

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

[Handwritten signatures and initials: JPA, JLG, and a large scribble]

VERIFIED PETITION OF INDIANA MICHIGAN)
POWER COMPANY ("I&M"), AN INDIANA)
CORPORATION, FOR APPROVAL OF CLEAN)
COAL AND ENERGY PROJECTS AND)
QUALIFIED POLLUTION CONTROL)
PROPERTY AND FOR ISSUANCE OF A)
CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY FOR USE OF CLEAN COAL)
TECHNOLOGY ("PROJECTS"); FOR ONGOING)
REVIEW; FOR APPROVAL OF A RATE)
ADJUSTMENT TRACKING MECHANISM TO)
PROVIDE FOR THE TIMELY RECOVERY OF)
COSTS INCURRED DURING CONSTRUCTION)
AND OPERATION OF SUCH PROJECTS; FOR)
APPROVAL OF DEPRECIATION PROPOSAL)
FOR SUCH PROJECTS; FOR AUTHORITY TO)
DEFER COSTS INCURRED DURING)
CONSTRUCTION AND OPERATION,)
INCLUDING CARRYING COSTS,)
DEPRECIATION, AND OPERATION AND)
MAINTENANCE COSTS, UNTIL SUCH COSTS)
ARE REFLECTED IN THE RATE ADJUSTMENT)
MECHANISM; AND FOR AUTHORITY TO)
RECOGNIZE EMISSION ALLOWANCE COSTS)
VIA A RATE ADJUSTMENT TRACKING)
MECHANISM, ALL PURSUANT TO IND. CODE)
§§ 8-1-2-6.1, 8-1-2-6.7, 8-1-2-6.8, 8-1-2-42(a), 8-1-8.7,)
8-1-8.8 and 170 IAC 4-6-1 et seq.)

CAUSE NO. 43636

APPROVED: JUN 30 2009

BY THE COMMISSION:

David E. Ziegner, Commissioner
Aaron A. Schmoll, Administrative Law Judge

On January 30, 2009, Indiana Michigan Power Company ("Petitioner", "I&M" or "Company") filed its petition with the Indiana Utility Regulatory Commission ("Commission") initiating this Cause. In its petition, Petitioner requested Commission approval of clean coal and energy projects and qualified pollution control property ("QPCP") and for issuance of a certificate of public convenience and necessity ("CPCN") to use clean coal technology ("CCT") at two of Petitioner's generating plants. Petitioner also requested Commission approval of financial incentives, including timely cost recovery through a rate adjustment mechanism.

On February 20, 2009, I&M filed its verified direct testimony and exhibits in support of approval of I&M's Petition. On March 4, 2009 a Prehearing Conference Order was issued, which

among other things, established a procedural schedule for this Cause. On May 28, 2009, I&M and the OUCC ("the Parties") filed a Stipulation and Settlement Agreement ("Settlement Agreement"). On June 3, 2009, I&M and OUCC each filed verified testimony in support of the Settlement Agreement.

Pursuant to notice, duly given and published as required by law, proof of which was incorporated into the record by reference and placed in the Commission's official file, a public evidentiary hearing in this Cause was held on Wednesday, June 10, 2009 at 10:30 a.m. EDT, in Judicial Courtroom 222 at National City Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Petitioner and the OUCC appeared by counsel and offered the Settlement Agreement and their prefiled testimony and exhibits, which were admitted into evidence without objection. No members of the public appeared or participated at the hearing.

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

1. **Commission Jurisdiction and Notice.** Proper notice of the hearing in this Cause was given as required by law. Petitioner is a public utility within the meaning of the term in Ind. Code § 8-1-2-1(a) of the Public Service Commission Act, as amended, and an "eligible business" as defined in Ind. Code § 8-1-8.8-6. Petitioner is subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Indiana. The Commission has jurisdiction over I&M and the subject matter of this Cause.

2. **Petitioner's Organization and Business.** I&M, a wholly owned subsidiary of American Electric Power Company, Inc. ("AEP"), is a corporation organized and existing under the laws of the State of Indiana with its principal offices located at One Summit Square, Fort Wayne, Indiana. I&M is engaged in, among other things, rendering electric service in the States of Indiana and Michigan. I&M provides retail electric service to approximately 455,000 customers in the State of Indiana. I&M owns, operates, manages and controls plant and equipment within the States of Indiana and Michigan that are in service and used and useful in the generation, transmission, distribution and furnishing of such service to the public. Petitioner's operations are subject to federal and state rules promulgated by among others, the United States Environmental Protection Agency ("USEPA") and by the Air Pollution Control Board of the State of Indiana. Among such rules are those that govern emissions from I&M's coal-fired electric generation units. Petitioner's Rockport and Tanners Creek Units are coal-fired generating units.

3. **Relief Requested.** Petitioner requests that the Commission approve clean coal and energy projects and QPCP, and for issuance of a CPCN to use CCT to allow I&M to reduce airborne emissions of nitrogen oxides ("NO_x") and mercury from existing coal-fired steam electric generating units (the "Projects"). Petitioner also requests Commission approval of financial incentives, including timely recovery through a rate adjustment mechanism subject to actual reconciliation of carrying costs during construction and post in-service costs of the Projects, including a weighted average cost of capital carrying cost, depreciation and operation and maintenance ("O&M") costs (including consumables). Petitioner also requests that the Commission approve I&M's proposal regarding the depreciation for the Projects and authorize I&M to defer any unrecovered carrying costs incurred during construction and incremental post in-service O&M expenses and depreciation until such costs are recognized and recovered in the rate adjustment mechanism. Petitioner requests ongoing review of the Projects and specific accounting treatment of under/over recovery of the Project costs. Finally, in its petition, Petitioner also requested

Commission authority to recognize and recover net emission allowance costs via a rate adjustment tracking mechanism if such authority was not granted in Cause No. 43306. As noted below, the Commission March 4, 2009 Order approving the settlement agreement in Cause No. 43306 approved I&M's Environmental Tracker for purposes of tracking net emission allowances. As a result, the request for timely cost recovery of emission allowance costs in this Cause is moot.

4. Evidentiary Summary. I&M presented the verified direct testimony of Kent D. Curry, Director of Regulatory Services for I&M, John M. McManus, Vice President of the Environmental Services Division of the American Electric Power Service Corporation ("AEPSC"), Robert L. Walton, Managing Director, Plant & Environmental Retrofit Projects for AEPSC, and Donald E. Hayes, Manager of Regulatory Accounting for AEPSC.

(a) Kent D. Curry. Mr. Curry's testimony provided an overview of the relief sought by I&M in this proceeding. In particular, Mr. Curry explained the requested environmental cost rate adjustment mechanism (identified as the Clean Coal Technology Rider or "CCTR") and calculated the initial factors to be billed thereunder. In addition, Mr. Curry presented the proposed forms and procedures to be used by I&M in Environmental Cost Review ("ECR") proceedings. Curry Direct at 2. Mr. Curry testified that I&M seeks Commission approval of two projects that are reasonable and appropriate to reduce NO_x and mercury emissions from I&M's generating facilities and associated accounting and ratemaking relief. *Id.* at 3. Per Mr. Curry, Project 1 concerns the use of selective non-catalytic reduction ("SNCR") systems at the Tanners Creek Units 1 through 3 to reduce airborne emission of NO_x associated with the combustion of coal by injecting urea into the furnace of each unit where SNCR will be installed. Mr. Curry testified that Project 2 concerns the use of an Activated Carbon Injection ("ACI") system on both generating units at the Rockport plant to reduce airborne emission of mercury associated with the combustion or use of coal. *Id.* at 4.

Mr. Curry's testimony set forth and supported I&M's request for ratemaking and accounting relief. *Id.* at 5. Mr. Curry explained that the billing factors were computed consistent with the rules for QPCP. In addition, Mr. Curry stated that I&M proposes to compute the revenue requirement in accordance with 170 IAC 4-6-14 using the cost of equity established in I&M's last rate case, Cause No. 43306. Mr. Curry also explained the Company's depreciation proposal and discussed the treatment of O&M costs. *Id.* at 8. He explained why the rate adjustment mechanism and deferred accounting treatment is reasonable and necessary to avoid the earnings erosion that would otherwise result in the absence of such treatment during the period of time between a Project's in-service date and inclusion of the Project costs in I&M's rates following a general rate case. Mr. Curry also explained that it would be virtually impossible and inefficient for I&M to perfectly time a rate case with the in-service dates of each Project. *Id.* at 9.

Mr. Curry also set forth the methodology used to calculate the billing factors to be applied through the CCTR. *Id.* at 9. Mr. Curry also discussed the revenue requirement resulting from the requested ratemaking treatment and explained how it will be allocated to and among I&M's customer classes. *Id.* at 10. He stated that any variance in collected revenues caused by differences in actual versus forecast sales would be reconciled. Mr. Curry also testified that I&M will treat the return associated with the requested ratemaking treatment in its quarterly fuel cost adjustment filings as provided by 170 IAC 4-6-21. *Id.* at 11. Mr. Curry described the information that I&M will provide in ECR proceedings in support of I&M's request for ongoing Commission review. *Id.* at 13. Mr. Curry requested the Commission approve the CCTR to implement the proposed ratemaking treatment.

(b) John McManus. Mr. McManus discussed the relevant environmental regulations, the emissions caps that AEP as a company is legally required to meet, and the environmental projects that AEP is planning to undertake on I&M plants to help achieve fleet compliance. McManus Direct at 3. Mr. McManus also discussed the process that AEP uses to select certain technologies for applicability in meeting environmental goals. *Id.* Mr. McManus explained that each of I&M's coal-fired units is subject to unit specific NO_x emission limits through various rules and regulations. These emission limits are defined by the New Source Performance Standards in the case of the Rockport plant and by Title IV Permit Limits for both the Rockport and Tanners Creek Plants. *Id.* at 4. Mr. McManus testified that Rockport and Tanners Creek Plants are subject to the New Source Review ("NSR") Consent Decree, which includes an overall annual cap on NO_x emissions from AEP's eastern coal fleet. Per Mr. McManus, the first year that this cap applies is 2009. *Id.* at 4.

Mr. McManus described the current status of the Clean Air Mercury Rule ("CAMR"), and how the CAMR influenced the decision to install ACI at Rockport. *Id.* at 4-5, 8. Mr. McManus explained how I&M came to the conclusion that installing an ACI system at the Rockport plant would be an effective method for reducing mercury. *Id.* at 5-6. Mr. McManus also discussed the tests performed to determine if there are any adverse environmental effects from the use of activated carbon. *Id.* at 7. Mr. McManus testified that I&M and AEP used its Multi Emission Control Optimization ("MECO") model to determine the least cost approach to environmental compliance. He explained that the model's analysis supported the application of ACI at Rockport as part of a least cost mercury control program. *Id.* at 7-8. Mr. McManus also explained why the ACI Project at Rockport was continued even though the CAMR had been vacated and new rules were still under development. *Id.* at 8. Per Mr. McManus, a significant amount of the ACI work had been completed and there is value in completing this project to achieve the goal of reducing mercury emissions from Rockport. Mr. McManus testified the USEPA will have to develop a new regulatory program to replace the vacated CAMR and completion of the ACI Project may shape and assist future mercury regulations. *Id.* at 9. Mr. McManus added that the operation of mercury reduction systems such as the one proposed here has the potential to help inform and shape future mercury regulations.

Mr. McManus explained the environmental regulations and requirements, including the Clean Air Interstate Rule ("CAIR"), relevant to the SNCR projects at the Tanners Creek Plant and I&M's and AEP's obligations to comply with environmental regulations. *Id.* at 9-12. He noted that on December 23, 2008, the District of Columbia Circuit Court of Appeals issued a ruling that remanded the CAIR back to USEPA for new rulemaking without vacating the CAIR. *Id.* at 9. He testified that as a result, the CAIR is in effect until a new rule is promulgated. Therefore, as of January 1, 2009 AEP is required to meet the emission reduction requirements set forth under the CAIR. *Id.* at 9-10. Mr. McManus also discussed the NSR Consent Decree NO_x limits to which the Company must adhere. *Id.* at 10.

Mr. McManus supported and explained I&M's rationale in retrofitting the Tanners Creek Units with SNCR technology. *Id.* at 12. He stated that the analysis done through the MECO model indicated that the SNCR Projects were an economic way to meet the emission caps in 2009 and beyond. *Id.* at 12-13. Mr. McManus explained that SNCR technology is a good solution and discussed AEP's experience operating SNCR systems on three units in West Virginia that are of similar design to Tanners Creek Units 1 through 3. *Id.* at 13. He opined that due to AEP's experience in operating SNCRs at similar units elsewhere, there is a high level of technical certainty

around the installation of SNCR technology at Tanners Creek. *Id.* He concluded that the installation of SNCR at Tanners Creek was the most fundamentally sound and certain solution to achieve the required NO_x emissions reduction. *Id.* Finally, Mr. McManus concluded I&M and AEP are pursuing a prudent path toward compliance with current and future environmental regulations with the Projects identified in I&M's petition. *Id.* at 13.

(c) Robert L. Walton. Mr. Walton discussed I&M's generating assets, further explained the two Projects and presented the estimated total Project costs as well as the actual Project costs incurred through December 31, 2008. Mr. Walton explained the engineering, design, procurement and installation of the SNCR at Tanners Creek and the ACI at Rockport. *Id.* at 4. Mr. Walton also explained the planning process used by AEP for preparing a lowest cost compliance plan for the AEP System, including I&M. *Id.* at 8. Mr. Walton also discussed the limitations regarding the use of Illinois Basin coal. *Id.* at 6-8.

Mr. Walton described the design of the SNCR system to be used at the Tanners Creek Plant and discussed how an SNCR system reduces NO_x emissions. He explained that the SNCR installation at the Tanners Creek Plant can be segregated into two major areas: a urea solution handling and storage portion, and a urea dilution and injection system. *Id.* at 9-10. Mr. Walton explained that a typical SNCR system can reduce NO_x emissions by 20% to 40%. He clarified that AEP and I&M are planning on reductions of NO_x in the range of 30% from the installation of the SNCR systems on Tanners Creek Units 1 through 3. *Id.* at 10. He added that while higher NO_x reductions may be achievable, injecting too much urea can cause operational problems (a phenomenon referred to as ammonia slip). *Id.* Mr. Walton also expanded on AEP's experience on constructing and operating SNCR systems elsewhere. *Id.* at 11.

Mr. Walton discussed the construction schedule for the Projects. He stated I&M expects that construction of the SNCR systems at Tanners Creek will be complete by August 2009. He explained that the operation of an SNCR system at Tanners Creek Units 1 through 3 will directly reduce airborne emissions of NO_x. He testified that I&M will be using a patented SNCR product that was not commercially available and therefore, not in general use as of January 1, 1989. He also testified that SNCR was previously approved for use as CCT by the Commission in Cause No. 42170. *Id.* at 12. Mr. Walton testified that the operation of the SNCR, and resulting reduction of NO_x emissions, is expected to reduce the dispatch cost of Tanners Creek Units 1 through 3 by reducing the cost of NO_x emissions that have historically been associated with the operation of these units. He added that although these units will exhibit lower NO_x emissions per unit of generation in the future, the Company does not expect the dispatching order to be significantly affected. *Id.* Mr. Walton also stated that the operation of the SNCR would not increase the useful life of the Tanners Creek Units. *Id.* at 13. Further, Mr. Walton provided the cost for constructing, implementing and using the SNCR at Tanners Creek. *Id.* at 16-18.

Mr. Walton also testified about the ACI system at I&M's Rockport plant which I&M proposes to use to reduce airborne emission of mercury associated with the combustion or use of coal. *Id.* at 13-15. Mr. Walton explained that the ACI system at the Rockport plant will consist of: (a) systems to pneumatically unload activated carbon from pressurized rail cars or trucks into silos designed to hold a maximum 30 day supply for Rockport Units 1 and 2; and (b) systems to pneumatically convey activated carbon from the silos to the electrostatic precipitators ("ESPs") inlet ductwork on both Rockport units. From these injection points, I&M is expected to maximize distribution of activated carbon inside the duct, and thus minimize carbon usage per unit mass of

mercury captured from the flue as. After injection, activated carbon with adsorbed mercury is captured in the existing ESPs. *Id.* at 14. Mr. Walton discussed AEP's testing of ACI at the Rockport plant and elsewhere and described the experience gained by the Company in both dealing with activated carbon and in determining the material handling equipment necessary to successfully design an ACI system.

Mr. Walton discussed the construction schedule and operation of the ACI system. He expected that the construction of the Rockport ACI system would be completed in June 2009, with performance testing planned to follow in September 2009. He testified that the ACI technology was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of the Clean Air Act Amendments of 1990. *Id.* at 16. In addition, Mr. Walton's testimony testified that the ACI system would not increase the remaining life of the Rockport units. *Id.* at 15. Finally, Mr. Walton described the costs for constructing, implementing and using the ACI system at Rockport. *Id.* at 16-17.

(d) Donald E. Hayes. Mr. Hayes discussed I&M's accounting related to the SNCR systems at the Tanners Creek Units 1 through 3 and the ACI systems at the Rockport plant and the accounting for the related rate recovery. Hayes Direct at 3. Mr. Hayes explained how I&M would account for the SNCR and ACI Projects during construction and the accounting for post in-service costs. *Id.* at 3-4. Mr. Hayes also explained the deferral accounting for pre and post implementation of I&M's requested rate mechanism. *Id.* at 7. In addition, Mr. Hayes stated I&M's proposed accounting for the SNCR and ACI Projects related to the proposed ratemaking treatment is consistent with 170 IAC 4-6-1 *et seq.* *Id.* at 10.

5. Settlement Agreement. A copy of the Settlement is attached hereto and incorporated herein by reference. The Settlement Agreement presents a comprehensive resolution of all matters pending before the Commission in this Cause which the Parties agree is fair, just and reasonable. More specifically, the Settlement Agreement provides that I&M's request for approval of clean coal and energy projects and QPCP and for issuance of a CPCN for the Projects described in I&M's Petition, as amended in the settlement testimony and exhibits, and case-in-chief shall be approved. The Settlement Agreement states that as discussed in the direct testimony of I&M witness McManus in this Cause, there are many reasons to go forward with the mercury control project at the Rockport plant. First, since significant portions of the costs have already been incurred, there is value in completing this project to achieve the goal of reducing mercury emissions from the Rockport plant. Completion of this project may also help to shape and inform future mercury regulations. There is a lack of long-term experience with reducing mercury emissions from coal-fired power plants. Completion of a project such as this could help add to that operating experience and provide data that will be useful to inform the development of future regulations. The Settlement Agreement provides that I&M should be authorized to recover the "value of qualified pollution control property under construction" recorded in the utility's accounts as of December 31, 2008. The Settlement Agreement sets forth the Parties' agreement that that amount is \$3,509,223 on the SNCR Projects and \$6,964,105 on the ACI Project, inclusive of Allowance for Funds Used During Construction ("AFUDC") accrued on the Projects. The Settlement Agreement also provides that I&M will accrue and recover AFUDC on these amounts calculated in accordance with the rules of the Commission. In the Settlement Agreement, the Parties also agreed that I&M shall continue to accrue AFUDC on any unrecovered value of that particular project until ratemaking treatment for the value of the QPCP is granted. The Parties also agreed that I&M will

be able to file a subsequent request for ratemaking treatment for any additional value of QPCP under construction in six month intervals consistent with the eligibility of the projects agreed to within the Settlement Agreement. Consistent with Ind. Code § 8-1-2-6.8, 170 IAC 4-6-1 et seq., and Ind. Code § 8-1-8.8-11, the Settlement Agreement provides that the Commission should approve timely recovery via a rate adjustment mechanism of any unrecovered depreciation and carrying costs of the investment as well as O&M costs, including consumables post in-service. The specific ratemaking treatment is enumerated in the Settlement Agreement and includes approval of the CCTR and the initial billing factors thereunder.

The Settlement Agreement provides that on a going forward basis, I&M's CCTR factors shall be calculated and filed in a form consistent with I&M witness Curry's settlement testimony and exhibits. I&M will update and reconcile the CCTR factors on a semi-annual basis, and I&M will include in its annual ECR proceedings schedules reflecting certain information as proposed in I&M witness Curry's direct testimony. The Settlement Agreement recognizes that I&M's Environmental Compliance Tracker was approved in the Commission's Order in Cause No. 43306 for purposes of tracking net emission allowances. The Settlement Agreement provides that the Parties agree to consider possible efficiencies in jointly administering the Environmental Compliance Tracker and CCTR in future ECR proceedings agreed to in this Cause. Finally, the Settlement Agreement also contains other terms commonly found in settlement agreements submitted to the Commission for approval, including the agreement that the Settlement Agreement must be approved in its entirety without changes or conditions unacceptable to any Party. The Parties agree the evidence submitted in support of the Settlement Agreement is an adequate evidentiary basis for its approval by the Commission.

6. Testimony in Support of Settlement Agreement. Both I&M and OUCC presented testimony in support of the Settlement Agreement.

(a) Kent D. Curry. Mr. Curry explained the terms and conditions of the Settlement Agreement and also the CCTR supported by the Settlement Agreement. Mr. Curry explained that the Settlement Agreement sets forth the Parties' agreement that the Commission should approve I&M's requests identified in its case-in-chief in this proceeding for: approval of clean coal and energy projects and QPCP; issuance of a CPCN; approval for the two Projects described in I&M's Petition, and; approval of timely cost recovery, as amended by the settlement testimony and exhibits. He explained that the Settlement Agreement provides that I&M should be authorized to recover the value of QPCP under construction recorded in I&M's accounts as of December 31, 2008. Mr. Curry explained that the Settlement Agreement further provides that I&M will accrue and recover a revenue requirement on the Projects in accordance with the rules of the Commission as shown in Exhibits KDC-S1 through -S6 and as explained in his testimony. He said the Settlement Agreement also allows I&M to file a subsequent request for ratemaking treatment for any additional value of QPCP under construction in six month intervals consistent with the eligibility of the Projects agreed to within the Settlement Agreement.

Mr. Curry testified that the Settlement Agreement allows I&M to continue to accrue AFUDC on any unrecovered value of the SNCR or ACI Project until ratemaking treatment for the value of the QPCP is granted. He said the unrecovered value includes incremental construction expenditures and related AFUDC including post in-service AFUDC until reflected in the CCTR through a semi-annual ECR proceeding. He clarified that once reflected in an ECR, AFUDC accrual ends and a return calculated at I&M's then-current cost of capital will be computed. He

also noted that I&M calculates its AFUDC accrual rate in accordance with 170 IAC 4-6-13 as defined and prescribed in the Uniform System of Accounts.

Mr. Curry also discussed the Settlement Agreement provisions regarding cost recovery via the CCTR. He stated that consistent with Ind. Code § 8-1-2-6.8, 170 IAC 4-6-1 *et seq.*, and Ind. Code § 8-1-8.8-11, the Settlement Agreement provides that the Commission should approve timely recovery via a rate adjustment mechanism of any unrecovered return on and of the investment as well as O&M costs, including consumables, post in-service. He testified that the CCTR implements the timely ratemaking treatment provided by the Settlement Agreement. He said the CCTR provides for the recovery of the Projects' unrecovered return during and after construction and unrecovered depreciation and O&M costs, including consumables, post-in-service. Mr. Curry explained that the Parties have agreed that the Commission should authorize I&M to depreciate the estimated in-service costs of the ACI Project over an expected usage period of 10 years and the SNCR Projects over 11 years. He added that the Settlement Agreement does not prevent I&M or the OUCC from taking a different position regarding the remaining depreciable life of these Projects in a future base rate proceeding, provided that I&M will be permitted to fully recover any remaining undepreciated plant value.

Mr. Curry explained that the initial billing factors for the CCTR were computed consistent with the rules for QPCP set forth in 170 IAC 4-6, which provide established methodologies for certain calculations. His Exhibits KDC-S1 through -S6 showed the agreed-upon calculations of the initial CCTR factors recommended for approval in this proceeding and provide the following: (1) I&M's applicable weighted-average cost of capital in the format of Exhibit KDC-S1; (2) for each Project, the actual construction expenditures, in-service depreciation expense, and O&M expenses including consumables for the recovery period generally following the format of Exhibit KDC-S2, supported by the details of actual construction expenditures, construction commencement date, estimated costs at Project completion, current stage of completion, and projected/actual in-service date; (3) the allocation of the revenue requirement to the Indiana jurisdiction in the form of Exhibit KDC-S3; (4) the allocation of the Indiana revenue requirement by class in the form of Exhibit KDC-S4; (5) the class revenue requirement and the reconciliation of any past period revenue recovery used to calculate new proposed per kWh billing factors in the form of Exhibit KDC-S5; and (6) a revised CCTR tariff sheet in the form of Exhibit KDC-S6. Mr. Curry explained that the Settlement Agreement provides that I&M may allocate its SNCR and ACI Project costs based upon the allocation parameters established by the Commission in Cause No. 43306 and as explained in his direct testimony and exhibits.

Mr. Curry testified that the proposed factors are calculated by dividing the amount of costs under review of the Commission by one-half of the kWh sales levels used for tariff rider calculations in Cause No. 43306 as estimates of kWh sales levels for the six-month period during which the factors will be in effect. He stated that in-service expenses and kWh sales levels estimated in this proceeding will be reconciled to actual amounts in future ECR proceedings. He stated that the effect of the initial residential CCTR billing factor under the Settlement Agreement of \$0.000633 per kWh will, if approved, result in an additional monthly charge of \$0.63 or an increase of 0.74% in the bill of a residential customer using 1,000 kWh. Mr. Curry explained that upon Commission approval and consistent with established Commission practice, I&M will promptly submit its CCTR tariff sheet to the Commission Staff for review and approval so that the CCTR rates may be placed into effect beginning, if administratively possible, with the first billing

month following the entry of a Commission order.

Mr. Curry explained that the Settlement Agreement provides that the CCTR factors will be updated and reconciled on a semi-annual basis via an ECR proceeding. I&M will perform traditional under/over recovery accounting for the semi-annual true-up of rider revenues to actual costs. He noted that an estimate of the effect on the monthly bill of a residential customer using 1,000 kWh will be included in each filing. He stated that the Parties have further agreed to consider possible efficiencies in jointly administering I&M's Environmental Compliance Tracker (approved in Cause No. 43306) and CCTR in future ECR proceedings. He said I&M is committed to working with the Commission and OUCC Staffs in this regard. Mr. Curry explained that the Settlement Agreement provides for Commission approval of I&M's request for ongoing review of construction of the Projects and recognizes that the Commission should hold a hearing before it approves or denies any proposed material increase in the cost estimate for the implementation, construction or use of the Projects.

As noted above, the Settlement Agreement provides that I&M may add the value of the SNCR and ACI Projects to the value of I&M's property for ratemaking purposes. Mr. Curry explained that in accordance with 170 IAC 4-6-21, the Settlement Agreement provides that I&M will add the approved return on the Projects to its net operating income authorized by the Commission for purposes of Ind. Code §§ 8-1-2-42(d)(2) and 8-1-2-42(d)(3) in all subsequent fuel adjustment charge proceedings, pro-rated for the effective period of the approved rates. Mr. Curry testified that as a result, for purposes of computing the authorized net operating income for Ind. Code §§ 8-1-2-42(d)(2) and 8-1-2-(d)(3), the jurisdictional portion of the increased return shall be phased-in over the appropriate period of time that I&M's net operating income is affected by the earnings modification which results from the Commission's approval of the Projects and CCTR as provided in the Settlement Agreement.

Mr. Curry stated that the Settlement Agreement is the product of serious bargaining among capable and knowledgeable parties. He stated that the Parties are of the opinion that the Settlement Agreement as a whole produces a fair, reasonable, and just resolution of all matters pending before the Commission in this Cause and approval of the Settlement Agreement is in the public interest. He requested the Commission find the Settlement Agreement to be reasonable and in the public interest and promptly enter an order approving the Settlement Agreement in its entirety.

(b) Robert L. Walton. Mr. Walton presented updated information and engineering reports regarding the Projects. Mr. Walton updated the original conceptual estimate of the Tanners Creek SNCR Project Total Cost (with AFUDC) to reflect the current estimated cost of \$16,931,108. He explained that the update reflects the performance of further site specific investigation, engineering and design, and material and equipment procurement since I&M prefled its testimony on February 20, 2009. He stated that since the February 20, 2009 filing, significant site investigative work and significant engineering and design have been accomplished. He added that construction labor, material, and equipment pricing have also been obtained. He said that additional safety items have been identified as being required, including an ammonia monitoring system that requires more piping and electrical runs than expected. He stated that I&M also discovered significant underground obstructions in the day tank foundation area and soil conditions that dictate auger case pile utilization versus spread footers for the foundations. Mr. Walton also updated the in-service date for the Tanners Creek Project. He explained that he testified in his direct testimony that the SNCR systems at Tanners Creek would be complete on or before August 1, 2009. He said

that date is now expected to be December 15, 2009, reflective of an optimized craft labor work schedule that eliminates overtime expenses. Finally, Mr. Walton explained that I&M relied on a number of confidential engineering studies and tests to support the Projects and noted that the studies were provided to OUCC in discussions concerning the Petition filed in this case. He stated that I&M had offered to provide the studies to the Commission subject to protection of the confidential information from public disclosure.

(c) Ronald L. Keen. Mr. Keen, Senior Analyst within the OUCC's Resource Planning, Emerging Technologies, and Telecommunications Division, described the issues involved with I&M's environmental CPCN request and discussed the terms of and the OUCC's support for the Settlement Agreement. Mr. Keen's testimony demonstrated that the OUCC had conducted significant investigation of I&M's proposal, including the conduct of formal and informal discovery, review of engineering reports, and a tour of the Rockport plant to observe the proposed ACI Project and discuss the Project with plant employees. Mr. Keen discussed the purpose of the ACI project and the engineering reports provided by I&M. Direct Testimony at 5. He also testified to the current regulatory environment and stated that the Rockport ACI Project appears to be more effective at removing mercury from outgoing flue gas than using the ESPs solely. Mr. Keen also discussed the purpose of the SNCR Project and related issues. He confirmed the updated cost estimates for Tanners Creek. He stated that reducing the NO_x emissions at the Tanners Creek Plant will result in environmental benefits that everyone can enjoy, including I&M's ratepayers. He explained that the cost for utilizing SNCR is much less than installing and operating a selective catalytic reduction ("SCR") system at Tanners Creek.

Mr. Keen also outlined the benefits of the accounting treatment provided in the Settlement Agreement. In his view, the Settlement Agreement accomplishes several of the OUCC objectives for proper accounting treatment, including: (1) establishes a cutoff date for determining plant balances and capital structure amounts and costs, and the resulting return component in determining the revenue requirement in this initial tracker period; (2) provides for AFUDC capitalization pre- and post-in-service until such time as the capital investment is reflected in the CCTR; (3) provides for amortization of post-in-service deferred AFUDC and depreciation over the life of the asset; and (4) provides various terminology and template changes in the schedules to facilitate review of each application. He added that the Parties have discussed and are committed to an on-going dialogue regarding supporting audit workpapers.

Mr. Keen explained that while the OUCC typically prefers a longer depreciation period, I&M has indicated that it intends to discontinue operating the ACI equipment upon the planned installation of the SCRs at Rockport. He noted that the USEPA is likely to promulgate its new mercury rules sometime before the time I&M must file its next rate case per the Commission's Order in Cause No. 43306. He added that the Settlement Agreement provides that the OUCC and I&M can address the appropriate remaining depreciable life of the Rockport ACI Project in the next rate case when the Parties will have the benefit of more information that could alter the applicable time period. Finally, Mr. Keen stated that the Settlement Agreement is the result of discussion and examination of issues raised by the Parties in this proceeding and substantial arms-length negotiation. He opined that the Settlement Agreement is comprehensive, balanced, and in the public interest. Mr. Keen recommended the Commission approve the Settlement Agreement in its entirety without modification.

7. Commission Discussion and Findings. "It is the policy of the Commission to

review and accept appropriate settlements.” 170 IAC 1-1.1-17(a). As we previously explained, “[a]s in other litigation contexts, negotiated settlements of administrative proceedings can help advance legal and policy objectives with far greater speed and certainty, and far less drain on public and private resources, than litigation or other adversarial proceedings.” *Re Petition of Southern Indiana Gas & Electric Company*, Cause No. 42861 (IURC 2/22/2006) at 16. Accordingly, the Commission may approve a settlement agreement if it is supported by substantial evidence, and the Commission finds it to be in the public interest. *Id.*

Substantial record evidence demonstrates it is reasonable and appropriate to reduce NO_x and mercury emissions from I&M’s generating facilities. As explained by I&M witness Walton, the cost for constructing, implementing and using the Projects is reasonable and conventional technologies could not achieve the NO_x and mercury emissions reductions in an as cost-effective manner. Petitioner’s exhibits RLW-1 and RLW-2 (confidential) were especially detailed with respect to actual costs incurred and expected, and included detailed O&M costs. Similar information shall be included in future CCTR proceedings. As explained by I&M witness Walton, the installation and use of the Projects will not increase the physical useful life of the Rockport and Tanners Creek Units. Nevertheless, the Projects will increase the respective operating lives of these units because failure to implement the Projects could force these units to be shutdown for noncompliance with emission requirements. In this way, the Projects extend the useful life and the value of these facilities. Further, the record shows there is a likelihood of success in the implementation and utilization of the Projects. As explained by I&M witness Walton, the dispatching priority of I&M’s generating units will not be significantly affected by the Projects. Accordingly, we find that the Projects are clean coal technology, clean coal and energy projects, and/or qualified pollution control property and the Commission should approve the use of the Projects. Finally, we further find that the timely ratemaking recognition through the CCTR and the procedures for implementing the tracking mechanism set forth in the Settlement Agreement are reasonable, consistent with Commission practice and should support I&M’s ability to continue to provide safe, reliable and economic electric service.

The Parties have agreed that the terms and conditions of the Settlement Agreement represent a fair, reasonable and just resolution of the issues in this proceeding, that the evidence in support of the Settlement Agreement constitutes substantial evidence sufficient to support the Settlement Agreement and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for approval of the Settlement Agreement. After reviewing the Settlement Agreement and based upon the evidence of record, we find the Settlement Agreement resolves all matters pending before the Commission and that the Settlement Agreement is supported by substantial evidence of record. Therefore, we further find that the Settlement Agreement is in the public interest and should be approved.

We further authorize Petitioner to use the ratemaking treatment for the timely recovery of the capital costs and O&M (including depreciation expense and consumables) related to the Projects as provided in the Settlement Agreement and consistent with Ind. Code § 8-1-2-6.8, 170 IAC 4-6-9 through 21, and Ind. Code § 8-1-8.8-11. We approve the construction cost estimate set forth in I&M witness Walton’s testimony in support of the Settlement Agreement and provide for ongoing review of the Projects which review shall take place in the context of semi-annual filings. Petitioner will make adjustments to its rates via the CCTR to reflect the costs of the Projects.

Finally, Exhibit KDC-S6 sets forth the initial CCTR billing factors agreed to by the Parties.

The evidence shows the factors are consistent with Commission practice and governing rules and we so find. Accordingly, we further find the initial CCTR billing factors should be approved. We further find that subsequent requests for recovery of capital costs and O&M shall be filed under this Cause number utilizing the extension ECR and a number that corresponds to the request. Therefore, the initial semi-annual filing following issuance of this Order shall be Cause No. 43636 ECR 1.

8. **Effect of Settlement Agreement.** The Parties stipulated that the Settlement Agreement shall not be used as precedent, except as necessary to enforce its terms. With regard to future citation of the Settlement Agreement, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (IURC 3/19/1997).

9. **Confidentiality.** On February 20 and June 3, 2009 I&M filed motions for a protective order regarding portions of the prefiled testimony and exhibits that contained information that Petitioner had designated as confidential, proprietary, competitively-sensitive and/or trade secret information ("Confidential Information"). By docket entry dated April 15 and June 4, 2009, the Presiding Officers made a preliminary finding of confidentiality and determined that the Confidential Information should be exempt from public disclosure and the unredacted version of the evidence was submitted and admitted into evidence under seal. The Commission affirms the ruling of the Presiding Officers and finds the Confidential Information should continue to be treated by the Commission as confidential and not subject to public disclosure.

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

1. The Settlement Agreement, a copy of which is attached hereto, is hereby approved and the terms and conditions thereof shall be and hereby are incorporated herein by reference as part of this Order.

2. The Projects are determined to be clean coal technology, clean coal and energy projects, and/or qualified pollution control property and the Commission approves the use of the Projects.

3. Petitioner is hereby issued a certificate of public convenience and necessity for the Projects as described in the above findings. This Order constitutes the certificate.

4. The cost estimates for the Projects shall be and hereby are approved.

5. The Projects construction work and construction costs incurred as of December 31, 2008 shall be and hereby are approved.

6. Petitioner's Clean Coal Technology Rider ("CCTR") shall be and hereby is approved consistent with the terms set forth in this Order and the Settlement Agreement.

7. Petitioner shall file with the Electricity Division of the Commission an amendment to its tariff reflecting the approval of the CCTR and shall be and hereby is authorized to place into effect the rate adjustment and billing factors agreed to in the Settlement Agreement and contained in

Exhibit KDC-S6.

8. Pursuant to 170 IAC 4-6-21, Petitioner shall add the approved return on its QPCP to its net operating income authorized by the Commission for the purposes of Ind. Code §§ 8-1-2-42(d)(2) and 8-1-2-42(d) (3) in all subsequent fuel adjustment charge proceedings. However, for purposes of computing the authorized net operating income for Ind. Code §§ 8-1-2-42(d)(2) and 8-1-2-42(d) (3), the jurisdictional portion of the increased return shall be phased-in over the appropriate period of time that the Petitioner's net operating income is affected by the earnings modification resulting from the Commission's approval of the Settlement Agreement and the CCTR.

9. Petitioner's request for ongoing review of its clean coal technology projects as described in this Order shall be and hereby is granted.

10. Petitioner shall be, and hereby is, authorized to implement the accounting procedures necessary to implement the ratemaking and tracking mechanisms agreed to in the Settlement Agreement.

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

HARDY, ATTERHOLT, GOLC, LANDIS AND ZIEGNER CONCUR:

APPROVED: JUN 30 2009

**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

VERIFIED PETITION OF INDIANA MICHIGAN)
POWER COMPANY ("I&M"), AN INDIANA)
CORPORATION, FOR APPROVAL OF CLEAN)
COAL AND ENERGY PROJECTS AND QUALIFIED)
POLLUTION CONTROL PROPERTY AND FOR)
ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY FOR USE OF)
CLEAN COAL TECHNOLOGY ("PROJECTS"); FOR)
ONGOING REVIEW; FOR APPROVAL OF A RATE)
ADJUSTMENT TRACKING MECHANISM TO)
PROVIDE FOR THE TIMELY RECOVERY OF)
COSTS INCURRED DURING CONSTRUCTION)
AND OPERATION OF SUCH PROJECTS; FOR)
APPROVAL OF DEPRECIATION PROPOSAL FOR)
SUCH PROJECTS; FOR AUTHORITY TO DEFER)
COSTS INCURRED DURING CONSTRUCTION)
AND OPERATION, INCLUDING CARRYING)
COSTS, DEPRECIATION, AND OPERATION AND)
MAINTENANCE COSTS, UNTIL SUCH COSTS)
ARE REFLECTED IN THE RATE ADJUSTMENT)
MECHANISM; AND FOR AUTHORITY TO)
RECOGNIZE EMISSION ALLOWANCE COSTS VIA)
A RATE ADJUSTMENT TRACKING MECHANISM,)
ALL PURSUANT TO IND. CODE §§ 8-1-2-6.1, 8-1-)
2-6.7, 8-1-2-6.8, 8-1-2-42(a), 8-1-8.7, 8-1-8.8 and)
170 IAC 4-6-1 et seq.)

OFFICIAL
EXHIBITS

Cause No. 43636

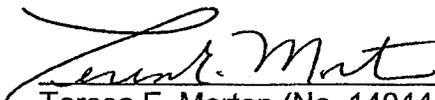
IURC
JOINT

EXHIBIT No. 1
6-10-09 AT
DATE REPORTER

JOINT MOTION FOR LEAVE TO SUBMIT
STIPULATION AND SETTLEMENT AGREEMENT

Petitioner Indiana Michigan Power Company ("I&M"), by counsel and on behalf of itself and the Indiana Office of Utility Consumer Counselor ("OUCC"), in accordance with the procedural schedule established by Docket Entry dated May 15, 2009, hereby requests leave to submit the attached Stipulation and Settlement Agreement dated May 26, 2009 by and between I&M and the OUCC.

Respectfully submitted,

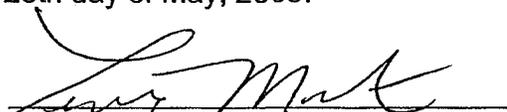


Teresa E. Morton (No. 14044-49)
BARNES & THORNBURG LLP
11 S. Meridian Street
Indianapolis, Indiana 46204
Phone: (317) 231-7716
Fax: (317) 231-7433
E-mail: tmorton@btlaw.com

Attorney for Indiana Michigan Power Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by email transmission to Robert Endris (rendris@oucc.in.gov) of the Office of Utility Consumer Counselor, National City Center, 115 W. Washington Street, Suite 1500 South, Indianapolis, Indiana 46204, this 28th day of May, 2009.


Teresa E. Morton

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF INDIANA MICHIGAN)
POWER COMPANY ("I&M"), AN INDIANA)
CORPORATION, FOR APPROVAL OF CLEAN)
COAL AND ENERGY PROJECTS AND QUALIFIED)
POLLUTION CONTROL PROPERTY AND FOR)
ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY FOR USE OF)
CLEAN COAL TECHNOLOGY ("PROJECTS"); FOR)
ONGOING REVIEW; FOR APPROVAL OF A RATE)
ADJUSTMENT TRACKING MECHANISM TO)
PROVIDE FOR THE TIMELY RECOVERY OF)
COSTS INCURRED DURING CONSTRUCTION AND)
OPERATION OF SUCH PROJECTS; FOR)
APPROVAL OF DEPRECIATION PROPOSAL FOR)
SUCH PROJECTS; FOR AUTHORITY TO DEFER)
COSTS INCURRED DURING CONSTRUCTION AND)
OPERATION, INCLUDING CARRYING COSTS,)
DEPRECIATION, AND OPERATION AND)
MAINTENANCE COSTS, UNTIL SUCH COSTS ARE)
REFLECTED IN THE RATE ADJUSTMENT)
MECHANISM; AND FOR AUTHORITY TO)
RECOGNIZE EMISSION ALLOWANCE COSTS VIA)
A RATE ADJUSTMENT TRACKING MECHANISM,)
ALL PURSUANT TO IND. CODE §§ 8-1-2-6.1, 8-1-2-)
6.7, 8-1-2-6.8, 8-1-2-42(a), 8-1-8.7, 8-1-8.8 and 170)
IAC 4-6-1 et seq.)

Cause No. 43636

STIPULATION AND SETTLEMENT AGREEMENT

Indiana Michigan Power Company ("I&M" or "Company") and the Indiana Office of Utility Consumer Counselor ("OUCC") (collectively the "Parties" and individually "Party"), solely for the purpose 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, reasonable and just resolution of all matters pending before the Indiana Utility Regulatory Commission ("Commission") in this Cause

subject to their incorporation by the 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. Terms and Conditions.

1. The Parties agree that I&M's request for approval of clean coal and energy projects and qualified pollution control property and for issuance of a certificate of public convenience and necessity for the following Projects described in I&M's Petition, as amended in the settlement testimony and exhibits, and case-in-chief shall be approved:

- (a) Selective Non-Catalytic Reduction ("SNCR") equipment projects, at the Tanners Creek Units 1 through 3, to reduce airborne emissions of nitrogen oxides ("NO_x") associated with the combustion of coal by injecting urea into the furnace of each unit where SNCR will be installed ("SNCR Projects"); and
- (b) Activated Carbon Injection ("ACI") systems on both generating units at the Rockport plant to directly reduce airborne emission of mercury associated with the combustion or use of coal ("ACI Projects"). Mercury remains a target for regulation by the United States Environmental Protection Agency (USEPA) and is considered a target for clean coal technology under Ind. Code §§ 8-1-2-6.8 and 8-1-8.8-3.

As discussed in the direct testimony of Witness McManus in this Cause, there are many reasons to go forward with the mercury control project at the Rockport plant. First, since significant portions of the costs have already been incurred, there is value in completing this project to achieve the goal of reducing mercury emissions from the Rockport plant. Completion of this project may also help to shape and inform future mercury regulations. There is a lack of long-term experience with reducing mercury emissions from coal-fired power plants. Completion of a project such as this could help add to that operating experience and provide data that will be useful to inform the development of future regulations. In the context of this proceeding, I&M provided and the OUCC reviewed various engineering analyses supporting contaminant removal rates and costs of contaminant removal compared to alternative technologies.

- (c) I&M should be authorized to recover the "value of qualified pollution control property under construction" recorded in the utility's accounts as of December 31, 2008. The Parties agree that amount is \$3,509,223 on the SNCR Projects and \$6,964,105 on the ACI Projects, inclusive of Allowance for Funds Used During Construction ("AFUDC") accrued on the Projects. I&M will accrue and recover AFUDC on these amounts calculated in accordance with the rules of the Indiana Utility Regulatory Commission.

- (d) The Parties agree that I&M shall continue to accrue AFUDC on any unrecovered value of that particular project until ratemaking treatment for the value of the qualified pollution control property is granted.
 - (e) The Parties agree that I&M will be able to file a subsequent request for ratemaking treatment for any additional value of qualified pollution control property under construction in six month intervals consistent with the eligibility of the projects agreed to within this agreement.
2. Consistent with Ind. Code § 8-1-2-6.8, 170 IAC 4-6-1 *et seq.*, and Ind. Code § 8-1-8.8-11, the Parties further agree that the Commission should approve timely recovery via a rate adjustment mechanism of any unrecovered depreciation and carrying costs of the investment as well as operating and maintenance costs, including consumables post in-service. Such ratemaking treatment includes:
- (a) Approval of I&M's Proposed Clean Coal Technology Rider ("CCTR") for inclusion in I&M's tariff in the form of Petitioner's Settlement Exhibit KDC-S6.
 - (b) I&M may implement ratemaking treatment for the recovery of a return on the plant investment in the CCTR.
 - (c) I&M may also recover via the CCTR:
 - (i) depreciation expense on the Projects as the Projects are placed in-service. The Parties agree that the Commission

- (g) I&M will perform traditional under/over recovery accounting for the semi-annual true-up of rider revenues to actual costs.
4. I&M's request for ongoing review of its construction of its Projects should be approved, and the Commission should hold a hearing before it approves or denies any proposed material increase in the cost estimate for the implementation, construction or use of the Projects.
 5. The Parties agree the initial billing factors presented by I&M witness Curry shall be adjusted to remove the effect of emission allowance recovery in Cause No. 43306. The Parties further agree that the Commission should approve the initial factors, as identified in settlement Exhibit KDC-S6, to be billed under the CCTR. On a going forward basis, I&M's CCTR factor shall be calculated and filed in a form consistent with I&M witness Curry's settlement testimony and exhibits. I&M will update and reconcile the CCTR factors on a semi-annual basis, and I&M will include in its semi-annual Environmental Cost Review ("ECR") proceedings schedules reflecting certain information as proposed in I&M witness Curry's direct testimony.
 6. I&M's Environmental Compliance Tracker was approved in the Commission's Order in Cause No. 43306 for purposes of tracking net emission allowances. The Parties agree to consider possible efficiencies in jointly administering the Environmental Compliance Tracker and CCTR in future ECR proceedings agreed to in this Cause.

II. Presentation of the Agreement to the Commission.

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 of the Parties 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 any 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). The Parties shall support or not oppose this Agreement in the event of any appeal or a request for a stay by a person not a party to this Agreement or if this Agreement is the subject matter of any other state or federal proceeding.
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 26th day of May, 2009.

INDIANA MICHIGAN POWER COMPANY

By: *Terence Moten*
Its: *Attorney*

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

By: *Robert W. Edwards*
Its: *Assistant Consumer Counselor*