ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	√		
Freeman	√		
Krevda	√		
Ober	√		
Ziegner	√		

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF INDIANA MICHIGAN POWER COMPANY (I&M) AND AEP GENERATING COMPANY (AEG) FOR CERTAIN DETERMINATIONS WITH RESPECT TO THE COMMISSION'S JURISDICTION OVER THE RETURN OF OWNERSHIP OF ROCKPORT UNIT 2	)))))))	**CAUSE NO. 45546**
		APPROVED: DEC 08 2021

ORDER OF THE COMMISSION

Presiding Officers:
James F. Huston, Chairman
David L. Ober, Commissioner
Jennifer L. Schuster, Administrative Law Judge

On May 10, 2021, Indiana Michigan Power Company ("I&M") and AEP Generating Company ("AEG") (collectively, "Petitioners") filed their Verified Petition with the Indiana Utility Regulatory Commission ("Commission") for certain determinations with respect to the Commission's jurisdiction over the proposed purchase of Unit 2 of the Rockport Generating Station ("Rockport Unit 2" or "the Unit") by I&M and AEG.

Petitions to intervene were filed by Citizens Action Coalition of Indiana, Inc. ("CAC") on May 12, 2021, by Sierra Club on May 19, 2021, by the I&M Industrial Group ("Industrial Group") on May 21, 2021, by the City of Marion, Indiana, Marion Municipal Utilities (collectively, "Marion"), and the City of Fort Wayne, Indiana ("Fort Wayne") (together, the "Municipal Intervenors") on May 25, 2021, and by Wabash Valley Power Association, Inc. d/b/a Wabash Valley Power Alliance ("Wabash Valley") on June 2, 2021. The petitions to intervene were granted by docket entries dated June 1 and 17, 2021.[1]

On June 8, 2021, Petitioners, the Indiana Office of Utility Consumer Counselor ("OUCC"), CAC, Sierra Club, the Industrial Group, and Municipal Intervenors filed a stipulation and agreement in lieu of prehearing conference. On June 17, 2021, the Commission set the procedural schedule by docket entry. On June 22, 2021, Petitioners filed their revised Petition and testimony.

On July 1, 2021, the OUCC, CAC, Sierra Club, the Industrial Group, and Municipal Intervenors filed a Motion to Dismiss. Petitioners opposed the motion by response filed July 19, 2021, and the moving parties filed their reply on July 29, 2021.[2]

On July 29, 2021, the OUCC, the Industrial Group, CAC, Municipal Intervenors, and Wabash Valley filed the testimony and exhibits constituting their cases-in-chief. Sierra Club filed

[1] The OUCC and intervenors are referred to collectively as the "Consumer Parties."
[2] As discussed further below, the Motion to Dismiss is deemed withdrawn as part of the parties' Settlement Agreement.

a notice of support of CAC's direct testimony on July 30, 2021. On August 2, 2021, the OUCC and CAC filed their workpapers, and the Industrial Group filed its notice of intent not to file workpapers. Petitioners filed their rebuttal evidence on August 10, 2021.

On August 19, 2021, the Commission requested additional information from Petitioners by docket entry. Petitioners responded on August 26, 2021.

On September 9, 2021, Petitioners, on behalf of themselves and the OUCC, Industrial Group, CAC, Sierra Club, Municipal Intervenors, and Wabash Valley (collectively the "Settling Parties") filed a Joint Motion for Leave to File Settlement Agreement, for Continuance of Hearing, and Request for Settlement Hearing. Due to the fact that this request was not made until approximately 4:30 p.m. on the day before the hearing, the evidentiary hearing occurred as scheduled on September 10, 2021 at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Petitioners, OUCC, Industrial Group, CAC, Sierra Club, Municipal Intervenors, and Wabash Valley participated by counsel, the parties' cases-in-chief and rebuttal evidence was admitted into the record without objection, and cross-examination was waived by all parties.

Following the hearing, on September 13, 2021, the Settling Parties filed a Renewed Joint Motion for Leave to File Settlement Agreement and Request for Settlement Hearing, which included a copy of the Stipulation and Settlement Agreement ("Settlement Agreement") among the Settling Parties, which was granted by docket entry dated September 15, 2021. On September 21, 2021, Petitioners and the OUCC filed settlement testimony in support of the Settlement Agreement.

A settlement hearing in this Cause was held on October 22, 2021 at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Counsel for Petitioners, OUCC, Industrial Group, CAC, Municipal Intervenors, and Wabash Valley appeared and participated at the settlement hearing. At the settlement hearing, the Settlement Agreement and supporting evidence was admitted into the record, and cross-examination was waived by the Settling Parties. Sierra Club's counsel was excused from attending both hearings in this Cause, as Sierra Club did not present any evidence.

Based upon applicable law and the evidence of record, the Commission now finds as follows:

1. Notice and Jurisdiction. Notice of the hearings in this Cause was given and published by the Commission as required by law. Petitioners are each a "public utility" under Ind. Code §§ 8-1-2-1 and 8-1-8.5-1 and an "energy utility" as defined in Ind. Code § 8-1-2.5-2. I&M is an "eligible business" as defined in Ind. Code § 8-1-8.8-6. Petitioners are each subject to the jurisdiction of this Commission as provided by applicable Indiana law. Therefore, the Commission has jurisdiction over Petitioners and the subject matter of this proceeding.

2. Petitioners' Characteristics. I&M, a wholly owned subsidiary of American Electric Power Company, Inc. ("AEP"), is a corporation organized and existing under Indiana law, with its principal offices at Indiana Michigan Power Center, Fort Wayne, Indiana. I&M is engaged in, among other things, rendering electric service in Indiana and Michigan. I&M owns and operates

plant and equipment in Indiana, including the Rockport Generating Station located in Spencer County, Indiana ("Rockport Plant"). I&M has a 50% undivided ownership interest in Unit 1 of the Rockport Plant ("Rockport Unit 1") and a 50% leasehold interest in Rockport Unit 2. I&M supplies electric service to approximately 470,000 retail customers in northern and east central Indiana. I&M also serves wholesale customers in Indiana and wholesale and retail customers in Michigan. I&M's electric system is an integrated and interconnected entity that is operated within Indiana and Michigan as a single utility.

AEG is a corporation organized and existing under Ohio law, having its principal executive office at 1 Riverside Plaza, Columbus, Ohio. AEG is duly admitted and qualified to transact business in Indiana and is a wholly owned subsidiary of AEP. AEG has a 50% undivided ownership interest in Rockport Unit 1 and has a 50% leasehold interest in Rockport Unit 2. AEG sells all of its power from these facilities at wholesale to certain of its utility company affiliates under long-term contracts approved by the Federal Energy Regulatory Commission ("FERC"). AEG makes no retail sales of power.

I&M and AEG are also subject to the jurisdiction of the FERC. I&M's transmission system is under the functional control of PJM Interconnection, L.L.C. ("PJM"), a FERC-approved regional transmission organization ("RTO"), and is used for the provision of open access, non-discriminatory transmission service pursuant to PJM's Open Access Transmission Tariff on file with the FERC.

3. Background. Rockport Unit 2 is a 1300-megawatt ("MW") coal-fired unit that is one of two similar units at the Rockport Plant. I&M is the operator of both units. Construction on Rockport Unit 2 began in 1979, and the unit was placed into service in 1989. Since then, Rockport Unit 2 has been part of I&M's generation resource mix used for the furnishing of public utility service.

As construction on the Rockport Plant was underway, I&M entered into transactions to reduce the cost of financing and the revenue requirement impact of Rockport Unit 2. First, I&M transferred 50% of its ownership in Rockport Unit 2 to AEG, an affiliate created in 1982 to facilitate and lessen the cost of financing generating units within the AEP system in exchange for an ownership interest in said generating units. Petitioners entered into a Unit-Power Agreement ("UPA") which provides that AEG must make all of the power representing its 50% interest available to I&M in exchange for compensation regulated by the FERC. Under this arrangement, I&M retained control and operation of both units of the Rockport Plant.

Second, Petitioners each entered into a sale and leaseback transaction of their respective 50% interests in Rockport Unit 2. Under the transaction, Petitioners sold their undivided interests in Rockport Unit 2 to an owner trust ("Owner Trust"), whose beneficiaries are unaffiliated, non-utility institutional equity investors ("Equity Participants"). Simultaneous with its purchase of the undivided interests from Petitioners, the Owner Trust leased Rockport Unit 2 back to Petitioners for a term of 33 years for a stipulated level rent with options to renew ("Lease"). I&M also entered into an agreement with the Owner Trust to operate Rockport Unit 2 during the Lease term and then, on behalf of the Owner Trust, beyond the Lease term.

The Commission approved the Lease in 1989. *Indiana Michigan Power Company and AEG,* Cause No. 38690; Cause No. 38691, 1989 WL 1734132 (March 30, 1989) ("1989 Sale/Lease Order"). The Commission disclaimed and declined to exercise jurisdiction over this transaction under Ind. Code ch. 8-1-8.5. *Id.* at *4. The Commission's 1989 Sale/Lease Order authorized Petitioners to enter into the transactions pursuant to which they undertook obligations involving the sale and the leasing back of their undivided ownership interests in Rockport Unit 2. The 1989 Sale/Lease Order also disclaimed and declined to exercise jurisdiction to regulate the Owner Trust and Equity Participants (or their shareholders or partners) as "public utilities" under Ind. Code ch. 8-1-2. *Id.*

4. Relief Requested. I&M and AEG have entered into an agreement whereby I&M and AEG will purchase Rockport Unit 2 at the end of the Lease term in December 2022 (the "Agreement" or the "Transaction"). Under the Agreement, I&M and AEG will purchase the interests of each Equity Participant in the Owner Trust with the intent to immediately terminate the Owner Trust, leaving I&M and AEG each with a 50% ownership interest in Rockport Unit 2. This is the same ownership arrangement that existed at the time the Commission approved the Lease in 1989. The Agreement is conditioned upon Petitioners receiving required governmental consents (as that term is described in the Agreement) from the Commission and the FERC by December 16, 2021.

In accordance with Ind. Code § 8-1-2.5-5, Petitioners ask the Commission decline to exercise its jurisdiction under the Certificate of Public Convenience and Necessity ("CPCN") statute, Ind. Code § 8-1-8.5-2 ("CPCN Statute") with respect to their purchase of Rockport Unit 2 or determine that Ind. Code § 8-1-8.5-2 does not apply to the Transaction. In their Revised Petition, Petitioners have only requested the ability to purchase Rockport Unit 2. They did not request approval of the inclusion of the costs of purchasing and operating Rockport Unit 2 after the Lease terminates in I&M's Indiana jurisdictional cost of service, but indicated that they may seek such approval through a CPCN process following an affirmative decision in this proceeding.

Petitioners now also request approval of the parties' Settlement Agreement, which resolves all of the contested issues in this Cause.

5. Evidence Presented.

A. Petitioners' Case-in-Chief. Toby L. Thomas, I&M President and Chief Operating Officer at the time the Petition was filed,[3] supported Petitioners' request to acquire the ownership interests in Rockport Unit 2 expeditiously, while deferring without prejudice the question of whether costs associated with reacquiring and operating Rockport Unit 2 after the end of the Lease will be included in I&M's ongoing costs of serving retail customers in Indiana. Mr. Thomas presented a copy of the Agreement, called the Trust Interests Purchase Agreement ("TIPA" or "Agreement"), as Confidential Attachment TLT-2 to his testimony. He testified that obtaining the legal ability to reacquire the unit is a prerequisite to moving forward and closing the Transaction.

[3] On July 31, 2021, Mr. Thomas became Senior Vice President, Energy Delivery, for American Electric Power Service Corporation ("AEPSC").

Mr. Thomas described the Lease, which terminates on December 7, 2022, and explained that the Lease has been the subject of litigation between Petitioners and the Owner Trust that started in 2013 regarding, among other things, a consent decree entered into by Petitioners. The litigation is currently stayed to facilitate confidential discussions amongst the parties. Mr. Thomas stated that, as the discussions with the Owner Trust evolved, it became clear to I&M and AEG that operating the unit for the Owner Trust would create significant risks for I&M and its customers. I&M and AEG found that there would be significant advantages to I&M and AEG regaining exclusive control over the unit. Accordingly, I&M and AEG negotiated the Agreement, which will allow them to reacquire Rockport Unit 2 at the end of the Lease.

Under the Agreement, I&M and AEG have agreed to pay the Owner Trust a total of $115.5 million to take over the interests of the Equity Participants in the Owner Trust at the closing of the Transaction in December 2022. Mr. Thomas said that I&M would then immediately extinguish the Owner Trust, which would return ownership of Rockport Unit 2 to I&M and AEG in the same form as they turned over ownership of the unit to the Owner Trust more than 30 years ago. Also under the Agreement, I&M and AEG would be able to commit immediately and unconditionally, without waiting until December 7, 2022 ("Closing Date"), that the unit would be able to comply with federal requirements under the Effluent Limitations Guidelines regulations ("ELG") pursuant to the Clean Water Act by retiring Rockport Unit 2 no later than December 2028. He testified that the ability to make that commitment now, without waiting for the Closing Date, will allow I&M and AEG to avoid investing more than $50 million in an ELG compliance project. He added that, if the transaction does not close, I&M will cooperate with the Owner Trust, if requested, to revisit the ELG compliance plan in a manner that could allow the Owner Trust to operate Rockport Unit 2 after December 2028.

Mr. Thomas testified that I&M will also be able, prior to the Closing Date, to commit Rockport Unit 2 as a capacity resource to meet its obligations as a member of PJM. I&M will also be able to make capital investments in the unit before the Closing Date in a manner that recognizes I&M's intention to retire the unit no later than December 2028. He stated that the Agreement also provides for the immediate dismissal without prejudice of the litigation between the Owner Trust and I&M. Thus, if the Transaction closes, all claims that the Owner Trust may have had against I&M prior to the Closing Date will be released. If the Transaction does not close, the Owner Trust will be permitted to reinstate the litigation.

Mr. Thomas testified that that Petitioners possess the necessary managerial, technical, and financial ability to own and safely and reliably operate Rockport Unit 2. Mr. Thomas testified that Commission declination of jurisdiction serves the public interest, as it would promote efficiency and be beneficial to I&M, AEG, customers, and the state of Indiana because it will allow the Transaction to proceed in a timely manner while allowing the more complicated questions of ratemaking and accounting treatment for I&M to be preserved without prejudice until thoroughly reviewed in a subsequent CPCN proceeding. In other words, the economic risk of the Transaction will remain with I&M until the Commission has a complete opportunity to consider I&M's proposals in a future proceeding.

Timothy C. Kerns, AEPSC Vice President – Generating Assets for I&M and Kentucky Power Company, further described the Rockport Plant and Rockport Unit 2. He explained that I&M has maintained and operated Rockport Unit 2 as a reliable resource since it was constructed

and has the requisite technical and managerial capability to continue to do so beyond December 7, 2022. He discussed the operating efficiencies to be gained by I&M maintaining control of Rockport Unit 2. He testified that ownership and control of both Rockport Units would also avoid potential conflicts that can come with two different owners, the most significant being a discrepancy in business models or cost structure that would cause one company to dispatch its unit differently than the other.

Franz D. Messner, AEPSC Managing Director of Corporate Finance, testified that the $115.5 million purchase price will be split 50/50 between Petitioners and showed that each Petitioner has the necessary financial capability to reacquire Rockport Unit 2.

B. OUCC's Case-in-Chief. Peter M. Boerger, Ph.D., Senior Utility Analyst in the OUCC's Electric Division, testified that Petitioners' requests were not adequately supported and recommended that the Commission deny them. Dr. Boerger stated that granting Petitioners' request for declination of jurisdiction under Ind. Code § 8-1-2.5-5 would override one of the primary protections afforded to public utility customers under Indiana law. He opined that approving such a request would be ill-advised in this situation because I&M, a regulated utility, would be granted authority to own capacity, the majority of which it does not need for serving retail customers. He also testified that there was no reasonable basis for the Commission to find that Ind. Code § 8-1-8.5-2 does not apply to the Transaction. Dr. Boerger also presented the results of his calculations showing that the cost of the capacity is not economic for serving I&M's needs.

C. Industrial Group's Case-in-Chief. James R. Dauphinais, Managing Principal of Brubaker & Associates, Inc., also recommended that the Commission deny Petitioners' requested relief. He said that the proposed transaction warrants full Commission review under the CPCN Statute prior to its approval because it more closely resembles the acquisition of a new facility rather than a restructuring of existing arrangements. He stated that I&M and AEG have not shown that: (1) the entire 1,300 MW capacity of Rockport Unit 2 (or I&M's 650 MW share of the Unit) is needed to serve I&M's customers; (2) that the costs and risks of I&M operating Rockport Unit 2 on behalf of the Owner Trust would be, or should be, the responsibility of I&M's customers; or (3) that the proposed transaction is the lowest reasonable cost alternative to address the risks and capacity needs of I&M's customers arising from the termination of the Lease. He stated that the filing of a CPCN request after approval of the Transaction would not adequately protect I&M's customers. He also opined that Petitioners have not met the criteria for a declination of jurisdiction.

D. CAC's Case-in-Chief. Ronald J. Binz, Principal with Public Policy Consulting, testified that the Commission should not waive or disclaim its authority and duty to determine whether a CPCN should be issued for the proposed purchase. He stated that the Rockport Unit 2 purchase would add a likely uneconomic resource for I&M that could eventually be transferred to its customers. He said that none of the four criteria in Ind. Code § 8-1-2.5-5(b) have been met, and the Commission should not decline jurisdiction. Mr. Binz made several recommendations of conditions to include in an order if the Commission decided to decline jurisdiction, including a condition that the unit may serve only as a merchant plant in Indiana or that the future cost of service be limited to the minimum amount of capacity from Rockport Unit 2 required for compliance with PJM's Fixed Resource Requirements ("FRR") obligation, if any. He also recommended that the Commission limit the amount and price of energy conveyed to I&M

by AEG via contract, require that I&M commit to a date certain for retirement of Rockport Unit 2 (December 31, 2028 or earlier), and require I&M to use competitive bidding for any replacement resources required after plant closure in 2028.

E. Municipal Intervenors' Case-in-Chief. Brown D. Thornton, Executive Consultant in Energy Practice, NewGen Strategies and Solutions, recommended that the Commission deny I&M's request to purchase Rockport Unit 2. He testified that purchasing Rockport Unit 2 as a means to meet I&M's capacity shortfall is not acceptable because most of the capacity of Rockport Unit 2 is simply not needed to meet I&M retail demand. He also questioned the value of Rockport Unit 2 as a generating unit in comparison to wholesale market prices for energy and capacity.

F. Wabash Valley Case-in-Chief. Mathew Moore, Wabash Valley Executive Vice President – Risk and Resource, explained why Wabash Valley is opposed to the Commission declining jurisdiction and authorizing Petitioners to purchase Rockport Unit 2. He explained that Wabash Valley is subject to the general jurisdiction, including rate regulation, of the FERC, and Wabash Valley has a wholesale power purchase agreement with I&M. He testified that the proposed transaction will directly impact I&M's wholesale contracts. He also stated that Petitioners do not need to purchase the Unit to meet I&M's capacity requirements. Mr. Moore concluded that the Commission should not decline its jurisdiction because there are less costly alternatives for I&M to cover its capacity shortage between now and the end of 2028.

G. Petitioners' Rebuttal. Mr. Thomas opined that the Consumer Parties' opposition to Petitioners' requested relief fails to adequately consider the significant operational challenges and financial risk of trying to continue to operate the Rockport Station with one of the two units owned by the Owner Trust, which has never been subject to Commission regulation.

Mr. Thomas testified that the risk that I&M may not obtain regulated cost recovery was recognized at the time I&M entered into the Transaction. Despite this, I&M decided that this was an appropriate path forward to close out other, unquantifiable risks and to achieve control of the remaining life of Rockport Unit 2. He added that the alternative to ownership will create significantly more financial uncertainty and risk, as I&M would have little to no control over the future operation of Rockport Unit 2. Mr. Thomas testified that, if I&M reacquires Rockport Unit 2 and operates it as a merchant unit, I&M has a reasonable expectation that it will recover its cost of operations, and if it does not, I&M can pursue other off ramps, such as early retirement. He said that the AEP Commercial Operations team has experience offering both retail-regulated and merchant units owned by AEP's operating companies, and the roles and responsibilities of I&M and AEPSC would not change if Rockport Unit 2 were operated as a merchant unit.

Mr. Thomas explained that Rockport Unit 2 currently does and can continue to operate within the guidelines set forth by PJM, even as a wholesale generator. He concluded that, given that Rockport Unit 2 is reasonably expected to be cash flow positive with conservative market assumptions, coupled with the modest purchase price of $115.5 million, operating Rockport Unit 2 in the wholesale market is not expected to have a material impact on I&M's financials.

Mr. Thomas testified that capacity has been only one part of the value provided to customers over the 33-year term of the Lease and said that customers have benefited from the

complete value Rockport Unit 2 offers — capacity, energy, and ancillary services coupled with an abundant, low-cost fuel supply source, as well as off-system sales revenues.

In response to Wabash Valley's specific concerns, Mr. Thomas stated that Wabash Valley's rates will be impacted regardless of whether the Transaction closes, but, under Petitioners' proposal, Wabash Valley's rates will actually decrease because the entire purchase price of $115.5 million is less than only one year of the total lease expense (accounting for both I&M's leased portion and I&M's purchases from AEG pursuant to the UPA).

Matthew J. Satterwhite, AEPSC Vice President of Regulatory Services, disagreed with Mr. Dauphinais's position that the proposed transaction is fundamentally no different than acquiring any other generation facility because the Unit has always been operated by I&M to provide power to Indiana customers. He testified that the Transaction presented in this case is a reasonable progression of the life of the Unit and the wrapping up of an asset that has served I&M customers for years.

Mr. Satterwhite explained that, because Rockport Unit 2 is part of the two-unit Rockport Station, it will be necessary to sort out environmental compliance and other operational issues, as well as the ultimate retirement and dismantlement of the Station. He said that Petitioners have committed to the retirement of Rockport Unit 1 and Unit 2 by the end of 2028 and added that the Owner Trust could reverse that commitment if the Transaction does not close.

According to Mr. Satterwhite, termination of the Lease and return of the facility to the Owner Trust does not end the involvement of I&M, as I&M is associated with and involved in the plant operations and clean up per the Lease terms until the plant is owned or retired. He stated that the Transaction will give Petitioners control of the Unit sooner and defines a more certain path and control to better understand what costs could be at stake.

Mr. Satterwhite stated that, under I&M's 2018-2019 IRP Short-Term Action Plan, I&M will continue evaluating its options for operating the Unit. He testified that, since the completion of that IRP analysis, I&M continued its negotiations with the Owner Trust and determined that the Transaction is the reasonable path forward for the reasons stated in Mr. Thomas's direct testimony. Mr. Satterwhite also noted that I&M is in the process of conducting a new IRP.

Mr. Satterwhite testified that Petitioners' request meets the requirements for a declination of jurisdiction, as it is in the public interest. He explained that FERC regulation of the wholesale market renders the exercise of Commission jurisdiction over the acquisition unnecessary. He stated that the Commission has discretion to organize its oversight and exercise its authority and opined that declination of jurisdiction would promote administrative and energy utility efficiency by streamlining regulation for Petitioners and enabling the Transaction to move forward in a timely manner.

Mr. Satterwhite noted that the Owner Trust is a passive investor and has no experience in operating a utility generating facility and making investment and environmental compliance decisions. He added that the Commission has no relationship with the Owner Trust and has previously found that it is not a public utility as a result of its participation in the Lease in the 1989 Sale/Lease Order. Mr. Satterwhite concluded that the requested declination of jurisdiction will

benefit customers and the state of Indiana because it returns control over the future of the Unit and Rockport Station to a fully regulated Indiana public utility and provides the other benefits identified in Mr. Thomas's direct testimony tied to a more certain future.

6. Settlement Agreement and Supporting Testimony. On September 13, 2021, the Settling Parties filed their Settlement Agreement resolving all of the issues in this Cause. The Settlement Agreement is attached to this Order and incorporated by reference. Petitioners and the OUCC filed supporting testimony on September 21, 2021.

Andrew J. Williamson, Director of Regulatory Services for I&M, provided an overview of the Settlement Agreement on behalf of Petitioners and stated his opinion that the Settlement Agreement is in the public interest and reasonably resolves all issues in this docket without further expenditure of the time and resources of the Commission and the Settling Parties in the litigation of these matters.

He also stated that approval of the Settlement Agreement, in combination with an order declining jurisdiction over the acquisition of Rockport Unit 2 by I&M and AEG (which the other Settling Parties have agreed not to challenge within the context of the Settlement Agreement terms), would serve as the Indiana government approval needed by December 16, 2021 for the Transaction to close. He added that the FERC approved the acquisition by order dated September 9, 2021 in Docket No. EC21-97-000.

Mr. Williamson stated that Section A memorializes the Settling Parties' negotiated resolution as to I&M's share of Rockport Unit 2. Subject to certain conditions and exceptions, I&M has agreed on a prospective basis to remove from its cost of service all costs and expenses associated with the operation of Rockport Unit 2 as of the date of the lease expiration, including costs associated with the UPA between itself and AEG. Section A also includes I&M's agreement that it will not seek a CPCN or other approval to recover future costs or expenses associated with Rockport Unit 2 arising after the termination of the Lease.

Mr. Williamson testified that Section A.1 resolves the Settling Parties' disagreement regarding the declination or disclaimer of jurisdiction sought by Petitioners. He stated that the Consumer Parties agreed not to challenge Petitioners' requests for an order from the Commission declining to exercise its jurisdiction over the acquisition of Rockport Unit 2 by Petitioners pursuant to Ind. Code § 8-1-2.5-5 in order to facilitate the acquisition of I&M's and AEG's respective shares of Rockport Unit 2, provided that, pursuant to Ind. Code § 8-1-2.5-7, the Commission's declination of jurisdiction is for a limited term that expires on December 31, 2028 or on the retirement date of Rockport Unit 2, whichever is earlier.

He stated that Section A.2 of the Settlement Agreement sets forth the Settling Parties' agreed transition plan, assuming the Transaction closes, to address I&M's expected capacity needs through the 2023/2024 PJM Planning Year while balancing the concerns of the various parties. Section A.2.a.iii provides that I&M shall be allowed to recover costs for the capacity used from Rockport Unit 2 in the FRR plan at a rate that equals PJM's Base Residual Auction Reliability Pricing Model ("RPM") clearing price for the respective PJM Planning Years (i.e., 2022/2023 and 2023/2024). Section A.2.a.iv clarifies that the capacity expense for the 2022/2023 PJM Planning Year will be prorated for the term that follows the termination of the Lease. Section A.2.a.v

addresses how the retail load capacity obligation through the 2023/2024 Planning Year will be addressed in the IRP that is currently underway. Section A.2.a.vi sets forth the Settling Parties' agreement that the remainder of Rockport Unit 2 shall be merchant (i.e., the share of Rockport Unit 2 not needed to meet I&M's load obligation during these respective PJM Planning Years) and will be treated as an RPM resource. The cost of such capacity shall not be recovered from Indiana retail customers as outlined in the Settlement Agreement, nor should the revenues associated with such capacity be credited to Indiana retail customers. Section A.2.b clarifies that all of the Unit shall be merchant after the end of the transition period, beginning with the 2024/2025 PJM Planning Year and through the remainder of its operating life, meaning 100% of Rockport Unit 2 will be treated as a merchant generating unit and participate in the PJM markets as an RPM-only resource. He testified that Rockport Unit 2 will be excluded from I&M's IRP preferred plan as of June 1, 2024, consistent with the end of the 2023/2024 Planning Year.

Mr. Williamson said that Section A.3 of the Settlement Agreement memorializes Petitioners' commitment to permanently retire Rockport Unit 2 by no later than December 31, 2028. Section A.4 of the Settlement Agreement addresses the removal of certain Rockport Unit 2 costs from I&M's rates after the Lease ends on December 7, 2022. The Settling Parties have agreed that, as of December 8, 2022, and except as provided in the Settlement Agreement, no Rockport Unit 2 costs shall be recoverable through rates, but costs arising during the term of the Lease may still be recoverable. The permitted recovery includes rider factors that address a period during the term of the Lease which are approved by the Commission for implementation or reconciliation after the Lease terminates. Section A.4 identifies which costs are and are not recoverable.

Mr. Williamson testified that I&M has agreed to exclude from its Indiana retail customers' rates any costs associated with (1) I&M's and AEG's purchase of Rockport Unit 2; (2) any going-forward costs specifically associated with the continued ownership and operation of Rockport Unit 2 incurred after termination of the Lease; and (3) Rockport Unit 2 purchases under the UPA with AEG after termination of the Lease, whether in base rates or through any tracker mechanisms, special riders, or charges, effective as of December 8, 2022. Except as otherwise provided in the Settlement Agreement, as part of implementing this exclusion, I&M's cost of service will be reduced to eliminate all costs related to the ownership and operation of Rockport Unit 2 after the termination of the Lease, including O&M expenses, and an adjustment will be made to credit customers with any amounts collected from customers after December 7, 2022 that do not relate to recoverable Rockport Unit 2 costs as specified within the Settlement Agreement. Mr. Williamson stated that the Settling Parties have reserved all rights to propose mechanisms to accomplish this in I&M's currently pending base rate case, Cause No. 45576.

According to Mr. Williamson, in Section A.4.a, I&M has agreed to account for Rockport Unit 2 costs and revenues in a manner that also excludes these costs and revenues from wholesale customers' bills. He added that I&M has reviewed the FERC Uniform System of Accounts and concluded that this is appropriate treatment for costs that are not recoverable after the Lease according to the Settlement Agreement. In the event I&M is not allowed by applicable accounting rules to account for Rockport Unit 2 costs and revenues in a manner that also excludes these costs and revenues from wholesale customers' bills, I&M will amend its wholesale agreement with Wabash Valley to the extent necessary to effectuate the exclusion of the foregoing costs and revenues. Mr. Williamson stated that Section A.4.a provides that customers will still be responsible for the expenses associated with meeting I&M's Indiana capacity obligation.

Mr. Williamson described Section A.4.b, in which the Settling Parties have agreed that the net book value of Rockport Unit 2 investments and regulatory assets currently on I&M's books and records associated with investments in Rockport Unit 2 made during the term of the Lease remains recoverable. He explained that this treatment recognizes the Rockport Unit 2 capital investments made in accordance with the terms of the Lease were reasonable and necessary in the provision of service to Indiana retail customers and should be fully recovered through I&M's cost of service.

Section A.4.c sets forth the Settling Parties' agreement that the net book value of Rockport Unit 2 investments that are projected to be placed in service before the Lease is terminated will be recoverable provided that those investments are approved for recovery by the Commission Cause No. 45576. The Settling Parties have agreed not to challenge recovery of Rockport Unit 2 investments in any future proceeding up to the amount approved in Cause No. 45576. He stated the Settling Parties have also reserved all rights to take any position in Cause No. 45576 with respect to the proposed investments, including cost recovery, regulatory treatment, and appropriate recovery mechanisms.

Section A.4.d clarifies that the Settlement Agreement does not preclude I&M from seeking recovery of the cost of removal, including Asset Retirement Obligations, in a future proceeding. Section A.5 of the Settlement Agreement memorializes the agreement that, after the date of the Settlement Agreement, I&M shall not seek a new CPCN for any amount of Rockport Unit 2.

Mr. Williamson stated that Section A.6 addresses a concern raised by CAC regarding I&M's IRP modeling of energy efficiency. The Settling Parties have agreed that, in IRPs following the 2021 IRP, I&M will replace the Supplemental Efficiency Adjustment ("SEA") approach by modeling demand side management ("DSM") as an independent variable in the regression equation, consistent with certain other Indiana investor-owned utilities. In the 2021 IRP, which is already well underway, I&M agreed to run the following scenarios without the SEA/Degradation Factor adjustment in order to provide a comparison of the level of energy efficiency selected with and without the SEA/Degradation Factor adjustment: (1) the reference case with Rockport Unit 1 retiring by 2024; (2) the reference case with Rockport Unit 1 retiring by 2026; and (3) the rapid technology advancement case.

In Section A.7, I&M has agreed to include as part of its current IRP process certain early retirement scenarios for Rockport Unit 1, as well as an analysis of the costs associated with the early termination of the operation of the Ohio Valley Electric Corporation units under the Inter-Company Power Agreement by the end of 2030.

Section A.8 of the Settlement Agreement establishes the Settling Parties' agreement regarding the use of a non-discriminatory and flexible all-source competitive bidding process before seeking approval of certain new generation resources. Mr. Williamson said that the Settlement Agreement maintains flexibility by recognizing that I&M will not be required to restrict its IRP inputs based on the Request for Proposal ("RFP") results.

Mr. Williamson opined that the declination of jurisdiction as set forth in the Settlement Agreement is in the public interest as that term is defined in Ind. Code § 8-1-2.5-5. He testified that Petitioners have the requisite managerial, operational, and financial abilities to continue to

operate Rockport Unit 2 safely and reliably until it retires no later than December 2028. He said that Petitioners will continue to operate Rockport Unit 2 in a manner consistent with good utility practice, and the Settlement Agreement avoids the operational complications and uncertainty that would arise if Petitioners do not acquire Rockport Unit 2.

According to Mr. Williamson, the exercise by the Commission of its jurisdiction under the CPCN Statute would be duplicative of other regulatory bodies, could complicate and cause inefficiencies for I&M in the operation of Rockport Unit 2 after the Lease terminates, and would be an unnecessary use of the Commission's resources. He stated that declination of jurisdiction under the CPCN Statute would promote administrative and energy utility efficiency by streamlining regulation for Petitioners and enabling the Transaction to move forward in a timely manner. He noted that the Commission has previously declined to exercise jurisdiction under the CPCN Statute where retail cost recovery was not sought. He stated that the Settlement Agreement represents the result of extensive, good faith, arm's-length negotiations.

Dr. Boerger discussed Petitioners' requested relief, the Consumer Parties' concerns, and how the Settlement Agreement resolves those concerns. In their cases-in-chief, the Consumer Parties' general position was that it is impossible for a public utility serving retail customers in Indiana to own and operate a merchant power facility without imposing risks and potential costs on retail ratepayers. The Consumer Parties also presented testimony that I&M's own analysis showed that it would need only about 300 to 400 MW of Rockport Unit 2's 1300 MW capacity, leaving customers potentially responsible for 900 to 1,000 MW of unneeded capacity under Petitioners' proposal. He said that, using I&M's stated 300 to 400 MW capacity need, the Consumer Parties showed the per-unit capacity cost of purchasing Rockport Unit 2 is costly enough to conclude that Petitioners' proposal would not be in the public interest. Dr. Boerger said that the Consumer Parties presented testimony showing the UPA, which governs the relationship between I&M and AEG, imposes costs from AEG's ownership on I&M even though AEG serves no retail customers in Indiana.

Dr. Boerger explained how the Settlement Agreement resolves these concerns and stated that the Settlement Agreement recognizes and memorializes the unique nature of the situation arising from a complex sale/leaseback arrangement entered into more than 30 years ago. He testified that the Settlement Agreement makes clear that the Consumer Parties are not, by entering into this Settlement Agreement, in any way rescinding their principled opposition to the potential risks imposed by rate-regulated public utilities that serve retail customers owning merchant generation facilities. By delineating the unique circumstances of this case, the Consumer Parties were able to enter into a practical agreement that avoids the risks arising from separate ownership of Rockport Units 1 and 2 and obtains certain benefits and protections for consumers, while also allowing Petitioners' goals to be realized.

Dr. Boerger discussed the provisions of the Settlement Agreement that provide for Petitioners' proposed transaction to proceed. The Consumer Parties will not oppose Petitioners' request for a declination of jurisdiction under Ind. Code § 8-1-2.5-5, which will continue until Rockport Unit 2's retirement date, which will occur no later than December 31, 2028.

He described the consumer benefits and protections detailed primarily in Settlement Agreement Sections A.2 through A.8. In Section A.2, I&M commits to utilize capacity from its

share of Rockport Unit 2 to fulfill its FRR capacity obligation to PJM from December 8, 2022 through May 31, 2024. He said that this commitment provides I&M certainty in fulfilling its FRR capacity obligations and time to plan for fulfilling its capacity obligations after May 31, 2024. He testified that I&M is allowed to recover costs for this capacity at a rate that equals PJM's Base Residual Auction RPM clearing price for the respective PJM Planning Years (i.e., 2022/2023 and 2023/2024), with costs prorated for the 2022/2023 year based upon the partial year from December 8, 2022 through May 31, 2023. Dr. Boerger explained that using an established market price for this capacity avoids affiliate concerns that might arise through transacting with I&M's below-the-line ownership and control of Rockport Unit 2. He testified that Section A.2.b makes clear that, beginning with the 2024/2025 PJM Planning Year and through the remainder of its operating life, 100% of Rockport Unit 2 will be treated as a merchant generating unit, and Rockport Unit 2 will participate in the PJM markets as an RPM-only resource. He said that the Settlement Agreement also establishes that Rockport Unit 2 will be excluded from I&M's IRP preferred plan as of June 1, 2024, consistent with the end of the 2023/2024 PJM Planning Year.

Dr. Boerger testified that Section A.3 of the Settlement Agreement contains Petitioners' agreement to permanently retire Rockport Unit 2 by December 31, 2028, as proposed in Petitioners' case-in-chief. He said Section A.3 also references Petitioners' agreement to make all required notifications under the ELG rule, including making filings with the U.S. Environmental Protection Agency and/or the Indiana Department of Environmental Management and PJM as required. Under Section A.3, I&M customers will not be held responsible for any costs related to ELG investments or other new investments at Rockport Unit 2 incurred after termination of the Rockport Unit 2 lease.

Dr. Boerger testified that Section A.4 of the Settlement Agreement establishes that, effective December 8, 2022, subject to some exceptions, no Rockport Unit 2 costs shall be recoverable through rates except for the recovery of costs arising during the term of the Lease. This includes rider factors that address a period during the term of the Lease that are approved by the Commission for implementation or reconciliation after the Lease terminates. Section A.4.a explains this provision in detail and makes clear that any costs collected in rates after December 7, 2022 not arising during the term of the Lease shall be credited to customers. Section A.4.a also establishes that these ratemaking requirements apply to cost recovery from both retail customers and Wabash Valley. Section A.4.b specifies that costs pertaining to approvals obtained in previous, specified causes remain recoverable, and such recovery will not be challenged by the Consumer Parties. He noted that the Consumer Parties have reserved all rights to propose alternative rate recovery mechanisms and regulatory treatment for these costs. Section A.4.c pertains to investments that are the subject of potential approval in I&M's pending base rate case (Cause No. 45576) and specifies these costs are also recoverable, but only to the extent approved by the Commission in Cause No. 45576. The Settling Parties have reserved all rights to take any position in Cause No. 45576 with respect to the proposed investments, including cost recovery, regulatory treatment, and appropriate recovery mechanisms.

Dr. Boerger testified that Section A.5 of the Settlement Agreement establishes I&M's commitment to not seek a CPCN for the Rockport Unit 2 facility. He testified that Sections A.6 through A.8 of the Settlement Agreement pertain largely to obtaining information for, and using information within, I&M IRPs going forward. To the extent these provisions obtain additional information for use by I&M in its IRPs, he stated that the OUCC generally favors obtaining more

information for the IRP process. He said that, to the extent these provisions seek specific uses of information within I&M's IRPs, it does not appear these provisions would restrict additional analysis or preclude alternative uses of information by I&M on its own initiative or through requests by other parties. For these reasons, Dr. Boerger stated that the OUCC does not object to these provisions and generally expects they will be helpful in the IRP process.

Dr. Boerger stated that the Settlement Agreement is the result of vigorous negotiations. He testified that, while no party got everything it wanted in these negotiations, he believes that the Settlement Agreement obtains significant benefits for all parties and, most importantly from the perspective of the OUCC, obtains valuable benefits and protections for I&M's customers while allowing Petitioners to run their businesses. He said that the Settlement Agreement also makes clear the Consumer Parties' agreement is in consideration of the unique nature of the situation faced by Petitioners and cannot be used as a model or a precedent for the obtaining of merchant power facilities by other public utilities in Indiana. Based upon all these factors, he stated that he considers the Settlement Agreement as being in the public interest.

7. Commission Discussion and Findings. Settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement "loses its status as a strictly private contract and takes on a public interest gloss." *Id*. (quoting *Citizens Action Coal. of Ind., Inc. v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement." *Citizens Action Coal.*, 664 N.E.2d at 406.

Further, any Commission decision, ruling, or order, including the approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coal. of Ind. V. Pub. Serv. Co. of Ind., Inc.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission's procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Before the Commission can approve the Settlement Agreement, the Commission must determine whether the evidence in this Cause sufficiently supports the conclusion that the Settlement is reasonable, just, and consistent with the purpose of Ind. Code ch. 8-1-2 and that such agreement serves the public interest. Here, the parties have presented substantial evidence from which we can assess the reasonableness of the terms of the Settlement Agreement.

Ind. Code § 8-1-2.5-5 authorizes the Commission to "enter an order, after notice and hearing, that the public interest requires the commission to commence an orderly process to decline to exercise, in whole or in part, its jurisdiction over . . . the energy utility . . . ." This authority is granted to the Commission "[n]otwithstanding any other law or rule adopted by the commission," except those cited in Ind. Code § 8-1-2.5-11 (none of which apply here). Accordingly, as the Commission has found previously, in certain circumstances, Ind. Code § 8-1-2.5-5 authorizes the Commission to decline to exercise its jurisdiction under the CPCN Statute. In addition, Ind. Code § 8-1-2.5-7 authorizes the Commission to notify an energy utility over which jurisdiction was limited or not exercised that the Commission will proceed to exercise jurisdiction.

In determining whether the public interest will be served by a declination of jurisdiction, the Commission will consider the following:

> (1) Whether technological or operating conditions, competitive forces, or the extent of regulation by other state or federal regulatory bodies render the exercise, in whole or in part, of jurisdiction by the commission unnecessary or wasteful.
>
> (2) Whether the commission's declining to exercise, in whole or in part, its jurisdiction will be beneficial for the energy utility, the energy utility's customers, or the state.
>
> (3) Whether the commission's declining to exercise, in whole or in part, its jurisdiction will promote energy utility efficiency.
>
> (4) Whether the exercise of commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment.

Ind. Code § 8-1-2.5-5(b). We discuss these considerations below.

A. Ind. Code § 8-1-2.5-5(b)(1). The evidence in this Cause demonstrates that the cost of any capacity used in accordance with the Settlement Agreement to satisfy I&M's FRR load obligations will reflect the PJM wholesale capacity market price. Given the unique circumstances at issue in this proceeding and the commitment on the part of I&M and AEG to remove costs associated with Rockport Unit 2 from rates and to effectively operate the plant as a merchant facility until closure, FERC regulation of the wholesale market renders exercise of Commission jurisdiction over this acquisition unnecessary. Under the Settlement Agreement, only select costs, most of which have already been approved by the Commission or are subject to Commission approval prior to ratemaking recognition, are subject to recovery from Indiana ratepayers.

The unique circumstances related to the Transaction, the limitations on capacity dedicated to retail service, and the agreement to forgo retail cost recovery for post-Lease investment resolve many issues raised by the Consumer Parties related to the need for the issuance of a CPCN prior to acquisition of Rockport Unit 2 by the Petitioners. Those issues were also addressed by the agreed limited term of the Commission's declination, requiring that it expire when Rockport Unit 2 is closed, which will occur no later than December 31, 2028, further reducing the exposure of retail customers for future cost recovery related to plant operation. The Settlement Agreement also reasonably resolves the wholesale concerns raised by Wabash Valley.

The record shows that I&M has the requisite managerial, operational, and financial abilities to continue to operate Rockport Unit 2 safely and reliably until it retires no later than December 31, 2028. Petitioners have indicated that they will continue to operate Rockport Unit 2 in a manner consistent with good utility practice, and the Settlement Agreement avoids the ongoing operational complications and uncertainty that would arise if Petitioners do not acquire Rockport Unit 2. Thus, exercise by the Commission of its jurisdiction under the CPCN Statute would be duplicative of

other regulatory bodies, could complicate and cause inefficiencies for I&M in the operation of Rockport Unit 2 after the Lease terminates, and would be an unnecessary use of the Commission's resources under the unique circumstances here given the resolution of the contested issues negotiated by the Settling Parties.

B. Ind. Code § 8-1-2.5-5(b)(2). Closing of the Transaction will allow Petitioners to control the post-Lease operation and wind down of Rockport Unit 2 and will avoid the uncertainty and operating challenges that would otherwise exist after the Lease ends. It will also conclude the litigation with the Trust Owners. Because a declination of jurisdiction will allow the Transaction to close, Petitioners will avoid investing more than $50 million in environmental compliance projects. The Transaction will return Rockport Unit 2 to a regulated Indiana public utility and provide the other benefits identified in Petitioners' evidence that are tied to a more certain future. In addition, the limits on the capacity used to serve retail customers and the removal of most costs related to Rockport Unit 2 from customer rates will benefit Indiana ratepayers. Thus, given the terms of the Settlement Agreement, we find that declining to exercise jurisdiction as requested by Petitioners will be beneficial to Petitioners, customers, and the state.

C. Ind. Code § 8-1-2.5-5(b)(3). The record demonstrates that declination of jurisdiction under the CPCN Statute under the circumstances here will promote administrative and energy utility efficiency by streamlining regulation for Petitioners and enabling the Transaction to move forward in a timely manner. Petitioners' purchase of the Unit maintains their control of both units at the Rockport Plant and allows I&M to achieve operating efficiencies at the Rockport Plant. Thus, closing the Transaction will promote energy efficiency.

D. Ind. Code § 8-1-2.5-5(b)(4). The Commission has previously declined to exercise jurisdiction under the CPCN Statute where retail cost recovery was not sought. Except for limited costs, Petitioners have agreed not to seek cost recovery for Rockport Unit 2 after the termination of the Lease. If a third party were acquiring Rockport Unit 2 from the current beneficial owners to sell energy into the wholesale market, Commission precedent indicates that the Commission would likely decline to exercise jurisdiction under the CPCN Statute. Exercise of the CPCN Statute over Petitioners would unreasonably inhibit Petitioners from moving forward with the Transaction in the same way that a third party would be able to do so. We find it unnecessary to inhibit Petitioners in this way under the circumstances here.

E. Conclusion. Substantial evidence shows that Petitioners' proposal to acquire Rockport Unit 2 from the Owner Trust upon termination of the Lease is reasonable and in the public interest as that term is used in Ind. Code § 8-1-2.5-5. Declination of jurisdiction under the CPCN Statute avoids the complexity and uncertainty associated with the Owner Trust owning the Unit after the Lease terminates and will benefit the energy utility, I&M's customers, and the state. Among other things, reacquisition of the Unit as proposed by Petitioners returns control over the future of this unit and Rockport Station to a fully regulated Indiana public utility and provides the other benefits identified in Petitioners' evidence tied to a more certain future. Accordingly, the Commission finds Petitioners' request that the Commission decline to exercise its jurisdiction under the CPCN Statute with respect to the proposed Transaction is in the public interest and is granted in accordance with the Settlement Agreement.

The Commission finds that the Settlement Agreement represents a just and reasonable resolution of the issues in this case. We also find that approval of the Settlement Agreement is in the public interest and, therefore, approve the Settlement Agreement in its entirety.

Pursuant to the Settlement Agreement, the pending Motion to Dismiss is deemed withdrawn.

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

9. Confidential Information. On May 10 and August 10, 2021, Petitioners filed motions seeking determinations that designated confidential information involved in this proceeding be exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3. On July 29, 2021, Wabash Valley filed a motion for confidential treatment of certain testimony and exhibits. All three motions for confidential treatment were supported by affidavits showing the designated documents were trade secret information within the scope of Ind. Code §§ 5-14-3-4 and 24-2-3-2. On June 1 and August 11, 2021, the Presiding Officers issued docket entries finding such information confidential on a preliminary basis, and the designated confidential information was filed with the Commission.

After reviewing the designated confidential information, we find all such information qualifies as confidential trade secret information pursuant to Ind. Code §§ 5-14-3-4 and 24-2-3-2. This information has independent economic value from not being generally known or readily ascertainable by proper means. Reasonable steps are taken to maintain the secrecy of the information and disclosure of such information would cause harm to Petitioners. Therefore, we find that the designated information should be exempted from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29, held confidential, and protected from public disclosure by the Commission.

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

1. The Settlement Agreement, a copy of which is attached to this Order and is incorporated herein by reference, is approved in its entirety.

2. The Commission declines to exercise its jurisdiction under Ind. Code § 8-1-8.5-2 with respect to Petitioners' proposed acquisition of Rockport Unit 2. In accordance with the Settlement Agreement, this declination of jurisdiction expires on December 31, 2028, or on the retirement date of Rockport Unit 2, whichever is earlier.

3. Petitioners shall file, as a compliance filing in this Cause, notice to the Commission of the closing of the Transaction within 60 days of its occurrence.

4. The information filed in this Cause pursuant to the motions for protection and nondisclosure of confidential and proprietary information is deemed confidential pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29, is exempt from public access and disclosure by Indiana law, and shall be held confidential and protected from public access and disclosure by the Commission.

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

HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:

APPROVED: DEC 08 2021

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

Dana Kosco

Digitally signed by Dana Kosco
Date: 2021.12.08 10:10:47 -05'00'

Dana Kosco
Secretary of the Commission

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF INDIANA MICHIGAN POWER COMPANY (I&M) AND AEP GENERATING COMPANY (AEG) FOR CERTAIN DETERMINATIONS WITH RESPECT TO THE COMMISSION'S JURISDICTION OVER THE RETURN OF OWNERSHIP OF ROCKPORT UNIT 2	)))))))	**CAUSE NO. 45546**

STIPULATION AND SETTLEMENT AGREEMENT

Indiana Michigan Power Company ("I&M"), AEP Generating Company ("AEG") the Indiana Office of Utility Consumer Counselor ("OUCC"), I&M Industrial Group, Citizens Action Coalition of Indiana, Inc. ("CAC"), the City of Marion, Indiana, Marion Municipal Utilities (collectively, "Marion"), and the City of Fort Wayne, Indiana ("Fort Wayne") (together, the "Municipal Intervenors"), Sierra Club, and Wabash Valley Power Association, Inc. d/b/a Wabash Valley Power Alliance ("Wabash Valley") (collectively the "Settling Parties" and individually "Settling Party"), solely for purposes of compromise and settlement and having been duly advised by their respective staff, experts and counsel, stipulate and agree that the terms and conditions set forth below represent a fair, just and reasonable resolution of the matters set forth below, subject to their incorporation by the Indiana Utility Regulatory Commission ("IURC" or "Commission") into a final, non-appealable order ("Final Order")[1] without modification or further condition that may be unacceptable to any Settling Party. If the Commission does not approve this Stipulation and Settlement Agreement ("Settlement Agreement"), in its entirety, the entire Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Settling Parties.

A. TERMS AND CONDITIONS.

1. **Legal Authority to Own.** The Settling Parties collectively acknowledge that this proceeding involves special circumstances including, but not limited to: (i) that Rockport Unit 2 is the subject of a unique financing, ownership, and operating structure, between and among I&M, AEG and the Owner Trust, (ii) that the Commission has previously declined to exercise its jurisdiction over AEG except to the extent the IURC limited that declination; (iii) that I&M has committed to operating its share of Rockport Unit 2 as a merchant plant after a date certain, (iv) that with specific exceptions and subject to certain conditions as set forth in this Settlement Agreement, I&M is agreeing on a prospective basis to remove from its cost of service all costs and expenses associated with the operation of Rockport Unit 2 as of the date of the lease expiration, including costs associated with the Unit Power Agreement ("UPA") between itself and AEG, and, further,

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

will not seek a certificate of pubic convenience and necessity ("CPCN") or other approval to recover future costs or expenses associated with Rockport Unit 2 arising after the termination of the Lease. That in consideration of these and other circumstances, the Settling Parties agree that the following terms and conditions set forth below represent a fair, just and reasonable resolution of the pending proceeding and approval of this settlement by the Commission is in the public interest:

a. The Consumer Parties agree not to challenge I&M's request for an order from the IURC declining to exercise its jurisdiction over the acquisition of Rockport Unit 2 by I&M pursuant to IC § 8-1-2.5-5 in order to facilitate the acquisition of I&M's share of Rockport Unit 2 as required by the terms of the Trust Interest Purchase Agreements ("TIPAs"), provided that pursuant to IC § 8-1-2.5-7, the IURC's declination of jurisdiction is for a limited term that expires on December 31, 2028 or on the retirement date of Rockport Unit 2, whichever is earlier. The Settling Parties agree that such a declination of jurisdiction does not otherwise affect the IURC's authority and jurisdiction over I&M including, without limitation, issues raised in any subsequent or pending proceeding, including those related to the recovery of costs and expenses and other ratemaking associated with Rockport Unit 2 unless otherwise agreed to in this Settlement Agreement, to review I&M's books and records or to consider whether the acquisition has had an impact on I&M's cost of capital in a rate case filed after the expiration of the Lease.

b. The Consumer Parties agree not to challenge AEG's request for an order from the IURC declining to exercise its jurisdiction over the acquisition of Rockport Unit 2 by AEG pursuant to IC § 8-1-2.5-5 in order to facilitate the acquisition of AEG's share of Rockport Unit 2 as required by the terms of the TIPAs, provided that pursuant to IC § 8-1-2.5-7, the IURC's declination of jurisdiction is for a limited term that expires on December 31, 2028 or on the retirement date of Rockport Unit 2, whichever is earlier. The Settling Parties agree that such a declination of jurisdiction does not otherwise affect the IURC's authority and jurisdiction over AEG except as previously limited.

c. The OUCC and Intervenors agree to withdraw their Motion to Dismiss.

2. Sunsetting Rockport Unit 2 from Service:

a. This is a transition plan to accommodate capacity needs through the 2023/2024 PJM Interconnection, LLC ("PJM") Planning Year. Beginning December 8, 2022 through May 31, 2024, I&M may utilize up to 650 MWs of I&M's share of Installed capacity from Rockport Unit 2, if available, and only to the extent necessary to meet the Indiana jurisdictional portion of I&M's Fixed Resource Requirement ("FRR") capacity obligation. The exact amount of capacity utilized will be the amount needed for I&M, after including all other capacity resources it owns or controls, to fulfill its load obligation to PJM for each planning period as identified in AEP's FRR election notification letter, and I&M shall notify the Settling Parties of this annual capacity obligation and will provide a copy of the FRR election notification letter, a copy of the FRR Plan submitted to PJM and supporting workpapers, subject to the protection of confidential information to the Settling Parties.

i. I&M has selected the FRR Alternative for the 2022/2023 Delivery Year. Consistent with the PJM capacity auction deadlines for the 2023/2024 Delivery Year, I&M intends to select the FRR Alternative and commit to the AEP FRR Plan an amount of capacity that satisfies its allocation of the AEP FRR load obligation, which AEP FRR load obligation is determined by PJM. I&M shall amend its 2022/2023 PJM FRR Plan consistent with the provisions of this Settlement Agreement in AEP's final FRR Plan for 2022/2023.

ii. I&M will include capacity from Rockport Unit 2 only if necessary to fulfill the Indiana jurisdictional portion of the I&M allocation of the AEP FRR load obligation (the "Indiana FRR Load Obligation") after including all other generation capacity resources it owns or controls.

iii. I&M shall be allowed to recover costs for the capacity used from Rockport Unit 2 in the FRR plan at a rate that equals PJM's Base Residual Auction ("BRA") Reliability Pricing Model ("RPM") clearing price for the respective PJM Planning Years (i.e., 2022/2023 and 2023/2024).

iv. The capacity expense for the 2022/2023 PJM Planning Year will be prorated for the term that follows the termination of the Lease.

v. I&M's 2021 Integrated Resource Plan ("IRP") going-in position will reflect I&M having sufficient capacity to meet its retail load obligation through the 2023/2024 Planning Year.

vi. The share of Rockport Unit 2 not needed to meet I&M's load obligation during these respective PJM Planning Years will be treated as a RPM resource, and the cost of such capacity shall not be recovered from Indiana retail or wholesale ratepayers.

b. Beginning with the 2024/2025 PJM Planning Year and through the remainder of its operating life, 100% of Rockport Unit 2 will be treated as a merchant generating unit and participate in the PJM markets as an RPM-only resource. Rockport Unit 2 will be excluded from I&M's IRP preferred plan as of June 1, 2024, consistent with the end of the 2023/2024 Planning Year.

3. **Retirement Date, Effluent Limitation Guidelines ("ELG") Rule, and Other Applicable Requirements.** If I&M and AEG acquire Rockport Unit 2 as provided in the TIPAs, I&M and AEG shall permanently retire Rockport Unit 2 by no later than December 31, 2028. If I&M and AEG acquire Rockport Unit 2 as provided in the TIPAs and subsequently intend to sell or transfer ownership of Rockport Unit 2, I&M and AEG shall expressly condition the sale or transfer of Rockport Unit 2 on any current or future buyer's or transferee's express acceptance of the retirement commitment set forth in this paragraph. I&M and AEG agree to timely file with the U.S. Environmental Protection Agency and/or Indiana Department of Environmental Management and PJM all notifications required by the ELG rule or any other applicable statutory or regulatory requirement of their decision to permanently retire Rockport Unit 2 on or before December 31, 2028. I&M and AEG agree that in no event shall I&M customers be responsible for any costs related to ELG investments or other new investments at Rockport Unit 2 incurred after termination of the Lease. Nothing in this Settlement Agreement impedes I&M's and AEG's rights to retire Rockport Unit 2 prior to December 31, 2028.

4. **Ratemaking.** Effective as of December 8, 2022, except as provided in this agreement, no Rockport Unit 2 costs shall be recoverable but for the recovery of costs arising during the term of the Lease through rates, including rider factors that address a period during the term of the Lease which are approved by the Commission for implementation or reconciliation after the Lease terminates. To effectuate this result, the Settling Parties agree to the following:

   a. **Exclusion of Costs from Retail and Wholesale Rates on a Going-Forward Basis.** I&M agrees to exclude from its Indiana retail customers' rates any costs associated with (i) I&M's and AEG's purchase of Rockport Unit 2; (ii) any going-forward costs specifically associated with the continued ownership and operation of Rockport Unit 2 incurred after termination of the Rockport Unit 2 Lease; and (iii) I&M's purchases under the UPA with AEG after termination of the Rockport Unit 2 Lease, whether in base rates or through any tracker mechanisms, special riders, or charges, effective as of December 8, 2022. Except as otherwise provided in this Settlement Agreement, as part of implementing this exclusion, I&M's cost of service will be reduced to eliminate all costs related to the ownership and operation of Rockport Unit 2 after the termination of the Lease, including O&M expenses, and an adjustment will be made to credit customers with any amounts collected from customers after December 7, 2022. The Settling Parties reserve all rights to propose mechanisms to accomplish this in Cause No. 45576. I&M agrees to account for Rockport Unit 2 costs and revenues in a manner that also excludes these costs and revenues from wholesale customers' bills. In the event that I&M is not allowed by applicable accounting rules to account for Rockport Unit 2 costs and revenues in a manner that also excludes these costs and revenues from wholesale customers' bills, I&M will amend its wholesale agreement with Wabash Valley Power Association to the limited extent necessary to effectuate the exclusion of the foregoing costs and revenues. Customers will still be responsible for the expenses associated with meeting I&M's Indiana capacity obligation as described in Section 2 above. Any costs not specifically enumerated in this Section 4 shall not be recoverable in customer rates, absent specific written agreement of the Settling Parties.

   b. **Continuing Recovery of Costs Currently Embedded in Rates after Closing.** The net book value of Rockport Unit 2 investments and regulatory assets currently on I&M's books and records associated with investments in Rockport Unit 2 made during the term of the Lease remains recoverable, consistent with prior IURC orders in Cause Nos. 44331, 44871, 44967 and 45235, using the depreciable lives of the related accounts approved by the Commission in Cause No. 45576. The Settling Parties agree not to challenge recovery of these investments and regulatory assets related to Rockport Unit 2 up to the cost previously approved by the Commission in any future proceeding, including in Cause No. 45576, but reserve all rights to propose alternative rate recovery mechanisms and regulatory treatment.

   c. **Net Book Value of Additional Plant Placed in Service Prior to Lease Termination.** The net book value of Rockport Unit 2 investments that are projected to be placed in service before the Lease is terminated in Cause No. 45576 will be recoverable provided they are approved for recovery by the Commission in that Cause. Subsequent to any approval by the Commission in Cause No. 45576, the Settling Parties agree not to challenge recovery of Rockport Unit 2 investments in any future proceeding up to the

amount approved in that Cause. The Settling Parties preserve all rights to take any position in Cause No. 45576 with respect to the proposed investments, including cost recovery, regulatory treatment, and appropriate recovery mechanisms.

d. **Cost of Removal and Asset Retirement Obligations.** Nothing in this Settlement Agreement precludes I&M from seeking recovery of the cost of removal, including Asset Retirement Obligations, in a future proceeding.

5. **Prohibition on New CPCN Request.** After the date of this Settlement Agreement, I&M shall not seek a new CPCN for any amount of Rockport Unit 2.

6. **Elimination of Supplemental Efficiency Adjustment ("SEA")/Degradation Factor in IRP/DSM.** In IRPs following the 2021 IRP, I&M will replace the SEA approach by modeling DSM as an independent variable in the regression equation consistent with certain other Indiana Investor Owned Utilities. For the 2021 IRP, I&M agrees to run the following scenarios without the Supplemental Efficiency Adjustment/Degradation Factor adjustment in order to provide a comparison of the level of energy efficiency selected with and without the Supplemental Efficiency Adjustment/Degradation Factor adjustment: (1) the reference case with Rockport Unit 1 retiring by 2024; (2) the reference case with Rockport Unit 1 retiring by 2026; and (3) the rapid technology advancement case. I&M agrees to provide the initial results of these scenario runs through a live screen share of the model interface and provide CAC an opportunity to offer any reasonable changes that align with the intention of this settlement provision. I&M also agrees to present the scenarios contemplated in this agreement in its final 2021 IRP report, including modeling results, submitted in Indiana.

7. **2021 IRP and Subsequent IRP Modeling Scenarios.** In I&M's 2021 IRP and subsequent IRP, I&M will include the following modeling scenarios:
   a. Scenarios using a retirement date for Rockport Unit 1 of May 31, 2024, May 31, 2025, and May 31, 2026. The inputs will include forward-looking capital and O&M costs, such as the reagents and other chemical costs required to operate environmental control equipment (e.g. the enhanced Dry Sorbent Injection system);
   b. A scenario related to I&M's Preferred Plan that: (1) removes the costs (capacity, energy, transmission, PJM expenses) and benefits (energy revenues, capacity value) associated with the Inter-Company Power Agreement ("ICPA") after 2030, (2) presents an analysis of the costs associated with the termination of the operation of the Ohio Valley Electric Corporation units under the ICPA by the end of 2030 pursuant to options available under the ICPA, including options that could be reasonably negotiated with the parties to the ICPA, and (3) describes the termination options I&M explored.

   I&M will commence this effort upon execution of this Settlement Agreement by Settling Parties and present the results in I&M's fourth stakeholder meeting.

8. **All-Source Competitive Bidding Process.**
   a. I&M shall use a non-discriminatory (i.e. such Request for Proposals ("RFP") shall not discriminate against renewable generation paired with storage, shall not discriminate by type, or by size in allowing projects as small as 20 MW, and shall invite any utility scale generator), flexible, all-source competitive bidding process before seeking approval of new generation resources in excess of 25 MW through any CPCN or other filing to

address the future capacity and energy needs that may arise with the retirement of Rockport Units 1 and/or 2 and will use this information to inform its analysis in I&M's next IRP that follows the 2021 IRP.

b. With respect to future IRPs, I&M will use its most recent RFP, the responses to which can be no more than 24 months old, to inform its IRP analysis but should not restrict its IRP inputs based on the RFP results. Such RFPs will, at a minimum, comport with the requirements of Section 8.a.

c. Subject to the protection of confidential information in a manner agreed to by participants in the RFP, RFP bid results and any analysis of RFP bid results shall be provided to interested stakeholders that are not competitive entities (i.e., potential bidders and their consultants and affiliates). I&M shall also publicly release nonproprietary and aggregate data regarding RFP bid results. While I&M has no current plans to repower Rockport Unit 2, I&M agrees for purposes of this Settlement Agreement to conduct the above referenced bidding process before seeking approval of any such repowering. Nothing in this agreement precludes I&M from seeking approval of renewable generation resources associated with its November 2020 RFP.

9. **Time is of the Essence.** Settling Parties agree that time is of the essence and will work to obtain an IURC order approving the Settlement Agreement no later than December 15, 2021.

10. **No Waiver.** No party is waiving rights of future or pending issues, except as explicitly noted in this Settlement Agreement. This Settlement Agreement does not create a precedent, and all Settling Parties reserve their rights to take whatever position they deem appropriate in any pending or future proceeding regarding the applicability of IC ch. 8-1-2.5 to CPCNs or other proceedings.

B. PRESENTATION OF THE SETTLEMENT AGREEMENT TO THE COMMISSION.

1. The Settling Parties shall support this Settlement Agreement before the Commission and request that the Commission expeditiously accept and approve the Settlement Agreement by order on or before December 15, 2021.

2. The Settling Parties may file testimony specifically supporting the Settlement Agreement. The Settling Parties agree to provide each other with an opportunity to review drafts of testimony supporting the Settlement Agreement and to consider the input of the other Settling Parties. Such evidence, together with the evidence previously prefiled in this Cause and the previously agreed stipulations, will be offered into evidence without objection and the Settling Parties hereby waive cross-examination of each other's witnesses. The Settling Parties propose to submit this Settlement Agreement and evidence conditionally, and that, if the Commission fails to approve this Settlement Agreement in its entirety without any change or approves it with condition(s) unacceptable to any Settling Party, the Settlement and supporting evidence shall be withdrawn and the Commission will continue to hear this with the proceedings resuming at the point they were suspended by the filing of this Settlement Agreement.

3. A Commission Order approving this Settlement Agreement shall be effective immediately, and the agreements contained herein shall be unconditional, effective and binding on all Settling Parties as an Order of the Commission.

C. EFFECT AND USE OF SETTLEMENT AGREEMENT.

1. It is understood that this Settlement Agreement is reflective of a negotiated settlement and neither the making of this Settlement Agreement nor any of its provisions shall constitute an admission by any Settling Party in this or any other litigation or proceeding except to the extent necessary to implement and enforce its terms. It is also understood that each and every term of this Settlement Agreement is in consideration and support of each and every other term.

2. Neither the making of this Settlement Agreement (nor the execution of any of the other documents or pleadings required to effectuate the provisions of this Settlement Agreement), nor the provisions thereof, nor the entry by the Commission of a Final Order approving this Settlement Agreement, shall establish any principles or legal precedent applicable to Commission proceedings other than those resolved herein.

3. This Settlement Agreement shall not constitute and shall not be used as precedent by any person or entity in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce this Settlement Agreement.

4. This Settlement Agreement is solely the result of compromise in the settlement process and except as provided herein, is without prejudice to and shall not constitute a waiver of any position that any Settling Party may take with respect to any or all of the items resolved here and in any future regulatory or other proceedings.

5. The evidence in support of this Settlement Agreement constitutes substantial evidence sufficient to support this Settlement Agreement and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Settlement Agreement, as filed. The Settling Parties shall prepare and file an agreed proposed order with the Commission as soon as reasonably possible after the filing of this Settlement Agreement and the final evidentiary hearing.

6. The communications and discussions during the negotiations and conferences and any materials produced and exchanged concerning this Settlement Agreement all relate to offers of settlement and shall be confidential, without prejudice to the position of any Settling Party, and are not to be used in any manner in connection with any other proceeding or otherwise. Sierra Club will only be liable for monetary damages resulting from a breach of this Section if it files, submits, or otherwise publishes confidential settlement material. If any Settling Party believes that Sierra Club has violated this Section in such a way, then such Settling Party shall provide Sierra Club with written notice of the violation and describe it with sufficient information to allow Sierra Club an opportunity to cure it, and such Settling Party shall allow Sierra Club fourteen (14) business days to cure the alleged violation. Notice shall be sent to undersigned counsel for Sierra Club. Sierra Club shall not be entitled to monetary damages for any alleged breach of this Settlement Agreement and the other Settling Parties shall not be

entitled to monetary damages for a breach of this provision by Sierra Club involving filing, submission or publication of settlement material, that is cured according to the terms of this section. "Cure" as used in this section shall mean to formally withdraw any filed or submitted statement and to publish a retraction or disavowal of any published statement (via the same media outlet through which the statement was made).

7. The undersigned Settling Parties have represented and agreed that they are fully authorized to execute the Settlement Agreement on behalf of their respective clients, and their successor and assigns, which will be bound thereby.

8. The Settling Parties shall not appeal or seek rehearing, reconsideration or a stay of the Commission Order approving this Settlement Agreement in its entirety and without change or condition(s) acceptable to any Settling Party (or related orders to the extent such orders are specifically implementing the provisions of this Settlement Agreement).

9. The provisions of this Settlement Agreement shall be enforceable by any Settling Party first before the Commission and thereafter in any state court of competent jurisdiction as necessary.

10. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.