ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF INDIANA MUNICIPAL POWER AGENCY FOR APPROVAL (i) UNDER IC 8-1-2.2 TO ISSUE BONDS IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $122,130,000 FOR THE PURPOSE OF FINANCING A PORTION OF THE ELECTRIC GENERATION EXPANSION PROJECT APPROVED IN CAUSE NO. 42455 AND (ii) TO MODIFY THE CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY ISSUED IN CAUSE NO. 42455	)	**CAUSE NO. 43833** **APPROVED:** JUL 14 2010

BY THE COMMISSION:
David E. Ziegner, Commissioner
Scott R. Storms, Chief Administrative Law Judge

On December 1, 2009, the Indiana Municipal Power Agency (the "Agency," "Petitioner", or "IMPA") filed its Verified Petition ("Petition") with the Indiana Utility Regulatory Commission ("Commission") seeking authority under IC 8-1-2.2 to issue bonds in an amount sufficient to produce proceeds to IMPA net of original issue discounts and premiums, underwriter's discount and other issuance costs ("Net Proceeds"), not to exceed $122,130,000 to finance the remainder of its percentage ownership interest in 200 MW of Peabody Energy's Prairie State Energy Campus ("Prairie State" or "Prairie State Project") approved in Cause No. 42455. Also on December 1, 2009, Petitioner filed its case-in-chief, consisting of the direct testimony and exhibits of its witnesses L. Gayle Mayo and J. Christian Rettig.

Pursuant to proper notice given as provided by law, a Prehearing Conference and Preliminary hearing was held in Room 222 of the National City Center, 101 West Washington Street, Indianapolis, Indiana at 9:30 a.m. on Monday, January 11, 2010. Counsel for Petitioner and the Indiana Office of Utility Consumer Counselor ("OUCC") appeared and participated in the Prehearing Conference.

Following the schedule set forth in the January 20, 2010 Prehearing Conference Order, the OUCC filed the direct testimony of its witnesses Duane P. Jasheway and Anthony A. Alvarez on February 25, 2010, and IMPA filed the rebuttal testimony and exhibits of J. Christian Rettig and L. Gayle Mayo on March 16, 2010.

On March 16, 2010, IMPA filed its motion to reopen the record in Cause No. 42455 in which the Commission approved a Certificate of Public Convenience and Necessity for the Generation Projects ("CPCN Order"), but later moved for leave to withdraw that motion in order to address the issue of modifying the CPCN Order in this Cause. On March 26, 2010, Petitioner filed its *Motion for Leave to Amend the Caption and the Relief Requested in the Verified Petition (With Consent [of the OUCC])* to include a request for modification of the CPCN issued in Cause No. 42455. The Presiding Officers granted IMPA's motion to amend the caption in a Docket Entry issued on March 29, 2010.

Prior the May 7, 2010 Evidentiary Hearing, IMPA also requested that the Commission take administrative notice of the Agency's "2009 Integrated Resource Plan" (the "2009 IRP") pursuant to 170 I.A.C. 1-1.1-21 (i)-(m), stating in support that the 2009 IRP was previously filed with the Commission on November 2, 2009 and that the Commission may take notice of "commission orders, or other documents previously filed with the Commission" pursuant to 170 I.A.C. 1-1.1-21(i) and (o). The 2009 IRP contained a detailed description of IMPA's participation in certain of the generating units comprising the generation expansion project ("Generation Expansion Project") approved in the CPCN Order. The Presiding Officers granted IMPA's motion to take administrative notice in a Docket Entry issued on April 6, 2010.

Pursuant to proper notice given as provided by law, an Evidentiary Hearing was convened at 9:30 a.m. on Friday, May 7, 2010 in Room 222 of the National City Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner and the OUCC appeared and participated in the hearing. There were no intervenors in this Cause and no members of the general public appeared. The direct testimony and exhibits of the parties were offered and admitted into evidence without objection. The Commission took administrative notice of IMPA's 2009 IRP, and the Agency's rebuttal testimony and exhibits were also offered and admitted into evidence without objection.

Based upon the applicable law, the evidence presented herein, and being duly advised, the Commission now finds:

1. Notice and Jurisdiction. Due, legal and timely notice of the hearing in this Cause was given and published as required by law. IMPA is a joint agency within the meaning of IC 8-1-2.2-2(c), created by contract among its member municipalities under IC 8-1-2.2-8. IMPA is a body corporate and politic and a political subdivision of the State of Indiana. As provided in IC 8-1-2.2-19, IMPA is not a "public utility," as defined in the Public Service Commission Act, IC 8-1-2-1(a), but is defined as a "public utility" for purposes of the Utility Powerplant Construction Act, IC 8-1-8.5-1(a)(2). IMPA has the statutory power to issue bonds for the purpose of paying the costs of any projects or purposes authorized by IC 8-1-2.2. However, IMPA may not finance projects, in whole or in part, without first obtaining the approval of this Commission under IC 8-1-2.2.

The issuance of any bonds necessary for IMPA to finance a portion of the costs of any of the generating units comprising the Generation Expansion Project is subject to Commission review and approval pursuant to IC 8-1-2.2-19(a). In addition, IMPA's request for an amendment to its Certificate of Public Convenience and Necessity ("CPCN") issued in Cause No. 42455 and its request for additional financing authority related to the Prairie State Project, one of the generating units comprising the Generation Expansion Project, give the Commission jurisdiction under IC 8-1-8.5 ("CPCN Statute"). Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. Petitioner's Organization and Business. Petitioner's principal office is located at 11610 N. College Avenue, Carmel, Indiana, 46032. Pursuant to the terms of Power Sales Contracts, IMPA provides all of the electric power and energy requirements of its 52 member municipalities, serving over 300,000 Hoosiers in the cities and towns of: Advance, Anderson, Argos, Bainbridge, Bargersville, Bremen, Brooklyn, Brookston, Centerville, Chalmers, Columbia City, Covington, Crawfordsville, Darlington, Dublin, Dunreith, Edinburgh, Etna Green, Flora, Frankfort, Frankton, Gas City, Greendale, Greenfield, Huntingburg, Jamestown, Jasper, Kingsford Heights, Knightstown, Ladoga, Lawrenceburg, Lebanon, Lewisville, Linton, Middletown, Paoli, Pendleton, Peru, Pittsboro, Rensselaer, Richmond, Rising Sun, Rockville, Scottsburg, Spiceland, Tell City, Thorntown, Tipton, Walkerton, Washington, Waynetown, and Winamac. Additionally, IMPA entered into a long term full requirements Power Supply Agreement with the Village of Blanchester, Ohio, in 2007.

3. **Relief Requested**. In the CPCN Order, the Commission authorized the Agency to issue bonds pursuant to IC 8-1-2.2 not to exceed the aggregate total amount of $850,000,000, net of original issue discounts and premiums, underwriter's discount and other issuance costs, for the purpose of financing the acquisition and construction of the electric generating units comprising the Generation Expansion Project. CPCN Order at 29. To date, IMPA has issued bonds in six series in an aggregate Net Proceeds amount of approximately $850,000,000 to finance the Trimble County Unit 2 Project, the Prairie State Project, and the Georgetown units, which exhausted the total amount of the financing authority the Agency received in Cause No. 42455 for the Generation Expansion Project. Petition at 4.

Since the issuance of the CPCN Order, however, the Prairie State Project experienced significant delays in permitting from 2004 to 2007, which caused construction and other costs to increase well beyond the amount of the estimated costs included in the evidence submitted in Cause No. 42455. Petition at 3. During this three-year period of delay, capital costs rose rapidly for construction-related equipment, materials and labor. *Id.* As of October 31, 2009, the Prairie State Project was approximately 34% complete and currently is on schedule to meet the planned commercial operation date of August 2011 for Unit 1 and May 2012 for Unit 2. *Id.* at 3-4.

In order for the Prairie State Project to be completed without interruption, and to protect the Agency's 12.64% joint ownership interest in the Prairie State Project, IMPA requested additional borrowing authority from the Commission in an amount sufficient to produce proceeds to IMPA net of original issue discounts and premiums, underwriter's discount and other issuance costs ("Net Proceeds"), not to exceed $122,130,000 to: (i) finance the remainder of its ownership interest in the Prairie State Project; (ii) pay interest during construction; and (iii) pay such other costs and reserves as authorized by IC 8-1-2.2-11. *Id.* at 3.

4. **Petitioner's Generation and Power Resources.** L. Gayle Mayo, the Agency's Executive Vice President and Chief Operating Officer, summarized the load IMPA serves and IMPA's power supply and transmission system. Pet. Ex. LGM at 2. IMPA provides wholesale electric power and transmission services to 53 municipal utilities in Indiana and Ohio and serves a total population that exceeds 320,000. *Id.* at 2. IMPA's 2008 non-coincident peak demand to serve these 53 communities was 1,158 megawatts ("MW"). *Id.* IMPA's power supply and transmission system includes (1) ownership interests in the 625 MW Gibson Generating Station Unit No.5 generating facility ("Gibson Unit 5"); (2) the 514 MW Trimble County Unit 1 Generating facility ("Trimble County Unit 1"); (3) seven wholly-owned combustion turbines and associated facilities aggregating 419 MW; and (4) certain transmission property and local facilities, which constitute part of the integrated transmission and distribution systems operated and maintained by Duke Energy. *Id.* at 2-3. IMPA also purchases power from four of its members who dedicate the capacity of their electric generating plants to IMPA pursuant to the terms of Capacity Purchase Agreements and has entered into long- and short-term purchases of power and energy from a variety of suppliers. *Id.* at 3. Additional details of IMPA's power supply and transmission system, as well as member-dedicated facilities and IMPA's supplemental power purchases, were provided in Petitioner's Exhibit LGM-5.

5. **Status of the Generation Expansion Project Approved in Cause No. 42455**. The CPCN Order approved IMPA's acquisition of and participation in several electric generation projects and associated bond financing for those projects which included 100 MW from the Trimble County Generating Unit 2 ("Trimble County 2"), 100 MW from the Thoroughbred Project, 200 MW from the Prairie State Project, and the purchase of Units 2 and 3 of the Georgetown Combustion Turbine Station. *Id.* at 4. In her testimony Ms. Mayo provided a brief description of the units as follows:

A. Georgetown Plant. Ms. Mayo testified that IMPA purchased Units 2 and 3 of the Georgetown Combustion Turbine Station and Indianapolis Power & Light ("IPL") operates the units on behalf of IMPA in conjunction with two units owned by IPL. *Id.*

B. Trimble County 2. Ms. Mayo testified that Trimble County 2 is being constructed by IMPA jointly with Louisville Gas & Electric Company and Kentucky Utilities (collectively "LG&E") and the Illinois Municipal Electric Agency ("IMEA"). *Id.* IMPA owns 12.88% of Trimble County 2, a nominal 750 MW (net) unit with a supercritical, pulverized coal boiler and a steam-electric turbine generator. *Id.* Ms. Mayo testified that all necessary environmental and siting permits have been obtained for Trimble County 2. *Id.* at 5. She stated that the generation from Trimble County 2 will be delivered to Indiana pursuant to an Interconnection and Operating Agreement between the Midwest Independent System Operator ("MISO") and LG&E, which provides for the construction of three miles of double circuit 345-kV line to loop the Ghent-Speed line through the Trimble County substation. *Id.* at 6. The Kentucky Public Service Commission has approved the transmission lines. *Id.* at 6-7. Construction on Trimble County 2 began in July 2006 and was 85% complete as of December 2009. *Id.* at 7. Ms. Mayo testified that the first firing of start-up fuel oil and coal is planned for early 2010 and commercial operation should begin in June 2010. *Id.* IMPA's most recent estimates showed costs for IMPA's ownership interest in Trimble County 2 at $1,590 per kilowatt. *Id.* at 13.

C. Thoroughbred Project. Although the CPCN Order approved IMPA's acquisition of a 100 MW ownership interest in the proposed Thoroughbred Project as part of the Generation Expansion Project, Ms. Mayo testified that Peabody Energy cancelled the Thoroughbred Project. *Id.* at 11. IMPA previously reported to the Commission that the Agency had not and would not be using any of the previously-authorized bond funds for the construction or acquisition of any part of the Thoroughbred Project. *Id.* at 12. A copy of IMPA's report in response to the Commission's request for an update on the status of the generation projects approved in Cause No. 42455 was attached to Ms. Mayo's testimony as Petitioner's Exhibit LGM-8. *Id.*

D. Prairie State Project. Ms. Mayo testified that the Prairie State Project consists of the Prairie State Energy Campus, related electric transmission system facilities, the Lively Grove coal mine and the Jordan Grove Coal Combustion Waste site. *Id.* at 7. She stated that IMPA is part of a consortium known as the Prairie State Generating Company, LLC ("PSGC") that is developing the Prairie State Project along with other public power entities and the Agency has a 12.64% ownership interest in the Prairie State Project. *Id.* at 8. The Prairie State Energy Campus will include two steam-electric turbine generators totaling approximately 1600 MW, contiguous coal reserves and a mine portal to supply Illinois coal to the Prairie State power plant. *Id.* at 8. PSGC estimated that the project-owned coal reserves will supply the plant for approximately 30 years. *Id.* at 2-3. IMPA's most recent estimates show costs for IMPA's ownership interest in the Prairie State Project at $2,802 per kilowatt. *Id.* at 13.

Following a protracted permitting and appeal process from 2004 to 2007, involving reviews from the U.S. EPA Environmental Appeals Board and petitions to the Seventh Circuit Court of Appeals, Ms. Mayo testified that all permits required to construct and operate the mine portal have been now issued. *Id.* at 9. The Illinois Environmental Protection Agency ("IEPA") has issued a prevention of significant deterioration ("PSD") permit and the National Pollution Discharge Elimination System ("NPDES") permit. *Id.* Ms. Mayo testified the Prairie State Project also includes the necessary transmission facilities to allow the generation at the plant to flow from the campus into the surrounding transmission system in a reliable manner and that the Federal Energy Regulatory Commission ("FERC") has approved an Interconnection Agreement under MISO's Open-Access Transmission Tariff. *Id.* at 10. As of December 2009, the Prairie State Project was 34% complete. *Id.* at 11. Ms. Mayo indicated construction schedules are on target for in-service dates of August 1, 2011 and May 1, 2012 for Prairie State Units 1 and 2, respectively. *Id.*

6. Additional Financing Necessary to Complete the Prairie State Project. In her testimony, Ms. Mayo explained why additional financing authority is necessary for IMPA to complete the Prairie State Project. *Id.* at 12. According to Ms. Mayo, IMPA provided estimated costs for each of the projects included in the Generation Expansion Project, and while those estimated costs were accurate at the time the estimates were made, the amount of the estimated costs was subsequently impacted in a material manner by a three-year delay in the planned startup of construction of the Prairie State Project caused by the lengthy permitting and appeals process. *Id.* Ms. Mayo also stated that capital costs in the industry have risen rapidly for construction-related equipment, materials, and labor which have increased the initially-estimated construction costs for the Prairie State Project. *Id.* at 12-13. Due to the delays and cost increases, Ms. Mayo testified that the existing financing authority, as provided in the CPCN Order, is insufficient to complete the Prairie State Project, even with the cancellation of the Thoroughbred Project. *Id.* at 13.

Ms. Mayo testified that obtaining the additional financing authority necessary to complete the Prairie State Project is critical to IMPA. *Id.* at 14. IMPA has used approximately $618.9 million of the financing authority provided by the CPCN Order for the Prairie State Project and reasonably needs an additional $122.1 million to finance its ownership interest in this Project. *Id.* at 14. She stated that if IMPA does not obtain the necessary financing authority to pay for its share of the remaining costs of the Prairie State Project, it could seriously jeopardize completion of the Project, and the millions of dollars of bonds already issued and funds invested by IMPA and its project partners. *Id.* at 14-15. While IMPA will not ultimately use the financing authority approved in Cause No. 42455 for the Thoroughbred Project, IMPA must maintain the CPCN as it relates to the other projects in, and its existing financing authority for, the Generation Expansion Project as reflected in the CPCN Order. *Id.* at 14.

Petitioner's next witness, J. Christian Rettig, Senior Vice President and Chief Financial Officer of IMPA, described the Petitioner's current financial position, presented information pertinent to Agency's capacity to issue additional debt, and explained the need to issue debt to finance the completion of the Prairie State Project. Pet. Ex. JCR at 1-2. Mr. Rettig presented IMPA's financial statements for the years ended December 31, 2007 and December 31, 2008 in Petitioner's Exhibit JCR-2, and testified that IMPA's financial position continues to be strong. *Id.* at 2. IMPA's 2008 revenues from sales to its member municipalities, which serve as security for IMPA's revenue bonds, increased approximately 13% over 2007 primarily due to load growth, rising purchased power and fuel costs. *Id.* The Agency's debt service coverage level for 2008 was 111.7%, compared to the minimum coverage level of 110% required by the Agency's Master Power Supply System Revenue Bond Resolution. *Id.* at 3. IMPA's total assets were approximately $1.2 billion at December 31, 2008 and IMPA's 2008 average cost per kilowatt-hour ("kWh") for electricity sold to its member municipalities was 5.54 cents, which continues to be very competitive, both in the industry as a whole and specifically in the State of Indiana. *Id.*

Mr. Rettig also testified regarding IMPA's bond financing activities and indicated that as of September 30, 2009, IMPA had approximately $1.2 billion (par value) of revenue bonds outstanding. *Id.* According to Mr. Rettig, IMPA has nearly exhausted the aggregate total amount of $850,000,000 in bond authority for the Generation Expansion Project approved in the CPCN Order, with $41.5 million used for the acquisition of the Georgetown Combustion Turbines, approximately $147.5 million used for the Trimble County Unit 2 project ($29.9 million of bond proceeds remain), and approximately $311.4 million used for the Prairie State Project ($273.5 million of bond proceeds remain). *Id.* at 3-4. In addition, Mr. Rettig testified that approximately $45.9 million has been placed into IMPA's Debt Service Reserve Fund, as required by IMPA's Bond Resolution. *Id.* at 4.

IMPA does not have adequate bond proceeds available to complete the Prairie State Project, according to Mr. Rettig, and the Agency needs the Commission's approval to issue additional bonds. *Id.* at 4. He testified that delays in permitting the Prairie State Project, combined with an unprecedented increase in construction costs, resulted in a situation where the portion of the $850,000,000 in financing approved in Cause No. 42455 that IMPA intended to use for the Prairie State Project fell short of the funds needed to complete the Project. *Id.* Mr. Rettig testified the total budgeted cost of the Prairie State Project is approximately $4.5 billion and IMPA's ownership share of the costs of the Prairie State Project will be approximately $567 million. *Id.* at 4-5. Mr. Rettig stated that to date, IMPA has issued bonds for the Prairie State Project totaling approximately $448 million. *Id.* at 5. Although IMPA expects to earn approximately $17 million of interest income over the life of the Prairie State Project from the investment of bond proceeds during construction, which will offset a small portion of the Project costs, Mr. Rettig testified that IMPA estimates it will need to borrow approximately $102 million to complete the construction of the Prairie State Project, plus interest during construction and any required additional funds necessary to fund the Debt Service Reserve Fund in accordance with IMPA's Bond Resolution. *Id.* The Prairie State Project budget provides for an approximate 10.5% contingency on the construction portion of the budget. *Id.* at 14.

Mr. Rettig next testified regarding the amount and estimated interest rate of the proposed financing. *Id.* at 6. He testified a bond financing providing total Net Proceeds (the par value of the bonds, plus any premiums received from the sale of the bonds, less any discounts paid from the sale of the bonds, less any bond issuance costs) of $122,130,000 will provide the funds necessary for IMPA to pay its share of the costs to complete the Prairie State Project. *Id.* According to Mr. Rettig, IMPA's proposed financing plan assumes the bonds will: (1) be primarily fixed rate tax-exempt bonds; (2) have an all-in total interest cost of approximately

5.4%; and (3) have a total life of approximately 30 years from the in-service date of the Prairie State Project. (Id.) He stated, however, that the terms of the proposed financing(s) will be determined at the time of issuance based on then current market conditions. *Id.*

As a result of its ownership interest in the Prairie State Project, IMPA has estimated an overall decrease in IMPA's total average system rates for electricity. *Id.* Mr. Rettig testified that IMPA expects a greater level of stability of operating costs from year to year since IMPA has purchased coal reserves as part of its ownership interest in the Prairie State Project and a larger portion of total operating costs will be fixed. *Id.* at 7. Mr. Rettig stated that IMPA is capable of meeting the associated debt service on the proposed additional incremental financing, as the Power Sales Contracts IMPA has entered into with its 53 member municipalities allow the Petitioner to include debt service as an explicit revenue requirement and recover that cost through IMPA's electric rates. *Id.* at 8. Mr. Rettig testified that all but one of the member municipalities decided to extend the terms of their Power Sales Contracts to April 2042, thus providing collateral for this proposed financing. *Id.*

Mr. Rettig concluded his testimony by indicating that he believes that the relief IMPA is requesting is necessary and consistent with the public interest. *Id.* at 8-9. Granting IMPA's request to issue bonds in an amount sufficient to produce Net Proceeds not to exceed $122,130,000 would permit IMPA to fund its remaining obligation and allow the Prairie State Project to be completed and placed in service. *Id.* at 9.

7. <u>OUCC's Case-in-Chief testimony</u>. Mr. Duane P. Jasheway, a Utility Analyst in the Electric Division within the Energy Group of the Indiana Office of Utility Consumer Counselor, recommended approval of the IMPA's request to issue bonds providing Net Proceeds not to exceed $122,130,000 for the purpose of financing a portion of the electric Generation Expansion Project approved in Cause No. 42455. Public's Ex. No. 1 at 2-3.

Mr. Jasheway agreed with the history of the Generation Expansion Project provided by Ms. Mayo and testified that, after gaining the initial approval for these projects in August of 2004, several environmental challenges were levied against the Prairie State Project by groups, such as the Sierra Club and Valley Watch, which continued for years and significantly delayed the acquisition of the proper permits before construction could continue in 2007. *Id.* at 4. He confirmed that prices had increased dramatically during the period of this delay, and when construction was able to begin, actual expenses had escalated far beyond the initial estimates. *Id.* at 4-5. Had the Thoroughbred Project not been cancelled, according to Mr. Jasheway, the additional bonding authority requested in this Cause presumably would have been even more significant. *Id.* at 6.

In terms of dollars per kilowatt of capacity, Mr. Jasheway disagreed with the current costs of these projects estimated by Ms. Mayo. *Id.* at 6-7. While Ms. Mayo estimated the cost of these projects at $1,590 per kilowatt for Trimble County 2 and $2,802 per kilowatt for Prairie State Project, Mr. Jasheway's estimates were closer to $1,870 and $3,664 per kilowatt, respectively. *Id.* at 7. While he questioned whether these projects would be considered viable alternatives today if hundreds of millions of dollars had not already been invested, Mr. Jasheway testified it would be improper to use "20/20 hindsight" to re-evaluate these projects. *Id.*

Mr. Jasheway testified that IMPA currently enjoys a sound financial position and applies sound financing practices. *Id.* at 7-8. According to Mr. Jasheway, IMPA's strengths include the fact that: it has garnered extensions of all-requirements contracts with 52 of its 53 member utilities through 2042; it has a diverse customer profile; and, is has sufficient power resources for the next several years. *Id.* Mr. Jasheway noted that IMPA consistently receives bond ratings of A+/A1 from the bond rating agencies of Fitch, Moody's and cited Standard and Poor's "Stable" Outlook Rating of IMPA based on " ... the strength of IMPA's rate structure, adequate financial policies, and the utility's demonstrated ability to adjust rates to ensure full cost recovery." *Id.* Mr. Jasheway testified that IMPA was well positioned to handle the $122,130,000 of additional debt impact and that he believes that IMPA's proposed financing plan is reasonable. *Id.* at 8.

According to Mr. Jasheway, if IMPA's request for additional funds is not approved, the consequences could be substantial and far reaching. *Id.* at 9. Such action would place the completion of the Prairie State Project in jeopardy, and introduce uncertainty with respect to the hundreds of millions of dollars already invested by IMPA and its project partners. *Id.* Mr. Jasheway testified that while the costs of these various projects have escalated significantly, benefits will still accrue to IMPA's members through greater cost certainty, overall lower operating costs, and the fact that the additional generation facilities will be owned by IMPA. *Id.*

While the OUCC did not object to the proposed financing in this Cause, Mr. Jasheway did recommend that the Petitioner file a report with the Commission documenting the terms of the loan, the interest rate, and the collateral pledged to secure the loan. *Id.* The OUCC also recommended that the Petitioner provide written notification to the Commission and the OUCC within thirty days after any project funded by these requested borrowings is completed. *Id.* at 9-10. According to Mr. Jasheway, the report should describe the project with sufficient detail to be reviewed and understood by Commission and OUCC technical staff, reflect the actual cost of the project, and address any deviations in the scope or in the financial nature of the project from that presented by Petitioner in this Cause. *Id.*

Mr. Anthony A. Alvarez also provided testimony on behalf of the OUCC in this Cause. Public's Ex. No. 2 at 3. In his testimony, Mr. Alvarez compared IMPA's "Planned Resources" in its 2009 IRP to its capacity and resource requirements in this Cause. *Id.* at 6. IMPA reflected its need for additional capacity in its 2009 IRP, which listed IMPA's 2009 non coincident peak ("NCP") demand at 1,103 MW and its available reserves at 206 MW. *Id.* IMPA-owned and member-dedicated generating capacity is 742 MW or 67.27% of its NCP demand, with the remainder served by purchased power, of which approximately 566 MW is sourced through power marketers. *Id.* Although IMPA already has reaped some benefits of its Generation Expansion Project through the ownership of new resources in the form of Georgetown Combustion Turbines ("CT") Units 2 & 3, Mr. Alvarez testified that IMPA's projected energy sales will continue to grow. *Id.* at 6-7. He testified IMPA's peak demand projections were in line with the OUCC's analysis, as well as that of the SUFG base projections, and that IMPA's total projected energy sales growth is being driven by members in the Duke Energy Indiana, Duke Energy Ohio, and Northern Indiana Public Service Company load zones. *Id.* at 7-8.

Mr. Alvarez testified that he believes that it is prudent for IMPA to reduce the amount of purchased power from its resource portfolio and that IMPA's strategic decision to avoid exposure to the expected future shortfall in generation resources is well documented in its 2009 IRP, and represents a sound policy choice among available alternatives in meeting its members' need for electric service. *Id.* at 9. The situation IMPA was facing in Cause No. 42455 is still true in this Cause, and Mr. Alvarez stated the OUCC finds that IMPA's need for additional generation capacity to serve its members' needs still exists and is as true today as it was five to eight years ago. *Id.*

While expressing general support for the Petitioner's request for approval of IMPA's request to issue bonds for the purpose of financing a portion of its Electric Generation Expansion Projection previously approved by the Commission in Cause No. 42455, Mr. Alvarez briefly described the OUCC's concerns regarding the current state of the IMPA Generation Expansion Project. *Id.* at 10 and 13. Mr. Alvarez indicated that he found it disconcerting that IMPA needed additional financing after the cancellation of the 100 MW Thoroughbred Project, which he believed should have provided Petitioner with additional funds to be allocated to the remaining projects. *Id.* at 10. He also expressed the OUCC's concern over the significance of the projected cost escalation and suggested the Prairie State project cost escalations were on par with what one might expect with an IGCC plant. *Id.* at 11. Mr. Alvarez further testified that he believes that the Petitioner should at least seek permission to modify its cost estimates that the Commission approved in Cause No. 42455, particularly as the financing request and CPCN are inextricably intertwined in this situation. *Id.* at 12.

8. <u>Petitioner's Rebuttal Testimony</u>. Ms. Mayo responded to issues raised in the OUCC's testimony pertaining to IMPA's capacity and need to issue debt to finance the completion of the Prairie State Project. Pet. Ex. LGM-Rebuttal at 1. She clarified that at the time the Commission approved the Generation Expansion Project in 2004, the Prairie State Project was included with the Thoroughbred Project under "Peabody Projects," and IMPA assumed for purposes of its testimony and exhibits in Cause No. 42455 that the Prairie State Project would have costs similar to the estimated costs for the Thoroughbred Project. *Id.* at 2. Ms. Mayo testified that the Peabody Projects were in such a preliminary stage of development in 2004 that comprehensive original project schedules and budgets simply did not exist. *Id.* Since the approval of the CPCN Order in August 2004, IMPA has provided the Commission and the OUCC with updated information for the Generation Expansion Project in each of its three subsequent Integrated Resource Plans filed respectively in 2006, 2007 and 2009. *Id.* Due to the unanticipated market increases and the economic instability that has occurred since 2004, IMPA could not have set a budget for a contingency amount sufficient to cover the actual cost increases experienced at Prairie State in 2004 that would not have been considered excessive. *Id.* at 3.

Ms. Mayo agreed with the OUCC's position that IMPA's requirement for additional generation capacity to serve its members' needs still exists and is as true today as it was five to eight years ago. *Id.* However, Ms. Mayo did not agree that the Prairie State Project cost escalations are on par with one might expect with an IGCC plant. *Id.* She indicated that if coal mine development and transmission costs were removed from the cost of the Prairie State Project, the cost per kilowatt is \$3,130. *Id.* She testified Trimble County Unit 2 and Prairie State were economic and prudent projects and those projects continue to be viable today. *Id.* at 5.

According to Ms. Mayo, the foregoing projects are a necessary part of IMPA's future generation resource portfolio. *Id.* She testified IMPA will file reports in this Cause after construction is completed on Trimble County Unit 2, and after each of the two units are completed at Prairie State. *Id.* Those reports will include a description of each project's costs and any deviations in the scope of the project budget from what IMPA presented in this Cause.

Id. In response to Mr. Alvarez's suggestion that IMPA should amend its CPCN issued in Cause No. 42455 for the Generation Expansion Project, Ms. Mayo indicated IMPA notified the Commission that it will not be issuing any bonds related to the Thoroughbred Project through a filing in Cause No. 42455, because that is the proceeding in which the Commission approved the CPCN. *Id.* at 6. Ms. Mayo testified that she believes that the bonding authority provided by the CPCN in Cause No. 42455 should remain the same, at net proceeds of $850,000,000 and the CPCN remain in place for Prairie State and Trimble County Unit because any amendment to the CPCN as to those on-going projects would seriously jeopardize completion of construction, and the millions of dollars of bonds already issued and funds invested by IMPA and its project partners, the majority of which are also public power entities. *Id.* at 6-7.

Mr. Rettig also provided rebuttal testimony to address the financial issues raised in the OUCC's testimony pertaining to IMPA's capacity and need to issue debt to finance its share of the costs necessary to complete construction of the Prairie State Project. Pet. Ex. JCR-Rebuttal, at 1. He noted that IMPA's project cost estimates of $1,590 per kilowatt for Trimble County Unit 2 and $2,802 for the Prairie State Project do not include interest during construction associated with the financing of the projects, which is typically excluded by utilities when computing on a cost per kilowatt basis because variables such as cost of capital, source of capital, timing of borrowing and the construction period can vary greatly from project to project. *Id.* at 1-2. IMPA only includes project costs, and includes interest during construction in its rates once a project is complete, which is an "apples to apples" manner of comparison of the costs per kilowatt (kW) of different projects. *Id.* at 2.

Mr. Rettig testified that Mr. Jasheway's estimates of the cost per kW were a bit high, as Mr. Jasheway included estimated funds to be borrowed for a deposit to the debt service reserve fund in his computation of cost per kilowatt. *Id.* at 2-3. According to Mr. Rettig, these funds should not be included when calculating the cost per kW of the project because they are held in trust over the life of the bonds as additional security for the bondholders and will be used to pay the final installment of principal and interest on the bonds. *Id.* at 3. After recomputing the cost per kW of Trimble County Unit 2 and the Prairie State Project with the addition of cost of interest during construction, Trimble County Unit 2's cost per kW, including interest during construction and excluding transmission costs and funds borrowed to be deposited to the debt service reserve fund is $1,777 and the Prairie State Project's cost per kW, including interest during construction and excluding transmission costs, coal reserves and mine development costs and excluding funds borrowed to be deposited to the debt service reserve fund is $3,464. *Id.*

According to Mr. Rettig, important considerations when looking at the calculated cost per kW of the Prairie State and Trimble County Unit 2 Projects are that each project included the cost to build transmission facilities, and the Prairie State Project also included the cost of coal reserves and mine costs. *Id.* At $1,777 per kilowatt, Mr. Rettig testified there can be no question that the Trimble County Unit 2 is a viable, competitively-priced generation alternative. *Id.* at 7. He also noted the Prairie State Project has locked in the cost of the coal reserves for the next 30 years at a very competitive price, and since the coal mine is at the site, Prairie State has eliminated significant future costs related to the transportation of coal. *Id.* at 4. While IMPA estimates it has adequate proceeds from the bonds previously issued to cover Prairie State Project construction costs through early 2011, it is necessary for the Commission to authorize IMPA to issue the remaining bonds for the Prairie State Project at the earliest date possible due to concerns that interest rates on bonds could increase late in 2010 and early 2011. *Id.*

Mr. Rettig testified that uncertainty surrounding the continuation and form of the Build America Bond program under the American Recovery and Reinvestment Act of 2009 could, as early as 2011, reduce IMPA's financing alternatives or the benefits IMPA could derive from those financings as a political subdivision of the State of Indiana. *Id.* The Build America Bond program provides funding for state and local governments for utility and other projects at lower borrowing costs than what is available from the traditional tax-exempt bond market. *Id.* at 5. Under the program, the Treasury Department will make a direct subsidy payment to the state or local governmental issuer in an amount equal to 35% of the interest payment on the taxable Build America Bonds. *Id.* Although it is set to expire at the end of 2010, Mr. Rettig testified the Obama Administration has included a recommendation in its fiscal 2011 budget that the Build American Bonds be made a permanent tax-advantaged financing tool. *Id.* Included in the administration's plan is the recommendation that the current Federal subsidy decrease from 35% to 28% beginning January 1, 2011, which would effectively increase interest rates. *Id.* There is also legislation pending in the Senate that would replace traditional tax-exempt financing with tax credit bonds providing a tax credit equal to 25% of the interest cost on the bonds. *Id.* at 5-6.

Mr. Rettig concluded his testimony by stating IMPA believes it is prudent to issue bonds prior to the fourth quarter of 2010 when, due to the holidays, activity in the bond markets decreases significantly. *Id.* at 6. After the execution of any borrowing done pursuant to the authority granted in this Cause, IMPA proposes to file a copy of the Official Statement(s) with the Commission documenting the terms of the bonds, the interest rate, and the collateral pledged to secure the bonds. *Id.* at 7.

9. <u>IMPA's Response to the Commission's May 3, 2010 Docket Entry</u>. On May 5, 2010, IMPA responded to questions the Commission posed in a docket entry and that response was admitted into evidence at the May 7, 2010 hearing. IMPA indicated that the Agency's 2009 IRP utilized the same October 2009 Prairie State budget information that was used to prepare Ms. Mayo and Mr. Rettig's testimony in this Cause. IMPA has continued to compare the projected cost of power from the Prairie State Project to forward or projected market prices in the Midwest ISO market. IMPA's analysis indicates that although the cost advantage of the Prairie State Project compared to market prices has varied over time, the comparison continues to be favorable for the Prairie State Project.

10. <u>Discussion and Findings by the Commission under IC 8-1-2.2-19(a) with respect to the Prairie State Project</u>.

A. <u>Economic and Technical Feasibility.</u> Based upon the evidence submitted by Petitioner and the OUCC, we find that completion of the Prairie State Project will result in economic benefits to IMPA's members and the Project will continue to be economically and technically feasible after issuance of the additional debt authorized by this Order.. As a result of its ownership interest in all of the generating units comprising the Generation Expansion Project, IMPA has estimated an overall decrease in its total average system rates and a greater level of stability of operating costs from year to year. Pet. Ex. JCR at 6.

B. Integration with Transmission Facilities. Based upon the testimony and exhibits filed in Cause No. 42455, we previously found in the CPCN Order that the Prairie State Project will be integrated with existing transmission facilities in a manner that will avoid economic and physical duplication of existing transmission line facilities. We further found in the CPCN Order that IMPA owns or ultimately will have access to transmission facilities necessary to transmit power and energy from the generating units comprising the Generation Expansion Project to its member municipalities.

C. Reasonableness of Financing. The evidence presented in this Cause demonstrates that Petitioner is capable of obtaining financing on reasonable terms necessary to complete the Prairie State Project. IMPA finances projects, subject to the Commission's approval, under the provisions of IC 8-1-2.2-11. IMPA has an A+/A1 rating from all three nationally recognized rating agencies (Moody's, Standard & Poor's and Fitch). With respect to IMPA's capacity to issue additional debt to finance the remaining costs associated with the Prairie State Project, the testimony in this Cause demonstrates that IMPA's estimated bond financing providing total Net Proceeds of $122,130,000 will: (1) be primarily fixed rate tax-exempt bonds; (2) have an all-in total interest cost of approximately 5.4%; and (3) have a total life of approximately 30 years from the in-service date of the Prairie State Project. (Id.) He stated, however, that the terms of the proposed financing(s) will be determined at the time of issuance of bonds based on then current market conditions. Pet. Ex. JCR at 8-9.

The Commission finds that IMPA's proposed financing approach for its share of the remaining costs of the Prairie State Project is reasonable. Therefore, the Commission, consistent with our additional findings herein regarding the amendment of the CPCN issued by the Commission in Cause No. 42455, finds that IMPA should be authorized to issue debt in an amount sufficient to provide total Net Proceeds (the par value of the bonds, plus any premiums received from the sale of the bonds, less any discounts paid from the sale of the bonds, less any bond issuance costs) of $122,130,000 for IMPA to pay its share of the costs to complete the Prairie State Project.

11. Discussion and Findings by the Commission with respect to IC 8-1-2.2-19(a)(7) Requirements. The determinations of the governing bodies of municipal members of IMPA with respect to the items listed in IC 8-1-2.2-8(b) previously has been approved by this Commission in its Order entered October 27, 1982 in Cause No. 36835 and reiterated in the CPCN Order. Accordingly, we find that Petitioner has satisfied the requirements of IC 8-1-2.2-19(a)(7).

12. Discussion and Findings by the Commission under IC 8-1-8.5.

A. Reasonableness of Prairie State Project Costs. The testimony presented in this matter demonstrates that additional financing authority is necessary for IMPA to complete the Prairie State Project. Although, IMPA provided estimated costs for each of the projects included in the Generation Expansion Project in Cause No. 42455, the amount of the estimated costs has been subsequently impacted in a material manner by a three-year delay in the planned startup of construction of the Prairie State Project due to the lengthy permitting and appeals process. In addition, the testimony presented in this matter demonstrates that capital costs in the industry have risen rapidly for construction-related equipment, materials, and labor which increased the initially-estimated construction costs for the Prairie State Project. The Commission notes that capital costs associated with construction related equipment, materials, and labor have generally increased over the past few years and have supported an increase in projected project costs in other proceedings before the Commission. *See*, Cause No. 43114 IGCC 1 (*Ind. Util. Reg. Comm'n*, January 7, 2009).

In certain respects the evidence in this proceeding regarding increasing costs is consistent with the Commission's prior consideration of this issue. However, the issues in this proceeding go beyond the mere increase in costs, and present legal issues regarding IMPA's unilateral determination that it could appropriately utilize funding approved by the Commission in the CPCN Order, including amounts approved for the construction of the cancelled Thoroughbred Plant, without the timely amendment of its CPCN. While IMPA belatedly recognized that its CPCN needed to be amended to address the fundamental change in the approved Generation Expansion Project, the time to seek such an amendment was when IMPA became aware that the Thoroughbred Plant would not be included in the Generation Expansion Project. Such a timely request would have allowed the Commission to consider this change to its approval in Cause No. 42455, and adjust the level of approved financing accordingly. The need to amend the Petitioner's CPCN was discussed by the OUCC in its testimony and ultimately undertaken in this proceeding.

The change in the scope of the Generation Expansion Project that resulted from the cancellation of the 100 MW Thoroughbred Project effectively provided the Petitioner with an additional level of contingency funding which was not approved by this Commission. While the OUCC recognized that absent the utilization the approved financing to address cost overruns, the financing requested in this proceeding would be even greater, we find it disconcerting that IMPA utilized these additional funds and still needed to come back to the Commission to request additional financing in this proceeding. While IMPA provided ample evidence in this matter with respect to the general overall increase in capital costs associated with construction related equipment, materials, and labor, there is less evidence regarding the specific efforts that IMPA undertook to manage and control the costs of the Generation Expansion Project which we would expect to see in a project of this magnitude.

Notwithstanding the foregoing concerns, based on the evidence presented in this proceeding, and the level of expenditures to date, the Commission finds that the estimated cost of the Prairie State Project has been reasonably quantified and represents a reasonable total cost for a project of this nature and scope to justify a one-time adjustment in the overall bonding authority approved in this matter. In reaching this conclusion, the Commission recognizes that, at this juncture, not completing the project does not appear to represent an economically viable alternative to approval of the additional bonding authority requested in this proceeding. However, we also recognize that it is the Petitioner's responsibility to closely monitor the expenditures approved by this Commission in a manner that ensures that a request for additional bonding authority regarding the Generation Expansion Project will not be presented to the Commission.

Accordingly, in an effort to monitor the approval granted herein and the progress of the Generation Expansion Project, we find that the Petitioner should submit a compliance filing in this Cause, within thirty (30) days of closing on the bonding approved under this Order, documenting the terms of the agreement, including the term of the loan, the interest rate, and the collateral pledged to secure the loan. The Petitioner shall also provide semi–annual updates in this Cause, with the first filing submitted on January 3, 2011, regarding the current status of construction all aspects of the Generation Expansion Project.

B. Need for Additional Resources and Analysis of Alternatives. Based upon the evidence IMPA submitted, as summarized in our findings related to the satisfaction of the requirements of IC 8-1-2.2-19(a), we find that Petitioner needs the additional generation from the Prairie State Project in order to reliably provide power and energy to its municipal members. IMPA's 2009 IRP reflects its need for additional capacity, as it indicates that IMPA-owned and member-dedicated generating capacity is 742 MW or 67.27% of NCP demand, with the remainder served by purchased power, of which approximately 566 MW is sourced through power marketers.

IMPA has projected that its energy sales are projected to grow, and the Agency demonstrated in this proceeding that it intends to change its strategic plan by reducing its exposure to risk from meeting and serving its existing load and future native load through purchased power. IMPA's strategic decision to avoid exposure to the expected future shortfall in generation resources is documented in its 2009 IRP, and represents an appropriate policy choice among available alternatives in meeting its members' need for power and energy.

C. Public Convenience and Necessity. Based on the evidence presented in this matter, the Commission finds that the estimated costs of the Prairie State Project are reasonable and the Project continues to represent a reasonable alternative from which IMPA will be able to obtain economical and reliable power for its municipal members upon completion of the Project. The evidence demonstrated that implementation of the Prairie State Project will result in cost-savings to IMPA's members and provide IMPA with additional benefits of owning generation and not having to rely as heavily on purchased power.

Based on the foregoing evidence, and the fact that the Prairie State Project is consistent with the least-cost planning standard established by IC 8-1-8.5-1 *et seq.*, we find that the Prairie State Project continues to be in the public interest and the public convenience and necessity require its completion. We further find that authority should be granted to Petitioner under IC 8-1-2.2 to issue bonds in an amount sufficient to produce proceeds to IMPA net of original issue discounts and premiums, underwriter's discount and other issuance costs not to exceed $122,130,000 to finance the remainder of the Agency's 200 MW ownership interest in the Prairie State Project previously approved by the CPCN Order. We further find that the CPCN issued in Cause No. 42455 should be amended to delete the cancelled Thoroughbred Project and to reflect that the total bonding authority approved for the Generation Expansion Project is $972,130,000.

13. Confidential Exhibit. In Docket Entries dated December 16, 2009 and March 22, 2010, the Presiding Officers made preliminary findings that certain designated information marked "confidential" and submitted pursuant to the terms of a Petition for Confidential Treatment should be treated as confidential in accordance with IC 5-14-3-4 and that confidential procedures should be followed with respect to this confidential information. The Commission confirms the preliminary findings and concludes that Petitioner's Confidential Exhibits JCR-6 and JCR-R2. Accordingly, Petitioners' Confidential Exhibits JCR-6 and JCR-R2 are exempt from the public access requirements of IC 5-14-3-3, IC 8-1 -2-29, and IC 24-2-3-1 and shall be held to be confidential by the Commission.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORYCOMMISSION THAT:

1. Consistent with the findings set forth herein, Petitioner is hereby granted authority to issue debt pursuant to IC 8-1-2.2 in one or more transactions, in an amount sufficient to produce proceeds to IMPA net of original issue discounts and premiums, underwriter's discount and other issuance costs, not to exceed $122,130,000 to finance the Agency's joint ownership interest necessary for the completion of the Prairie State Project.

2. The Petitioner shall submit a compliance filing in this Cause within thirty (30) days of closing on the bonding approved by this Order, documenting the terms of the agreement, including the term of the loan, the interest rate, and the collateral pledged to secure the loan.

3. The CPCN issued in Cause No. 42455 is hereby amended to delete the cancelled Thoroughbred Project and to reflect that the total bonding authority approved for the Generation Expansion Project is $972,130,000.

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

ATTERHOLT, LANDIS, MAYS AND ZIEGNER CONCUR; HARDY ABSENT:

APPROVED: JUL 14 2010

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

Brenda A. Howe

Brenda A. Howe
Secretary to the Commission