S T A T E   O F   M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **INDIANA MICHIGAN POWER COMPANY** for approval of its integrated resource plan under MCL 460.6t, avoided costs and for other relief.	))))))	Case No. U-21189

At the Februaru 2, 2023 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 APPROVING SETTLEMENT AGREEMENT

I. Procedural History

On February 28, 2022, Indiana Michigan Power Company (I&M), a wholly-owned subsidiary of American Electric Power Company, Inc. (AEP), filed an application, together with supporting testimony and exhibits, pursuant to: (1) Section 6t of Public Act 341 of 2016 (Act 341), MCL 460.6t; (2) the November 21, 2017 order in Case No. U-18418, Exhibit A, which approved the Michigan Integrated Resource Planning Parameters; (3) the December 20, 2017 order in Case Nos. U-15896 *et al.*, Exhibit A, which approved the Integrated Resource Plan (IRP) Filing Requirements; and (4) the February 18, 2021 order in Case Nos. U-20633 *et al.*, which adopted additional modeling scenarios to assist in achieving the carbon emission reduction objectives of Executive Directive 2020-10.

On March 23, 2022, a prehearing conference was held before Administrative Law Judge Dennis W. Mack. Intervenor status was granted to the Michigan Department of Attorney General (Attorney General); the Michigan Environmental Council (MEC); the Sierra Club; Citizens Utility Board of Michigan (CUB); the Association of Businesses Advocating Tariff Equity (ABATE); Energy Michigan; and the Great Lakes Renewable Energy Association, Inc. (GLREA). I&M and the Commission Staff (Staff) also participated in the proceeding.

A public hearing was held on April 6, 2022, and evidentiary hearings were held on August 15 and 16, 2022. On September 29, 2022, the case was reassigned to Administrative Law Judge Sharon L. Feldman (ALJ). Subsequently, timely initial briefs and reply briefs were filed.

On October 31, 2022, I&M and the Staff jointly filed a motion to extend the statutory deadlines found in MCL 460.6t(7) (joint motion), and the Attorney General, CUB, MEC, and the Sierra Club filed a joint response to the joint motion on November 7, 2022 (joint response). On November 9, 2022, a joint reply to the joint response was filed by I&M and the Staff.

A hearing on the joint motion was held before the ALJ on November 10, 2022. Subsequently, on November 14, 2022, I&M filed a settlement agreement, indicating that it had settled all of the issues in this matter with the Staff and ABATE. Energy Michigan did not join the settlement agreement but offered a statement of non-objection under Mich Admin Code, R 792.10431(3) (Rule 431(3)).

On November 15, 2022, the ALJ issued a ruling addressing the joint motion (ruling). On November 16, 2022, the Commission issued a notice informing all parties that, pursuant to Rule 431(3), responses to the proposed settlement agreement must be filed with the Commission and must be received no later than 5:00 p.m. (Eastern time) on November 28, 2022. On

November 17, 2022, the Attorney General filed a response to the proposed schedule included with the settlement agreement.

On November 18, 2022, the Commission issued an order (November 18 order) granting the joint motion which extended the statutory deadlines and set a tentative schedule in the event the settlement agreement was contested. On November 28, 2022, GLREA, the Sierra Club, MEC, and the Attorney General jointly with CUB filed objections to the settlement agreement.

On December 7, 2022, the Staff, the Sierra Club, and the Attorney General jointly with CUB filed direct testimony in the contested settlement phase of this proceeding while I&M filed a letter indicating that it would not be filing direct testimony in this phase. On December 13, 2022, the Staff and I&M filed rebuttal testimony.

On December 9 and 14, 2022, I&M and the Sierra Club, respectively, filed motions to strike. Responses to the motions to strike were thereafter filed by the Attorney General jointly with CUB and the Sierra Club, the Staff, and I&M. On December 19, 2022, the ALJ held a motion hearing at which the motions to strike were denied and an opportunity to provide surrebuttal was provided. As a result, on December 20, 2022, the Attorney General and CUB jointly filed surrebuttal testimony.

On January 5, 2023, I&M, the Staff, GLREA, the Sierra Club jointly with MEC, and the Attorney General jointly with CUB filed initial briefs in the contested settlement phase of this proceeding. On January 12, 2023, I&M, the Staff, GLREA, the Sierra Club jointly with MEC, and the Attorney General jointly with CUB filed reply briefs in this phase of the proceeding.

II. Evidentiary Record

The evidentiary record in this contested settlement portion of this proceeding consists of 234 pages of transcript contained in three volumes and 23 exhibits.[1] This is in addition to the 1,340 pages of transcript and nearly 200 exhibits admitted into evidence as part of the underlying record in this case. Unless otherwise noted, all citations to briefing in this order refer to the briefing in the contested settlement portion of this case and not the underlying record.

A. Direct Testimony

1. Commission Staff

The Staff presented the testimony of Paul A. Proudfoot, the Director of the Commission's Energy Resources Division. Mr. Proudfoot asserts that I&M's Preferred Portfolio, as modified by the settlement agreement, meets the statutory requirements of Section 6t(8) of Act 341, MCL 460.6t(8). 6 Tr 1473. Mr. Proudfoot recommends that the Commission approve the contested settlement agreement in its entirety without recommending changes under Section 6t(7) of Act 341, MCL 460.6t(7). 6 Tr 1473. Mr. Proudfoot also states that the contested settlement agreement satisfies the condition of Rule 431 but notes that the Staff reserves arguments regarding Rule 431 for rebuttal as directed by the November 18 order. 6 Tr 1474.

2. Michigan Department of Attorney General and Citizens Utility Board of Michigan

The Attorney General and CUB jointly provide the testimony of Douglas B. Jester. Mr. Jester testifies that, although some aspects of the settlement agreement are in the public interest, the balance is not, and it should be rejected by the Commission. Mr. Jester specifically indicates objections to paragraphs 1, 4, and 7 of the settlement agreement, and the fact that the settlement agreement "implicitly approves I&M taking on Kentucky Power [Company]'s share of the

[1] The Commission also notes that public comments were filed in this docket.

high-cost affiliate Unit Power Agreement [UPA] for purchase of AEP Generat[ing Company's (AEG's)] share of energy and capacity from Rockport Unit 1" which he states, "should be explicitly rejected." 7 Tr 1531.

With respect to paragraph 1, Mr. Jester indicates that the modifications to I&M's Preferred Portfolio[2] include that installed capacity from wind and solar resources will be considered interchangeably whereas they were separate in the application and that "the 1000 MW [megawatt] of combustion turbine [CT] initially proposed by the Company is reduced to 750 MW, with the corresponding capacity credit replaced by 255 MW battery storage." 7 Tr 1532-1533. Citing discovery responses, Mr. Jester states that the estimated capital cost for the addition of 750 MW of CTs is $629 million, with Michigan's estimated share being $100 million. Further, he indicates that "[t]he estimated net Michigan revenue requirement is $16 million in the first year" which "assumes that the CTs have a positive variable energy margin (i.e., variable revenues greater than costs) of $3 million in 2028." 7 Tr 1533. However, he notes that assumptions regarding natural gas costs and market energy prices five years in the future are speculative.

Mr. Jester states that I&M approached modeling from a resource adequacy perspective with a key driver of the Preferred Portfolio being the retirement of existing resources. Specifically, he avers that "[r]etirement of the Rockport Units by 2028 is the driver of all resource additions through 2028." 7 Tr 1533-1534. He further notes that:

> I&M assumes retirement of the Cook units at the end of current licenses, but also provided scenarios in which those licenses are extended and made it clear that the near-term plan in the Preferred Portfolio is unaffected by that choice and that I&M intends to examine whether to relicense Cook in a future RFP [request for proposals].

[2] For purposes of this order, the company's preferred (or proposed) course of action (PCA) may also be referenced as the Preferred Portfolio.

7 Tr 1534. Reviewing the candidate portfolios, Mr. Jester concludes that the decision about the timing of the Cook retirement has little effect in the near term but larger effects in the 2030s. Therefore, Mr. Jester opines that I&M has not presented sufficient evidence in this proceeding to justify a decision about the date of the Cook retirement but has shown that such a decision will not affect near-term resource additions. He recommends that the Commission require I&M "to present in its next IRP evidence supporting either a commitment to retire Cook in the 2030s or a decision to begin relicensing" and states that paragraph 8 of the settlement agreement appropriately addresses this aspect of the Preferred Portfolio. 7 Tr 1535.

Mr. Jester also indicates that as part of "its Preferred Portfolio, I&M has assumed continuation of its participation in the Inter Company Power Agreement (ICPA) with the Ohio Valley Electric Corporation (OVEC) and has presented some evidence with respect to that assumption;" however, he notes that while "[t]he Commission has directed I&M to evaluate the ICPA in this case" the settlement agreement does not address the ICPA aside from a statement that the settlement agreement is not an approval of the ICPA. 7 Tr 1535. Mr. Jester contends that the settlement agreement appropriately deals with the issue of hydropower resources in paragraph 8.

In addition, Mr. Jester states that in most scenarios evaluated by I&M's modeling, the company limited additions of solar and wind. He indicates that "in every optimization scenario that I&M developed, the 2022-2028 additions of renewables were as large as allowed by the build limits" which he states indicates "that the build limits were binding constraints in the optimization model and that the optimization method used in I&M's modeling would have chosen additional renewables absent the build limits." 7 Tr 1537. Mr. Jester notes that build limits may be appropriate if there is support to show there are actual limits to the amount of renewables that could be acquired but contends that "I&M did not limit renewables based on limited availability and then explore whether they could expand that limit" and that I&M "substituted arbitrary build limits for sound modeling that would have identified the appropriate quantity of renewables to build." 7 Tr 1538-1539. Further, Mr. Jester states that the company proposed less wind and solar in the Preferred Portfolio than the build limits used in modeling.

Mr. Jester reviews the company's decision-making process to derive its Preferred Portfolio, noting that, "[i]n short, I&M proposes to delay renewables and accelerate gas peaking capacity relative to the optimized results in the Reference' portfolio." 7 Tr 1541. He opines that "the factors considered in I&M's Balanced Scorecard do not strongly favor either the Preferred Portfolio or the Reference' portfolio" and that "[t]he principal driver of I&M's decision to defer renewables and accelerate combustion turbine additions appears to be the level of net energy sales that would result." 7 Tr 1542.

Mr. Jester disagrees with the company's "claim that 'the greater the energy market . . . sales . . . required by a Candidate Portfolio, the greater the exposure to the risk that energy prices will be higher than the short-run marginal cost of energy production from the I&M fleet . . . .'" 7 Tr 1542 (quoting Exhibit IM-2, p. 164). He avers that this claim was a drafting error and notes that:

> [i]f a portfolio posits energy sales at a given price forecast, then that portfolio will receive more rather than less revenue if energy prices are higher, and if the marginal costs of the I&M portfolio are not driven up by the same factors that drive market energy rates up, the higher energy prices will cause the portfolio to receive more rather than less net revenue. Since renewables are near-zero marginal cost, their margins will simply be higher if energy prices are higher.

7 Tr 1542-1543. Continuing, Mr. Jester indicates that gas prices in the PJM Interconnection, LLC (PJM) market have significantly increased since I&M developed its IRP analysis, noting that "current gas prices exceed the 95th percentile of the distribution of gas prices considered by I&M by a considerable margin" and "are currently expected to stay high in the EIA [Energy Information

Administration] forecast period, compared to the projections used by [I&M] for the same period and they show high uncertainty that is asymmetric toward higher prices." 7 Tr 1544-1545. Therefore, Mr. Jester concludes that this suggests:

> that I&M's assessment of risks associated with being "long" on energy based on levels of renewables versus the risks of being "short" on energy at positive margins because of an investment in gas generation that is exposed to the same gas price risk as the larger market is misplaced and that a focus on levels of net sales is not a sound basis for resource selection.

7 Tr 1545.

Mr. Jester also opines that there have been significant changes since the filing of I&M's IRP including the passage of the federal Inflation Reduction Act of 2022 (IRA), which "extended and modified various tax credits for renewable electricity generation and added tax credits for electricity storage." 7 Tr 1546. He indicates that, after recalculating, the data reflects "a 13-14% reduction in the levelized cost of energy from utility-scale solar and [a] 23-48% reduction in the levelized cost of energy from utility-scale wind for the build years that are relevant for the I&M [Preferred Portfolio]." 7 Tr 1547.

Mr. Jester avers that the Commission should question I&M's plan to defer the optimum amount of renewable generating resources, find that I&M has not supported the addition of 750 MW CT capacity, and require the company to revisit its resource proposal in its next IRP proceeding. Further, he states that the Commission should recommend "that I&M proceed with renewable acquisition in line with the Reference' portfolio or even on an accelerated basis, given the opportunity for considerable cost savings presented by the IRA." 7 Tr 1547-1548.

Overall, Mr. Jester opines that the Commission should not accept paragraph 1 of the settlement agreement because I&M's original Preferred Portfolio was not adequately supported on the underlying record, that the settlement agreement only marginally fixes the deficiencies, and that the economic conditions including the significant increase in gas prices and reduction in cost of renewables and storage under the IRA were not considered. Therefore, he recommends that the Commission find that the Preferred Portfolio is not the most reasonable and prudent course of action as required by MCL 460.6t.

With respect to paragraph 4 of the settlement agreement, Mr. Jester states that his understanding of the settlement agreement language is that the settlement agreement would meet the statutory requirement under MCL 460.6s(11), including the requirement that the certificate of necessity (CON) filing would "include '[a]n analysis of the availability and costs of other electric resources that could defer, displace, or partially displace the proposed generation facility or purchased power agreement, including additional renewable energy, energy efficiency programs, load management, and demand response [DR] . . . .'" 7 Tr 1549 (quoting MCL 460.6s(11)(f)). He further opines that this provision is not in the public interest because it would narrow the Commission's review in a CON proceeding to adopt the results of the IRP in this proceeding and that the settlement agreement fails to address the material deficiencies of the company's Preferred Portfolio as well as the changes in circumstances since the filing of this case. Therefore, Mr. Jester recommends that the Commission find that paragraph 4 of the settlement agreement would unreasonably limit the Commission's review of new CT resources in a future CON proceeding. He adds that, "[a]lthough the Commission could reject the overall [Preferred Portfolio] as proposed in the settlement, the Commission could also authorize cost recovery for other resources proposed in this case and deny cost recovery for combustion turbine resources pending justification in a CON proceeding." 7 Tr 1550.

Mr. Jester provides background with respect to paragraph 7, indicating that:

> [t]he Rockport Generating Station is a two-unit coal-fired power plant operated by I&M.[3] The capacity of [Rockport] Unit 1 is 1,320 MW and the capacity of [Rockport] Unit 2 is 1,300 MW. [Rockport] Unit 1 is owned 50 percent by I&M and 50 percent by AEP Generat[ing Company], or AEG. Until recently, a separate owner's trust owned [Rockport] Unit 2 and leased it back to I&M and AEG at a 50 percent share each. In initial testimony, I&M witness Andrew Williamson explains that I&M and AEG recently purchased [Rockport] Unit 2 back from the owner's trust. He describes a transition plan for [Rockport] Unit 2 that involves its use as a capacity-only resource and a merchant resource starting in December of 2022.
>
> In this case, I&M requested two cost approvals with respect to Rockport Unit 2. First, the Company seeks approval to recover the Michigan share of costs for capacity used from [Rockport] Unit 2 in its Fixed Resource Requirement plan at a rate that equals PJM's Base Residual Auction (BRA) clearing price for the relevant PJM planning years. Second, the Company seeks approval to recover the Michigan portion of the remaining net book value of [Rockport] Unit 2 through 2028, including return of and on the remaining net book value (NBV) at the Company's full pre-tax weighted average cost of capital (WACC). I&M states that it will not seek recovery of the purchase price for [Rockport] Unit 2 or any capital investments made in [Rockport] Unit 2 after the lease expires, and remove [Rockport] Unit 2 costs currently recovered through the PSCR [power supply cost recovery] from its PSCR plan starting in 2023.

7 Tr 1550-1551.

Mr. Jester avers that paragraph 7.a. of the settlement agreement proposes that I&M be authorized to recover the Michigan portion of the remaining NBV of Rockport Unit 2 and summarizes that:

> customers will continue to pay for Rockport Unit 2 as though it was used to serve them, albeit at a slightly reduced weighted average cost of capital after I&M's next rate case. Customers may receive some credit in PSCR for 50% of net earnings provided that such net earnings are not overtaken by impairment of the value of Rockport Unit 2 and is not recaptured to pay for subsequent losses.

7 Tr 1552. Citing Exhibit AG-26, Mr. Jester indicates that I&M provided the projection of $18,015,435 as the remaining NBV of Rockport Unit 2 as of December 31, 2022, and noted that

[3] The Rockport Generating Station units are referred to as Rockport Unit 1 and Rockport Unit 2.

the projection of the Michigan share of the revenue requirement is $21,790,878, or approximately 10% higher than the estimate provided in the underlying record. 7 Tr 1552.

Mr. Jester contends that the amount of credits Michigan customers will receive through the PSCR for merchant earnings from Rockport Unit 2 are unknown. Further, he opines that it is "unlikely that Michigan customers will recoup before 2028 a substantial share of the NBV they would be committed to pay for under the Settlement Agreement." 7 Tr 1553. Noting his original direct testimony, Mr. Jester avers that recovery of capacity revenues in addition to the NBV for Rockport Unit 2 would constitute double recovery. Further, Mr. Jester contends that recovery of the NBV of Rockport Unit 2 is not warranted and includes costs, such as the costs to reacquire Rockport Unit 2, which have not been deemed reasonable and prudent by the Commission. Mr. Jester opines that authorizing full recovery of costs not previously approved by the Commission would not be appropriate "when the plant is no longer used and useful during the period covered by the PCA" and that "[t]his would amount to approval in this IRP case of costs that the Commission is not authorized to address in an IRP case." 7 Tr 1554. He concludes that credits for merchant earnings by Rockport Unit 2 are not a good deal for Michigan customers and that the Commission should not approve paragraph 7.a. of the settlement agreement. 7 Tr 1555.

Mr. Jester also testifies to objections regarding the Kentucky Power share of the affiliate UPA. He notes that the settlement agreement does not expressly address this issue. Citing Exhibit AG-29, Mr. Jester quotes I&M's response to a discovery request which he avers clearly reflects the company's position that the settlement agreement "implicitly approves this action and will no doubt defend cost recovery in a PSCR proceeding on the grounds that its reliance on this resource was approved by the Commission via this Settlement Agreement." 7 Tr 1555.

In sum, Mr. Jester recommends that the Commission find that including "'750 MW (ICAP [installed capacity]) of fully dispatchable resources (e.g., natural gas combustion turbines)' in the Preferred Portfolio through 2028 is not acceptable." 7 Tr 1560 (quoting settlement agreement, p. 3). Alternatively, he recommends that "if the Commission allows the inclusion of 750 MW (ICAP) natural gas combustion turbines in the Preferred Portfolio, the Commission should not accept the IRP in this case as an approved IRP for purposes of considering a CON for such resources pursuant to MCL 460.6s." 7 Tr 1560. Mr. Jester also recommends that the Commission reject "the creation of a regulatory asset for the now almost $22 million share of Rockport Unit 2's undepreciated net book balance when Rockport Unit 2 switches to merchant operation in December of this year," noting that "[t]he Commission could make that decision in this case outright or inform the settling parties that it will consider this issue in the Company's next general rate case." 7 Tr 1560. Finally, he recommends that the Commission note disagreement with "I&M taking on Kentucky Power's share of the Unit Power Agreement for purchase of [AEG's] share of energy and capacity from Rockport Unit 1." 7 Tr 1560.

3. Sierra Club

The Sierra Club presents the direct testimony of Tyler Comings, a Senior Researcher at the Applied Economics Clinic. Mr. Comings avers that the inclusion of the proposed 750 MW natural gas capacity has not been adequately justified and should be rejected for two reasons. First, he argues that committing to natural gas procurement now is premature when considering the passage of the IRA. Specifically, the Sierra Club states that if the IRA was incorporated into the company's IRP modeling "new gas resources are less likely to be economic, and clean resources are more likely" because "[t]he passage of the IRA is undeniably a significant change to the electric utility industry, in large part by providing substantial federal tax credits for new clean resources." 6 Tr 1499. Emphasizing the changes to existing law, Mr. Comings notes these changes would "unequivocally make solar, wind, and battery storage more financially appealing for resource planners—and by extension ratepayers." 6 Tr 1499. However, he indicates that given the timing of the passage of the IRA, the changes in law were not considered in the modeling offered in support of the IRP. Therefore, Mr. Comings contends that the Commission should direct I&M "to revisit its modeling and analysis before selecting 750 MW of new gas resources as part of its approved plan." 6 Tr 1499.

Nevertheless, Mr. Comings avers that even if the modeling is updated to consider the change in law under the IRA:

> the modeling would remain biased against clean resources because it: 1) assumed that recovery of the [federal] ITC [investment tax credit] would occur evenly over the life of the project (e.g., 35 years for solar PV [photovoltaic]) rather than more quickly through a power purchase agreement ("PPA"); 2) committed a substantial error that inflated the capital costs for solar-battery hybrid projects; and 3) generally inflated new resources' costs by using the wrong cost of capital.

6 Tr 1500. He concludes that these errors resulted in the company's modeling being less likely to economically select clean resources.

Mr. Comings states that the settlement agreement includes a modification to the company's original Preferred Portfolio including the specification to issue an RFP for "'[a]pproximately 750 MW (ICAP) from resources that are fully dispatchable without any run-time limit. This will not include coal or new combined cycle technologies.'" 6 Tr 1501 (quoting the settlement agreement, p. 4). He avers that these specifications make it likely that this capacity will come from new natural gas CTs, existing CTs, existing combined cycle plants, or a combination of these resources. Mr. Comings notes that this is a reduction to the company's original 1,000 MW of new CTs on its system, accompanied by a stipulation that the company "procure 255 MW of 'dispatchable carbon-free resources' (such as battery storage or solar-battery hybrid resources) as a replacement for 250 MW of CTs." 6 Tr 1501 (quoting settlement agreement, p. 4). Mr. Comings opines that it would be "fiscally imprudent" to lock in such a large gas procurement, again citing the IRA. 6 Tr 1502.

In further explanation, Mr. Comings opines that "[t]he IRA is a game-changing event in electricity resource planning in the U.S. [United States] in large part by drastically reducing the costs of clean energy resources." 6 Tr 1503. He highlights the critical elements of the IRA including: (1) the increase and extension of the solar ITC, (2) the expansion of the solar ITC to standalone battery storage, (3) the increase and extension of the federal production tax credit (PTC), (4) the expansion of the PTC to include solar PV, (5) bonus credits for locating resources in an energy community, and (6) bonus credits for using domestic manufacturing. *See*, 6 Tr 1503-1507. Mr. Comings contends that because the company's modeling was conducted before the passage of the IRA, these provisions were not considered and the scenario with lower renewable and storage capital costs was dismissed as unrealistic. 6 Tr 1507 (citing 2 Tr 172). Further, Mr. Comings provides a table illustrating the differences between the clean energy tax credits used in I&M's IRP modeling and those available under the IRA. 6 Tr 1508, Table 1.

Mr. Comings continues, opining that "the IRA massively changes the economics of standalone battery storage." 6 Tr 1508. He states that the IRA modified the law to allow the solar ITC to be available not only to battery storage directly tied to a renewable source but also standalone resources. Therefore, Mr. Comings states that the IRA results in a 30% to 50% discount to costs "depending on if any bonus credits for energy community or domestic manufacturing are applicable to the project" which he states is "a major industry change." 6 Tr 1508. With respect to solar PV, he states that the IRA changes the economics by extending the solar ITC, making resources "cheaper for the next decade," and that the PTC may be used in lieu of the ITC "which will be an even cheaper option for many projects." 6 Tr 1509.

Mr. Comings opines that the IRA provides more policy certainty with respect to the PTC which "cultivates better medium- and long-term decision-making than the previously unpredictable—and often last-minute—changes to the policy" and that "solar PV resources can now take advantage of a more favorable subsidy that has previously led to substantial wind development in the U.S." 6 Tr 1511.

Mr. Comings also notes that AEP, I&M's parent company, has acknowledged the benefits of the IRA including cost savings which will drive-down costs. 6 Tr 1511. Additionally, he indicates that several utilities have delayed some resource planning decisions such as natural gas investments due to the IRA. *See*, 6 Tr 1512-1514. Mr. Comings concluded that I&M does not need to commit to a natural gas procurement for 2028 as there is time to evaluate more resource options, especially in light of "the shifting economic landscape resulting from the IRA" which he states "offers the most comprehensive and substantial set of incentives for building clean energy resources ever put forward," making "new gas resources far less attractive replacement options." 6 Tr 1514.

Mr. Comings reiterates that, even if I&M's modeling was updated to reflect the changes under the IRA, it would still be biased against clean energy resources. He also notes that:

> for all new resources, the Company's modeling misconstrued real and nominal dollars by: 1) using the nominal weighted average cost of capital ("WACC") to develop the annual capital costs in real 2019 terms that were entered into the model for resource selection, which generally biased the model towards existing resources; and 2) miscalculating the costs of its portfolios using the wrong discount rate.

6 Tr 1515 (citing 3 Tr 953-961). Mr. Comings further states that, although the company made manual corrections to address some errors, the modeling still contained incorrect input

assumptions which results in resource selection based upon false information and the "post-hoc corrections were not sufficient to address the myriad modeling errors." 6 Tr 1515. Further, Mr. Comings avers that I&M did not make corrections to address its flawed treatment of the ITC "and simply re-stated that it was normalizing the credit—essentially assuming only self-build resources" and reiterates that normalization of the ITC "was not a reasonable assumption and should be rectified in any updated modeling to appropriately capture the potential for PPA resources." 6 Tr 1515-1516. Finally, he reiterates the position that, besides the IRA, the company's modeling contains many errors rendering it unreliable to support the large gas procurement reflected in the settlement agreement and any attempt to make post-hoc corrections outside of the modeling fails to "address the fundamental issue that the model selected new builds using false information that mostly skewed the results against clean resources." 6 Tr 1516.

B. Rebuttal Testimony

In its November 18 order in the present case, the Commission instructed that "[r]ebuttal testimony, if filed, shall focus on the factors set forth in Rule 431(5)(b) and (c)." November 18 order, p. 7. The rebuttal testimony of the parties on Rule 431 is summarized below.

1. Indiana Michigan Power Company

I&M filed rebuttal testimony responding to both the Sierra Club's direct testimony and the Attorney General and CUB's joint direct testimony.

David A. Lucas

I&M presented the settlement rebuttal testimony of David A. Lucas, the company's Vice President-Regulatory and Finance. Mr. Lucas objects to Mr. Jester's assertion that the settlement agreement is not in the public interest. Mr. Lucas posits that the settlement agreement is in the public interest for reasons not limited to the following:

- It aligns with the Company's core IRP objectives of Affordability, Reliability, Sustainability, Rate Stability, Market Risk Minimization, and Resource Diversity to ensure the implementation of a balanced and interdependent Preferred Portfolio . . . [;]

- It ensures further reduction to I&M's future reliance on carbon-emitting resources, advancing clean energy resources in a manner consistent with the sustainability goals of the State of Michigan and the Company[;]

- It recognizes that as a multistate electric utility under MCL 460.6t(4), I&M must address state policy objectives and public needs in both Indiana and Michigan and its customers benefit from operations on a total company basis[;]

- It provides I&M the regulatory approval necessary to support the development and acquisition of more than 2,000 MW of clean energy resources and preconditions for I&M to ensure resource adequacy and capacity sufficiency in a reasonable and flexible manner during a critical transitional period for the Company[;]

- As confirmed by Commission Staff, and supported by EGLE['s] [the Michigan Department of Environment, Great Lakes, and Energy's] advisory opinion [in this case[4]], it complies with state and federal environmental regulations, including exceeding state and federal climate action goals[;]

- It significantly enhances the Company's EWR [energy waste reduction] programming, including increases to future EWR savings targets[;]

- It supports further development of demand-side resources and programs for the benefit of all of I&M's customers[;]

- It benefits I&M's low-income customers by increasing low-income program funding related to EWR and bill assistance[; and]

- It includes new components and commitments intended to enhance I&M's future resource planning and next IRP, including those related to I&M's commercial and industrial customers participating in Retail Open Access service.

6 Tr 1411-1412 (footnote omitted).

I&M argues that "[t]he Settlement Agreement is comprehensive and addresses each of the factors set forth by the Commission in MCL 460.6t(8)." 6 Tr 1414. I&M outlines the ways that the company's Preferred Portfolio complies with the Section 6t(8) requirements of Act 341 that the

[4] *See*, Case No. U-21189, filing #U-21189-0092.

Commission consider resource adequacy and capacity to serve anticipated peak electric load requirements, applicable state and federal environmental regulations, competitive pricing, reliability, commodity price risks, diversity of generation supply, and cost-effective levels of peak load reduction. *See*, 6 Tr 1414-1418.

In addition to the above details, Mr. Lucas outlines the collective benefits that the settlement agreement provides that allow the company to "prepare for the responsible transition from Rockport, which represents nearly 50 percent of I&M's existing capacity, to a portfolio that includes a significant increase in carbon-free generation and an appropriate amount of firm capacity resources." 6 Tr 1418. Further, Mr. Lucas posits that the settlement agreement:

> provides the Company a clear and comprehensive road map to implement this transition by establishing the targeted amount of resource additions by type of resource, outlining the competitive procurement process that will be used to acquire the resources, establishes guidance on appropriate targets of ownership and purchase power agreements, sets the framework for the financial incentive mechanism for purchase power agreements, and defines the regulatory processes that will be used to obtain approval of specific resources.

6 Tr 1418. Mr. Lucas adds that the settlement agreement resolves issues related to Rockport Unit 2 after the lease expires and the unit becomes a merchant resource.

Mr. Lucas rebuts Mr. Jester's statements that while objecting parties were "generally aware of some larger group meetings regarding settlement taking place over the summer . . ." they did not "have knowledge of the process by which I&M and Staff negotiated the settlement with each other or decided to proceed with a contested settlement signed only by themselves and one other party." 6 Tr 1419 (quoting 7 Tr 15320. Mr. Lucas asserts that "the parties for whom [Mr. Jester] is testifying were present during settlement discussions and had a full opportunity to provide input." 6 Tr 1419. Mr. Lucas summarizes the settlement process and states that "I&M met with all parties on multiple occasions over the course of multiple months." 6 Tr 1420. Mr. Lucas provides that "it is I&M's understanding that Staff and the other parties to this proceeding held meetings that did not include I&M to develop jointly supported proposed modifications to the Settlement Agreement." 6 Tr 1420. Additionally, Mr. Lucas states that "I&M's counsel had individual discussions with counsel for the [Attorney General] and Sierra Club to try to work through remaining issues prior to filing of the Settlement Agreement." 6 Tr 1420. Mr. Lucas concludes that "Witness Jester's testimony glosses over the efforts that were undertaken to engage all parties in this case in shaping the final Settlement Agreement . . . ." 6 Tr 1420.

Mr. Lucas argues that "[t]he parties who have signed the Settlement Agreement and the party [that] signed a statement of non-objection are fully representative of the public interest in this IRP proceeding." 6 Tr 1421. Mr. Lucas asserts that the parties who have filed testimony opposing the settlement agreement are placing narrow interests over "a holistic and balanced approach" analyzing the benefits of the settlement agreement and Preferred Portfolio, "including the fact that the Settlement Portfolio and Settlement Agreement exceed state and federal climate action goals that are consistent with and significantly advance the public interest." 6 Tr 1421. Mr. Lucas states that "[t]he Settlement Agreement is broadly and diversely supported by the parties who signed the Settlement Agreement and signed a statement of non-objection, including the utility, [the Staff], large business and industrial customers, and independent power producers." 6 Tr 1421.

Mr. Lucas responds to Mr. Jester's characterization of the settlement agreement as "delaying renewables and accelerating gas," stating that it "does not reflect all of the factors and analyses I&M considered in developing its Preferred Portfolio . . . ." 6 Tr 1422; 7 Tr 1541-1542.
Mr. Lucas asserts that the settlement agreement addresses Mr. Jester's concerns by reducing the amount of natural gas in the plan from 1,000 MW, as originally proposed in the company's direct case, to 750 MW and replacing this "250 MW of combustion turbine natural gas capacity planned

for 2028 with 255 MW of new storage, or other carbon-free resources, to be added in 2028."

6 Tr 1422.

Mr. Lucas additionally describes the RFP process for the acquisition of the 750 MW of natural gas capacity in 2028. Mr. Lucas states that:

> [t]erm 1.b. in the Settlement Agreement discusses the process that will be used to acquire resources. This term states "I&M's RFPs necessary to acquire resources to meet its long-term capacity and energy needs that may arise with the retirement of Rockport shall not discriminate by type or by size in allowing projects as small as 20MW." In term 1.c., I&M has agreed to limit the acquisition of natural gas resources through 2028 to approximately 750 MW (ICAP) and has reserved the right to select additional carbon-free resources to fulfill, in whole or in part, this incremental capacity need.
>
> To comply with these two settlement terms, for resources required to meet I&M's capacity obligation in 2027 and 2028, I&M will conduct a non-discriminatory, All-Source RFP in 2023. In this RFP, I&M will target the resources included in the Settlement Portfolio, but will invite all types of supply-side resources, including both PPAs and Purchase and Sale Agreements (PSAs), to submit proposals for consideration. Based upon the responses received from the RFP and the evaluation of the proposals using an established scoring methodology, I&M will bring forward for regulatory approval the projects that provide the best value to I&M and its customers. The projects ultimately selected and brought forward for regulatory approval will be dependent upon the resources available in the market at the time of the RFP. The Settlement Agreement also establishes a cap for the amount of natural gas resources and provides the flexibility to substitute other carbon-free resources depending upon the responses to the RFP.

6 Tr 1423 (quoting settlement agreement, p. 4).

Mr. Lucas responds to Mr. Jester's and Mr. Comings' assertions that I&M should delay making a decision on procuring natural gas capacity for 2028. *See*, 7 Tr 1547; 6 Tr 1502. Mr. Lucas asserts that "I&M has a clear need for capacity with the retirement of Rockport in 2028 and there is a clear sense of urgency in order to be able to acquire the resources needed to replace this capacity." 6 Tr 1424. Mr. Lucas asserts that delaying a decision to acquire new resources to I&M's next IRP would "jeopardize I&M's ability to procure the capacity it needs for 2028."

6 Tr 1424. Mr. Lucas provides a timeline for the company's all-source RFP process. Mr. Lucas also emphasizes the that:

> the capacity associated with Rockport will be removed from the Company's capacity plan starting in the 2028/2029 PJM Delivery Year. The Company will be required to submit its capacity plan to PJM and include the resources that will replace Rockport in 2028/2029 in the March 2025-May 2025 timeframe assuming normal PJM planning practices. In order to include a new, specific resource in this plan, it is important the Company have regulatory approval to ensure that the resource will be available as a capacity resource in that year.

6 Tr 1425.

Mr. Lucas responds to Mr. Jester's and Mr. Comings' testimony that the company should revisit its resource proposal in its next IRP and update its modeling, respectively. *See*, 6 Tr 1502; 7 Tr 1547. Mr. Lucas responds that "the suggestion . . . that an IRP should be re-run and resource decisions delayed every time a relevant law or input change is untenable." 6 Tr 1425. Mr. Lucas states that this process "would result in endless IRP modeling re-runs and rarely achieve an actionable IRP. It would in essence make the IRP an academic modeling exercise as opposed to an effective decision-making tool for resource planning." 6 Tr 1425. Further, Mr. Lucas asserts that a decision to deny approval of I&M's IRP in full or in part may prevent I&M from meeting capacity needs and acquiring carbon-free resources. 6 Tr 1425-1426. Mr. Lucas states that "the resource costs that I&M will bring forward in future *ex parte* or CON filings will reflect the current pricing that includes all factors influencing the market prices of resources, including IRA considerations." 6 Tr 1426.

Mr. Lucas concludes that the public interest is adequately represented by the parties entering into the settlement agreement, the settlement agreement is in the public interest, and the settlement agreement represents a fair and reasonable resolution to this IRP proceeding. Mr. Lucas posits that the settlement agreement is supported by substantial evidence on the whole record, and thus recommends that the settlement agreement should be approved by the Commission. 6 Tr 1427.

Kelly D. Pearce

Kelly D. Pearce is the Managing Director of Integrated Resource Planning and Strategy for American Electric Power Service Corporation (AEPSC). Like I&M, AEPSC is a subsidiary of AEP. 6 Tr 1436. He responds to the direct testimony of Mr. Jester and Mr. Comings.

On the issue of the impact of the IRA, Dr. Pearce notes that this legislation was passed months after the modeling for the PCA was completed and avers that, given how long it takes to prepare, file, and litigate an IRP, changes in the law, in forecasts, and in market conditions will inevitably occur. Thus, he argues that it is not realistic to reject an IRP on that basis. He also states that the IRA is not the only factor that may affect the future price of renewable resources. He further testifies that I&M included the available "pre-IRA tax benefits" as shown in Exhibit IM-2, pp. 111-116, and notes that in some cases "more capacity was added in the near term to take advantage of these credits." 6 Tr 1438-1439. Dr. Pearce posits that Mr. Comings is simply speculating about what renewable projects might be available at a future time and whether they would qualify for the IRA credits, which, he notes, may be reduced by 80% in any case if certain wage and apprenticeship requirements are not met. Due to the recent passage of the IRA, Dr. Pearce states that these issues should be left for the next IRP cycle and declares that the company "will work to take full advantage of any IRA tax benefits based on projects' eligibility." 6 Tr 1440. Dr. Pearce also rebuts Mr. Comings' assertion that the company simply dismissed the Rapid Technology Advancement (RTA) scenario and associated portfolio. He states that the resource selections between the two portfolios were similar in the near term and posits that I&M's

findings regarding the RTA scenario support the selection of the CT. 6 Tr 1440-1441 (citing Exhibit IM-2, pp. 225-227).

Turning to the natural gas forecast, Dr. Pearce contends that Mr. Jester's use of the EIA data fails to show the complete picture on this issue, because a comparison of long-term prices, Henry Hub spot prices, and the prices modeled in the IRP, shows that the "forecasts converge and are nearly identical when the new natural gas CT would come online and throughout the period into the 2040s." 6 Tr 1441. He further states that I&M and Siemens Power Technologies International (PTI) considered the errors that Mr. Comings points out and determined that they had no impact on the modeling results, and he asserts that build limits and ITC normalization are not errors but, rather, valid assumptions. Dr. Pearce asserts that the settlement agreement represents a compromise because it contains less natural gas-fired capacity than is contained in the Preferred Portfolio and adds more carbon-free storage.

Dr. Pearce states that the build limits contained in the modeling are reasonable because it is not the intent of an IRP to keep adding a certain type of resource until it reaches an economic breakeven point, as this could lead to a generation surplus. 6 Tr 1443 (citing 2 Tr 198-199). He states that the build limits arose from the stakeholder process and were used because:

> • Overreliance on market sales and purchases can create exposure and risks based on cost and availability. This is a key reason why Market Risk Minimization was included as a metric in this IRP. 2 TR 163.
>
> • Modifying (expanding) the build limits in the "Reference with Expanded Build Limits" Portfolio resulted in forecasted energy exports that exceeded over half (50%) of the Company's load, which should be cause for concern of all parties. 2 Tr 198.
>
> • A "Reference with No Renewable Limits" Portfolio resulted in a capacity surplus exceeding 1,500 MWs over a nine-year period and energy exports that exceeded the entire load of I&M for a twelve-year period. 2 TR 198.

6 Tr 1444. He also notes that revenues from renewable energy sources can be volatile.

Dr. Pearce supports the selected timing of the dispatchable generation based on stochastic modeling, improving the likelihood of responses to the RFPs, and the importance of adding CTs to complement intermittent renewable resources. 6 Tr 1445-1446 (citing 2 Tr 175, 199). He states that CTs provide fuel diversification and that PJM has encouraged the use of balanced resources. He again points to the compromise embodied in the settlement agreement.

Dr. Pearce posits that Mr. Jester's testimony demonstrates that the relicensing decision for the Cook Nuclear Plant "does not impact near-term resource decisions." 6 Tr 1447. He also notes that all IRPs are simply a snapshot in time and inevitably involve a significant amount of uncertainty as conditions change over time. He also states that the settlement agreement involves a maximum of 750 MW of natural gas-fired resources, rather than a minimum as stated by Mr. Comings. He concludes that the Commission should reject Mr. Jester's argument against the use of the IRP in the CON proceeding, stating that much effort has gone into the settlement agreement and that failing to rely on this IRP in the CON proceeding would result in lost time and wasted resources. Dr. Pearce posits that a new IRP done within a CON proceeding "could actually result in much less optimal solutions than proposed in the Settlement Agreement due to self-inflicted missed opportunities and deadlines and subsequent forced courses of action." 6 Tr 1449-1450.

<u>Andrew J. Williamson</u>

Andrew J. Williamson is the Director of Regulatory Services for I&M. He responds to Mr. Jester's testimony and sponsors Exhibit IM-42. 6 Tr 1453.

Mr. Williamson states that Mr. Jester's testimony contains several errors, which he lists. By way of correction, he states that the settlement agreement provides customers with the opportunity to benefit from the post-lease operations of Rockport Unit 2 and that this was an important compromise arising from settlement. Mr. Williamson states that I&M agreed to a lower return on equity (ROE) on the remaining NBV of Rockport Unit 2, and he notes that the estimated revenue requirement associated with the remaining NBV in the settlement is more than 10% lower than the estimated requirement that was included in his original direct testimony. 6 Tr 1455 (citing Exhibits AG-26 and AG-5). He states that Mr. Jester's estimate of the Michigan share of the Rockport Unit 2 revenues is incorrect because it was based on only a 50 MW example. He also clarifies that in this proceeding I&M is not seeking approval of the recovery of the cost of reacquiring Rockport Unit 2. 6 Tr 1456 (citing 2 Tr 345, 350).

Mr. Williamson states that the settlement agreement represents a compromise on the issue of the NBV of Rockport Unit 2 because the company agreed to a reduced ROE on the remaining NBV, and customers are given the opportunity to benefit from its post-lease merchant operation. He states that this, combined with recovery of the remaining NBV at the end of the lease, does not constitute double recovery, and he posits that these aspects of the agreement should "be evaluated separately." 6 Tr 1457. Mr. Williamson notes that I&M will incur costs in order to continue to use Rockport Unit 2, including the $115.5 million reacquisition price. He further notes that recovery of the remaining NBV at the end of the lease and compensation for the post-lease use of the capacity are also terms in the settlement that was approved by the Indiana Utility Regulatory Commission (IURC). 6 Tr 1458 (citing 2 Tr 341-342). He states that the agreed ROE is lower than what the company sought in its application in the underlying proceeding, evidence of the compromise. He also argues that being allowed to share in the profits from merchant revenues is good for customers because it will reduce the cost of service and offset Rockport Unit 2 costs.

Mr. Williamson states that I&M complied with the Commission directive to perform the OVEC ICPA analysis for this IRP case. 6 Tr 1460. He also states that, regarding the AEG UPA, this is not a new transaction for I&M because the company has always been entitled to the use of this power, and the costs "associated with the resource remains subject to the Commission's review and recovery in I&M's PSCR proceedings, just as it is today. It is unclear how Mr. Jester concludes approval of the IRP, according to the terms of the Settlement Agreement, provides implicit approval of the cost of this resource." 6 Tr 1461. He also avers that Mr. Jester's cost comparisons are flawed, citing 2 Tr 376-380, and asserts that substantial evidence on the record as a whole supports the settlement agreement's provisions regarding the AEG UPA. 6 Tr 1462.

Timothy B. Gaul

Timothy B. Gaul is the Director of Regulated Infrastructure Development for AEPSC. He responds to Mr. Jester and Mr. Comings on the IRA issue. 6 Tr 1430-1431.

Mr. Gaul states that, while the IRA provides benefits for new renewables, the costs reflected in the IRP would "not be drastically lower" today than they were when modeled, because the witnesses fail to account for other conditions which put upward pressure on the cost of new renewables including supply chain issues, federal tariffs, the anti-dumping investigation, competition, and inflation. 6 Tr 1432. He further states that it is not clear that manufacturers will pass on the IRA benefits to customers. In fact, he avers, since the IRA was passed, cost updates that have been requested by the company reflect increases. Mr. Gaul concludes that "the IRA is just one consideration in a complex and continuously changing commercial market for renewable projects," noting that currently the increases are offsetting the decreases. 6 Tr 1433.

2. Commission Staff

Mr. Proudfoot, on behalf of the Staff, responds to the Sierra Club's testimony and the Attorney General and CUB's joint testimony. 6 Tr 1476. Mr. Proudfoot opines that the record stands for itself and is sufficient to support the Staff's position, and a decision not to directly address direct testimony is not a reflection of an agreement with the testimony. Mr. Proudfoot notes that while there were many settlement agreement negotiation meetings which included stakeholders, but ultimately "all parties were not able to come to agreement on all terms of the [settlement agreement]." 6 Tr 1477. Therefore, he avers that all parties were given an opportunity to present arguments opposing the settlement agreement, and the Commission has provided ample time for the parties to file direct and rebuttal testimony in support or opposition of the settlement agreement.

Mr. Proudfoot further argues that the settlement agreement is in the public interest, "promotes the interests of Michigan customers in the Company's service territory, as well as the interests of the physical environment in which those customers reside," and that "the arguments made with respect to the limited number of terms at issue in the direct testimony opposing the [settlement agreement] fail to refute the benefits arising from the [settlement agreement] that are in the public interest." 6 Tr 1478. Additionally, Mr. Proudfoot states that the portfolio of resources contained within the settlement agreement "represents significant emission reductions and creates a path for the Company to produce 93% of its energy from carbon-free resources by 2029 and achieve an 80% carbon emission reduction by 2030 from a 2000 baseline year." 6 Tr 1478-1479 (footnotes omitted).

With respect to EWR and low-income spending, Mr. Proudfoot states that the settlement agreement provides significant benefits as the settlement includes increases to both EWR and low-income spending. He opines that the settlement agreement "presents the most significant commitment and step forward on EWR savings and low-income spending that Staff has seen in the last 12 years," and "the low-income pilot spending and low-income bill assistance will undoubtedly and immediately help the Company's most vulnerable Michigan customers in the coming winter months and beyond." 6 Tr 1480. Regarding EWR specifically, Mr. Proudfoot states that the settlement agreement contains clear consequences if I&M fails to achieve the EWR savings targets by 2025 and to increase its low-income spend target to 12% by 2025. He notes that no objecting party recognized the "benefits, significant commitment, and advancement that, if approved by the Commission, the [settlement agreement] will have with respect to EWR for Michigan customers." 6 Tr 1482.

Mr. Proudfoot indicates that objecting parties raised concerns with Rockport Unit 2, the participation in the Kentucky Power share of the UPA, and I&M's participation in the ICPA to purchase capacity from OVEC. He notes his observation "that objecting parties' positions appear to be based on the assumption that Term 1 of the [settlement agreement] approves all existing resources and PPA's as modeled in the plan for the duration of the planning period and subsequently that all costs for those resources are pre-approved." 6 Tr 1482. However, Mr. Proudfoot contends that this assumption is inaccurate because I&M must update the IRP at least every five years, allowing for continued reexamination of the plan, and the settlement agreement "only grants cost pre-approval in Term 10 for the Company's Conservation Voltage Reduction (CVR) capital costs for years 2023-2025. The [settlement agreement] pre-approves no other costs . . . ." 6 Tr 1483. Mr. Proudfoot notes that concerns regarding the relicensing of the Cook nuclear plant and the hydro facilities should be alleviated due to the statutory requirement to refile a revised IRP every five years and the fact that I&M has committed to supplying an analysis of these resources as part of its next IRP.

With regard to Rockport Unit 2, "[u]pon further examination of the historical proceedings that have led to the remaining net book balance, Staff believes it is indeed reasonable for the Company to recover the remaining net book balance." 6 Tr 1484. Citing the April 12, 2018 order in Case

No. U-18370 (April 12 order), Mr. Proudfoot indicates that, after an agreement to modify the retirement dates for the Rockport Units to 2028, the Commission approved new depreciation rates extending depreciation for Rockport Unit 2. He responds that the company would not be double recovering costs because the costs associated with Rockport Unit 2 "have already been identified, approved as a regulatory asset, and included in rates as part of previous Commission orders" and that the settlement agreement further "provides potential benefits to customers with the guarantee of no possible harm by incorporating a 50% credit for all [Rockport] Unit 2 revenues in excess of costs and no recovery of any future capital or operational costs in excess of revenues post lease." 6 Tr 1485. Therefore, Mr. Proudfoot opines that the settlement agreement has the potential to provide some relief regarding the remaining NBV as well as a savings through a "reduction on the return on equity for the remaining net book balance of Rockport Unit 2 upon the implementation of the rates resulting from the Company's next base rate case as stated in Term 7a." 6 Tr 1485.

Regarding concerns raised relating to the UPA, Mr. Proudfoot contends that the settlement agreement "does not pre-approve any costs or contracts associated with the Unit Power Agreement." 6 Tr 1486. He further indicates that the Staff recognizes that the company has a capacity need and "will need to purchase short term capacity resources while it procures and develops the resources identified in its preferred plan that will allow for the retirement of the Rockport facility in 2028." 6 Tr 1486.

Mr. Proudfoot states that the settlement agreement should not be rejected merely because the company's participation with OVEC was not addressed. He avers that for the purposes of this IRP it is reasonable to continue the status quo of OVEC resources. Further, Mr. Proudfoot states that:

> The Company provided an analysis that included the energy and capacity purchased through the ICPA and compared that to an analysis that did not include the energy and capacity it receives through participation in the ICPA. Even if the Company does not receive energy and capacity from the ICPA, there are still costs to the

> Company due to the existing contract provisions that cannot be renegotiated without the inclusion and support of several sponsoring companies. Neither I&M nor AEP have controlling interest in the ICPA. The analysis provided by the Company has shown that replacing the OVEC resources with new resources is more costly to customers under current market conditions.

6 Tr 1486-1487. Additionally, he notes that the company did not ask for preapproval for costs associated with the ICPA and that the settlement agreement does not preapprove any costs associated with the ICPA. 6 Tr 1487.

Mr. Proudfoot states that the settlement agreement limits acquisition of natural gas to 750 MW through 2028. Further, Mr. Proudfoot notes he does not share any concerns regarding costs "because the cost is not being pre-approved in this IRP" and will be closely scrutinized through a CON proceeding. 6 Tr 1488. He further notes that the settlement agreement requires a CON application for approval of projects 225 MW or larger, which will provide the Commission with an opportunity to "consider the cost and other pertinent information as directed by MCL 460.6s." 6 Tr 1488. Mr. Proudfoot opines that the underlying modeling does, in fact, support the selection of 750 MW of gas peaking facilities through 2028. 6 Tr 1488-1489 (citing 3 Tr 1170-1171). Further, he avers that even in light of the IRA, the selection of 750 MW of natural gas CT is still reasonable. Noting agreement that the IRA improves the economics of carbon-free resources, Mr. Proudfoot states there are many additional variables to be considered. Specifically, he notes that utilities have faced significant challenges including fluctuating costs and supply chain issues which has hindered Michigan utilities' ability to expand renewable resources, and these challenges will not diminish overnight. Mr. Proudfoot states that, "[b]y diversifying the resource types within the portfolio, the risks associated with the near-term resource procurement can be better managed." 6 Tr 1490. In addition, Mr. Proudfoot notes that the timing is important because the entire Rockport facility will retire by 2028, and "the construction or procurement of all resources needed to replace the Rockport facility will commence within the next 5 years." 6 Tr 1490. Finally, he reiterates that the settlement agreement allows the company to displace some or all of the capacity need from the 750 MW of natural gas resources with additional carbon free resources if economically appropriate.

With respect to the modeling errors, Mr. Proudfoot contends that they were already previously and adequately addressed in I&M's rebuttal testimony. 6 Tr 1490 (citing 2 Tr 406-413; 2 Tr 708-713). Further, he indicates that the renewable build limits in the modeling were reasonable "[g]iven the practical challenges that are being experienced by all utilities across the state and beyond," and the settlement agreement "does allow the Company to procure additional renewable resources to fulfill all or part of the capacity that would otherwise be satisfied by the 750 MW of natural gas resources." 6 Tr 1490-1491. Mr. Proudfoot also opines that it is an oversimplification to assume that natural gas resources are interchangeable with solar resources, and there are benefits in resource diversity.

Mr. Proudfoot indicates that the nature of modeling is that it provides a snapshot in time whereas policy is constantly evolving and, unfortunately, "the timing of such changes may not fully align with the regulatory process." 6 Tr 1491. However, he notes that "[t]he IRA was designed to minimize the inflationary impacts of market conditions on resource development for all carbon-free resources." 6 Tr 1492 (emphasis omitted). Mr. Proudfoot opines that:

> [r]ather than restart an IRP in such instances where changes in policy or commodity prices are too large to quicky adapt to, it is more appropriate to use the information in the IRP to understand which resource portfolio provides the most benefits to utility customers under all possible futures.

6 Tr 1493.

Finally, Mr. Proudfoot notes that while GLREA provided objections regarding the Public Utility Regulatory Policies Act of 1978, PL 95–617; 92 Stat 3117 (PURPA), GLREA did not provide testimony in support of its objection. In sum, Mr. Proudfoot recommends that the Commission approve the settlement agreement because it includes numerous benefits. Specifically he states that the settlement commits the company to:

> (1) increase energy waste reduction (EWR), (2) increase[] spending on EWR low income pilots, (3) provide immediate bill assistance for Michigan's most vulnerable customers, (4) provide potential credits from Rockport Unit 2 that were not otherwise contemplated in the record, and (5) transition to low or no-carbon resources through the development of significant renewable energy and storage resources while maintaining affordability and resource reliability.

6 Tr 1494.

C. <u>Surrebuttal Testimony</u>

1. <u>Michigan Department of Attorney General and Citizens Utility Board of Michigan</u>

In his surrebuttal, Mr. Jester states that he is responding to the rebuttal testimony of Mr. Proudfoot and Mr. Lucas. He disputes the rebuttal testimony of both witnesses which state that the settlement agreement provides benefits to Michigan customers. Responding to Mr. Proudfoot, Mr. Jester states that the benefits to customers are not proportional to the benefits to I&M related to the approval of up to 750 MW of new CT generation at an estimated cost to Michigan customers of $100 million. 7 Tr 1563.

Turning specifically to EWR, he notes that Mr. Proudfoot cited the benefits associated with I&M's increase to its EWR savings from the targets proposed in its current EWR plan case, as well as its increase to low-income EWR spending from 2022 through 2025, agreement to propose two income-qualified pilots in 2026, and to donate $200,000 over three years to bill assistance programs. Mr. Jester testified that Consumers Energy Company (Consumers) and DTE Electric Company (DTE Electric) have "agreed to allocate substantially greater percentages of their annual EWR budgets on low-income EWR programs." 7 Tr 1564. Mr. Jester cites the settlement agreement approved in the March 17, 2022 order in Case No. U-20875, which provides for

Consumers to spend $198.4 million on income-qualified EWR programs for 2022 through 2025. He states that he has calculated that Consumers has budgeted $1.151 billion on EWR over that time period and will spend about 17% of its total EWR budget on income-qualified programs. Mr. Jester also cites to the settlement agreement approved in the January 20, 2022 order in Case No. U-20876 for DTE Electric and notes that it provides that DTE Electric will spend $65.6 million on income-qualified EWR programs for 2022 and 2023. He states that he has calculated that DTE Electric has budgeted $347.7 million for EWR across that time period and will spend about 18.9% of its EWR budget on income-qualified programs over those two years. By contrast, I&M is committing to spending at most 12% of its EWR budget on low-income EWR programs by 2025 in the instant case. *See*, 7 Tr 1564-1567. He argues that this does not amount to a substantial benefit for customers. He also criticizes the provisions regarding income-qualified pilots and the donation, because the pilots are simply proposals and do not happen for several years, and the company's "pre-tax return on rate base for the Michigan portion of the estimated cost of the gas CT assets whose selection is approved by the settlement is $7 million for the first year alone. (See Exhibit AG-25)." 7 Tr 1568.

Regarding the approval of new clean energy resources embodied in the settlement agreement, Mr. Jester states that, other than the new storage, "all of the new clean energy resources approved under the proposed Settlement Agreement were included in I&M's preferred portfolio and not opposed by any party, so their inclusion is not a benefit in the sense of a change in what I&M was proposing without the settlement." 7 Tr 1569. He adds that the competitive procurement process described in the settlement agreement is the same process included in the company's original filing, which no party opposed. Mr. Jester further notes that Consumers has committed to obtaining 50% of new resources through PPAs and thus argues that the settlement agreement's provision for 30% is not as strong as it could be. Finally, he opines that the terms addressing the transition of Rockport Unit 2 are nearly the same as what the company sought in its original PCA, and no benefit for customers was achieved in return for the agreement. 7 Tr 1571.

III. Initial Briefs

A. Indiana Michigan Power Company

I&M posits that the settlement agreement meets the requirements of Rule 431. Specifically, I&M asserts that the parties who signed the settlement agreement adequately represent the public interest, that the settlement agreement is a fair and reasonable resolution to this proceeding, and that the settlement agreement is supported by substantial evidence on the record as a whole. I&M also argues that the objections to the settlement agreement do not provide sufficient grounds for rejecting or modifying the settlement agreement.

I&M argues that the parties who entered into the settlement agreement or did not object adequately represent the public interest and include the utility, the Staff, large business and industrial customers, and independent power producers. I&M's initial brief, pp. 13-14 (citing 6 Tr 1421). I&M states that "the Company and Staff agree that the Settlement Agreement promotes the interests of the Company's Michigan customers by ensuring reliable energy at reasonable rates while balancing the environmental impacts of that service by increasing renewable energy resources." I&M's initial brief, p. 14 (citing 6 Tr 1421, 1478). I&M asserts that, "[a]lthough it is preferrable for all interested parties to sign a settlement agreement, the Commission has not imposed such a requirement." I&M's initial brief, p. 14 (citation omitted). I&M states that the Commission has "rejected the argument that the public interest was not adequately represented by signing parties because interest groups representing customers did not sign a contested settlement, reasoning that the Staff also represents customers in proceedings and had signed on." *Id.*, pp. 14-15.[5] I&M responds to the assertion of the Attorney General and CUB and the Sierra Club that the public interest is not adequately represented by the signing parties as they only include three of the nine parties to this case. I&M quotes the Court of Appeals finding that "[p]articipation of fewer than all interested parties in the negotiation does not mandate a conclusion that the signatories to the settlement did not represent the public interest." *Id.*, p. 15 (quoting *Attorney General v Mich Pub Serv Comm*, 237 Mich App 82, 93-94; 602 NW2d 225 (1999)). I&M asserts that the parties opposing the settlement agreement "are placing narrow interests over a holistic and balanced approach to analyzing the benefits of the Settlement Portfolio and other terms of the Settlement Agreement." I&M's initial brief, p. 15. I&M states that the company, the Staff, and ABATE adequately represent the public interest in this case as evidenced by the balance struck between party positions "to promote reliable, cost-effective service and an incremental transition from coal-fired generation to carbon-free resources." *Id.*, p. 16.

I&M posits that the settlement agreement is in the public interest and represents a fair and reasonable resolution of the proceeding. I&M argues that the settlement agreement appropriately balances the policies of both Indiana and Michigan jurisdictions. *See*, *id.*, pp. 16-17. The company states that the signing parties to the settlement agreement "negotiated the terms of the Settlement Agreement over multiple months, during which all parties had an opportunity to participate." I&M's initial brief, p. 17 (citing 6 Tr 1408). I&M reiterates that the settlement agreement is in the public interest for the reasons enumerated by Mr. Lucas in his direct testimony, outlined above.

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[5] The Commission notes that although the citation in I&M's initial brief to the November 14, 1996 order in Case No. U-10685 *et al*. appears to be incorrect, the Court of Appeals has found that the public interest is adequately represented by the Staff when the Staff is party to a contested settlement agreement. *See*, *Attorney General v Mich Pub Serv Comm*, 237 Mich App 82, 93-94; 602 NW2d 225 (1999).

I&M states that the settlement agreement complies with Section 6t(8) of Act 341 and results in the most reasonable and prudent means of meeting the company's energy and capacity needs. The company posits that the settlement agreement "supports resource adequacy and capacity sufficient in quantity to serve anticipated peak electric load requirements as determined by PJM." I&M's initial brief, p. 18 (citing MCL 460.6t(8)(a)(i)). I&M states that "the Company's Preferred Portfolio is the result of extensive analysis that considers future additions and retirements in I&M's generation portfolio, [considers] forecasts of future capacity obligations, and provides the necessary amount of supply-side and demand-side resources to meet the Company's peak electric loads plus the applicable reserve margin requirement." I&M's initial brief, p. 18 (citing 6 Tr 1414). I&M asserts that the portfolio comprised of incremental resource additions included in the settlement portfolio and the company's existing resources "allows the company to transition 2,600 MW of its coal-fired generation to a similar amount of carbon-free resources while also maintaining enough firm dispatchable capacity to ensure an adequate level of capacity to meet customers' needs." I&M's initial brief, p. 19 (citing 6 Tr 1414).

I&M asserts that the settlement agreement "ensures compliance with applicable state and federal environmental regulations." I&M's initial brief, p. 19 (citing MCL 460.6t(8)(a)(ii)). I&M states that the company agrees to issue RFPs, consistent with the Commission's Competitive Procurement Guidelines, and that "[t]hese RFPs will not discriminate by type or size of resource and will allow projects as small as 20 MW to participate." I&M's initial brief, p. 19 (citing 6 Tr 1415). In accordance with the Competitive Procurement Guidelines, the company states that it:

> will utilize an independent third party to conduct the stakeholder process, to review the bid documents and scoring criteria, and provide oversight of the bid evaluation and scoring process. The projects selected as a result of the competitive

> procurement process will be brought before the Commission in *ex parte* or CON proceedings for regulatory approval.

I&M's initial brief, pp. 19-20 (citing 6 Tr 1415) (internal citations omitted).

I&M argues that the settlement agreement supports reliability. I&M's initial brief, p. 20 (citing MCL 460.6t(8)(a)(iv)). The company states that it "measured reliability based on the surplus reserve margin above the PJM Forecasted Pool Requirement." I&M's initial brief, p. 20 (citing 6 Tr 1416). Further, the company posits that it "considered the impacts of the generation transition as Rockport retires and the addition of intermittent resources and their associated Effective Load Carrying Capability ('ELCC') capacity contribution." I&M's initial brief, p. 20 (citing 6 Tr 1416). I&M argues that the resource additions proposed in the settlement agreement combined with the company's current generation resources "provide a diverse resource mix that leverages the strengths of, and mitigates the weaknesses inherent in, each type of generation resource and provides a reliable integrated generation portfolio." I&M's initial brief, p. 20 (citing 6 Tr 1416).

I&M argues that the settlement agreement addresses commodity price risks by providing "a diverse portfolio of nuclear, solar, wind, hydro, coal, natural gas, storage, energy efficiency, and other demand-side resources." I&M's initial brief, p. 20 (citing 6 Tr 1416). The company states that a significant portion of its energy supply is forecasted to come from nuclear, solar, and wind, which ensures "I&M and its customers are insulated from changes in fuel costs or other production related costs." I&M's initial brief, p. 20 (citing 6 Tr 1416). Additionally, I&M argues that the competitive procurement process for new generation resources addresses commodity price risk, and the company "will go to the market at different points in time to procure new resources and allow market competition to help mitigate the impacts of future commodity risks." I&M's initial brief, p. 21 (citing 6 Tr 1416).

I&M posits that the settlement agreement ensures a diverse generation supply, as outlined above. The company asserts that "[t]his combination of types of generation resources provides the Company a significant diversity of generation supply and the flexibility to adapt to changing market conditions or changes in technology and continue to provide I&M's customers with a reliable source of power." I&M's initial brief, p. 21 (citing 6 Tr 1417).

I&M asserts that the settlement agreement addresses reasonable and cost-effective levels of peak load reduction and EWR savings. I&M states that the settlement agreement reflects a compromise of EWR and DR levels. The company "agrees to increase its annual EWR energy savings targets incrementally over the next four years to achieve 2% savings by the end of 2027." I&M's initial brief, p. 21 (citing 6 Tr 1417). Further, I&M states that according to the settlement agreement, "[i]f the company fails to achieve its target by the end of 2025 without good cause, I&M will transfer management of its EWR programming to Efficiency United." I&M's initial brief, p. 21 (citing 6 Tr 1417). I&M also notes that the settlement agreement increases the company's DR targets by increasing participation in the Residential Thermostat DCL program, as recommended by the Staff. I&M's initial brief, pp. 21-22 (citing 6 Tr 1417-1418).

I&M argues that the settlement agreement is a fair and reasonable resolution to the IRP proceeding because "it represents a compromise between the positions of the Company and many of the parties who participated in this case." I&M's initial brief, p. 22 (citing 6 Tr 1411). As an example of compromise, I&M cites to the reduction of fossil-fueled resources and incorporation of additional carbon-free resources in Section 1.a.ii. of the settlement agreement, as a recommendation made by the intervening parties. I&M's initial brief, p. 22. I&M notes that the replacement of 250 MW of gas CT with 255 MW of storage resources was recommended by the Staff and argues that it was "a reasonable compromise of the parties' positions and specifically addresses the concerns raised by [the Attorney General and CUB] witness Jester of I&M 'accelerating' gas peaking in the Preferred Portfolio from 2033 to 2028." I&M's initial brief, p. 23 (citing 6 Tr 1422). I&M argues that Section 1.a.ii. of the settlement agreement balances the positions of the company, the Staff, the Sierra Club, and the Attorney General and CUB as:

> [n]atural gas capacity is an important complimentary resource to the intermittent renewable resources for the Company to maintain an adequate supply of capacity for customer's load and the required reserve margin. (6 Tr. 1445-1446). By supplementing the CT with additional renewables, the Settlement Portfolio further reduces the Company's reliance on carbon-emitting generation resources in favor of renewable resources.

I&M's initial brief, p. 23.

I&M posits that the settlement agreement "fairly and reasonably resolves the parties' disagreement over EWR savings targets by incrementally increasing the savings targets to achieve a 2% savings target by the end of 2027." I&M's initial brief, pp. 23-24 (citation omitted). I&M reasons that this outcome is part of a reasonable compromise between the Staff, the Attorney General and CUB, along with MEC's initial position that the company's EWR levels should be increased to a 2% savings target by 2024 and I&M's concerns that the timeframe put the company in an unrealistic position. *Id*., p. 24.

I&M avers that it "made a substantial commitment to low-income EWR spending, by adopting the two recommendations of MEC and the [Attorney General and CUB] related to low-income EWR programs." *Id*. (citing MEC's underlying initial brief, pp. 32-33; Attorney General and CUB's underlying initial brief, p. 73) (citation omitted). I&M provides that the settlement agreement incrementally increases the company's low-income spending to 12% annually by the end of 2025 and provides for the development of two low-income EWR pilot programs in future EWR proceedings. I&M's initial brief, pp. 24-25 (citing settlement agreement, paragraph 5.a.).

I&M posits that paragraphs 3.a. and 3.b. of the settlement agreement incorporate the Attorney General and CUB's recommendation "to modify the Company's PPA incentive by using after-tax WACC to calculate payments and authorize the new incentive for new, renewable PPAs." I&M's initial brief, p. 25 (citing Attorney General and CUB's underlying initial brief, p. 71).

I&M contends that the settlement agreement resolves the parties' disagreement over OVEC and the ICPA, as it maintains the status quo and OVEC ICPA issues will continue to be addressed in PSCR proceedings. I&M states that this is consistent with the positions of the Sierra Club and the Attorney General and CUB. I&M's initial brief, p. 25 (citing Attorney General and CUB's underlying initial brief, p. 61; 3 Tr 792; Sierra Club's underlying initial brief, p. 48).

I&M concludes that the settlement agreement represents a fair and reasonable resolution to the proceeding, as it contains a number of compromises that take into consideration the interests held by the parties to this case, including recommendations made by objecting parties.

I&M avers that the settlement agreement remains in the public interest and is a reasonable resolution to these proceedings despite the enactment of the IRA. I&M states that the all-source, non-discriminatory RFP contemplated by the settlement agreement will allow I&M and its customers to realize the benefits of the IRA. I&M's initial brief, p. 26. Specifically, I&M states that:

> [t]he projects selected and brought forward for future regulatory approval will be dependent upon the resources available in the market at the time of the RFP. This naturally will reflect the most current pricing that includes all factors influencing the market prices of resources, including IRA considerations. Hence, the selection of the resources from the RFP will ensure the Company's customers receive the benefits available in the market related to the IRA.

I&M's initial brief, p. 27 (citations omitted). I&M reiterates testimony from Mr. Lucas that procurement activities for new generation resources will need to start early in 2023 to fill the capacity need created by the retirement of Rockport in 2028. *See*, I&M's initial brief, pp. 27-28.

I&M asserts that the settlement agreement is supported by substantial evidence on the record as a whole. The company argues that the settlement agreement and resulting portfolio are a derivative of the IRP modeling process and that "[t]he testimony of the Company's expert witnesses, along with witnesses from Staff and other signing parties, overwhelmingly supports the provisions adopted in the Settlement Agreement." I&M's initial brief, p. 29. I&M states that the objecting parties' attempt to invalidate the settlement agreement (because of the company's modeling) has no merit, as the company's testimony "makes clear that the record demonstrates that the modeling assumptions, including build limits and ITC normalization, were reasonable." *Id*., p. 30 (citing 6 Tr 1443; 2 Tr 151; 2 Tr 197-199; 2 Tr 450-452). I&M asserts that the settlement portfolio "is supported by substantial record evidence and, most relevantly, the IRP Report and modeling." I&M's initial brief, p. 30.

I&M posits that "build limits were imposed for good reason and thoroughly addressed in the record." *Id*. Specifically, I&M states that "build limits mitigate risks and exposure associated with overreliance on market sales and purchases." I&M's initial brief, p. 30 (citing 6 Tr 1444; 2 Tr 163). Additionally, I&M states that "modifying (or expanding) the build limits in the "Reference with Expanded Build Limits" Portfolio resulted in forecasted energy exports that exceeded over half (50%) of the Company's load, which should be cause for concern of all parties." I&M's initial brief, p. 30 (citing 6 Tr 1444; 2 Tr 198). Finally, I&M states that "a 'Reference with No Renewable Limits' Portfolio resulted in a capacity surplus exceeding 1,500 MWs over a nine-year period and energy exports that exceeded the entire load of I&M for a twelve-year period." I&M's initial brief, pp. 30-31 (citing 6 Tr 1444; 2 Tr 198). I&M further elaborates that:

> [i]n addition, the build limits recognize various execution risks, including commercial issues that may arise when attempting to procure and deploy new

> resources. Furthermore, while renewables may have near-zero short-term marginal costs, the amount of energy revenues they receive on a $/MWh [megawatt-hour] basis can be volatile, thus creating exposure since these revenues are an important factor in offsetting the associated capital and other fixed costs.
>
> The Company's normalization of the ITC credit was also appropriate. As explained in prior testimony by witness Berini, I&M assumed non-discriminatory cost framework for all resources that included normalization of the ITC. Significant solar was picked in the Reference' [sic] Portfolio both before and after the reduction in ITC, indicating that such a change to only whether the ITC was normalized or not would not be expected to have a significant change in the amount selected and subsequently included in the Preferred Portfolio.

I&M's initial brief, p. 31 (citations omitted).

I&M argues that the objections to the settlement agreement do not constitute sufficient grounds to reject or modify the agreement. I&M responds to the individual objections of the Sierra Club and the Attorney General and CUB. I&M argues that the Sierra Club's recommendation that the Commission reject the 750 MW of gas generation contemplated by the settlement agreement is unreasonable given the company's capacity position in 2028 following the retirement of Rockport. I&M contends that the Sierra Club has misunderstood Section 1.c. of the settlement agreement as including a minimum of 750 MW of natural gas generating capacity when the company reads the settlement agreement:

> to *limit* the acquisition of natural gas resources through 2028 to approximately 750 MW (ICAP) while reserving the right to select additional carbon-free resources above the 2,160 MW identified in Section 1.a.i. to fulfill, in whole or in part, this 750 MW incremental capacity need. Hence, the 750 MW of natural gas resources in Section 1.c. does not reflect a minimal amount allowed under the Settlement Agreement, but serves to limit the acquisition of natural gas resources to approximately 750 MW.

I&M's initial brief, p. 34 (emphasis in original) (citations omitted).

I&M responds to the Sierra Club's claims that including CTs in the settlement portfolio is premature given the passage of the IRA because "[the Sierra Club's witness] assumes the IRA will drastically lower costs for renewable resources." I&M's initial brief, p. 35 (citing 6 Tr 1499).

I&M argues that the Sierra Club's assumption that renewable resources are economically preferable "is speculative and potentially inaccurate at this point in time." I&M's initial brief, p. 35. I&M asserts that "Mr. Comings ignores the many other commercial considerations that are putting upward pressure on the costs of renewables, including ongoing supply chain issues, federal tariffs and remaining uncertainty in the Anti-Dumping/Countervailing Duties ('AD/CVD') investigation, [competition] for renewable resources, and rising inflation rates and resulting increased interest rates." *Id*., p. 36 (citing 6 Tr 1432). I&M reiterates its position that the Commission cannot deny the settlement agreement based on the passage of the IRA, as "[i]t should be expected that various changes that impact modeling inputs — such as change in market conditions, changes in forecasts, and/or legislative updates — will routinely occur after the IRP modeling is complete." I&M's initial brief, p. 36 (citing 6 Tr 1437). I&M further argues that:

> if the Commission were to reject every IRP on the basis that a change occurred well after the completion of the IRP modeling phase, all IRPs would be subject to an endless cycle of litigation, thereby subjecting the Commission to rule without, and the Company to serve its customers' needs without, an effective, cost efficient, and reliable resource plan.

I&M's initial brief, p. 36 (citing 6 Tr 1437-1438).

I&M responds to the Sierra Club's statement in its objection to the settlement agreement that "[t]he Settlement Agreement was negotiated, on information and belief, by only two parties—the Company and the Staff." I&M's initial brief, p. 39 (quoting Sierra Club's objections, p. 5). I&M posits that this statement is "demonstrably false" and argues that:

> [a]ll parties participated in lengthy settlement negotiations over the course of several months that included all parties exchanging drafts and proposals, several one-on-one meetings between parties, and several meetings with all parties. The fact that Sierra Club later in the process did not participate in every discussion or was no longer contributing to final terms does not support the statement.

I&M's initial brief, p. 38. I&M provides an overarching timeline of the settlement process in support of its position that "the Company engaged all parties in settlement discussions." *Id*. I&M emphasizes that "although not all parties signed the Settlement Agreement, all parties had input regarding its terms and a role in negotiating the final Settlement Agreement." *Id*., p. 39.

I&M reiterates a number of its above positions in response to the Attorney General and CUB's objections to the settlement agreement. I&M reasserts that it cannot delay its gas procurement decisions, as the company has an impending capacity need in 2028. I&M argues that the settlement agreement addressed the Attorney General and CUB's arguments "against the Preferred Portfolio's increase of the gas CT capacity in 2028 from 750 MW to 1,000 MW by incorporating 250 MW of gas CT selected for 2033 in the Reference Portfolio." *Id*., p. 40 (citing 3 Tr 774). I&M asserts that it has compromised on this issue in the settlement agreement to address the Attorney General and CUB's concerns about accelerating the procurement of natural gas generation and limited the acquisition of natural gas resources to 750 MW through 2028. I&M repeats that it has "reserved the right to select additional carbon-free resources to fulfill its incremental capacity need." I&M's initial brief, p. 41 (citing 6 Tr 1423).

I&M responds to the Attorney General and CUB's assertion that "gas prices are expected to stay high in the EIA forecast period." *See*, I&M's initial brief, p. 43; *see also*, 7 Tr 1545. I&M argues that the EIA Short Term Energy Outlook is a short-term forecast and only references gas prices through 2024. I&M posits that "the most recent EIA 2022 long term forecast for Henry Hub prices are nearly identical to the gas prices modeled in the Company's IRP, which is more relevant to when the new gas CTs would come online . . . ." I&M's initial brief, p. 43.

I&M responds to the Attorney General and CUB's contention that the remaining NBV of Rockport Unit 2 "is $1,846,632, or almost 10%, higher than the estimate of $19,944,246 provided [by I&M] . . . ." 7 Tr 1552. I&M responds that the NBV should be lower than the estimate provided by the Attorney General and CUB because the company used an estimated revenue requirement of $24.4 million to calculate the remaining NBV of Rockport Unit 2, whereas Attorney General and CUB witness Mr. Jester estimated an updated NBV of $18,015,435 with an estimated revenue requirement of $21.8 million. I&M's initial brief, p. 44 (citing 6 Tr 1455). I&M also states that, in the settlement agreement, the company compromised on a lower ROE on the remaining NBV of Rockport Unit 2. I&M's initial brief, p. 44 (citing 6 Tr 1455). I&M concludes that "the compromise regarding NBV benefits I&M's customers by reducing the return I&M will earn on the remaining NBV and provides customers the opportunity to benefit from the post-Lease merchant operation of Rockport Unit 2." I&M's initial brief, p. 45.

I&M addresses the Attorney General and CUB's claim that recovering the remaining NBV at the end of the lease of Rockport Unit 2 and being compensated for the post-lease use of Rockport Unit 2 constitutes double-recovery. I&M asserts that these are separate issues. Further, I&M argues that it:

> would need to procure additional capacity over the next few years even with recovery of the NBV. The ability to use Rockport Unit 2 capacity, as proposed, helps meet this need. Mr. Williamson explained in his Initial Rebuttal Testimony that other scenarios would allow I&M to continue to meet the capacity needs of its customers and how each of those results in additional costs beyond the remaining NBV, which are both reasonable and necessary and should be recoverable in I&M's cost of service.

I&M's initial brief, pp. 45-46 (footnote omitted). I&M also notes that the Attorney General and CUB's claim of double recovery "fails to acknowledge the costs incurred by I&M that allows it to continue to use Rockport 2 as a capacity resource after the Lease ends. These costs include the $115.5 million reacquisition price and other ongoing capital and operation and maintenance costs that I&M is not requesting to be included in its cost of service." I&M's initial brief, p. 46

(citations omitted). I&M notes "that the ability to recover the remaining NBV at the end of the Lease and the compensation for post-Lease use of the capacity based on the PJM BRA [base residual auction] clearing price are the same terms agreed to in the Settlement Agreement approved by the Indiana Utility Regulatory Commission . . . ." I&M's initial brief, p. 46. I&M states that while the reduced return on recovery of the remaining NBV of Rockport Unit 2 is not as low as the Attorney General and CUB recommended, it represents a compromise between the company's initial position and that of the Attorney General and CUB. *Id*., p. 47.

I&M responds to the Attorney General and CUB's assertion that the company is "taking on the Kentucky Power share under the Unit Power Agreement . . ." and maintains that "'[t]he costs associated with I&M's purchased power under the AEG Unit Power Agreement will be subject to review and recovery in I&M's PSCR proceedings.'" I&M's initial brief, p. 47 (quoting 7 Tr 1555). Additionally, I&M states that the settlement agreement does not approve the ICPA, which also remains subject to regulatory oversight in PSCR proceedings. I&M's initial brief, p. 49. I&M states that the company performed analyses of the ICPA at the Commission's direction in this case.

I&M concludes that the settlement agreement "represents a significant compromise based on the positions of the parties in the original record." I&M's initial brief, p. 50. I&M posits that the settlement agreement meets the requirements of Rule 431 and requests the Commission approve the contested settlement agreement.

B. Commission Staff

The Staff avers that the settlement agreement "provides continued flexibility through future opportunities to review resource selection and the associated costs" and does not preapprove any costs except for the reasonable and prudent costs associated with I&M's CVR program. Staff's initial brief, p. 1. Further, the Staff contends that the settlement agreement provides for the filing of a CON proceeding for any project which will be 225 MW or larger, which will allow the Commission to continue to review and evaluate any proposals. The Staff adds that approval of the settlement agreement will allow for continued review of the IRP, including the requirement for I&M to file a review of its IRP within five years. The Staff contends that there are numerous benefits to the settlement agreement, including:

> 1) The settlement agreement allows for a diverse resource portfolio to aid reliability while also expanding the Company's renewable and storage resources. 2) The settlement agreement provides one of the most meaningful steps forward for the Company's Energy Waste Reduction (EWR) program to date with real consequences if the underlying commitments are not met. 3) The Company's low-income EWR spending will increase and the Company will work collaboratively to identify additional income-qualified pilot programing. 4) Some of Michigan's most vulnerable customers will see immediate bill assistance from the Company's donations to the Southwest Michigan Community Action Association. 5) Finally, the settlement agreement provides a path forward with respect to Rockport Unit 2 consistent with previous Commission orders while providing potential credits to Michigan ratepayers that were not included in the Company's initial proposed plan.

Staff's initial brief, pp. 2-3. Therefore, the Staff recommends approval of the settlement agreement.

The Staff avers that the proposed settlement agreement meets the requirements of Rule 431. With respect to the first factor, the Staff reiterated the procedural history to argue that the parties have had more than a reasonable opportunity to present evidence and arguments through testimony and briefing in this contested settlement proceeding. *See*, Staff's initial brief, pp. 4-5. Although noting objections to the second factor, the Staff contends that the second factor is nevertheless met. Specifically, the Staff notes that the settlement was signed by the company which speaks for its own interests, ABATE which represents numerous industrial ratepayers, and the Staff which "ensures that the public interest is adequately represented." *Id*., p. 6. The Staff further emphasizes that the "Commission's mission is to 'serve the public by ensuring safe, reliable, and accessible energy and telecommunications services at reasonable rates.'" *Id*., p. 7 (citing 6 Tr 1478). The Staff further avers that precedent supports the finding that the Staff's participation adequately represents the public interest and, therefore, concludes that the second factor is met. *See*, Staff's initial brief, pp. 6-7.

The Staff posits that "[t]he settlement agreement in this case has several important benefits that outweigh any criticisms alleged by the objecting parties" and that "many of these benefits are achieved without cost pre-approval . . . ." *Id*., p. 8. The Staff avers that the settlement agreement is supported on the record as a whole and that all objections have been addressed including "any proposed gas resources to replace early retirements of [the company's] coal generating fleet." *Id*., p. 9 (citing settlement agreement, p. 6). Turning to the benefits, the Staff avers that the public will greatly benefit from the EWR investments, increases in low-income spending, and bill assistance contained in the settlement agreement. The Staff also notes that the EWR provisions of the settlement agreement reflect significant improvements upon I&M's current EWR efforts and, "[i]f the Company fails to meet the EWR savings targets by the end of 2025 without good cause, it will transfer management of its EWR program to Efficiency United." Staff's initial brief, p. 10 (citing settlement agreement, pp. 6-7). Further, the Staff notes that comparing I&M's EWR programs to other Michigan utilities is irrelevant because the terms of the settlement agreement reflect positive steps with respect to I&M's EWR programming which directly benefits Michigan customers.

The Staff states that the settlement agreement will promote a diverse resource mix which will allow the company to retire the Rockport units and provide reliability for customers. Further, the Staff notes that the terms of the settlement will also make significant progress towards creating carbon-free generation and storage portfolios. With respect to objections regarding including 750 MW (ICAP) of fully dispatchable resources, the Staff responds that the settlement agreement's "resource diversity can also reduce the risks associated with near-term resource procurement posed by challenges that threaten the availability of accelerated renewable resources beyond the amounts in the Company's plan." Staff's initial brief, p. 14 (citing 6 Tr 1489-1490). The Staff cites to the retirement of the Rockport units by 2028, to emphasize the importance of acquiring sufficient capacity and to "satisfy the PJM resource adequacy construct." Staff's initial brief, p. 14 (citing 6 Tr 1425). Additionally, the Staff notes that approval of the settlement agreement:

> does not mean that further development and expansion of renewable resources is not key to the Company's resource planning. In fact, the settlement agreement recognizes this importance and even allows for the procurement of additional economic carbon-free resources to displace (in whole or in part) the capacity need addressed by the fully dispatchable 750 MW in Term 1.a.ii at the Company's discretion to consider all factors such as reliability, economics, and emission goals.

Staff's initial brief, p. 15 (citing settlement agreement, p. 4).

The Staff again emphasizes that the settlement agreement does not preapprove any costs other than CVR program costs. The Staff states that approval of the settlement agreement would not provide I&M with a blank check to acquire natural gas resources and would ensure that I&M will submit CON applications for any project 225 MW or larger. Therefore, the Staff avers that any objections based upon the costs of the 750 MW of natural gas CT should be rejected as those costs would be closely analyzed in a future CON proceeding if pursued by the company. Citing MCL 460.6s, the Staff notes that in a future CON proceeding the Commission would be required to evaluate the factors under subsection 4. Further, the Staff responds to concerns raised with respect to MCL 460.6s(11)(f), stating that, "while the settlement agreement allows for submission of the modified IRP in this case for purposes of MCL 460.6s, it does not require it" and that the terms of the settlement agreement "would not foreclose the possibility of evaluating the IRP approved through the settlement agreement further in the CON proceeding." Staff's initial brief,

p. 17. The Staff continues, stating that the CON filing requirements would require the company to identify significant material changes since the plan was approved, which would include changes in the cost of resources and market factors. The Staff states that, "[t]o issue a CON, the Commission must find that the estimated cost of the power is reasonable and that the proposed project represents the most reasonable and prudent means of meeting the power need relative to other resource options." *Id*., p. 18 (citing MCL 460.6s(4)). In sum, the Staff argues that there will be numerous opportunities to further review I&M's resources and costs given that the only preapproved costs relate to CVR.

The Staff contends that the settlement agreement "contains environmental benefits while also promoting system reliability" and "improves what the Company originally included in its IRP application by locking in commitments made by the Company to advance its EWR program and pursue new carbon-free generation and storage." Staff's initial brief, pp. 18-19. In response to objections, the Staff indicates that the opposition fails to acknowledge the "significant commitments to expand carbon-free resources and other benefits from the settlement agreement" and focuses only on the potential procurement of carbon-emitting resources. *Id*., p. 21. Concluding, the Staff argues that the objections do not negate the numerous benefits of the settlement agreement, which it avers should be approved.

With respect to Rockport Unit 2, the Staff reiterates the terms of the settlement agreement and disagrees with the Attorney General and CUB's assertions that the settlement agreement will result in double recovery. Specifically, the Staff contends that, through prior Commission orders, the costs for Rockport Unit 2 were previously identified, approved as a regulatory asset, and already included in rates, and the settlement agreement "provides the possibility that ratepayers will recover 50% of the applicable merchant revenues that would not otherwise be available, without subjecting them to any additional costs." *Id*., p. 25 (citing 6 Tr 1485). The Staff notes that this is a compromise from its initial position of 100% credit of the revenue in excess of costs but argues that it is nonetheless reasonable and beneficial to ratepayers.

The Staff responds to objections regarding I&M's participation in OVEC through the ICPA not being addressed through the settlement agreement, noting that the company has not requested preapproval of any costs associated with the ICPA, which will be further reviewed through PSCR proceedings. The Staff also indicates that the company has provided responses to the Commission's prior directives and notes "that the Company will incur costs from the ICPA even if it does not receive energy and that the analysis shows that replacing the OVEC resources with new resources is more costly to customers under current market conditions." Staff's initial brief, p. 26 (citing 6 Tr 1487). Thus, the Staff recommends maintaining the status quo as a reasonable and prudent outcome of this IRP proceeding.

The Staff notes its general agreement with the objecting parties "that the enactment of the IRA improves the economic outlook of carbon-free resources, including renewable resources, as compared to the future cost of those same resources absent the IRA." Staff's initial brief, p. 27 (citing 6 Tr 1489). The Staff acknowledges that it was "impossible for the Company to fully consider all of the impacts the IRA may have when conducting its modelling," and "that the full impact of the IRA may still be unknown months after its enactment." Staff's initial brief, p. 28 (citing 6 Tr 1492). However, the Staff avers that the enactment of the IRA is not justification to reject the settlement agreement and that the impacts of the IRA can be further evaluated in future proceedings such as CON application proceedings, PSCR cases, and future IRP proceedings.

In sum, the Staff avers that the settlement agreement meets all of the requirements of Rule 431 and "provides assurance with respect to the substantive benefits, as well as the procedural path forward for continued review of the Company's resource planning, all while maintaining flexibility." Staff's initial brief, p. 29. Therefore, the Staff recommends that the Commission approve the settlement agreement.

C. <u>Great Lakes Renewable Energy Association</u>

GLREA opposes approval of the settlement agreement as it relates to the PURPA provisions in paragraph 9. GLREA argues that the first sentence of paragraph 9 is overly broad and vague because it lacks any context or explanation. GLREA avers that it cannot provide a carte blanche agreement that I&M has complied with the orders in Case Nos. U-18092 and U-20591 and all other applicable law. GLREA's initial brief, p. 1.

GLREA also opposes the adoption of locational marginal price (LMP) as the avoided energy cost for I&M as contained in paragraph 9.a. GLREA contends that "the avoided energy cost under PURPA should be equal to the highest energy cost associated with the utility's next addition of generating resources," and this will always be higher than LMP. GLREA's initial brief, p. 2. GLREA adds that allowing this cost until 2030 is far too long and conflicts with paragraph 9.b. which speaks of a credit until mid-2025. GLREA also notes that the revised LMP forecast for 2022-2030 has not been performed and does not appear in the record, and thus the provision is premature. Additionally, GLREA contends that use of the LMP is inconsistent with other Michigan utilities, such as Consumers, which relies on a competitive bidding process to set the avoided cost.

GLREA proposes new language for paragraph 9.a. as follows:

> 9. As a follow up to the Settlement Agreement in Case No. U-20951:
>
> a. During the limited interim period pending a prompt [Commission] redetermination of the Company's avoided costs in the Company's next biennial PURPA case, the parties agree that the Company will update its proposed Tariff COGEN/SPP locational marginal price (LMP) forecast prior to

> filing the tariff with the Commission. This provision shall not be interpreted as a predetermination of, or precedent for, the adoption of locational marginal price (LMP) for purposes of determining the avoided energy cost in the company's next upcoming biennial PURPA case.

GLREA's initial brief, p. 5. GLREA also posits that the settlement agreement should provide a process for promptly implementing avoided costs for PURPA facilities that is consistent with the process adopted in Case No. U-20165. Alternatively, GLREA recommends simply deleting paragraph 9 and promptly commencing a separate proceeding for determining full avoided costs for I&M.

D. <u>Michigan Department of Attorney General and Citizens Utility Board of Michigan</u>

The Attorney General and CUB begin with a discussion of Rule 431(5) and Section 6t(8) and assert that the way to harmonize the two requirements in this contested settlement proceeding "is that there must be substantial evidence on the record as a whole that the plan approved by the settlement agreement represents the most reasonable and prudent means of meeting the electric utility's energy and capacity needs," noting that the "record as a whole includes the original record and the record created in the contested settlement proceeding." Attorney General and CUB's initial brief, p. 7. While urging the Commission to reject the settlement in this case, the Attorney General and CUB note that the Commission modified a settlement agreement in the November 14, 1996 order in Case Nos. U-10685 *et al*.

Looking at the criteria required under Rule 431, the Attorney General and CUB argue that the settlement agreement is not in the public interest, does not represent a fair and reasonable resolution of this proceeding, and is not supported by substantial evidence on the record as a whole for several reasons, beginning with the fact that the settlement agreement includes approval of a 750 MW CT gas resource planned for 2028. They note that the settlement agreement allows I&M to structure its RFPs to seek 750 MW of new gas CT assets and allows I&M to submit the IRP as an approved IRP in a future CON proceeding. The Attorney General and CUB argue that this is an expensive investment that is estimated to cost Michigan ratepayers $100 million and that the cost in the first year could reach $19 million. Attorney General and CUB's initial brief, p. 11. They contend that any assumptions regarding natural gas costs are speculative, especially in light of recent increases and the passage of the IRA, both of which favor renewables over gas builds.

The Attorney General and CUB assert that the modeling that resulted in this asset selection is rife with errors and that I&M (after admitting to the errors) made manual changes to the results but chose not to re-do the modeling. They state that the errors include:

> • Using the wrong discount rate in calculating net present value (NPV) revenue requirements for the different portfolios, making all of the reported results incorrect;
> • Mixing up real and nominal dollars in developing the cost of new generating resources in the model, further inflating their costs;
> • Assuming that the recovery period for the Investment Tax Credit (ITC) would occur evenly over the life of the project (e.g., 35 years for solar PV) rather than more quickly through a PPA; and
> • Making an error in the calculation of solar-battery hybrid costs that inflated the assumed costs of that resource by 20%.

Attorney General and CUB's initial brief, pp. 13-14. The Attorney General and CUB argue that I&M's witness Mr. Berini admitted to most of the errors on rebuttal or cross-examination, including admitting that one error affected the model's resource cost comparisons. Attorney General and CUB's initial brief, pp. 14-15 (citing 2 Tr 445-448, 496-505). Noting that the company argues that the settlement agreement represents a compromise, the Attorney General and CUB argue that the compromise is only between the Staff and I&M (and ABATE did not submit testimony on the gas plant issue), and taking 250 MW of gas capacity out of the original PCA does not represent a concession based on the modeling errors. Thus, they argue, the modeling errors have never been addressed and continue to affect the results, including the selection of the CT gas assets. The Attorney General and CUB contend that the Staff originally objected to the modeling errors but has now reversed that position without sufficient evidence that the modeling is reliable.

The Attorney General and CUB also argue that the selection of the 750 MW gas CT asset was assisted by arbitrary restrictions that I&M placed on the selection of renewables and post-modeling downward adjustments to those selections, which are not supported by substantial evidence on the whole record by either I&M or the Staff. They note that I&M placed predetermined limits on how much solar, wind, and storage could be selected, both on an annual and cumulative basis. Attorney General and CUB's initial brief, pp. 19-20. They argue that the effect of these limits is clear when comparing the Reference Case portfolio to the Expanded Build Limits portfolio and the No Renewable Limits portfolio, wherein the renewables increase and the gas CT assets decrease or disappear. *Id*., pp. 20-21. Additionally, the Attorney General and CUB note that solar and wind renewables for 2025-2026 were decreased by 50% after the modeling in creating the Preferred Portfolio, and 250 MW of gas CT assets were accelerated from 2033 to 2028. The Attorney General and CUB posit that these kinds of constraints are contrary to Commission practice, which favors allowing the model to optimize resource portfolios without predetermining the outcomes. They assert that I&M failed to support the values used as build limits with any evidence on how they were developed, noting that a discovery "request also asked I&M for any documents that communicated or memorialized the values, or that were relied on to generate the values. I&M did not produce any documents, and referred back only to the tables that state the values." *Id*., p. 23. They argue that arbitrary limits were substituted for sound modeling.

The Attorney General and CUB note that Dr. Pearce testified that the limits were justified by the need to limit energy exports in the modeling, so that exports did not become excessive in the overall load; but they argue that this only justifies placing some limits within the modeling and offers nothing to explain how the limits and downward adjustments that were used were arrived at. They note that the Staff provided testimony that the renewable "constraints on the model result in selection of CT to fill the capacity need left by Rockport." *Id*., p. 25 (quoting 3 Tr 1173). They acknowledge that Mr. Proudfoot testified that the Staff, with regard to the settlement agreement, is not concerned about the build limits because utilities are experiencing challenges in developing renewables including, supply chain issues, siting, and costs, but they argue that such general observations are not sufficient to support the approval of a new 750 MW gas CT resource.

The Attorney General and CUB also argue that changes to natural gas prices have rendered the IRP's selection of the CT resource outdated, because the model projected prices around $4 per million British thermal units (MMBtu) and prices in October 2022 were around $5.66 per MMBtu, which exceeds the highest price that the company considered in its stochastic modeling. Attorney General and CUB's initial brief, p. 27. They note that gas prices are forecasted to have high uncertainty, particularly in light of the war in Ukraine.

Finally, on the issue of the CT resource, the Attorney General and CUB argue that the IRA, which was adopted in August 2022, has changed the outlook for renewables by expanding certain solar and wind tax credits and creating new ones and by making storage eligible for credits as well. They contend that Mr. Jester's testimony shows that "the IRA will produce a 13 to 14% reduction in the levelized cost of energy from utility-scale solar and a 23 to 48% reduction in the levelized cost of energy [LCOE] from utility-scale wind for the rest of this decade and the first four years of the 2030s," as well as a 25% reduction in the LCOE of storage. Attorney General and CUB's initial brief, p. 29 (citing 7 Tr 1546-1547). They assert that the modeling, by contrast, assumed declines in the credits and state that they adopt the testimony of Mr. Comings and the arguments of the Sierra Club on this issue. The Attorney General and CUB contend that it is not in the public interest to approve this large investment in fossil generation "mere months after the enactment of a federal law that fundamentally shifts the economics of clean energy, without any analysis of that law's impact on the plan." Attorney General and CUB's initial brief, p. 30.

Next, the Attorney General and CUB turn to their criticisms of the settlement agreement's provisions covering the Rockport Unit 2 transition plan, based on the fact that those provisions grant the company everything that it asked for in the underlying proceeding, including the ability to recover the Michigan share of the undepreciated NBV for Rockport Unit 2 with a return on the amount at the pre-tax WACC and the implied ability to recover capacity revenues from Michigan customers as well. They state that the WACC return is at 9%, and the total revenue requirement associated with the Rockport Unit 2 provisions is almost $22 million. *Id*., p. 32. Thus, the Attorney General and CUB argue, the only concession made in return is that I&M will credit Michigan customers with 50% of the Michigan jurisdictional share of merchant revenues in excess of costs, but they note that this concession lacks value because those revenues in excess of costs are currently projected to be zero. *Id*., pp. 32-33 (citing Exhibit AG-27). The Attorney General and CUB note that the Staff originally argued that the request to recover the NBV did not belong in this case and that the NBV, in any case, should transfer with the transition of the unit to a merchant plant and not be recoverable from ratepayers after that transition; and that, to do otherwise, would amount to allowing the company to create a stranded cost. The Attorney General and CUB argue that it seems unlikely that the Staff would consider allowing the company a return on the NBV at its full ROE if this case had proceeded.

The Attorney General and CUB assert that it is not fair and reasonable to allow a return on an asset that is not used and useful for those customers who are paying the return and that the NBV includes costs that have not yet been determined to be reasonable and prudent in a rate case. They argue that the unrecovered NBV from retiring coal plants has typically been dealt with through securitization, which has a much lower carrying cost than the WACC. The Attorney General and CUB recognize that the Commission approved a return on a regulatory asset for Consumers' retiring coal plants applying a 9% return to the WACC, but they describe that settlement agreement provision as "groundbreaking" in that it was in return for a commitment to cease the generation of electricity from coal forever. Attorney General and CUB's initial brief, p. 39. They argue that the provisions in the instant settlement agreement are not connected to any future resource planning, and state that the Commission may approve recovery of the Rockport Unit 2 NBV with no return on the expenditures, or with a return at the company's long-term debt rate. Finally, they argue that there is precedent for a return *of* the NBV but no precedent for a return *on* the NBV. *Id*., p. 40.

The Attorney General and CUB also argue that the settlement agreement allows I&M to double recover by approving capacity revenues on top of the return of the NBV, which constitutes a double recovery of a portion of the revenues. They argue that this seems to assume that I&M is entitled to double-recover capacity costs "if it would otherwise have to purchase capacity from someone else." *Id*., p. 42. They assert that "I&M cites no authority stating that a utility is entitled to recover the same bucket of costs twice if it would otherwise incur costs to purchase the second bucket from a third party." *Id*., p. 43.

Next, the Attorney General and CUB turn to issues associated with Kentucky Power's share of the UPA under which, going forward, I&M will purchase 100% of AEG's 50% allotment of Rockport Unit 1. The Attorney General and CUB argue that this continues to be "a substantial amount of power purchased from an affiliate." *Id*., p. 45. They urge the Commission to provide clarity on this issue which, they argue, is not provided by the settlement agreement. They note that the Commission has no current approval of the UPA and has never addressed whether the UPA complies with the Code of Conduct, Mich Admin Code, R 460.10101 *et seq*. The Attorney General and CUB point out that the Commission expressed concern with the ROE provided for under the UPA in the June 7, 2019 order in Case No. U-18404, p. 7. They contend that the evidence in this case shows that the cost of the UPA is about double to triple the cost of wholesale power in PJM and significantly higher than I&M's projected cost for any new generating resources. Attorney General and CUB's initial brief, p. 47 (citing 3 Tr 791-792, 7 Tr 1559). The Attorney General and CUB state that the settlement agreement does not explicitly address the UPA and does not preapprove any costs or contracts, but they argue that the settlement agreement may be seen as suggesting that purchases under the UPA are approved. They recommend that the Commission explicitly resolve these questions.

Next, the Attorney General and CUB argue that several Commission orders in PSCR cases have called for the OVEC ICPA to be addressed in this case, and yet the settlement agreement does not address this affiliate transaction. The Attorney General and CUB describe the OVEC joint venture and state that the Commission has expressed concern with the level of costs and the economic analysis in Case Nos. U-20224 (I&M's 2019 PSCR reconciliation), U-20529 (2020 PSCR plan), and U-20804 (2021 PSCR plan). They note that the settlement agreement in Case No. U-20591 required I&M to submit an NPV analysis showing the effect on the company's resource portfolio of terminating the ICPA in 2022, 2030, and 2040 (the current end date of the contract). Reviewing the OVEC economic analysis that was presented in this case, the Attorney General and CUB argue that it suffers from the same modeling errors that plagued the rest of the modeling. They point out that the Staff also found the analysis to be deficient, providing testimony that the company underestimated the amount of energy that I&M would purchase via

OVEC in the future, that the solar bids in I&M's RFPs are lower than OVEC's LCOE, and that the company made little effort to renegotiate the ICPA. Attorney General and CUB's initial brief, p. 54. Despite all of this, the Attorney General and CUB contend, the settlement agreement assumes that generation will continue to be purchased via the OVEC ICPA through 2040 but states that the ICPA is not explicitly approved in Section 1.d. They note that Mr. Proudfoot stated in support of the settlement agreement that "'status quo of OVEC resources is a reasonable outcome,'" thus they argue that the Staff reversed position without addressing the previous criticisms. Attorney General and CUB's initial brief, p. 55 (quoting 6 Tr 1486).

In sum, the Attorney General and CUB contend that the benefits of the settlement agreement are insufficient to warrant its approval, because, ultimately, it is not in the public interest, is not fair and reasonable, and is not supported by substantial evidence. They argue that Mr. Jester's surrebuttal shows that the benefits to I&M are not in proportion to the benefits to ratepayers, particularly the approval of a large gas CT investment based on bad modeling and the collection of millions of dollars from ratepayers for a unit that has become a merchant plant. They point to Mr. Jester's surrebuttal testimony regarding the benefits associated with EWR savings and additional low-income EWR spending and how those benefits actually demonstrate a substantial underperformance by the utility compared to Consumers and DTE Electric. The Attorney General and CUB ask the Commission to keep these concessions in perspective. They further argue that there were no concessions by the utility with regard to carbon-free resources, because all of those resources included in the settlement agreement were also included in the Preferred Portfolio and were unopposed. They contend that the same is true of the competitive procurement process and that the commitment to target 30% of capacity additions via PPAs (coupled with 70% owned assets) is underwhelming as well in light of Consumers' 50% PPA commitment. The Attorney

General and CUB assert that the terms related to Rockport Unit 2 provide no tangible benefit for ratepayers.

Finally, the Attorney General and CUB aver that the public interest is not adequately represented by the parties to the settlement agreement because they constitute only three out of the nine parties and do not include the Attorney General or "any parties who represent residential customers, environmental interests, clean energy organizations, or businesses in Michigan's advanced energy sector." Attorney General and CUB's initial brief, p. 63. The Attorney General and CUB recognize that the Court of Appeals has affirmed the Commission's approval of a Staff/utility contested settlement in a multi-party case, but they contend that this situation has not happened recently or in an IRP case. *Id.*, p. 64 (citing *Attorney General v Mich Pub Serv Comm*, 237 Mich App 82, 93-94; 602 NW2d 225 (1999)). In conclusion, the Attorney General and CUB request that the settlement agreement be rejected and that the Commission set a "schedule for briefing and issuance of a 300-day Order;" or, if the Commission recommends changes to the settlement agreement, that it exclude the 750 MW gas CT (leaving it for a CON proceeding), exclude "approval of recovery of NBV or capacity revenues for Rockport Unit 2" (leaving it for a rate case), exclude any approval of the UPA, and provide clarification regarding the OVEC ICPA. Attorney General and CUB's initial brief, pp. 65-66.

E. Sierra Club and Michigan Environmental Council

The Sierra Club and MEC make many of the same arguments as those made by the Attorney General and CUB. They contend that the 750 MW CT capacity contained in the settlement agreement portfolio is backed-up by fatally flawed modeling and unsupported assumptions. They state that the Preferred Portfolio understated the cost of the IRP by nearly $2 billion and relied on modeling that was biased in favor of additional gas capacity and against clean energy resources.

The Sierra Club and MEC note that, rather than correcting the modeling flaws (which were admitted by the company), I&M simply reduced its proposed 2028 gas capacity by 250 MW, and they argue that this does not make the 750 MW of gas capacity the most reasonable and prudent means for fulfilling the capacity need identified for 2028. Sierra Club and MEC's initial brief, p. 6.

The Sierra Club and MEC state that the Sierra Club's initial brief in the underlying case laid out the flaws, assumptions, and biases that resulted in the selection of more gas capacity for 2028, which they incorporate by reference. In the instant brief they highlight certain arguments. They contend that the caps that were placed on the amount of new renewables that the long-term capacity expansion model could select were unreasonable. *Id*., p. 7. The Sierra Club and MEC note that I&M also limited the amount of standalone storage that could be selected and that all of these artificial limits were not relaxed until 2035. Like the Attorney General and CUB, the Sierra Club and MEC argue that the company also made arbitrary post-modeling manipulations to the Reference Prime portfolio which reduced the amount of wind and solar that could be built in 2025-2026 by 50% and shifted those resources to later years while accelerating 250 MW of CT capacity by five years to 2028. They note that the resulting 1,000 MW of gas CT capacity "served as the Settlement's baseline" and argue that I&M "provided no theoretical or analytical support for the specific annual and cumulative limits it assumed . . . ." *Id*., p. 8. They further note that the Expanded Build Limits portfolio and the Unlimited portfolio made significant clean energy additions and argue that I&M "provided no reason why the 'Unlimited' portfolio does not reflect construction potential in the real world." *Id*., p. 9. They are skeptical of I&M's explanation referring to the need to avoid excess generated energy that would have to be sold in the market, agreeing with Mr. Jester's assessment of the likely difference between the cost of, and the market revenue for, both gas generation and renewable energy generation. The Sierra Club and MEC posit that I&M never supplied a good reason for rejecting its own model's output.

The Sierra Club and MEC also argue that the settlement agreement portfolio relies on false assumptions about ITC normalization, based on the fact that I&M does not plan to build the solar resources but is in fact soliciting bids for those resources. They note that the company made no attempt to remedy this error, or the other errors, in the modeling. *Id*., pp. 10-11. The Sierra Club and MEC also argue that I&M overstated the cost of solar-battery hybrid projects by applying the fixed costs per kilowatt (kW) to the wrong capacity level, which the company admitted, and the settlement agreement does not take into consideration this modeling error. Additionally, they point to the modeling errors resulting from confusing nominal and real dollars which resulted in the use of the wrong WACC, which the company also conceded. Noting that the company made post-hoc manual corrections but did not re-run the model, they argue that the settlement agreement itself embodies these same flaws, in that it provides "an overall resource mix with no sound analytical support and therefore cannot be considered a fair and reasonable resolution of this proceeding." *Id*., p. 14.

The Sierra Club and MEC also argue that the settlement agreement is supported only by modeling that is outdated due to the passage of the IRA. They note that the settlement agreement simply adopts the 2,160 MW of renewable and storage resources that I&M originally proposed in the Preferred Portfolio. They posit that the passage of the IRA resulted in the extension and expansion of several federal tax credits applicable to renewables, as well as the creation of several new credits for renewables, meaning that the modeling that underlies the settlement agreement includes costs that are much higher than what the company will actually face. The Sierra Club and MEC state that I&M has failed to provide any analysis of the impact of the IRA on the portfolio that is being adopted as a result of the settlement and, thus, the IRP relies on outdated and overly low credits. They point to Mr. Jester's settlement testimony demonstrating the scale of the difference. *Id.*, p. 18 (citing 7 Tr 1546-1547). They again urge the Commission to require I&M to revisit the modeling before approving 750 MW of additional gas CT capacity. They note that I&M witness Mr. Gaul even conceded that the IRA provides substantial benefits for renewables and will help to reduce their costs, before listing several offsets to those costs such as inflation and supply chain issues. The Sierra Club and MEC add, however, that:

> increased interest rates would place upward pressure on any new power generation project, including gas-fired plants, and therefore would not counteract the improved financial competitiveness of clean energy compared to gas capacity provided by the IRA. In addition, in contrast to the IRA, the market conditions identified by witness Gaul are not new and, therefore, were presumably reflected in the cost assumptions used in the Company's IRP modeling.

Sierra Club and MEC's initial brief, p. 19 (footnotes omitted). They also note that the record contains no evidence showing that prices for renewables have increased since I&M's last all-source RFP.

Turning to the modeling, the Sierra Club and MEC aver that the RTA scenario did not select more renewable resources for 2028 because I&M had manually prevented it from doing so via the build limits. They note that when this modeling was done, the PTC, for example, was not available for solar projects and was soon to disappear for wind projects as well, which is no longer true; and they argue that, with the restoration of the PTC to its previous maximum for both solar and wind, the risk of having excess renewables is significantly reduced. They contend that I&M should be required to redo the modeling, and they assert that, if I&M is truly interested in a non-discriminatory RFP process, "the Company should have no objection to deferring to that future CON proceeding the determination of whether that gas capacity is the 'most reasonable and prudent means' of meeting the 2028 need." Sierra Club and MEC's initial brief, p. 24. The Sierra

Club and MEC state that other utilities that were planning new gas procurement have delayed this decision based on the IRA, including in Minnesota and Indiana.

The Sierra Club and MEC argue that the settlement agreement reflects much of I&M's original Preferred Portfolio, and thus, there were "no additional concessions to the public interest." *Id*., p. 25. In particular, they state that the settlement agreement allows the company nearly all of what it originally requested for Rockport Unit 2, other than the ROE and the 50% credit of excess revenues to Michigan customers, and, regarding the latter, they note that the company testified that it does not project having any revenues in excess of costs. *Id*., p. 27 (citing Exhibit AG-27). They call the concession to do competitive bidding a spurious one, since I&M is required by statute to use competitive bidding and to file a CON application. Sierra Club and MEC's initial brief, p. 27. Like the Attorney General and CUB, they note that I&M's EWR commitments fall short of the commitments made by Consumers and DTE Electric in this area. They also fault I&M on its carbon-free commitments, arguing that the greenhouse gas (GHG) reduction commitments in the settlement agreement simply mirror the Preferred Portfolio.

The Sierra Club and MEC argue that the settlement agreement fails to resolve the OVEC ICPA issues which were intended to be resolved in this proceeding, as directed in Case Nos. U-20529 and U-20591. They further contend that the analyses offered by I&M are filled with errors that resulted in the company understating the cost of the Preferred Portfolio by almost $2 billion and that I&M's "entire renegotiation effort consists of a single letter that it sent to OVEC in January 2022." Sierra Club and MEC's initial brief, p. 34.

Finally, the Sierra Club and MEC assert that the parties that entered into the settlement agreement do not represent the public interest, because they fail to represent "Michiganders as inhabitants of the physical environment and as ratepayers" and are "skewed in favor of business interests." *Id*., p. 36. They note that the Commission has "never found that Staff alone adequately represents the public interest in a large multiparty IRP case where only a third of the parties have signed a settlement and all parties representing residential ratepayer and environmental interests, including the [Attorney General], have objected," and they argue that "Staff representation alone is not necessarily adequate to represent the public interest." *Id*., p. 38. They refer to a finding that the Staff represents the public interest as outdated precedent that could discourage participation in IRP proceedings. They urge the Commission to reject the settlement agreement and to recommend changes to the IRP in a 300-day order.

IV. Reply Briefs

A. Indiana Michigan Power Company

I&M begins by arguing that many of the initial briefs, particularly the Attorney General and CUB's, are inaccurate and misleading when they speak about approval of a new gas CT plant, stating that:

> [t]o be clear, there is no such identified plant and there are no specified costs sought for approval in the Settlement Agreement. There is only an identified need for capacity and fully dispatchable CT generation to help meet that capacity need; estimated costs used only for modeling purposes; an agreement on the framework and subsequent regulatory processes regarding how the Company will procure fully dispatchable generation; and a Settlement Agreement that limits the amount of gas-fired dispatchable generation that I&M may pursue.

I&M's reply brief, p. 5. I&M refers to the parties contesting the settlement agreement as the objecting parties, and argues that they have failed to satisfy the burden of proof that is placed on them by Rule 431(3), which requires them to state "with particularity" how they "would be adversely affected by the settlement agreement." I&M's reply brief, pp. 7-8. I&M notes that the Commission has previously rejected objections to a settlement agreement because the contesting party failed to describe how the settlement agreement would adversely affect its members, citing the December 20, 2018 order in Case Nos. U-20084 *et al*., p. 13. I&M also argues that the evidentiary standard is not preponderance of the evidence but rather substantial evidence on the whole record under MCL 24.285 and Rule 431(5)(c).

I&M contends that the signatory (and non-objecting) parties adequately represent the public interest, noting that they represent the utility, the Staff, large business and industrial customers, and independent power producers. The company argues that the settlement agreement ensures "reliable energy at reasonable rates while balancing the environmental impacts of that service by increasing more renewable energy sources." I&M's reply brief, p. 10. I&M asserts that the proportion of signing to non-signing parties is not determinative and urges the Commission to analyze the settlement agreement in a holistic and balanced manner, arguing that the agreement will result in requiring the company to exceed state and federal climate goals.

I&M reiterates that the Objecting Parties failed to fulfill the requirements of Rule 431(3) and notes that those parties even offered evidence regarding several positive aspects of the settlement agreement. I&M states that the Sierra Club "witness Comings only filed testimony opposing the settlement provision including what he misunderstood as requiring a minimum of 750 MW of natural gas resources." I&M's reply brief, p. 13. I&M argues that the Objecting Parties simply think the settlement agreement does not go far enough. I&M states that, "[w]hile the signing parties have waived the right to challenge the carbon-free resources selected in subsequent *ex-parte* or CON regulatory processes, the parties have reserved all other arguments available under MCL 460.6s." *Id*. In any case, I&M continues, the full impact of the IRA will not be known for months.

I&M argues that inclusion of 750 MW of gas resources is in the public interest and supported by substantial evidence. The company emphasizes that retirement of the Rockport plant cannot be delayed and contends that the settlement agreement does nothing to preclude the company from reaping the benefits of the IRA in procuring resources, but again argues that some of those benefits may be offset by other commercial factors including supply chain issues, anti-dumping laws, and the war in Ukraine. I&M asserts that it needs a diverse resource mix to address the retirement of the full 2,600 MW supplied by the Rockport facility by 2028 and notes that, to satisfy PJM requirements, it must acquire this capacity in a timely manner. I&M's reply brief, p. 19. Looking at recent weather events, I&M contends that CTs complement intermittent resources and provide dispatchability and extended operation. The company notes that even the RTA portfolio includes 750 MW of gas peaking capacity by 2028. I&M further maintains that the acknowledged errors in the modeling should not prevent approval of the settlement agreement, because the company has thoroughly considered the impact of the errors and has determined that they did not significantly affect the results.

I&M points out that adding 255 MW of additional storage was the result of a compromise and argues that the settlement agreement portfolio is consistent with the balancing factors contained in MCL 460.6t(8). I&M notes that even Mr. Jester testified that build limits are appropriate in certain circumstances. I&M also reminds the Commission that it is a multi-state utility and so must comply with MCL 460.6t(4). I&M posits that the build limits were the result of extensive stakeholder engagement and were imposed because they mitigate the risk that the company will become over-reliant on market sales and purchases. I&M notes that:

> modifying (or expanding) the build limits in the "Reference with Expanded Build Limits" Portfolio resulted in forecasted energy exports that exceeded over half (50%) of the Company's load, which should be cause for concern of all parties. (6 Tr. 1444; 2 Tr. 198). Finally, a "Reference with No Renewable Limits" Portfolio resulted in a capacity surplus exceeding 1,500 MWs over a nine-year period and energy exports that exceeded the entire load of I&M for a twelve-year period. *Id*.

I&M's reply brief, p. 23. I&M notes that, with the exception of CVR, no costs are being approved by the settlement agreement. The company also argues that the concerns stated by the Attorney General and CUB regarding gas prices were refuted on the record and that, in any case, gas prices will be further reviewed in subsequent CON proceedings, wherein any material changes will be addressed.

I&M contends that Rule 431 does not require an analysis based on whether the settling parties conceded enough, but it does require the Objecting Parties to articulate how their interests will be adversely affected. The company points out that the settlement agreement incorporates many of the recommendations made by the Objecting Parties in the underlying proceeding, including reducing the fossil-fueled resources present in the Preferred Portfolio and increasing carbon-free resources; and the company notes that no party disputed that additional capacity resources will be required by the end of 2028. I&M contends that the settlement agreement does not prevent the use of existing CT resources to fulfill the 750 MW capacity need, and there is no requirement for a new plant. I&M's reply brief, p. 26, n. 9.

Next, I&M addresses the OVEC ICPA, and begins by noting Mr. Proudfoot's testimony that "'OVEC is an existing resource with an existing contract under which I&M also does not maintain controlling interest.'" I&M's reply brief, p. 30 (quoting 6 Tr 1486). I&M asserts that it complied with the Commission's directive to perform certain analyses for this IRP proceeding and contends that, as the Staff has also stated, maintaining the status quo for OVEC is a reasonable outcome because ICPA issues may be addressed in other matters. I&M observes that it is only one of many sponsoring companies and cannot revise the ICPA without the involvement of several other affected companies, as well as the Federal Energy Regulatory Commission and the state of Indiana.

Next, I&M addresses the Rockport Unit 2 issues and argues that the Objecting Parties have misunderstood Section 7 of the settlement agreement. I&M notes that the plan for Rockport Units 1 and 2 will result in retirement of more than 90% of I&M's remaining coal-fired resources by 2028. The company states that, to be clear, "the NBV itself and the costs underlying the NBV were not up for debate in this case. Section 7.a. is a reiteration of what the Company was granted in Case No. U-18370." I&M's reply brief, p. 32. I&M contends that there is no double recovery and reminds the Commission that the remaining NBV represents costs already incurred during the period of the lease, which are already approved as a regulatory asset by the Commission and included in rates. *Id*. Moreover, the settlement agreement provides for the possibility that customers may benefit from revenues that exceed costs while Rockport Unit 2 operates as a merchant plant. I&M cites to the April 12 order, pp. 49-50, wherein the Commission approved the recovery of Rockport Unit 2 costs in base rates through 2028. I&M further argues that it made significant concessions in the settlement agreement, including agreeing to a lower ROE than originally sought and crediting Michigan customers with 50% of the excess merchant revenues, which might offer the chance to offset some of the costs remaining after the end of the lease. The company contends that the April 12 order is the primary reason that there is a remaining NBV on Rockport Unit 2, because the order directed the company to depreciate Rockport Unit 2 through 2028. I&M's reply brief, p. 32. I&M states that the Commission followed a similar process when I&M retired the Tanners Creek plant, in the September 14, 2014 order in Case No. U-17542 (September 14 order). I&M avers that "this accounting treatment was intended to decrease the Company's total annual depreciation expense." I&M's reply brief, p. 37 (citing September 14 order, p. 1). Thus, I&M argues, the NBV issue has already been decided and there is no double recovery because the NBV and the cost of owning and running Rockport Unit 2 once the lease has ended are two different sets of costs. I&M contends that the post-lease costs will be subject to review in a PSCR proceeding, and the lease-related capital investments have already been made and been found to be reasonable.

Next, I&M turns to the UPA and argues that the Objecting Parties simply repeat arguments they have made in prior PSCR cases. I&M asserts that the record demonstrates the need for this resource and that this is not a new transaction. I&M notes that none of the associated costs are approved as a result of the settlement agreement, and they remain subject to approval in PSCR proceedings. I&M's reply brief, p. 41.

Next, I&M addresses the EWR issues. I&M observes that no party showed how it would be adversely affected by the EWR provisions of the settlement agreement and argues that the comparisons to other utilities are irrelevant to the question of whether the agreement is in the public interest. I&M notes that the Commission generally cautions against comparing utilities and offers that "the public interest as it relates to EWR should be measured by balancing environmental considerations with cost-effective means of reducing energy waste." *Id*., p. 42. I&M contends that the Objecting Parties made no showing that the company's EWR commitments are not in the public interest. I&M notes that the settlement agreement (Section 5) includes the additional incentive of a punishment in that, if the company does not achieve the set targets by the end of 2025, then I&M must transfer management of its EWR programs to Efficiency United.

I&M next addresses the GHG reductions that will result from the settlement agreement. I&M describes the company's plan to transition from 2,600 MW of coal-fired resources to a minimum of 2,160 MW renewables and 255 MW of storage, again noting that this will phase out 90% of the company's carbon emissions. I&M states that both the Staff and the EGLE confirmed that the Preferred Portfolio meets the state and federal emissions reductions targets. I&M points out that the settlement agreement takes the company's commitment further by including the additional storage instead of the CT resource by the end of 2028. I&M argues that the objecting parties fail to consider the resource adequacy requirements of Section 6t(8)(a)(i) and (iv) and notes that the "up to approximately 750 MW of gas CT is equivalent to approximately 24 percent of the installed capacity (ICAP) that will replace Rockport, which is approximately 12 percent of the Company's existing generation resource portfolio," and that the settlement agreement will "increase the Company's use of carbon-free generation resources by approximately 40 percent by 2028." I&M's reply brief, p. 48. I&M urges the Commission not to forget that the company has time-sensitive resource adequacy and reliability concerns.

I&M then addresses GLREA's PURPA-related arguments and contends that the settlement agreement does not say what GLREA alleges. I&M clarifies that the avoided cost review was developed on the record in this proceeding in both direct and rebuttal testimony and in exhibits and argues that use of the LMP is supported in the record. Noting that GLREA failed to cite to any record evidence to support its arguments, I&M adds that the order in Case No. U-18092 selected the LMP as the avoided energy cost.[6] I&M agrees that reliance on the LMP is an interim measure that will last only until its next biennial PURPA proceeding. I&M's reply brief, p. 50.

In conclusion, I&M urges the Commission to consider the need to balance the expectations of all of the stakeholders when analyzing the settlement agreement, and to remember that I&M is a multi-state utility.

[6] The Commission assumes that I&M is referring to the December 20, 2018 order in Case No. U-18092, p. 11.

B. Commission Staff

The Staff argues that the Sierra Club and MEC's proposed approach, to reject the settlement agreement and recommend changes to the IRP under MCL 460.6t(7), does not have as many benefits as approval of the settlement agreement. Further, the Staff claims that the objecting parties go beyond the scope of Rule 431 and:

> [i]nstead of simply analyzing whether the terms of the settlement agreement are fair, reasonable, and in the public interest, the objecting parties repeatedly claim that the settlement agreement should be rejected, in part, because too many of the benefits were included in the Company's application or were otherwise likely to be obtained through a Commission order. At the same time, the objecting parties do not fully acknowledge the benefits of having an approved IRP from this proceeding, under which the statutory framework can work as intended.

Staff's reply brief, p. 2. Therefore, the Staff avers that the settlement agreement should be approved as the most reasonable and prudent means under Section 6t.

The Staff reiterates its position that the settlement agreement is the most reasonable and prudent means of meeting I&M's energy and capacity needs, again arguing that the settlement agreement provides numerous benefits while addressing the concerns raised by the objecting parties. Specifically, the Staff contends that adopting either the Attorney General and CUB's or the Sierra Club and MEC's positions would negate the numerous benefits of the settlement agreement and asserts that the concerns raised are adequately addressed in the settlement agreement. With respect to concerns regarding OVEC, the Staff responds that the settlement agreement explicitly states that it does not approve the OVEC ICPA or amendments and "maintains the Commission's authority to closely scrutinize the contract's costs in future PSCR cases consistent with its previous orders." Staff's reply brief, p. 4. The Staff further reiterates that no costs associated with the OVEC ICPA would be approved under the proposed settlement agreement. With respect to the Sierra Club and MEC's recommendation regarding 1,000 MW of gas CT capacity, the Staff replies that the settlement agreement limits the acquisition to 750 MW maximum and provides flexibility for the 750 MW to be offset by other carbon-free resources at I&M's discretion. *See*, *id*., p. 5 (citing settlement agreement, p. 4).

The Staff states that the settlement agreement contains multiple benefits which justify its approval as being a fair and reasonable resolution of this proceeding that is in the public interest. The Staff avers that the objecting parties do not follow the standard set in Rule 431 to reject the settlement agreement. Specifically, the Staff claims that, contrary to the standard of Rule 431, the parties argue that some of the settlement agreement benefits should be discounted because they were included in I&M's initial IRP filing. *See*, Staff's reply brief, pp. 7-9. Citing to the Commission's order in Case No. U-21090, the Staff contends that the settlement in that case similarly contained provisions which were included in the original filing and are "just as appropriate to consider, regardless of whether they were included in the application." Staff's reply brief, p. 9.

With respect to objections based upon modeling concerns, the Staff responds that the Attorney General and CUB are incorrect in claiming that the "Staff changed its position on these modeling errors without explanation." *Id*., p. 10. The Staff contends that, while the modeling errors are the same, the settlement agreement remedies the Staff's concerns. More specifically, the Staff reiterates that the settlement agreement plainly excludes OVEC from the terms of the agreement and that costs under the ICPA will continue to be reviewed in PSCR cases for reasonableness and prudence. Regarding the IRA, the Staff restates that "it is still unclear exactly what impact the IRA will have on renewable resource prices, whether it will fully resolve supply chain issues, or how quickly any changes will take effect." *Id*., p. 11 (citing 6 Tr 1489-1492). Again, the Staff states the importance of replacing capacity due to the retirement of Rockport Units 1 and 2 to meet resource requirements as required by the PJM resource adequacy construct and argues that cost is only one consideration in this replacement. The Staff contends that "[e]nsuring that the energy needs of customers are reliably met is crucial in considering a resource portfolio and the replacements for the retired Rockport capacity." Staff's reply brief, pp. 11-12. Notwithstanding this, the Staff again states that the IRA can be considered in future Commission decisions as acknowledged by the company. *See*, *id*., p. 12 (citing I&M's initial brief, pp. 27; Staff's initial brief, pp. 17, 28).

The Staff avers that "inclusion of 750 MW of fully dispatchable energy is not merely a concession to the Company" but rather "provides the flexibility to aid resource diversity and reliability, while maintaining the opportunity for cost review." Staff's reply brief, p. 13. The Staff contends that increases in gas prices should not justify rejection of the settlement agreement because costs will be subject to a CON proceeding and the company has committed to review material changes since the IRP was performed and approved. Further, the Staff reiterates that natural gas and solar are not interchangeable and price is not the only consideration when evaluating the value of CTs. *See*, *id*., p. 14. The Staff also notes that MCL 460.6t contemplates reliability and diversity of a utility's generation supply which it avers gas resources can provide.

With respect to the build limits contained in I&M's underlying modeling, the Staff contends that it does not have concerns and that, "in this case, the build limits are supported by substantial evidence on the record, even if the objecting parties seek to diminish the testimony supporting these parameters." Staff's reply brief, p. 16 (citation omitted). The Staff posits that the characterization of the Staff's initial testimony opposing the build limits as an inappropriate manual adjustment to the modeling "misses the mark" and that the testimony "does not focus on the appropriateness of the renewable build limits in [Mr. Heidemann's] direct testimony" but rather "describes the behavior of the model when the build limits were relaxed." *Id*., p. 17 (citing 3 Tr 1172). Further, the Staff claims that the settlement agreement is actually consistent with its testimony and demonstrates that the settlement agreement meets the requirements of Rule 431. The Staff also refutes the Attorney General and CUB's reliance upon *In re Application of Indiana Michigan Power Co*, 307 Mich App 272; 859 NW2d 253 (2014), which the Staff claims is distinguishable from the case at hand. Specifically, the Staff states that, in that proceeding, the issue was regarding cost preapproval under MCL 460.6s versus, in the instant case, a settlement agreement which does not preapprove any costs aside from the CVR expenses. In sum, the Staff states that "the objecting parties' arguments for rejecting the settlement agreement based on the build limits are not persuasive." Staff's reply brief, p. 19.

With regard to Rockport Unit 2, the Staff reiterates that the settlement agreement is a compromise of the Staff's original position that 100% of the revenues in excess of costs should be returned to customers and that it represents a fair and reasonable outcome as a result of settlement. Noting the Commission's decision in Case No. U-18370, the Staff states that the regulatory asset treatment was previously approved by the Commission and does not constitute double recovery. Further, the Staff claims that the agreed upon ROE of 9% is lower than the company's previously approved ROE which "is better for ratepayers compared to the treatment the regulatory asset is currently receiving in rates, as approved by the Commission in Case No. U-20359." Staff's reply brief, p. 21.

The Staff again replies that I&M conducted the analysis of the OVEC ICPA as previously ordered by the Commission. While the Staff concedes that it found the company's efforts to renegotiate to be lacking, some effort was made, and, more importantly, given the plain language of the settlement agreement excluding OVEC, the Staff avers that the settlement agreement is not in conflict with prior orders. *See*, *id*., p. 23. Overall, the Staff contends that the objections based upon OVEC are essentially related to costs which are not approved by the settlement agreement, which allows the Commission to continue to scrutinize the costs in future proceedings.

Regarding PURPA, the Staff contends that paragraph 9 of the settlement agreement is reasonable and that "[w]hether the LMP forecast has been updated does not dictate the determination of the appropriate methodology for calculating the avoided energy cost, which is what the settlement agreement addresses." Staff's reply brief, pp. 26-27 (citing settlement agreement, p. 9). In addition, the Staff states that "structuring the LMP forecast for the period up to 2030 is consistent with the relevant portions of the tariff." Staff's reply brief, p. 27. The Staff agrees that adopting the LMP as the avoided energy cost is different from other utilities but notes that other utilities are facing different circumstances. Moreover, the Staff indicates that the RFP submitted in this proceeding was dated and would not adequately reflect market conditions and that "the settlement agreement does nothing to limit the Commission's authority to review avoided cost rates pursuant to MCL 460.6v . . ." based on RFP results in the future. Staff's reply brief, p. 28.

In reply to the Attorney General and CUB's comparison of the settlement agreement's PPA terms to other utilities, the Staff states that the comparison is incomplete. Specifically, the Staff states that the analysis does not consider the differences resulting from I&M being a multi-jurisdictional utility and also notes that the Consumers terms cited by the Attorney General and CUB "do not condition incentives for PPAs on procurement levels." *Id*., p. 29 (citation omitted).

The Staff also reiterates that the public interest is adequately represented by the signatory parties. The Staff avers that the Commission orders relied upon by the objecting parties do not diminish the Court of Appeals decision on this issue and that the Staff shares the hope that additional parties will continue to participate in IRP proceedings. However, the Staff indicates that "this hope for a robust set of parties in IRP proceedings does not negate the Court of Appeals precedent the Commission has repeatedly recognized, nor does it negate the fact that the public interest is adequately represented by the parties who signed onto the settlement agreement in this case." *Id*., pp. 31-32. In sum, the Staff contends that the settlement agreement meets all of the requirements of Rule 431 and MCL 460.6t and should, therefore, be approved by the Commission.

C. <u>Great Lakes Renewable Energy Association</u>

In its reply brief, GLREA notes its continued participation in this proceeding regarding the PURPA issues, which it contends "were simply ignored in the Settlement Agreement as filed." GLREA's reply brief, p. 1. GLREA reiterates its position that the LMP should not be adopted as the avoided energy cost for purposes of PURPA, as it is inconsistent with precedent for other utilities. GLREA also responds that it did not file testimony because its arguments were focused on legal and regulatory policy arguments regarding paragraph 9.a. of the settlement agreement, and, therefore, no testimony was required.

GLREA also replies to I&M's criticisms that its position has been:

> clear throughout this proceeding commencing with GLREA's Intervention Petition, and subsequent filings and settlement discussions, along with GLREA's consistent position in several other [Commission] cases, that GLREA advocates in favor of a more diverse and competitive approach to obtaining capacity and energy resources for this state, which can be enhanced by determining proper full avoided costs under PURPA for small independent qualifying facilities so as to reduce the cost of service of utilities over time, and to provide more reliable and resilient resources to the grid and to our state's citizens, all in accordance with the overriding purposes and goals of Michigan statutes, as stated in Section [1 of Public Act 295 of 2008, as amended], MCL 460.1001.

GLREA's reply brief, p. 3. Therefore, GLREA contends its position has been made perfectly clear throughout the case without additional testimony on the contested settlement agreement portion of this proceeding. In sum, GLREA concludes that the proposed settlement agreement should be rejected as it is not in the public interest and does not result in a reasonable resolution of this case.

D. Michigan Department of Attorney General and Citizens Utility Board of Michigan

The Attorney General and CUB reply that the authority cited by I&M supports the Attorney General and CUB's position because it confirms that substantial evidence on the record as a whole is necessary to support a contested settlement agreement and that it is irrelevant in considering a contested settlement based on what negotiators thought or how they arrived at the settlement agreement. Responding to I&M, the Attorney General and CUB note that they have not proffered any wish list and, instead, "have provided detailed explanations grounded in the record evidence for why the very generous benefits provided to I&M in the settlement agreement are not fair and reasonable, not in the public interest, and not supported by substantial evidence on the whole record." Attorney General and CUB's reply brief, p. 5.

The Attorney General and CUB object to I&M's analysis that the public interest is met by adding Energy Michigan, a non-objecting party. Further, the Attorney General and CUB argue that the company cannot be considered with respect to representing the public interest under Rule 431(5)(b) and that such an "attempt flies in the face of fundamental law underpinning utility regulation." Attorney General and CUB's reply brief, p. 6. With respect to ABATE, the Attorney General and CUB claim that even ABATE does not claim to represent the public interest but rather the private interests of its members. Reviewing the interests of the objecting parties, the Attorney General and CUB aver that "interests represented by these intervenors are vastly more representative of the interests of the Michigan public than an investor-owned utility based in Indiana." *Id*., p. 8. In addition, the Attorney General and CUB acknowledge precedential decisions finding that the Staff was found to satisfy the requirements of Rule 431(5)(b) but question whether the Commission wishes "to revive such a practice after 20 years of not conducting business that way?" Attorney General and CUB's reply brief, p. 8. In sum, the Attorney General and CUB argue that the public interest is not adequately represented by the signing parties to the contested settlement agreement.

Reiterating their initial brief, the Attorney General and CUB contend that the settlement agreement is not in the public interest and does not result in the most reasonable and prudent means of meeting I&M's energy and capacity needs. *See*, *id*., p. 9 (citing Attorney General and CUB's initial brief, pp. 57-62; MCL 460.6t(8)). The Attorney General and CUB aver that I&M's claims that the settlement agreement contains recommendations by intervenors is misleading, and whether the company believes intervenors should be in favor of the settlement agreement is irrelevant. The Attorney General and CUB state that I&M mischaracterizes the record and the objecting parties' positions. With respect to the approved gas capacity, the Attorney General and CUB state that "that 750 MW is the maximum gas capacity that the model selected as a result of the modeling errors, the restrictions imposed on selection of renewable resources, and the company's refusal to evaluate [the] impact of the IRA." Attorney General and CUB's reply brief, p. 10 (footnote omitted). Similarly, the Attorney General and CUB note that the EWR commitments are improvements over I&M's historic performance but are still an underperformance in EWR as compared to other Michigan utilities. Further, the Attorney General and CUB aver that maintaining the status quo with respect to the OVEC ICPA is not a compromise but the best-case scenario for the company.

The Attorney General and CUB argue that it is neither reasonable nor prudent to ignore the IRA. Specifically, the Attorney General and CUB contend that the plain language of the settlement agreement indicates that the RFPs will be structured to seek new capacity that includes the 750 MW of gas CT and that this IRP would satisfy the requirements of MCL 460.6s; therefore, "I&M can use the settlement to vest the decision to build or acquire a gas plant in this case without ever considering the impact of the IRA on the selection of that resource" and that "customers will never receive the benefits of a decision that acknowledges the IRA's existence and determines the most reasonable and prudent plan under that reality, because the decision to procure the gas capacity will already have been made." Attorney General and CUB's reply brief, pp. 11-12. The Attorney General and CUB also question I&M's claims that consideration of the IRA would delay procurement of gas capacity, noting that a future CON proceeding would still be based upon the statutory 270-day deadline and I&M has not explained how it could not evaluate the impacts of the IRA prior to a CON filing in March of 2024.

In response to claims that the settlement agreement is supported by substantial evidence, the Attorney General and CUB reiterate that the original portfolio contained numerous modeling errors, that I&M did not do additional modeling, and that the company continues to refuse to conduct "any modeling to evaluate the economics of the portfolio in light of the IRA, the most impactful climate and energy legislation in a generation." *Id*., p. 13. The Attorney General and CUB argue that expert testimony from the Staff is insufficient to meet the company's burden of proof and that the company never submitted qualified expert testimony to support its modeling. *See*, *id*., pp. 13-14.

The Attorney General and CUB respond to I&M's timeline of negotiations, arguing that it is outside the scope of the record of this case and inadmissible under the Michigan Rules of Evidence Rule 408. Further, the Attorney General and CUB aver that the timeline set forth by the company is also inaccurate and misleading. *See*, Attorney General and CUB's reply brief, pp. 15-19.

The Attorney General and CUB argue that I&M misstates their position and clarify that they are asking "the Commission to disapprove the settlement agreement and recommend in the 300-day order that I&M remove the 750 MW of gas CT from its portfolio and leave that determination to the future CON proceeding for the CTs." *Id*., p. 19 (footnote omitted). In the alternative, the Attorney General and CUB set forth the recommendation to modify the settlement to reach the same conclusion. The Attorney General and CUB argue that, either way, the company has not supported the selection of 750 MW of gas CT on this record and that being required to provide support for this selection in a future CON proceeding will not cause undue delay.

In response to I&M's contention that the EIA long-term gas price forecast supports its modeling, the Attorney General and CUB again reiterate that the EIA forecast predates the war in Ukraine and the resulting high gas prices. With respect to Rockport Unit 2, the Attorney General and CUB respond that the error pointed out by I&M was acknowledged "but also noted that the difference is a minor detail and not material to the ultimate determination of this issue." *Id*., p. 21 (footnote omitted). Overall, the Attorney General and CUB argue that it is not reasonable to require ratepayers to pay for the NBV of Rockport 2 as a merchant asset.

In response to the Staff, the Attorney General and CUB again acknowledge precedent regarding the Staff adequately representing the public interest but argue that it has been decades since this finding was made, and it has never been made in an IRP proceeding. The Attorney General and CUB further argue that, from a policy standpoint, other utilities may begin to only negotiate with the Staff in multi-party cases. With respect to comparing I&M to other utilities regarding EWR performance, the Attorney General and CUB aver that it is relevant and reasonable to compare utilities, as reflected in the Staff's original case in this proceeding. *See*, *id*., pp. 24-25. The Attorney General and CUB respond to the Staff's diverse portfolio claims to state that the Staff's claims are generalized and "a few hundred less MW of gas and a few hundred more MW of storage and/or solar is not determinative of whether the company will have a diverse resource portfolio." *Id*., p. 27. Overall, the Attorney General and CUB argue that this diversity preference does not justify disregarding modeling errors and the enactment of the IRA or how those questions cannot be more fully explored in a CON proceeding with accurate modeling considering the implications of the IRA.

The Attorney General and CUB posit that the "Staff may be overly optimistic regarding I&M's willingness to revisit selection of the CTs in the CON" proceeding and that "a directive in the filing requirements to identify and explain certain changes may not be tantamount to the legal authority to revisit resource selection decisions based on the changes identified." *Id*., p. 28. The Attorney General and CUB also note that the Staff did not directly address paragraph 1 or paragraph 1.a.ii listing the inclusion of 750 MW of CTs or the RFP target of 750 MW of CTs. Moreover, the Attorney General and CUB argue that it is likely that the company will claim in a future CON proceeding that the enactment of the IRA is not a material change since the approval of the IRP, given that the IRA was enacted before the settlement agreement was signed. Additionally, the Attorney General and CUB state that the:

> Staff's position regarding whether selection of the gas CTs may be revisited in the CON case is certainly at odds with I&M's position on that question. I&M's initial settlement brief and I&M witness David Lucas both argue vehemently that I&M requires approval of the gas procurement decision in this settlement, and cannot wait for the CON. The lack of agreement between I&M and Staff on what the settlement means with respect to this key issue should give the Commission pause about approving it.

Id., pp. 28-29 (footnote omitted) (emphasis omitted).

In response to the Staff's claim that the settlement should be approved for environmental reasons based upon the EGLE advisory opinion, the Attorney General and CUB aver that many of the facts relied upon in the EGLE opinion are "existing conditions and they are unaffected by the settlement, and therefore not a benefit of the settlement." *Id*., p. 29. With respect to the Staff's reliance upon Case No. U-18370, the Attorney General and CUB argue that the Commission "made no decisions regarding the level of return on the net book value of Rockport Unit 2, and never addressed I&M's collection of capacity revenues from Michigan customers either." Attorney General and CUB's reply brief, p. 30. The Attorney General and CUB also contend that maintaining the status quo with respect to OVEC is not reasonable as the Staff claims because "the status quo is not a fair and reasonable outcome and it is wholly unsupported by the record in this case." *Id*., p. 31. Replying to the Staff's contentions regarding the IRA, the Attorney General and CUB argue that the IRA was enacted more than two months before the settlement agreement and four months before the evidentiary hearing on the settlement agreement. In addition, the Attorney General and CUB reiterate that the motion to strike was denied with respect to testimony relating to the IRA and that the Commission could take judicial notice of the IRA, which should be considered in this proceeding.

E. <u>Sierra Club and Michigan Environmental Council</u>

The Sierra Club and MEC argue that the proposed settlement agreement is not in the public interest and is not a fair and reasonable resolution to this IRP proceeding. The Sierra Club and MEC state that the 750 MW of natural gas capacity included in the settlement portfolio in 2028 is "based on fatally flawed modeling and analysis that biased gas over clean energy resources." Sierra Club and MEC's reply brief, p. 3. The Sierra Club and MEC respond to I&M's claim that the proposed settlement agreement is "'derivative of'" and "'supported by'" the IRP modeling and analysis provided in this proceeding. *Id*., p. 4 (quoting I&M's initial brief, pp. 29, 30). The Sierra Club and MEC argue that the record demonstrates "that such IRP modeling and analysis was riddled with fundamental errors and omissions that biased gas over clean energy and fully undermined any basis upon which to conclude that the gas capacity is the 'most reasonable and prudent means' to meet the 2028 capacity need." Sierra Club and MEC's reply brief, p. 4.

The Sierra Club and MEC outline four categories of errors and omissions they find present in I&M's IRP modeling that "undermine its evidentiary value for the 750 MW of gas capacity." *Id*. As outlined above, the Sierra Club and MEC posit that:

> 1. The Company's IRP modeling included fatal flaws that led I&M to understate the total costs of its Original Preferred Portfolio by nearly $2 billion, and overstated the assumed costs for various renewable resources.
>
> 2. I&M imposed on its modeling baseless build limits on solar, storage, and wind resources that resulted in preventing the model from selecting any additional solar or storage resources in 2027 through 2034, and any additional wind resources in 2026 through 2034.
>
> 3. After concluding its modeling, I&M manually manipulated the results in order to delay half (800 MW) of the wind resources selected by the model for 2025-26 to 2034-38, delay substantial amounts of the solar and storage resources selected by the model from 2025-27 to 2034-36, and accelerate 250 MW of gas capacity selected by the model for 2033 to 2028 instead.
>
> 4. None of the IRP modeling or analysis accounts for the Inflation Reduction Act ("IRA"), which was signed into law in August 2022, and is expected to significantly reduce the costs to customers of clean energy resources.

Sierra Club and MEC's reply brief, pp. 4-5 (footnotes omitted). The Sierra Club and MEC conclude that:

> the 750 MW of gas capacity is based not on objective and robust modeling, but instead on fatally flawed modeling in which clean energy was unreasonably restricted, the results of which were manipulated to delay even the restricted amounts of renewables that were selected, and the game-changing impacts of the IRA continue to be ignored.

Id., p. 5.

The Sierra Club and MEC state that "I&M made no attempt to assess the impact of the fatal flaws in its modeling on the resource selections made by the model." *Id*. The Sierra Club and

MEC respond to I&M's claim that the flaws identified in the company's modeling have no impact on the results. *Id*. (referencing I&M's initial brief, p. 30). The Sierra Club and MEC reason that no impacts were found because "I&M never re-ran its optimization modeling to evaluate the impacts of these errors on its resource selection but, instead, only made post-hoc manual corrections to re-calculate the costs of the sets of resources that had previously been determined for each modeled scenario." Sierra Club and MEC's reply brief, pp. 5-6 (footnote omitted).

The Sierra Club and MEC next reply to I&M's assertion that the company imposed build limits for good reason as thoroughly addressed in the record. *See*, *id*., p. 6 (referencing I&M's initial direct brief, p. 30). The Sierra Club and MEC argue that "despite being asked multiple times in discovery, [the company] never provided an explanation or supporting documentation for how the specific build limits imposed on the IRP modeling were identified." Sierra Club and MEC's reply brief, p. 6 (citing Sierra Club and MEC's initial brief, pp. 31-33). The Sierra Club and MEC repeat testimony from Mr. Jester that I&M "substituted arbitrary build limits for sound modeling that would have identified the appropriate quantity of renewables to build." Sierra Club and MEC's reply brief, p. 6 (quoting 7 Tr 1539).

The Sierra Club and MEC respond to I&M's contention that "build limits and manual manipulations were necessary to minimize exposure to market risks associated with reliance on market sales that would purportedly result from the high levels of renewables that the modeling would otherwise select." Sierra Club and MEC's reply brief, p. 6 (citing I&M's initial brief, pp. 30-31). The Sierra Club and MEC note that I&M has not provided an explanation for how it determined the appropriate level of market exposure or refuted the argument that "increased reliance on gas capacity poses far more market risk on I&M's customers than clean energy would." Sierra Club and MEC's reply brief, p. 7 (footnote omitted). The Sierra Club and MEC also note that, while volatility may exist in the $/MWh of energy revenues, the IRA provides a $27.50/MWh PTC for wind and solar projects that would likely reduce such risk.

The Sierra Club and MEC posit that the build limits and manual manipulations the company imposed on its modeling had a significant impact on the resource mix I&M proposed in its IRP and now included in the proposed settlement agreement. The Sierra Club and MEC state that:

> [w]hile the model was limited to selecting 1,600 MW of wind and 1,800 MW of solar through 2034, in every IRP optimization scenario those limits were met by 2026 for wind and 2027 for solar. While such results demonstrated how economic renewable resources are, the build limits meant that the model could not select any additional clean energy resources for meeting the identified 2028 capacity need, which made the selection of 750 MW of gas capacity basically inevitable. Through post-modeling manipulations, the Company then reduced the amount of renewables and storage included in its Original Preferred Portfolio to 620 MW UCAP [unforced capacity] (2,160 MW nameplate capacity), and increased the gas in 2028 to 1,000 MW.

Sierra Club and MEC's reply brief, pp. 7-8 (footnote omitted). The Sierra Club and MEC argue that this resource mix served as the basis for the settlement agreement and is "a far cry from the modeling results of 3,460 MW of nameplate capacity of renewables and storage by 2027." *Id*., p. 8. Further, the Sierra Club and MEC note that "[i]t is an even farther cry from the mix selected in the Expanded Build Limits scenario in which the renewable build limits were increased, which resulted in 5,430 MW of renewables and storage by 2027, and only 250 MW of gas capacity in 2028." *Id*. (citing Exhibit IM-2, p. 219). The Sierra Club and MEC conclude that "[t]he lack of any justification for the specific limits and manipulations that I&M imposed renders the resulting proposal for 750 MW of gas capacity in 2028 unsupported by the record and not shown to be in the public interest or a fair and reasonable resolution of this proceeding." Sierra Club and MEC's reply brief, p. 8.

The Sierra Club and MEC state that, while it is understandable that the impacts of the IRA were not reflected in the IRP modeling and analysis that I&M filed in this proceeding, it is not understandable that the company has not revisited its IRP modeling to determine the impacts of the IRA on the company's resource selections. The Sierra Club and MEC respond to the company's contention that it need not revisit its modeling in light of the IRA because its renewable costs assumptions "would not be drastically lower" and "in fact recent experience suggests they would not be lower at all." Sierra Club and MEC's reply brief, p. 9 (quoting I&M's initial brief, p. 35). The Sierra Club and MEC respond that this argument "relies largely on speculation about the price impacts of other market conditions that are near-term, already accounted for in the IRP, and at least some of which would also impact the price of I&M's proposed gas capacity." Sierra Club and MEC's reply brief, p. 9 (footnote omitted). In response to I&M's assertion that the RTA scenario included 750 MW of gas capacity in 2028 despite assuming lower prices for renewables, the Sierra Club and MEC state that "the RTA scenario selected 750 MW of gas capacity not because of economics but instead because the imposition of the baseless build limits discussed above prevented the model from selecting additional clean energy resources." *Id*. (footnote omitted).

The Sierra Club and MEC respond to I&M's claims that the all-source RFP proposed in the settlement agreement "'will reflect the most current pricing that includes all factors influencing the market prices of resources, including IRA consideration,' and then 'I&M will select the projects for regulatory approval that provide the best value to I&M and its customers.'" *Id*., p. 10 (quoting I&M's initial brief, p. 27). The Sierra Club and MEC assert that the company has not defined the rubric for best value, which could include both price and non-price factors.

The Sierra Club and MEC contend that I&M's claims that there is "a 'clear sense of urgency to acquire the resources needed' to fill its 2028 capacity need and, therefore, it is 'virtually impossible' to delay its resource decisions so that the IRA can be evaluated" are contradicted by the company's timeline outlined in its initial brief, which includes the possibility of "flexibility to substitute other carbon-free resources" for some or all of the 750 MW of gas capacity included in the settlement agreement. Sierra Club and MEC's reply brief, p. 10 (quoting I&M's initial brief, pp. 26-28) (footnote omitted). The Sierra Club and MEC recommend that I&M:

> revisit the assumptions in its IRP that are impacted by the IRA, carry out a few modeling runs assessing the impacts of such revisited assumptions (and correcting the fatal flaws and baseless build limits discussed above), and collect market data regarding the IRA impacts on pricing for resources relevant to the 2028 time period at issue.

Sierra Club and MEC's reply brief, p. 11.

The Sierra Club and MEC posit that the commitments of I&M and the Staff to an all-source RFP in which other resources are meaningfully considered can only be realized if the 750 MW of natural gas CT is not predetermined to be the most reasonable and prudent means for meeting the company's capacity need in 2028. The Sierra Club and MEC posit that "if such a predetermination is made, it is hard to see why any energy developer would submit a proposal for something other than gas combustion turbine capacity for 2028." *Id*., p. 12. The Sierra Club and MEC also state that "it is unclear how meaningful the CON process under MCL 460.6s would be if the gas capacity has already been determined to be the 'most reasonable and prudent' option." *Id*., p. 13 (quoting MCL 460.6t(8)(a)). As such, the Sierra Club and MEC aver that "rejection of the Proposed Settlement Agreement is necessary to ensure that such future processes allow for the meaningful evaluation of the 'most reasonable and prudent means' for meeting the 2028 capacity need that did not occur in the Company's IRP." Sierra Club and MEC's reply brief, p. 13 (quoting MCL 460.6t(8)(a)).

The Sierra Club and MEC refute I&M's assertions that the settlement agreement is in the public interest. The Sierra Club and MEC argue that the benefits to Michigan customers of the settlement agreement are "not substantial enough to be in the public interest as they are either illusory or far less substantial than recent commitments made by other Michigan utilities and are practically de minimis when compared to the benefit to I&M under the Proposed Settlement—approval of the addition of up to 750 MW of new gas generation." Sierra Club and MEC's reply brief, p. 14. The Sierra Club and MEC compare I&M's claim that the settlement portfolio reduces reliance on carbon-emitting resources to other scenarios considered in the IRP, which they assert would "lead to greater carbon reductions and would not allow emissions to spike in later years." *Id*. The Sierra Club and MEC quote testimony from Mr. Comings stating that "'[o]n a cumulative basis, the total CO_2 [carbon dioxide] emissions under the Preferred Portfolio (nearly 59 million tons) is significantly higher under any of the other scenarios the Company evaluated, which had cumulative CO_2 emissions ranging from approximately 25 to 55 million tons.'" Sierra Club and MEC's reply brief, p. 15 (quoting 3 Tr 964).

The Sierra Club and MEC respond to I&M's claim that the company's commitment to increase its annual EWR savings by 2% by 2027 is a reasonable compromise. The Sierra Club and MEC state that "[t]he Commission should find I&M's argument unpersuasive as IRP policy decisions regarding EWR targets should predate an EWR plan." Sierra Club and MEC's reply brief, p. 16. The Sierra Club and MEC also take issue with I&M's low-income spending commitment which increases the company's low-income spending to 12% by 2025. Regarding both the EWR and low-income spending commitments made by the company, the Sierra Club and MEC argue that these concessions are not sufficient to meet the public interest when compared to other Michigan utilities. Specifically, the Sierra Club and MEC state that:

> [b]oth Consumers Energy and DTE Electric agreed to achieve 2% EWR savings years earlier than I&M and agreed to reach those targets at a quicker pace. In addition, Consumers and DTE [Electric] both agreed with regards to EWR

> programs for low-income customers to spend a higher percentage (17.2% and 18.9%, respectively) of their total EWR spending on low-income programs.

Id. (footnotes omitted). The Sierra Club and MEC note that the commitment made in the settlement agreement is for I&M to spend at most 12% of its EWR program budget on low-income EWR programs. The Sierra Club and MEC state that, more accurately, "'I&M agrees to spend 8.3% of its total annual EWR program budget on low-income EWR programs by 2023; 10% by 2024; and 12% by 2025.'" *Id*., p. 17 (quoting 7 Tr 1564).

In response to I&M's claim that the settlement agreement addresses commodity price risks as required by Section 6t(8)(a)(v) of Act 341, the Sierra Club and MEC state that the company's modeling "failed to reasonably account for the risk of significantly higher than forecasted gas and coal prices." Sierra Club and MEC's reply brief, p. 17. Specifically, the Sierra Club and MEC point to testimony of the Attorney General and CUB which:

> observed that I&M used a gas price forecast that assumes stable prices (at the Henry Hub) close to (in real dollar terms) $4 per MMBtu for the whole planning period through 2040. But Witness Jester noted that the actual Henry Hub price was $8.14 per MMBtu as of May 2022, according to the U.S. Energy Information Administration.

Id., pp. 17-18 (citing 3 Tr 777, 778) (footnotes omitted). The Sierra Club and MEC also note that the Staff similarly recommended that the company "'use a wider upper range of natural gas prices for risk assessment for future IRPs.'" Sierra Club and MEC's reply brief, p. 19 (quoting 3 Tr 1176).

In response to I&M's assertions that the settlement agreement ensures diversity of generation supply and supports the development of demand-side resources, the Sierra Club and MEC assert that the assumptions of the AURORA model undermine both assertions. *See*, Sierra Club and MEC's reply brief, p. 19 (quoting Sierra Club and MEC's initial brief, p. 36). For the reasons outlined above, the Sierra Club and MEC conclude that the Commission should find that the proposed settlement agreement is not in the public interest.

The Sierra Club and MEC assert that the settlement agreement fails to address the Commission's prior directives on the ICPA "by omitting the ICPA from its terms except to say that its approval would not expressly or impliedly approve the ICPA." Sierra Club and MEC's reply brief, p. 20 (footnote omitted). The Sierra Club and MEC argue that maintaining the status quo with regard to the ICPA "fails to resolve the Commission's directives on this issue and thus is not reasonable or in the public interest." *Id*.

Finally, the Sierra Club and MEC argue that the settling parties do not represent the public interest. The Sierra Club and MEC state that Court of Appeals precedent in *Attorney General v Mich Pub Serv Comm* was not a holding that the Staff adequately represents the public interest but that the Court of Appeals gave deference to the Commission and refused to find that the Commission erred in its finding. Sierra Club and MEC's reply brief, p. 21 (citing *Attorney General v Mich Pub Serv Comm*, 237 Mich App 82, 93-94; 602 NW2d 225 (1999)). The Sierra Club and MEC do not disagree with I&M's assertion that the Commission may approve a contested settlement agreement with fewer than all parties represented; however, they argue that "[t]he problem here is not that fewer than all nine parties have signed the Proposed Settlement, but that the three parties that have signed it do not adequately represent the public interest." Sierra Club and MEC's reply brief, p. 21. The Sierra Club and MEC cite to a number of cases where the Commission has found that the public interest was represented by a broad cross-section of interests. *See*, *id*., pp. 22-24. In response to I&M's claim that the settlement agreement represents a compromise between the positions of all intervening parties, the Sierra Club and MEC argue that "the Proposed Settlement Agreement's terms do not support the contention that the Proposed

Settlement incorporates any of [the Sierra Club]'s recommendations from testimony or briefing, nor do they represent a legitimate compromise of [the Sierra Club]'s positions." Sierra Club and MEC's reply brief, p. 25; *see also*, Sierra Club and MEC's reply brief, pp. 24-29.

The Sierra Club and MEC ask that the Commission reject the proposed settlement agreement. Sierra Club and MEC's reply brief, p. 29.

V. Discussion

The Commission finds that the contested settlement agreement should be approved. Under Rule 431(5)(a)-(c), Commission approval of a contested settlement agreement is appropriate where the Commission determines the following requirements have been met: (1) that the objecting parties have been given a reasonable opportunity to present evidence and arguments in opposition to the settlement agreement, (2) the public interest is adequately represented by the parties who entered into the settlement agreement, (3) the settlement agreement is in the public interest, (4) the settlement agreement represents a fair and reasonable resolution of the proceeding, and (5) the settlement agreement is supported by substantial evidence on the record as a whole.

With respect to the first criterion listed above, the Commission finds that it has provided a reasonable opportunity to those parties that objected to the settlement agreement to present evidence and arguments in opposition to the settlement agreement. The parties were given the opportunity to submit direct, rebuttal, and surrebuttal testimony, file initial and reply briefs, and appear at an evidentiary hearing regarding the contested settlement agreement before a presiding officer. The underlying record in this case consists of 1,340 pages of transcript and nearly 200 exhibits admitted into evidence. The record on the contested settlement alone consists of 234 additional pages of transcript and 23 additional exhibits admitted into evidence. Therefore, the Commission finds that the objecting parties have been provided a reasonable opportunity to present evidence and arguments against the settlement agreement and the requirement set forth in Rule 431(5)(a) has been met.

With respect to the second criterion listed above, the signatories include the company, ABATE, and the Staff. As noted on the record, the company represents its own interests, ABATE represents the large business and industrial customers of the company, and the Staff represents a broad set of interests including furthering the Commission's mission to "serve the public by ensuring safe, reliable, and accessible energy and telecommunications services at reasonable rates." Staff's initial brief, pp. 6-7 (citing 6 Tr 1478). It is well settled that the public interest is adequately represented by the Staff when the Staff is party to a contested settlement agreement. *Attorney General v Mich Pub Serv Comm*, 237 Mich App 82, 93-94; 602 NW2d 225 (1999). The Commission has upheld this ruling in contested IRP settlement decisions. *See*, June 7, 2019 order in Case No. U-20165, p. 77; June 23, 2022 order in Case No. U-21090, p. 88. Accordingly, the Commission finds that the public interest is adequately represented by the parties who entered into the settlement agreement. *See*, Rule 431(5)(b). The Commission also notes the Attorney General's reference to the October 17, 2019 order in Case No. U-20470 (October 17 order), wherein the Commission expressed:

> its hope that additional parties will participate in future IRPs as these cases represent a unique opportunity to holistically review short- and long-term utility plans. The Commission also notes that the participation of additional parties would aid in the development of a more robust record on which to base a decision.

October 17 order, p. 2. As noted in briefing, the Staff shares this hope. *See*, Staff's reply brief, pp. 31-32. The Commission finds that the participation of numerous parties in this proceeding has led to a better and more robust record both in the underlying initial phase of the case and as part of the contested settlement process. The fact that several parties filed objections does not negate the fact that the public interest is adequately represented by the parties who entered into the settlement agreement.

Rule 431(5)(c) requires the Commission to make a three-part finding that: (1) the settlement agreement is in the public interest, (2) represents a fair and reasonable resolution of the proceeding, and (3) is supported by substantial evidence on the record as a whole. On this record, the Commission finds that these requirements have been met. The objecting parties raise concerns with several aspects of the contested settlement agreement. These concerns include the settlement agreement's inclusion of 750 MW of fully dispatchable energy, the terms regarding the treatment of Rockport Unit 2, the company's participation in the ICPA with OVEC, and matters related to PURPA, EWR, and the UPA. These concerns are individually addressed more fully below.

The Commission has fully considered the objections on the record and finds that the settlement agreement is in the public interest and provides a reasonable resolution to this proceeding. The Commission finds that the settlement agreement was negotiated in good faith, and, even though several parties filed objections, the Commission nevertheless finds that the negotiation and compromise of contested issues is evident from the terms of the settlement agreement. The Commission further recognizes that a settlement agreement is a creature of compromise. No party can expect to achieve all of its goals in settlement, and the same is true for the Commission. Thus, if this were a 300-day order, the Commission might be recommending changes to the IRP under Section 6t(7) of Act 341 that may differ in some regards with the terms of the settlement agreement. But whether a settlement reflects every change the Commission might otherwise recommend is not the standard for evaluating whether a settlement agreement should be approved. In this light, the Commission finds that the settlement agreement, taken as a whole, is in the public interest, represents a fair and reasonable resolution of this proceeding, and is supported by substantial evidence on the record as a whole.

Some of the uncontested benefits of the settlement agreement include the significant additions of carbon-free resources, the potential for providing a credit to ratepayers with revenues from Rockport Unit 2, and assurances regarding the company's EWR programs. The latter concern includes significant steps forward from I&M's historical EWR performance and consequences if the commitments are not met, along with an increase in low-income EWR spending. As the parties acknowledge, the Commission generally discourages comparisons between utilities, and the significance of this progress is not diminished by comparing I&M's EWR performance to other utilities in Michigan.[7] 6 Tr 1480-1482. The Commission reiterates that the settlement agreement does not include cost preapprovals for any terms of the agreement other than the reasonable and prudent costs associated with the company's CVR program. Settlement agreement, pp. 10-11; 6 Tr 1483. Moreover, the Commission agrees with the Staff that substantial evidence on the record in this case supports approval of the settlement agreement which will provide direction for I&M's future resource planning while maintaining flexibility for the Commission to further review resource selections and costs in later proceedings. *See*, Staff's initial brief, p. 1.

A. <u>750 Megawatt Combustion Turbine Capacity</u>

In the contested settlement proceeding, no party disputed that I&M will have a 750 MW capacity need which follows naturally from the retirement of the Rockport plant and the resulting 2,600 MW capacity deficiency in 2028. Several parties dispute the selection of a natural gas CT resource as the most reasonable and prudent means of filling this capacity need that could result

[7] The Commission also finds that a comparison to other utilities does not require rejection of the settlement agreement with respect to I&M's commitment to procure 30% of capacity additions through PPAs.

from the “fully dispatchable without any run-time limit” language contained in paragraph 1.a.ii. of the settlement agreement. While acknowledging the shortcomings of the modeling underlying this language, the Commission finds that the settlement agreement provides the future flexibility that is necessary with respect to this issue.

Paragraph 1.a. of the settlement agreement provides that I&M will structure its RFPs that seek to procure resources in alignment with its Preferred Portfolio by targeting three distinct types of nameplate capacity. Paragraph 1.a.ii. of the settlement agreement provides that I&M will structure its RFPs to target “[a]pproximately 750 MW (ICAP) from resources that are fully dispatchable without any run-time limit. This will not include coal or new combined cycle technologies.” The Commission notes, however, that under the terms of the settlement agreement this provision is not intended to be read in isolation, but instead must be read in the context of other commitments articulated in the settlement agreement, including Paragraphs 1.b and 1.c. Paragraph 1.c. provides that “I&M agrees to limit the acquisition of natural gas resources through 2028 to approximately 750 MW (ICAP). I&M reserves the right to select additional carbon-free resources above the level identified in Part 1.b.i above to fulfill, in whole or in part, this incremental capacity need.”[8] Paragraph 1.b. of the settlement agreement provides that “I&M’s RFPs necessary to acquire resources to meet its long-term capacity and energy needs that may arise with the retirement of Rockport shall not discriminate by type or by size in allowing projects as small as 20 MW.” The parties argue over the semantics of whether the language of paragraph 1.a.ii. constitutes a minimum or a maximum target level of capacity to be filled through fully-dispatchable resources. While finding that it is not dispositive of this issue, the Commission notes that paragraph 1.c.

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[8] The Commission assumes that this paragraph was intended to say “Part 1.a.i. above” which is the paragraph that describes the total amount of carbon-free resources that will be obtained through RFPs (of 2,160 MW). There is no “Part 1.b.i” in the settlement agreement.

makes clear that it is a maximum (through 2028) and that the company reserves the right to exceed the amount of carbon-free resources committed to in paragraph 1.a.i. (of 2,160 MW). Paragraph 1.b. makes clear that the company does not intend to discriminate by type of project when replacing the capacity that will be lost through the Rockport retirement.

Consistently throughout the record, I&M has asserted that the company's competitive solicitation will be "an all-source, non-discriminatory RFP." *See*, 6 Tr 1423; I&M's initial brief, pp. 26, 32, 34; I&M's reply brief, p. 18. The Commission concludes from the language of the settlement agreement on its face as well as the record in the contested settlement agreement portion of this proceeding, that I&M will conduct an all-source, non-discriminatory RFP in 2023 that will target the amounts of capacity identified in the company's Preferred Portfolio, without placing further size, generation-type, or run-time restrictions on the solicited bid.

While not an issue in the underlying case (but briefed extensively in the contested settlement phase), the Commission agrees with the Attorney General and CUB that it is neither reasonable nor prudent to ignore the IRA. However, the Commission disagrees with the conclusion that approving the settlement agreement will have this effect. With respect to future RFPs, the company states that:

> [t]he Settlement Agreement contemplates an incremental addition of generation resources via a thorough, competitive and flexible process, which will naturally allow I&M and its customers to realize the benefits of the IRA. The Settlement Agreement does not foreclose considering the IRA's benefits; to the contrary, the Settlement Agreement provides clear guidelines, regulatory assurances, and parameters for the Company to follow in the procurement of resources that may benefit from the IRA.

I&M's reply brief, p. 15. Further, I&M acknowledges that when it files for a CON the company:

> will identify and explain any significant material changes that have occurred to actual and/or forecasted market energy, capacity, and fuel prices; load projections; capital and operating costs of resources; etc., since the Company performed the IRP that was most recently approved. The framework set forth in the Settlement Agreement ensures that the market impacts of the IRA will be accounted for without needless delays to the Company's time-sensitive procurement of resources arising from the forthcoming retirement of the Rockport Units.

Id., p. 14. Thus, the Commission finds that I&M acknowledges the reality of the IRA, and, moreover, the company is aware that in order to fulfill the aforementioned commitment additional modeling may be required in a future proceeding under MCL 460.6s to supply the robust analysis envisioned by the company in its reply brief and to achieve the company's goals. I&M and the Staff have committed to conduct a robust analysis of costs and resource options for meeting power demand in a future CON proceeding under MCL 460.6s to follow the conclusion of this case. *See*, 6 Tr 1426, 1488; Staff's initial brief, pp. 15-18; I&M's initial brief, pp. 19-20, 22, 27, 32, 38; Staff's reply brief, pp. 10, 12, 13-15; I&M's reply brief, pp. 13-14, 24. Specifically, I&M states that:

> [w]hile the signing parties have waived the right to challenge the carbon-free resources selected in subsequent ex-parte or CON regulatory processes, the parties have reserved all other arguments available under MCL 460.6s. Thus, the Settlement Agreement establishes the necessary framework for the Company to procure time-sensitive resources to meet undisputed capacity needs, while streamlining the procurement of carbon-free resources but allowing for subsequent arguments over other resource types.

I&M's reply brief, pp. 13-14.

In order to grant a CON, the Commission must find under Section 6s(4)(a) of Act 341 that the estimated cost is reasonable and, under Section 6s(4)(d) of Act 341, that the proposed facility or PPA:

> represents the most reasonable and prudent means of meeting the power need relative to other resource options for meeting power demand, including energy efficiency programs, electric transmission efficiencies, and any alternative

> proposals submitted under this section by existing suppliers of electric generation capacity under subsection (13) or other intervenors.

Thus, the Commission retains the authority to deny a future CON application on grounds of unreasonable estimated costs or on grounds of failure to show that the means are the most reasonable and prudent relative to other resource options presented by intervenors (including intervenors who are not independent power producers such as MCL 460.6t(13) envisions).[9] The Commission explicitly clarifies that it has not been determined, as a result of this settlement agreement, that a CT is the most reasonable and prudent option to fulfill the needed capacity, only that I&M will have a 750 MW capacity need following the retirement of the Rockport plant in 2028. The determination of the most reasonable and prudent option to fill this capacity need is left to be made in a future CON proceeding, as described above. Finally, the Commission notes that having an approved IRP for I&M provides the opportunity to direct the company to perform a plan review under MCL 460.6t(21). For these reasons, the Commission finds that there is substantial evidence on the record to support this aspect of the settlement agreement; and that the settlement agreement is in the public interest and fair and reasonable.

B. Rockport Unit 2

Concerns raised regarding Rockport Unit 2 include a purported double recovery of costs associated with receiving both merchant plant revenues and the approved NBV, and the return on the pre-tax WACC. The Commission is not persuaded that the settlement agreement should be rejected on these grounds. As the Staff and I&M point out, the settlement agreement embodies a compromise regarding the amount of the ROE and the percentage of excess revenues over costs that may be credited to Michigan ratepayers in the future as Rockport Unit 2 transitions to

[9] The existence of an approved IRP affects only the decision regarding need contained in MCL 460.6s(4)(a).

operation as a merchant plant. While the parties appear to agree that the chance of seeing excess revenue is slim, again, the Commission does not find this to be grounds for rejecting the settlement agreement. The Commission is also not persuaded that the settlement agreement presents the opportunity for double recovery of the same costs. As the Staff correctly notes, the Commission approved the return of the NBV (as is typical with retiring coal plants) to the utility in the April 12 order, pp. 49-50, and extended that return through 2028 in order to decrease the total expense. *See*, 6 Tr 1484-1485. The NBV addresses capital expenditures that have already been made and found to be reasonable and prudent. The fact that the company intends to run the unit as a merchant plant, presenting the possibility of offsetting some of those costs for ratepayers if the opportunity presents itself, does not change this underlying fact and is not a basis for rejecting the settlement agreement.

C. <u>Ohio Valley Electric Corporation Inter Company Power Agreement</u>

The Commission is not persuaded that the settlement agreement's treatment of the OVEC ICPA provides grounds for rejecting the agreement. The Commission notes that the settlement agreement results in no cost approvals of any kind with regard to the OVEC ICPA. 6 Tr 1486-1487. Further, Paragraph 1.d. of the settlement agreement provides that "[n]othing in the approval of this IRP shall be construed as express or implied approval of the OVEC ICPA or any of its amendments." Costs will continue to be reviewed in other proceedings such as the PSCR plan and reconciliation proceedings, as will the reasonableness and prudence of the ICPA. The Commission does not find that the treatment of the OVEC ICPA requires rejection of the settlement agreement.

D. Unit Power Agreement

The Commission does not find the terms of the settlement agreement addressing the UPA to require rejection of the settlement agreement. As the Staff points out, no costs associated with the UPA or purchases under the UPA are being approved as a result of the settlement agreement, and all such costs will be reviewed in future PSCR proceedings. 6 Tr 1482-1483, 1486. The Commission is not persuaded that the inclusion of the UPA in the IRP requires rejection of the settlement agreement.

E. Public Utility Regulatory Policies Act of 1978

The Commission does not find that the provisions related to PURPA require rejection of the settlement agreement. The Commission notes its adoption of the LMP in the December 20, 2018 order in Case No. U-18092, p. 11, and further notes I&M's statement that:

> the Company agrees that its use of LMP to determine PURPA avoided costs can only be established on an interim, non-precedential basis until the Commission initiates the Company's next biennial PURPA proceeding. The Company also agrees that this common understanding can be stated by the Commission in an order approving the Settlement Agreement. Therefore, no modification to Section 9.a. is necessary.

I&M's reply brief, p. 50. The Commission is not persuaded to reject the settlement agreement on these grounds.

F. Conclusion

Given the above, the Commission concludes that all requirements of Rule 431 have been met and the contested settlement agreement should be approved.

THEREFORE, IT IS ORDERED that the settlement agreement, attached as Exhibit A, is approved.

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 mpscedockets@michigan.gov and to the Michigan Department of Attorney General - Public Service Division at pungp1@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

Daniel C. Scripps, Chair

Tremaine L. Phillips, Commissioner

Katherine L. Peretick, Commissioner

By its action of February 2, 2023.

Lisa Felice, Executive Secretary

EXHIBIT A

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of INDIANA MICHIGAN POWER COMPANY for approval of its integrated resource plan pursuant to MCL 460.6t, avoided costs and for other relief.	))))	Case No. U-21189

SETTLEMENT AGREEMENT

Pursuant to Section 78 of the Administrative Procedures Act of 1969, as amended (1969 PA 306, § 78; MCL 24.278), and Rule 431 of the Rules of Practice and Procedure before the Michigan Public Service Commission ("MPSC" or "Commission"), R 792.10431, the undesigned parties agree as follows:

WHEREAS, on February 28, 2022, Indiana Michigan Power Company ("I&M" or the "Company") filed its Application, testimony and exhibits in this proceeding seeking approval of the Company's multistate[1] Integrated Resource Plan ("IRP") pursuant to Section 6t of 2016 PA 341, MCL 460.6t, the Commission's September 10, 2020 Order Approving Settlement Agreement in Case No. U-20591, and all other orders and applicable law.[2]

[1] On January 31, 2022, the Company submitted its IRP Report to the Indiana Utility Regulatory Commission ("IURC"). Although I&M's multistate IRP presents a Total Company analysis, as set forth in Exhibit IM-2, the Company provided supplemental information in this case consistent with Commission requirements.

[2] The Company's multistate IRP was also filed pursuant to Orders in I&M's 2020 Power Supply Cost Recovery ("PSCR") Plan Case No. U-20529, Commission Order (May 13, 2021) and 2021 PSCR Plan Case No. U-20804, Commission Order (November 18, 2021), which required presentation and analysis of additional portfolios that were modeled around I&M's continued participation in the Ohio Valley Electric Corporation ("OVEC") Inter-Company Power Agreement ("ICPA").

WHEREAS, a prehearing conference was held on March 23, 2022, before Administrative Law Judge Dennis W. Mack ("ALJ").[3] In addition to I&M, the parties to the IRP proceeding are: the Commission Staff ("Staff"); Attorney General Dana Nessel ("Attorney General"); Michigan Environmental Council ("MEC"), Sierra Club, Citizens Utility Board ("CUB"), the Association of Businesses Advocating Tariff Equity ("ABATE"), Energy Michigan, and the Great Lakes Renewable Energy Association ("GLREA")

WHEREAS, I&M filed testimony and exhibits requesting approval of the Company's IRP and Preferred Portfolio (a/k/a "Proposed Course of Action") in its entirety, as the most reasonable and prudent means of meeting the Company's energy and capacity needs. The Company specifically requested the Commission to make the following determinations:

A. Approve Indiana Michigan Power Company's multistate Integrated Resource Plan filed pursuant to MCL 460.6t(4) by specifically approving the Preferred Portfolio inclusive of all proposals and costs presented by Indiana Michigan Power Company in the record and the Company's Initial Brief and Reply Brief as the most reasonable and prudent means of meeting Indiana Michigan Power Company's energy and capacity needs;

B. Approve Indiana Michigan Power Company's request for approval of costs associated with supply-side and demand-side resources that commence construction within three years of approval of the IRP as well as approve the deferral of the cost recovery for those resources until they are included in a revenue requirement used to determine customer rates;

C. Approve Indiana Michigan Power Company's proposed Financial Compensation Mechanism for future PPAs entered to fulfill the resource requirements approved as part of I&M's Preferred Portfolio;

D. Approve Indiana Michigan Power Company's Rockport Unit 2 transition plan, including continued rate recovery of the remaining net book value of Rockport Unit 2 upon termination of the Lease;

[3] On September 28, 2022, a Reassignment Memorandum was issued assigning Administrative Law Judge Sharon L. Feldman to be the presiding officer in this case effective immediately. (Case No. U-21189, Doc. No. 218).

E. Find Indiana Michigan Power Company's Renewable Energy Plan, including Preferred Portfolio resources, will allow I&M to comply with Michigan's RPS and statutory goal of 35% renewable energy and cumulative EWR savings;

F. Approve Indiana Michigan Power Company's proposed financial incentive mechanism for Load Management programs;

G. Approve Indiana Michigan Power Company's proposed avoided costs, related methodology and PURPA tariff;

H. Find that Indiana Michigan Power Company actively engaged Stakeholders at every stage of the IRP process, as required under the Settlement Agreement in Case No. U-20591; and

I. Find that Indiana Michigan Power Company complied with requirements arising from 2020 PSCR Plan Case No. U-20529, Commission Order (May 13, 2021) and 2021 PSCR Plan Case No. U-20804, Commission Order (November 18, 2021), by analyzing and presenting additional portfolios that were modeled around I&M's continued participation in the OVEC ICPA.

J. Grant Indiana Michigan Power Company such other and further relief as is just and reasonable.

Staff and other intervening parties filed testimony and exhibits addressing various issues.

NOW THEREFORE, for purposes of settlement of Case No. U-21189, the undersigned parties agree as follows:

1. The parties agree that the Company's IRP, including its Preferred Portfolio, is the most reasonable and prudent means to meet its needs for energy and capacity, with the modifications that (i) carbon-free capacity from solar and wind shall be considered to be interchangeable; and (ii) I&M will replace 250 MW of combustion turbine natural gas capacity planned for 2028 with 255 MW of new storage to be added by 2028. Accordingly, for purposes of this settlement, I&M's Preferred Portfolio through 2028 shall consist of 2160 MW (ICAP, or approximately 620 MW UCAP) of carbon-free resources (e.g., solar and wind); 750 MW (ICAP) of fully dispatchable resources (e.g., natural gas combustion turbines); and 255 MW (ICAP) of storage.

a. I&M will structure its Requests for Proposals ("RFPs") that seek to procure resources in alignment with its Preferred Portfolio, as modified in part 1.a., to target the following amounts of nameplate capacity:

   i. Approximately 2160 MW (ICAP, or approximately 620 MW UCAP) from new carbon-free resources or the expansion or repowering of existing carbon-free resources.

   ii. Approximately 750 MW (ICAP) from resources that are fully dispatchable without any run-time limit. This will not include coal or new combined cycle technologies.

   iii. Approximately 255 MW (ICAP) from dispatchable carbon-free resources such as hybrid renewable plus storage or stand-alone storage, with minimum dispatchability of 4-hour increments in a 24-hour period. To the extent such storage resources are not available or not reasonably economic, I&M will seek additional carbon-free resources to satisfy its capacity needs. To the extent that these dispatchable resources are hybrid renewable plus storage, the renewable capacity may count toward the carbon free resources discussed in Part 1.b.i.

b. I&M's RFPs necessary to acquire resources to meet its long-term capacity and energy needs that may arise with the retirement of Rockport shall not discriminate by type or by size in allowing projects as small as 20 MW.

c. I&M agrees to limit the acquisition of natural gas resources through 2028 to approximately 750 MW (ICAP). I&M reserves the right to select additional carbon-free resources above the level identified in Part 1.b.i above to fulfill, in whole or in part, this incremental capacity need.

d. Nothing in the approval of this IRP shall be construed as express or implied approval of the OVEC ICPA or any of its amendments.

2. The parties agree that for carbon-free resources the Company expects to begin commercial operations by May 31, 2028, the Company will use commercially reasonable efforts to target at least 30% of capacity additions (in ICAP MWs) through Purchased Power Agreements ("PPAs") and approximately 70% of capacity additions (in ICAP MWs) as Company-owned assets. The parties acknowledge, however, that I&M is a multi-state electric utility and I&M's customers benefit from the efficiencies provided by a single generation fleet. The parties further acknowledge that limitations on resource ownership imposed by one jurisdiction may not align

with the policy objectives of another jurisdiction, potentially resulting in the rejection of proposed resources and the delay of new capacity and energy that is needed to meet I&M's customers' needs. Accordingly, any targeted ownership proportion is subject to the approval of individual resources by both the MPSC and the Indiana Utility Regulatory Commission ("IURC").

a. The new resources obtained through PPAs will not compete economically against the new resources which will be owned by the Company; however, the Company agrees to provide Staff with the RFP price and non-price scoring results to allow for the review and comparison of PPAs and Company-owned resources.

b. The Company, in its sole discretion, may choose to acquire more than 30% of its new capacity through PPAs.

c. The Company's affiliates will be prohibited from offering resources into the Company's RFPs that are intended to procure resources that are expected to begin commercial operations by May 31, 2028.

3. The parties agree that I&M will earn an incentive on all eligible PPAs for resources approved as part of this settlement if the Company procures at least 50% of its capacity additions (in ICAP MW) through new PPAs.

a. The incentive is applicable to non-affiliate new PPAs for new carbon-free resources and for the expansion or repowering of existing carbon-free resources that are approved by the MPSC as discussed below in parts 4.b. and 4.c. An incentive will not apply to new or existing resources needed to meet renewable energy portfolio standards, voluntary green pricing programs, or carbon emitting resources; however, all such new PPAs shall count toward the 50% threshold discussed in 3.c. Additionally, new PPAs for existing, natural gas fueled resources that end by 2050 shall count toward the 50% threshold discussed in 3.c.

b. The parties agree the incentive will be determined as the Company's overall after-tax WACC including deferred taxes, applied to monthly PPA payments.

c. The determination of whether I&M has procured 50% of its capacity additions (in ICAP MWs) through PPAs shall be made annually on May 31st, beginning May 31, 2024, and continuing through May 31, 2028 ("Annual Review"). That determination shall consider all generation resources approved by the Commission following the date of the Commission's order approving this Settlement Agreement and which are in commercial operation by the next Annual Review of capacity additions discussed herein. Once I&M is eligible to receive an incentive on new PPA(s) as identified in this settlement, such PPA(s) will continue to earn an incentive for the life of the PPA, regardless of how I&M's future ratio of PPAs to owned resources changes.

4. The parties agree to the following regarding subsequent *ex-parte* applications in this docket and certificate of necessity ("CON") proceedings:

a. For approval of costs for generation and storage resources, construction commences with the initiation of physical site preparatory work such as breaking ground.

b. The Company will submit *ex-parte* applications in this docket seeking MPSC approval of costs associated with specific resources for all projects less than 225 MW. The parties agree that reasonable and prudent costs for resources approved in such *ex-parte* proceedings shall be recoverable in rates, in accordance with MCL 460.6t for cost recovery of resources smaller than 225 MW, for which construction commences within three years of the order in this case and that result from a competitive solicitation that complies with the MPSC's Competitive Procurement Guidelines.

c. The Company will submit CON applications seeking MPSC approval for all projects 225 MW or larger. The parties agree that reasonable and prudent costs for resources approved in such CON proceedings shall be recoverable in rates, in accordance with MCL 460.6t and MCL 460.6s for cost recovery of projects larger than 225 MW, for which construction commences within three years of the order in this case and that result from a competitive solicitation that complies with the MPSC's Competitive Procurement Guidelines.

d. The parties agree to not challenge the carbon-free resources selected by the Company in the ex-parte or CON regulatory processes discussed above in parts 4.b and 4.c and agree to not challenge the Company's request to recover reasonable and prudent capital costs incurred, or the deferral of reasonable and prudent capital costs incurred for up to 30 months following the month a project is placed in-service, so long as the resources align with the resources and amounts reflected in this settlement agreement. For carbon-emitting resources for which the Company seeks a CON, the Company may submit the IRP as modified by this Settlement Agreement as an approved IRP for all purposes under MCL 460.6s. Otherwise, the parties reserve all arguments available under MCL 460.6s.

e. This section 4 does not apply to short-term capacity purchase agreements with terms of two years or less.

5. The parties agree that the Company will increase its annual Energy Waste Reduction ("EWR") energy savings targets incrementally over the next four years to achieve 2%

savings by the end of 2027, with interim targets of 1.6% in 2024, 1.75% in 2025, 1.9% in 2026, and 2% in 2027. Thereafter the Company will maintain a 2% target until its next IRP. To the extent the Company fails to achieve its target by the end of 2025 without good cause, I&M will transfer management of its EWR programming to Efficiency United.

a. The parties agree the Company will increase its low-income spend target to 12% of the total annual EWR program budget by the 2025 plan year, which will remain at that level until the approval of the Company's next IRP and achieve the following interim spending targets: 8.3% by the 2023 plan year and 10% by the 2024 plan year. The parties agree to work collaboratively to identify up to two Income Qualified pilot EWR programs to present for approval in the 2026-2027 EWR Plan proceeding. The Company may use a combination of funds from their pilot allotment in addition to their low-income funds. Funds used from the pilot budget will be eligible for the deemed savings as approved in U-15800, funds from the low-income budget will receive actual savings typical to all low-income projects. These pilots will not be required to be cost-effective. I&M agrees to work collaboratively with the parties on metrics to evaluate the effectiveness of low-income budgets in the next EWR plan case.

6. The parties agree that the DR programs proposed in this case by the Company are reasonable and prudent and should be approved.

a. The parties agree that the DR targets should be increased by increasing projected participation in the Residential Thermostat DLC program as recommended by Staff.

b. The parties agree that the program costs associated with DR through 2025 of $2,905,495, as modified for the increased participation in the Residential Thermostat DLC program, is reasonable. The Company agrees that this spending is expected to achieve the following incremental DR demand savings targets: 2.492 MW in 2023, 3.612 MW in 2024, and 5.591 MW in 2025.

c. The parties agree that Staff's incentive proposal is reasonable and prudent and should be approved. The Company will first be eligible to earn an incentive on DR beginning with the 2023 calendar year.

d. The Company agrees to Staff's proposal to begin filing DR reconciliation cases in 2023, first reconciling calendar year 2022. I&M will establish a regulatory asset or liability for the difference between I&M's actual DR costs incurred and the DR costs included in I&M's rates.

7. The parties agree the Commission should approve the Company's proposals for Rockport Unit 2 as reasonable and prudent with the modifications described below.

a. The Parties agree that I&M's Michigan jurisdictional NBV of Rockport Unit 2 at the end of the Lease will be fully recoverable in retail rates through 2028, including a pre-tax weighted average cost of capital (WACC) return on the NBV. Upon the implementation of rates resulting from the Company's next base rate case, the return shall be calculated using a 9% return on equity ("ROE"). In all other respects, the WACC return shall reflect the cost of capital and capital structure approved by the Commission in each of the Company's base rate cases through 2028.

i. I&M agrees to provide to Michigan retail customers 50% of the Michigan jurisdictional share of Rockport Unit 2 merchant revenues in excess of costs starting January 1, 2023. The credit, if any, will be filed in each PSCR reconciliation proceeding beginning with the 2023 PSCR reconciliation and will be based on the annual income statement associated with the Rockport Unit 2 merchant operations. The Company will separately track, through use of a separate business unit, costs and revenues for Rockport Unit 2 on an annual basis. A credit will be determined by positive net income and the most recently approved Michigan jurisdictional demand allocation factor (excluding Customer Choice). If annual net income is negative, or a loss, then no credit will apply. I&M will be permitted to recapture losses (i.e., charge customers) up to the amount of cumulative credits recognized. I&M is not permitted to recover from customers losses in excess of previously provided credits. This means that the credit(s) provided to Michigan retail customers will be determined on a cumulative basis over the term January 1, 2023, through the retirement date of Rockport Unit 2 and limited to the Michigan jurisdictional share of the cumulative positive net income associated with Rockport Unit 2's post-Lease merchant operations. Any asset impairments related to I&M's merchant share of Rockport Unit 2 as required by Generally Accepted Accounting Principles ("GAAP") will be included in I&M's post-lease Rockport Unit 2 merchant net income calculations, including if the impairment occurs before January 1, 2023. Only the calculation and accounting of the credit, if any, is subject to review in future PSCR cases.

ii. Part 7.a.i. in no way limits I&M's ongoing management of Rockport Unit 2, including but not limited to, dispatch decisions, plant operation and maintenance activities, capital investments, or retirement decisions. The parties agree not to challenge such management decisions in future PSCR cases. Any decision by I&M to retire Rockport Unit 2 prior to 2028 in no way impacts the recovery of the remaining NBV of Rockport Unit 2 at the end of the Lease.

b. Nothing in this Settlement Agreement precludes I&M from seeking recovery of reasonable and prudent costs of removal, including Asset Retirement Obligations, in a future proceeding. The parties agree not to take a position that Rockport Unit 2's post-Lease merchant operations precludes I&M's recovery of the cost of removal, including Asset Retirement Obligations. The parties reserve the right to challenge any incremental increases to cost of removal or ARO beyond costs approved in the Company's most recent depreciation case, Case No. U-20359.

c. Nothing in this Settlement Agreement prevents or limits I&M from considering all viable options to procure the gas peaking resources identified in the Preferred Portfolio in 2028, including options that would allow I&M to site such resources at its existing Rockport location to leverage the benefits associated with utilizing the existing land, interconnection infrastructure, transmission infrastructure, a qualified work force, and maintain a presence in the Rockport community. If pursued, I&M will utilize a competitive bidding process for engineering, procurement, and construction ("EPC") proposals and file with the MPSC a request for CON to allow for review of the project. Such a project also would be subject to approval by the IURC.

8. The parties agree the Company will include the following in its next IRP:

a. An analysis to present evidence whether it is more reasonable and prudent that the Cook plant retires at the end of its current units' license lives or seek relicensing;

b. An analysis to present evidence whether it is more reasonable and prudent to seek relicensing or retire hydro facilities whose licenses will expire within the first ten years evaluated in the IRP following I&M's next IRP; and

c. A Michigan retail rate impact analysis consistent with that provided by the Company in Case No. U-21189 and in addition will include annual incremental revenue requirement by class and cents per kWh impacts by class associated with the Company's Preferred Portfolio based on the class cost of service study from I&M's most recently completed rate case.

9. The parties agree that the Company's PURPA avoided cost review satisfied the requirements set forth in the Commission's orders in Case No. U-18092, the Settlement Agreement in Case No. U-20591, and all other applicable law.

a. The parties agree that the Company will update its proposed Tariff COGEN/SPP locational marginal price (LMP) forecast for 2022-2030 prior to filing the tariff with the Commission.

b. The parties agree that the Company will include the following language in its Tariff COGEN/SPP: "This option will only be open to customers for the PJM Planning

Years in which the Company has a capacity need. Consistent with I&M's 2021 IRP, this option is expected to be available through May 31, 2025, which represents the end of the 2024/2025 PJM Planning Year. A customer that elects this option, while available, would be eligible to receive the capacity payment for the life of the contract signed with the QF, regardless of the Company's future need for capacity."

i. The following values will be utilized in the capacity credit calculation:

1. 2022/2023 $5.48 kW/month
2. 2023/2024 $5.61 kW/month
3. 2024/2025 $5.74 kW/month

ii. The capacity credit calculation will be the lower of the following:

1. Monthly on-peak capacity, or
2. Current month on-peak metered average capacity, i.e., on-peak kWh delivered to the Company divided by 305, or
3. Lowest on-peak average capacity metered during the previous two months.

10. The Parties agree that the CVR program proposed in this case for the three years following the Commission's final order is approved as reasonable and prudent. The parties agree that the Company's reasonable and prudent costs for the CVR program should be pre-approved up to the following annual projected capital costs: $2.885 million in 2023 expected to achieve an incremental 1.98 MW; $3.5 million in 2024 expected to achieve an incremental 2.59 MW; and $3.185 million in 2025 expected to achieve an incremental 2.51 MW.

a. The Company agrees to adopt the following conditions and provide data satisfying each of the following in the next rate case:

i. The Company shall provide a clear comparison of the actual vs. projected Michigan CVR costs (using Class 4 and 5 estimates) in historic years and support the reasonableness of the forecasted spend. The comparison shall also clearly identify the Commission pre-approved spend, by year.

ii. The Company shall provide the results of the Guidehouse study, showing the distributed energy resource ("DER") impacts on CVR circuits, and include any additional projected cost per CVR circuit to accommodate DERs.

b. The capital costs associated with CVR will be reviewed and recovered in future rate case filings.

11. For purposes of I&M's next IRP filing in Michigan, I&M will provide up to three Aurora (or, throughout this paragraph, any successor modeling software) licenses necessary to replicate I&M's modeling process to any party to the next IRP proceeding. In addition, I&M will provide such licenses to the Staff and to the Attorney General. Each license will include access to training material and up to 20 hours of technical support from the model vendor if the vendor charges an extra fee for said support. Each license will be for a fully executable version of the model and will be valid from the start of I&M's stakeholder process until the conclusion of the hearings in the IRP proceeding. Within 15 business days after the next IRP filing, I&M will make all modeling files, including but not limited to (i) the Aurora capacity expansion files; (ii) the Aurora production cost modeling files; (iii) the Aurora stochastic modeling files; (iv) workpapers used to develop model inputs; and (v) workpapers used in processing model outputs, available to the parties to this settlement. I&M will provide an overview of how the information in these files was developed. I&M will not be responsible for ongoing training or supporting the persons provided the Aurora licenses. The cost of providing the licenses to the parties, Staff, and Attorney General will be allowed to be deferred for recovery in I&M's next base rate case.

12. The parties agree the Company will include the following treatment of Retail Open Access customer load and Alternative Electric Supplier ("AES") self-supplied capacity resources in its next IRP:

a. All Retail Open Access customer load will be included.

b. All self-supplied capacity commitments that have been made by AESs to the Company to meet the Company's PJM Fixed Resource Requirement (FRR) obligation will be included.

c. For each AES that has continually used capacity self-supply since the inception of that AES's use of capacity self-supply, the Company will assume the capacity self-supply commitments of that AES to the Company will be renewed or otherwise replaced by the AES upon their expiration through the conclusion of the planning period of the IRP.

d. Notwithstanding, the Company may perform one or more sensitivity cases in its IRP analysis examining some portion or all of Retail Open Access customers returning to standard (bundled) service (or, alternatively, returning to capacity purchases from the Company) upon the expiration of AES self-supply capacity commitments to the Company.

e. The Parties acknowledge that by agreeing to the above terms, I&M will not be planning to serve Retail Open Access customer load and therefore may not have sufficient resources to serve this load if it returns to I&M in the future for any reason. As a result, I&M may be required to obtain, and incur costs, associated with incremental resources to specifically serve Retail Open Access customer load in the future. In recognition of this, the Parties agree it is reasonable for the Company to establish tariff provisions in an ex parte proceeding for Open Access Distribution Service that will allow for the following:

    i. I&M to directly bill a customer(s) who returns to the Company's Standard Service for the incremental cost of capacity (in dollars) acquired to serve that customer(s), if such cost is higher than the revenue collected from the customer (in dollars) under the Company's power supply capacity charges for the period the capacity was required.

    ii. If the customer(s) do not pay the incremental cost of capacity, in full or in part, I&M may seek recovery of the unpaid capacity expense in a subsequent PSCR reconciliation filing.

    iii. Such provisions will apply from the time the customer returns to Standard Service until the completion of three full PJM Planning Years.

13. The parties agree that the Company will donate $100,000 in 2023 to fund the Southwest Michigan Community Action Association to provide bill assistance to the Company's low-income electric customers. The Company will also donate $50,000 to the Southwest Michigan Community Action Association in each of 2024 and 2025 for this same purpose, which coincides with the estimated period of time between the Company's current IRP and next IRP. The donations described in this section will not be recovered in rates.

14. This settlement is entered into for the sole and express purpose of reaching a compromise among the parties. All offers of settlement and discussions relating to this settlement are, and shall be considered, privileged under MRE 408. If the Commission approves this Settlement Agreement without modification, neither the parties to this Settlement Agreement nor the Commission shall make any reference to, or use, this Settlement Agreement or the order approving it, as a reason, authority, rationale, or example for taking any action or position or making any subsequent decision in any other case or proceeding; provided, however, such references may be made to enforce or implement the provisions of this Settlement Agreement and the order approving it.

15. This Settlement Agreement is based on the facts and circumstances of this IRP proceeding and is intended for the final disposition of Case No. U-21189. So long as the Commission approves this Settlement Agreement without any modification, the parties agree not to appeal, challenge, or otherwise contest the Commission order approving this Settlement Agreement. Except as otherwise set forth herein, the parties agree and understand that this Settlement Agreement does not limit any party's right to take new and/or different positions on similar issues in other administrative proceedings, or appeals related thereto.

16. This Settlement Agreement is not severable. Each provision of the Settlement Agreement is dependent upon all other provisions of this Settlement Agreement. Failure to comply with any provision of this Settlement Agreement constitutes failure to comply with the entire Settlement Agreement. If the Commission rejects or modifies this Settlement Agreement or any provision of the Settlement Agreement, this Settlement Agreement shall be deemed to be withdrawn, shall not constitute any part of the record in this proceeding or be used for any other purpose, and shall be without prejudice to the pre-negotiation position of the Parties.

17. The parties agree that approval of this Settlement Agreement by the Commission would be reasonable and in the public interest.

18. The parties agree to waive Section 81 of the Administrative Procedures Act of 1969, MCL 24.281, as it applies to the issues resolved in this Settlement Agreement, if the Commission approves this Settlement Agreement without modification.

MICHIGAN PUBLIC SERVICE COMMISSION STAFF

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Date: 11/14/2022

INDIANA MICHIGAN POWER COMPANY

Richard Aaron

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ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY (ABATE)

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The following parties do not wish to be signatories to this Settlement Agreement; however they have agreed to sign below to indicate non-objection to the Settlement Agreement.

ENERGY MICHIGAN

Date: 11-14-2022

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P R O O F   O F   S E R V I C E

STATE OF MICHIGAN)

Case No. U-21189

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on February 2, 2023 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 J. Brown

Brianna Brown

Subscribed and sworn to before me
this 2nd day of February 2023.

Angela P. Sanderson

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

Service List for Case: **U-21189**

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