

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF INDIANA)
MUNICIPAL POWER AGENCY (“IMPA”))
FOR COMMISSION APPROVAL TO)
ASSUME THE OBLIGATION OF CERTAIN) CAUSE NO. 44898
JURISDICTIONAL IMPA MEMBERS TO)
PURCHASE ENERGY AND CAPACITY)
OFFERED BY A QUALIFYING FACILITY)
PURSUANT TO 170 IAC 4-4.1-5(A))

VERIFIED PETITION

Petitioner, Indiana Municipal Power Agency (“IMPA” or “Petitioner”), petitions the Indiana Utility Regulatory Commission (“IURC” or “Commission”) for authority, pursuant to 170 IAC 4-4.1-5(a), to assume the obligations of certain of IMPA’s jurisdictional members under the Public Utility Regulatory Policies Act of 1978, as amended (“PURPA”)¹ to purchase energy and capacity offered by a Qualifying Facility (“QF”). Petitioner also petitions the Commission, that if the relief requested in this Petition is granted, that the IURC join Petitioner in filing at the Federal Energy Regulatory Commission (“FERC”), on behalf of IMPA’s jurisdictional members, an application for waiver pursuant to 18 C.F.R. § 292.402 that would transfer those members’ PURPA purchase obligation to IMPA and IMPA’s PURPA sales obligation to its members. In accordance with 170 IAC 1-1.1-8 and 1-1.1-9 of the Commission’s Rules of Practice and Procedure, IMPA submits the following information in support of its Petition.

1. Petitioner’s Organization and Business. IMPA is a joint agency within the meaning of IC 8-1-2.2-2(c) and is a political subdivision of the State of Indiana. IMPA has its principal office at 11610 N. College Avenue, Carmel, Indiana, 46032. IMPA provides all of the

¹ See Pub.L. 95-617, November 9, 1978.

electric power and energy requirements of its 60 municipal members, serving over 330,000 Hoosiers in cities and towns across the state.² IMPA has eight municipal members whose electric utilities remain under the jurisdiction of the IURC pursuant to IC 8-1-2.2 *et seq.*: Anderson, Crawfordsville, Frankfort, Kingsford Heights, Knightstown,³ Lebanon, Richmond, and Tipton (“Jurisdictional Members”).

IMPA’s members, pursuant to long-term wholesale Power Sales Contracts executed under IC 8-1-2.2, are required to purchase all of their power and energy requirements from IMPA. As a joint agency, IMPA has the authority “...to negotiate and enter into contracts with each of its member municipalities whereby each municipality may purchase power and energy and related services from the joint agency derived from any project or projects *or without designation as to source...*” IC 8-1-2.2-9(a)(13) (*emphasis added*). The Power Sales Contracts are substantively identical, and serve as security for IMPA’s bond issuances. IC 8-1-2.2-10. IMPA also has capacity purchase agreements with its members that own generating assets which provide that those generating assets are dedicated for the benefit of IMPA as a whole, along with other IMPA-owned and Member-owned generating assets and purchased power. Thus, IMPA is an “all-requirements” provider to its members. Richmond is the only Jurisdictional Member that owns generating assets. In 2014, however, IMPA acquired operational control of the Whitewater Valley Station (“WWVS”) in Richmond, thus, Richmond has no operational control or direct

² Advance, Anderson, Argos, Bainbridge, Bargersville, Bremen, Brooklyn, Brookston, Centerville, Chalmers, Coatesville, Columbia City, Covington, Crawfordsville, Darlington, Dublin, Dunreith, Edinburgh, Etna Green, Flora, Frankfort, Frankton, Gas City, Greendale, Greenfield, Huntingburg, Jamestown, Jasper, Kingsford Heights, Knightstown, Ladoga, Lawrenceburg, Lebanon, Lewisville, Linton, Middletown, Montezuma, New Ross, Paoli, Pendleton, Peru, Pittsboro, Rensselaer, Richmond, Rising Sun, Rockville, Scottsburg, South Whitley, Spiceland, Straughn, Tell City, Thomtown, Tipton, Troy, Veedersburg, Walkerton, Washington, Waynetown, Williamsport and Winamac. Additionally, in 2007, IMPA entered into a long term full requirements power supply agreement with the Village of Blanchester, Ohio.

³ As of the date of this filing, Knightstown is the only IURC jurisdictional member that has not formally adopted IMPA’s PURPA Plan (See Attachment JFA-1 of to IMPA Exhibit JAA, the Direct Testimony of Jack A. Alvey). The Agency will formally update the Commission, as appropriate, if and when the Town’s written authorization is complete.

entitlement to the WWVS output. Richmond purchases all of its power supply requirements from IMPA pursuant to its Power Sales Contract with IMPA.

2. IMPA's Regulated Status. IMPA is subject to the jurisdiction of the Commission in the manner and to the extent provided for in IC 8-1-2.2 *et seq.* However, IMPA is not a "public utility" as defined in IC 8-1-2-1 and is not subject to rate regulation or the requirements of IC 8-1-2.4 *et seq.* Indiana law confers jurisdiction to the Commission to approve IMPA's issuance of bonds necessary to finance generation and transmission system projects (IC 8-1-2.2-19), to issue certificates of public convenience and necessity (IC 8-1-8.5-1(a)(2)), and to require IMPA to file an Integrated Resource Plan (170 IAC 4-7-3(a)(2)). Also, IMPA is not subject to the ratemaking jurisdiction of the FERC. 16 U.S.C. § 824(f). However, IMPA and its Jurisdictional Members are subject to Section 210 of PURPA and FERC's regulations thereunder, 18 CFR § 292.303(a) and 292.303(b).

3. Purpose of Filing This Petition. PURPA requires all electric utilities, including IMPA and its Jurisdictional Members, to purchase power from and sell power to QFs. 16 U.S.C. § 824a-3. FERC requires that utilities must purchase from QFs at rates equal to their full avoided cost, defined as "...the incremental cost to the electric utility of electric energy or capacity or both which, but for the purchase from the QF or QFs, such utility would generate itself or purchase from another source." 18 CFR § 292.101(b)(6). All QFs and electric utilities, which include Jurisdictional Members, are subject to the Commission's Cogeneration and Alternate Energy Production Facilities Rules (the "Cogeneration Rules"). 170 IAC 4-4.1 *et seq.* However, IMPA is not subject to the Cogeneration Rules, because it is not an "electric utility" under the definition of those rules.⁴ The Cogeneration Rules provide that "[i]f a utility purchases

⁴Under the Cogeneration Rules, an "electric utility" means "a public utility or municipally-owned utility that owns, operates, or manages an electric plant." 170 IAC 4-4.1-1-1(g). IMPA is not a public utility under IC 8-1-2.2-2(h).

all of its power from a single supplier, such that its avoided cost, as defined in this rule, is derived from the single supplier, the supplier may assume the obligation to purchase the energy and capacity offered by a qualifying facility.” 170 IAC 4-4.1-5. This is consistent with FERC’s longstanding policy that an all-requirements customer’s avoided cost (here, the Member’s cost) is that of its all-requirements supplier (or IMPA).⁵

Pursuant to 170 IAC 4-4.1-5, IMPA seeks to “stand in the shoes” of its Jurisdictional Members for purposes of meeting the Jurisdictional Members’ PURPA obligations to purchase power from QFs under the Cogeneration Rules (the “PURPA Purchase Obligations”). IMPA will offer a standard purchase rate or a negotiated rate for energy and capacity produced by QFs interconnected with IMPA or a member’s system. This standard purchase rate will be determined by IMPA based on its avoided costs. As a result, IMPA – and not the Jurisdictional Member – will purchase power from any QF located in a Jurisdictional Member’s territory.⁶

It is reasonable and consistent with existing regulations for IMPA to assume its Jurisdictional Members’ PURPA Purchase Obligations. As the Cogeneration Rules recognize, it is appropriate for IMPA to assume the PURPA Purchase Obligations for its Jurisdictional Members since each of the Jurisdictional Members’ avoided costs are derived from IMPA as the sole supplier, and these rules provide that an all-requirements supplier “may assume the obligation to purchase the energy and capacity offered by a qualifying facility.” 170 IAC 4-4.1-5. IMPA supplies all of the electric power and energy requirements for its members and provides

⁵ See *Western Farmers Electric Coop.*, 115 FERC ¶ 61,323 (2006) citing *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, Order No. 69; *Carolina Power & Light Co.*, 48 FERC ¶ 62,101 (1989), and *Swecker v. Midland Power Coop.*, 807 F.3d 883 (8th Cir. 2015).

⁶ Each Jurisdictional Member will retain the obligation to directly sell power requested by QFs located within its territory, including but not limited to backup and ancillary power, at the Jurisdictional Member’s tariffed rates.

an identical rate structure for all of the municipalities it serves. IMPA seeks to formally assume the PURPA Purchase Obligations so that it can stand in the shoes of its Jurisdictional Members.

If the Jurisdictional Members had to individually comply with the filing and rate calculation provisions of 170 IAC 4-4.1 *et seq.*, those Members could be forced to charge QFs for avoided costs for capacity differently than each other, and differently than the other 52 non-jurisdictional IMPA members, because the avoided costs under the Cogeneration Rules would be based on their individual municipal systems, and not on IMPA as a whole. This would result in inefficiencies and potentially discourage QFs from operating in IMPA member territories. Because each Jurisdictional Member relies on IMPA as its single source for power supply, it would be difficult and inefficient for each separate member to identify its incremental cost. IMPA has a Joint PURPA Implementation Plan (“PURPA Plan”), which was approved by IMPA’s Board of Commissioners on June 24, 2016 and was subsequently approved by all Jurisdictional Members to date, except for Knightstown, as well as IMPA members who are not subject to the jurisdiction of the IURC (“Authorizing Members”).⁷ The PURPA Plan is included in this Petition as Attachment JFA-1.

The PURPA Plan is in furtherance of the basic structure adopted in the Power Sales Contracts between IMPA and each of the Authorizing Members, which provide for IMPA to negotiate with and purchase energy from QFs on behalf of Authorizing Members. As discussed above, the PURPA Plan is consistent with the Cogeneration Rules. The PURPA Plan is also consistent with Indiana Law requiring the Authorizing Members to provide power on a nondiscriminatory basis to any energy consumer within their respective service territories, including QFs. Ind. Code § 8-1.5-3-8. The PURPA Plan is intended to add further detail to these

⁷ The PURPA Plan applies equally to Authorizing Members who are Jurisdictional Members and those members that are not subject to the jurisdiction of the IURC; however, this petition only pertains to Authorizing Members who are also Jurisdictional Members of IMPA.

basic concepts and advise the public of the guidelines for enabling QFs to interconnect with the electric utility systems of IMPA and the Authorizing Members, sell energy and capacity to IMPA, and purchase retail electric services from the Authorizing Members.

Specifically, the PURPA Plan provides that:

- (i) Any QF is permitted to interconnect with the electric systems of IMPA or any Authorizing member;
- (ii) Any QF is permitted to sell energy and capacity to IMPA at rates equal to IMPA's full avoided costs or at a negotiated rate;
- (iii) Any QF is permitted to purchase supplemental, back-up, and maintenance power from an Authorizing Member on either a firm or interruptible basis, at rates that are nondiscriminatory, just and reasonable, and in the public interest; and
- (iv) No QF will be subject to duplicative charges for interconnection or wheeling as a result of selling to IMPA and buying from an Authorizing Member.

The PURPA Plan allows IMPA and the Authorizing Members to implement their policy of encouraging QFs, while maintaining the functional division of power-supply responsibilities between IMPA and its Authorizing Members. The Implementation Plan makes clear that a QF interconnecting with an Authorizing Member and selling to IMPA will not be subject to duplicative interconnection or wheeling charges. To the extent that additional costs of wheeling (*i.e.*, beyond the Authorizing Member's facilities) are necessitated by the fact that IMPA is the purchaser rather than the Authorizing Member, such costs will be borne by IMPA and not the QF. Thus, a QF interconnecting with an Authorizing Member will be subject to the same charges if it sells to IMPA as it would be if it were selling to the interconnecting Authorizing Member.

Contemporaneously with the filing of this Verified Petition, IMPA is filing testimony which further demonstrates how IMPA will ensure that QFs are able to interconnect, purchase and sell power on a nondiscriminatory basis anywhere in IMPA member service territories at

reasonable rates. IMPA's QF rates will reflect the Agency's full avoided cost, which in turn, under IMPA's rate structure, equals the full avoided cost of its members. This will enable IMPA to effectively perform its primary function – the coordination of power generation and transmission decisions on behalf of all of its members in a centralized manner with a rate structure that remains uniform for all.

4. Richmond's Existing QF Rates. Richmond Power & Light ("Richmond") currently has a Cogeneration Rate (CG) tariff approved and on file with the Commission. No QF is currently interconnected with Richmond's system or taking service under this rate. Upon approval of this Petition and granting of the relief requested, Richmond will file to withdraw its existing CG tariff so that it does not conflict with IMPA's PURPA Plan and avoided cost QF rate structure.

5. FERC Approval. Subsequent to an approval of this Petition from the Commission, IMPA will seek appropriate authority from FERC to implement the policies set forth in its PURPA Plan. Section 292.402 of the FERC's regulations (18 C.F.R. § 292.402) permits any "State regulatory authority (with respect to any electric utility over which it has ratemaking authority) or nonregulated electric utility,"⁸ after appropriate public notice, to apply for a waiver of Sections 292.303(a) and 292.303(b). If granted, the effect of the waiver will be to transfer the must-purchase obligation of the Authorizing Members to IMPA and the must-sell obligation of IMPA to the Authorizing Members. IMPA will seek such a waiver on behalf of its non-IURC jurisdictional members and requests that, if the relief requested in this Petition is

⁸ The term "nonregulated electric utility" is defined as "any electric utility other than a State regulated electric utility." 16 U.S.C. § 2602(9).

granted, the IURC join IMPA's filing at FERC on behalf of IMPA's Authorizing Members that are subject to the Commission's ratemaking authority,⁹ pursuant to 18 C.F.R. § 292.402.

Section 292.402 provides that FERC will grant such a waiver if an applicant demonstrates that compliance with any of the regulatory requirements "is not necessary to encourage cogeneration and small power production and is not otherwise required under section 210 of PURPA." 18 C.F.R. § 292.402(b). Here, such a waiver will not undermine the PURPA statutory mandate of encouraging cogeneration and small power production by QFs. The PURPA Plan advances the policies of Section 210 of PURPA in a manner consistent with shared responsibilities under state law, including the Cogeneration Rules, and the existing Power Sales Contracts between IMPA and its Authorizing Members. No QF will be disadvantaged, because IMPA will stand in the shoes of its Authorizing Members with regard to the purchase obligation, and the Authorizing Members will stand in the shoes of IMPA with regard to the sales obligation. Precedent exists for public power agencies like IMPA, which are prohibited from making retail sales, to receive FERC-approved waiver of the obligation of the agency to sell power to QFs, when the local utility may make such retail sales.¹⁰ *See* Missouri River Energy Services, Docket No. EL13-80-000, 145 FERC para. 62,022 (October 9, 2013).

6. Petitioner's Attorneys. The names and addresses of IMPA's attorneys in this matter are:

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⁹ In other words, all of the Jurisdictional Members who have become Authorizing Members. IMPA is hopeful that Knightstown will become an Authorizing Member by the time the FERC application is submitted.

¹⁰ IMPA is prohibited from making retail sales pursuant to IC 8-1-2.2-9(a)(11).

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Each of said attorneys is duly authorized to accept service of papers in this Cause on behalf of IMPA.

4. Applicable Law. Petitioner believes that 170 IAC 4-4.1-5(a) and IC 8-1-2.2 *et seq.* are applicable to the subject matter of this Petition.

WHEREFORE, Petitioner prays that the Indiana Utility Regulatory Commission:

- a. Set this matter for prehearing conference at the Commission's earliest convenience;
- b. Approve Petitioner's request to assume the obligation of its Jurisdictional members to purchase energy and capacity offered by a Qualifying Facility pursuant to 170 IAC 4-4.1-5(a);
- c. If this requested relief is granted, that the Commission join Petitioner in filing at FERC, on behalf of IMPA's Authorizing Members that are subject to the Commission's ratemaking authority, an application for waiver pursuant to 18 C.F.R. § 292.402 that would transfer IMPA's members' PURPA purchase obligation to IMPA and IMPA's PURPA sales obligation to its members; and
- d. Grant to Petitioner such additional and further relief as may be deemed necessary or appropriate.

Dated this 17th day of January, 2017.

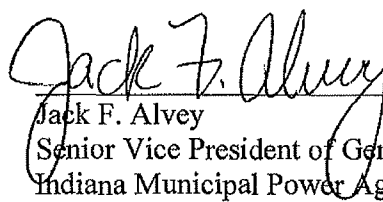
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VERIFICATION

I, Jack A. Alvey, affirm under penalties for perjury that the foregoing representations are true and correct to the best of my knowledge, information and belief.

Date: January 17, 2017

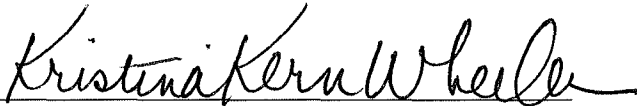


Jack F. Alvey
Senior Vice President of Generation
Indiana Municipal Power Agency

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Verified Petition" was served electronically, by personal delivery or by first-class United States mail, postage prepaid, this _____ day of January, 2017, on the following:

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