

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

* * * * *

In the matter of the Application of Indiana)	
Michigan Power Company for a certificate)	
of necessity pursuant to MCL 460.6s and)	Case No. U-21377
<u>related accounting authorizations.</u>)	

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 October 30, 2023.

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 November 10, 2023, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before November 22, 2023 with a request that the parties notify the Commission if not going to file a reply.

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

**Katherine E.
Talbot**

Digitally signed by: Katherine E. Talbot
DN: CN = Katherine E. Talbot email =
talbotk@michigan.gov C = US O =
MOAHR OU = MOAHR-PSC
Date: 2023.10.30 12:59:39 -04'00'

October 30, 2023
Lansing, Michigan

Katherine E. Talbot
Administrative Law Judge

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

* * * * *

In the matter of the Application of Indiana)
Michigan Power Company for a certificate)
of necessity pursuant to MCL 460.6s and)
related accounting authorizations.)
_____)

Case No. U-21377

PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

On February 2, 2023, the Michigan Public Service Commission (Commission) issued an Order approving a contested settlement of Indiana Michigan Power Company's (I&M) Integrated Resource Plan (IRP) in Case No. U-21189.¹ A provision of this Order provided that I&M would file a Certificate of Necessity (CON) for Commission approval under Section MCL 460.6s for all projects of 225 MW or more.

On March 27, 2023, I&M filed this CON case requesting approval of the Lake Trout Solar Project (Lake Trout project) as part of its plan, approved in the IRP settlement, to replace generation facilities that are being retired. Petitions to intervene were filed by the Department of the Attorney General and Wabash Valley Power Association, Inc. d/b/a

¹ See MPSC Case No. U-21189, February 2, 2023 Order.

Wabash Valley Power Alliance (Wabash Valley). On April 26, 2023, I&M filed an Objection to the intervention of Wabash Valley.

A prehearing conference was held on April 27, 2023, at which time I&M and the Commission Staff (Staff) appeared along with the Attorney General and Wabash Valley. The Attorney General's intervention was not contested and was granted. A schedule for this matter was agreed to by the parties, which included a process for addressing the disputed intervention of Wabash Valley.² I&M's motion for a Protective Order was granted and issued on April 27, 2023.

On May 2, 2023, Wabash Valley filed a Response to I&M's Objection and on May 4, 2023 I&M filed a Reply. On May 9, 2023, the ALJ issued a Ruling which granted the intervention of Wabash Valley.

On July 6, 2023, I&M filed the revised testimony of two witnesses. Consistent with established schedules, Staff filed the direct testimony and exhibits for three witnesses, and the Attorney General filed direct testimony and exhibits of one witness on July 13, 2023. The Attorney General filed revised testimony and exhibits on July 14, 2023. On August 8, 2023, I&M and Staff filed rebuttal testimony. Wabash Valley did not file testimony or exhibits.

A hearing was held on August 13, 2023, at which time the prefiled testimony for all witnesses was bound into the record, and exhibits were admitted, without the need for witnesses to appear. The record in this case is comprised of 482 pages of transcript and 36 exhibits admitted into the record. On September 14, 2023, I&M, Staff, the Attorney

² Wabash Valley agreed to the proposed schedule if the petition to Intervention is granted.

General and Wabash Valley filed Briefs. On September 28, 2023, I&M and Staff filed Reply Briefs.

II.

RELEVANT HISTORY AND LEGAL FRAMEWORK

A. History

I&M requests the following CON for the Lake Trout project:

- (i) A certificate of necessity that the size, fuel type, and other design characteristics of the existing or proposed electric generation facility represent the most reasonable and prudent means of meeting the Company's power need, consistent with MCL 460.6s(3)(b); and
- (ii) A certificate of necessity that the estimated capital costs of and the financing plan for the Project including, but not limited to, the costs of siting and licensing the Project and the estimated cost of power from the Project will be recoverable in rates from the Company's customers, consistent with MCL 460.6s(3)(d).³

As noted above I&M filed this CON application pursuant to the Commission Order in Case No. U-21189 (the IRP). On February 2, 2023, the Commission approved a contested settlement in the IRP case⁴ and found that the Company's IRP, as modified by the settlement agreement, provides a reasonable and prudent means to replace the loss of significant energy and capacity associated with the retirement of I&M's Rockport Plant.⁵

The Settlement provided:

[F]or purposes of this settlement, I&M's Preferred Portfolio through 2028 shall consist of 2160 MW (ICAP, or approximately 620 MW UCAP) of carbon-free resources (e.g., solar and wind); 750 MW (ICAP) of fully dispatchable resources (e.g., natural gas combustion turbines); and 255 MW (ICAP) of storage.⁶

³ MPSC Case No. U-21377, March 27, 2023 Application, p 4.

⁴ See MPSC Case No. U-21189, February 2, 2023 Order.

⁵ Id. at Attachment A (Settlement Agreement), p 2-3.

⁶ Id. at p 3.

In its order, the Commission approved the following regarding subsequent CON proceedings:

4. The parties agree to the following regarding subsequent ex-parte applications in this docket and certificate of necessity (“CON”) proceedings:

* * *

b. The Company will submit ex-parte applications in this docket seeking MPSC approval of costs associated with specific resources for all projects less than 225 MW. . . .

c. The Company will submit CON applications seeking MPSC approval for all projects 225 MW or larger. The parties agree that reasonable and prudent costs for resources approved in such CON proceedings shall be recoverable in rates, in accordance with MCL 460.6t and MCL 460.6s for cost recovery of projects larger than 225 MW, for which construction commences within three years of the order in this case and that result from a competitive solicitation that complies with the MPSC’s Competitive Procurement Guidelines.

d. The parties agree to not challenge the carbon-free resources selected by the Company in the ex-parte or CON regulatory processes discussed above in parts 4.b and 4.c and agree to not challenge the Company’s request to recover reasonable and prudent capital costs incurred, or the deferral of reasonable and prudent capital costs incurred for up to 30 months following the month a project is placed inservice, so long as the resources align with the resources and amounts reflected in this settlement agreement. For carbon-emitting resources for which the Company seeks a CON, the Company may submit the IRP as modified by this Settlement Agreement as an approved IRP for all purposes under MCL 460.6s. Otherwise, the parties reserve all arguments available under MCL 460.6s.⁷

The Commission stated that its decision recognized a capacity need for 750 MW following the retirement of the Rockport plant and explicitly clarified: “The determination of the most reasonable and prudent option to fill this capacity need is left to be made in a future CON proceeding.”⁸

⁷ Id. at p 6.

⁸ MPSC Case No. U-21189, February 2, 2023 Order, p 100.

In addition to the Trout Lake project at issue in this case, I&M requested Commission approval of four other projects in Case No. U-21189, pursuant to paragraph 4(b) of the settlement agreement.⁹ Approval in that case was requested under MCL 460.6t and the Commission granted approval of the applications for all four projects.¹⁰

B. Legal Framework

I&M files this CON application under MCL 460.6s.¹¹ This statutory provision provides, in relevant part:

(1) An electric utility that proposes to construct an electric generation facility, make a significant investment in an existing electric generation facility, purchase an existing electric generation facility, or enter into a power purchase agreement for the purchase of electric capacity for a period of 6 years or longer may submit an application to the commission seeking a certificate of necessity for that construction, investment, or purchase if that construction, investment, or purchase costs \$100,000,000.00 or more and a portion of the costs would be allocable to retail customers in this state. A significant investment in an electric generation facility includes a group of investments reasonably planned to be made over a multiple year period not to exceed 6 years for a singular purpose such as increasing the capacity of an existing electric generation plant. The commission shall not issue a certificate of necessity under this section for any environmental upgrades to existing electric generation facilities. If the application is for the construction of an electric generation facility of 225 megawatts or more or for the construction of an additional generating unit or units totaling 225 megawatts or more at an existing electric generation facility submitted as required under section 6t(13),¹ the commission shall consolidate its proceedings under section 6t and this section. If the commission approves or denies an application for an electric generation facility under this section that has been submitted as required under section 6t(13), the provisions of this section prevail in a conflict with section 6t.

(2) The commission may implement separate review criteria and approval standards for electric utilities with less than 1,000,000 retail customers that seek a certificate of necessity for projects costing less than \$100,000,000.00.

⁹ See MPSC Case No. U-21189, March 30, 2023 Application.

¹⁰ See MPSC Case No. U-21189, August 30, 2023 Order. The four projects approved in that case are: the Elkhart County Solar Project PPA, the Sculpin Solar Project PPA, the Montpelier Capacity Only Purchase Agreement (CPA), and the Mayapple Solar Project PSA.

¹¹ MPSC Case No. U-21377, March 27, 2023 Application, p 4.

(3) An electric utility submitting an application under this section may request 1 or more of the following:

- (a) A certificate of necessity that the power to be supplied as a result of the proposed construction, investment, or purchase is needed.
- (b) A certificate of necessity that the size, fuel type, and other design characteristics of the existing or proposed electric generation facility or the terms of the power purchase agreement represent the most reasonable and prudent means of meeting that power need.
- (c) A certificate of necessity that the price specified in the power purchase agreement will be recovered in rates from the electric utility's customers.
- (d) A certificate of necessity that the estimated purchase or capital costs of and the financing plan for the existing or proposed electric generation facility, including, but not limited to, the costs of siting and licensing a new facility and the estimated cost of power from the new or proposed electric generation facility, will be recoverable in rates from the electric utility's customers subject to subsection (4)(c).

(4) Within 270 days after the filing of an application under this section, or, for an application for an electric generation facility submitted as required under section 6t(13), concurrently with a final order issued under section 6t, the commission shall issue an order granting or denying the requested certificate of necessity. The commission shall hold a hearing on the application. The hearing 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. The commission may allow intervention by persons under the rules of practice and procedure of the commission and shall allow intervention by existing suppliers of electric generation capacity under subsection (13), persons allowed to intervene in the contested case under section 6t, and interested persons. The commission shall permit reasonable discovery before and during the hearing in order to assist parties and interested persons in obtaining evidence concerning the application, including, but not limited to, the reasonableness and prudence of the construction, investment, or purchase for which the certificate of necessity has been requested. The commission shall grant the request if it determines all of the following:

- (a) That the electric utility has demonstrated a need for the power that would be supplied by the existing or proposed electric generation facility or pursuant to the proposed power purchase agreement through its approved integrated resource plan under section 6t or subsection (11).
- (b) The information supplied indicates that the existing or proposed electric generation facility will comply with all applicable state and federal environmental standards, laws, and rules.

(c) The estimated cost of power from the existing or proposed electric generation facility or the price of power specified in the proposed power purchase agreement is reasonable. The commission shall find that the cost is reasonable if, in the construction or investment in a new or existing facility, to the extent it is commercially practicable, the estimated costs are the result of competitively bid engineering, procurement, and construction contracts, or in a power purchase agreement, the cost is the result of a competitive solicitation. Up to 150 days after an electric utility makes its initial filing, it may file to update its cost estimates if they have materially changed. No other aspect of the initial filing may be modified unless the application is withdrawn and refiled. A utility's filing updating its cost estimates does not extend the period for the commission to issue an order granting or denying a certificate of necessity. An affiliate of an electric utility that serves customers in this state and at least 1 other state may participate in the competitive bidding to provide engineering, procurement, and construction services to that electric utility for a project covered by this section.

(d) The existing or proposed electric generation facility or proposed power purchase agreement represents the most reasonable and prudent means of meeting the power need relative to other resource options for meeting power demand, including energy efficiency programs, electric transmission efficiencies, and any alternative proposals submitted under this section by existing suppliers of electric generation capacity under subsection (13) or other intervenors.

(e) To the extent practicable, the construction or investment in a new or existing facility in this state is completed using a workforce composed of residents of this state as determined by the commission. This subdivision does not apply to a facility that is located in a county that lies on the border with another state.

(5) The commission may consider any other costs or information related to the costs associated with the power that would be supplied by the existing or proposed electric generation facility or pursuant to the proposed purchase agreement or alternatives to the proposal raised by intervening parties.

* * *

(9) Once the electric generation facility or power purchase agreement is considered used and useful or as otherwise provided in subsection (12), the commission shall include in an electric utility's retail rates all reasonable and prudent costs for an electric generation facility or power purchase agreement for which a certificate of necessity has been granted. The commission shall not disallow recovery of costs an electric utility incurs in constructing, investing in, or purchasing an electric generation facility or in purchasing power pursuant to a power purchase agreement for which a certificate of necessity has been granted, if the costs do not exceed the costs approved by the commission in the certificate. The portion of the cost of a plant, facility, or power purchase agreement that exceeds the cost approved by the

commission is presumed to have been incurred due to a lack of prudence. Once the electric generation facility or power purchase agreement is considered used and useful or as otherwise provided in subsection (12), the commission shall include in the electric utility's retail rates costs actually incurred by the electric utility that exceed the costs approved by the commission only if the commission finds by a preponderance of the evidence that the additional costs were prudently incurred. The commission shall disallow costs the commission finds have been incurred as the result of fraud, concealment, gross mismanagement, or lack of quality controls amounting to gross mismanagement. The commission shall also require refunds with interest to ratepayers of any of these costs already recovered through the electric utility's rates and charges. If the assumptions underlying an approved certificate of necessity, other than a certificate of necessity approved for a power purchase agreement for the purchase of electric capacity, materially change, an electric utility may request, or the commission on its own motion may initiate, a proceeding to review whether it is reasonable and prudent to complete an unfinished project for which a certificate of necessity has been granted. If the commission finds that completion of the project is no longer reasonable and prudent, the commission may modify or cancel approval of the certificate of necessity. Except for costs the commission finds an electric utility has incurred as the result of fraud, concealment, gross mismanagement, or lack of quality controls amounting to gross mismanagement, if commission approval is modified or canceled, the commission shall not disallow reasonable and prudent costs already incurred or committed to by contract by an electric utility. Once the commission finds that completion of the project is no longer reasonable and prudent, the commission may limit future cost recovery to those costs that could not be reasonably avoided.¹²

III.

OVERVIEW OF THE RECORD

A. **I&M**

The Company filed the testimony of eight witnesses.

David A. Lucas, a Vice President in Regulatory and Finance for I&M,¹³ provided an overview of the relief requested by I&M in this proceeding. He detailed how the Lake Trout project diversifies the Company's generation resources and discussed how the project is consistent with the capacity need and resource portfolio identified in I&M's most

¹² MCL 460.6s.

¹³ Mr. Lucas' Public Direct testimony is transcribed at 2 Tr 23-42 and his Confidential Direct testimony is transcribed at 2 Tr 301-320. He sponsored Exhibits IM-1 and IM-2.

recent IRP. He provided a brief introduction of other Company witness and asserted the totality of the evidence demonstrated that the project is the most reasonable and prudent means of meeting the Company's capacity needs. And Mr. Lucas supported the CON for project costs to be recoverable in rates.¹⁴

Timothy B. Gaul, the Director of Regulated Infrastructure Development for Electric Power Service Corporation (AEPSC), a wholly owned subsidiary of American Electric Power Company, Inc. (AEP), I&M's parent company,¹⁵ provided an overview of the 2022 All-Resource Request for Proposals (RFP) and the selection of the Lake Trout project. He reviewed the development and issuance of the RFP and detailed the engagement of the independent monitor. He described the review and selection process for the project, and an overview of the negotiation process, including a discussion of market pressures. Then, Mr. Gaul provided an overview of the contract for the Lake Trout project and its estimated capital costs.¹⁶

Mark A. Becker, a Managing Director of Resource Planning and Operational Analysis with AEPSC,¹⁷ provided an overview of the Company's recently approved IRP, described the price evaluation of projects that bid in response to I&M's RFP, described the Lake Trout project and how it is consistent with the approved IRP, and reviewed the resource options assessed in the IRP. He detailed I&M's need for additional capacity and

¹⁴ 2 Tr 27.

¹⁵ Mr. Gaul's Public Direct and Rebuttal testimony are transcribed at 2 Tr 62-122 and his Confidential Direct and Rebuttal testimony are transcribed at 2 Tr 338-399. He sponsored Exhibits IM-9, IM-10 (Confidential), IM-11, and IM-21 (Confidential).

¹⁶ 2 Tr 64-65.

¹⁷ Mr. Becker's Public Direct testimony is transcribed at 2 Tr 44- 60 and his Confidential Direct testimony is transcribed at 2 Tr 321-337. He sponsored Exhibits IM-3 and IM-4 (Confidential).

described the economic analysis and price ranking of proposals received in the RFP. And he described I&M's consideration of alternatives other than the Lake Trout project.¹⁸

D. Dean Koujak, a Principle in the Energy Practice area of Charles River Associates (CRA), the independent monitor for the RFP,¹⁹ presented CRA's role in the procurement process under the RFP, detailing that process and the independent monitors conclusions. He presented evidence regarding the evaluation process and an overview of how proposals were selected and evaluated at the time of bidding, including review of a projects capability to maintain pricing. And he asserted the RFP complied with the Michigan Competitive Procurement Guidelines.²⁰

Bartley Taberner, a Transmission Planning Manager for East Transmission Planning AEPSC's Grid Solution Group,²¹ provided testimony to explain the Lake Trout project's transmission interconnection to the PJM market and the expected transmission modifications that will occur as part of the project. He also addressed the cost of these interconnections.²²

David A. Hodgson, a Director of Tax Accounting & Regulatory for AEPSC,²³ detailed the income tax implications of the Lake Trout project. He testified these include the Company's qualification for federal Production Tax Credits (PTC). He provided

¹⁸ 2 Tr 47-48

¹⁹ Mr. Koujak's Public Direct and Rebuttal testimony are transcribed at 2 Tr 124-144 and his Confidential Direct and Rebuttal testimony are transcribe at 2 Tr 400-420. He sponsored Exhibits IM-5 (Confidential) through IM-8.

²⁰ 2 Tr 128-29.

²¹ Mr. Taberner's Direct testimony is transcribed at 2 Tr 146-155. He sponsored Exhibits IM-12 and IM-13.

²² 2 Tr 149

²³ Mr. Hodgson's Direct testimony is transcribed at 2 Tr 157-173.

testimony detailing I&M's ability to utilize these PTCs through transfer or sale. And he provided testimony concerning the accelerated tax depreciation.²⁴

Andrew J. Williamson, the Director of Regulatory Services for I&M,²⁵ provided testimony concerning accounting and ratemaking associated with the Lake Trout project. He testified to support I&M's request for authority to defer the costs associated with the project until they can be included in rates. He also supported the request for a depreciation rate specific to the project, including salvage value and asset retirement obligation expenses. Mr. Williamson explained the Company's plan to elect PTC benefits along with the plan to monetize and utilize them over a twenty-year period. He stated I&M proposes to utilize the PSCR factor to flow the PTC benefits to customers. And Mr. Williamson explains how I&M plans to utilize RECs from the Lake Trout project to benefit customers.²⁶

Beth E. Lozier, a Project Director for AEPSC,²⁷ provided an overview of the Lake Trout project and described how the design life of the project is reasonable. She described I&M's role in the project's management, and its oversight of the engineering, procurement, and construction. She presented the projected commercial operation date and the milestones for construction activities. Ms. Lozier provided testimony to support

²⁴ 2 Tr 160

²⁵ Mr. Williamson's Public Direct and Rebuttal testimony are transcribed at 2 Tr 175-199 and his Confidential Direct and Rebuttal testimony are transcribe at 2 Tr 421-438. He sponsored Exhibits IM-19 and IM-20.

²⁶ 2 Tr 178-79.

²⁷ Ms. Lozier's Direct testimony is transcribed at 2 Tr 202-219. She sponsored Exhibits IM-14, IM-15(Confidential), IM-16, IM-17 (Confidential), and IM-18 (Confidential).

owner's cost, overheads, and AFUDC components of the estimated capital costs for the project. And she described the Company's O&M plans, including cost estimates.²⁸

B. Staff

Staff presented the testimony of three witnesses.

Zachary C. Heideman, a Public Utilities Engineer in the Resource Optimization and Certification Section of the MPSC,²⁹ provided testimony discussing technical aspects of CON request for the Lake Trout project and how it relates to the company's most recent IRP. He provided information relating to I&M's capacity needs and confirmed the project is an appropriate means to fill the capacity needs.³⁰ Mr. Heidemann also identified contingency costs included in the Company's requested cost approval, explaining Staff's position that these costs should be included in the cost approval in this case but not included in rates until certain conditions occur and the cost are actually incurred.

Karsten D. Szajner, a Department Analyst in the Resource Optimization and Certification Section of the MPSC,³¹ provided testimony to assess the reasonableness of I&M's RFP. He described the development of the RFP process and the planned acquisition of resources. Mr. Szajner assessed I&M's use of an independent monitor and provided testimony concerning compliance with the MPSC Competitive Procurement Guidelines.³²

²⁸ 2 Tr 205-206.

²⁹ Mr. Heidemann's Direct and Rebuttal testimony are transcribed at 2 Tr 235-259 and his Confidential Direct and Rebuttal testimony are transcribe at 2 Tr 439-463. He sponsored Exhibits S-1.0 (Confidential) and S-1.1 (Confidential).

³⁰ 2 Tr 239.

³¹ Mr. Szajner's Direct and Rebuttal testimony are transcribed at 2 Tr 262-278 and his Confidential Rebuttal testimony are transcribe at 2 Tr 464-469. He sponsored Exhibit S-2.1 and S-2.2.

³² 2 Tr 265.

Naomi J. Simpson, a Manager of the Resource Optimization and Certification Section of the MPSC,³³ provided Staff's overall assessment and recommendation regarding the Lake Trout contract and its relationship to I&M's most recent IRP.³⁴ She testified that Staff support commission approval of the Lake Trout project to fulfill the needs identified in the IRP.³⁵

C. Attorney General

The Attorney General presented the testimony of one witness, Douglas B. Jester, a Managing Partner of 5 Lakes Energy LLC,³⁶ who provided an assessment of the Lake Trout project, including a critique of its price and ownership structures. He testified that I&M has not established that the price of the project or that Company ownership of the project is reasonable and prudent.³⁷ Mr. Jester asserted that the higher prices resulting from post-bid negotiations resulted in a bilateral agreement and not a competitive solicitation. Asserting the resulting costs were unreasonable, he opined the Company could have requested revised offers from project dropped from the shortlist.³⁸ And he testified that PPA projects were not considered for the Lake Trout project and the Company did not justify this decision.³⁹

³³ Ms. Simpson's Direct testimony is transcribed at 2 Tr 223-232.

³⁴ 2 Tr 229.

³⁵ 2 Tr 230.

³⁶ Mr. Jester's Public Direct testimony is transcribed at 2 Tr 281-292 and his Confidential Direct testimony is transcribed at 2 Tr 470-481. He sponsored Exhibits AG-1, AG-2 (Confidential), and AG-3 (Confidential).

³⁷ 2 Tr 287-88.

³⁸ 2 Tr 290.

³⁹ 2 Tr 291.

D. Rebuttal

I&M filed the rebuttal testimony of three witnesses, all of whom provided testimony in response to Mr. Jester's testimony.

Mr. Gaul testified that the Lake Trout project resulted from a competitive procurement process, in compliance with the Michigan Competitive Procurement Guidelines, and not a bilateral negotiation as suggested by Mr. Jester. He stated post-bid negotiations do not diminish the competitive process and asserted the Company responded to the current volatility in the renewable resource market.⁴⁰ He noted the Lake Trout PSA was very high scoring and disputed the propriety of resubmitting bids arguing that it "risks establishing a paradigm wherein the Company is in a perpetual procurement process."⁴¹

Mr. Koujak challenged Mr. Jester's assertion that I&M failed to consider PPA options for the Lake Trout project, contending that the PSA was the most reasonable choice to meet the Company's needs.⁴² He also criticized Mr. Jester's testimony that the final Lake Trout contract did not result from a competitive solicitation, testifying he observed similar price changes in post bid negotiation across the industry.⁴³

Mr. Williamston disagreed with Mr. Jester's arguments concerning selection of a PSA over a PPA, arguing that the settlement agreement in the IRP provided that new PPAs would not compete economically against new Company owned resources and

⁴⁰ 2 Tr 105.

⁴¹ 2 Tr 119.

⁴² 2 Tr 141-43.

⁴³ 2 Tr 142.

therefore I&M properly compared the Lake Trout PSA against other PSA options.⁴⁴ He stated that Mr. Jester failed to consider the benefits of a Company owned resource.⁴⁵

Staff filed the rebuttal testimony of two witnesses, both of whom provided testimony in response to Mr. Jester's testimony.

Mr. Heidemann filed testimony to note that Mr. Jester's testimony did not address contingency costs.⁴⁶

Mr. Szajner disputes Mr. Jester's contention that the project did not result from a competitive solicitation but should be viewed as a bilateral negotiation. He opposed the suggestion that bids could be resubmitted and indicated further delay is not likely to result in lower costs for the project.⁴⁷ Mr. Szajner explained that Staff conducted an in-person audit of the confidential RFP materials, including bids and signed contracts to confirm the Company conducted its RFP fairly and in accordance with the Commission's Competitive Procurement Guidelines.⁴⁸

IV.

DISCUSSION

Along with accounting and ratemaking approvals, I&M requests the Commission approve CONs for the design of the Lake Trout project as the most reasonable and prudent means of meeting its power needs, and to approve inclusion of the estimated capital costs for recovery in rates charged to customers.

⁴⁴ 2 Tr 197.

⁴⁵ 2 Tr 198.

⁴⁶ 2 Tr 259.

⁴⁷ 2 Tr 276.

⁴⁸ 2 Tr 278.

The Lake Trout project will be located in Blackford County, Indiana and will add approximately 245 MW of the capacity need identified in the IRP.⁴⁹ I&M has entered into a competitively bid Purchase and Sale Agreement (PSA) between the Company and the developer, EDF Renewables and expects the project to be operational in April 2026, at which time the Company will obtain ownership of the facility.⁵⁰ “The Company will own and operate the facility and will include the capacity of this facility in its PJM Fixed Resource Requirements capacity plans following the commercial operation date.”⁵¹ The Company asserts that with advancements in technology and O&M practices, a solar facility can have a useful life well beyond the design life and states the Lake Trout project will have a useful life of at least 35 years.⁵²

I&M argues the Lake Trout project complies with environmental requirements and asserts the Lake Trout project will reduce the risks associated with future fuel prices or regulatory policies that can impact a portfolio consisting of a single generation resource type.⁵³ The Company also states the Lake Trout project will provide RECs which can benefit customers when they are monetized.⁵⁴ And the Company asserts the Lake Trout project is eligible for PTC as a result of the Inflation Reduction Act and the proposal in this case will ensure the tax benefits realized by I&M are passed on to customers on a timely basis.⁵⁵

⁴⁹ 2 Tr 30.

⁵⁰ Id.

⁵¹ I&M Initial Brief, p 27. 2 Tr 30.

⁵² Id. at 27-28. 2 Tr 218.

⁵³ Id. at 30. 2 Tr 30.

⁵⁴ Id. at 31.

⁵⁵ Id. at 31. 2 Tr 40.

No party disputes the need for I&M to acquire additional solar generation in accordance with its approved IRP, or disputes I&M's choice of solar over other resources. Similarly, no party disputes I&M's compliance applicable filing requirement, and no party disputes that the project would fail to comply with applicable environmental or other permitting requirements. Instead, the Attorney General and Wabash Valley contend that I&M did not establish that the PSA contract it entered into for the Lake Trout project is the most reasonable and prudent means of obtaining the generation. In particular, they object to post-bid negotiations and corresponding increases in the project cost, as discussed in section A below. In addition, the Attorney General and Wabash Valley argue that contingency and contingency-like costs should be excluded from cost approvals under MCL 460.6s(6), as discussed in section B below.

A. Most Reasonable and Prudent Means of Meeting Power Needs

The Company specifically requests the Commission approve “the size, fuel type, and other design characteristics of the [Lake Trout project] represent the most reasonable and prudent means of meeting the I&M's power needs.”⁵⁶

Citing the testimony of its witnesses as well as the testimony of Staff witness, the Company asserts that the Lake Trout project is the most reasonable and prudent means to meet the energy and capacity needs. Based on Mr. Lucas's testimony, the Company argues customers will benefit from the cost savings associated with the new generation which is “expected to reduce the cost I&M incurs . . . while at the same time enabling I&M to maintain resource adequacy and significantly increase its clean energy resources.”⁵⁷

⁵⁶ Id. at 26.

⁵⁷ 2 Tr 41.

I&M addressed key points of dispute in its initial brief. The Company argues that the record establishes that the Lake Trout project was developed from a competitive solicitation which complied with the Competitive Procurement Guidelines, developed by the Commission to be used in the determination of whether resource procurements are reasonable and prudent.⁵⁸ I&M relies on the testimony of Company witnesses Mr. Gaul and Mr. Koujak in support of its bidding process, as well as Mr. Szajner's testimony concluding that the Company complied with the Guidelines.

The Company argues that the procurement process it followed was reasonable and prudent and complied with the provisions of MCL 460.6s(4)(c). The Company explains that, to develop the RFP, I&M retained an independent monitor, drafted the RFP based on the need outlined in the IRP, assessed the pool of eligible projects already engaged in the PJM approval process, and engaged stakeholders for input on the RFP.⁵⁹ Solar projects were required to be located in Indiana or Michigan, but the geographic scope was expanded for wind projects to include a broader range of potential projects.

Mr. Koujak testified:

Under the final design of the RFP, eligible technologies included Solar, Wind, and Supplemental Capacity Resources. Accordingly, bidders were able to propose a range of transmission and distribution interconnected projects, including hybrid resources (e.g., solar + storage, wind + storage), standalone storage, and thermal resources. All these technology types contributed to the capacity need identified under the IRP.⁶⁰

I&M cites its use of Charles River Associates (CRA) as an independent monitor to administer the RFP process. The Company asserts "[t]he record demonstrates that CRA

⁵⁸ I&M Initial Brief, p 32.

⁵⁹ Id. at p 31-32.

⁶⁰ 2 Tr 130.

has a breadth of applicable experience as an Independent Monitor, both in Michigan and elsewhere.”⁶¹ I&M also notes use of the independent monitor complies with the Procurement Guidelines and other parties did not challenge the qualifications of CRA as an independent monitor.

I&M also highlights the review process it conducted with the independent monitor including the evaluation and scoring by AEP consultants. It cites Mr. Gaul’s description of both an economic analysis, which accounted for 60 percent of the total, and a non-price analysis which accounted for the remaining 40 percent.⁶² I&M notes that seven projects were selected for a shortlist and further commercial contract negotiations, and in the end five projects were selected, including the Lake Trout project with final contract negotiations conducted during the post-bid process.

I&M argues that the record establishes that Lake Trout project is the result of a competitive bidding process, rather than a negotiation.

The record demonstrates the Company followed the Commission’s Competitive Procurement Guidelines and conducted a fair, transparent, and competitive RFP to ensure the integrity of the process and that the five projects selected by I&M were the best choice for the Company and its customers.⁶³

I&M cites the commission’s August 30, 2023 order in Case No. U-21189, which approved four PPAs selected from the RFP, in arguing that the Commission has already found that the process I&M followed should be considers a competitive solicitation rather than a bilateral negotiation. The Company argues therefore the Lake Trout project resulted from the same solicitation and review process already approved.

⁶¹ I&M Initial Brief, p 35. 2 Tr 128.

⁶² Id.

⁶³ Id. at 40. 2 Tr 361.

The Company also asserts the change in price between bid price and the final contract price for the LCOE was reasonable due to the anticipated market volatility.⁶⁴ I&M argues the costs for the portfolio of solar resources ultimate selected after the RFP, including the Lake Trout project, are reasonable given current market conditions, asserting that the estimated capital costs “reflect new market realities that are being experienced across the industry and includes reasonable [contingencies] to address the anticipated market volatility affecting solar projects.”⁶⁵ Reasoning that if project development stalls, I&M’s ability to meet the capacity needs of its customers could be jeopardized, the Company argues that reasonably responded to market changes to develop the Lake Trout project agreement.

I&M states the original bids are based on market assumptions at the time of submittal, but “it is natural for the market to change and fluctuate” between submission and final contract.⁶⁶ Mr. Gaul testified that a range of economic factors influenced the final price of the Lake Trout project during the bid evaluation and negotiation process including international labor issues, equipment costs, and volatility in raw materials.⁶⁷ And he stated completion of the competitive solicitation process can take up to a year.⁶⁸

Staff recommends the Commission approve the CONs for the Lake Trout project. First Staff contends that the application complies with MCL 460.6s(4)(b) and (e), and compliance has not been challenged by any other party. Citing the testimony of Mr. Lozier, Staff notes that the developer, EDF Renewables Development, Inc. (EDF), is

⁶⁴ Id. at 42.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Id. at 43. 2 Tr 357.

⁶⁸ 2 Tr 356.

responsible for permitting and legal compliance.⁶⁹ And citing the testimony of Mr. Lucas, Staff notes the Lake Trout project will be developed in Indiana, therefore the work requirements are negated.⁷⁰

Agreeing with I&M, Staff states that the record establishes there is a need for the power that would be supplied by the Lake Trout project, citing the Company's recent IRP settlement agreement.⁷¹

Staff also supports the Company's assertion that the Lake Trout project resulted from a competitive solicitation and argues that the Lake Trout contract is reasonable.⁷² Citing Mr. Gaul's and Mr. Koujak's testimony, Staff supports the conclusion that the RFP selection process complied with the Competitive Procurement Guidelines.⁷³ Citing Mr. Szajner's testimony, Staff argues that it reviewed all bids.⁷⁴ Mr. Szajner testified the projects not on the shortlist were excluded for a variety of reasons and provided detailed testimony on the non-price issues with the excluded projects.⁷⁵ And, Staff contests the Attorney General's and Wabash Valley's suggestion that bids should be updated as a part of the competitive solicitation process, asserting that process would cause unnecessary delay and make the bidding process untenable.⁷⁶

Staff also cites the settlement agreement approved in Case No. U-21189 in arguing that I&M has demonstrated that the Lake Trout project is the most reasonable

⁶⁹ Staff Initial Brief, p 5. 2 Tr 211.

⁷⁰ Id. at 5. 2 Tr 29.

⁷¹ Id. at 6, citing MPSC Case No. U-21189, February 2, 2023 Order, p 96,100.

⁷² Id. at 8, 11.

⁷³ Id. at 8.

⁷⁴ Id. at 9. 2 Tr 277.

⁷⁵ 2 Tr 468-69.

⁷⁶ Staff Initial Brief, p 10.

and prudent means of meeting its power needs. Staff argues that “the resource type, timing, and operations and maintenance costs of [the projects selected from the RFP] are consistent with what was presented in the IRP when taken as a portfolio.”⁷⁷ And Staff notes that the Commission has recently ruled in Case No. U-21189 that negotiations are part of the competitive solicitation process and changes to the final price do not diminish that process.⁷⁸ Staff recommends the Commission find the costs for the Lake Trout project result from a competitive solicitation and are reasonable.⁷⁹

In her initial brief, the Attorney General states that she “does not oppose I&M’s acquisition of the Lake Trout project, but challenges the amount of the costs for which I&M seeks preapproval from the Commission . . .”⁸⁰ The Attorney General opposes the total cost of the project including changes from bid price to contract price. Asserting the cost of the Lake Trout project is not reasonable and prudent, the Attorney General argues that the Commission should not approve the cost of the Lake Trout project.⁸¹

The Attorney General contests the Company selection of a PSA over a PPA; arguing “the utility-owned bid for Lake Trout is not the most reasonable and prudent means of meeting I&M’s power needs.”⁸² Based on the testimony of Mr. Jester, the Attorney General asserts I&M did not justify its decision to pursue ownership of the Lake Trout project is the most reasonable, noting the Company did not consider PPAs for that

⁷⁷ Id. at 13.

⁷⁸ Id., citing MPSC Case No. U-21189, August 30, 2023 Order, p 53.

⁷⁹ Id. at 14.

⁸⁰ Attorney General Initial Brief, p 1.

⁸¹ Id. at 1-2.

⁸² Id. at 4

project.⁸³ And the Attorney General argues the Lake Trout PPA bid scored higher and was priced lower than the PSA that was selected.⁸⁴

The Attorney General addresses Mr. Williamson's rebuttal testimony, by arguing that the fact that the Lake Trout project was the lowest scoring PSA bid is off point and does not address the Attorney General's criticism. And the Attorney General argues the fact that the IRP settlement agreement provides that a PPA will not compete economically against Company owned resources, "does not govern the question of whether I&M should select a higher priced PSA over a lower-priced PPA for the *same project*."⁸⁵ The Attorney General also disputes the significance of Mr. Williamson's assertions that the settlement agreement in the IRP provided for a minimum acquisition of 30% PPAs, and that the projects selected through RFP satisfied this threshold. The Attorney General argues:

[S]imply exceeding that minimum obligation in the IRP settlement does not relieve I&M of the obligation to demonstrate that the resource for which it seeks approval is the most reasonable and prudent option among the options available under MCL 460.6s(4)(d).⁸⁶

The Attorney General argues the Commission has held the principles of reasonableness and prudence require the solicitation of PPAs in an RFP. She notes that while in this case I&M did solicit both PPAs and PSAs, it then chose the higher cost PSA over the lower cost PPA, arguing that this defeats the purpose behind prior Commission's rulings.⁸⁷

⁸³ Id. at 13. 2 Tr 291.

⁸⁴ Id. at 4. 2 Tr 480-81.

⁸⁵ Id. at 14. (Emphasis in original)

⁸⁶ Id. at 15.

⁸⁷ Id. at 15-16.

While acknowledging that the scoring of the Lake Trout PPA bids is relatively close to the scoring of the PSA, the Attorney General argues that I&M has nonetheless failed to establish the Lake Trout PSA is the most reasonable and prudent due to post-bid changes. The Attorney General details the changes in the Levelized Cost of Energy (LCOE) for Lake Trout project from the time of bid short-listing to contract execution.⁸⁸ And then the Attorney General argues that the total cost of the Lake Trout project are “exorbitant” and the Company has not justified the change in price. And, acknowledging the Commission’s recent approval of another solar project in Case No. U-21189, the Attorney General argues this case is distinguishable due to the magnitude of the change and the legal standard in this matter. The Attorney General also contends the contract price for the Lake Trout project is substantially higher than the overall LCOE for solar in the IRP or for I&M’s highest price tier of solar projects from the IRP.⁸⁹ Arguing that the LCOE for Lake Trout project is at the top range of solar prices observed by Staff, the Attorney General asserts the project costs are “far above any other utility-scale solar PPA that has been approved for Consumers or DTE in the past 15 years.”⁹⁰ The Attorney General asserts the high costs are not due to market factors, but I&M’s decision to select the PSA over the lower priced PPA options as well as the addition of substantial contingency costs as discussed below.⁹¹

The Attorney General further argues that I&M has not provided any updated data to establish the final contract price for the Lake Trout project is within the recent market

⁸⁸ Id. at 10.

⁸⁹ Id.

⁹⁰ Id. (emphasis in original) The Attorney General provided a list of projects and costs for projects developed by Consumers Energy and DTE. See Table, Attorney General Initial Brief, p 11.

⁹¹ Id. at 13.

ranges, given the significant post-bid changes in contract price. The Attorney General acknowledges that Staff relied on its audit of the RFP, but objects that Staff did not offer evidence to show that the Lake Trout project is comparable to recent market data.

Wabash Valley also does not dispute I&M's need for the power to be generated by the Lake Trout project, but states "[t]he Commission should deny I&M's request for certificates of necessity because the Project is not the most reasonable and prudent means of meeting I&M's power need."⁹² Based on the testimony of Mr. Jester, Wabash Valley argued the Company "could have solicited revised bids from viable projects, or even negotiated one of the Lake Trout PPAs as well as the PSA, before making its final decisions."⁹³ Acknowledging Mr. Jester's testimony that some of the same issues would cause price increases with other projects, Wabash Valley argued solicitation of revised bids could have resulted in lower costs.⁹⁴

Wabash Valley disputes Mr. Szajner's assertion that non-price issues eliminated the projects excluded from the shortlist.⁹⁵ Based on the testimony of Mr. Jester, Wabash Valley states two Lake Trout PPAs were not on the shortlist.⁹⁶ Wabash Valley states that Mr. Gaul provided testimony about the projects which were not on the shortlist but did not reference the Lake Trout PPAs.⁹⁷ Therefore, Wabash Valley argues the record does not establish that the Lake Trout PSA is more reasonable and prudent than the PPAs from the same entity. And arguing the Company did not identify any non-price issues with

⁹² Wabash Valley Initial Brief, p 1.

⁹³ Id. at 2.

⁹⁴ Id.

⁹⁵ Id. 2 Tr 480-81.

⁹⁶ Id. 2 Tr 291.

⁹⁷ Id. at 2-3. 2 Tr 392-95

these PPAs, Wabash Valley states I&M has not adequately explained the choice of a PSA over a PPA.⁹⁸

Wabash Valley also disputed the total costs of the Lake Trout project.⁹⁹ Like the Attorney General, Wabash Valley argues the final price should be considered a result of bilateral negotiations, not a competitive solicitation.¹⁰⁰ Wabash Valley asserts the final price change after the identification of the five shortlist projects was not market-based, but rather the result of post-bid negotiations.

In its Reply Brief I&M disputes the assertion that the Lake Trout project was the result of bilateral negotiations, rather than a competitive solicitation. The Company asserts Mr. Jester's critique of the competitive solicitation process is really based on the final price and not the process. I&M cites the following testimony from Mr. Jester:

Because the final contracts negotiated in I&M's process were priced substantially higher than at the time the short list was developed and the degree of change in the prices varies considerably between projects, the resulting prices cannot reasonably be considered as resulting from competitive solicitation. Rather, they must be considered as resulting from bilateral negotiations.¹⁰¹

I&M argues Mr. Jester's statements are conclusory and the Company asserts this quote forms the entire basis for the challenge to the competitive process argued by the Attorney General and Wabash Valley.¹⁰²

Based on the testimony of Mr. Gaul, I&M argues "[p]ost-bid negotiations are a necessary part of all competitive solicitation processes and do not diminish the

⁹⁸ Id. at 3.

⁹⁹ Id. at 4.

¹⁰⁰ Id. at 1.

¹⁰¹ I&M Reply Brief, p 4, citing 2 Tr 479. While the citation in the Company's brief redacts some of this quote, there is no redaction in the original. See 2 Tr 290.

¹⁰² I&M Reply Brief, p 4.

competitive nature of the process.”¹⁰³ The Company also notes the independent monitor, Mr. Koujak testified:

had all the remaining non-shortlisted proposals been given the opportunity to reprice, the outcome would have, with a high degree of certainty, resulted in the same selection at the final negotiated prices given consideration of both non-price and price factors.¹⁰⁴

And noting the final scores between the Lake Trout PSA and PPA were negligible, I&M argues both Company and Staff witnesses testified they “would expect generally the same percentage increase in costs.”¹⁰⁵ I&M also disputes the Attorney General’s assertion that its RFP “favors utility ownership over PPAs,” and state the economic criteria were levelized to facilitate accurate comparisons between PPA and PSA structures.¹⁰⁶

Addressing criticism from the Attorney General and Wabash Valley that the Company could have chosen a higher scoring PPA, rather than PSA, for the Lake Trout project, I&M states:

the selection of the Project is consistent with the competitive solicitation, the Settlement Agreement in I&M’s most recent IRP, and the discretion afforded to the Company to select its resources.¹⁰⁷

I&M also argues that it was appropriate to select ownership over a PPA in this case. The Company states:

Ownership of the Lake Trout Solar Project is appropriate because it benefits I&M’s customers. With the PSA structure, I&M can manage the ongoing O&M and capital investments in the facility, providing greater flexibility to maximize the benefits of the resource over its operating life. The PSA structure provides more years of service to customers than a typical 30-year PPA term and allows I&M to realize the terminal value of the resource. In

¹⁰³ Id. at 5.

¹⁰⁴ Id.

¹⁰⁵ Id. at 13-14.

¹⁰⁶ Id.

¹⁰⁷ Id. at 13.

short, the PSA structure allows for a more comprehensive management of risks, supporting the project's ability to reach commercial operation.¹⁰⁸

Again, noting that the settlement agreement in the IRP provided that PPAs will not compete economically against new Company owned assets, I&M states it properly compared the Lake Trout project with other PSAs.

Finally, the Company argues the Commission has ruled that the selection process at issue in this matter is a competitive solicitation under the Act.¹⁰⁹ I&M states when assessing a competitive solicitation, the Commission considered the process rather than the final price. And asserting the record pertaining to the competitive solicitation in this matter is similar to that presented in Case No. 21189, I&M states there is no reason to deviate from the Commission's finding in that case. Therefore, I&M argues the Commission should find the proposed Lake Trout project resulted from a competitive solicitation.¹¹⁰

In its Reply Brief, Staff disputed the Attorney General's and Wabash Valley's assertions that the Lake Trout project is at or above the top range of prices observed, with:

Staff maintains that it has seen bids comparable to the Lake Trout Solar Project, the price of Lake Trout Solar Project falls within a reasonable cost range, and the project thus represents the most reasonable and prudent means of meeting the power need relative to other resource options for meeting power demand.¹¹¹

Agreeing with I&M, Staff takes issue with the market comparison presented by the Attorney General. Staff notes that the discovery provided to the Attorney General

¹⁰⁸ I&M Initial Brief, p 29.

¹⁰⁹ I&M Reply Brief, p 8, citing MPSC Case No. U-21189, August 30, 2023 Order, p 53.

¹¹⁰ Id. at 9.

¹¹¹ Staff Reply Brief, p 2.

included two solar projects developed by I&M in the PJM market which were not included in the Attorney General's comparison. Staff argues the failure to include relevant projects from PJM results in a price range for LCOE that is too low, observing different market conditions exist in MISO. Staff reiterates it has encountered a price range from the mid-\$40 to mid-\$90 for solar projects.¹¹²

Staff disputes the Attorney General's assertion that did not offer evidence to support the conclusion that the price of the Lake Trout project is within market ranges.¹¹³ Staff argue it provided discovery and testimony to support its recommendations and note the Commission found this type of evidence to be reliable.¹¹⁴

The PFD finds the arguments from Staff and I&M that the Lake Trout project is the most reasonable and prudent means to meet the Company energy needs to be persuasive. First no party disputed the need for the additional energy and capacity.

The record establishes that the Lake Trout project resulted from a competitive solicitation and not a bilateral negotiation as suggested by the Attorney General and Wabash Valley. I&M established it complied with the Competitive Procurement Guidelines established by the Commission. Staff agreed there was compliance and no other party disputed the Company's compliance. While not required, this compliance supports the Company's assertion that the RFP resulted from a competitive solicitation.

I&M and Staff present credible evidence related to post-bid negotiations. Both assert these negotiations are common and are designed to address changing market conditions, noting the bidding process can last up to a year. I&M effectively argues that

¹¹² Id. at 3.

¹¹³ Id. at 4.

¹¹⁴ Id. at 5, referencing MPSC Case No. U-21189, August 30, 2023 Order, p 5.

it is natural for prices to fluctuate between the receipt of initial bid price and final contract price. And I&M argues that the Commission decision in Case No. U-21189, approving the four companion projects, rejected the Attorney General's argument. The Commission ruled "Concerns regarding the negotiations process also do not support the Attorney General's objections. More specifically, the record demonstrates that negotiations are a common part of the competitive solicitation process."¹¹⁵

The record in this case and Case No. U-21189 established that the Lake Trout project resulted from the same RFP process as the other four projects. In Case No. U-21189, the Commission stated:

The finalized price as compared to the initial bid does not discount the extensive competitive procurement process utilized in the selection of the projects. Concerns regarding the negotiations process also do not support the Attorney General's objections. More specifically, the record demonstrates that negotiations are a common part of the competitive solicitation process.¹¹⁶

And, under the statute, the finding that the RFP was a competitive solicitation is dispositive of reasonableness and prudence. MCL 460.6s(4)(c) provides in relevant part:

The commission shall find that the cost is reasonable if, in the construction or investment in a new or existing facility, to the extent it is commercially practicable, the estimated costs are the result of competitively bid engineering, procurement, and construction contracts, or in a power purchase agreement, the cost is the result of a competitive solicitation.

Accordingly, this PFD recommends the Commission find the Lake Trout project resulted from a competitive solicitation and find the costs to be reasonable and prudent.

¹¹⁵ MPSC Case No. U-21189, August 30, 2023 Order, p 54-55.

¹¹⁶ MPSC Case No. U-21189, August 30, 2023 Order, p 53.

Even if the Commission disagrees that the solicitation was a competitive solicitation, this PFD recommends a finding that the Lake Trout project is a reasonable and prudent means of meeting the Company's capacity needs. The Attorney General and Wabash Valley assert that failure to consider PPA options as an alternative to the Lake Trout PSA was unreasonable. However, I&M provided credible evidence that it chose a mix of generation resources which comply with the requirements of the settlement agreement in the IRP case. The RFP considered both economic and non-economic criteria. Staff conducted an audit of the projects that submitted bids in response to the RFP and provided testimony that the projects not included on the shortlist were excluded for non-economic reasons.

And the argument that PPAs not selected for the shortlist could have resulted in lower costs is not persuasive. The argument is speculative, and the IRP settlement agreement specifically provides the two resources will not compete economically.

Staff provided credible testimony that the LCOE associated with the Lake Trout project is within the range of prices it has seen and assert the projected capital costs are reasonable. The Commission has held:

The Commission relies on the Staff's expert testimony regarding market conditions and range of solar LCOEs and finds that a Staff audit of materials and expert testimony regarding its findings is reliable evidence to be considered in a contested proceeding.¹¹⁷

Staff refutes the Attorney General's market comparison, representing a range for LOCE which is too low, by demonstrating the analysis failed to include data from recent PJM solar projects, and only included outdated data and costs for projects in MISO. And Staff

¹¹⁷ Id. at p 52.
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notes the Commission found this market comparison to be unreasonable in Case No. U-21189.¹¹⁸

Accordingly, this PFD recommends the Commission grant I&M's request for a CON that approves the size, fuel type, and other design characteristics of the proposed Lake Trout Project represents the most reasonable and prudent means of meeting the Company's power need. And this PFD recommends the Commission grant the CON that approves inclusion of capital costs for the project in base rates. However, the total projected costs for the Lake Trout project include contingency costs, which the Commission should exclude prior to final approval of the capital costs. (addressed infra)

B. Contingency Costs

The Attorney General also challenges the inclusion of "substantial contingency costs of multiple types."¹¹⁹ Two types of contingency costs are detailed by Mr. Gaul's testimony, as shown in the second and eighth listed dollar amounts in Table TBG-3.¹²⁰ And the total contingency costs are identified by Mr. Heidemann's testimony and detailed in his confidential testimony. While recommending that the costs be included as approved costs under MCL 460.6s(6), Mr. Heidemann also testified that the contingency amounts should not be included in rates unless the following conditions are met:

- The costs have been incurred by the Company.
- The Company has provided evidence that these expenses have been incurred.

¹¹⁸ Id.

¹¹⁹ Id. at 2. The parties have attempted to identify the specific costs in the Confidential record. Therefore, this PFD will simply refer to them generally. However, as discussed infra, the parties should expect the Commission to specifically identify these costs as part of the final Order.

¹²⁰ 2 Tr 373. See Table TBG-3. Id.

- The Company provides an explanation of the event or events that lead to these costs being necessary. This evidence should be provided in the annual CON update that is to be filed in this docket, as well as in future rate cases, in which I&M is proposing to recover these costs and include them in rates.
- The costs have been reviewed and the Commission finds the costs included to be reasonable and prudent.¹²¹

Staff argues the Commission should adopt Mr. Heidemann's recommendation.

Staff observe that the Commission disallowed contingency expenses when approving the other four projects selected as part of the RFP in Case No. 21189. Then, Staff notes that the Commission approved contingency costs in Case No. U-21841, but required further review before the amounts were approved for inclusion in rates. Staff asserts these contingency costs may not be incurred by the Commission and therefore should not be included in rates until such time as they are actually incurred.¹²² Therefore, Staff argues the Commission should approve the contingency costs in this CON and conduct a review for reasonable and prudent if the costs are incurred.¹²³

I&M argues that all costs included in the Lake Trout project are reasonable and prudent and should be included in rates. As noted above, I&M argues it was necessary to create a final contract structure to address post-bid market volatility.¹²⁴ Based on Mr. Gaul's testimony, the Company argues additional amounts added during post-bid negotiation for the Lake Trout project allow for flexibility to ensure that cost increases do not impede the project's development.¹²⁵ Asserting these contingency costs are

¹²¹ 2 Tr 256-257.

¹²² Staff Initial Brief, p 15.

¹²³ Id. at 15-16.

¹²⁴ I&M Initial Brief, p 42.

¹²⁵ Id. at 42. See 2 Tr 362-63.

comparable to those developed for solar projects by other utilities, I&M argues its “approach was reasonably designed to manage economic issues and risks while allowing the Company to acquire the resources needed to meet customers’ need for energy and capacity resources.”¹²⁶

While arguing that contingency costs should be included in the final costs approved for this CON, I&M states “the Company is not seeking recovery of any costs not yet incurred.”¹²⁷ The Company asserts that expects the Commission will conduct further review of the contingency costs before inclusion in rates. I&M notes that Staff agree and recommends approval of these costs.

The Attorney General asserts inclusion of these costs results in an unacceptable LCOE and argues the Commission should not approve these costs for inclusion in rates. The Attorney General provides details concerning the change from base purchase price to the final contract price and details the total costs associated with the contingency costs as part of the price.¹²⁸ The Attorney General also identified “owner’s costs” which are included in the total price for the Lake Trout project as shown at 2 Tr 372, as potentially containing additional contingency costs.¹²⁹ The Attorney General notes these costs will be paid to I&M or AEP, its parent, and argues the record does not identify potential contingency amounts in these “owner’s costs.”¹³⁰ Finally the Attorney General argues

¹²⁶ I&M Initial Brief, p 44. 2 Tr 363.

¹²⁷ Id.

¹²⁸ Attorney General Initial Brief, p 17. The Attorney General specifies the three types of contingency costs in her argument. Id.

¹²⁹ Id.

¹³⁰ Id.

that inclusion of these contingency costs, makes the final price of the Lake Trout project higher than the range of projects approved in the IRP.¹³¹

Criticizing Staff's recommendation that the costs be approved in this case and then reviewed for reasonable and prudence in another proceeding, the Attorney General argues this recommendation defeats the purpose of the statutory language in MCL 460.6s(9).¹³² This provision provides, in relevant parts:

[T]he commission shall include in an electric utility's retail rates all reasonable and prudent costs for an electric generation facility or power purchase agreement for which a certificate of necessity has been granted.

* * *

The portion of the cost of a plant, facility, or power purchase agreement that exceeds the cost approved by the commission is presumed to have been incurred due to a lack of prudence. Once the electric generation facility or power purchase agreement is considered used and useful or as otherwise provided in subsection (12), the commission shall include in the electric utility's retail rates costs actually incurred by the electric utility that exceed the costs approved by the commission only if the commission finds by a preponderance of the evidence that the additional costs were prudently incurred.¹³³

The Attorney General asserts that approval of the costs in this CON proceeding relieves I&M from its obligation to overcome the statutory presumption that costs exceeding those approved are not reasonable and prudent. The Attorney General asserts that because contingency costs are inherently speculative, approval in this case is not reasonable.¹³⁴

The Attorney General also notes that the Commission rejected Staff's approach under similar circumstances when it excluded contingency costs in its approval of the four other projects, selected in the RFP in Case No U-21189.¹³⁵ Noting the Commission held

¹³¹ Id. at 18.

¹³² Attorney General Initial Brief, p 19.

¹³³ MCL 460.6s(9).

¹³⁴ Attorney General Initial Brief, p 19.

¹³⁵ MPSC Case No. U-21189, August 30, 2023 Order, p 54-55.

the determination of reasonableness and prudence cannot take place until the costs are actually incurred, the Attorney General argues the Commission should exclude all contingency-like costs from the final amount approved in this CON proceeding.¹³⁶

Wabash Valley also argues that the inclusion of contingency costs is not reasonable.¹³⁷

In its reply brief, I&M again argues that contingency costs should be approved by the Commission for the Lake Trout project. Recognizing the Commission's long history of disallowing contingency costs, I&M argues they are appropriate in this case due to market volatility surrounding solar projects. The Company again notes Staff did not recommend disallowance of the contingency costs.¹³⁸

The PFD finds the arguments of the Attorney General and Wabash Valley to be more persuasive and recommends the Commission exclude the contingency costs from the total capital costs projected by the Company before permitting inclusion in rates.

"The Commission has a long-standing policy of disallowing contingency costs."¹³⁹ The Attorney General and Wabash Valley established that significant contingency costs were added to the Lake Trout contract price during the negotiation process, and both argue inclusion of these costs in rates is inappropriate. The Attorney General correctly notes that if the Commission approves the contingency costs in this CON case, they will be deemed reasonable and prudent. The Attorney General persuasively argues, this

¹³⁶ Attorney General Initial Brief, p 22, referencing MPSC Case No. U-21189, August 30, 2023 Order, p 55-56.

¹³⁷ Wabash Valley Initial Brief, p 5.

¹³⁸ I&M Reply Brief, p 18-20.

¹³⁹ MPSC Case No. U-21189, August 30, 2023 Order, p 54. The Commission included a long string of citations to support this statement. Id.

subverts the provision which provides unapproved costs are presumptively unreasonable under the Act MCL 460.6s(4)(c). And the Commission addressed inclusion of contingency costs in Case No. U-21189 with:

Although the total cost requested by the company inclusive of contingency and contingency-like costs may be a reasonable cost for such a resource, approval of contingency or contingency-like expenses would equate to a finding of reasonableness and prudence, which the Commission declines to provide at this time. Such a finding of reasonableness and prudence of contingency and contingency-like costs, inclusive of the reviews detailed by the Staff, cannot take place until such costs have been incurred.¹⁴⁰

As with the above case, the contingency costs for the Lake Trout project are speculative and should not be included in the costs approved in this CON case. While the Attorney General argues that I&M also included “owner’s costs” that appear to be contingency-like costs, the record does not establish this assertion and this PFD does not recommend exclusion of these costs.

Accordingly, this PFD recommends the Commission exclude the contingency costs from the projected capital costs, prior to approving the CON allowing inclusion of capital costs in base rates.

In its application, I&M requests “authority to defer as a regulatory asset, the incurred project costs once the Project is place in-service for 30 months and until I&M’s base rates are reset to reflect such costs.”¹⁴¹ Because this request was not disputed in the record, the PFD recommends the Commission subtract the contingency costs and then grant the request for the remaining capital costs.

¹⁴⁰ Id. at 55.

¹⁴¹ MPSC Case No. U-21377, March 27, 2023 Application, p 8.

This PFD notes that the record in this case contains a significant amount of material that is redacted as confidential, including the actual costs associated with the Lake Trout project. In Case No. U-21189 the Commission unsealed part of the confidential record initially created in that case, ruling that I&M did not establish the material was properly designated as confidential.¹⁴² While this PDF notes that the parties, including the Company, marked testimony and argument as confidential inconsistently in this case, no party has expressly addressed the information that should be designated as confidential in light of the Commission's August 30, 2023 ruling in Case No. U-21189.¹⁴³ Although this PFD describes the costs recommended for approval with reference to the confidential record, and does not identify the specific costs recommended for approval, the parties should expect that if the Commission issues a final order approving the CON, it will explicitly identify, in its non-confidential final order, the costs being approved under MCL 460.6s(6). This PDF finds that the total amount of approved costs under that statutory section has independent legal significance and does not constitute the revocation of a document's protected status under Paragraph IV.A of the Protective Order in this case, so no hearing is required. Nonetheless, this PFD is placing the parties on notice, so that any party wishing to do so may raise its concerns with the Commission regarding such disclosure as part of exceptions to this PFD.

¹⁴² MPSC Case No. U-21189, August 30, 2023 Order, p 34.

¹⁴³ As an example: I&M attempted to mark terms indicating there was an increase in price for the Lake Trout project, but then referred to increased costs in unredacted arguments. See I&M Initial Brief, p 43 and Reply Brief, p 14. And I&M redacted information in its arguments that was not redacted original. See I&M Initial Brief, p 10. (quote from Mr. Jester)

V.

CONCLUSION

This PFD recommends that the Commission adopt the following findings of fact and conclusions of law:

1. Grant the CON that the size, fuel type, and other design characteristics of the proposed Lake Trout Project represents the most reasonable and prudent means of meeting the Company's power needs.
2. Remove the Contract Allowances and Project Contingency Costs from the estimated capital costs of the Lake Trout Project.
3. Grant the CON that the estimated capital costs, less the contingency costs excluded above, and the financing plan for the Lake Trout Project, including, but not limited to, the costs of siting and licensing the Project and the estimated cost of power from the Lake Trout Project, will be recoverable in rates from I&M's customers.
4. Grant the deferred accounting requested by I&M for the estimated capital costs, less the contingency costs.

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

**Katherine
E. Talbot**

Digitally signed by: Katherine E.
Talbot
DN: CN = Katherine E. Talbot email
= talbotk@michigan.gov C = US O
= MOAHR OU = MOAHR-PSC
Date: 2023.10.30 13:02:43 -04'00'

Katherine Talbot
Administrative Law Judge

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