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 Upper Peninsula Power Company to fully comply With Public Act 295 of 2008, as amended by Public Act 342 of 2016.	))))))	Case No. U-20879

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 May 26, 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 June 14, 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 June 28, 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

Sharon L. Feldman

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Sharon L. Feldman
Administrative Law Judge

May 26, 2022
Lansing, Michigan

STATE OF MICHIGAN

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

Upper Peninsula Power Company (UPPCo) filed its Energy Waste Reduction (EWR) plan on June 30, 2021, as directed by the Commission's November 19, 2020 order opening this docket. The company's application for approval of its plan included the testimony and exhibits of Andrew McNeally and Eric Stocking. At the August 11, 2021 prehearing conference, UPPCo and Staff appeared along with Attorney General Dana Nessel, the Citizens Utility Board of Michigan (CUB), and Verso Corporation (Verso), who were granted intervention. In keeping with the schedule set at the prehearing conference, on November 4, the Attorney General and CUB jointly filed the testimony of Douglas Jester, Verso filed the testimony of Jessica A. York, and Staff filed the testimony of Brad B. Banks and Katie J. Smith, and on December 17, Alpena filed the rebuttal testimony of Mr. McNeally and Mr. Stocking. At the January 12, 2022 evidentiary hearing, the prefiled testimony of all witnesses was bound into the record by agreement of the parties, without the need for them to appear, and the proposed exhibits were admitted into evidence. UPPCo, Staff, Verso, and the Attorney General and CUB together filed briefs on March 7; UPPCo, Staff, and the Attorney General and CUB filed reply briefs on March 21, 2022. Following an overview of the record in section II below, the disputed issues are discussed in section III.

II.

OVERVIEW OF THE RECORD

The evidentiary record in this case is contained in 139 pages of transcript and 30 exhibits.[1]

A. UPPCo

As noted above, UPPCo presented the testimony of two witnesses. Mr. McNeally is the Energy Efficiency Program Administrator for UPPCo.[2] His direct testimony described UPPCo's EWR plan for 2022 and 2023, detailed in Exhibit A-1, including programs for residential, commercial and industrial, and low-income customers intended to meet the company's 1.75% energy savings goal.[3] He testified that the since the company began self-administering its plan in 2018, the company has exceeded the statutory energy savings targets at costs below the budgeted level.[4] Mr. McNeally identified projected costs of $4.07 million for 2022 and $4.09 million for 2023 as shown in Exhibits A-2 and A-8, with net benefits of $8.7 million as shown in Exhibit

[1] Unless otherwise stated, transcript references in this PDF are to volume 2 of the two transcripts in this docket.
[2] Mr. McNeally's testimony, including direct and rebuttal, is transcribed at Tr 19-54; his qualifications are set forth at Tr 20-21.
[3] Tr 22-24.
[4] Tr 24.

A-5.[5] Asserting that the company's plan complies with the statutory requirements in section 71(4),[6] Mr. McNeally testified that UPPCo will meet its target savings level with programs that are cost-effective as shown in Exhibits A-3 and A-5. He further testified that UPPCo proposes to recover program costs as shown in Exhibits A-12 and A-13 through surcharges that align with benefits within rate categories and within rate classes to the extent feasible, that UPPCo will have effective and practical administration of its programs, and that UPPCo has contracted for independent evaluation of the programs. Mr. McNeally also testified that the company's plan includes the elements required by the Commission's order in Case No. U-15800, including the potential coordination with other utilities, an allowance for pilot programs within the 5% limit, and an allowance for educational programs within the 3% limit.[7]

In describing how the surcharges are calculated by rate class, Mr. McNeally explained that costs specific to the residential sector are assigned to residential rate classes, costs specific to commercial and industrial customers are assigned to those rate classes, and costs UPPCo has labeled as "societal costs, which include "low-income programming costs, 75% of multi-family direct install costs, and education and pilot program costs," are allocated across all customer rate classes.[8] Mr. McNeally testified that the company's surcharges would result in a 9% decrease for residential customers and a 6% decrease for small commercial customers, while acknowledging

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[5] The net program costs shown in Exhibit A-5 are slightly less than the total program budgeted costs shown Exhibit A-2.
[6] MCL 460.1071(4).
[7] Tr 27-28.
[8] Tr 40. These costs were referred to as "portfolio costs" in prior cases. Exhibit A-2 still uses the "portfolio cost" designation, but that designation is not equivalent to the "societal cost" designation used in the development of the company's surcharges in Exhibits A-8 through A-13.

increases of 1% for medium commercial customers, 878% for industrial customers taking service under Real Time Market Pricing (RTMP) rates, 151% for industrial customers taking service under the WP-3 rate, and 353% for metered lighting customers. These increases are also shown in a chart at Tr 40-41. Mr. McNeally also described the performance incentive mechanism UPPCo is requesting, citing Exhibit A-4, based on a sliding scale for 3 different metrics: first-year energy savings, lifetime savings, and low-income spending as a percentage of total spending.[9]

Mr. Stocking is the Manager of Rates and Power Supply for UPPCo.[10] He presented additional testimony in support of the calculation of savings goals and targets, presented in Exhibit A-9 for each rate class. He also provided detail regarding the development of the revenue requirements for each rate class, using the historical energy sales data also included in Exhibit A-9 to develop allocation factors for costs assigned to the residential, commercial and industrial, and societal cost categories as shown in Exhibit A-10. Using the allocation factors, he developed total revenue requirements per rate class in Exhibit A-11; he developed per-class surcharges for each rate schedule using projected sales for residential rates and projected meter counts for commercial and industrial rates. The results are shown in Exhibit A-12 for participating customers and in Exhibit A-13 for self-directed customers. He presented proposed tariffs in Exhibit A-14.

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[9] Tr 28-29.

[10] Mr. Stocking's testimony, including his direct and rebuttal testimony, is transcribed at Tr 56-69; his qualifications are set forth at Tr 57-58.

B. Staff

Staff also presented the testimony of two witnesses. Mr. Banks is a Departmental Analyst in the Energy Waste Reduction Section of the Commission's Energy Resources Division.[11] He testified in support of the company's plan as filed, specifically endorsing the company's proposed increase in low-income spending, overall budget, and content and program design.[12]

Ms. Smith is an Economic Specialist, also in the Energy Waste Reduction Section of the Commission's Energy Resources Division.[13] She addressed the company's proposed performance incentive mechanism, testifying that Staff supports the continuation of the mechanism approved in prior plans for the company, but recommends the factor reflecting lifetime-savings as a percent of maximum savings be adjusted from a maximum of 150% to 175% as shown in Exhibit S-1. She explained that Staff does not find the lower threshold to be an incentive for the company to achieve more for customers.[14]

C. Attorney General and CUB

The Attorney General and Cub presented the testimony of Mr. Jester, a partner in the firm 5 Lakes Energy, LLC.[15] Mr. Jester recommended that UPPCo establish an on-bill repayment program for residential energy waste reduction projects following the statutory program authorized by MCL 460.1203 and further detailed in MCL 460.1205-1209. Acknowledging that the benefits of such a program depend on the program

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[11] Mr. Banks's testimony is transcribed at Tr 73-76; his qualifications are set forth at Tr 73-75.
[12] Tr 76.
[13] Ms. Smith's testimony is transcribed at Tr 77-83; her qualifications are set forth at Tr 78-80.
[14] Tr 82.
[15] Mr. Jester's testimony is transcribed at 7 Tr 87-99; his qualifications are set forth at Tr 88-92 and in Exhibit AG-1.

design, he explained that "an on-bill repayment program makes psychological sense to the customer when they anticipate covering all or most of the costs of an investment [through] utility bill savings," and further that by attaching the repayment obligation to the meter, "the customer's creditworthiness is less important . . . and . . . on-bill repayment can solve the problem of split incentives for energy waste reduction between the landlord and the tenant."[16] He characterized such a program as tool to provide customers the opportunity for larger investments in EWR, repaid by the benefitting customer rather than funded through surcharges.

Mr. Jester also addressed the company's proposed financial incentive mechanism, citing the limits in MCL 460.1075 to show that UPPCo's proposal may exceed these limits for certain annual savings amounts. He recommended an alternative method, presented in Exhibit AG-2, that would scale the maximum incentive based on incremental annual savings from 0% for achieving savings of 1% to 20% for achieving savings of 1.75%, while also including lifetime savings and low-income spending as factors.[17]

In addition to the exhibits sponsored by Mr. Jester, Exhibits AG-1 and AG-2, the Attorney General and CUB also presented Exhibit AG-3.

D. <u>Verso</u>

Verso presented the testimony of two witnesses. Mr. Brooks is the Business Analysis & Energy Director for Verso.[18] He testified to the impact on Verso of what he

[16] Tr 94.
[17] Tr 96-99.
[18] Mr. Brooks' testimony is transcribed at Tr 102-107S; his qualifications are set forth at Tr 103.

characterized as “the extraordinary increase in [EWR] charges proposed by [UPPCo].”[19] He explained that Verso takes service from UPPCo as a Special Contract customer for a portion of its baseload requirements, based on a PPA with an adjacent hydroelectric plant, and takes service as an RTMP customer for the remainder of its needs.[20] He further testified that Verso has chosen to self-direct an EWR program as a Special Contract customer, while participating in the UPPCo EWR program as an RTMP customer. Mr. Brooks described Verso as engaged in an extremely competitive market for the paper produced at its Escanaba mill, and unable to pass cost increases through to its customers.[21] He also explained the indirect benefits of the company’s ongoing operations to the local and broader Upper Peninsula economy.[22]

He testified that Verso understood in 2021 that its maximum responsibility for EWR costs as an RTMP customer would be $100,000, and characterized the $938,516 annual revenue requirement assigned to Verso in UPPCo’s application as “substantially more than our fair share.”[23] He also noted that the company’s cost as a Special Contract customer with a self-directed program would increase approximately $4,500 from its current level of approximately $30,000, characterizing this as “a program from which we receive no benefit and impose essentially no cost.”[24] Acknowledging that the company could also choose to self-direct its RTMP account, he objected that the cost of that option would be $180,505 per year, “even though Verso would receive no benefit from participation in the utility sponsored program and would impose essentially no

[19] Tr 103.
[20] Tr 104.
[21] Tr. 104-105.
[22] Tr. 106.
[23] Tr 105.
[24] Tr 105.

cost," while Verso would "separately incur the full cost associated with the modifications at its facility that are necessary to meet the energy reduction targets."[25] He contrasted the EWR surcharges currently charged and sought by UPPCo to the EWR surcharges Verso pays to UMERC as a customer at Verso's mill in Quinnesec, Michigan.[26] He requested that the Commission insure that rates are fair and "do not result in Verso providing an unreasonable subsidy to UPPCO's EWR program costs."[27]

Ms. York is a consultant in the field of public utility regulation and an Associate with the consulting firm Brubaker & Associates, Inc.[28] She characterized the EWR program in Michigan as one in which utilities are incentivized to invest heavily in EWR programs and to exceed statutory savings targets, causing surcharges to increase. Focusing on the projected costs to Verso as an RTMP customer, she testified that an 878% increase for the company's only RTMP customer is excessive and unrelated to increases in the cost of programs available to Verso.[29] Ms. York concluded that UPPCo's proposed surcharges to the RTMP customer class do not reasonably reflect the benefits available to Verso.[30]

She objected that both the allocation of commercial and industrial program costs and the allocation of the societal costs to the RTMP rate are based on energy, although prior to the settlement agreement approved in the company's last EWR plan case, cost allocations were based on revenue. Her Exhibit VER-1 compares the surcharges for

[25] Tr 105-106.
[26] Tr 106-107.
[27] Tr 107.
[28] Ms. York's testimony is transcribed at Tr 108-137; her qualifications are set forth at Tr 136-137.
[29] Tr 114-116.
[30] Tr 116, 130-132.

large industrial customers and self-directed industrial customers among Michigan utilities, characterizing UPPCo's surcharges as among the highest in the state.[31]

Ms. York also objected to the assignment of particular elements of the budgeted costs to Verso, including a portion of the costs UPPCo labeled societal costs that UPPCo allocated to all customers as well as the cost of a program available only to small commercial customers that UPPCo allocated to all commercial and industrial customers. She recommended an alternative rate design using a revenue-based allocation and a per-meter charge for larger commercial and industrial customers combined. Based on these changes, as shown in Exhibit BER-11, Ms. York recommended an RTMP surcharge of $4,172.68 per meter, per month and a self-directed rate for RTMP and Special Contract customers of $212.92 per meter, per month.[32] The exhibits Ms. York sponsored, Exhibits VER-1 through VER-11, include discovery responses from UPPCo as well as revised rate schedules. ABATE also presented Exhibit VER-12 at the hearing.

E. Rebuttal

Mr. Stocking and Mr. McNeally provided rebuttal testimony on behalf of UPPCo. Mr. McNeally first agreed to Staff's revision to the performance incentive mechanism, explaining that he revised his Exhibit A-4 accordingly.[33] Next, addressing Mr. Jester's recommendation that UPPCo adopt an on-bill repayment program for EWR investments, Mr. McNeally testified that UPPCo is not considering such a program

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[31] Tr 117-118.
[32] Tr 134-135.
[33] Tr 45.

because it believes even a pilot would be expensive and administratively difficult.[34] Regarding the performance incentive mechanism recommended by Mr. Jester, Mr. McNeally testified that the company's proposal aligns with MCL 460.1075, while Mr. Jester's proposal provides incentives that are below the statutory cap until the maximum savings within each level are attained.[35]

Turning to Ms. York's recommendations regarding the costs allocated to the commercial and industrial class generally and to the RTPM and self-directed rates more specifically, Mr. McNeally characterized her proposed exclusions from the societal cost category as short-sighted, and not based on an understanding of the components of the company's programs.[36] He explained that he corrected Exhibit A-8 to reflect the addition of 50% of residential evaluation and administrative costs to the societal cost category, but acknowledged that 42% would be a reasonable assumption.[37] He further defended UPPCo's inclusion of educational and pilot program costs in the societal cost category, characterizing the programs as benefitting all communities and society as a whole.

Finally, Mr. McNeally addressed Ms. York's concerns regarding the benefits Verso receives from EWR programs as an RTMP customer and the costs allocated to it, disputing that there is a cap on incentives beyond the 75% limitation and the available funds.[38]

In his rebuttal testimony, Mr. Stocking explained the revisions to his Exhibits A-10 through A-14 to reflect changes to Exhibit A-8 described by Mr. McNeally. Addressing

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[34] Tr 46.
[35] Tr 47.
[36] Tr 50.
[37] Tr 50, 52.
[38] Tr 55.

Ms. York's recommendation to return to an allocation based on class contribution to total revenue rather than energy, Mr. Stocking objected, testifying that method is no longer appropriate because UPPCo is no longer using the State Administrator for compliance. He also objected to combining the larger commercial and industrial rate classes, and discussed the impact on the other rate classes of Ms. York's proposed surcharges. Regarding the self-direct surcharges, he testified that UPPCo believes its calculation is consistent with MCL 460.1093, and further testified that Verso has missed the July 15, 2021 deadline to participate as a self-directed customer for 2022, and must decide by July 15, 2022 whether to participate as a self-directed customer for 2023.

III.

DISCUSSION

UPPCo's plan must meet the statutory requirements for an EWR plan contained in sections 71 through 99 of 2008 PA 295 (Act 295) as amended.[39] Section 71(3) describes the goal of the plans:

> The overall goal of an energy waste reduction plan shall be to help the provider's customers reduce energy waste and to reduce the future costs of provider service to customers. In particular, an electric provider's energy waste reduction plan shall be designed to delay the need for constructing new electric generating facilities and thereby protect consumers from incurring the costs of such construction.

Section 71(4) directs:

> (4) An energy waste reduction plan shall do all of the following:
>
> (a) Propose a set of energy waste reduction programs that include offerings for each customer class, including low-income residential. The commission shall allow a provider flexibility to tailor the relative amount of

[39] MCL 460.1071 et seq.

effort devoted to each customer class based on the specific characteristics of the provider's service territory.

(b) Specify necessary funding levels.

(c) Describe how energy waste reduction program costs will be recovered as provided in section 89(2).

(d) Ensure, to the extent feasible, that charges collected from a particular customer rate class are spent on energy waste reduction programs that benefit that rate class.

(e) Demonstrate that the proposed energy waste reduction programs and funding are sufficient to ensure the achievement of applicable energy waste reduction standards.

(f) Specify whether the number of megawatt hours of electricity or decatherms or MCFs of natural gas used in the calculation of incremental energy savings under section 77 will be weather-normalized or based on the average number of megawatt hours of electricity or decatherms or MCFs of natural gas sold by the provider annually during the previous 3 years to retail customers in this state. Once the plan is approved by the commission, this option shall not be changed.

(g) Demonstrate that the provider's energy waste reduction programs, excluding program offerings to low-income residential customers, will collectively be cost-effective.

(h) Provide for the practical and effective administration of the proposed energy waste reduction programs. The commission shall allow providers flexibility in designing their energy waste reduction programs and administrative approach, including the flexibility to determine the relative amount of effort to be devoted to each customer class based on the specific characteristics of the provider's service territory. A provider's energy waste reduction programs or any part thereof, may be administered, at the provider's option, by the provider, alone or jointly with other providers, by a state agency, or by an appropriate experienced nonprofit organization selected after a competitive bid process.[40]

(i) Include a process for obtaining an independent expert evaluation of the actual energy waste reduction programs to verify the incremental energy savings from each energy waste reduction program for purposes of

[40] MCL 460.1071(4).

> section 77. All such evaluations are subject to public review and commission oversight.

Section 78 provides in pertinent part:

> (1) By January 1, 2022, and every 2 years thereafter, an electric provider whose rates are regulated by the commission shall file an energy waste reduction plan amendment with the commission under section 73 pursuant to a filing schedule established by the commission. The amendment shall detail the amount of energy waste reduction the electric provider proposes to achieve for the succeeding 2-year period. If the electric provider whose rates are regulated by the commission proposes a level of energy waste reduction that is higher than the level specified in the provider's current energy waste reduction plan, the commission may approve the proposed higher level if the commission finds that it is the most reasonable and prudent. If the electric provider whose rates are regulated by the commission proposes a level of energy waste reduction that is lower than the level specified in the provider's current energy waste reduction plan, the commission may approve the proposed lower level if the commission finds that it is the most reasonable and prudent. If the commission finds that the proposed lower level of energy waste reduction is not the most reasonable and prudent, the level of energy waste reduction to be achieved by the electric provider whose rates are regulated by the commission for the succeeding 2-year period under the energy waste reduction plan shall be the same as the level specified in the provider's current energy waste reduction plan.
>
> (2) If over a 2-year period an electric provider whose rates are regulated by the commission cannot achieve the level of energy waste reduction provided for in the energy waste reduction plan pursuant to subsection (1) in a cost-effective manner, the provider may petition the commission in a contested case hearing under section 73 to establish an alternative energy waste reduction level for that provider.

Commission review of the plan is further governed by section 73, MCL 460.1073.

Subsection 2 of this section states:

> (2) The commission shall not approve a proposed energy waste reduction plan unless the commission determines that the energy waste reduction plan meets the utility system resource cost test and, subject to section 78, is reasonable and prudent. In determining whether the energy waste reduction plan is reasonable and prudent, the commission shall review each element and consider whether it would reduce the future cost of service for the provider's customers. In addition, the commission shall consider at least all of the following:

(a) The specific changes in customers' consumption patterns that the proposed energy waste reduction plan is attempting to influence.

(b) The cost and benefit analysis and other justification for specific programs and measures included in a proposed energy waste reduction plan.

(c) Whether the proposed energy waste reduction plan is consistent with any long-range resource plan filed by the provider with the commission.

(d) Whether the proposed energy waste reduction plan will result in any unreasonable prejudice or disadvantage to any class of customers.

(e) The extent to which the energy waste reduction plan provides programs that are available, affordable, and useful to all customers.

Section 74 provides for reconciliation of EWR plan costs, section 75 authorizes a financial incentive, section 77 governs the savings calculation, sections 83 and 87 govern the calculation of credits and a credit tracking program, section 89 governs the recovery of costs through an EWR surcharge, section 91 provides for alternative compliance through payments to an independent energy waste reduction program administrator, and section 93 provides for certain customers to choose a self-directed plan.

No party disputes that UPPCo's plan proposes overall savings targets that exceed the statutory requirement, and no party objects to awarding a financial incentive to UPPCo for exceeding the statutory savings target. UPPCo's plan proposes spending in 2022 and 2023 totaling $8,155,586, including a 20% financial incentive for meeting its savings targets as shown in Exhibit A-2. The savings targets by customer rate class are shown in Exhibit A-9; the revenue requirement the company seeks to collect from each customer rate class is shown in Exhibit A-11, including additional revenue attributed to Verso as a special contract customer on a self-directed rate; the specific charges to collect that revenue requirement are shown in Exhibits A-12 through A-14. UPPCo divided its projected costs into three categories, “residential,” “commercial & industrial,” and “portfolio” in Exhibit A-2, with line items for each program, as well as line items for evaluation and administration costs, pilot programs, educational services, and the performance incentive. UPPCo redivided these costs into “residential,” “commercial,” and “societal” cost categories in Exhibit A-8, for subsequent allocation to rate schedules using the allocation schedules in Exhibit A-10. The translation of costs from the first set of categories to the second set of categories is the source of some confusion in the record and some dispute between UPPCo and Verso as discussed below.

Consistent with the testimony reviewed above, the parties raise essentially three sets of issues for resolution in this proceeding. Verso contends that the plan does not provide benefits proportional to the costs assigned to it, and objects to the assignment and allocation of certain costs to Verso as discussed in section A below. The Attorney General and CUB take issue with the parameters of the financial incentive mechanism, as discussed in section B below. Finally, the Attorney General, CUB, and Staff recommend that the Commission direct UPPCo to evaluate on-bill financing for residential EWR projections as part of its next plan case, as discussed in section C.

A. Verso

Verso operates a paper mill in UPPCo’s service territory and takes service from UPPCo as a Special Contract customer and as a Real Time Market Pricing (RTMP) customer. UPPCo has explained that Verso is UPPCo’s only RTMP customer because this rate schedule and tariff were specifically designed for Verso and were approved by the Commission in Case No. U-15224.[41] A review of the energy usage data in Exhibit A-9 shows that Verso as an RTMP customer is UPPCo's largest customer, responsible for approximately 23% of total energy sales.[42] Section 89 of Act 295[43] requires commercial and industrial customers pay EWR surcharges on a per-meter basis. As shown in the draft tariff in Exhibit A-13, UPPCo is proposing to increase the monthly per-meter charge for Verso as an RTMP customer from $7,997 per month to $79,239 per month. Verso has a single RTMP meter, making the proposed annual cost increase approximately 890%.

Mr. McNeally's testimony shows that not all customers are facing an increase of this magnitude, with proposed residential customer surcharges decreasing by 9% and small commercial customer surcharges decreasing by 6%.[44] The wide variety of rate changes proposed for the different rate classes implement an approximately 24% increase in the company's EWR budget relative to the budget approved in the company's 2020/2021 EWR plan.[45] Mr. McNeally provided a general explanation for the proposed changes in EWR surcharges:

> Proposed EWR surcharges are slightly decreasing for residential and small commercial rate classes while increasing for large commercial and industrial rates classes. The primary drivers are a focus on equitable distribution of plan costs based on electric sales which provides customers the appropriate pricing signal, and better alignment with the Energy Waste Reduction statute for distribution of societal costs to all rate classes. In addition, to reach UPPCO's energy savings target of 1.75% in 2022-2022

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[41] UPPCo reply, pages 3-4.
[42] Exhibit A-9, column e; also see Exhibit A-10, column d.
[43] MCL 460.1089.
[44] Tr 40.
[45] The settlement agreement attached to the Commission's May 8, 2020 order in Case No. U-20376 included a total budget of $3,213,869 for 2020 and $3,347,131 for 2021. In this 2022/2023 plan case, the company is proposing a 2022 budget of $4,086,451 and a 2023 budget of 4,087,135, including an allowance for a 20% financial incentive.

> higher incentives are necessary to encourage participation and installation of longer-life measures, especially for low-income residential customers and small commercial customers to install deeper energy savings measures. Additional drivers include evaluation/verification, and performance incentive mechanism.[46]

Facing a surcharge as an RTMP customer that is approximately 10 times what the company is currently paying, Verso objects that the plan does not provide benefits to Verso in proportion to the costs assigned to it, and objects to the allocation of certain costs and to the overall rate design. As Verso argues, the Commission has expressed concern with rate increases of this magnitude.[47] Subsection 1 addresses Verso's concern with the benefits available to it as an RTMP customer; subsection 2 addresses the categorization and allocation of certain costs that Verso disputes; subsection 3 addresses Verso's alternative rate design proposal; and subsection 4 addresses self-directed customer surcharges.

1. RTMP customer programs, benefits, and savings

Verso objects to UPPCo's EWR plan and proposed surcharges in significant part based on its claim the surcharges UPPCo proposes to collect from Verso as an RTMP customer are not proportional to any benefits that Verso will receive from the programs UPPCo has included in its plan.

UPPCo's EWR plan in Exhibit A-1 provides some detail regarding each of the programs available to commercial and industrial customers. The three programs designed for commercial and industrial customers are the Prescriptive, the Custom, and the Small Business Direct Install. The program budgets are shown in Exhibit A-2. As

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[46] Tr 41.
[47] Verso brief, page 6 at n30, citing the Commission's June 26, 2009 order in Case Nos. U-15805 and U-15889.

shown in Exhibit A-10, UPPCo allocates 36.56% of the total cost of these programs, including the evaluation and administration costs, to the RTMP rate. Verso notes that it is not eligible to participate in the Small Business Direct Install program, which is only available to customers with a demand of 25 kW or less. Ms. York reviewed the budget and also concluded that the total EWR cost assigned to Verso is equivalent to 90% of the Prescriptive and Custom program budgets.[48] Citing discovery responses from UPPCo, Verso further argues that UPPCo is not proposing to target any of budgeted spending for the other two programs allocated dollars for Verso.[49]

In rebuttal testimony, Mr. McNeally characterized Verso's objections to its EWR plan as primarily based on an objection to UPPCo's societal cost allocation, asserting

> UPPCO agrees that EWR surcharge rates must be just and reasonable which is the premise for the Company's proposed EWR Plan for 2022-2023. As stated in my direct testimony, the program costs for the 2022-2023 planning years are based on incentive, implementation, and administrative budgets and costs, not solely incentive dollars. Each rate class will receive the benefit of the surcharges collected from that rate class, but incentive payments to that rate class will always be less, until that rate class is not contributing its fair share to the implementation and administrative program costs. Said differently, if Verso expects that total EWR surcharge revenue must equal the amount that they are able to take out of the program in incentive payments, then that is not possible.[50]

Verso disputed this characterization of its position, arguing in its brief:

> UPPCO has alleged that it is Verso's belief that if it doesn't receive benefits that match its costs dollar-for-dollar, the cost allocation is invalid. In actual fact, Verso has not taken such an unrealistic position. Rather, it has merely stated that any portion of EWR costs it is expected to bear "reasonably reflect the cost of EWR programs available to" it. This position is entirely consistent with the EWR statutory language in MCL 460.1071(4)(d). These costs would clearly include the "incentive, implementation and administrative budgets and costs" of the programs it is

[48] Tr 132.
[49] Verso brief, pages 7-8.
[50] Tr 48-49.

eligible to participate in, not just the incentives available. Verso's position is that the costs that the RTMP class is being asked to bear under UPPCO's proposal—$1,837,804—even taking account of the "incentive, implementation and administrative budgets and costs," do not "reasonably reflect the cost of EWR programs available to this customer class," and that therefore the "charges collected from [this] customer rate class" are not being "spent on energy waste reduction programs that benefit that rate class."[51]

UPPCo did not directly address Verso's acknowledgment in its reply brief, but continued to characterize Verso's position as simply opposed to paying the assigned societal costs.[52] Thus, UPPCo argues:

> Witness McNeally confirmed that as a practicable matter, although each rate class will receive the benefit of its surcharges, it is not possible for the total EWR surcharge revenue to equal the amount that the rate class avails from the EWR programs. This or course, is true because cost allocation includes Societal costs as addressed by Witness McNeally in rebuttal (2 Tr 49-53, Revised Exhibit A-11 (EWS-3)). To be sure, Verso's complaint lies with the amount of Societal costs allocated to the RTMP class.[53]

UPPCo then argues that there are broad benefits from any spending on EWR, asking the Commission to take official notice of the Commission's *Annual Report on the Implementation of the PA 295, 2020 Utility Energy Waste Reduction Program*.[54] UPPCo thus dismisses Verso's concerns with benefits available to it under UPPCo's plan:

> If the Commission were to adopt Verso's restricted interpretation of MCL 460.1071(4)(d) "that any portion of the EWR costs [allocated to a rate class] is expected . . . to reasonably reflect the costs of EWR programs *available to it*." (p 15), then these broader benefits may be [lost], as the focus of what an EWR plan *should do* to address utility-wide energy consumption would switch to whether the ratepayer received the benefit of the EWR programs available to that ratepayer's rate class.[55]

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[51] Verso brief, pages 15-16.
[52] See UPPCo reply, pages 5-9.
[53] UPPCo reply, page 8.
[54] See UPPCo reply, page 9.
[55] UPPCo reply, page 9.

Verso cites sections 71(4) and 73(2), which are quoted above, in support of its argument that there should be a reasonable relationship between the surcharges it pays and the benefits it receives. In pertinent part, section 71(4) requires each plan to propose EWR programs that: "include offerings for each customer class," with "provider flexibility to tailor the relative amount of effort devoted to each customer class based on the specific characteristics of the provider's service territory;" "[e]nsure, to the extent feasible, that charges collected from a particular customer rate class are spent on energy waste reduction programs that benefit that rate class," and with the proposed funding "are sufficient to ensure the achievement of applicable energy waste reduction standards."[56] Section 73(2) requires the Commission to determine that an EWR plan is reasonable and prudent, and further directs the Commission to consider, among other factors, "[w]hether the proposed energy waste reduction plan will result in any unreasonable prejudice or disadvantage to any class of customers," and "[t]he extent to which the energy waste reduction plan provides programs that are available, affordable, and useful to all customers."[57] A review of UPPCo's plan, along with its discovery responses, justifies Verso's concerns that UPPCo's EWR plan does not comply with the requirements of section 71(4) and is not reasonable and prudent.

UPPCo does not dispute that the RTMP rate is a customer class. While UPPCo asserts that "each rate class will receive the benefit of its surcharges," it has declined to show how the RTMP class, of which Verso is the only member, will receive substantial benefits from the programs funded by its surcharges. Indeed, as quoted above,

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[56] MCL 460.1071(4).
[57] MCL 460.1073(2).

notwithstanding Mr. McNeally's testimony that "[e]ach rate class will receive the benefit of the surcharges collected for that rate class,"[58] UPPCo appears to argue that it is not required to show any direct benefits to Verso from the company's planned spending and proposed surcharges. As Verso argues, if UPPCo's position that indirect savings exclusively are sufficient to justify any level of cost assignment to a customer class, "it would never be possible for charges collected from a particular rate class to **not** be deemed to have been spent on EWR programs that in some way benefit that rate class."[59]

UPPCo's plan proposes to obtain 3,180,000 kWh in energy savings from Verso as an RTMP customer, approximately 23.6% of its total planned savings. This is roughly proportional to the 22.5% of total budgeted costs assigned to the RTMP customer class. As Verso argues, the only potential for direct savings for this customer would be from the Prescriptive or the Custom program. Yet, UPPCo appears indifferent to whether Verso is able to take advantage of either of these programs.

As shown in Exhibit VER-12, page 7, UPPCo was asked in discovery to "provide the basis and copies of all supporting cost and benefit analyses for Mr. McNeally's statement that each rate class will receive the benefit of the surcharges collected from that class." UPPCo responded:

> Per UPPCO's first Discovery Responses to Verso, the proposed EWR Plan programs are for eligible customers, not a specific customer rate class, and that DSMore cost analysis tool was used to calculate the cost-effectiveness for the proposed EWR Plan and programs.

[58] Tr 49.
[59] Verso brief, pages 13-14.

Asked in the same question to "explain how UPPCO proposes to ensure that each rate class with receive the benefit of the surcharges collected from that class," UPPCo responded:

> UPPCO proposes to "ensure, to the extent feasible" by focusing on marketing to customers to participate in the EWR Plan programs they are eligible for. The focus is on programs because the EWR Plan is not disaggregated by customer rate class but by programs.[60]

Asked to "quantify the benefit UPPCO expects the RTMP class to receive as a result of paying $950,867 per year in EWR surcharges," UPPCo responded: "UPPCO cannot predict the benefits to an individual customer rate class, as the EWR Plan programs proposed are not disaggregate by the customer rate class."[61]

Apparently, in 2021, before Verso elected to be a self-directed customer under the Special Contract rate, Verso and UPPCo were discussing opportunities for Verso to achieve savings. UPPCo now considers such discussions "not relevant to the matters to be considered and decided by the Commission in this proceeding, because in the proposed EWR Plan for 2022 and 2023 [incentives] are offered to qualifying customers only while funding[] is available."[62] This is consistent with Mr. McNeally's rebuttal testimony, in which he clarified that there is no fixed dollar cap on UPPCo's spending under the Prescriptive program, but testified that "incentives are offered to qualifying electric customers only while funding is available," and regarding the Custom program, testified that it "has the added requirement that incentives will not be provided for

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[60] Exhibit VER-12, page 7.
[61] Exhibit VER-12, page 7; also see Exhibits VER-7 and VER-8.
[62] Exhibit VER-12, page 11.

projects with less than a one (1)-year simply payback or greater than an eight (8)-year simple payback."[63]

As shown in Exhibit VER-12, page 3, Verso asked:

> For each year from 2016 through 2021 to date, please provide the amount of incentive payments paid to each customer class. Please break out the annual incentive payments for each of the customer classes listed on Exhibit A-12 (EWS-4).

UPPCo's response was limited to the following:

> UPPCO does not have incentive payments by customer rate class available. The incentive payments are at the EWR Plan program level for tracking and reconciliation. Industrial rate class customers typically complete large energy efficiency projects which enable review and analysis on a customer basis, but that analysis would not be at the customer rate class level, with the exception of the RTMP rate class which is unique to Verso's Escanaba Mill facility.

No data specific to the RTMP rate class (Verso) was provided with this response.

Mr. McNeally also testified that Verso receives benefits, which he subsequently labeled indirect benefits,[64] from the Small Business Direct Install program. But he did not claim that any savings from that program would go toward meeting the savings target assigned to Verso as an RTMP customer, or explain how that savings target would be achieved.

UPPCo's indifference regarding the performance of its plan as it relates to the RTMP class—whether viewed in terms of plan spending, customer benefits, or energy savings—is inconsistent with its statutory obligations under section 71(4), and with UPPCo's own representations regarding its plan. Indeed, as part of its RFP process to

[63] Tr 55.
[64] See Exhibit VER-12, page 10.

select a program administrator, UPPCo provided answers to questions from potential bidders, including the following statement:

> At a high level, UPPCo's EWR Plan must accomplish the first-year energy savings, lifetime energy savings and low-income spend goals as ordered in a future MPSC Case for UPPCO's 2022-23 EWR Plan. In addition, the surcharge collection and incentive spend needs to be equitably distributed across UPPCO's customer rate classes.[65]

As UPPCo and Verso recognize, Act 295 does not require UPPCo to spend all dollars assigned to the RTMP rate class on incentives for that class. For example, it would not be feasible for the company to offer programs without administrative and evaluation costs, and low-income programs are specifically provided for in 2008 PA 295. In the absence of evidence of direct benefits to the RTMP class, planned spending for the RTMP class, or actual savings expected from the RTMP class, however, UPPCo has not established that its plan is consistent with the statutory requirements.

Even looking at the commercial and industrial sector as a whole, as shown in Exhibit A-9, UPPCo is targeting annual savings of 9,049,000 kWh for this sector, or 8,701,000 excluding the self-directed customer. This savings target exceeds the savings associated with the commercial and industrial sector as shown on line 18 of Exhibit A-2 (6,693,975kWh for 2022); even including all the education and pilot program savings on line 24 (1,077,781 kWh) and the multi-family dwelling savings on line 6 (212,981 kWh), discussed in more detail below, the 7,984,737 kWh total would be insufficient to attain the target.

This PFD finds that UPPCo has not established that it has a reasonable and prudent plan to achieve targeted savings, considering the savings the plan attributes to

[65] Exhibit A-7, page 4, Question 7.

the RTMP class, or that is has made any effort to "ensure, to the extent feasible, that charges collected from a particular customer rate class are spent on energy waste reduction programs that benefit that rate class." This PFD recommends that the Commission reject UPPCo's plan and direct the company to file a plan that demonstrates how target savings will be achieved from the RTMP customer class.

Verso's objections to specific cost allocations are discussed in more detail in subsection 2 below.

2. Cost classification and allocation issues

As shown in Exhibit A-8, Verso has classified its budgeted spending into three categories—residential program costs, commercial and industrial program costs, and societal costs—for allocation to the various rate classes. The residential program costs are allocated to the residential rate classes based on energy use; the commercial and industrial program costs are allocated to commercial and industrial rate classes based on energy use, not including Verso as a Special Contract Self-Directed customer; and the societal program costs are allocated to all customer classes, including the Special Contract Self-Directed customer, based on energy usage. The financial incentive is split between the residential and the commercial and industrial sectors 50/50 and allocated with the program costs for each sector. The development of the allocation factors is shown in Exhibit A-10. Using these allocations, UPPCo calculates Verso's revenue requirement as an RTMP customer as 36.56% of all commercial and industrial program costs including 50% of the financial incentive, and 23.18% of the societal costs.

As further background, at a high level, the RTMP class is assigned approximately 22.5% of total budgeted costs and 23.6% of energy savings, reflecting a rough symmetry. Act 295 has limited directions regarding cost allocation and rate design. Section 89(2) requires UPPCo to recover costs from residential electric customers through a volumetric charge, and to recover costs from all other metered electric customers through per-meter charges.[66] "The established funding level for low-income programs," which are not required to be cost-effective under section 71(4)(g), is to be recovered "from each customer rate class in proportion to that customer rate class's funding of the provider's total energy waste reduction programs," and through "[c]harges . . . applied to distribution customers regardless of the source of their electricity or natural gas supply."[67] Section 93(5) requires a mechanism to recover the costs of low-income energy waste reduction programs from self-directed customers, while section 93(8) clarifies that self-directed customers are exempt from program costs under sections 89 and 91.[68]

Verso's objection to allocating the "commercial and industrial program" costs as shown in column c of Exhibit A-10 is discussed in subsection a; Verso's further objection to the allocation of "societal costs" to the RTMP and Special Contract revenue requirement as shown in column d of Exhibit A-10 is discussed in subsection b; Verso's proposal to combine the larger commercial and industrial rate classes into a single class for purposes of designing the EWR surcharge is discussed in subsection c; cost assignments specifically to the self-directed customers are discussed in subsection d.

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[66] MCL 460.1089(2).
[67] MCL 460.1071(4)(g).
[68] MCL 460.1093.

a. Commercial and industrial program costs

Exhibit A-10 shows the allocation factors used to allocate each of the three cost categories in Exhibit A-8. Column c shows the allocation factors for $3,719,745 in costs that UPPCo labels commercial and industrial program costs. This category includes the costs listed in lines 13-17 of Exhibit A-2 as well as 50% of the proposed financial incentive on line 23 of Exhibit A-2. Verso's principal objections to the cost allocations made in this column are i) to the use of an energy allocator and ii) to the inclusion of the Small Business Direct Install program costs in the costs allocated to all commercial and industrial customers.

i. Energy allocator

In his direct testimony, Mr. McNeally identified the energy allocation as a primary driver of rate changes, explaining:

> The primary drivers are a focus on equitable distribution of plan costs based on electric sales which provides customers the appropriate pricing signal, and better alignment with the Energy Waste Reduction statute for distribution of societal costs to all rate classes.[69]

Ms. York agreed that the energy allocation is significant,[70] but objected to it:

> UPPCo claims the energy allocator is geared toward providing an equitable distribution of plan costs, which provides customers the appropriate pricing signal, and results in better alignment with the EWR statute for distribution of societal costs to all rate classes. However, UPPCo's proposed allocation does not accomplish its stated objectives, and instead results in unjust, unreasonable, and discriminatory rates.[71]

Ms. York explained that UPPCo had proposed a revenue allocation method in its 2020/2021 plan filing, Case No. U-20376, but in a settlement agreement in that case,

[69] Tr 41.
[70] Tr 116.
[71] Tr 116-117.

agreed to an energy allocation. Ms. York also cited the approach taken by other utilities in concluding that UPPCo did not justify the change in its cost allocations methods. She recommended that program costs be allocated to rate schedules based on that schedule's share of 2020 revenues, which she described as the method used before the settlement agreement in Case No. U-20376. This revenue allocation forms the basis for her recommended rate design in Exhibit VER-11. Because she recommended combining the larger commercial and industrial rate classes, her Exhibit VER-11 does not revise the per-class revenue requirement for all commercial and industrial rate classes; she also acknowledged that she did not have comparable revenue data for Verso as a Special Contract customer.[72] Nonetheless, it is clear from the allocation factors in column (2) of Exhibit VER-11 that using revenue, the percentage of the commercial and industrial program costs allocated to Verso as an RTMP customer would decrease from 36.56% to 14.34%.

In rebuttal, Mr. Stocking testified that the revenue-based allocation was appropriate when UPPCo used the State Administrator for compliance, with costs calculated as a percentage of revenue.[73] Mr. Stocking disputed that this allocation method is appropriate for EWR plan costs under the current company-administered plan.[74]

In its brief, Verso argues generally that UPPCo should allocate costs among rate classes using a revenue allocator as it did prior to the settlement agreement in Case

[72] Exhibit VER-11, column 6 and note 2.
[73] Tr 64.
[74] Tr 65.

No. U-20376. UPPCo opposes any change in its allocation, relying on Mr. Stocking's rebuttal.

Without a better understanding of the programs, benefits, and savings Verso would obtain from an approved plan, it is difficult to evaluate the dispute over the allocation method. As discussed above, UPPCo's cost allocation assigns a relatively equal portion of costs and energy savings to the RTMP rate class, but has failed to establish that the savings target is realistic. UPPCo's primary justification for the energy-based allocation, the need to send price signals, does not apply to the metered commercial and industrial rate classes because they are required to pay a fixed fee per meter. The marginal cost of energy is unchanged for these customers. On the other hand, the statute focuses on energy savings, so an energy-based allocator is not unreasonable under circumstances where the programs are targeted to achieve energy savings for all rate classes. Thus, this PFD finds that Verso has not shown an inherent inequity in the use of an energy allocator for the commercial and industrial program cost category. Consistent with this PFD's recommendation that UPPCo file a revised plan demonstrating benefits to the RTMP class, the allocation method can be considered at that time to ensure it is appropriate.

ii. Small business direct install program costs

Verso objects to the allocation of the Small Business Direct Install program costs to the RTMP rate class, since Verso is not eligible for the program. As noted above, Ms. York testified that such costs should not be allocated to the RTMP rate class. In his rebuttal, Mr. McNeally objected to assigning Small Business Direct Install program costs only to eligible rate schedules rather than to the commercial and industrial class as a whole, contending that Verso as an RTMP customer receives benefits from plan costs associated with this program.[75]

Consistent with the discussion in section 1 above, this PFD finds that UPPCo has not adequately demonstrated a benefit to Verso from the commercial and industrial programs ostensibly available to the RTMP class. Regarding the Small Business Direct Install program costs specifically, this PFD finds that UPPCo has failed to justify allocating the cost of the program to customers not eligible to participate in the program. The allocation appears inconsistent with UPPCo's obligation to match program costs to the classes benefiting from those costs, to the extent feasible. While the small commercial customers are also allocated the costs of the Prescriptive and Customer programs that appear targeted at larger commercial and industrial companies, the small commercial customers are eligible for both programs. UPPCo's proposed pilot program, detailed in Exhibit A-1 at page 28, is also focused on increasing the ability of smaller customers to participate in these programs.

Nonetheless, consistent with this PFD's recommendation that UPPCo be directed to file a revised plan establishing how its programs will benefit Verso and lead to the projected savings for the RTMP rate class, UPPCo will have the opportunity to further address the allocation of the commercial and industrial program costs in a revised filing.

b. Societal cost category

While the components of the societal cost category were somewhat confused in UPPCo's initial filing,[76] the $2,060,300 included in the societal cost category in Exhibits

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[75] Tr 54.

A-8 and A-11 include the Income Qualified/Low Income costs on line 2 of Exhibit A-2, 75% of the Multi-Family Direct Install program costs on line 6 of Exhibit A-2, 50% of the residential evaluation and administration costs on lines 8 and 9 of Exhibit A-2, and the Pilot Programs and Educational Services costs shown on lines 21 and 22 of Exhibit A-2. As discussed in subsections i through iii below, Verso objects to the classification of the latter three of these cost elements as "societal costs" allocated to all rate classes. As discussed in subsection iv, Verso also argues that low-income program costs that are properly allocated to all classes must be allocated on the basis of the percentage of other, non-low-income EWR costs assigned to each class.

i. Multi-family direct install program costs

UPPCo's plan calls for a three-fold increase in spending for the Multi-Family Direct Install program, from approximately $28,000 per year in its 2020/2021 plan as shown in Attachment 2 to the settlement agreement approved in the Commission's May 8, 2020 order in Case No. U-20376, to approximately $87,000 per year as shown in Exhibit A-2. This program is described in Exhibit A-1, beginning at page 17, and includes in-unit and common area direct installation measures in buildings with four or more units, some overlap with the Small Business Direct Install and Business Prescriptive programs, and some resources to be used to assist multi-family buildings with subsidized rental units housing low-income customers. As to the latter, the program description states:

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[76] Mr. McNeally testified that the societal cost category was the new name for what the company had previously labeled the portfolio cost category, but the costs under the heading "portfolio costs" on line 20 of Exhibit A-2 are not the same as the societal costs that are allocated collectively to all customers including self-directed customers.

> This program will also assist multi-family buildings with subsidized rental units housing low-income customers. Buildings identified as receiving subsidized rents (ex: Section 8 housing) or in areas where the population is more than 50% low-income, will be traced through the low-income program and may qualify for additional measures available under that program.[77]

As noted above, Mr. McNeally testified that UPPCo allocated 75% of the multi-family direct install program costs to the low-income program. He did not provide a basis for the 75% allocation in his direct testimony. In his rebuttal testimony, he explained:

> [T]he percentage of income eligible customers is assumed to be 75% based on active participation in the Michigan Public Service Commission Low-Income Workgroup meetings and presentations since 2018. Based on conversation that UPPCO has had with energy efficiency industry experts, UPPCO believes that 75% of customer living in multi-family units in Michigan are less than the 200% FPL. Therefore, UPPCO believes that 75% allocation of these costs to the Company's low-income programs is reasonable.[78]

UPPCo provided a similar explanation to Verso in discovery, as shown in Exhibit VER-5. Citing this discovery response as well as the response in Exhibit VER-4, Ms. York objected to the lack of supporting detail for the allocation percentage in the company's case:

> The Company's response to Verso's discovery request on this topic indicated that a portion of the Multi-Family Direct Install program is one of UPPCo's low income residential EWR programs. However, UPPCo has not provided any details about the portion of these program costs associated with the low income program. In addition, UPPCo has not provided any technical evidence showing that it is reasonable to assume 75% of these costs are associated with the low income portion of this program.[79]

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[77] Exhibit A-1, page 17.
[78] Tr 51.
[79] Tr 125.

In its brief, Verso argues that UPPCo has failed to support the characterization of 75% of the multi-family direct install program costs as part of its low-income spending, contending that the company's "assumption" is an insufficient basis to shift $131,172 from the residential to societal cost allocation category.[80] While UPPCo does not address Ms. York's testimony in its initial brief, in its reply brief it cites Mr. McNeally's rebuttal testimony and argues:

> As made clear by Witness McNeally, the 75% figure is not just a number picked from the sky as Verso would have the Commission believe; instead, this figure is based on the Company's experience, participation in industry and MPSC workgroups, and knowledge regard[ing] customer demographics.[81]

This PDF finds that UPPCo has not adequately supported its division of the multi-family dwelling costs into residential and low-income categories. Despite its assertion, as quoted above, that UPPCo has other experience outside its workgroup participation to inform its decision, the testimony and discovery responses did not identify such experience. The company has not set aside any particular funding level for the low-income piece of the program, and did not present a single demographic statistic in support of its 75% estimate.

As described in Exhibit A-1, this program overlaps with other programs, including the Small Business Direct Install and Prescriptive program, in addition to the Residential Income Qualified Services program:

> The Multi-Family program is designed to help improve the efficiency of living units inside of multi-family business and to improve the lighting in the common areas of the building (interior and exterior). Multi-Family buildings often have two distinct areas from a utility perspective, living

[80] Verso brief, page 18.
[81] UPPCo reply, page 11.

> units that have their own meter and common areas which have a commercial meter. In-unit improvements will be made through a direct install strategy for both lighting and electric water hearing. Common area improvements will be through both a direct install and rebated approach depending on the measure. Common area savings will be captured within the Small Business Direct Install and Business Prescriptive programs to assure that costs get allocated properly.
>
> This program will also assist multi-family buildings with subsidized rental units housing low-income customers. Buildings identified as receiving subsidized rents (ex: Section 8 housing) or in areas where the population is more than 50% low-income, will be tracked through the low-income program and may qualify for additional measures available under that program.[82]

UPPCo has not adequately explained how low-income spending and savings will be separated from other program spending and savings as part of this specific program, and this confusion casts further doubt on the reasonableness of UPPCo's 75% allocation factor. As a point of clarification, no one has suggested that low-income programs targeted at multi-family dwellings are unreasonable or imprudent. This PFD finds only that UPPCo has not established that 75% of the Multi-Family Direct Install budget will be spend on low-income programs.

Consistent with the recommendation in subsection 1 above, this PFD recommends that in a revised filing, UPPCo provide justification for the classification of costs associated with this program as "low-income," or revise the program to separate and identify what spending will be considered low-income, e.g., buildings identified as receiving subsidized rent, from spending that should be considered part of the Small Business Direct Install or the Prescriptive programs.

[82] Exhibit A-1, page 17.

ii. Evaluation and administration costs

Lines 8 and 9 of Exhibit A-2 include a two-year total of $707,000 for residential evaluation and administration costs. Verso also raised an issue with the allocation of 50% of these budget amounts to the low-income program. As Ms. York testified, the company's initial allocation of 50% of this amount to the societal cost category was not mentioned or discussed in the company's direct testimony. Additionally, in discovery and in rebuttal testimony, Mr. McNeally stated that the correct percentage of residential evaluation and administration costs to allocate to low-income programs "may be revised to 42%."[83] While testifying that the 42% figure should be the most allocated to the societal cost category, Ms. York took further issue with this cost allocation:

> UPPCo has not shown that a revised ratio of 42% accurately reflects, or is a reasonable proxy for, the portion of residential evaluation and administration costs associated with Income Qualified/Low Income EWR programs. In fact, UPPCo's response to a discovery request clearly states that this estimated percentage of customers may be under- or over-stated because UPPCo supplies electric energy to limited communities and/or portions of communities within the counties listed.[84]

UPPCo did not address this testimony in its brief, but in its reply brief UPPCo asserts that it had acknowledged the correct percentage should be 42%. UPPCo's revised exhibits, however, do not incorporate the change. Recognizing that it is reasonable to conclude that some evaluation and administrative costs will be required for low-income programs, this PFD finds that the 42% allocation now adopted by UPPCo should be incorporated in the low-income or "societal" cost classification.

[83] Tr 52.
[84] Tr 126.

iii. Education and pilot program costs

As shown in lines 21 and 22 of Exhibit A-2, UPPCo plans two-year spending on education programs totaling $188,787 and plans two-year spending on pilot programs totaling $314,645. UPPCo has allocated its education and pilot program costs entirely to the societal cost category, and thus to all customers, including self-directed customers, based on energy. As noted above, there is some confusion on the record regarding this classification. As Verso explains, and consistent with Exhibit VER-4, while UPPCo initially split the education and pilot program costs 50/50 between the residential and the commercial & industrial sectors, UPPCo's revised Exhibit A-8 includes the education and pilot costs in the societal cost category, aligning with Mr. McNeally's direct testimony at Tr 39-40 that these costs are spread to all customer classes.

Ms. York objected to the initial 50/50 allocation as explained in her testimony at Tr 119-120, contending that UPPCo had not supported the split.[85] She explained that DTE Electric tracks its pilot and education costs by customer class. She proposed a per-customer allocation of education and pilot program costs as an alternative, which approximates the tracked results used by DTE Electric. This allocation results in approximately 15% of education and pilot project costs allocated to the commercial and industrial sector, compared to 68% under UPPCo's proposal.

In rebuttal, Mr. McNeally addressed the classification of education and pilot costs as "societal costs." He testified that the education plan benefits all communities:

> UPPCO's Education plan costs support energy education to nearly every fourth-grade student is the Company's service territory annually, as well as provide training opportunities for businesses and contractors, plus

[85] See Tr 118-121.

> other educational activities. In aggregate, UPPCO's Education plan costs benefit all the communities within the Company's service territory and are included in the Societal cost category allocated across all rate classes. To allocate UPPCO's Education plan costs as Verso proposes, based on number of customers in customer classes, would be inequitable.
>
> UPPCO does not agree that number of customers is a valid allocator for Education costs as these costs are not earmarked for any specific rate class or EWR sector. For example, a small amount of education dollars spent to train a contractor who then performs work for many commercial & industrial customers has a broad impact.[86]

Similarly, regarding pilot programs, he testified that these costs should be included in the societal cost category because they are not specific to a person, home, business, or industry, but to society overall, and disputed that such costs should be allocated on a per-customer basis:

> The MPSC Staff Report "Utility Pilot Best Practices and Future Pilot Areas" released on September 30, 2020, provides extensive review of pilots, as well as recommendations, for Michigan. The wide variety of current and emerging problems in the rapidly evolving energy sector are not specific to a person, home, business, or industry but to society overall. Pilot plan costs within UPPCO's proposed EWR Plan for 2022-2023 enable the opportunity to explore, validate, and learn, at smaller scale, about solutions to current and emerging energy problems, and may have benefits and impacts beyond the energy efficiency focus. Pilot plan costs benefit the public interest and, therefore, are included in the Societal cost category.[87]

In its brief, Verso argues that UPPCo's revised allocation assigns a greater percentage of costs to the RTMP customer class:

> Verso does not doubt that some vague, indirect benefits may result "in aggregate" from certain EWR investments. UPPCO has clearly failed, however, to demonstrate that those benefits inure directly to the RTMP rate class (or even to the C&I sector as a whole) in anywhere near the proportion they are proposed to be required to pay for them and has therefore once again effectively rendered nugatory the requirement of

[86] Tr 50-51.
[87] Tr 53.

> MCL 460.1071(4). Since UPPCO has since included the Education Services and Pilot program costs in the Societal cost allocation category, and since 68% of Societal costs (and thus 68% of the Education Services and Pilot program costs) are now allocated to the C&I sector, this issue has only become more acute.[88]

In its reply brief, UPPCo relies on Mr. McNeally's rebuttal testimony and its general claim that Verso does not want to pay societal costs.

No party contends that the educational programs exceed the statutory 3% limit in section 71(6),[89] or that the education or pilot expenditures are unreasonable or imprudent. Instead, Verso objects to treating these costs and pilot program costs akin to low-income costs that are allocated to all customers, and to any cost allocation that does not take into account the rate classes primarily benefiting from the expenditures.

This PFD finds that UPPCo has not established that education and pilot program costs are "low-income program" costs that by statute may be spread to all customers. Although the Commission has discretion to approve alternate allocations of these costs, including the 50/50 split first used by UPPCo or an energy-based allocation, section 93(1) exempts self-directed customers from charges under sections 89 and 91, while section 93(5) speaks only to recovery of the costs of the low-income energy waste reduction program under section 89.

Regarding Ms. York's recommendation that education and pilot program costs be allocated on a per-customer basis, this PFD does not find that appropriate because DTE Electric's tracking of its own education and pilot programs is not a reliable basis on which to allocate the costs of UPPCo's programs, which could be significantly different.

[88] Verso brief, page 15.
[89] MCL 460.1071(6)

Nor is there support for the underlying assumption that all customers benefit equally from the education and pilot program expenditures. Nonetheless, this PFD recommends that the Commission require UPPCo to track its education and pilot program expenditures so that reasonable allocations can be made in the reconciliation and guide future plan cases. As noted above, the only pilot program identified by UPPCo so far is targeted at small commercial customers to further facilitate participation in the programs available to those customers. Regarding the education programs, while UPPCo argues that training opportunities for businesses and contractors justify allocating the majority of pilot program costs to commercial and industrial customers, this PFD notes that the programs available to commercial and industrial customers, separately budgeted on lines 13-15 of Exhibit A-2, already include training of this nature, as shown on pages 19-24 of Exhibit A-1.[90]

iv. Allocation method

Citing MCL 460.1089(4), Ms. York acknowledged that income qualified/low-income program costs, by statute, are to be allocated to each customer rate class in proportion to that class's funding of the providers total EWR program, but concluded that UPPCo had not followed this allocation. She testified that commercial and industrial customers are allocated 58% of program costs and portfolio costs, but are assigned 68% of the income qualified/low-income program costs based on UPPCo's use of an energy allocator.[91] In its reply brief, UPPCo does not directly address the directive in

[90] For example, the implementation strategy for the Prescriptive program states: "Outreach will include orientation meetings and conduct in-person visits aimed at training and equipping market providers to communicate program information to customers. Training will be provided to the market providers on new technologies and the appropriate application of those technologies."

[91] Tr 124.

section 89(4) that “ [t]he established funding level for low income residential programs shall be provided from each customer rate class in proportion to that customer rate class's funding of the provider's total energy waste reduction programs.” Instead, UPPCo justifies its allocations generally on the basis that the costs at issue benefit all customer classes, as discussed above.

This PFD finds that costs associated with UPPCo’s low-income programs, including evaluation and administrative costs, must be allocated according to the statutory directive. Consistent with the recommendation in section 1 above, UPPCo’s refiled plan should include an allocation of its low-income program costs consistent with section 89(4), including an allocation to self-directed customers.

3. Commercial and Industrial Customer Rate Design

Ms. York proposed to redesign rates for the commercial and industrial customer classes by combining all the commercial and industrial rate classes to produce a single per-meter charge for each of them as shown in Exhibit VER-11. Mr. McNeally and Mr. Stocking objected to this approach.

In rebuttal, Mr. Stocking disputed that the surcharge should be the same for Verso as large commercial (Rate CP-U) customers, testifying that “it is fair to say that Verso could be as much as 812 times larger than a small CP-U customer, in terms of annual maximum demand.”[92] He estimated that Verso would pay 11.8% of its total billed revenue as an RTMP customer under the surcharge, while some CP-U customers pay more than 20% of their total bill through the surcharge. He reviewed the increases that

[92] Tr 66.

commercial and streetlighting customers would pay under Verso's revenue-based cost allocation and revised rate design.[93]

This PFD finds that Verso has not established a benefit in combining these disparate customer rate classes. Verso's proposal was in large part driven by an objection to the allocation of particular cost items as discussed above. In addition to the concerns raised by Mr. Stocking, this PFD notes the difficulty that could arise in future rate cases as UPPCo's programs shift, which following Verso's approach, could lead to continually reorganizing customer classes into different groups for surcharge purposes.

4. Self-Directed Customer Rates

As noted above, Verso has elected to be a self-directed customer under its Special Contract rate, and has the option to choose to be a self-directed customer under its RTMP rate by July 2022. Section 93 contains the self-directed customer requirements. While section 93 articulates these requirements for each "site", which is defined in section 13 of Act 295, no party has argued that Verso must choose to be a self-directed customer at the mill under both the Special Contract and RTMP rates, or under neither.[94]

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[93] Tr 67.

[94] Since no one has raised this concern, this PFD merely notes the potential limitation under MCL 460.1093 and 460.1013. Section 93(2) states: "Subject to subsection (3), an electric customer is not eligible under subsection (1) unless it is a commercial or industrial electric customer and had an annual peak demand in the preceding year of at least 1 megawatt in the aggregate *at all sites* to be covered by the self-directed plan." Section 93(6)(b) states: "The self-directed plan shall provide for aggregate energy savings that each year meet or exceed the energy waste reduction standards based on the electricity purchases in the previous year for the *site or sites covered* by the self-directed plan." Section 93(8) states: "Once a customer begins to implement a self-directed plan at a site covered by the self-directed plan, *that site is exempt* from energy waste reduction program charges under section 89 or 91 and is not eligible to participate in the relevant electric provider's energy waste reduction programs." Under section 13(a): "'Site' means a contiguous site, regardless of the number of meters at that site. A site that would be contiguous but for the presence of a street, road, or highway is considered to be contiguous for the purposes of this subdivision."

Verso argues that only low-income program costs can be allocated to self-directed customers, and objects to an allocation of education and pilot program costs to all rate classes, including self-directed customers. As discussed above, this PFD finds that Verso's argument is correct to the extent that education and pilot program costs that are not part of a low-income program should not be assigned to self-directed customers. As Mr. Stocking testified, low-income and provider-level review and evaluation costs may be assigned to self-directed customers.[95] UPPCo has not presented a specific level of review and evaluation costs for self-directed customers.

B. <u>On-bill financing</u>

The Attorney General and CUB argue that the Commission should require UPPCo to evaluate and consider adopting an on-bill financing program consistent with sections 201 through 212 of Act 295.[96] Under these provisions, a utility may establish a residential energy projects program under which a record owner of property in the utility's service territory obtains financing for an energy project on the property and repays the loan through itemized charges on the utility's bill for that property. A utility is also able to propose an alternative program, subject to Commission approval.

As explained above, Mr. Jester recommended this as a means of increasing residential EWR measures:

> The specific benefits of an on-bill repayment program depend on the program design. Generally, an on-bill repayment program makes psychological sense to the customer when they anticipate covering all or most of the costs of an investment though utility bill savings. When the obligation to repay applies to the meter, then the customer's creditworthiness is less important in originating the loan for the investment

[95] Tr 68.
[96] MCL 460.1201 to 460.1212.

> and the customer's creditworthiness is not affected by the obligation. When the premise is rented and the occupant pays the utility bill, on-bill repayment can solve the problem of split incentives for energy waste reduction between the landlord and the tenant. On-bill repayment can also provide low transaction costs compared to other loan products, because security for a loan is provided by the utility. Finally and perhaps most importantly, an on-bill repayment program provides a tool by which a utility can offer customers an opportunity for larger investments in energy waste reduction at minimal cost to the utility and its other customers.
>
> The net result of an on-bill repayment program can be that a high contribution to EWR is achieved largely with funding by a third party that is repaid by the benefitting customer rather than being paid through the EWR surcharges.[97]

In rebuttal, Mr. McNeally testified that UPPCo is not interested in pursuing an on-bill financing program:

> The Company is aware of a few on-bill repayment programs being implemented by other utilities, but is not considering or seeking to establish, adopt or pilot an on-bill repayment program as part of our 2022-2023 EWR Plan filing in this case. At this time UPPCO believes that introducing such a program, even as a pilot, would be expensive and administratively difficult.[98]

In their brief, the Attorney General and CUB review Mr. Jester's testimony in detail.[99] Citing Exhibit AG-3, they argue that discovery responses provided by UPPCo show that the company did not conduct an analysis of the costs and benefits of adopting an on-bill financing program:

> Exhibit AG-3 is UPPCO's responses to the Attorney General's second discovery request. In response to discovery 2-AG-20 requesting the Company to describe all efforts that it took to consider the on-bill repayment programs, UPPCO responded that it believes the Company has no obligation to implement an on-bill program and that it "does not believe that loaning money to its customers is a core-utility function." (Exhibit AG-3, p 1.) Moreover, the Company explained that it "is not obligated to contact others for information regarding on-bill repayment

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[97] Tr 93.
[98] Tr 46.
[99] See AG/CUB brief, pages 9-10.

programs," but that it has participated in some information gathering activities to better understand the program. (Exhibit AG-3, p 1.)

> In response to 2-AG-21, however, UPPCO admitted that it did not contact its billing software vendor to ask about features that would support an on-bill financing program and did not inquire into the cost of implementing such a program. (Exhibit AG-3, p 3.) Moreover, UPPCO admitted that it has "not performed any analysis of the effort or costs required" to implement an on-bill repayment program. (Exhibit AG-3, p 5.)[100]

They request the Commission to "encourage UPPCo [to] investigate and develop [a] concrete on-bill repayment program that it can present in the next EWR Plan proceeding."[101] In its reply brief, Staff expresses support for further evaluation of an on-bill financing program:

> While Staff is not recommending the Commission order the Company to include on-bill financing in its next EWR plan case, it does support further investigation into such programs. An on-bill financing program has the potential to increase access to EWR for customers who may otherwise face obstacles to participating to the extent they desire, if at all. Additional investigation into on-bill financing by the Company could further the efforts that have been made to improve and expand the Company's EWR programming.[102]

UPPCo did not address Mr. Jester's recommendation in its initial brief, and in its reply brief, relies on Mr. McNeally's rebuttal testimony in arguing that the Commission should reject the Attorney General's and CUB's request. It argues that it is not required to adopt an on-bill financing program, and because the decision to adopt such a program is committed to management discretion, has no obligation to further evaluation such a program.[103] Further, UPPCo argues in the alternative that the Attorney General and CUB have not established a sufficient evidentiary basis to require the company to

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[100] See AG/CUB brief, page 11.
[101] See AG/CUB brief, page 11.
[102] Staff reply, page 6.
[103] See UPPCo reply, pages 14-15.

investigate such a program further, characterizing Mr. Jester's testimony regarding the potential benefits of an on-bill financing program as "customer-generic and speculative," lacking in program detail.

This PFD finds UPPCo's analysis persuasive and does not recommend that the Commission require UPPCo to evaluate an on-bill financing program for its next plan case. UPPCo has a plan to exceed the statutory target, with no party taking issue with the efficacy of the residential programs it has planned. An on-bill financing program does carry with it a host of legal issues, and there is no evidence in this record regarding the potential cost of an analysis of those issues, while the statute appears to vest discretion in the utility whether to adopt such a program.

C. Financial Incentive Mechanism

Section 75 of Act 295 authorizes a financial incentive to utilities for exceeding the statutorily required EWR savings, subject to statutory caps as provided in that section.[104] Those caps are delineated in subsections 75(2), (3) and (4):

> (2) The total amount of a financial incentive for an electric provider that achieves annual incremental savings of greater than 1.5% of its total annual retail electricity sales in megawatt hours in the preceding year or a natural gas provider that achieves annual incremental savings of greater than 1% of its total annual retail natural gas sales in decatherms in the preceding year shall not exceed the lesser of the following amounts:
>
> (a) 30% of the net present value of life-cycle cost reductions experienced by the provider's customers as a result of implementation, during the year for which the financial incentive is paid, of the energy waste reduction plan.
>
> (b) 20% of the provider's actual energy waste reduction program expenditures for the year.

[104] MCL 460.1075.

(3) The total amount of the financial incentive for an electric provider that achieves annual incremental savings of greater than 1.25% but not greater than 1.5% of its total annual retail electricity sales in megawatt hours in the preceding year or a natural gas provider that achieves annual incremental savings of greater than 0.875% but not greater than 1% of its total annual retail natural gas sales in decatherms in the preceding year shall not exceed the lesser of the following amounts:

(a) 27.5% of the net present value of life-cycle cost reductions experienced by the provider's customers as a result of implementation, during the year for which the financial incentive is paid, of the energy waste reduction plan.

(b) 17.5% of the provider's actual energy waste reduction program expenditures for the year.

(4) The total amount of a financial incentive for an electric provider that achieves annual incremental savings of at least 1.0% but not greater than 1.25% of its total annual retail electricity sales in megawatt hours in the preceding year or a natural gas provider that achieves annual incremental savings of at least 0.75% but not greater than 0.875% of its total annual retail natural gas sales in decatherms in the preceding year shall not exceed the lesser of the following amounts:

(a) 25% of the net present value of life-cycle cost reductions experienced by the provider's customers as a result of implementation, during the year for which the financial incentive is paid, of the energy waste reduction plan.

(b) 15% of the provider's actual energy waste reduction program expenditures for the year.

MCL 460.6a(13) further authorizes the Commission to provide a greater incentive under specified conditions:

The commission shall consider the aggregate revenues attributable to revenue decoupling mechanisms, financial incentives, and shared savings mechanisms the commission has approved for an electric utility relative to energy waste reduction, conservation, demand-side programs, peak load reduction, and other waste reduction measures. The commission may approve an alternative methodology for a revenue decoupling mechanism authorized under subsection (12), a financial incentive authorized under section 75 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1075, or a shared savings mechanism authorized under section 6x if the commission determines that the

> resulting aggregate revenues from those mechanisms would not result in a reasonable and cost-effective method to ensure that investments in energy waste reduction, demand-side programs, peak load reduction, and other waste reduction measures are not disfavored when compared to utility supply-side investments. The commission's consideration of an alternative methodology under this subsection shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287.

UPPCo filed a financial incentive structure, explained by Mr. McNeally, that allows UPPCo to recover an incentive up to 20% of its EWR spending based on a sliding scale that considers first-year savings, lifetime savings, and low-income program spending. Ms. Smith explained the method clearly:

> First-year savings will determine the maximum incentive award possible, while the subsequent two metrics will be weighted to determine the earned incentive award. The sum of the percentages earned in each of the two remaining metrics will be added together and multiplied by the actual EWR program expenditures to determine the performance incentive payment. The total percentage reached in the subsequent metrics cannot exceed the percentage reached in the first-year savings component.[105]

She further explained the rationale for Staff's change to the lifetime savings percentage that must be attained for the company to achieve the maximum incentive:

> Staff does not want the performance incentive mechanism to incentivize a below planned amount of savings. Performance incentive mechanisms are created and used to motivate and push a utility to achieve more than planned or required. Staff does not see 150% of lifetime-savings to be an incentive for the Company to push or achieve more for their customers.[106]

Ms. Smith presented the revised structure in Exhibit S-1.[107] As Mr. McNeally testified, the company adopted this refinement in its amended Exhibit A-4.[108]

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[105] Tr 81-82.
[106] Tr 82.
[107] Tr 81-82.
[108] Tr 44-45.

Mr. Jester observed that certain of the potential combinations of first-year and lifetime savings and low-income spending would exceed the statutory incentive cap associated with first-year savings. He explained his revised version:

> The key features of this proposal are that it starts with low incentives for a utility that just reaches the threshold of meeting the energy waste reduction standard, reserving incentives for exceeding that standard, it complies with the provisions of 2016 PA 341 by not exceeding the authorized level of incentives in each range of performance but scales from the maximum incentive level for the previous tier for a utility that is at the bottom of a range to the maximum incentive for the given tier for a utility that is at the top of a range. Finally, if UPPCO achieves annual incremental savings that exceed 1% of preceding year sales, they are nonetheless incented by an increasing financial incentive as a percentage of expenditures up to annual incremental energy waste reduction of 1.75% of preceding year sales.[109]

He explained:

> The ramp-up of incentive payments as a percentage of spending when UPPCo is achieving incremental annual energy waste reduction above 1.5%, which is a change that is not required for compliance with 2016 PA 342, has the effect of increasing the incentive that UPPCo will receive for a marginal increase in spending that increases savings. If the incentive is fixed at 20% of spending once UPPCo reaches 1.5% energy savings, then the increase in incentive with an increase in spending is just 20% of the spending increase. If the incentive ramps up as I propose, then an increase in spending that increases annual incremental energy waste reduction from 1.5% to 1.51% increases incentive payments by 17.6% of the incremental spending to accomplish that increase PLUS the difference between 17.6% and 17.5% of their entire spend, which will be larger than 20% of their incremental spending. This marginal incentive accelerates with increasing spending that increase annual incremental energy waste reduction. Thus, while the change I propose will reduce UPPCO's incentive earnings below what they proposed if they fall short of 1.75% annual incremental waste reduction, if they act as a profit maximizing firm, it strengthens their incentive to achieve at even higher levels than would be the case with a flat incentive of 20% of spending. If they attain the target 1.75% annual incremental energy savings, they will receive the same incentive earnings as under their proposal.[110]

[109] Tr 97.
[110] Tr 98.

He presented the revised financial incentive in Exhibit AG-2. In their brief, the Attorney General and CUB argue that the Commission should revise the financial incentive as proposed by Mr. Jester.

In rebuttal testimony, Mr. McNeally asserted that the company's incentive structure complies with section 75 and objected to Mr. Jester's proposal:

> The Company's proposed performance incentive aligns with standards provided in Section 75 of PA 342. Witness Jester's recommended performance incentive mechanism is not consistent with the applicable law and requires that UPPCO achieve the next tier's savings to earn the prior tier's incentive. For example, even though PA 342 clearly states a 15% incentive may be authorized for exceeding 1.0% savings, Witness Jester's performance incentive mechanism does not award 15% until a utility reaches 1.25% savings. In addition, Witness Jester introduces a 1.75% savings standard not found in PA 342. Witness Jester's proposal related to UPPCO's performance incentive is not consistent with the construct outline PA 342, and, therefore, should not be adopted.[111]

Consistent with this testimony, in its initial brief, UPPCo argued only that its mechanism complied with the requirements of section 75 and has been previously approved.[112]

Staff's brief also argues that the incentive mechanism in Exhibits A-4 and S-1 should be approved. Staff cites MCL 460.6a(13) to show that this method is authorized:

> [W]itness Jester's testimony fails to recognize the flexibility granted to the Commission under MCL 460.6a(13), which authorizes approval of alternative methodologies for this type of incentive. MCL 460.6a(13) ("The commission may approve an alternative methodology for . . . a financial incentive authorized under section 75 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1075.").[113]

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[111] Tr 47.
[112] UPPCo brief, pages 8-9.
[113] Staff brief, page 6.

In its reply brief, Staff argues that its proposed incentive is reasonable and prudent,[114] and further addresses this section:

> The Commission previously considered whether to rule that alternative mechanisms approved pursuant to MCL 460.6a(13) should be subject to the statutory caps on shared savings mechanisms in MCL 460.6x (which are similar to those imposed by MCL 460.1075). MPSC Case No. U-20747, 09/10/2020 Order, pp 27–28. While the Commission noted that it generally agreed this approach seemed appropriate, it declined to establish a bright-line rule implementing the MCL 460.6x caps on alternative mechanisms. Id. Instead, the Commission decided to "consider all proposals on a case-by-case basis to ensure that utilities are encouraged to implement innovative programs that are reasonable and cost-effective." Id.[115]

In its reply brief, UPPCo cites Staff's brief in arguing that the Commission is authorized to approve a greater incentive under MCL 460.6a(13).[116]

In their reply brief, the Attorney General and CUB reject reliance on MCL 460.6a(13). First, they focus on the statutory language:

> The second sentence of this subsection explains that the Commission may approve an alternative methodology for a financial incentive under MCL 460.1075 if the Commission determines that the "resulting aggregate revenues from those mechanisms would not result in a reasonable and cost-effective method to ensure that investments in energy waste reduction, demand-side programs, peak load reduction, and other waste reduction measures that are not disfavored when compared to utility supply-side investments."[117]

They then argue that the quoted statutory criterion has not been met in this case:

> In this case, however, the Commission has never made this determination as to UPPCO. No where in this record or any record has the Commission determined that UPPCO's "aggregate revenues from those mechanisms [RDM, Section 75 financial incentive, and share savings mechanism] would not result in a reasonable and cost-effective method to ensure that investments in energy waste reduction, demand side programs, peak load

[114] Staff reply, pages 2-5.
[115] Staff reply, page 4.
[116] UPPCo reply, pages 12-13.
[117] Attorney General and Cub reply, page 3.

> reduction, and other waste reduction measures that are not disfavored when compared to utility supply-side investments." The Commission hasn't examined those three mechanisms in relation to energy waste reduction, demand side programs, peak load reduction, and other waste reduction measures to determine if they provide a sufficient incentive compared to a UPPCO's supply-side investment incentive to build more electric generation facilities.[118]

This PFD first concludes, as the Attorney General and CUB argue, that some of the potential outcomes in UPPCo's revised financial incentive structure provide incentives that are greater than permitted under section 75 for the associated level of savings. This PFD also concludes, as the Attorney General and CUB argue, that the record in this case does not support a financial incentive exceeding the maximums for each tier under section 75 because there is no evidence that the statutory maximum is an inadequate incentive under MCL 460.6a(13). As noted above, UPPCo asserted in testimony and in brief that its financial incentive complied with section 75.

These conclusions, however, do not mean that the company should be unable to attain the maximum incentive permitted under section 75 for each tier until it attains the maximum savings level within that tier, as the Attorney General and CUB propose. Instead, this PFD recommends that the Commission limit the incentive recovered under Exhibit A-75 to the statutory maximum under MCL 460.1075, unless in its revised filing, UPPCo establishes that the aggregate revenues resulting from a EWR financial mechanism capped in accordance with section 75 and any other shared savings mechanisms "would not result in a reasonable and cost-effective method to ensure that investments in energy waste reduction, demand-side programs, peak load reduction,

[118] Attorney General and CUB reply, pages 3-4.

and other waste reduction measures are not disfavored when compared to utility supply-side investments" under MCL 460.6a(13).

IV.

CONCLUSION

For the reasons set forth above, this PFD recommends that the Commission direct UPPCo to file a revised EWR plan that provides detail supporting benefits to the RTMP class and allocates costs consistent with section III.A above. This PFD further recommends that the Commission deny the Attorney General's and CUB's request to require UPPCo to investigate an on-bill financing program at this time, given UPPCo's management's lack of interest in pursuing such a program and the absence of any evidence regarding the potential cost of such an analysis. Additionally, this PFD recommends that the Commission limit UPPCo's financial incentive to the maximum permitted under MCL 460.1075, unless evidence is presented to demonstrate that a higher incentive meets the criteria of MCL 460.6a(13).

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

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Administrative Law Judge

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