

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of )  
INDIANA MICHIGAN POWER COMPANY for )  
a Power Supply Cost Recovery Reconciliation ) Case No. U-20805  
proceeding for the 12-month period )  
ended December 31, 2021. )  
\_\_\_\_\_ )

**STIPULATION FOR PROTECTIVE ORDER**

This Protective Order governs the use and disposition of Protected Material that Indiana Michigan Power Company (“I&M” or the “Company”) or any other Party discloses to another Party during the course of this proceeding. The Company or other Party disclosing Protected Material is referred to as the “Disclosing Party”; and the recipient is the “Receiving Party” (defined further below). The intent of this Protective Order is to protect non-public, confidential information and materials so designated by I&M or by any other Party, which information and materials contain confidential, proprietary, or commercially sensitive information. This Protective Order defines “Protected Material” and describes the manner in which Protected Material is to be identified and treated.

Accordingly, IT IS HEREBY ORDERED:

**I. “Protected Material” and Other Definitions**

A. For the purposes of this Protective Order, “Protected Material” consists of: discovery responses and results related to I&M’s purchase of nuclear fuel and prices paid for transportation and the transloading of coal at I&M’s Rockport plant, including information regarding the secondary nuclear fuel market, planned generation and generator outages, forecasted emission allowance positions, and cost of forecasted consumables on a per unit basis, as well as non-public trade secrets or confidential,

proprietary, commercially- or security-sensitive information, including but not limited to Critical Energy Infrastructure Information (“CEII”), as well as information protected from disclosure by law or under agreement, that is so designated by any Party, including information obtained under license from a third-party licensor to which the Disclosing Party or witnesses engaged by the Disclosing Party is a licensee and that are subject to any confidentiality or non-transferability clause. Subject to challenge under Paragraph IV.A, Protected Material also includes the following information disclosed during the course of this case if it is marked as required by this Protective Order:

1. Trade secrets or confidential, proprietary, or commercially sensitive information provided in response to discovery, in response to an order issued by the presiding officer or the Michigan Public Service Commission (“MPSC” or the “Commission”), in testimony or exhibits filed later in this case, or in arguments of counsel.

2. Information obtained under license from a third-party licensor, to which the Disclosing Party or witnesses engaged by the Disclosing Party is a licensee, that is subject to any confidentiality or non-transferability clause. This information includes reports; analyses; models (including related inputs and outputs); trade secrets; and confidential, proprietary, or commercially sensitive information that the Disclosing Party or one of its witnesses receives as a licensee and is authorized by the third-party licensor to disclose consistent with the terms and conditions of this Protective Order.

3. No individual Company employee’s compensation, benefits, or other personal information are relevant to this proceeding. No individual Company

employee's compensation, benefits, or other personal information shall be required to be disclosed in this proceeding in the course of a hearing, through discovery, under this Protective Order, or otherwise.

4. Information that could identify the bidders and bids, including the winning bid, in a competitive solicitation or in a competitively bid procurement, or construction contract at any stage of the selection process (i.e., before the Disclosing Party has entered into an agreement or selected a contractor).

5. Any memorandum, handwritten notes, or any other form of information that copies, contains, or discloses the Protected Material.

B. The information subject to this Protective Order does not include:

1. Information that is or has become available to the public through no fault of the Receiving Party or Reviewing Representative and no breach of this Protective Order, or information that is otherwise lawfully known by the Receiving Party without any obligation to hold it in confidence;

2. Information received from a third party free to disclose the information without restriction;

3. Information that is approved for release by written authorization of the Disclosing Party, but only to the extent of the authorization;

4. Information that is required by law or regulation to be disclosed, but only to the extent of the required disclosure; or

5. Information that is disclosed in response to a valid, non-appealable order of a court of competent jurisdiction or governmental body, but only to the extent the order requires.

C. "Party" refers to I&M, Michigan Public Service Commission Staff ("Staff"), and the Attorney General, or any other person, company, organization, or association that is granted intervention in Case No. U-20530 under the Commission's Rules of Practice and Procedure. Mich Admin Code, R 792.10401 *et al.*

D. "Receiving Party" means any Party to this proceeding who requests or receives access to Protected Material, subject to the requirement that each Reviewing Representative sign a Nondisclosure Certificate attached to this Protective Order as Attachment 1.

E. "Reviewing Representative" means a person who has signed a Nondisclosure Certificate and who is:

1. an attorney who has entered an appearance in this proceeding for a Receiving Party;
2. an attorney, paralegal, or other employee associated, for the purpose of this case, with an attorney described in Paragraph I.E.1;
3. an expert or employee of an expert retained by a Receiving Party to advise, prepare for, or testify in this proceeding; or
4. an employee or other representative of a Receiving Party with significant responsibility in this case.

A Reviewing Representative is responsible for assuring that persons under his or her supervision and control comply with this Protective Order.

F. "Nondisclosure Certificate" means the certificate attached to this Protective Order, which is signed by a Reviewing Representative who has been granted access to Protected Material and agreed to be bound by the terms of this Protective Order.

## **II. Access to and Use of Protected Materials**

A. This Protective Order governs the use of all Protected Material that is marked as required by Paragraph III.A and made available for review by the Disclosing Party to any Receiving Party or Reviewing Representative. This Protective Order protects: 1) the Protected Material; 2) any copy or reproduction of the Protected Material made by any person; and 3) any memorandum, handwritten notes, or any other form of information that copies, contains, or discloses Protected Material. All Protected Material in the possession of a Receiving Party shall be maintained in a secure place. Access to Protected Material shall be limited to persons authorized to have access subject to the provisions of this Protective Order.

B. Protected Material shall be used and disclosed by the Receiving Party solely in accordance with the terms and conditions of this Protective Order. A Receiving Party may authorize access to and use of Protected Material by a Reviewing Representative identified by the Receiving Party, subject to Paragraphs III and V below, only as necessary to analyze the Protected Material; make or respond to discovery; present evidence; prepare testimony, argument, briefs, or other filings; prepare for cross-examination; consider strategy; and evaluate settlement. These individuals shall not release or disclose the content of Protected Material to any other person or use the information for any other purpose.

C. The Disclosing Party retains the right to object to any designated Reviewing Representative if the Disclosing Party has reason to believe that there is an unacceptable risk of misuse of confidential information. If a Disclosing Party objects to a Reviewing Representative, the Disclosing Party and the Receiving Party will attempt to reach an

agreement to accommodate that Receiving Party's request to review Protected Material. If no agreement is reached, then either the Disclosing Party or the Receiving Party may submit the dispute to the presiding officer. If the Disclosing Party notifies a Receiving Party of an objection to a Reviewing Representative, then the Protected Material shall not be provided to that Reviewing Representative until the objection is resolved by agreement or by the presiding officer.

D. Before reviewing any Protected Material, including copies, reproductions, and copies of notes of Protected Material, a Receiving Party and Reviewing Representative shall sign a copy of the Nondisclosure Certificate (Attachment 1 to this Protective Order) agreeing to be bound by the terms of this Protective Order. The Reviewing Representative shall also provide a copy of the executed Nondisclosure Certificate to the Disclosing Party.

E. Even if no longer engaged in this proceeding, every person who has signed a Nondisclosure Certificate continues to be bound by the provisions of this Protective Order. The obligations under this Protective Order are not extinguished or nullified by entry of a final order in this case and are enforceable by the MPSC or a court of competent jurisdiction. To the extent Protected Material is not returned to a Disclosing Party, it remains subject to this Protective Order.

F. Members of the Commission, Commission Staff assigned to assist the Commission with its deliberations, and the presiding officer shall have access to all Protected Material that is submitted to the Commission under seal without the need to sign the Nondisclosure Certificate.

G. A Party retains the right to seek further restrictions on the dissemination of Protected Material to persons who have or may subsequently seek to intervene in this MPSC proceeding.

H. If a Receiving Party seeks access to CEII as defined in Federal Energy Regulatory Commission (“FERC”) rules, specifically 18 CFR § 388.113(c), the Receiving Party shall submit a separate non-disclosure agreement meeting the requirements of 18 CFR § 388.113(h)(2) that is Attachment 2 to this order. The Disclosing Party shall have five business days from receipt of the non-disclosure agreement to object to the Reviewing Representative’s access to the CEII, in which case the objecting party shall set the matter for hearing with the Administrative Law Judge (“ALJ”); or else the Disclosing Party shall provide the material to the Reviewing Representative. If the Disclosing Party believes that disclosure of some requested information poses an unresolvable security risk or other concern in spite of the protections provided above, that party may promptly seek additional relief from the ALJ, with no disclosure required prior to the ALJ’s decision. The parties reserve the right to seek a stay from the Commission and any court or appellate court of competent jurisdiction prior to making any ordered disclosure, but this order does not grant an automatic stay.

I. Nothing in this Protective Order precludes a Party from asserting a timely evidentiary objection to the proposed admission of Protected Material into the evidentiary record for this case.

### **III. Procedures**

A. The Disclosing Party shall mark any information that it considers confidential as “CONFIDENTIAL: SUBJECT TO THE PROTECTIVE ORDER ISSUED

ON [INSERT DATE] IN CASE NO. U-20805.” If the Receiving Party or a Reviewing Representative makes copies of any Protected Material, they shall conspicuously mark the copies as Protected Material. Notes of Protected Material shall also be conspicuously marked as Protected Material by the person making the notes.

B. If a Receiving Party wants to quote, refer to, or otherwise use Protected Material in pleadings, pre-filed testimony, exhibits, cross-examination, briefs, oral argument, comments, or in some other form in this proceeding (including administrative or judicial appeals), the Receiving Party shall do so consistent with procedures that will maintain the confidentiality of the Protected Material. For purposes of this Protective Order, the following procedures apply:

1. Written submissions using Protected Material shall be filed in a sealed record to be maintained by the MPSC’s Docket Section, or by a court of competent jurisdiction, in envelopes clearly marked on the outside, “CONFIDENTIAL — SUBJECT TO THE PROTECTIVE ORDER ISSUED IN CASE NO. U-20805.” Simultaneously, identical documents and materials, with the Protected Material redacted, shall be filed and disclosed the same way that evidence or briefs are usually filed.

2. Oral testimony, examination of witnesses, or argument about Protected Material shall be conducted on a separate record to be maintained by the MPSC’s Docket Section or by a court of competent jurisdiction. These separate record proceedings shall be closed to all persons except those furnishing the Protected Material and persons otherwise subject to this Protective Order. The Receiving Party presenting the Protected Material during the course of the proceeding shall



give the presiding officer or court sufficient notice to allow the presiding officer or court an opportunity to take measures to protect the confidentiality of the Protected Material.

3. Copies of the documents filed with the MPSC or a court of competent jurisdiction, which contain Protected Material, including the portions of the exhibits, transcripts, or briefs that refer to Protected Material, must be sealed and maintained in the MPSC's or court's files with a copy of the Protective Order attached.

C. It is intended that the Protected Material subject to this Protective Order should be shielded from disclosure by a Receiving Party only to the extent permitted by law. If any person files a request under the Freedom of Information Act with a governmental agency participating in this proceeding, including, but not limited to, the MPSC, the MPSC Staff, and the Michigan Attorney General, seeking access to documents subject to this Protective Order, the governmental agency shall promptly notify the Disclosing Party, and the Disclosing Party may take whatever legal actions it deems appropriate to protect the Protected Material from disclosure. In light of Section 5 of the Freedom of Information Act, MCL 15.235, the notice must be given at least five (5) business days before the governmental agency grants the request in full or in part.

#### **IV. Termination of Protected Status**

A. A Receiving Party reserves the right to challenge whether a document or information is Protected Material and whether this information can be withheld under this Protective Order. In response to a motion or on its own initiative, the Commission or the presiding officer in this case may revoke a document's protected status after notice and

hearing. If the presiding officer revokes a document's protected status, then the document loses its protected status after 14 days unless a Party files an application for leave to appeal the ruling to the Commission within that time period. Any Party opposing the application for leave to appeal shall file an answer with the Commission no more than 14 days after the filing and service of the appeal. If an application is filed, then the information will continue to be protected from disclosure until either the time for appeal of the Commission's final order resolving the issue has expired under MCL 462.26 or, if the order is appealed, until judicial review is completed and the time to take further appeals has expired.

B. If a document's protected status is challenged under Paragraph IV.A, then the Disclosing Party bears the burden of proving that the document should continue to be protected from disclosure.

## **V. Retention of Documents**

A. Protected Material remains the property of the Disclosing Party and, except as required by applicable law and State retention schedules, only remains available to the Receiving Party until the time expires for petitions for rehearing of a final MPSC order in this Case No. U-20805 or until the MPSC has ruled on all petitions for rehearing in this case (if any). However, an attorney for a Receiving Party who has signed a Nondisclosure Certificate and who is representing the Receiving Party in an appeal from an MPSC final order in this case may retain copies of Protected Material until either the time for appeal of the Commission's final order resolving the issue has expired under MCL 462.26 or, if the order is appealed, until judicial review is completed and the time to take further appeals has expired. On or before the time specified by the preceding sentences, the

Receiving Party shall return to the Disclosing Party all Protected Material in its possession or in the possession of its Reviewing Representatives—including all copies and notes of Protected Material—destroy the Protected Material and, at the request of the Disclosing Party, certify in writing that it has done so.

B. Notwithstanding the preceding Paragraph, counsel for a Receiving Party may maintain a single confidential file of Protected Material beyond the resolution of this proceeding, provided that this Protective Order will continue in effect with respect to the Protected Material for so long as it is retained by counsel for any requesting Party. If the Protected Material is relevant or reasonably calculated to lead to admissible evidence in another Commission proceeding, then it may be used in such a proceeding subject to the issuance of a new Protective Order in that proceeding. The terms of this Paragraph shall apply until the resolution of Case No. U-20805 or I&M's next Integrated Resource Planning case under MCL 460.6t conducted after the conclusion of Case No. U-21189, whichever occurs later. For purposes of this Paragraph, the "resolution" of a case means the expiration of the period of judicial review of a final order of the Commission. Counsel for a requesting Party may also retain, without time limitation, a single unredacted copy of any of counsel's own briefs (not including any confidential attachments) that contain information derived from Protected Material, subject to continued confidential treatment in accordance with all obligations of this Protective Order.

## **VI. Limitations and Disclosures**

The provisions of this Protective Order do not apply to a particular document, or portion of a document, described in Paragraph II.A if a Receiving Party can demonstrate that it has been previously disclosed by the Disclosing Party on a non-confidential basis

or meets the criteria set forth in Paragraphs I.B.1 through I.B.5. A Receiving Party intending to disclose information taken directly from materials identified as Protected Material must—before actually disclosing the Information do one of the following: 1) contact the Disclosing Party’s counsel of record and obtain written permission to disclose the information, or 2) challenge the confidential nature of the Protected Material and obtain a ruling under Paragraph IV that the information is not confidential and may be disclosed in or on the public record.

## **VII. Remedies**

If a Receiving Party violates this Protective Order by improperly disclosing or using Protected Material, the Receiving Party shall take all necessary steps to remedy the improper disclosure or use. This includes immediately notifying the MPSC, the presiding officer, and the Disclosing Party, in writing, of the identity of the person known or reasonably suspected to have obtained the Protected Material. A Party or person that violates this Protective Order remains subject to this paragraph regardless of whether the Disclosing Party could have discovered the violation earlier than it was discovered. This paragraph applies to both inadvertent and intentional violations. Nothing in this Protective Order limits the Disclosing Party’s rights and remedies, at law or in equity, against a Party or person using Protected Material in a manner not authorized by this Protective Order, including the right to obtain injunctive relief in a court of competent jurisdiction to prevent violations of this Protective Order.

**IT IS SO ORDERED:**

**STIPULATED AND AGREED:**

Dated: July 20, 2021

**For Commission Staff**

/s/ Nicholas Q. Taylor with permission  
Spencer A. Sattler (P70524)  
Amit T. Singh (P75492)  
Nicholas Q. Taylor (P81020)  
Assistant Attorney General  
Michigan Public Service Commission  
PO Box 30221  
Lansing, MI 48909  
singha@michigan.gov  
taylorn10@michigan.gov

Dated: July 20, 2021

**For Indiana Michigan Power Company**

Richard Aaron Digitally signed by: Richard Aaron  
DN: CN = Richard Aaron email =  
raaron@dykema.com C = US O = Dykema  
Date: 2022.07.20 16:52:40 -04'00'

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Richard J. Aaron (P35605)  
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Dated: July 20, 2021

**For Attorney General Dana Nessel**

/s/ Christopher M. Bzdok (w/permission)  
Michael E. Moody (P51985)  
Christopher M. Bzdok (P53094))  
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(517) 335-7627  
Moodym2@michigan.gov  
chris@envlaw.com

**IT IS SO ORDERED**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Administrative Law Judge

# **Attachment 1**

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of	)	
INDIANA MICHIGAN POWER COMPANY for	)	
a Power Supply Cost Recovery Reconciliation	)	Case No. U-20805
proceeding for the 12-month period	)	
ended December 31, 2021.	)	
_____	)	

**NONDISCLOSURE CERTIFICATE**

I hereby certify my understanding that access to Protected Material is provided to me pursuant to the terms and restrictions of the Protective Order issued in Case No. U-20805, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by the terms of the Protective Order. I understand that the substance of the Protected Material (as defined in the Protective Order), any notes from Protected Material, or any other form of information that copies or discloses Protected Material, shall be maintained as confidential and shall not be disclosed to anyone other than in accordance with the Protective Order.

Reviewing Representative

Date: \_\_\_\_\_

\_\_\_\_\_

Representing:

\_\_\_\_\_



# **Attachment 2**

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of	)	
INDIANA MICHIGAN POWER COMPANY for	)	
a Power Supply Cost Recovery Reconciliation	)	Case No. U-20805
proceeding for the 12-month period	)	
ended December 31, 2021.	)	
_____	)	

**NONDISCLOSURE AGREEMENT AND CERTIFICATE FOR CRITICAL ENERGY INFRASTRUCTURE INFORMATION**

I hereby certify my understanding that access to Critical Energy Infrastructure Information (“CEII”) as defined in 18 CFR § 388.113(c) is provided to me pursuant to the terms and restrictions of this Nondisclosure Agreement and the Protective Order issued in Case No. U-20805, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by the terms of this Nondisclosure Agreement and the Protective Order. I further agree that:

1. I will use CEII only for the purpose for which it was requested;
2. I will only discuss CEII with authorized recipients;
3. I will keep CEII in a secure place in a manner that prevents unauthorized access;
4. Except as required by applicable law and State retention schedules, I will destroy CEII or return it to the disclosing party upon request;
5. I understand that CEII is not subject to release under the Freedom of Information Act;

6. I understand that I am obligated to protect CEII even after a designation as CEII has lapsed until a determination by the Administrative Law Judge that the information should no longer be designated as CEII; and
7. I will report all unauthorized disclosures of CEII to the disclosing party.

Reviewing Representative

Date: \_\_\_\_\_

\_\_\_\_\_

Representing:

\_\_\_\_\_

STATE OF MICHIGAN  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

STATE OF MICHIGAN	)	
	) SS.	Case No. U-20805
County of Ingham	)	
_____	)	

PROOF OF SERVICE

Meaghan Dobie being duly sworn, deposes and says that on July 22, 2022, she served a copy of the attached Stipulation for Protective Order via email and/or first-class mail, to the persons as shown on the attached service list.

\_\_\_\_\_  
Meaghan Dobie

Subscribed and sworn to before me this  
22<sup>nd</sup> day of July 2022.



\_\_\_\_\_  
Brianna L. Brown  
Notary Public, Gratiot County, Michigan  
My Commission Expires July 4, 2028

**Case No. U-20805**  
**Service List**

**INDIANA MICHIGAN POWER COMPANY**

Richard J. Aaron

[raaron@dykema.com](mailto:raaron@dykema.com)

**MICHIGAN PUBLIC SERVICE COMMISSION STAFF**

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