

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,	)	
regarding the regulatory reviews, revisions,	)	
determinations, and/or approvals necessary for	)	Case No. U-20877
<b>INDIANA MICHIGAN POWER COMPANY</b> to fully	)	
comply with Public Act 295 of 2008, as amended by	)	
Public Act 342 of 2016.	)	
_____	)	

At the August 11, 2022 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair  
Hon. Tremaine L. Phillips, Commissioner  
Hon. Katherine L. Peretick, Commissioner

**ORDER**

History of Proceedings

On July 30, 2021, in compliance with Public Act 295 of 2008 (Act 295), as amended by Public Act 342 of 2016 (Act 342), Indiana Michigan Power Company (I&M) filed an application, with supporting testimony and exhibits, seeking approval of its energy waste reduction (EWR) plan for 2022-2023, and related relief.

A prehearing conference was held on September 8, 2021, before Administrative Law Judge Martin D. Snider (ALJ). At the prehearing conference, the ALJ granted intervenor status to the Citizens Utility Board of Michigan (CUB) and acknowledged the notice of intervention filed by the Michigan Department of Attorney General (Attorney General). The Commission Staff (Staff) and I&M also participated in the proceeding.

An evidentiary hearing was held before the ALJ on December 16, 2021. The ALJ issued a Proposal for Decision (PFD) on April 1, 2022. Exceptions were filed by the Staff and jointly by the Attorney General and CUB on April 22, 2022, and replies to exceptions were filed by I&M on May 6, 2022. The record in this matter consists of 190 pages of transcript and 27 exhibits admitted into evidence.

### Discussion

The ALJ provided a thorough review of the record in the PFD that will not be repeated here. *See*, PFD, pp. 4-60. Summarizing I&M's proposed EWR plan, the ALJ noted that the company's target savings levels exceed the 1% statutory standard, at 1.42% for 2022 and 1.48% for 2023, as based upon I&M's 2021 Market Potential Study (2021 MPS). *Id.*, p. 60; *see also*, Exhibit IM-20. The ALJ indicated that the Staff recommended several changes to the company's proposed EWR plan, as did the Attorney General and CUB jointly. *Id.*, pp. 62-63. The recommended changes are individually discussed below.

### Proposed Energy Waste Reduction Savings Levels

The Staff disputed the company's savings targets in its EWR plan, indicating that I&M should strive for savings levels at 2% and that the company's proposed EWR levels fell below the achievable potential savings levels of 1.9% for 2022, and 1.8% for 2023, based upon the 2020 Michigan Energy Waste Reduction Statewide Potential Study (2020 statewide study), and therefore, should be deemed unreasonable. 2 Tr 159. The Staff further argued that the company has been underserving its customers "for far too long" and that I&M's achieved savings levels have declined over the last three years. 2 Tr 160. I&M responded that in the October 29, 2020 order in Case No. U-20374 (October 29 order), the final order in I&M's 2020-2021 EWR proceeding, the Commission "acknowledged that the I&M 2016 Market Study was specifically

designed for I&M's Michigan service area and supported the Company's savings targets," and rejected the Staff's proposed higher savings target based upon a study not specific to the company's service territory. 2 Tr 118 (footnote omitted). Therefore, I&M argued that its proposed targets "are aggressive compared to prior actual achievements" and are substantiated by the 2021 MPS, a service area specific and comprehensive review, which is consistent with the Commission's decision in the October 29 order. *Id.*

The ALJ agreed with I&M, concluding that the 2021 MPS supports the company's proposed savings targets of 1.42% for 2022 and 1.48% for 2023, which are "[m]arkedly higher than prior EWR plan actual savings." PFD, p. 68. Further, the ALJ found that reliance on the 2021 MPS was consistent with the October 29 order. Therefore, the ALJ recommended approval of I&M's proposed savings targets. PFD, p. 68.

No exceptions were filed on this issue.

The Commission finds that I&M's study is a reasonable indication of savings targets for the plan year. In this case, as noted by the company and the ALJ, the proposed savings targets of 1.42% for 2022 and 1.48% for 2023 are much higher than I&M's actual achieved savings in recent years. *See*, 2 Tr 160. Therefore, the Commission finds the company's proposed savings targets to be reasonable and prudent on this record and adopts the ALJ's recommendation to approve I&M's proposed EWR savings targets. Further, while the Commission appreciates that each utility's service territory is unique, the Commission finds the Statewide Potential Study continues to provide valuable insights that are useful to the development of EWR programs in Michigan.

Notwithstanding the above, the Commission finds the Staff's points regarding the company's abysmal EWR performance in 2020 of 0.7% which was below the statutory minimum, and in recent years to be well-taken. *See*, 2 Tr 160. Further, as noted in the October 29 order:

Section 73 [MCL 460.1073] requires the Commission to determine if the EWR plan is consistent with any long-range resource planning, such as an IRP [integrated resource plan]. MCL 460.1073(2)(c). On September 10, 2020, the Commission issued an order in Case No. U-20591 approving a settlement agreement resolving I&M's IRP case that had been pending during this proceeding (September 10 order). The settlement agreement allows I&M to withdraw its IRP and refile an IRP application no later than December 15, 2021. September 10 order, p. 2. Thus, at this time, I&M does not yet have an approved IRP with which to judge consistency with its EWR plan.

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The Commission notes that the IRP statute, MCL 460.6t, tasks the Commission with considering EWR as part of a holistic assessment of an electric provider's means of meeting energy and capacity needs in terms of assessing EWR potential, modeling assumptions, and analyzing how the 35% goal set out in Section 1 of the Clean and Renewable Energy and Energy Waste Reduction Act will be achieved. MCL 460.6t(1), (5), and (8); MCL 460.1001. The Commission finds that the IRP statute contemplates not only achieving the minimum statutory 1% EWR savings, but achieving EWR savings that align with an IRP determined to be the most reasonable and cost effective means of meeting the utility's energy and capacity needs as determined pursuant to the factors set forth in MCL 460.6t. MCL 460.6t(8)(a). Therefore, while the Commission does not find that the record supports compelling I&M to achieve a higher target in this proceeding, the Commission does not foreclose on the possibility that, in the context of an IRP proceeding, the Commission could find that a reasonable and cost effective EWR target exceeds the 1% minimum set forth in Section 77 [MCL 460.1077].

October 29 order, pp. 8-9. I&M filed its IRP application on February 28, 2022, in Case No.

U-21189, which is currently pending before the Commission. The Commission reiterates its discussion of MCL 460.6t in the October 29 order, as quoted above, and concludes that I&M's

EWR targets will be further reviewed through the company's IRP proceeding in Case No.

U-21189. Depending upon the determinations made in Case No. U-21189, an amendment of the approved savings targets noted above may be appropriate.

#### Carryover of Unachieved 2020 Energy Waste Reduction Savings

The Staff noted its recommendation in Case No. U-20867 for the Commission to require I&M to "add the equivalent of the 30% of unachieved 2020 savings relative to the 1% target to the

Company's 2021 EWR savings target" and that, if so ordered "and the Company is unable to, those savings should carry over into the 2022 program year and [be] added to the legislatively mandated 1% goal without the benefit of receiving an incentive on those additional savings."

2 Tr 160-161. I&M responded that this recommendation was "unfairly punitive, especially considering if a utility over achieves in one year, the over achievement does not carry over to the next year, thereby excusing the utility from having to achieve the 1%." 2 Tr 134-135.

The ALJ found that MCL 460.1073(3) provides the Commission with limited authority and does not provide the Commission with "the authority to retroactively mandate I&M to achieve a higher energy savings target in a previous EWR year or amend a preceding EWR Plan arising from an un-appealed Commission final order." PFD, p. 69. The ALJ further noted that the Staff did not provide evidence to demonstrate that its recommendation would be cost effective or what would occur if there was an overachievement. Citing Case No. U-20374, the ALJ found that the Staff's recommendation should be rejected. *See*, PFD, p. 70.

No exceptions were filed on this issue.

As noted by the Staff, its request was made in Case No. U-20867, and on March 17, 2022, the Commission issued an order in Case No. U-20867 (March 17 order) fully addressing the Staff's recommendation as follows:

Turning to the Staff's recommendation that the Commission require I&M to make up the savings it did not achieve in 2020 in the company's 2021 EWR program, the Commission agrees with the ALJ in declining to adopt this recommendation. As the Commission has discussed in the October 29, 2020 order in Case No. U-20374, I&M's 2020-2021 EWR plan case, the Commission cannot raise the statutory energy savings minimum set out in Section 77. The Commission is, however, tasked with ensuring that any approved EWR plan is cost-effective, reasonable and prudent, and aligns with the utility's long-range resource plan. *See*, MCL 460.1073(2). With that, it may be appropriate for the Commission to set a higher target for I&M in the future that aligns with the company's long-range resource plan or integrated resource plan (IRP). The Commission notes that after initially filing and withdrawing its IRP in Case No. U-20591, I&M filed an

application on February 28, 2022, seeking approval of its IRP in Case No. U-21189. In its holistic evaluation of the company's proposed IRP, the Commission will look carefully at the company's planned reliance on EWR as a demand-side resource.

In addition, the Commission notes that one consequence of I&M's failure to comply with the EWR savings requirements of Act 295, as amended by Act 342, was likely that the company had to generate and/or purchase additional electricity to make up for its unachieved EWR savings. As such, the Commission will closely review I&M's power supply costs to evaluate whether these additional market and fuel purchase costs were in fact reasonably and prudently incurred. Given that the record has closed in I&M's 2020 power supply cost recovery (PSCR) reconciliation proceeding in Case No. U-20530, the Commission directs I&M, in its 2021 PSCR reconciliation filing in Case No. U-20805, to provide a detailed explanation and supporting documentation of the impacts of its failure to comply with the EWR savings requirements of Act 295, as amended by Act 342, on its power supply costs and needs, consistent with the Commission's authority to "consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue was not considered adequately at a previously conducted power supply and cost review." MCL 460.6j(12).

March 17 order, pp. 9-10.

The Commission reiterates the conclusions, as quoted above, made in the March 17 order and adopts the ALJ's findings and recommendations on this issue.

#### Limitation on Behavioral Based Energy Savings Measures

I&M included increased behavior savings contributions of 18% for 2022 and 33% for 2023. *See*, 2 Tr 125. The Staff, however, recommended that the Commission require the company to retain a 15% limitation on spending for behavioral-based energy savings measures including the home energy reports (HER) and home energy engagement (HEE) programs. 2 Tr 166. The 15% limitation began as part of the settlement in Case No. U-18263 regarding the company's 2018-2019 EWR plan and was also incorporated into the 2020-2021 EWR plan in Case No. U-20374. The Staff noted that it:

had concerns that the proportion of savings from behavioral programs was too large, and potentially growing larger, compared to traditional physical measures such as efficient appliances and building improvements. These concerns stemmed

from, among other things, a lack of persistence in energy savings from behavioral programs, limits on educational programs per Commission orders, and the displacement of traditional measures that have longer term benefits.

2 Tr 166-167 (footnotes omitted). I&M disputes the Staff's recommendation citing increasing expectations for savings levels and customer preferences and needs and argues that "the 15% limitation actually prevents customers from realizing the full benefit potential and keeps I&M from realizing higher savings." 2 Tr 125.

The ALJ stated that the Staff did not argue the company's proposed increases were not reasonable or prudent, as the Staff only advocated a preference for long life measures rather than behavioral measures. In addition, the ALJ concluded that "I&Ms proposed spending levels of 18% in 2022 and 33% in 2023 are supported by the evidence" and therefore recommended that "the Commission adopt I&M's spending levels and not adopt Staff's 15% limit." PFD, p. 73.

The Staff takes exception to the ALJ's statement that the Staff did not argue the company's proposed increase in behavioral based energy savings were not reasonable and prudent. The Staff states that while it "may not have used the words 'not reasonable nor prudent' in describing I&M's proposed increases in its behavioral based energy savings measures, Staff's testimony clearly indicates that Staff does not believe that these increases in behavioral based energy savings measures are reasonable or prudent." Staff's exceptions, pp. 4-5. Reiterating its testimony and briefing that the savings from behavioral based programs decline rapidly, the Staff avers that it is neither reasonable nor prudent to base a large portion of a utility's EWR program on changes in customer behavior. Rather, the "Staff asserts that it is reasonable and prudent to continue restricting behavior based measures to 15% while more durable, persisting measures continue to make up the bulk of the EWR program for I&M." Staff's exceptions, p. 5.

In reply, I&M reiterates its testimony that the 15% limitation would impair its ability to achieve higher savings and customer parity is harmed. I&M's replies to exceptions, p. 12 (citing 2 Tr 125). The company reiterates that the Staff's preference for long life measures should be disregarded because I&M additionally "has specific plans to also increase long life measure participation in its EWR Plan," and "[b]ehavior savings are inherently borne out of individual customer motivation for change and therefore should be considered separate and distinct, where one should not be limited or constrained, due to the other." I&M's replies to exceptions, p. 13. In addition, I&M again states that it has a plan to evaluate the customer behavior savings and "it is not appropriate to unduly constrain the benefits resulting to I&M customers as a result of Staff's recommended 15% limitation." *Id.*

The Commission agrees with the Staff's contention that the company's proposed increases in behavioral savings contributions are not reasonable or prudent. As noted by the Staff, the limit on behavior-based programs was first proposed in Case No. U-18263 and was ultimately adopted in the Commission-approved settlement agreement in that case. The Staff reiterated its testimony from Case No. U-18263, noting its "concerns that the proportion of savings from behavioral programs was too large, and potentially growing larger, compared to traditional physical measures such as efficient appliances and building improvements" and that those "concerns stemmed from, among other things, a lack of persistence in energy savings from behavioral programs, limits on educational programs per Commission orders, and the displacement of traditional measures that have longer term benefits." 2 Tr 166-167 (citations omitted). The Commission agrees with the Staff and finds that it is neither reasonable nor prudent to increase behavioral programs with a one-year measure life and that "[g]rowing other programs with longer measure lives would result in more durable savings . . . ." 2 Tr 167. Therefore, the Commission adopts the Staff's proposal,



and finds that the behavioral savings contributions shall continue to be capped at 15% for 2022 and 2023.

In addition, the Commission echoes the Staff's concerns pertaining to the evaluation and amount of savings claimed in the Michigan Behavior Resource Manual (BRM) adopted by the EWR Collaborative. *See*, 2 Tr 167. As noted by the Staff, "[t]he HERs and HEE programs as described would not qualify for the prescribed, or 'deemed', energy savings" as reported in the BRM and would "require the programs to be evaluated appropriately to establish the energy savings. This evaluation has to be designed and executed according to the industry best practices referenced in the BRM because of the differences between the BRM version of HERs and the Company's version." 2 Tr 176. In its replies to exceptions, I&M notes that it has "a plan to appropriately evaluate the customer behavior savings to ensure consistency with the" BRM including that "as part of a transitional strategy, I&M has already switched to an electronic version of Home Energy Reports and has evaluated the energy savings in the past two EWR program years as part of the current approved EWR Plan in Case No. U-20374." I&M's replies to exceptions, p. 12. Further, I&M indicates that it "has engaged its third party evaluator to develop custom evaluation plans to appropriately examine an increasing number of customers participating, as the treatment group, based on self-selection into receiving specific weekly reports on their individual usage." *Id.*, pp. 12-13. Given the concerns, the Commission directs I&M to work with the Staff to ensure appropriate evaluation and reporting of savings in compliance with the BRM.

#### Participation in the Michigan Energy Assistance Program

The Staff also recommended that the Commission direct I&M to participate in the Michigan Energy Assistance Program (MEAP). *See*, 2 Tr 142-143. The company agreed that this was a "reasonable goal" and stated that it has:

been in the process of investigating MEAP and the impact it could have on I&M customers for several months. Currently, I&M is working with [the] Staff to understand all of the requirements of the program as well as consulting with other utilities involved to create a proposal that could potentially work for I&M. Further discussions and investigation are needed to determine the internal impacts, staffing, and budgets requirements to implement such a plan.

2 Tr 100.

The ALJ found the Staff's recommendation to be reasonable and prudent and recommended that the Commission "direct I&M to participate in MEAP after I&M and Staff determine the staffing and budgeting impact on I&M." PFD, p. 74.

No exceptions were filed on this issue, and the Commission finds the ALJ's recommendation to be well-reasoned. Therefore, the Commission finds that I&M shall participate in MEAP and should continue to work with the Staff to determine the staffing and budgeting impacts of participation.

#### Collection of Customer Data

The Staff further recommended that the company begin to track data regarding customers receiving both EWR and bill payment assistance to:

identify blind spots in its program delivery, focus its much-needed weatherization efforts on those customers who are in the most need of its services, identify opportunities to work in conjunction with other utilities and develop partnerships with stakeholder agencies to shore up the obvious weaknesses in its tangible program delivery.

2 Tr 143. I&M noted concern with the recommendation stating that it "does not collect customer data regarding age, gender, race/ethnicity, income, education level, etc. that would be applicable to issues related to customer affordability and access" and arguing that it is not the company's role "to routinely collect, process, disclose, and store this type of sensitive personal information directly from its customers." 2 Tr 112.

The ALJ found that collecting “customer personal information and data to identify customers that receive EWR, and bill payment assistance is not reasonable nor prudent” and therefore recommended that the Commission reject the Staff’s proposal. PFD, p. 75.

No exceptions were filed on this issue.

The Commission notes the company’s concerns but finds that the goal of data collection, as recommended by the Staff, is not to share information with third parties but to improve the company’s ability to connect customers with appropriate programming. As stated by the Staff in its initial brief, the proposed data collection “would help identify those customers who are missing out on program delivery, focus its weatherization efforts on those customers who are most in need, identify opportunities to work with other utilities and develop stakeholder partnerships.” Staff’s initial brief, p. 3. Further, other utilities are pursuing similar voluntary based data collection efforts, which are in compliance with the Commission’s rules. *See*, January 20, 2022 orders in Case Nos. U-20876 and U-20881 (January 20 orders); *see also*, Mich Admin Code, R 460.153. Therefore, the Commission directs I&M to work with the Staff to develop an appropriate data collection methodology which protects customers’ interests but also aids in furthering the goals outlined by the Staff in briefing and quoted above.

#### Income Qualified Customer Spending

I&M proposed spending \$2,767,040 in 2022 and \$513,578 in 2023 on income qualified (IQ) customers. Exhibit IM-3. The Attorney General and CUB pointed out that the proposed spending is only 18% of the residential portfolio funds for 2022 and 17% of the residential portfolio funds for 2023. 2 Tr 178. However, the Attorney General and CUB stated that, based upon the company’s estimates provided through discovery, it has approximately 28,892 IQ customers, or about 26.2% of its residential customers. 2 Tr 177; *see also*, Exhibit AG-2. Based upon this

information, the Attorney General and CUB argued that I&M should be required to increase its IQ budgeted “programming at or above a level that matches the proportion of [I&M] residential customers that are [IQ] (25%), by increasing that part of [I&M’s] proposed budget without reducing the non-[IQ] residential EWR budget.” 2 Tr 178-179. I&M countered the Attorney General and CUB’s recommendation, indicating that it is based upon an “unsupported assumption” that “IQ customers spend approximately the same amount on energy as non-IQ customers” and that “there are several publicly available reports which demonstrate that low-income households have lower energy expenditures than non-low-income households.” 2 Tr 89.

The ALJ concluded “that the evidence presented shows that I&M’s proposed IQ program spending is reasonable and prudent and that [the Attorney General]/CUB’s IQ spending recommendation is based on an unsupported and incorrect assumption regarding I&M non-IQ and IQ customer electric use.” PFD, p. 79. Therefore, the ALJ recommended that the Commission approve I&M’s proposed IQ program spending.

The Attorney General and CUB take exception to the ALJ’s rejection of their recommendation for IQ residential customer programming. Specifically, the Attorney General and CUB argue that the ALJ addressed little to none of their record arguments which utilized “I&M’s own evidence in the case . . . .” Attorney General and CUB’s exceptions, p. 8. Restating record testimony, the Attorney General and CUB reiterate that about 26.2% of I&M’s residential customers are IQ in comparison to the 17-18% budgeted for IQ programming. The Attorney General and CUB argue, therefore, that the budget for IQ programing is not “a fair and equitable amount of its Income Qualified customers.” Attorney General and CUB’s exceptions, p. 5. Reviewing the studies relied upon by I&M, the Attorney General and CUB argue that the reports cited do not “advocate for

spending less on low-income customers because they cannot afford to spend as much as non-low-income customers.” *Id.*, p. 6 (referencing 2 Tr 89-91). Rather, the Attorney General and CUB state that the studies actually encourage “greater utility spending in this area.” Attorney General and CUB’s exceptions, p. 7. The Attorney General and CUB state that “[t]he lack of spending on electricity is likely not because low-income customers choose to spend less, but rather they are struggling to meet budgets for their households” and merely because other EWR programs are available to IQ customers does not “help address some of the unique challenges of low-income customers and the type of housing they are living in versus the non-low-income customers.” *Id.*, p. 8 (citing 2 Tr 90). I&M replies that the ALJ properly found its proposed IQ spending to be reasonable and prudent and that “there are several publicly available reports which demonstrate that low-income households have lower energy expenditures than non-low-income households.” I&M’s replies to exceptions, p. 6 (citing 2 Tr 177-178). Reiterating its record testimony, I&M avers that its proposed spending of 18% in 2022 and 17% in 2024 is closely aligned with the proportional amount revenue estimated to be from low-income customers based upon the study findings. *Id.* In addition, I&M states that “IQ customers are not precluded from participating in and benefiting from the other EWR programs in the residential portfolio” and “that IQ customers receive more than their fair share of funding and savings than the remaining residential customers in I&M’s service territory.” *Id.*

The Commission finds that the ALJ properly weighed the evidence presented and determined that I&M supported its IQ spending proposal. As noted by the ALJ, the Attorney General and CUB’s proposal assumes similar energy expenditures from low-income and non-low-income customers, which is not supported on the record. Therefore, the Commission declines to recommend increased IQ spending on this record. Nevertheless, the Commission finds that I&M’s

IQ spending and efforts are lacking, with historical spending continuing to decline. As reflected in the American Council for an Energy-Efficient Economy (ACEEE) report cited to by I&M,<sup>1</sup> there are well-known barriers that often prevent low-income customers from participating in EWR programs offered to all customers. *See*, ACEEE report, p. 1. Overall, the Commission finds that there is much room for improvement in the company's low-income programming, and that additional measures should be considered such as the on-bill repayment options, more fully discussed below. Therefore, the Commission finds that I&M should work with the Staff to improve the company's low-income programming.

#### Review of Utility Cost Test Ratios

The Attorney General and CUB argued that, in reviewing Exhibits IM-9 through IM-19, many of the proposed measures have high Utility Cost Test (UCT) ratios. 2 Tr 179-180. The Attorney General and CUB recommend that the Commission:

require [I&M] to evaluate all measures with high UCT ratios and identify those where market penetration is modest and where customer adoption might reasonably be expected to respond to the level of customer assistance, and on that basis to propose an experiment in which some of these measures receive significantly increased support while others do not and customer response can be observed.

2 Tr 181. I&M argues, however, that its evidence suggests “that while higher incentives will lead to increased savings, estimated costs will increase by 3.4% for every 1% increase in savings” which it contends demonstrates its proposed “incentive levels are sufficient to encourage participation in the EWR programs without significant increases in program spending that would lead to rapidly diminishing returns and reduced cost-effectiveness.” 2 Tr 92.

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<sup>1</sup> *See*, 2 Tr 90 (citing ACEEE, *Building Better Energy Efficiency Programs for Low-Income Households*, available at <https://www.aceee.org/sites/default/files/publications/researchreports/al601.pdf> (accessed August 11, 2022)).

The ALJ stated that the Attorney General and CUB are not recommending that the UCT ratios be addressed in the instant proceeding; therefore, he stated, “[b]ecause of this I leave it to the Commission to decide what it would like I&M to do in I&M’s next plan case.” PFD, pp. 81-82.

No exceptions were filed on this issue.

The Commission finds that the Attorney General and CUB’s proposal is reasonable. Therefore, the Commission directs I&M, in its next EWR plan proceeding, to present an evaluation of all measures with a UCT score of 1.0 and higher consistent with the Attorney General and CUB’s proposal. *See*, 2 Tr 179-181.

#### On-Bill Repayment Program

The Attorney General and CUB recommended that I&M consider implementing or piloting an on-bill repayment program as authorized by Part 7 of Act 342. I&M replies that “[t]he decision to request approval is a matter of utility discretion” and “that concerns exist regarding the feasibility of an on-bill repayment program for residential energy efficiency improvements. Introducing such a program, even as a pilot, could be cost-prohibitive and highly complex.” I&M’s reply brief, p. 24.

The ALJ found that “I&M has not included a request in its EWR plan filing in this matter to establish an on-bill repayment program and has not asked the Commission for approval of such a plan under MCL 460.1205.” PFD, p. 84. The ALJ found I&M’s concerns regarding cost, complexity, and legal issues to be reasonable. The ALJ recommended that, given the fact that I&M did not propose an on-bill repayment program, the Commission should reject the Attorney General and CUB’s proposal and noted that “[i]f I&M choses to implement an on-bill repayment plan in the future, it may do so consistent with MCL 460.1205 in a general rate case or other appropriate contested case proceeding.” PFD, p. 84.

The Attorney General and CUB take exception to the ALJ's rejection of the on-bill repayment program proposal. Reiterating testimony, the Attorney General and CUB again note that, while MCL 460.1205 provides discretion to the utility to provide on-bill financing options, they request "that the Commission encourage I&M to review the program and/or consider ordering its Staff to conduct a review of the program and provide options for all the parties to review in the next EWR plan case." Attorney General and CUB's exceptions, p. 3.

The Commission recommends that an evaluation of on-bill repayment options be included in I&M's next EWR plan case. The Staff shall work with I&M to continue evaluating on-bill repayment options to be considered in the future.

#### Financial Incentive Mechanism

I&M proposed a financial incentive mechanism (FIM) which it states, "reflects the mechanism approved by the Commission in the 2020 and 2021 EWR Plan but adjusted by I&M to propose slightly different metrics for performance achievement basis." 2 Tr 65; *see also*, Exhibit IM-7. The Staff proposed modifying "the legislative first-year savings percent of minimum savings from the company's proposal of 75% to 100% and maximum savings from 150% to 200%." 2 Tr 152; *see also*, Exhibit S-1. The Staff avers that a FIM starting below the 1% statutory minimum in MCL 460.1077 "would be inappropriate and threaten the integrity of a performance incentive." 2 Tr 152. Similarly, the Attorney General and CUB recommended changes to I&M's proposal, as reflected in Exhibit AG-3, and argue that the FIM proposed by the company exceeds the statutory maximum and is inconsistent with MCL 460.1075. 2 Tr 185-187; *see also*, Attorney General and CUB's initial brief, pp. 8-11.

The ALJ found that, contrary to the Staff's assertions, I&M proposed savings targets above the 1% threshold as "Exhibit IM-7 shows that I&M's FIM Payout Tier 1 starts at 75% of the EWR



Plan Target Attainment, or 75% of the 1.42% achievement proposed by the [sic] I&M for 2022 and 1.48% in 2023.” PFD, p. 89. He agreed with I&M’s testimony that its proposal would “result in a threshold of 1.065% in 2022 and 1.11% in 2023.” *Id.* (citing 2 Tr 131). The ALJ also held that the Attorney General and CUB’s arguments have no merit because MCL 460.6a(13) provides discretion to the Commission to approve alternate FIM methodologies and “ignores the fact that the prior I&M proceedings were contested case proceeding[s] where I&M’s FIM was approved by the Commission.” PFD, p. 93. Therefore, the ALJ concluded that the FIM proposed by I&M was reasonable and prudent and that “the Commission has the authority to approve I&M’s FIM.” PFD, p. 89.

In exceptions, the Staff avers that the FIM proposed by I&M is not reasonable and prudent. The Staff argues that the ALJ placed too much emphasis on the 1% minimum or higher standard under MCL 460.1077 because “barely exceeding 1% may not be reasonable or prudent.” Staff’s exceptions, p. 2. The Staff contends that its proposed FIM is the most reasonable and prudent and that the Commission has discretion in determining whether the EWR plan, including the FIM, is reasonable and prudent. The Staff reiterated its position, with which the company agreed, that:

“the goal of a financial incentive in this case is to incentivize the Company to implement an EWR program that goes above and beyond ‘business as usual,’ or actual performance achieved historically.” Yet, I&M has presented no facts to show it is going above and beyond in this case with its proposed FIM.

Staff’s exceptions, p. 3 (quoting 2 Tr 132). The Staff further states that the FIM should not be used to allow the utility “to stand still or go backwards but to go forwards by planning for further savings than was achieved in prior years” and “[a] contrary interpretation is not reasonable or prudent.” Staff’s exceptions, p. 4.

The Attorney General and CUB also take exception, arguing that the ALJ did not fully address the statutory problems with I&M’s proposed FIM. The Attorney General and CUB state that the

proposed FIM is inconsistent with MCL 460.1075 and that “the ALJ simply ignored that argument and concluded that MCL 460.6a(13) allows the Commission to adopt alternative methodologies.” Attorney General and CUB’s exceptions, p. 9. The Attorney General and CUB aver that MCL 460.6a(13) does not simply override the requirements in MCL 460.1075, “otherwise why even have the specific statutory language in Section 75 and the three tiered system of financial incentives/incremental savings. Such an interpretation would render the language in Section 75 surplusage or nugatory.” Attorney General and CUB’s exceptions, p. 10 (footnote omitted). Rather, the Attorney General and CUB argue that MCL 460.6a(13) “gives the Commission flexibility to ensure that these energy waste reduction measures are not disfavored by an electric utility that is considering supply-side/new electric generation investments” but that “the ALJ never addressed this language and never made any findings regarding whether an alternative methodology is necessary to ensure that investments in energy waste reduction, demand-side programs, peak load reduction, and other waste reduction measures are not disfavored when compared to utility supply-side investments.” Attorney General and CUB’s exceptions, p. 11.

Replying to the Staff, I&M avers that the Staff’s exceptions are based upon a misunderstanding of the company’s proposal and that its “proposed FIM remains consistent with the EWR statutory scheme and Staff’s traditional understanding of the purpose of the FIM.” I&M’s replies to exceptions, p. 10. In reply to the Attorney General and CUB, I&M cites to the Commission’s April 25, 2022 order in Case No. U-20883 (April 25 order) “ruling against the Intervenor’s argument against harmonizing MCL 460.6a(13) and MCL 460.1075 in a manner that provides flexibility and discretion to approve alternative FIM methodologies.” I&M’s replies to exceptions, p. 3. Therefore, I&M argues that the Commission properly interpreted MCL 460.1075 and MCL 460.6a(13) in the April 25 order and that “[r]eading MCL 460.6a(13) and MCL

460.1075 together, to harmonize and give effect to both, leads to the conclusion that the Commission has the flexibility and discretion to review and approve alternative methodologies for utility FIMs arising from MCL 460.1075.” I&M’s replies to exceptions, p. 4.

The Commission finds that the ALJ properly found that I&M’s proposed FIM, as reflected in Exhibit IM-7, results in a threshold of 1.065% in 2022 and 1.11% in 2023. *See*, PFD, p. 89.

While the Commission agrees with the Staff’s concerns, it finds that the FIM proposed does, in fact, exceed both the threshold in MCL 460.1075 and I&M’s recent historical performance. *See*, 2 Tr 160. The Commission notes that the framework of the FIM set forth by I&M is structured differently than previously approved FIMs given that it is structured in comparison to the company’s proposed savings targets as opposed to the legislative standard. Exhibit IM-7.

Nevertheless, the Commission agrees with the ALJ’s findings and conclusion that the FIM as proposed by I&M is reasonable and exceeds both the threshold in MCL 460.1075 and I&M’s recent historical performance.

With respect to the Attorney General and CUB’s statutory concerns, the Commission again acknowledges and appreciates these arguments; however, as it did in the April 25 order, the Commission finds that the ALJ’s conclusion is consistent with the interrelated statutory provisions of MCL 460.6a(13) and MCL 460.1075. Further, the Commission concludes that I&M’s proposed FIM is consistent with the Commission’s precedent in these cases, including the decisions approving I&M’s past EWR programs in Case Nos. U-18263, U-20367, and U-20374. The Attorney General and CUB have not demonstrated on this record that I&M’s proposed FIM is not in compliance with MCL 460.1075, and the Commission concludes that the FIM, as proposed by I&M, ensures that investments in EWR, demand-side programs, peak load reduction, and other waste reduction measures are not disfavored when compared to utility supply-side investments.

Therefore, the Commission adopts the findings and conclusions of the ALJ with respect to the FIM.

#### Revenue Requirements and Surcharges

I&M presented an EWR plan revenue requirement of \$12,188,967 including “operating costs associated with program rebates, customer education, plan administration, information technology support, and marketing.” 2 Tr 71; *see also*, Exhibit IM-21. The company also indicated that its proposed “rate design structure remains the same for Residential, Unmetered, Commercial and Industrial (C&I) small/medium customers and C&I large customers” and provided updated EWR monthly plan rate surcharges for each customer class. 2 Tr 28-29; *see also*, Exhibit IM-21.

The ALJ concluded “that the evidence shows that I&M’s EWR plan rate schedules supporting the proposed total EWR revenue requirement for 2022-2023 of \$12,188,967, effective for bills rendered beginning with the billing month of January 2022 (which begins on December 30, 2021) . . . are reasonable and prudent.” PFD, p. 95. Therefore, the ALJ recommended that the Commission approve the company’s EWR revenue requirement of \$12,188,967 and related surcharges.

No exceptions were filed on this issue.

The Commission finds the ALJ’s determination to be supported by the record. Therefore, the Commission adopts the ALJ’s recommendation and approves the 2022-2023 revenue requirement of \$12,188,967 and related surcharges as reflected in Exhibit IM-21.

THEREFORE, IT IS ORDERED that:

A. Indiana Michigan Power Company’s 2022-2023 energy waste reduction plan is approved, subject to the company’s agreement to continuing the capping of the behavioral savings

contributions at 15% for 2022 and 2023, as described in this order. Within 10 days of the date of this order Indiana Michigan Power Company shall file in this docket a document attesting to the company's consent with respect to modifying its plan.

B. Within 30 days of the date of this order, Indiana Michigan Power Company's shall file tariff sheets consistent with Exhibit IM-21.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notification should be sent to the Executive Secretary at [mpscdockets@michigan.gov](mailto:mpscdockets@michigan.gov) and to the Michigan Department of Attorney General - Public Service Division at [pungpl@michigan.gov](mailto:pungpl@michigan.gov). In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General – Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Daniel C. Scripps, Chair

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Tremaine L. Phillips, Commissioner

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Katherine L. Peretick, Commissioner

By its action of August 11, 2022.

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Lisa Felice, Executive Secretary


# PROOF OF SERVICE

STATE OF MICHIGAN )

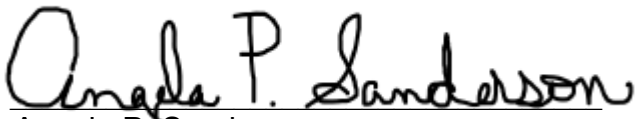
Case No. U-20877

County of Ingham )

Brianna Brown being duly sworn, deposes and says that on August 11, 2022 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

  
Brianna Brown

Subscribed and sworn to before me  
this 11<sup>th</sup> day of August 2022.



Angela P. Sanderson  
Notary Public, Shiawassee County, Michigan  
As acting in Eaton County  
My Commission Expires: May 21, 2024

**Service List for Case: U-20877**

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