

FILED
October 12, 2021
**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 OF CAPITAL)
INVESTMENT; (4) RATE ADJUSTMENT)
MECHANISM PROPOSALS; (5) CUSTOMER)
PROGRAMS; (6) WAIVER OR DECLINATION OF)
JURISDICTION WITH RESPECT TO CERTAIN)
RULES; AND (7) NEW SCHEDULES OF RATES,)
RULES AND REGULATIONS.)

CAUSE NO. 45576

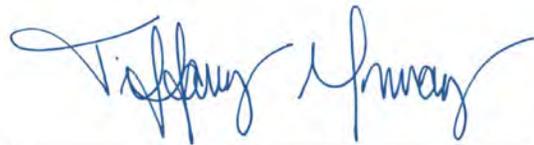
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

PUBLIC'S EXHIBIT NO. 6

TESTIMONY OF OUCC WITNESS PETER M. BOERGER, PH.D.

OCTOBER 12, 2021

Respectfully submitted,



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TESTIMONY OF OUCC WITNESS PETER M. BOERGER, PH.D.
CAUSE NO. 45576
INDIANA MICHIGAN POWER COMPANY

I. INTRODUCTION

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

2 A: My name is Peter M. Boerger, and my business address is 115 West Washington
3 St., Suite 1500 South, Indianapolis, Indiana 46204.

4 **Q: By whom are you employed and in what capacity?**

5 A: I am employed by the Indiana Office of Utility Consumer Counselor ("OUCC") as
6 a senior economist, with the official job title of Senior Utility Analyst, in the
7 Electric Division. A summary of my educational and professional background, as
8 well as my duties and responsibilities at the OUCC, can be found in Appendix A.

9 **Q: What is the purpose of your testimony?**

10 A: I address three topics. First, I address Indiana Michigan Power Company's ("I&M")
11 testimony regarding the Rockport Unit 2 generating facility, introduce and explain
12 a settlement recently entered into among a number of stakeholders related to this
13 Unit, and generally describe the implications of that settlement for this Cause.

14 Second, I address I&M's position that it need not implement a test year
15 adjustment in this Cause reflecting the Commission's Cause No. 45235 Order to
16 exclude capacity pertaining to the then-terminating Indiana Michigan Municipal
17 Distributors Association's ("IMMDA") load. I&M's approach inappropriately
18 avoids crediting costs to customers for the period between the Phase 1 rate order in
19 the present Cause and the end of the Rockport Unit 2 lease. I recommend I&M

1 implement a refund reflecting the IMMUDA load amount in its first Resource
2 Adequacy Rider (“RAR”) proceeding following the end of the Rockport Unit 2
3 lease.

4 The third topic I address is I&M’s proposal for a new “Critical Peak
5 Pricing” rate for residential and small commercial customers. I do not object to this
6 new rate proposal on a voluntary basis but identify portions of I&M’s testimony
7 foreshadowing future imposition of this rate on an “opt-out” basis. I recommend no
8 approval of any future “opt-out” implementation be given to I&M at this time and
9 I&M be required to present an analysis studying the effect of this rate on
10 participants and on I&M capacity needs in I&M’s future rate cases.

II. ROCKPORT UNIT 2

11 **Q: What Rockport Unit 2 changes are occurring during the test year?**

12 A: Petitioner’s witness Andrew Williamson indicates I&M and AEP Generating
13 Company (“AEG”) notified the Rockport Unit 2 owners they would not renew the
14 Unit’s lease, which expires on December 7, 2022.¹

15 **Q: Are Rockport Unit 2 costs included in I&M’s proposed rates?**

16 A: Yes. I&M indicates it included all Rockport Unit 2 costs forecasted to fall within
17 the test year, and prior to the lease’s expiration, in its proposed rates.²

¹ Direct Testimony of Andrew J. Williamson, pp. 15-16.

² *Id.* at 16.

1 **Q: Did I&M and AEG file a petition with the Commission seeking relief to allow**
2 **them to purchase Rockport Unit 2 from its owners?**

3 A: Yes. I&M describes Cause No. 45546 in its testimony in this case.³ I also filed
4 testimony in Cause No. 45546, which is attached to my testimony in this filing as
5 Attachment PMB-1.

6 **Q: Has a settlement been entered into among the OUCC, Petitioners, and**
7 **Intervenors in Cause No. 45546 and presented to the Commission for**
8 **approval?**

9 A: Yes. I include the Cause No. 45546 Settlement Agreement with my testimony as
10 Attachment PMB-2. I also filed settlement testimony on September 21, 2021,
11 included here as Attachment PMB-3.

12 **Q: Are there terms in the Settlement Agreement pertaining to this Cause?**

13 A: Yes. Section 4 of the Settlement Agreement deals with ratemaking for costs related
14 to Rockport Unit 2. While the terms of the Settlement Agreement speak for
15 themselves, I would characterize it as generally excluding from rates all Rockport
16 Unit 2 costs occurring after the end of the lease, except as otherwise provided for
17 in the Settlement Agreement. Sections 4(b) and 4(c) provide that certain capital
18 costs previously given Commission approval or will be given Commission approval
19 in this Cause ("Unit 2 Capital Costs") are recoverable. However, the parties to the
20 Settlement Agreement "reserve all rights to propose alternative rate recovery
21 mechanisms and regulatory treatment" related to Section 4(b) costs⁴ and "preserve
22 all rights to take any position in Cause No. 45576 with respect to the proposed

³ *Id.*

⁴ Section 4(b) costs are Unit 2 Capital Costs generally related to previous environmental investments.

1 investments, including cost recovery, regulatory treatment, and appropriate
2 recovery mechanisms” related to Section 4(c) costs.⁵

3 **Q: Do other OUCC witnesses make proposals pertaining to the ratemaking**
4 **treatment of Rockport Unit 2 costs?**

5 A: Yes. OUCC witness Wes R. Blakley presents testimony pertaining to Rockport
6 Unit 2 cost recovery.

III. IMMDA LOAD

7 **Q: What did the Commission order in Cause No. 45235 pertaining to the loss of**
8 **IMMDA load?**

9 A: IMMDA is a consortium of municipal utilities that, for some years, I&M served
10 under a full requirements contract (“IMMDA contract”). In Cause No. 45235, I&M
11 notified the Commission that IMMDA members gave notice that they wished to
12 exit their contract with I&M and free themselves of the related obligations to take
13 and pay for energy and capacity. Since IMMDA, through its full requirements
14 contract, had been allocated demand-related costs pertaining to its service for more
15 than 50 years,⁶ the loss of this load in the Cause No. 45235 test year led I&M to
16 propose allocating these costs to other entities through the jurisdictional allocation
17 study and then to retail rate classes through the class cost of service study.

18 In its Final Order, the Commission found I&M could not reasonably be
19 allowed to allocate these costs to other customers and determined “...the 312 MW

⁵ Section 4(c) costs are Unit 2 Capital Costs related to investments not previously place into I&M rate base and are proposed for recovery in this Cause.

⁶ *In re Indiana Michigan Power Co.*, Cause No. 45235, Final Order p. 83 (Ind. Util. Regul. Comm’n Mar. 11, 2020) (“Cause No. 45235”).

1 capacity from the wholesale load is not necessary to service Indiana retail
2 customers.”⁷ and further “...I&M’s forecasted test year revenues should not reflect
3 the expiration of the IMMUDA wholesale contracts...”⁸ The Commission further
4 found “...I&M should bear the ramification of not contractually protecting the
5 Company from the termination of the IMMUDA load well before the Rockport Unit
6 2 lease is to expire...”⁹

7 **Q: How did I&M interpret that Cause No. 45235 Final Order provision?**

8 A: In this Cause, Mr. Williamson states the Commission’s decision regarding IMMUDA
9 load “imputed the expiring wholesale load into I&M’s jurisdictional demand
10 allocation factors as if the wholesale load continued to be served by I&M. This
11 resulted in excluding a percentage of all of I&M’s capacity resources allocated on
12 demand from Indiana retail base rates.”¹⁰

13 **Q: Has I&M made an adjustment in this Cause to account for the IMMUDA**
14 **provision in the Commission’s Cause No. 45235 Final Order?**

15 A: No. On page 9 of his direct testimony, Mr. Williamson states “The Company is
16 proposing no such adjustment in this case.”¹¹

17 **Q: Do you agree with I&M’s position?**

18 A: No. The facts about the IMMUDA load loss have not changed since the
19 Commission’s Cause No. 45235 Final Order. It remains true now, as it did then,
20 that the 312 MW of capacity previously used to serve IMMUDA load is unnecessary

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Williamson p. 8, ll. 21 to p. 9, ll. 2.

¹¹ Williamson p. 9, ll. 6.

1 to service Indiana retail customers.

2 **Q: How do you know the 312 MW of capacity previously used to serve IMMUDA**
3 **load remains unnecessary to service Indiana retail customers?**

4 A: First, I note, prior to the expiration of the Rockport Unit 2 lease, the Unit provides
5 I&M with 1,105 MW of nameplate capacity.¹² Additionally, Mr. Williamson
6 indicates the expiration of the Rockport Unit 2 lease will leave I&M with a 300 to
7 400 MW capacity deficit.¹³ Combining those two facts, along with the fact that the
8 Kentucky Power portion of Rockport Unit 1 will become available to I&M after
9 December 22, 2021,¹⁴ implies, prior to Rockport Unit 2's lease expiration, I&M
10 holds excess capacity of about 500 to 600 MW,¹⁵ of which the 312 MW of IMMUDA
11 load represents a part. Thus, I&M continues holding excess capacity, and the basis
12 for the Commission's Cause No. 45235 IMMUDA finding stands today and will
13 remain through the end of the Rockport Unit 2 lease.

14 **Q: What testimony does I&M offer to explain why it is not implementing the**
15 **Commission's Cause No. 45235 IMMUDA finding in this Cause?**

16 A: Mr. Williamson presents a number of arguments;¹⁶ however, the Commission
17 already heard a majority of these arguments (or what can be reasonably interpreted
18 as extensions of these arguments) in I&M's Cause No. 45235 testimony and in its
19 request for reconsideration of this issue. I&M argues only one primary point

¹² Kentucky Power takes 195 MW (30% of AEG's half) of Rockport Unit 2's 1,300 MW nameplate capacity through its contract with AEG through the end of the lease, resulting in a net of 1,105 MW of capacity available to I&M until the end of the lease.

¹³ Williamson p. 14, ll. 6-10.

¹⁴ See Attachment AJW-3.

¹⁵ 1105 MW that I&M controls of Rockport Unit 2 prior to the end of the lease, less 195 MW of Kentucky Power's share of Rockport Unit 1 which becomes available to I&M after the end of the Rockport Unit 2 lease and less 300 to 400 MW of capacity shortage post-lease, per Mr. Williamson's testimony.

¹⁶ Williamson p. 9, ll. 10 through p. 15, ll. 13.

1 different from the arguments made in Cause No. 45235—that I&M will be short
2 capacity during its test year in this proceeding.¹⁷ Mr. Williamson presents this fact
3 as though it should change the decision framework from what existed at the time
4 of the Commission's Cause No. 45235 Final Order, but it does not.

5 **Q: Why does Mr. Williamson's testimony regarding I&M's capacity needs once**
6 **the Rockport Unit 2 lease ends not change the decision framework?**

7 A: As it did in Cause No. 45235, I&M is proposing to place costs in its revenue
8 requirement that support excess capacity, and a significant part of these costs arose
9 from losing IMMDA's load. The fact that the Rockport Unit 2 lease expires in the
10 last month of the test year does not change the burden I&M is placing on its Indiana
11 retail customers to fund the loss of the IMMDA load in the months leading up to
12 that expiration. The exact same Commission findings from Cause No. 45235 are
13 still applicable to the entire test year leading up to December 7, 2022, and I&M's
14 proposal in this Cause seeks to inappropriately shift the burden for that load in
15 contravention of those findings.

16 **Q: How do you propose I&M's rate proposal in this proceeding be adjusted to**
17 **reflect IMMDA-related capacity costs in the test year?**

18 A: Until its rates are changed in this Cause, I&M's current base rates are consistent
19 with the IMMDA-related offset ordered in Cause No. 45235. After December 7,
20 2022, the date on which the Rockport Unit 2 lease expires, I&M will no longer have
21 excess capacity. Therefore, an order in this Cause must address the time period
22 between the order issuance date and December 8, 2022. Since the exact date for the

¹⁷ Williamson p. 9 beginning on l. 10.

1 issuance of an order in this Cause is unknown, I propose no adjustment to I&M's
2 base rate proposal in this Cause to address IMMUDA load and instead recommend a
3 refund related to IMMUDA amounts collected between the date of implementation
4 of Phase 1 rates in this Cause and December 7, 2022, be provided to customers in
5 the first RAR tracker request I&M files following Rockport Unit 2's lease
6 expiration. That refund would be calculated on the same basis I&M used to
7 implement the Commission's IMMUDA finding in Cause No. 45235.

IV. CRITICAL PEAK PRICING AND OTHER DEMAND RESPONSE-RELATED RATES

8 **Q: What changes is I&M proposing to its demand response-related rates?**

9 A: Substantive changes (those beyond changes primarily to rate factors) are proposed
10 only for residential and small commercial offerings. I&M witness Kurt C. Cooper,
11 who summarizes proposed changes to I&M's tariff, identifies the addition of new
12 "Critical Peak Pricing" ("CPP") tariffs for only residential and small commercial
13 customers.¹⁸ He also identifies changes to I&M's current time-of-day ("TOD")
14 offerings (R.S. TOD and G.S. TOD), including closing these offerings to new
15 customers and removing caps on customer enrollment in time-of-day offerings
16 currently identified as "experimental" (R.S. TOD2 and G.S. TOD2).

17 **Q: What is a TOD offering?**

18 A: A TOD offering sets different rates at different times of day (and for off-peak days
19 such as weekends and holidays) to provide an incentive to customers to reduce
20 demand during high-cost hours. TOD rates provide customers with a rate schedule

¹⁸ Cooper p. 13, ll. 8-13.

1 allowing the customer to always know well in advance what the rate will be during
2 any hour of the year.

3 **Q: How does I&M's proposed CPP offering differ from the Company's TOD**
4 **offerings?**

5 A: Like TOD, CPP also seeks to incent customer shifts in demand by instituting
6 different pricing at different times of day, but it adds a component of
7 communication with customers to inform them of time periods of emergency stress
8 on the system and imposes much higher rates during those periods. Unlike TOD
9 rates, customers on CPP rates do not know well in advance and with certainty the
10 rates they will pay at each hour of the year. Instead, customers on CPP rates are
11 told a short time in advance whether the much higher "critical peak" rate will apply.
12 As such, a CPP rate is for customers who wish to be more actively engaged with
13 their electricity usage.

14 **Q: Do TOD and CPP rates offer benefits for all customers who are on these rates?**

15 A: No, not necessarily. Customers who have loads occurring during high-cost hours
16 can pay more under these rates. Thus, it is important for customers to be made well
17 aware of the rate design and their implications for customer bills—both the
18 potential for lower bills and for higher bills. This is especially true for CPP rates
19 and the "critical peak" periods when customer usage can lead to even higher bills
20 than under standard TOD rates.

21 **Q: Given the need for understanding these rate designs and their potential for**
22 **resulting in higher customer bills, is it important these rates be voluntary in**
23 **nature?**

24 A: Yes. Customers who do not wish to be engaged with their electricity usage will

1 likely not benefit from them and may see higher costs. Customers who are not
2 actively engaged will also not likely benefit the utility's overall cost structure since
3 the achievement of such benefits relies on the idea of customers changing their
4 behavior. Customers who are not actively engaged will not change their behavior.
5 Given the potential for "surprise" bills on these rates and related dissatisfaction with
6 utility service, the best way to avoid unintended consequences is to ensure these
7 rates are only offered on a voluntary basis.

8 **Q: Is there any reason to expect these rates need to be involuntary?**

9 A: No, certainly not at this time, and I think there is reason to believe involuntary
10 imposition of these types of rates may never be needed.

11 **Q: Please explain why involuntary imposition of these types of rates may never**
12 **be needed.**

13 A: Standard rates cover the cost of providing service, only at an expected higher cost
14 than TOD or CPP rates due to hoped-for shifts in customer behavior. The
15 efficiencies that can be gained from providing time-differentiated rates provide a
16 potential pool of benefits that can be drawn upon to incent customers to participate
17 in such rates. This pool provides a source of incentives that will exist so long as
18 there are benefits to be gained from customers shifting their loads, and time-
19 differentiated rates should only exist if there are benefits to be gained. Therefore,
20 there should always be a way, through proper design of a utility's voluntary TOD
21 and CPP rate structures, to entice customers to participate without requiring the
22 involuntary imposition of such rates. Customers who do not participate give up
23 those benefits and will thus pay higher rates to reflect their choice to not participate

1 and to cover the resulting higher costs of the electricity system.

2 **Q: Is there a difference between an “involuntary” rate and what is referred to as**
3 **an “opt-out” rate?**

4 A: There are some similarities and some differences between these concepts.
5 Involuntary rates can be thought of as being imposed without the option to shift to
6 a different rate. In contrast, an “opt-out” rate places customers involuntarily into a
7 rate class but allows customers to take action to move to a different rate class.

8 **Q: Is an “opt-out” rate better in your view than involuntary rate?**

9 A: Yes, because it provides choice to the consumer. However, even an “opt-out” rate
10 will place many customers into rate tariffs that can lead to surprise bills and related
11 dissatisfaction with utility service. While it is better than involuntary rates,
12 customers who find themselves in an opt-out rate may still perceive such a rate as
13 being involuntary when the surprise bill arrives.

14 **Q: So why would a utility propose an “opt-out” rate if there is a pool of benefits**
15 **that can be used to incent participation and there is the potential customer**
16 **dissatisfaction arising from involuntary placement into such a rate?**

17 A: The reason is, due to the requirement to take affirmative action to get off an imposed
18 rate, the number of customers on an “opt-out” rate will be much higher than on a
19 voluntary or “opt-in” rate.

20 **Q: Does having a much higher number of customers on a rate necessarily provide**
21 **an increase in benefits commensurate with that increase?**

22 A: No. As I discussed above, customers who are not aware of and do not wish to be
23 engaged in taking action under these programs may not provide the benefits arising
24 from the involuntary rate structure as would customers who are motivated and
25 engaged. Even if there are benefits to be gained from the involuntary imposition of

1 such rates on customers, one must weigh those benefits against their potential for
2 causing customer dissatisfaction.

3 **Q: Does I&M currently impose any of its demand-related rates on an involuntary**
4 **basis?**

5 A: No. All its demand-related rates currently in place must be voluntarily chosen by
6 customers. Otherwise, customers are automatically placed in the standard rate class
7 based upon their customer characteristics.

8 **Q: Is I&M proposing any “opt-out” rates in this proceeding?**

9 A: No, not for imposition immediately. However, witnesses describing the proposed
10 CPP rate refer to a plan to impose CPP rates on residential and small commercial
11 customers starting in 2028.¹⁹

12 **Q: Does the OUCC oppose I&M’s proposal for a new CPP rate in this proceeding**
13 **due to its envisioned ultimate imposition as an “opt-out” rate?**

14 A: No, but the OUCC wishes to make clear that moving to an “opt-out” model is a
15 significant shift that should be given careful consideration prior to imposition and
16 certainly should not be decided seven years in advance.

17 **Q: Do you have any other recommendations regarding I&M’s demand-response-**
18 **related rates?**

19 A: Yes. I&M is proposing to delete one demand-response rate (its “TOD” rates),
20 replace it with another TOD rate (its “TOD2” rates) and create a new CPP rate
21 without presenting any studies evaluating past programs as a way of informing new
22 rate designs. I see in Petitioner’s witness Jon Walter’s testimony that I&M plans to

¹⁹ Direct Testimony of Jon Walter p. 29, ll. 13-14 and Direct Testimony of Curtiss H. Bech pp. 34-37.

1 perform an “impact evaluation” of the new CPP programs.²⁰ I recommend I&M
2 file these evaluations with the Commission as part of or prior to its next base rate
3 case. Such evaluations, which should compare usage of customers on the demand-
4 response rate to customers in a control group, should be presented for all its
5 demand-response-related programs at the same time so informed decisions can be
6 made as to which programs are working, how they are working and improvements
7 that can be made.

8 Finally, I recommend I&M edit the proposed CPP tariff sheet to add major
9 holidays to the weekend exemption proposed by I&M during which all kWh
10 consumed will be billed at the low-cost level.

V. SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

11 **Q: Please summarize your testimony and conclusions.**

12 A: I present and discuss I&M's Rockport Unit 2 proposal and the recent Cause No.
13 45546 Settlement Agreement pending before the Commission. This Settlement
14 Agreement should reduce the ongoing Rockport Unit 2 costs reflected in I&M
15 customers' rates. I analyzed the Commission's Cause No. 45235 IMMUDA finding
16 and conclude I&M has not provided customers with rate relief in this Cause that is
17 consistent with the Commission's prior ruling. As such, I recommend a
18 methodology for providing rate relief aligning with that ruling. Finally, I discuss
19 I&M's demand response-related rates. While I do not oppose I&M's rate proposals,
20 I highlight concerns with I&M's testimony stating it is considering proposing “opt-

²⁰ Walter Attachments JCW-3 p. 4 and JCW-5 p. 3.

1 out rates” in the future and note that approving an “opt-out rate” without proper
2 review and consideration would be problematic. I also make two recommendations
3 pertaining to such rates—the provision of studies regarding such rates in future rate
4 cases and a small edit to I&M’s CPP tariff to reflect holidays.

5 **Q: What are your specific recommendations?**

6 A: I recommend:

7 1) The Commission require I&M to refund the amount related to IMMUDA-
8 related amounts collected between the date of implementation of Phase
9 1 rates in this Cause and December 7, 2022. Such a refund would be
10 provided to customers in the first RAR tracker request I&M files
11 following Rockport Unit 2’s lease expiration and would be calculated
12 on the same basis I&M has used to implement the Commission’s
13 IMMUDA finding in Cause No. 45235;

14 2) The Commission approve the new CPP rate proposed by I&M, but
15 without any approval for imposition on an “opt-out” basis; and

16 3) Studies regarding all of I&M’s demand-related rates be provided in or
17 before future rate cases to assist in decisions regarding such rates. I also
18 propose a small edit to I&M’s CPP tariff to reflect holidays.

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

20 A: Yes.

APPENDIX A - QUALIFICATIONS OF PETER M. BOERGER, PH.D.

1 **Q: Please summarize your professional background and experience.**

2 A: My undergraduate education consisted of a Bachelor of Science degree in
3 Mechanical Engineering from the University of Wisconsin-Madison and a
4 Bachelor of Arts degree in Physics from Carthage College, through its 3-2
5 engineering program. The extra year of liberal arts study during my undergraduate
6 career allowed me to take significant coursework in business and economics,
7 including courses in microeconomics, macroeconomics and accounting. After
8 working as an engineer at a manufacturing company, my graduate training began
9 at Purdue University (West Lafayette campus) in a program of Technology and
10 Public Policy, resulting in a Master of Science in Public Policy and Public
11 Administration. My training there included courses in microeconomic theory, cost-
12 benefit analysis, operations research (cost minimization algorithms as might be
13 used in utility economic optimization programs), and policy analysis. I came to
14 Indianapolis and worked doing research and analysis at Legislative Services
15 Agency and later at the Indiana Economic Development Council. Following those
16 stints, I began working on my Ph.D. at Purdue University (West Lafayette campus)
17 in Engineering Economics through Purdue's School of Industrial Engineering. That
18 program required taking Ph.D.-level microeconomics classes, as well as additional
19 work in operations research. During my time there I taught a 300-level engineering
20 economy class for three semesters. While finishing my doctoral thesis I worked in
21 policy research for the Indiana Environmental Institute in Indianapolis and then,

1 after obtaining my doctorate, went to work at the Indiana Office of Utility
2 Consumer Counselor, starting as an economist in the Economics and Finance
3 Division. During my 8 years there, I rose to Assistant Director of the Electric
4 Division and then Director of that Division. In 2005 I left the Agency to pursue
5 other interests, largely outside of utility regulation, and then returned in November
6 of 2015 to work in my current position as a senior economist in the Electric
7 Division, with the formal title of Senior Utility Analyst.

8 **Q: Please describe your duties and responsibilities at the OUCC.**

9 A: I review petitions submitted to the Commission for their economic justification and
10 perform other duties as assigned by the Agency.

11 **Q: Have you previously testified before the Commission?**

12 A: Yes, I have testified before the Commission in several significant cases during the
13 1997 to 2005 timeframe. I also recently submitted testimony in several proceedings
14 since my return to the agency.

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July 29, 2021
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**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

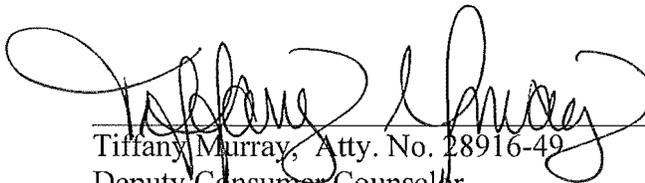
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

PUBLIC'S EXHIBIT NO. 1

TESTIMONY OF OUCC WITNESS PETER M. BOERGER, PH.D

JULY 29, 2021

Respectfully submitted,


Tiffany Murray, Atty. No. 28916-49
Deputy Consumer Counselor

TESTIMONY OF OUCC WITNESS PETER M. BOERGER, PH.D.
CAUSE NO. 45546
INDIANA MICHIGAN POWER COMPANY AND
AEP GENERATING COMPANY

I. INTRODUCTION

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

2 A: My name is Peter M. Boerger, and my business address is 115 West Washington
3 St., Suite 1500 South, Indianapolis, Indiana 46204.

4 **Q: By whom are you employed and in what capacity?**

5 A: I am employed by the Indiana Office of Utility Consumer Counselor (“OUCC”) as
6 a senior economist, with the official job title of Senior Utility Analyst, in the
7 Electric Division. A summary of my educational and professional background, as
8 well as my duties and responsibilities at the OUCC, can be found in Appendix A.

9 **Q: What is the purpose of your testimony?**

10 A: I address the reasonableness of Indiana Michigan Power Company’s (“I&M”) and
11 AEG Generating Company’s (“AEG”) (together “Joint Petitioners”) joint request
12 for findings from the Indiana Utility Regulatory Commission (“Commission”)
13 allowing these entities to purchase Rockport Generating Station’s Unit 2
14 (“Rockport Unit 2”) from an owner trust (“Owner Trust”), described in the Petition
15 as “unaffiliated, non-utility institutional equity investors,”¹ that currently owns the
16 electric generation facility.

¹ Paragraph 12(b), page 4 of Revised Petition.

1 **Q: What specific request do Joint Petitioners make?**

2 A: Joint Petitioners request authority to purchase Rockport Unit 2 by seeking the
3 Commission to either decline its jurisdiction over the proposed transaction or
4 determine the law establishing the Commission's jurisdiction is not applicable to
5 the proposed transaction. Specifically, the revised Petition requests as follows:

6 In accordance with Ind. Code § 8-1-2.5-5, Petitioners ask the
7 Commission to decline to exercise its jurisdiction under the CPCN
8 statute with respect to the return of Rockport Unit 2 ownership to
9 Petitioners, or determine that Ind. Code § 8-1-8.5-2 does not apply
10 to the return of Rockport Unit 2 ownership to Petitioners.²

11 I will address each of these requests separately, in reverse order.

**II. JOINT PETITIONERS' REQUEST FOR A DETERMINATION THAT IND.
CODE § 8-1-8.5-2 DOES NOT APPLY TO THE PROPOSED PURCHASE**

12 **Q: What are the requirements of Ind. Code § 8-1-8.5-2?**

13 A: This section states in relevant part:

14 . . . a public utility may not begin the construction, purchase, or lease
15 of any steam, water, or other facility for the generation of electricity
16 to be directly or indirectly used for the furnishing of public utility
17 service, even though the facility is for furnishing the service already
18 being rendered, without first obtaining from the commission a
19 certificate that public convenience and necessity requires, or will
20 require, such construction, purchase, or lease.³

21 **Q: Are Joint Petitioners seeking a Certificate of Public Convenience and
22 Necessity ("CPCN") for the proposed purchase, as required in Ind. Code § 8-
23 1-8.5-2?**

24 A: No. Rather than seek the issuance of a CPCN, Joint Petitioners request the
25 Commission determine compliance with I.C. ch. 8-1-8.5 is not necessary for
26 Commission approval of the proposed transaction.

² Paragraph 22, page 8 of Revised Petition.

³ I.C. § 8-1-8.5-2.

1 **Q: Are you aware of any basis upon which it would be reasonable to determine**
2 **I.C. § 8-1-8.5-2 does not apply to the proposed transaction, as requested in the**
3 **Petition?**

4 A: No. The proposed transaction is a public utility seeking to purchase a facility for
5 the generation of electricity. This type of transaction is explicitly contemplated in
6 the plain language of I.C. ch. 8-1-8.5. There is no clearer indication that the General
7 Assembly, in establishing I.C. ch. 8-1-8.5, sought to regulate the purchase Joint
8 Petitioners are seeking to have ruled outside the Commission's jurisdiction.

9 **Q: Does requiring utilities to obtain CPCNs prior to constructing or purchasing**
10 **generating facilities protect consumers?**

11 A: Yes. It aids in protecting consumers from paying for unneeded or inappropriate
12 generation investments.

13 **Q: Does the Commission's March 30, 1989, Order granting permission to I&M**
14 **(and AEG) in its consolidated Cause Nos. 38690 and 38691 to enter into a**
15 **sale/leaseback arrangement without requiring the issuance of a CPCN have**
16 **any bearing on this case?**

17 A: No. The Commission's findings in that Order were grounded in I&M's ownership
18 of Rockport Unit 2, along with AEG. The Commission determined I&M did not
19 need to obtain a CPCN because the obligation for the cost of Unit 2 was already
20 held by I&M, and I&M's customers would be responsible for the costs of the Unit
21 regardless of whether the Commission required a CPCN.⁴ The key difference in the
22 present Cause is I&M does not currently own Rockport Unit 2 as it did then.
23 Further, at the lease's expiration with the Owner Trust, I&M will not be responsible

⁴ The Commission addresses the applicability of IC 8-1-8.5 in Section 7 of the Final Order in Cause No. 38690/38691, stating in relevant part "The construction of Rockport Unit No. 2 was commenced in 1979, prior to the enactment of IC 8-1-8.5. For that reason, IC 8-1-8.5 clearly does not apply to the construction by Petitioners of Rockport 2, and we see no reason why it should apply to the lease portion of the sale and leaseback of Rockport 2. . ."

1 for covering AEG's share of the Unit as in 1989, given that AEG will not lease or
2 own Rockport Unit 2's capacity and thus I&M's obligation to AEG under the Unit
3 Power Agreement⁵ ("UPA") will no longer apply. As such, the protections afforded
4 to consumers by the CPCN statute are relevant to the current Cause in a way they
5 were not in 1989.

6 **Q: Does the reference in the Petition in this Cause to a "return of . . . ownership"⁶
7 instead of a "purchase" make the requirements of I.C. § 8-1-8.5-2 any less
8 applicable?**

9 A: No. I&M seeks to purchase Rockport Unit 2 from its current owners—the Owner
10 Trust. The document establishing the transaction that is the subject of this Cause is
11 called a "purchase agreement."⁷ The fact that Joint Petitioners previously owned
12 the facility⁸ does not in any way change the fact that the transaction that is the
13 subject of this Petition is a purchase of a facility for the generation of electricity,
14 thus making the proposed transaction subject to the requirements of I.C. § 8-1-8.5-
15 2.

16 **Q: What do you conclude regarding Joint Petitioners' request for the
17 Commission to determine IC § 8-1-8.5-2 does not apply to the proposed
18 transaction?**

19 A: Joint Petitioners present no reasonable basis to have the Commission determine IC
20 § 8-1-8.5.2 does not apply to the proposed transaction, and I am not aware of any
21 basis beyond what Joint Petitioners presented for such a determination. Having

⁵ The Unit Power Agreement, which governs the obligations of AEG and I&M as pertains to Rockport generating units is described in paragraph 12(a) of the Petition in this Cause and was provided to the OUCC in discovery.

⁶ See the caption to the Revised Petition in this Cause.

⁷ Trust Interests Purchase Agreement attached to the revised testimony of Joint Petitioners' witness Toby L. Thomas as Petitioner's Attachment TLT-2 (Confidential).

⁸ As described in Paragraphs 12 through 17 of the Revised Petition in this Cause.

1 identified that the proposed transaction cannot be reasonably approved based upon
2 inapplicability of IC 8-1-8.5, I next review the reasonableness of approval under
3 Joint Petitioners' alternative approach—that of approval under Indiana's
4 Alternative Utility Regulation statute—IC 8-1-2.5.

**III. JOINT PETITIONERS' ALTERNATIVE REQUEST FOR A DECLINATION
OF JURISDICTION UNDER IC § 8-1-2.5-5**

5 **Q: What is Joint Petitioners' request pertaining to IC § 8-1-2.5-5?**

6 A: Joint Petitioners seek approval for the proposed Rockport Unit 2 purchase through
7 their request that the Commission determine the public interest requires the
8 Commission to decline its jurisdiction over the proposed transaction. Such
9 declination would eliminate the need to obtain a CPCN under IC 8-1-8.5, which I
10 identified in the previous section of my testimony would apply to the proposed
11 transaction.

12 **Q: Is it the OUCC's position the Commission should grant the requested
13 declination under IC § 8-1-2.5-5?**

14 A: No. Granting a public utility the right to avoid requirements of IC 8-1-8.5, while
15 not prohibited under statute, overrides one of the primary protections afforded to
16 public utility customers in Indiana utility law. The OUCC does not see sufficient
17 reason to override those protections in this case.

18 **Q: What reasons do Joint Petitioners give regarding why the protections of IC 8-
19 1-8.5 should be overridden in this case?**

20 A: Most prominently, I&M does not seek cost recovery for the proposed transaction,
21 with the apparent implication customers are not at risk for covering costs from the
22 proposed transaction. Further, Petitioner's witness Mr. Toby L. Thomas identifies

1 a number of benefits to the proposed transaction, including the avoidance of certain
2 “potential disagreements”⁹ regarding I&M’s obligation to continue operating the
3 facility for the Owner Trust. Included in Mr. Thomas’ list of potential benefits is
4 avoidance of potential Effluent Limitation Guidelines (“ELG”) compliance costs¹⁰
5 and potential litigation from the Owner Trust.¹¹ I&M would also obtain control of
6 1300 MW of capacity through its ownership of half of Rockport Unit 2 and control
7 of AEG’s share of the facility.¹²

8 **Q: Do you agree with an implication that I&M’s customers will not face**
9 **additional risk should the Commission approve the proposed transaction**
10 **without attribution of cost responsibility?**

11 A: No. First, in my view, granting permission for ownership provides an advantage for
12 I&M in any future request for cost recovery. However, even if cost recovery from
13 I&M’s ratepayers is not ultimately granted, I&M’s ownership of a large amount of
14 additional capacity (and also, I&M cost responsibility to AEG under the Unit Power
15 Agreement) potentially affects the finances of the regulated utility, how Wall Street
16 views I&M, and ultimately its cost of capital.

17 **Q: Please explain further how I&M having ownership and control of 1300 MW**
18 **of coal capacity could affect its retail customers, even in the event explicit cost**
19 **recovery from those customers is not granted.**

20 A: I&M’s proposal for approval of ownership without cost recovery approval is in

⁹ P.8, ll.5 Revised Direct Testimony of Toby L. Thomas.

¹⁰ P.8, ll.6-8 and p.12, ll.6-9 Revised Direct Testimony of Toby L. Thomas.

¹¹ P.9, ll. 13-17 Revised Direct Testimony of Toby L. Thomas.

¹² For efficiency of explanation, I will at points in my testimony refer simply to ownership by I&M rather than providing the more complete reference to “ownership by I&M and control by I&M of AEG’s share of Rockport Unit 2.” I&M will, through its obligation under the Unit Power Agreement, under Joint Petitioners’ proposal, be responsible for the cost of all 1300 MW of capacity, including AEG’s share of the facility, even though it would own only 650 MW.

1 essence granting I&M authority to own 1300 MW of merchant capacity under the
2 regulated utility.¹³ Merchant power generators are generally viewed on Wall Street
3 as riskier than regulated utilities because of their lack of government-authorized
4 monopoly status and related lesser level of cost recovery certainty. Granting a
5 simple declination of jurisdiction to I&M to buy half of Rockport Unit 2 (and
6 obligating it to cover costs related to AEG's half of the unit) does not segregate that
7 purchase from the finances of the utility's regulated operations. As such, any losses
8 I&M incurs as a result of obtaining the facility necessarily affect the financial health
9 of the overall company, which includes its regulated operations.

10 **Q: Do Joint Petitioners present evidence as to whether I&M needs the capacity it**
11 **would obtain through the proposed transaction?**

12 A: No. However, Joint Petitioners stated I&M recently calculated it would need 300-
13 400 MW of capacity at the time Rockport Unit 2's lease expires.¹⁴ This response
14 implies I&M does not need between 900 and 1000 MW of Rockport Unit 2's 1300
15 MW capacity.

16 **Q: Is the cost of the proposed transaction small enough that its economics can be**
17 **reasonably ignored?**

18 A: No. Joint Petitioners do not present an economic analysis of the proposed
19 transaction compared to I&M's other options for fulfilling its need for 300-400 MW
20 of capacity. As such, Joint Petitioners have not presented sufficient evidence to
21 judge the extent of the cost and economic risk I&M's customers could face from

¹³ Joint Petitioners make this very point on page 5 of their "Joint Petitioners' Response in Opposition to Motion to Dismiss" in this Cause.

¹⁴ See response to OUCC DR 2-3, attached as Attachment PMB-1.

1 this transaction's approval. While the transaction's \$115.5 million¹⁵ purchase price
2 is relatively small compared to the size of I&M's rate base, this asset is proposed
3 to be used and useful for a maximum of only six years.¹⁶ Further, I&M will be
4 responsible for costs to maintain and repair the facility in a manner allowing it to
5 meet PJM requirements as a capacity resource. Thus, the \$115.5 million up-front
6 cost does not reflect the true, full costs of entering into this transaction.

7 **Q: Have you performed any calculations to estimate the proposed transaction's**
8 **economics?**

9 A: Yes. Using data from I&M's most recent six FERC Form 1s (2015 through 2020),
10 I calculated average fixed O&M costs per MW-day.¹⁷ I also calculated the
11 transaction's capital costs on a per MW-day basis over the maximum projected
12 remaining six-year life. Further, I made the additional assumption that I&M would
13 need to cover the cost of ELG upgrades on Rockport Unit 2 in the event the
14 transaction is not approved, as suggested by I&M (and discussed earlier in my
15 testimony).

16 **Q: What were the results of those calculations?**

17 A: I calculate the cost of capacity to be approximately \$74 per MW-day when spread
18 over the entire 1300 MW of capacity I&M will obtain. However, as noted above,
19 I&M does not need the full 1300 MW of capacity. Therefore, I also calculated the

¹⁵ P.8, ll.17 Revised Direct Testimony of Toby L. Thomas.

¹⁶ P.3, ll.7 of the Revised Direct Testimony of Toby L. Thomas states that Rockport Unit 2, under Joint Petitioners' proposal will be retired "no later than December 2028," which is 6 years after the expiration of the lease with the Owner Trust.

¹⁷ I calculated costs on a per MW-day basis because these are units used for purposes of PJM's Base Residual Auction ("BRA"), its capacity auction.

1 cost of this capacity using the midpoint of I&M's estimated capacity needs at the
2 time of the lease expiration (350 MW), which results in a cost of approximately
3 \$274 per MW-day.

4 **Q: How do those estimates compare to recent capacity prices in PJM's Base**
5 **Residual Auction?**

6 A: The results from PJM's most recent auction showed \$50 per MW-day capacity
7 prices in the area I&M covers.¹⁸

8 **Q: Was that value low by historical standards?**

9 A: While it is lower than other recent auctions, the value Joint Petitioners report in a
10 discovery response¹⁹ for the 5-year average of Base Residual Auction results is
11 \$106.26—still quite low compared to the cost of the proposed transaction when
12 viewed in the context of the amount of capacity I&M actually needs.

13 **Q: What do you conclude about the proposed transaction's cost?**

14 A: I conclude, at a minimum, the proposed transaction is not a bargain in the context
15 of recent PJM market prices. Further, when viewed in the context of capacity
16 needed to serve I&M's customers, the proposed transaction is expensive.

17 **Q: What do you conclude about Joint Petitioners' request for the Commission to**
18 **decline jurisdiction over the proposed transaction?**

19 A: I&M does not need the majority of the 1300 MW of capacity it would obtain under
20 the proposed transaction and, based on the capacity that it does need, the proposal
21 is expensive. While Joint Petitioners raise the potential for some risks arising from
22 not allowing Joint Petitioners to purchase Rockport Unit 2 from the Owner Trust,

¹⁸ See Attachment PMB-2.

¹⁹ See Attachment PMB-3.

1 they present little support regarding those risks. Given the costs and risk associated
2 with the purchase, the OUCC's position is the public interest has not been shown
3 to require the proposed declination of jurisdiction and thus the OUCC recommends
4 Joint Petitioners' request be denied.

IV. OVERALL CONCLUSIONS AND RECOMMENDATIONS

5 **Q: What are your overall conclusions and recommendations?**

6 A: My analysis shows that neither of the two alternative requests made by the Joint
7 Petitioners (a finding that IC § 8-1-8.5-2 does not apply or alternatively seeking a
8 declination of jurisdiction under IC § 8-1-2.5-5) are reasonable. As such, I must
9 conclude, Joint Petitioners' requested relief is not adequately supported.

10 **Q: While not requested by Joint Petitioners, would it be reasonable for the**
11 **Commission to grant Joint Petitioners' declination request for only AEG**
12 **(while not issuing an approval for I&M)?**

13 A: No. Even though AEG does not serve retail customers in Indiana, which may on
14 the surface appear to allow approval for AEG without affecting I&M retail
15 customers, approving the declination for AEG would affect I&M's retail customers
16 as the UPA would require I&M to take the Rockport Unit 2 power from AEG and
17 pay for it under the terms of that agreement.²⁰ Thus, a declination for only AEG
18 could not be approved without affecting I&M and its customers. While Joint
19 Petitioners are not asking for such a partial result in the alternative, I present this
20 position in the event such a result would become a feasible option for Commission

²⁰ See Sections 1.2 and 1.3 of the Unit Power Agreement, with a relevant portion of that Agreement attached to my testimony as Attachment PMB-4

1 decision-making. Thus, as a supplement to my overall recommendations expressed
2 above, I recommend declination of jurisdiction for AEG not be approved on a
3 stand-alone basis.

4 **Q: What do you recommend?**

5 A: I recommend Joint Petitioners' requested relief be denied.

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

7 A: Yes.

APPENDIX A - QUALIFICATIONS OF PETER M. BOERGER, PH.D.

1 **Q: Please summarize your professional background and experience.**

2 A: My undergraduate education consisted of a Bachelor of Science degree in
3 Mechanical Engineering from the University of Wisconsin-Madison and a
4 Bachelor of Arts degree in Physics from Carthage College, through its 3-2
5 engineering program. The extra year of liberal arts study during my undergraduate
6 career allowed me to take significant coursework in business and economics,
7 including courses in microeconomics, macroeconomics and accounting. After
8 working as an engineer at a manufacturing company, my graduate training began
9 at Purdue University (West Layette campus) in a program of Technology and
10 Public Policy, resulting in a Master of Science in Public Policy and Public
11 Administration. My training there included courses in microeconomic theory, cost-
12 benefit analysis, operations research (cost minimization algorithms as might be
13 used in utility economic optimization programs), and policy analysis. I came to
14 Indianapolis and worked doing research and analysis at Legislative Services
15 Agency and later at the Indiana Economic Development Council. Following those
16 stints, I began working on my Ph.D. at Purdue University (West Lafayette campus)
17 in Engineering Economics through Purdue's School of Industrial Engineering. That
18 program required taking Ph.D.-level microeconomics classes, as well as additional
19 work in operations research. During my time there I taught a 300-level engineering
20 economy class for three semesters. While finishing my doctoral thesis I worked in
21 policy research for the Indiana Environmental Institute in Indianapolis and then,

1 after obtaining my doctorate, went to work at the Indiana Office of Utility
2 Consumer Counselor, starting as an economist in the Economics and Finance
3 Division. During my 8 years there, I rose to Assistant Director of the Electric
4 Division and then Director of that Division. In 2005 I left the Agency to pursue
5 other interests, largely outside of utility regulation, and then returned in November
6 of 2015 to work in my current position as a senior economist in the Electric
7 Division, with the formal title of Senior Utility Analyst.

8 **Q: Please describe your duties and responsibilities at the OUCC.**

9 A: I review petitions submitted to the Commission for their economic justification and
10 perform other duties as assigned by the Agency.

11 **Q: Have you previously testified before the Commission?**

A: Yes, I have testified before the Commission in several significant cases during the
1997 to 2005 timeframe. I also recently submitted testimony in several proceedings
since my return to the agency.

INDIANA MICHIGAN POWER COMPANY
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR
DATA REQUEST SET NO. OUCC DR 2
IURC CAUSE NO. 45546

DATA REQUEST NO OUCC 2-03

REQUEST

What is I&M's expected capacity shortfall at the time of the expiration of the Unit 2 lease in the event that its proposed purchase of Rockport Unit 2 in this proceeding is not granted? Please identify the basis for and provide calculations supporting I&M's answer to this question, including specific page references to I&M's most recent IRP if applicable.

RESPONSE

For purposes of starting the development of its 2021 Integrated Resource Plan (IRP), I&M identified a capacity shortfall of approximately 300-400 MWs as a result of the expiration of the Rockport 2 Lease. I&M has sufficient capacity to meet its Fixed Resource Requirements (FRR) for the 2022-23 PJM delivery year, due to the availability of Rockport 2 through the entire delivery year (which ends May 2023). I&M has not yet projected the amount of capacity it will require for its FRR for the 2023-24 PJM delivery year, which is the first full delivery year following the end of the Rockport 2 lease, and it is possible that the amount will be higher than the going-in amount identified for IRP purposes. I&M expects this question to be discussed in more detail in Phase Two of the proposed procedural schedule in this matter when the data will be better known and available to all parties.

2022/2023 RPM Base Residual Auction Results

Executive Summary

The 2022/2023 Reliability Pricing Model (RPM) Base Residual Auction (BRA) cleared 144,477.3 MW of unforced capacity in the RTO representing a 21.1% reserve margin. Accounting for load and resource commitments under the Fixed Resource Requirement (FRR), the reserve margin for the entire RTO for the 2022/2023 Delivery Year as procured in the BRA is 19.9%, or 5.4% higher than the target reserve margin of 14.5%. This reserve margin was achieved at clearing prices that are between approximately 19% to 56% of Net CONE, depending upon the Locational Deliverability Area (LDA). The auction also attracted a diverse set of resources, including a significant increase in gas fired combined cycle generation, Energy Efficiency resources and new wind and solar resources.

The 2022/2023 BRA is the third where PJM has procured 100% Capacity Performance (“CP”) Resources. CP Resources must be capable of sustained, predictable operation, and are expected to be available and capable of providing energy and reserves when needed throughout the entire Delivery Year. As was the case with the 2021/2022 BRA, the 2022/2023 BRA was conducted under the provisions of PJM’s Enhanced Aggregation filing (Docket ER17-367-000 & 001) which was accepted by FEREC on March 21, 2017. The 2022/2023 BRA is the first RPM auction conducted under the expanded application of the Minimum Offer Price Rule resulting from FEREC’s December 19, 2019 Order¹.

2022/2023 BRA Resource Clearing Prices

Resource Clearing Prices (RCPs) for the 2022/2023 BRA are shown in Table 1 below. The RCP for CP Resources located in the rest of RTO is \$50.00/MW-day. MAAC, EMAAC, BGE, COMED and DEOK were constrained LDAs in the 2022/2023 BRA with locational price adders, in regards to the immediate parent LDA, of \$45.79/MW-day, \$2.07/MW-day, \$30.71/MW-day, \$18.96/MW-day and \$21.69/MW-day, respectively, for all resources located in those LDAs. For comparison, the RTO’s resource clearing price in the 2021/2022 BRA was \$140.00/MW-day. Additionally, the EMAAC, PSEG, BGE, ATSI and COMED LDA were constrained LDAs in the 2021/2022 BRA with RCPs of \$165.73/MW-day, \$204.29/MW-day, \$200.30/MW-day, \$171.33/MW-day and \$195.55/MW-day respectively.

2022/2023 BRA Resource Clearing Prices

Capacity Type	2022/23 BRA Resource Clearing Prices (\$/MW-day)					
	Rest of RTO	MAAC	EMAAC	BGE	COMED	DEOK
Capacity Performance	\$50.00	\$95.79	\$97.86	\$126.50	\$68.96	\$71.69

¹ Docket Nos. EL16-49-000 EL18-178-000 (Consolidated)

INDIANA MICHIGAN POWER COMPANY
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR
DATA REQUEST SET NO. OUCC DR 4
IURC CAUSE NO. 45546

DATA REQUEST NO OUCC 4-05

REQUEST

Referencing Petitioners' response to OUCC DR 2-8 please respond to the following:

- a. Please explain how it is that using Rockport 2 as a capacity resource results in "operational efficiencies."
- b. Please explain why Rockport 2 is better suited as a "capacity resource" rather than as an "energy resource."
- c. Please explain the "current market conditions" referenced in this answer and why those market conditions make Rockport 2 better suited as a "capacity resource" rather than as an "energy resource."
- d. Please explain the differences in how Rockport 2 will be operated and managed as a "capacity resource" rather than as an "energy resource."
- e. Please explain the differences, if any, as to how Rockport 2 will be offered into PJM's day-ahead energy market to implement Petitioners' intentions to operate Rockport 2 as a "capacity resource" rather than as an "energy resource."
- f. What does I&M expect to be the effect, if any, on its margins earned from energy sales resulting from operating Rockport 2 as a capacity resource rather than as an energy resource. Please provide calculations supporting your answer to this question.
- g. What does I&M expect to be the effect, if any, on its operations and maintenance cost resulting from operating Rockport 2 as a capacity resource rather than as an energy resource. Please explain why such changes in costs will occur and provide calculations supporting your answer to this question.
- h. Does I&M intended to also operate Rockport 1 as a "capacity resource" rather than as an "energy resource?" Please explain I&M's reasoning for its decision on this matter and provide any analysis performed by I&M or on I&M's behalf reviewing this choice and identify how, if at all, this choice was evaluated in I&M's most recent IRP.

RESPONSE

- a. The "operational efficiencies" referenced in I&M's response to OUCC DR 2-8 are qualitative efficiencies that are expected to be realized by having both of the Rockport units under I&M's control rather than I&M owning Unit 1 and operating Unit 2 for a different owner or lessee. One example is that the decision making process will be more efficient since it will not be encumbered by the potential for operational or design basis philosophical differences.
- b. The reference to a "capacity resource" is acknowledging that the energy value in the PJM day ahead market has declined in recent years due to historically low natural gas prices and the availability of renewable generation. Rockport Unit 2 has the operating

INDIANA MICHIGAN POWER COMPANY
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DATA REQUEST SET NO. OUCC DR 4
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characteristics and capabilities to be available when other resources are unavailable or insufficient to meet the demand for electricity. In fact, because there are no operational differences between Rockport Units 1 and 2, both are, and will continue to be, available to serve customers when needed.

- c. Market conditions determine how resources operate in PJM. Current market conditions indicate that coal resources may create more value as capacity resources rather than from providing energy in PJM. Recent PJM forecasts determined a forecasted Energy & Ancillary Services value of \$33.24/MW-Day for an AEP Zone coal unit. When compared to the five most recent Base Residual Auctions (BRA) RTO Zone Clearing price average of \$106.26/MW-Day this is a clear indication that capacity value could provide the majority of value created by a coal resource. Rockport 2's large Installed Capacity (1,300 MW ICAP) and favorable performance history, position it to maximize capacity value going forward. Ultimately, economics of energy provision will dictate how often the resource will operate as an energy resource in PJM. AEP currently expects that Rockport 2's primary role will be to operate for energy provision during high load periods or when unusual weather occurs. As a Capacity Resource, Rockport 2 will continue to be offered in compliance with PJM market rules. Energy economics will end up driving the frequency of operation. Natural gas prices, weather, and unit outages all play significant roles in determining how often units operate.
- d. See part (b) above.
- e. There are no plans to offer Rockport Unit 2 into the PJM day ahead energy market differently unless the Transaction does not close and the Owners direct a different strategy.
- f. I&M objects to subpart (f) of this Request to the extent it seeks an analysis, calculation, or compilation which has not already been performed and which I&M objects to performing. Without waiving that objection, please see the response to (e).
- g. I&M objects to subpart (g) of this Request to the extent it seeks an analysis, calculation, or compilation which has not already been performed and which I&M objects to performing. Without waiving this objection, I&M states that, since both of the Rockport units will be maintained in a manner such that they will be available to serve customers when needed, O&M savings, if any, would expected to be small.
- h. See part (b) above.

**AEP Generating Company
FERC Rate Schedule No. 1
Unit Power Service
to
Indiana Michigan Power Company**

**Tariff Submitter: AEP Generating Company
FERC Tariff Program Name: FPA Electric
Tariff Title: RS and SA
Tariff Record Proposed Effective Date: January 1, 2019
Tariff Record Title: Indiana Michigan Power Company Unit Power Agreement
Option Code: A**

UNIT POWER AGREEMENT

THIS AGREEMENT dated as of March 31, 1982 by and between INDIANA & MICHIGAN ELECTRIC COMPANY ("IMECO") and AEP GENERATING COMPANY ("AEGCO"),

WITNESSETH:

WHEREAS, IMECO, a subsidiary company of American Electric Power Company, Inc. ("AEP") under the Public Utility Holding Company Act of 1935 (the "1935 Act"), is presently constructing the Rockport Steam Electric Generating Plant at a site along the Ohio River near the Town of Rockport, Indiana, which will consist of two 1,300,000-kilowatt fossil-fired steam electric generating units and associated equipment and facilities (the "Rockport Plant"), the first unit ("Unit No. 1") of which is presently expected to be placed in commercial operation in 1984 and the second unit ("Unit No. 2") of which is presently expected to be placed in commercial operation in 1986; and

WHEREAS, AEGCO proposes to enter into an Owners' Agreement, dated as of March 31, 1982 (the "Owners' Agreement"), with IMECO and Kentucky Power Company ("KEPCO"), another subsidiary company of AEP under the 1935 Act, pursuant to which AEGCO and KEPCO plan to acquire undivided ownership interests, as tenants in common without right of partition, in the Rockport Plant which, upon completion of the construction of Unit No. 1, is thereafter to be operated as a part of the interconnected, integrated electric system comprising the American Electric Power System (the "AEP System"); and

WHEREAS, AEGCO proposes, upon completion of the construction of Unit No. 1 and the completion thereafter of the construction of Unit No. 2, to make available to IMECO, pursuant to this agreement, all of the available power (and the energy associated therewith) to which AEGCO shall from time to time be entitled at the Rockport Plant; and

WHEREAS, IMECO proposes to complete the construction of, the Rockport Plant pursuant to the provisions of the Owners' Agreement, and, upon completion of such construction, to operate the Rockport Plant pursuant to an operating agreement to be entered into by IMECO, AEGCO and KEPCO in accordance with the Owners' Agreement;

NOW, THEREFORE, in consideration of the terms and of the agreements hereinafter set forth, the parties hereto agree with each other as follows:

1.1 IMECO and AEGCO shall, subject to the provisions and upon compliance with the then applicable requirements of Section 2.1 and Section 2.2 of this agreement, use their respective best efforts to complete and to make effective the arrangements described and specified in Section 1.1 and in Section 1.2 of the Capital Funds Agreement, dated as of March 31, 1982, between AEP and AEGCO.

1.2 AEGCO shall, subject to the provisions and upon compliance with the then applicable requirements of Section 2.1 of this agreement, make available, or cause to be made available, to IMECO all of the power (and the energy associated therewith) which shall be available to AEGCO at the Rockport Plant, including test power produced during the course of the construction of generating units installed as a part of the Rockport Plant.

1.3 IMECO shall, subject to the provisions and upon compliance with the then applicable requirements of Section 2.2 of this agreement, be entitled to receive all power (and the energy associated therewith) which shall be available to AEGCO at the Rockport Plant, and IMECO agrees to pay to AEGCO in consideration for the right to receive all such power (and the energy associated therewith) available to AEGCO at the Rockport Plant, as a demand charge for the right to receive such power (and as an energy charge for any associated energy taken by IMECO), such amounts from time to time as, when added to amounts received by AEGCO from any other sources, will be at least sufficient to enable AEGCO to pay, when due, all of its operating and other expenses, including provision for the depreciation and/or amortization of the cost of AEGCO's facilities and also including for the purposes of this agreement (i) any amount which AEGCO may be required to pay on account of any interest and/or any commitment fee on all indebtedness for borrowed money issued or assumed by AEGCO (or by any corporation or other entity with which AEGCO shall have merged or consolidated or to which it shall have sold or otherwise disposed of all or substantially all of its assets) and outstanding at the time and (ii) such additional amounts as are necessary after any required provision for taxes on, or measured by, income to enable AEGCO to pay required dividends on any preferred stock which it may issue and such amount as will represent a return on the common equity of AEGCO equal to the return most recently found in the period of the 24 calendar months immediately preceding the time when payments are to commence under this Section 1.3 to be

fair, and authorized, by the Federal Energy Regulatory Commission ("FERC", such term also including any successor Federal regulatory agency) as an appropriate return on the common equity of IMECO in a wholesale electric proceeding before FERC under the Federal Power Act, or any legislation enacted in substitution for, or to replace, the Federal Power Act or, if within such period of 24 calendar months immediately preceding the date when payments are to begin under this Section 1.3 no such action by FERC shall have become final and not subject to further proceedings before FERC or a court, the return most recently found to be fair and authorized by the Public Service Commission of Indiana as an appropriate return on the common equity of IMECO in a retail electric proceeding before that Commission. IMECO shall commence the payment of such amounts to AEGCO on the earlier of the following dates: (i) June 30, 1985 and, (ii) the date on which power, including any test power, and any energy associated therewith, shall become available to AEGCO at the Rockport Plant.

2.1 The performance of the obligations of AEGCO hereunder shall be subject to the receipt and continued effectiveness of all authorizations of governmental regulatory authorities at the time necessary to permit AEGCO to perform its duties and obligations hereunder, including the receipt and continued effectiveness of all authorizations by governmental regulatory authorities at the time necessary to permit the completion by IMECO of the construction of the Rockport Plant, the operation of the Rockport Plant, and for AEGCO to make available to IMECO all of the power (and the energy associated therewith) available to AEGCO at the Rockport Plant. AEGCO shall use its best efforts to secure and maintain all such authorizations by governmental regulatory authorities.

2.2 The performance of the obligations of IMECO hereunder shall be subject to the receipt and continued effectiveness of all authorizations of governmental regulatory authorities necessary at the time to permit IMECO to perform its duties and obligations hereunder, including the receipt and continued effectiveness of all authorizations by governmental regulatory authorities necessary at the time to permit IMECO to pay to AEGCO in consideration for the right to receive all of the power (and the energy associated therewith) available to AEGCO at the Rockport Plant the charges provided for in Section 1.3 of this agreement. IMECO shall use its best efforts to secure and maintain all such authorizations by governmental regulatory authorities. IMECO shall, to the extent permitted by law, be obligated to perform its duties and obligations hereunder, subject to then applicable provisions of this Section 2.2, (a)

AFFIRMATION

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



Peter M. Boerger, Ph.D.
Senior Utility Analyst
Indiana Office of Utility Consumer Counselor

Cause No. 45546
Indiana Michigan Power Co.

Date: July 29, 2021

CERTIFICATE OF SERVICE

This is to certify that a copy of the Indiana Office of Utility Consumer Counselor's Testimony Filing has been served upon the following parties of record in the captioned proceeding by electronic service on July 29, 2021.

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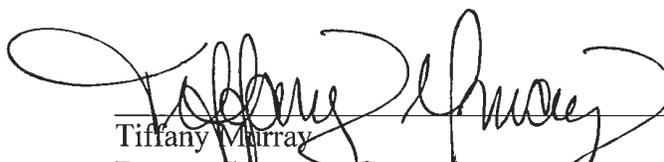
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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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

**RENEWED JOINT MOTION FOR LEAVE TO FILE SETTLEMENT
AGREEMENT AND REQUEST FOR SETTLEMENT HEARING**

Indiana Michigan Power Company (“I&M” or “Company”) and AEP Generating Company (“AEG”) (together, “Petitioners”), by counsel and on behalf of themselves and the following parties, Indiana Office of Utility Consumer Counselor (“OUCC”), I&M Industrial Group (“Industrial Group”), Citizens Action Coalition of Indiana, Inc., Sierra Club, the City of Marion, Indiana, Marion Municipal Utilities (the latter two collectively, “Marion”), the City of Fort Wayne, Indiana (“Fort Wayne”) (together with Marion, the “Municipal Intervenors”), and Wabash Valley Power Association, Inc. d/b/a Wabash Valley Power Alliance (“Wabash Valley”) (collectively the “Settling Parties” and individually “Settling Party”), in accordance with 170 IAC 1-1.1-12 and 170 IAC 1-1.1-17, and per the direction of the Presiding Officers, respectfully renew their motion for leave from the Commission to submit a Stipulation and Settlement Agreement (“Settlement Agreement”) and supporting settlement testimony. The Settling Parties further request the Commission schedule a settlement hearing to be conducted on or about October 18, 2021, and that the balance of the procedural dates be vacated. In support of this Renewed Joint Motion, the Settling Parties state as follows:

1. All parties to this proceeding participated in settlement communications and engaged in extensive settlement negotiations.

2. On September 9, 2021, all parties to this proceeding reached a settlement agreement in principle (subject to final client approval) that resolves all issues pending before the Commission in this proceeding.

3. The Settling Parties have worked to finalize the formal written Settlement Agreement and obtain final client approval. The final Settlement Agreement is attached hereto as Exhibit 1. The Settlement Agreement resolves all issues in this Cause. The Settling Parties plan to file supplemental testimony supporting the Settlement Agreement on or about Tuesday, September 21, 2021.

4. The Settling Parties' prefiled direct and rebuttal evidence, along with the parties' stipulated evidence, were admitted into the record at the September 10, 2021 evidentiary hearing. Per the guidance from the Presiding Officers at the September 10, 2021 evidentiary hearing, the Settling Parties respectfully request the Commission schedule a settlement hearing (anticipated to be uncontested) on or about October 18, 2021, for the presentation and receipt of the Settlement Agreement and the supplemental testimony in support of the Settlement Agreement.

5. The Settling Parties proposed the following post-hearing briefing schedule, which consists solely of the filing of an agreed proposed order:

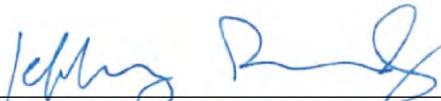
Proposed Order – The Settling Parties plan to file an agreed proposed order contemporaneous with the conclusion of the settlement hearing. If desired by the Presiding Officers, the Settling Parties can expedite the filing of the agreed proposed order in advance of the settlement hearing, with any necessary updates filed within one business day following the conclusion of the settlement hearing.

6. The Settling Parties ask the Commission to issue an order approving the Settlement Agreement on or before December 15, 2021 so that Petitioners may comply with the closing condition for the proposed Transaction as defined in the Petition.

7. Undersigned counsel is authorized to represent that it is authorized to sign and file this Renewed Joint Motion on behalf of all the identified parties.

WHEREFORE, the Settling Parties respectfully submit and move this Renewed Joint Motion be promptly granted; that the procedural schedule be revised as proposed herein; and that the Commission grant to the Settling Parties all other relief as may be reasonable and appropriate in the premises.

Respectfully submitted on behalf of the above parties,



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Attorneys for:
INDIANA MICHIGAN POWER COMPANY
and AEP GENERATING COMPANY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served this 13th day of September, 2021, via email transmission to:

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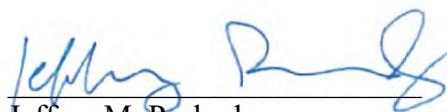
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DMS 20925282v1

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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

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 public 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.

ACCEPTED and AGREED as of the 13th day of September, 2021.

INDIANA MICHIGAN POWER COMPANY

Steven F. Baker

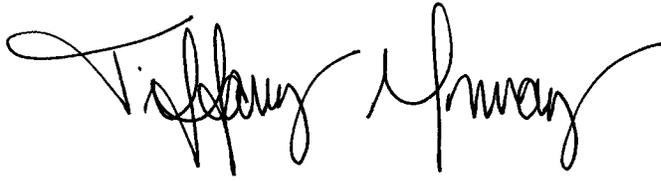
Steve Baker
I&M President and Chief Operating Officer
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Fort Wayne, Indiana 46802

AEP GENERATING COMPANY

Paul Chodak III

Paul Chodak III
AEG Vice President
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Columbus, Ohio 43215

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A handwritten signature in black ink, appearing to read "Tiffany Murray". The signature is fluid and cursive, with the first name "Tiffany" written in a larger, more prominent script than the last name "Murray".

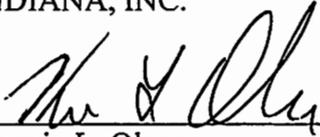
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Tiffany Murray, Deputy Consumer Counselor
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I&M INDUSTRIAL GROUP



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INDIANA, INC.

A handwritten signature in black ink, appearing to read "Kerwin L. Olson", written over a horizontal line.

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Citizens Action Coalition
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CITY OF MARION, INDIANA, MARION MUNICIPAL UTILITIES,
AND THE CITY OF FORT WAYNE, INDIANA

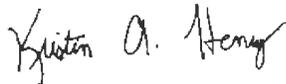


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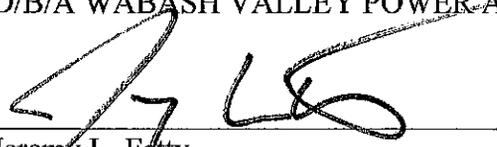


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WABASH VALLEY POWER ASSOCIATION, INC.
D/B/A WABASH VALLEY POWER ALLIANCE

A handwritten signature in black ink, appearing to read 'J L Fetty', is written over a horizontal line.

Jeremy L. Fetty
Liane K. Steffes
PARR RICHEY
251 N. Illinois Street, Suite 1800
Indianapolis, IN 46204

FILED
September 21, 2021
INDIANA UTILITY
REGULATORY 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 AND FOR THE CREATION OF A SUBDOCKET)
TO ADDRESS ASSOCIATED ACCOUNTING AND)
RATEMAKING MATTERS, OR IN THE)
ALTERNATIVE ISSUANCE OF A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY.)

CAUSE NO. 45546

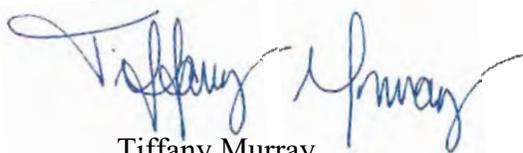
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

SETTLEMENT TESTIMONY OF OUCC WITNESS

PETER M. BOERGER, PH.D - PUBLIC'S EXHIBIT NO. 1S

SEPTEMBER 21, 2021

Respectfully submitted,



Tiffany Murray
Attorney No. 28916-49
Deputy Consumer Counselor

**SETTLEMENT TESTIMONY OF OUCC WITNESS
PETER M. BOERGER, PH.D.
CAUSE NO. 45546
INDIANA MICHIGAN POWER COMPANY AND
AEP GENERATING COMPANY**

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

2 A: My name is Peter M. Boerger, and my business address is 115 West Washington
3 St., Suite 1500 South, Indianapolis, Indiana 46204.

4 **Q: By whom are you employed and in what capacity?**

5 A: I am employed by the Indiana Office of Utility Consumer Counselor (“OUCC”) as
6 a senior economist, with the official job title of Senior Utility Analyst, in the
7 Electric Division.

8 **Q: Are you the same Peter M. Boerger who previously provided testimony in this**
9 **Cause?**

10 A: Yes.

11 **Q: What is the purpose of your testimony?**

12 A: The purpose of my testimony is to describe and present support for the Settlement
13 Agreement presented in this Cause between the OUCC, Indiana Michigan Power
14 Company (“I&M”) Industrial Group, Citizens Action Coalition of Indiana, Inc.
15 (“CAC”), the City of Marion, Indiana, Marion Municipal Utilities (collectively,
16 “Marion”), and the City of Fort Wayne, Indiana (“Fort Wayne”) (together, the
17 “Municipal Intervenors”), Sierra Club, and Wabash Valley Power Association, Inc.
18 d/b/a Wabash Valley Power Alliance (“Wabash Valley”) (collectively referred to
19 as “Consumer Parties”) and I&M and AEP Generating Company (“AEG”)
20 (collectively referred to as “Petitioners”) (all parties referred to as “Settling
21 Parties”) as being in the public interest.

1 **Q: Please provide a high-level overview of Petitioners' request in this case and the**
2 **Consumer Parties' concerns raised in testimony.**

3 A: Petitioners requested¹ authority to consummate an agreement with the current
4 owners of Rockport Unit 2 to purchase the generating facility as of December 8,
5 2022, either through a declination of jurisdiction under Ind. Code § 8-1-2.5-5 or
6 through a determination that the portion of Ind. Code § 8-1-8.5-2 requiring
7 obtaining a Certificate of Public Convenience and Necessity ("CPCN") does not
8 apply.² The Petition indicates, in order for I&M to receive cost recovery related to
9 its purchase of Rockport Unit 2, I&M would seek a CPCN and authority for cost
10 recovery in a separate proceeding. Petitioners' testimony made it clear that unless
11 and until a CPCN were obtained, Rockport Unit 2 would in effect be a merchant
12 power facility. Petitioners presented testimony explaining the benefits of the
13 purchase, which I characterize as centering on 1) avoiding operational
14 inefficiencies that could arise from having separate ownership and control of
15 Rockport Units 1 and 2 and 2) eliminating potential for litigation with the current
16 owners of Rockport Unit 2.

17 In response, the Consumer Parties' testimony argued in part that it is
18 impossible for a public utility serving retail customers in Indiana to own and operate
19 a merchant power facility without imposing risks and potential costs on retail
20 ratepayers. The Consumer Parties also presented testimony that I&M's own

¹ When I refer to the Petition in this Cause, I am referring the revised Petition filed with the Commission on June 22, 2021.

² Revised Joint Petition at Section 22.

1 analysis shows it would need only about 300 to 400 megawatts (“MW”) of
2 Rockport Unit 2’s 1300 MW capacity, leaving customers potentially responsible
3 for 900 to 1,000 MW of unneeded capacity under Petitioners’ proposal. Using
4 I&M’s stated 300 to 400 MW capacity need, the Consumer Parties showed the per
5 unit capacity cost of purchasing Rockport Unit 2 is costly enough to conclude
6 Petitioners’ proposal would not be in the public interest. Further, the Consumer
7 Parties presented testimony showing the Unit Power Agreement (“UPA”), which
8 governs the relationship between I&M and AEG, imposes costs from AEG’s
9 ownership on I&M in spite of the fact that AEG serves no retail customers in
10 Indiana. For these reasons, among others, the Consumer Parties opposed
11 Petitioners’ request.

12 **Q: How does the Settlement Agreement resolve these concerns?**

13 A: The Settlement Agreement recognizes and memorializes the unique nature of the
14 situation arising from a complex sale/leaseback arrangement entered into more than
15 30 years ago (Section 2). By doing so, the Settlement Agreement makes clear the
16 Consumer Parties are not, by entering into this Settlement Agreement, in any way
17 rescinding their principled opposition to the potential risks imposed by rate-
18 regulated public utilities that serve retail customers owning merchant generation
19 facilities. By delineating the unique circumstances of this case, the Consumer
20 Parties were able to enter into a practical agreement that avoids the risks arising

1 from separate ownership of Rockport Units 1 and 2 and obtains certain benefits and
2 protections for consumers, while also allowing Petitioners' goals to be realized.

3 **Q: Which provisions of the Settlement Agreement provide for the Petitioners'**
4 **proposed transaction to proceed?**

5 A: In Sections 1(a) and 2(b) of the Settlement Agreement, the Consumer Parties
6 commit to not oppose Petitioners' request for a declination of jurisdiction under IC
7 § 8-1-2.5-5 for purposes of allowing the proposed transaction to proceed. A
8 timeframe is specified for the declination of jurisdiction, covering the period prior
9 to retirement of the unit, which Petitioners have committed to be no later than
10 December 31, 2028. Section 1(c) provides the OUCC and Intervenors will
11 withdraw the Motion to Dismiss that was previously filed in the case. In Section 9
12 of the Settlement Agreement, the Consumer Parties agree to support the issuance
13 of a final order by December 15, 2021, as this date is essential to completion of the
14 transaction under the proposed terms.

15 **Q: Which Settlement Agreement provisions provide consumer benefits and**
16 **protections?**

17 A: Consumer benefits and protections are detailed primarily in Settlement Agreement
18 Sections 2 through 8. In Section 2, I&M commits to utilize capacity from its share
19 of Rockport Unit 2 to fulfill its Fixed Resource Requirement ("FRR") capacity
20 obligation to PJM Interconnection, LLC ("PJM") from December 8, 2022 through
21 May 31, 2024. This commitment provides I&M certainty in fulfilling its FRR
22 capacity obligations and time to plan for fulfilling its capacity obligations after May
23 31, 2024. I&M is allowed to recover costs for this capacity at a rate that equals
24 PJM's Base Residual Auction ("BRA") Reliability Pricing Model ("RPM")

1 clearing price for the respective PJM Planning Years (i.e., 2022/2023 and
2 2023/2024), with costs prorated for the 2022/2023 year based upon the partial year
3 from December 8, 2022 through May 31, 2023. Using an established market price
4 for this capacity avoids affiliate concerns that might arise through transacting with
5 I&M's below-the-line ownership and control of Rockport Unit 2. Significantly,
6 I&M is prohibited from obligating its customers to more capacity than required for
7 fulfilling its obligations to PJM. Section 2(a)(vi) provides that costs pertaining to
8 the share of Rockport Unit 2 not needed to meet I&M's load obligation during these
9 respective PJM Planning Years shall not be recovered from Indiana retail or
10 wholesale ratepayers. Finally, Section 2(b) makes clear that, beginning with the
11 2024/2025 PJM Planning Year and through the remainder of its operating life,
12 100% of Rockport Unit 2 will be treated as a merchant generating unit and the Unit
13 will participate in the PJM markets as an RPM-only resource. It further makes clear
14 Rockport Unit 2 will be excluded from I&M's Integrated Resource Plan ("IRP")
15 preferred plan as of June 1, 2024, consistent with the end of the 2023/2024 PJM
16 Planning Year.

17 Section 3 of the Settlement Agreement contains Petitioners' agreement to
18 permanently retire Rockport Unit 2 by December 31, 2028, as proposed in
19 Petitioners' case-in-chief. Section 3 also references Petitioners' agreement to make
20 all required notifications under the Effluent Limitations Guidelines ("ELG"),
21 including making filings with the U.S. Environmental Protection Agency and/or
22 the Indiana Department of Environmental Management and PJM as required.

1 Section 3 makes plain that I&M customers will not be held responsible for any costs
2 related to ELG investments or other new investments at Rockport Unit 2 incurred
3 after termination of the Rockport Unit 2 lease.

4 Section 4 of the Settlement Agreement pertains to ratemaking items. The
5 introduction to this Section makes clear, effective December 8, 2022, except as
6 provided in this Settlement Agreement, no Rockport Unit 2 costs shall be
7 recoverable through rates except for the recovery of costs arising during the term
8 of the current Rockport Unit 2 lease. This includes rider factors that address a period
9 during the term of the Rockport Unit 2 lease that are approved by the Commission
10 for implementation or reconciliation after the lease terminates. Subsection 4(a)
11 explains this provision in detail and makes clear that any costs collected in rates
12 after December 7, 2022 not arising during the term of the lease shall be credited to
13 customers. This subsection also identifies these ratemaking requirements apply to
14 cost recovery from both retail customers and from Wabash Valley Power
15 Association. Subsection 4(b) specifies costs pertaining to approvals obtained in
16 previous, specified causes remain recoverable and recovery will not be challenged
17 by the Consumer Parties. However, the Consumer Parties reserve all rights to
18 propose alternative rate recovery mechanisms and regulatory treatment for these
19 costs. Subsection 4(c) pertains to investments that are the subject of potential
20 approval in I&M's pending base rate case (Cause No. 45576) and specifies these
21 costs are also recoverable, but only to the extent approved by the Commission in
22 Cause No. 45576. The Settling Parties preserve all rights to take any position in

1 Cause No. 45576 with respect to the proposed investments, including cost recovery,
2 regulatory treatment, and appropriate recovery mechanisms. Subsection 4(d)
3 specifies this Settlement Agreement does not preclude I&M from seeking recovery
4 of Rockport Unit 2 cost of removal, including Asset Retirement Obligations, in a
5 future proceeding.

6 Section 5 of the Settlement Agreement makes clear I&M's commitment to
7 not seek a CPCN for the Rockport Unit 2 facility.

8 Sections 6 through 8 of the Settlement Agreement pertain largely to obtaining
9 information for, and using information within, I&M IRPs going forward. These
10 provisions were the subject of detailed negotiations. To the extent these provisions
11 obtain additional information for use by I&M in its IRPs, the OUCC's position is
12 generally that more information is better. To the extent these provisions seek
13 specific uses of information within I&M's IRPs, it does not appear these provisions
14 would restrict additional analysis or preclude alternative uses of information by
15 I&M on its own initiative or through requests by other parties. For these reasons,
16 the OUCC does not object to their inclusion, and as a general matter, expects they
17 will be helpful in the IRP process.

18 **Q: Are there other provisions to the Settlement Agreement?**

19 **A:** Yes. There are other provisions I would consider to be standard, but important,
20 provisions that might be found in most or all settlement agreements. One specific
21 provision of note is found in Section 10 of the Agreement, which provides that no
22 party is waiving rights of future or pending issues, except as explicitly noted in this

1 Settlement Agreement, and that this Settlement Agreement does not create a
2 precedent. All Settling Parties reserve their rights to take whatever position they
3 deem appropriate in any pending or future proceeding regarding the applicability
4 of IC ch. 8-1-2.5 to CPCNs or other proceedings.

5 **Q: What do you conclude about the Settlement Agreement presented for**
6 **approval?**

7 A: Having been involved in the Settlement Agreement negotiations, I can attest the
8 Settlement Agreement presented here is the result of vigorous negotiations. While
9 no party got everything they wanted in these negotiations, it is my judgment this
10 Settlement Agreement obtains significant benefits for all parties and, most
11 importantly from the perspective of the OUCC, obtains valuable benefits and
12 protections for I&M's consumers while allowing Petitioners to run their businesses.
13 The Settlement Agreement further makes clear the Consumer Parties' agreement is
14 in consideration of the unique nature of the situation faced by Petitioners and cannot
15 be used as a model or a precedent for the obtaining of merchant power facilities by
16 other public utilities in Indiana. Based upon all these considerations, I consider the
17 Settlement Agreement presented for approval as being in the public interest.

18 **Q: Does the OUCC support approval of the Settlement Agreement?**

19 A: Yes.

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

21 A: Yes, it does.

CERTIFICATE OF SERVICE

This is to certify that a copy of the Indiana Office of Utility Consumer Counselor's Testimony Filing has been served upon the following parties of record in the captioned proceeding by electronic service on September 21, 2021.

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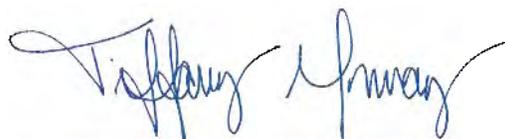
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AFFIRMATION

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



Peter M. Boerger, Ph.D
Senior Utility Analyst
Indiana Office of Utility Consumer Counselor
Cause No 45576
Indiana Michigan Power Co.

October 12, 2021

CERTIFICATE OF SERVICE

This is to certify that a copy of the Indiana Office of Utility Consumer Counselor's Testimony Filing has been served upon the following parties of record in the captioned proceeding by electronic service on October 12, 2021.

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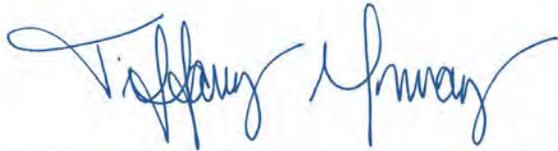
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