had an average age of 10.18 years with an average remaining life of 4.82 years. IMPO at 11, citing Cash Direct, 3 (depreciation study evaluates utility plant as of December 31, 2018) and Cash Rebuttal, 21. Accordingly, if the existing meters were replaced organically, based on the average remaining life, they would be replaced on average by October, 2023. I&M is proposing to complete those replacements by December, 2022, or approximately 10 months sooner. This proactive replacement is efficient and lays the foundation for operational and other benefits. It also recognizes that AMR is a declining technology and is being phased-out industry wide. Nearly all vendors have stopped manufacturing and supporting AMR meters; currently there remains only one vendor that supplies I&M's type of AMR meters, and the vast majority of this vendor's business is AMI. IMPO at 10, citing Isaacson Rebuttal at 18.

The idea that the AMI project has an "unlimited price tag" is erroneous. JM Exceptions at 12. The cost of the AMI project is clearly identified in the record as are the numerous benefits of AMI. The contention that the Company has not presented an analysis of the cost and benefits of AMI must also be rejected. The Company has supported this investment in the same way that infrastructure investment has been supported in other Indiana general rate cases. The proposed AMI investment satisfies the "used and useful" standard and should be approved.

The Company is not circumventing any statutory requirements. See CPLB at 8-9. Rather, I&M is using the Section 42.7 future test year authorized by the General Assembly and the provisions of Section 23. A formulaic assessment of whether the benefits of an infrastructure project exceed the cost thereof is not required by Section 42.7, by Section 23, or by the TDSIC Statute. The record here fails to demonstrate that the new standard urged by Consumer advocates should be adopted at all, much less in the midst of a pending general rate case.

As a utility with an obligation to provide reasonably adequate service and facilities, the Company's goal is to replace equipment and other facilities before they fail to avoid service interruptions. Because I&M is charged with operating in the public interest, the Company reasonably makes the investments determined to be reasonably necessary to fulfill its mandate.

Furthermore, it is difficult to quantify the economic value of the incremental benefits and undertake a meaningful monetized cost-benefit analysis of infrastructure investments such as AMI. For example, I&M (like other utilities) makes many infrastructure investments for the purpose of safety and security. Mr. Isaacson testified that AMI will enhance public and employee safety, as well as mitigate tampering and theft, which are also hazardous to public safety. Isaacson Direct at 30. The robust cost-benefit analysis recommended by the OUCC would require the quantification of the monetary value of safety and security. The Commission has not involved itself in this sort of quantification in past general rate cases or otherwise explored evidence that placed a monetary value on a life, the monetary value of injuries to people or property, or the monetary value of potential damage from a terrorist attack. The formulaic cost-benefit analysis urged by the other parties would require a utility to conduct such an analysis and then litigate before the Commission the reasonableness of the assumptions necessary for such an analysis. Yet, the record fails to demonstrate that incurring this substantial cost would further the objective of providing safe and reliable service or otherwise serve the public interest.

Similarly, the Company's direct testimony explains that the AMI infrastructure investment is reasonably necessary to address technological change and will improve service reliability and the customer experience. For example, the Company has explained that AMI technology can optimize its operations and better accommodate the integration of customer-sited generation, electric vehicles and renewable energy resources. These resources help to diversify the Company's generating resources, reduce carbon and other emissions, and, when located in Indiana, support Indiana's energy security and economic development. Yet, it is difficult to do a meaningful quantification of the benefits of these investments. The other parties have not shown otherwise. They merely insist on applying new standards as a means to reject the Company's well founded proposals. Put another way, the other parties overlook the need to establish why their new rules are reasonable and fair.

Finally, it is important that the Commission recognize that requiring Indiana public utilities to undertake a formulaic cost-benefit analysis to support rate case infrastructure investments would fundamentally alter Indiana ratemaking practice and substantially increase the cost of general rate case because the utilities would need to retain consultants to perform this type of cost-benefit analysis.

Therefore, the proposal that the infrastructure investment decisions should depend on a financial justification model and the other opposition to the Company's AMI deployment should be rejected.

B. <u>Distribution System Asset Renewal, Reliability Improvements And Major Projects.</u> The IMPO steps through the substantial evidence supporting the Company's distribution system infrastructure investment and also explains that the Company's presentation complies with the governing statute and the MSFR. IMPO at 12-15. The OUCC urges the Commission to sweep all of this aside and disallow tens of millions of dollars of important capital investment in 2019 and 2020 with a "reminde[r]" that the Company "bears the burden of proof", and a novel interpretation of the MSFR requirements. OUCC PO at 15. The OUCC does not dispute that I&M must reasonably make distribution investments during the Test Year. Established Commission precedent teaches that if the OUCC disagreed with the amount I&M presented, the burden of proof required the OUCC to present the alternative amount the OUCC believes is necessary rather than proposing to disallow the investment *in toto.*[5] The Commission should reject both the OUCC proposal that a wholly new standard be imposed in the midst of this general rate case and the OUCC proposal that the Commission should decline to engage in the merits of the proposed infrastructure investment and the substantial record evidence demonstrating the used and usefulness thereof.

C. <u>Rockport Enhanced DSI System.</u> The OUCC's representative previously admitted that the pollution controls in the original AEP Consent Decree imposed zero additional costs on customer rates because these pollution controls reflected what the Company was already planning for environmental compliance. Tr. L-38; I&M CX 10 at 111. This OUCC admission confirmed the sworn testimony of the Company's representative on the prudence of the Company decision to enter into the original Consent Decree. Tr. L-41. These initial pollution controls

[5] *American Suburban Utils.,* Cause No. 41254 at 14, 1999 WL 397655 (IURC 4/14/1999).

included $2.4 billion in flue gas desulfurization ("FGD") equipment at Rockport Station. Tr. L-52.

Since the entry of the original Consent Decree, I&M has worked with the other parties to utilize other technology to reduce the cost of compliance dramatically while maintaining the viability of the Rockport units and the emission reduction benefits. The cost of the DSI systems already installed at Rockport and the cost of the DSI system enhancement at issue in the instant case are a small fraction of the $2.4 billion cost of the FGD systems required by the original Consent Decree. The other parties' opposition to the DSI enhancements ignores the substantial effort undertaken by the Company to reach this extremely favorable environmental compliance outcome by negotiating the Fifth Modification to the Consent Decree.

The cost of the proposed enhancements to the DSI systems are also significantly less than the Lease Termination Fee payment that would be due if these systems were not installed. Tr. L-49-50; Armstrong at 10; Attachment CMA-3; Thomas Rebuttal at 24. Finally, the relatively modest cost of the DSI Enhancement Project would not, as explained in discovery, have changed the results of I&M's IRP. Thomas Rebuttal at 25.

Therefore, the opposition to the DSI system enhancements should be rejected.

D. <u>Rockport Coal Combustion Residuals ("CCR") Compliance Project.</u> While the OUCC proposed edits to the IMPO summary of the OUCC testimony, neither the OUCC nor any other party took exception to the Company's proposed discussion and finding as set forth in the IMPO. Therefore, the Company's proposed discussion and finding should be adopted.

E. <u>Rockport Unit 2 High Pressure ("HP") Turbine Replacement Project.</u> As discussed in the IMPO, substantial record evidence demonstrates the prudence of the turbine replacement project. IMPO at 19-20. In its proposed order the OUCC does not challenge the "necessity of the turbine replacement itself." OUCC PO at 21. Rather, the OUCC urges the Commission to "share the OUCC's concern with the proposed cost recovery" and deny cost recovery. *Id.* The idea that I&M be denied an opportunity to earn a return on and of its prudent and used and useful investment contravenes the regulatory compact at the heart of Indiana's public utility law. Furthermore, the Commission approved the Rockport Unit 2 Lease. It is both reasonable and necessary for the Company to make the investments in Rockport Unit 2 that are necessary to comply with the Lease and to enable the unit to serve customers through the end of the Lease term.

Mr. Kerns explained that rebuilding this turbine is consistent with good utility practice. Tr. at D-69. He also explained that not rebuilding the turbine "is too high a risk" to take:

> We don't let turbines fail. There are catastrophic consequences when turbines fail. At best, you only wreck that turbine. At worst, you cause collateral damage and expose our employees to a safety risk. We've got experience with that here in I&M with Cook several years ago. We have experience with that at other spots in the fleet.
>
> So I do not recommend and cannot sit here and endorse not rebuilding that turbine regardless of the end date of the Lease or anything else. We just – It's just too high a risk for us to accept.

Tr. at D-70.

No matter what happens with I&M's lease of Unit 2 after 2022, Unit 2 is and will continue to be an important part of I&M's generation portfolio at least through the end of 2022. It would be unreasonable to accept the higher risk of failure of the HP Turbine during those years. The failure of a rotating or stationary blade will cause extensive damage to the downstream rotating blades resulting in a forced outage. A forced outage on the HP turbine would require, at minimum, eight weeks to install a spare inner block, and the collateral damage to other turbine components would require spending incremental funds in addition to the base cost to open/close the turbine. In addition to the increased capital and O&M costs, Unit 2 would be unavailable during this repair timeframe. Kerns Rebuttal at 6. Further, collateral damage due to a turbine failure cannot be accurately predicted and could be greater. For instance, on September 20, 2008, Cook Unit One experienced a failure of the generator turbine assembly. Damage also resulted to the turbine building and support systems. As a result, Cook Unit One was unavailable for approximately 15 months, and the restoration effort cost in excess of $200 million. Kerns Rebuttal at 7.

Simply put, it is prudent utility practice to avoid a turbine failure and not accept the risk that would come from failing to rebuild the Unit 2 turbine. The HP Turbine rebuild project is consistent with good utility practice and is the reasonable course of action regardless of whether the Unit 2 lease will expire at the end of 2022. The OUCC suggestion that the Commission ignore this risk and disallow recovery of this prudent investment should be rejected.

F. <u>South Bend Solar Project ("SBSP").</u> While the OUCC proposed edits to the IMPO summary of the OUCC testimony, neither the OUCC nor any other party took exception to the Company's proposed discussion and finding as set forth in the IMPO. Therefore, the Company's proposed discussion and finding should be adopted.

G. <u>Prepaid Pension Asset.</u>

1. <u>OUCC.</u> The OUCC urges the Commission to change its previous decision in Cause No. 44075 that the Company's prepaid pension asset is properly included in rate base. Not one of the reasons offered by the OUCC justifies a departure from the previous decision.

I&M's "prepaid pension asset" continues to be "recorded on the Company's books in accordance with governing accounting standards." *Re Indiana Michigan Power Co.*, Cause No

44075 at 10, 2013 WL 1180842 (IURC 2/13/2013); Ross Rebuttal at 3. The OUCC contention otherwise is semantics. The asset can and does exist. Ross Rebuttal 2-3.

Consistent with GAAP[6], a prepaid pension asset exists when contributions to the related trust fund exceeds the amount of pension expense that is recorded. Pension expense required to be recorded under GAAP is net of the earned return on pension-related investments. *Id.* at 2. Although FAS 87 was superseded by FAS 158 (and now ASC 715), I&M's calculation of a prepaid pension in accordance with GAAP has not changed. In the end, ASC 715 now requires the separation of the pension prepayment into two components on the balance sheet – funded position and regulatory asset. This balance sheet split does not change the character of the original prepayment transaction/calculation. *Id.* at 3-4. Two different external auditors have issued opinions since ASC 715 was implemented and both auditors have issued "unqualified", *i.e.*, clean opinions, regarding I&M's financial statements and disclosures, including the accounting for I&M's pension plan and other postemployment benefits ("OPEB"). *Id.* at 4.

Therefore, the OUCC contention that FAS 87 is outdated, its discussion of GAAP, and its suggestion that I&M has not properly recorded this asset on its books are erroneous and should be rejected. OUCC PO at 25-27.

The OUCC's "working capital" argument confuses the concept of "*cash* working capital" with the broader concept of "working capital". The Commission recognized this distinction in its order in *Re IPL*, Cause No. 44576 at 23, n.23, 2016 WL 1118795 (IURC 3/16/2016). The OUCC's continued attempt to confuse the record on this point should be rejected.

[6] Generally Accepted Accounting Principles.

The OUCC contention that the Company has not proven that its prepaid pension asset was made using "investor-supplied capital" is also erroneous. OUCC PO at 27. I&M's customers are paying rates that reflect the level of GAAP-determined pension cost that is used in I&M's cost of service. I&M does not recover through rates any pension amounts above and beyond the cost of service level. In its simplest form, I&M's prepaid pension asset is comprised of the following:

Row		**For Illustrative Purposes Only**
1	Company Pension Contributions	$xxx,xxx
2	Less: GAAP-determined Pension Expense (In rates Paid by I&M Customers)	$(xxx,xxx)
3	Equals: Prepaid Pension Asset (Account 165) (Equal to Row 9 Below)	$xxx,xxx
4		
5	Pension Funded Status (Account 129)	$xxx,xxx
6	**OR**	
7	Pension Funded Status (Account 228)	$(xxx,xxx)
8	Plus: Pension-Related Regulatory Asset (Account 182.3)	$xxx,xxx
9	Equals: Prepaid Pension Asset (Account 165) (Equal to Row 3 Above)	$xxx,xxx

Ross Rebuttal at 10.

As shown by the table above, it is clear that I&M's prepaid pension asset (cumulative contributions less cumulative GAAP-determined expense) is funded solely by investor-provided capital. At most, the cost of service in the rates I&M customers pay has reflected the level of GAAP-determined pension expense that is shown in Row 2 above and nothing more. The only funds available to I&M from customers are for the level of GAAP-determined pension cost. Amounts in Account 165 represent contributions in excess of pension cost, which were provided by investors. *Id.* at 10-11.

The record shows that I&M's "prepaid pension asset" continues to reduce I&M's total pension cost that is included in its cost of service such that having a "prepaid pension asset" benefits customers by reducing I&M's revenue requirement. The projected $85 million prepaid pension asset on a total company basis at December 31, 2018 will serve to reduce 2018 pension cost by approximately $5.1 million ($85 million times 6.00 percent investment return equals $5.1

million FAS 87 pension cost savings) which is included and lowers the projected 2020 pension cost to about $7.7 million. Applying the Company's proposed weighted average cost of capital ("WACC") of 5.91% to the prepaid pension asset results in a cost of $5.0 million, which supports that the costs are commensurate with the benefits. So, without the savings from the $85 million additional pension contributions, 2020 pension cost would instead be projected to total nearly $13 million. Hill Rebuttal at 22-23.

Pension contributions have benefited customers by creating additional trust fund principal and investment income that has served to reduce each subsequent year's pension cost included in cost of service. The contributions and returns have also contributed to the avoidance of paying the variable Pension Benefit Guaranty Corporation ("PBGC") premiums since 2012 that other utilities in the state and nation have had to pay when a pension plan falls below certain funded levels. *Id.* at 23.

Prepaid pension asset contributions have enabled a virtuous cycle of lower past, current and future cost of providing service and PBGC variable premium avoidance that have benefited customers and the utility's ongoing ability to provide reliable service. Clearly, the prepaid pension asset represents a prudent investment made to help meet utility obligations and to reduce cost of service for customers and is necessary for the responsible management of the pension plan. Simply put, pension cost is a reasonable and necessary cost of providing electric service to I&M's customers. The additional contributions the Company has made results in a higher pension balance that is able to generate higher returns and in both respects is used and useful in offsetting the ongoing cost of providing service to customers by virtue of lowering future pension contributions.

The facts underlying this aspect of the Commission's 44075 decision have not changed. The OUCC contention otherwise is mistaken. Before, in, and after the Commission decision in

Cause No. 44075, the return on assets in a utility's rate base are necessarily grossed up for income tax. The gross revenue conversion factor, *i.e.*, the gross up for taxes, reflects only that in the context of a rate case the return reflects the amount the utility will earn after taxes. Thus "gross up" is necessary to capture the true cost. Tr. at C-38. Thus, the OUCC argument that rate base treatment causing costs to be unfairly high is based on a false premise. There is nothing unfair about recognizing the cost incurred to provide service in the price for that service.

The OUCC contentions that this asset is not "used and useful" and does not benefit customers lack merit. OUCC PO at 28. The cash contributions that made the prepaid pension asset continue to be a reasonable investment that use investor-supplied capital. As just explained, the prepaid pension asset represents a prudent investment made to help meet utility obligations and to reduce cost of service for customers, is used and useful in providing public utility service, and is necessary for the responsible management of the pension plan. Ross Rebuttal at 11. Like any other used and useful asset that benefits I&M's customers, the prepaid pension asset is properly included in rate base.

Cash investments are included in rate base in order to provide the utility an opportunity to recover the cost of capital for investor funds dedicated to utility service. While the most obvious rate base item may be plant in service, rate base typically includes other property, such as working capital, fuel inventory, materials and supplies, and prepayments. By including such other property in rate base, the utility is compensated for the cost of the cash invested for and used in the operation of the utility. Ross Rebuttal at 12-13. These costs of providing service are recognized in the ratemaking process because a utility is entitled to recover all of its reasonable costs. In other words, the utility has prepaid an allowable expense and the inclusion of the prepayment in rate base is consistent with well-accepted ratemaking principles and necessary both to compensate the utility for use of the funds it has advanced and to avoid a disincentive to the utility for making similar prudent advances in the future. Such treatment is particularly warranted where, as here, the prepayment lowered both the current and future cost of providing service and thus benefited customers and the utility's ongoing ability to provide reliable service.

The record in the instant case continues to demonstrate that the prepaid pension asset "preserves the integrity of the pension fund." 44075 Order at 10; Hill Direct at 37. The OUCC suggestion otherwise implies that all any pension plan would need to do to remain financially sound is to simply make ERISA minimum required contributions. This would lead to disaster. As Mr. Hill explained, ERISA minimum funding contributions are guide rails that "you do not want to hit." ERISA minimum funding contributions do not even use the same liability amount that a Company uses to determine its funding status. Hill Rebuttal at 18-19.

The OUCC contention that the amount of the prepaid pension asset has remained virtually unchanged is also incorrect. OUCC PO at 28. I&M's prepaid pension asset decreased in eight of the eleven years from 2006 to 2016. Hill Rebuttal at 17-18. While increased by contributions, the prepaid pension asset will also always be reduced by pension cost and could even be less than zero. In its prior rate case, I&M's prepaid pension asset was forecasted to be \$104 million (Total Company) as of December 31, 2018. In this case, I&M's Test Year prepaid pension asset is \$19 million less at \$85 million (Total Company). Hill Rebuttal at 17-18; also Ross Rebuttal at 14 (noting the \$85 million forecasted prepaid pension asset is lower than actual prepaid pension asset as of December 31, 2018).

The inclusion of a prepaid pension asset in rate base is aligned with traditional cost of service ratemaking principles. In contrast, the OUCC's alternative treatment attempts to circumvent the ratemaking process by removing a previously justified asset, the prepaid pension asset, from rate base, and substituting the loss with a complicated, fictitious cost calculation. It is not even clear that Ms. Stull's hypothetical calculation would be supported by GAAP. Hill Rebuttal at 19.

The current rate base ratemaking treatment of I&M's prepaid pension asset *is the correct treatment*. The prepaid pension asset is a prudent and reasonable investment that reduces the cost of service, helps the pension plan avoid financial distress and is necessary for the responsible management of the pension plan for the employees of I&M that provide service to customers. Therefore, the Commission should continue to approve the prepaid pension asset as a component of I&M's rate base.

2. <u>IG.</u> The Industrial Group proposed discussion and finding rests on the contention that the prepaid pension asset must be shown to have been created from investor-supplied funds. IG Redline at 23. As explained above, the prepaid pension asset is by definition created from investor-supplied funds; it is not customer supplied because it is the *excess* beyond the level of cost reflected in the ratemaking process. Therefore, the continued inclusion of the I&M prepaid pension asset in rate base does not run afoul of *City of Evansville v. Southern Ind. Gas & Electric Co.*, 167 Ind. App. 472, 339 N.E.2d 562 (1975). Quite the contrary, the continued inclusion of the prepaid pension asset in rate base reflects the mirror image of the principles recognized in *City of Evansville*. In fact, both *City of Evansville*, 339 N.E.2d 562, 569 and *L.S. Ayres v. IPALCO*, 351 N.E.2d 814, 820 (Ind. Ct. App. 1976) instruct that rate base includes not only "physical properties" but also "an allowance for working capital." Both of these decisions cite Professor Bonbright's treatise throughout and specifically for the working capital proposition. *City of Evansville*, 339 N.E.2d at 569 n.4; and *L.S. Ayres,* 351 N.E.2d at 820 n.5. Professor

Bonbright's treatise includes "prepayments" in the definition of "working capital." Ross Rebuttal at 12-13.

Finally, the suggestion that the Commission should penalize the Company based on the Industrial Group's allegations regarding the discovery process are meritless. IG PO Redline at 23-24. The Commission has a process whereby discovery disputes may be presented to the Commission. 170 IAC 1-1.1-16. Neither the Industrial Group nor any other party presented any motions in accordance with this procedure. Consequently, this belated effort to raise a discovery concern should be rejected. Moreover, the information sought by this discovery request is not relevant. In the ratemaking process, customers pay for service, not individual expenses. The test period is used to determine the revenue requirement. One element of that cost is pension expense determined under GAAP. The prepaid pension asset, by definition, is the amount (at any given point in time) by which total cumulative contributions have *exceeded* total cumulative GAAP pension expense, which is in no way a function of ERISA minimum funding. Hill Rebuttal at 18-19. Simply put, the source of the entire prepaid pension asset is investor capital requiring a return.

In sum, neither the OUCC nor Industrial Group objects to the Company including pension expense as a recoverable cost, nor do they dispute the fact that pension expense is reduced as a result of I&M's prepaid pension asset. Yet, both are, in effect, requesting that the Company's actions to reduce cost of service (through a reduced pension expense) be permitted without customers paying rates that compensate investors for the cash they advanced to effectuate this cost of service reduction. Because the prepaid pension asset represents contributions in excess of the expense included in revenue requirements, investor capital is required to fund the entire net prepaid pension asset balance and such investor capital is entitled to a return. Earnings on pension trust assets reduce pension expense, benefiting customers. In addition to the customer benefit of reduced annual and cumulative pension expense recognized for financial and ratemaking purposes, customers also benefit from the Company's ability to attract and retain employees knowing their pension is adequately funded. Therefore, the Commission should reject the OUCC and Industrial Group proposals and continue to include the prepaid pension asset in rate base as proposed by I&M.

H. Unamortized Nuclear Decommissioning Study And Rate Case Expense Asset. When an expense is deferred and recovered through rates over a period of time via an amortization, the time value of money is appropriately recognized by including carrying charges on the deferral. In the IMPO, this is accomplished by including this deferred cost in rate base. The OUCC exception to I&M's proposed discussion and finding should be rejected.

I. Conclusion On Rate Base. I&M's proposed conclusion on rate base set forth in the IMPO should be adopted.

8. Depreciation.

A. Accounts 354, 355, 364, 365, 366, 368, 369. The IMPO explains that the OUCC and Industrial Group opposition to I&M's proposed depreciation rates for these accounts is wholly arbitrary. IMPO at 25. In their post hearing filings, both OUCC and IG gloss over their reliance on the arbitrary Bauhan scale and his 1947 unpublished Bauhan paper. They ask the Commission to instead establish I&M's depreciation rates for these accounts based on data from other utilities. Notably, the Bauhan paper underlying the OUCC and Industrial Group testimony did not urge reliance on other utility data. Moreover, the "other utility data" offered by the OUCC and Industrial Group ignores the AEP affiliate data that validates the results of the Company's analysis. The record shows the service lives proposed by the OUCC and IG witnesses are significantly outside the range of comparable AEP affiliates that have similar operating conditions to I&M. Cash Rebuttal at 25; Attachment JAC-R2. Therefore, it would be arbitrary for the Commission to ignore the AEP data. Because the complete record of "other utility data" demonstrates the OUCC and Industrial Group proposals are flawed, the OUCC and IG findings should be rejected.

B. Account 370 (Meters). The Company's proposed single depreciation rate for this account is consistent with the NARUC Public Utility Depreciation Practices Manual. Cash Rebuttal at 20. This approach is reasonable for calculating a depreciation rate for the account given the AMI deployment. The OUCC proposal (OUCC PO at 33) that no change be made ignores the anticipated AMI deployment. The Industrial Group's recommended depreciation rate uses an average service life of 16 years and an average remaining life of 9.84 years, which is well beyond the four years that are left for the current meters. IG Redline at 29; Cash Rebuttal at 19-20. Therefore, the OUCC and IG exceptions to the IMPO should be rejected.

C-E. Contingency, Escalation And Interim Retirements. While contingency, escalation and interim retirements are three separate depreciation issues, the OUCC's approach to them is the same: ignore precedent and urge that their position be accepted. The OUCC simply deletes eight citations to four different fully litigated depreciation proceedings which flatly reject the positions taken by the OUCC here. OUCC PO at 33-34. The OUCC does not even mention these orders, let alone attempt to distinguish them. A stable regulatory environment depends upon adherence to precedent. It is not helpful to such an environment when the OUCC advocates positions that have routinely been rejected in earlier proceedings by this Commission. I&M's proposed discussion and findings should be adopted.

F. Rockport. The ICC suggests that the Company's proposed depreciation rate for steam production plant is based on a change in the life of the Rockport units. ICC

Exceptions at 6-7. That is not correct. The reason for the Company's proposed change in the depreciation accrual rate for steam production plant is investment of $21.7 million in the Rockport plant since the last depreciation study. IMPO at 28-29; Cash Direct at 16; Cash Attachment JAC-1, p. 8 of 34. In other words, I&M has not proposed to change the retirement dates used in the life-span analysis for Steam Production Plant (Rockport) from the dates underlying the Company's existing rates. Cash Attachment JAC-1, p. 7 of 34. Rather, the Company is proposing to adjust the depreciation rate for steam production plant to recognize investment made since the depreciation study in the Company's last rate case. Given this, the ICC's proposed discussion of the Fifth Modification and Lease end are beside the point. Therefore, the ICC exception to the Company's proposed order should be rejected and the IMPO adopted. IMPO at 28-29.

G. <u>Rockport Enhanced DSI.</u> The Joint Municipal Group would have the Commission "find" that a ten year depreciation rate for the Enhanced DSI project would be "consistent with the requirements of Indiana Code § 8-1-2-6.7(b)." JM PO at 30. As stated in the IMPO, the minimum period under this statute is "ten years or the useful economic life of the technology, whichever is less…". IMPO at 29. It is incorrect to conclude that the statute requires a depreciation period of at least ten years.

Furthermore, as explained in the IMPO, the Joint Municipal Group's position is based on its witness' confusion as to the depreciation rates that would apply to this project. It is a fundamental principle of cost-of-service ratemaking that the cost of an asset should be recognized over the period it is used and useful to provide service to customers. Cash Rebuttal at 5-6. The record shows the Joint Municipal Group's proposal would extend depreciating the Enhanced DSI projects beyond the expected life of the Rockport Plant and would improperly shift the cost of service to customers who will not benefit from the asset. *Id.* The Company's proposed discussion and finding should be adopted**.**

9. <u>Fair Rate Of Return.</u>

A. <u>Reply To Joint Municipal Group.</u> The Joint Municipal Group agrees with I&M that the Commission should find an ROE in the range of 10.00 percent to 10.75 percent represents the range of returns required by equity investors under current and expected market conditions. JM Exceptions at 35. This conclusion corroborates Mr. Hevert's recommendation. The Joint Municipal Group asserts that the Commission should further find and conclude that "a 10.5% ROE would be fair and reasonable absent other circumstances present here" which they contend warrant an authorized ROE of 10%, *i.e.* the low end of Mr. Hevert's recommended range. *Id.*

While I&M appreciates the Joint Municipal Group recognizing the validity of Mr. Hevert's recommendations, the Company disagrees that the Indiana and Michigan Municipal Distributors Association ("IMMDA") customers' decisions to exercise their right to purchase their wholesale power elsewhere warrant a penalty to I&M. JM Exceptions at 35. The Company has not acted imprudently. To the contrary, by selling power at wholesale from generation facilities established to provide retail service, the Company has significantly reduced its retail cost of service (and associated customer rates) for many years. Because the wholesale market is competitive and the IMMDA contracts culminated out of very contentious negotiations, it is only reasonable to conclude that these wholesale contracts would not have existed if the Company had required additional material exit fees as retroactively proposed by the Joint Municipal Group. Moreover, the record shows the assets are not stranded as this generation remains used and useful in the provision of retail electric service. Thomas Rebuttal at 28-29. Therefore, the Joint Municipal Group's position that the Commission should impose a penalty on I&M should be rejected.

B. <u>Reply To Walmart.</u> Walmart urges the Commission to assess ROE based on the rate impact to customers. Walmart Redline at 33. This is not how ROE is determined in Indiana and Walmart identifies no precedent reconciling its proposal with governing law.

Mr. Hevert's recommended range (10% - 10.7%) is within the range of Regulatory Research Associates ("RRA") reported ROEs identified by Walmart (8.4% to 11.95%). Walmart Redline at 33. The average reported ROE for vertically-integrated utilities identified and recommended by Walmart (9.73%) is substantially greater than the ROEs recommended by the OUCC and Industrial Group. Walmart Redline at 36. Although this highlights why the OUCC and IG proposals are indefensible, the Walmart recommendation that the Commission adopt the RRA "average ROE" for I&M should be rejected.

Recent authorized returns serve as a broad gauge check on the ROE recommendations. Nevertheless, it is important to recognize that average annual data obscures variation in returns and does not address the number of cases or the jurisdictions issuing orders within a given year. For example, one year may have fewer cases decided, and a relatively large portion of those cases decided by a single jurisdiction.

Furthermore, as Mr. Hevert explained during cross-examination, the average authorized returns for 2019 for vertically integrated utilities reflects an anomalously low return. Tr. at C-31, 69-70.[7] Moreover, as shown in the Chart 6 in Mr. Hevert's rebuttal (p. 48), if *all* authorized ROEs

[7] As Mr. Hevert explained in the same month this low result was entered in South Dakota, the utility's stock price dropped and the company under-performed the utility sector by about 6% in that one month. Tr. C-71. The inference to be drawn is that despite the fact that South Dakota operations are but a small portion of that company's operations, the 8.75% return was so unusual that the market reacted. *Id.*

are charted, rather than annual averages, there is no meaningful trend since 2015. Rather, time explains less than one percent of the change in ROEs, and the trend variable is statistically insignificant. *Id.* at 48. Additionally, the recent fluctuations around the annual average authorized return data are well within the standard deviation of authorized ROEs. From this perspective as well, there is no reason to conclude authorized returns have fallen since 2015.

C. **Reply To OUCC And Industrial Group.**

1. The OUCC And Industrial Group Violate The Principle That Inputs Must Be Reasonable, Which They Concede Governs. The OUCC's proposed finding on cost of equity ("COE") rests on the "reasonable[ness of the] inputs" underlying the witness recommendations in this case. OUCC PO at 40. The Industrial Group also touts the importance of ROE witness judgment. IG Redline at 37. The underlying premise is that because the COE models require inputs, sound judgment and use of objective inputs are vital to the credibility of COE expert testimony. Tellingly, both the OUCC and Industrial Group wholly fail to address the shortcomings of the OUCC and intervenor analysis or otherwise reconcile their ROE findings with the record evidence.

These parties also ignore substantial record evidence demonstrating that the Discounted Cash Flow ("DCF") model remains unsuited to the current market environment, which continues to reflect changing conditions and high levels of instability. Hevert Direct at 5, 8. Nevertheless, as discussed in Section B above, the Commission cannot ignore this evidence or adopt a finding based on "reasonableness" without addressing the substantial evidence showing the OUCC and Industrial Group witness recommendations are biased downward and otherwise determining that the inputs underlying the OUCC recommended ROE are in fact reasonable.

2. While Both The OUCC And Industrial Group Also Concede The Commission Must Consider The Totality Of The Circumstances, Both Parties' Filings Fail To Take Such Circumstances Into Account. The OUCC and Industrial Group also contend that "consistent with *Hope* and *Bluefield*, I&M's authorized ROE should be based on its cost of equity, while also being reasonable given the totality of the circumstances." OUCC PO at 40; IG Redline at 37. This *sounds* perfectly acceptable with one important exception – namely that the OUCC and the IG filings fail to give effect to the "totality of the circumstances."

Most significantly, the OUCC and Industrial Group ignore their extraordinary proposal that I&M be denied an opportunity to continue to track its PJM costs and the resulting financial harm to the Company.[8] Like other rate adjustment mechanisms, the PJM Rider is an important means by which the Company is provided a true opportunity to earn its Commission-authorized return. Given that the ROE testimony in this case assumes that this opportunity will in fact exist, the Commission must give more than mere lip service to the "totality of the circumstances."

As trackers are prevalent in the utility industry, and authorized for the other utilities in the proxy group and other utilities in Indiana, the COE analysis and ROE recommendations reflect the cost of equity where rate adjustment mechanisms are being used. Put another way, the companies of comparable risk are comparable because they, too, have rate adjustment mechanisms in place to support cash flow and other credit metrics and otherwise provide the cost recovery that cannot be reasonably captured through the general rate case process. Thus, rate adjustment mechanisms do not reduce the Company's recommended ROE; they are assumed within the COE analysis.

[8] This is especially troubling given the myriad other extreme positions the OUCC and Industrial Group urge the Commission adopt, including: disregard 20 years of precedent on incentive pay; disallow $15 million of pension expense in reliance on a mistake their witness made simply because I&M did not explicitly rebut it; throw out tens of millions of dollars of necessary distribution investment; and reject $64 million in rate base for the prepaid pension asset that has been in rate base since Cause No 44075 and which was affirmed by the Indiana Court of Appeals.

It is often stated that a utility's return is not guaranteed. Rather, the utility is afforded an "opportunity" to earn it. In fact, Mr. Gorman's analysis fundamentally assumes I&M actually will earn the entirety of its authorized ROE on a going-forward basis. Hevert Rebuttal at 87. The word "opportunity" means a set of circumstances that makes it possible to do something, *i.e.,* a "favorable juncture of circumstances", "a good chance for advancement or progress."[9] The OUCC and intervenor recommendations fall far short of satisfying the plain meaning of the word "opportunity".

The record demonstrates that the Test Year PJM costs are not representative of the PJM costs the Company will incur during the period the rates established in this proceeding will be in effect.[10] More specifically, I&M expects PJM NITS to increase by approximately $58 million (Total Company) in 2021, the year following the Test Year. *Id.* On an Indiana jurisdictional basis that increase approximates $48 million. *Id.* Based on the cost of service filed in this Cause, a 1% return on equity (ROE) is approximately $25 million per year. Therefore, if I&M does not continue to track PJM NITS as proposed by the Company, it would decrease I&M's earned ROE by approximately 1.90% in the first calendar year following this rate case, making I&M's earned ROE less than that recommended by any intervenor in this case. *Id.* This point was made in the Company direct and rebuttal testimony, yet the other parties continue to ignore it.

In addition, utility costs are rising, customer load is not growing in a meaningful way, and some tariffs are still structured in a way that does not reflect the realities of the ongoing impact of efficiency and behind the meter solutions. Thus, it is undoubtedly clear that not tracking PJM NITS would eliminate any reasonable opportunity I&M has to earn its authorized return.

---

[9] www.merriam-webster.com/dictionary/opportunity

[10] Williamson Rebuttal at 12; also Williamson Direct at 52-53; Hevert Rebuttal at 94.

Tracking PJM NITS and other costs reduces the uncertainty associated with whether the utility's rates will produce the required level of revenue, but such mechanisms do not change the utility risk underlying its COE. As Mr. Hevert explained during cross-examination:

> In that respect, a tracker effectively puts the company back in the position it would have been but for the need to invest in this particular asset to incur this particular cost, and when we look at trackers and we look at the types of costs that they recover and we look at the financial community's response to them, at least in my experience, I have not seen, for example, a company's credit rating improve specifically because of a tracker. In my view, that goes to the point that the tracker is credit supportive. It supports the company's credit profile because but for the tracker, the profile likely would come under pressure.

Tr, C-68.[11]

Given that trackers support the opportunity for a utility to earn its authorized return and maintain the metrics important to credit rating agencies, no credible argument can be made that the OUCC and Industrial Group recommended ROEs (9.10 and 9.00%, respectively) will maintain I&M's financial integrity.

As the Commission has stated, "[a] full rate case for each year of operations would be as useful as it is impractical."[12] Thus, even if the Company were to file a general rate case as frequently as permitted by Indiana law, the general rate case process will not allow timely recognition of the Company's PJM costs, at least not without the Commission also authorizing an associated cost deferral with carrying charges, which is not an ideal alternative and would not provide timely review of the PJM costs. Williamson Rebuttal at 4-5, 13.

[11] The Commission decision *in Re Indianapolis Power & Light Co.*, Cause No. 44576, p. 41 (IURC 3/16/2016), cited by JM Exceptions (at 34-35) is not determinative. The Commission decision must reflect the evidence of record in the instant proceeding, not ignore it as proposed by the other parties.

[12] Williamson Rebuttal at 4, quoting IURC Regulatory Flexibility Report to the Indiana General Assembly '08, at 16.

Because a utility is entitled to a reasonable opportunity to recover the reasonable and necessary costs to provide service, including compliance with regulatory RTO and other policies, trackers are reasonably, if not necessarily, used where costs are changing in such a way that they cannot be captured through the general rate case procedure.

In sum, the combination of the opposing witnesses' unduly low ROE recommendations and the increased likelihood of under-earning absent the timely recovery of increased NITS and other costs suggests returns that are far too low to be considered reasonable. Moreover, the OUCC and intervenor filings ignore the totality of impact on customers. Financial strength is necessary for a utility to attract capital at a reasonable cost in order to make the investments necessary for the utility to fulfill its service obligations at a reasonable cost. While consumer advocates appear to seek a short term win, the results they recommend are a longer term loss for the customer and public interest.

3. The OUCC And Industrial Group Concede That Multiple Models Should Be Used But Ignore The Analysis Demonstrating Their Recommended ROEs Are Confiscatory. Both the OUCC and Industrial Group urge the Commission to "find" that use of "multiple models" "is desirable." OUCC PO at 40; IG Redline at 37. Yet, they ignore the analysis they do not like, such as the bond yield plus risk premium approach presented by Mr. Hevert (together with his DCF and Capital Asset Pricing Model ("CAPM") analysis) notwithstanding the record evidence demonstrating that all three models are accepted by financial theory:

> As Professor Eugene Brigham explains: "Whereas debt and preferred stocks are contractual obligations which have easily determined costs, it is not at all easy to estimate [the Cost of Equity]. However, three methods can be used: (1) the Capital Asset Pricing Model (CAPM), (2) the discounted cash flow (DCF) model, and (3) the bond-yield-plus-risk-premium approach. These methods should not be regarded as mutually exclusive – no one dominates the others, and all are subject to error when used in practice. Therefore, when faced with the task of estimating a company's cost of equity, we generally use all three methods and then choose

> among them on the basis of our confidence in the data used for each in the specific case at hand." Eugene F. Brigham, Louis C. Gapenski, Financial Management, Theory and Practice, 7th ed., The Dryden Press, 1994, at 341.

Hevert Direct at 25 n. 39.

The OUCC and Industrial Group also urge the Commission to "find" that "both the CAPM and DCF Model" "can produce" "reasonable estimates for the cost of equity." OUCC PO at 40; IG Redline at 37. As an initial matter, this proposed finding begs two noteworthy points. First, the question is not what the models "*can*" produce, it is what they "*do*" produce in the context of current and expected market conditions and relative to other appropriate benchmarks. See Hevert Direct at 4. The record shows that since 2014, the DCF model has produced results consistently and meaningfully below authorized returns and the model's underlying structure and assumptions are not compatible with the recent capital market and economic environment. *Id.* at 5, 8.

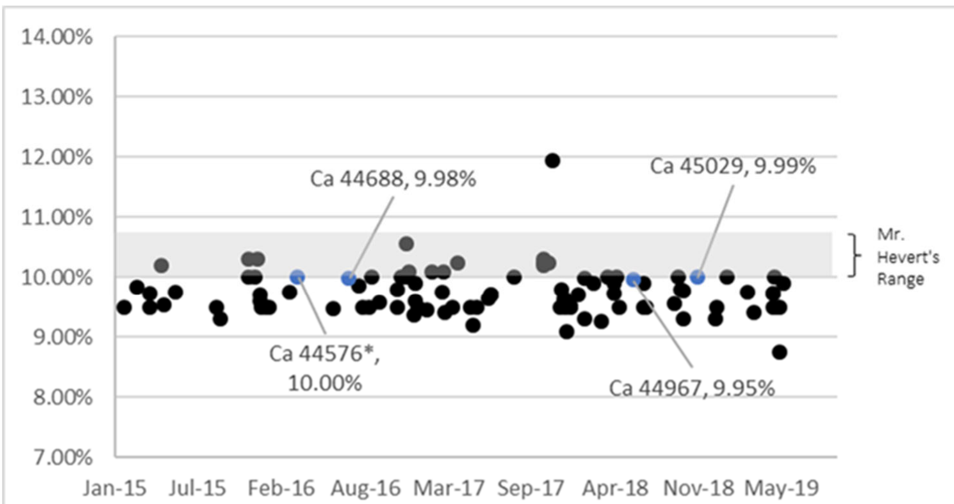
Second, after proposing the Commission "find" that its decision should be based on the models, the OUCC's recommended result is that the Commission adopt the OUCC witness recommended ROE. Ironically, Mr. David Garrett's recommended ROE is *not* the product of any COE model analysis. Mr. Garrett's model analysis produced an estimated COE of 6.5%. It is illogical, as well as arbitrary, for the Commission to find it is relying on the "models" and then adopt a 9.1% ROE that is not the product thereof and reflects an unwarranted and punitive 85 basis point drop from the Company's current Commission-authorized ROE (9.95%).[13]

The OUCC and Industrial Group contend the "evidence presented in this case" shows that the authorized ROE of 10.5% recommended by Mr. Hevert "exceeds any reasonable estimate for I&M's cost of equity" in the current market environment. OUCC PO at 40; IG Redline at 37.

[13] This return stems from the Commission approval of a settlement agreement in Cause No. 44967.

Notably, neither the OUCC nor the Industrial Group filing makes any real attempt to reconcile their summary dismissal of Mr. Hevert's recommendation and adoption of their respective witness recommendations with the record evidence. This is a fatal flaw as the Commission cannot merely ignore the record as a whole. See this brief, Section B.

Furthermore, the OUCC and Industrial Group contention is erroneous. The record shows Mr. Hevert's range and recommendation are consistent with industry and Commission awards:



*In Cause No. 44576, the Commission found the Cost of Equity for Indianapolis Power & Light Co. ("IPL"), to be 10.00%, but authorized a 9.85% ROE, which represented the midpoint between IPL's unadjusted COE of 10.00% and the low end of the range 9.70%, due to management performance factors

As shown in the figure above, the Commission's recent authorized ROEs are also consistent with ROEs authorized for vertically integrated electric utilities in other jurisdictions. In addition, authorized ROEs of 9.00% or lower are shown to be very infrequent, and Mr. Garrett's 6.5% "true" Cost of Equity is well below any reasonable estimate. Hevert Rebuttal at 4-5; 48 (Chart 6).

4. <u>The OUCC And Industrial Group's Summary Dismissal Of Mr. Hevert's Analysis In Favor Of Their Respective Recommendations Ignores Substantial Record Evidence In Violation Of Their Concession That ROE Model Inputs Must Be Reasonable.</u>

a. DCF. As discussed above, the OUCC and Industrial Group respective ROE determinations rest on the premise that model "inputs" must be reasonable. They urge the Commission to single out and reject Mr. Hevert's ROE based on his growth rate inputs in the DCF Model. OUCC PO at 40; IG Redline at 37. They say nothing to demonstrate the reasonableness of their respective witness input. This is illogical. The Commission cannot reasonably rest its decision on "inputs" – growth rates in particular – without assessing the reasonableness of the growth rate assumption used by the analyst whose ROE recommendation is being adopted.

Substantial record evidence shows the OUCC witness input is unreasonable. Mr. David Garrett assumed a single, perpetual growth rate of 3.90 percent for all his proxy companies. Mr. Garrett's 3.90 percent growth rate is not based on any measure of company-specific growth, or even growth in the utility industry in general. Hevert Rebuttal at 13. Under the DCF model's strict assumptions, expected growth and dividend yields are related. Mr. Garrett's assumption that one growth rate applies to all companies, even though dividend yields vary across those companies, has no basis in theory or practice. *Id.*

Moreover, by reference to the Congressional Budget Office ("CBO") expected inflation rate of 2.00 percent, Mr. Garrett's method assumes his proxy companies all will grow at real rates of approximately 1.90 percent, in perpetuity. *Id*. This means the OUCC's recommended result is founded on the opinion of an analyst who has assumed that an investor would be willing to assume the risks of *equity* ownership in exchange for growth only modestly greater than expected inflation. *Id.* Common sense, not to mention record evidence, tells us that under such conditions, it is more likely an investor would prefer *debt* securities, with their higher yield and considerably less risk of capital loss (if held to maturity), than common equity, with a lower yield, higher volatility, and little prospect of meaningful capital appreciation. *Id.*

As to Mr. Garrett's remaining growth rate estimates (presented in his Attachment DJG-1-5), none are appropriate measures of growth for his DCF analysis. As a practical matter, because they are generic in nature, or specific only to I&M, they fail to account for the risks and prospects faced by the proxy companies. *Id.* Mr. Garrett contends his chosen input is reasonable because it is higher than his other options (Garrett at 55). Yet, being higher than other unreasonable options is not a legitimate means by which to validate a growth rate assumption.

The Constant Growth DCF model assumes cash flows will grow at a constant rate, in perpetuity. Hevert Direct at ii. The model simplifies to a form that expresses the ROE as the sum of the expected dividend yield and the expected growth rate. *Id.* As shown in Equations 4 and 5 in Mr. Hevert's direct testimony (Appendix A, p. 61), the first term is the expected dividend yield and the term is the *expected long-term annual growth rate*. Simply put, under the Constant Growth DCF model, the current price is a positive function of investors' growth rate *expectations*. Under the model's strict assumptions, the growth rate equals the expected rate of capital appreciation. Hevert Direct at 16.

Mr. Hevert relied on analysts' expectations of earnings growth for the constant growth DCF analysis. Hevert Direct at 32.[14] The average growth rate in Mr. Hevert's Constant Growth DCF analysis is 5.66%. An average capital appreciation rate of 5.66 percent is not unsustainably

[14] Under the model's strict assumptions, the growth rate equals the rate of capital appreciation (that is, the growth in the stock price). Given that assumption, it does not matter whether the investor holds the stock in perpetuity, or whether they hold the stock for some period of time, collect the dividends, then sell at the prevailing market price. That result also requires that the ROE result reached today will remain unchanged in perpetuity. So, if market conditions are such that the model produces an unreasonably low (or high) ROE estimate today, it assumes that estimate will be the same ROE investors require every day in the future, regardless of whether or how market conditions change. Hevert Direct at 32.

high as argued by the OUCC and Industrial Group. Hevert Rebuttal at 68. In fact, higher growth has occurred quite often. The record reflects Mr. Hevert's growth rates represent approximately the 43rd percentile of the actual capital appreciation rates observed from 1926 to 2018. *Id.* at 68-69.

Furthermore, the OUCC's reference to the entire U.S. economy (OUCC PO at 40) is beside the point. The Commission is not tasked with finding the COE for the entire U.S. economy and the multitude of business entities and risks encapsulated therein.

Investors rely on analysts' forecasts in framing their investment decisions. Hevert Rebuttal at 17; also Hevert Direct at 63-65. Thus, the relevant issue is not whether Mr. Garrett, the OUCC, intervenors or the Commission believe the analysts' growth rates Mr. Hevert included in his model are proper, it is whether investors *rely on them.* The other parties' filings do not show that analysts' earnings growth rate expectations are unrelated to expected capital appreciation or investors' return requirements.

As shown by the following examples, the Industrial Group ROE recommendation (9.00%) is based on inputs that produce unreasonably low ROE estimates:

1. Mr. Gorman's Multi-Stage DCF model assumes a *perpetual* growth rate beginning in 2029 based on a GDP growth rate projection that actually ends in 2030. Hevert Rebuttal at 50. This one parameter accounts for more than 70% of the model's results. *Id.* at 52. It not consistent with either the model structure or measures of growth noted elsewhere in Mr. Gorman's testimony. *Id.* For example, Mr. Gorman's CAPM analysis assumes economic growth could be as high as 8.80 percent, well in excess of the 4.10 percent growth rate he uses in his Multi-Stage DCF. *Id.* Assuming the 6.45 percent midpoint in Mr. Gorman's Multi-Stage DCF model (including the mid-year convention) as the terminal growth rate produces an average ROE estimate of about 9.64 percent, well above Mr. Gorman's 9.00 percent recommendation. *Id.* at 53.

2. Mr. Gorman assumes all dividends are received at year-end, rather than over the course of the year. *Id.* at 50. Because Mr. Gorman's proxy companies pay dividends on a quarterly basis, Mr. Gorman's assumptions that the entire

dividend is paid at the end of that year essentially defers the timing of the quarterly cash flows (that is, the quarterly dividends) until year-end, even though they are paid throughout the year. A reasonable method of reflecting the timing of quarterly dividend payments is to assume cash flows are received in the middle of each year (i.e., the "mid-year convention"). Hevert Rebuttal at 51 (relying on Duff & Phelps). Simply changing the dividend timing to reflect the mid-year convention increases Mr. Gorman's mean results by nearly thirteen basis points. *Id.*

3. Mr. Gorman's average and median Multi-Stage DCF results of 7.58 percent and 7.47 percent are well below his DCF recommendation of 9.00 percent and his overall recommended range of 8.50 percent to 9.00 percent. *Id.* at 55.

Adjusting Mr. Gorman's Multi-Stage DCF model to reflect growth rates associated with other aspects of his analyses produces ROE estimates well above his 9.00% ROE recommendation.

b. CAPM. Whereas DCF models focus on expected cash flows, Risk Premium-based models, such as the CAPM, focus on the additional return that investors require for taking on additional risk.[15] Hevert Direct at ii-iii, 67-69. The fundamental analytical issue in applying the CAPM is to ensure that all three components of the model (*i.e.*, the risk-free rate, Beta, and the Market Risk Premium) are consistent with market conditions and investor expectations. Hevert Rebuttal at 57. As Morningstar observes:

> It is important to note that the expected equity risk premium, as it is used in discount rates and cost of capital analysis, **is a forward-looking concept**. That is, the equity risk premium that is used in the discount rate should be reflective of what investors think the risk premium will be going forward.

Hevert Rebuttal at 57 (emphasis added). Longstanding financial research has shown the Market Risk Premium varies over time and with market conditions. *Id.* at 57-58. Among their findings is that the Market Risk Premium is inversely related to Government bond yields. That is, as interest rates fall, the Market Risk Premium increases. See Hevert Rebuttal at 64. Financial researchers

[15] In finance, "risk" generally refers to the variation in expected returns, rather than the expected return, itself. Hevert Direct at 32.

therefore have found the Market Risk Premium to be time varying, and a function of economic parameters including interest rates. *Id*. at 64-65.

Continuing with their overall finding that "when using reasonable inputs, both the CAPM and DCF Model can produce reasonable estimates for the cost of equity", the OUCC and Industrial propose the Commission find that Mr. Hevert's recommendation "exceeds any reasonable estimate" because he "relied on an equity risk premium in the CAPM that is more than twice as high as those reported in expert surveys." OUCC PO at 40; IG Redline at 38. While the OUCC cites to its own witness to support this finding, the Industrial Group identifies no specific record evidence to support its proposed finding. OUCC PO at 40.

As an initial matter, the OUCC's proposed finding does not reflect what the OUCC witness actually said. He did not refer to "expert surveys". Rather, as shown in the excerpt from the equity Risk Premium discussion of his testimony, Mr. David Garrett based his "twice as high" claim on "thousands of survey respondents and other experts."

> . . . Many of Mr. Hevert's other long-term growth estimates are similarly too high to be considered realistic. This example highlights why it is important not to overestimate long-term growth rates in the DCF Model. As a result, Mr. Hevert's estimate of the most important factor in the CAPM is more than twice as high as the results estimated and reported by thousands of survey respondents and other experts. Thus, Mr. Hevert's CAPM cost of equity estimate is overstated and unreasonable.

D. Garrett Part I at 15. Being "twice as high" as these surveys does not validate Mr. Garrett's analysis, much less invalidate Mr. Hevert's analysis. It merely shows an arithmetic difference between what Mr. Garrett chose to rely on and the published sources (Bloomberg and Value Line) used by Mr. Hevert.

Substantial record evidence refutes the OUCC and Intervenor contention that Mr. Hevert's CAPM is unreasonable. To estimate the market required return, Mr. Hevert calculated the market capitalization weighted average ROE based on the Constant Growth DCF model relying on data from two sources: (1) Bloomberg; and (2) Value Line. Hevert Direct at 70. His CAPM analyses suggest an ROE range of 8.14 percent to 11.40 percent. Hevert Direct at 71; also Attachment RBH-5. Notably, this CAPM range overlaps much of the recommended COE range offered by the OUCC (9.0%-9.5%) and Industrial Group (8.50% to 9.00%). Given this, the OUCC and Industrial proposal that the Commission dismiss Mr. Hevert's CAPM analysis based on the view that it "exceeds any reasonable estimate" is illogical.

By adopting their respective recommended ROEs, the OUCC and Industrial Group respective filings imply that Mr. Garrett's and Mr. Gorman's inputs are reasonable. Yet, they say nothing to validate either Mr. Garrett's or Mr. Gorman's inputs. This is a fatal flaw. As noted above, the key premise of the OUCC's and Industrial Group's proposed finding is that the model "inputs" selected by the analyst must be reasonable.

Furthermore, the record shows the surveys underlying the OUCC's "twice as high" contention actually support Mr. Hevert's approach to estimating the current Market Risk Premium. Hevert Rebuttal at 21. The record also shows that the survey results Mr. Garrett relied on are disconnected from actual market results. Hevert Rebuttal at 18-19.

More specifically, one of the surveys Mr. Garrett relied on is a survey of expected returns from Graham and Harvey. Hevert Rebuttal at 18-19. Using the Graham and Harvey survey expected return on the overall market in the CAPM provides a COE estimate of 4.98%, only 44 basis points above the Company's proposed cost of debt (which was not disputed in this case). Hevert Rebuttal at 19-20. Because utility stocks tend to be somewhat less risky than the broad market, if the Graham and Harvey survey results are meaningful, Mr. Garrett's ROE recommendation would be no more than 6.79 percent. In fact, his own ROE recommendation exceeds the Graham and Harvey estimate by 231 basis points. This illustrates the tenuous nature of Mr. Garrett's inputs and the conclusions he draws from his analysis. *Id.* at 20.

The record also shows that Graham and Harvey survey respondents' forecasts significantly underestimate actual market returns. From 2012 through 2018, the average market return was 13.27 percent, about 2.50 times greater than the Graham and Harvey survey average expected return. *Id.*

Moreover, the OUCC overlooks the distinction between the expected market return on one hand, and the "hurdle rate" on the other. The "hurdle rate" reflects the return required for capital investments, which is the objective of the COE determination in a utility rate case. In the Third Quarter 2017 survey, Graham and Harvey reported an average hurdle rate of 13.50 percent. The authors further reported the average Weighted Average Cost of Capital, which includes the cost of debt, was 9.20 percent even though the expected market return was 6.50 percent. *Id.* at 21. As a result, the Graham and Harvey surveys relied on by the OUCC are not a reasonable reflection of the expected Market Risk Premium going forward, much less a credible basis to accept Mr. Garrett's recommendation or to reject Mr. Hevert's analysis and his recommended ROE.

Mr. Gorman's 8.80 percent expected market return is well below the long-term market experience and, therefore, is not reasonable.[16] His long-term historical Market Risk Premium estimate (6.00 percent) is the difference between the average market return (approximately 11.90 percent) and the total return of long-term Government bonds (approximately 5.90 percent). However, his CAPM estimate assumes a risk-free rate component of 2.80 percent, not the 5.90 percent used in his Market Risk Premium calculation. Had Mr. Gorman chosen to use the 5.90

---

[16] Hevert Rebuttal at 55-56.

percent risk-free rate that underlies the 11.90 percent market return, Mr. Gorman's CAPM estimate would have been 310 basis points higher.[17]

c. Risk Premium. A review of Mr. Gorman's risk premium analysis highlights that he cherry-picked inputs to drive to his desired conclusion. More specifically, in determining his 8.80 percent DCF-based recommendation, Mr. Gorman effectively relied on his highest results of 8.81 percent and 8.55 percent, effectively discarding several other results ranging from 7.47 percent to 7.98 percent. In a similar fashion, Mr. Gorman relied on his high end CAPM result, discarding a 7.00 percent estimate. Hevert Rebuttal at 60. In his Risk Premium analysis, however, Mr. Gorman retained risk premiums that produced ROE estimates within the range of the DCF and CAPM estimates he discarded. Despite their low levels, Mr. Gorman gave those risk premium estimates (producing ROE results of 7.05 percent and 7.31 percent) weights of 30.00 percent in aggregate. Mr. Gorman did not explain why he would exclude DCF results of 7.98 percent and lower, but include Risk Premium results of 7.05 percent and 7.31 percent. *Id.* Furthermore, Mr. Gorman's Risk Premium ROE estimates are also biased downward because he did not reasonably reflect the inverse relationship between interest rates and the Equity Risk Premium, which is supported by the data on which he relied. *Id.* at 61-65.

5. The Industrial Group's Proposed "Zone of Reasonableness" Applies A Flawed Standard That Ignores The Record Evidence And Assumes Testimony Is Reasonable *Per Se* Simply Because It Has Been Presented. The Industrial Group filing rests on the premise that the expert witness testimony in this case produces a "zone of reasonableness" from 8.5% to 10.75% with a recommended range of 9.00% to 10.5%. IG Redline at 37. In short, the Industrial

[17] *Id.* at 78.

Group proposes the Commission identify the low end and the high end of the ROE witness testimony and pick a point based on this range. This approach assumes that anything an ROE witness presents is reasonable *per se*. It overlooks the importance of sound judgment and objective inputs in ROE analysis, which the Industrial Group concedes is a necessary prerequisite to acceptance of an ROE recommendation. IG Redline at 37. Furthermore, if adopted, this "dart board" approach would disincent expert witness testimony that reflects sound underpinnings. Therefore, the Industrial Group proposal should be rejected.

6. <u>The Industrial Group Opposition To Mr. Hevert's Consideration of Flotation Costs Should Be Rejected.</u> The Industrial Group also points to "flotation costs" as grounds to reject Mr. Hevert's recommendation. IG Redline at 38. Notably, the Industrial Group does not argue such costs do not exist. Nor does the Industrial Group claim that these costs are captured in other aspects of the revenue requirement (which they are not). Tellingly, neither the OUCC nor the Industrial Group mentions OUCC witness David Garrett's testimony on this issue, which was shown on cross-examination to be flawed and unreliable. Tr. at O-76-85. Instead, the Industrial Group points to a 2012 decision in *Indiana-American*, Cause No. 44022 (at 35) and proposes the Commission blindly follow it.

The facts underlying the Commission's decision in Cause No. 44022 are not part of the record here and the Industrial Group has not established that the instant case is similar to the earlier water rate case. Rather, the Industrial Group simply advocates for the same result. Nevertheless, the record in the instant case warrants a different conclusion. The record demonstrates that whether paid directly or indirectly via an underwriting discount, flotation cost results in net proceeds that are less than the gross proceeds. Hevert Rebuttal at 39. What matters is that issuance costs are a permanent reduction to common equity, and absent a recovery of those costs, the issuing company will not be able to earn its required return. *Id.* at 39-40.[18] Furthermore, the earlier decision rejected an "adjustment" to ROE to reflect flotation costs. Mr. Hevert did not propose an adjustment or "adder" as Industrial Group contends. IG Redline at 38; Hevert Direct at 40.[19] Rather, this was one of various risk factors he took into account in reaching his ROE recommendation. Hevert Direct at 59.[20] The record shows that flotation costs are a cost of capital incurred by the utility. Even if that were not the case, Mr. Gorman conceded that regulatory commission's change authorized ROEs based on more factors than changes in capital market costs. Gorman at 116. Therefore, the Industrial Group exception to Mr. Hevert's consideration of flotation costs should be rejected.

7. <u>The Industrial Group Assertion That A 9.00% ROE Award Is Not Harmful To Indiana Regulatory Policy Is Erroneous.</u> Incredibly, the Industrial Group contends that a 95 basis point decrease in I&M's authorized ROE (*i.e.* nearly a $25 million decrease in authorized earnings) will not signal a drastic change in Indiana's utility regulatory policy. IG Redline at 38. The Industrial Group points to no precedent that support its assertion, much less its proposed Commission action. Not only does the Industrial Group assertion defy logic, it is refuted by substantial record evidence and Commission precedent. IG Redline at 38; Hevert Rebuttal at 5-6, 90; Tr. at C-20.

[18] As shown by Attachment RBH-R11, because of flotation costs an authorized ROE of 10.62% would be required to realize an ROE of 10.50 percent. If flotation costs are not recovered, the growth rate falls and the ROE decreases to 10.38 percent (*i.e.,* below the required return).

[19] Mr. Hevert stated: "Although I have calculated the effect of flotation costs, I did not make any explicit adjustments to my ROE estimates to account for flotation costs. Rather, I took it into consideration in determining where the Company's Cost of Equity falls within the range of analytical results."

[20] Mr. Hevert said his "recommendation reflects analytical results based on a proxy group of electric utilities, and takes into consideration the risk factors associated with: (1) the Company's generation portfolio and environmental regulations; (2) customer concentration; (3) the Company's planned capital expenditures and the effect, if any, of certain regulatory mechanisms; and (4) the costs of issuing common stock (that is, "flotation" costs)."

The Commission's authorized ROEs for electric utilities have ranged from 9.85% to 10.50% since 2009 – a 65 basis point change over a decade across four different utilities. Hevert Rebuttal at 5-6. Moreover, during this period no single utility ROE decreased more than 30 basis points from one case to the next. *Id.* Even where the Commission has desired to send a message to utility management to incent improved behavior, the decrease in COE was limited to 15 basis points. Tr. C-6 (discussing Commission finding of 10% COE in Cause No. 44075 versus awarded ROE of 9.85%). Nor can the Industrial Group's recommendation on cost of equity be reconciled with the most recent cost of equity finding by this Commission for an investor owned utility. In reviewing a settlement agreement in *Northern Ind. Pub. Serv. Co.*, Cause No. 45159 (IURC 12/3/2019), the Commission found the cost of equity to be 9.75%, after making a 15 basis point reduction due to NIPSCO's decreased risk from the fundamental change in service structure the Commission had authorized for NIPSCO's industrial load. *NIPSCO*, Cause No. 45159 at 162.

Furthermore, the Industrial Group position begs the question as to why the Commission would want to run the risk of causing a significant downward shift in the Commission's standing in the capital markets. Doing so will harm not only I&M's financial integrity but will have ripple effects throughout all industries regulated by the Commission. This in turn harms customers and the public interest at large because credit rating downgrades cause the cost of capital and ultimately the cost of service that must be reflected in consumer rates to increase. Such cost increases can delay infrastructure investment and other work on utility systems. This, too disserves the public interest in adequate, reliable and modernized service and facilities. It also disincents economic development, shown by the record here to be of the utmost importance in the face of flat or declining load.

More specifically, a drastic reduction in I&M's authorized ROE puts downward pressure on the Company's credit ratings for two reasons: (1) the diminished cash flows from the lower return would have a direct, downward effect on the cash flow-based metrics that are central to credit determinations; and (2) such a decision would present a significant departure from the Commission's past practice, introducing a high degree of regulatory uncertainty and risk. Hevert Rebuttal at 41-42.

This reflects the simple fact that the financial community focuses on the level and predictability of future cash flows. Moody's, for example, notes that 32.50 percent of the weight it gives to various factors considered in its ratings determinations are focused on cash flow.[21] It does so because "[f]inancial strength, including the ability to service debt and provide a return to shareholders, is necessary for a utility to attract capital at a reasonable cost in order to invest in its generation, transmission and distribution assets, so that the utility can fulfill its service obligations at a reasonable cost to rate-payers."[22]

Standard & Poor's also makes clear that cash flow-based metrics are integral to its assessment of the "Financial Risk Profile" which, when combined with the "Business Risk Profile" forms the basis of its rating assessment.[23] Because both the authorized ROE and capital structure directly affect earnings, the Commission's decision would have a direct effect on the Company's

[21] Hevert Rebuttal at 42, citing Moody's Investors Service, *Rating Methodology; Regulated Electric and Gas Utilities*, June 23, 2017, at 6.

[22] Hevert Rebuttal at 42, quoting Moody's Investors Service, *Rating Methodology; Regulated Electric and Gas Utilities*, June 23, 2017, at 20.

[23] Hevert Rebuttal at 42, quoting Standard & Poor's Ratings Services, Industry Report Card: The Outlook for U.S. Regulated Utilities Remains Stable on Increasing Capital Spending and Robust Financial Performance, December 16, 2014, at 7.

cash flows and, therefore, on the credit metrics that both Moody's and S&P find critically important in their rating process.

As to the importance of stability and predictability, Moody's describes the circumstances that correspond to a rating in the "A" category as follows:

> The issuer's interaction with the regulator has led to a strong, lengthy track record of **predictable, consistent and favorable decisions**. The regulator is highly credit supportive of the issuer and utilities in general. We expect these conditions to continue.[24]

Similarly, S&P notes that the regulatory structure is one of the most important factors in its credit rating analyses:

> For a regulated utility company, the regulatory regime in which it operates will influence its performance in profound ways. As such, Standard & Poor's Ratings Services' regulatory advantage assessment - - which informs both our business and financial risk scores - - is one of the most important factors in our credit analysis of regulated utilities.
>
> ***
>
> Our assessment of a utility's regulatory regime rests on four pillars: regulatory stability, efficiency of tariff-setting procedures, financial stability, and regulatory independence… We believe these factors strongly influence a utility's credit quality and its ability to recover its costs and earn a timely return.[25]

While Mr. Gorman referred to certain rating agency reports that discuss the implications of tax reform on the utility sector, concluding they suggest the utility sector is stable, in actuality, those reports discuss the uncertainties surrounding the implications of tax reform and Mr. Gorman himself noted that Moody's recently placed the regulated utility industry on "Negative" outlook due to TCJA cash flow impacts and capital spending. Hevert Rebuttal at 46.

---

[24] Hevert Rebuttal at 42, quoting Moody's Investors Service, *Rating Methodology; Regulated Electric and Gas Utilities*, June 23, 2017, at 30 (emphasis added).

[25] Hevert Rebuttal at 43, quoting Standard & Poor's Ratings Services, *How Regulatory Advantage Scores Can Affect Ratings on Regulated Utilities*, April 23, 2015, at 2.

Additionally, Mr. Gorman's Figure 3 demonstrates utility capital investment has "increased considerably" and is expected to "remain high" in the 2019-2021 forecast period relative to the prior ten-year historical period.[26] All three rating agencies observed the negative effects of the TCJA on utilities' cash flow and the potential consequences for their credit profiles. It therefore is clear that efficient access to external capital at reasonable rates will be important to fund capital expenditures. It also is clear that the markets in which that capital will be raised reflect greater volatility than those experienced even over the past two years. Hevert Rebuttal at 47.[27]

The record shows Mr. Hevert's recommended range of 10.00% to 10.75% is consistent with the returns authorized in the more constructive jurisdictions ranked by RRA. An authorized return of 9.00% or 9.10% clearly falls well outside the realm of constructive jurisdictions and would therefore constitute a sudden, drastic and inexplicable change in the Indiana regulatory climate.

8. <u>The Industrial Group's Proposed Order Fails To Make Proper Findings Of Fact.</u> As discussed in Section B above, the Commission must base its decision on the record as a whole and provide detailed findings covering all material basic and ultimate facts. *Ind. Bell Tel. Co. v. Office of Util. Consumer Counselor*, 717 N.E.2d 613, 624 (Ind. Ct. App. 1999), modified on other grounds on reh'g, 725 N.E.2d 432 Ind. Ct. App. (2000). The Industrial Group's proposed ROE determination, which says little more than the Commission took the record into consideration, violates this standard. As such, the Industrial Group proposed finding fails to protect parties' "legal right to know the evidentiary bases upon which the ultimate finding rests."

[26] Hevert Rebuttal at 46, citing Gorman at 52-54. *See also*, *Moody's Investors Service* Outlook: "2019 outlook shifts to negative due to weaker cash flows, continued high leverage", June 18, 2018.

[27] As Mr. Hevert noted, the median value of the VIX, which measures expected market volatility over the coming 30 days, was 10.85 in 2017, and 15.32 in 2019, indicating a significant increase in volatility. By December 2020, the VIX is expected to increase to 20.29. Source: cboe.com, accessed August 30, 2019. Hevert Rebuttal at 47, n. 122.

Perez, 426 N.E.2d at 32 (citing Davis, 2 Administrative Law Treatise § 16.05 p. 448 (1958)). As shown below, the factors mentioned summarily in the Industrial Group proposed finding lack merit.

First, the utility-specific risks faced by I&M are reflected in the ROE modeling. Given that the ROE witnesses largely used the same proxy group, this factor fails to establish grounds to adopt one recommendation over another.

Second, this is not a case where the utility has sought extraordinary relief. As shown above, use of a future test year and trackers are credit supportive and do not decrease the cost of equity because the proxy group companies also have these types of cost recovery mechanisms. In other words, a future test year and use of rate adjustment mechanisms protect the utility's right to have an "opportunity" to earn its authorized return but are not grounds to decrease it.

Third, while phrases like "observable market evidence of such factors as existing returns" and "expected inflation rates" sound nice, standing alone these words fail to articulate the basis for the Commission's determination. IG Redline at 38. The Industrial Group proposed finding points to no evidence that supports these words. It provides no explanation of how or why these factors support the proposed conclusion.

Moreover, the record shows the OUCC and Industrial Group recommendations are fundamentally disconnected from their own analyses and conclusions, and are far removed from observable and relevant data. Hevert Rebuttal at 4-5. For example, the record shows that because I&M's projected customer growth is 0.10 percent, Mr. Garrett assumes earnings for his proxy group will essentially remain flat (or negative in real terms, assuming his 2.00 percent inflation rate). Hevert Rebuttal at 14. As discussed above, under that scenario investors more likely would prefer debt securities. Mr. Garrett did not explain why growth beginning five years in the future, and extending in perpetuity, will be less than one-half of long-term historical growth. From a somewhat different perspective, assuming long-term inflation will be approximately 2.00 percent implies perpetual real growth will be approximately 0.70 percent. *Id.* at 24. This assumes the long run, real growth will be less than one-third of historical real growth, but nowhere in his testimony did Mr. Garrett explain the fundamental, systemic changes that would so dramatically reduce long-term economic growth. *Id.* at 24-25.

Mr. Gorman's analyses assume Market Risk Premium estimates of 8.20 percent and 6.00 percent. Combining those Market Risk Premium estimates with his projected long-term risk-free rate, Mr. Gorman develops expected market returns in the range of 8.80 percent to 10.98 percent. *Id.* at 55-56. Mr. Gorman's 8.80 percent expected total market return estimate, which is approximately 310 basis points below the long-term average market return, falls outside the range of average returns during the period 1976-2018 using 50-year annual averages; his higher 10.98 percent estimate falls in the 13th percentile of the average return over the last fifty years. *Id.* at 56. From 1926 through 2018 the arithmetic average market return was 11.90 percent. *Id.*, citing Gorman at 90. Over time, the rolling fifty-year mean return has been quite consistent, in the range of approximately 12.00 percent. Taken from that perspective, Mr. Gorman's 8.80 percent expected market return is well below the long-term market experience and, therefore, is not reasonable.

While it is important to assess the reasonableness of any financial model's results in the context of observable market data, the record here shows the OUCC and Industrial Group model's assumptions are misaligned with such data and the results are inconsistent with basic financial principles. The OUCC and Industrial Group recommendations are also well below the returns authorized for vertically integrated electric utilities.[28] Neither the OUCC nor Industrial Group makes any attempt to reconcile their proposed ROE determination with this observable market data.

At bottom, maintaining "financial integrity" is a sound and important utility regulatory objective. It is also a fundamental tenet upon which investor-owned utility service is provided. The OUCC and intervenor proposals are short sighted and if adopted would be harmful, not only to I&M but the customer and public interest as well. Therefore, the OUCC and Industrial Group recommendations should be rejected.

D. Reply To 39 North. In its exceptions, 39 North makes numerous edits to I&M's summary of Mr. Hevert's direct testimony. 39N Redline at 11. These edits are not accurate and add a "spin" to Mr. Hevert's testimony that does not exist, in an effort to support a proposed conclusion that the record repudiates. The Company should not have to disprove the contents of the other parties' filing. Rather, the other parties should be held responsible for demonstrating that their filings are fair and accurate. When a party's filing reflects significant errors and mischaracterizations the filing should be afforded little weight by the Commission. To conclude otherwise rewards the intervenor for disregarding the important need for the Commission decision to rest on accurate information.

39 North contends Mr. Hevert made a clarification to footnote 9 on page 6 of his rebuttal testimony to include a reference to the Commission's Order in Cause No. 44242. 39 North Redline at 11. That is not correct. As the transcript shows, Mr. Hevert clarified that the Order in Cause

[28] Hevert Direct at 66; Hevert Rebuttal at 5-6; (showing Commission electric utility returns range from 9.85 percent to 10.50 percent since 2009, with the two most recent litigated cases finding COE to be 10.2% (I&M) and 10.0% (IPL); Hevert Rebuttal at 92 (showing his recommended range of 10.00% to 10.75% is consistent with the returns authorized in the more constructive jurisdictions ranked by RRA).

No. 44576 found the cost of equity to be 10 percent but, for management reasons, authorized the return of 9.85 percent. Tr. at C-6. Similarly, 39 North edits indicate that Mr. Hevert "acknowledged that he did not recognize or account for a lower cost of living for Indiana as compared to his selected proxy group companies that he used in his analysis." These words do not appear in Mr. Hevert's direct testimony (or his rebuttal). 39 North provides no citation to support this proposed addition to the summary of Mr. Hevert's direct testimony. The transcript shows that when he was asked about the Indiana cost of living during cross-examination Mr. Hevert explained:

> We have to remember that what we're looking at here is the return required by equity investors. Equity investors are not limited by geography; they're certainly not limited to investing only in companies based in Indiana. It's the return that they require based on opportunity costs, based on the returns available elsewhere, based on risks.

Tr. at C-56. When asked about cost of living in the context of the *Hope* and *Bluefield* standards, Mr. Hevert further explained why the COE analysis is not based on the local cost of living:

> I think if we look back at the Hope and Bluefield standards and how it's evolved over time and how it's been applied over time, I am not aware of a witness that limits the proxy group to geography, and again, it goes back to the simple observation that investors are not limited by geography; investors can invest in a utility anywhere. So because what we are trying to do is determine the return investors require by reference to the companies in which they may invest, there's no limitation geographically to the companies in which they may invest.
>
> ***
>
> So again, the practical effect of a geographic limitation, I just think that would be -- I think it would be impractical, and I think in the way the capital markets have evolved, I just don't think it would reflect the investible universe of utility equities.
>
> ***
>
> The -- no, I think most commissions do address the Hope and Bluefield standards. Now the question becomes -- you know, we look at cost of living; we look at economic conditions within a given state. Does the fact that if economic conditions improve, for example, should the return be higher just because of that? Those types

> of issues, I think, are abstracted from the analysis because, again, what we're looking at is the investible universe of utility equities.. . .

C-59-60. In other words, Mr. Hevert did not "acknowledge" something was *excluded*, he explained why the local cost of living is not properly *included* in the analysis. Thus, 39 North's proposals that the Commission "discussion" state 1) that Mr. Hevert "failed to recognize or adjust for this important factor consistent with *Bluefield*" and 2) that the Commission "take this relevant [local cost of living] factor in to account" are misplaced. 39N Redline at 14. Mr. Hevert's testimony shows this is not a "failure" and explains why the local cost of living should not be considered.

39 North also claims that at page 52 of his direct testimony "Mr. Hevert testified to I&M's use of alternative regulatory procedures" 39 North Redline at 11. This page will be searched in vain for this alleged discussion. Hevert Direct, 52. What Mr. Hevert did say in his direct testimony as part of his discussion of regulatory mechanisms generally is:

> Adjustment mechanisms to recover fuel costs, purchased power expenses, energy efficiency and demand-side program costs, new plant investment, and other expenses are common. In addition, full or partial decoupling mechanisms have been implemented by electric utilities in 32 jurisdictions. Consequently, the implementation of alternative regulation mechanisms has become an increasingly visible issue to investors.

Hevert Direct at 49 (footnotes omitted). He added that alternative regulation mechanisms are common among proxy group companies, provided a summary showing this in Attachment RBH-9, and explained:

> Under the comparable earnings standard, the allowed Return on Equity should represent a return commensurate with the returns on investments of similar risk. To the extent the proxy companies have mechanisms in place to address revenue shortfalls or cost recovery, the Company's use of cost recovery mechanisms make it more comparable to its peers.

Id. at 50. Mr. Hevert also clarified that the Company's cost recovery mechanisms do not reduce its cost of equity:

> No, they do not. The principal analytical issue is whether the Company is so less risky than its peers as a direct result of its recovery mechanisms that investors would specifically and measurably reduce their return requirements. The fact that the Company's existing recovery mechanisms may, to a degree, stabilize the Company's revenues will not affect its Cost of Equity unless it can be demonstrated that (1) the Company is materially less risky than the proxy group by virtue of those mechanisms; and (2) investors are likely to react to the incremental effect of those mechanisms. Because revenue stabilization and cost recovery mechanisms are common among the proxy companies, there is no reason to assume that I&M would be materially less risky, and that its Cost of Equity would be lower than its peers' as a result of its recovery mechanisms.

Id. at 50. With respect to the question of whether the timeliness of recovery afforded by the Company's trackers are of concern to investors, Mr. Hevert stated:

> Yes. Although the capital recovery mechanisms discussed above are viewed positively by the investment community, of concern is the effect of the regulatory lag given the Company's proposed capital spending program. I&M currently plans to invest over $1.23 billion during the period including 2019-2020. That amount includes expenditures in both transmission and distribution facilities and to maintain safe, sufficient, and reliable service. As the Company moves forward with its capital spending plan, retained earnings will be an important source of funding in mitigating the delay of capital recovery and executing its capital spending program.

Id. at 52 (footnotes omitted). While the record shows that, with respect to I&M, Mr. Hevert was discussing trackers, this was not "confirmed during cross" as claimed by 39 North. The transcript shows that Mr. Beall said he interpreted Mr. Hevert's testimony to refer to tracker but Mr. Beall did not ask Mr. Hevert to confirm that. Rather after pointing to the top of page 52 of the testimony, the question was: "Do you see that?" and the answer was "I do, yes." Tr. at C-47.

When asked how do trackers relate to the utility's opportunity to earn its authorized return, Mr. Hevert explained:

> Trackers, in my experience, typically are put into place to recover a cost that is large and that otherwise would have a significant effect on a utility. In my experience, you have a tracker if there was not the ability to recover the cost on a timely basis. The inevitable outcome is a dilution in the return and a dilution in the company's cash flows.

> In that respect, a tracker effectively puts the company back in the position it would have been but for the need to invest in this particular asset to incur this particular cost, and when we look at trackers and we look at the types of costs that they recover and we look at the financial community's response to them, at least in my experience, I have not seen, for example, a company's credit rating improve specifically because of a tracker. In my view, that goes to the point that the tracker is credit supportive. It supports the company's credit profile because but for the tracker, the profile likely would come under pressure.

Tr. at C-67-68.

39 North's proposal that this testimony, and the other record evidence supporting Mr. Hevert's ROE recommendation (discussed above in the reply to the OUCC and IG) be swept aside on the grounds that the Commission is simply "not convinced" must be rejected. This proposed finding and conclusion does not satisfy the standards for Commission orders discussed in Section B above.

Finally, following a reference to the OUCC and Intervenor ROEs, 39 North proposes the Commission find: "it is not lost upon this Commission that although it was a settled case, the agreed upon ROE in Cause No. 44967 less than 2 years ago was within this same range and I&M was presumably able to attract necessary capital." 39N Redline at 15. This is dumbfounding. The authorized ROE from Cause No. 44967 is 9.95%. The OUCC and Industrial Group recommendations, 9.10% and 9.00% respectively, are hardly in the same range. While 39 North ultimately concludes that a 9.4% ROE should be authorized, for the reasons discussed above, the actual record evidence supports the ROE increase recommended by Mr. Hevert together with the tracking mechanisms proposed by the Company. It does not support a decrease in the Company's authorized ROE or the termination of its tracking of PJM NITS and other costs. Accordingly, the Commission should approved Mr. Hevert's recommended 10.5% ROE.

10. Disputed Test Year Revenue. No party took exception to this section of I&M's proposed order and I&M's proposed discussion and finding should be adopted by the Commission.

11. Disputed Test Year Operation and Maintenance ("O&M") Expenses.

A. Cook 316(b). The Cook 316(b) costs were initially booked to Construction Work in Progress in anticipation of a capital project. When it was uncertain as to whether I&M would be required to construct a property asset, I&M properly reclassified the Cook 316(b) costs to Account 183 for Preliminary Survey and Investigation Charges, which is the account where costs of preliminary studies of the feasibility of capital projects are recorded. Now that it is unlikely that a capital project will be required for 316(b) compliance, the Company reclassified the deferred Cook 316(b) study costs from Account 183 to Account 182.3 in accordance with ASC 980, Regulated Operations. Ross Rebuttal at 17.

The OUCC exception to the IMPO discussion and finding on this issue is based on the contention that a deferral must be based on a reasonable belief that the costs will eventually be recovered. I&M has not contended otherwise. As stated by Mr. Ross, movement of the costs to Account 182.3 is supported by the prudence of conducting the study and past precedent of recovery of similarly incurred costs related to Cook. Ross Rebuttal at 16-17. The 316(b) studies allowed I&M to avoid a major capital project and this outcome was a positive outcome for I&M's customers. The 316(b) costs were necessarily incurred to ensure the Cook Nuclear Plant complied with Federal regulations in support of the ongoing operation of the plant. Simply put, these costs were reasonably and necessarily incurred to allow for the continued operation of the Cook Nuclear Plant and therefore it is reasonable that the associated costs be similarly reflected over the remaining life of the plant.

It is appropriate to reflect the cost incurred to produce a cost savings in rates. Doing so provides an incentive for the utility to achieve such savings. It is consistent with sound regulatory policy and Commission practice. *Re Northern Ind. Pub. Serv. Co.*, Cause No. 38380 at 29, 1988 WL 391323, 97 PUR4th 259 (IURC 10/26/1988) ("[T]he same ratepayers who will receive the benefits of the cost reduction program should reimburse Petitioner for the costs of such a program. The Petitioner should not be penalized for efforts which clearly benefit the ratepayer prospectively.").[29] The Commission should adopt I&M's proposed finding.

B-C. <u>Customer Assistance And Economic Development Programs.</u> The IMPO demonstrates the cost of the Company's proposals is modest and the programs themselves have a reasonable nexus to the provision of retail electric service. IMPO at 36-40. The OUCC and Intervenor contentions otherwise should be rejected.

While certain intervenors have in this case voiced their frustrations with the programs and grants authorized in Cause No. 44967, the fact remains that the instant docket is not an investigation of the Company's compliance with the Order approving the settlement agreement in Cause No. 44967. The Commission's final order in Cause No. 44967 stands unless and until it is rescinded or amended after notice and opportunity to be heard as provided in Ind. Code § 8-1-2-72. In the instant docket, any frustrations with the past are relevant only to whether the Company's Test Year program costs are reasonable. Neither the caption nor notice in this Cause indicate that

[29] The instant case is also distinguishable from the Commission's recent order on reconsideration in Cause No. 44367 FMCA 4, which disallowed certain vegetation management project costs where the utility (Duke) waited "more than six years to begin cost recovery". *Re Duke Energy Indiana, LLC*, Cause No. 44367 FMCA 4, Order on Reconsideration at 3 (IURC 12/4/19). Here, the record details that the accounting for these costs has been proper under GAAP. Ross Rebuttal at 16-17. The record also shows the treatment of the 316(b) costs as a regulatory asset only recently became ripe for Commission consideration and that I&M sought recovery in a timely manner in this proceeding. *Id.* Moreover, the Commission in the *Duke* case made it clear that "the Commission's decision in this Cause is limited to DEI and the facts and circumstances of this Cause." *Re Duke*, Cause No. 44367 FMCA 4, Order on Reconsideration at 6.

the Company's compliance with the prior Commission order will be litigated and determined in the instant docket. Therefore, the Commission's consideration of these issues can and should end here.

That being said, the Company has not acted unreasonably with respect to the Fort Wayne water utility pressure station. The intent of the Economic Impact Grant ("EIG") program in the Cause No. 44967 Settlement Agreement was not for one utility (I&M) to pay for the infrastructure project of <u>another utility</u>, which was the basis for the City of Fort Wayne's application. Lucas Rebuttal at 17. The Settlement Agreement grant program was intended to benefit I&M customers through growth in I&M electric load. Furthermore, it was not intended to fund projects for non-I&M customers. Lucas Rebuttal at 18. The Cause No. 44967 Settlement Agreement (¶17) states (emphasis added): "I&M will establish an Economic Impact Grant ("EIG") program to assist with economic development in the communities *within its service territory*." As stated in the Order in Cause No. 44967 (p. 23) potential uses of the EIG grants included, but are not limited to, industrial and headquarter site development due diligence, workforce development initiatives, housing development initiatives, spec building development, and job creation and retention. Also Cause No. 44967 Settlement Agreement (¶17.4). Ineligible uses include, but are not limited to, funding new employees, new employee training, operational budget, travel costs, memberships, or registrations. *Id.* at ¶17.5.

While certain intervenors have voiced frustrations over I&M posing questions as to the nature and location of the proposed projects, strategic funding, partners, and other missing information, the Settlement Agreement clearly established I&M is the gatekeeper. The Cause No. 44967 Settlement Agreement (¶17.6) expressly provides (emphasis added) that: "Applications *must* meet minimum guidelines that *will be established by I&M* and *must receive final approval from I&M's* Economic & Business Development staff." Additionally, the Settlement directs that:

- the grants were open to communities "*within the Company's service territory* investing in economic development projects that are an *integral part of the community's or organization's strategic plan* to attract new companies, grow existing businesses, and develop talented employees." *Id.* at ¶17.2 (emphasis added).
- Proposals demonstrating collaboration with regional or partner organizations may be preferred. *Id.* at ¶17.3.
- Priority will be given to projects that clearly show value to economic development efforts in the I&M service area and include metrics, timelines, and identification of responsible persons or entities. *Id.* at ¶17.3.

In other words, scrutiny of the grant applications to ensure consistency with the program objectives is not only appropriate, it is required. The Company's actions demonstrate that it acted responsibly to ensure that the grant program was not abused. Therefore, the attack on the Company's effort to achieve economic development within its service territory for the benefit of its electric retail customers should be rejected.

Finally, the CAC/INCAA criticism of the Company's implementation of the customer assistance programs in the Cause No. 44967 Settlement Agreement lacks merit. The record shows that the Company has not ignored stakeholder input. Lucas Rebuttal at 24. Indeed the CAC/INCAA contention otherwise defies understanding given the Company turn-about with respect to customer assistance proposals in this case. Tr. M-48. Finally, as Mr. Thomas explained during cross-examination, collaboration does not mean the parties will always agree. Tr. B-64.

D. <u>Employee Medical And Dental Expenses.</u> Distilled to its essence, the OUCC's position on medical and dental expenses is to impose an arbitrary reduction. While most of the dispute to this point has centered on the appropriate escalation rate for 2020, the OUCC now argues – without any support – that the forecasted 2019 expense "is overstated." OUCC PO at 49.

The 2019 expense was *determined by an actuary.* The more realistic forecast of employee medical and dental expense is the one presented in I&M's proposed order. IMPO at 40-41.

E. Employee Adjustment – Full Time Employee. The IG continues to suppress forecasted O&M by reducing forecasted full time employee headcount without recognizing that the work forecasted to be done by the excluded positions is still needed. IG Redline at 49. I&M's proposed order reflects the more realistic forecast. IMPO at 41.

F. EZ Bill Program. The "wait and see" or "heads I win, tails you lose" approach proposed by the OUCC should be rejected. The EZ Bill Program is offered by I&M as a voluntary, customer-friendly option for paying for the same standard electric service I&M provides all its customers. This is no different from other customer rate offerings that are treated as above-the-line costs. IMPO at 42. The OUCC agrees that costs associated with the EZ Bill program should be addressed in I&M's next base rate case. OUCC PO at 50. It is reasonable to grant I&M its requested regulatory accounting treatment to treat the EZ Bill Program costs and revenues as a component of I&M's cost of service in subsequent rate proceedings and the Commission should adopt I&M's proposed discussion and finding.

G. Factoring Expense. The OUCC assertion (OUCC PO at 51) that interest rates are "by far the most significant driver in the factoring expense calculation" is erroneously based on a comparison of uncollectibles expense to total operating revenue. The record shows bad debt expense and carrying costs are the two largest components of the factoring expense forecast and that bad debt expense has been trending higher than previous periods. Lucas Rebuttal, 23-24. Moreover, actual factoring expense through July 2019 is higher than the Test Year forecast, further corroborating the reasonableness of the Test Year factoring expense. The Commission should reject the OUCC's proposed discussion and finding and adopt the IMPO.

H. I&M *IM Plugged In* Pilot Program. No party disputes that PEV adoption is accelerating and that it is important that load from electric transportation be integrated into the grid in a manner that minimizes or eliminates additional system costs. Nor is there any dispute that I&M's proposed PEV incentive rates should be approved. The OUCC and IG nonetheless claim there is insufficient support for the proposed rebate that would encourage electric vehicle owners to purchase 240-volt charging equipment. OUCC PO at 53; IG Exceptions at 7. As explained in the IMPO, substantial evidence supports the reasonableness of the rebate and it is necessary to shift customers' entire charging load to off-peak times, to the benefit of all customers. IMPO at 44-45. As Mr. Lehman explained in response to a question from the Bench, if a PEV owner has 240-volt charging equipment at their home, and they do all of their electric fueling at home, then they would only need about two hours to completely replenish the energy that they used that day. Tr. D-94. Absent 240-volt charging equipment, the average PEV owner will simply have no choice but to charge during peak system periods in order to keep up with their daily commute and transportation needs. Lehman Rebuttal at 5. The OUCC and IG recommendation would eliminate significant customer benefits from the *IM Plugged In* pilot program and should be rejected.

South Bend's proposed finding that I&M be required to allow net metering customers to participate in the PEV pilot ignores evidence showing this is not currently a practical option. As Mr. Lehman explained at the hearing,

> "there is just no feasible way with our systems and the hardware that we have in place to accommodate them as they currently exist as a net-metered customer. That certainly is something that we will be looking at as time continues and we look to evolve these programs."

Tr. D-92. While I&M currently contemplates using two meters at the premise, Mr. Lehman noted that the AMI meter "would be electrically behind the existing premise meter" and thus does not allow for participation by distributed generation customers. Tr. D-83. With respect to the billing issues associated with such an arrangement, Mr. Lehman explained that even if a solution were discovered, this could "require additional time and effort and resources to be spent on making that happen" and this "begins to undermine some of the total value and the benefits to all customers that we're trying to achieve." Tr. D-87-88. Given these concerns and the pilot nature of the program, the OUCC and intervenor exceptions should be rejected. I&M's proposed discussion and findings should be adopted.

I. <u>Incentive Compensation.</u> As explained in the IMPO, the Commission's policy and standard for recovery of incentive compensation dates back more than 20 years. IMPO at 45-47. The OUCC begins its discussion of incentive compensation by deleting citations to eleven orders of this Commission spanning that 20-year period. OUCC PO at 56. They brought in an out-of-state expert who advocated a new standard which is fundamentally at odds with the Indiana standard. They now abandon the test Mr. Garrett advocated in his direct testimony, shifting to a new test hatched during his redirect examination. This new test also fails under the weight of this Commission's precedent.

I&M included its incentive compensation at the target level, even though its historical experience is that it actually pays incentive compensation at close to 190% of target. Carlin at 19. The OUCC seeks to authorize incentive compensation at 50% of target, and they cite to *Northern Ind. Pub. Serv. Co.*, Cause No. 43526, 2010 WL 3444546 (IURC 8/25/2010) as support. NIPSCO's *proposed* recovery was at the trigger level, which happened to be 50% of NIPSCO's target level; however, there was no discussion of how NIPSCO's actual payout levels compared to target.

A later order, largely ignored by the OUCC, rejects the OUCC's new reading of *NIPSCO*. In *Southern Ind. Gas & Elec.,* Cause No. 43839, 2011 WL 1690057, 289 PUR4th 9 (IURC 4/27/2011), the Commission approved recovery at the target level, just as I&M has proposed here. The Commission did so because SIGECO's historic payouts had been as high as 190% of target, just as I&M's are here. *SIGECO*, Cause No. 43839 at 50.

The IG proposes to disallow the portion of incentive compensation which they claim is tied to financial performance. IG Redline at 56-57. This is an argument previously raised by a colleague of Mr. Gorman with his firm on behalf of industrial customers which this Commission has specifically rejected twice before in *SIGECO* and *NIPSCO.*

Both the OUCC and the IG propose to disallow all recovery of the long-term incentive compensation, and they both claim – incorrectly – that no part of the LTIP incentivizes behavior other than financial performance. Both of them ignore that one of the declared purposes of the LTIP is to encourage plan participant retention. This satisfies this Commission's standard for recovery, and the LTIP should be recovered just as it was in *SIGECO.*

J. **Pension Expense.** It is abundantly clear that the OUCC's witness made a $15 million mistake in calculating the OUCC's proposed revenue requirement. Tr. U-38-40. The OUCC does not even attempt to argue otherwise. OUCC PO at 59. Mistakes happen, and no one is blaming Mr. Garrett for making it. But the record is clear: Mr. Garrett's adjustment is wrong, and the Commission can review for itself Petitioner's CX Exhibit 5 to confirm this.

Not having facts upon which it can rely, the OUCC urges that I&M receive a $15 million annual penalty because I&M did not expose the *OUCC's mistake* in rebuttal. The OUCC can cite no rule of evidence or other precedent in support of such a draconian result. If a party is going to put on a witness who makes a mistake, cross-examination may reveal that mistake; indeed, this is one of the purposes of cross-examination. One would hope that in matters before this Commission, parties will acknowledge their mistakes when they have been discovered rather than clinging to them by ignoring cross examination of their witness.

K. Major Storm Expense And Major Storm Reserve. The OUCC took exception to I&M's proposal to adjust the storm reserve baseline for inflation, even though it is indisputable that inflation exists and it is reasonable and necessary to account for it when determining future dollars based on past dollars. Inflation is commonly recognized and the Commission has been instructed not to ignore its effect. *Indianapolis Water Co. v. Pub. Serv. Comm'n of Indiana*, 484 N.E.2d 635, 638-40 (Ind. Ct. App. 1985) (holding that Commission cannot ignore inflation in determining fair value of property); *see also* Pet. Ex. 43 (I&M response to Docket Entry dated Sept. 27, 2019), response to IURC DR 1-7 (collecting cases regarding cost escalation or other uses of inflation factors to determine expenses). Furthermore, recognizing the effect of inflation improves the reliability of the five year average as a baseline. While the Company will adjust the reserve for costs above or below the baseline, it remains important to establish a reasonable baseline for potential costs. Doing so helps to mitigate the potential for large swings and the associated over or under recovery.

L. Nuclear Decommissioning Funding Expense. It is ironic that the IG laments about the impending exhaustion of unprotected excess accumulated deferred income tax and the resulting rate increase that day will bring, but then urges a similar fate with respect to nuclear decommission funding expense. Collectively, the OUCC, IG and Joint Municipals urge a riskier posture for trust funding. They gamble that costs will be lower, but the stakes will be paid by tomorrow's customers if their bet does not pay off. Significantly, the level of trust funding approved by the Commission has no impact on I&M: I&M cannot access the cash which is funded, and whatever level is ordered is the amount that will be booked to I&M's financial statements. So all of the risk from being wrong falls on customers. It is not uncommon for facts and circumstances to change over time and lead to future environmental costs being higher than what was previously forecasted, and so I&M urges that tomorrow's customers need to be protected with the funding level in I&M's proposed order.

M. Rate Case And Nuclear Decommissioning Study Expense. There is no evidence to support the OUCC's contention that I&M could cost-effectively reduce rate case expense by hiring more in-house counsel. OUCC PO at 65. Accordingly, there is no need for the OUCC's admonishment that I&M do so or the OUCC's proposal that the rate case expense amortization period be lengthened as a result.

The Commission should similarly reject the Joint Municipals' erroneous and argumentative language regarding settlement negotiations and future rate case proceedings. JM Exceptions at 59. First, the Joint Municipals mischaracterize the question posed to Mr. Thomas, which asked whether there had been settlement discussions amongst all the parties. Tr. B-53-54. Second, Ind. Evid. R. 408 limits the use of any "conduct or a statement made during compromise negotiations" and provides such evidence "is not admissible on behalf of any party either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction". Finally, in a case with numerous parties with divergent views, many of whom also raise numerous issues outside the scope the docket (including challenges to the terms of the last rate case settlement), it is not always possible to reach settlement of all issues among all parties, particularly without a delay in implementing new rates, which in turn imposes a financial harm on the utility. *See also Re Indiana Michigan Power Co.*, Cause No. 45235, Prehearing

Conference Order at 3 (emphasizing need to comply with General Administrative Order 2013-5 to maintain 300-day schedule).

N. Taxes.

1. Excess Accumulated Deferred Federal Income Taxes ("EADFIT"). There are three proposals to address the full amortization of I&M's unprotected EADFIT. I&M continues to believe that its proposal is the most balanced and most true to the settlement agreement approved in Cause No. 44967. As between the OUCC's proposal and the IG's proposal, the OUCC's proposal is the one that is less likely than IG's to create a normalization violation, provided one change is made: between the time that the unprotected EADFIT has been fully amortized and approval of the compliance rates to remove such amortization from the revenue requirement, I&M must be authorized to defer the difference between $29.9 million and actual average rate assumption method ("ARAM") on protected EADFIT at that time. The IG's proposal, which runs the risk of I&M being required to file a general rate case because the unprotected portion of the EADFIT amortization has been exhausted, is destined to result in a normalization violation. As to IG's concern that the exhaustion of unprotected EADFIT will expose customers to an "unpredictable" future rate increase, IG is simply wrong. IG Redline at 68. The rate increase following the complete pass-back of unprotected EADFIT has always been known, and its magnitude and timing were the product of the Stipulation and Settlement Agreement in Cause No. 44967, where the parties agreed to a pass-back over a period estimated to be six years. A longer amortization period would have delayed and lessened the resulting increase at its termination, but that was not the parties' agreement.

O. Utility Receipts Tax ("URT"). The extent of the Industrial Group's position on URT is to argue that two other electric utilities have *proposed* the same treatment of

URT as the IG requests here and that, therefore, the *proposals* in these other cases should be imposed on I&M. IG Redline at 68-69. The Commission issued a final order on December 4, 2019 in Cause No. 45159, and there is not one mention of the proposal that Mr. Gorman urges here. The other case cited by IG remains pending. As noted in I&M's Proposed Order, the matter merits further study in a context where all stakeholders may participate.

P. **Vegetation Management.** There is absolutely no evidence whatsoever to support the OUCC's incendiary speculation that, for one year, I&M diverted funds from vegetation management to incentive compensation. OUCC PO at 70-71. What's more, the year on which the OUCC is fixated is *before* the implementation of the 4-year trim cycle, which was approved by the Commission's May 30, 2018 Order in Cause No. 44967. The actual spend in 2018 (the first year of the program) was greater than the forecasted amount approved in Cause No. 44967. Isaacson Rebuttal at 16. What the OUCC seeks is a retreat to an approach to tree-trimming which pre-dated the 4-year cycle that the Commission specifically applauded in Cause No. 44967. The OUCC's recommendation should be rejected.

12. **Financial Forecast.** South Bend disagrees with I&M's load forecast, claiming it is "too speculative and unreliable" to set rates on the possibility of an upcoming economic recession. SB Exceptions at 17. I&M reasonably relied on the base economic forecast prepared by Moody's Analytics, a reputable independent source of economic forecasting data. While South Bend may disagree with Moody's conclusions based on a "glance at the Wall Street Journal or evening national news,"[30] the record shows I&M's actual load has been lower than forecasted by I&M, further supporting the reasonableness of I&M's load forecast. IMPO at 59-60; Tr. G-109-

[30] SB Exceptions at 17.

110 (explaining actual load through September 2019 has dropped to 1.4% below forecast). The Commission must base its findings on substantial evidence, and the evidence presented in this case supports a slowing down of the economy consistent with the load forecast prepared by I&M. No other party presented a load forecast or quantified any proposed adjustment to I&M's load forecast. South Bend's proposed finding should be rejected.

In their exceptions, the Joint Municipal Group conclude that I&M's Test Year forecast is reasonable and should be approved. JM Exceptions at 65. Their proposal to require I&M in future rate cases to compare forecast period economic and DSM data to actual data for each of the three most recent consecutive years preceding the test year should be rejected. The Joint Municipal Group does not identify any Commission rule or statutory provision that requires this additional analysis be prepared. Nor do they explain how the potentially significant burden of performing this analysis would be outweighed by any benefits. The generation forecast methodology used by I&M in this case is the same methodology used and accepted in its FAC filings. Heimberger Direct at 9. The average accuracy of I&M's budget load forecasts since 2008 has been within 0.3% on a weather normalized basis. Burnett Direct at 12. Given the historical accuracy of I&M's forecasts, it is reasonable to continue to use I&M's proven, reliable approach. The Commission should accept I&M's proposed discussion and finding.

13-14. Net Operating Income At Present Rates; Authorized Revenue Requirement. The Commission should adopt the discussion and findings in the IMPO.

15. Cost Of Service And Revenue Allocation.

A. Jurisdictional Separations Study. Joint Municipals, joined by OUCC and 39 North, argue that the Commission should disallow millions in Test Year generation costs because I&M has been "imprudent". JM Brief, at 22; JM Exceptions at 72. The Industrial Group argues the jurisdictional separation study should be modified to exclude the IMMDA adjustment and I&M should be permitted to retain revenues flowing from the sale of any "excess capacity" at wholesale. IG Redline at 78. It would be fundamentally unfair to artificially reduce Test Year revenues to recognize a benefit that will not continue during the period the rates established in this case are in effect.

The other parties' arguments rest on a series of false assumptions and incorrect statements, examples of which are enumerated below.

1. Citing Ind. Code § 8-1-2-48 and *City of Evansville,* Joint Municipals contend the Commission "may disallow any costs it finds imprudent or excessive." JM Exceptions at 72. Joint Municipals' reliance on these authorities as support for the disallowance of the Company's generation costs is misplaced. The plain language of the referenced statute refers to "expense", not "cost". The statement from the Court of Appeals' opinion in *City of Evansville* is addressed to "operating expense".[31] The standard for generation is "used and useful". Ind. Code § 8-1-2-6. The record here demonstrates the contested generation is used and useful in the provision of service to I&M's Indiana retail customers.

2. Joint Municipals claim I&M has completely avoided addressing an important legal issue related to the imminent loss of load from its wholesale customers in the IMMDA. This is false. The issue is addressed in the IMPO at 62-65. While I&M sees the issue differently than the Joint Municipals, the Company has not ignored it. The issue here is not about the bright line between costs that are recoverable through federally-regulated rates and costs

[31] "While the utility may incur any amount of operating expense it chooses, the Commission is invested with broad discretion to disallow for rate-making purposes any excessive or imprudent expenditures. IC 1971, 8-1-2-48 (Burns Code Ed.)." *City of Evansville*, 339 N.E.2d at 569.

that are recoverable through state-regulated rates. I&M has sold power not used to serve retail customers in the wholesale market and used those proceeds to reduce the retail revenue requirement. Because this benefit changes over time, it has been calculated via the jurisdictional separations study in this case as well as previous cases. The Company's jurisdictional separations study methodology has not been challenged. Therefore, it should be approved.

3. Citing JM CX-2, Joint Municipals allege I&M "has admitted that the loss of I&M wholesale load results in excess capacity that is not needed by its retail customers." JM Brief at 10. This is *not* what the identified I&M discovery response says. In response to a request for admission about Ms. Duncan's rebuttal testimony at page 3, line 8-10 regarding the jurisdictional separation study, I&M admitted only "that Indiana retail jurisdictional customers have a greater share of I&M Company's production fixed cost due to the IMMDA load loss." Ms. Duncan's testimony is not addressed to the used and usefulness of the Company's capacity and the discovery response relied upon by Joint Municipals does not change this scope. Tr. D-11-13. Moreover, contrary to the Industrial Group's assertion (IG Redline at 77), Mr. Thomas very clearly established that the 300 MW of capacity previously sold to IMMDA remains used and useful. Thomas Rebuttal at 28. Joint Municipals and the Industrial Group made no effort to reconcile their arguments with this testimony. Moreover, given the 300 MW of generation capacity is needed to serve the retail jurisdiction, the Test Year allocation of costs proposed by I&M is consistent with principles of cost causation. Finally, the I&M statement in JM-CX 2 that "services to retail customers did not change as a result of IMMDA leaving the system" highlights that the

Company has and continues to provide reasonably adequate service to its retail customers; the statement does not demonstrate I&M has excess capacity.

4. Joint Municipals refer to a $89 million total revenue loss for the Test Year. JM Brief at 6. This is a "total company" amount, not the net Indiana retail jurisdictional Test Year cost, which is $46.44 million or 3.1% of the Company's total Test Year revenue requirement. Duncan Direct at 20.

5. Joint Municipals assume I&M's generation was built or sized to accommodate the IMMDA wholesale load but they identify <u>*no*</u> evidence that supports this assumption. While FERC Order 888 mentions in passing that some utilities "may" have built facilities to serve load, this fails to establish the origin of I&M's retail generation.[32] Indiana's long-standing use of the separations process refutes it. Put another way, had all or part of the Company's generation been built for or sized beyond the needs of the retail customers, all or part of it would have been excluded on the grounds that it was not used and useful in the provision of retail electric service. But that is not what Indiana has done. Indiana did not exclude part of the Company's generation from the retail jurisdiction and in doing so place it in the federal jurisdiction. Rather, the long-standing Indiana practice has been to use a jurisdictional separations process that ebbs and flows over time to capture in the retail revenue requirement the changing benefit of the wholesale sales (the price of which was regulated by FERC). In other words, because system generation capacity rarely exactly matches retail load requirements, the Company prudently sold excess power at wholesale

[32] FERC Order 888, 61 FR 21,540 at 21,549 ("a utility may have built facilities …"); *cf.* JM Brief at 9, which omits the word "may" from its paraphrase of the FERC discussion.

and used the proceeds to reduce the retail revenue requirement for the benefit of retail customers.

6. Joint Municipals contend I&M provided *no notice* about the loss of a significant wholesale load to the Commission, the OUCC, or other stakeholders prior to this case. JM Brief at 17, also 6. This is not what the record shows. Mr. Thomas testified that he did not know the first instance that I&M notified this Commission of the loss of 300 MW of IMMDA load because "he did not have the information in front of [him]". Tr. B-44.[33] Most importantly, the load was not "lost"; rather, the contracts ended.

7. Joint Municipals contend that I&M acted imprudently by entering into the IMMDA Contracts without imposing exit fees or pursuing other stranded cost recovery requirements. Their claims are based on hindsight and motivated by their self-interest in excluding costs from retail rates. The focus in a prudence inquiry is not whether a given decision or action produced a favorable or unfavorable result and in reviewing prudence the Commission does not "engage in a hindsight analysis." *Re Duke Energy Indiana, Inc.*, Cause No. 38707 FAC 76 S1 at 16, 2009 WL 3455937 (IURC 10/21/09). Rather, "[i]n determining whether the utility acted prudently [the Commission] must review the circumstances as they existed considering what was known or should reasonably have been known at the time of the actions." *Id.*; also *New England Power Co.*, 31 FERC P 61,047 at 61,084, 1985 WL 191205 (FERC 4/11/1985). At the time the Company entered into the

[33] In Cause No. 44967, Mr. Williamson's direct testimony (at 50-52) explained the Company's proposal to modify the methodology for allocating projected nuclear decommissioning costs to recognize the realities of the current wholesale market where FERC customers can purchase from other suppliers. Joint Municipals, 39 North and the OUCC were parties to that docket.

contracts, the generation was not stranded.[34] This remains true today. Therefore the state and federal stranded cost frameworks cited by Joint Municipals are not applicable. Furthermore, the record shows that if the Company had insisted on exit fees at the time the contracts were negotiated, the wholesale sales would not have been made and retail customers would have lost the significant benefit of this retail revenue requirement reduction decades earlier. Tr. J-64-65: J-109. In other words, the Company has not imprudently "let the IMMDA customers off 'scott free'". JM Brief at 13. Rather, the Company through contentious negotiations in a competitive marketplace was able to retain this retail customer benefit. The fact that the wholesale customers have now opted to use an alternative supplier does not diminish this achievement or otherwise demonstrate that the Company's decision in 2006 to enter into the IMMDA contracts was imprudent.

8. Joint Municipals claim I&M has simply "thrown up its hands" and failed to provide any evidence on this subject. JM Brief at 6, 12. This contention is false as shown by the rebuttal testimony of I&M Witness Thomas and his testimony during cross-examination. Thomas Rebuttal at 29; Tr. A-73-76; see also Petitioner's Exhibit 44.

In sum, the jurisdictional separations methodology I&M used to allocate Test Year costs has not been challenged and is consistent with how changes in wholesale load have been addressed in the past, even so recently as Cause No. 44967. The Commission should reject the other parties'

[34] Stranded generation plant costs are the fixed cost of a generating plant that have been expended and that cannot be recovery by the plant owners on future sales revenues from the plant following a particular regulatory change. FERC Order 888 stated that the FERC would consider only those costs imposed as result of its own specific open access policies as "stranded". FERC Order 888, 61 FR 21,540 at 21,630, n.584 ("As a result, the opportunity for wholesale stranded cost recovery under this Rule is limited to utilities … that face the potential inability to recover costs when their customers are able to reach new suppliers through open access transmission.").

effort to distort the record and the issue at hand. The Commission should also reject their imprudence claim because it rests on hindsight, which is not the standard for assessing prudence.

B. <u>Class Cost Of Service And Revenue Allocation.</u> The OUCC and various intervenors submitted proposed findings regarding the class cost of service and revenue allocation which, if adopted, would favor their respective customer classes. OUCC PO at 76-80; IG Redline at 78-81; CAC-INCAA Exceptions at 10-12; SB Exceptions at 18-22; see also Kroger Exceptions at 6-12 (recommending rejection of OUCC and CAC-INCAA position and adoption of I&M's proposed order regarding class cost of service study). I&M's proposed order balances the interests of the parties, reconciles their positions with the record evidence, and should be adopted by the Commission.

C. <u>Subsidy Reduction.</u> The OUCC's proposed order states that revenue allocation is not "an exact science" and proposes the use of the OUCC's preferred revenue allocation. OUCC PO at 80-81. South Bend's exceptions go beyond even its own witness' position and argue for the complete elimination of the subsidy from the streetlighting rate classes. SB Exceptions at 23. The Joint Municipals similarly argue for a rate reduction for the streetlighting classes. JM Exceptions at 76. Regardless of how one characterizes the revenue allocation process, it should be based on a reliable and sound approach that strikes an appropriate balance between progress toward eliminating interclass subsidies and a recognition of the rate impacts on the various tariff classes. Under the position advocated by South Bend and Joint Municipals, the streetlighting class would not contribute to the overall class subsidy mitigation. It would also be the only class moved to full cost of service and receive a base rate and total rate decrease. As Mr. Nollenberger explained in his rebuttal testimony, it would be reasonable to expect that no rate class receive a rate reduction while other classes are experiencing an average total revenue increase of more than 11%. Nollenberger Rebuttal at 7. I&M's proposed revenue allocation and subsidy reduction reasonably addresses the various parties' contentions and should be approved by the Commission. IMPO at 67-68. The other parties' proposed findings should be rejected.

16. Rate Design.

A. Tariffs R.S.-PEV And G.S.-PEV. I&M's PEV tariffs are reasonably designed to encourage off-peak charging by offering lower rates during off-peak periods. As Mr. Lehman explained, creating a punitive on-peak rate as proposed by the OUCC is unnecessary and potential participants may perceive this as a risk, which would result in less program participation and lower overall benefit from the pilot program. Lehman Rebuttal at 6. The OUCC's proposed language should be rejected.

South Bend agrees that shifting PEV charging off peak provides all I&M customers benefits, but recommends that the off-peak incentive rate be lowered to reflect off peak costs. SB Exceptions at 5. The record shows lowering the off-peak incentive rate as proposed by South Bend would eliminate the incremental contribution to fixed costs from participants' off-peak PEV charging, and thus eliminate the corresponding benefit to all other customers. Lehman Rebuttal at 11. In other words, South Bend's recommendation (if adopted) would eliminate the very benefits South Bend supports. I&M's proposed off-peak PEV charging rate reasonably incents the desired off-peak charging behavior while ensuring all other non-participating customers also benefit from this activity. I&M's proposed discussion and finding should be adopted.

B. Tariff IP. I&M's proposed order adequately addressed this issue and Walmart's alternative language should be rejected. IMPO at 69; Walmart Exceptions at 75.

C. **<u>Tariff LGS Rate Design.</u>** Walmart and Kroger both propose language that would approve their preferred Tariff LGS rate design. Walmart Exceptions at 76-77; Kroger Exceptions at 1-6. As Mr. Nollenberger explained during cross-examination, I&M's proposed rate design is not "trying to give a deal to a specific customer, customer class, or a level of usage or load factor." Tr. H-82. Rather, he said one consideration of the overall rate design process is to balance bill impacts. Tr. H-83. The record shows I&M's proposed rate design for Tariff LGS provides for a more balanced bill impact across all Tariff LGS customers as opposed to the alternatives proposed by Kroger and Walmart. Attachment MWN-R2. The Commission should reject the proposed discussions and findings from Kroger and Walmart and approve I&M's proposed rate design for Tariff LGS.

D. **<u>Tariffs Water And Sewage Service (WSS) And Municipal Service (MS).</u>** The Joint Municipals recognize that establishing demand charges for Tariffs WSS and MS "helps to send proper price signals to customers and incentivize efficient use of electricity." JM Exceptions at 79. While the Joint Municipals assert that I&M's proposed demand charges for Tariffs WSS and MS rate structures would cause rate shock, what they fail to recognize is that if these costs are not recovered through the demand charge, they would show up in a higher energy charge. Tr. H-98. As Mr. Nollenberger explained, I&M considered gradualism in designing rates for Tariffs WSS and MS and "did not try to take the demand charge to a level that's even close to the level of demand costs that are recovered through the demand charges in the other C&I classes." Tr. I-8. The Joint Municipals' proposed finding should be rejected. I&M's rate design better reflects cost causation while recognizing the need for gradualism. I&M's proposed discussion and finding should be approved by the Commission. IMPO at 70-71.

South Bend proposes the Commission order I&M to file time-differentiated demand charges for Tariff WSS in I&M's next rate case. SB Exceptions at 26. However, the record shows implementing a time-based demand charge may require additional or alternative metering and related costs that are not reflected in I&M's Test Year forecast. In addition, based on existing Tariff WSS metering, I&M does not currently have the data required to design such a rate. Nollenberger Rebuttal at 11. South Bend's exceptions should accordingly be rejected.

E. <u>Residential Rates.</u> I&M is not proposing straight-fixed variable ("SFV") rates in this proceeding, and I&M's rate design proposal will still recover close to 90% of total residential costs through the volumetric energy charge. IMPO at 72 (citing Nollenberger Rebuttal at 27-28). The OUCC's discussion of the approval of a SFV rate design for natural gas pipelines by FERC is therefore a strawman argument and irrelevant to the issues in this case. Similarly, the OUCC assertion that continuing an existing declining-block rate structure and instituting a new declining-block rate structure "are two critically distinct requests", fails to explain why any such distinction matters. OUCC PO at 87. Ultimately, both scenarios result in a similar rate structure with similar price signals, and the OUCC does not suggest otherwise. Given that the Commission has previously found a declining-block rate structure to be reasonable, the Commission is free to reach the same conclusion in this proceeding. The OUCC's contention otherwise should be rejected.

The CAC-INCAA exceptions advance the same arguments raised by their witness and should be rejected for the reasons explained in I&M's testimony and proposed order. CAC-INCAA attempts to make much of the fact that I&M witness Nollenberger did not propose to recover demand-related costs through the fixed charge in I&M's last rate case, Cause No. 44967. CAC-INCAA Exceptions at 14-15. However, as Mr. Nollenberger explained in his rebuttal testimony in this case, I&M's approach in Cause No. 44967 was an initial attempt to improve the residential rate structure by placing the Company's proposal in the context of the costs associated with connecting a customer. Nollenberger Rebuttal at 20. In other words, I&M's overarching rationale, to design a reasonable level of residential fixed costs to be recovered through a monthly residential fixed charge, is consistent across both cases. The CAC-INCAA exceptions present a distorted view of the record and should be rejected.

CAC-INCAA goes on to assert I&M's proposed fixed service charge "runs contrary to long-standing principles" and "would inappropriately shift recovery of demand-related costs from the volumetric energy rate to the fixed service charge." CAC-INCAA Exceptions at 15-16. This claim was contradicted by CAC-INCAA's own witness, who stated distribution costs (*i.e.*, the demand-related costs that I&M proposes to recover through the monthly service charge and first block energy charges) are typically driven by the coincident peak load for all customers sharing resources. Nollenberger Rebuttal at 29 (citing Wallach at 19). Ignoring evidence does not make it go away, and the CAC-INCAA discussion on this point should not be adopted by the Commission.

CAC-INCAA next claims I&M's rate design would lead to subsidization of high-usage residential customers' costs by low-usage customers. CAC-INCAA Exceptions at 17. This, too, was shown to be incorrect. As the Commission has previously recognized, "[m]any low-income customers use more than the residential average amount." Nollenberger Direct at 23 (quoting *IPL*, Cause No. 44576 at 72). More specifically, I&M's Indiana residential customers on assistance programs use noticeably similar amounts of annual energy as compared to those residential customers that are not on assistance programs. *Id.* at 22. The average usage for I&M's Indiana residential assistance and non-assistance customers provides evidence that I&M's average assistance customer used within approximately 5% of the annual usage of I&M's average non-assistance customer. *Id.* at 22-23. Furthermore, in the winter months, the average assistance user used roughly the same amount or more electricity than the average non-assistance customer. *Id.* at 23. This suggests that a significant portion of I&M's Indiana assistance customers rely on electricity for their winter space heating needs. *Id.* More importantly, the data suggests that the Company's proposal to recover a more proportional amount of fixed costs through both the fixed service charge and declining block energy charge can actually benefit the average assistance customer during the winter months when they rely on electricity the most. *Id.*

Mr. Nollenberger also provided an example of a customer that uses zero kWh during one or several months of a year, such as a customer with a vacation or lake home. He explained that to the extent a rate design collects fixed costs through a volumetric energy (kWh) charge, the Company is limited to recovering those fixed costs from the intermittent customer only during the one or several months of the year when the customer incurs actual usage. Nollenberger Rebuttal at 30. As a result, this rate design does not allow the Company to recover its cost of service from the intermittent usage customer and shifts the balance of fixed cost recovery to higher volumetric rates, which under CAC's approach are disproportionately paid by the above average usage customers. Conversely, under the Company's proposal, a greater level of these fixed costs can be recovered each month from such intermittent customers, even in months when no usage is recorded. *Id.* The CAC-INCAA proposed discussion and finding ignores this record evidence and should be rejected.

CAC-INCAA's erroneous price elasticity arguments should similarly be rejected. CAC-INCAA Exceptions at 17-18. Mr. Burnett's rebuttal identified numerous flaws in Mr. Wallach's price elasticity discussion, which the CAC-INCAA exceptions completely ignore. Among other things, Mr. Burnett explained that Mr. Wallach's elasticity estimate is over two times larger than the observed price elasticity for I&M's residential customers based on the Company's own price elasticity study. Burnett Rebuttal at 21. Mr. Wallach failed to incorporate more up-to-date information and his position should be afforded little weight.

CAC-INCAA suggests that I&M should be indifferent to the particular rate design approved by the Commission because, according to CAC-INCAA, "I&M will be made whole as determined by this Commission and is not harmed from such." CAC-INCAA Exceptions at 18. As an initial point, the establishment of base rates does not ensure a utility "will be made whole". Rather, the rates approved by the Commission are intended to provide the utility with a reasonable opportunity to earn a reasonable return on its investment. *Re Indiana Michigan Power Co.*, Cause No. 44075 at 48, 2013 WL 653036 (IURC 2/13/2013). There is no guarantee that I&M will be able to recover its revenue requirement and CAC-INCAA's suggestion otherwise should be rejected. Moreover, the choice of rate design absolutely does impact both I&M and its customers. The record shows I&M's current residential rate structure presents several challenges for I&M's customers and I&M itself. Nollenberger Direct at 14. I&M's proposed residential rate design addresses these challenges by better aligning I&M's cost of service with the revenues recovered from its residential customers. This benefits I&M as well as its customers. For example, I&M's proposed rate design provides greater month-to-month bill stability for residential customers that are sensitive to weather extremes. Nollenberger Direct at 21; see also *Re Indianapolis Power & Light Co.*, Cause No. 44576 at 72, 2016 WL 1118795 (IURC 3/16/2016) (finding increase in customer charge will reduce customer bill volatility). The one-sided view of rate design presented by CAC-INCAA should be rejected. I&M's proposed residential rate design appropriately balances the interests of I&M and its customers and is consistent with cost causation principles.

I&M's proposed order adequately addresses the OUCC and CAC-INCAA opposition to I&M's residential customer charge and declining block rate structure and should be adopted. IMPO at 72-73.

Finally, CAC-INCAA's remaining discussion incorrectly claims that I&M is proposing a declining block <u>energy</u> rate. CAC-INCAA Exceptions at 19-21. The record evidence is clear, however, that both volumetric block rates collect the same amount of energy-related costs. Nollenberger Direct at 19-20. CAC-INCAA's discussion of other cases discussing declining block energy rates is inapposite and does not refute the reasonableness of I&M's proposal to recover a more proportionate amount of fixed demand-related costs in the fixed monthly service charge and first block of the volumetric energy charge. Moreover, the record shows the Commission has long approved I&M's declining block volumetric rates for I&M's non-residential rate classes. Nollenberger Direct at 17. CAC-INCAA's exceptions ignore record evidence, are based on a faulty premise, and should be rejected by the Commission. The Commission should instead adopt I&M's proposed discussion and findings on the monthly service charge and declining block rate design issues.

With respect to I&M's optional Residential Demand Metered Tariff, both the OUCC and CAC-INCAA agree it should be approved. OUCC PO at 87-88; CAC-INCAA Exceptions at 21-22. The Commission, however, should reject the additional language proposed by both parties. The CAC-INCAA exceptions assert (at 22) that the residential demand charge will create "perverse incentives", yet the record shows the pilot will give customers greater control over their electricity costs and better aligns customers' rates with the types of costs being recovered. IMPO at 73; Nollenberger Rebuttal at 35.

The OUCC and CAC-INCAA proposals to require I&M to maintain records on a customer by customer basis and provide this detail as an annual compliance filing raise significant customer privacy concerns and should be rejected. Moreover, as Mr. Cooper explained, required reporting on individual customer usage patterns and behavior could discourage customers from participating in the pilot. Cooper Rebuttal at 7-8. The CAC-INCAA reference to other cases where reporting was required are inapposite as they involve (1) a settled water rate case approving a pilot low-income customer assistance program; and (2) an Alternative Regulatory Plan approving a prepayment pilot program. Neither case supports requiring I&M to monitor and publicly report customer-specific information and the Commission should not adopt such a reporting recommendation.

The Commission should similarly reject the language proposed by CAC-INCAA requiring I&M to conduct "extensive education" and file a detailed implementation plan in advance of the roll-out of the pilot and requiring a collaborative process to work through the proposed implementation plan before the pilot is allowed to move forward. CAC-INCAA Exceptions at 22. I&M has experience implementing new tariff offerings and is committed to providing customers with information on Tariff RSD and how they may benefit from this offering. Cooper Rebuttal at 7. Requiring a potentially burdensome and lengthy pre-implementation process could frustrate successful implementation of the pilot program and undermine the potential benefits of this tariff offering. The Commission should adopt I&M's proposed discussion and finding on this issue.

17. <u>Riders.</u>

A. <u>AMI Rider.</u> As discussed above and in the IMPO, I&M's proactive approach to AMI deployment is reasonable and should be approved. The other parties' recommendations to deny the AMI Rider should accordingly be rejected. The record shows the

AMI Rider benefits customers versus a deferred accounting of the costs for the AMI deployment because it avoids unnecessarily compounding the rate impact in I&M's next general rate case when the deferral is then reflected in I&M's cost of service, in addition to the full cost of the AMI deployment. Williamson Rebuttal at 27. Further, the record shows the AMI Rider better reflects the cost of providing service to customers over time, avoids compounding the costs onto future customers, and provides routine updates to the Commission and stakeholders. *Id.*; IMPO at 74.

As Mr. Williamson explained, it is reasonable to track the AMI deployment costs because it would be impractical and an inefficient and ineffective use of resources to require I&M to file another general rate case immediately after this proceeding to address the majority of the cost recovery associated with an investment the Commission already determined to be reasonable and necessary. Williamson Direct at 35. No party challenges that the AMI deployment costs are significant. Moreover, while I&M presented cost estimates for the AMI deployment, the ultimate costs will be subject to change and will reflect the actual work performed in each year. Actual expenditures may vary due to weather, availability of labor and materials, and other factors outside I&M's control. Tracking the costs of the AMI deployment provides timely financial support for this significant capital investment and ensures that customer rates ultimately reflect only the actual cost of the AMI deployment over time. Williamson Direct at 36. Accordingly, the Commission should approve the AMI Rider and adopt I&M's proposed discussion and finding.

Finally, Auburn agrees that the AMI deployment should be approved under Ind. Code § 8-1-2-23 but contends that "due to a change in management's decision", the Commission should disallow cost recovery for the retired AMR meters. Auburn Exceptions at 1-2. This vague reference to a "change in management's decision" is unsupported by the record, which demonstrates that the AMI infrastructure investment is reasonably necessary to address technological change and will improve service reliability and the customer experience. Thomas Rebuttal at 14; Isaacson Direct at 28-32; Lucas Direct at 43-47. The record further shows that replacing AMR meters in a proactive, systematic way would be more beneficial and efficient than replacing AMR meters in a piecemeal fashion. Isaacson Rebuttal at 19-21. It would be unreasonable and a violation of Ind. Code § 8-1-2-19 to disallow this cost recovery or otherwise penalize I&M for following this proactive approach and otherwise making prudent investments to maintain its proper in an operating state of efficiency corresponding to the progress of the industry. See also Ind. Code § 8-1-2-6(a) (directing Commission to give weight to the reasonable cost of bringing property to its then state of efficiency). Auburn's proposed finding should be rejected.

B. Environmental Cost Recovery (ECR) Rider. The ICC recognizes that consumables and allowances expenses, much like fuel costs, vary considerably based on how much the Rockport units operate and supports tracking of these expenses. ICC Exceptions at 8. However, the Commission should reject ICC's proposal that tracking of consumables and allowances only be permitted if variable operating costs are not included in the offer price for dispatch of the Rockport units. The record shows that placing restrictions or requirements on how I&M offers power into the PJM market could increase the cost of generation for I&M's customers and impair I&M's ability to manage its costs. Kerns Rebuttal at 5. Accordingly, the Commission should reject the ICC's proposed language as it could be harmful to both I&M and its customers.

The OUCC's argument regarding the Commission's QPCP rule miss the mark. First, the OUCC's recitation of 170 IAC 4-6-22 simply shows that a utility may continue collecting revenues under the QPCP rule until the Commission includes the projects in base rates and charges. Contrary to the OUCC's assertion, the cited rule does not prohibit the continued tracking of consumables pursuant to the Commission's general authority to approve rate adjustment mechanisms under Ind. Code § 8-1-2-42. Moreover, the Vectren Order cited at length by the OUCC did not find continued tracking of O&M expenses associated with environmental projects to be impermissible; rather, it simply concluded based on the evidence presented in that case that there was insufficient evidence of volatility to warrant tracking at that time. Indeed, the Order itself stated: "We do not foreclose the future consideration of such a tracker should the potential volatility be realized and established with evidence." *Re S. Ind. Gas & Elec. Co.*, Cause No. 43839, 2011 WL 1690057, *98-99 (IURC 4/27/2011).

In the present case, substantial evidence demonstrates that the consumables and allowances expenses I&M seeks to track are in fact potentially variable or volatile. Kerns Direct at 25-28; Figure TCK-8. As Mr. Kerns explained, the cost of the consumables used at Rockport vary significantly over time and the two largest drivers of variability are PJM market prices and the fuel mixture. IMPO at 75 (citing Kerns Rebuttal at 3-4); Tr. D-40-43. Further, the fact that I&M procures consumables through a competitive bidding process does not, contrary to the OUCC's assertion, eliminate the variable and volatile nature of these costs. OUCC PO at 90. The use of RFPs benefits customers by securing competitive pricing for consumables but does not change the fact that consumable consumption is driven by factors largely outside of I&M's control. Accordingly, the Commission should accept I&M's proposed discussion and finding.

C. <u>Fuel Adjustment Clause ("FAC").</u> As the OUCC PO acknowledges (at 93), I&M continues to provide the OUCC and its consultant an audit package immediately following the filing of each FAC to expedite and facilitate the review process. The OUCC's testimony did not identify instances in which the OUCC was unable to complete its audit within the statutory timeframe, nor explain why inclusion of a simple calculation to the FAC process warrants a more than two-week extension to the existing reporting deadline. I&M's proposed discussion and finding adheres to the statutory deadline set forth in Ind. Code § 8-1-2-42(b) and should be adopted.

D. *__IM Green__* __Rider.__ The OUCC's recommendation (OUCC PO at 94) that I&M be required to "use all reasonable measures" to sell its RECs is not in the best interest of I&M's customers and should be rejected. As Mr. Lucas explained in his rebuttal testimony, mandating that I&M monetize its RECs would result in: I&M no longer being able to claim green energy generation; I&M's customers no longer being able to claim they receive green energy; and renewable energy will not be available to recruit additional customers to locate in I&M's service area. Lucas Rebuttal at 27-28. While the OUCC PO (at 94) identifies some other utilities that sell RECs, the OUCC has not shown why this alone warrants a change in I&M's REC management practice, which is consistent with how AEP manages the REC inventory in several of its jurisdictions without a renewable portfolio standard. Lucas Rebuttal at 28-29.

While the OUCC asserts it would be "inappropriate" for I&M to claim a general carbon-free benefit applies to all customers, it does not provide any authority for this statement, nor does it allege I&M's current REC management practices violate any regulatory requirements. Moreover, during cross-examination, OUCC Witness Aguilar acknowledged that she could not identify any requirement in the FTC rules that a utility must retire RECs to claim the power it supplied or used is renewable. Tr. L-70-71; L-74-76. The Commission should reject the OUCC's proposed discussion and finding.

IG, Walmart and South Bend all support approval of the *IM Green* Rider. Their exceptions would have the Commission explicitly direct I&M to coordinate with its commercial and industrial customers to pursue additional renewable energy arrangements. IG Redline at 91-92; Walmart Exceptions at 84; SB Exceptions at 26-27. The record shows I&M will continue to work with customers to explore utility partnership opportunities in Northeast Indiana and would bring the proposed structure of those opportunities before the Commission at the appropriate time. Lucas Rebuttal at 29. Accordingly, the additional language suggested by IG, Walmart and South Bend is unnecessary and the Commission should adopt I&M's proposed discussion and finding on this issue.

E. <u>Off-System Sales Margin Sharing.</u> I&M proposes to continue the existing OSS margin sharing mechanism, which embeds zero dollars in base rates and provides 95/5 sharing, meaning that customers receive 95% of any OSS margins. The OUCC and Intervenor recommendations to abandon the current OSS margin sharing approach ignore the actions I&M takes to maximize OSS margins, disregard I&M's expertise in the wholesale market (which creates value for I&M and its customers), and would make I&M's authorized return unreasonably dependent on the competitive wholesale market.

For example, Kroger recommends that $38.4 million in OSS margins be embedded in rates, with 95/5 sharing above and below that amount. Kroger Exceptions at 19. The record shows embedding an amount of OSS margins artificially reduces I&M's revenue requirement and could dramatically reduce I&M's operating income. IMPO at 78. Moreover, if margins are not shared up and down to dollar zero, I&M will be denied a reasonable opportunity to realize its share, as I&M explained in its response to the Commission's September 27, 2019 docket entry. IMPO at 78 (citing Pet. Ex. 43 at 21-23). More specifically, I&M provided an example where the actual results were $5 million, and $10 million of OSS margins are embedded in basic rates. A 95/5 sharing around the difference would divide the $5 million deficit between I&M ($250,000) and customers ($4,750,000), but the reality is that customers would still receive a total benefit greater than the level of OSS margins realized or $5.25 million ($10 million embedded credit minus $4.75

million recovered through OSS rider) and I&M would have a loss of $0.25 million. In other words, customers would receive 105% of actual OSS margins of $5 million, with the extra amount coming from I&M's shareholders who created the value. Embedding OSS margin puts all the risk on the Company. Conversely, sharing from dollar zero eliminates the risk for any party and ensures both the Company and customers benefit from OSS margins with customers continuing to receive nearly all the benefits. Accordingly, Kroger's proposal should be rejected.

Requiring 100% sharing of OSS margins as proposed by the OUCC, IG and Joint Municipals is similarly unreasonable and should also be rejected. OUCC PO at 95-96; IG Redline at 93; JM Exceptions at 87. The record shows I&M is exposed to various forms of risk to create the OSS margin value that is shared with customers. IMPO at 78. I&M's customers have long benefitted from the expertise provided through AEPSC's Commercial Operations team, which incorporates the abilities of I&M's generation fleet along with Commercial Operations' expertise in the various PJM energy and ancillary revenue markets. Pet. Ex. 43 at 17. This expertise provides benefits in the form of lower purchased power cost used to serve customers and in capturing additional opportunities for OSS margins. The 5% sharing provided to I&M provides a modest yet fair mechanism to acknowledge and encourage these continued efforts that benefit customers. I&M proposed discussion and finding should be adopted.

F. <u>PJM Rider And PJM Capacity Performance Insurance.</u> I&M's Test Year PJM NITS costs are not representative of the costs I&M will incur following the Test Year. As discussed above, rate adjustment mechanisms are necessary to provide the Company a realistic opportunity to earn its authorized return. It is unreasonable for customers to enjoy the ongoing benefits of the RTO policy without the associated costs being recognized in rates.

The OUCC and IG oppose continued tracking of NITS based on their apparent dissatisfaction with the regulatory procedures established by FERC and PJM. IG Redline at 100-01; OUCC PO at 102-04. Their criticisms go far beyond the scope of this general rate case, which is focused on Indiana retail ratemaking. The record shows the Company's transmission investment rests on a solid planning and engineering foundation. Ali Direct at 9-13; Attachment KA-1; Ali Rebuttal at 5-7. The record also shows both FERC and PJM provide a means for interested parties to obtain additional information about transmission projects, provide comments and feedback, and otherwise challenge the reasonableness and need for projects. IMPO at 80 (citing Ali and Williamson Rebuttal). To the extent parties seek a change in FERC and PJM review processes, those changes should be addressed in the appropriate forum, not here. The Commission should accordingly reject the OUCC and IG invitation to weigh in on matters that exceed the scope of this proceeding.

The OUCC PO takes an "everything but the kitchen sink" approach to challenge continued tracking of NITS costs. First, it quotes *City of Evansville* for the proposition that use of a future test year warrants a concern about the reliability of projected data. OUCC PO at 101-02. Notably, in the forty-four years since this opinion was written much has changed with respect to the tools available to forecast costs and the use of such tools in Commission proceedings.

The OUCC points to no record evidence challenging, much less invalidating, the credibility of the Company's forecast. For example, the average accuracy of the budget load forecasts (GWh) for I&M since 2008 has been within 0.3% on a weather normalized basis. Burnett Direct at 12. The overall level of forecasted capital expenditures during the Capital Forecast Period is reasonable compared to the last three years of actual capital expenditures. Lucas Direct at 14. The average annual capital expenditure in 2019–2020 is forecasted to be $616 million compared to

$585 million in 2016-2018, an estimated increase of 5%. Considering inflationary factors and specific capital programs taking place during the Capital Forecast Period the overall amount is reasonable compared to historical actual expenditures. *Id.* There are significant needs in the wires side of the business to invest in infrastructure and technological improvements to I&M's system that will result in customer reliability improvements, economic development opportunities, as well as improve the efficiency of the Company's system. *Id.* at 16. From 2016 – 2018 the average actual capital expenditures per year for capital investments in Transmission has been $88 million. During the Capital Forecast Period, the average capital forecast per year is $94 million. The projects included in I&M's forecast here are primarily focused on physical security and local infrastructure improvement projects. *Id.*; Ali Direct at 18. In fact, Industrial Group witness Dauphinais (p. 17) concedes that "these cost[s] are significant and projected to grow . . .". See Ali Rebuttal at 3.

Market conditions have also changed since *City of Evansville* was issued and in the wake of the Great Recession timely cost recovery and mitigation of regulatory lag are of utmost importance to a utility's financial health. Indeed, the Indiana General Assembly has expressly authorized the use of forward-looking test years, and the Commission has gained experience in evaluating projected test year data. The OUCC states that utilities "must now show that the projections of future expense are reasonable", but nowhere does it allege that I&M's projection of NITS costs are unreasonable or inaccurate. OUCC PO at 102. No real concern exists with respect to the tracking mechanism as forecasts have long been accepted in such proceedings and the mechanism itself is subject to reconciliation of any variance.

The OUCC argument also overlooks the policy and consumer benefits underpinning the RTO membership. It is fundamentally unfair as a matter of regulatory policy to encourage and authorize I&M to join the PJM RTO and then prohibit the Company from timely recovering the costs reasonably and responsibly incurred to fulfill its membership requirements. Thomas Rebuttal at 5-6. As a Commission-approved member of PJM, I&M has a duty and responsibility to pay its PJM bill for service and it is reasonable and necessary for the Company to be afforded a true opportunity to recover its PJM costs. To conclude otherwise loses sight of the long-term benefits of the RTO framework and will result in significant financial harm to I&M as shown in the direct and rebuttal testimony of Company witness Williamson and the rebuttal testimony of Company witness Hevert. No other party has challenged I&M's forecast as being unreasonable, and that forecast shows NITS costs will continue to be significant and volatile going forward. *City of Evansville* provides no basis to deny continued tracking of NITS costs.

Second, the OUCC argues there is no "specific statute addressing NITS recovery", and that "perhaps most analogous" would be a proceeding brought under the TDSIC statute. OUCC PO at 103. The OUCC does not explain the basis for its conclusion that NITS recovery is "perhaps most analogous" to a TDSIC proceeding; presumably the connection is that both can involve transmission projects. But the record quashes this contention. The TDSIC is intended to recover transmission costs associated with Indiana regulated public utility capital projects. The TDSIC is not a practical solution for I&M as all of the revenue requirement associated with the Company's owned transmission assets is paid for by PJM and I&M's cost of transmission service for its customers is fully based on PJM's charges and the AEP Transmission Agreement. See Williamson Rebuttal at 11. Furthermore, the TDSIC statute is not an option for transmission projects and transmission service costs of other PJM members. So while I&M's transmission service charges are unique, effectively the other Indiana IOUs are able to track the majority of their transmission costs. I&M should not be disadvantaged from similar relief as other Indiana utilities simply because of how I&M incurs costs for transmission service in PJM. *Id.*

Third, the OUCC references a prior I&M case in which costs associated with a carbon capture and sequestration study were disallowed. OUCC PO at 103-04; also IG Redline at 101. Again, however, the instant case is immediately distinguishable. There is no dispute that the investments reflected in the NITS costs in this case benefit customers and are appropriate for recovery through rates. The OUCC's complaint about the extent to which the Commission may review and approve transmission projects taking place throughout the PJM transmission system is outside the scope of this proceeding and properly addressed through other avenues consistent with the state and federal policy that resulted in I&M's RTO membership. The Commission's prior disallowance of an entirely different type of expense does not support discontinuing tracking of NITS costs.

Finally, the OUCC argues that AEP's Annual Incentive Compensation Plan contains a metric related to transmission infrastructure investment and that this further justifies denial of NITS tracking because it suggests AEP has control over transmission investments. OUCC PO at 104-105. The OUCC ignores Mr. Carlin's testimony, which thoroughly debunked this line of reasoning. Mr. Carlin explained that the Plant in Service goal is a measure of the timely completion of already approved transmission and telecommunications construction, replacement, and rebuilding projects, which I&M does control, not the approval of such projects or their cost. Carlin Rebuttal at 24-25. In other words, the performance measure referenced by the OUCC is aligned with customer interests because it bring projects into service on time and within budget, which enhances reliability and saves customers money by bringing assets that reduce costs to customers into service more quickly and by avoiding delays that often lead to cost overruns. *Id.* at 25.

The Industrial Group and Kroger further contend that the NITS charges do not satisfy the Commission's criteria for tracking. IG Redline at 98-100; Kroger Exceptions at 13-14. Substantial record evidence, however, shows that NITS charges are collectively and potentially significant in nature (a point no party contests), potentially variable or volatile, and largely outside the control of I&M. IMPO at 81. Notably, the IG proposed order attempts to materially change the applicable standard by arguing that volatility requires "recurring and difficult to predict significant swings up and down." IG Redline at 99. Kroger's exceptions similarly attempt to muddy the waters by arguing for a distinction between volatility and variability. Kroger Exceptions at 14. No authority is cited for this proposition, and it is contradicted by Commission precedent. *Re Indianapolis Power & Light Co.*, Cause No. 44576 at 79, 2016 WL 1118795 (IURC 3/16/2016); *PSI Energy*, Cause No. 42359 at 115-16, 2004 WL 1493966 (IURC 5/18/2004). In both cases, the Commission recognized that costs that are volatile and/or variable are appropriately tracked where the test year costs are not representative of the costs incurred to provide service during the period in which rates will be in effect. After all, as stated above, rate adjustment mechanisms are a tool to provide the utility its right to a true opportunity to earn its authorized return.

In sum, substantial record evidence demonstrates that PJM NITS costs are significant, subject to variability or volatility, and are largely outside of I&M's control. The record further shows that absent continued tracking of these costs, I&M would be subjected to severe financial harm. See IMPO at 81-82 (citing Williamson Rebuttal at 12); *see also* this brief, Section 9.C.2. I&M's proposed discussion and finding appropriately reconciles the record evidence with sound regulatory policy and Commission precedent and should be adopted by the Commission. The Commission should reject the OUCC and intervenor proposed discussion and findings.

With respect to the PJM Capacity Performance Insurance premium, the Commission should reject the proposed findings by the OUCC and Kroger that would disallow the recovery of this prudently incurred expense. OUCC PO at 105; Kroger Exceptions at 16-17. The OUCC PO assertion that the imposition of capacity performance penalties is "speculative" was invalidated by Mr. Thomas' discussion at the hearing, where he noted PJM had preliminarily called a performance assessment event just the week before, when it was roughly 80 degrees outside. Tr. B-87. As Mr. Thomas explained in response to a question from the Presiding Commissioner:

> So when we looked at this insurance product and the way PJM looks at the rules and assesses charges, part of the way I looked at it is for one Rockport unit, if it's not available and you look at the numbers that are out there, it's about $4.5 million an hour penalty, $4.5 million per hour of a charge as far as the performance assessment.
>
> The other thing in my experience is there's a number of issues that can cause units to go off line well beyond the company's control. I've lived it; I've run about every type of asset that exists and provides electricity to the system, so based on our large generators, the magnitude of the charge if it happened – and then you have to look at basically one hour; it only has to happen one hour one time a year and I have more than covered the cost of the insurance.
>
> That, for me, based on my experience said it was prudent and reasonable to cover that risk on behalf of the company and our customers.

Tr. B-84-85. Kroger's claim that I&M's rate of return adequately compensates I&M for the risk associated with PJM Capacity Performance charges was refuted by Mr. Hevert, who explained that if Mr. Bieber's proposal were to be adopted, it would require an increase in the authorized ROE. Hevert Rebuttal at 95-96. Kroger's claim also misstates the issue. The purchase of insurance is a reasonable, necessary and appropriate expense, particularly where, as here, the purchase is shown to be prudent and the cost is not excessive. Thus, this business expense satisfies the Ind. Code § 8-1-2-48 standard (*i.e.*, this operating cost is neither "unnecessary" nor "excessive"). The record supports the reasonableness of the PJM Capacity Insurance Premium and the Commission should adopt I&M's proposed discussion and finding in lieu of that proposed by the OUCC and Kroger.

G. Resource Adequacy Rider (RAR). The OUCC supports the continued tracking of non-fuel purchased power costs through the RAR, while IG and Kroger oppose it. There is no dispute that these significant costs should be recovered; rather the question is whether to track incremental purchased power costs above and below the amount embedded in base rates. As explained in the IMPO, the costs are currently subject to FERC-approved and regulated purchased power contracts and thus are largely outside I&M's control. IMPO at 83.

Rate adjustment mechanisms are a tool that allows timely cost recovery where the test year is not representative of significant ongoing costs to be incurred during the period the new rates will be in effect. IG's assertion (IG Redline at 104) that these costs are "relatively predictable" is beside the point because no credible argument can be made that the Test Year amount of these costs is representative of this significant cost or that the conduct of additional general rate cases is an appropriate remedy. Furthermore, the IG contention is belied by the record, including the actual and forecasted data included in OUCC witness Lantrip's testimony (reproduced below):

Table 1: Actual and Forecasted Purchased Power Costs

Total Company Purchased Power Non-FAC Costs	
Actual Purchased Power Costs 2013 (1)	$140,733,707
Actual Purchased Power Costs 2014 (1)	$143,870,910
Actual Purchased Power Costs 2015 (1)	$149,308,029
Actual Purchased Power Costs 2016 (1)	$144,776,159
Actual Purchased Power Costs 2017 (1)	$153,872,009
Actual Purchased Power Costs 2018 (1)	$161,285,252
Forecasted Purchased Power Costs 2020 (Test Year) (2)	$190,132,242
Forecasted Purchased Power Costs 2021 (3)	$189,511,000
Forecasted Purchased Power Costs 2022 (3)	$186,312,000
Forecasted Purchased Power Costs 2023 (3)	$120,409,000
Forecasted Purchased Power Costs 2024 (3)	$112,277,000
Forecasted Purchased Power Costs 2025 (3)	$113,646,000

(1) See Attachment KGL-2.
(2) I&M witness Andrew J. Williamson's Testimony, p. 55, lines 18-20
(3) See Attachment KGL-1, p. 2 of 2.

Lantrip at 4. This evidence demonstrates the significance and volatility of purchased power non-fuel costs and the reasonableness of tracking incremental changes in these costs.

IG's concern that "to the extent I&M is compelled to purchase additional capacity in the future based on its plans related to the Rockport facility, such purchases should be subject to greater review than can be achieved through a RAR proceeding" is speculative and does not warrant discontinuing the RAR. IG Redline at 104. The record shows that I&M has made no decisions with respect to the Rockport Unit 2 lease and continues to explore the available options at the end of the initial lease term. Thomas Rebuttal at 23. IG has not demonstrated that the existing RAR proceeding is insufficient or explained why additional process is necessary. Accordingly, the IG's proposed language should be rejected.

Both IG and Kroger claim that continued tracking would remove any incentive for I&M to control its purchased power costs. IG Redline at 104; Kroger Exceptions at 15. But they offer no support for this assertion. Furthermore, while the costs that are subject to the RAR are significant and warrant tracking, the record shows that tracking these costs does not influence any incentive I&M has to manage the underlying costs. For example, I&M's largest non-fuel purchased power cost relates to the contract I&M has with AEG for 70% of AEG's share of Rockport. Since I&M owns and leases 50% of Rockport and does not track the majority of those costs, I&M has every incentive to continue to manage the costs of Rockport. Williamson Rebuttal at 22. The RAR is a reasonable and necessary tool to provide the Company a true opportunity to earn its authorized return.

Finally, Kroger claims that continued tracking of non-fuel purchased power costs through the RAR would not allow consideration of decreases in expenses or increases in revenue. Kroger Exceptions at 15. However, the record shows the RAR would provide precisely that: decreases in non-fuel purchased power costs as well as increases in capacity sales revenues would both be captured through the RAR. In other words, the RAR ensures rates reflect the actual non-fuel purchase power costs incurred by I&M and that any benefits associated with additional capacity sales are flowed through to customers.

The Commission should reject the other parties' proposed language and adopt the discussion and finding proposed by I&M.

18. Miscellaneous Issues.

A. ICC Investigation Request. The record shows the execution of and modifications to the Consent Decree reflect a series of actions taken by AEP to comply with evolving environmental requirements in a cost effective manner. These actions have avoided the expenditure of billions of dollar on pollution control equipment, the cost of which would have been reflected in retail electric rates. Thomas Rebuttal at 22. The record shows that Ms. Medine's contentions regarding the Fifth Modification to the Consent Decree are flawed and based on erroneous premises. IMPO at 83-84. She based her recommendations on excerpts from a Commission decision in another case that was expressly limited to that specific case, which had different facts. Tr. P-13-14. Moreover, those excerpts did not concern infrastructure investments undertaken to comply with a federal NSR Consent Decree. Tr. P-14. Further, the Commission's other findings in the very precedent relied on by the ICC support such infrastructure investment and the full inclusion thereon in retail rates. Tr. P-20. The ICC's apparent confusion over the nature of and benefits arising from the Consent Decree and its subsequent modifications does not provide a reasonable basis to conduct the broad, sweeping investigation the ICC now requests. ICC Exceptions at 8-10. The Commission should reject the ICC's proposal and adopt I&M's proposed discussion and finding.

B. **<u>Streetlighting/Public Efficient Streetlight Program.</u>** As explained in the IMPO, I&M is not proposing any LED-specific basic rates in this case; these rates were previously approved by the Commission through a 30-day filing. IMPO at 86. Furthermore, I&M has proposed a revised PES Program in its pending DSM Plan case, Cause No. 45285, in which South Bend is an intervenor. I&M's rebuttal evidence identified errors in South Bend's criticism of I&M's streetlighting rates and demonstrated that the net effect of I&M's proposed basic SL rates, plus proposed SL rider rates, results in an effective 0% increase for the overall SL class. *Id.* There is no need for the Commission to further address South Bend's flawed arguments in this basic rate case. I&M's proposed discussion and finding should be adopted.

C. **<u>Dry Cask Storage Deferral.</u>** I&M's proposed order reasonably addressed this issue and the OUCC's additional language is not necessary. The Commission should adopt I&M's discussion and findings.

D. Municipal Solar Programs. South Bend proposes the Commission require the creation of a Municipal Solar Program collaborative and identifies mandatory size requirements and a deadline for reporting on the collaborative. SB Exceptions at 32-34. This request, like South Bend's other specific requests, exceeds the scope of this docket. As an intervenor, South Bend was granted leave to participate with respect to the specific subject matter of this proceeding and that intervention is subject to the important qualification that the intervention does not unduly broaden the proceeding. These requirements apply throughout the proceeding, not only at the time a decision on the intervention is made. Put another way, intervention is not an invitation for a party to present a wish list regarding other matters. Doing so contravenes the terms on which intervention was allowed by the Commission and unnecessarily burdens this docket with collateral matters.

Additionally, Commission-mandated collaboratives impose a cost and resource burden on all stakeholders. Such efforts can be productive, but this tool is not and should not be viewed as the go-to solution for all concerns. And this tool is not without its shortcomings. For example, the posturing that can occur at formal meetings conducted under the guise of state management can obscure the purpose of the collaboration. While the concept of two parties talking to each other, without artificial constraints, may not have an official state seal attached to it and may not require the ongoing employment of outside experts, counsel and other representatives, the effectiveness of this form of communication should not be discounted. Given that I&M is willing to discuss with South Bend, South Bend's interest in municipal solar projects, it is unnecessary to place artificial timeframes and size requirements on those discussions. Lucas Rebuttal at 30. Accordingly, the Commission should reject South Bend's proposed discussion and finding.

E. **South Bend's Specific Requests.** In its exceptions, South Bend also proposes that I&M be required to offer South Bend "an ongoing at least monthly utility / customer renewable energy and energy efficiency collaborative exchange," with the goal of reaching agreement on new programs. SB Exceptions at 34-35. South Bend further proposes that a report be filed within six months describing the collaborative outcome. These requests exceed the scope of this docket. The record shows that I&M and AEP currently have activities underway to evaluate a number of the items mentioned by South Bend's witnesses and will take South Bend's feedback into consideration as I&M considers new program offerings and changes to existing programs. Lucas Rebuttal at 31. Given this commitment, the Commission need not mandate a formal collaborative process with prescribed meeting frequency and reporting requirements. South Bend's proposed discussion and finding should not be adopted.

19. **Terms And Conditions Of Service And Tariffs.**

A. **AMI Opt Out/Self Read.** Both South Bend and the OUCC argue that I&M be required to allow AMI opt-out customers the option to self-read their meters. SB Exceptions at 32; OUCC PO at 111. South Bend recognizes that any such self-read option should include "appropriate customer conformance requirements including that failure to timely provide three meter readings in a twelve month period will justify removal from the self read option…." SB Exceptions at 32. I&M agrees that any Commission-imposed self-read option should include the ability to remove participating customers for failure to timely self-read. That said, the record shows shifting meter reading responsibility from I&M's trained employees to customers is fraught with problems. IMPO at 88-89. Therefore, the OUCC's and intervenor's proposals should be rejected. I&M's proposed discussion and finding should be adopted.

D. CONCLUSION

The record demonstrates I&M continues to work hard to control its operating expenses and to comply with the cost of environmental and other mandates. The record also demonstrates the Company must continue to invest in the infrastructure used and useful in the provision of service to customers.

Prudent regulatory oversight dictates that the Commission take firm steps to alleviate the Test Year strain on the Company's financial position. Doing so is fair to consumers, Indiana's local economies and I&M. Furthermore, fundamental fairness and the U.S. Supreme Court decisions in *Hope* and *Bluefield* require the Commission to provide I&M a realistic opportunity to earn its authorized return through the rates established for the provision of retail service. Sound regulatory policy, a fair and impartial consideration of the record evidence, and adherence to Indiana and constitutional law lead to the conclusion that I&M's proposed rate relief is just, reasonable, and in the public interest.

The OUCC and Intervenor proposals contravene these and other well-established legal and regulatory requirements and ignore or distort substantial probative evidence. They urge the Commission to exclude reasonable and necessary costs for providing service, to ignore the benefits customers have received from I&M's efforts to reduce its costs, to disallow investment, to discontinue rate adjustment mechanisms and thus effectively disallow I&M a realistic opportunity to recover costs incurred in furtherance of state and federal RTO policies that have provided and continue to provide substantial consumer benefits, and to award a confiscatory return. Their proposals jeopardize I&M's financial integrity, its compliance with federal and other regulatory mandates and the continued provision of safe, reliable and economic service. This in turn harms customers and the public interest. "[T]he power to regulate is not the power to destroy, and the limitation which the Public Service Commission may impose upon public utilities in the fixing of rates and charges is not the equivalent of confiscation." *Public Service Comm. v. Indiana Bell Tele. Co.*, 235 Ind. 1, 130 N.E.2d 467, 481 (1955).

Therefore, for the reasons set forth in I&M's testimony, exhibits and post-hearing filings and to comply with Indiana law and further the public interest, I&M respectfully urges the Commission to adopt the findings in I&M's Proposed Order and promptly issue an order approving the rate increase sought by I&M.

Respectfully submitted,

Teresa Morton Nyhart (Atty. No. 14044-49)
Nicholas K. Kile (Atty. No. 15023-23)
Jeffrey M. Peabody (Atty. No. 28000-53)
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204

Nyhart Phone:	(317) 231-7716
Kile Phone:	(317) 231-7768
Peabody Phone:	(317) 231-6465
Fax:	(317) 231-7433
Nyhart Email:	tnyhart@btlaw.com
Kile Email:	nkile@btlaw.com
Peabody Email:	jpeabody@btlaw.com

Attorneys for:
INDIANA MICHIGAN POWER COMPANY

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served upon the following via electronic email, hand delivery or First Class, or United States Mail, postage prepaid this 10th day of December, 2019 to:

Tiffany Murray
Indiana Office of Utility Consumer Counselor
Office of Utility Consumer Counselor
115 West Washington Street, Suite 1500 South
Indianapolis, Indiana 46204
timurray@oucc.in.gov
infomgt@oucc.in.gov

Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
KBoehrn@BKLlawfirm.com
JKylerCohn@BKLlawfirm.com

Robert K. Johnson
2454 Waldon Dr.
Greenwood, IN 46143
rjohnson@utililtylaw.us

J. Christopher Janak
Kristina Kern Wheeler
BOSE MCKINNEY & EVANS LLP
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204
cjanak@boselaw.com
kwheeler@boselaw.com

Robert M. Glennon
Robert Glennon & Assoc., P.C.
3697 N. Co. Rd. 500 E.
Danville, IN 46122
robertglennonlaw@gmail.com

Jennifer A. Washburn
Margo Tucker
Citizens Action Coalition
1915 W. 18th Street, Suite C
Indianapolis, Indiana 46202
jwashburn@citact.org
mtucker@citact.org

John P. Cook, Esq.
John P. Cook & Associates
900 W. Jefferson Street
Franklin, Indiana 46131
john.cookassociates@earthlink.net

Kevin Higgins
Energy Strategies, LLC
Parkside Towers, 215 South State Street, Suite 200
Salt Lake City, Utah 84111
khiggins@energystrat.com

Bette J. Dodd
Joseph P. Rompala
Anne E. Becker
LEWIS & KAPPES, P.C.
One American Square, Suite 2500
Indianapolis, IN 46282-0003
BDodd@Lewis-Kappes.com
JRompala@Lewis-Kappes.com
abecker@lewis-kappes.com

Courtesy copy to:
ATyler@lewis-kappes.com
ETennant@lewis-kappes.com

Brian C. Bosma
Kevin D. Koons
Ted W. Nolting
Kroger Gardis & Regas, LLP
111 Monument Circle Drive, Suite 900
Indianapolis, IN 46204-5125
bcb@kgrlaw.com
kdk@kgrlaw.com
twn@kgrlaw.com

Randolph G. Holt
PARR RICHEY
c/o Wabash Valley Power Alliance
6720 Intech Blvd.
Indianapolis, IN 46278
r_holt@wvpa.com

Jeremy L. Fetty
Liane K. Steffes
PARR RICHEY
251 N. Illinois Street, Suite 1800
Indianapolis, IN 46204
jfetty@parrlaw.com
lsteffes@parrlaw.com

Courtesy copy to:
CHolcomb@parrlaw.com

Eric E. Kinder
SPILMAN THOMAS & BATTLE, PLLC
300 Kanawha Boulevard, East
P. O. Box 273
Charleston, WV 25321
ekinder@spilmanlaw.com

Jeffery A. Earl
BOSE MCKINNEY &EVANS LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
jearl@boselaw.com

Barry A. Naum
SPILMAN THOMAS & BATTLE, PLLC
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
bnaum@spilmanlaw.com

Mark W. Cooper
Attorney at Law
1449 North College Avenue
Indianapolis, IN 46202
attymcooper@indy.rr.com

Shaw R. Friedman
Friedman & Associates, P.C.
705 Lincolnway
LaPorte, IN 46350
sfriedman.associates@frontier.com

W. Erik Weber, Esquire
Mefford Weber and Blythe
130 East Seventh Street
Auburn, IN 46706-1839
erik@lawmwb.com

Keith L. Beall
CLARK, QUINN, MOSES, SCOTT & GRAHN, LLP
320 N. Meridian St, Suite 1100
Indianapolis, IN 46204
kbeall@clarkquinnlaw.com

Nikki G. Shoultz
BOSE MCKINNEY & EVANS LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
nshoultz@boselaw.com

Jeffrey M. Peabody

Teresa Morton Nyhart (No. 14044-49)
Nicholas K. Kile (Atty. No. 15023-23)
Jeffrey M. Peabody (No. 28000-53)
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204

Nyhart Phone:	(317) 231-7716
Kile Phone:	(317) 231-7768
Peabody Phone:	(317) 231-6465
Nyhart Email:	tnyhart@btlaw.com
Kile Email:	nkile@btlaw.com
Peabody Email:	jpeabody@btlaw.com

Attorneys for:
INDIANA MICHIGAN POWER COMPANY

DMS 15763099v3