

IURC
JOINT

EXHIBIT No. _____

10-22-21

DATE

REPORTER

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)

OFFICIAL
EXHIBITS

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 Intervenor"), 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Agreement ("Settlement Agreement"), in its entirety, the entire Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Settling Parties.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

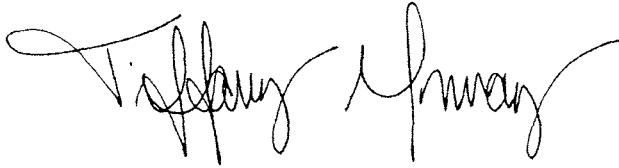
Steve Baker
I&M President and Chief Operating Officer
Indiana Michigan Power Center
Fort Wayne, Indiana 46802

AEP GENERATING COMPANY

Paul Chodak III

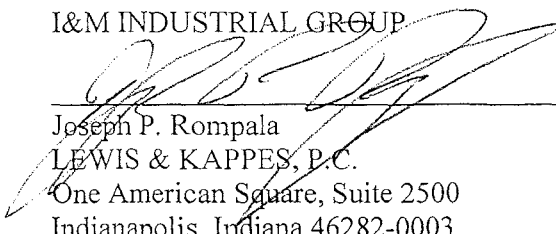
Paul Chodak III
AEG Vice President
1 Riverside Plaza
Columbus, Ohio 43215

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

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".

Randall Helmen, Chief Deputy Consumer Counselor
Tiffany Murray, Deputy Consumer Counselor
Office of Utility Consumer Counselor
115 West Washington Street, #1500S
Indianapolis, Indiana 46204

I&M INDUSTRIAL GROUP



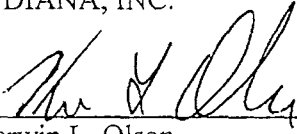
Joseph P. Rompala

LEWIS & KAPPES, P.C.

One American Square, Suite 2500

Indianapolis, Indiana 46282-0003

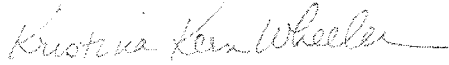
CITIZENS ACTION COALITION OF
INDIANA, INC.

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Kerwin L. Olson

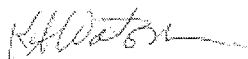
Citizens Action Coalition
1915 West 18th Street, Suite C
Indianapolis, Indiana 46202

CITY OF MARION, INDIANA, MARION MUNICIPAL UTILITIES,
AND THE CITY OF FORT WAYNE, INDIANA

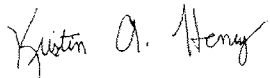


J. Christopher Janak
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SIERRA CLUB

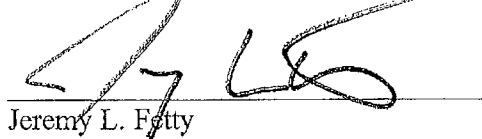


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Kristin A. Henry
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WABASH VALLEY POWER ASSOCIATION, INC.
D/B/A WABASH VALLEY POWER ALLIANCE

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

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