ORIGINAL

| Commissioner | Yes | No | Not Participating |
|---|---|---|---|
| Huston | √ | | |
| Bennett | √ | | |
| Freeman | √ | | |
| Veleta | √ | | |
| Ziegner | √ | | |

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

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| **VERIFIED PETITION OF INDIANA MICHIGAN POWER COMPANY, AN INDIANA CORPORATION, FOR APPROVAL PURSUANT TO IND. CODE § 8-1-2-42(a) AND § 8-1-8.8-11 OF AN AMENDMENT TO A RENEWABLE WIND ENERGY PROJECT POWER PURCHASE AGREEMENT WITH FOWLER RIDGE WIND FARM, LLC, INCLUDING THE TIMELY RECOVERY OF COSTS THROUGH RATES AND CONFIDENTIAL TREATMENT OF POWER PURCHASE AGREEMENT PRICING AND RELATED CONFIDENTIAL INFORMATION** | ) | **CAUSE NO. 45859**<br><br>**APPROVED: JUL 26 2023** |

**ORDER OF THE COMMISSION**

**Presiding Officers:**
**David E. Veleta, Commissioner**
**Jennifer L. Schuster, Senior Administrative Law Judge**

On March 15, 2023, Indiana Michigan Power Company ("Petitioner" or "I&M") filed its Verified Petition and case-in-chief with the Indiana Utility Regulatory Commission ("Commission") in this Cause. On April 27, 2023, the Office of the Utility Consumer Counselor ("OUCC") filed its Notice of Intent Not to File Testimony in this case.

The Commission held an evidentiary hearing in this matter on May 23, 2023 at 2 p.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner and the OUCC, by counsel, appeared and participated in the evidentiary hearing, and Petitioner's evidence was admitted into the record without objection.

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

**1. Notice and Jurisdiction.** The Commission published notice of the evidentiary hearing in this Cause as legally required. Petitioner is a "public utility" as defined in Ind. Code § 8-1-2-1 and an "eligible business" as defined in Ind. Code § 8-1-8.8-6. Petitioner requests relief pursuant to Ind. Code ch. 8-1-8.8 and § 8-1-2-42(a). Therefore, the Commission has jurisdiction over the Petitioner and the subject matter of this proceeding.

**2. Petitioner's Characteristics and Project Background.** I&M is a public utility organized and existing under Indiana law with its principal office and place of business located at Indiana Michigan Power Center, Fort Wayne, Indiana. Petitioner renders retail electric utility service to approximately 476,000 Indiana retail customers located in northern and east central Indiana. Petitioner owns, operates, manages, and controls plant and equipment in Indiana that is in service and used and useful in the generation, transmission, distribution, and furnishing of such service to the public.

The Fowler Ridge Wind Farm (the "Project" or "Fowler Ridge") is a wind farm located largely in Benton County, Indiana, with a portion also located in Tippecanoe County. I&M has contracted with BP Wind Energy North American, Inc. ("BP") to purchase approximately 100 megawatts ("MW") of power from the Project, along with renewable energy certificates, for a 20-year term. In our November 28, 2007 order in Cause No. 43328 (the "43328 Order"), we found that the Project is an "energy project" and a "renewable energy resource" under Ind. Code ch. 8-1-8.8. As such, the Project is eligible for certain incentives under the law, including timely cost recovery.

**3. <u>Background and Requested Relief</u>.** In the 43328 Order, the Commission found that I&M's power purchase agreement with BP for electricity from the Project (the "PPA") represented a reasonable addition and diversification of I&M's capacity and energy portfolio and that the terms of the PPA were reasonable. The Commission further found as follows:

> The evidence also reflects that the purported viability of the [] Project is dependent upon I&M entering into, and obtaining Commission approval of, the Wind PPA and full recovery of the jurisdictional purchased power costs for the full 20-year term of the contract. Ind. Code § 8-1-8.8-11 provides that renewable energy projects, such as I&M's Wind PPA with [Fowler Ridge], are eligible for incentives, including timely recovery of costs. Based on the record evidence, the Commission finds that the recovery of all of the purchased power costs related to the purchase over the full 20-year term of the Wind PPA should be approved as provided in the Settlement Agreement. We further find that I&M should be authorized to recover via a rate adjustment mechanism the retail portion of the costs of the Wind PPA on an accrual basis in accordance with Ind. Code §§ 8-1-2-42(a) and 8-1-8.8-11 contemporaneously with the processing of I&M's [fuel adjustment charge ("FAC")] proceedings (or successor mechanism). Although I&M is proposing to have the cost recovery administered through its FAC proceedings, we clarify that this cost recovery shall not be subject to the Section 42(d)(l) test or any FAC benchmarks as all findings of reasonableness have been made in this Order for the full 20-year term of the Wind PPA.

43328 Order at 18.

In October of 2008, the Parties amended the Fowler Wind PPA to clarify some language to protect the intent of the Parties (the "First Amendment"). *See* Petitioner's Exhibit 1 (Welsh Testimony) at 2.

In this Cause, I&M requests that the Commission issue an order finding that the Fowler Wind PPA, as amended by the Second Amendment, is reasonable and necessary and granting I&M continued authority to recover all costs related to the purchase over the full 20-year term of the PPA, as amended, via a rate adjustment mechanism administered through Petitioner's FAC proceedings (or successor mechanism).

**4.** **Statutory Framework.** Ind. Code § 8-1-8.8-2 concerns the development of alternative energy sources, including a renewable "energy project." Ind. Code § 8-1-8.8-10 defines "renewable energy resource" to include energy from wind. Pursuant to Ind. Code § 8-1-8.8-11, an energy project is eligible for timely recovery of costs. This framework provides the basis for the requested Commission assurance of continued cost recovery through the 20-year term of the PPA. Ind. Code § 8-1-2-42(a) also authorizes the recovery of purchased electricity.

**5.** **Petitioner's Evidence.** The Verified Petition and the testimony of Petitioner's witness, Denzil L. Welsh, its Regulatory Analysis and Case Manager, provided details and supporting information about the proposed Second Amendment to the Fowler Wind PPA between Petitioner and BP. BP and Petitioner originally entered into the PPA in August 2007. The PPA is currently set to terminate at the end of January 2029. Mr. Welsh testified that the proposed Second Amendment is necessary because BP is in the process of the technology upgrade at the Project, and those changes will require a technical amendment to the PPA.

Mr. Welsh explained the components of the Second Amendment, including a technical change to reflect the technological upgrades BP is making and a modest reduction in the price per MW-hour that I&M will pay for the wind energy from the Project. The exact amount of the price reduction is included in Mr. Welsh's confidential testimony. He stated that providing a lower purchased energy cost will benefit I&M's customers.

Mr. Welsh testified that I&M seeks approval of the Second Amendment to the PPA and authority to continue to recover all the costs of the 20-year PPA, as amended, in connection with its periodic FAC proceedings. In addition, I&M requests that the Commission reiterate its finding in Cause No. 43328 that the Project is a clean energy project and a renewable energy resource, as those terms are defined in Ind. Code ch. 8-1-8.8. As such, the costs associated with the PPA, as amended, would continue to be eligible for certain incentives under the law, such as timely cost recovery.

Mr. Welsh opined that the Second Amendment is reasonable and in the public interest. He stated that the Second Amendment will allow the continued provision of renewable power to I&M and its customers, as it does today, but with a modestly reduced energy price. In addition, the Second Amendment will allow I&M to continue to utilize the PPA for capacity value. Finally, he testified that the Second Amendment will allow the continued use of a "home grown" renewable resource, which in turns helps I&M meet the interests of its customers in the use of more renewable energy resources.

**6.** **Commission Discussion and Findings.** Ind. Code § 8-1-8.8-11 provides that "[a]n eligible business must file an application to the Commission for approval of a clean energy project" and directs the Commission to "encourage clean energy projects by creating . . . financial incentives for clean energy projects, if the projects are found to be just and reasonable[.]" Ind. Code ch. 8-1-8.8 provides the basis for Petitioner's request for Commission approval of the amended PPA and for assurance of purchase power cost recovery through the full term of the amended PPA. Ind. Code § 8-1-2-42(d) also authorizes recovery of the cost of fuel included in the cost of purchased electricity.

In the 43328 Order, we found that Petitioner is an "eligible business" for the purposes of reviewing its request for financial incentives under Ind. Code § 8-1-8.8-11. The Second Amendment to the PPA does not change those findings. Based on the evidence of record, we find that the Second Amendment will provide a modest price reduction which will benefit I&M and its customers. Accordingly, we find again that Petitioner is an "eligible business" for purposes of reviewing its request for continued financial incentives, such as timely cost recovery, under Ind. Code § 8-1-8.8-11.

We also found in the 43328 Order that the Project satisfied the statutory definition of "energy project" in Ind. Code § 8-1-8.8-2,[1] in that the Project will develop alternative energy sources, including renewable energy resources. We further found that the Project also qualifies as a "renewable energy resource" as defined by Ind. Code § 8-1-8.8-10. The 43328 Order authorized I&M to recover the costs incurred under the PPA over its full 20-year term, and we directed that the costs of the PPA should be recovered in connection with I&M's FAC proceedings (or successor mechanism) without being subject to the Ind Code § 8-1-2-42(d) tests or any FAC benchmarks.

The evidence of record reflects that the Second Amendment, a technical amendment to the PPA, will facilitate BP's proposed technology upgrades to some of its turbines at the Project while also benefitting I&M's customers through a modest reduction in the PPA prices. We find that the Project remains a just, reasonable, and necessary clean energy project under Ind. Code § 8-1-8.8-11 pursuant to the terms of the amended PPA and that the Project is a renewable energy project that continues to qualify for Ind. Code § 8-1-8.8-11 incentives, including timely recovery of costs. We conclude that the Second Amendment is reasonable and should be approved, and continued recovery of all the costs related to the purchase over the 20-year term of the PPA, as amended by the Second Amendment, should be approved.

We also find that I&M should continue to be authorized to recover via a rate adjustment mechanism the retail portion of the costs of the PPA in accordance with Ind. Code §§ 8-1-2-42(a) and 8-1-8.8-11, contemporaneously with the processing of I&M's FAC proceedings (or successor mechanism). As we found in the 43328 Order, this cost recovery shall not be subject to the Ind. Code § 8-1-2-42(d) tests or any FAC benchmarks as all findings of reasonableness have been made in this and the 43328 Order for the full 20-year term of the PPA.

**7. Confidentiality.** On March 15, 2023, Petitioner filed a Motion for Protection and Nondisclosure of Confidential and Proprietary Information ("Motion"), supported by Mr. Welsh's affidavit, showing that documents to be submitted to the Commission contain trade secrets as defined by Ind. Code § 24-2-3-3 and within the scope of Ind. Code § 5-14-3-4(a)(4). On March 29, 2023, a docket entry was issued finding information described in the Motion to be confidential on a preliminary basis.

On May 17, 2023, the Presiding Officers issued a docket entry seeking clarification on certain information claimed by Petitioner to be confidential, including the amount of capacity Fowler Ridge supplies to I&M and the Second Amendment's effect on pricing, as Petitioner had redacted certain information in its case-in-chief that was unredacted in the Verified Petition. On

[1] The language of Ind. Code § 8-1-8.8-2 has since been slightly amended, but the relevant parts of the definition of "clean coal and energy projects" under the version of Ind. Code § 8-1-8.8-2 in force at the time of the 43328 Order and "clean energy projects" under the current version are identical.

May 22, 2023, Petitioner filed a response to the docket entry ("Docket Entry Response") acknowledging "that the amount of capacity that the Fowler Ridge Wind Farm supplies to I&M is not confidential or proprietary." Docket Entry Response at 1. I&M also acknowledged that "the phrases 'lower purchased energy cost' and 'modestly reduced energy price' . . . are not confidential or proprietary." *Id.* I&M then submitted a corrected version of the public version of Mr. Welsh's testimony. In the future, Petitioner should take caution to make sure that it only seeks confidential treatment for information that qualifies for such treatment under Indiana law.

After reviewing the designated confidential information, as revised following Petitioner's Docket Entry Response, the Commission finds such information qualifies as confidential trade secret information under Ind. Code §§ 5-14-3-4 and 24-2-3-2. This information has independent economic value from not being generally known or readily ascertainable by proper means, and Petitioner takes reasonable steps to maintain its secrecy. Disclosure of such information could harm Petitioner; therefore, the Commission affirms the preliminary ruling on confidentiality and finds this information should be exempted from the public access requirements contained in Ind. Code ch. 5-14-3-and Ind. Code § 8-1-2-29, held as confidential, and protected from public disclosure by this Commission.

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

1. The Fowler Wind Farm (including the associated amended PPA) remains a just, reasonable, and necessary clean energy project under Ind. Code § 8-1-8.8-11 pursuant to the terms of the amended PPA.

2. Petitioner is authorized to recover the costs of the amended PPA over its full term as proposed, pursuant to Ind. Code §§ 8-1-2-42(a) and 8-1-8.8-11, to be administered with Petitioner's FAC proceedings (or a successor mechanism). This recovery shall not be subject to Ind. Code § 8-1-2-42(d) tests or FAC benchmarks.

3. The material submitted to the Commission under seal is declared to contain trade secret information as defined in Ind. Code § 24-2-3-2 and therefore is exempted from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29.

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

**HUSTON, BENNETT, FREEMAN, VELETA, AND ZIEGNER CONCUR:**

**APPROVED: JUL 26 2023**

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

Dana Kosco Digitally signed by Dana Kosco Date: 2023.07.26 10:38:13 -04'00'

**Dana Kosco**
**Secretary of the Commission**