

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF INDIANA MICHIGAN )  
POWER COMPANY (I&M) FOR APPROVAL OF )  
(1) ISSUANCE TO I&M OF CERTIFICATES OF )  
PUBLIC CONVENIENCE AND NECESSITY )  
UNDER IND. CODE § 8-1-8.5-2 FOR THE )  
ACQUISITION AND DEVELOPMENT THROUGH )  
PURCHASE SALE AGREEMENTS (PSA) OF TWO )  
SOLAR POWER GENERATING FACILITIES TO )  
BE KNOWN AS LAKE TROUT, AND MAYAPPLE )  
(CLEAN ENERGY PSA PROJECTS); (2) TO THE )  
EXTENT NECESSARY, ISSUANCE OF AN )  
ORDER PURSUANT TO IND. CODE § 8-1-2.5-5 )  
DECLINING TO EXERCISE JURISDICTION ) CAUSE NO. 45868  
UNDER IND. CODE § 8-1-8.5-5(e) (3) APPROVAL )  
OF EACH PSA PROJECT AS A CLEAN ENERGY )  
PROJECT UNDER IND. CODE § 8-1-8.8-11; (4) )  
APPROVAL OF TWO SOLAR RENEWABLE )  
ENERGY PURCHASE AGREEMENTS FOR )  
PROJECTS TO BE KNOWN AS ELKHART )  
COUNTY AND SCULPIN (CLEAN ENERGY PPA )  
PROJECTS) AS CLEAN ENERGY PROJECTS )  
UNDER IND. CODE § 8-1-8.8-11; (5) ASSOCIATED )  
TIMELY COST RECOVERY UNDER IND. CODE § )  
8-1-8.8-11 FOR ALL PSA AND PPA PROJECTS; )  
AND (6) OTHER ACCOUNTING AND )  
RATEMAKING AUTHORITY. )

**WABASH VALLEY POWER ASSOCIATION'S RESPONSE AND EXCEPTIONS TO  
PETITIONER'S PROPOSED ORDER**

Wabash Valley Power Association, Inc. ("WVPA"), by counsel, hereby responds and takes exceptions to the following portions of the proposed order submitted in this Cause by Petitioner Indiana Michigan Power Company ("I&M") on July 7, 2023:

**I. Commission Discussion and Findings.**

In this section of its proposed order, I&M proposes that the Commission issue it a Certificate of Public Convenience and Necessity ("CPCN") pursuant to Ind. Code § 8-1-8.5-5 for,

in relevant part, the Mayapple Solar and Lake Trout Solar PSA Projects. However, as described in further detail below, I&M has not demonstrated that it meets the requirements necessary to grant a CPCN for these projects.

*A. I&M has not provided sufficient information to support that the Mayapple Solar and Lake Trout Solar PSA Project estimates are the best estimate of construction and purchase costs based on the evidence of record.*

The PSA Best Estimates include [REDACTED] of [REDACTED] for Lake Trout Solar and [REDACTED] for Mayapple Solar. I&M was in the best position to negotiate these provisions, and these are unreasonable.

The PSA Best Estimates also include contingency components. The IURC has previously stated that “a **reasonable** amount of contingency is standard in the industry and a reasonable approach to mitigate risk with respect to unidentified or unknown changes that could add to the cost of the project.” *Verified Petition of Southern Indiana Gas and Electric Company d/b/a Centerpoint Energy Indiana South*, Cause No. 45836 at p. 23 (June 6, 2023) (emphasis added). The contingency for the Mayapple Solar PSA Project is [REDACTED] out of a total budget of [REDACTED], which is [REDACTED]; and the contingency for the Lake Trout Solar PSA Project is [REDACTED] out of [REDACTED] which is [REDACTED]. When coupled with [REDACTED], Mayapple Solar’s [REDACTED] and contingencies account for [REDACTED] of its total cost, and Lake Trout Solar’s [REDACTED] and contingencies account for [REDACTED] of its total cost. WP-TBG-1 Confidential. I&M has explained what makes up these amounts in its risk assessment but has only tried to explain how it reached some of these amounts, not all. *See id.*

OUCC witness [REDACTED]  
[REDACTED]. Direct Testimony Confidential Gregory Krieger,

8. I&M witness Mr. Gaul is of the opinion that Mr. Krieger's position does not consider the timing of the investigation, that it is ongoing, or that the investigation impacts 78% of solar panel imports. Rebuttal Testimony Timothy B. Gaul, 10. However, even if the investigation impacts 78% of solar panel imports, this is of little consequence in this case; I&M witness Mr. Gaul said EDF Renewables has master supply agreement with Canadian Solar, meaning EDF Renewables could not have selected a different supplier without breaching its agreement. *Id.* Notably, Lightsource bp, Mayapple Solar's developer, [REDACTED]

[REDACTED] OUCC Attachment GLK-1-C, 2, Confidential.

The outcome of the investigation and current law will determine any tariff outcomes. After tariff outcomes, modules may remain in the competitive price range but there is no guarantee they will. The Commission should not find that the inclusion of this risk in the Best Estimates is reasonable. I&M selected the Lake Trout Project, [REDACTED]

[REDACTED] Direct Testimony Timothy B. Gaul Confidential, 46. Any additional tariffs imposed as a result of this investigation should be or should have been borne by the EDF Renewables, who entered into the contract with Canadian Solar. As seen firsthand with the Mayapple Solar Project, [REDACTED]

[REDACTED] Additionally, it is the utility's responsibility, "not its customers, to provide utility service that complies with federal law and regulations." *Joint Petition of Duke Energy Indiana, Inc., Wabash Valley Power Association, Inc. and Duke Energy Vermillion II, LLC*, Cause No. 43956 at p. 65 (Dec. 28, 2011). I&M witness Mr. Gaul asserts that this language is not relevant to I&M because that language arose from a case with different circumstances involving surrenders.

Rebuttal Testimony Timothy B. Gaul, 16. But this does not mean that the Commission's statement that it is the utility's responsibility to provide service complying with federal law and regulations does not apply to I&M. Clearly, it is I&M's responsibility to provide service that complies with law and using a supplier that does not comply with federal law and regulations further supports that the Lake Trout PSA project does not meet the requirements of Ind. Code § 8-1-8.5-5.

WVPA does not dispute that I&M's Best Estimates are an approximation of the anticipated costs that will be incurred in the future based on I&M's knowledge and information at the time the estimates were prepared. However, I&M has failed to justify its contingency amounts as reasonable and necessary and has failed to justify why the [REDACTED] are commercially practicable. For these reasons, the I&M's estimates of the PSA projects should not be found to be the best estimate as required by Ind. Code § 8-1-8.5-5(b)(1).

*b. I&M imposed different geographic restrictions for wind and solar projects that may have eliminated more cost-effective and beneficial projects and unreasonably restricted competition.*

Ind. Code 8-1-8.5-5(e) requires the Commission to find that, for a project with generating capacity of more than 80 MW, the estimated costs of the proposed project are, to the extent commercially reasonable, the result of competitively bid engineering, procurement, or construction contracts. The cost of each PSA project was determined through I&M's RFP process and subsequent negotiations with project developers.

It is important for the Commission to consider the geographic restrictions imposed by I&M when soliciting wind and solar projects during the 2022 All-Source RFP. I&M solicited bids for wind projects from Indiana, Michigan, Ohio, and Illinois, but restricted bids for solar projects to those from Indiana and Michigan only. I&M 2022 All-Source RFP, 5. I&M witness Mr. Lucas

states that I&M conducted a review of the inventory of potential projects and determined there was a sufficient level of solar projects and capacity available in Indiana and Michigan to provide a competitive and robust response to its RFP, while wind was limited. Rebuttal Testimony David A. Lucas, 8-9. While this may be true, expanding the geographic limits could have presented projects that ranked higher than the two PSA projects selected by I&M. The overall benefit of doing so may have outweighed the benefit of having the resources closer to the load. It is important for the Commission to take this into consideration.

*c. I&M's proposal, when taking into consideration the IRP, Short-Term Action Plan, and 2023 All-Source RFP, is not consistent with its IRP.*

I&M asserts its projects are consistent with the renewable capacity resources identified in its IRP from 2025-2027. Specifically, I&M witness Mr. Becker states that, “during this period the Preferred Portfolio contains 2,100 MW (ICAP) of solar and wind resources combined.” Direct Testimony of Mark A. Becker, p. 14. While this is true, it does not paint a clear picture. According to I&M's 2021 IRP, only 1,300 MW of the 2,100 MW should be from solar energy resources. David A. Lucas Direct Testimony, Figure DAL-1. I&M is seeking an additional 850 MW of solar energy resources in its 2023 RFP – which puts I&M over 1300 MW from solar energy resources in its 2021 IRP.

I&M's Short-Term Action Plan specified that the Preferred Portfolio identified 800 MW of wind and 500 MW of solar as the 2025 and 2026 needs. 2021 Integrated Resource Plan, page 167. I&M witness Mr. Lucas argues that the four solar projects totaling 750 MW of solar resources are consistent with the Short-Term Action Plan because the Plan “states the Company will issue an RFP seeking 800 MW of wind and 500 MW of solar, which is precisely what the Company did.” David A. Lucas Direct Testimony, 14. He points out that the Short-Term Action Plan

expressly allows I&M to adjust the Short-Term Action Plan and future IRPs to reflect changing circumstances. *Id.* However, I&M has taken no action to adjust its Short-Term Action Plan.

The Commission should consider whether these changes, in light of I&M's entire proposed portfolio, are consistent with the IRP and Short-Term Action Plan. It is not enough to look at the proposed projects alone.

*d. I&M's proposed projects raise questions of the reliability of its portfolio.*

I&M states that it has a need for capacity additions to make up for the retirement of the Rockport Facility in five years. The results of I&M's 2022 All Source RFP indicate that no wind capacity made the short-list in the 2022 All-Source RFP process. Direct Testimony Mark A. Becker, 14-15. I&M attempted to reach a broader set of wind resources than it did for solar resources in its 2022 All-Source RFP and was unable to acquire any wind projects. I&M is facing challenges acquiring wind generation – but it is still seeking an additional 800 MW of wind generation and capacity resources in its 2023 All-Source RFP. I&M 2023 All-Source RFP. As a result, it is entirely possible that I&M will not acquire any wind resources this year either, which, if I&M does the same as it did when it did not acquire wind resources from its 2022 All-Source RFP, means I&M may acquire even more solar resources. As OUCC witness Mr. Hanks said, “renewable capacity resources are not interchangeable when planning for resource adequacy.” Direct Testimony John W. Hanks, 13.

OUCC witness Mr. Hanks pointed out that, while solar generation is effective during the summer, solar generation is not as effective in the winter, meaning that enough energy may not be generated to meet winter peaks and I&M may have to rely on market purchases to meet its winter capacity requirements. *Id.* at 11. In his rebuttal testimony, I&M witness Mr. Becker said that PJM's capacity requirements are based on its summer peak, and so I&M needed to ensure it could meet

its summer capacity requirements. Rebuttal Testimony Mark A. Becker, 5. But Mr. Becker's explanation does nothing to address the concern that I&M may be unable to meet its winter peak, and I&M witness Becker has said and acknowledged that these are "valid points." *Id.* at 6. Mr. Hanks presented no evidence that I&M's proposed projects would not, when combined with other resources, enable I&M to meet its winter peak. However, I&M has the burden of showing these projects are reliable and stable – it cannot shift this burden.

The Commission has previously stated that "[t]he transition to a greater reliance on renewable resources means the analysis of reliability must also consider energy adequacy across all hours of the year." *Verified Petition of Southern Indiana Gas and Electric Company d/b/a Centerpoint Energy Indiana South*, Cause No. 45836 at p. 30 (June 6, 2023). Therefore, it is relevant that I&M's portfolio is lacking in resources that may enable it to reliably meet its winter peak. The IURC has acknowledged, that "wind resources are a good complement to solar resources given the difference in their peak production times, particularly in winter when solar resources are at their lowest level of energy production." *Id.* Moreover, PJM may move closer to a seasonal capacity construct, meaning that "solar projects will have less accredited capacity during winter" and increasing the risk I&M will not meet its capacity reserve requirements during the winter. Direct Testimony John W. Hanks, 11.

Indiana law acknowledges the importance of developing a diverse portfolio of energy production or generating capacity. Ind. Code 8-1-8.8-1(a)(2). But I&M is proposing to go from almost no solar to solar representing almost a third of its generation capacity. Direct Testimony John W. Hanks, 15. The only diversity in the proposed projects is that two are PSAs and two are PPAs. *See* Rebuttal Testimony David A. Lucas, 19-20. This difference in structure is important, but I&M fails to acknowledge the importance of a diversified portfolio from a reliability

perspective. Furthermore, Indiana's 21<sup>st</sup> Century Energy Policy Development Task Force has established five pillars that should not be compromised.<sup>1</sup> Two of these pillars are reliability and stability. As demonstrated above, PSA projects that may be insufficient to reach winter peaks are not reliable nor stable.

*e. I&M has not provided sufficient evidence to support that the public convenience and necessity requires or will require the construction and purchase of the Lake Trout facility.*

Indiana Code 8-1-8.5-5(b)(2) requires the Commission find the public convenience and necessity requires or will require the proposed PSA and PPA projects. When looking at new renewable energy projects, another one of the pillars established by the 21<sup>st</sup> Century Energy Policy Development Task Force is affordability.

The PSA Projects are not affordable. I&M has proposed four projects in this proceeding: the Elkhart County Solar PPA Project, the Sculpin Solar PPA Project, the Mayapple Solar PSA Project, and the Lake Trout PSA Project. The [REDACTED]

[REDACTED] Direct Testimony of Mark A. Becker, Confidential Figure MAB-4, 16. However, the difference becomes starker when looking at the difference between each specific project. [REDACTED]

[REDACTED]

[REDACTED] *Id.* It is clear from this data that [REDACTED]

[REDACTED]

The Mayapple Solar PSA Project is the second most expensive proposed project in this proceeding, but it is still approximately [REDACTED] cheaper than the Lake Trout PSA Project. I&M asserts that it is improper to compare two selected projects to each other, and that Lake Trout

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<sup>1</sup> These five pillars are reliability, affordability, resiliency, stability, and environmental sustainability.



should be compared instead to the next highest project that was not selected. Rebuttal Testimony David A. Lucas, 3. However, this fails to consider that the Lake Trout Solar project may be unreasonable compared to other projects included or proposed in I&M's portfolio. WVPA is not arguing that another project should have been selected instead of Lake Trout Solar, but rather that Lake Trout Solar is an unaffordable, unreasonable investment that should not be approved.

I&M witness Mr. Gaul explained how projects were selected through a scoring system. The total score of each proposal was weighed by 60% price and 40% non-price factors. Direct Testimony Timothy B. Gaul, 15-16. Lake Trout Solar scored the highest among the projects in non-price factors. Rebuttal Testimony Timothy B. Gaul, 6-7. Although Mr. Gaul explained the different factors, he did not explain how specific scores for factors or for the projects were reached. Furthermore, 60% of the total score was weighed by price, [REDACTED]

[REDACTED] WP-MAB-1 Confidential. [REDACTED]

[REDACTED] TBG-2C Confidential.

I&M asserts that the [REDACTED]

[REDACTED] OUCC Attachment GLK-1-C, 2,

Confidential. I&M has cited no significant differences in specification, design, engineering, or construction that create this [REDACTED] I&M may have a need for additional capacity over the next five years. But this need does not justify the selection of expensive projects whose [REDACTED] are largely unjustified. I&M should provide more information and explain exactly what [REDACTED]

Furthermore, both Mayapple Solar and Lake Trout Solar [REDACTED] Confidential Workpaper MAB-1C. PPA projects are less expensive than PSA projects because they are not owned directly by the utility. Direct Testimony Benjamin Inskeep, 8. PPAs offer lower costs while still providing the same energy, capacity, and benefits to customers. *Id.* at 9. [REDACTED]

[REDACTED] But I&M does argue that the advantages of PSAs and disadvantages of PPAs must also be considered, and that PSAs and PPAs are both needed for a diverse portfolio. However, affordability, one of the fundamental pillars established for renewable energy projects, must also be considered. [REDACTED]

[REDACTED] The [REDACTED] and risk of I&M needing to purchase power from the market to reach its winter peak all contribute to the unaffordability of the PSA projects. While affordability is not the only thing that should be considered, it clearly weights heavily against approval of these PSA projects and it is not in the best interest of the public to approve the PSA projects at this time. I&M has a need for capacity upon Rockport's retirement in five years. The projects all have development and construction risk, but these risks are higher for the PSA projects.

## **II. Conclusion**

For all the reasons stated herein, WVPA requests that the Commission enter an order that denies approval of the Mayapple Solar and Lake Trout Solar PSA Projects as requested in I&M's Verified Petition and for all other relief that is just and reasonable.

Respectfully submitted,

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