

STATE OF MICHIGAN

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own,)
motion, regarding the regulatory reviews,)
revisions, determinations, and/or approvals)
necessary for Indiana Michigan Power)
Company to fully comply with)
Public Act 295 or 2008.)

Case No. U-20867

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 January 10, 2022.

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 January 31, 2022, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before February 14, 2022.

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

Martin D. Snider

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January 10, 2022
Lansing, Michigan

Martin D. Snider
Administrative Law Judge

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
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PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

On November 19, 2020, the Michigan Public Service Commission (Commission) issued an Order in this docket instructing the Indiana Michigan Power Company (I&M) to file a cost reconciliation and annual report for its 2020 EWR Plan year in accordance with Act 295's requirements. On May 4, 2021, I&M filed its application in which it requested Commission approval of I&Ms

- Reconciliation of 2020 EWR Plan year program costs and carrying costs resulting in a cumulative surplus of \$6,385,360.
- Rate adjustments associated with the reconciled 2020 EWR Plan year program costs and carrying costs; and

- Authority to implement a revised EWR surcharge rider effective for bills rendered with the first billing cycle of January 2022 or the first billing month following a Commission order in this case, whichever is later.

On May 10, 2021, the Commission's Executive Secretary issued a Notice of Hearing setting a prehearing for June 10, 2021. Subsequently no petitions to intervene in this matter were filed.

On June 10, 2021, Administrative Law Judge (ALJ) Martin D. Snider convened a properly noticed prehearing. During the prehearing, counsel for I&M and Commission staff (Staff) agreed to a schedule in this matter.

On August 13, 2021, Staff filed the written testimony of witness Brad B. Banks and Fawzon B. Tiwana.

On September 14, 2021, I&M filed written testimony from Jon C. Walter and Nicholas Elkins.

According to the agreed upon schedule cross examination was set for October 14, 2021. Prior to the date set for cross examination counsel for I&M and Staff stipulated to the binding in of testimony in the record and the admission of all exhibits.

On October 14, 2021, ALJ Martin Snider convened an evidentiary hearing during which the following written testimony of I&M witnesses Jon C Walter, Nicholas Elkins, Bryan S. Owens, John W. Morgan, and Staff witnesses Brad B. Banks and Fawzon B. Tiwana, and sponsored exhibits were bound and admitted to the hearing record.

I&M

Jon C Walter Direct and Rebuttal Testimony
Exhibits: IM -1, IM-2, IM-3, IM-4

Nicholas Elkins Direct and Rebuttal Testimony
Exhibits: IM-9

Bryan S. Owens Direct Testimony
Exhibits: IM-5, IM-6, IM-7

John W. Morgan Direct Testimony
Exhibits: IM-8

Staff

Brad B. Banks Direct Testimony
Exhibits: None

Fawzon B Tiwana Direct Testimony
Exhibits: S-1

On November 15, 2021, I&M and Staff filed Initial Briefs. On November 29, 2021, I&M filed a Reply Brief. Staff did not file a Reply Brief.

II.

BACKGROUND

The “Clean, Renewable, and Efficient Energy Act,” 2008 PA 295 (Act 295), was enacted into law on October 6, 2008, requiring I&M as well as other electric and natural gas providers, to file proposed Energy Optimization Plans and Reconciliations with the Commission. MCL 460.1001 *et seq.*

In 2016, the Legislature passed 2016 PA 342 (Act 342), which amended Act 295 and became effective on April 20, 2017. Act 342 uses the term “Energy Waste Reduction” instead of “Energy Optimization” for energy efficiency programs. Section 71(2) of Act 295, as amended by Act 342, provides that Energy Optimization Plans

under Act 295 remain in effect, subject to any amendments, as EWR Plans. MCL 460.1071(2).

Section 74 of Act 295, as amended by Act 342, provides that EWR cost reconciliations be conducted on an annual basis to review “the reasonableness and prudence of EWR expenses for which customers were charged during the relevant reconciliation period.” MCL 460.1074.

Pursuant to Act 295 the Commission in this matter must make a determination of I&M’s compliance with applicable EWR standards and, if necessary, adjust I&M’s EWR charges previously approved by the Commission. *Id.* The Commission may also authorize a financial performance incentive for exceeding the EWR savings target for each individual year through 2021. MCL 460.1077.

In U-20374 the Commission issued an order approving I&M’s 2020-2021 EWR Plan, in part, and authorizing I&M to recover EWR Plan costs. I&M’s Commission approved EWR Plan included:

- Act 295 energy savings targets supported by a market potential study specific to I&M’s service territory
- EWR Plan programs for each customer class; and
- Specific funding levels, including authorization to roll over.

On May 4, 2021, I&M filed an application requesting Commission approval of:

- I&M’s reconciliation of 2020 EWR Plan year program costs and carrying costs resulting in a cumulative surplus of \$6,385,360.

- Rate adjustments associated with the reconciled 2020 EWR Plan year program costs and carrying costs; and
- Authority to implement a revised EWR surcharge rider effective for bills rendered with the first billing cycle of January 2022 or the first billing month following a Commission order in this case, whichever is later.

III.

POSTION OF THE PARTIES

A. I&M

I&M submitted the direct testimony and exhibits of the following witnesses in support of its requested 2020 EWR Plan year reconciliation and revised surcharge factors:

- Jon C. Walter, Manager of EE & Consumer Programs for I&M (qualifications and direct testimony). See 2 TR. 19- 35.
- Bryan S. Owens, Regulatory Consultant Staff in the Regulatory Services Department for I&M (qualifications and direct testimony). See 2 TR. 52-61.
- John W. Morgan, Regulatory Consultant Staff in the Regulatory Services Department for I&M (qualifications and direct testimony). See 2 TR. 64-68.
- Nicholas Elkins, Director of Customer Services and Business Development. See 2 TR 71-89.

Witness Walter testified that in 2020, I&M achieved 11,973,519 kWh in verified energy savings for residential sector programs. This was a 104% achievement of I&Ms allocated 1% standard goal and 76,959,374 kWh in verified lifetime energy savings. See

Exhibit IM-1. Witness Walter testified I&M's reconciliation is based on EWR expenses of \$1,700,374 for residential sector programs against the previous apportioned Act 295 cap of \$3,075,455. See 2 TR. 31. Commercial & Industrial (C&I) sector programs achieved 7,295,717 kWh in verified energy savings. This was a 46% achievement of its allocated 1% savings goal and 86,134,609 kWh of lifetime savings, at a total cost of \$1,422,283 against the previous apportioned Act 295 cap of \$3,274,899. Id.

Witness Walter testified that I&M's 2020 EWR plan was structured to build on I&M's history of achieving its 1% savings target. The 2020 plan expanded I&M's EWR measures, but the impact of COVID-19 required I&M to adjust the implementation of its EWR plan. Witness Walter testified that I&M:

- Adjusted program participant requirements.
- Introduced new program delivery channels.
- Increased incentive levels; and
- Revised customer communications

Witness Walter testified that the intent for these EWR service changes was to address the impact of new COVID-19 restrictions and health and safety concerns. See 2 TR 23-24: Exhibit IM-3.

Witness Walter testified that for I&M residential customers, I&M piloted EWR measures through its Food Bank LED Giveaway Pilot and the COVID PPE/Energy Savings Kit Pilot. See 2 TR. 24. I&M also:

- In June 2020 initiated curbside pickup in its Appliance Recycling Program when health and safety procedures permitted.

- Adapted its weatherization program to engage homebound customers through virtual audits.
- Increased incentives in the Home Energy Products program; and
- Initiated an online promotion for residential LED bulbs as an alternative for customers unable to make retail purchases

See 2 TR 25.

Witness Walter testified that I&M worked closely with low-income customers during the 2020 COVID-19 restrictions to personally help residential and low-income customers, even at the individual customer level by:

- Hand-delivering packs of LED donations to organizations serving low- and moderate-income customers,
- Direct shipping LED donations to low- and moderate-income customers.
- Direct installation measures,
- Worked with for low-income housing property management to determine various needs.
- Provided bulk measures delivered by I&M employees and.
- PPE kit deliveries for multi-family communities and customers.

2 TR 81-82.

Witness Walter testified that I&M undertook these efforts to help its customers respond to the impact of COVID-19 and not to grow EWR savings. *Id.*

Witness Walter testified that for Commercial and Industrial (C&I) I&M supported small businesses through program availability outreach enacted rebate promotions and

adapted the project application process to accept virtual onsite audits from trade allies and customers. *Id.* Witness Walter testified that I&M revised rebates in May 2020 and in July 2020 to address the impact of COVID-19 restrictions. *Id.* I&M increased C&I rebates for:

- LED tubes and fixing upgrades,
- Custom projects, and
- Long-life, energy intensive measure applications regarding refrigeration improvements and motor efficiency measures. *Id.*

Witness Walter testified that I&M is not satisfied with its C&I EWR program efforts. COVID-19 and related restrictions impacted I&M's ability to achieve C&I savings targets and required I&M to revise its EWR implementation efforts to ensure the safety of employees, customers, and the public in Michigan. *Id.* Witness Walter testified that I&M responded to known and reasonably anticipated COVID-19 market conditions and pivoted to meet the needs of its business customers through adjusted program participation requirements, new program delivery channels, increased incentive levels, and expanded customer communication efforts. Witness Walter testified that I&M made a good faith effort to provide EWR services in responses to COVID-19 restrictions and health and safety procedures. *Id.* I&M believes that it made reasonable and prudent adjustments to its C&I programming and outreach during the COVID-19 restrictions to achieve EWR savings goals. *Id.*

A detailed explanation on I&M's 2020 programs is provided in Exhibit IM-3. Witness Walter testified that I&M believes that the costs incurred to implement and offer EWR programs to customers were reasonable, prudent, consistent with the Commission-

approved plan in U-20374 and within the previous spend cap prescribed in Act 295. I&M's 2020 EWR reconciliation includes the following:

- EWR Tariff Revenue Collected.
- Cumulative (Over)/Under Program Costs; and
- Carrying Costs on the Cumulative (Over)/Under Program Costs.

Witness Walter testified that despite the impact of COVID-19 I&M's EWR programming response provided EWR benefits in excess of the cost to offer its EWR programs. See 2 TR 38. Exhibit IM-2 portfolio score of 1.26 shows that I&M's Michigan customers benefited from the I&M's 2020 EWR performance. Witness Walter testified that I&M met and exceeded its EWR responsibility by delivering 126% more benefits than costs. See 2 TR 38.

I&M witness Owens testified that I&M is proposing an adjustment to the 2020 EWR Surcharge rates to reconcile a cumulative over-recovery balance of \$6,333,420 for the EWR Plan year ending December 31, 2020. See 2 TR 58. I&M's reconciliation of the EWR Surcharge revenues and costs is the difference between the 2020 amounts collected through customer rates and the actual costs incurred. See 2 TR 55. Actual 2020 costs incurred and proposed for recovery include:

- Program expenses and public efficiency street lighting rebates.
- A carrying credit authorized in U-20704, and
- The amortization of a disallowed net loss revenue balance as ordered by the Commission in U-20367.

Id.

Witness Owens testified that Exhibit IM-5 provides 2020 monthly EWR Surcharge revenue received separated by the amount of revenue recovering financial incentive authorized in the 2019 EWR reconciliation and remaining revenue applied to proposed 2020 EWR program costs. 2 TR 58.

Total 2020 EWR Surcharge revenue collected is \$6,452,467, of which \$643,327 is the amount of revenue recovering financial incentive authorized in the 2019 EWR reconciliation. The remaining \$5,809,140 is the amount of 2020 EWR Surcharge revenue applied to actual. 2020 EWR program costs to determine over-/under-recovery of program costs for the 2020 reconciliation. See 2 Tr. 57. Exhibit IM-6 provides the monthly over-/under-recovery variance between the amounts collected through the EWR Surcharge revenue and 2020 actual program costs incurred. The 2020 monthly over-/under-recovery amounts add to the \$3,158,900 cumulative program cost over-recovery balance authorized in the 2019 EWR reconciliation case to arrive at the 2020 year-end cumulative program cost over-recovery of \$6,333,420.

Exhibit IM-6 shows that 2020 EWR program costs of \$3,012,948 of total program expenses associated with EWR programming authorized in U-20374, (\$90,012) of a total carrying charge credit authorized. U-20704, and (\$288,316) of total 2020 NLR amortization credit ordered by the Commission in U-20367. Witness Owens testified that the total 2020 EWR program cost of \$2,634,620 compared to the 2020 EWR program revenue of \$5,809,140 results in a 2020 EWR over-recovery of \$3,174,520. See 2 TR 58. Witness Owens testified that when the 2020 EWR over-recovery of \$3,174,520 is added to the beginning program cost over-recovery balance of \$3,158,900 authorized by the Commission in U-20704, the 2020 program cost over-recovery amount results in a

cumulative program cost over-recovery balance of \$6,333,420 for the EWR Plan year ending December 31, 2020. See 2 TR 58.

Witness Walters testified that I&M contracts with ADM Associates, Inc. to provide third-party evaluation, review, and verification of the energy savings associated with I&M's EWR program. See 2 TR 25. I&M's gross reported energy savings were calculated using measure specific energy savings calculations and assumptions documented in the Michigan Energy Measures Database (MEMD). *Id.* ADM Associates confirmed reported results through a savings calculation audit to determine and verify I&M savings. Additionally, I&M used cost-effectiveness tests to determine that EWR program customer expenses and benefits reduced their energy and demand consumption through I&M's EWR program See 2 TR 32-33. Witness Walter testified that I&M used four standard energy efficiency cost-effectiveness tests to calculate 2020 EWR program cost-effectiveness.

Consistent with Act 295, I&M used the portfolio USCRT test to report compliance cost effectiveness to the Commission and ADM & Associates performed a final cost benefit scoring. I&M measured level energy savings values consistent with those prescribed in the MEMD and actual measures rebated were reported by I&M and ADM. Witness Walter testified that I&M's EWR portfolio achieved a USCRT score of 1.26, without the IQ Weatherproofing Program and without pilots. See 2 TR 33. Exhibit IM-2 provides I&M's EWR portfolio level and program level cost-benefit scores determined by ADM.

Witness Walter testified that I&M cost-benefit analysis did not include two of the residential pilots because these pilots were focused on IQ customer engagement and the stipulated savings method for pilot savings was used for all pilot energy savings claims. *Id.* Witness Walter testified that because pilot cost-effectiveness scores using the stipulated savings method are very low (residential pilots score of .08 and C&I pilots score of .09), they did not reflect normal program benefits and unduly burdened the portfolio cost-effectiveness determination. See 2 TR 34.

I&M witness John W. Morgan provided testimony regarding the I&M's calculation of the reconciliation component of I&M's EWR surcharges as required by Act 296 as amended by Act 342. Exhibit IM-8 provides witness Morgan's surcharge calculations. I&M recovers 2020 EWR program costs through rates approved by the Commission in U-20374. Witness Morgan details his calculations in his testimony at 2 TR 66-68.

I&M witness Elkins provided rebuttal testimony regarding the Staff witnesses Banks and Tiwana testimony. Witness Elkins provided testimony regarding I&M's EWR actions during the 2020 EWR plan year in response to the COVID-19 pandemic. See 2 TR 71-89. Witness Elkins provided testimony regarding I&M's pre COVID-19 actions. See 2 TR 75-76., I&M's customer engagement and customer marketing efforts. See 2 TR 76-78, EWR program participation, See 2 TR 78-82, residential and low income and appliance Recycling. See 2 TR 82-85, Online energy checkup, See 2 TR 86. Low income EWR programs and qualified weatherproofing, See 2 TR 87-89.

I&M argues in its brief that, for the period ending December 31, 2020, I&M's proposed reconciliation meets Act 295's requirements and the Commission should authorize and approve I&M's 2020 EWR Plan reconciliation, revised EWR Surcharge rider,

and associated proposed tariffs. Additionally, I&M argues that the Commission should authorize the requested rate adjustment associated with the actual 2020 EWR program costs and carrying costs cumulative surplus balance. See I&M Brief, p. 15.

B. Staff

Brad B. Banks provided testimony regarding I&M's 2020 EWR reconciliation. Witness Banks testified that in 2020 I&M underperformed in its responsibilities to its Michigan customers having achieved .7 percent of its legislated minimum target of 1.0%. Witness Banks testified that based on these results Staff concluded that I&M is either unable, or unwilling, to deliver a robust and effective EWR program to its Michigan customers. Witness Banks testified that; I&M believes that its EWR responsibility to its Michigan ratepayers ends at the achievement of the legislated minimum 1.0% level. See 2 TR 104.

Witness Banks testified that IM Exhibit-3 the Michigan 2020 Annual report on Energy Waste Reduction shows that I&M took advantage of the pandemic to shut down all portions of I&M's EWR programs that weren't customer outreach and behavior change oriented. Those programs were the most inexpensive and effortless of all I&M EWR program offerings. 2 TR 104-105. Witness Banks testified I&M's EWR residential programs spent just over half of its allocated budget on programming and achieved 1.04% in savings. I&M's Commercial and Industrial EWR programs, I&M spent less than half of its approved budget and achieved only 46% of its EWR target. Witness Banks testified that all other Michigan regulated utilities greatly exceeded their EWR goals. 2 TR 105-106.

Witness Banks testified that Staff recommends that I&M

- Eliminate its Qualified Weatherization programs \$3,000.00 for single family residences and \$2,000.00 multi-family income spending caps. Witness Banks testified that the elimination of these caps would allow I&M to meet its spending goals and provide lasting quality of weatherization services to its income-qualified customers
- Invest in weatherization deferral mitigation programming.
- Invest 10% of its residential budget, at a minimum, on its income-qualified programming.
- Increase EWR residential income-qualified spend to 15%, with a goal of 20%, of its This increases and the rollover of previous years' unspent funds, would provide resources to significantly impact the health, safety, welfare, and energy consumption patterns of I&Ms most vulnerable customers.

2 TR 106.

Witness Banks testified that I&M's service territory includes many income-qualified residents. The United States Census Bureau, 2021 data shows that 15.9% of Berrien County Michigan residents and 13.0% of Van Buren County Michigan residents have family incomes at or below 100% of the Federal Poverty Level. 2 TR 107. Witness Banks testified that EWR low-income programs are available to customers with incomes at or below 200% of the Federal Poverty Level. Despite the high number of income-qualified customers in the I&M service territory I&M continues to pattern offer the same, or similar, EWR low-income programs. Staff recommends that I&M's EWR programs use the 200%

of Federal Poverty Level and the ALICE (Asset Limited Income Qualified Employed) qualification threshold for its income-qualified programs, on a case-by-case basis which ever proves to be the most inclusive. This would greatly expand I&M's low-income eligibility pool and eliminate I&M's claims it have difficulty finding eligible customers. *Id.*

Witness Banks testified that Staff recommends that I&M perform a vigorous and thoughtful income qualified EWR plan for 2022 and 2023 then follow through. Witness Banks testified that since I&M has left Efficiency United and took over its own EWR programs I&M's EWR program performance has been marginal. 2 TR 108.

Fawzon B. Tiwana also testified for Staff. See 2 TR 93-99. Witness Tiwana testified that according to I&M witness Jon C. Walter, I&M achieved 19,269,235 kWh of EWR savings compared to the goal of 27,374,373 kWh. This equates to I&M achieving 70% of the 1% minimum legislative target. Because I&M did not achieve the minimum EWR Savings goal outlined in Sec. 77(1) of 14 Public Act 295 (PA 295), as amended by Public Act 342 (PA 342) Staff concluded that I&M's reconciliation is not reasonable and prudent. 2 TR-95.

Witness Tiwana testified that Staff Exhibit S-1 shows that every other Michigan electric utility's EWR Programs either maintained or exceeded their goal for 2020, but also exceeded the previous years' savings. Witness Tiwana testified that I&M's 2020 reconciliation is the first instance in Michigan where a regulated utility provider has not met the Legislative Minimum EWR goal since it was established in 2008 by PA 295, as amended by PA 342. 2 TR-96.

Witness Tiwana testified that Staff recommends that I&M add 30% of unachieved 2020 savings relative to the 1% target to I&M's 2021 EWR savings target. This would raise the 2021 EWR savings target to 37,886,616 kWh. Staff calculated the amount of unachieved savings by subtracting the 2020 EWR savings achieved of 19,269,235 kWh from the 2020 1% target of 27,374,373 kWh resulting in an unachieved savings amount of 8,105,138 kWh. The unachieved savings amount of 8,105,138 kWh was then added to 28,425,498 kWh. This is the 2021 EWR Savings goal found in Exhibit IM-1 of I&Ms' 2020-2021 EWR Plan Case U-20374. This equates to 37,886,616 kWh. See 2 TR 96.

Witness Tiwana testified that Staff recommends that I&M should not be able to request a Financial Incentive for program year 2021 until I&M exceeds the new target of 37,886,616, or 1.3%. This new target would be the minimum requirement for 2021, and an incentive award would be based on exceeding this revised goal for 2021. 2 TR 97

Witness Tiwana testified that other Michigan utilities successfully achieved EWR savings higher than the legislative minimum target of 1%. Alpena Power Company, Consumers Energy, 3DTE – Electric, and UPPCo have all achieved higher than 1.5% savings annually. Michigan's municipalities collectively achieved 1.23% for program year 2018. Staff believes that I&M did not offer a reasonable and prudent EWR program in 2020. *Id.*

Witness Tiwana testified that I&M had a successful EWR program when it contracted with the Efficiency United (EU) program from 2009 through 2016. Efficiency United, had dedicated contractors working in its Michigan service territory and implemented meaningful and beneficial programs for all I&M customers. After I&M terminated its relationship with EU it subsequently severed its relationship with

CLEAResult and the Michigan Community Action (MCA), and I&M's EWR programs declined. Witness Tiwana testified that I&M implemented inexpensive measures with shorter lifetime savings and behavior report programs instead of physical measures. Physical measures have a longer life and add higher value to a home's comfort and produce decreased bills through effective lower energy consumption. Witness Tiwana testified that I&M is the only regulated utility provider in Michigan implementing its own EWR program, which has not successfully or annually achieved the highest financial incentive award possible. See 2 TR 97-98.

Witness Tiwana testified that the Commission authorized I&M in, U-20374, I&M's 2020 plan case, to spend \$3,895,750 but I&M spent \$ 3,012,948. Witness Tiwana testified that Staff believes that the 2020 underspending amount of \$882,802 should be added to I&M's approved 2021 EWR amount at a minimum. 2 TR 98

If I&M elected to use an EWR Program Administrator, I&M would be required to spend 2% of their previous year's annual sales on EWR programs. Instead of increasing its expenditures toward EWR to achieve the highest possible amount of cost-effective EWR for its customers, I&M has decreased its EWR expenditures. Revised Exhibit IM-5 shows that I&M sales for 2019 were \$313,698,970. If I&M had spent at a minimum 2% of their previous year's sales, as it had in years past, that would equate to \$6,273,979 in EWR program spending. This is almost double what I&M actually spent. 2 TR 99.

Witness Tiwana testified that Staff agrees with I&M's decision not to request a financial incentive for the 2020 EWR plan year. *Id*

Staff provided neither rebuttal testimony nor exhibits and did not file a reply brief.

III.

DISCUSSION

The Commission has jurisdiction over this matter pursuant to 1909 PA 106, as amended, MCL 460.551 *et seq.*; 1909 PA 300, as amended, MCL 462.2 *et seq.*; 1919 PA 419, as amended, MCL 460.51 *et seq.*; and 1939 PA 3, as amended, MCL 460.1 *et seq.*

The Commission's EWR Plan reconciliation case jurisdiction is found in Act 295, as amended by Act 342. Specifically, MCL 460.1074(3)(a)-(b) provides in pertinent part:

(3) The commission shall reconcile the pertinent revenues recorded with the amounts actually expensed and projected according to the provider's plan for compliance. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged in the relevant reconciliation period. In its order, the commission shall do both of the following:

- (a) Make a determination of a provider's compliance with the energy waste reduction standards.
- (b) Adjust, if necessary, the energy waste reduction charges previously set by the commission.

In this matter the Commission must determine whether EWR expenses were incurred by I&M through reasonable and prudent actions in the 2020 reconciliation period. See MCL 460.1074(3). The Commission's determination whether I&M's actions were reasonable and prudent actions does not require a finding by the Commission that I&M's actions were perfect. *Attorney General v Pub Serv Comm*, 161 Mich App 506, 517; 411 NW2d 469 (1987). I&M's reasonableness and prudence must be

evaluated using I&M's knowledge when it made its decisions, and not based on the Commission's hindsight regarding the outcome of I&M's decisions. *Id.*

During the Commission's Act 295 EWR reconciliation review the Commission has no authority to apply I&M's unachieved EWR savings amounts to subsequent EWR Plan years because doing so would increase I&M's EWR savings target beyond the Act 295 EWR Plan 1% level. See MCL 460.1077(1) Additionally, Act 295 does not contain penalty provisions which apply when the Commission finds a utility has failed to meet the statutory 1% the savings target. If the Commission finds that I& M failed to meet the 1% EWR savings target during the 2020 EWR plan year then, according to Act 295, the Commission may deny I&M recovery of a financial incentive. As the applicant in this matter, I&M has the burden of proof in this proceeding to demonstrate that the EWR expenses charged to I&M customers during the 2020 reconciliation period were reasonable and prudent using a "preponderance of the evidence" standard.

On May 4, 2021, I&M filed an application requesting Commission approval of:

- I&M's reconciliation of 2020 EWR Plan year program costs and carrying costs resulting in a cumulative surplus of \$6,385,360.
- Rate adjustments associated with the reconciled 2020 EWR Plan year program costs and carrying costs; and
- Authority to implement a revised EWR surcharge rider effective for bills rendered with the first billing cycle of January 2022 or the first billing month following a Commission order in this case, whichever is later.

Exhibit IM-6 shows that I&M's 2020 EWR program costs consist of \$3,012,948 of total program expenses associated with EWR programming authorized in U-20374, (\$90,012) of a total carrying charge credit authorized in U-20704, and (\$288,316) of total 2020 NLR amortization credit ordered by the Commission in U-20367. I&M witness Owens testified that I&M's 2020 EWR program cost of \$2,634,620 compared to the 2020 EWR program revenue of \$5,809,140 results in a 2020 EWR over-recovery of \$3,174,520. See 2 TR 58. When the 2020 EWR over-recovery of \$3,174,520 is added to the beginning program cost over-recovery balance of \$3,158,900 authorized by the Commission in U-20704, I&M's 2020 program cost over-recovery amount results in a cumulative program cost over-recovery balance of \$6,333,420 for the EWR Plan year ending December 31, 2020. *Id.*

Staff witness Tiwana testified that Staff reviewed I&M's reconciliation expenses and savings and concluded that I&M's 2020 EWR savings level results were not reasonable and prudent. However, the Act 295 reasonableness and prudence standard applied in EWR Plan reconciliations deals with the expenses I&M customers were charged. See MCL 460.1074(3)(a)-(b). Staff witness Tiwana testified that Staff recommends that because I&M did not meet or exceed the Act 295 1% savings target during the COVID-19 pandemic and resulting 2020 work restrictions throughout, the Commission should add the 30% unachieved savings amount of 8,105,138 kWh to the 2021 savings target of 28,425,498 kWh, which equates to 37,886,616 kWh. See 2 TR 96. Additionally, Staff witness Tiwana testified that Staff recommends that I&M be denied a financial incentive for its' EWR program year 2021 until I&M exceeds a 37,886,616 kWh a 1.3% target.

In its brief I&M correctly argues that the Commission's powers are limited to the express authority granted to it by the Legislature. *Attorney General v Pub Serv Comm*, 231 Mich App 76, 78; 585 NW2d 310 (1998). The Commission is a body possessing limited powers to be ascertained by reference to its enabling statute and has no common law powers. Any power possessed by the Commission must affirmatively appear in a statute. *Id.* The power and authority the Commission exercises must be conferred by clear and unmistakable language because a doubtful power does not exist. *Mason Co Civic Research Council v Mason Co*, 343 Mich 313, 326-327; 72 NW2d 292 (1955) (citation omitted) When an enabling statute exists, it must be read narrowly and in the context of the entire statutory scheme. *Consumers Power Co, supra*, 155-159.

The Michigan Supreme Court has consistently applied these principles and restricted the scope of the powers exercised by the Commission and its predecessors. See, e.g., *Grand Rapids & I R Co v Michigan Railroad Comm'n*, 183 Mich 383, 392; 150 NW 154 (1914); *Taylor v Pub Serv Comm*, 217 Mich 400, 402-403; 186 NW 485 (1922); *In re Application of Joe Brown & Sons*, 273 Mich 652, 656; 267 NW 887 (1935); *Sparta Foundry Co v Pub Serv Comm*, 275 Mich 562, 564; 267 NW 736 (1936); *Huron Portland Cement Co v Pub Serv Comm*, 351 Mich 255, 262; 88 NW2d 492 (1958); *Union Carbide Corp v Pub Serv Comm*, 431 Mich 135, 147-148; 428 NW2d 322 (1988); and *Consumers Power Co, supra*, 155-156.

The Commission cannot expand the plain language in a statute. *Consumers Power Co, supra*, 157, n 8. Where powers are expressly conferred, it must be inferred that the Legislature intended that no other or greater power was given than the power specified.

Eikhoff v Detroit Charter Comm'n, 176 Mich 535, 540; 142 NW 746 (1913). *Accord, Taylor, supra; In re Application of Joe Brown & Son Supra.*

The evidence presented shows that Staff's recommendations, if adopted by the Commission, would expand the Commission's authority beyond what is expressly granted in Act 295. MCL 460.1074(3) limits each reconciliation period to a consideration of "any issue regarding the reasonableness and prudence of expenses for which customers were charged "in the relevant reconciliation period." Therefore, Staff's recommendation to impose 8,105,138 kWh of unmet savings in 2020 to the 2021 savings target, if adopted by the Commission, would be contrary to Act 295's well-established "annual" reconciliation process.

I&M witness Walter testified that I&M contracted with ADM Associates, Inc. to provide a third-party evaluation, review, and verification of the energy savings associated with I&M's EWR program. See 2 TR. 25. ADM calculated Gross reported energy savings using measure specific energy savings calculations and assumptions documented in the Michigan Energy Measures Database (MEMD). *Id.* ADM Associates confirmed I&M's reported results through a savings calculation audit. Annual energy savings were calculated using measure appropriate MEMD based energy savings updated with any MEMD updates after those approved by the Commission in U-20374. Exhibit IM-1 shows I&M's verified energy savings from 2020 EWR programs. See Exhibit IM-1.

I&M calculated 2020 EWR program cost-effectiveness using four standard energy efficiency cost-effectiveness tests. Consistent with Act 295, I&M used the portfolio USCRT test to report compliance cost effectiveness to the Commission. ADM

& Associates performed a final cost benefit scoring for I&M and measured energy
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savings consistent with those prescribed in the MEMD and actual measures rebated were reported by I&M and ADM. See 2 TR. 32-33.

Witness Walter testified that I&M's EWR programs performed at a USCRT score of 1.26, without the IQ Weatherproofing Program and without pilots. *Id.* I&M excluded pilots for cost-benefit demonstration because two of the residential pilots focused only on IQ customer engagement and the stipulated savings method for pilot savings was used for all pilot energy savings claims. *Id.* Because I&M pilot cost-effectiveness scores using the stipulated savings method are very low (residential pilots score of .08 and C&I pilots score of .09), they are not indicative of normal program benefits See 2 TR 34. Exhibit IM-2 provides I&M's EWR portfolio level and program level cost-benefit scores calculated by ADM.

Staff witness Banks provided testimony regarding I&M's 2020 EWR reconciliation. Witness Banks testified that in 2020 I&M underperformed in its responsibilities to its Michigan customers having achieved .7 percent of its legislated minimum target of 1.0%. Witness Banks testified that based on these results Staff concluded that I&M is either unable, or unwilling, to deliver a robust and effective EWR program to its Michigan customers. Witness Banks testified that; I&M believes that its EWR responsibility to its Michigan ratepayers ends at the achievement of the legislated minimum 1.0% level.

Witness Banks testified I&M's EWR residential programs spent just over half of its allocated budget on programming and achieved 1.04% in savings. I&M's Commercial and Industrial EWR programs, I&M spent less than half of its approved budget and achieved only 46% of its EWR target. Witness Banks testified that all other Michigan regulated utilities greatly exceeded their EWR goals.

Fawzon B. Tiwana also testified for Staff Witness Tiwana testified that according to I&M witness Jon C. Walter, I&M achieved 19,269,235 kWh of EWR savings compared to the goal of 27,374,373 kWh. This equates to I&M achieving 70% of the 1% minimum legislative target. Because I&M did not achieve the minimum EWR Savings goal outlined in Sec. 77(1) of 14 Public Act 295 (PA 295), as amended by Public Act 342 (PA 342) Staff concluded that I&M's reconciliation is not reasonable and prudent.

Witness Tiwana testified that Staff Exhibit S-1 shows that every other electric utility in Michigan EWR Programs either maintained or exceeded their goal for 2020, but also exceeded the previous years' savings. Witness Tiwana testified that I&M's 2020 reconciliation is the first instance in Michigan where a regulated utility provider has not met the Legislative Minimum EWR goal since it was established in 2008 by PA 295, as amended by PA 342.

Staff argues that because I&M did not achieve the minimum EWR Savings goal outlined in Sec. 77(1) of 14 Public Act 295 (PA 295), as amended by Public Act 342 (PA 342) I&M's reconciliation is not reasonable and prudent. Staff's position is not supported by the plain language of Act 295. MCL 460.1074(3)(a)-(b) provides in pertinent part:

(3) The commission shall reconcile the pertinent revenues recorded with the amounts actually expensed and projected according to the provider's plan for compliance. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged in the relevant reconciliation period. In its order, the commission shall do both of the following:

(a) Make a determination of a provider's compliance with the energy waste reduction standards.

(b) Adjust, if necessary, the energy waste reduction charges previously set by the commission.

In this matter the Commission must determine whether EWR expenses during the 2020 plan year were incurred by I&M through reasonable and prudent actions by I&M during the 2020 EWR plan year. See MCL 460.1074(3). Staff is not contesting I&M's EWR expenses during the 2020 plan year because I&M's EWR expenses were below I&M's 2020 EWR plan approved by the Commission in U-20374 resulting in a cumulative surplus of \$6,385,360. Staff is not arguing that any of I&M's 2020 EWR plan's accrued expenses were not reasonable and prudent. Staff's position is that because I&M's EWR expenses were too low I&M's EWR reconciliation is not reasonable and prudent, and the Commission must approve a penalty by increasing I&M's EWR savings targets for the subsequent EWR plan year. Staff's position ignores the fact that in a EWR reconciliation proceeding the Commission's jurisdiction is limited to a determination whether I&M's EWR expenses during the 2020 plan year were incurred through reasonable and prudent actions. Staff may argue, and the Commission may subsequently agree, that specific I&M EWR expenses incurred during the 2020 plan year were not reasonable and prudent and recommend disallowance by the Commission, but Staff has no Act 295 authority or otherwise to determine that I&M's EWR proposed reconciliation is not reasonable and prudent because I&M's 2020 EWR spending was below the required amount. Act 295 clearly provides that the Commission may deny a I&M a financial incentive, but the Commission has no authority to go any further in a EWR reconciliation proceeding.

Therefore, I find that the evidence presented shows that I&M's proposed 2020 EWR reconciliation meets Act 295's requirements. I recommend the Commission authorize

and approve I&M's 2020 EWR Plan reconciliation, revised EWR Surcharge rider, and associated proposed tariffs. I recommend the Commission authorize I&M's requested rate adjustment associated with the actual 2020 EWR program costs and carrying costs cumulative surplus balance. Additionally, I recommend the Commission deny I&M a EWR financial incentive.

IV.

CONCLUSION

Based on the foregoing, I recommend the Commission do the following:

1. Approve I&M's reconciliation of 2020 EWR Plan year program costs and carrying costs resulting in a cumulative surplus of \$6,385,360.
2. Approve I&M's rate adjustments associated with the reconciled 2020 EWR Plan year program costs and carrying costs; and
3. Grant I&M the authority to implement a revised EWR surcharge rider effective for bills rendered with the first billing cycle of January 2022 or the first billing month following a Commission order in this case, whichever is later.
4. Deny I&M a EWR financial incentive.

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

**Martin D.
Snider**

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Issued and Served:
January 10, 2022

Martin D. Snider
Administrative Law Judge