

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE APPLICATION OF)
INDIANA MICHIGAN POWER COMPANY)
FOR AUTHORIZATION OF A NEW FUEL)
ADJUSTMENT CHARGE FOR ELECTRIC)
SERVICE APPLICABLE FOR THE BILLING)
MONTHS OF APRIL 2009 THROUGH)
SEPTEMBER 2009 AND FOR APPROVAL OF)
RATEMAKING TREATMENT FOR COST OF)
WIND POWER PURCHASES PURSUANT TO)
CAUSE NO. 43328)

CAUSE NO. 38702 FAC 62 S1

APPROVED: FEB 23 2011

BY THE COMMISSION:

David E. Ziegner, Commissioner

Loraine L. Seyfried, Administrative Law Judge

This proceeding commenced on January 16, 2009, when Indiana Michigan Power Company (“I&M” or “Petitioner”) filed with the Indiana Utility Regulatory Commission (“Commission”) its Verified Application For a New Fuel Adjustment Charge (“FAC”) for electric service to be applicable during the April 2009 through September 2009 billing months, pursuant to the provisions of Ind. Code § 8-1-2-42, and for approval of I&M’s ratemaking treatment of wind power purchase costs pursuant to the Commission’s Order dated November 28, 2007 in Cause No. 43328. I&M filed its direct testimony and exhibits on January 16, 2009 and supplemental testimony on January 23, 2009.

On January 23, 2009, the I&M-Industrial Group (“Industrial Group”), an ad hoc group of industrial customers located in the electric service territory of I&M, filed its petition to intervene, which petition was granted on January 29, 2009.¹ On February 11, 2009, Steel Dynamics, Inc.-Flat Roll Steel Division (“SDI”), an industrial customer located in the electric service territory of I&M filed its petition to intervene, which petition was granted on February 18, 2009.

At the hearing in Cause No. 38702 FAC62 (“FAC62”) on February 18, 2009, the Indiana Office of Utility Consumer Counselor (“OUCC”), SDI, the Industrial Group and I&M (collectively the “Parties”) agreed to the creation of a subdocket for further review of the unplanned outage at I&M’s Donald C. Cook Nuclear Plant Unit 1 (“Cook Unit 1”) that began in September 2008 and I&M’s coal procurement practices. The Parties also agreed that I&M’s FAC62 factor would be approved on an interim basis subject to refund pending the outcome of the subdocket, subject to a modification regarding the time period during which I&M would recover the reconciliation period variance. I&M also agreed to the OUCC’s proposal that I&M file a report providing a final accounting of insurance funds received and spent because of the outage and costs covered by vendor warranties and guarantees. On March 25, 2009, the

¹ The I&M-Industrial Group included Air Products & Chemicals, Inc., Hartford City Paper, LLC, Marathon Petroleum Company, LLC, Arcelor Mittal USA., The Linde Group, and Praxair, Inc.

Commission issued its Order in Cause No. 38702 FAC62 approving and authorizing the modified fuel adjustment charge, on an interim basis, subject to refund, and establishing this subdocket.

On July 16, 2009, I&M filed its application in Cause No. 38702 FAC63 (“FAC63”) for approval of an FAC factor for the October 2009 through March 2010 billing months. On August 18, 2009, I&M, the Industrial Group and SDI submitted a Stipulation and Settlement Agreement (“2009 Settlement Agreement”) in FAC63 that, among other things, provided the FAC63 factor would be subject to refund pending resolution of this subdocket, except for the coal procurement issues for the time period covered by FAC62 and FAC63, which would be dismissed from this subdocket and those factors would no longer be subject to refund for this purpose. The 2009 Settlement Agreement also provided that a voltage differentiation issue raised by SDI would be considered in this subdocket. On September 16, 2009, the Commission issued its Order in FAC63 approving the 2009 Settlement Agreement, except for the provision on dismissal of coal procurement issues from this subdocket, and authorizing the FAC63 factor on an interim basis, subject to refund. The FAC63 Order stated dismissal of the coal procurement issues should be addressed in this subdocket.

On February 26, 2010, I&M filed in this subdocket its Initial Accounting Report (“Initial Report”) on outage costs, insurance matters and warranty matters.

In our Orders dated March 24, 2010 and September 22, 2010, in Cause No. 38702 FAC64 (“FAC64”) and 38702 FAC65 (“FAC65”) respectively, we approved FAC factors for I&M for billing months from April 2010 through March 2011, on an interim basis, subject to refund, pending the outcome of this subdocket.

I&M filed its direct testimony and exhibits in this subdocket on May 7, 2010. I&M also filed supplemental testimony and exhibits on July 23, 2010 addressing an update to the Initial Accounting Report (“Updated Report”).² On October 6, 2010, the OUCC, the Industrial Group and SDI filed their testimony and exhibits.³ On December 3, 2010, I&M filed its rebuttal testimony and exhibits.⁴

On January 11, 2011, the Parties notified the Presiding Officers they had reached a settlement that they wished to present to the Commission. On that date, the Commission, by docket entry, continued the evidentiary hearing originally scheduled for January 12 and 13, 2011 to January 25, 2011 to provide time for the filing of the settlement agreement. On January 19, 2011, the Parties filed a Stipulation and Settlement Agreement (“2011 Settlement Agreement” or “Agreement”) and I&M filed testimony in support of the 2011 Settlement Agreement. The 2011 Settlement Agreement is attached hereto and incorporated herein by reference.

² On July 23, 2010, I&M also filed its Submission of Revisions to Prefiled Direct Testimony and a Notice of Substitution of Witness and Submission of Direct Testimony. On September 20, 2010, I&M filed its Submission of Revisions to Prefiled Direct Testimony.

³ On October 14, 2010, Industrial Group filed its Submission of Corrected Pages.

⁴ On December 30, 2010, I&M filed its Submission of Revisions to Prefiled Rebuttal Testimony.

Pursuant to public notice duly 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, a public hearing was held on January 25, 2011, at 1:30 p.m. in Room 222, PNC Center, 101 W. Washington Street, Indianapolis, Indiana. I&M, the OUCC, and the Industrial Group participated in the hearing. At the hearing, the Parties offered as support for the settlement agreement their respective prefiled testimony and exhibits, including the testimony in support of the 2011 Settlement Agreement, all of which was admitted into evidence.

The Commission, based upon the applicable law and the evidence of record, and being duly advised in the premises, now 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 electric generating utility within the meaning of the Public Service Commission Act, as amended. I&M is an Indiana corporation engaged in rendering electric public utility service in the State of Indiana and the Commission has jurisdiction over the I&M and the subject matter of this proceeding.

2. **Issues Deferred to this Subdocket.** In accordance with our March 25, 2009 Order in FAC62, the 2009 Settlement Agreement and our Order dated September 16, 2009 in FAC63, this subdocket was created for further review of the September 2008 outage at Cook Unit 1, I&M's coal procurement practices and SDI's voltage differentiation issue. Although coal procurement issues were originally to be addressed in this subdocket, in the 2009 Settlement Agreement, several of the Parties agreed that the formal and informal discovery questions regarding I&M's coal fuel procurement for the time period covered by Cause No. 38702 FAC62 and FAC63 have been answered; that these issues would be dismissed from this subdocket; and the factor approved in FAC62 shall no longer be subject to refund for this purpose and the factor approved in FAC63 shall not be subject to refund for this purpose. The FAC63 Order found the provision regarding dismissal of the coal procurement issues should be addressed in the subdocket.

3. **Summary of Evidence of the Parties.**

a. **I&M's Direct and Supplemental Testimony.** The summary below includes both I&M's direct and supplemental direct testimony.

i. Michael H. Carlson, Vice President – Site Support Services at the D.C. Cook Nuclear Power Plant.⁵ Mr. Carlson described the reasons why Cook Unit 1 was out of service over a 15-month period and explained how this outage was managed by I&M. He discussed the cause of the outage, the safe recovery from the outage event, warranty coverage information and the repair and replacement work undertaken due to the event. Mr. Carlson co-sponsored the outage-related portions and Schedules of I&M's Initial Report (Exhibit TEM-1 attached to Petitioner's Exhibit 3) and I&M's Updated Report (Supplemental Exhibit TEM-1 attached to Petitioner's Exhibit 8).

⁵ The Direct Testimony and Exhibits of Raymond A. Hruby, Jr., Mr. Carlson's predecessor as Vice President – Site Support Services at the D.C. Cook Nuclear Power Plant, were adopted by Mr. Carlson pursuant to notice filed on July 23, 2010.

Mr. Carlson testified that the Cook Plant is a two-unit nuclear power plant located along the eastern shore of Lake Michigan in Bridgman, Michigan. Units 1 and 2 of the Cook Plant, owned and operated by I&M, are both pressurized water reactor (“PWR”) designs with a four loop Westinghouse nuclear steam supply system. The combined net demonstrated electric capability for both units is 2191 megawatts (“MWe”), not including the approximate 35 MWe temporary derate for Cook Unit 1. He stated that Unit 1 was placed in-service in 1975 and Unit 2 in 1978 and that the Units are currently licensed by the U.S. Nuclear Regulatory Commission (“NRC”) to operate until 2034 and 2037, respectively.

Mr. Carlson testified on September 20, 2008, at approximately 8:05 p.m., operators shut down Cook Unit 1 due to high vibrations in the main turbine. The rotating parts of the main turbine include three low pressure (“LP”) turbine rotors which are connected to one high pressure (“HP”) turbine rotor and the electric main unit generator. Overall, these rotating parts comprise approximately 225 feet in length, weigh approximately 860 tons, spin at 1,800 revolutions per minute and produce significant forces when operating normally. He stated the turbine equipment is part of the non-nuclear secondary system located in the turbine building, and is separate and isolated from the primary system that includes the nuclear reactor. The secondary system is similar to steam power generation systems in place at other generating plants, regardless of whether they are nuclear or fossil-fueled.

Mr. Carlson stated the Cook Unit 1 operators immediately responded to the high vibrations exactly as they were trained to do. He stated within one second, there were numerous alarms indicating very high vibrations in the turbine building. The reactor operator manually shut down the reactor within five seconds. Immediately following the reactor shut down, he said the main turbine generator shut down as designed and the operators properly took action to stop the spinning of the turbine rotor. Plant protection workers immediately responded to contain and extinguish a small fire in the electric generator. Other emergency response organization personnel responded as trained to ensure the safety of the plant and the community. In addition, notice of the incident was promptly provided to regulators and to the community to assure them that there was no danger.

Mr. Carlson stated that there were no injuries caused directly by the turbine vibration or the small fire that ensued. However, he testified, the enormous forces generated from the LP turbine failure resulted in significant damage to the components on the turbine generator shaft line, the shaft bearings, and associated equipment in the turbine building. Mr. Carlson stated this collateral damage could not have been prevented or lessened had Cook personnel reacted differently to the turbine blade failure. He said the NRC conducted a special inspection related to the fire protection aspects of the event described above and reported no violations.

Mr. Carlson testified that I&M promptly took action in phases to recover from the incident. He explained that the Immediate Recovery phase included the safe shutdown of Cook Unit 1 and the cleaning of pipe insulation and oil to prevent potential industrial safety hazards and assure reliable operation of equipment. He stated, during the Assessment phase, the I&M team evaluated the cause of the event and the actions necessary to return the unit to reliable service in a safe, efficient, and timely manner. Finally, the Long-term Recovery phase began with the engineered removal, inspection, and evaluation of damaged equipment. This phase included the discovery of significant additional damage as major plant components were

inspected and disassembled. It also included the repair of existing parts, equipment, and structures, and the replacement of parts where repair was not feasible. He testified each phase of the recovery had significant overlap with the other phases and all three phases have now been completed.

Mr. Carlson testified the turbine equipment that failed in 2008 was installed during the fall 2006 refueling outage for Cook Unit 1. I&M had contracted with Siemens Power Generation, Inc. (“Siemens”) to replace the three LP turbine rotors with upgraded state of the art models to improve the unit’s reliability, availability, and efficiency. The procurement process was competitively bid and carried out in accordance with I&M Nuclear Generation Group procedures. The overall bid evaluation resulted in the selection of Siemens for the replacement of the LP turbines. Siemens is a world class engineering firm that has decades of experience in designing and manufacturing large scale steam power system equipment, including turbines. Mr. Carlson discussed I&M’s oversight and monitoring of the engineering, design, manufacturing, assembly, test, and transportation requirements that were required to support the turbine replacement. I&M engaged the engineering firm Sargent & Lundy to develop the engineering interface, requirements documents, and modification package for the Cook Plant with the new Siemens turbines. He testified I&M’s review of Siemens engineering, design, manufacturing, assembly, and testing did not reveal any deficiencies in the new LP turbine rotors.

Mr. Carlson described the structure of the Cook Unit 1 LP turbine which consists of three rotors (LP-A, LP-B, and LP-C) connected in series. Each rotor is comprised of stages or rows of blades that are attached to a shaft. The size of the blades in each stage become progressively larger (longer) as the distance from the mid-point of the rotor increases, with the blades in the largest stage being referred to as the L-0 blades.

Mr. Carlson stated that after the new rotors were delivered to the plant in August 2006 Siemens notified I&M that it had found a turbine system issue, which Siemens addressed by welding tuning weights on the tips of the L-0 blades. I&M provided oversight and contracted with third party experts to review Siemens’ work. Mr. Carlson stated that Siemens was responsible for the installation of the 2006 replacement turbines, with participation from I&M to make sure that the installation conformed to I&M’s requirements, practices, and procedures prior to going into service. Mr. Carlson testified that nothing abnormal occurred during the installation of the turbine rotors that would have caused damage to the turbine blades. After the turbines were installed, they were also inspected and tested to determine that the equipment was ready to be placed in service. Mr. Carlson testified the rotors and all 300 L-0 blades were visually inspected by Siemens personnel during the subsequent refueling outage for Cook Unit 1 in the spring of 2008 with acceptable results. Additionally, the L-0 blade tips on the LP-B rotor were inspected using non-destructive testing techniques with acceptable results.

Mr. Carlson testified that prior to the September 2008 outage event, Cook Unit 1 was operating normally and the turbine vibration was within acceptable values. Mr. Carlson explained that the event was initiated by the failure of two L-0 blades on the LP-B rotor and one L-0 blade on the LP-C rotor. Mr. Carlson stated that although turbine rotor blade failures are not common, they do happen despite the best efforts of world class engineers, technicians, and craftsmen.

Mr. Carlson testified I&M organized a team and retained outside experts to determine the root cause of the turbine failure. The teams conducted an extensive and critical review of all possible causes and spent approximately six months evaluating records and examining equipment. Mr. Carlson sponsored Exhibit RAH-3 attached to Petitioner's Exhibit 1, the Root Cause Evaluation Report. He stated the Root Cause Evaluation ("Evaluation") determined that the root cause was a blade-rotor system design which failed to provide adequate stress margin in at least three L-0 blades. This deficiency caused the three blades to occasionally exceed their stress limit, thereby suffering high cycle fatigue. Eventually the fatigue caused the blades to crack at their base and to come loose from the rotor, causing the damage. The Evaluation determined the tuning weights that were welded to the L-0 blades did not contribute to the event. Mr. Carlson further testified the Evaluation found no indication of imprudence or negligence on the part of I&M related to the turbine failure.

Mr. Carlson stated the contract with Siemens for the purchase and installation of the LP turbine rotors included provisions that warranted the turbine rotors and blades against defects in materials and workmanship for ten years. Pursuant to the warranty provisions, the vendor was required to repair or replace the damaged equipment subject to a \$37.7 million limitation of Siemens' liability.⁶

Mr. Carlson explained that the turbine repair costs detailed in the Initial Report and the Updated Report included the following: craft support for event repair and restoration activities, LP and HP turbine repairs, Cook Plant labor support, tool purchase and rental, welding activities, main generator and exciter repairs, project administrative support, AEP Service Corporation support, painting, and AEP Central Machine Shop heavy machining support. In his supplemental direct testimony, Mr. Carlson stated that the cumulative total incurred repair cost increased from \$249.7 million as of December 31, 2009 as shown in the Initial Report to \$259.9 million as of June 30, 2010 as shown in the Updated Report. He noted that the updated costs include additional repair activities related to the Cook Unit 1 turbine outage that were conducted during the Spring 2010 refueling outage for Cook Unit 1.

Mr. Carlson addressed the replacement cost for the Unit 1 turbine which was calculated to be \$37.8 million as shown on Schedule 1-B of the Updated Report which reflects (a) a \$9.2 million payment to Siemens under a letter of intent ("LOI") for the manufacture, installation and reservation of replacement turbine equipment for which a property damage insurance claim is pending; (b) \$13 million of incurred costs not yet claimed but probable of insurance recovery; and (c) \$15.6 million of costs not yet claimed but doubtful of insurance recovery.

In his supplemental testimony, Mr. Carlson stated that the total capitalized replacement costs for the Cook Unit 1 turbine decreased from \$42.7 million in the Initial Report to \$37.8 million in the Updated Report due to a reduction in the amount owed under the Siemens LOI. He explained that during the Assessment and Recovery Phases of the Unit 1 turbine outage, I&M signed the \$15 million LOI with Siemens to secure a production slot for the manufacture and installation of replacement rotors to minimize the time needed to return Cook Unit 1 to service. Mr. Carlson stated that subsequent to signing the LOI, I&M determined it was feasible to

⁶ As discussed on page 12 of Mr. Carlson's direct testimony, this \$37.7 million limit is a correction to the \$37.8 million limit shown in I&M's Initial Report.

straighten the damaged turbine rotor shafts, allowing the unit to be returned to service well in advance of installing new replacement rotors. Successful straightening of the rotors provided I&M with the opportunity to obtain additional replacement proposals that resulted in its purchasing replacement rotors from Alstom Power, Inc. (“Alstom”), which offered rotors with a proven 16.8-m² blade design that I&M believed was more prudent and appropriate than the 13.9-m² blade design then offered by Siemens. The change in suppliers for the new rotors prompted discussions with Siemens regarding the LOI which resulted in a reduction in the original \$15 million obligation to Siemens by \$5,818,258 to \$9,181,742.

Mr. Carlson described the steps I&M took to return Unit 1 to service in a safe, timely, and reliable manner. Mr. Carlson explained that each of the three 39-foot long, 190-ton LP turbine rotors suffered blade damage and shaft bowing during the incident. Reblading, shaft straightening, and high-speed balancing was performed by Siemens at its turbine facility in Charlotte, North Carolina. He said if this process had not been successful, Unit 1 could have been off-line well into 2011 while replacement rotors were fabricated. Mr. Carlson also discussed work on the main generator and high-pressure turbine performed by General Electric. He said the 500-ton main generator stator was also lifted off the building foundation and placed on a new foundation for alignment. The support equipment that had been damaged by the fire were repaired by the AEP Central Machine Shop. He explained that the 12 large bearings that connect the four turbine rotors and one generator rotor together as a common shaft were either replaced or rebuilt. The cone extensions between the bearings and exhaust hoods also required extensive structural welding repairs and laser-aligned machining. Repairs were also made to damaged piping, pipe supports, insulation, the turbine control system and the turbine lube oil system. Twenty-three large motors were removed, shipped off-site for inspection to determine if repair was feasible, and reinstalled or replaced.

Mr. Carlson testified the outage was completed safely and in a timely manner in December 2009. He testified, however, that it was not possible to return the unit to service at its normal maximum electric output because the row of L-0 turbine blades were omitted due to the design issues discovered during the Root Cause Evaluation. As a result, the unit is operating with an average unit derate of approximately 35 MW, which may vary by season.⁷ After the repaired LP turbines are replaced with the new turbine design purchased from Alstom, the unit is expected to return to its normal full-load rating. Mr. Carlson explained that after comparing the cost of the alternatives, I&M determined it was better to return the unit to service in December 2009 at less than its full capacity rather than wait for a replacement turbine, which would have caused the unit to be out of service until late 2011.

Mr. Carlson testified that from the beginning of the 2006 project to replace the turbine rotors, through the event of September 20, 2008, and continuing through the recovery efforts, I&M has acted prudently. This effort included the selection of Siemens to upgrade the LP turbine rotors in 2006, the negotiation of favorable warranty provisions with Siemens, conducting proper levels of analysis and supervision in the design and manufacture of the turbines, and maintaining directly applicable insurance coverage for both property damage and accidental outage.

⁷ In his rebuttal testimony at page 5, Mr. Carlson stated that the average derate for the period of December 2009 to November 2010 was 28 MWe.

ii. Laura J. Thomas, Managing Director – Regulatory Projects and Compliance in the Regulatory Service Department. Ms. Thomas, who prior to March 1, 2010 was Vice President – Enterprise Risk and Insurance of American Electric Power Service Corporation, addressed the insurance-related aspects of the Cook Unit 1 outage. Ms. Thomas testified I&M maintains insurance policies with Nuclear Electric Insurance Limited (“NEIL”) which is a mutual insurance company that insures nuclear powered generating facilities. The two policies applicable to the Cook Unit 1 outage were placed in 2007 and are (i) the NEIL Accidental Outage Insurance (accidental outage) policy and (ii) the Primary Property and Decontamination Liability Insurance (property damage) policy.

Ms. Thomas explained that the accidental outage policy provides insurance for an outage of a unit resulting from accidental damage to property at the site. The policy provides for fixed weekly payments of \$3.5 million for the first 52 weeks of an outage, following a 12-week deductible period. After 52 weeks, the policy pays \$2.8 million per week of the outage for up to an additional 110 weeks until the day on which the unit could resume generating electric power (synchronization to the grid). Ms. Thomas stated the accidental outage policy is intended to mitigate I&M’s losses and other costs associated with an accidental outage but is not specific to what costs are covered. She testified in total, I&M received \$184.8 million in accidental outage payments for the Cook Unit 1 outage.

Ms. Thomas testified I&M’s claims under the accidental outage policy are not complete. She stated that NEIL, in the normal course of the adjusting process, is reviewing the cost, timing and nature of all work and activities related to the Cook Unit 1 outage to assure they meet the terms and conditions of the policy, including with respect to the length of the outage. She stated that an adverse finding by NEIL could require either a refund of monies received to date under the accidental outage policy or an offset against future payments from NEIL to I&M under the property damage policy. In her supplemental testimony, Ms. Thomas stated that this review was still in progress and discussions continued.

Ms. Thomas said the property damage policy included a \$1 million deductible and coverage for the cost of physical repair or replacement of damaged property up to \$500 million. Ms. Thomas testified it typically takes several years to complete the insurance claim process for significant events at nuclear facilities, citing examples involving other utilities. Ms. Thomas said the more complex the claim, and the greater the dollars involved, the longer it typically takes to bring a claim to complete resolution. She testified the claim for the Cook Unit 1 property damage involves thousands of cost items and activity, and is very complex.

In her supplemental direct testimony, Ms. Thomas testified that I&M had received \$202.8 million under the property damage policy as of June 30, 2010. Ms. Thomas sponsored Exhibit LJT-2 and Supplemental Exhibit LJT-2 attached to Petitioner’s Exhibits 2 and 9, which identified the dates of I&M’s submission of property damage claims to NEIL, the dates on which I&M received payments from NEIL and the amount of payments.

Ms. Thomas testified that while it is impossible to indicate at this time any total amount of costs potentially not covered by I&M’s property damage policy, there are some costs incurred by I&M for necessary work at the Cook Plant that will not be covered. After review of I&M’s initial submission to NEIL, I&M and NEIL agreed that certain items were not covered under the

property damage policy. In general, the policy does not cover costs for items such as overheads, incentives, the residual value of hand tools purchased for repair use and retained by I&M afterward, and the property damage policy deductible. Once this agreement occurred, I&M stopped submitting such costs to NEIL. I&M also agreed that some items were not directly due to the incident and therefore should not have been submitted. Ms. Thomas emphasized this does not mean these costs are not valid; it simply means that these costs are not covered under the property damage policy with NEIL. Ms. Thomas explained in her supplemental direct testimony that (as shown in the Updated Report, Supplemental Exhibit TEM-1, Schedule 1-A) a total amount of \$8,213,576 of repair costs has been agreed to as not covered under the property damage policy. In addition, another \$8,557,425 in submitted repair costs and \$90,733 in unsubmitted repair costs have been categorized as doubtful of recovery.

Ms. Thomas also addressed the turbine replacement costs shown on Schedule 1-B of the Initial Report and Updated Report. Ms. Thomas explained that \$15.59 million of the \$37.8 million of turbine replacement costs relates to the rotors purchased from Alstom, which are different than the previously installed rotors.⁸ She stated the policy provides for reimbursement of the cost of like kind and quality equipment. An issue exists as to whether a portion of the total cost of the replacement rotors will be considered not to be of like kind and quality and, therefore, not subject to reimbursement under the property damage policy. Ms. Thomas testified that another pending issue is whether the policy will cover the \$9,181,742 LOI payment to Siemens for the construction of new rotors in the event the damaged rotors could not be repaired. She stated that although I&M has received preliminary feedback from NEIL that this amount may not be covered under I&M's insurance policies, I&M intends to continue to pursue recovery from NEIL of this prudently incurred cost.

She stated that only after the claims process is fully completed and all of the costs relating to the outage are known will I&M be able to determine the aggregate amount of insurance proceeds associated with the Cook Unit 1 outage.

iii. Thomas E. Mitchell, Managing Director of Regulatory Accounting Services. Mr. Mitchell discussed I&M's accounting for the (1) Cook Unit 1 repair and replacement costs and the related property damage insurance; (2) accidental outage insurance proceeds; and (3) absorption of incremental fuel expense during a portion of the Cook Unit 1 outage. Mr. Mitchell sponsored and explained the related amounts contained in I&M's Initial Report and the updated schedules in its Updated Report.

Mr. Mitchell explained that I&M accounted for the cost of repairs in the normal manner prescribed by the FERC Uniform System of Accounts ("USofA"), as either an expense or a capital item by charging a retirement work order for removal work, or a construction work order for replacement capital costs, as appropriate. In the case of retirement work, the related retirement was recorded by crediting Electric Plant In Service (Account 101) and charging the Accumulated Provision for Depreciation of Electric Utility Plant (Account 108) at the original cost following the FERC USofA Electric Plant Instructions.

⁸ The referenced amounts are updated amounts from Ms. Thomas' supplemental direct testimony.

With respect to the accounting for the property damage insurance related items, Mr. Mitchell said that I&M first charged costs related to the incident to the normal account for the type of property. The deductible under the property damage insurance policy of \$1 million was expensed. Incurred repair and replacement costs above the \$1 million deductible were generally recorded as a receivable for the expected recovery from the insurer, in Miscellaneous Current and Accrued Assets (Account 174), with an offsetting credit to either the original account charged for repair expenses or for capital costs, to Accumulated Provision for Depreciation of Electric Utility Plant (Account 108), again following the FERC USofA. He stated the repair and replacement costs were reviewed by I&M and those considered doubtful of recovery, remained in the original accounts charged. For the submitted costs that were not covered under the property damage policy, Mr. Mitchell stated I&M reduced the NEIL receivable and charged the cost back either to the original expense account or to the Accumulated Provision for Depreciation of Electric Utility Plant (Account 108).

Mr. Mitchell testified the proceeds related to the accidental outage insurance were recorded in Account 456, Other Electric Revenue, following revenue recognition requirements of the Securities and Exchange Commission Staff and the Financial Accounting Standards Board.

Mr. Mitchell explained that the incremental fuel expense during the period when accidental outage insurance payments were received was absorbed by I&M and not deferred for future recovery from customers. In his direct testimony, Mr. Mitchell testified the total absorbed by I&M for incremental fuel expense for all of its jurisdictions (Indiana, Michigan and FERC) was approximately \$78.4 million. In his supplemental direct testimony, Mr. Mitchell adjusted this amount slightly from \$78.4 million to \$78.2 million.

Mr. Mitchell testified I&M did not record on its books any amounts for the warranty work performed by Siemens. He stated that the warranty work was not billed to I&M by Siemens and, as such, is not included in I&M's Initial Report or Updated Report.

In his direct testimony, Mr. Mitchell provided an overview of I&M's Initial Report which provides a narrative on the outage and restoration efforts through December 31, 2009 and schedules that explain the accounting for the Cook Unit 1 outage. In his supplemental direct testimony, Mr. Mitchell provided an overview of the Updated Report as of June 30, 2010 and updated versions of the schedules thereto. Mr. Mitchell explained that the schedules provide the total costs for capital and operations and maintenance ("O&M") expenses for both the turbine repair and the turbine replacement; the turbine repair O&M expenses incurred by I&M that are not expected to be reimbursed by insurance; and the incremental fuel expense due to the Cook Unit 1 outage not recovered from ratepayers during the period when accidental outage insurance proceeds were received from NEIL. The Initial Report also set forth the balance sheet accounts for work related to the Cook Unit 1 outage.

In his supplemental direct testimony, Mr. Mitchell testified the turbine repair costs total approximately \$259.9 million (\$23.5 million in capital and \$236.4 million in O&M) and the turbine replacement costs total approximately \$37.8 million in capital costs. He said that as of June 30, 2010, approximately \$257.7 million in claims had been submitted to NEIL, of which approximately \$202.9 million was paid to I&M, approximately \$46.6 million was pending and \$8.2 million was determined not to be covered under the property damage policy. Of the \$46.6

million of pending policy claims, approximately \$8.6 million is considered doubtful of recovery from NEIL. Additionally, approximately \$2.2 million of costs have been incurred and not yet filed with NEIL, of which approximately \$2.1 million is considered probable of recovery, and approximately \$0.1 million is considered doubtful of recovery.

iv. David L. Hille, Principal Regulatory Consultant. Mr. Hille described adjustments I&M made in its FAC filings related to the Cook Unit 1 outage. Mr. Hille testified the calculation of actual FAC costs for the months of the outage period were included in FAC62 through FAC65. Mr. Hille stated I&M made an adjustment in each of these FAC filings that used proceeds from the outage insurance policy as an offset against increased FAC costs resulting from the outage during the period of accidental outage insurance coverage which included a portion of December 2008, each full month of January 2009 through November 2009, and the portion of December 2009 prior to the unit returning to service.

Mr. Hille sponsored Exhibit DLH-1 attached to Petitioner's Exhibit 4 comparing I&M's actual and adjusted FAC costs for one of the Cook Unit 1 outage months, *i.e.* August 2009. Mr. Hille explained that the actual fuel costs were adjusted to the estimated level that I&M would have incurred if it had been receiving generation from Cook Unit 1. The assumed Cook Unit 1 generation was priced based on the actual cost of nuclear fuel loaded in the reactor at the time of the outage. He stated this additional generation was accounted for by first removing any retained AEP Non-associated Cash Purchases (increasing actual deliveries to equal purchases) and any Pool-Primary & Economy Purchases from the AEP System Pool, and then increasing I&M Primary Energy Deliveries to the AEP System Pool. I&M's Primary Energy Deliveries to the AEP System Pool are priced based on I&M's primary energy rate which reflects the average fuel costs of I&M's own generation.

Mr. Hille explained that I&M is an operating subsidiary in the AEP System which is operated on an integrated, interconnected basis. I&M as a member of the AEP System receives power from the AEP System under a FERC-approved Interconnection Agreement when it is economical to do so, including when I&M's generation resources are not available. Mr. Hille described I&M's delivery of power to the AEP System Pool when it is not required by I&M but is the least cost option to other AEP System Pool members. He noted I&M generally delivers power to the AEP System Pool and receives very little, if any, power from the AEP System Pool. In addition, I&M as a member of the AEP System receives a share of all AEP System purchases; however, I&M's internal load is met with the lowest cost sources available. Therefore, I&M's share of AEP System purchases is generally not allocated to serve I&M's internal load.

Mr. Hille stated the cumulative effect of the outage adjustments was to reduce I&M's actual fuel costs on a Total Company Indiana jurisdictional basis for December 2008 through December 2009 by \$74.8 million. This equates to a \$49.3 million credit to I&M's Indiana jurisdictional customers. Mr. Hille explained that as with Indiana, I&M made similar outage adjustments in each of its other jurisdictions, based on the fuel clause basis of each respective jurisdiction. The sum of each of the resulting jurisdictional amounts totaled the \$78.4 million⁹ which includes the \$49.3 million credit for Indiana plus the jurisdictional credit amounts for I&M's other jurisdictions. Mr. Hille testified these adjusted FAC costs reflect a reasonable

⁹ The \$78.4 million amount was trued-up to \$78.2 million in Mr. Hille's supplemental direct testimony.

estimate of what I&M's FAC costs would have been had Cook Unit 1 been operating during the period covered by the accidental outage insurance policy.

v. Charles F. West, Manager – Fuel Emissions and Logistics. Mr. West addressed the coal procurement issue. Mr. West explained that I&M presents testimony regarding its coal procurement in each FAC proceeding. According to Mr. West, this evidence shows that I&M has and continues to make every reasonable effort to obtain available fuel as economically possible. Mr. West stated that at the time the issue was deferred to this subdocket, no party had presented testimony questioning I&M's coal procurement. Instead, SDI indicated that it wanted an opportunity to conduct discovery in this area. The Parties agreed to defer this issue to this subdocket as a placeholder in the event a party sought to raise a question. Mr. West stated that following the creation of this subdocket, formal and informal discovery questions regarding fuel procurement for the time period covered by FAC62 and FAC63 have been answered. On June 5, 2009, I&M met with representatives of the OUCC, Intervenors and the Commission to discuss the issues deferred to this subdocket, including coal procurement. Mr. West stated that he participated in this meeting. He testified that in FAC63, the other parties agreed that they had no issues to raise and further agreed that the coal procurement issues will be dismissed from this subdocket. Thus, I&M is not aware of any remaining issues or concerns regarding coal procurement.

vi. David M. Roush, Manager – Regulated Pricing and Analysis. Mr. Roush discussed the issue of voltage differentiation with respect to I&M's FAC. Mr. Roush said that I&M's Terms and Conditions of Service specify four different voltage categories ordered from low voltage to high voltage: Secondary, Primary, Subtransmission and Transmission. He noted the vast majority of I&M's customers take service at Secondary voltage, but larger customers will tend to take service at higher voltages. Some of I&M's non-residential rate schedules include different rates depending upon the service voltage of the customer.

Mr. Roush explained that one reason for having voltage differentiated rates is to reflect the fact that more equipment is required to provide service at secondary voltages than at primary or transmission voltages. Mr. Roush stated that since transmission and delivery equipment are not part of the FAC, this component of voltage-based cost differentiation is not relevant to this proceeding. Mr. Roush stated the other reason for voltage differentiation concerns line losses which increase as electricity travels through more equipment or over greater distances on the same type of equipment. Mr. Roush asserted this is the only potentially relevant component of voltage-based cost differentiation in the context of the FAC.

Mr. Roush stated that based upon the long-standing practice in Indiana, the FAC factor is not voltage differentiated. He stated I&M does not favor a voltage differentiated FAC as it would be inconsistent with the manner in which base rates and the basing point of fuel were established in Cause No. 43306 when the cost of losses, including losses related to fuel costs, were reflected in the allocation of costs to each rate class in the cost of service study used to develop the current base rates. Thus, Mr. Roush testified, voltage differentiation of fuel costs is already reflected in I&M's current rates.

b. OUCC's Direct Testimony. OUCC Witness Michael D. Eckert, Senior Utility Analyst, testified that the Root Cause Evaluation Report performed by I&M and its

independent third party consultants concluded the root cause of the Cook Unit 1 outage was a blade rotor system design that failed to provide adequate stress margin in at least three L-0 blades. He further stated the report found no indication of imprudence or negligence on the part of I&M. Mr. Eckert also reviewed the NRC Special Inspection Team report (“NRC Report”) related to the fire protection aspects of the outage and testified that the NRC Report stated that “[n]o findings of significance were identified” other than one finding of very low safety significance.

Mr. Eckert discussed the timing of I&M’s Initial and Updated Reports and I&M’s proposed future semi-annual updates. He stated it was anticipated that the final accounting report will be completed in 2011 or 2012.

Mr. Eckert also discussed the two I&M insurance policies that are applicable to the Cook Unit 1 outage. Mr. Eckert asserted that I&M passed the insurance policy premiums on to its ratepayers and, therefore, the retail ratepayers should receive the proceeds from the policies. He stated that I&M has received \$184,800,000 in accidental outage payments for the Cook outage and that I&M has used the payments to offset its fuel costs for every month during the period of December 2008 to December 2009, except for the initial three month period September 18, 2008 to December 18, 2008. Mr. Eckert testified that those adjustments total approximately \$78,400,000 and were reflected in I&M’s FAC applications.¹⁰

Mr. Eckert stated that the OUCC understands that I&M has similarly credited its Michigan and FERC jurisdiction customers, but that the OUCC did not yet know the exact amount of those credits. He asserted that this was a concern because the OUCC wants to make sure that I&M has made a proper allocation of the insurance proceeds between its Indiana, Michigan and FERC jurisdictions. He also stated that the OUCC wants to make sure that I&M is not retaining insurance proceeds that should be returned to consumers. Mr. Eckert stated that I&M’s current Indiana energy jurisdictional separation factor is approximately 65% (0.6519218), and thus the OUCC would expect Indiana to receive approximately 65% of the insurance proceeds.

Mr. Eckert stated that he reviewed various costs associated with the outage including the Siemens LOI cost, the rotor replacement costs, costs of submitted claims that have been agreed to as not recoverable under the property damage policy and claims under the property damage policy that are pending. Mr. Eckert stated that there has been no resolution of the recoverability from NEIL of the Siemens LOI and the rotor replacement costs. Mr. Eckert testified that it appeared that these costs were prudently incurred by I&M, and if I&M cannot recover these costs through its property damage insurance, it could try to recover these costs through its accidental outage insurance policy. Mr. Eckert asserted it would be reasonable for I&M to withhold a portion of the accidental outage insurance proceeds to pay for these costs if the property damage insurance does not cover them. However, he said that if I&M is reimbursed for these costs from the property damage insurance, it should refund these costs to its ratepayers.

¹⁰ As discussed in Mr. Hille’s direct testimony, this is the total company amount including the FERC and Michigan jurisdictions. The Indiana jurisdictional basis amount is \$49.3 million. Petitioner’s Exhibit 4 at 6.

Mr. Eckert stated that there are total costs of \$8,213,576, associated with such items as overheads, hand tools, outside services, materials and equipment, that have been submitted to NEIL as part of I&M's property damage claim but which I&M and NEIL have agreed are not recoverable under the property damage policy. He added that there is an additional \$8,557,425 in similar costs that have been submitted to NEIL as part of I&M's property damage claim which appear to be unrecoverable because they are similar to the costs that have already been agreed to as non-recoverable. Mr. Eckert stated that it is possible that I&M may try to allocate a portion of the accidental outage insurance policy to reimburse these costs if I&M cannot recover them through the property damage insurance. However, Mr. Eckert stated that I&M should not be allowed to use the accidental outage insurance proceeds to offset the costs that I&M and NEIL have agreed are unrecoverable.

Mr. Eckert noted the Cook Unit 1 repair and replacement process appears to be very lengthy and that I&M expects to incur additional capital costs for the replacement of damaged units. He said I&M also expects to file additional claims with NEIL under the property damage policy and work with NEIL through 2011 or possibly 2012 to finalize I&M's claims and collect all of the property-related costs that are recoverable under the policy. He stated that the OUCC generally agrees with this position. He added that I&M expects to file a final and full accounting of the cost of the Cook Unit 1 outage, related warranty work and NEIL insurance proceeds in 2011 or possibly 2012. Mr. Eckert testified that the proceeds from the accidental outage insurance policy do not have to be used to offset fuel costs, but could be allocated to offset maintenance costs and/or capital costs. He said that if I&M has not fully spent or used its accidental outage proceeds for outage expenses, it should accrue interest on the remaining balance and credit the interest to the consumers.

Mr. Eckert concluded that based on the time it is going to take to resolve I&M's insurance claims and finish preparing and replacing its damaged units, the OUCC does not believe it is reasonable to reach a final conclusion on recovery and allocation of costs in this docket. However, Mr. Eckert opined that the Commission can give guidance on what and how I&M treats the insurance proceeds it has received from its accidental outage policy. He further opined that many of the issues associated with the capitalized costs and property damage policy could be resolved in I&M's next base rate case which is required to be filed by March 4, 2014.

In conclusion, Mr. Eckert recommended the Commission require I&M to update its Initial Report with semi-annual updates until the turbine repair and replacement costs have been fully incurred and recorded and the insurance recovery has been fully resolved and accounted for. He recommended that I&M be allowed to set aside approximately \$24.6 million to offset costs associated with the Siemens LOI and rotor replacement if the property damage policy will not cover them. He also recommended that I&M be required to refund to its customers the remaining balance of the accidental outage insurance proceeds which has not been set aside or already refunded to consumers. Mr. Eckert opposed use of accidental outage insurance proceeds to offset costs that are unrecoverable under the property damage policy. He asserted I&M should be required to credit the customers with interest on the remaining balance of outage insurance proceeds.

c. Industrial Group's Direct Testimony. Industrial Group witness James R. Dauphinais, a consultant in the field of public utility regulation with Brubaker & Associates,

Inc., addressed the Cook outage and FAC voltage differentiation issues. Mr. Dauphinais testified that I&M's proposal to retain the entire \$184.8 million in accidental outage insurance payments from NEIL due to the failure of the LP turbine is unreasonable. Mr. Dauphinais opined that a preliminary disposition of the \$184.8 million should be made now, particularly considering the current fragile economic recovery which could be aided in I&M's service territory by returning excess payments to the ratepayers who ultimately pay the cost of NEIL insurance premiums through base rates.

Mr. Dauphinais recommended that the Commission, on a preliminary basis and subject to true up through I&M's FAC once final insurance and prudence determinations are complete, preliminarily dispose of the \$184.8 million in payments by assigning \$112.2 million of the amount to I&M to cover the incremental fuel costs it absorbed during the accidental outage insurance coverage period, the deductible under the property damage policy and the replacement costs doubtful of recovery under the property damage policy. Mr. Dauphinais proposed assigning the remaining \$72.6 million to customers. He stated that Indiana's share of the latter amount, \$45.9 million, should be refunded to Indiana customers through the FAC over the next two FAC periods, subject to true up through the FAC once final insurance and prudence determinations are complete.

Mr. Dauphinais testified that as of June 30, 2010, I&M was estimating its total repair and replacement cost at approximately \$395 million. He stated that this amount is net of the \$37.7 million in repair cost that was absorbed by Siemens under its warranty. He said that as of June 30, 2010, \$97.3 million of the estimated total repair and replacement cost had yet to be incurred by I&M. Mr. Dauphinais testified that incremental fuel costs for native load due to the LP turbine failure will occur over three distinct time periods: (1) the NEIL accidental outage insurance deductible period (September 21, 2008 – December 14, 2008), (ii) the period between the end of the deductible period and the restart of Cook Unit 1 (December 15, 2008 – December 19, 2009), and (iii) the period from which the unit restarted operation at a derated level to the unit's forthcoming Fall 2011 refueling outage when the LP turbine will be replaced (December 19, 2009 – Fall 2011 refueling outage). He stated that I&M has estimated the incremental fuel cost due to the LP turbine failure over the period from the end of the deductible period to the restart of Cook Unit 1 to be \$78.2 million, of which \$49.2 million is associated with Indiana-jurisdictional FAC sales.

Mr. Dauphinais stated that in his testimony in FAC63, he estimated I&M's incremental fuel cost for native load due to the LP turbine failure during the deductible period to be approximately \$17.3 million, of which \$11.1 million is associated with Indiana-jurisdictional FAC sales. He also estimated I&M's incremental fuel cost for native load during the period from the restart of Cook Unit 1 to the forthcoming Fall 2011 refueling outage to be approximately \$3.3 million, of which \$2.1 million is associated with Indiana-jurisdictional FAC sales. Mr. Dauphinais asserted that I&M has absorbed the \$78.2 million in incremental fuel cost it incurred on behalf of native load between the end of the deductible period and Cook Unit 1's restart, but that I&M has passed on to Indiana customers through its FAC the Indiana portion of the incremental fuel cost associated with the deductible period and the derated operation period.

Mr. Dauphinais testified that I&M and its Indiana customers have also lost, or will be losing, off-system sales margin sharing opportunities that would have existed under I&M's off-

system sales tracker but for the LP turbine failure. However, he indicated that the fact I&M does not even mention them in its testimony filed in Cause Nos. 43775 and 43775 OSS-1, which involve I&M's off-system sales tracker, suggests that I&M believes the LP turbine failure had a negligible impact on off-system sales margins. Therefore, Mr. Dauphinais stated that he would assume the lost margins were in fact negligible, barring the later production of evidence to the contrary.

Mr. Dauphinais next discussed the status of I&M's claims with NEIL under I&M's property damage insurance policy. He noted that of the claims yet to be submitted, I&M believes \$0.09 million of repair O&M expenses and \$15.6 million in replacement capital costs are doubtful of recovery under the policy.

With respect to the accidental outage policy, Mr. Dauphinais stated that as of June 30, 2010, I&M has received \$184.8 million in payments from NEIL due to the LP turbine failure representing \$3.5 million per week for the post-deductible outage period. However, he added that if NEIL concludes that I&M did not use due diligence in returning Cook Unit 1 to service, I&M may be required to return a portion of the payments to NEIL.

Mr. Dauphinais testified that I&M's proposal to retain the entire amount of accidental outage payments was unreasonable and recommended that the Commission, on a preliminary basis and subject to true-up once final insurance and prudence determinations are complete, dispose of the \$184.8 million in accidental outage payments in the following manner: (i) allow I&M to retain \$78.2 million in accidental outage insurance payments to cover its estimated incremental fuel cost during the period between the end of the deductible period and the restart of Cook Unit 1 at its current derated level; (ii) allow I&M to retain an additional \$1 million in accidental outage insurance payments to cover the portion of the \$15.7 million in O&M repair expenses it has incurred that is within the NEIL property damage insurance deductible; (iii) require I&M to refund a total of \$13.2 million of the accidental outage insurance payments to Indiana customers over the next two FAC periods to cover Indiana's share of the incremental fuel costs for native load of \$20.6 million that have been, or will be, incurred during the deductible period and between the restart of Cook Unit 1 and the start of the Fall 2011 refueling outage; (iv) allow I&M to retain an additional \$15.6 million of the accidental outage insurance payments to cover its estimated \$15.6 million in replacement capital costs that are doubtful of recovery under the property damage policy; (v) allow I&M to temporarily retain 25% (\$17.4 million) of the remaining \$69.4 million in accidental outage insurance payments to cover the contingency of additional amounts being found by NEIL to be unrecoverable under the property damage policy; and (vi) require I&M to refund Indiana's share of 75% (\$52.0 million) of the remaining \$69.4 million in accidental outage insurance payments to Indiana customers through the FAC over the next two FAC periods. Mr. Dauphinais said his proposals would assign (subject to true up) \$112.2 million of the accidental outage insurance proceeds to I&M and \$72.6 million to customers. He said Indiana's share of the latter amount would be \$45.9 million.

Mr. Dauphinais stated that if NEIL concludes I&M did not exercise due diligence in returning Cook Unit 1 to service, I&M would likely be required to return a portion of the accidental outage insurance payments to NEIL. If as a result of such a conclusion by NEIL the Commission subsequently finds I&M imprudent in regard to managing the length of the Cook Unit 1 outage, he stated any payments that must be returned to NEIL should come out of the

\$78.2 million that I&M proposes to retain to cover the incremental fuel costs it absorbed during the period between the end of the deductible period and the restart of Cook Unit 1. With respect to his recommendation that I&M only be allowed to retain accidental outage insurance payments to cover \$1 million of its \$15.7 in repair O&M expenses that are unlikely to be recovered under the NEIL property damage policy, Mr. Dauphinais explained that, with the exception of the \$1 million deductible, these O&M expenses by their nature are generally expenses that I&M would have incurred regardless of whether the LP turbine failure occurred or, in the case of the hand tools, represent a value that I&M can realize through resale or reducing future costs. He said I&M should not be permitted to apply any of the accidental outage payments against these normal course of business costs that are recovered through I&M's base rates.

Mr. Dauphinais explained that he proposed to allow I&M to preliminarily retain \$15.6 million in accidental outage insurance payments to cover the portion of its replacement capital costs that are unlikely of recovery under the NEIL property damage policy because it appears these costs were only incurred due to the LP turbine failure. He opined that it is more appropriate to cover as much as possible of the capital costs prudently incurred by I&M because of the LP turbine failure from excess accidental outage insurance payments than to allow I&M to place these capital costs into rate base in order to earn a return on those costs. With respect to his recommendation to allow I&M to temporarily retain 25% of the remaining accidental outage payments, Mr. Dauphinais explained that I&M has suggested there may be difficulty in getting NEIL to ultimately agree that the Siemens LOI payment is recoverable under the property damage policy. He said his proposal would be large enough to cover this contingency and an additional contingency of nearly the same magnitude.

Mr. Dauphinais next addressed the issue of voltage differentiation of the FAC. He stated that I&M's current FAC assesses fluctuations in I&M's fuel and purchased power costs to customers through a uniform per kWh charge, with no variation in charges by voltage level of service. He asserted that voltage differentiation would result in FAC charges that more accurately reflect cost causation principles and would send more accurate price signals to customers that would assist them in making rational economic decisions with respect to their electricity consumption. Mr. Dauphinais stated that customers on I&M's system are not uniformly responsible for the incurrence of line losses, as the magnitude of such losses increases with the number of required transformations and the length of the transmission and distribution lines that are required to deliver electricity from the generator to the customer's meter. He explained that higher voltage customers are electrically closer to generation resources and require fewer transformations to take electric service. Consequently, he pointed out that customers taking service at a higher voltage level cause I&M to incur fewer line losses on a percentage basis than lower voltage level customers.

Mr. Dauphinais testified that cost-based FAC charges are equitable because they require each customer class to bear only the fuel costs that I&M incurs to provide service to that class, minimize the inter-class cross-subsidies and send clear price signals. With respect to I&M witness Roush's testimony that voltage differentiation of fuel costs is adequately reflected in base rates, Mr. Dauphinais responded that this argument only has merit if the over and under-recoveries of fuel costs produce a net result over time that approximates the recovery of fuel costs through base rates. He stated, however, that I&M's FAC orders since early 2009 show that, on a net basis, I&M has under-recovered fuel costs over time, resulting in positive FAC

factors without voltage differentiation. He concluded that the voltage differentiation in base rate fuel costs is therefore inadequate to fully incorporate the impact of line losses on I&M's fuel costs.

Mr. Dauphinais suggested that a larger portion of I&M's total revenues are now being collected outside of base rates than was the case in the past, likely reducing the frequency of future base rate filings and thereby making it much more important to ensure that these riders properly allocate costs to the customer classes. He stated that the Commission can take an important step in this direction by requiring I&M to introduce voltage differentiation into the design of its FAC charges.

d. I&M's Rebuttal Testimony.

i. Marc E. Lewis, Vice President – External Relations. Mr. Lewis responded from a regulatory perspective to the recommendations presented in the testimony of Industrial Group witness Dauphinais and OUCC witness Eckert.

Mr. Lewis stated both Mr. Dauphinais and Mr. Eckert, through their repeated use of the word "refund," urge the Commission to require I&M to turn over to customers insurance policy proceeds I&M received as a result of insurance policies I&M purchased as a reasonable business practice. He said they also make recommendations regarding what revenues I&M may be "allowed" to "retain" or "set aside," notwithstanding the fact that they do not demonstrate any imprudence or mismanagement related to the outage and without regard for the fact that I&M earned less than its authorized return even after receiving these revenues. Mr. Lewis testified Mr. Dauphinais and Mr. Eckert seek an unfair windfall for customers and in so doing contradict foundational principles of Indiana utility ratemaking, which seek to regulate utility companies in a balanced and impartial manner.

Mr. Lewis stated regulation should hold utilities accountable for mismanagement and protect customers from costs that result from imprudence. However, he stated, neither the Industrial Group nor the OUCC make a showing of that nature with regard to the Cook Unit 1 outage. Instead, Mr. Lewis asserted, they appear to take the position that I&M should be strictly liable for any increased costs incurred by an unexpected generating unit outage without regard for the reasonableness of I&M's actions. That position, he stated, is incorrect.

Mr. Lewis testified outages are an unavoidable part of operating any electric system and, in this case, the extensive Root Cause Evaluation found no indication of imprudence or negligence on the part of I&M. He said I&M was not responsible for causing the outage and went above and beyond to return the unit to service as soon as safely and reasonably possible. Mr. Lewis stated that bringing the unit back sooner by repairing the rotors, rather than waiting until replacement rotors could be manufactured and installed, allowed the low cost generation to be returned to serving I&M's customers, although the repair effort necessarily caused a small reduction or "derate" of the unit's output. With respect to Mr. Dauphinais' testimony regarding NEIL's review of the length of the outage, Mr. Lewis noted that NEIL's review was a hindsight analysis based on the insurance coverage and should not be mistaken for a regulatory review.

Mr. Lewis testified Indiana regulation recognizes that increased fuel costs reasonably incurred due to a generating unit outage or unit derate should not be disallowed for ratemaking purposes, citing Commission FAC Orders involving outages and derates at generating units of Duke Energy Indiana and at NIPSCO.¹¹

Mr. Lewis testified the Cook Plant has performed excellently and achieved remarkable capacity factors between planned refueling outages. As a result, customers have benefited over the years from the low fuel costs of the Cook Plant. Although fuel costs were higher when the unit was unexpectedly out of service due to no fault of I&M, he stated the burden was mitigated by I&M's ability to procure replacement power at a reasonable cost. Mr. Lewis further stated, referencing the testimony of I&M witness Carlson, that I&M's management of the outage resulted in the unit being returned to service much earlier than would have been the case if new rotors had been required to restart the unit.

Mr. Lewis testified that I&M is a shareholder-owned business that is allowed to incur expenses reasonably necessary to operate its business and such expenses should not be disallowed for regulatory purposes unless shown to be excessive or caused by mismanagement. Mr. Lewis stated that the basic rates I&M charges for retail electric service are based on a "snapshot" of utility revenues and costs at the time of its last ratemaking proceeding, which used a test year of the twelve-months ended September 30, 2007.¹² Mr. Lewis stated this does not mean that customers pay for, or acquire rights in, the individual cost components reflected in the snapshot. Simply put, customers pay for retail electric service -- not specific expenses. Likewise, the revenues received by I&M do not belong to the customers. Mr. Lewis analogized this business principle to a taxi passenger paying a fee that is expected to cover the cost of providing taxi service. In this example, Mr. Lewis pointed out, paying the taxi fare does not make the passenger an owner of the taxi; and if an accident causes the driver to miss work or repair damage to the taxi, the passenger is not entitled to the proceeds of the taxi driver's insurance policy. Mr. Lewis asserted I&M's insurance policy proceeds are revenues rightfully received and properly recorded by I&M just like any other non-electric service revenues that I&M may receive from time to time.

Mr. Lewis also pointed out that when I&M's revenue requirement was set in I&M's last base rate case, it included a net credit for the accidental outage insurance. Thus, Mr. Lewis testified, not only was I&M's revenue requirement not increased to reflect the costs of the insurance premiums, I&M's rates were lower as a result of the credit. Therefore, Mr. Lewis emphasized, the Industrial Group and the OUCC are incorrect in claiming the customers bore the cost of the insurance premiums.

Mr. Lewis drew the Commission's attention to its Order in *Northern Indiana Public Service Company*, Cause No. 38706 FAC18 S1 (IURC 12/19/1995), wherein it reviewed an outage of a NIPSCO generating unit for which the utility received insurance proceeds. He stated

¹¹ *Duke Energy Indiana, Inc.* Cause No. 38707 FAC76 S1 (IURC 10/21/2009); *Northern Indiana Public Service Company*, Cause No. 38706 FAC45, p. 8 (IURC 2/23/2000).

¹² The Commission approved I&M's current basic rates and charges in its order dated March 4, 2009 in Cause No. 43306.

that in that case, the Commission found customers were entitled to an “equitable reimbursement” of replacement fuel costs incurred during the period covered by an Extra Expense insurance policy but not any portion of a separate property damage coverage settlement, which remained available to the utility for use in its business. Mr. Lewis noted I&M’s actions are consistent with the finding in the NIPSCO FAC case in that I&M has already made customers whole for the higher replacement cost of power incurred during the coverage period of the accidental outage policy.

Mr. Lewis further explained that like any picture, the elements in the “snapshot” used for ratemaking purposes do not stand still and will change, almost immediately after the picture is taken. He stated that between general rate cases, a large utility like I&M experiences thousands of changes in expenses and fluctuations in revenues. Regardless of the components of the revenue requirement when base rates were set, a variance from the “snapshot” does not create a refund obligation or a right to a surcharge, unless the revenue or expense is the subject of a statutory or Commission-approved tracking mechanism, which is not the case with respect to I&M’s insurance proceeds.

Mr. Lewis testified Indiana regulation places on I&M the risk that its rates for retail electric service may not produce sufficient revenue to allow it to earn the fair return authorized by the Commission. After receiving a rate order, the utility must manage its business in an effort to recover the authorized return and insurance is one tool used to further that utility effort. Mr. Lewis testified it was reasonable for I&M to purchase insurance policies to guard against the risk that the Cook Plant may experience an accidental outage or incur significant property damage. Doing so is a reasonable business practice that has the dual intention of lowering I&M’s cost of providing service to customers if an insurable event occurs and protecting I&M against the financial impact of a loss of a Cook unit.

Mr. Lewis stated that under the FAC statute, FAC proceedings are limited to the sole issue of the fuel charge. He noted that in FAC62 and each of the FAC proceedings that have occurred since the creation of this subdocket, I&M has shown that it has satisfied each of the applicable FAC tests that must be passed before the Commission can approve a new FAC factor. He testified the Commission’s orders in the FAC proceedings related to this subdocket approved the fuel factors subject to further review of the (d)(1) and (d)(4) tests, but neither the Industrial Group nor the OUCC has demonstrated that the interim findings set forth in the Commission’s FAC orders should be reversed. Instead, he stated, their recommendations are based on the doubly-flawed premise that customers paid for the insurance policy premiums through the basic rates charged by I&M for retail electric service.

Mr. Lewis testified I&M made every reasonable effort to acquire fuel and generate or purchase power, or both, so as to provide electricity to its retail customers at the lowest fuel cost reasonably possible. He stated that as explained in the testimony of I&M witness Carlson and recognized by OUCC witness Eckert, the Root Cause Evaluation of the Cook outage found no indication of imprudence or negligence on the part of I&M. Mr. Lewis noted that Mr. Carlson’s testimony is clear that the repairs performed by I&M to return the unit to service, which were unprecedented, extraordinary and viewed as impossible by some, preserved for its customers the availability of low cost generation that otherwise would have been lost.

Mr. Lewis pointed out the accidental outage policy did not provide coverage during the first twelve weeks of the outage, a deductible period that is typical in the industry. Nor did the policy apply to the period after the unit was restarted with a slight derate. In this respect, Mr. Lewis asserted, even if one erroneously concludes that customers paid for the policy, they got what they paid for because they did not pay for coverage during the first twelve weeks of the outage or during the post-outage derate period. With respect to the coverage period, however, I&M did absorb the incremental replacement fuel costs by voluntarily implementing an FAC credit that reduced the fuel costs recovered through the FAC to the level that would have existed if Cook Unit 1 was running.

Moreover, Mr. Lewis pointed out I&M cannot over-earn its authorized return as a result of the insurance proceeds because of the earnings test component of the FAC Statute. He explained that the earnings test is a two step review; first, the Commission looks at the most recent earnings experience and then balances that against any underearnings over a longer period of time. Thus, the earnings test recognizes that fluctuations in revenue can be expected and requires the overall calculation to be performed on a cumulative basis. Mr. Lewis stated this approach is particularly fair in I&M's case because the so-called earnings bank was reset for I&M to a zero balance in a recent depreciation rate case, significantly narrowing the time frame in which near-term overearnings are balanced against longer-term underearnings. Because no excess return has been earned as measured by Section 42.3, no "refund" and no accrued interest are due.

ii. Mr. Carlson. Mr. Carlson responded to testimony of Industrial Group witness Dauphinais and OUCC witness Eckert about Cook Unit 1 outage activities and decisions. In particular, he addressed I&M's position that regardless of the outcome of insurance-related decisions made by NEIL, I&M exercised sound judgment in the restoration of Unit 1 and its return to service.

Mr. Carlson reiterated that the Unit 1 turbine outage was a "forced" outage that resulted from a catastrophic unplanned event that was not caused by an act of negligence or imprudence by I&M. He stated this fact is confirmed by the Root Cause Evaluation Report and is not disputed by the other parties. Furthermore, I&M managed the outage in a reasonable and prudent manner that allowed the unit to be returned to service within a much shorter timeframe than many experts thought possible, thereby preserving for I&M's customers the availability of the unit's low cost generation. Mr. Carlson testified I&M demonstrated a superior commitment and dedication that resulted in I&M successfully implementing unprecedented and extraordinary repairs through efforts of the men and women who worked tirelessly throughout this very challenging period.

In response to Industrial Group witness Dauphinais' testimony regarding the approximate 28 MWe derate, Mr. Carlson explained why the Cook Plant management repaired the severely damaged LP rotors and returned it to service in a derated condition instead of proceeding only to purchase new rotors. He stated the overriding goal from the outset of the event was to return the unit to service in a safe, timely and reliable manner consistent with sound engineering practices for the benefit of I&M customers. He said that new rotors have an approximate three year lead time and would not be available for installation at the Cook Plant until the fall of 2011. He stated the unit was returned to service slightly derated in December

2009, almost two full years sooner than waiting for new rotors. Mr. Carlson stated the derate of 28 MWe over a period of approximately 23 months (Dec. 2009 – Nov. 2011) is inconsequential when compared to the complete loss of over 1000 MWe from Unit 1 for the same period.

Mr. Carlson disagreed with Mr. Dauphinais' statement that there may be prudence concerns associated with the length of the outage based on NEIL's review of I&M's efforts to restore the unit to service. Mr. Carlson stated NEIL does not perform prudence reviews. NEIL's review is for coverage under the accidental outage insurance policy and uses a looking-backwards, hindsight analysis based on final outcomes; NEIL's review does not constitute an evaluation of the reasonableness of the decisions and actions taken by I&M based on information that was known by management at the time.

Mr. Carlson described Cook Plant's immediate response to the turbine failure that contributed to its quick restoration. He stated that General Electric and Siemens had not previously experienced the extent of damage that occurred at the Cook Plant. Siemens managers and technicians and others in the industry had little confidence that the bent LP rotors could be straightened because of their size and the significant degree of damage, which included a large sinusoidal bend in the LP-B rotor. Mr. Carlson explained that Cook Plant management pursued parallel paths of attempting innovative and unprecedented repair of the damaged rotors and began procurement of new LP rotors.

Mr. Carlson defended the discussion of the restoration activities and costs in I&M's case-in-chief that included extensive information presented in the accounting reports and testimony filed by I&M. Mr. Carlson also discussed the repair and replacement costs set forth in I&M's Initial Report and Updated Report. Mr. Carlson testified that the replacement costs are associated with the permanent replacement of temporary repaired components associated with the turbine event, including three complete low pressure turbine rotor assemblies, stationary blades, bearings, and other related components. Mr. Carlson noted Schedule 1-A-1 of the Report, provides an itemized list of clean up and restoration costs. Mr. Carlson sponsored Exhibit MHC-1 attached to Petitioner's Exhibit 12, showing a detailed summary of these activities, and others associated with the costs.

In light of Mr. Dauphinais' suggestion that I&M had not demonstrated the basis of some costs, Mr. Carlson provided additional information regarding the types of activities that were taken following the event. As examples, he cited the increased wear and tear on some infrastructure (such as turbine freight and personnel elevators) due to the increased number of people on site and the multitude of extra work activities required in response to the event; the need for I&M to verify through inspections, maintenance and/or repair that key equipment (which included eddy current testing of the Main Condenser Water Boxes, the Forebay structure and Ice Condenser system) was not damaged and would ensure a safe, timely and reliable return to service of the unit; and I&M's election to perform some improvements or upgrades in certain areas (including turbine bearing pedestal stiffening and generator rotor coupling modifications) to add design and operational margin in systems, instead of just putting everything back the way it was. He stated I&M's property damage policy does not cover these items, but they represent prudent incremental work that would not have been performed at this time but for the outage event.

Mr. Carlson's rebuttal testimony also addressed the labor retention costs incurred during the outage to prevent the loss of craft labor necessary to maintain the proper skill-set, safety and job familiarity throughout the outage. He discussed how the outage impacted other Cook Plant systems and operations including the auxiliary steam header that supports the start-up of both units. He said that because of the Unit 1 outage, an auxiliary boiler was used to provide steam for the turbine steam shaft seals and a vacuum pump was rented to draw a vacuum on the Main Condenser to support startup of Unit 2 after its Spring of 2009 refueling outage.

Mr. Carlson also stated the decision to replace the repaired Siemens LP turbine rotor assembly with a new rotor assembly during the Fall of 2011 refueling outage was reasonable and prudent. He stated that bids for Cook Unit 1 replacement low pressure turbines were received from Alstom and Siemens, and Alstom surfaced as both the preferred technical choice and the low cost provider. He stated the comparative cost of the proposals, taking into account equipment price, installation costs, electrical output, and adjustments for differences in currency exchange rate, delivery scope, and terms of payment, showed Alstom as the low cost provider.

iii. Ms. Thomas. Ms. Thomas responded to the insurance-related aspects of the testimony of OUCC witness Eckert and Industrial Group witness Dauphinais. Ms. Thomas noted there are many reasons why commercial property damage insurance typically does not cover 100% of costs related to an insurable event. She stated property damage insurance policies typically have explicit exclusions for certain costs that are not covered. She cited as an example, I&M's property damage policy with NEIL is specific in that it will only pay for like kind and quality replacements of damaged property, which means that the cost of design changes, modifications, and improvements are not covered by that policy.

Ms. Thomas said the fact that a cost is not covered by the property damage policy does not mean that it was not an appropriate cost; it simply means that the policy did not cover the cost. She emphasized that insurance coverage was not a consideration when determining what repairs, design changes, modifications or improvements were necessary to return the unit to service. She stated that while the property damage policy with NEIL does not cover the cost of design changes, modifications, or improvements, such as the cost for turbine stiffener modifications and the cost of the Forebay and Ice Condenser surveillances, it was reasonable and necessary for I&M to incur these costs to ensure the safe and reliable operation of the unit.

Ms. Thomas responded to the suggestions of Mr. Dauphinais and Mr. Eckert that the claims process for the Cook Unit 1 outage has progressed far enough, and with definitive enough results, to draw conclusions as to what will ultimately be covered by insurance. Ms. Thomas reiterated that while the claim continues to progress, it is far from over and amounts either "agreed as not covered" or "doubtful of recovery" are still open for discussion. Ms. Thomas stated the process that exists for resolution of a complex commercial property damage claim is continuous and iterative.

Ms. Thomas discussed some of the issues that are yet to be resolved with NEIL. She stated that there is still a significant difference between the amounts paid under the property damage policy and the costs I&M incurred for turbine repair and replacement. She stated that as of June 30, 2010, the total anticipated cost to repair and replace damaged turbine equipment is approximately \$395 million; approximately \$203 million has been paid by NEIL under the

property damage policy for turbine repair costs; and I&M had received no payment from NEIL for the turbine replacement. Ms. Thomas explained that this means that nearly \$200 million of costs that I&M has incurred or will incur as a result of the Cook Unit 1 outage is still subject to the claims adjustment process. She stated the reasonableness of I&M's incurrence of these costs should not be dictated by what is ultimately covered by the property damage policy.

Referencing I&M witness Krawec's rebuttal testimony regarding the surplus distribution from NEIL that was reflected in I&M's last base rate case, Ms. Thomas stated I&M as a NEIL policyholder and member company receives a surplus distribution only if one is declared by NEIL's board of directors based on NEIL's financial status. She stated I&M is responsible for paying the annual insurance premium in order to maintain its insurance coverage regardless of whether or not NEIL has provided a surplus distribution during the year. Ms. Thomas explained that since I&M's last basic rate case, the snapshot has changed from a net credit of \$2.6 million to a charge of approximately \$900,000, reflecting net costs related to accidental outage insurance that are \$3.5 million greater than what was reflected in the revenue requirement in the rate case. She also testified both policies provide NEIL with the right to call for additional premiums if the total losses incurred by NEIL during the policy year exceed NEIL's financial resources. Ms. Thomas stated I&M has experienced increased property damage policy premiums as a result of the Cook Unit 1 outage of 30% and this increase will be in effect for a three year period.

In response to Mr. Dauphinais' testimony concerning the 12-week deductible period, Ms. Thomas testified accidental outage policies from NEIL have a time period deductible in lieu of a dollar deductible. She testified I&M purchased its accidental outage policy with a 12-week deductible period as it's a reasonable time period that is fairly short yet longer than a typical refueling outage. She stated that approximately 70% of the nuclear units in the US that purchase accidental outage policies from NEIL have the same 12-week deductible period as I&M. She testified that during the 12-week deductible period I&M received no accidental outage insurance proceeds.

Ms. Thomas responded to Industrial Group witness Dauphinais' assertion that if costs are not covered under the property damage policy, then such costs are "generally expenses that I&M would have incurred regardless of whether the LP turbine failure occurred" and that I&M should not be permitted to utilize proceeds from the accidental outage policy to offset outage-related costs that are not covered by the property damage policy. Ms. Thomas testified the fact that certain outage costs are not covered by the property damage policy does not mean that these costs would have been incurred if the Cook Unit 1 outage had not occurred. She stated the property damage policy covers the cost for repair or replacement of "property damage," but costs of other activities to restore the unit to service were also incurred. Ms. Thomas opposed the view that coverage under the property damage policy should dictate what is or is not a reasonable and necessary outage cost, urging instead that these matters should be decided based on sound engineering practices. Ms. Thomas also provided a number of examples of outage-related costs that are anticipated not to be covered by the property damage policy including the vacuum pump-related costs incurred to start up Cook Unit 2 after its refueling outage. She stated this cost is not covered by the property damage policy but is an appropriate incremental cost that would not have been incurred but for the Unit 1 outage.

Ms. Thomas disagreed with Mr. Eckert's proposal that if "I&M has not fully spent or used its accidental outage proceeds for outage expenses" then I&M should "accrue interest on the remaining balance and credit the interest to customers." Ms. Thomas stated his proposal assumes that I&M has been holding the proceeds received from the accidental outage policy and has been earning interest on those funds. Ms. Thomas testified I&M has used these revenues as cash as needed to pay for the necessary repairs and other costs associated with the Cook Unit 1 outage. She sponsored Exhibit LJT-1 attached to Petitioner's Rebuttal Exhibit 13, showing the monthly inflows and outflows related to the Cook Unit 1 outage for the period September 2008 through June 2010, which showed I&M has rarely been in a positive cash position when considering outage-related expenditures, replacement FAC costs and insurance payments. She stated I&M was in a cumulative net positive position for only 7 out of 22 months.

Ms. Thomas disagreed with Mr. Dauphinais' suggestion that insurance coverage outcomes are a way for the Commission to judge the prudence of I&M's management of the outage because NEIL's insurance review is based on entirely different considerations. Ms. Thomas stated because the NEIL review is conducted after-the-fact and focused on what is covered by the accidental outage policy, it is based on hindsight and uses information that could only be known after completion of the work, instead of being limited to information known at the time I&M made its decisions. She also stated NEIL's review may not consider actions taken by I&M to ensure the safe and reliable operation of the unit on a going forward basis.

Ms. Thomas recommended that the Commission reject the penalties that Mr. Dauphinais' recommendations would impose on I&M and his proposed "true-ups" based on the results of the accidental outage policy coverage.

iv. Scott M. Krawec, I&M Director of Regulatory Services. Mr. Krawec discussed the treatment of the accidental outage insurance premiums and distributions in I&M's last general rate case; the proper accounting for outage costs, insurance proceeds and warranty repairs; and the FAC tests applicable to this proceeding. In particular, he addressed OUCC witness Eckert's contention that "retail ratepayers paid the annual costs associated with the premiums and should receive proceeds from the policies" and Mr. Dauphinais' contention that ratepayers ultimately pay the cost of the insurance premiums through basic rates.

Mr. Krawec explained the revenue requirement used to establish I&M's basic rates in Cause No. 43306 was based on a test year consisting of the 12 month period ended September 30, 2007, and included a \$935,625 premium cost for accidental outage insurance offset by a surplus distribution from NEIL totaling \$3.5 million. Thus, due to the surplus distribution from NEIL, the test period used in I&M's last rate case reflected a net credit of \$2.6 million for accidental outage insurance. In other words, Mr. Krawec stated, I&M's proposed revenue requirement in Cause No. 43306 not only did not include accidental outage insurance premium expense, it was actually lower because of the insurance. Mr. Krawec also pointed out the Settlement Agreement in Cause No. 43306, which resulted in the rates currently in effect, was a significant reduction from revenues requested based upon I&M's filed cost of service and the filed cost of service, as it relates to the NEIL insurance elements, was not adjusted under the terms of the Settlement Agreement. Therefore, I&M's customers continue to receive the benefit of lower base rates due to the net credit.

Mr. Krawec stated the amounts received from NEIL under the accidental outage policy were recorded as revenue on I&M's general ledger in accordance with the USofA and accounting principles generally accepted in the United States of America. He stated the "return test" exhibit in I&M's FAC proceedings is filed "per books" and the insurance revenues are reflected in I&M's FAC filings pursuant to Ind. Code § 8-1-2-42(d)(3).

Mr. Krawec testified the insurance policy costs are not booked to any fuel cost accounts eligible to be recognized in the FAC, and therefore, do not flow through the FAC. He stated that in each FAC filing since the Cook Unit 1 outage, I&M has passed the (d)(1) test which requires I&M to make every reasonable effort to acquire fuel and generate or purchase power, or both, so as to provide electricity to its retail customers at the lowest fuel cost reasonably possible. He noted this finding was subject to further review in this subdocket, but that neither the Industrial Group nor the OUCC contended this finding should be reversed. Instead, he stated, their recommendations are based on a different and incorrect theory – namely that customers paid for the insurance policies and therefore are entitled to the policies' benefits. Mr. Krawec testified the testimony and exhibits presented by I&M in this subdocket demonstrate that the interim finding regarding the (d)(1) test should be affirmed because there was no imprudence or negligence on the part of I&M related to the cause of the outage.

Moreover, Mr. Krawec testified, the other parties fail to recognize that I&M's customers continued to benefit from comparatively low fuel costs during the outage and derate period. Mr. Krawec provided a comparison of I&M's fuel cost in mills per kWh for each month from September 2008 through May of 2010 to the fuel costs per kWh of the other four Indiana investor-owned electric utilities during the same months. The comparison showed that I&M customers benefitted from I&M having the lowest fuel costs in almost every month, even during the 12 week deductible period. He stated that I&M's resource planning and long term management have benefitted I&M's customers in the form of low fuel costs, and therefore no adjustment for accidental outage insurance proceeds can be justified based on the (d)(1) test.

Mr. Krawec also provided schedules from I&M's evidence in FAC62 through FAC65 showing that I&M's actual jurisdictional non-fuel operating expenses were consistently greater than the level reflected in the revenue requirement used in Cause No. 43306 to develop I&M's basic rates. Because I&M's actual increases in fuel costs have not been offset by actual decreases in other operating expenses in each FAC filing since the Cook Unit 1 outage, I&M has passed the "operating expense" test set forth in Ind. Code § 8-1-2-42(d)(2). Therefore, he asserted, no refund or other Commission directive regarding insurance proceeds can be justified based on the (d)(2) test.

Mr. Krawec stated that in each FAC filing since the Cook Unit 1 outage, I&M has reported its "per books" return and has passed the "return test" set forth in Ind. Code § 8-1-2-42(d)(3) and 42.3. He stated this means that I&M has not earned in excess of its authorized return for the relevant period as determined under Ind. Code § 8-1-2-42.3. Mr. Krawec sponsored an exhibit showing the sum of differentials calculation from I&M's most recent completed FAC filing (FAC65). Mr. Krawec pointed out that I&M has under earned by \$147 million. Thus, he stated, no adjustment regarding the accidental outage policy proceeds can be justified based on the (d)(3) test.

Mr. Krawec testified compliance with the Ind. Code § 8-1-2-42(d)(4) test requires a Commission finding that the utility's estimate of its prospective average fuel cost is reasonable after taking into consideration the actual fuel costs experienced for the months that were previously estimated. He stated that in each FAC proceeding since the outage, the Commission found that I&M satisfied the (d)(4) test. Therefore, Mr. Krawec testified, no adjustment for accidental outage insurance proceeds can be justified based on the (d)(4) test.

With respect to Mr. Dauphinais' recommendation that I&M be allowed to "retain" \$78.2 million in accidental outage insurance payments to cover the estimated \$78.2 million in incremental fuel costs that I&M incurred between the end of the accidental outage insurance deductible period and the restart of Cook Unit 1, Mr. Krawec stated that the use of the word "retain" is misleading because, in reality, the \$78.2 million referred to by Mr. Dauphinais has already passed through the FAC in Indiana and I&M's other jurisdictions for the benefit of customers via a voluntary reduction in the fuel factor. As a result, I&M paid the \$78.2 million higher level of costs referred to by Mr. Dauphinais, but I&M did not collect this higher fuel cost from its native load customers in Indiana and elsewhere. Therefore, he concluded, the \$78.2 million is no longer available for I&M to "retain."

Mr. Krawec testified that all costs, including the capitalized costs, were prudently incurred and necessary to bring the unit back on line safely and expediently. He stated that after capital components are placed in service, they will be appropriately reflected in rate base in I&M's next general rate case. He also testified that property damage insurance recovery related to capital expenditures has been credited to Accumulated Provision for Depreciation of Electric Utility Plant (Account 108), in accordance with the USofA. Consequently, these amounts will be appropriately reflected as a rate base reduction in I&M's next base rate case.

v. Mr. Roush. Mr. Roush disagreed with the recommendation to implement voltage differentiation in this or the next FAC case. He testified that should the Commission desire I&M introduce voltage differentiation into its FAC charges, such change should be made in I&M's next basic rate case proceeding. He stated this would allow for the establishment of a voltage differentiated basing point of fuel against which subsequent FAC factors could be determined.

4. 2011 Settlement Agreement.

a. Cook Unit 1 Outage Issues. In the 2011 Settlement Agreement, the Parties agree to the resolution and settlement of all issues related to the Cook Unit 1 turbine outage that were under review in this subdocket pursuant to the motions and agreements of the Parties and the orders of the Commission, including the root cause of the Cook outage, replacement costs of fuel during and after the outage, the prudence of I&M, and the use and disposition of the accidental outage and property damage insurance proceeds received by I&M.

I&M agrees to credit an additional \$13.5 million to Indiana jurisdictional customers through the FAC factor to be approved in Cause No. 38702 FAC67, which is expected to be filed in July 2011. I&M will submit an exhibit in Cause No. 38702 FAC66, which is expected to be filed in January 2011 showing the effect of the \$13.5 million credit on the fuel adjustment charges filed in FAC66 and agrees to implement the credit in the event the Commission reviews

and approves the Agreement in time to do so. If the credit is applied in FAC66, no additional credit would be included in FAC67.

The Parties agree that there is no basis for the Commission to find that the Cook Unit 1 turbine outage and length of the outage were caused or prolonged by any negligence, imprudence or mismanagement by I&M.

The Parties agree that they will not oppose the need to replace the existing low-pressure turbine at Cook Unit 1 planned for the fall of 2011. The Agreement does not preclude any party from addressing the reasonableness of the turbine replacement, including the cost thereof and whether such cost should be added to rate base. The Parties agree that the cost of the replacement should not be offset by the accidental outage insurance proceeds discussed in this subdocket.

The Parties agree that, subsequent to approval of the Agreement, I&M will no longer be required to file updates to the Accounting Report previously filed in this subdocket and further agree that the subdocket should be closed.

b. FAC Voltage Differentiation Issue. I&M agrees that on or before October 31, 2011, it will make a filing with the Commission that provides both voltage-differentiated fuel factors for customers served at secondary, primary, subtransmission, and transmission voltages, and the uniform FAC factors that I&M typically files in each FAC case. The Parties agree that I&M's filing should be made as part of a general rate case in the event a rate case petition is filed by October 31, 2011, and if such a petition is not filed, then I&M's filing should be made as part of a FAC subdocket or other petition. I&M's exhibits and/or workpapers included as part of the voltage-differentiated filing will include all energy sales data by delivery voltage, as well as all energy-loss analyses used in developing the voltage-differentiated FAC rates. This filing will permit all Parties to address issues and make specific recommendations to the Commission related to both the uniform and the voltage-differentiated FAC rates.

c. Coal Procurement. The Parties¹³ affirm and reiterate the 2009 Settlement Agreement in FAC 63 that finalized the coal procurement issues originally reserved for this subdocket. Specifically, I&M, the Industrial Group and SDI agreed in the 2009 Settlement Agreement, at paragraph 5, that:

The Parties agree that the formal and informal discovery questions regarding I&M's coal fuel procurement for the time period covered by Cause No. 38702-FAC62 and FAC63 have been answered; that these issues will be dismissed from Cause No. 38702-FAC62-SI; and the factor approved in Cause No. 38702-FAC62 shall no longer be subject to refund for this purpose and the factor approved in Cause No. 38702-FAC63 shall not be subject to refund for this purpose.

d. Removal of Interim Rate/Subject to Refund Conditions in Prior FAC Orders. The interim rate and subject to refund conditions imposed on the FAC factors approved

¹³ While the OUCC was not a party to the 2009 Settlement Agreement, it did not oppose the agreement.

in FAC62 and each subsequent I&M FAC Order shall be removed and terminated as they relate to the Cook Unit 1 outage and other issues in this subdocket.

e. **Litigation Expense.** I&M agrees to reimburse litigation expenses incurred by the Industrial Group in the amount of \$45,000. I&M will not seek to include this amount in the revenue requirement of any general or other rate case or otherwise seek to recover this amount from customers.

f. **Other Terms And Conditions.** The Parties agree that, solely for purposes of compromise and settlement, the Agreement is a fair, just and reasonable resolution of the matters at issue in the subdocket. The Agreement provides that it will be null and void unless approved by the Commission in its entirety without modification or further condition unacceptable to any party. The Agreement provides that it shall not constitute an admission by any party in this or any other proceeding and shall not be used as a precedent in any other proceeding except to the extent necessary to implement or enforce its terms.

5. Testimony In Support of 2011 Settlement Agreement. I&M witness Marc E. Lewis testified in support of the 2011 Settlement Agreement.

Mr. Lewis explained that the Parties have been in communication about the issues since the subdocket was created. He pointed out the FAC62 Order noted the agreement of the Parties to engage in an informal resolution of the issues while the subdocket was held in abeyance pending the ending of the outage. He stated the 2009 Settlement Agreement reiterated the parties' commitment to continue to engage on an informal basis in an effort to seek to resolve the issues and to report to the Commission on those efforts. He also referred to the statement in the FAC64 Order citing the OUCC's recommendation that I&M meet with the OUCC and interested stakeholders to explain its interim accounting report and I&M's expression of its willingness to work with the other parties and the Commission to discuss the report.

Mr. Lewis stated that as is evident from these statements, I&M and the other parties from the beginning sought to work together in an effort to resolve the issues on a mutually acceptable basis and avoid further litigation if possible. He commented that the Parties dedicated significant time and effort to understand the issues, and the viewpoint of each party. He said that after good faith efforts, including scrutiny of the prefiled evidence and the give and take of settlement negotiations, the Parties were able to reach agreement on a reasonable resolution that would avoid the time and expense of further litigation.

Mr. Lewis testified the Agreement represents the result of arms-length negotiations by a diverse group of stakeholders with differing views on the issues raised in the subdocket. He noted experts were involved with legal counsel in the development of both the conceptual framework and the details of the Agreement. He said many hours were devoted by the Parties to discussions, the collaborative exchange of information and settlement negotiations.

Mr. Lewis expressed the opinion that the Agreement was in the public interest. Mr. Lewis explained the 2011 Settlement Agreement resolves the issues in this subdocket without further expenditure of the time and resources of the Commission in litigating the matter to a conclusion. He called attention to the fact that Indiana jurisdictional customers will receive the

benefit of a \$13.5 million credit through the FAC. He said this benefit is on top of the benefit those customers have already received from I&M's absorption of \$49.3 million in replacement fuel costs that was not passed through to Indiana jurisdiction customers in previous FAC filings. Further, the Agreement provides for the submission by I&M of information that will allow for consideration of whether I&M's FAC factors should reflect voltage differentiation or continue to be uniform for all customers regardless of the voltage at which they take service.

6. Commission 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. Furthermore, 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.*, 583 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 the Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusion that the Agreement is reasonable, just and in the public interest.

The Commission, after carefully analyzing the evidence and the proposed 2011 Settlement Agreement, determines the Agreement is reasonable, just and properly balances the interests of I&M and its customers. We therefore find the 2011 Settlement Agreement is in the public interest. As shown by the evidence of record set forth above, the 2011 Settlement Agreement provides a just and reasonable resolution of the issues pending before the Commission in this subdocket. It reflects the significant collaboration and compromise inherent in serious negotiations among a diverse group of interests. It provides benefits to the consumers including a significant FAC credit. Therefore, the Commission finds that the 2011 Settlement Agreement should be approved.

7. Effect of 2011 Settlement Agreement. The Agreement sets forth the Parties' agreement with respect to its non-precedential effects. As noted above, the Commission has reviewed these provisions and concludes that the agreements contained therein are reasonable and should be approved as set forth herein. With regard to future citation of the 2011 Settlement Agreement, we find the Agreement and our approval of it as set forth above should be treated in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (IURC March 19, 1997).

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION THAT:

1. The Stipulation and Settlement Agreement among I&M, the OUCC, the Industrial Group and SDI filed on January 19, 2011, attached hereto and incorporated herein by reference, is approved.

2. I&M shall comply with the terms of the Stipulation and Settlement Agreement, including providing the FAC credit to Indiana jurisdictional customers through its FAC as provided in Section II, Paragraph 2 of the Agreement.

3. As provided in Section III, Paragraph 5 of the Stipulation and Settlement Agreement, I&M will no longer be required to file updates to the Accounting Report previously filed in this subdocket.

4. The interim rate and subject to refund conditions imposed on the FAC factors approved in Cause No. 38702 FAC62 and each subsequent I&M FAC Order up to and including Cause No. 38702 FAC 65 shall be removed and terminated as they relate to the Cook Unit 1 outage and other issues in this subdocket.

5. This Order shall be effective on and after the date of its approval.

ATTERHOLT, LANDIS, MAYS AND ZIEGNER CONCUR; BENNETT NOT PARTICIPATING:

APPROVED: FEB 23 2011

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



Brenda A. Howe,
Secretary to the Commission

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE APPLICATION OF)
INDIANA MICHIGAN POWER COMPANY FOR)
AUTHORIZATION OF A NEW FUEL)
ADJUSTMENT CHARGE FOR ELECTRIC)
SERVICE APPLICABLE FOR THE BILLING)
MONTHS OF APRIL 2009 THROUGH) CAUSE NO. 38702-FAC62-S1
SEPTEMBER 2009 AND FOR APPROVAL OF)
RATEMAKING TREATMENT FOR COST OF)
WIND POWER PURCHASES PURSUANT TO)
CAUSE NO. 43328)

STIPULATION AND SETTLEMENT AGREEMENT

Indiana Michigan Power Company ("I&M" or "Company"), I&M Industrial Group ("IIG"), Steel Dynamics, Inc.-Flat Roll Steel Division ("SDI") 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 ("Agreement"), in its entirety, the entire Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Parties.

I. SUBDOCKET

1. On March 25, 2009, in Cause No. 38702 FAC 62, the Commission, upon the recommendation of the OUCC and motions filed by IIG and SDI, entered an order establishing the instant subdocket in this Cause for the express purpose of allowing "further review of the outage at Cook Plant Unit 1 and the matters raised in SDI's motion and the Industrial Group's motion." (Order at paragraph 7, page 4). The motions of IIG and SDI raised questions about whether I&M was imprudent with regard to the Cook Unit 1 turbine outage, both before and after the fact, the reasonableness of I&M's replacement costs of fuel, and the use and disposition of any insurance proceeds received by I&M related to the outage.

2. On September 16, 2009, in Cause No. 38702 FAC 63, the Commission entered an order approving the Stipulation and Settlement Agreement filed by the Parties that, among other things, addressed and added to the subdocket issues related to the reasonableness of I&M's coal procurement practices and the manner in which voltage differentiations are treated in I&M's fuel adjustment clause.

3. On February 26, 2010, in Cause No. 38702 FAC 62 S1, I&M submitted its initial Accounting Report pursuant to the Commission's March 25, 2009 order in Cause No. 38702 FAC 62. The OUCC had proposed and the Parties agreed in Cause No. FAC 62 that I&M would file an "accounting of the funds received and the funds spent from the insurance policies and a report detailing the costs covered by the vendor warranties and guarantees." (Order at paragraph 6, page 3). I&M subsequently filed an update to its Accounting Report on July 23, 2010 attached to the testimony of I&M witness Thomas Mitchell.

II. TERMS AND CONDITIONS

Cook Unit 1 Outage Issues.

1. The Parties agree that this Agreement resolves and settles all issues related to the Cook Unit 1 turbine outage that were under review in this subdocket pursuant to the motions and agreements of the Parties and the orders of the Commission, including the root cause of the Cook outage, replacement costs of fuel during and after the outage, the prudence of I&M, and the use and disposition of the accidental outage and property damage insurance proceeds received by I&M.

2. I&M agrees to credit an additional \$13.5 million to Indiana jurisdictional customers through the fuel adjustment clause factor to be approved in Cause No. 38702-FAC67, which is expected to be filed in July 2011. I&M will submit an exhibit in Cause No. 38702-FAC66, which is expected to be filed in January 2011 showing the effect of the \$13.5 million credit on the fuel adjustment charges filed in FAC66 and agrees to implement the credit in the event the Commission reviews and approves the Agreement in time to do so. If the credit is applied in FAC66, no additional credit would be included in FAC67.

3. The Parties agree that there is no basis for the Commission to find that the Cook Unit 1 turbine outage and length of the outage were caused or prolonged by any negligence, imprudence or mismanagement by I&M.

4. The Parties agree that they will not oppose the need to replace the existing low-pressure turbine at Cook Unit 1. That turbine replacement is planned for the fall of 2011. This Agreement does not preclude any party from addressing the reasonableness of the turbine replacement, including the cost thereof and whether such

cost should be added to rate base. The Parties agree that the cost of the replacement should not be offset by the accidental outage insurance proceeds discussed in this subdocket.

5. The Parties agree that, subsequent to approval of this Agreement, I&M will no longer be required to file updates to the Accounting Report previously filed in this subdocket and further agree that the subdocket should be closed.

FAC Voltage Differentiation Issue.

6. I&M agrees that on or before October 31, 2011, it will make a filing with the Commission that provides both voltage-differentiated fuel factors for customers served at secondary, primary, subtransmission, and transmission voltages, and the uniform FAC factors that I&M typically files in each FAC case. The Parties agree that I&M's filing should be made as part of a general rate case in the event a rate case petition is filed by October 31, 2011 and if such a petition is not filed, then I&M's filing should be made as part of a FAC subdocket or other petition. I&M's exhibits and/or workpapers included as part of the voltage-differentiated filing will include all energy sales data by delivery voltage, as well as all energy-loss analyses used in developing the voltage-differentiated FAC rates. This filing will permit all parties to address issues and make specific recommendations to the Commission related to both the uniform and the voltage-differentiated FAC rates.

Coal Procurement.

7. The Parties affirm and reiterate the agreement in FAC 63 that finalized the coal procurement issues originally reserved for this subdocket. Specifically, the parties in FAC63 stated:

The Parties agree that the formal and informal discovery questions regarding I&M's coal fuel procurement for the time period covered by Cause No. 38702-FAC62 and FAC63 have been answered; that these issues will be dismissed from Cause No. 38702-FAC62-SI; and the factor approved in Cause No. 38702-FAC62 shall no longer be subject to refund for this purpose and the factor approved in Cause No. 38702-FAC63 shall not be subject to refund for this purpose.

Removal of Interim Rate/Subject to Refund Conditions in Prior FAC Orders.

8. The interim rate and subject to refund conditions imposed on the FAC factors approved in Cause No. 38702-FAC62 and each subsequent I&M FAC Order shall be removed and terminated as they relate to the Cook Unit 1 outage and other issues in this subdocket and the FAC factors approved therein shall be finalized.

Litigation Expense.

9. I&M agrees to reimburse litigation expenses incurred by IG in the amount of \$45,000. I&M will not seek to include this amount in the revenue requirement of any general or other rate case or otherwise seek to recover this amount from customers.

III. PRESENTATION OF THE AGREEMENT TO THE COMMISSION

1. The Parties shall support this Agreement before the Commission and request that the Commission expeditiously accept and approve the Agreement. This Agreement is not severable and shall be accepted or rejected in its entirety without modification or further condition(s) that may be unacceptable to any Party.

2. The Parties agree to the admission of the following evidence in support of the Agreement: the direct and supplemental direct evidence prefiled by I&M, the direct testimony of the OUCC, IIG and SDI; and I&M's rebuttal evidence. Such evidence shall be admitted into evidence without objection and the Parties hereby waive cross-examination of such witnesses. I&M also agrees to submit prefiled testimony in support

of the Agreement and any other Party may submit prefiled testimony in support of the Agreement. Any Party prior to filing prefiled testimony in support of the Agreement shall provide a copy in draft form to the other Parties for their review and comment. If the Commission fails to approve this Agreement in its entirety without any change or with condition(s) unacceptable to either Party, the Agreement shall be withdrawn and the Commission will continue to hear Cause No. 38702-FAC62-S1 with the proceedings resuming at the point immediately prior to the filing of this Agreement.

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

IV. EFFECT AND USE OF AGREEMENT

1. It is understood that this Agreement is reflective of a negotiated settlement and neither the making of this Agreement nor any of its provisions shall constitute an admission by any Party to this Agreement in this or any other litigation or proceeding except to the extent necessary to implement and enforce its terms. It is also understood that each and every term of this Agreement is in consideration and support of each and every other term.

2. Neither the making of this Agreement (nor the execution of any of the other documents or pleadings required to effectuate the provisions of this Agreement), nor the provisions thereof, nor the entry by the Commission of a Final Order approving this Agreement, shall establish any principles or legal precedent applicable to Commission proceedings other than those resolved herein.

3. This Agreement 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.

4. This Agreement is solely the result of compromise in the settlement process and except as provided herein, is without prejudice to and shall not constitute a waiver of any position that any Party may take with respect to any or all of the items resolved here and in any future regulatory or other proceedings.

5. The evidence in support of this Agreement constitutes substantial evidence sufficient to support this Agreement and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Agreement, as filed. The Parties shall prepare and file an agreed proposed order with the Commission as soon as reasonably possible after the execution of this Agreement.

6. The communications and discussions during the negotiations and conferences and any materials produced and exchanged concerning this Agreement 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 used in any manner in connection with any other proceeding or otherwise.

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

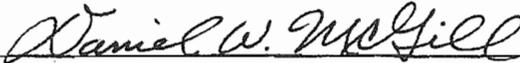
8. The Parties shall not appeal or seek rehearing, reconsideration or a stay of the Final Order approving this Agreement in its entirety and without change or condition(s) unacceptable to any Party (or related orders to the extent such orders are specifically implementing the provisions of this Agreement).

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

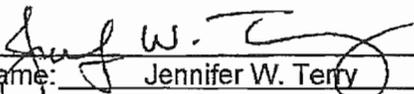
10. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ACCEPTED and AGREED this 19th day of January, 2011.

INDIANA MICHIGAN POWER COMPANY


Name: Daniel W. McGill
Its: Counsel

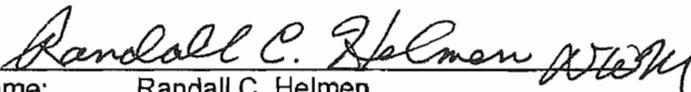
I&M INDUSTRIAL GROUP


Name: Jennifer W. Terry
Its: Counsel

STEEL DYNAMICS, INC.-FLAT ROLL STEEL DIVISION

Name: Damon E. Xenopoulos
Its: Counsel

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR


Name: Randall C. Helmen
Its: Chief Deputy Consumer Counselor

ACCEPTED and AGREED this 19th day of January, 2011.

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