

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF)
INDIANA MICHIGAN POWER COMPANY FOR)
APPROVAL OF CERTAIN TRANSACTIONS)
RELATING TO THE LEASING OF NUCLEAR)
FUEL FOR THE DONALD C. COOK NUCLEAR)
PLANT OF INDIANA MICHIGAN POWER)
COMPANY)

CAUSE NO. 45806

APPROVED: MAR 22 2023

Commissioner	Yes	No	Not Participating
Huston	√		
Freeman	√		
Krevda	√		
Veleta	√		
Ziegner	√		

ORDER OF THE COMMISSION

Presiding Officers:

David E. Veleta, Commissioner

Carol Sparks Drake, Senior Administrative Law Judge

On November 14, 2022, Indiana Michigan Power Company (“I&M” or “Petitioner”) filed a Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) seeking approval of certain proposed leasing transactions relating to nuclear material (“Nuclear Fuel”) for the Donald C. Cook Nuclear Plant (“Cook Plant”).

On November 18, 2022, Petitioner filed its direct testimony and exhibits, except for certain confidential exhibits. This included the testimony of Noah K. Hollis, Director, Corporate Finance, at American Electric Power Service Corporation, a wholly-owned subsidiary of American Electric Power Company, Inc., the parent company of I&M. On November 18, 2022, Petitioner also filed a motion for protection and nondisclosure of confidential and proprietary information. A docket entry was issued on December 1, 2022, requesting Petitioner clarify the scope of the requested confidential treatment. In response to this docket entry, I&M filed an updated motion for protection and nondisclosure of confidential and proprietary information on February 7, 2023, that was granted in a docket entry issued on February 8, 2023. On February 8, 2023, Petitioner filed three confidential exhibits, with the public versions of these exhibits filed on February 7, 2023.

On February 3, 2023, the Indiana Office of Utility Consumer Counselor (“OUCC”), filed the direct testimony and exhibits of Derek J. Leader, a Utility Analyst at the OUCC.

The Commission set this matter for an evidentiary hearing to be held at 1:30 p.m. on March 8, 2023, in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, the prefiled testimony and exhibits of Petitioner and the OUCC were admitted into evidence without objection, and both parties waived cross-examination.

Based on the evidence presented and the applicable law, the Commission finds:

1. Notice and Jurisdiction. Notice of the hearing in this case was given and published by the Commission as required by law. Petitioner is a public utility as defined in Ind. Code § 8-1-2-1. Under Ind. Code §§ 8-1-2-76 through -80, the Commission has jurisdiction over a public

utility's issuance of stocks, bonds, and debt; therefore, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. Petitioner's Characteristics. I&M is a corporation organized and existing under Indiana law with its principal executive office at Indiana Michigan Power Center in Fort Wayne, Indiana. Petitioner owns and operates electric utility properties for service to the public in Indiana and southwestern Michigan, including the Cook Plant, a nuclear-fueled steam electric generating station located near Bridgman, Michigan. The Cook Plant consists of two generating units, both of which are in commercial operation. The Cook Plant requires Nuclear Fuel in its production of power, and the power the Cook Plant produces is primarily sold to Indiana customers.

3. Petitioner's Case-in-Chief. Mr. Hollis testified in support of Petitioner's request for approval for the leasing of Nuclear Fuel with a maximum aggregate value of up to \$400 million. I&M proposes that such approval terminate on the later of the leasing of four separate Nuclear Fuel assemblies inserted into a reactor (each assembly is referred to as a "Batch") or December 31, 2024.

Citing to prior Commission Orders, Mr. Hollis stated the Commission has previously approved similar leasing arrangements on numerous occasions. He explained that the most recent leasing authority the Commission approved occurred in Cause No. 45417. The November 25, 2020 Order in that Cause authorized Petitioner to enter into one or more Nuclear Fuel lease agreements with as then unspecified commercial banks, other financial institutions, insurance companies, or other institutional investors (each a "Lessor") under which I&M was authorized to lease from Lessor the Nuclear Fuel required for operation of the Cook Plant in an aggregate amount of up to \$400 million. Petitioner subsequently entered into: (a) a Fuel Lease, dated as of May 18, 2021, with DCC Fuel Trust XVI, in the aggregate amount of \$64,900,000; (b) a Fuel Lease, dated as of May 23, 2022, with DCC Fuel Trust XVII, in the aggregate amount of \$72,800,000; and (c) Mr. Hollis testified Petitioner anticipated entering into a Fuel Lease on or about November 15, 2022, that was actually entered into on November 7, 2022, with DCC Fuel Trust XVIII, in the approximate aggregate amount of \$62,500,000 (collectively, the "Current Leases"), all of which are or will be capital leases with all tax benefits claimed by Petitioner. The remaining \$262,300,000 of authority granted in Cause No. 45417 expired December 31, 2022. On February 7, 2023, I&M filed redacted copies of the fuel leases Petitioner entered into on May 18, 2021, May 23, 2022, and November 7, 2022.

Mr. Hollis testified Petitioner is proposing to enter into one or more new lease agreements ("New Lease") with one or more as yet unspecified commercial banks, other financial institutions, insurance companies, other institutional investors, or a special purpose entity formed for the purpose of serving as the lessor on behalf of any such institutional investor ("New Lessor") for the lease of Nuclear Fuel. The New Lease will be a capital lease with all tax benefits claimed by Petitioner and have a form substantially similar to the Current Leases. Mr. Hollis advised the net rent to be paid by Petitioner will be determined in substantially the same manner as under the Current Leases. Alternatively, Petitioner and New Lessor may agree upon a different manner of computing rent, such as assuming equal monthly consumption of the Nuclear Fuel. He stated each Batch will be amortized to zero, other than Batches still in heat production on the last day of the lease term, which will be purchased by I&M upon termination of the New Lease for the then-unamortized value of such Nuclear Fuel.

Mr. Hollis testified that, unless the New Lease is earlier terminated or extended, Nuclear Fuel will be leased under the New Lease for a period up to 60 months. After a minimum time following the execution of the New Lease, I&M or the New Lessor may terminate the New Lease for any reason upon 180 days prior written notice (or such other period as Petitioner and the New Lessor agree upon). The New Lessor may terminate the New Lease prior to a scheduled termination date under certain circumstances, including if: (a) it becomes subject to certain adverse rules, regulations, or declarations with respect to its status or the conduct of its business; (b) certain changes occur in the Price-Anderson Act or Atomic Energy Act; (c) there is a nuclear incident of sufficient magnitude; or (d) certain adverse regulatory events occur in connection with the New Lease or the Cook Plant.

At termination of the New Lease, Mr. Hollis stated I&M will purchase all of the New Lessor's interests in the unamortized Nuclear Fuel then subject to the New Lease. Title to the Nuclear Fuel will be transferred to Petitioner or, under certain circumstances, a party designated by I&M and approved by the New Lessor. Petitioner will be obligated to pay the New Lessor a purchase price equal to the then-unamortized value of the Nuclear Fuel then subject to the New Lease. Upon consummation of such purchase, all obligations of I&M under the New Lease will terminate, except to the extent provided therein.

Mr. Hollis testified the final interest rate spread will be based on one, two, or three month adjusted term SOFR, or another mutually accepted floating interest rate index, or a fixed rate plus a spread based upon Petitioner's credit ratings, and will not be known until the transaction is closed. He stated that although the interest rate will not be known until the transaction is closed, the proposed method of financing Petitioner's Nuclear Fuel should be a lower cost than if Petitioner financed the Nuclear Fuel directly by the issuance of its own notes and/or equity because Petitioner's weighted average cost of capital is in excess of the interest rate I&M will pay under the New Lease.

Mr. Hollis stated the proposed transactions are reasonably necessary to the operation and management of Petitioner's business so that I&M may provide adequate service to the public at a projected lower cost. Per Mr. Hollis, Petitioner's capital structure, after giving effect to the proposed transactions, will be reasonable and in the public interest. Additionally, after the proposed transactions, the total amount of Petitioner's outstanding stock, its notes maturing in more than 12 months, and other evidence of indebtedness will not exceed the fair value of Petitioner's property.

4. OUC's Case-in-Chief. Mr. Leader testified the cost of Petitioner's Nuclear Fuel is recovered through its semi-annual fuel adjustment charge ("FAC"); therefore, any Nuclear Fuel cost savings realized through lease financing will be passed through to ratepayers via the FAC in a timely manner. Mr. Leader advised that in Cause No. 45417, Petitioner's witness Hollis testified that ratepayers saved about \$19.8 million between 2015 and 2020 due to leasing, and in this Cause, Mr. Hollis testified I&M has recognized \$38.9 million in present value savings since 2015, meaning Petitioner has recognized an additional \$19.1 million in savings since 2020 due to leasing rather than traditional purchase. Mr. Leader recommended Petitioner continue to calculate the annual savings resulting from its leasing activity and provide this information to the Commission and the OUC in future FAC and Nuclear Fuel leasing proceedings.

Mr. Leader testified that the OUCC recommends the Commission: (1) approve I&M's request for authorization for its nuclear financing arrangements; and (2) require I&M to continue to provide regular updates, in future FAC and Nuclear Fuel lease proceedings, of its Nuclear Fuel leasing developments, including all terms of said agreements and a calculation of the comparative annual savings to ratepayers of Nuclear Fuel leasing versus ownership.

5. Commission Discussion and Findings. I&M requests Commission approval to enter into a New Lease(s) with one or more New Lessors. Pursuant to the terms of the New Lease, New Lessor will finance and lease to Petitioner, or New Lessor will purchase from and lease back to Petitioner, Nuclear Fuel with a maximum aggregate value of up to \$400 million. Unless the New Lease is earlier terminated or extended, Nuclear Fuel will be leased under the New Lease for a period of up to 60 months.

I&M was first authorized by the Commission to enter into a leasing transaction related to the Nuclear Fuel for the Cook Plant in the Commission's December 5, 1990 Order in Cause No. 39051. As the witnesses noted, the Commission has approved similar leasing arrangements in Cause Nos. 34795, 41748, 43351, 43682, 44025, 44490, 44827, 45126, and most recently in Cause No. 45417.

Based on the evidence presented, the Commission finds I&M's request for approval to enter into a New Lease(s) as described in the testimony is reasonable, was shown to be in the public interest, and should be approved. The proposed transaction(s) is reasonable in the operation and management of Petitioner's business so as to provide adequate service to the public at a reasonable cost. The evidence demonstrates the use of similar leasing authority in the past has yielded customer savings, and future leasing activity is projected to also result in ratepayer savings when compared to the ownership option. In addition, I&M has committed to only enter into such leases that cost less than ownership. The Commission further finds Petitioner's capital structure, after giving effect to the proposed transaction, will be reasonable and in the public interest. After the proposed transaction, the total amount of I&M's outstanding stock and long-term indebtedness will not exceed the fair value of Petitioner's utility property.

I&M did not object to the OUCC's recommendations. The Commission finds these recommendations are reasonable and should be implemented; therefore, I&M shall provide annual updates, through FAC testimony and future Nuclear Fuel lease proceedings, of its Nuclear Fuel leasing activity.

6. Confidentiality. On February 7, 2023, pursuant to the December 1, 2022 docket entry requesting I&M clarify the scope of I&M's requested confidential treatment, Petitioner filed a motion for protection and nondisclosure of confidential and proprietary information, supported by the Affidavit of Noah K. Hollis, showing certain information to be submitted to the Commission contained trade secret information that is not known or readily available to persons outside of I&M. A docket entry was issued on February 8, 2023, finding this information should be held confidential on a preliminary basis, after which the information was submitted under seal. After reviewing the information, the Commission finds this information qualifies as confidential trade secret information under Ind. Code §§ 5-14-3-4 and 24-2-3-2; consequently, this information shall continue to be held as confidential and protected from public access and disclosure by the

Commission and is exempted from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29.

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

1. I&M's request to enter into a New Lease(s) for Nuclear Fuel at a maximum aggregate value of up to \$400 million with one or more New Lessors is approved. This Order shall constitute the certificate of authority.

2. I&M shall notify the Commission of its Nuclear Fuel leasing activity, including all terms of said agreements and provide a calculation of the comparable savings to ratepayers of Nuclear Fuel leasing versus ownership in its FAC proceedings and in future Nuclear Fuel lease proceedings.

3. The information identified in Finding No. 6 above qualifies as confidential trade secret information under Ind. Code §§ 5-14-3-4 and 24-2-3-2; therefore, this information is exempt from public access and disclosure by Indiana law and shall be held confidential and protected from public access and disclosure by the Commission.

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

HUSTON, FREEMAN, KREVDA, VELETA, AND ZIEGNER CONCUR:

APPROVED: MAR 22 2023

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

**Dana Kosco
Secretary of the Commission**