

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

  
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VERIFIED PETITION OF INDIANA )  
MICHIGAN POWER COMPANY, AN )  
INDIANA CORPORATION, FOR APPROVAL )  
PURSUANT TO IND. CODE 8-1-2-42(a), 8-1- )  
8.8-11 AND TO THE EXTENT NECESSARY 8- )  
1-2.5-6 OF A RENEWABLE ENERGY POWER )  
PURCHASE AGREEMENT WITH FOWLER )  
RIDGE II WIND FARM, LLC, INCLUDING )  
TIMELY COST RECOVERY. )

CAUSE NO. 43750

APPROVED: JAN 06 2010

**BY THE COMMISSION:**

**David E. Ziegner, Commissioner**  
**Angela Rapp Weber, Administrative Law Judge**

On July 27, 2009, Indiana Michigan Power Company ("Petitioner" or "I&M") filed its Verified Petition with the Indiana Utility Regulatory Commission ("Commission") for approval of a Renewable Wind Energy Project Power Purchase Agreement between Fowler Ridge II Wind Farm, LLC ("FRWF-II") and I&M ("Wind PPA"), including timely recovery of the associated costs through rates. On July 27, 2009, I&M also filed its case-in-chief and its Motion for Protection of Confidential and Proprietary Information, through which protection from public disclosure was sought for certain Confidential Information. On September 1, 2009, the Presiding Officers issued a Docket Entry determining that the Confidential Information should be held as confidential by the Commission on a preliminary basis.

On August 20, 2009, Steel Dynamics, Inc. ("SDI"), a customer located in the electric service territory of I&M, filed its Petition to Intervene, which was granted by the Presiding Officers by Docket Entry dated October 2, 2009. In Accordance with the Prehearing Conference Order, on September 28, 2009 the Office of Utility Consumer Counselor ("OUCC") filed its case-in-chief. Also on September 28, 2009, SDI filed its case-in-chief with the Commission. On October 6, 2009, I&M prefiled its rebuttal testimony and its Motion for Protection of Confidential and Proprietary Information in the Rebuttal Exhibits and Workpapers. On October 9, 2009, the Presiding Officers issued a Docket Entry determining that the Confidential Information should be held as confidential by the Commission on a preliminary basis. On October 7, 2009, Petitioner filed its submission of proofs of publication of notice in accordance with Ind. Code § 8-1-2.5-6(d).

Pursuant to notice as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, a public evidentiary hearing in this Cause was held at 1:30 p.m. on October 15, 2009, in Judicial Room 222 of the National City Center, 101 W. Washington Street, Indianapolis, Indiana. At the evidentiary hearing, evidence was presented by I&M, OUCC, and SDI. No members of the general public were present at the hearing.

Based upon applicable law and evidence presented herein, the Commission now finds as follows:

1. **Notice and Jurisdiction.** Due, legal, and timely notice of the evidentiary hearing in this Cause was given and published by the Commission and by I&M as required by law. Proofs of publication for legal notices made by I&M were offered and admitted into evidence.

Petitioner is a "public utility" under Ind. Code § 8-1-2-1 and an "energy utility" providing "retail energy service" as defined in Ind. Code §§ 8-1-2.5-2 and -3, and is subject to the jurisdiction of this Commission in the manner and to the extent provided by the Public Service Commission Act, as amended, and other pertinent laws of the State of Indiana. Petitioner requests relief pursuant to Ind. Code §§ 8-1-8.8, 8-1-2-42(a) and 8-1-2.5-6. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Petitioner's Characteristics 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 office 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. In Indiana, I&M provides retail electric service to approximately 457,000 customers in the following counties: Adams, Allen, Blackford, DeKalb, Delaware, Elkhart, Grant, Hamilton, Henry, Howard, Huntington, Jay, LaPorte, Madison, Noble, Randolph, St. Joseph, Steuben, Tipton, Wabash, Wells and Whitley. I&M also provides retail service to approximately 129,000 customers in Michigan. In addition, I&M serves customers at wholesale in the States of Indiana and Michigan. I&M's electric system is an integrated and interconnected entity that is operated within Indiana and Michigan as a single utility. I&M is located in AEP's "East Zone" and is a member of the PJM Interconnection, L.L.C. ("PJM").

3. **The Wind PPA and Relief Requested.** I&M is seeking approval of a Wind PPA under which I&M will purchase approximately 50 MWs (nameplate) of electrical energy output from FRWF-II, a subsidiary of BP Wind Energy North America. The source of the energy will be a wind farm located in Benton County, Indiana with a portion located in Tippecanoe County, Indiana ("FRWF-II Project" or "Project"). I&M proposes to begin its purchases under the Wind PPA by February 15, 2010 and to continue thereafter over a twenty-year term. The purchase is a bundled product consisting of energy, capacity, and Renewable Energy Credits ("RECs").

I&M requests the Commission approve the Wind PPA and find the FRWF-II Project to be an "energy project" and a "renewable energy resource" as those terms are defined in Ind. Code §§ 8-1-8.8-2 and -10. As such, the Project would be eligible for certain incentives under the law, including, but not limited to, timely cost recovery. With regard to cost recovery, I&M requests approval of all purchased power and related costs incurred under the Wind PPA over the full twenty-year term of the Wind PPA. I&M asks that the Commission authorize I&M to recover via a rate adjustment mechanism the retail portion of those costs on an accrual basis in accordance with Ind. Code §§ 8-1-2-42(a) and 8-1-8.8-11 contemporaneously with the processing of I&M's semiannual fuel adjustment charge ("FAC") proceedings (or successor mechanism). Although I&M is proposing to have the cost recovery administered through its FAC proceedings, this cost recovery shall not be subject to the Section 42(d)(1) test or any other

benchmarks. Rather, I&M requests that the Commission make a definitive finding in this Cause that the Project, Wind PPA, and associated costs are reasonable and necessary so that I&M will be presently authorized to recover those costs over the full term of the Wind PPA.

4. **Statutory Framework.** Ind. Code § 8-1-8.8-2 concerns the development of alternative energy sources, including a renewable “energy project.” Ind. Code § 8-1-8.8-10 defines “renewable energy resource” to include energy from wind. Pursuant to Ind. Code § 8-1-8.8-11, an energy project is eligible for timely recovery of costs. This framework thus provides the basis for the requested Commission assurance of purchased power cost recovery through the full twenty-year term of the Wind PPA. Ind. Code § 8-1-2-42(a) also authorizes recovery of purchased electricity.

This is not a case of first impression. The Commission’s Orders in Cause Nos. 43097, 43259, 43328, 43393, and 43485 granted relief to Indiana electric utilities comparable to what I&M seeks here. In these cases, and pursuant to Ind. Code §§ 8-1-2-42(a) and 8-1-8.8, the Commission found that the wind purchased power agreements were a Renewable Energy Project and authorized the timely recovery of the cost incurred over the full contract term through a rate adjustment mechanism to be administered within the FAC proceedings (or successor mechanism). The Commission further found that the cost recover was not subject to the Ind. Code § 8-1-2-42(d)(1) test or any benchmarks.

5. **Summary of Petitioner’s Evidence.** The evidence in support of I&M’s Petition includes the testimony of: Marc E. Lewis, I&M Vice President of External Relations; Jay F. Godfrey, Managing Director—Renewable Energy for American Electric Power Service Corporation (“AEPSC”); and Jon R. MacLean, Manager of Production Resource Modeling in the Corporate Planning and Budgeting Department for AEPSC.

Mr. Lewis has extensive experience in the utility industry and is actively involved in legislative and regulatory matters. He discussed the potential for federal or state Greenhouse Gas (“GHG”) or carbon regulation and I&M’s interest in adding additional wind energy to its generation portfolio. Mr. Lewis explained I&M’s cost recovery proposal and described how the wind energy from FRWF-II will be transmitted to I&M. He also discussed the benefits produced by FRWF-II Wind PPA for I&M, its customers, and the State of Indiana, including, but not limited to, the reduction of I&M’s variable costs, improvement of I&M’s settlement position in the AEP System Interconnection Agreement, and increase in the potential for system sales. Among other things, Mr. Lewis explained that adding a modest amount of wind energy to the portfolio allows I&M to further diversify its generation portfolio, meet the demand for increase use of renewable energy, and provides other benefits with a relatively small impact on customers’ overall electricity bills.

Mr. Godfrey has over fourteen years of commercial and financial management experience in the wind energy industry. His experience includes evaluating wind project investment, negotiating wind energy power purchase and sales agreements, wind system operations and maintenance agreements, real estate agreements related to wind projects, wind turbine purchase agreements, and project loan documents. He is a past member of the Board of Directors of the American Wind Energy Association and currently serves as Advisor to that Board.

Mr. Godfrey discussed the Wind PPA, the Request for Proposal ("RFP"), and AEP's continued experience with wind energy projects and technology and the benefits associated with RECs. Mr. Godfrey updated the Commission regarding AEP's experience in the development, construction, ownership, and operation of wind energy projects since his presentation of testimony in Cause No. 43328. He explained that between September 2007 and January 2008, I&M contracted for three 200-foot meteorological test towers to be erected in Jay, Randolph, and Wayne Counties in Indiana to begin collection of wind data to determine the feasibility of building wind turbines in the area. He explained that this activity is part of the East Central Indiana Wind Farm effort that I&M announced in 2006.

Mr. Godfrey stated that since Commission approved the FRWF PPA in Cause No. 43328, several I&M affiliates have entered into a total of eight Wind PPAs, totaling 527.9 MW. All of these Wind PPAs were executed as a result of a competitive RFP process which sought proposals from a variety of renewable technologies, including solar, wind, hydroelectric, geothermal, biologically derived methane gas, and certain biomass energy projects. Mr. Godfrey explained that including the FRWF-II Wind PPA, AEP now has a total of 1296.1 MW of long-term renewable wind energy resources under contract. In Mr. Godfrey's view, the acquisition of these additional renewable energy resources underscores the ongoing efforts to diversify fuel mix and to support expanded development of renewable energy resources while meeting customers' needs and reducing environmental impact.

Mr. Godfrey provided the Commission with the background on I&M's negotiation of the Wind PPA. He explained that the Wind PPA was the result of a competitive RFP process initiated by two affiliates of I&M and added that AEP's substantial wind experience was beneficial in the negotiation of the Wind PPA. Mr. Godfrey summarized the terms of the Wind PPA and explained that the FRWF-II Wind PPA has a wind weighted average around-the-clock contract price and that this price will escalate beginning in 2012 at 2.25% per year for the term of the contract. In his opinion, the FRWF-II Wind PPA represents a prudent, valuable, and reasonably priced renewable energy generation resource for I&M.

Mr. Godfrey explained that the twenty-year Wind PPA allows I&M to secure the lowest-available prices for reliable renewable resources and to ensure that this energy will be economically accessible to its native load customers in the coming years. He explained that as various states continue to implement Renewable Portfolio Standards ("RPS") and goals and the federal government moves toward renewable standards and carbon limits, the availability of renewable energy will likely be constrained causing upward pressure on pricing. He stated that although these same standards and goals will also spur growth in the number of renewable energy providers throughout the PJM service territory, there is no guarantee that the supply of renewable energy resources will remain abreast of the demand. Mr. Godfrey added that in particular, access to available transmission will increasingly impact cost and availability of these resources.

Mr. Godfrey testified that the twenty-year Wind PPA also provides a direct benefit to the consumer. He explained that the twenty-year agreement, which is also the expected life of the technology, allows renewable energy resource providers to procure long-term financing, thereby amortizing the cost of their projects over a longer period. Such financing has the effect of

reducing the upfront costs and allows for a more economically levelized price over the term of the contract.

Mr. Godfrey also described the benefit of the federal Production Tax Credit to the FRWF. He explained that the renewable energy production tax credit ("PTC") is the primary federal incentive for wind energy and has been essential to the industry's growth. He explained that Congress has extended the PTC through December 31, 2012. Mr. Godfrey added that Congress also provided a subsidy as an alternative to the PTC in the form of either an Investment Tax Credit ("ITC") or a grant-in-lieu of the ITC. He stated that these federal subsidies, which go to the at-risk owner of the facility, help to buy-down the purchase price that I&M or any purchaser would pay for the renewable product.

Mr. Godfrey also addressed the other incentives related to I&M's purchase from the FRWF-II. He explained that currently, wind energy is generally acknowledged as the most economical new source of renewable energy in the United States. He stated that as with all forms of new electric generation, wind generation has recently experienced a significant increase in the delivered price of energy. He explained that as the price of wind generated energy continues to increase, it is to the advantage of I&M and its customers to obtain the lowest available cost wind energy to hedge against future price increases and regulatory requirements. With regard to RECs, Mr. Godfrey explained that I&M will receive all current and future attributes, including the associated RECs. He stated that the RECs will be tracked through the PJM Generation Attribute Tracking System, which is a database that tracks the ownership of RECs and generation attributes that result from the generation of electricity as they are traded or used to meet government standards.

Mr. MacLean is responsible for supervising planning studies in the area of production costing for AEP's eastern and western electric utility operating companies. These studies include fuel expense projections, marginal cost studies, and other analyses that involved the use of electric energy costs. Mr. MacLean addressed the cost impact of the Wind PPA on I&M customers. He explained that the estimate of the annual net cost, which retail customers would incur due the Wind PPA, considered the cost of the wind energy, the net of the relative changes in I&M's fuel cost (including net pool energy credit/cost), and the primary capacity settlements under the AEP System Interconnection Agreement. He testified that on a cost per kWh basis, the estimated incremental net cost to I&M's Indiana customers for an annual supply of renewable wind energy is projected to be less than 0.023 cents per kWh, with the average cost over the period of only 0.020 cents per kWh.

**6. Summary of OUCC's Evidence.** The OUCC presented the testimony of Ronald L. Keen, a Senior Analyst within the Resource Planning, Emerging Technologies, and Telecommunications Division; Greg A. Foster, a Utility Analyst in the Electric Division of the OUCC's Energy Group; and Anthony A. Alvarez, a Utility Analyst II within the Resource, Planning, Emerging Technologies, and Telecommunications Division. Mr. Keen described the Petitioner and FRWF, addressed the request for approval of the Wind PPA, and discussed RPS, RECs and legislative initiatives at the state and federal level. Among other things, Mr. Keen noted that the Wind PPA was approved by the Michigan Public Service Commission on September 15, 2009. Mr. Keen explained that twenty-six states have RPS, while four states have Alternative Energy Portfolio Standards and five states have a Renewable or Alternative Energy

Goal. Only thirteen states have not yet adopted a renewable or alternative energy portfolio or standard at this time. Mr. Keen explained that in Indiana, as early as 2006, a bill was introduced to enact an RPS standard for the state. He said the issue was held over for committee study and RSP legislation was introduced in each subsequent legislative session. Mr. Keen testified there are a number of legislative proposals before Congress including H.B. 2452, which passed the House of Representatives in June 2009 and is now under consideration in the Senate. Mr. Keen recommended the Commission approve the Wind PPA, as well as the associated cost recovery.

Mr. Foster provided the OUCC's analysis of I&M's request for approval of the Wind PPA, specifically to support the choice of wind power as a reasonable component of a diversified portfolio. Mr. Foster explained that a portfolio is a reasonable mix or collection and that by owning several types of generating assets, certain types of risk can be reduced. In his view, portfolio management, if used prudently, is a valuable tool to reduce risk. He testified that while Indiana does not currently have a RPS, the risk of state or federal RPS or carbon legislation being adopted is very real. Mr. Foster noted that the Commission has previously recognized that a wind PPA represents a reasonable addition to and diversification of capacity and energy portfolios, which may serve to mitigate the volatility of prices from other energy sources as such renewable energy opportunities are available independent of fuel price volatility and increased environmental emissions, constraints, and costs. Mr. Foster concluded that I&M's petition for approval of the Wind PPA is a reasonable step toward diversification of its generation portfolio and recommended Commission approval of the Wind PPA and associated cost recovery.

Mr. Alvarez discussed transmission issues and the findings contained in the PJM Generator Interconnection Impact Study Reports. Mr. Alvarez testified that while the generator source for this Wind PPA is located in the Midwest ISO footprint, the I&M load sink is located in PJM's footprint, cost is not attributed to having a different ISO/RTO for the source and the sink. There are neither toll charges nor through and out charges added to the total cost involved. Mr. Alvarez also testified that there is no significant LMP differential in the source and sink. He explained that this is due to the relatively close proximity of the source and sink and the robustness of the transmission lines in Indiana and the absence of significant congestion issues. Mr. Alvarez testified that there were no significant network impact issues, no new system reinforcement requirements and no potential congestion issues raised in the PJM Generator Impact Study Reports.

**7. Summary of Intervenor's Evidence.** Intervenor SDI presented the testimony of Dennis W. Goins, Ph.D. of the Potomac Management Group, an economics and management consulting firm. Dr. Goins noted that I&M is asking the Commission to approve the recovery of the cost of the FRWF-II purchases through its FAC during the twenty-year contract term. He also noted that I&M retains 100% of Indiana jurisdictional off-system sales margins up to \$37.5 million, and shares all sales margins in excess of \$37.5 million equally with retail customers.

Dr. Goins testified that I&M does not need the Wind PPA to meet new GHG regulations since such new regulations do not exist. Dr. Goins stated that the benefits of the Wind PPA are generally speculative and if they occur, may provide little direct benefit to the ratepayers. He explained that when and how the Indiana legislature mandates an RPS (if at all) will determine whether the Wind PPA is a reasonable and prudent response by I&M. In his view, wind purchases now are merely a form of insurance against the potential costs of GHG regulations that

have not even been adopted—much less implemented and ratepayers should not be responsible for the entire cost. Dr. Goins recommended the Commission reject I&M's proposal because the Wind PPA cost recovery does not meet the requirement in Ind. Code § 8-1-2-42(d)(1) to acquire fuel and general and/or purchase power to serve retail electric customers at the lowest fuel cost reasonably possible. If the Commission decides to allow I&M to recover the total cost of the FRWF-II purchases, Dr. Goins recommended the Commission modify the off-system sales sharing mechanism approved by the Commission in Cause No. 43306 to increase the benefits provided to I&M's customers.

**8. Rebuttal Evidence.** I&M witnesses Lewis, Godfrey, and MacLean presented rebuttal testimony. Mr. Lewis refuted SDI witness Goins' claims regarding I&M's proposal. Mr. Lewis explained that the request in this Cause is pending pursuant to authority granted to the Commission in Ind. Code § 8-1-8.8-11, Ind. Code § 8-1-2-42(a), and to the extent necessary Ind. Code § 8-1-2.5-6. These statutes do not concern the FAC, which is authorized by Ind. Code § 8-1-2-42(d). He testified that because the FAC is subject to a different statute it is not accurate to state that I&M seeks relief in this Cause pursuant to Ind. Code § 8-1-2-42(d). Mr. Lewis explained that it appears that SDI witness Goins may be confused by I&M's request that the process the Commission currently uses for the administration of rate adjustment mechanisms for wind purchased power be utilized here.

Mr. Lewis explained that even if this were not the case, SDI witness Goins overlooks the reasonableness standard incorporated twice in the statute upon which he mistakenly relies. Mr. Lewis testified that the reasonableness standard and Commission practice recognize that the absolute lowest cost is not required. Rather, the (d)(1) test permits use of a diversified approach so that the provision of low cost electricity may be achieved over a range of circumstances. He explained that like hedging and other procurement activities, the purchase of renewable energy is part of I&M's ongoing effort to make every reasonable effort to continue to acquire fuel and generate power so as to provide electricity to its retail customers at the lowest fuel cost reasonably possible.

Mr. Lewis explained that in Ind. Code § 8-1-8.8-1, the General Assembly declared that the development of a robust and diverse portfolio of energy production or generation capacity, including the use of renewable energy is in the public interest and important to Indiana's energy security and reliability. In order to incent this development, the General Assembly expressly authorized the Commission to grant the timely cost recovery I&M seeks in this case if the project is reasonable and necessary. Ind. Code § 8-1-8.8-11. He concluded that, as shown by I&M's direct testimony and further addressed both below and in the rebuttal testimony of I&M witnesses Godfrey and MacLean, the FRWF-II Wind PPA which is the subject of I&M's Petition in this case is reasonable and necessary and should be approved.

Mr. Lewis disagreed with Dr. Goins contention that the FRWF-II Wind PPA benefits are speculative and provide little direct benefit to customers. He explained that in analogous cases, the Commission has recognized that Wind PPAs produce real benefits for the electric utility, its customers, and the State of Indiana. He explained that the benefits from the FRWF-II Wind PPA before the Commission are no less real or material than those derived from the wind PPAs previously approved by the Commission.

Mr. Lewis explained that SDI witness Goins' incorrectly implied that I&M receives the benefit of 100% of the first \$37.5 million in off-system sales margins. Mr. Lewis clarified that I&M's customers receive this benefit through a reduction of their basic rates regardless whether I&M even earns \$37.5 million in off-system sales margins. He explained that the Settlement Agreement approved in Cause No. 43306 provides only for sharing above the \$37.5 million reflected as a credit to the revenue requirement. He testified that I&M customers are protected from the downside loss but permitted to share in the upside benefit. This ensures that I&M's risk of participating in the wholesale electricity market remains with I&M and is not passed to customers.

Mr. Lewis also showed that the level of off-system sales margins used as a credit to reduce I&M's retail customer rates is substantially greater than the minimum credit recognized in previous Indiana rate cases. He testified that while off-system sales margins have recently decreased from levels reflected in the basic rate case, I&M's customers will continue to receive a significant benefit from these wholesale market activities. In his view, Dr. Goins' contention overlooks the significant customer benefits and safeguards already provided in the Settlement Agreement and Order in Cause No. 43306, including the fact that customer rates are at least \$37.5 million lower because of the risk I&M has undertaken in the wholesale market. Mr. Lewis stated that to the extent the FRWF-II Wind PPA results in off-system sales margins above the level already credited in basic rates, customers will share equally with I&M in this return. While the credit in the off-system sales margins sharing mechanism is adjusted annually, I&M's customers benefit more from I&M's off-system sales activities than customers of other Indiana utilities. He said it is unreasonable for I&M's efforts to secure renewable energy for the benefit of its customers to be penalized while other Indiana utilities are permitted the full and timely cost recovery afforded by the governing statute.

Mr. Lewis disagreed with Dr. Goins' contentions that the FRWF-II Wind PPA is merely an insurance policy against the potential costs of GHG regulations that have not yet been adopted and that it is neither fair nor reasonable to require ratepayers to bear all the cost of the Wind PPA. Mr. Lewis testified that protection against the potential costs of GHG regulations is not the only benefit of the Wind PPA. He stated that SDI witness Goins' contention that the Commission should disallow some or all of the costs of I&M's Wind PPA contravenes Indiana policy in Ind. Code § 8-1-8.8-11, which provides that the Commission shall encourage the use of renewable and other clean energy projects by creating financial incentives, including timely cost recovery. This statute also authorizes the Commission to approve other incentives, including an additional return to shareholders and other financial incentives for projects to develop alternative energy sources, including renewable energy projects. Mr. Lewis stated that while I&M has not sought these additional financial incentives in this proceeding, the availability of these incentives demonstrates that shareholders should not be penalized for pursuing the use of renewable energy.

Mr. Lewis also responded to Dr. Goins' contention that the Wind PPA might unreasonably benefit shareholders. Mr. Lewis explained that this contention ignores the earnings test in Ind. Code § 8-1-2-42(d)(3), which protects customers against the possibility that an electric utility's net operating income might exceed its authorized level. He added that this is particularly true in I&M's case because its sum of differentials was reset to zero in Cause No. 43231. Furthermore, pursuant to the Order in Cause No. 43306 I&M is required to file a new rate case not later than five years from March 4, 2009. He stated that because a rate case

provides the Commission, the OUCC, and other interested parties an opportunity to review a utility's return, this filing requirement also protects customers from the possibility that I&M's net operating income might exceed its authorized level due to the FRWF-II Wind PPA.

Mr. Lewis also disagreed with Dr. Goins suggestion that the Commission cannot determine whether I&M's FRWF-II Wind PPA is reasonable and necessary until such as time as the Indiana General Assembly determines whether it will mandate an RPS. He explained that neither the legislature nor the Commission has conditioned approval under this statute on the existence of an Indiana RPS mandate. To the contrary, in its 2009 Report to the Regulatory Flexibility Committee of the Indiana General Assembly (at 48), the Commission stated that "[t]he passage of either a state or federal renewable portfolio standard (RPS) or green house gas emission regulations (e.g., carbon emissions regulation) would likely make wind resources even more desirable than they are now. . . ." In other words, a determination of whether a Wind PPA is reasonable and necessary is not dependent on the existence of an Indiana RPS mandate. He testified that witness Goins' contention also fails to recognize that the resource planning process necessarily requires reasonable predictions about the future, including estimates of future demand for electricity, fuel costs, generation costs, and environmental regulation costs. Mr. Lewis summarized state and federal legislative initiatives and explained that locking in a long-term price now permits I&M to avoid the cost increases associated with increased demand, increased turbine costs, and the cost increases that are expected to occur once the federal tax credits expire.

Mr. Godfrey showed that I&M has obtained the lowest reasonable cost renewable resources for its native load customers, and explained the benefits of being an active participant in the renewable energy resource market at this time. Mr. Godfrey explained that Dr. Goins' analysis was flawed because the price he quotes as I&M's average cost for the Wind PPA in 2010 is a bundled price. The bundled price for this wind purchase is composed of charges for energy, as well as capacity, and the associated REC value; it does not represent an energy-only price. He explained that conversely, the average cost of coal-fired general and other non-wind off-system sales purchases referenced by witness Goins include only the variable costs of energy and, therefore, is an inappropriate comparison. Mr. Godfrey explained that to create an accurate price comparison, the total cost of one generation resource must be compared to the total cost of another contemplating the future impacts of renewable portfolio standards and carbon legislation.

Mr. Godfrey presented the results of the 2007 and 2008 renewable energy RFPs that AEPSC issued in PJM on behalf of AEP's operating companies. This showed that AEPSC was able to secure the lowest reasonable cost for the bundled renewable product. Mr. Godfrey testified that as states throughout the United States continue to implement RPS and goals, the availability of renewable energy may be constrained in the coming years. Mr. Godfrey reiterated that the current federal subsidies help to buy-down the purchase price that I&M would pay for the renewable energy product. He explained that by acting now and being able to take advantage of the federal subsidies, I&M (and ultimately) customers will save approximately \$30 million over the life of the FRWF-II Wind PPA. He stated that if Congress does not extend the ITC beyond 2010 or the PTC beyond 2012, I&M (and ultimately customers) will end up paying more to acquire additional megawatt-hours of renewable energy as a part of any federal or state mandate. He opined that obtaining a prudent amount of renewable energy while the PTC/ITC is

in place mitigates the potential risks associated with having to acquire renewable energy in constrained markets and without the benefit of such a credit or subsidy.

Mr. MacLean refuted Dr. Goins' statement that the average cost of I&M's FRWF-II purchases in 2010 will be more than three times the average cost of its coal-fired generation and more than 2.5 times the cost of other non-wind off-system purchases. He explained that the Wind PPA is a twenty-year bundled product whereas the fossil and purchase costs used by witness Goins are single-year (2010) values from a Net Energy Cost report that contains only fuel costs and only energy costs. Thus, witness Goins' took only a short-term view of the Wind PPA versus other alternatives. Mr. MacLean explained that since the Wind PPA is a new twenty-year renewable resource, a valid comparison should be based on a multi-year, bundled, energy + capacity + RECs price for other new renewable or new conventional resources to put it on an equivalent basis. As illustrated by Exhibit JRM-R1, this comparison shows that the cost for the Wind PPA is lower than comparable costs for a new build CT or CC over the entire range of operation. He concluded that when all appropriate costs are included, the FRWF-II PPA is less costly than new gas-fired facilities.

**9. Commission Discussion and Findings.** Substantial evidence in the record of this proceeding supports a finding that the relief requested herein should be approved. The Commission finds that the Renewable Energy Project will not only increase the availability of emissions-free renewable energy sources in Indiana, but it will also demonstrate the vitality of the market for commercial wind generation. The evidence indicates the Wind PPA produces real benefits for I&M, its customers, and the State of Indiana. The Wind PPA also improves Petitioner's capacity settlement position in the AEP Pool and increases the potential for off-system sales. In addition, the Wind PPA diversifies I&M's generation portfolio, supports a "home grown" renewable resource, encourages economic development, and meets the increasing interest of customers in the use of more renewable resources. The evidence also indicates that the terms of the Wind PPA are reasonable and full cost recovery of the Wind PPA through the full twenty-year term of the contract is reasonable and necessary. The Commission finds that the approval we grant herein is in the public interest and designed to promote efficiency and reliability in the provision of retail electric service. This Commission's specific findings are as follows:

(a) **Governing Statutes.** Witness Goins contended that the Commission should not authorize I&M to recover the cost of the FRWF-II purchases through I&M's FAC because such recovery is inconsistent with I&M's obligation under Ind. Code § 8-1-2-42(d)(1) to acquire fuel and generate and/or purchase power to serve its retail electric customers at the lowest fuel cost reasonably possible. SDI's position must be rejected. I&M's Petition is not pending under the FAC statute upon which SDI witness Goins relies. Rather, I&M seeks the Commission to exercise authority granted to it by the Legislature in Ind. Code § 8-1-8.8-11, Ind. Code § 8-1-2-42(a), and to the extent necessary, Ind. Code § 8-1-2.5-6.

For administrative efficiency and simplicity, the Commission has previously authorized the administration of the rate adjustment mechanism which I&M seeks here. In Cause Nos. 43328, 43485, 43097, 43259, and 43393, the Commission approved proposals for wind PPA rate adjustment mechanisms to be administered through the FAC proceedings authorized by Ind. Code § 8-1-2-42(a) and not be subject to the Ind. Code § 8-1-2-42(d) test or any benchmarks.

These statutes do not impose a “least cost” requirement. Even if this were not the case, SDI witness Goins overlooks the reasonableness standard incorporated twice in the statute upon which he mistakenly relies. Ind. Code § 8-1-2-42(d)(1) provides that with regard to “the fuel cost charge” the Commission must find that the utility has made every “reasonable” effort to acquire fuel or generate or purchase power or both so as to provide electricity to its retail customers at the lowest fuel cost “reasonably possible.” The reasonableness standard and Commission practice recognize that the absolute lowest cost is not required. Rather, the (d)(1) test permits use of a diversified approach so that the provision of low cost electricity may be achieved over a range of circumstances.

For example, utilities acquire fuel pursuant to short-term and long-term contracts and also make purchases on the spot market. At any point in time, the cost of fuel on the spot market may be greater or less than the cost of fuel under a short-term or long-term contract. Yet, over the longer term, the diversified purchasing approach enables the utility to serve retail customers at the lowest fuel cost reasonably possible. In other words, it is reasonable to procure fuel through a diversified purchasing strategy, just as it is reasonable to generate or purchase electricity through a reasonable integrated resource plan. As noted by Mr. Lewis, SDI has encouraged I&M to engage in hedging activities. Like hedging and other procurement activities, the purchase of renewable energy is part of I&M’s ongoing effort to make every reasonable effort to continue to acquire fuel and generate power so as to provide electricity to its retail customers at the lowest fuel cost reasonably possible.

Moreover, as the Commission found in Cause No. 43097, once the Commission finds that a Wind PPA and its costs are reasonable and should be recovered through the full term of the contract in accordance with Ind. Code § 8-1-2-42(a), it is “incongruent to have the Wind PPA subjected to a quarterly FAC review statutorily designed to determine whether or not the utility has made every reasonable effort to obtain fuel or purchase power at the lowest cost reasonably possible. That finding of reasonableness is already made in [the] Order for the Wind PPA for the term of the contract.” *PSI Energy, Inc.*, Cause No. 43097 at 18. Therefore, the Commission finds I&M’s proposal for the administration of the wind purchase power agreement rate adjustment mechanism is consistent with the governing statutes, Commission practice and public policy. Accordingly, we further find that SDI’s objection should be rejected.

(b) Renewable Energy Benefits. SDI witness Goins contended that the benefits the FRWF-II PPA may produce are speculative and provide little direct benefit to customers. In analogous cases, the Commission has recognized that Wind PPAs produce “real benefits for Petitioner, its customers, and the state of Indiana.” See *e.g.*, *Southern Indiana Gas and Electric Co.*, 8 (*Ind. Util. Reg. Comm’n*, Cause No. 43635, June 17, 2009) (approving 50 MW purchase of wind power from FRWF-II); *Indiana Mich. Power Co.*, 16 (*Ind. Util. Reg. Comm’n*, Cause No. 43328, Nov. 28, 2007) (approving 100 MW purchase of wind power from FRWF-I); and *Indianapolis Power & Light Co.*, 10 (*Ind. Util. Reg. Comm’n*, Cause No. 43485, Oct. 1, 2008) (approving 100 MW purchase of wind power from Hoosier Wind Project, LLC). Similarly, *Southern Indiana Gas and Electric Co.*, 15 (*Ind. Util. Reg. Comm’n*, Cause, No. 43259, Dec. 15, 2007), the Commission found that the proposed wind PPA “diversifies [the] supply portfolio; it provides environmental benefits; it encourages the proliferation of more renewable Hoosier Homegrown Energy; it will improve Indiana’s economy; and it hedges against new environmental emissions regulations and potential fuel cost volatility.” The Commission further

found that “[t]hese attributes provide direct benefits to . . . customers and Indiana stakeholders.”  
*Id.*

The benefits from the FRWF-II Wind PPA before the Commission in this proceeding are no less real or material than those derived from the wind PPAs previously approved by the Commission. Substantial evidence enumerates the numerous benefits available from environmentally friendly renewable energy such as that made available from the FRWF-II Renewable Energy Project. Wind generation avoids fuel and transportation costs and will avoid potential future carbon emission taxes associated with carbon fuel generation. The terms of the FRWF-II Wind PPA were reached through arms-length negotiation, compare favorably with market conditions, and are reasonable. The FRWF-II Wind PPA represents a reasonable addition to and diversification of I&M’s integrated resource portfolio that may serve to mitigate the volatility of prices from other energy sources. It is a real benefit to secure generation from a diverse pool of sources. The FRWF-II Wind PPA also allows I&M to take advantage of the real government incentives that lower the cost of securing wind-generated power, which is important with the increasing likelihood of federal renewable energy legislation and the increasing number of state renewable energy mandates. Thus, it is reasonable for Petitioner to begin to add to its renewable energy portfolio now as part of its resource planning process. It is a real benefit to I&M, its customers, and the State of Indiana to secure long-term prices of renewable generation.

The FRWF-II Renewable Energy Project will not only produce emission free electricity but will help further promote awareness in I&M’s customers and other Indiana citizens on the advancement and availability of renewable energy technology. This may increase consumer interest in protecting the environment by supporting renewable, environmentally friendly energy sources. In addition to the environmental benefits from the emission free generation, Indiana also benefits through the development of another “home grown” energy resource. As was also the case with similar projects previously approved by this Commission, the FRWF-II Project offers the economic benefits of local Indiana business investment, revenue generation, and job creation.

Further, I&M and its customers will benefit from RECs received as a result of the FRWF-II Project because RECs can be used to meet future RPS compliance obligations. The Commission agrees with Petitioner and the OUCC that there is a benefit from proactively acquiring renewable energy resources now, while federal subsidies for renewables can help “buy-down” the cost of purchased renewable energy to I&M, rather than waiting until a federal or state RPS or carbon requirement is in effect and prices and demand from other utilities for renewable energy and RECs increase. Accordingly, we reject witness Goins’ contentions.

SDI witness Goins also contended the FRWF-II Wind PPA is merely an insurance policy against the potential costs of GHG regulations that have not yet been adopted and therefore it is neither fair nor reasonable to require ratepayers to bear all the cost of the Wind PPA. As just discussed, there are many other benefits from this Wind PPA. Furthermore, SDI witness Goins’ contention that the Commission should disallow some or all of the costs of I&M’s Wind PPA contravenes Indiana policy. As noted above, Ind. Code § 8-1-8.8-11 provides that the Commission shall encourage the use of renewable and other clean energy projects by creating financial incentives, including timely cost recovery. This statute also authorizes the Commission to approve other incentives, including an additional return to shareholders and other financial

incentives for projects to develop alternative energy sources, including renewable energy projects. While I&M has not sought these additional financial incentives in this proceeding, the availability of these incentives demonstrates that shareholders should not be penalized for pursuing the use of renewable energy.

Witness Goins' suggestion that I&M's shareholder may somehow derive an unreasonable benefit from our approval of the FRWF-II PPA ignores the earnings test in Ind. Code § 8-1-2-42(d)(3), which protects customers against the possibility that an electric utility's net operating income might exceed its authorized level. This is particularly true in I&M's case because its sum of differentials was reset to zero in Cause No. 43231. Furthermore, pursuant to the Order in Cause No. 43306 I&M is required to file a new rate case not later than five years from March 4, 2009. Because a rate case provides the Commission, the OUCC and other interested parties an opportunity to review a utility's return, this filing requirement also protects customers from the possibility that I&M's net operating income might exceed its authorized level due to the FRWF-II Wind PPA. Therefore, SDI witness Goins' proposal that the Commission impose special restrictions or otherwise condition I&M's timely cost recovery should be rejected.

(c) Reasonableness of the Wind PPA Terms. The record establishes that the Wind PPA resulted from arms-length negotiations. I&M will only pay for the energy it receives at a fixed price per MWh with fixed annual adjustments. I&M will own all of the environmental credits, including RECs, from the Wind PPA. FRWF retains the responsibility for construction, ownership, operation, and maintenance of the plant. Like the other wind power purchase agreements approved by this Commission, the FRWF-II Project represents a reasonable addition and diversification of I&M's capacity portfolio, which may serve to mitigate the volatility of prices from other energy sources. This renewable energy opportunity will be available independent of fuel price volatility or increased environmental emissions, restraints, and costs. Substantial evidence of record demonstrates that I&M's cost per MW of energy under the Wind PPA is lower than other proposals received in response to the 2007 and 2008 RFPs and other renewable energy alternatives available to Petitioner. As shown by witness MacLean, the FRWF-II PPA is also less costly than new gas-fired facilities. The Commission finds that the pricing and other terms of the FRWF-II Project are reasonable and in the public interest.

(d) Wind PPA Cost Recovery. The Commission finds that Petitioner shall be authorized to recover all of the purchased power and other costs related to the Wind PPA over its full twenty-year term as proposed by Petitioner and the prudence of the Wind PPA and associated costs shall not be subject to any future review. We find that I&M should be authorized to recover via a rate adjustment mechanism the retail portion of the costs of the FRWF-II Wind PPA on an accrual basis in accordance with Ind. Code §§ 8-1-2-42(a) and 8-1-8.8-11 contemporaneously with the processing of I&M's FAC proceedings (or successor mechanism). While the cost recovery of the Wind PPA should be administered through I&M's FAC proceedings (or successor mechanism), such cost recovery shall not be subject to the Section 42(d)(1) test or any FAC or purchased power benchmarks, economic dispatch requirements, or least cost requirements. This relief is consistent with Ind. Code §§ 8-1-2-42(a) and 8-1-8.8-11.

SDI witness Goins' suggested that the Commission cannot determine whether I&M's FRWF-II Wind PPA is reasonable and necessary until such as time as the Indiana General

Assembly determines whether it will mandate an RPS. This contention should be rejected. First, as discussed above, the Indiana General Assembly has already declared that the state policy shall be to encourage the investment in renewable energy by providing timely cost recovery. Ind. Code § 8-1-8.8 was enacted even though Indiana has not mandated a RPS. Neither the Legislature nor the Commission has conditioned approval under this statute on the existence of an Indiana RPS mandate. To the contrary, in page forty-eight its 2009 Report to the Regulatory Flexibility Committee of the Indiana General Assembly, the Commission stated that “[t]he passage of either a state or federal renewable portfolio standard (RPS) or green house gas emission regulations (e.g., carbon emissions regulation) would likely make wind resources even more desirable than they are now.” A determination of whether a Wind PPA is reasonable and necessary is not dependent on the existence of an Indiana RPS mandate.

Witness Goins’ contention also fails to recognize that the resource planning process necessarily requires reasonable predictions about the future, including estimates of future demand for electricity, fuel costs, generation costs, and environmental regulation costs. As discussed above, witness Goins’ suggestion that it is unreasonable or unnecessary for I&M to respond to the potential for GHG regulation should be rejected.

A review of Ind. Code § 8-1-8.8 *et seq.*, demonstrates and we find that the FRWF-II Project satisfies the statutory definition of “energy project” defined in Ind. Code § 8-1-8.8-2 in that the project will develop alternative energy sources, including renewable energy. We further find that the project also qualifies as a “renewable energy resource” as defined by Ind. Code § 8-1-8.8-10. Ind. Code § 8-1-8.8-11 provides that renewable energy projects, such as I&M’s Wind PPA with FRWF-II, are eligible for incentives, including timely recovery of costs and financial incentives. Accordingly, the Commission finds that Petitioner’s cost recovery proposal should be approved.

(e) Off-System Sales Sharing. SDI witness Goins contends that because I&M receives 100% of the first \$37.5 million in off-system sales margins, the Commission should implement a modified off-system sales sharing arrangement to increase customer benefits if the Commission decides to allow I&M to timely recover the cost of the FRWF-II Wind PPA purchases. We find this proposal should be rejected. First, I&M’s customers receive the benefit of 100% of the first \$37.5 million in off-system sales margins through a reduction of their basic rates. Pursuant to the Order approving the Settlement Agreement in Cause No. 43306 retail jurisdictional off-system sales margins above \$37.5 million are shared equally between I&M’s customers and the Company and is reflected as a credit to the revenue requirement. I&M customers are protected from the downside loss but permitted to share in the upside benefit, which ensures that I&M’s risk of participating in the wholesale electricity market is not passed to customers.

Finally, Ind. Code § 8-1-8.8-11 provides that the Commission shall encourage the use of renewable and other clean energy projects by creating financial incentives, including timely cost recovery. This statute also authorizes the Commission to approve other incentives, including an additional return to shareholders and other financial incentives for projects to develop alternative energy sources, including renewable energy projects. While I&M has not sought these additional financial incentives in this proceeding, the availability of these incentives demonstrates that shareholders should not be penalized for pursuing the use of renewable energy.

**10. Confidential Information.** On September 1 and October 9, 2009, the Presiding Officers made a preliminary finding that certain designated information marked "Confidential Information" as requested in Petitioner's Motions for Protection and Nondisclosure of Confidential and Proprietary Information should be treated as confidential in accordance with Ind. Code § 5-14-3-4 and that confidential procedures should be followed with respect to this Confidential Information. Upon review of the Confidential Information submitted pursuant to the Presiding Officers' preliminary determination, the Commission confirms this prior preliminary finding. The Commission also concludes that the information for which Petitioner sought confidential treatment contains confidential, proprietary, competitively sensitive trade secret information that has economic value to Petitioner and to FRWF-II from neither being known to, nor ascertainable by, its competitors and other persons who could obtain economic value from the knowledge and the use of such information; that the public disclosure of such information would have a substantial detrimental affect on Petitioner and FRWF-II; and that the information is subject to efforts of Petitioner that are reasonable under the circumstances to maintain its secrecy. Accordingly, the Confidential Information submitted to the Commission, including that contained in Petitioner's Exhibit JFG-1 (Protected), Petitioner's Exhibit JFG-2 (Protected), Petitioner's Exhibit JRM-1 (Protected), Petitioner's Exhibit JFG-R1 (Confidential), Petitioner's Exhibit JRM-R1(Confidential) and the confidential workpapers supporting this exhibit are exempt from the public access requirements of Ind. Code §§ 5-14-3-3, 8-1-2-29, and 24-2-3-1 and shall continue to be held as confidential by the Commission.

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

1. I&M's Wind PPA with the Fowler Ridge II Wind Farm, or its assigns or successors, shall be and is hereby authorized as a Renewable Energy Project.
2. The Renewable Energy Purchase Agreement between Petitioner and Fowler Ridge Wind Farm II shall be and hereby is approved in its entirety and without change.
3. I&M is hereby authorized to recover the costs incurred under the Wind PPA over its full twenty-year term pursuant to Ind. Code §§ 8-1-2-42(a) and 8-1-8.8, to be administered within I&M's FAC proceedings (or successor mechanism). This recovery shall not be subject to the Ind. Code § 8-1-2-42(d)(1) test or any benchmark.
4. I&M shall be and hereby is granted the accounting authority necessary to implement the cost recovery provided by this Order.
5. If I&M chooses to monetize RECs associated with the wind purchase, I&M shall use the revenues to first offset the cost of the Wind PPA and next to credit the jurisdictional ratepayers through the FAC proceedings (or successor mechanism).
6. For a period of five (5) years from the commencement of the Fowler Ridge II Wind Farm Wind PPA, I&M shall annually submit to the Commission and the OUCC a confidential report showing the actual wind energy delivered on an hourly basis by the Project to I&M.

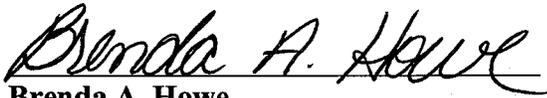
7. I&M's request for confidential trade secret treatment shall be and is hereby granted, and such Confidential Information shall be exempted from public disclosure.

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

**HARDY, ATTERHOLT, GOLC, LANDIS, AND ZIEGNER CONCUR:**

**APPROVED: JAN 06 2010**

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



**Brenda A. Howe  
Secretary to the Commission**