

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)	
regarding the regulatory reviews, revisions,)	
determinations, and/or approvals necessary for)	Case No. U-20879
UPPER PENINSULA POWER COMPANY to fully)	
comply with Public Act 295 of 2008, as amended by)	
Public Act 342 of 2016.)	
_____)	

At the February 23, 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

I. PROCEDURAL HISTORY

On June 29, 2021, in compliance with Public Act 295 of 2008 (Act 295), as amended by Public Act 342 of 2016 (Act 342), Upper Peninsula Power Company (UPPCo) filed an application, with supporting testimony and exhibits, seeking approval of its energy waste reduction (EWR) plan and related surcharges for the 24-month period ending December 31, 2023.

A prehearing conference was held on August 11, 2021, before Administrative Law Judge Sharon L. Feldman (ALJ). At the prehearing conference, the ALJ granted intervenor status to the Citizens Utility Board of Michigan (CUB), Verso Corporation (Verso), and the Natural Resources Defense Council and acknowledged the notice of intervention filed by the Michigan Department

of Attorney General (Attorney General). The Commission Staff (Staff) and UPPCo also participated in the proceeding.

An evidentiary hearing was held before the ALJ on January 12, 2022. The ALJ issued a Proposal for Decision on May 26, 2022 (PFD). Exceptions were filed by the Staff and UPPCo on June 14, 2022, and replies to exceptions were filed by Verso and jointly by the Attorney General and CUB on June 28, 2022. Additionally, the Commission notes that public comments were also filed in the docket.

On September 8, 2022, the Commission issued an order in this case (September 8 order), which reopened the record pursuant to Mich Admin Code, R 792.10436 (Rule 436). In the September 8 order the Commission: (1) adopted UPPCo's proposed savings target, total proposed spend, and proposed financial incentive (September 8 order, p. 2); (2) found that UPPCo's proposed EWR plan is cost-effective and consistent with the company's approved integrated resource plan (*id.*, p. 9); (3) concluded "that there is no inherent inequity in the utilization of an energy-based allocator" (*id.*, pp. 11-12); (4) adopted the 42% allocation of evaluation and administration costs for low-income programming (*id.*, p. 13); (5) found that Verso did not support its proposal to combine all commercial and industrial (C&I) customers for purposes of calculating the EWR surcharge (*id.*, p. 14); (6) recommended "that an evaluation of on-bill repayment and/or financing options be included in UPPCo's next EWR plan case" and directed the Staff to "work with UPPCo to continue evaluating on-bill repayment and/or financing options to be considered in the future" (*id.*, p. 16); and (7) approved the financial incentive mechanism as proposed by UPPCo (*id.*, p. 18-19). As described in the order, the Commission also reopened the record to allow the parties to file additional testimony and evidence pertaining to the issues surrounding the real time

market pricing (RTMP) rate class and to address any alternative proposals for cost allocation. The Commission stated that no additional briefing would be permitted. September 8 order, p. 21.

On October 7, 2022, Verso filed a petition for rehearing pursuant to Mich Admin Code, R 792.10437 (Rule 437).¹ In its petition for rehearing, Verso sought permission to file additional briefing. On October 28, 2022, UPPCo and the Staff filed responses to the petition for rehearing.

On December 9, 2022, the Commission issued an order granting Verso’s request for briefing on the reopened record. Thereafter, UPPCo, Verso, and the Staff filed timely initial briefs on the reopened record, and on January 13, 2023, UPPCo, Verso, and the Staff filed reply briefs.

II. EVIDENTIARY RECORD

The parties filed timely testimony and rebuttal testimony on the reopened record. The reopened record consists of 96 pages of transcript and 12 exhibits. Unless otherwise noted, all citations to briefing in this order refer to the briefing in the reopened record portion of this case and not the underlying record.

A. Direct Testimony

1. Upper Peninsula Power Company

UPPCo presents the testimony of Andrew McNeally, its Energy Efficiency Program Administrator. Mr. McNeally indicates that his testimony is focused on the 2023 plan year, noting that given the timing of the reopened record, UPPCo “is of the opinion that its EWR revenues for 2022, as collected pursuant to the then-approved surcharges, will be reconciled with its 2022 EWR

¹ In the petition for rehearing, Verso noted that it “has undergone a name change associated with a change in corporate ownership since the opening of this proceeding, resulting in Verso Corporation becoming Billerud Americas Corporation.” Petition for rehearing, p. 1, n. 1. However, Verso indicated that, for the remainder of this proceeding, it would continue to use “Verso” for clarity’s sake. The Commission will also continue to utilize “Verso” for consistency.

plan costs.” 3 Tr 164. In that regard, Mr. McNeally notes that Verso has elected to self-direct its EWR program for the 2023 plan year and will not be taking advantage of UPPCo’s EWR programming for the 2023 plan year. 3 Tr 164 (citing MCL 460.1093(7)). Thus, several of his exhibits are updated versions of the exhibits he originally filed.

Citing Exhibit A-15, Mr. McNeally indicates that it resembles Exhibit A-2 but separates the low-income first year energy savings, lifetime savings, and costs into separate categories. He further states that:

[t]he Low Income plan category includes 100% of the Income Qualified/Low Income savings and costs as presented in the initial filing: (i) 75% of the Multi-family Direct Install savings and costs; and (ii) 42% of the Residential Evaluation and Administration costs as presented in the initial filing and approved by the Commission in the September 8th Order. The total costs proposed [for] 2023 remain the same as the Company’s initial filing as plan cost were not contested and not the subject of this reopened proceeding as directed by the Commission in its September 8th Order.

3 Tr 165-166. Similarly, Mr. McNeally avers that Exhibit A-16, which is similar to Exhibit A-8, reflects only 2023 plan year costs and contains the addition of a column for low-income costs with the same revenue requirement as the initial filing. He states that Exhibit A-17, similar to Exhibit A-9:

shows the calculation of the incremental energy savings based on the average number of megawatt hours [MWh] of electricity sold during the previous 3 years. The changes in the reopened version versus the Company’s initial filing is the reduction of UPPCO’s energy savings target (column (g)) by 1,363 MWh due to the RTMP Rate Class (Line 19) contribution being reduced from 1.75% of the 3-year average sales (3,180 MWh) to 1.0% of the 3-year average sale (1,817 MWh) for 2023. As I have said, the RTMP Rate Class’s only customer, [Verso], [h]as elected to self-direct its energy waste reduction program for 2023. The 1.0% statutory savings goal remains the same as the Company’s initial filing.

3 Tr 166-167.

With respect to Exhibit A-18, Mr. McNeally notes that, as compared to Exhibit A-10, the allocation factors utilized are based upon rate class revenue rather than rate class usage. More

specifically, he states that Exhibit A-18 reflects UPPCo's decision to not pursue energy-based allocation for the 2023 plan year, similar to the company's alternative proposal mentioned in exceptions. 3 Tr 167. Mr. McNeally explains that Exhibit A-19 shows the basis for calculating the 2023 EWR plan surcharges updated from Exhibit A-11 to add column (d), which allocates the low-income cost category from Exhibit A-16 to each of the rate classes.

Mr. McNeally indicates that Exhibit A-20 resembles Exhibit A-12 and "shows the proposed surcharges needed to collect sufficient revenues to recover the costs for the Company to deliver its EWR Plan for 2023 with, as required by law, volumetric rates for residential customers and per-meter charges for all other metered customers." 3 Tr 168. He notes that the revisions include updated base charges approved in Case No. U-21209 and that the total proposed revenue requirement remains unchanged. He further states that Exhibit A-21 resembles Exhibit A-13, which shows the self-directed surcharges with the change being self-directed surcharge values appearing in column (d). Mr. McNeally states that Exhibit A-22 is the proposed tariff sheet. He indicates that Exhibits A-23 and A-24 are new, with Exhibit A-23 showing the rate class revenues which are the basis for allocation factors in Exhibit A-18. Mr. McNealy states that Exhibit A-24 "shows the comparison of the proposed EWR Plan costs for 2023 to the 3-year average revenues in dollars, and the proposed EWR Plan energy savings for 2023 to the 3-year average usage in megawatt hours." 3 Tr 169.

Mr. McNeally testifies that the Commission properly found that the RTMP tariff provides that a customer:

purchases energy at a rate that is based on the applicable Locational Marginal Price ("LMP") plus applicable Midcontinent [Independent] System Operator[, Inc.] ("MISO") charges and credits. Furthermore, the RTMP tariff specifies that the customer shall be charged for transmission costs that are billed to the Company by the American Transmission Company ("ATC") and MISO, based upon the customer's contribution to these billing determinants used by ATC and MISO to

invoice the Company for its total network transmission service. As a result of the relevant RTMP tariff language, the Company's regulated generation and distribution assets are not utilized to provide service to the RTMP customer.

3 Tr 170-171. Further, he acknowledges that EWR savings by the RTMP customer do not decrease the company's cost of service (COS). However, Mr. McNeally indicates that UPPCo's costs to serve the RTMP rate class "are borne by the Company and subsequently billed to the RTMP customer in accordance with the tariff." 3 Tr 171. He therefore contends that "the benefit that is ultimately realized by the RTMP customer as a result of EWR activity is in the form of decreased costs that are promptly realized by the same customer due to the decreased amount of energy purchased by the customer at [the] prevailing LMP." 3 Tr 171.

Responding to the Commission's inquiry regarding Exhibits A-2 and A-9, Mr. McNeally states that:

[a]s a result of the allocation changes brought forth in the record to date, the RTMP class would be allocated 8.7% of total EWR plan costs and be eligible to participate in 25.3% of total EWR incentive payments. With the RTMP class election to self-direct, the RTMP class is allocated 1.3% of the total EWR plan costs and is not eligible to participate in EWR incentive programs, while representing 23% of MWh usage and 6.8% of revenues based on a 3-year average.

3 Tr 171-172. He further reiterates the company's position that it would be inequitable to set forth surcharges that do not recoup the equivalent amount of Evaluation and Administration costs to a given customer class, as otherwise would result in subsidization by the other classes. Next, Mr. McNeally states that, to save time and avoid additional controversy regarding the usage of an energy-based allocator, the company has proposed on the reopened record to utilize a revenue-based allocation and will address the Commission's request in a future proceeding.

With respect to the Commission's request for additional evaluation of the allocation of the multi-family program and education and pilot expenses, Mr. McNeally responds that the inclusion of 75% of the residential multi-family direct install expense was based upon experience including

“active participation in the Michigan Public Service Commission EWR Low-Income Workgroup and the Michigan Energy Assistance Program Workgroup meetings and presentations since 2018.”

3 Tr 173. He further explains that UPPCO does not collect income information from customers and the allocation is based upon estimation. Citing other utilities, he avers that the company’s allocation “is reasonable and consistent with the practices of other utilities.” 3 Tr 174. In addition, Mr. McNeally notes that the company has conceded that education and pilot program expenses will not be allocated to the low-income programming expenses for purposes of this proceeding.

Responding to the Commission’s direction regarding providing allocation of low-income program costs, Mr. McNeally states that:

[l]ow-income programs within UPPCO’s EWR plan are allocated to each rate class based upon the three-year average rate class revenues as reported in UPPCO’s annual P-521 Reports as presented in Reopened Exhibit A-23 (AHM-17). As noted in Reopened Exhibit A-18 (AHM-12) and Reopened Exhibit A-19 (AHM-13), this allocation forms the basis by which UPPCO is allocating the EWR program costs to each rate class. Since the allocation of EWR program costs to each rate class is paramount to the surcharges that are derived in Reopened Exhibit A-20 (AHM-14) and Reopened Exhibit A-21 (AHM-15), then this allocation is a direct proxy and proportionate to each rate class[’] funding of EWR programs, as required by Section 89(4). As such, UPPCO states that its method to allocate low-income costs to each rate class for the purposes of calculating participating customer and self-directed customer surcharges is appropriate and in accordance with statute.

3 Tr 175. He reiterates that Exhibit A-15 reflects that the company has not included any education and pilot program costs as part of low-income program expenses and, as reflected on Exhibit A-21, the costs associated with education and pilot programs are not reflected in the calculation of the self-directed customer surcharges.

Mr. McNeally indicates that the company uses the terms “low-income” and “income qualified” interchangeably with respect to the EWR plan and that low-income programming is available to “[r]esidential customers whose income is estimated to be below 200% of poverty

level.” 3 Tr 176 (quoting Exhibit A-6). He states that this definition has not been modified during this proceeding and “that approximately 42% of the Company’s residential customers may qualify as low-income / income qualified customers” which “was used to calculate the separation of Residential Evaluation and Administrative costs to Low Income plan category.” 3 Tr 176.

In conclusion, Mr. McNeally summarizes that UPPCo’s case “in this reopened phase addresses only the 2023 EWR Plan year savings and budgets, which have not changed in quantity, 13,494 MWh of first year savings, 154,712 MWh of lifetime savings and \$4,087,135 budget” and that the significant change is the company’s allocation which is now “based on 3-year average revenues by segment and rate class.” 3 Tr 177.

2. Verso Corporation

Steven Brooks

Verso first presents the testimony of Steven Brooks, the Business Analysis & Energy Director for Billerud Americas Corporation (formerly Verso). Mr. Brooks notes that, since the close of the underlying record, Verso “has elected to self-direct the EWR program for its RTMP account, rather than to continue to participate in the UPPCO program.” 3 Tr 194. He indicates that the decision to self-direct was driven in large part by the high costs proposed by UPPCo with respect to the RTMP rate class, noting that “the risk appeared great that the costs of the program could outstrip the potential benefits by such a vast margin that participation would not be a prudent thing to do.” 3 Tr 195. However, he states that Verso would prefer to participate in the utility’s EWR programming like it does for its Quinnesec facility under Upper Michigan Energy Resources Corporation’s (UMERC’s) EWR plan. Mr. Brooks explains that:

For 2023, EWR rates for our Quinnesec facility are \$23.54959/day/meter to participate and \$2.38131/day/meter for self-direct compared to the following rates that UPPCO proposed for our Escanaba facility in their Reopened Testimony: \$1,036.9091/day/meter to participate and \$140.944/day/meter for self-direct. As

you can see, the programs are not comparable at all in their costs, and the potential benefits that [Verso] might derive from participation in the UPPCO program continue to be out of all proportion to the costs.

3 Tr 196. Mr. Brooks avers that Verso would receive the same benefit through self-directing its EWR that it would through participation in UPPCo's EWR programming, but for a much lower cost. He also acknowledges that participation in the company's EWR programming would entitle Verso to participate in the incentive program. *See*, 3 Tr 197.

Mr. Brooks notes that the company's modified allocation method on the reopened record is "a welcome change" but argues that it still results in very high self-direct surcharges. 3 Tr 198. He states that Verso receives no benefit from the EWR program when electing to self-direct and still must incur the full costs necessary to meet its energy reduction targets. Mr. Brooks states that he understands the need to socialize some costs but argues that UPPCo's proposed surcharges ask Verso to subsidize the utility's EWR programs "greatly in excess of the utility's cost to provide EWR program services to [Verso] (the sole member of that rate class), or to any benefits that [Verso] may reasonably receive." 3 Tr 198.

In conclusion, Mr. Brooks requests that the Commission ensure "rates are fair and that they do not result in [Verso] providing an unreasonable subsidy to UPPCO's EWR program costs contrary to the statutory requirements and cost-of-service principals [sic]" 3 Tr 198-199.

Jessica A. York

Verso next provided the testimony of Jessica A. York, a consultant with Brubaker & Associates, Inc. Ms. York reiterates that Verso would prefer to participate in UPPCo's EWR programming "if participation was not cost prohibitive" and that Verso may choose to participate again in the future "if the EWR surcharge rates accurately reflect UPPCo's cost of providing EWR programs to each business customer class." 3 Tr 203.

Responding to UPPCo's revised allocation utilizing the three-year average of rate class revenues, Ms. York claims the "proposed allocation produces an enormous and non-cost justified increase to the EWR surcharge to the RTMP rate Class." 3 Tr 205. She compares the 2020-2021 plan surcharges to the proposed 2023 surcharges to indicate that the RTMP rate class would have an increase of 270% and the self-direct customer would have an increase of 71.3%. 3 Tr 205-206. Ms. York avers that, while the revised allocation results in a smaller increase, Verso "still finds the rate to be excessive, and not reflective of UPPCo's underlying costs of providing EWR programs to the RTMP class." 3 Tr 206. In addition, Ms. York indicates that under UPPCo's proposed surcharges, the RTMP class would face the largest increase of any class whether Verso participates in UPPCo's program or self-directs. 3 Tr 207.

Ms. York notes her disagreement with UPPCo's allocation and argues "within the C&I, or business class, it would be most appropriate to allocate these costs using a weighted customer allocation factor" and that Verso is "not eligible to participate in the Small Business Direct Install program, and therefore should not receive an allocation of any costs associated with that program." 3 Tr 208. She explains that:

[a] standard customer allocation uses the number of customers, or meters in each class to allocate customer-related costs across classes. A weighted approach takes into account the fact that average customer costs (per customer) vary across rate classes. The weighted customer approach produces slightly greater allocation factors for classes with few customers relative to a non-weighted customer approach. Using this allocation method for EWR costs within the C&I class produces a more logical result than UPPCo's proposed revenue allocator, in terms of aligning the allocation of program costs to the classes that can participate in the programs and who will benefit from those programs, as will be discussed in greater detail throughout this testimony.

3 Tr 208-209.

Ms. York summarizes UPPCo's business EWR programs and contends that:

while all business customers are eligible to participate in the Business Prescriptive program, this program is primarily intended for small to medium commercial customers with demands less than 200 kW [kilowatts]. These customers take service under UPPCo's lighting, C-1, H-1, and P-1 rate schedules. Therefore, all C&I classes should receive an allocation of the cost of this program, but the vast majority of the costs should be recovered from the customers taking service under the lighting, C-1, H-1, and P-1 rate schedules.

Similarly, all business customers are eligible to participate in the Business Custom program, but the program is primarily intended for C&I customers using unique processes or equipment that are not covered by the Business Prescriptive program.

3 Tr 211. Moreover, she reiterates that Verso is not eligible to participate in the Small Business Direct Install program, and, therefore, costs for this program should not be allocated to the RTMP rate class. *See*, 3 Tr 211.

With respect to benefits, Ms. York indicates that the RTMP rate class would not receive the general benefit of a reduction in COS through EWR programs. She does, however, acknowledge that the RTMP rate class would receive the benefit of reduced energy costs corresponding with any reduction in energy consumption and that Verso would be eligible to participate in incentive programs if it participated in UPPCo's EWR programs. 3 Tr 213.

Ms. York avers that rates are required to be set based on COS and that the law requires that, "to the extent feasible, that charges collected from a particular customer rate class are spent on EWR programs that will benefit that rate class." 3 Tr 213 (citing MCL 460.1071(4)(d)). She further contends that the allocation method proposed by UPPCo would not meet these statutory requirements. Ms. York reiterates her proposed weighted allocation method as reflected in Revised Exhibit BIL-1 and summarizes her recommendations as follows:

I recommend that the Business EWR spend be allocated across the C&I customer classes using a weighted customer allocator. This method better aligns the costs of the three Business EWR programs with the customer classes that comprise the target market of each program, and better ensures that the charges collected from each class will be spent on programs that benefit that class. The weighted customer allocator still allocates a portion of the business EWR cost to the larger industrial

classes, including RTMP, to recognize their eligibility to participate in the programs. However, the RTMP class receives a much smaller allocation of costs, which is appropriate given it is eligible to participate, but does not benefit from the EWR programs in the form of reducing UPPCo's future cost of providing service to this class.

3 Tr 216.

3. Commission Staff

The Staff presents the testimony of Karen Gould, the manager of the Energy Waste Reduction Section within the Commission's Energy Resources Division. Ms. Gould sets forth the position that, given Verso's election to self-direct for plan year 2023, many of the issues raised regarding the RTMP rate class are now moot. Ms. Gould contends that the company's focus on the 2023 plan year only in its reopened testimony is reasonable and prudent due to the timing of the reopened record.

With respect to the use of an energy-based allocation, the Ms. Gould contends that it can be reasonable and prudent and that "[e]ach utility provider should establish rates based on the method that is appropriate and most fair to *all* customers and does not allow for subsidization by any rate class." 3 Tr 227 (emphasis in original). She reiterates the ALJ's and Commission's finding that there is no inherent inequality in the application of an energy-based allocator and opines that both methods may be valid for planning purposes.

Ms. Gould testifies that she agrees with UPPCo's allocation of 75% of residential family direct install programming as low-income because it is "reasonable and consistent with the practices of other utilities" and "has also been proven through the Company's commitment to low-income programs for both residential and multi-family programs that the Company takes these programs very seriously." 3 Tr 227. Ms. Gould further states her agreement with the company that its method to allocate costs is consistent with the statutory provisions and that UPPCo is

appropriately defining low-income and income-qualified with respect to the administration of its EWR provisions. She notes the Staff's support for a utility to have the "ability to recognize its customer base and the need that is within its service territory for these invaluable programs."

3 Tr 229. Further, she indicates that the Upper Peninsula is a challenging service area and that UPPCo has proven its ability to serve its customers by overcoming the challenges and providing best-in-class EWR programming.

B. Rebuttal Testimony

1. Upper Peninsula Power Company

UPPCo again provided the testimony of Mr. McNeally in response to the direct testimony on behalf of Verso. Mr. McNeally testifies that on July 15, 2022, Verso chose to self-direct its account with respect to the 2023 EWR plan period. Given this election, he avers that under MCL 460.1093(8), Verso is no longer eligible to participate in the company's EWR programming and that UPPCo will seek to recover the RTMP-self direct surcharge of \$4,287.06 per month for the 2023 calendar year. Mr. McNeally testifies that Verso's claims regarding the RTMP EWR surcharge being excessive and not reflective of the cost of providing EWR programming are "in effect pointless" because the decision to self-direct means that Verso will not be paying the RTMP customer class surcharge. 3 Tr 180. Moreover, he states that Verso's RTMP rate class customer account will not be eligible to participate in UPPCo's EWR programming until January 1, 2025, based upon its July 15, 2022 self-direct election form. Further, he explains that the surcharges for 2024-2025 have not yet been established as the company plans to file its EWR plan for that period on or before July 1, 2023, which will include proposed surcharges.

Mr. McNeally notes his disagreement with Verso's claims that UPPCo's EWR plan does not ensure, to the extent feasible, that charges collected from a particular customer rate class are spent

on programming to benefit that class under MCL 460.1071(4)(d). He argues that this issue is not relevant to the reopened record regarding the RTMP rate class because Verso is the only customer in that rate class, and, because of the decision to self-direct, Verso is no longer eligible to participate in UPPCo's 2023 EWR programs. Mr. McNeally states that the "self-direct surcharge is not based on specific program costs but as addressed in my reopened direct testimony, it is solely based on allocated low-income costs." 3 Tr 181. In addition, he indicates that for the remaining rate classes, the company "believes that its proposed charges reflect EWR program costs that benefit the customers" and that its proposed allocation based on three-year average revenues is consistent with UPPCo's previously approved EWR plans. 3 Tr 181. Responding to Verso's claim that the proposed three-year average revenue allocation does not reflect cost causation, Mr. McNeally states that the self-directed rates cannot be COS based because EWR programming is not available to self-directed customers.

With respect to Verso's weighted customer allocation method, Mr. McNeally contends that the:

method introduces multiple weighting factors including cost of service by rate class and number of meters per rate class with no support that the cost of service or the number of customers or meters has any correlation to EWR focused concerns such as the energy consumed, amount of energy savings available, or customer willingness to participate by rate class in EWR programs. Further, the use of the number of meters per class as an allocator . . . will always mean that industrial and large commercial customers will be assigned less cost (because they typically have fewer meters) and residential more cost (because as a class there are more meters), and is inherently unfair as it completely disregards the size and economic viability of the customer.

3 Tr 183. Further, he argues that Verso's proposed allocation would result in the RTMP rate class having a lower surcharge than the WP-3 industrial rate class. He argues that this is unreasonable given the RTMP rate class represents 23% of UPPCo's average annual energy consumption and 7% of total revenue in comparison to the WP-3 rate class which represents only 6% of the annual

average energy consumption and 2.5% of total revenues. 3 Tr 184. Mr. McNeally contends that comparing UPPCo's 2020-2021 EWR surcharges to the proposed 2023 surcharges is not a reasonable comparison because "[t]he 2023 surcharges represent EWR programs that target higher energy savings, increased low-income spend, and expanded multi-family, prescriptive and custom business programs while adding residential new construction and small business direct install programs." 3 Tr 184. Mr. McNeally also states that Verso's proposal shifts "over \$300,000 of low-income program costs to residential customers, the same vulnerable individuals that the EWR statute is focused on helping by socializing low income program costs." 3 Tr 184-185. Therefore, Mr. McNeally avers that Verso's proposal is a "cherry-picking approach" which results in an improper shift of low-income program costs to the residential customer class. 3 Tr 185.

In response to criticism regarding the allocation of small business, business prescriptive, and business custom costs, Mr. McNeally states that the use of the number of customers or meters for allocation purposes is not appropriate as it "has no correlation to energy consumed, amount of energy savings available, or customer willingness to participate by rate class in EWR programs." 3 Tr 186. Further, he contends that it is not a fair representation that rate classes that only represent 27% of the C&I customer energy consumption should contribute 99% of the costs. Mr. McNeally also responds that he is surprised by the contention that the RTMP rate class receives no benefits from the EWR programs. He specifically points to the surcharges paid and incentives received by Verso from 2013 to 2021, which demonstrate "a total cumulative benefit of \$295,562 exceeding the surcharges paid." 3 Tr 187.

Mr. McNeally responds to Verso's comparison of UPPCo's proposed RTMP rate class surcharges to UMERCo's EWR surcharges for Verso's Quinnesec facility, stating that Verso "offers no evidence that the EWR programs and costs offered in Upper Michigan Energy

Resources Corporation's service territory are identical to UPPCO's programs and costs, including costs associated with low income [customers]." 3 Tr 188. Further, Mr. McNeally states that it is an "apples-to-oranges" comparison to compare the proposed RTMP rate class surcharge and the proposed self-directed surcharge. Regarding claims that Verso would receive no benefit from the self-direct surcharge, he explains that the surcharge "is the product of legislative directive (specifically, MCL 460.1089(4)), to reflect costs attributable to low income [programs], and such self-direct rate does not reflect [Verso's] participation in UPPCO's EWR programs, as [Verso] is ineligible to participate in the programs." 3 Tr 189. Mr. McNeally contends that any subsidization that would arise from the RTMP self-direct surcharge is regarding low-income programming, as provided for by statute. He states that UPPCo's EWR plan does comply with MCL 460.1073(e), as the company "has demonstrated that all its customers have the ability to participate in at least one or more EWR programs offered by the Company (Exhibit A-1)." 3 Tr 190.

2. Commission Staff

In rebuttal, the Staff provides the testimony of Katie Smith in response to Verso's direct testimony. Ms. Smith is an Economic Specialist in the EWR Section of the Commission's Energy Resources Division, and she responds to Mr. Brooks' testimony comparing UPPCo's proposed rates for Verso's Escanaba facility to UMEREC's rates for Verso's Quinnesec facility. She contends that Mr. Brooks' testimony does not provide information regarding the size of EWR programs, the amount of energy provided to the Quinnesec facility, or the incentives or programs offered to customers in UMEREC's service territory. Therefore, Ms. Smith opines that "[n]o direct comparison can be made and, therefore, the Commission should not use this example as an appropriate comparison." 3 Tr 232.

In addition, she responds that Mr. Brooks does not identify the programs Verso would have access to and participate in, and, therefore, Verso cannot reasonably ascertain that it would not receive benefits from UPPCo's EWR programming. Therefore, Ms. Smith recommends that the Commission refrain from making a finding that Verso would not receive benefits from the company's EWR programming.

III. INITIAL BRIEFS

A. Upper Peninsula Power Company

In its initial brief, UPPCo contends that the Commission reopened the record to receive additional evidence relating to the benefits conferred upon the RTMP class and whether the benefits justify the company's proposed surcharge; however, UPPCo claims that because Verso "has elected to self-direct for 2023, a determination of whether 'the *benefits* to the RTMP class are substantial enough to justify the proposed surcharge' is no longer relevant to the outcome of this case." UPPCo's initial brief, pp. 3-4 (emphasis in original). UPPCo argues that Verso is no longer eligible to participate in or receive benefits from the company's EWR programming for the 2023 plan year, therefore rendering the statutory language of MCL 460.1071(4) once relied upon by Verso nugatory.

With respect to the self-direct surcharge, UPPCo indicates that it is proposing a \$4,287.06 per month per meter surcharge which it claims "reflects allocated EWR low-income costs, and the allocation of the low-income costs is based on three-year average rate class revenues" UPPCo's initial brief, p. 4 (citing 3 Tr 174-175). UPPCo contends that its allocation proposal on the reopened record is based on the three-year average rate class revenues, allows for recovery of the 2023 EWR plan year costs for all rate classes, is consistent with previously approved allocation

methods, and was the method originally supported by Verso as a reasonable methodology. UPPCo's initial brief, pp. 3-4 (citing 2 Tr 133-134).

UPPCo again notes that Verso's decision to self-direct has changed the circumstances of this proceeding and that the company's revenue-based allocation as presented on the reopened record is supported and complies with the Commission's order and previous approvals. Given the timing of the case, UPPCo "reiterates that with each passing month its ability to recover the EWR plan cost for 2023 in real-time and avoid applying interest to year-end balances to be recovered from customers diminishes." UPPCo's initial brief, p. 5. Thus, UPPCo requests that the Commission approve its EWR plan and surcharges as reflected in Exhibit A-22, as soon as possible.

B. Commission Staff

In its brief, the Staff summarizes the reopened record, reiterating the position that "many of the issues surrounding the RTMP EWR surcharges are no longer applicable in the reopened record." Staff's initial brief, p. 5 (citing 3 Tr 180, 226-227). The Staff also contends that Verso did not submit enough evidence to make an adequate comparison between UPPCo's EWR program and surcharges and UMERCo's EWR program and surcharges.

With respect to cost allocation, the Staff maintains that either the revenue-based allocation or the energy-based allocation can be reasonable and prudent allocation methodologies. The Staff highlights Verso's objections to the proposed revenue-based allocation and the company's position that Verso's allocation method would result in excessively low surcharges which improperly shift low-income program costs to the residential rate class. Similarly, regarding the multi-family program expenses, the Staff notes that UPPCo supported the 75% allocation based on the company's experience and that the allocation is within the range of other utility allocators. The Staff states that the company removed education and pilot expenses from its low-income

allocation for this proceeding. The Staff also addresses the self-directed customer rates, again noting that the company removed the education and pilot expenses and allocated the low-income costs according to MCL 460.1093. *See*, Staff’s initial brief, pp. 6-8.

In sum, the “Staff supports the adoption of the Plan, as revised by the Company’s proposal in the reopened record.” *Id.*, p. 9.

C. Verso Corporation

After a summary of the proceeding, Verso first addresses its decision to self-direct the EWR program for the RTMP account. Verso argues that the decision to self-direct was based in large part on the uncertainty surrounding the surcharges associated with the RTMP rate class. Verso again notes that the company’s revised allocation on the reopened record is an improvement over the original plan filed but argues that it still does not meet the requirement of MCL 460.1071(4)(d) and that Verso would prefer to participate in UPPCo’s EWR programming if economically prudent in the future. *See*, Verso’s initial brief, pp. 3-4.

Verso reiterates that the costs under UPPCo’s proposed EWR plan are significantly greater than those for Verso’s facility in UMEREC’s service area. Verso continues to argue that the RTMP rate class does not receive sufficient benefits from UPPCo’s EWR programming to justify the surcharge and that “UPPCO has repeatedly failed to provide evidence of such benefits in these original and reopened proceedings.” *Id.*, p. 5. Responding to the Staff, Verso claims that it was unnecessary and redundant to provide evidence in this record regarding the size, programs, and incentives of each company’s EWR plans given they are already available to the Commission.

Further, Verso states that:

[d]ata on programs available for each customer class is, of course, irrelevant for the purpose of determining UPPCO’s compliance with the statutory requirement that the Commission “ensure, to the extent feasible, that charges collected from a

particular customer rate class are spent on energy waste reduction programs that benefit that rate class,” when the dispute is over only the RTMP rate class.

Id., p. 6 (quoting MCL 460.1071). Verso states that it has not made the claim that there are no benefits available to it and that the Staff and UPPCo do not directly address Verso’s concern that the proposed surcharge is disproportionate to the benefits to the RTMP rate class. *See, id.*, p. 7.

Verso alleges that on the reopened record UPPCo failed to “provide any detail as to why or how its proposed revenue allocator aligns the program costs and benefits, or otherwise reflects cost causation.” *Id.*, p. 8. Verso further claims that analysis of the RTMP surcharge is not moot because Verso “would prefer to participate in the program and will do so in the future if the program costs are not unaffordable to the RTMP class.” *Id.*, p. 9. Verso argues that cost causation principles are applicable to EWR proceedings, contrary to the company’s claims which “only points to a statutory basis for allocating low-income costs differently from cost causation principles, not EWR program costs generally.” *Id.*

With respect to the RTMP self-direct rate, Verso alleges that the increase over the 2020-2021 EWR plan surcharge is unreasonable given that Verso “would receive no benefit from the program and would impose no costs on the program.” *Id.*, p. 10 (citing 3 Tr 198). In sum, Verso contends that UPPCo has failed “to show by the preponderance of the evidence that its proposed EWR cost allocation satisfies the standards contained in MCL 460.1071, 460.1073, and 460.1089 and that it is otherwise reasonable and prudent” and that Verso’s allocation should instead be adopted. Verso’s initial brief, p. 11.

IV. REPLY BRIEFS

A. Upper Peninsula Power Company

In reply to Verso, UPPCo reiterates that, for the 2023 plan year at issue in this proceeding, Verso, the sole member of the RTMP rate class, cannot participate in the company's EWR programming, and, as such, the issue regarding whether charges collected from that class would be spent on programs to benefit the class is no longer relevant. Further, UPPCo contends that any preference to participate in UPPCo's EWR programs in the future is for a later EWR plan proceeding and, again, is not relevant in this matter.

Responding to the comparison of UPPCo's proposed EWR surcharges to UMERCo's surcharges, UPPCo responds that "not only is this issue regarding the cost/benefit to the RTMP rate class no longer relevant to this plan given [Verso's] choice, this alleged 'proof' is without competent, substantial record support." UPPCo's reply brief, p. 3. More specifically, UPPCo reiterates that, on this record, Verso has not demonstrated that the programs and offerings of the utilities are similar enough to demonstrate that a comparison of rates is relevant. UPPCo also responds that the use of the revenue-based allocation has not historically resulted in surcharges that exceed their benefits for the RTMP rate class. Specifically, UPPCo reiterates that Verso has received a cumulative benefit of \$295,562 in excess of surcharges paid for the RTMP and Special Contract rate classes. *Id.*, p. 4.

UPPCo also replies that Verso's criticism relating to cost causation is misplaced as even Verso's proposed weighted allocation approach would not satisfy such a requirement. Specifically, UPPCo points to the legislative requirements to contribute to low-income programming. More importantly, UPPCo contends that the weighted allocation method proposed by Verso "lacks any relevant correlation to the purpose of the EWR legislation (3 Tr 183) and

looks to be end-result orientated, with the intent of making the rate impact to [Verso] as low as possible, and consequently unduly burdening other rate classes.” UPPCo’s reply brief, p. 5.

In response to criticisms of the self-direct surcharge, UPPCo states that Verso’s claims are inconsistent with the legislative mandate and “fail to account for the fact that [Verso] did not contest the EWR total spend which included low-income costs.” *Id.*, p. 6. In sum, UPPCo requests that the Commission adopt the company’s revenue-based allocation in the reopened proceeding and the “approval of its biennial plan and the EWR surcharges set forth in Reopened Exhibit A-22.” UPPCo’s reply brief, p. 7.

B. Commission Staff

In its reply brief, the Staff first maintains its support for UPPCo’s EWR plan as revised through the reopened record in this proceeding. Like UPPCo, the Staff also replies to Verso’s comparison of UPPCo’s proposed EWR plan and surcharges to UMERC’s program. The Staff states that Verso’s comparison “lacks the necessary record evidence to fully draw the conclusions it seeks to.” Staff’s reply brief, p. 1. Responding to Verso’s claims that the Commission may just look to the record of Case No. U-20880, the Staff states that “UPPCo’s plan clearly states the low-income program savings it intends to offer its low-income customers and the associated costs,” whereas the settlement agreement approved in Case No. U-20880 reflects UMERC’s intention to utilize the state-appointed EWR program administrator in lieu of filing an EWR plan. Staff’s reply brief, p. 2. Moreover, the Staff indicates that:

[b]ecause the two facilities Verso compares in its initial brief are in different service territories with different customer bases and sales amounts, if the facilities have “comparable purchased electric loads,” they will constitute different percentages of each utility’s total commercial and industrial sales. The costs of the low-income program, and even the Real Time Market Pricing (RTMP) program (had Verso not decided to self-direct), would also constitute different percentages of the program costs attributable to Verso’s facilities.

Id., p. 3.

Finally, the Staff posits that considering Verso's decision to self-direct and the timing with respect to the plan year, "the most prudent course of action is to approve UPPCo's Plan, as amended by UPPCo's positions in the reopened record. The parties and Commission could then consider Verso's remaining concerns regarding the RTMP surcharge in the future." *Id.*

C. Verso Corporation

Verso replies to criticisms of its weighted allocation method, stating that the RTMP rate class paying a smaller share than other commercial rate classes is "not a problem with the allocation as Staff and UPPCO seem to believe, but the correct result." Verso's reply brief, p. 2. Reiterating the unique nature of the RTMP rate class with only one customer, Verso argues that UPPCo's proposed allocation would result in unreasonable prejudice and that the weighted allocation method recognizes that "the RTMP rate class derives fewer benefits from UPPCO's EWR programs and therefore should be assigned a lesser share . . . is consistent with the statutory requirements . . . which require proportionality between customer class costs and benefits." *Id.*, p. 3.

Verso also responds that merely because UPPCo's proposed surcharges are consistent with prior EWR plans does not mean that the plan is reasonable or should be approved. More specifically, Verso claims that it:

was not a party to UPPCO's previous EWR cases, and so did not raise questions about the appropriateness of applying the allocation to that rate class in those cases. This means that the question of whether or not UPPCO's allocation method is reasonable for the RTMP rate class has not previously been disputed before the Commission, so the Commission has not examined whether the utility's assumptions and allocation method are reasonable specifically for that class.

Id.

V. DISCUSSION

In the September 8 order, the Commission found that the record should be reopened to develop a full and complete record under Rule 436. The Commission requested additional testimony and exhibits to evaluate whether the benefits provided to the RTMP rate class were substantial enough to justify the proposed surcharge for that class. As reflected in the reopened record, Verso has since elected to self-direct, rendering a determination on whether UPPCo has demonstrated that the benefits to the RTMP rate class are substantial enough to justify the proposed surcharge to be moot. *See*, 3 Tr 194. More specifically, given the fact that Verso is the only RTMP customer, the RTMP surcharge for the 2023 plan year will not be applied to any customer due to Verso's decision to self-direct. *See*, MCL 460.1093.

Turning to the appropriate allocation, the Commission finds that UPPCo has reasonably supported its revised revenue-based allocation on the reopened record in this proceeding. As noted by the company, the revenue-based allocation is consistent with UPPCo's previously approved EWR plans and reasonably reflects the costs for programs benefitting customers. *See*, 3 Tr 181. While Verso disputes that prior Commission approval provides evidence that the RTMP rate class surcharges provide benefits commensurate with the surcharge, the Commission finds that UPPCo has demonstrated substantial benefits to Verso through its participation in prior EWR plans. UPPCo presented evidence demonstrating that from 2013 through 2021, Verso paid \$154,331 in RTMP surcharges and received \$356,389 in incentives. *See*, 3 Tr 187, Table 1. As UPPCo correctly points out, historically the RTMP rate class received substantial benefits in excess of the surcharges paid. Although the record does not reflect the specific incentives that would be available to the RTMP rate class in 2023, the Commission nevertheless finds that UPPCo has demonstrated historical benefits to the RTMP rate class under the revenue-based

allocation. Additionally, the Commission is persuaded that the application of the allocation factors in Exhibit A-18 results in reasonable surcharges in compliance with applicable statutory provisions.

Regarding Verso's proposed allocation, the Commission agrees with UPPCo that Verso's weighted allocation method:

introduces multiple weighting factors including cost of service by rate class and number of meters per rate class with no support that the cost of service or the number of customers or meters has any correlation to EWR focused concerns such as the energy consumed, amount of energy savings available, or customer willingness to participate by rate class in EWR programs.

3 Tr 183. Absent additional information, the Commission is not persuaded that Verso's weighted allocation method is reasonable. Therefore, the Commission finds that UPPCo's revenue-based allocation is supported on the record and is adopted as the most reasonable and prudent allocation on this record. This includes the proposed RTMP surcharges which will not be applied to any customer for the 2023 plan year which is at issue in this proceeding. The Commission also reiterates its agreement with the ALJ's determination that there is no inherent inequity in the utilization of an energy-based allocator, and the adoption of the revenue-based allocation in this proceeding does not preclude UPPCo from presenting an energy-based allocator in future EWR plan cases. *See*, September 8 order, p. 12.

With respect to Verso's comparison of UPPCo's and UMERCo's EWR surcharges for Verso's facilities, the Commission finds that the evidence on this record, including Verso's comparison of its surcharges in UPPCo's and UMERCo's service territories, does not, on its own, sufficiently demonstrate that the proposed surcharges in this proceeding are unreasonable.

With respect to the allocation of the multi-family program, education, and pilot expenses, the Commission finds that UPPCo's revised low-income allocation on the reopened record is

reasonable and in compliance with MCL 460.1089(4) and other applicable statutory provisions. *See*, Exhibits A-19, A-20, A-21, and A-23. UPPCo removed the education and pilot expenses from its low-income allocation and further demonstrated that the 75% allocation is within the range of other utilities in Michigan. *See, id.*; *see also*, Exhibit A-15 and 3 Tr 173-174. For this proceeding, the Commission finds that UPPCo's experience and knowledge support the proposed allocation. *See*, 3 Tr 173. The Commission acknowledges that UPPCo does not collect income information from customers; however, demographic data is available through the United States Census Bureau. Going forward, the Commission agrees with the ALJ that UPPCo should provide demographic data and further justification for the classification of expenses associated with the multi-family program. *See*, PFD, pp. 33-34.

Regarding the self-direct surcharges, as indicated above, the Commission finds that UPPCo's allocation is reasonable and supported on the record. Further, the revised allocation of low-income expenses on the reopened record is also supported, as described above. Verso's claims with respect to the self-directed surcharges are primarily based upon an increase over the 2020-2021 EWR plan surcharges. The Commission finds that this is insufficient to demonstrate that the 2023 RTMP self-direct surcharge is unreasonable. In addition, as indicated by UPPCo, the self-direct surcharges are statutory in nature and relate to low-income expenses. The company is not required to demonstrate a benefit to Verso from the self-direct surcharge. Therefore, the Commission concludes that UPPCo's proposed self-direct surcharge is consistent with MCL 460.1093 and is adopted.

Finally, in cases like these, involving a single customer or small number of customers participating in a rate offering provided by a utility, the Commission encourages parties to work

outside of the contested case proceeding process to pursue settlement discussions as an option to resolve similar disputes in future cases.

THEREFORE, IT IS ORDERED that:

A. Upper Peninsula Power Company's 2022-2023 energy waste reduction plan, as modified on the reopened record, is approved.

B. Within 30 days of the date of this order, Upper Peninsula Power Company shall file a tariff sheet consistent with Exhibit A-22.

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

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

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

MICHIGAN PUBLIC SERVICE COMMISSION

Daniel C. Scripps, Chair

Tremaine L. Phillips, Commissioner

Katherine L. Peretick, Commissioner

By its action of February 23, 2023.

Lisa Felice, Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

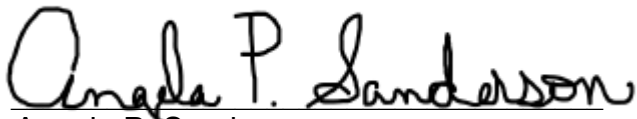
Case No. U-20879

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on February 23, 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 Brown

Subscribed and sworn to before me
this 23rd day of February 2023.



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

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Superior Energy Company

Texas Retail Energy, LLC

Thumb Electric Cooperative

Upper Michigan Energy Resources Corporation

Upper Peninsula Power Company

Upper Peninsula Power Company

Village of Baraga

Village of Clinton

Volunteer Energy Services

Wabash Valley Power

Wolverine Power

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Xcel Energy