

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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

CAUSE NO. 44033

ORDER ON LESS THAN ALL  
THE ISSUES

APPROVED: FEB 22 2012

ORDER OF THE COMMISSION

**Presiding Officers:**

**Kari A.E. Bennett, Commissioner**

**Angela Rapp Weber, Administrative Law Judge**

On June 1, 2011, Indiana Michigan Power Company ("I&M" or "Petitioner") filed its Verified Petition requesting Indiana Utility Regulatory Commission ("Commission") approval of clean coal and energy projects and qualified pollution control property ("QPCP") and for issuance of a certificate of public convenience and necessity ("CPCN") to use clean coal technology to allow I&M to reduce airborne emissions of sulfur dioxide ("SO<sub>2</sub>"), nitrogen oxides ("NO<sub>x</sub>"), acid gases, mercury ("Hg"), particulate matter and other hazardous air pollutants ("HAPS") from existing coal-fired steam electric generating units. On June 14, 2011, the Indiana Michigan Industrial Group ("Industrial Group") filed its Petition to Intervene. On June 23, 2011, Steel Dynamics, Inc. ("SDI") filed its Petition to Intervene. The Petitions to Intervene were granted by Docket Entries dated June 28, 2011 and July 8, 2011, respectively.

On August 1, 2011, I&M filed its case-in-chief. On December 13, 2011, I&M, the Industrial Group, and the Office of Utility Consumer Counselor ("OUCC") (collectively, the "Settling Parties")

filed their Joint Motion for Leave to Submit Settlement Agreement, for Issuance of Order on Less Than All the Issues and for Modification of Procedural Schedule (“Joint Motion”). SDI did not oppose the Settlement Agreement or the requests made in the Joint Motion. On December 20, 2011, I&M and the OUCC filed testimony and exhibits in support of the Settlement Agreement. On January 6, 2012 and January 17, 2012, the Presiding Officers issued Docket Entries requesting information from I&M, to which I&M responded on January 13, 2012 and January 18, 2012.

Pursuant to notice published 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 hearing was held in this Cause on January 19, 2012 at 1:30 p.m. in Room 222, 101 West Washington Street, Indianapolis, Indiana. Petitioner, the OUCC, and Industrial Group participated in the hearing. No members of the general public appeared. At the hearing, Petitioner and the OUCC offered their evidence, which was admitted into evidence without objection.

The Commission, based upon the applicable law and the evidence of record, now finds as follows:

1. **Notice and Jurisdiction.** Due, legal, and timely notice of the public hearing in this Cause was given and published by the Commission as required by law. Petitioner operates a public utility and, as such, is subject to the jurisdiction of the 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. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Petitioner’s Organization and Business.** I&M is a public electric generating utility, organized and existing under the laws of the State of Indiana, with its principal office and place of business at One Summit Square, Fort Wayne, Indiana. I&M is engaged in rendering electric service in the State of Indiana, and owns, operates, manages and controls, among other properties, plant and equipment within the State of Indiana that are used for the generation, transmission, delivery and furnishing of such service to the public. I&M is a “public utility” under Ind. Code §§ 8-1-2-1 and 8-1-8.7-2 and is an “eligible business” as defined in Ind. Code § 8-1-8.8-6. I&M’s operations are subject to federal and state rules promulgated by, among others, the United States Environmental Protection Agency (“EPA”), the Indiana Department of Environmental Management (“IDEM”) and by the Air Pollution Control Board of the State of Indiana. Such rules establish environmental compliance standards that govern emissions from I&M’s electric generating units.

3. **Relief Sought.** In its Petition, I&M seeks Commission approval to construct, install, and operate dry flue-gas desulfurization and Selective Catalytic Reduction systems at one of the units at the Rockport Plant, an existing coal-fired steam electric generating facility (“Projects”). I&M considers the Rockport Environmental Projects to be advanced technologies designed to reduce SO<sub>2</sub>, NO<sub>x</sub>, acid gases, Hg, particulate matter, and HAPS from existing coal-fired steam electric generating units. I&M also requests Commission approval of financial incentives, including timely recovery through I&M’s existing Clean Coal Technology Rider (“CCTR”) subject to actual reconciliation of carrying costs incurred during construction and post in-service costs of the Projects, including a weighted average cost of capital carrying cost, depreciation, and operation and maintenance costs (including consumables).

The Settling Parties, however, ask the Commission to approve in this Order the Settlement

Agreement, which is an agreement reached on less than all the issues presented by the Petition. The Settlement Agreement, among other things, asks the Commission to approve I&M's recovery as capital costs through the CCTR the Indiana jurisdictional portion of up to \$10 million to perform the Phase I work described in I&M's case-in-chief. Therefore, the Commission will address in this Order the issues raised in the Settlement Agreement; the remaining issues in this Cause will be addressed at a later date.

4. **The Settlement Agreement.** Pursuant to the Settlement Agreement, the Settling Parties agree it is in the public interest for I&M to continue its work to validate the cost estimate for the engineering, design, construction, and use of the Projects. Further, I&M should be authorized to defer for subsequent recovery as capital costs through its CCTR the Indiana jurisdictional portion of up to \$10 million to perform the Phase I work outlined in I&M's case-in-chief. The Phase I work includes the Project Plan, Project Feasibility Study, and Budgetary Cost Estimate and Implementation Schedule. The Settlement Agreement provides that no later than April 2, 2012, I&M will provide the Project Plan, Project Feasibility Study, and validation of the Budgetary Cost estimate to the Settling Parties. Opportunities for discussion concerning this information, including the identification of the Rockport Unit on which the Projects will be installed, the status of lease negotiations on Unit 2, and the AEP Interconnection Agreement. According to the Settlement Agreement, I&M will make any regulatory filings required to implement the outcome of its Rockport 2 lease in a separate proceeding.

5. **Testimony in Support of the Settlement Agreement.** Marc Lewis, I&M's Vice President of External Relations, provided an overview of the Settlement Agreement and explained from I&M's perspective why approval of the Settlement Agreement is in the public interest. Mr. Lewis said regulations imposed by the EPA, including the Cross-State Air Pollution Rule ("CSAPR") and the Electric Generating Unit Maximum Achievable Control Technology ("EGU MACT") Rule, require the pollution control equipment to be installed in order for the coal-fired units to continue to generate electricity. The Commission's approval was sought because I&M believes the Projects are clean coal technology, air pollution control devices, qualified pollution control property, and clean coal and energy projects as those terms are used in Indiana's regulatory framework. Mr. Lewis testified the Rockport units are among the largest coal-fired units in the country, but are similar to four other 1,300 MW coal-fired units owned and operated by AEP.

Mr. Lewis said work on the Projects is ongoing and occurred before and after the filing of I&M's Petition and case-in-chief. The approach taken in this Cause was necessitated by the short compliance deadlines imposed by federal environmental regulations. The short compliance deadlines imposed by the EPA necessitate that the state approval process, the cost validation, and other work be done on parallel paths.

Mr. Lewis stated the cost estimate presented in I&M's prefiled verified case-in-chief is based on actual recent experience with similar projects at similar AEP coal-fired facilities. In the discussions surrounding the Settlement Agreement, the other parties desired to see the outcome of the cost validation process that is currently underway as part of Phase I activities. Mr. Lewis stated I&M understands the desire for more information. However, Petitioner is also mindful of the compliance deadlines, the likely need to curtail generating facilities until the pollution controls are installed, and the potential for the cost of the proposed Projects to increase over time due to the industry demand and other factors beyond I&M's control. In Mr. Lewis's opinion, the Settlement Agreement balances these factors and provides a reasonable path forward for the pre-filing of additional evidence, public hearing, and issuance of a Final Order on the outstanding issues.

Mr. Lewis outlined the modified procedural schedule set forth in the Settlement Agreement and noted the goal is to receive a Final Order regarding the remaining issues from the Commission by September 30, 2012. This date is important because the Petitioner would like to enter into contracts with major equipment manufacturers and other vendors as soon as practicable for overall cost mitigation, environmental compliance deadlines, and the abatement of facility curtailment. Further, due to the cost involved with the Projects and the importance of State review of the costs that will be recognized for ratemaking purposes, Petitioner needs to obtain the Commission's approval of the Projects consistent with Indiana's pre-approval framework before committing significant resources.

Mr. Lewis stated neither the installation of flue-gas desulfurization equipment nor the state regulatory process can be performed overnight. Therefore, it may be necessary for I&M to curtail its units, change priority of dispatch or short-term generation levels, or take other actions to maintain compliance with emission limitations and the requirements of the CSAPR and EGU MACT Rule, and New Source Review Consent Decree. Mr. Lewis testified I&M believes the public convenience and necessity will be served by the parties cooperating so the Commission may issue its Final Order as soon as possible (and not later than September 30, 2012). In Mr. Lewis's opinion, the terms of the Settlement Agreement are reasonable, serve the public interest, and should be approved by the Commission.

Mr. Ronald Keen, Senior Analyst in the OUCC's Resource Planning and Communications Division, also testified in support of the Settlement Agreement. Mr. Keen explained how the Settlement Agreement provides the parties an opportunity to review essential documentation related to the Projects, as well as the ability to evaluate in detail the potential cost of the Projects to ratepayers.

Mr. Keen stated I&M believes the installation of the Projects provide it with the ability to comply with existing and potential future EPA requirements. The Projects, according to I&M, will also allow the Rockport facility to use Illinois Basin coal, as opposed to the mix currently in use at the facility. Petitioner estimates the total cost of the Projects to be approximately \$1.414 billion, of which \$707 Million would be allocated to I&M. He added that of the \$707 million, the Indiana portion of the cost would be approximately \$457 million (65% of the cost). Mr. Keen said a final decision as to which unit will be upgraded is expected soon.

Mr. Keen discussed the significance of the Phase I work, including the Project Plan, Project Feasibility Study and Budgetary Cost Estimate, and Implementation Schedule.<sup>1</sup> He said the OUCC will use the Project Plan and Project Feasibility Study to evaluate the Projects from the holistic view, as well as a mechanical and purpose-oriented perspective. These two documents offer the ability to determine if the Projects will meet the stated requirements for Petitioner and if the completion of the Projects remain in the interest of the ratepayers. Mr. Keen stated I&M anticipates the Budgetary Cost Estimate and Implementation Schedule will be completed in mid-March 2012. Further, this information is vital in order for the OUCC to properly review and make a recommendation regarding the Projects.

Mr. Keen stated the Settlement Agreement gives the parties more time to verify and validate

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<sup>1</sup> Mr. Keen's testimony refers to the Phase I deliverables as the Project Plan, Conceptual Engineering Study, and Budgetary Cost Estimate or Feasibility Study. In response to the Commission's January 6, 2012 Docket Entry, I&M clarified that the agreed list of deliverables is appropriately labeled in the Settlement Agreement as the Project Plan, Project Feasibility Study and Budgetary Cost Estimate, and Implementation Schedule.

the information I&M has provided, make recommendations to the Commission, and attempt to reach consensus on how best to proceed. Mr. Keen testified that by engaging in this scrutiny and oversight, the OUCC and other parties can ensure ratepayer impact is minimized, while at the same time verifying the Projects are accomplished in the most effective and efficient manner. The delay in the procedural schedule is in the public interest, and he recommended that the Commission approve the Settlement Agreement without modification.

**6. Docket Entries.** After reviewing the Settlement Agreement and supporting evidence, on January 6, 2012 and January 17, 2012 the Presiding Officers issued Docket Entries requesting additional evidence from Petitioner. I&M provided timely responses to the Docket Entries, which are summarized below.

According to I&M, Indiana's jurisdictional portion of the proposed \$10 million expenditure for Phase I would be approximately \$5.56 million. If Phase I costs exceed \$10 million, the amount in excess of \$10 million would be subject to review for recovery in a separate phase of this proceeding. With respect to the calculation of the Indiana jurisdictional portion of the cost estimate for the Projects, I&M clarified how it intends to allocate costs for purposes of the CCTR. If I&M is not granted a CPCN by the Commission for the Projects or construction of the Projects is abandoned, I&M would seek recovery of the incurred costs in a future rate proceeding. If the Commission approves I&M's request for a CPCN, the costs will be treated as capital costs through the CCTR.

The \$1.4 billion cost estimate for the Projects included the proposed \$10 million expenditure for Phase I. The Phase I work will allow Petitioner to further validate the \$1.4 billion cost estimate for the Projects, and specifically the estimated accuracy range of -15% to +20% discussed by Robert Walton in his direct testimony. I&M provided greater detail regarding the engineering feasibility studies to be performed in Phase I. With respect to the \$10 million expenditure, I&M provided a breakdown of the work to be performed, which listed the entity to perform specific work, a description of the work, and the associated cost.

**7. Discussion and Findings.** The Commission begins with a general discussion of Settlement Agreements. Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement "loses its status as a strictly private contract and takes on a public interest gloss." *Id.* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement." *Citizens Action Coalition*, 664 N.E.2d at 406.

Furthermore, any Commission decision, ruling, or order—including the approval of a settlement—must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission's own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, a copy of which is attached to this Order and incorporated reference, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Indiana Code ch. 8-1-2, and that such agreement serves the public interest.

The Settling Parties agree I&M should be permitted to recover as capital costs through the CCTR the Indiana jurisdictional portion of up to \$10 million to perform the Phase I work described in I&M's case-in-chief. The cost estimate is an integral component of the clean coal technology CPCN review process. Indiana Code § 8-1-8.7-4(a) states: "As a condition for receiving the certificate required under section 3 of this chapter, an applicant must file an estimate of the cost of constructing, implementing, and using clean coal technology and supportive technical information in as much detail as the commission requires." As we have previously stated, "the initial granting of a CPCN depends in large part upon the economic efficacy of a proposed project, and as such, the initial cost estimates are a significant factor in the Commission's decision making process." *Indianapolis Power & Light*, Cause No. 42170 ECR 16 S1, at 7 (IURC 7/7/2011). It is the Petitioner's obligation to prepare a well-founded and realistically accurate cost estimate to support its CPCN request.

Recently, we recognized that the variety of regulatory and statutory parameters under which a utility operates "presents a challenge for a utility that wishes to satisfy environmental requirements while also attempting to provide timely and thorough information to state regulators and its stakeholders when it requests authority to construct the project." *Northern Indiana Public Service Co.*, Cause No. 44012, Phase I, at 18 (IURC 12/28/11). With this acknowledgement, we stated that "a standardized cost estimate accuracy and/or a standardized level of engineering to be done before the filing to support a request for a CPCN is not a reasonable or appropriate expectation." *Id.* With this framework in place to review this particular request, we recognize the Parties' efforts to develop a more detailed site-specific cost estimate for this project.

Based on the evidence presented, the Commission finds the Settlement Agreement represents a fair, just, and reasonable resolution of several issues associated with the relief sought in I&M's Verified Petition and therefore is in the public interest. Accordingly, I&M is authorized to defer for subsequent recovery the Indiana jurisdictional portion of up to \$10 million to perform Phase I work to validate the cost estimate for the engineering, design, construction, and use of the Projects. If I&M does not complete the Projects or is denied a CPCN, it may request recovery of incurred costs associated with the Projects in a future rate proceeding.

It should be noted that even though Mr. Lewis states the Settlement Agreement "speaks for itself," the Settlement Agreement and the evidence supporting it lacked information and detail concerning the proposed \$10 million expenditure. As a result, the Presiding Officers issued two Docket Entries to better understand the Settling Parties' agreement memorialized by Settlement Agreement. The Commission determined enough evidence existed to approve the Settlement Agreement only after reviewing I&M's responses to the Docket Entries. We make this point to remind the parties that their success in obtaining approval of any Settlement Agreement, even an interim request on less than all of the issues, is dependent on the provision of adequate evidence and support for the agreement.

The Commission notes that its approval of cost recovery in this Order is specific to the facts of this case and should not be construed as an indication of what may be approved in any future CPCN proceeding. As we noted above, it is the responsibility of a Petitioner for a CPCN to submit a well-founded and realistically accurate cost estimate to support its CPCN request. A utility cannot substitute this obligation with a request for guaranteed cost recovery to develop an appropriate cost estimate.

Finally the parties agree that the Settlement Agreement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. However, with regard to future citation of the Settlement Agreement, we find that our approval

of it should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, (IURC March 19, 1997).

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

1. The Settlement Agreement is approved in its entirety without change.
2. I&M is authorized to defer for subsequent recovery of the Indiana jurisdictional portion of up to \$10 million to perform the work outlined in I&M's case-in-chief as Phase I, including the work on the Project Plan, Project Feasibility Study and Budgetary Cost Estimate, and Implementation Schedule.
3. I&M shall file in this Cause the Project Plan, Project Feasibility Study and Budgetary Cost Estimate, and Implementation Schedule to the Commission at the same time these documents are provided to the other parties.
4. This Order shall be effective on and after the date of its approval.

**ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR;**

**APPROVED: FEB 22 2012**

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



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

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF INDIANA MICHIGAN )  
POWER COMPANY (“I&M”), AN INDIANA )  
CORPORATION, FOR APPROVAL OF CLEAN )  
COAL AND ENERGY PROJECTS AND )  
QUALIFIED POLLUTION CONTROL PROPERTY )  
AND FOR ISSUANCE OF A CERTIFICATE OF )  
PUBLIC CONVENIENCE AND NECESSITY FOR )  
USE OF CLEAN COAL TECHNOLOGY )  
 (“PROJECTS”); FOR ONGOING REVIEW; FOR )  
APPROVAL OF THE TIMELY RECOVERY OF ) CAUSE NO. 44033  
COSTS INCURRED DURING CONSTRUCTION )  
AND OPERATION OF SUCH PROJECTS )  
THROUGH I&M’S CLEAN COAL TECHNOLOGY )  
RIDER; FOR APPROVAL OF DEPRECIATION )  
PROPOSAL FOR SUCH PROJECTS; AND FOR )  
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ARE REFLECTED IN THE CLEAN COAL )  
TECHNOLOGY RIDER, ALL PURSUANT TO IND. )  
CODE §§ 8-1-2-6.1, 8-1-2-6.7, 8-1-2-6.8, 8-1-2-42(a), 8- )  
1-8.7, 8-1-8.8 AND 170 IAC 4-6-1 ET SEQ. )

STIPULATION AND SETTLEMENT AGREEMENT

Indiana Michigan Power Company (“I&M” or “Company”), Indiana Michigan Power Industrial Group (“Industrials”), and the Indiana Office of Utility Consumer Counselor (“OUCC”), (collectively the “Parties” and individually “Party”) solely for purposes of compromise and settlement and having been duly advised by their respective staff, experts and counsel, stipulate and agree that the terms and conditions set forth below represent a fair, just and reasonable resolution of the matters set forth below, subject to their incorporation by the Indiana Utility Regulatory Commission (“Commission”) into a final, non-appealable order on less than

all the issues (“Order On Less Than All The Issues”) without modification or further condition that may be unacceptable to any Party. If the Commission does not approve this Stipulation and Settlement Agreement (“Agreement”), in its entirety, the entire Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Parties.

**A. TERMS AND CONDITIONS**

1. The Settling Parties agree to and will timely request the Commission to promptly issue an Order on Less than all the Issues recognizing, without prejudicing any Party’s position on whether the Commission should grant a certificate of public convenience or necessity for the construction, installation and operation of dry flue-gas desulfurization (“DFGD”) and Selective Catalytic Reduction (“SCR”) systems at one of the units at the Rockport Plant (the “Projects”), that:

- a. I&M proposes that the Projects: (1) are advanced technologies designed to reduce airborne emissions of sulfur dioxide (“SO<sub>2</sub>”), nitrogen oxides (“NO<sub>x</sub>”), acid gases, mercury (“Hg”), particulate matter and other hazardous air pollutants (“HAPS”) associated with the combustion of coal at the Rockport facility; (2) constitute “clean coal technology” as defined in Ind. Code §§ 8-1-2-6.1, 8-1-2-6.7, 8-1-2-6.8, 8-1-8.7-1, and 8-1-8.8-3; (3) are an “air pollution control device” as defined in 170 IAC 4-6-1(a); and (3) constitute “qualified pollution control property” under Ind. Code §8-1-2-6.8 and “clean coal and energy projects” under Ind. Code §8-1-8.8-2; and
- b. the Parties agree that it is in the public interest for I&M to continue its work to validate the cost estimate for the engineering, design, construction, and use of the Projects; and
- c. authorizes I&M to defer for subsequent recovery as capital costs through its Clean Coal Technology Rider (“CCTR”) the Indiana jurisdictional portion of up to \$10 million to perform the work outlined in I&M’s case-in-chief as Phase I, including the work on the Project Plan, Project Feasibility Study and Budgetary Cost Estimate and Implementation Schedule.

2. I&M will provide the Project Plan, Project Feasibility Study and validation of the Budgetary Cost Estimate to the other Parties (subject to the protection of any confidential, proprietary, competitively sensitive and trade secret information contained therein) as they

become available, but no later than April 2, 2012. I&M will also provide an opportunity for the Parties to discuss the foregoing information and other questions as they arise, including identifying the Rockport Unit on which the Projects will be installed, the status of lease negotiations on Unit 2, and the AEP Interconnection Agreement. I&M will make any regulatory filings required to implement the outcome of its Rockport 2 lease discussions in a separate proceeding.

3. The Parties agree to the following revised procedural schedule which permits I&M to supplement its case-in-chief within a reasonable time after the conclusion of the Budgetary Cost Estimate, other Parties to file their cases-in-chief and cross-answering, if necessary, and I&M to file rebuttal with a goal of receiving a Final Order from the Commission by September 30, 2012.

- a. I&M shall prefile any supplemental testimony and exhibits on or before April 30, 2012.
- b. The OUCC and Intervenors shall prefile their respective testimony and exhibits on or before May 24, 2012.
- c. The OUCC and Intervenors shall prefile their respective cross answering testimony and exhibits, if any, on or before June 5, 2012.
- d. I&M shall prefile its rebuttal testimony on or before June 15, 2012.
- e. An evidentiary hearing date shall be conducted on or about July 9, 2012 (or such other dates as may be available on the Commission's calendar) so that a timely Commission determination may be made so as to mitigate delay. The Parties ask the Commission to reserve at least three days for hearing.
  - i. If the information set forth in Paragraph 2 is not completed and provided as it becomes available, but no later than April 2, 2012, the Parties shall adjust the procedural schedule as necessary to adjust for the impact of the delay on the ability of the Parties to timely review the Projects.

4. No Party waives or forecloses taking any position with regard to an issuance of a certificate of public convenience or necessity for the Projects.

5. I&M has advised the Parties that it may be necessary for I&M to curtail its units, change priority of dispatch or short term generation levels, or take other actions to maintain compliance with emission limitations and the requirements of the Cross-State Air Pollution Rule (“CSAPR”) and Electric Generating Unit Maximum Achievable Control Technology (“EGU MACT”) Rule, the NSR Consent Decree or other environmental regulations and that the public convenience and necessity will be served by the Parties cooperating to reach an agreement or close the record timely so that the Commission may issue its Final Order as soon as possible and no later than September 30, 2012.

**B. PRESENTATION OF THE SETTLEMENT TO THE COMMISSION**

1. The Parties shall support this Settlement before the Commission and request that the Commission expeditiously accept and approve the Settlement. The concurrence of the Parties with the terms of this Agreement is expressly predicated upon the Commission’s approval of the Agreement in its entirety without any modification or any -condition that may be unacceptable by any Party. If the Commission does not approve the Agreement in its entirety and without change, the Agreement shall be null and void and deemed withdrawn, upon notice in writing by any Settling Party within fifteen (15) business days after the date of the Final Order that any modifications made by the made by the Commission are unacceptable to it.

2. The Parties shall jointly move for leave to file this Settlement and supporting evidence. Such evidence will be offered into evidence without objection and the Parties hereby

waive cross-examination. The Parties propose to submit this Settlement and evidence conditionally, and that, if the Commission fails to approve this Settlement in its entirety without any change or with condition(s) unacceptable to any Party, the Settlement and supporting evidence shall be withdrawn and the Commission will continue to hear Cause No. 44033 with the proceedings resuming at the point they were suspended by the filing of this Settlement.

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

4. The Parties shall jointly agree on the form, wording and timing of public/media announcement (if any) of this Settlement and the terms thereof. No Party will release any information to the public or media prior to the aforementioned announcement. The Parties may respond individually without prior approval of the other Parties to questions from the public or media, provided that such responses are consistent with such announcement and do not disparage any of the Parties. Nothing in this Settlement shall limit or restrict the Commission's ability to publicly comment regarding this Settlement or any Order affecting this Settlement.

**C. EFFECT AND USE OF SETTLEMENT**

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

2. This Settlement shall not constitute and shall not be used as precedent by any person in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce the terms of this Settlement.

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

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

5. The communications and discussions during the negotiations and conferences and any materials produced and exchanged concerning this Settlement all relate to offers of settlement and shall be privileged and confidential, without prejudice to the position of any Party, and are not to be used in any manner in connection with any other proceeding or otherwise.

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

7. The Parties shall not appeal or seek rehearing, reconsideration or a stay of the Final Order approving this Settlement in its entirety and without change or condition(s) unacceptable

to any Party (or related orders to the extent such orders are specifically implementing the provisions of this Settlement). The Parties shall support or not oppose this Settlement in the event of any appeal or a request for a stay by a person not a party to this Settlement or if this Settlement is the subject matter of any other state or federal proceeding.

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

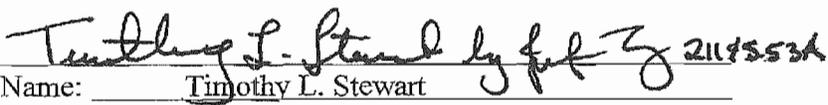
9. This Settlement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ACCEPTED and AGREED as of the 13th day of December, 2011.

INDIANA MICHIGAN POWER COMPANY

Name: Marc E. Lewis  
Its: Vice President, External Relations

INDIANA MICHIGAN POWER INDUSTRIAL GROUP

  
Name: Timothy L. Stewart  
Its: Attorney

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

Name: Terry Tolliver  
Its: Deputy Consumer Counselor

to any Party (or related orders to the extent such orders are specifically implementing the provisions of this Settlement). The Parties shall support or not oppose this Settlement in the event of any appeal or a request for a stay by a person not a party to this Settlement or if this Settlement is the subject matter of any other state or federal proceeding.

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

9. This Settlement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ACCEPTED and AGREED as of the \_\_\_\_th day of December, 2011.

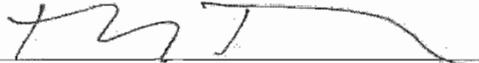
INDIANA MICHIGAN POWER COMPANY

\_\_\_\_\_  
Name: Marc E. Lewis  
Its: Vice President, External Relations

INDIANA MICHIGAN POWER INDUSTRIAL GROUP

\_\_\_\_\_  
Name: Timothy L. Stewart  
Its: Attorney

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

  
\_\_\_\_\_  
Name: Terry Tolliver  
Its: Deputy Consumer Counselor

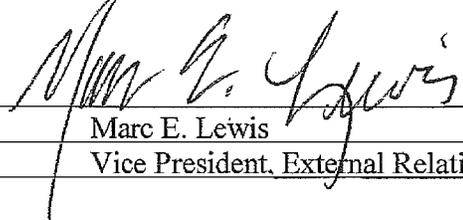
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