

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF )  
INDIANA MICHIGAN POWER COMPANY )  
("I&M") FOR APPROVAL OF AN AGREEMENT )  
PROVIDING FOR THE PURCHASE BY I&M OF )  
ELECTRIC UTILITY PROPERTY OWNED BY ) CAUSE NO. 43980  
THE CITY OF FORT WAYNE, INDIANA ("CITY") )  
AND LEASED TO I&M IN ACCORDANCE WITH )  
THE COMMISSION'S ORDER IN CAUSE NO. ) APPROVED:  
33638 AND FOR ASSOCIATED ACCOUNTING ) AUG 10 2011  
AND RATEMAKING RELIEF AND FOR ALL )  
OTHER APPROPRIATE APPROVAL AND )  
AUTHORITY. )

**BY THE COMMISSION:**

**Carolene Mays, Commissioner**

**Jeffery A. Earl, Administrative Law Judge**

On December 30, 2010, Indiana Michigan Power Company ("I&M" or "Petitioner") filed with the Indiana Utility Regulatory Commission ("Commission") its Verified Petition, seeking the following: approval of an agreement providing for the purchase by I&M of electric utility property owned by the City of Fort Wayne, Indiana ("City") and currently leased to I&M in accordance with the Commission's Order in Cause No. 33638; for associated accounting and ratemaking relief; and for all other appropriate Commission approval and authority necessary to implement the terms of the Agreement between I&M and the City executed October 28, 2010, effective as of March 1, 2010 (the "Ft. Wayne Agreement").<sup>1</sup> On January 7, 2011, I&M prefiled with the Commission the prepared testimony and exhibits constituting its case-in-chief. On January 11, 2011, the City filed its Petition to Intervene, which was granted by Docket Entry dated January 24, 2011. On February 9, 2011, the City prefiled its prepared direct testimony and exhibits in support of the Commission's approval of the Ft. Wayne Agreement. On February 23, 2011, the Commission issued a Prehearing Conference Order, which established a procedural schedule for this Cause.

On April 5, 2011, the Office of Utility Consumer Counselor ("OUCC") prefiled its testimony and exhibits. On May 26, 2011, the Parties filed an Agreed Joint Motion for Modification of Procedural Schedule and Motion for Leave to Submit Settlement Agreement, which the Commission granted in its June 6, 2011 Docket Entry. Also on June 6, 2011, I&M and the OUCC filed a Stipulation and Settlement Agreement (the "OUCC Settlement")<sup>2</sup> along with the supporting testimony of I&M witness Marc Lewis.

<sup>1</sup> A copy of the Ft. Wayne Agreement is attached to this Order as Attachment A.

<sup>2</sup> A copy of the OUCC Settlement is attached to this Order as Attachment B.

Pursuant to notice given and published as required by law, proof of which was incorporated into the record of this Cause by reference and placed in the official files of the Commission, the Commission held an Evidentiary Hearing on June 14, 2011, at 9:30 a.m., in Hearing Room 222, 101 West Washington Street, Indianapolis, Indiana. At the hearing, I&M, the City, and the OUCC appeared and participated. The parties' evidence was admitted into evidence without objection. No members of the general public appeared.

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

1. **Notice and Jurisdiction.** Proper notice of the public hearing in this Cause was published as provided by law. I&M is a public utility as defined in Indiana Code § 8-1-2-1 and an "electricity supplier" under Indiana Code § 8-1-2.3-2 and is subject to the jurisdiction of this Commission in the manner and to the extent provided by the Public Service Commission Act, as amended. The Commission has jurisdiction over I&M and the subject matter of this proceeding in the manner and to the extent provided by the law of the State of Indiana.

2. **I&M's Organization and Business.** I&M, a wholly owned subsidiary of the American Electric Power Company, Inc., is a corporation organized and existing under the laws of the State of Indiana, with its principal offices at One Summit Square, Fort Wayne, Indiana. I&M is engaged in rendering electric service in the State of Indiana and owns, operates, manages, and controls plant and equipment within the State of Indiana for the generation, transmission, delivery, and furnishing of such service to the public. I&M provides electric service to approximately 457,000 customers within the State of Indiana.

3. **Background.** The circumstances presented in this proceeding stem from a thirty-five year Lease Agreement dated September 13, 1974, between the City and I&M (the "Lease"). The Commission approved the Lease in Cause No. 33638. *Ind. & Mich. Elect. Co.*, Cause No. 33638 (Pub. Serv. Comm'n of Ind. Mar. 29, 1974). The Lease was approved by the Commission prior to and existed at the time of the enactment in 1980 of the Electricity Suppliers' Service Area Assignments Act, which is codified in Indiana Code ch. 8-1-2.3 ("Service Area Act").

A. **Cause No. 33638.** In Cause No. 33638, I&M petitioned the Commission for approval of a Lease by the City's municipal electric utility to I&M of an electric generation, transmission, and distribution system located in the City and rural areas adjacent thereto. As explained in the Commission's Order in Cause No. 33638, I&M and the City had negotiated and determined the annual rental payment, the duration, and other terms and conditions of the Lease for an original term of 35 years. *Ind. & Mich. Elect. Co.*, Cause No. 33638, slip op. at 3-4. The Commission found that:

By means of the Lease Agreement, the Leased Property of the City can be consolidated with electric utility properties of [I&M], and thus provide for single integrated electric utility operation, maintenance and enlargement in and about Fort Wayne. Such a consolidation will provide many benefits and betterments to [I&M] and the customers of both [I&M] and City ....

*Id.*, slip op. at 4. Based upon its finding that the Lease was in the public interest, and in the best interests of I&M, its customers and investors, and the City and its customers, the Commission authorized and approved the Lease. *Id.*, slip op. at 6-7.

**B. The Service Area Act.** In 1980, the General Assembly enacted the Service Area Act. The Service Area Act provided for the assignment of a designated geographic service area to electricity suppliers, including the sole right to furnish retail electric service in the assigned service area as long as the electricity supplier continued to provide adequate service. The Service Area Act provides that “[u]nless otherwise agreed upon between adjacent electricity suppliers, all areas inside existing municipal limits are hereby assigned to the electricity supplier serving a plurality of the electric meters within the municipality on January 1, 1979.” Ind. Code § 8-1-2.3-3(a). Where two or more electricity suppliers are serving within the same existing municipal limits, the Service Area Act allows the electricity supplier serving a plurality of electric meters within the municipality to purchase the electric utility property of the other electricity supplier at the property’s then reproduction cost new less depreciation (“RCNLD”) value plus severance damages. Ind. Code § 8-1-2.3-3(b)(1). Although severance damages are not defined in Section 3 of the Service Area Act, Section 6 defines severance damages as an amount equal to 2½ times the previous year’s gross sales from the service area plus one tenth of one cent for each kilowatt hour of electricity sold to any permanent new customers in the service area for a period of five years. Ind. Code § 8-1-2.3-6

In *Ind. & Mich. Elect. Co. v. Jay Cnty. REMC*, the Court of Appeals agreed with the Commission’s determination that the General Assembly intended the definition of severance damages in Ind. Code § 8-1-2.3-6 to apply to Ind. Code § 8-1-2.3-3(b)(1). 510 N.E.2d 225, 227 (Ind. Ct. App. 1987). In 1985, the Commission approved an Order designating the boundaries of I&M’s assigned service area in and around the City. *Assignment of Elect. Suppliers’ Serv. Areas*, Cause No. 36299-S209(X), 1985 Ind. PUC LEXIS 65 (Pub. Serv. Comm’n of Ind. Nov. 27, 1985). Although I&M’s assigned service area included the area where the Leased Property is located, the Order did not address the applicability of the Service Area Act to the Lease.

**C. The Ft. Wayne Agreement.** The original 35-year term of the Lease expired on February 28, 2010. The Lease provided I&M the option to extend the Lease upon the same terms and conditions as long as the Commission approved the amount of rent agreed to by the City and I&M for the 15-year extended term. The Lease also provided that upon termination of the Lease, the City would have the option to purchase the Betterments made by I&M during the term of the Lease at the original cost depreciated of the property. As discussed below, I&M and the City engaged in extensive negotiations, litigation, and mediation to address disputes relating to the Parties’ rights and obligations under the Lease.

Ultimately, I&M and the City entered into the Ft. Wayne Agreement. The Ft. Wayne Agreement settles the disputes relating to the Parties’ rights and obligations under the Lease and under the Service Area Act, sets forth the terms and conditions of the negotiated resolution, provides for the purchase from the City of personal property and real estate being used by I&M to provide electric service to customers in certain areas of the City, and provides that I&M will be the exclusive electricity supplier in the disputed service area. The Ft. Wayne Agreement is subject to Commission approval. The Ft. Wayne Agreement is also subject to the approval of the

Fort Wayne Common Council, which the Council granted by ordinance on November 23, 2010.

4. **Relief Sought.** In its Petition, I&M and the City request Commission approval of the Ft. Wayne Agreement and its associated ratemaking and regulatory accounting treatment proposals. In addition, I&M and the OUCC request approval of the OUCC Settlement, which modifies some of the ratemaking and regulatory accounting treatment proposals of the Ft. Wayne Agreement.

5. **I&M's Case-In-Chief.** I&M presented the testimony and exhibits of: Marc E. Lewis, I&M's Vice President of External Relations, David C. Moody, a Vice President with Shaw Consultants International, Inc., and Scott M. Krawec, I&M's Director of Regulatory Services. A copy of the Ft. Wayne Agreement was included as Exhibit A to the Petition filed in this Cause, and was admitted into the record as Petitioner's Exhibit MEL-1.

Mr. Lewis explained that prior to the Lease, the City operated an electric utility known as City Light & Power ("City Light"). City Light provided electric service to approximately 33,000 customers within the city limits of Fort Wayne. I&M also provided electric service to about 35,000 customers within and around the city limits of Fort Wayne. The rivalry between I&M and City Light was intense and at times contentious, which created friction within the community. I&M and City Light operated separate facilities that were intertwined and in many instances duplicated and overlapped each other. For example, Petitioner's Exhibit MEL-4 shows before and after pictures of common circumstances such as poles and wires that ran alongside each other in the streets and alleys of the city. Customers could and did switch back and forth between the two utilities, and it was common for neighbors to be served by different utilities. The Lease was agreed to as a means of resolving the inefficient situation facing I&M, City Light, and their respective customers. Mr. Lewis explained that during the term of the Lease, I&M provided reasonable and adequate service to all of its customers, including all customers located within the Lease Footprint. To do so, I&M replaced its older 4 kV facilities and retired much of the City's Leased Property to create a single, integrated 12 kV network. The new I&M system required an investment by I&M of over \$86 million and took many years to accomplish.

Mr. Lewis also discussed the controversy that surrounded the Lease. He explained that after the Lease was negotiated, but before the Lease could take effect, a lawsuit was filed seeking to enjoin the Lease. That suit was dismissed, and the Lease took effect five months after it was signed. In 1978, a second lawsuit was filed seeking, among other things, the return of control of City Light to the City. The second lawsuit was ultimately resolved six years later, and the Lease remained in effect. Then, in 1979, a referendum was introduced seeking to have the City condemn I&M's property in and around Fort Wayne so that the City could resume providing electric service to customers. The referendum was ultimately unsuccessful. About this same time, the Service Area Act was introduced in the General Assembly.

Mr. Lewis explained that during the term of the Lease, issues arose between the City and I&M regarding obligations for providing redundant generation to the City's water filtration plant and disputes ensued about whether the Lease obligated I&M to make certain improvements to its facilities serving the City's water system. The differences of opinion between the Parties were strongly held and persisted over many years. However, Mr. Lewis stated that while relations

were often times strained over the Lease, both I&M and the City cooperated in their day-to-day interactions in a professional manner with the best interests of their constituents in mind.

Mr. Lewis testified that I&M and the City engaged in extensive negotiations for four years to attempt to resolve the numerous legal and technical issues regarding the Parties' rights under the Lease, including the effect of the Service Area Act on certain rights under the Lease. I&M and the City had substantially different interpretations regarding the termination of the Lease, particularly in light of the passage of the Service Area Act. The Parties sought a resolution of their dispute that essentially would clarify the ambiguity of the termination provisions of the Lease and service area disputes in a manner that was in the public interest.

Mr. Lewis testified that on May 29, 2009, the City provided written notice to I&M of its intent to exercise its right under the Lease to purchase the Betterments from I&M for the purpose of providing electric service to customers in the City of Fort Wayne. Then, in June 2009, the City stated its intent to take over serving approximately 33,000 customers it believed to be former City Light customers. In August 2009, the City indicated it intended to serve all customers within the Lease Footprint regardless of whether they were ever served by City Light. The City also informed I&M that it believed I&M was in default of the Lease and stated that it would take possession of the Leased Property and Betterments if I&M did not cure the alleged default by October 19, 2009. On August 19, 2009, I&M provided written notice to the City of its intent to exercise its option to extend the term of the Lease.

Mr. Lewis stated that I&M responded by filing a complaint for declaratory and injunctive relief in Allen County Superior Court (Cause No. 02D01-0910-PL-400) on October 15, 2009, to protect the service being provided to I&M's customers. In response, the City filed counterclaims. Copies of the Complaint, Answer, and Counterclaims were included as exhibits to Mr. Lewis's direct testimony. Mr. Lewis explained that during this time, I&M and the City agreed to engage in mediation even though alternative dispute resolution appeared to have a low probability of success. The Parties agreed to retain John Whiteleather as their mediator and also agreed to a "stand still" arrangement that would ensure that service to customers in Fort Wayne would not be disrupted by the ongoing dispute. Mediation was conducted between September 23, 2009, and February 3, 2010, and ultimately led to the Ft. Wayne Agreement which is the subject of this Cause. Mr. Lewis stated that the lawsuit mentioned above has been stayed by the Allen County Superior Court pending the Commission's approval of the Ft. Wayne Agreement and will be dismissed if the Ft. Wayne Agreement is approved.

Mr. Lewis explained the Ft. Wayne Agreement provides that I&M will purchase the remaining electric utility property owned by the City and compensate the City for the claims alleged under the Service Area Act and under the default and Betterment provisions of the Lease. Section 2 of the Ft. Wayne Agreement sets forth the payments that I&M will make to the City in consideration for the City's transfer of the Property to I&M and for the City's promises and obligations contained in the Ft. Wayne Agreement. The Ft. Wayne Agreement provides that I&M will provide a stream of payments totaling \$39.2 million in principal and interest to the City, starting at the termination date of the Lease (February 28, 2010). Specifically, the payment stream consists of a one-time, up-front payment of \$5 million within thirty (30) days of the effective date of a final order in this Cause. In addition, the payment stream includes monthly

installment payments over fifteen years that start at \$1.74 million annually, which is the same annual amount of the payment that I&M was making to the City at the end of the Lease. The annual payments increase gradually over time to \$2.6 million for the period beginning March 1, 2021, and ending on February 1, 2025. These annual payments represent the full payment for the fair market value of the Property and the settlement of all claims the City may have against I&M under the Lease and the Service Area Act.

Mr. Lewis explained that Section 4 of the Ft. Wayne Agreement describes the value of the payments and provides that the net present value of the fifteen years of payments equals \$19 million, based on a weighted cost of capital of 8%. The \$19 million consists of \$13.1 million for the fair market value of the City's electric utility property, which was calculated by I&M witness Mr. Moody using the RCNLD methodology. Mr. Lewis noted that the Service Area Act provides for the payment of RCNLD by an electricity supplier to another supplier transferring its electric utility property in order to establish one supplier within a municipality. In addition, \$5.9 million extinguishes the City's claims to purchase the Betterments made by I&M and the City's claim for damages related to the installation of customer-owned Generation. The \$5 million upfront payment settles the City's claims for compensation under the Service Area Act and resolves all issues regarding I&M's status as the exclusive electricity supplier in Fort Wayne. Mr. Lewis noted that the Service Area Act provides for the payment of severance damages in the amount of two and one-half times gross revenues produced by the customers whose service is transferred from an electricity supplier to another supplier in order to establish one supplier within a municipality. The Parties disputed the application of this statutory provision under the facts and circumstances of the Lease. Mr. Lewis explained that as set forth in Section 8 of the Ft. Wayne Agreement, if the Ft. Wayne Agreement is approved by the Commission, I&M will continue to be the sole assigned Electricity Supplier as that term is defined in Indiana Code § 8-1-2.3-2 within the Lease Footprint, as well as the other areas in and around Fort Wayne currently served by I&M.

Mr. Lewis testified that the Ft. Wayne Agreement, a product of serious bargaining among capable and knowledgeable parties, resulted from a rigorous, difficult negotiation process involving numerous complex disputes between I&M and the City. Both experts and legal counsel aided in the development of the conceptual framework and the details of the Ft. Wayne Agreement. Many hours were devoted by the Parties to the negotiation, litigation, and mediation, which ultimately resulted in the Ft. Wayne Agreement. Given the issues raised by I&M and the City, Mr. Lewis believes it is certain that continuing litigation would be costly, time consuming and risky for all. The Ft. Wayne Agreement resolves this litigation and avoids the cost, in terms of actual dollars and inefficiency as well as regulatory uncertainty, of ongoing litigation for both Parties.

David C. Moody of Shaw Consultants International, Inc. presented an RCNLD appraisal of the Property which is the subject of the Ft. Wayne Agreement. Mr. Moody chose the RCNLD approach based upon three things. First, it is his experience and observation that in most cases in which there is a transaction between a municipal utility and an investor-owned utility involving a portion of an electric distribution system, the discussions and the transaction price revolve around the RCNLD value of the property. Second, the Commission is required to consider RCNLD in its determination of the fair value rate base. Third, the Service Area Act requires the

compensation for assets and customers transferred between contiguous electricity suppliers to be based upon the RCNLD value. In his testimony, Mr. Moody explained in detail how his appraisal was developed. This work included, but was not limited to, a determination of physical, functional, and external depreciation involving field inspection, analysis of I&M's records and statistics, and various calculations. Mr. Moody calculated a total value for the Property based upon RCNLD of \$13,122,022.

Mr. Moody also discussed the potential adverse effect on I&M and its customers that could result from the potential loss of retail customers should the City take over as the service provider upon termination of the Lease. According to I&M's records, there were 20,083 customer accounts in November, 2010, that were served by the City of Fort Wayne prior to the Lease. These customers used 244,595,313 kWh of electricity in the 12 months ending in November, 2010, and produced revenues of \$20,949,887, or \$1,043.17 per customer. Generally speaking, the loss of over \$20,000,000 per year in revenue would mean a reduced contribution to I&M's fixed costs of operation and maintenance of generation, transmission, and distribution plant. There would also be a decrease in the contribution to overhead costs, payment of the carrying cost of I&M's debt, and depreciation. Conversely, there would be a decrease in certain variable costs such as fuel and there would no longer be a need to maintain the portion of the local distribution system located in Fort Wayne. Mr. Moody's analysis determined the net benefit or loss of these opposing impacts: his findings are summarized in I&M's Exhibit DCM-2. Mr. Moody concluded that the net effect of the loss of the 20,083 customers and their attendant \$20,949,887 of revenue would be a loss to I&M of approximately \$0.50 of every revenue dollar, which would necessarily be shifted to other ratepayers in I&M's system. This means that the impact is approximately \$10,000,000 per year of costs that would need to be transferred to I&M's remaining customers.

Scott M. Krawec, I&M's Director of Regulatory Services discussed the ratemaking and regulatory accounting provisions in the Ft. Wayne Agreement. Mr. Krawec stated that I&M seeks approval to account for the total \$39.2 million payments under the Ft. Wayne Agreement in the following manner: 1) to recognize the value of the physical assets purchased at approximately \$13.1 million, as supported by I&M witness Moody, subject to depreciation or amortization and inclusion in rate base in a future I&M basic rate case; 2) to recognize as a regulatory asset, \$10.9 million paid to settle claims regarding the right to serve the Fort Wayne service territory, the purchase of Betterments, and certain Generation facilities; 3) to record, at the time the Ft. Wayne Agreement is included in the revenue requirement used to establish new basic rates, interest expense on the Ft. Wayne Agreement at I&M's rate of return authorized in Cause No. 43306 (I&M's last basic rate case); and 4) to recognize as a regulatory asset, the difference between the amount of the former City Light Lease payment used to establish current rates, and the sum of the depreciation expense of the physical assets and the interest incurred prior to the time that the Ft. Wayne Agreement is included in the revenue requirement used to establish new basic rates.

Mr. Krawec testified that upon Commission approval of the Ft. Wayne Agreement, I&M would recognize the initial present value of the liability for the Ft. Wayne Agreement of approximately \$24 million. For the approximately \$13.1 million of this liability that relates to physical assets purchased, I&M will record depreciation or amortization related to these assets

retroactive to March 1, 2010, the date of acquisition. In addition, both the \$5.9 million that relates to items referenced in Sections 3.1.1, 3.1.2.2, and 3.1.2.3 of the Ft. Wayne Agreement and the \$5 million that relates to Section 3.1.1.1 of the Ft. Wayne Agreement will be recognized as regulatory assets. These items are more fully described by I&M witness Mr. Lewis. The \$5 million relating to Section 3.1.1.1 will be paid to the City at the time the Commission approves the Ft. Wayne Agreement and will reduce the present value of the liability. I&M will apply the monthly payments it has made to the City since March 1, 2010, to the present value of the liability and to interest expense. Finally, as stated earlier, I&M proposes to record a regulatory asset for the difference between the former City Light lease payments being reflected in current basic rates and the expense amounts pertaining to the Ft. Wayne Agreement recorded effective March 1, 2010, through the date of the Commission's Order approving the Ft. Wayne Agreement, and monthly thereafter until the Ft. Wayne Agreement is recognized in I&M's basic Indiana retail rates.

Mr. Krawec explained that the RCNLD of the property acquired under the Ft. Wayne Agreement will be initially recorded in the amount of \$13.122 million to I&M's Utility Plant accounts, as of the date of acquisition, March 1, 2010. This property will be further sub-classified to Distribution Plant accounts in the amount of \$11.414 million and to Transmission Plant accounts in the amount of \$1.708 million. I&M proposes to commence depreciation of the acquired property straight line over the 15-year term of the Ft. Wayne Agreement, commencing March 1, 2010. I&M will also record retirements, if any, of the acquired property since March 1, 2010. At the time I&M includes the acquired property as assets in its next Indiana general rate case, I&M will reflect in the cost-of-service supporting Indiana jurisdictional rates the RCNLD on the acquired value as of March 1, 2010, less any retirements, and less accumulated depreciation, as of the cutoff date for jurisdictional plant in service. Mr. Krawec testified that I&M also proposes to include in the cost-of-service supporting Indiana jurisdictional rates the depreciation expense for the acquired property calculated over the 15-year term of the Ft. Wayne Agreement.

With regard Sections 3.1.1, 3.1.2.2, and 3.1.2.3 of the Ft. Wayne Agreement, Mr. Krawec reiterated that I&M's payments pursuant to the Ft. Wayne Agreement not only permit it to acquire used and useful utility plant, but also to settle disputed claims relating to the termination of and obligations under the Lease. I&M proposes to establish a regulatory asset of \$10.9 million as of the effective date of the Ft. Wayne Agreement representing the present value of these items at March 1, 2010. In I&M's next Indiana general rate case, I&M will reflect in the cost-of-service supporting Indiana jurisdictional rates, the amortization of the \$10.9 million regulatory asset over the remaining term of the Ft. Wayne Agreement. Mr. Krawec stated that I&M proposes to defer as a regulatory asset the imputed interest relative to the Ft. Wayne Agreement at 8%, which approximates I&M's approved weighted cost of capital from its last general rate case (Cause No. 43306) until the jurisdictional net utility plant value discussed above is reflected in rate base in the revenue requirement supporting I&M's proposed Indiana jurisdictional rates.

Mr. Krawec explained that prior to the establishment of new rates in I&M's next general rate case, I&M will amortize monthly to expense the difference between the former City Light annual lease payment amount of \$1.74 million which has been used to establish I&M's current



rates, and the depreciation expense I&M will be recording on its RCNLD utility plant balance (approximately \$0.8 million annually). The regulatory asset amount that remains unamortized will continue to be deferred until the establishment of new rates. At that time, the deferral will cease and the remaining balance will be amortized over the remaining term of the Ft. Wayne Agreement. This amortization will be reflected in the revenue requirement supporting I&M's proposed Indiana jurisdictional rates.

Mr. Krawec clarified that a portion of the physical assets are transmission property (\$1.708 million), and these amounts are not directly assignable to Indiana retail. However, for the purpose determining the appropriate amount of interest expense to defer until such time as new rates are established from a revenue requirement that includes the effects of the Ft. Wayne Agreement, I&M will utilize allocation factors approved in I&M's last Indiana base rate case (Cause No. 43306) to allocate the transmission related depreciation to the Indiana retail jurisdiction.

Finally, Mr. Krawec testified that if I&M were to lose customers absent the approval of the Ft. Wayne Agreement, the potential allocation of I&M's Indiana jurisdictional fixed costs to a smaller base of customers will naturally result in higher costs for all customers. Mr. Krawec believes that Mr. Moody's \$10 million cost estimate is conservative considering that the City has contended that its rightful potential customer base is much larger than 20,083. However, dividing the cost determined by Mr. Moody across I&M's current Indiana customer count less the customer loss would yield an approximate average increase in customer bills of \$2.00 per month. Because of timing issues, the rate impact of the Ft. Wayne Agreement on customers will not be precisely known until the time that I&M files a general rate case that includes all of the approved elements, and establishes the regulatory assets and the corresponding amortization period for those regulatory assets. However, Mr. Krawec calculated an estimate assuming Commission approval of the Ft. Wayne Agreement in mid-2011 and new base rates effective mid-2012. As shown on Petitioner's Exhibit SMK-1, using those assumptions, the impact on an average customer would be about \$0.36 per month. Mr. Krawec noted this would be significantly less than the approximately \$2.00 per month increase estimated by Mr. Moody should the City resume its provision of service within the Lease Footprint.

**6. City's Case-in-Chief.** The City presented the testimony and exhibits of Kumar Menon, the City's Director of Utilities, and Susan L. Macey, a professional arbiter employed by Judicial Arbiter Group, Inc., who previously served as the Indiana Utility Consumer Counselor.

Mr. Menon discussed the Ft. Wayne Agreement from the City's perspective and testified why the City believes approval of the Ft. Wayne Agreement is in the public interest. The Lease addressed issues such as the duplication of facilities due to the presence of two competing systems and the need for capital improvements in the City's electrical power grid. Mr. Menon agreed with Mr. Lewis' descriptions of the controversies that arose during the Lease term and that both the City and I&M agreed their top priority was assuring Fort Wayne residents would continue to receive uninterrupted, high-quality electric service.

Mr. Menon discussed the City's view of its rights under the Service Area Act, including its right to severance damages per the statutory methodology. The City and I&M also did not

agree as to what their respective rights and responsibilities were at the termination of the Lease. The City contended that I&M must either turn over to the City a functioning electric distribution system upon the termination of the Lease Agreement or pay for the right to serve the former City Light customers. I&M claimed that at the termination of the Lease Agreement, the City had the right only to obtain certain Betterments and what remained of the City's original Leased Property in use at the time.

Mr. Menon described the four years of negotiations and discussed the actions taken by the City and I&M upon expiration of the Lease. After the complaint and counterclaims were filed in Allen Superior Court, the trial court judge stayed the litigation and directed the parties to attempt to negotiate a resolution of their differences on a confidential basis with a court-appointed mediator. Mr. Menon described the mediation process as intensive and lengthy, with the last of the mediation sessions producing a framework by which I&M and the City believed they could resolve their differences. Ultimately, the teams were able to negotiate the final and mutually acceptable resolution reflected in the Ft. Wayne Agreement.

Mr. Menon explained the following consideration the City is making in exchange for the payments to be made by I&M: (i) the City waives any claim it might have to provide electric service to customers located in Fort Wayne; (ii) the City acknowledges that I&M is the exclusive electricity supplier in Fort Wayne; (iii) the City agrees that the amount paid by I&M is in settlement of any damages claims under the Service Area Act; (iv) the City waives the right to purchase Betterments or improvements I&M made to the Leased Property; and (v) the City agrees to transfer the Leased Property, including real estate, to I&M. Mr. Menon opined that Commission approval of the Ft. Wayne Agreement is in the public interest, stating among other things that all parties benefit from a solid agreement that avoids the greater cost and risk of litigation, which might take years to resolve. Most importantly, customers benefit from the Ft. Wayne Agreement because of the certainty of continued electricity service from I&M and the avoidance of the uncertainty of litigation in multiple forums. Mr. Menon also stated that if the Ft. Wayne Agreement were not approved by the Commission, the matter could return to protracted litigation.

Mr. Menon concluded that if the Commission approves the Ft. Wayne Agreement, the City can invest not only the funds received from I&M, but also the nearly \$36 million in the Trust Fund on behalf of the residents of Fort Wayne. The ability to leverage those dollars will leave a lasting legacy to the Fort Wayne community. In addition, Fort Wayne residents can be confident of continued electric service from I&M. Mr. Menon remarked that I&M's home office is in Fort Wayne, and it provides hundreds of hours of volunteer work and makes donations to local charities.

Ms. Macey testified in her capacity as a professional arbiter familiar with the art of negotiations and the settlement process in utility regulatory matters. Ms. Macey indicated that she reviewed the lawsuit pleadings, various accounts of the disputes between the Parties, and investigated the nature and scope of the settlement process undertaken and the merits of the agreement from widely diverse perspectives, including those of local and state political leaders.

Ms. Macey explained that the mediator met with respective representatives of the City

and I&M on four separate dates from September of 2009 through February of 2010. At the first mediation session on September 23, 2009, the City was represented by six individuals, including the Mayor of the City of Fort Wayne, Counsel, and subject matter experts, and I&M was represented by four individuals, including its President, Helen Murray, Marc E. Lewis, Vice President of External Relations, Counsel, and subject matter experts. The mediation sessions were long, ranging from nine to more than twelve hours per day. The Mediator met with the party representatives in an initial joint session, and conducted subsequent sessions in private caucuses with each side. Ms. Macey understood that throughout the mediation process, the mediator assisted the parties in generating proposals on very sophisticated and complex issues. In addition, specific representatives from each side met in smaller private caucuses to resolve specific issues that were later brought back into the context of the larger group discussion. The mediator required the parties to be extremely well prepared prior to the commencement of any given mediation session, and Ms. Macey expressed confidence that each side had engaged in extensive discussions about the legal and economic consequences of any given proposal.

Ms. Macey acknowledged that the Commission is charged with the statutory responsibility to assure that its decisions are in the “public interest.” She noted that private disputes between litigants generally do not have the requirement nor concern for the “public interest.” At the end of the day in a private negotiation, if the parties to the dispute believe the agreement to be in their mutual best interests, a “deal” is struck. However, the subject matter of the Ft. Wayne Agreement involves issues related to the provision of electric utility service and has implications for a large number of people, other than the named parties to the lawsuit. In her opinion the parties to this Cause, and their respective legal counsel, are skilled in utility regulatory matters, familiar with Commission policy and procedures related to ratemaking, cost recovery, and electricity suppliers’ assigned service areas, and represent the highest levels of settlement authority in each organization. The Parties have expended significant time and financial resources in a comprehensive and rigorous process in which each side was required to consider and reconcile the significant interests involved in the negotiation process. Ms. Macey concluded that the public interest is well served by the comprehensive nature, scope, and depth of these settlement negotiations, and the difficult “trades” made by each side in an effort to achieve a settlement of a long standing dispute between the City and I&M. Ms. Macey believes the Commission should have added confidence in the Ft. Wayne Agreement knowing the comprehensive and rigorous process in which the parties have already engaged prior to bringing the matter to the Commission for its review and approval.

Finally, Ms. Macey explained why she believes the Commission should not modify the Ft. Wayne Agreement. Given the process used here there were, no doubt, concessions made and concessions given by both parties. I&M and the City, through extensive negotiations facilitated by a trained mediator, reached consensus on specific terms and conditions. Any modification to these terms and conditions changes the benefit of their bargain and could put I&M and the City back in the trial court with the attendant risk and cost of additional litigation. Each side assessed a weighted value to certain terms and conditions, and the Ft. Wayne Agreement is a composite of a series of trades that reflect a unique consideration and reconciliation of the available legal positions. Modifications to settlement agreements typically have a chilling effect on the willingness of parties to participate in good faith negotiations. In Ms. Macey’s opinion, parties

will be less likely to expend significant resources of time and money in a process that does not result in minimal risk and certainty of outcome. As a consequence, there will be more utility regulatory litigation. Ms. Macey believes that a settlement agreement negotiated by skilled parties in an extensive, comprehensive and rigorous process such as the one conducted here, helps the Commission achieve efficient outcomes and is in the public interest

7. **OUCC's Case-in-Chief.** The OUCC supported the result of the Ft. Wayne Agreement, but opposed certain aspects of the ratemaking treatment of the payments by I&M to the City under the terms of the Ft. Wayne Agreement. Mr. Duane P. Jasheway, Utility Analyst in the OUCC's Electric Division, presented the OUCC's analysis and recommendations. After reviewing the terms of the Ft. Wayne Agreement, Mr. Jasheway stated that the \$39.2 million cost is very high when compared to both the original cost and RCNLD of the acquired utility property. The provisions in the Ft. Wayne Agreement, if approved as proposed, will pass the full amount of these costs on to all of I&M's Indiana customers.

After discussing how the \$39.2 million is proposed to be paid over time by I&M to the City, Mr. Jasheway stated that the negotiated 8% interest rate is based loosely on I&M's weighted cost of capital of 7.62% in its last rate case. Mr. Jasheway compared the 8% interest rate to I&M's cost of long term debt. In I&M's last base rate case, the Commission found that I&M's embedded cost of debt was 5.98%. I&M's long-term debt rating is BBB and Baa2 from S&P and Moody's, respectively. According to Value Line, yields on BBB 25/30 year utility bonds have recently been in the range of 5.86% to 6.26%. The 8% interest rate to be paid to Fort Wayne is well in excess of I&M's embedded cost of debt and well above recent BBB bond cost rates. The 8% negotiated interest rate is therefore unsupported by either I&M's most recent rate case or current market conditions. As a result, the OUCC recommends that the Commission not authorize the proposed 8% interest rate.

Mr. Jasheway indicated that while there is benefit to the resolution of the dispute between I&M and Ft. Wayne, the \$10.9 million payment to settle legal claims raised by Fort Wayne is not a recurring expense associated with the provision of electric services by I&M. As a consequence, the OUCC does not believe this amount should be included in rates. In addition, the OUCC believes the interest related to the payments of this amount over fifteen years (\$15.2 million) as part of I&M's requested relief should also be denied.

Mr. Jasheway explained that the OUCC does not support the Ft. Wayne Agreement's provisions that require Indiana retail customers to fund large payments to the City in an amount well beyond the value of the acquired property as measured by original cost or RCNLD. The total of \$39.2 million in payments to the City is roughly three times the \$13.1 million value of the property based on RCNLD and roughly six times the original cost of the plant, which is \$6.9 million. The OUCC is concerned that the resolution of issues between Fort Wayne and I&M may have a far reaching impact.

Mr. Jasheway testified that the OUCC supports I&M's continued provision of service in its assigned service area, including Fort Wayne. In recognition of the importance of the Ft. Wayne Agreement, the OUCC will agree not to oppose in I&M's next base rate case a proposal for I&M to receive a return on and return of, the proposed value of the acquired utility property

up to the \$13.1 million RCNLD amount. However, the Commission should not pre-approve any ratemaking treatment of amounts paid to settle Fort Wayne's claimed rights to serve a portion of I&M's territory and the City's claimed right to purchase Betterments made and owned by I&M. To the extent the Commission allows those costs to be included in the test year in I&M's next rate case, then I&M can propose whatever treatment it deems appropriate. Other parties to the rate case should be able to oppose such proposals or make alternative proposals as to the treatment of such costs. Finally, Mr. Jasheway recommended that the Commission should not provide financing authority for I&M to pay 8% interest to the City on the payments that are to be spread out over fifteen (15) years. In the event that the Commission decides not to accept the OUCC's recommendation and finds that the entire \$39.2 million in payments to the City is recoverable, the OUCC's alternate recommendation is that the Commission should reserve all issues relating to cost causation and cost allocation until I&M's next base rate case.

**8. OUCC Settlement.** On May 26, 2011, the parties informed the Commission that I&M and the OUCC had reached an agreement in principle that resolved the disputed issues in this proceeding. The OUCC Settlement was subsequently reduced to writing and filed with the Commission together with the supporting testimony of Mr. Lewis. The OUCC Settlement provides for Commission approval of the Ft. Wayne Agreement subject to the additional approval of certain changes to the ratemaking treatment agreed to by I&M and the OUCC. More specifically, I&M has agreed, for ratemaking purposes, to reduce the amount of interest expense and a portion of the severance damage claim in order to move this matter to an expeditious conclusion for the benefit of its customers. The OUCC Settlement does not affect the payments to the City set forth under the Ft. Wayne Agreement or change the Ft. Wayne Agreement from the City's perspective. The City supports Commission approval of the OUCC Settlement. If the Commission approves the Ft. Wayne Agreement, subject only to the changes set forth in the OUCC Settlement, both I&M and the City will accept those modifications in accordance with Section 10.1 of the Ft. Wayne Agreement.

**9. Testimony in Support of the OUCC Settlement.** Mr. Lewis summarized the terms of the OUCC Settlement and explained from his perspective why the OUCC Settlement provides a reasonable resolution of the disputed issues and otherwise serves the public interest. The OUCC Settlement is a product of serious arms' length bargaining among capable and knowledgeable parties. The OUCC Settlement would permit the Ft. Wayne Agreement to be approved fundamentally unchanged from the City's perspective, but with some changes to the ratemaking treatment of payments made by I&M to the City as set forth in Section 5 of the Ft. Wayne Agreement.

Mr. Lewis explained that the OUCC's concern about the reasonableness of the 8% interest rate reflected in the Ft. Wayne Agreement is resolved in the OUCC Settlement by I&M agreeing for all ratemaking purposes to use a lower imputed interest rate of 6% instead of 8%. I&M will record the difference between using an interest rate of 8% and 6%, which equates to approximately \$3.4 million, below-the-line so that this amount will be excluded for all future ratemaking purposes. I&M will not seek to include in rates the \$3.4 million associated with the use of an imputed interest rate of 6% in any future case. The OUCC has agreed to accept I&M's proposed accounting and ratemaking treatment associated with the balance of the interest (\$11.8 million) and to support its approval by the Commission. Mr. Lewis also responded to Mr.

Jasheway's testimony that the Ft. Wayne Agreement involves a long-term financing. Mr. Lewis explained that the Ft. Wayne Agreement does not involve repayment of a loan. He added that while I&M disagrees with Mr. Jasheway's view, all parties agree that the scope of the Petition is sufficient for the Commission to approve it even if this were deemed "other evidences of indebtedness" requiring approval under Indiana Code § 8-1-2-78.

I&M agrees to record below-the-line, and thus exclude for all ratemaking purposes, \$700,000 of the \$5 million upfront payment set forth in Section 2 of the Ft. Wayne Agreement that resolves the City's severance damage claim. I&M will still pay the \$700,000, but this amount will be excluded for all future ratemaking purposes. I&M will not seek to include in rates the \$700,000 in any future case.

Mr. Lewis explained that the remaining provisions of the OUCC Settlement provide further explanation that the accounting and ratemaking relief sought by I&M, and not changed by the provisions discussed above, shall be approved by the Commission. The value of the physical assets to be purchased under the Ft. Wayne Agreement at approximately \$13.1 million should be included in rate base in I&M's future basic rate cases as proposed by I&M, and the associated accounting treatment shall be approved. In addition, \$4.3 million of the \$5.0 million upfront payment set forth in the Ft. Wayne Agreement to resolve the City's claims for compensation under the Service Area Act and to resolve all issues regarding I&M's status as the exclusive electricity supplier in Fort Wayne should be recognized for accounting and ratemaking purposes as proposed by I&M. Finally, the payment of \$5.9 million set forth in Section 4 of the Ft. Wayne Agreement to extinguish the City's claim regarding the purchase of Betterments and the City's claim regarding I&M's obligations with respect to Generation shall be recognized for accounting and ratemaking purposes as proposed by I&M.

Mr. Lewis explained why he believes these provisions are reasonable. He testified that the total payments to be made under the Ft. Wayne Agreement resolve I&M's damages claims stemming from the Lease and the Service Area Act and are not tied only to the property. In this situation the property is valued in accordance with the statute, which mandates that the purchase price shall be RCNLD. The property has been professionally valued, and there is no dispute that the RCNLD has been properly calculated. Moreover, the sale and purchase is consistent with the Service Area Act and achieves the benefits that the General Assembly has found to serve the public interest, as set forth in Indiana Code § 8-1-2.3-1. The General Assembly concluded that it is reasonable to achieve these public benefits by selling the property at its current value. It is likewise reasonable to recognize the current value as the appropriate cost of doing business for ratemaking purposes. The proposed accounting and ratemaking treatment is consistent with regulatory policy. The payment made to the City by I&M will be included in I&M's cost of service to all of its Indiana customers to the extent set forth in the OUCC Settlement. I&M's customers in Indiana beyond Fort Wayne benefit from I&M retaining the exclusive right to serve its customers in Fort Wayne because the modest incremental rate impact, resulting from the Ft. Wayne Agreement, pales in comparison to the rate impact that customers would have experienced had the City prevailed in its attempts to take over service from I&M, as demonstrated by the conservative estimates of Mssrs. Moody and Krawec.

Finally, Mr. Lewis opined that Commission approval of both the OUCC Settlement and

the Ft. Wayne Agreement is in the public interest. In his view, the OUCC Settlement recognizes that I&M's actions to settle the City's claims for far less than the amounts claimed will save customers money and should be recognized for ratemaking purposes to the extent set forth in the OUCC Settlement. Together, the Ft. Wayne Agreement and OUCC Settlement bring certainty and closure to the litigation, remove the associated risks, and resolve the issues in a manner that leaves I&M's customers with only a small increase in rates. Approval of these agreements also avoids potential wasteful duplication of services, which is consistent with the public policy expressed under the Service Area Act. Finally, the Ft. Wayne Agreement ends a long period of contentiousness and uncertainty and allows I&M, the City, and all of I&M's customers to move forward. The importance of these considerations are what lead I&M to agree to absorb \$4.1 million of costs that it believes were properly includable in its cost of service. Mr. Lewis urged the Commission to find these agreements to be reasonable and in the public interest and to approve both the Ft. Wayne Agreement and the OUCC Settlement.

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

Further, any Commission decision, ruling, or order – including the approval of a settlement – must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission's own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve a settlement agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the settlement agreement is reasonable, just, consistent with the purpose of Ind. Code ch. 8-1-2, and serves the public interest.

**A. Approval of the Ft. Wayne Agreement.** The evidence in this case demonstrates that the Ft. Wayne Agreement is the result of extensive discussion and bargaining between I&M and Ft. Wayne. Had the Parties not negotiated the Ft. Wayne Agreement, litigation between the Parties would likely have continued at great expense to all involved, including, eventually, I&M's customers in the Fort Wayne area and elsewhere. While the total payments to the City under the Ft. Wayne Agreement are greater than the original cost value of the plant being acquired, the evidence demonstrates that these payments also resolve other legal claims made by the City under the terms of the Lease and the Service Area Act.

Although the Lease entered into between I&M and the City addressed the issue of the unnecessary duplication of facilities that previously existed in Fort Wayne, it did so only temporarily until the expiration of the Lease. The Ft. Wayne Agreement conclusively settles the question of who will be the exclusive service provider within the Lease Footprint in a manner consistent with Indiana Code ch. 8-1-2.3. Had I&M and the City not entered into the Lease in

1974, the passage of the Service Area Act would have required one utility to sell its property to the other. The Service Area Act also would have allowed the selling utility to recoup certain severance damages in addition to payment for the RCLND value of utility property. In light of this unique circumstance where the City was likely entitled to certain statutory payments for the sale of the utility, we find it is reasonable that the total payment from I&M to the City under the Ft. Wayne Agreement includes an amount to settle the City's claims under the Service Area Act and the terms of the Lease.

The OUCC questioned the reasonableness of I&M's proposal to spread the total cost of the Ft. Wayne Agreement, including the payment to settle the City's legal claims, across I&M's entire customer base. I&M provided testimony from Mr. Krawec that compared the rate impact to I&M's customers of the cost of the Ft. Wayne Agreement versus the possible cost of the City taking over the provision of service to customers within the Lease Footprint. Mr. Krawec estimated the rate impact of the Ft. Wayne Agreement on an average I&M customer to be \$0.36 per month. On the other hand, Mr. Krawec estimated that the loss of customer base, which would result from the City providing service to former I&M customers, and the resultant need to spread fixed costs among a smaller number of customers could result in an increase of up to \$2.00 per month for an average customer. I&M witness, Mr. Moody, agreed with Mr. Krawec's analysis. Mr. Moody's testimony indicates that the rate impact of the City taking over the provision of service would be as much as five times higher than the rate impact of the Ft. Wayne Agreement. In light of this, we find the cost allocation of the Ft. Wayne Agreement is reasonable.

The OUCC also questioned the 8% interest rate applied to I&M's payments to the City under the Ft. Wayne Agreement. Mr. Jasheway testified that an 8% interest rate exceeds the embedded cost of debt from I&M's last rate case of 5.98% and also exceeds the current market rate for a BBB rated utility on a 25/30 year debt offering, which ranges from 5.86% to 6.26%. In response to the OUCC's partial opposition to the Ft. Wayne Agreement, I&M and the OUCC negotiated the OUCC Settlement discussed below.

**B. Approval of the OUCC Settlement.** I&M and the OUCC entered into what Mr. Lewis described as serious, arm's length negotiations, to address the OUCC's issues with certain ratemaking provisions of the Ft. Wayne Agreement. As a result, I&M agreed to apply, for ratemaking purposes, an interest rate of 6% to its stream of payments to the City under the Ft. Wayne Agreement, rather than the 8% interest it will actually pay to the City. In addition, I&M has agreed to seek recovery of only \$4.3 million of the initial \$5 million payment to the City. These concessions result in a net savings to I&M's customers of approximately \$4.1 million.

Based upon the evidence provided, we find that the OUCC Settlement reasonably addresses the concerns raised by the OUCC and protects the efficacy of the Ft. Wayne Agreement, which we have previously found to be in the public interest. Further, the ratemaking treatment agreed to in the OUCC Settlement materially reduces the cost of the Ft. Wayne Agreement for I&M's ratepayers.

**C. Conclusion.** Based on our review of the evidence in this Cause, we



conclude that the Ft. Wayne Agreement and the OUCC Settlement are sufficiently supported by the evidence in this Cause. In addition, we conclude the Ft. Wayne Agreement and the OUCC Settlement are reasonable, just, consistent with the purpose of Ind. Code ch. 8-1-2, and serve the public interest. Therefore, the Ft. Wayne Agreement and the OUCC Settlement are approved. With regard to future citation of the Settlement Agreement, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, 1997 Ind. PUC LEXIS 459 (IURC March 19, 1997).


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

1. The Ft. Wayne Agreement, identified in the record as Exhibit A to Exhibit MEL-1 and attached to this Order as Attachment A, is approved subject to the changes set forth in the OUCC Settlement.
2. The OUCC Settlement, identified in the record as Settling Parties' Exhibit 1 and attached to this Order as Attachment B, is approved.
3. The terms and conditions of the Ft. Wayne Agreement and OUCC Settlement are incorporated herein as a part of this Order and the Parties shall abide by such terms and conditions.
4. This Order shall be effective on and after the date of its approval.

**ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:**

**APPROVED:**            **AUG 10 2011**

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



**Sandra K. Gearlds,  
Acting Secretary to the Commission**

## AGREEMENT

This Agreement ("Agreement") between INDIANA MICHIGAN POWER COMPANY, ("I&M"), an Indiana corporation, and the City of Fort Wayne, Indiana, a municipality located within Allen County, Indiana (the "City") is made effective as of March 1, 2010.

WHEREAS, I&M and the City are parties to a 1974 Lease Agreement pursuant to which I&M leased certain electric utility property from the City;

WHEREAS, a dispute has arisen relating to the Parties' rights and obligations under the 1974 Lease Agreement; and

WHEREAS, I&M and the City desire to settle all disputes or other matters between them relating to the 1974 Lease Agreement and to treat this Agreement as the definitive agreement resolving the dispute.

THEREFORE, I&M and the City agree to the following terms and conditions:

### 1. DEFINITIONS

The following terms have the meaning indicated here when used in this Agreement:

- 1.1. "Act" means the Indiana Electricity Suppliers' Service Area Assignments Act set forth in Indiana Code §8-1-2.3 *et seq.*
- 1.2. "APA" means the Asset Purchase Agreement between I&M and the City, which is attached hereto as Exhibit A.
- 1.3. "Betterments" means all items defined as "Betterments, Enlargements, and Extensions" in Article XVII of the Lease and includes all items listed on Exhibit B to this Agreement.
- 1.4. "Commission" means the Indiana Utility Regulatory Commission.
- 1.5. "Effective Date" means March 1, 2010.
- 1.6. "Effective Date of the Final Order" means the date upon which the Final Order may no longer be appealed or challenged by any person or organization.
- 1.7. "Electricity Supplier" shall have the definition provided to it by the Act.
- 1.8. "Final Order" means an order issued by the Commission that approves this Agreement without any modification or condition that is objectionable to either Party and for which the time to appeal such an order has expired.
- 1.9. "Hazardous Constituent" shall have the meaning assigned thereto under 40 C.F.R. § 260.10.

- 1.9.1. "Hazardous Materials" shall mean, collectively, Hazardous Substances, Hazardous Constituent and Solid Wastes.
- 1.9.2. "Hazardous Materials Laws" shall mean all laws, statutes, ordinances, rules, or regulations promulgated by any governmental authority concerning Hazardous Materials or concerning the protection of, or regulation of the discharge of substances into, the environment or concerning the health or safety of persons with respect to environmental hazards, and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq., Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq., Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq., Clean Air Act of 1966, as amended, 42 U.S.C. §§ 7401 et seq., Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601 et seq., Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq., Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq., National Environmental Policy of 1975, 42 U.S.C. §§ 4321 et seq., Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300(f) et seq., the Hazardous Materials Transportation Act, 42, U.S.C. § 1801 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, U. S.C. § 7401 et seq., and any similar or implementing law of the State of Indiana, and all amendments, rules, and regulations promulgated thereunder or implementing the same.
- 1.9.3. "Hazardous Substances" shall mean at any time any substance, waste, pollutant, contaminant or material, in solid, liquid or gaseous form, which: (i) is a substance regulated or defined or designated as hazardous, extremely or imminently hazardous, objectionable, dangerous, or toxic pursuant to any law, by any local, state, territorial or federal governmental authority; (ii) is a substance with respect to which such a governmental authority otherwise requires environmental compliance, investigation, monitoring, reporting, or remediation; including but not limited to, (A) all substances, wastes, pollutants, contaminants and materials regulated, or defined or designated as hazardous, extremely or imminently hazardous, dangerous, objectionable or toxic, under any Hazardous Materials Law; (B) petroleum and petroleum based products including crude oil, used oil and any fractions thereof; (C) natural gas, synthetic gas, and any mixtures thereof; (D) radon; (E) radioactive substances and materials; (F) asbestos; (G) urea formaldehyde; (H) polychlorinated biphenyls; (I) lead; (J) methane; (K) flammable substances and materials ; and (L) explosives.
- 1.9.4. "Solid Wastes" shall have the meaning assigned thereto in 40 C.F.R. § 261.2.

- 1.9.5. "Storage Containers" shall mean existing and future containers for Hazardous Materials and aboveground and underground storage tank systems (including underground piping, conduits or sumps).
  - 1.9.6. "Wetlands Laws" means, without limitation, 33 C.F.R. § 328.3 and any comparable state and local law, statute, ordinances, rule or regulation.
  - 1.10. "Lawsuit" means the litigation pending before the Allen County Superior Court as Cause No. 02D01-0910-PL-400.
  - 1.11. "Lease" means the September 13, 1974 Fort Wayne Municipal Electric Utility Lease Agreement between the City as Lessor and Indiana & Michigan Electric Company (now I&M) as Lessee.
  - 1.12. "Parties" means both I&M and the City, and each of I&M and the City shall be considered to be a "Party."
  - 1.13. "Personal Property" means all of the property included within the definition of "Leased Property", excluding the Real Estate, set forth in Article 1.1(a) of the Lease and as listed on Exhibit C, attached hereto.
  - 1.14. "Petition" means a petition to be filed by I&M seeking the Commission's unconditional approval of this Agreement.
  - 1.15. "Property" shall mean (i) the Personal Property, and (ii) the Real Estate.
  - 1.16. "Real Estate" means the real estate as described in Exhibit D, attached hereto.
2. PAYMENTS TO THE CITY
- 2.1. In consideration for the City's transfer of the Property to I&M and for the City's promises and obligations contained herein (as more fully set forth in Section 3 of this Agreement), I&M shall make the following payments to the City:
    - 2.1.1. I&M will pay the City \$5,000,000 within thirty (30) days of the Effective Date of the Final Order.
    - 2.1.2. I&M will make the following monthly installment payments (which shall be comprised of both principal and interest) to the City for fifteen (15) years which payments shall be due on the first (1<sup>st</sup>) of each month, paid in immediately available funds and directly deposited into an account designated by the City:
      - 2.1.2.1. \$1,740,000 per year, payable in monthly installments of \$145,000 each, commencing on March 1, 2010 and ending on February 1, 2013 (which payment is the same as the payment

I&M was making under the Lease during the final year of its term);

- 2.1.2.2. \$2,200,000 per year, payable in monthly installments of \$183,333.33 each, commencing on March 1, 2013 and ending on February 1, 2016;
  - 2.1.2.3. \$2,400,000 per year, payable in monthly installments of \$200,000 each, commencing on March 1, 2016 and ending on February 1, 2021; and
  - 2.1.2.4. \$2,600,000 per year, payable in monthly installments of \$216,666.66 each, commencing on March 1, 2021 and ending on February 1, 2025.
- 2.1.3. If I&M fails to make any of the above payments by the date required, the City shall give written notice of such failure. I&M shall have twenty (20) days from the receipt of notice to make the required payment. If the required payment is not made within this twenty (20) day notice period, I&M shall be in "Default."
- 2.1.4. In the event of Default by I&M, the City shall be entitled to seek to enforce the terms of this Agreement in a court of law.
- 2.1.5. Any installment which is not paid in full on or before the fifth day of a month shall accrue interest at a rate of ten percent (10%) per annum until paid in full.

### 3. CONSIDERATION

- 3.1. The Parties agree that the payments made pursuant to Section 2 of this Agreement shall be deemed to be applied as follows:
- 3.1.1. The Parties agree that the payment set forth in Section 2.1.1 shall be deemed to be full payment in consideration of the following:
    - 3.1.1.1. settlement of any and all claims that the City may now or hereafter have or possess that it is entitled to serve customers located within the service area currently assigned to I&M pursuant to the Act;
    - 3.1.1.2. settlement of any and all claims that the City may now or hereafter have or possess that it is entitled to receive damages and other payments consistent with the Act (specifically, Indiana Code §8-1-2.3-3); and
    - 3.1.1.3. the City's agreements set forth in Section 8.

3.1.2. The Parties agree that the payments set forth in Section 2.1.2 shall be deemed to be full payment in consideration of the following:

3.1.2.1. the fair value of the Property;

3.1.2.2. settlement of any and all claims the City may now or hereafter have or possess that it is entitled to purchase the Betterments from I&M; and

3.1.2.3. settlement of any and all claims the City may now or hereafter have or possess against I&M that I&M is required to make certain expenditures relating to generation facilities.

3.2. The Parties agree that the fair value of the Personal Property is based on reproduction cost new less depreciation consistent with Indiana Code § 8-1-2.3-3 and 6.

#### 4. VALUATION AND USEFULNESS OF THE PROPERTY

4.1. The fifteen-year stream of payments set forth in Section 2.1.2 will total a gross sum of \$34.2 million, and has a net present value of \$19 million based on I&M's weighted cost of capital.

4.2. The present fair value of the Property based upon reproduction cost new less depreciation is \$13.1 million.

4.3. The present value of extinguishing the City's claimed right to purchase the Betterments and the City's claim regarding I&M's obligations with respect to generation is \$5.9 million.

4.4. The Property is used and useful in the provision of electric service to I&M's customers.

#### 5. RATEMAKING TREATMENT

5.1. The Parties agree that this Agreement shall be contingent upon Commission approval of the following accounting and ratemaking treatment of the amounts payable under this Agreement. Both I&M and the City shall support the following proposal.

5.1.1. The fair value of the Property based upon reproduction cost new less depreciation will be recognized for ratemaking purposes as rate base assets in I&M's next general Indiana rate case; and

5.1.2. The value of extinguishing the City's claims referenced in Sections 3.1.1, 3.1.2.2, and 3.1.2.3 will be recorded by I&M in Other Regulatory Assets and the appropriate annual amount will be recognized for ratemaking purposes as an expense in I&M's Indiana cost of service, as follows:

5.1.2.1. Prior to I&M's next general Indiana rate case, the regulatory asset will be amortized on a straight-line basis in an annual amount of \$1.186 million, representing the annual Lease payment recognized for ratemaking purposes in I&M's current Indiana retail rates.

5.1.2.2. Beginning with I&M's next general Indiana rate case, the regulatory asset will be amortized on a straight-line basis over the remaining life of the stream of payments set forth in this Agreement. The regulatory asset will continue to be recognized in subsequent rate cases until fully amortized.

## 6. PERSONAL PROPERTY

6.1. Subject to the terms and conditions of this Agreement and the APA, the City does hereby agree to sell, transfer, convey, assign and deliver to I&M and I&M does hereby agree to purchase and accept from the City, all of the City's rights, title and incidents of interest in and to the Personal Property. The Parties shall execute the APA on and as of the date of execution of this Agreement. The APA shall be held by I&M in escrow. I&M may release the APA from escrow upon the third day following the Effective Date of the Final Order.

6.2. I&M, as consideration for the transfer and delivery to it of the Personal Property as herein provided, shall pay the City as set forth in Section 2, with the allocations to be made as agreed in Section 3.

6.3. Upon the execution of this Agreement, the City shall deliver to I&M a properly executed bill of sale transferring the Personal Property to I&M together with such other documents reasonably requested by I&M to transfer title to the Personal Property to I&M. I&M shall hold such documents in escrow until the Effective Date of a Final Order. Upon the third day following Effective Date of the Final Order, I&M may release all such documents from escrow.

## 7. REAL ESTATE

7.1. Subject to the terms and conditions of this Agreement and the APA, the City does hereby agree to sell, transfer, convey, assign and deliver to I&M and I&M does hereby agree to purchase and accept from the City, all of the rights, title and incidents of interest in and to the Real Estate.

- 7.2. I&M, as consideration for the transfer and delivery to it of the Real Estate as herein provided, shall pay the City as set forth in Section 2, with allocations to be made as agreed in Section 3.
- 7.3. Within fifteen days of the execution of this Agreement, the City shall deliver to I&M the following, which shall be held in escrow by I&M until the time set forth in Section 7.4:
  - 7.3.1. a properly executed special warranty deed in recordable form conveying the City's title in the Real Estate to I&M;
  - 7.3.2. an assignment and assumption agreement assigning all of the City's right, title and interest in and to all licenses, easements and the like concerning the supply of electricity, including but not limited to third party utility easements;
  - 7.3.3. an Owner's Title Policy (as defined in the APA) with an effective date as of the Closing Date; and
  - 7.3.4. such other documents reasonably requested by I&M to transfer title to the Real Estate to I&M.
- 7.4. I&M may release all of the documents listed in Section 7.3 on the third day following the Effective Date of the Final Order.

## 8. CITY'S AGREEMENTS

- 8.1. The City agrees and covenants as follows:
  - 8.1.1. the City will relinquish any option it might possess pursuant to the Lease or otherwise (i) to obtain possession of (whether through purchase or otherwise) any property owned by I&M or the Betterments, and (ii) to operate any electric utility located within the area formerly served by City Light for the purpose of providing retail electric service to the public;
  - 8.1.2. the City will acknowledge that I&M is the exclusive Electricity Supplier within the area formerly served by City Light, as well as the area in and around the City currently served by I&M;
  - 8.1.3. the City will waive any and all rights it may have to be an Electricity Supplier;
  - 8.1.4. the City agrees not to challenge, either directly or indirectly, I&M's status as the sole Electricity Supplier within the City of Fort Wayne; and
  - 8.1.5. the City will not attempt to become an Electricity Supplier, or to otherwise provide retail electric service to the public, either directly or through any



other entity, or to otherwise take any action, or encourage or direct any third party to take any action, that would lead to another Electricity Supplier or a third party that would supply retail electric service to the public within the area comprised of the City of Fort Wayne, the area formerly served by City Light, or the area currently served by I&M. Provided, however, that nothing in this Section 8 shall be deemed to prohibit the City from installing, owning and operating its own electric generation for purposes of meeting its needs for electric power and energy, participating in demand response and similar programs in accordance with applicable Federal law, Indiana law and I&M's terms and conditions of service.

- 8.2. The City shall be deemed to have made all of the agreements set forth in this Section 8 as of the Effective Date of the Final Order.
- 8.3. The Parties acknowledge that the express intent of this Agreement is to preclude the City from providing retail electric service to the public, whether as an Electricity Supplier or otherwise, within the area comprised of the City of Fort Wayne, the area formerly served by City Light, or the area currently served by I&M for as long as I&M provides retail electric service within those areas. The City acknowledges that the intent of the Parties in entering into this Agreement is that the City will at no future time serve as a provider of retail electric service within the Fort Wayne area. The City acknowledges that any material breach of the City's obligations under this Section 8 would deprive I&M of the benefit of its bargain. Thus, in the event that the City materially breaches any of its agreements set forth in this Section 8, I&M shall be entitled to withhold all payments that would be otherwise due to the City after such material breach. In the event a court of competent jurisdiction determines that the City has materially breached any of its agreements set forth in this Section 8, I&M, without prejudice to any other legal or equitable remedies, including specific performance and permanent or temporary injunctive relief, shall be entitled to the return of the payment set forth in Section 2.1.1.
- 8.4. The City acknowledges that this Agreement is in the best business interests of the City. This Agreement is meant to constitute a business decision of the City, pursuant to which it has agreed not to provide retail electric service within the Fort Wayne area (except as otherwise set forth herein) in exchange for the consideration received hereunder.
- 8.5. The City hereby transfers and assigns to I&M any and all rights it may have or possess to act as a provider of retail electric service within the Fort Wayne area, whether pursuant to the Act or otherwise. In the event that the City obtains any future right to act as a provider of retail electric service within in the Fort Wayne area, whether pursuant to the Act or otherwise, the City agrees to assign such right to I&M.

9. TERMINATION OF LEASE

- 9.1. The Parties agree that the Lease is deemed to have terminated upon the expiration of its original term.

10. COMMISSION APPROVAL

- 10.1. This Agreement shall be subject to the approval of the Commission in its entirety and without any change or condition that is unacceptable to either Party, including the Commission's approval of all amounts to be paid to the City as being recoverable by I&M as a part of its cost of service and the ratemaking treatment set forth in Section 5 of this Agreement.
- 10.2. As soon as practicable, I&M shall file the Petition. The City shall thereafter timely file a petition to intervene in and be made a party to the Commission proceeding relating to the Petition. The Parties shall cooperate as necessary and appropriate to prepare and file their respective testimony and exhibits in support of Commission approval of the relief requested in the Petition. Such evidence shall be admitted into evidence without objection from either Party and the Parties will agree to waive the right of cross-examination. The Parties will request that the Commission review this Agreement on an expedited basis and, if the Commission finds this Agreement is reasonable and in the public interest, approve this Agreement as soon as reasonably possible. The Parties shall prepare and file an agreed upon proposed order with the Commission.
- 10.3. The Petition will submit this Agreement and supporting evidence conditionally. In the event that the Commission does not approve this Agreement in its entirety and without any change or condition that is unacceptable to either Party, unless otherwise agreed in writing by the Parties, the Petition and all supporting evidence filed by either Party shall be withdrawn.
- 10.4. The evidence to be filed with the Commission in support of this Agreement will constitute substantial evidence sufficient to support the Commission's approval of the Agreement and will provide an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Agreement, as filed.

11. COURT PROCEEDINGS

- 11.1. Contemporaneously with the filing of the Petition, the Parties shall file a Joint Motion to Stay the Lawsuit, in its entirety, pending entry of a Final Order.
- 11.2. The Parties shall cooperate in seeking the Court's entry of an Order granting the Joint Motion to Stay.

- 11.3. Upon the Effective Date of the Final Order, the Parties shall jointly file a stipulation of dismissal with prejudice with respect to the Lawsuit, which shall dismiss any and all claims made within the Lawsuit.

## 12. THE COMMON COUNCIL

- 12.1. The City and I&M shall present the terms of this Agreement to the Common Council of the City of Fort Wayne (the "Common Council") for approval.
- 12.2. The form and content of a joint presentation to the Common Council shall be coordinated by the Parties.
- 12.3. Nothing in this Agreement shall prevent the City officials from fulfilling their obligation to inform Common Council members of the status of this matter. I&M shall be entitled to speak with Common Council members regarding the status of this matter in response to any request to do so by a Common Council member. The Parties agree to inform all Common Council members of the confidential nature of this matter. The Parties further agree not to take any position that is contrary to the terms of this Agreement when speaking with Common Council members.

## 13. PAYMENTS PRIOR TO FINAL ORDER

- 13.1. I&M has placed into an escrow account the payments under Section 2.1.1 that have become due since March 1, 2010 (the "Escrowed Payments"). Within fifteen business days after execution of this Agreement, I&M shall pay to the City all Escrowed Payments.
- 13.2. Beginning upon the first business day of the first full month after the execution of this Agreement, and continuing until the earlier of (i) the date upon which Common Council of the City of Fort Wayne does not approve the City's entry into the Agreement, (ii) the Effective Date of the Final Order, or (iii) any order from the Commission that rejects any part of the Agreement, I&M shall make monthly payments to the City in the amount of \$145,000 and thereafter as required by Section 2.1.2.
- 13.3. If (i) the Common Council of the City of Fort Wayne approves the City's entry into this Agreement without change or condition unacceptable to I&M, and (ii) the Commission approves this Agreement in its entirety and without change or condition unacceptable to either Party, then the payments to be made by I&M pursuant to Section 13.1 shall be credited against I&M's payment obligations under Section 2.1.2.
- 13.4. If (i) the Common Council of the City of Fort Wayne does not approve the City's entry into this Agreement without change or condition unacceptable to I&M, or

(ii) the Commission does not approve this Agreement in its entirety and without change or condition unacceptable to either Party, then the payments to be made by I&M pursuant to this Sections 13.1 and 13.2 shall be placed in an escrow account or deposited with the Allen Superior Court within thirty (30) days of the date upon which the first of either of the events set forth in (i) and (ii) occurs.

- 13.5. During the time period in which I&M is making the payments set forth in Section 13.1, the Parties shall take no legal action regarding, and shall make no public statements relating to, any alleged breach or default of the Lease.

#### 14. MUTUAL RELEASE

- 14.1. Except as otherwise explicitly set forth herein and except with respect to enforcement of the terms of this Agreement, including with without limitation, the indemnification obligations contained in Section 15 hereof, each Party for itself and for all of its representatives, officers, directors, owners, agents, officials, attorneys, employees, successors, predecessors, and related entities, shall release and forever discharge the other, including without limitation all predecessor and successor entities and all of their respective present and past partners, associates, attorneys, agents, officers, directors, employees, insurers, assigns, and all others acting for, by, or through I&M and the City, from and against any and all claims, demands, rights, costs, attorneys' fees, causes of action, suits at law or in equity, regulatory proceedings or relief, losses or damages of any nature, whether now known or unknown, anticipated or unanticipated, of any nature whatsoever, which either Party now has, has had, or may later claim to have arising from or related to (i) any aspect of the Lease or any rights or obligations arising thereunder, (ii) any claim that may exist between the Parties with respect to I&M's provision of, or alleged failure to provide, electric service to the City, and (iii) any claim relating to I&M's right to serve customers within I&M's assigned service area, including, but not limited to claims arising under antitrust laws or any other law, regulation, precedent, doctrine, theory, or rule.
- 14.2. The releases contained within this Section 14 will be deemed to have been made upon the Effective Date of the Final Order.

#### 15. REPRESENTATIONS AND INDEMNIFICATION

- 15.1. I&M hereby represents and covenants to the City that I&M has not performed any operations on the Property in violation of any Hazardous Materials Laws or Wetlands Laws, that I&M has not caused nor is responsible for any violation of Hazardous Materials Laws or Wetlands Laws to occur with respect to the Property, and that I&M is unaware of any violations of any Hazardous Materials Laws or Wetlands that have occurred on the Property during the term of the Lease.

- 15.2. The City hereby represents and covenants to I&M that the City has not performed any operations on the Property in violation of any Hazardous Materials Laws or Wetlands Laws, that the City has not caused nor is responsible for any violation of Hazardous Materials Laws or Wetlands Laws to occur with respect to the Property, and that the City is unaware of any such violations of any Hazardous Materials Laws or Wetlands that have occurred on the Property prior to or during the term of the Lease.
- 15.3. I&M shall be solely responsible for, and I&M agrees, at its sole cost and expense, to indemnify, protect and hold harmless the City, its directors, officers, employees, agents, successors and assigns, ("City Indemnified Parties"), from and against, any claim, action, cause of action, loss, damage, cost (including, without limitation, reasonably attorneys' fees and consultants' fees), expense, liability, obligation, penalty, demand, suit, proceeding, or disbursement directly or indirectly, in whole or in part, arising out of or attributable to a breach of I&M's representations and covenants contained in Section 15.1 ("I&M Environmental Claims"). For the purposes of this Agreement, I&M Environmental Claims shall include, without limitation: (A) the cost of any required or necessary repair, response, or cleanup of the Property and (B) all costs and expenses incurred by the City in connection with clause (A); provided, however, that nothing contained in this paragraph shall be deemed to (i) create or give any rights to any person other than City Indemnified Parties, it being intended that there shall be no third party beneficiary of such provisions, other than City Indemnified Parties, or (ii) preclude I&M from seeking indemnification from, or otherwise proceeding against, any third party including, without limitation, any tenant or predecessor in title to the Property.
- 15.4. The City shall be solely responsible for, and the City agrees, at its sole cost and expense, to indemnify, protect and hold harmless I&M, its directors, officers, employees, agents, successors and assigns, ("I&M Indemnified Parties"), from and against, any claim, action, cause of action, loss, damage, cost (including, without limitation, reasonably attorneys' fees and consultants' fees), expense, liability, obligation, penalty, demand, suit, proceeding, or disbursement directly or indirectly, in whole or in part, arising out of or attributable to a breach of the City's representations and covenants contained in Section 15.2 ("City Environmental Claims"). For the purposes of this Agreement, City Environmental Claims shall include, without limitation: (A) the cost of any required or necessary repair, response, or cleanup of the Property and (B) all costs and expenses incurred by the I&M in connection with clause (A); provided, however, that nothing contained in this paragraph shall be deemed to (i) create or give any rights to any person other than I&M Indemnified Parties, it being intended that there shall be no third party beneficiary of such provisions, other than I&M Indemnified Parties, or (ii) preclude the City from seeking indemnification from, or otherwise proceeding against, any third party including, without limitation, any tenant or predecessor in title to the Property.

- 15.5. Any costs or expenses incurred by either Party for which the other Party is responsible or for which the other Party has agreed to provide indemnification shall be paid to by the indemnifying party on demand, and failing prompt reimbursement, shall earn interest at the highest default rate of interest specified herein until paid in full.
  - 15.6. Notwithstanding anything in this Agreement to the contrary, the representations and undertakings of the Parties in this Section 15 shall survive the execution of this Agreement and the issuance of the Final Order.
16. EFFECT OF NON-APPROVAL OF AGREEMENT
- 16.1. If the Commission does not approve the Agreement in its entirety and without change or condition unacceptable to any Party, or, if the Common Council does not approve the City's entry into the Agreement, then, unless otherwise agreed in writing by the Parties:
    - 16.1.1. This Agreement, and all documents created in furtherance of the terms of this Agreement, with the exception of the terms contained in Sections 16, 21, and 24, and I&M's right to use the Property as set forth in Section 17, shall be deemed null, void and of no further effect;
    - 16.1.2. The Parties will cooperate in withdrawing the Petition, Agreement, and supporting evidence filed with the Commission;
    - 16.1.3. The Parties will request that the Court lift the stay of the Lawsuit, effective thirty (30) days from the earlier of (i) the date upon which the Commission issues an order that does not unconditionally approve this Agreement or (ii) the date upon which the Common Council indicates that it will not approve the City's entry into and the terms of this Agreement;
    - 16.1.4. Upon the effective date of the lifting of the stay sought pursuant to Section 11, the state of proceedings in the Lawsuit shall then be, in every respect, as if the date of the lifting of the stay were February 2, 2010, and all circumstances between the Parties and with respect to the Lease were as they existed on and as of February 2, 2010;
    - 16.1.5. Except as may be necessary to implement or enforce the terms of this Section 16, no Party or witness shall be permitted to refer to, or offer into evidence, this Agreement, the Petition, or the Joint Motion (or any act, omission or statement by any Party in furtherance of or reliance of the terms of such documents) in the Lawsuit or in any agency or other proceeding concerning the Lease;
    - 16.1.6. All payments made by I&M to the City pursuant to Section 13 shall be held by the City so that they are available either as an offset against

amounts that may be recoverable by the City from I&M in the Lawsuit or in any Commission proceeding relating to the Lease or to be returned to I&M in the event that no amounts are recoverable by the City or the Common Council does not approve the City's entry into and the terms of this Agreement;

16.1.7. Each Party shall bear its own costs and attorneys' fees associated with the efforts and actions required by this Agreement, the Petition, the City's petition to intervene in the Commission proceeding and the Joint Motion; and

16.1.8. Neither the making of this Agreement nor any of its provisions, or the provisions of the Agreement, shall constitute an admission by either Party, in the Lawsuit or any other litigation or proceeding. It is also understood that each and every term of the Agreement will be in consideration and support of each and every other term.

#### 17. USE OF PROPERTY

17.1. The City agrees that from the termination of the Lease until the earlier of either the Effective Date of the Final Order or the non-approval of this Agreement as set forth in Section 16, I&M is entitled to use the Property as if the Lease were in full force and effect.

#### 18. SEVERABILITY

18.1. The terms of the Agreement will not be severable and shall be accepted or rejected by the Commission in their entirety, without modification or further condition(s) that may be unacceptable to either Party. Notwithstanding the foregoing, the terms set forth in Sections 16, 21, and 24, as well as I&M's right to use the Property set forth in Section 17, shall survive and be binding upon the Parties in the event that the Commission does not unconditionally approve the Agreement.

#### 19. COLLABORATION

19.1. The Parties will cooperate and work together to defend against any third (3<sup>rd</sup>) party challenge to: i) the validity of this Agreement; and/or ii) the approval of this Agreement by the Commission and the Common Council (i) and ii) collectively referred to as a "Challenge").

19.2. The Parties will continue to collaborate on implementation of energy efficiency efforts in and around the City under the Commission's generic order dated December 9, 2009 in Cause No. 42693-Phase II.

19.3. The Parties will collaborate and cooperate with respect to the winding down of the City of Fort Wayne, Indiana and Indiana and Michigan Electric Company Restated Pension Plan and Funding Agreement (the "Pension Plan").

19.3.1. I&M will assign to the City sole sponsorship of the Pension Plan and its rights as Contractholder under the Group Annuity Contract with the Lincoln National Life Insurance Company which has been maintained in connection with the Pension Plan.

19.3.2. The City, at its own cost and expense, will take all actions (including any filings) that the City determines to be necessary to wind down the Pension Plan. I&M, at its own cost and expense, shall provide all support to the City that I&M and the City agree to be necessary to wind down the Pension Plan.

19.3.3. The City, as sponsor of the Pension Plan, shall have the sole right to any permissible reversion from the Pension Plan following the satisfaction by the pension Plan of all of the Pension Plan's liabilities.

20. NON-LEASE CLAIMS.

20.1. The Parties have identified certain charges for services rendered by I&M to the City as a customer of I&M that are unrelated to the Lease (the "Non-Lease Claims"). Specifically, the Non-Lease Claims relate to a gate relocation at the Three Rivers Substation, a 2007 Control Cable Relocation at the Filtration Plant, the conversion of Transformer No. 4 at Three Rivers Substation, the provision of 34KV underground service at the St. Joseph Dam, and provision of a 4KV portable transformer for the Three Rivers Filtration Plant.

20.2. The Parties agree that:

20.2.1. It is in the best interest of all concerned to eliminate any ambiguity regarding the effect of this Agreement on the Non-Lease Claims.

20.2.2. The value of the Non Lease Claims is \$555,000

20.2.3. The City shall pay to I&M the sum of \$555,000 within thirty (30) days after the City's receipt of the payment set forth in Section 13.1.

20.3. Upon receipt of the payment set forth in Section 20.1, I&M shall release and discharge the City from any and all liability relating to the Non-Lease Claims.



21. PUBLIC STATEMENTS

- 21.1. The Parties shall agree on the form, wording and timing of the public/media announcements concerning the Parties' execution of this Agreement, and with respect to filings with the Commission related to approval of this Agreement.
- 21.2. Unless otherwise required by law, neither Party will release any information to the public or media before the joint announcement of execution of this Agreement. Either Party may respond individually, without prior approval of the other Party, to questions from the public or media, provided that such responses are consistent with the agreed announcement and do not disparage the other Party.
- 21.3. Nothing in this Agreement shall limit or restrict the ability of the Commission or the Common Council to publicly comment regarding this Agreement or any Order affecting this Agreement.

22. NATURE OF AGREEMENT

- 22.1. This Agreement arises from a unique situation in terms of the resolution of disputed issues between the Parties related to the Lease and application of the terms of the Act. Neither the making of this Agreement (nor the execution of any instrument or court or agency submission required to effectuate the provisions of this Agreement), nor the provisions thereof, nor the entry by the Commission of a Final Order (or any other order), shall establish any principle or legal precedent applicable to Commission proceedings other than those resolved by this Agreement. A Final Order shall not constitute, and shall not be used as, precedent by any person in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce this Agreement.
- 22.2. This Agreement is 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 either of the Parties may take with respect to any or all of the items resolved by this Agreement and in any future regulatory or other proceedings.
- 22.3. This Agreement shall constitute a resolution of all matters involving, relating to, and concerning the Lease.

23. NATURE OF COMMUNICATIONS

- 23.1. The communications and discussions during the negotiations and mediation conferences, and any materials produced and exchanged concerning this Agreement, including drafts of the term sheet, drafts of the Agreement and drafts of documents filed with the Commission, all relate to offers of settlement and shall be privileged and confidential, without prejudice to the position of either

Party, and are not to be released to the public or used in any manner in connection with the Lawsuit, any other proceeding, or otherwise.

24. EFFECT OF FINAL ORDER

- 24.1. The Parties shall not appeal or seek rehearing, reconsideration or a stay of an order issued by the Commission that approves this Agreement in its entirety and without any change or condition that is unacceptable to either Party (or related orders to the extent such orders are specifically implementing the provisions of this Agreement).
- 24.2. The Parties shall support or not oppose this Agreement in the event of any appeal or a request for a stay by a person not a party to the Agreement or if the Agreement is the subject matter of any other state or federal proceeding.
- 24.3. Upon issuance of a Final Order, the agreements and covenants contained therein shall be unconditional, effective and binding on both Parties as an Order of the Commission.

25. MISCELLANEOUS

- 25.1. Governing Law. The Agreement shall be interpreted and enforced in accordance with the laws of the State of Indiana. Except as provided in Section 2.1.4, the provisions of the Agreement shall be enforceable by either Party before the Commission and thereafter, as necessary, a court of law located in Allen County, Indiana.
- 25.2. Authority to Execute Agreement. The undersigned persons have represented and agreed that they are fully authorized to execute this Agreement on behalf of the Parties they represent.
- 25.3. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties concerning the subject matter hereof and supersedes any prior written or verbal agreements or understandings in connection herewith. No amendment, waiver or modification hereto or hereunder shall be valid unless specifically made in writing and signed by an authorized signatory of each of the Parties hereto.
- 25.4. No Waiver. Neither Party's failure to exercise any of its rights under this Agreement will constitute or be deemed a waiver or forfeiture of those rights.
- 25.5. Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail or delivered either by hand or by messenger, or sent via fax, addressed to the address set forth at the foot of this Agreement. Any notice or other communication so addressed and mailed by registered or certified mail (in each case, with return receipt

requested) shall be deemed to be delivered and given when so mailed. Any notice or other communication so addressed and delivered by hand, by messenger or by fax shall be deemed to be given when actually received by the addressee.

- 25.6. Attorneys' Fees. In any action relating to this Agreement, the Prevailing Party shall be entitled to recover reasonable attorneys' fees and other costs incurred therein, in addition to any other appropriate relief, except as otherwise provided or limited by Section 16.1.7 herein. "Prevailing Party" shall include, but not be limited to, a party who dismisses an action for recovery under this Agreement in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.
- 25.7. Captions. The section headings and captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement nor substantively affect it in any way.
- 25.8. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the respective Parties hereto, their parent, subsidiaries, respective successors-in-interest, legal representatives, heirs and assigns.
- 25.9. Further Assurances. Each Party hereto agrees to take, or cause to be taken, all such further or other actions as shall reasonably be necessary to make effective, to consummate and to perform the undertakings and obligations contemplated by this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be executed by their duly authorized representatives.

INDIANA MICHIGAN POWER COMPANY

The CITY OF FORT WAYNE, INDIANA

By: Paul Chodak III

By: Thomas C. Henry

Printed: Paul Chodak III

Printed: THOMAS C. HENRY

Its: PRESIDENT + CHIEF OPERATING  
OFFICER

Its: MAYOR

Address: ONE SUMMIT SQUARE

Address: 1 MAIN STREET

FORT WAYNE, IN 46801

FORT WAYNE, IN 46802

OCTOBER 28, 2010

OCTOBER 28, 2010

**EXHIBIT A**

**ASSET AND REAL ESTATE PURCHASE AGREEMENT**

See following pages

ASSET AND REAL ESTATE PURCHASE AGREEMENT

This Asset and Real Estate Purchase Agreement ("APA") is made and entered into effective as of March 1, 2010 ("Effective Date"), by and between Indiana Michigan Power Company, an Indiana corporation ("Buyer") and the City of Fort Wayne, Indiana, a city within the State of Indiana ("Seller"). Buyer and Seller each shall be referred to individually herein as "Party" or collectively as "Parties."

Recitals

A. Seller owns certain assets and real estate that is located in the City of Fort Wayne and used by Buyer in connection with the provision of electric services.

B. Buyer desires to purchase the "Acquired Assets" and Seller desires to sell the "Acquired Assets" on the terms and subject to the conditions set forth in this APA.

Agreement:

In consideration of the mutual promises set forth herein and the representations, warranties, and covenants herein contained, the Parties agree as follows.

1. Definitions.

"Acquired Assets" means all of Seller's right, title, and interest in and to the items listed on Exhibit "1" and the real estate identified on Exhibit "2" (the "Real Estate"). The Acquired Assets consist of equipment, machinery, inventory, and real estate.

"Agreement" means the Agreement between Indiana Michigan Power Company and the City of Fort Wayne, which was effective as of March 1, 2010 and to which this APA is attached as an Exhibit.

"Buyer's Title Policy" means a policy of title insurance, if any, issued by the Title Company insuring Buyer's interest in the Real Estate.

"Knowledge" shall mean either actual knowledge of any official of Seller or officer of Buyer, or knowledge that should have been obtained by such individuals in the course of conducting a reasonably comprehensive investigation into the matter.

"Law" shall mean any local, county, state, federal, foreign or other law, statute, regulation, ordinance, rule, order, or governmental requirement enacted, promulgated, entered into, agreed or imposed by any governmental entity.

"Owner's Title Policy" means a policy of title insurance issued by the Title Company insuring the Buyer's interest in the Real Estate.

"Title Company" means Fidelity National Title Insurance Company, unless another company is mutually agreed upon by the Parties.

All capitalized terms not defined in this APA shall have the meaning given to them in the Agreement between Seller and Buyer to which this APA is an Exhibit.

2. Purchase and Sale of Assets. On and subject to the terms and conditions of this APA, Buyer agrees to purchase from Seller, and Seller agrees to sell, transfer, convey, and deliver to Buyer, all the Acquired Assets at the Closing for the consideration specified herein.

3. Purchase Price and Payment of Purchase Price. Buyer agrees to pay the Purchase Price to Seller in cash or other readily available funds as set forth in Sections 2, 3 and 4 of the Agreement. Seller agrees that title to the Acquired Assets will pass to Buyer on the Closing Date despite the fact that not all of the Purchase Price will be fully paid at Closing.

4. Non-Assumption of Liabilities. Except as otherwise set forth in the Agreement, Buyer shall not assume or become responsible for any liability of Seller whenever incurred and irrespective of the nature of such liability. Without limiting the generality of the foregoing, Buyer shall not assume any of the following obligations nor shall any of the following become a liability of Buyer for any purpose:

a. foreign, federal, state, county, or local taxes, if any, including without limitation, excise taxes, personal property taxes or documentary transfer taxes, which arise from due to any action of Seller on or prior to the Closing Date or that are charged or assessed against Seller as a result of the consummation of the transaction contemplated by this APA

b. any obligations or liabilities arising out of, relating to, or in connection with any action, suit, proceeding, or investigation pending or threatened against Seller or any of its officers, directors, employees, or agents as of the Closing Date;

c. any payments, costs or expenses (including fees and disbursements of counsel, accountants, experts and other financial, legal, accounting or other advisors) arising out of or incurred by Seller incident to the negotiation, preparation, execution and delivery of this APA and its performance and compliance with the agreements and conditions contained herein and therein;

d. any liabilities or obligations of Seller related to the violation of any Laws (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

5. Closing. Closing of the transaction contemplated by this APA ("Closing") shall occur by the automatic release of this Agreement from escrow on the third day after the Effective Date of the Final Order (the "Closing Date").

6. Deliveries By Seller at Closing. At or before the Closing, Seller shall execute and/or deliver to Buyer the following:

- a. A bill of sale the form attached hereto as Exhibit "3".
- b. A special warranty deed in the form attached hereto as Exhibit "4".
- c. An assignment and assumption agreement assigning all of Seller's right title and interest in and to all licenses, easements and the like concerning the retail supply of electricity, including, but not limited to, third party utility easements.
- d. An Owner's Title Policy with an effective date as of the Closing Date.
- e. Such other documents of transfer and assignment reasonably requested by Buyer to transfer title to the Acquired Assets to Buyer, effective as of the Closing Date.

7. Closing Costs.

- a. Seller shall pay the cost of the Owner's Title Policy up to and not to exceed Five Thousand and 00/100 Dollars (\$5,000.000).
- b. Buyer shall pay (i) all recording costs related to the conveyance of the Real Estate from Seller, releasing present encumbrances on the Real Estate, (ii) any cost of the Owner's Title Policy that exceeds Five Thousand and 00/100 Dollars (\$5,000.000); (iii) the cost of a survey of the Real Estate, if any, (iv) the cost of a Phase I environmental assessment, if any (v) the cost of the Buyer's Title Policy, if any, and (vi) the closing fee charged by the Title Company.

8. Transfer of Possession. Seller shall effectively convey title to, and Buyer shall take effective possession of, the Acquired Assets on the Closing Date. From and after the Closing, the risk of loss with respect to the Acquired Assets shall be borne solely by Buyer.

9. Representations and Warranties of Buyer. Buyer represents and warrants to Seller that the statements made by it and contained in this Section are correct and complete as of the Effective Date and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the Effective Date throughout this Section).

- a. Authorization of Transaction. Buyer has full power and authority to execute and deliver this APA and to perform its obligations hereunder. This APA

constitutes the valid and legally binding obligation, enforceable in accordance with its terms and conditions.

b. Noncontravention. Neither the execution and delivery of this APA, nor the consummation of the transaction contemplated hereby will, to the Knowledge of Buyer, (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which Buyer is subject, or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Buyer is a party or by which it is bound or to which any of its assets is subject.

c. No Environmental Claims. Buyer has no Knowledge of any violations of any Hazardous Materials Laws or Wetlands Laws that have occurred on the Property prior to the Closing Date.

d. Condition of Acquired Assets. Buyer has had the opportunity to inspect the Acquired Assets and, except for any representations and warranties contained herein, in a bill of sale, or in the special warranty deed, accepts the conveyance of the Acquired Assets in their AS IS, WHERE IS CONDITION WITH ALL FAULTS as of the Closing Date.

10. Representations and Warranties of Seller. Seller represents and warrants to Buyer that the statements made by it and contained in this Section are correct and complete as of the Effective Date and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the Effective Date throughout this Section).

a. Authorization of Transaction. After the Effective Date of the Final Order, Seller has full power and authority from the Common Council to execute and deliver this APA and to perform its obligations hereunder. This APA constitutes the valid and legally binding obligation, enforceable in accordance with its terms and conditions.

b. Noncontravention. After the Effective Date of the Final Order, neither the execution and delivery of this APA, nor the consummation of the transaction contemplated hereby will, to the Knowledge of Seller, (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which Seller is subject, or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Seller is a party or by which it is bound or to which any of its assets is subject.

c. Title to Assets. Seller has good and marketable title to the Acquired Assets, free and clear of all liens, claims and encumbrances, excluding any liens set forth on Schedule 10(c).



d. Compliance with Applicable Law. There are no existing violations of or non-conformities with, and to Seller's Knowledge, Seller is not under investigation with respect to and has not been charged with any alleged existing violations of or non-conformities with, any Law relating to the Acquired Assets and/or the use thereof, or of any material restriction, condition, covenant or agreement concerning the Acquired Assets (such violations and non-conformities herein referred to as "Violations" and "Non-Conformities," respectively). Further, Seller has not received notice of a Violation or Non-Conformity. Seller further warrants that to the extent any Acquired Assets are affixed to, or used upon, any real estate, such affixation and use shall comply with all applicable zoning or other use requirements or ordinances.

e. No Litigation or Claims. Seller is not subject to and has no Knowledge of any threatened actions, suits, proceedings or claims affecting the Acquired Assets. With respect to the Acquired Assets, Seller has not been charged with, or, to Seller's Knowledge, is not being investigated with respect to any Law, and no judgment, order, writ, injunction, decree (including, without limitation, a consent decree) or other similar command of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality which is presently in effect has been entered against or served upon Seller or affects materially and adversely the Acquired Assets.

f. No Environmental Claims. Seller has no Knowledge of any violations of any Hazardous Materials Laws or Wetlands Laws that have occurred on the Property prior to the Closing Date.

EXCEPT AS OTHERWISE HEREIN EXPRESSLY PROVIDED, SELLER MAKES NO WARRANTIES OR REPRESENTATIONS WHATSOEVER TO BUYER IN CONNECTION WITH ANY OF THE ACQUIRED ASSETS, AND, EXCEPT AS OTHERWISE HEREIN EXPRESSLY PROVIDED, ALL SUCH WARRANTIES AND REPRESENTATIONS, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF FITNESS AND MERCHANTABILITY, ARE HEREBY DISCLAIMED BY SELLER AND WAIVED BY BUYER.

11. Reasonable Efforts. Subject to the terms and conditions herein provided, the Parties agree to take, or cause to be taken, all actions and to do, or cause to be done, all things, necessary, proper or advisable to consummate and make effective as promptly as practicable the transactions contemplated by this APA.

12. Additional Covenants

a. Taxes. Buyer shall be responsible for all transfer taxes, if any, resulting from the conveyance of the Acquired Assets to Buyer.

b. Rights of Third Parties. Nothing contained in this APA, express or implied, is intended to confer on any persons other than the Parties or their respective

successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this APA.

c. Survival of Representations and Warranties. Neither Party may, after the expiration of three (3) years following the Closing Date, assert a claim against the other Party based on an alleged breach by such other Party of its representations or warranties that are contained in this APA, except that the representations and warranties contained in Section 9(a) and Section 10(a) shall survive indefinitely and the representations and warranties contained in Section 9(d) and Section 10(f) shall survive until the expiration of any and all applicable statutes of limitation periods.

d. Brokers. Each Party represents and warrants to the other that it has not engaged the services of any broker or finder in connection with this transaction, agrees to indemnify and hold the other Party harmless from and against any claim for commissions, finder's fees or any similar payment in connection with this APA or the transactions contemplated hereby based upon the conduct of the indemnifying Party in retaining the services of a broker or finder.

### 13. Indemnification

a. By Seller. Subject to Section 12(c) and excluding Challenges under Section 19 of the Agreement, Seller agrees to indemnify Buyer and to defend and hold Buyer harmless from and after the Closing Date against and in respect to any and all: (i) liabilities and obligations of Seller which existed prior to the Closing Date, or resulted from actions of Seller prior to the Closing Date or are based on events, acts, or omissions which occurred prior to the Closing Date; (ii) liabilities and obligations of Seller which result from Seller's use of the Acquired Assets (other than as lessor of the Acquired Assets) prior to the Closing Date; (iii) damages, losses, liabilities, taxes, and deficiencies, including penalties and interest thereon, and costs and expenses resulting from, any misrepresentation, breach of warranty or covenant or non-fulfillment of any obligation on the part of Seller under this APA or from any misrepresentation in or omission from any instrument furnished to Buyer as a closing deliverable pursuant to this APA; (iv) claims or litigation now pending or threatened against Seller; (v) claims or litigation which may hereafter be brought against Buyer based on events, acts, or omissions of Seller unrelated to any transactions contemplated by this APA or the Agreement and occurring prior to the Closing Date; (vi) litigation, actions, suits, proceedings, claims, demands, assessments, judgments, costs, losses, liabilities, and legal and other expenses and costs incident to any of the foregoing; and (vii) City Environmental Claims.

b. By Buyer. Subject to Section 12(c) and excluding Challenges under Section 19 of the Agreement, Buyer hereby agrees to indemnify Seller and to defend and hold Seller harmless from and after the Closing Date against and in respect to any and all: (i) liabilities and obligations of Buyer which arise after the Closing Date, or result from the use of the Acquired Assets after the Closing Date or are based on events, acts, or omissions which occurred after the Closing Date; (ii) liabilities and obligations of

Buyer which result from Buyer's use of the Acquired Assets prior to the Closing Date; (iii) damages, losses, liabilities, taxes and deficiencies, including penalties and interest thereon, and costs and expenses resulting from any misrepresentation, breach of warranty or covenant or non-fulfillment of any obligation on the part of Buyer under this APA, or from any misrepresentation in or omission from any instrument furnished to Seller; (iv) litigation, actions, suits, proceedings, claims, demands, assessments, judgments, costs, losses, liabilities, and legal and other expenses and costs incident to any of the foregoing; and (v) I&M Environmental Claims.

c. Notification. The Party seeking indemnification pursuant to this Section 13 ("Indemnatee") shall promptly notify the Party from whom indemnification is sought ("Indemnitor") of any third party claim covered by the indemnification provided for in this Section 13, and the Indemnitor shall have the right, by written notice given within thirty (30) business days after notice thereof from Indemnatee, at the cost and expense of Indemnitor, to defend any claim, and to control any settlement negotiations with respect to any such claim. Indemnitor shall not, in the defense or settlement of any such claim, consent to any injunction or other equitable relief without the prior written consent of Indemnatee or consent to any judgment or settlement which does not include as an unconditional term thereof the giving by the claimant to Indemnatee of a release from all liabilities in respect of such claims. If Indemnitor shall fail so to notify Indemnatee or assume such defense or control, Indemnatee may, in its sole discretion, defend, settle or compromise such third party claim and Indemnitor shall, upon demand by Indemnatee, cause to be paid to Indemnatee all amounts to which Indemnatee is entitled to indemnification hereunder.

14. Risk of Loss and Insurance. The risks of ownership and loss of the Real Estate shall pass to Buyer upon the Closing Date. Seller and Buyer shall maintain all property/casualty insurance on the Real Estate as required under the Lease through the Closing Date and Buyer shall provide insurance for the Real Estate thereafter.

15. Miscellaneous.

a. Expenses. Except as otherwise expressly provided herein to the contrary, all fees and expenses incurred by Seller in connection with the transactions contemplated by this APA shall be borne by Seller, and all fees and expenses incurred by Buyer in connection with the transactions contemplated by this APA shall be borne by Buyer, whether or not such transactions are consummated.

b. Assurances. Each of the Parties hereto agrees that it will, from time to time hereafter, execute and deliver such other documents and instruments and take such other action as may be reasonably requested by the other Party to carry out and consummate the actions and transaction contemplated by this APA.

c. Waiver and Amendment. Any provision of this APA may be waived at any time by the Party which is entitled to the benefits thereof, and this APA may be amended or supplemented at any time. However, no such waiver shall be

effective unless it is in writing and signed by the Party so waiving, and no such amendment or supplement shall be effective unless it is in writing and signed by both Seller and Buyer.

d. Entire Agreement. Except for the Agreement, this APA constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements and understandings, both written and oral, with respect to the subject matter hereof. In the event of any conflict between this APA and the Agreement, the Agreement shall control.

e. Governing Law. This APA shall be governed by and construed in accordance with the laws of the State of Indiana without application of any principles of conflict of laws that would otherwise provide for application of the law of a state other than Indiana. The provisions of the APA shall be enforceable by each of the Parties before a court of law located in Allen County, Indiana.

f. Notices. All notices and other communications hereunder shall be in writing and shall be delivered personally or transmitted to the Parties at the following addresses (or such other addresses for a Party as may be specified by notice given hereunder):

If to Seller:                      City of Fort Wayne, Indiana.  
   Attn: The City Attorney  
   One Main Street, Room 910  
   Fort Wayne, IN 46802  
  
   FAX 260-427-5678

If to Buyer:                      Indiana Michigan Power Company  
   President and COO  
   Attn: Paul Chodak  
   PO Box 60  
   One Summit Square  
   Fort Wayne, IN 46801

All properly addressed notices shall be deemed to have been given (i) three (3) business days after transmission via United States Mail, certified or registered, postage prepaid; (ii) the date transmitted via facsimile with a copy transmitted via United States Mail, postage prepaid, or (iii) one (1) business day after transmission via a nationally recognized courier with overnight delivery requested.

g. Headings. The headings contained in this APA are for reference purposes only and shall not affect in any way the meaning or interpretation of this APA.

h. Counterparts. This APA may be executed in one or more counterparts which may be transmitted via facsimile or otherwise, all of which

counterparts shall be considered one in the same agreement, and shall be effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party, being understood that both Parties need not sign the counterpart.

i. Severability. Each covenant and term contained in this APA is separate and distinct from every other covenant and term. In the event of the invalidity of any one covenant or term, the remaining covenants and terms shall be deemed independent and remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this executed this APA to be executed by their duly authorized representatives to be effective as of the Closing Date.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

INDIANA MICHIGAN POWER COMPANY

By: *Paul Chodak*

Printed: Paul Chodak

Its: PRESIDENT & CHIEF OPERATING OFFICER

Address: ONE SUMMIT SQUARE

FORT WAYNE, IN 46801

OCTOBER 28, 2010

The CITY OF FORT WAYNE, INDIANA

By: *Thomas C. Henry*

Printed: THOMAS C. HENRY

Its: MAYOR

Address: 1 MAIN STREET

FORT WAYNE, IN 46802

OCTOBER 28, 2010

Exhibit "1"  
Acquired Assets

See following pages

**The Following Substations and Related Structures and Misc. Equipment**

Lakeside Station  
Dalman Station – Land only  
Hobson Station  
Lawton Park Station  
Three Rivers Station  
Up River Dam Station

**All of the following Transmission Plant Equipment**

Poles  
Overhead Conductors & Devices  
Underground Conduit, Conductors and Devices

**All of the following Distribution Plant Equipment**

Poles  
Overhead Conductors and Devices  
Line Transformers  
Services  
Meters and Accessories  
Area Lighting on Customers' Premises  
Street Lighting

**All as More Particularly Described in I&M's Books and Records**



Exhibit "2"  
Real Estate

See following pages

**REAL ESTATE\***

**PARCEL I**

THE WEST HALF OF LOTS 17 AND 18 IN PRIZE GARDEN ADDITION TO THE CITY OF FORTWAYNE, ALLEN COUNTY, INDIANA.

**PARCEL II**

PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 6 TOWNSHIP 30 NORTH, RANGE 13 EAST, ALLEN COUNTY, INDIANA BY METES AND BOUNDS DESCRIBED AS FOLLOWS, TO WIT: TO ARRIVE AT THE POINT OF BEGINNING, COMMENCE AT THE NORTH QUARTER CORNER OF SAID SECTION; THENCE SOUTH (ASSUMED BEARING) ON THE EAST LINE OF SAID QUARTER SECTION, A DISTANCE OF 696.0 FEET TO THE AFOREMENTIONED POINT OF BEGINNING; THENCE NORTH 89 DEGREES 06 MINUTES WEST, A DISTANCE OF 649.5 FEET TO THE EAST LINE OF 18.0 ACRES DEEDED TO FORT WAYNE COMMUNITY SCHOOLS; THENCE SOUTH 0 DEGREES 50 MINUTES WEST ON THE LINE AFORESAID, A DISTANCE OF 768.0 FEET TO THE SOUTHEAST CORNER OF SAID 18.0 ACRES; THENCE NORTH 89 DEGREES 06 MINUTES WEST ON THE SOUTH LINE AT SAID 18.0 ACRES, A DISTANCE OF 542.72 FEET TO THE SOUTHWEST CORNER OF SAID 18.0 ACRES; THENCE SOUTH 0 DEGREES 50 MINUTES WEST ON A LINE PARALLEL TO AND 85.5 FEET NORMALLY DISTANT EAST OF THE EAST LINE OF SOUTH KENSINGTON PARK ADDITION AS RECORDED IN PLAT BOOK 9, PAGES 54-55, IN THE OFFICE OF THE RECORDER OF SAID COUNTY, A DISTANCE OF 1123.5 FEET, MORE OR LESS, TO LOW WATER MARK OF THE LEFT BANK OF THE MAUMEE RIVER; THENCE EASTWARD ON AND ALONG THE SAID LOW WATER MARK WITH THE MEANDERINGS THEREOF TO THE EAST LINE OF SAID FRACTIONAL QUARTER SECTION; THENCE NORTH ON THE LINE AFORESAID, A DISTANCE OF 1675 FEET TO THE POINT OF BEGINNING; CONTAINING 38.21 ACRES.

**PARCEL III**

AN IRREGULAR TRACT OF LAND SOUTHWESTERLY OF INTERSTATE 930 EAST AND NORTH ANTHONY BOULEVARD LOCATED IN THE NORTHWEST QUARTER OF SECTION 30, TOWNSHIP 31 NORTH RANGE 13 EAST CONTAINING 4.45 ACRES.

**PARCEL IV**

PARTS OF THE NORTHEAST AND SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 31 NORTH, RANGE 12 EAST OF THE SECOND PRINCIPAL MERIDIAN, WASHINGTON TOWNSHIP AND PARTS OF THE NORTHWEST QUARTER OF SECTION 30, TOWNSHIP 31 NORTH, RANGE 13 EAST OF THE SECOND PRINCIPAL MERIDIAN, ST. JOSEPH TOWNSHIP, ALL IN ALLEN COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A 1/2" PIPE AT THE EAST QUARTER CORNER OF SAID SECTION 25; THENCE NORTH 02 DEGREES 55 MINUTES 38

SECONDS WEST, (ASSUMED BEARING AND BASIS OF BEARINGS TO FOLLOW), A DISTANCE OF 159.87 FEET (160.00 FEET DEED) ALONG THE NORTHERLY EXTENSION OF THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 25 AND ALONG THE OLD CENTERLINE OF NORTH ANTHONY BOULEVARD TO THE EXISTING WESTERLY RIGHT-OF- WAY LINE OF SAID NORTH ANTHONY BOULEVARD, ALSO BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE NORTH 31 DEGREES 52 MINUTES 38 SECONDS EAST, A DISTANCE OF 386.71 FEET ALONG SAID RIGHT OF WAY LINE TO A POINT, SAID POINT BEING 56.00 FEET DISTANT FROM THE CENTERLINE OF SAID NORTH ANTHONY BOULEVARD; THENCE SOUTH 16 DEGREES 59 MINUTES 24 SECONDS WEST, A DISTANCE OF 589.11 FEET PARALLEL WITH THE CENTERLINE OF SAID NORTH ANTHONY BOULEVARD; THENCE NORTH 82 DEGREES 19 MINUTES 10 SECONDS WEST, A DISTANCE OF 78.19 FEET TO THE WEST RIGHT-OF-WAY LINE OF SAID NORTH ANTHONY BOULEVARD; THENCE NORTH 02 DEGREES 55 MINUTES 38 SECONDS WEST, A DISTANCE OF 175.20 FEET; THENCE NORTH 57 DEGREES 52 MINUTES 37 SECONDS EAST, A DISTANCE OF 57.28 FEET TO THE POINT OF BEGINNING. CONTAINING 0.937 ACRES, MORE OR LESS.

PARCEL V

LOTS 1 THROUGH 134 IN CITY PARK ADDITION AS RECORDED IN DEED RECORD 66 PAGE 570 IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA. ALSO A PART OF LOTS 2, 5, 6, AND 8 WELLS RESERVE LAWTON PARK CONTAINING 33 ACRES.

PARCEL VI

THE WEST 15 FEET AND THE EAST 35 FEET OF LOT NUMBERED 27 AND LOTS NUMBERED 28, 94 THROUGH 116 AND LOTS A-B, IN BALTES AND ROMY'S ADDITION AMENDED TO THE CITY OF FORT WAYNE ACCORDING TO PLAT THEREOF RECORDED IN PLAT RECORD 1 PAGE 26 AND AMENDED IN PLAT RECORD 1 PAGE 38.

\*All real estate subject to change and revision based upon surveys and discussions between the parties.

\*\* Grantor makes no representations or warranties with respect to the accuracy of the Real Estate legal description attached as Exhibit A, which legal description has been provided by Grantee.

Exhibit "3"  
Bill of Sale

See following pages

**BILL OF SALE**

The City of Fort Wayne, Indiana, a city within the State of Indiana ("Seller"), hereby bargains, sells, assigns, conveys and transfers to **Indiana Michigan Power Company**, an Indiana corporation ("Buyer") all of Seller's right, title, and interest in and to certain electric utility equipment owned by Seller located in Fort Wayne, Allen County, Indiana. The electric utility equipment being transferred is more particularly described on Exhibit A attached hereto and incorporated herein by this reference (collectively, the "**Equipment**"), and is being transferred in accordance with and subject to the terms and conditions of a certain Agreement and a certain Asset and Real Estate Purchase Agreement executed of even date herewith (collectively, the "**Agreements**").

To Seller's actual knowledge (without investigation), the Equipment is free of liens and encumbrances other than: (i) those referenced on Exhibit B attached to the Special Limited Warranty Deed of even date, and (ii) those which might otherwise arise by operation of law.

This Bill of Sale is made, executed, and delivered pursuant to the Agreements, in full and complete satisfaction of Seller's obligation to transfer the Equipment.

SELLER DISCLAIMS ANY WARRANTY OF MERCHANTABILITY WITH RESPECT TO THE EQUIPMENT. SELLER DISCLAIMS ANY WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE WHATSOEVER WITH RESPECT TO THE EQUIPMENT. SELLER IS SELLING THE EQUIPMENT ON AN "AS IS" AND "WHERE IS" BASIS, AND DISCLAIMS ANY IMPLIED WARRANTIES WITH RESPECT TO THE EQUIPMENT.

IN WITNESS WHEREOF, the undersigned duly authorized representatives of Seller and Buyer have caused this instrument to be executed on this \_\_\_\_ day of \_\_\_\_, 2010.

**The City of Fort Wayne, Indiana**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit A**

**The Following Substations and Related Structures and Misc. Equipment**

Lakeside Station  
Dalman Station – Land only  
Hobson Station  
Lawton Park Station  
Three Rivers Station  
Up River Dam Station

**All of the following Transmission Plant Equipment**

Poles  
Overhead Conductors & Devices  
Underground Conduit, Conductors and Devices

**All of the following Distribution Plant Equipment**

Poles  
Overhead Conductors and Devices  
Line Transformers  
Services  
Meters and Accessories  
Area Lighting on Customers' Premises  
Street Lighting

**All as More Particularly Described in I&M's Books and Records**

Exhibit "4"  
Special Warranty Deed

See following pages

**SPECIAL LIMITED WARRANTY DEED**  
**(Allen County)**

THIS INDENTURE WITNESSETH, that the **City of Fort Wayne, Indiana**, a city within the State of Indiana ("Grantor"), CONVEYS AND SPECIALLY WARRANTS to **Indiana Michigan Power Company**, an Indiana corporation ("Grantee"), for the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, certain real estate located in Allen County, Indiana, as more specifically described on Exhibit A attached hereto and incorporated herein (the "Real Estate"), subject to (i) all easements, covenants, conditions, encumbrances, liens and restrictions of record; (ii) non-delinquent real estate taxes due and payable in November, 2010, and all subsequent real estate taxes; (iii) all applicable zoning, land use and other rules, regulations and ordinances; (iv) any set of facts which would be disclosed by an accurate survey or inspection; and (v) the matters set forth on Exhibit B attached hereto and incorporated herein.

Grantor makes no representations or warranties with respect to the accuracy of the Real Estate legal description attached as Exhibit A, which legal description has been provided by Grantee.

The warranty of title by Grantor is limited to a warranty against the acts of Grantor and those claiming by, through or under Grantor, and not otherwise.

To Grantor's actual knowledge (without investigation), the Real Estate is free of liens and encumbrances other than: (i) those referenced on Exhibit B attached hereto, and (ii) those which might otherwise arise by operation of law.

THE REAL ESTATE SHALL BE CONVEYED IN ITS AS IS, WHERE IS CONDITION WITH ALL FAULTS AS OF THE DATE OF CONVEYANCE.

The undersigned person executing this Special Limited Warranty Deed on behalf of Grantor is duly authorized to do so, and Grantor has full right and authority to convey the real estate described herein.

IN WITNESS WHEREOF, the undersigned executes this Special Limited Warranty Deed on behalf of Grantor this \_\_\_\_ day of \_\_\_\_\_, 2010.

**The City of Fort Wayne, Indiana**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_



STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of the City of Fort Wayne, who, being first duly sworn, acknowledged execution of the above and foregoing "Special Limited Warranty Deed" for and on behalf of said city within the state of Indiana.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed

My Commission Expires:

My County of Residence:

\_\_\_\_\_

\_\_\_\_\_

After recording return to:

Send tax statements to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This instrument was prepared by Kristin Dutton, Attorney at Law, Bingham McHale LLP, 2700 Market Tower, 10 W. Market Street, Indianapolis, IN 46204-4900 (Ph: (317) 635-8900).

I hereby certify under the penalties for perjury that I have exercised reasonable care to redact all social security numbers from this document unless required by law.  
Kristin Dutton

**EXHIBIT A**  
**REAL ESTATE\***

**PARCEL I**

THE WEST HALF OF LOTS 17 AND 18 IN PRIZE GARDEN ADDITION TO THE CITY OF FORTWAYNE, ALLEN COUNTY, INDIANA.

**PARCEL II**

PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 6 TOWNSHIP 30 NORTH, RANGE 13 EAST, ALLEN COUNTY, INDIANA BY METES AND BOUNDS DESCRIBED AS FOLLOWS, TO WIT: TO ARRIVE AT THE POINT OF BEGINNING, COMMENCE AT THE NORTH QUARTER CORNER OF SAID SECTION; THENCE SOUTH (ASSUMED BEARING) ON THE EAST LINE OF SAID QUARTER SECTION, A DISTANCE OF 696.0 FEET TO THE AFOREMENTIONED POINT OF BEGINNING; THENCE NORTH 89 DEGREES 06 MINUTES WEST, A DISTANCE OF 649.5 FEET TO THE EAST LINE OF 18.0 ACRES DEEDED TO FORT WAYNE COMMUNITY SCHOOLS; THENCE SOUTH 0 DEGREES 50 MINUTES WEST ON THE LINE AFORESAID, A DISTANCE OF 768.0 FEET TO THE SOUTHEAST CORNER OF SAID 18.0 ACRES; THENCE NORTH 89 DEGREES 06 MINUTES WEST ON THE SOUTH LINE AT SAID 18.0 ACRES, A DISTANCE OF 542.72 FEET TO THE SOUTHWEST CORNER OF SAID 18.0 ACRES; THENCE SOUTH 0 DEGREES 50 MINUTES WEST ON A LINE PARALLEL TO AND 85.5 FEET NORMALLY DISTANT EAST OF THE EAST LINE OF SOUTH KENSINGTON PARK ADDITION AS RECORDED IN PLAT BOOK 9, PAGES 54-55, IN THE OFFICE OF THE RECORDER OF SAID COUNTY, A DISTANCE OF 1123.5 FEET, MORE OR LESS, TO LOW WATER MARK OF THE LEFT BANK OF THE MAUMEE RIVER; THENCE EASTWARD ON AND ALONG THE SAID LOW WATER MARK WITH THE MEANDERINGS THEREOF TO THE EAST LINE OF SAID FRACTIONAL QUARTER SECTION; THENCE NORTH ON THE LINE AFORESAID, A DISTANCE OF 1675 FEET TO THE POINT OF BEGINNING; CONTAINING 38.21 ACRES.

**PARCEL III**

AN IRREGULAR TRACT OF LAND SOUTHWESTERLY OF INTERSTATE 930 EAST AND NORTH ANTHONY BOULEVARD LOCATED IN THE NORTHWEST QUARTER OF SECTION 30, TOWNSHIP 31 NORTH RANGE 13 EAST CONTAINING 4.45 ACRES.

**PARCEL IV**

PARTS OF THE NORTHEAST AND SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 31 NORTH, RANGE 12 EAST OF THE SECOND PRINCIPAL MERIDIAN, WASHINGTON TOWNSHIP AND PARTS OF THE NORTHWEST QUARTER OF SECTION 30, TOWNSHIP 31 NORTH, RANGE 13 EAST OF THE SECOND PRINCIPAL MERIDIAN, ST. JOSEPH TOWNSHIP, ALL IN ALLEN COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A 1/2" PIPE AT THE EAST QUARTER

CORNER OF SAID SECTION 25; THENCE NORTH 02 DEGREES 55 MINUTES 38 SECONDS WEST, (ASSUMED BEARING AND BASIS OF BEARINGS TO FOLLOW), A DISTANCE OF 159.87 FEET (160.00 FEET DEED) ALONG THE NORTHERLY EXTENSION OF THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 25 AND ALONG THE OLD CENTERLINE OF NORTH ANTHONY BOULEVARD TO THE EXISTING WESTERLY RIGHT-OF-WAY LINE OF SAID NORTH ANTHONY BOULEVARD, ALSO BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE NORTH 31 DEGREES 52 MINUTES 38 SECONDS EAST, A DISTANCE OF 386.71 FEET ALONG SAID RIGHT OF WAY LINE TO A POINT, SAID POINT BEING 56.00 FEET DISTANT FROM THE CENTERLINE OF SAID NORTH ANTHONY BOULEVARD; THENCE SOUTH 16 DEGREES 59 MINUTES 24 SECONDS WEST, A DISTANCE OF 589.11 FEET PARALLEL WITH THE CENTERLINE OF SAID NORTH ANTHONY BOULEVARD; THENCE NORTH 82 DEGREES 19 MINUTES 10 SECONDS WEST, A DISTANCE OF 78.19 FEET TO THE WEST RIGHT-OF-WAY LINE OF SAID NORTH ANTHONY BOULEVARD; THENCE NORTH 02 DEGREES 55 MINUTES 38 SECONDS WEST, A DISTANCE OF 175.20 FEET; THENCE NORTH 57 DEGREES 52 MINUTES 37 SECONDS EAST, A DISTANCE OF 57.28 FEET TO THE POINT OF BEGINNING. CONTAINING 0.937 ACRES, MORE OR LESS.

PARCEL V

LOTS 1 THROUGH 134 IN CITY PARK ADDITION AS RECORDED IN DEED RECORD 66 PAGE 570 IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA. ALSO A PART OF LOTS 2, 5, 6, AND 8 WELLS RESERVE LAWTON PARK CONTAINING 33 ACRES.

PARCEL VI

THE WEST 15 FEET AND THE EAST 35 FEET OF LOT NUMBERED 27 AND LOTS NUMBERED 28, 94 THROUGH 116 AND LOTS A-B, IN BALTES AND ROMY'S ADDITION AMENDED TO THE CITY OF FORT WAYNE ACCORDING TO PLAT THEREOF RECORDED IN PLAT RECORD 1 PAGE 26 AND AMENDED IN PLAT RECORD 1 PAGE 38.

\*All real estate subject to change and revision based upon surveys and discussions between the parties.

\*\* Grantor makes no representations or warranties with respect to the accuracy of the Real Estate legal description, which legal description has been provided by Grantee.

**EXHIBIT B**  
**EXCEPTIONS**

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for the value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Rights or claims of parties in possession, boundary line disputes, overlaps, encroachments, and any other matters not shown by the public records which would be disclosed by an accurate survey and inspection of the land described in Schedule A.
3. Easements, or claims of easements, not shown by the public records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the land. The term "encroachment" includes encroachments of existing improvements located on the land onto adjoining land, and encroachments onto the land of existing improvements located on adjoining land.
15. Rights of the public and others entitled thereto in and to the use of that portion of the property within the bounds of any road or highways.
16. Possible assessment for periodic ditch maintenance which may be a lien but is not assessed as of the date of this commitment.
18. Easement over the North 20 feet of Lot 18 for ingress and egress recorded May 21, 1970 as Instrument Number 70-7799. (Parcel I)
19. Hold Harmless Agreement by and between The Trustees of Purdue University, for and on behalf of Indiana University-Purdue University Fort Wayne (IPFW) and the City of Fort Wayne recorded November 14, 2007 as Instrument Number 2007063053. (Parcels III and IV)
20. Grant of Permanent Easement to The Trustees of Purdue University for and on behalf of Indiana University-Purdue University Fort Wayne recorded November 14, 2007 as Instrument Number 2007063054. (Parcels III and IV)
21. St. Joseph Interconnect Interceptor Resolution 310-1980 Phase I, II, III and IV. (Parcel II)
23. Rights of upper, lower, and/or abutting riparian owners, the State of Indiana, the County, and/or the public in and to the water of St. Josephs River, and to the uninterrupted natural flow thereof free of pollution from the insured premises and subject to the possibilities of accretion or avulsion which might change boundaries established by said waters.

24. Rights, if any, of the property owners abutting the insured premises in and to the waters of the adjoining lake and in and to the bed thereof, also boating and fishing rights of property owners abutting the lake or stream of water leading thereto and therefrom.

25. Rights of others thereto and entitled in and to the continued uninterrupted flow of the stream/river passing through the insured premises.

26. Excepting any part thereof resulting through change in the course of the shore line of St. Josephs River occasioned by other than natural causes or by natural causes other than accretion.

Schedule 10(c)

None

**EXHIBIT B**

**BETTERMENTS, ENLARGEMENTS, AND EXTENSIONS**

See following pages

asset_location	utility_account
Lakeside FWCPL 34.5KV Switching Structure : I&M : 5801	35200 - Structures and Improvements
Lakeside FWCPL 34.5KV Switching Structure : I&M : 5801	35300 - Station Equipment
Sub-Transmission Lines- =<69KV Fort Wayne Betterments (City Light) : I&M : 0694	35400 - Towers and Fixtures
Sub-Transmission Lines- =<69KV Fort Wayne Betterments (City Light) : I&M : 0694	35500 - Poles and Fixtures
Sub-Transmission Lines- =<69KV Fort Wayne Betterments (City Light) : I&M : 0694	35600 - Overhead Conductors, Device
Sub-Transmission Lines- =<69KV Fort Wayne Betterments (City Light) : I&M : 0694	35700 - Underground Conduit
Sub-Transmission Lines- =<69KV Fort Wayne Betterments (City Light) : I&M : 0694	35800 - Undergrmd Conductors Device
Phenie FWCPL 13.8/4KV Substation : I&M : 9810	36000 - Land
Distribution Mass Property - Fort Wayne Betterments (City Light) : I&M : 1004	36010 - Land Rights
Bloomingtondale FWCPL 13.8/4KV Substation : I&M : 9802	36100 - Structures and Improvements
Dalman FWCPL 13.8/4KV Substation : I&M : 9803	36100 - Structures and Improvements
Lafayette FWCPL 13.8/4KV Substation : I&M : 9807	36100 - Structures and Improvements
Lawton Park FWCPL 34.5/13.8/4KV Substation : I&M : 9808	36100 - Structures and Improvements
Phenie FWCPL 13.8/4KV Substation : I&M : 9810	36100 - Structures and Improvements
Storm Water FWCPL 34.5/4KV Substation : I&M : 9815	36100 - Structures and Improvements
Three Rivers FWCPL 34.5/13.8/4/2.4KV Substation : I&M : 9811	36100 - Structures and Improvements
Up River Dam FWCPL 13.8/4/2.4KV Substation : I&M : 9812	36100 - Structures and Improvements
Water Pollution FWCPL 34.5/4KV Substation : I&M : 9814	36100 - Structures and Improvements
Bloomingtondale FWCPL 13.8/4KV Substation : I&M : 9802	36200 - Station Equipment
Dalman FWCPL 13.8/4KV Substation : I&M : 9803	36200 - Station Equipment
Hobson FWCPL 34.5/4KV Substation : I&M : 9806	36200 - Station Equipment
Lafayette FWCPL 13.8/4KV Substation : I&M : 9807	36200 - Station Equipment
Lawton Park FWCPL 34.5/13.8/4KV Substation : I&M : 9808	36200 - Station Equipment
Phenie FWCPL 13.8/4KV Substation : I&M : 9810	36200 - Station Equipment
Storm Water FWCPL 34.5/4KV Substation : I&M : 9815	36200 - Station Equipment
Three Rivers FWCPL 34.5/13.8/4/2.4KV Substation : I&M : 9811	36200 - Station Equipment



Up River Dam FWCPL 13.8/4/2.4KV Substation : I&M : 9812  
Water Pollution FWCPL 34.5/4KV Substation : I&M : 9814

Distribution Mass Property - Fort Wayne Betterments (City Light) : I&M : 1004

Distribution Mass Property - Fort Wayne Betterments (City Light) : I&M : 1004

Distribution Mass Property - Fort Wayne Betterments (City Light) : I&M : 1004

Distribution Mass Property - Fort Wayne Betterments (City Light) : I&M : 1004

Distribution Mass Property - Fort Wayne Betterments (City Light) : I&M : 1004

Distribution Mass Property - Fort Wayne Betterments (City Light) : I&M : 1004

Distribution Mass Property - Fort Wayne Betterments (City Light) : I&M : 1004

Storm Water FWCPL 34.5/4KV Substation : I&M : 9815  
Up River Dam FWCPL 13.8/4/2.4KV Substation : I&M : 9812  
Water Pollution FWCPL 34.5/4KV Substation : I&M : 9814

Distribution Mass Property - Fort Wayne Betterments (City Light) : I&M : 1004

Distribution Mass Property - Fort Wayne Betterments (City Light) : I&M : 1004

Dalman FWCPL 13.8/4KV Substation : I&M : 9803  
Lawton Park FWCPL 34.5/13.8/4KV Substation : I&M : 9808  
Storm Water FWCPL 34.5/4KV Substation : I&M : 9815  
Water Pollution FWCPL 34.5/4KV Substation : I&M : 9814

36200 - Station Equipment  
36200 - Station Equipment

36400 - Poles, Towers and Fixtures

36500 - Overhead Conductors, Device

36600 - Underground Conduit

36700 - Undergrmd Conductors, Device

36800 - Line Transformers

36900 - Services

37000 - Meters  
37000 - Meters  
37000 - Meters  
37000 - Meters

37100 - Install Customer Premises

37300 - Street Lghtng & Signal Sys

39700 - Communication Equipment  
39700 - Communication Equipment  
39700 - Communication Equipment  
39700 - Communication Equipment

**EXHIBIT C**

**PERSONAL PROPERTY**

**See following pages**

**The Following Substations and Related Structures and Misc. Equipment**

Lakeside Station  
Dalman Station - Land only  
Hobson Station  
Lawton Park Station  
Three Rivers Station  
Up River Dam Station

**All of the following Transmission Plant Equipment**

Poles  
Overhead Conductors & Devices  
Underground Conduit, Conductors, and Devices

**All of the following Distribution Plant Equipment**

Poles  
Overhead Conductors and Devices  
Line Transformers  
Services  
Meters and Accessories  
Area Lighting on Customers' Premises  
Street Lighting

**All as More Particularly Described in I&M's Books and Records**

**EXHIBIT D**

**REAL ESTATE\***

**PARCEL I**

THE WEST HALF OF LOTS 17 AND 18 IN PRIZE GARDEN ADDITION TO THE CITY OF FORTWAYNE, ALLEN COUNTY, INDIANA.

**PARCEL II**

PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 6 TOWNSHIP 30 NORTH, RANGE 13 EAST, ALLEN COUNTY, INDIANA BY METES AND BOUNDS DESCRIBED AS FOLLOWS, TO WIT: TO ARRIVE AT THE POINT OF BEGINNING, COMMENCE AT THE NORTH QUARTER CORNER OF SAID SECTION; THENCE SOUTH (ASSUMED BEARING) ON THE EAST LINE OF SAID QUARTER SECTION, A DISTANCE OF 696.0 FEET TO THE AFOREMENTIONED POINT OF BEGINNING; THENCE NORTH 89 DEGREES 06 MINUTES WEST, A DISTANCE OF 649.5 FEET TO THE EAST LINE OF 18.0 ACRES DEEDED TO FORT WAYNE COMMUNITY SCHOOLS; THENCE SOUTH 0 DEGREES 50 MINUTES WEST ON THE LINE AFORESAID, A DISTANCE OF 768.0 FEET TO THE SOUTHEAST CORNER OF SAID 18.0 ACRES; THENCE NORTH 89 DEGREES 06 MINUTES WEST ON THE SOUTH LINE AT SAID 18.0 ACRES, A DISTANCE OF 542.72 FEET TO THE SOUTHWEST CORNER OF SAID 18.0 ACRES; THENCE SOUTH 0 DEGREES 50 MINUTES WEST ON A LINE PARALLEL TO AND 85.5 FEET NORMALLY DISTANT EAST OF THE EAST LINE OF SOUTH KENSINGTON PARK ADDITION AS RECORDED IN PLAT BOOK 9, PAGES 54-55, IN THE OFFICE OF THE RECORDER OF SAID COUNTY, A DISTANCE OF 1123.5 FEET, MORE OR LESS, TO LOW WATER MARK OF THE LEFT BANK OF THE MAUMEE RIVER; THENCE EASTWARD ON AND ALONG THE SAID LOW WATER MARK WITH THE MEANDERINGS THEREOF TO THE EAST LINE OF SAID FRACTIONAL QUARTER SECTION; THENCE NORTH ON THE LINE AFORESAID, A DISTANCE OF 1675 FEET TO THE POINT OF BEGINNING; CONTAINING 38.21 ACRES.

**PARCEL III**

AN IRREGULAR TRACT OF LAND SOUTHWESTERLY OF INTERSTATE 930 EAST AND NORTH ANTHONY BOULEVARD LOCATED IN THE NORTHWEST QUARTER OF SECTION 30, TOWNSHIP 31 NORTH RANGE 13 EAST CONTAINING 4.45 ACRES.

**PARCEL IV**

PARTS OF THE NORTHEAST AND SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 31 NORTH, RANGE 12 EAST OF THE SECOND PRINCIPAL MERIDIAN, WASHINGTON TOWNSHIP AND PARTS OF THE NORTHWEST QUARTER OF SECTION 30, TOWNSHIP 31 NORTH, RANGE 13 EAST OF THE SECOND PRINCIPAL MERIDIAN, ST. JOSEPH TOWNSHIP, ALL IN ALLEN COUNTY, INDIANA, MORE PARTICULARLY

DESCRIBED AS FOLLOWS: COMMENCING AT A 1/2" PIPE AT THE EAST QUARTER CORNER OF SAID SECTION 25; THENCE NORTH 02 DEGREES 55 MINUTES 38 SECONDS WEST, (ASSUMED BEARING AND BASIS OF BEARINGS TO FOLLOW), A DISTANCE OF 159.87 FEET (160.00 FEET DEED) ALONG THE NORTHERLY EXTENSION OF THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 25 AND ALONG THE OLD CENTERLINE OF NORTH ANTHONY BOULEVARD TO THE EXISTING WESTERLY RIGHT-OF-WAY LINE OF SAID NORTH ANTHONY BOULEVARD, ALSO BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE NORTH 31 DEGREES 52 MINUTES 38 SECONDS EAST, A DISTANCE OF 386.71 FEET ALONG SAID RIGHT OF WAY LINE TO A POINT, SAID POINT BEING 56.00 FEET DISTANT FROM THE CENTERLINE OF SAID NORTH ANTHONY BOULEVARD; THENCE SOUTH 16 DEGREES 59 MINUTES 24 SECONDS WEST, A DISTANCE OF 589.11 FEET PARALLEL WITH THE CENTERLINE OF SAID NORTH ANTHONY BOULEVARD; THENCE NORTH 82 DEGREES 19 MINUTES 10 SECONDS WEST, A DISTANCE OF 78.19 FEET TO THE WEST RIGHT-OF-WAY LINE OF SAID NORTH ANTHONY BOULEVARD; THENCE NORTH 02 DEGREES 55 MINUTES 38 SECONDS WEST, A DISTANCE OF 175.20 FEET; THENCE NORTH 57 DEGREES 52 MINUTES 37 SECONDS EAST, A DISTANCE OF 57.28 FEET TO THE POINT OF BEGINNING. CONTAINING 0.937 ACRES, MORE OR LESS.

PARCEL V

LOTS 1 THROUGH 134 IN CITY PARK ADDITION AS RECORDED IN DEED RECORD 66 PAGE 570 IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA. ALSO A PART OF LOTS 2, 5, 6, AND 8 WELLS RESERVE LAWTON PARK CONTAINING 33 ACRES.

PARCEL VI

THE WEST 15 FEET AND THE EAST 35 FEET OF LOT NUMBERED 27 AND LOTS NUMBERED 28, 94 THROUGH 116 AND LOTS A-B, IN BALTES AND ROMY'S ADDITION AMENDED TO THE CITY OF FORT WAYNE ACCORDING TO PLAT THEREOF RECORDED IN PLAT RECORD 1 PAGE 26 AND AMENDED IN PLAT RECORD 1 PAGE 38.

\*All real estate subject to change and revision based upon surveys and discussions between the parties.

\*\* Grantor makes no representations or warranties with respect to the accuracy of the Real Estate legal description, which legal description has been provided by Grantee.

## STATE OF INDIANA

## INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF )  
 INDIANA MICHIGAN POWER COMPANY )  
 ("I&M") FOR APPROVAL OF AN AGREEMENT )  
 PROVIDING FOR THE PURCHASE BY I&M OF )  
 ELECTRIC UTILITY PROPERTY OWNED BY )  
 THE CITY OF FORT WAYNE, INDIANA ("CITY") ) CAUSE NO. 43980  
 AND LEASED TO I&M IN ACCORDANCE WITH )  
 THE COMMISSION'S ORDER IN CAUSE NO. )  
 33638 AND FOR ASSOCIATED ACCOUNTING )  
 AND RATEMAKING RELIEF AND FOR ALL )  
 OTHER APPROPRIATE APPROVAL AND )  
 AUTHORITY. )

## STIPULATION AND SETTLEMENT AGREEMENT

Indiana Michigan Power Company ("I&M" or "Company") and the Indiana Office of Utility Consumer Counselor ("OUCC") (collectively the "Parties" and individually "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 ("Commission") into a final, non-appealable order ("Final Order") without modification or further condition that may be unacceptable to any Party. If the Commission does not approve this Stipulation and Settlement Agreement ("Settlement"), in its entirety, the entire Settlement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Parties.

## I. TERMS AND CONDITIONS

A. The Parties agree that the relief sought in I&M's Petition and direct testimony in this proceeding shall be approved subject to the following modification of the Ratemaking Treatment proposed in Section 5 of the Agreement between I&M and the City of Fort Wayne ("the City") filed with the Petition in this Cause as Exhibit A ("Agreement"):

1. Resolution of OUCC Concern Regarding Interest Rate. For all ratemaking purposes, I&M agrees to use a lower imputed interest rate of 6% instead of the 8% reflected in the Agreement.

a. I&M will record the difference between using an interest rate of 8% and 6%, which equals approximately \$3.4 million below-the-line so that this amount will be excluded for all ratemaking purposes.

b. The \$39.2 million payment stream to the City by I&M in accordance with the Agreement will not be affected by the use of the lower imputed interest rate for ratemaking purposes.

c. I&M will not seek to include in rates the \$3.4 million associated with the use of an imputed interest rate of 6% in this case or any future case.

d. I&M's proposed accounting and ratemaking treatment associated with the remaining balance of the interest (\$11.8 million) will be approved.

2. Resolution of OUCC Concern Regarding Resolution of Severance Damages Claim. I&M will record below-the-line \$700,000 of the \$5 million up front payment set forth in

Section 2 of the Agreement that resolves the City's severance damage claim so that this amount will be excluded for all ratemaking purposes.

a. The \$39.2 million payment stream to the City by I&M in accordance with the Agreement will not be affected by I&M's recording the \$700,000 amount below-the -line.

b. I&M will not seek to include in rates the \$700,000 in this case or any future case.

c. I&M's proposed accounting and ratemaking treatment associated with the remaining balance of the up front payment (\$4.3 million) will be approved.

3. Resolution Regarding Other Accounting and Ratemaking Requests. The other accounting and ratemaking relief requested by I&M will be approved.

a. The value of the physical assets purchased under the Agreement at approximately \$13.1 million shall be included in rate base in I&M's future basic rate cases as proposed by I&M and the associated accounting treatment will be approved.

b. The payment of \$5.9 million set forth in Section 4 of the Agreement to extinguish the City's claim regarding the purchase of Betterments and the City's claim regarding I&M's obligations with respect to generation shall be recognized for accounting and ratemaking purposes as proposed by I&M.

## **II. PRESENTATION OF THE SETTLEMENT TO THE COMMISSION**

A. The Parties shall support this Settlement before the Commission and request that the Commission expeditiously accept and approve the Settlement. This Settlement is not



severable and should be accepted or rejected in its entirety without modification or further condition(s) that may be unacceptable to any Party.

B. The Parties shall jointly move for leave to file this Settlement and supporting evidence, which evidence shall include: the evidence prefiled by I&M, City and OUCC prior to May 25, 2010 and additional testimony supporting the Settlement. Such evidence will be offered into evidence without objection and the Parties hereby waive cross-examination. The Parties propose to submit this Settlement and evidence conditionally, and that, if the Commission fails to approve this Settlement in its entirety without any change or with condition(s) unacceptable to any Party, the Settlement and supporting evidence shall be withdrawn and the Commission will continue to hear Cause No. 43980 with the proceedings resuming at the point they were suspended on May 25, 2010.

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

D. The Parties shall jointly agree on the form, wording and timing of public/media announcement (if any) of this Settlement and the terms thereof. No Party will release any information to the public or media prior to the aforementioned announcement. The Parties may respond individually without prior approval of the other Parties to questions from the public or media, provided that such responses are consistent with such announcement and do not disparage any of the Parties. Nothing in this Settlement shall limit or restrict the Commission's ability to publicly comment regarding this Settlement or any Order affecting this Settlement.

### **III. EFFECT AND USE OF SETTLEMENT**

A. It is understood that this Settlement is reflective of a negotiated settlement and neither the making of this Settlement nor any of its provisions shall constitute an admission by any Party to this Settlement in this or any other litigation or proceeding. It is also understood that each and every term of this Settlement is in consideration and support of each and every other term.

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

C. This Settlement 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 of the Parties may take with respect to any or all of the items resolved here and in any future regulatory or other proceedings.

D. The Parties agree that the evidence in support of this Settlement constitutes substantial evidence sufficient to support this Settlement 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, as filed. The Parties shall prepare and file an agreed proposed order with the Commission as soon as reasonably possible.

E. The communications and discussions during the negotiations and conferences and any materials produced and exchanged concerning this Settlement all relate to offers of settlement and shall be privileged and confidential, without prejudice to the position of any

Party, and are not to be used in any manner in connection with any other proceeding or otherwise.

F. The undersigned Parties have represented and agreed that they are fully authorized to execute the Settlement on behalf of their designated clients, and their successor and assigns, who will be bound thereby.

G. The Parties shall not appeal or seek rehearing, reconsideration or a stay of the Final Order approving this Settlement in its entirety and without change or condition(s) unacceptable to any Party (or related orders to the extent such orders are specifically implementing the provisions of this Settlement). The Parties shall support or not oppose this Settlement in the event of any appeal or a request for a stay by a person not a party to this Settlement or if this Settlement is the subject matter of any other state or federal proceeding.

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

J. This Settlement 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.

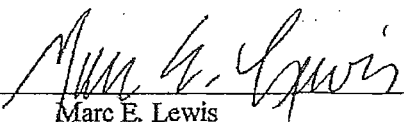
#### **IV. ACCEPTANCE OF CHANGE TO AGREEMENT BETWEEN I&M AND THE CITY.**

The Parties to the Settlement are authorized to represent to the Commission that the City supports the terms of this Settlement. Section 10.1 of the Agreement provides that it is subject to approval of the Commission in its entirety and without change or condition that is unacceptable to either I&M or the City, including the Commission's approval of all amounts to be paid to the City as being recoverable by I&M as a part of its cost of service and the ratemaking treatment set

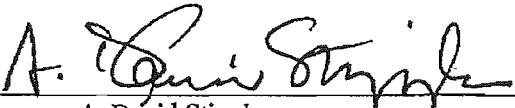
forth in Section 5 of this Agreement. If the Commission approves the Agreement, subject only to the modifications set forth in the Settlement, I&M is authorized to represent that both I&M and the City will accept those modifications in accordance with Section 10.1 of the Agreement.

ACCEPTED and AGREED this 6th day of June, 2011.

INDIANA MICHIGAN POWER COMPANY

  
Name: Marc E. Lewis  
Its: Vice President, External Relations

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

  
Name: A. David Stippler  
Its: Utility Consumer Counselor