STATE OF MICHIGAN

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 May 18, 2023 meeting of the Michigan Public Service Commission in Lansing, Michigan.

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

<u>ORDER</u>

Background

On March 30, 2023, Indiana Michigan Power Company (I&M) filed an application in this case (application), with supporting testimony and exhibits, requesting *ex parte* approval of its Elkhart County Solar Project Renewable Energy Power Purchase Agreement (PPA), Sculpin Solar Project PPA, Montpelier Capacity Only Purchase Agreement (CPA), and Mayapple Solar Project Purchase and Sale Agreement (PSA) (collectively referred to as the projects).

On February 28, 2022, the company filed its multistate 2021 integrated resource plan (IRP) in Michigan under MCL 460.6t in Case No. U-21189. Subsequently, on November 14, 2022, the company filed a settlement agreement. This settlement agreement was contested by several intervening parties. On February 2, 2023, the Commission issued an order in Case No. U-21189 (February 2 order) approving the contested settlement agreement for I&M's IRP. Application, pp. 2-3; *see also*, February 2 order, p. 103.

The contested settlement agreement, as approved by the February 2 order, provides that I&M will submit applications in this docket seeking approval of costs associated with specific resources for all projects less than 225 megawatts (MW). *See*, Contested settlement agreement, p. 3. The contested settlement agreement also allows for reasonable and prudent costs for resources approved in such *ex parte* proceedings to 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 date of the February 2 order, and that result from a competitive solicitation that complies with the Commission's Competitive Procurement Guidelines. *Id*.

Application

In the application, I&M indicates that the company's IRP identifies a significant need for new supply side resources beginning in 2025 through 2028 to replace the capacity and energy associated with the company's Rockport Plant. Application, pp. 2-3. The company states that the IRP also identifies new resources I&M will need in order to meet its generation capacity requirements through 2028, in part, with approximately 2,160 MW (installed capacity (ICAP), or approximately 620 MW unforced capacity) of new carbon-free resources or the expansion or repowering of existing carbon-free resources; approximately 750 MW (ICAP) of fully dispatchable resources without any run-time limit; and approximately 255 MW (ICAP) of storage with a minimum dispatchability of 4-hour increments in a 24-hour period. *Id*.

The company implemented a competitive solicitation in the form of an open, non-discriminatory all source request for proposals (RFP) in 2022 and retained Charles River Associates to serve as the independent monitor (IM). Application, p. 4. The RFP was open to PPA and PSA proposals located in Indiana or Michigan, with bids for wind from Ohio and Illinois also accepted.

I&M received 32 proposals from 12 bidders by the April 21, 2022 due date. Application, Exhibit IM-1, p. 16. The company and the IM assessed proposals based on economic and non-price criteria, with the former accounting for 60% and the latter accounting for 40% of the overall score. Application, Exhibit IM-1, pp. 18-19. Bidders were given the opportunity to cure non-conforming proposals by providing additional requested information. Application, Direct Testimony of Timothy Gaul, pp. 10-11. I&M conducted a detailed analysis of the proposals and furnished points based on several dozen criteria. The company updated the non-price evaluation where necessary based on the IM's recommendations to ensure consistency in the evaluation. Application, Exhibit IM-1, p. 18. The IM also evaluated the financial model underpinning the economic evaluation and found the scoring reasonable. Application, Exhibit IM-1, p. 19.

Seven proposals were selected for shortlist negotiations. Ultimately, five of the seven shortlisted proposals resulted in contractual agreements. Application, Direct Testimony of Mr. Gaul, p. 15. Four of the agreements are presented in the instant case: (1) a 30-year PPA with Elkhart County Solar Project, LLC for the Elkhart County Solar project, developed by Savion, LLC (Savion), located in Indiana that will produce 100 MW of solar generation; (2) a 30-year PPA with Sculpin Solar, LLC for the Sculpin Solar project, developed by EDF Renewables Development, Inc. (EDF), located in Indiana and which will produce 180 MWs of solar generation; (3) a 7-year CPA with Rockland Capital, which is a capacity-only contract for 210 MW of PJM Interconnection, L.L.C. (PJM)-accredited capacity; and (4) a PSA with Mayapple Solar Holdings, LLC, for the Mayapple Solar project, developed by Lightsource bp, located in Indiana, that will be owned by the company, and will produce 224 MWs of solar generation. Application, pp. 5-7. Each of these projects will be interconnected to the American Electric Power Company, Inc. transmission system in PJM. Additionally, I&M has filed a Certificate of Need proceeding in Case No. U-21377 to seek approval of the fifth agreement resulting from its 2022 RFP. Application, p. 5.

I&M's testimony and exhibits provide estimates of the levelized cost of energy (LCOE) of the portfolio of solar projects selected from the 2022 RFP, including the three solar projects requested for approval in this proceeding, which it contends demonstrates that the estimated LCOE is consistent with the resource cost assumptions used in the company's approved IRP. Application, pp. 7-8. The project costs for the Elkhart County Solar PPA, the Sculpin Solar PPA, and the Montpelier CPA represent power supply costs under Public Act 304 of 1982 that will be accounted for, in accordance with the Federal Energy Regulatory Commission's Uniform System of Accounts, as purchased power expenses and will be included in I&M's power supply cost recovery (PSCR) filings beginning with the year each respective agreement commences. Application, pp. 5-7.

In its application, I&M requests that the Commission find that the projects are consistent with the company's approved IRP and grant *ex parte* approval of the Elkhart County Solar PPA, Sculpin Solar PPA, Montpelier CPA, and Mayapple Solar PSA. Application, p. 7-9. For the Mayapple Solar Project, I&M requests approval to defer and record as a regulatory asset the incremental costs associated with the Mayapple Solar PSA until such time that these costs are included in I&M's base rates, which the company explains is consistent with the February 2 order. *Id.* Additionally, the company requests approval to utilize deferred accounting to extend the Mayapple Solar project production tax credits (PTCs) over 20 years to reduce the relative rate

volatility and variability customers would otherwise experience over the life of the project, and to flow the PTC benefits back to the customers through the PSCR factor. *Id*.

Objections and Response

On April 25, 2023, the Michigan Department of Attorney General (Attorney General) and the Citizens Utility Board of Michigan (CUB) filed objections to *ex parte* approval of the application in this matter (April 25 objections). The Attorney General and CUB state that, while the contested settlement agreement provided for the filing of *ex parte* applications, it did not guarantee that *ex parte* approval would be granted by the Commission. Attorney General's and CUB's April 25 objections, p. 2.

The Attorney General and CUB aver that the agreements at issue in the company's application do not qualify for *ex parte* approval under MCL 460.6a(3). Specifically, the Attorney General and CUB indicate that I&M does not state in the application that the four agreements will not increase the cost of service, as required by the statute. *See*, Attorney General's and CUB's April 25 objections, p. 5. Rather, the Attorney General and CUB note that I&M indicates that the agreements are aligned with the modeled resource costs in the underlying IRP proceeding. The Attorney General and CUB argue that it is not clear what the company means by "aligned" given "the LCOE for the solar projects is higher than the projected LCOE for solar in the IRP and higher than the bids for solar in the 2022 RFP" *Id.* The Attorney General and CUB further state that, once the agreements are approved by the Commission, inclusion of the costs for the agreements in rates would be almost inevitable.

The Attorney General and CUB further state that, on this record, it is unclear whether the bid process was consistent with the Commission's Competitive Procurement Guidelines. The Attorney General and CUB indicate that they "are not taking a position regarding whether the Commission should ultimately approve these projects. Discovery is needed to provide the information necessary to determine whether the process and the outcome are reasonable, prudent, and consistent with I&M's IRP and the Commission Order approving the settlement in this case." Attorney General's and CUB's April 25 objections, p. 6.

On May 5, 2023, I&M filed a response to the objections (I&M's May 5 response). In the response, I&M indicates that the application clearly states that the company is not seeking rate recovery in this *ex parte* proceeding and that a request for rate increases will be reviewed in a subsequent rate case for reasonableness and prudence. *See*, I&M's May 5 response, p. 4. Moreover, the company contends that it has no legal obligation to make a determination that the agreements at issue will *not* increase the cost of service for customers and that "[t]he Commission does not need to reach beyond the standard in MCL 460.6t(12) to make a determination in this case." I&M's May 5 response, p. 4.

I&M avers that the Attorney General and CUB have no grounds to question whether the RFP process utilizing an IM, which was consistent with the Competitive Procurement Guidelines. The company states that "[d]uplicating the process already established in MCL 460.6t(12) would unnecessarily waste the Commission's time and resources." I&M's May 5 response, p. 5. Additionally, I&M argues that the costs being higher than the LOCE in the IRP modeling does not automatically trigger review. Specifically, I&M reiterates that the statute indicates that costs must be *significantly* higher and that MCL 460.6t(12) does not create a ceiling for permissible costs. I&M's May 5 response, pp. 6-7. I&M also points out that the Commission has previously granted *ex parte* approval even when costs were higher than originally projected in a company's IRP. The company contends that the increase in costs is insignificant and that it "has demonstrated that it has followed the Commission's Competitive Procurement Guidelines established in Case

No. U-20852 which the Commission has stated carries a presumption of prudence that would extend to the resource pricing." I&M's May 5 response, p. 8.

I&M further contends that any cost increases that were negotiated after the receipt of bids is immaterial to whether *ex parte* approval should be granted. More specifically, I&M reiterates that the costs are not significantly higher than approved and "are consistent with those approved by the Commission in I&M's IRP and the materials submitted in this *ex parte* proceeding provide sufficient information" to approve the company's application. I&M's May 5 response, p. 9. The company further states that the IRP statute permits *ex parte* approval and the fact that the Attorney General and CUB did not sign the settlement agreement does not allow "a second bite at the apple to relitigate the reasonableness and prudence of new resources that were approved in I&M's IRP." I&M's May 5 response, p. 9.

Discussion

The Commission has reviewed I&M's application, supporting testimony and exhibits, and the relevant statutory provisions. At this time, the Commission is not convinced that the finalized costs are not significantly higher than the initially approved costs or that approval will not affect rates or rate schedules and will not increase the cost of service to customers as required for *ex parte* approval. *See*, MCL 460.6t(12)(c) and MCL 460.6a(3).

Accordingly, the Commission has scheduled a prehearing conference for June 14, 2023, before Administrative Law Judge Christopher S. Saunders. By May 31, 2023, I&M shall serve copies of this order on all parties in the underlying IRP proceeding. No later than May 31, 2023, I&M shall publish notice of the prehearing conference, attached as Exhibit A, in three newspapers of general circulation in the company's service territory. Affidavits of publication shall be filed by the date of the prehearing conference on June 14, 2023. Petitions for intervention shall be filed by June 7, 2023.

The record for this contested proceeding, including all evidence, briefing, and argument, shall be completed by August 9, 2023. With the goal of issuing an expeditious decision on the application, the Commission shall read the record, dispensing with the need for a proposal for decision. The Commission will employ its best efforts to issue an order in this proceeding not later than August 31, 2023.

THEREFORE, IT IS ORDERED that:

A. Indiana Michigan Power Company's request for *ex parte* approval of power purchase agreements, capacity only purchase agreement, and a purchase and sale agreement is denied.

B. Indiana Michigan Power Company and other participants are directed to attend the
June 14, 2023 prehearing conference, as set forth in Exhibit A.

C. Indiana Michigan Power Company shall serve a copy of this order on all parties in the underlying integrated resource plan proceeding before May 31, 2023.

D. Indiana Michigan Power Company shall publish notice of the prehearing conference attached as Exhibit A, in three newspapers of general circulation in Indiana Michigan Power Company's service territory no later than May 31, 2023. Affidavits of publication shall be filed by the date of the prehearing conference on June 14, 2023.

E. Petitions for intervention shall be filed no later than June 7, 2023.

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 notifications should be sent to the Executive Secretary at <u>mpscedockets@michigan.gov</u> and to the Michigan Department of Attorney General - Public Service Division at <u>pungp1@michigan.gov</u>. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Daniel C. Scripps, Chair

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Katherine L. Peretick, Commissioner

By its action of May 18, 2023.

Usa Felice

Lisa Felice, Executive Secretary

STATE OF MICHIGAN BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION NOTICE OF HEARING FOR THE ELECTRIC CUSTOMERS OF INDIANA MICHIGAN POWER COMPANY CASE NO. U-21189

- Indiana Michigan Power Company requests Michigan Public Service Commission's approval of its Elkhart County Solar Project Renewable Energy Purchase Agreement, Sculpin Solar Project Renewable Energy Purchase Agreement, Montpelier Capacity Only Purchase Agreement, and Mayapple Solar Project Purchase and Sale Agreement (collectively, the "Projects") and find the Projects are consistent with Indiana Michigan Power Company's Integrated Resource Plan (IRP), as approved in the Commission's February 2, 2023 Order Approving the Settlement Agreement in Case No. U-21189.
- The information below describes how a person may participate in this case.
- You may call or write Indiana Michigan Power Company, Benton Harbor Service Center, 2425 Meadowbrook Rd., Benton Harbor, MI 49022, (800) 311-6424 for a free copy of its application. Any person may review the documents at the offices of Indiana Michigan Power Company or on the Commission's website at: <u>michigan.gov/mpscedockets</u>.
- A prehearing will be held:

DATE/TIME:	June 14, 2023 at 10:30 AM	
BEFORE:	Administrative Law Judge Christopher Saunders	
LOCATION:	Video/Teleconferencing	
PARTICIPATION:	Any interested person may participate. Persons needing any assistance to participate should contact the Commission's Executive Secretary at (517) 284-8096, or by email at <u>mpscedockets@michigan.gov</u> in advance of the hearing.	

The Michigan Public Service Commission (Commission) will hold a prehearing to consider Indiana Michigan Power Company's (I&M) March 30, 2023 application requesting the Commission to: 1) grant approval of I&M's Elkhart County Solar PPA, Sculpin Solar PPA, Montpelier CPA, and Mayapple Solar PSA and find that the Projects are consistent with the I&M's Integrated Resource Plan (IRP), as approved in the Commission's February 2, 2023 Order approving Settlement Agreement in Case No. U-21189; 2) approve I&M's request to utilize deferral accounting associated with the Mayapple PSA costs, consistent with the Settlement Agreement in Case No. U-21189; 3) approve I&M's request to utilize deferral accounting to extend the Mayapple Project PTCs over 20 years and to utilize the PSCR to reflect production tax credits in I&M's rates on a timely basis; and 4) grant I&M other and further relief. All documents filed in this case shall be submitted electronically through the Commission's E-Dockets website at: <u>michigan.gov/mpscedockets</u>. Requirements and instructions for filing can be found in the User Manual on the E-Dockets help page. Documents may also be submitted, in Word or PDF format, as an attachment to an email sent to: <u>mpscedockets@michigan.gov</u>. If you require assistance prior to e-filing, contact Commission staff at (517) 284-8090 or by email at: <u>mpscedockets@michigan.gov</u>.

Any person wishing to intervene and become a party to the case shall electronically file a petition to intervene with this Commission by June 7, 2023. (Interested persons may elect to file using the traditional paper format.) The proof of service shall indicate service upon Indiana Michigan Power Company's attorney, Richard J. Aaron, 201 Townsend St., Ste. 900, Lansing, MI 48933.

The prehearing is scheduled to be held remotely by video conference or teleconference. Persons filing a petition to intervene will be advised of the process to participate in the hearing.

Any person wishing to participate without intervention under Mich Admin Code, R 792.10413 (Rule 413), or file a public comment, may do so by filing a written statement in this docket. The written statement may be mailed or emailed and should reference Case No. **U-21189**. Statements may be emailed to: <u>mpscedockets@michigan.gov</u>. Statements may be mailed to: Executive Secretary, Michigan Public Service Commission, 7109 West Saginaw Hwy., Lansing, MI 48917. All information submitted to the Commission in this matter becomes public information, thus available on the Michigan Public Service Commission's website, and subject to disclosure. Please do not include information you wish to remain private. For more information on how to participate in a case, you may contact the Commission at the above address or by telephone at (517) 284-8090.

Requests for adjournment must be made pursuant to Michigan Office of Administrative Hearings and Rules R 792.10422 and R 792.10432. Requests for further information on adjournment should be directed to (517) 284-8130.

For more information on how to participate in a case, you may contact the Commission at the above address or by telephone at (517) 284-8090.

The Utility Consumer Representation Fund has been created for the purpose of aiding in the representation of residential utility customers in various Commission proceedings. Contact the Chairperson, Utility Consumer Participation Board, Department of Licensing and Regulatory Affairs, P.O. Box 30004, Lansing, Michigan 48909, for more information.

Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.54 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and Parts 1 & 4 of the Michigan Office of Administrative Hearings and Rules, Mich. Admin Code, R 792.10106 and R 792.10401 through R 792.10448.

R 792.10422 Adjournments.

Rule 422

(1) Unless the presiding officer allows otherwise, a request for adjournment shall be by motion or stipulation made orally at a hearing or in writing and shall be based on good cause.

(2) A motion or stipulation for adjournment shall state the party who is requesting the adjournment and the reason for the adjournment.

(3) An adjournment may be granted for good cause and shall be in writing or on the record.

(4) In granting an adjournment, the presiding officer, administrative law manager assigned by the hearing system to the commission, or commission may impose reasonable conditions.

R 792.10432 Motion practice.

Rule 432

(1) In a pending proceeding, a request to the commission or presiding officer for a ruling or order, other than a final order, shall be by motion. Unless made during a hearing, a motion shall be in compliance with all of the following provisions:

(a) Be in writing.

(b) State with particularity the grounds and authority on which the motion is based.

(c) State the relief or order sought.

(d) Be signed by the party or the party's attorney.

(2) Unless a different time is set by the commission or presiding officer or unless the motion is one that may be heard ex parte, a written motion, notice of the hearing on the motion, and any supporting brief or affidavits shall be served as follows:

(a) Not less than 9 days before the hearing, if served electronically or by mail.

(b) Not less than 7 days before the hearing, if served electronically or by delivery to the attorney or party under Michigan court rule 2.107(c)(1) or (2).

(3) Unless a different time is set by the commission or presiding officer, any response to a motion, including a brief or an affidavit, shall be served as follows:

(a) Not less than 5 days before the hearing, if served electronically or by mail.

(b) Not less than 3 days before the hearing, if served electronically or by delivery to the attorney or party under Michigan court rule 2.107(c)(1) or (2).

(4) Motions shall be noticed for hearing at the time designated by the commission or presiding officer.

(5) When a motion is based on facts not appearing on the record, the commission or presiding officer may hear the motion on affidavits presented by the parties or may direct that the motion be heard wholly or partly as oral testimony or deposition.

(6) The commission or presiding officer may limit oral arguments on motions and may require the parties to file briefs in support of, and in opposition to, a motion. The commission may dispense with oral argument on matters brought before the commission.

MICHIGAN PUBLIC SERVICE COMMISSION RATE-REGULATED UTILITIES PUBLISHING REQUIREMENTS FOR NOTICE

- > Attached notice shall be published in at least 3 newspapers of general circulation in service area
- > Published title of notice shall be printed in at least 12-point boldface type
- > Body of notice shall be in 9-point type surrounded by a black border 1/8 inch from the body of the notice
- > Company logo shall be displayed at the end of the published notice
- > Affidavits of publication with annexed notice shall be filed by the date of the prehearing conference

STATE OF MICHIGAN					
	BEFORE THE				
MICHIGAN PUBLIC					
SERVICE COMMISSION					
NOTICE OF HEARING					
FOR THE CUSTOMERS					
OF					
(COMPANY) CASE NO. U-					
• (COMPANY) will implement a (proposed action) if the Michigan Public Service Commission					
(Commission) approves its request.					
• The information below describes how a person may participate in this case.					
• You may call or write (Company , Address , Telephone Number) for a free copy of its application. Any person may review the application at (Company's) offices.					
The first public hearing in this matter will be held:					
DATE/	TIME:	Month, day, year (e.g. April 5, 2018), at Time (e.g. 9:00 a.m.)			
BEFOR		Administrative Law Judge (<u>Name</u>)			
LOCAT	ION:	Michigan Public Service Commission			
		7109 West Saginaw Highway			
		Lansing, Michigan 48917			
PARTI	CIPATION:	Any interested person may attend and participate. The hearing site is			
		accessible, including handicapped parking. Persons needing any			
		accommodation to participate should contact the Commission's Executive			
		Secretary at (517) 284-8090 in advance to request mobility, visual, hearing or other assistance.			
		Service Commission will hold a public hearing to consider (Company's) (Date) v of application).			
I (-	ion method(s)/schedule(s).			
Any person wishing to intervene and become a party to the case shall file a file a petition to intervene					
with this Commission by (Date). The proof of service shall indicate service upon (Company's) Attorney,					
(Name), (Address).					
Any person wishing to make a statement of position without becoming a party to the case, may					
participate by filing an appearance. To file an appearance, the individual must attend the hearing and advise the presiding administrative law judge of his or her wish to make a statement of position. All information					
submitted to the Commission in this matter will become public information, available on the Michigan Public					
Service Commission's Web site, and subject to disclosure.					

Requests for adjournment must be made pursuant to the Commission's Rules of Practice and Procedure R 792.10422 and R 792.10432. Requests for further information on adjournment should be directed to (517) 284-8130.

A copy of (Company's) request may also be reviewed on the Commission's web site: <u>https://mi-psc.force.com/s/</u> or at the office of the Commission's Executive Secretary, 7109 W. Saginaw Highway, Lansing, MI 48917 or at the office of (Company, Address). For more information on participating in a case, you may contact the Commission at the above address or by telephone at (517) 284-8090.

The Commission has jurisdiction pursuant to (cite appropriate jurisdiction).

(Company Logo)

PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-21189

County of Ingham

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Brianna Brown being duly sworn, deposes and says that on May 18, 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

Subscribed and sworn to before me this 18th day of May 2023.

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

U-21189

Name	On Behalf of	Email Address
Christopher M. Bzdok	Department of Attorney General	chris@envlaw.com
Christopher M. Bzdok	Citizens Utility Board of Michigan (CUB)	chris@envlaw.com
Don L. Keskey	Great Lakes Renewable Energy Association (GLREA)	donkeskey@publiclawresourcec enter.com
Holly Hillyer	Michigan Environmental Council	holly@envlaw.com
Holly Hillyer	Sierra Club	holly@envlaw.com
	Indiana Michigan Power Company	ajwilliamson@aep.com
Indiana Michigan Power Company (2 of 3)	Indiana Michigan Power Company	msmckenzie@aep.com
Indiana Michigan Power Company (3 of 3)	Indiana Michigan Power Company	mgobrien@aep.com
Jason T. Hanselman	Indiana Michigan Power Company	jhanselman@dykema.com
John A. Janiszewski	Indiana Michigan Power Company	jjaniszewski@dykema.com
Justin K. Ooms	Energy Michigan, Inc.	jooms@potomaclaw.com
Kristin Henry	Sierra Club	kristin.henry@sierraclub.org
Laura A. Chappelle	Energy Michigan, Inc.	lchappelle@potomaclaw.com
Lauren Piette	Sierra Club	lpiette@earthjustice.org
Michael E. Moody	Department of Attorney General	moodym2@michigan.gov
Nicholas Q. Taylor	MPSC Staff	taylorn10@michigan.gov
Olivia R.C.A. Flower	Indiana Michigan Power Company	oflower@dykema.com
Richard J. Aaron	Indiana Michigan Power Company	raaron@dykema.com
Sharon Feldman	ALJs - MPSC	feldmans@michigan.gov
Stephen A. Campbell	Association of Businesses Advocating Tariff Equity (ABATE)	scampbell@clarkhill.com
Timothy J. Lundgren	Energy Michigan, Inc.	tlundgren@potomaclaw.com