

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

* * * * *

In the matter of the application of)
Indiana Michigan Power Company for)
approval to implement a power supply cost)
recovery plan for the twelve months ending)
December 31, 2021.)

Case No. U-20804

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on August 2, 2021.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 7109 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before August 23, 2021, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before September 7, 2021.

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission
Kandra K. Robbins

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August 2, 2021
Lansing, Michigan

Kandra K. Robbins
Administrative Law Judge

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

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PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

On September 30, 2020, Indiana Michigan Power Company (I&M or Company) filed its Application under 1982 PA 304 (Act 304) as amended requesting approval of its proposed 2021 Power Supply Cost Recovery (PSCR) Plan and proposed factors. In its filing, the Company requested the Michigan Public Service Commission: (i) authorize I&M to continue the roll-in methodology in connection with its PSCR Clause; and (ii) approve I&M's 2021 PSCR Plan as reasonable and prudent and approve a PSCR factor of 2.85 mills per kWh for each of the billing months of January 2021 through December 2021.

The Company's filing was accompanied by the testimony of witnesses Hazel A. Baker, Keith A. Steinmetz, Justin R. Ray, Nancy A. Heimberger, Callie J. Dunn, and Jason E. Walcutt.

At the November 19, 2020 prehearing conference, the Company and Staff appeared, and intervention was granted to the Attorney General and Sierra Club.

In accordance with the schedule established at the prehearing conference, Staff filed the testimony of Raushawn D. Bodiford; and the Sierra Club filed the testimony of Devi Glick. On April 9, 2021, I&M filed rebuttal testimony of Jason M. Stegall and Nancy A. Heimberger.

II.

OVERVIEW OF THE RECORD AND POSITIONS OF THE PARTIES

The evidentiary record is contained in two volumes of transcripts, and 55 exhibits¹. An overview of the testimony presented by each party is reviewed in the following sections.

A. I&M Testimony

I&M presented six witnesses. The first, Hazel A. Baker, is Resource Planning Analyst Staff for Resource Planning in the Corporate Planning and Budgeting Department of the American Electric Power Service Corporation, a wholly owned subsidiary of the American Electric Power Company, Inc (AEP), the parent company of I&M.² Ms. Baker testified regarding I&M's expected electric power demand and energy requirements and anticipated sources of power supply on a monthly basis for 2021 as well as on an annual basis for the five-year forecast period (2021-2025).³ Ms. Baker described the major contracts and power supply arrangements entered into by I&M for providing power supply. She described I&M's integrated resource planning process and testified as to the reasonableness and prudence of I&M's decisions to provide power supply in the manner described and as to the reasonableness of I&M's reserve levels.⁴

¹ 4 Exhibits are confidential. There is both a confidential and public transcript.

² Tr. Vol. II, pg. 29

³ Tr. Vol. II, pg. 31

⁴ Tr. Vol. II, pg. 31

Ms. Baker testified that two distinct methods were used for forecasting energy. First, regression models with time series error terms were used to forecast energy sales up to 18 months ahead. The models used the most recent customer count, kWh sales data, weather data and indicator variables where needed. The second method is the long-term process that starts with economic forecasts provided by Moody's Analytics for the United States as a whole, each state, and counties within each state. To forecast peak demand, Metrix ND was used. The initial phase was to develop representative load shapes for each retail revenue class by using regression and neural network models. Separate models were used for each FERC wholesale customer.⁵

Ms. Baker stated that the impacts of any long-standing existing Energy Efficiency and Demand Response (EE/DR) programs for each jurisdiction were embedded in the historical data that were supplied to the trend and econometric load-forecasting models.⁶

Ms. Baker testified that with regard to the impacts of Michigan electric industry restructuring and retail customer choice, there are currently two alternative electric suppliers that have registered to compete for the Company's customers. She stated that the Company currently has 41 accounts representing 279,602 MWh of annual usage with a demand of 52.75 MW and 4 customer accounts in the queue representing 13,486 MWh with a demand of 2.531 MW. Therefore, it is appropriate to include retail competition adjustments to the load forecast in this year's PSCR filing.⁷

⁵ Tr. Vol. II, pgs. 32-33

⁶ Tr. Vol. II, pg. 33

⁷ Tr. Vol. II, pg. 34

Ms. Baker testified that whenever I&M has energy available beyond what is needed to supply its internal load together with any contractual commitments to non-associate power systems, the energy is offered to the PJM market.

Ms. Baker testified that the capacity plan included in this forecast is consistent with the Integrated Resource Planning Report filed with the Commission on August 14, 2019 in Case No. U-20591.⁸ Ms. Baker summarized the relevant environmental requirements that affected I&M.⁹ She summarized the modifications to the AEP New source Review Consent Decree.¹⁰ She described I&M's IRP process.¹¹ Ms. Baker testified that I&M's power and energy requirements during the 12-month period covered by the plan and during the five-year forecast period will be supplied from its own generating units, its unit power purchase from AEG, committed purchases, along with other purchases from affiliates or from the extensive PJM system.¹²

Ms. Baker sponsored Exhibits IM-1 through IM-9. Exhibit IM-1 shows actual and forecast I&M seasonal peak internal demands, energy requirements, and load factors for the years 2010 through 2025 including annual and average rates of growth in demand and energy for the historical and forecast periods. Exhibit IM-2 presents the annual energy requirements for the residential, commercial, and industrial sectors other internal requirements and the total internal energy requirements for I&M. IM-3 includes a month-by-month projection of 2021 of I&M's energy sales into the PJM market. IM-4 presents an annual projection of such sales for the five-year forecast period 2021-2025. IM-5 shows

⁸ Tr. Vol. II, pg. 37

⁹ Tr. Vol. II, pgs. 38-42

¹⁰ Tr. Vol. II, pg. 42

¹¹ Tr. Vol. II, pg. 43

¹² Tr. Vol. II, pg. 45

I&M's committed capacity/energy purchase agreements total to 208 MW. IM-6 illustrates the Rockport Plant generating units. IM-7 provides a projected PJM view of summer peak demands, capabilities, and margins for I&M for the 2021/22 PJM planning year through the 2025/26 planning year as well as I&M's capacity position within PJM. IM-8 presented the generation and purchase power forecast by month. IM-9 presented the generation and purchase power forecast annually for the years 2021-2025. Cross-examination of Ms. Baker was waived.

Next, the Company presented the testimony of Keith A. Steinmetz, Manager of Nuclear Engineering for the Donald C. Cook Nuclear Plant. Mr. Steinmetz presented testimony to (i) describe the relevant responsibilities of the Nuclear Engineering Department as they pertain to the 2021 nuclear fuel costs; (ii) support projected nuclear fuel costs used by Witness Heimberger; (iii) describe major nuclear fuel contracts that affect I&M's 2021 nuclear fuel costs; and (iv) discuss the reasonableness and prudence of the actions taken to minimize I&M's actual nuclear fuel costs.¹³

Mr. Steinmetz presented a summary of the major contracts I&M entered into for the supply and disposal of nuclear fuel for the Cook Nuclear Plant that affect the 2021 costs.¹⁴

Mr. Steinmetz sponsored exhibits IM-10 and IM-11 which provide the monthly expensing of nuclear fuel costs. Cross-examination of Mr. Steinmetz was waived.

Mr. Justin R. Ray, Manager -Transportation, Logistics, and Railcar Fleet, testified concerning fossil fuel generation. Mr. Ray testified that I&M's sole coal generating station

¹³ Tr. Vol. II, pg. 48

¹⁴ Tr. Vol II, pgs. 50-52

consists of two 1300-megawatt coal generating units. He testified that I&M's coal purchasing strategy is based on continuous market monitoring and evaluation along with periodic competitive bids.¹⁵

Mr. Ray testified that the amount of coal projected to be consumed is based on load forecasts for the applicable years. Coal delivery requirements were then determined by taking into consideration coal inventory, the forecast of coal consumption, and adjustments for any contingencies that would necessitate an increase or decrease in coal inventory levels. The sources of the coal were determined by considering environmental and boiler constraints as well as contractual obligations and existing sources of supply. The price of contract coal and committed spot market purchases area based on contractual agreements.¹⁶

Mr. Ray testified that I&M continues to manage its inventory position, monitor conditions in the coal market, perform regular market solicitations, and accept competitive offers to ensure reliable supplies of coal at the lowest reasonable delivered cost. I&M's projected coal costs, reflecting both the cost of its committed purchases and the expected cost of the non-committed coal position, are reasonable for use in estimating the total projected fuel costs for 2021.¹⁷

Mr. Ray sponsored Exhibits IM-12 and IM-13. IM-12 provides a forecast of the monthly delivered coal costs for I&M's coal generating station in 2021. IM-13 provides an extended forecast of annual delivered coal costs for I&M's generating station. Cross-examination of Mr. Ray was waived.

¹⁵ Tr. Vol. II, pg. 64

¹⁶ Tr. Vol. II, pg. 66

¹⁷ Tr. Vol. II, pg. 68

Callie J. Dunn, Manager-Transmission Settlements, testified presenting the forecasts of the Company's monthly Open Access Transmission Tariff (OATT) expenses for the period of January 2021 through December 2021 and the annual OATT expenses for the years 2021 through 2025. She described the methodologies employed to derive I&M's estimated OATT expenses.¹⁸

Ms. Dunn stated that in compliance with Case No. U-16801, Case No. U-18370 and Case No. U-20359, the charges and credits which constitute I&M's OATT expenses reflected in the PSCR factor are (i) Network Integration Transmission Service; (ii) Firm and Non-Firm Point-to-Point Transmission Credits; (iii) Schedule 1A Ancillary Service Charges; (iv) PJM Transmission Enhancement Charges; (v) PJM Administrative Charges; and (vi) RTO Start-up Cost Recovery Charges.¹⁹

Ms. Dunn testified that Network Integrated Transmission Services (NITS) are wholesale transmission expenses allocated to I&M for the Company's use of the AEP transmission system in PJM. She stated that to forecast the NITS expenses beyond the effective period of the FECR approved billing determinants, transmission revenue requirement projections were forecasted. Load forecasts received from AEP's Economic Forecasting group were used to estimate future peak loads.²⁰

Ms. Dunn stated that the PTP transmission credits for 2021 are forecasted using the latest available actual credits appearing on the PJM Settlement statement based on recent transmission service reservations. She testified that the same monthly numbers

¹⁸ Tr. Vol. II, pg. 70

¹⁹ Tr. Vol. II, pg. 71

²⁰ Tr. Vol. II, pg. 73

were held constant as a reasonable forecast for years beyond 2021 because demand for PTP transmission reservations is less reasonably predictable over the long term.²¹

Ms. Dunn presented testimony regarding the PHM transmission enhancement charges, the PJM administrative charges, and the RTO Start-up Cost Recovery charges. Ms. Dunn testified that the projected 2021 transmission costs are based on the OATT charges and credits expected to be incurred by the company's usage of the AEP transmission system in PJM. The projected OATT costs are incorporated in the development of the proposed PSCR described by witness Walcutt and are reasonable and prudent.²²

Ms. Dunn sponsored Exhibit IM-18 which forecasts the monthly OATT expenses for the period January 2021 through December 2021 and annual OATT expenses for 2021 through 2025. Cross-examination of Ms. Dunn was waived.

Jason E. Walcutt, Regulatory Consultant, testified regarding the calculation of I&M's PSCR Plan Case factors.

Mr. Walcutt testified that the PSCR factor was calculated in accordance with the methodology the MPSC approved in I&M's most recent rate proceeding Case No. U-20359. Mr. Walcutt testified that based on the calculations, the proposed PSCR factor of 2.85 mills per kWh to the billing months of January through December 2021.²³ He testified that a 4.1% loss factor was utilized and included transmission items as established in Case No. U-20359.²⁴ Mr. Walcutt testified that based on the PSCR factor in effect at the

²¹ Tr. Vol. II, pg. 73

²² Tr. Vol. II, pg. 77

²³ Tr. Vol. II, pg. 80

²⁴ Tr. Vol. II, pg. 80

time of this filing, I&M's customers will experience an increase of 5.80 mills per kWh as a result of the proposed factor of 2.85 mills per kWh.²⁵

Mr. Walcutt explained that the roll-in method spreads the over/under recovery amount across all twelve months of the plan year, minimizing its impact on customers while providing rate stability. In addition, the roll-in method is administratively more efficient and cost effective for I&M than the prior refund/surcharge method. He testified that the roll-in method provides customers with better rate stability, improves bill clarity, minimizes customer confusion and uncertainty, and is more administratively and cost efficient.²⁶ Mr. Walcutt testified that I&M's objective is to achieve the lowest total unit cost of electricity to customers over the long term while insuring an adequate and reliable supply of energy.

Mr. Walcutt sponsored Exhibit IM-19, Exhibit IM-20, and Exhibit IM-21. Exhibit IM-19 shows the calculation of the proposed PSCR factor for the billing months of January through December 2021 and the under-recovery expected at the end of the 2021 PSCR plan year. Exhibit IM-20 calculates the applicable transmission factor included within the PSCR clause. Exhibit IM-21 contains the revised tariff sheet that reflects the proposed PSCR factor. Cross-examination of Mr. Walcutt was waived.

Nancy A. Heimberger, Financial Analyst Senior Staff, testified concerning the forecasts of the Company's monthly power supply costs and net energy requirements for the period of January through December 2021. She also described the methodologies employed to derive I&M's estimate power supply costs.²⁷

²⁵ Tr. Vol. II, pg. 82

²⁶ Tr. Vol. II, pg. 81

²⁷ Tr. Vol. II, pg. 230

Ms. Heimberger testified that the power supply costs reflect the costs identified in I&M's PSCR clause adopted pursuant to Act 304 and the methodologies are consistent with the PSCR basing point included in the Commission Order in Case No. U-20359. She testified that the costs included are all items in accounts 447 and 555 except those related to either Michigan or Indiana jurisdictional trackers and revenues directly related to I&M's wholesale requirements customers. She stated that there are also some items related to Off-System Sales (OSS) margins that have been included.²⁸

Ms. Heimberger testified that the cost of fossil fuel consumed was based on the generation forecast for each of I&M's fossil generating units. The cost of fossil fuel consumed for each of I&M's generating units is equal to the number of tons of coal consumed times the average unit cost of coal in fuel inventory. For the 2021 plan year, the cost of fuel consumed was developed on a monthly basis. The average cost of coal was defined as the weighted average cost of coal in inventory at the beginning of the month plus the projected cost of fuel delivered during the month.²⁹

Ms. Heimberger testified concerning the nuclear fuel expense, the wind generation expense, and the solar generation expense.³⁰ She also explained the purchased power, planned purchases from AEG, and the derivation of the non-fuel charges associated with the Rockport purchases from AEG. She testified regarding the PJM ancillaries included in Exhibit IM-14.³¹ Ms. Heimberger testified about the Transmission losses, OSS Cost of Goods Sold, the OSS Margin, and adjustments for fuel handling, affiliated transportation

²⁸ Tr. Vol. II, pg. 231

²⁹ Tr. Vol. II, pgs. 232-233

³⁰ Tr. Vol. II, pgs. 233-234

³¹ Tr. Vol. II, pgs. 236-238

exclusion and ash disposal costs/credits.³² Ms. Heimberger stated that the 2021 power supply costs for I&M, on a total Company basis, are projected to be \$398,425,000 or 18.92 mills per kWh before consideration for any line losses based on a net energy requirement of 21,052.4 GWh.³³

Ms. Heimberger testified that the fossil generation included I&M's share of Rockport Unit 1 and Rockport Unit 2. She stated that the purchase power non-affiliated includes plan purchases from OVEC as well as unplanned market purchases which occasionally have to make from time to time to meet load. She testified that they receive OVEC's forecast from OVEC and that is incorporated into their forecast. The market purchases are calculated through the PLEXOS model.³⁴

Ms. Heimberger testified that plan purchases from AEG represent the purchase of 70% of the power and energy from AEG's share of Rockport Unit 1 and Unit 2. The remaining 30% is purchased by Kentucky Power. AEG owns 50% of Rockport Unit 1 and leases 50% of Unit 2. AEG sells 70% of the power from both Rockport units to I&M.³⁵ I&M pays AEG under a FERC approved purchase power agreement that includes both energy charges and demand charges. The costs are then recovered through the PSCR from the Michigan share of customers. She stated that I&M pays AEG demand charges associated with 35% of the capacity of the Rockport plant and recovers its share of demand charges from its Michigan customers in the PSCR.³⁶

³² Tr. Vol. II, pgs. 239-240

³³ Tr. Vol. II, pg. 241

³⁴ Tr. Vol. II, pg. 250

³⁵ Tr. Vol. II, pg. 258

³⁶ Tr. Vol. II, pg. 260

Ms. Heimberger sponsored Exhibits IM-14 through IM-17. Exhibit IM-14 identifies, by component, the forecasted monthly Total Company -Michigan Basis power supply costs for the period of January 1, 2021 through December 31, 2021. Exhibit IM-15 details the forecasted monthly Total Company- Michigan Basis net energy requirement for the period January 1, 2021 through December 31, 2021. Exhibit IM-16 identifies, by component, the annual forecasted Total Company-Michigan Basis power supply costs for the years 2021 through 2025. Exhibit IM-17 details the forecasted annual Total Company-Michigan Basis net energy requirement for the years 2021 through 2025.

B. Staff Testimony

Raushawn D. Bodiford, a Public Utilities Engineer in the Energy Operations Division of the Michigan Public Service Commission, was the only witness on behalf of Staff. Mr. Bodiford presented the Staff's analysis of and position on I&M's 2021 PSCR plan and requested PSCR factor.

Mr. Bodiford testified that Staff reviewed I&M's filing to determine what the Company was requesting for approval, to ensure consistency with past Commission orders, and to determine the reasonableness and prudence of the Company's plan.³⁷

Mr. Bodiford stated that Staff's review found that I&M did not introduce any new issues and that its 2021 PSCR plan is consistent with past Commission approvals. I&M's PSCR plan assumes utilization of its existing internal resources within the PJM Interconnection market construct. The projections I&M utilized to produce the requested monthly PSCR factor are a 'best guess under normal circumstances' and provide a reasonable representation of future events. All revenue collected from the PSCR base

³⁷ Tr. Vol. II, pg. 279
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and proposed factors will be reconciled with the booked costs that will result from actual system operations during 2021. The booked costs will be reviewed for reasonableness and prudence and a recovery determination will be made in the 2021 PSCR reconciliation case.³⁸

Mr. Bodiford testified that as part of the reasonable and prudence review, Staff compared I&M's 2021 PSCR plan to the Company's 2020 PSCR plan in Case No. U-20529. I&M has requested a higher PSCR factor in 2021 compared to its 2020 requested PSCR factor. The main differences driving the higher PSCR factor for 2021 are that I&M is projecting an increase in transmission costs for 2021 and that I&M has rolled an estimated under-recovery of \$5,215,141 from 2020 into its 2021 plan.³⁹ The roll-in methodology of including estimated PSCR costs over-recoveries from prior years decrease the subsequent year's projected PSCR factor, while under recoveries serve to increase the projected PSCR factor for the next year. In 2020 the projected PSCR plan factor included a prior year roll-in of an under-recovery of \$683,543. The 2021 PSCR plan factor includes a projected roll-in from 2019 of an under-recovery of \$5,215,141.⁴⁰

Mr. Bodiford testified that though it is difficult to anticipate how PSCR costs will ultimately be impacted due to the ongoing COVID-19 pandemic, Staff has determined that the methodologies and assumptions detailed in the Company's filing are within a range of reasonableness sufficient for setting a PSCR billing factor.⁴¹

Mr. Bodiford testified that as part of the settlement in Case. No. U-20359, I&M provided additional details regarding its power agreement with OVEC. He described the

³⁸ Tr. Vol. II, pgs. 270-280

³⁹ Tr. Vol. II, pgs. 281-282

⁴⁰ Tr. Vol II, pg. 283

⁴¹ Tr. Vol. II, pg. 284

OVEC Inter-Company Power Agreement (ICPA). He stated that OVEC was formed in 1952 to supply power for uranium enrichment facilities by the Atomic Energy Commission. OVEC, the Atomic Energy Commission, and the sponsoring companies executed a 25-year power agreement that was later extended. OVEC and the sponsoring companies signed an Inter-Company Power Agreement (ICPA) in 1953 that allowed for the sale of excess power not used by the Department of Energy to the sponsoring companies. In 2003, the power supply agreement with the Department of Energy was terminated, and the entire output of the OVEC plants has been available to the sponsoring companies since that time. The original agreement has twice since been extended once in 2006 and again in 2011, which extended the ICPA until 2040. I&M has not presented the ICPA to the Commission for approval.⁴² Since I&M has not presented the ICPA for review by the Commission, the actual costs resulting from I&M's participation in the OVEC ICPA are reviewed each year in the PSCR process for reasonableness and prudence.

Mr. Bodiford stated that Staff's position is that the Commission is only obligated to consider for approval what a utility requests in its case. Generally, a PSCR case is only approving projected costs for one year to bill a PSCR factor as required by Public Act 304 of 1982. Considerations of future costs would be relevant if the Commission was asked by the Company to approve the actual contract which provides a framework in the future where costs will be incurred. I&M has never asked for approval of the OVEC ICPA; therefore, Staff will continue to evaluate the costs that result from the ICPA on a year-by-year basis. If there is a point in the future when the costs that result from I&M extending the terms of the ICPA become unreasonable, Staff will evaluate the costs at that time and

⁴² Tr. Vol. II, pg. 284
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would expect I&M to provide ample evidence to support the actions it took to minimize the cost of its contract for customers.⁴³

Mr. Bodiford testified that per the Commission's order in Case No. U-18404, the Commission emphasized its expectation that utilities must continue to evaluate wholesale power contracts as market conditions change and not become complacent. The Commission is, however, clarifying its expectation that I&M must demonstrate to this Commission, in the PSCR reconciliation proceeding and future plan cases, that its wholesale purchases from affiliates are just and reasonable under current market conditions, tax structures, and I&M's participation in PJM and that the utility is taking appropriate actions to minimize costs to ratepayers pursuant to Act 304. (June 7, 2019 order in Case No. U-18404 at page 7).⁴⁴ Mr. Bodiford stated that I&M has provided enough information for Staff to determine that its costs are within a range of reasonableness for billing customers for the 2021 PSCR plan year. The costs will be evaluated again in the Company's 2022 PSCR plan case.⁴⁵

As to the IPA, Mr. Bodiford testified that the ICPA costs are reviewed similar to how one would view any long-term generation commitment. Utility actions in Act 304 cases are evaluated for reasonableness and prudence based on the information that the utility had available at the time the decision was made. Therefore, I&M's decision to extend the OVEC ICPA to 2040 would have to be found to be reasonable based on the information that I&M knew in the 2011 timeframe when it made the decision to extend the ICPA to 2040.⁴⁶

⁴³ Tr. Vol. II, pg. 285

⁴⁴ Tr. Vol. II, pg. 286

⁴⁵ Tr. Vol. II, pg. 286

⁴⁶ Tr. Vol. II, pg. 286

Mr. Bodiford testified Staff did not evaluate the long-term economics of the OVEC ICPA in this case. As with any long-term decision, the investment may not be economic in every single year, and very likely will not be, but while I&M has committed itself to a long-term contract with OVEC, that does not mean that I&M should not regularly evaluate the economics of the contract and make attempts to renegotiate if the contract is no longer beneficial to its customers. If the contract is no longer within a range of reasonableness in the future, Staff would fully expect that I&M would take actions to exit and/or modify the contract or show that the contract is still just and reasonable for customers. Given the long-term nature of the contract, Staff has recommended in I&M 2020's PSCR plan in Case No. U-20529 that the OVEC ICPA merits additional evaluation in I&M's next integrated resource plan.⁴⁷

Mr. Bodiford testified Staff is recommending that I&M's 2021 PSCR factor be approved as reasonable for collecting revenue from its customers that will be reconciled and again reviewed for reasonableness and prudence in I&M's 2021 PSCR reconciliation case.⁴⁸

Mr. Bodiford sponsored Exhibit S-1⁴⁹ and cross-examination was waived. Exhibit S-1 is I&M's written response to Staff's discovery request.

C. Attorney General Testimony

The Attorney General did not present any testimony in this matter.

⁴⁷ Tr. Vol. II, pg. 287

⁴⁸ Tr. Vol. II, pg. 287

⁴⁹ Portions of Exhibit S-1 were marked as confidential.

D. Sierra Club Testimony

Sierra Club presented testimony of Devi Glick.⁵⁰ Ms. Glick is a Senior Associate at Synapse Energy Economics which is a research and consulting firm specializing in energy and environmental issues, including electric generation, transmission and distribution system reliability, ratemaking and rate design, electric industry restructuring and market power, electricity market prices, stranded costs, efficiency, renewable energy, environmental quality, and nuclear power.⁵¹

Ms. Glick testified regarding her review and evaluation of the prudence of I&M's PSCR Plan for 2021. Specifically, she evaluated I&M's justification for charging Michigan customers for the purchase of energy from its affiliate OVEC under the ICPA at above-market prices and reviews I&M's oversight of OVEC's operational and planning decisions. She testified regarding her evaluation of the Company's operation of the Rockport units and review fuel and power purchase costs it plans to pass on to customers during the PSCR plan and five-year forecast period.⁵²

Ms. Glick stated that her primary findings were:

1. I&M has been purchasing power from OVEC under the ICPA at above market value and passing those costs on to customers since 2017. Over the course of 2020, the ICPA has cost I&M customers \$26.5 million more than the cost of equivalent energy and capacity purchased from the market.
2. OVEC currently operates its two power plants, Clifty Creek and Kyger Creek, uneconomically and incurs net losses relative to market energy prices. In 2020, I&M ratepayers incurred \$2.5 million in losses relative to the energy market on just a variable cost basis. In 2020, I&M customers would have been better off if the OVEC plants had not operated at all.

⁵⁰ Ms. Glick's testimony consisted of confidential version that was filed under seal.

⁵¹ Tr. Vol. II, pg. 296

⁵² Tr. Vol. II, pg. 297

These losses could be mitigated with more prudent unit commitment practices.

3. I&M is projected to lose in energy market revenue and capacity value over the PSCR forecast period of 2021–2025 and over the life of the ICPA (on a present value basis) by purchasing energy from OVEC under the ICPA. These costs will be passed on to ratepayers, absent protection from the Commission.

4. I&M is subject to the MPSC Code of Conduct and, as such, is required to cap payment to an affiliate based on market prices and rates. The Company's sustained pattern of paying OVEC above-market prices for 6 power appears to violate the Code of Conduct.

5. I&M has been imprudently managing its ICPA contract with OVEC. It has taken no apparent steps to minimize costs and losses and has remained ignorant of the operational and planning decisions being made at the plant, including the forward-going economics of the decision to keep the plant online and the 2020 decision to invest in Coal Combustion Residuals ("CCR") and Effluent Limitation Guidelines ("ELG") upgrades.

6. I&M has operated, and continues to operate, the two Rockport units uneconomically. I&M incurred net losses relative to market energy prices of \$25.1 million in 2020 on a variable cost basis. These losses could have been mitigated with more prudent unit commitment practices.

7. I&M's latest fuel cost plan and five-year forecast indicate that I&M intends to continue its uneconomic operation and commitment practices at the Rockport units. The Company plans to pass on the costs incurred through both (1) generation fuel costs (for the portion I&M owns and leases), and (2) power purchased from AEG (for the portion it purchases under PPA), which combined, exceed market revenues by over the next five years.⁵³

Ms. Glick testified recommended that:

1. The Commission should amend the PSCR plan by removing the costs of the OVEC ICPA from the maximum PSCR factor for the plan year. The Commission should reduce I&M's forecast costs by the difference between OVEC's expected costs and the expected cost of market purchases for energy and capacity during that time period.
2. The Commission should issue a Section 7 warning to I&M that on the basis of present evidence it will likely disallow I&M's recovery of the Michigan jurisdictional share of compensation for the ICPA in 2021–2025.
3. To the extent that I&M continues paying costs under the ICPA, recovery of all purchased power costs from OVEC should be capped at the equivalent price that I&M would pay to procure the energy, capacity, and ancillary services from the PJM market in each given year.
4. The Commission should not approve I&M's PSCR plan to the extent it is developed around the assumption that it will continue to uneconomically self-commit the Rockport units, and put I&M on notice that the Commission may disallow recovery of the costs of such operation.
5. The Commission should caution I&M that if the Company extends its lease or enters into a new purchase agreement with current or future Rockport unit 2 owners to continue to lease or purchase power from Rockport unit 2 without contemporaneous Commission approval of that lease or purchase agreement decision, the Commission may disallow recovery of all or part of those costs in future proceedings.
6. The Commission should indicate that it will disallow recovery in future fuel cost reconciliation dockets of the fuel portion of all net revenue losses incurred as a result of imprudent unit commitment decisions.⁵⁴

Ms. Glick testified that I&M's share of the ICPA with OVEC is 7.85%. This means that I&M is responsible for 7.85% of OVEC's fixed and variable costs while also being

entitled to a 7.85% share of OVEC's power output. This translates into an installed capacity ("ICAP") share of 174–174.3 MW. The cost of the ICPA is passed through to I&M ratepayers as a direct cost. In 2020, I&M was billed \$47,665,070 by OVEC for 721,476 MWh. Before 2004, the ICPA was set to expire on December 31, 2005. Before this date, the Sponsors agreed among themselves to extend the ICPA to 2026. I&M did not seek approval from the Michigan PSC for the decision to enter into the contract around the time that decision was made in 2004. In September 2010, the Sponsors again agreed to a revised ICPA that extended its term until 2040. I&M and the other participating investor-owned utilities are therefore obligated to cover the costs of the OVEC plants through 2040. The Clifty Creek and Kyger Creek Plants will each be 85 years old by the time the ICPA expires. Once again, I&M did not request or receive Commission approval for its decision to enter into a revised ICPA contemporaneous with its decision to sign that contract in 2010. Other utilities, including I&M's affiliate, Appalachian Power, did seek approval for the decision to sign the 2010 contract from the relevant state commission.⁵⁵

Ms. Glick testified that if I&M can purchase the energy, capacity, or ancillary services that it needs from the PJM market at a lower cost than it would pay to purchase power from OVEC under the ICPA, then it is paying above the market price for the OVEC power. She stated that she compared the total energy charges billed to Sponsoring Companies under the ICPA and the revenue that I&M earned selling that energy into the PJM energy market. I&M's own data shows that in 2020 OVEC billed I&M \$18,487,826 in energy charges for 721,476 MWh of electricity. That works out to an energy cost of \$25.63/MWh. But I&M only earned \$15,960,650 in energy and ancillary market revenue

⁵⁵ Tr. Vol. II, pg. 302
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selling that energy, which works out to a value of \$22.12/MWh. That means that on a marginal cost basis alone, in 2020 I&M lost \$2.5 million for its ratepayers (excluding demand charge and capacity value).⁵⁶

She testified that the ICPA is not delivering value to the I&M ratepayers. Ms. Glick stated that the cost for power under the ICPA has been significantly above market value since at least 2017 (the last year for which the Company provided complete data). This is not a new occurrence or a single year fluke, it is in fact part of a pattern of poor and steadily worsening performance.⁵⁷

Ms. Glick testified that I&M has conducted no analysis, nor is the Company aware of any other analysis that has been conducted during the past two years, on the economics of operating the OVEC units. I&M has neglected to evaluate the forward-going economics of continuing to purchase power under the ICPA over the past few years. But this analysis establishes that if I&M is allowed to continue to purchase power from OVEC under the ICPA, I&M ratepayers will be forced to pay hundreds of millions of dollars more than the market value of the power over the next two decades. These findings, which were conducted using the Company's own data, were confirmed by the analysis conducted by several other reputable consulting firms over the past few years.⁵⁸

Ms. Glick testified that I&M is responsible for the costs associated with the 50 percent share of Rockport 1 that it owns and the 50 percent share of Rockport 2 that it leases. The associated fuel costs are planned for in this PSCR docket and passed on directly to customers as fuel costs through fuel clauses. The remaining unit costs are

⁵⁶ Tr. Vol. II, pg. 304

⁵⁷ Tr. Vol. II, pg. 307

⁵⁸ Tr. Vol. II, pg. 321

passed on to ratepayer through rate case and other dockets. I&M also is responsible for the costs associated with the 70 percent share of AEG's portion of Rockport it purchases through a Unit Power Sale agreement. But because this power is procured through a power purchase agreement, instead of from a unit operated by I&M, the entire cost of this share is passed on directly to customers through fuel clauses (not just the fuel costs). That means the entire PPA cost is forecasted and planned for in this PSCR docket.⁵⁹

Ms. Glick sponsored 16 exhibits. Exhibits SC-1 through SC-16 were admitted. Cross-examination was waived.

E. Rebuttal Testimony

In rebuttal, the Company presented witness Jason M. Stegall and additional testimony for Ms. Heimberger.

Mr. Stegall, Manager of Regulatory Pricing and Analysis for American Electric Power Service Corporation, testified to rebut the testimony of Ms. Glick. Mr. Stegall states both the Company's purchases from OVEC under the ICPA and its purchases from AEP Generating Company (AEG) under the Unit Power Agreement (UPA) include two primary types of costs – energy costs and demand costs. The energy costs are those costs associated with the energy delivered under each agreement for the benefit of I&M. Comparing the energy-only costs of these agreements to the PJM energy market prices is a limited comparison because it only shows profitability while failing to address the prudence of Company decisions, such as dispatching a generating unit. An evaluation of prudence in that regard would need to consider all information available to the Company at the time the decision was made.

⁵⁹ Tr. Vol. II, pg. 328
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Demand costs are those costs that provide I&M the right to energy delivered under the cost-based energy charges in both agreements. This is particularly valuable at times when market prices for energy are high. Demand costs are costs that will be incurred as a result of the agreement, and are independent of the energy delivered. In addition, the demand costs allow I&M to take credit for a share of OVEC's capacity and AEG's capacity to meet its capacity requirements as a Fixed Resource Requirement (FRR) entity in PJM. Witness Glick's analysis only includes a value for capacity at the short-term PJM Reliability Pricing Model (RPM) clearing price – a capacity market that does not apply to I&M as a FRR entity. Her analysis fails to recognize that the purchase of short-term RPM capacity (currently only available through the 2022/2023 PJM planning year for which RPM auctions have occurred) would not entitle I&M to also receive additional cost-based energy when market prices rise.⁶⁰

Mr. Stegall contends that if the Commission were to follow witness Glick's recommendation to disallow ICPA costs based on a comparison to the current market prices, it would have a chilling effect on all businesses regulated by this Commission. Using the benefit of hindsight and applying witness Glick's rationale, any contract that falls above market costs, at any point during the life of that contract, could be subject to disallowance from rates. This approach could just as easily be applied to the ICPA as it could to companies entering into other long-term purchase power agreements for natural gas or renewable resources. Over time, as market prices go up or down, these contracts could be below market at times and above market at other times.⁶¹

⁶⁰ Tr. Vol. II, pgs. 91-92

⁶¹ Tr. Vol. II, pg. 95

Mr. Stegall testified that Ms. Glick merely supposes what she believes to be the case, and arrives at her conclusion but is incorrect. He contends that the fact is that a generation asset may operate at a cost that may appear to be out of merit because there are other considerations (such as minimum take requirements with liquidated damages when not met in coal contracts) that must factor into the economic decision to dispatch a unit. Any analysis that only compares the cost of energy generated to the market price is not an analysis that proves imprudence. As such, witness Glick has presented no facts that would support a finding that OVEC is not using a sound strategy to bid its units into the market. In fact, she admits that she, “has no clear information on OVEC’s unit commitment and operational decision or decision-making process.”⁶²

Mr. Stegall testified that the Company’s use of energy purchased through the ICPA and energy generated from its Rockport units to satisfy Michigan customers’ energy requirements is reasonable and the Commission should continue to allow the Company to include these resources in its PSCR Plan. Witness Glick erroneously concludes these resources are imprudent without any evaluation that does more than compare costs to market prices, even though not all products provided by the Company’s resources can be compared to market products. The Company reviews the costs and operations of OVEC in accordance with its rights established in the ICPA. Finally, OVEC is not an affiliate of I&M, is not subject to the Code of Conduct, and the Company should not receive a Section 7 warning.⁶³

⁶² Tr. Vol. II, pg. 97

⁶³ Tr. Vol. II, pg. 103

On cross-examination, Mr. Stegall testified that each Rockport unit is about 1300 megawatts of capacity. In addition, he testified that I&M and AEP Generation are going to acquire 100% interest in Rockport Unit 2. He testified that AEP Generation is an affiliate of I&M. It's an AEP company that owns half of Rockport Unit 1 and leases half of Rockport Unit 2.⁶⁴

Mr. Stegall sponsored Exhibit IM-22, a benchmark Study.

Ms. Heimberger presented additional testimony to rebut the testimony of Ms. Glick. Ms. Heimberger testified that she reviewed Ms. Glick's workpapers and identified two flaws. First, when calculating Rockport's fuel costs relevant to the PJM market and the PSCR, fixed operations and maintenance expenses (O&M) and capital expenditures (CAPEX) should be excluded. I&M's generating units are operated, along with the units of the other PJM members, to meet the total PJM load requirements on the most economical basis, based on price offers, subject to transmission limitations. Such operation was simulated in the development of the generation forecast by means of the PLEXOS simulation model, a production costing computer program that AEP uses to simulate a market-price dispatch of its generation units. PLEXOS commits units in PJM based on variable energy costs (fuel and variable O&M), which is the same basis that the PJM market-price is determined. The PLEXOS forecasting model will not dispatch or run the Rockport units uneconomically. She stated witness Glick's assertion that the Company intends to continue to operate and commit the Rockport units uneconomically in the plan year and five-year forecast is incorrect. Also, I&M did not provide fixed O&M or CAPEX projections in discovery during this case since the commitment process does

⁶⁴ Tr. Vol. II, pg. 112
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not include any fixed O&M or CAPEX. She testified that witness Glick's use of EIA's technology and age-specific values in an attempt to estimate the units' fixed costs is not appropriate.⁶⁵

Second, when calculating Rockport's revenues relevant to the PJM market, it is not appropriate to include capacity revenues because I&M is a Fixed Resource Requirement (FRR) entity within PJM. I&M and its affiliates, as operating companies of AEP, have been FRR entities in PJM since joining the Regional Transmission Organization in 2004. This means that I&M has sufficient capacity to serve the needs of its customers and does not participate in the RPM capacity market in PJM. Additionally, replacing Company-owned FRR capacity with a market product is not a like-for-like replacement. Therefore, witness Glick's use of capacity revenues is not appropriate.⁶⁶

She stated that she updated Ms. Glick's analysis by removing the fixed O&M, CAPEX and capacity revenues. She stated that the updated analysis demonstrates the errors made by Ms. Glick and undermine Ms. Glick's conclusions and recommendations.⁶⁷

During cross-examination, Ms. Heimberger indicated that the purchase of Rockport Unit 2 by I&M and AEP Generation impact was not included in any of the forecasting completed for this filing in September 2020.⁶⁸

⁶⁵ Tr. Vol. II, pgs. 243-245

⁶⁶ Tr. Vol. II, pgs. 243-245

⁶⁷ Tr. Vol. II, pg. 246

⁶⁸ Tr. Vol. II, pg. 254

III.

DISCUSSION

A. Position of the Parties

I&M requests that the Commission enter an order approving implementation of the Company's proposed PSCR Plan and PSCR Factor in rates for 2021 jurisdictional sales of electricity that are subject to the PSCR clause. I&M requests the Commission approve the Company's request for a 2021 PSCR Factor of 18.92 mills per kWh, resulting in a proposed Michigan jurisdictional PSCR factor of 2.85 mills per kWh applicable to the billing months of January 2021 through December 2021. I&M requests that the Commission accept the Company's five-year forecast and reject the request to issue a Section 7 warning pursuant to MCL 460.6j(7).

I&M argues that in accordance with Act 304, its proposed 2021 PSCR Plan contains all of the elements which are required to be included and described in a PSCR Plan. I&M contends that the proposed 2021 PSCR Plan is reasonable and prudent. I&M argues that it has taken all appropriate actions to minimize the cost of fuel. The Company argues that the proposed 2021 PSCR factors do not reflect items that the Commission could reasonably anticipate would be disallowed under Section 6j(13) of Act 304.⁶⁹

Staff recommends that the Company's 2021 PSCR factor be approved as reasonable given that it will be reconciled and reviewed in the Company's future 2021 PSCR reconciliation case. Staff contends that the ICPA/OVEC costs included in the Company's 2021 PSCR Plan case fall within a range of reasonableness and should be

⁶⁹ I&M's Initial Brief, pg. 21
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approved subject to reconciliation and further review for reasonableness and prudence in a reconciliation case.⁷⁰

Staff agrees with Sierra Club that the dispatch of the Rockport units is uneconomic as “must run”. However, Staff maintains its position that the Company’s application in this case is acceptable for the purposes of setting a reasonable and prudent PSCR factor in 2021. Although, in light of the uneconomic must run, Staff recommends that the Commission order the Company to provide an analysis of Rockport’s actual dispatch in the reconciliation proceeding of this case. Staff argues that if the Company fails to provide this information or provides information that does not adequately support its position to commit the Rockport units as must run, the Commission should warn the Company that it may disallow fuel costs associated with uneconomic must run decisions in future reconciliation cases.⁷¹

While Staff contends the costs associated with ICPA/OVEC are within the range of reasonableness for the 2021 PSCR plan year, Staff recognizes that because the reasonableness of a long-term commitment contract can change over time with shifting market conditions, further review of the long-term reasonableness is warranted. Staff points out that the Commission in Case No. U-20529 indicated that the agreement should be addressed in the Company’s next IRP proceeding.⁷²

The Sierra Club requests that the Commission relieve the customers of I&M of the burden of paying for the high-cost OVEC contract through the PSCR charge. Sierra Club argues that the OVEC costs exceed any range of reasonableness. In support of this

⁷⁰ Staff Initial Brief, pg. 8

⁷¹ Staff Reply Brief, pg. 1

⁷² Staff Reply Brief, pg. 3

contention, Sierra Club argues that besides the costs are not just and reasonable under current market conditions, OVEC is an affiliate of I&M under the Commission's Code of Conduct. Therefore, the affiliate price cap in the Code applies and the Commission should disallow recovery of charges to Michigan customers above market price.⁷³

Sierra Club argues that rather than offer contemporaneous evidence of the prudence of the plan year and forecasted OVEC costs or overall reasonableness of the ICPA, I&M offers legal arguments that have now been rejected by the Commission in Case No. U-20529.⁷⁴

Sierra Club asks that the Commission determine that the ICPA is substantially higher cost than the value of the products and services provided by OVEC to I&M and; therefore, the OVEC contract is not reasonable or prudent under current market conditions for the 2021 plan year. In addition, that the Commission find that the OVEC contract is projected to cost significantly more than equivalent market products and services during the forecast period of 2022 to 2025 such that it is outside the range of reasonable and prudent costs. Sierra Club asks that the Commission should amend the PSCR plan by removing the costs of the OVEC ICPA from the maximum PSCR factor, and reduce I&M's forecast costs by the difference between OVEC's expected costs and the expected cost of market purchases for energy and capacity during that time period. Sierra Club requests the Commission issue a Section 7 warning to I&M that on the basis of present evidence it will likely disallow I&M's recovery of the Michigan jurisdictional share of compensation for the ICPA in 2022-2025.

⁷³ Sierra Club Initial Brief, pg. 2

⁷⁴ Sierra Club Initial Brief, pg. 3

Sierra Club argues that the Commission should reaffirm that OVEC is an “affiliate” of I&M under the Michigan Code of Conduct. The Commission should apply the Code of Conduct’s affiliate price cap, and direct a disallowance equal to the difference between the payments I&M makes under the ICPA and the costs that I&M ratepayers would pay for the same amount of energy and capacity at market prices. Finally, the Sierra Club contends that the Commission should warn I&M that it will disallow recovery in PSCR reconciliation dockets of the fuel portion of all net revenue losses incurred as a result of imprudent unit commitment decisions at Rockport.⁷⁵

In rebuttal, I&M contends that the Sierra Club’s argument regarding commitment decisions at Rockport and request for a warning that the Commission will disallow recovery of fuel costs with imprudent must run designations in future reconciliation proceedings should also be rejected because it is not based on any analysis of the prudence of I&M’s dispatch decisions.⁷⁶

I&M argues that the announced plan to purchase Rockport Unit 2 is not part of the record in this case. The Sierra Club’s argument that the purchase price of Rockport Unit 2 shows the cost of OVEC capacity is excessive should not be considered at this time.⁷⁷

I&M contends that the Commission’s order in Case No. U-20529 does not apply to this matter because this case’s initial filing predates the May 13, 2021 order. I&M argues that the Commission’s stated intention that it will only scrutinize ICPA costs under the Code of Conduct for newly filed cases must also apply to this present PSCR Plan case.⁷⁸ I&M states that if the Commission were to apply the Code of Conduct’s pricing provision

⁷⁵ Sierra Club Initial Brief pgs. 2-3

⁷⁶ I&M Reply Brief, pg. 4

⁷⁷ I&M Reply Brief, pg. 18

⁷⁸ I&M Reply Brief, pg. 19

in this case based on its May 13 Order to justify a disallowance or Section 7 warning, despite the official record being closed in this case on April 28, 2021, it would be clearly applying a new practice after-the-fact violating fundamental due process.⁷⁹

I&M argues that the Section 7 warning is unwarranted arguing that the evidence submitted in this case complies with the statutory requirements for a five-year forecast filing and supports finding that there are no projected costs in the five-year proceeding that would not be permitted for recovery. The forecasts of customers' power supply requirements and I&M's anticipated sources of supply were supported by I&M witness Baker and are contained in Exhibits IM-1 through IM-5 and IM-8 through IM-9.⁸⁰

In reply, Sierra Club argues that the Commission rejected I&M's position regarding the appropriate review of the OVEC contract in Case No. U-20529 noting that the Commission stated:

the Commission also has the duty under statute to continuously evaluate the reasonableness of the PSCR plan and factors, including the cost arising under the ICPA and its amendments. See, PFD, pp. 17-18. This is particularly true for cases involving affiliate transactions that implicate the Code of Conduct, as discussed below.⁸¹

Sierra Club argues that the Commission never actually stated that a Code of Conduct applies to the ICPA only in "newly filed" proceedings as claimed by I&M. Sierra Club points out that the text of the Order actually states:

the Commission agrees with the ALJ that the comparison to the PJM capacity market is insufficient, on its own, to warrant a disallowance and finds that a Section 7 warning is not appropriate at this time, particularly given that the reconciliation for the 2020 plan year has already been filed. See, Case No. U-20530, application filed March 31, 2021.

⁷⁹ I&M Reply Brief, pg. 19

⁸⁰ I&M Reply Brief, pg. 28

⁸¹ Sierra Club Reply Brief, pg. 3 citing Case No. U-20529.

The Commission added that “on a going forward basis” it “will closely scrutinize costs incurred under this contract between affiliates.”⁸²

Sierra Club argues that the Code of Conduct administrative rules establishes requirements for transactions with affiliates, including a price cap. Sierra Club argues that the Commission should disallow excess OVEC costs in this case because I&M’s payments to OVEC run afoul of the Code of Conduct’s price cap.⁸³

Sierra Club contends that its evidence shows the OVEC costs are excessive from 2017 through 2025 and the data included three different measures of capacity: AEP’s own PJM capacity market forecast, the price the Company recently paid for Rockport Unit 2, and CONE as calculated by PJM. I&M’s assertion that Sierra Club’s evidence is based on 2020 alone is simply incorrect Sierra Club argues.⁸⁴

Sierra Club agrees with Staff’s position that OVEC costs that I&M includes in its PSCR plan must be evaluated “on a year-by-year basis, as are other PSCR costs.” Sierra Club further agrees with Staff that the appropriate “lens” to view I&M’s OVEC costs is through “current market conditions.” But Sierra Club argues that Staff’s range of reasonableness analysis is flawed in at least four ways and is not a basis to approve these costs. Sierra Club contends that Staff does not define what its range of reasonableness actually is. Sierra Club states that Staff’s focus on one year of data when there are at least four years of historical data showing significant economic losses fails to protect the ratepayers. Sierra Club argues that Staff uses the wrong standard when limiting its review to the 2011 timeframe and ignored current market conditions. Finally,

⁸² Sierra Club Reply Brief, pgs. 4 and 5

⁸³ Sierra Club Reply Brief, pg. 6

⁸⁴ Sierra Club Reply Brief, pg. 11

Sierra Club argues that staff did not appear to conduct an evaluation of whether the ICPA transactions comply with the Code of Conduct's price cap for affiliate transactions. The Commission conclusively decided that I&M is an affiliate of OVEC in Case No. U-20529 and found that "the Commission will closely scrutinize costs incurred under this contract between affiliates, reminds I&M of its obligations under the Code of Conduct, including I&M's 'continuing duty to support its long-term contracts and affiliate transactions,' and 'will expect to see evidence that the company has taken steps to minimize the cost of [power], including efforts to renegotiate contracts, and will look to comparisons with other long-term supply options as informative as to whether this particular contract adheres to the requirements of the Code of Conduct.'"⁸⁵

Sierra Club concludes its argument by asking the Commission to determine:

1. The ICPA is substantially higher cost than the value of the products and services provided by OVEC to I&M and therefore the OVEC contract is not reasonable or prudent under current market conditions for the 2021 plan year.
2. The OVEC contract is projected to cost significantly more than equivalent market products and services during the forecast period of 2022 to 2025 such that it is outside the range of reasonable and prudent costs.
3. The Commission should amend the PSCR plan by removing the costs of the OVEC ICPA from the maximum PSCR factor, and reduce I&M's forecast costs by the difference between OVEC's expected costs and the expected cost of market purchases for energy and capacity during that time period.
4. The Commission should issue a Section 7 warning to I&M that on the basis of present evidence it will likely disallow

I&M's recovery of the Michigan jurisdictional share of compensation for the ICPA in 2022-2025.

5. The Commission should reaffirm that OVEC is an "affiliate" of I&M under the Michigan Code of Conduct.

6. The Commission should apply the Code of Conduct's affiliate price cap, and direct a disallowance equal to the difference between the payments I&M makes under the ICPA and the costs that I&M ratepayers would pay for the same amount of energy and capacity at market prices, determined in one of the ways discussed below.

7. The Commission should warn I&M that it will disallow recovery in PSCR reconciliation dockets of the fuel portion of all net revenue losses incurred as a result of imprudent unit commitment decisions at Rockport.⁸⁶

B. Discussion

Act 304 provides the legal framework used to review the Company's proposed 2021 PSCR Plan and proposed factors. The Company bears the burden of proof in an Act 304 proceeding to demonstrate that its proposed PSCR plan and PSCR factors are reasonable and prudent. The applicable standard of proof for purposes of determining whether they are reasonable and prudent is the preponderance of the evidence standard.

Specifically, PSCR proceedings concern the recovery of an electric utility's "power supply costs" on an annual basis. MCL 460.6j(1) provides that:

As used in this act:

'Power supply cost recovery clause' means a clause in the electric rates or rate schedule of a utility which permits the monthly adjustment of rates for power supply to allow the utility to recover the booked costs, including transportation costs, reclamation costs, and disposal and reprocessing

⁸⁶ Sierra Club Reply Brief pg. 16
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costs, of fuel burned by the utility for electric generation and the booked costs of purchased and net interchanged power transactions by the utility incurred under reasonable and prudent policies and practices.

‘Power supply cost recovery factor’ means that element of the rates to be charged for electric service to reflect power supply costs incurred by an electric utility and made pursuant to a power supply cost recovery clause incorporated in the rates or rate schedule of an electric utility. MCL 460.6j(1)(b) and (c).

Subsection 6j(3) of Act 304 requires a utility with a PSCR clause to annually file a PSCR plan describing the expected sources of electric power supply and the changes in the cost of power supply anticipated over a future 12-month period. The PSCR plan must also describe all major contracts and power supply arrangements for the 12-month period.⁸⁷

Subsection 6j(4) of Act 304 requires the utility to file a five-year forecast of its power supply requirements, its anticipated sources of supply, and its projected power supply costs, all in light of its existing sources of electrical generation and sources of electric generation under construction.⁸⁸

Subsection 6j(5) of Act 304 provides that, after a utility files its PSCR plan and five-year forecast, the Commission conducts a proceeding to review the reasonableness and prudence of the PSCR plan and to establish PSCR factors for the period covered by the plan.⁸⁹

⁸⁷ MCL 460.6j(3)

⁸⁸ MCL 460.6j(4)

⁸⁹ MCL 460.6j(5)

Subsection 6j(6) of Act 304 provides that, in its final order in a PSCR plan case, the Commission must “evaluate the reasonableness and prudence of the decisions” underlying the utility’s plan and shall approve, disapprove, or amend the plan accordingly. In evaluating the decisions underlying the utility’s plan, the Commission must consider the cost and availability of the electrical generation open to use by the utility; the cost of available short-term firm purchases; the availability of interruptible service; the ability of the utility to reduce or eliminate any firm sales to out-of-state customers (if the utility is not a multistate utility whose firm sales are subject to other regulatory authority); whether the utility has taken all appropriate steps to minimize the cost of fuel and other relevant factors. This subsection also provides that the Commission must, in its final order regarding the plan, specifically approve, reject, or amend the 12 monthly PSCR factors requested by the utility. It requires that those factors not reflect any items that the Commission could reasonably anticipate would be disallowed under Subsection 6j(13), which sets forth the criteria to be considered in a subsequent PSCR reconciliation concerning the 12-month period covered by the plan in question.⁹⁰

Subsection 6j(7) of Act 304 provides that the Commission must evaluate the utility’s decisions underlying its 5-year forecast. With regard to its review of the 5-year forecast, the Act provides for the Commission to indicate whether it would be unlikely for the Commission to subsequently permit recovery of its rates, rate schedules, or power supply cost recovery factors set forth in the 5-year forecast based on present evidence.⁹¹

⁹⁰ MCL 460.6j(6)
⁹¹ MCL 460.6j(7)
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I&M's PSCR plan includes costs of its affiliate OVEC. In this case, Sierra Club has raised significant arguments against allowing costs associated with OVEC. In support of its objection, the Sierra Club argues that OVEC is an affiliate as determined by this Commission in Case No. U-20529 and therefore, recovery of costs would be governed by the Code of Conduct provisions. Sierra Club argues that the costs associated with OVEC are excessive and should be disallowed. I&M's does not dispute that the Commission determined that OVEC is an affiliate, and the costs would then be governed by the Code of Conduct rather I&M argues that the Code of Conduct provisions should not be applied at this time because the Company did not have sufficient notice that OVEC is an affiliate, and the Code of Conduct would apply.

If the Code of Conduct provision is applied, I&M's recovery of costs under the ICPA would be limited to the market equivalent prices. I&M argues that its costs are reasonable and prudent.

Staff has not addressed the affiliate issue. Staff has indicated that based on its review of the 2021 PSCR plan year, the costs associated with the ICPA/OVEC are within the range of reasonableness for the single year. Staff did not evaluate the long-term economics of the ICPA/OVEC contract. Staff acknowledges that the reasonableness of a long-term commitment contract such as the ICPA can change over time with shifting market conditions and further review of the long-term reasonableness of the ICPA/OVEC costs is warranted. However, Staff points out that the Commission agreed that the agreement would be addressed in the Company's next IRP proceeding scheduled for December 2021.

Staff contends that this is a Plan case, before recovery of costs, the Company would be required to file a Plan reconciliation at which time all costs would be able to be reviewed and excessive costs could be disallowed at that time. Sierra Club argues that the OVEC costs are excessive and are not permitted pursuant to the Code of Conduct which limits recovery of costs. To include these costs in the determination of the PSCR factor would potentially place an unfair burden on ratepayers.

While a plan forecast is merely a forecast of requirements of customers, anticipated sources of supply and projections of costs, it is just a projection using current information to plan for future needs. In this case, since this Plan was filed, there have been a couple of significant changes that have not been reflected in the Plan filing. The first is the Commission's determination that OVEC is an affiliate of I&M. This will limit the costs that can be recovered pursuant to the Code of Conduct. The second significant change that has the potential to affect the power supply costs, is the announced purchase of Rockport Unit 2. The purchase was announced just prior to the evidentiary hearing in this matter. No forecast by any party included this purchase in evaluating the PSCR Plan and costs.

Act 304 requires the Commission, in its final order regarding the plan, to specifically approve, reject, or amend the 12 monthly PSCR factors requested by the utility. It requires that those factors not reflect any items that the Commission could reasonably anticipate would be disallowed under Subsection 6j(13), which sets forth the criteria to be considered in a subsequent PSCR reconciliation concerning the 12-month period covered by the plan in question. Because OVEC is an affiliate of I&M, the Code of

Conduct applies. This means that there are costs associated with OVEC's potential uneconomic runs that the Commission could reasonably anticipate would be disallowed.

Staff appears to argue that the PSCR factor should be approved as requested and let any excessive costs be dealt with during the IRP or during the PSCR Plan Reconciliation. While it is true that the reconciliation of costs for this PSCR plan case would permit the disallowance of any unreasonable costs or any imprudent plans and presumably, any harm to ratepayers would be able to be corrected with an over/under recovery. However, the Commission has a duty to protect ratepayers. It does not seem appropriate to approve a PSCR factor that was calculated using costs that are likely to be disallowed and charge ratepayers a higher cost each month while expecting that a reconciliation will make ratepayers whole.

Because OVEC is an affiliate of I&M, the Michigan Code of Conduct is applicable. Therefore, the Commission should apply the affiliate price cap and direct disallowance equal to the difference between I&M's payments under the ICPA and the costs I&M ratepayers would pay for the same amount of energy and capacity at market prices.

The PSCR plan should be amended to remove the costs of the OVEC ICPA from the maximum PSCR factor and reduce I&M's forecast costs by the difference between OVEC's expected costs and the expected cost of market purchases for energy and capacity.

The Commission should warn I&M that it will disallow recovery in PSCR reconciliation dockets of the fuel portion of all net revenue losses incurred as a result of imprudent unit commitment decisions at Rockport.

IV.

CONCLUSION

Based on the foregoing discussion, this PFD recommends that the Commission:

- (1) Apply the affiliate price cap and direct disallowance equal to the difference between I&M's payments under the ICPA and the costs I&M ratepayers would pay for the same amount of energy and capacity at market prices.
- (2) Direct that the PSCR plan should be amended to remove the costs of the OVEC ICPA from the maximum PSCR factor and reduce I&M's forecast costs by the difference between OVEC's expected costs and the expected cost of market purchases for energy and capacity.
- (3) Amend the plan to include the impact of the Rockport Unit 2 purchase in the forecasting of costs.
- (4) Warn I&M that it will disallow recovery in PSCR reconciliation dockets of the fuel portion of all net revenue losses incurred as a result of imprudent unit commitment decisions at Rockport.

MICHIGAN OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission

**Kandra K.
Robbins**

Digitally signed by: Kandra K.
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Kandra K. Robbins
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