STATE OF MICHIGAN

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of INDIANA MICHIGAN POWER COMPANY for approval to implement a power supply cost recovery plan for the twelve months ending December 31, 2023.	)))))	Case No. U-21261

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 February 5, 2024.

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 February 26, 2024, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before March 11, 2024.

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

Jonathan F. Thoits

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Date: 2024.02.05 12:22:44 -05'00'

Jonathan F. Thoits
Administrative Law Judge

February 5, 2024
Lansing, Michigan

STATE OF MICHIGAN

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of INDIANA MICHIGAN POWER COMPANY for approval to implement a power supply cost recovery plan for the twelve months ending December 31, 2023.	)))))	Case No. U-21261

PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

On September 30, 2022, Indiana Michigan Power Company (I&M) filed its application with the Public Service Commission pursuant to MCL 460.6j, 1982 PA 304 (Act 304) requesting approval of its Power Supply Cost Recovery (PSCR) plan and monthly PSCR Factors for the 12-month period January 2023 through December 2023. I&M's application sought approval of a PSCR factor of 5.08 mills per kilowatt-hour (kWh). In addition, I&M submitted for the Commission's review a 5-year forecast of projected power supply requirements of the company's customers, along with the sources and costs of supply to meet the same. I&M also requests continuation of the roll-in methodology approved in MPSC Case No. U-15004, I&M's 2007 PSCR Plan.

Pursuant to due notice, a pre-hearing conference was conducted on November 17, 2022. I&M and Commission Staff appeared at that proceeding, the

Attorney General intervened by right, and intervention was granted to Sierra Club (SC) and the Citizens Utility Board (CUB).[1]

Based upon the schedule established at the pre-hearing conference, the hearing was held on July 26, 2023. During the hearing, I&M entered the testimony of the following employees:

1. Hazel A. Baker, Resource Planning Analyst in the Corporate Planning and Budgeting Department, American Electric Power Service Corporation (Direct);

2. Keith A. Steinmetz, Manager of Nuclear Engineering, (Direct);

3. Darryl H. Scott, Manager of Reagents Procurement & Coal Combustion Products, American Electric Power Service Corporation (Direct);

4. Shelli A. Sloan, Director of Financial Support and Special Projects in the Corporate Planning and Budgeting Department, American Electric Power Service Corporation (Direct);

5. Michelle M. Howell, Director of Transmission Settlements, American Electric Power Service Corporation (Direct);

6. Denzil L. Welsh, Regulatory Analysis & Case Manager in the Regulatory Services Department, (Direct and Rebuttal);

7. Jason M. Stegall, Manager of Regulatory Pricing and Analysis, American Electric Power Service Corporation (Direct and Rebuttal).

Through these witnesses, I&M entered exhibits IM-1 through IM-21.[2]

Commission Staff entered the direct testimony of Raushawn Bodiford, a Public Utilities Engineer in the Energy Operations Division, and entered exhibit S-1.

Sierra Club entered the direct testimony of Devi Glick, a Senior Principal at Synapse Energy Economics, an energy and environmental research and consulting

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[1] 1 Tr 7.

[2] Certain testimony and exhibits filed by the parties in this case are deemed confidential and have been filed under seal.

firm, and SC entered exhibits SC-1, SC-2C, SC-3, SC-4C, SC-5C, SC-6 through SC-21, SC-22C, SC-23 through SC-24, SC-25C, SC-26 through SC-31, and SC-31C.

The other intervening parties did not offer any evidence and did not participate in the cross-examination of any witnesses.

The evidentiary record is contained in the testimony and exhibits bound into the record during the July 26, 2023 hearing. I&M, Staff, and Sierra Club filed initial briefs on August 18, 2023.[3] I&M, Staff and Sierra Club filed reply briefs on September 20, 2023.

II.

STATUTORY REQUIREMENTS

Public Act 304 of 1982 (Act 304), among other things, governs PSCR clauses, annual PSCR plan cases, and annual PSCR reconciliation cases for electrical utilities. Specifically, Act 304 provides for a PSCR clause that "permits the monthly adjustment of rates for power supply to allow the utility to recover the booked costs, including transportation costs, reclamation costs, and disposal and reprocessing costs, of fuel burned by the utility for electric generation and the booked costs of purchased and net interchanged power transactions by the utility, incurred under reasonable and prudent policies and practices." MCL 460.6j(1)(a).

Subsection 6j(3) of Act 304 requires a utility with a PSCR clause to annually file a complete PSCR plan describing the expected sources of electric power supply and the changes in the cost of power supply anticipated over a future 12-month period. Based on this information, the utility is to request specific PSCR factors for each of the 12

[3] I&M and Sierra Club each filed a public, redacted initial brief and a confidential initial brief. Sierra Club filed a public, redacted reply brief and a confidential reply brief.

months covered by its PSCR plan. The PSCR plan must also describe all major contracts and power supply arrangements for the 12-month period.

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

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

Subsection 6j(6) of Act 304 provides that, in its final order in a PSCR plan case, the Commission shall evaluate the reasonableness and prudence of the decisions underlying the utility's plan, and shall approve, disapprove, or amend the plan accordingly. In evaluating the decisions underlying the utility's plan, the Commission shall consider the cost and availability of the electrical generation open to use by the utility; the cost of available short-term firm purchases; the availability of interruptible service; the ability of the utility to reduce or eliminate any firm sales to out-of-state customers (if the utility is not a multi-state utility whose firm sales are subject to other regulatory authority); whether the utility has taken all appropriate steps to minimize the cost of fuel; and other relevant factors. In its final order, the Commission must approve, reject, or amend the 12 monthly PSCR factors requested by the utility, which factors shall not reflect any items that the Commission could reasonably anticipate would be

disallowed under Subsection 6j(13), which sets forth the criteria to be considered in a subsequent PSCR reconciliation concerning the 12-month period covered by the plan in question.

Subsection 6j(7) of Act 304 provides that the Commission must evaluate the decisions underlying the 5-year forecast filed by a utility. The Commission may also indicate any cost items in the 5-year forecast that, on the basis of present evidence, the Commission would be unlikely to permit the utility to recover from its customers in rates, rate schedules, or power supply cost recovery factors established in the future. This is colloquially known as a "Section 7 warning."

III.

THE 2023 PSCR PLAN AND 5-YEAR FORECAST

Except as detailed below, I&M's proofs concerning most of the components of its PSCR Plan and 5-year Forecast were undisputed. Those components include for the period of 2023 through 2027 annual and monthly projections of: actual and forecasted seasonal peak internal demands, energy requirements, and load factors for 2012 through 2027; annual and average rates of growth in demand and energy for the historical and forecast periods; annual energy requirements for the residential, commercial, and industrial sectors, other internal requirements, and the total internal energy requirements for I&M; month-by-month projection for 2023 and for the five-year forecast period 2023-2027 of I&M's energy sales into the PJM market; I&M's expected capacity resources for the 2023 summer peak and I&M's committed capacity/energy purchase agreements; a projected PJM view of summer peak demands, capabilities, and margins for I&M for the 2023/24 PJM planning year through the 2027/28 planning

year as well as I&M's capacity position within PJM; the relevant environmental requirements affecting I&M; a summary of the major contracts for the supply and disposal of nuclear fuel; forecasts of delivered coal costs; forecasts of power supply costs and net energy requirements; transmission expenses; and PSCR factor calculations. In addition, I&M provided extensive evidence on the basis and methodology used to develop the projections.[4] Based on this record, the projections for these categories as used to develop the proposed PSCR factor should be accepted.

The sole components of the Plan and Forecast that are at issue are the projected costs for purchased power from 2023 through 2027 under an Inter-Company Power Agreement (ICPA) with the Ohio Valley Electric Corporation (OVEC), and the commitment decisions for the Rockport facility.

The projected purchases by MWh from OVEC for the Plan Year and 5-Year Forecast are detailed in Exhibits IM-8 & IM-9.

Ms. Baker states that OVEC is a reliable source of purchase energy, and a reliable capacity resource that is included in I&M's total capability which I&M uses to meet its capacity requirements as a Fixed Resource Requirement (FRR) entity in PJM.[5] Regarding the Rockport Plant, Ms. Baker states that the Rockport Plant consists of two 1,300-MW (nominal) generating units which are jointly owned or leased by I&M and AEP Generating Company (AEG), another AEP subsidiary, with I&M's projected generating capacity resources reflect the following Rockport Unit 1 related arrangements: a) I&M's 50% ownership share of Rockport Unit 1 (i.e., 660 MW of Unit

[4] Ex. IM-1 through Ex. IM-5, Ex. IM-7, Ex. IM-10 through Ex. IM-21,
[5] 2 Tr 30.

1), and b) AEG's 50% share of Rockport Unit 1 (i.e., 660 MW of Unit 1).[6] She adds that the Rockport Unit 2 lease ends on December 7, 2022 and I&M will no longer be entitled to capacity or energy from Unit 2.[7] She states that under the terms of the March 31, 1982 Unit Power Agreement (UPA) between I&M and AEG, AEG makes available to I&M up to 100% of the power and associated energy from its share of Rockport Unit 1, and that I&M, in turn, pays to AEG amounts sufficient to cover AEG's operating and other expenses related to the amount of power sold to I&M.[8]

Ms. Baker states that I&M's generating units are operated along with the units of the other PJM members, to meet the total PJM load requirements on the most economical basis, based on price offers, subject to transmission limitations, and that such operation was simulated in the development of the generation forecast by means of the PLEXOS® simulation model, a production-costing computer program developed by Energy Exemplar.[9] She states that in PLEXOS®, I&M models the commitment and dispatch of Rockport unit in PJM as economic, and that PLEXOS® commits Rockport unit 1 in PJM based on variable energy costs (fuel and variable O&M), which is the same basis that the PJM market-price is determined.[10] She adds that the plan year and five-year forecast does not include any uneconomic commitment or uneconomic operation of Rockport unit 1.[11]

Ms. Baker states that I&M's Purchased Power for the forecast period consists of energy from: I&M's Unit Power purchase from AEG (from Rockport Unit 1); I&M's share

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[6] 2 Tr 31.
[7] Id.
[8] 2 Tr 31-32.
[9] 2 Tr 41.
[10] Id.
[11] 2 Tr 41-42.

of purchases from the OVEC; and wind, battery, and other purchases (PJM market energy).[12]

Mr. Stegall provided testimony regarding I&M's share of energy received from OVEC under the relevant ICPA, as well as an overview of the history of the ICPA.[13] Pursuant to the ICPA, OVEC sells and the Sponsoring Companies purchase certain power and energy produced by OVEC.[14] He states that the terms of the ICPA are the same for all Sponsoring Companies, and that the ICPA does not have any provision for early termination by one or more of the Sponsoring Companies.[15] He adds that OVEC is primarily debt-financed and beholden to its bondholders, so any renegotiation would need to be carried out in a way that does not violate its borrowing agreements, and that, as a FERC-approved contract, any change in the contract would require FERC approval.[16]

Mr. Stegall states that only one Sponsoring Company, Energy Harbor, has sought to exit or withdraw from the ICPA without seeking unanimous agreement of all the signatories to the ICPA and FERC approval, and that Energy Harbor withdrew this effort after suffering a setback from a federal Court of Appeals decision that referenced FERC jurisdiction.[17] As such, he asserts that it is unreasonable to expect that I&M would be able to achieve a different result than that of First Energy should it attempt to exit the ICPA.[18]

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[12] 2 Tr 42.
[13] 2 Tr 117-118.
[14] 2 Tr 118.
[15] 2 Tr 119.
[16] Id.
[17] Id.
[18] Id.

Mr. Stegall testified that I&M and its customers benefitted from I&M's participation in the ICPA since 1953.[19] He states that I&M purchases 7.85% of OVEC's capacity and energy at cost, and that I&M its 7.85% share of OVEC's capacity to help meet its own capacity requirements in PJM, the Regional Transmission Organization (RTO) to which I&M belongs.[20]

Mr. Stegall notes that in its order Case No. U-20529, the Commission identified OVEC as an affiliate of I&M and stated that the "utility 'is under a continuing duty to support its long-term contracts" and that the Commission 'will look to comparison with other long-term supply options as informative as to whether this particular contract adheres to the requirements of the Code of Conduct.'"[21] He also notes that in Case No. U-20529, the Commission instructed I&M to perform a comprehensive review of OVEC as part of its next Integrated Resource Plan (IRP) filing.[22] He states that as part of I&M's settlement in Case No. U-20591 (2019 IRP filing), approved by the Commission in an order dated September 10, 2020, I&M agreed to calculate a Net Present Value Revenue Requirement of a potential early termination of the ICPA as part of its next IRP filing.[23] Mr. Stegall states that the results of these analyses were provided in I&M's most recent IRP filing in Case No. U-21189, with these analyses demonstrating that the net present value of incremental costs to exit the ICPA in 2022 would result in a $169 to $346 million of incremental costs above the net present value of the costs of I&M's generation portfolio that includes the ICPA, and that a 2030 exit would result in $54 to

[19] 2 Tr 118.
[20] 2 Tr 119-120.
[21] 2 Tr 120, citing Case No. U-20529, Order, p. 18.
[22] 2 Tr 120-121.
[23] 2 Tr 121.

$128 million of incremental costs at net present value.[24] As such, he asserts that these analyses demonstrated that OVEC remains a more economic resource than the potential replacements.[25]

Mr. Stegall states that he performed a comparison of OVEC energy costs to the net revenues I&M received from selling its share of energy, which comparison shows that aside from 2020 which included the global COVID pandemic and its economic effects, I&M has received a net benefit from OVEC energy.[26] He adds that, through the first eight months of 2022, I&M's energy revenues for its energy from the ICPA exceed total billings from OVEC by $3.5 million, which he asserts demonstrates the value of this resource in the current energy markets.[27] He concludes,

> The Company is realizing a net benefit from the energy that it purchases through the ICPA. The energy, besides being below market price, has provided price stability during historic market swings and the surge in prices that began in 2021. The energy purchased under the ICPA is expected to continue to provide that stability in the Planning Period.[28]

Mr. Stegall states that the Unit Power Agreement (UPA) is a wholesale contract between I&M and its affiliate AEP Generating Company (AEG) that authorizes I&M to purchase energy and capacity at a cost-based mechanism defined in that agreement.[29] He adds that the purchases of Rockport Unit 1 energy and capacity under the UPA are included in I&M's forecast of PSCR costs.[30] He states that the UPA allowed I&M to rely on the revenue stream from the UPA as collateral for the financing needed to construct

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[24] 2 Tr 122.
[25] Id.
[26] 2 Tr 122-123, Table JMS-1.
[27] 2 Tr 122.
[28] 2 Tr 124-125.
[29] 2 Tr 125.
[30] Id.

the Rockport Generating plant.[31] He adds that the UPA obligates I&M to pay AEG's costs in exchange for the right to receive the output from AEG's ownership share of the unit and that as long as I&M is entitled to receive generation from AEG, I&M retains all the benefits of direct ownership of Rockport including credit for AEG's generating capacity in the determination of AEP Pool capacity settlements.[32]

Mr. Stegall states that average energy prices in the Day-Ahead and Real-Time energy markets have been increasing since March 2021, and that it is unusual for this increase to continue regardless of weather and load imposed on the system and to have prices continue to rise in the spring and fall months when weather is generally milder than in the summer and winter months.[33] He adds that I&M regularly meets to review the operations of Rockport and to ensure that the plant has adequate supplies of coal and consumables.[34] He states that I&M recognizes that its decision-making with regard to how it offers Rockport energy into PJM is subject to Commission review and I&M will present information to the Commission in the subsequent reconciliation filing for this PSCR Plan.[35]

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[31] Id.
[32] 2 Tr 126.
[33] 2 Tr 126.
[34] 2 Tr 127.
[35] 2 Tr 128-129.

IV.

CHALLENGES TO THE 2023 PSCR PLAN & 5-YEAR FORECAST

A. Sierra Club

The Sierra Club takes issue with the PSCR costs in both the Plan and Forecast attributed to the ICPA with OVEC. Specifically, the Sierra Club argues:

1. The ICPA is substantially higher cost than the value of the products and services provided by OVEC to I&M and therefore the OVEC contract is not reasonable or prudent under current market conditions for the 2023 plan year.

2. The OVEC contract is likely to cost more than equivalent market products and services during the five-year forecast period from 2023 to 2027, based on I&M's own forecasts of PJM market prices (energy and capacity) and from other power purchase benchmarks and agreements.

3. I&M and has not demonstrated reasonable management of its OVEC contract, including by remaining ignorant of the ELG/CCR retrofit decision.

4. The Commission should issue a Section 7 warning to I&M that on the basis of present evidence it will likely disallow I&M's recovery of the Michigan jurisdictional share of compensation for the ICPA in 2023-2027.

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

6. The Commission should apply the Code of Conduct and direct a disallowance equal to the difference between the payments I&M makes under the ICPA and the costs that I&M ratepayers would pay for the same amount of energy and capacity at market prices.

7. The Commission should warn I&M that it will disallow recovery in future fuel cost reconciliation dockets of the fuel portion of all net revenue losses incurred as a result of imprudent unit commitment decisions at Rockport.[36]

Sierra Club asserts that the OVEC ICPA incurs excessive costs such that it is not reasonable or prudent under current market conditions for either the 2023 plan year or

[36] Sierra Club Initial Brief, p. 4.

the forecasted years 2023-2027.[37] Sierra Club contends that over the PSCR period from 2023 to 2027, the OVEC ICPA is expected to cost I&M $76.5 million in present value terms more than the market value of services provided, or an average of $18.6 million per year.[38] Sierra Club asserts that this calculation was made using OVEC's and I&M's own data, comparing the projected cost of the OVEC ICPA, as projected by OVEC, and the value of the energy, capacity, and ancillary services as projected by I&M during these years, using I&M's forecast of PJM capacity auction prices as a proxy for the value of OVEC's capacity.[39]

Sierra Club argues that uneconomic nature of the ICPA is shown by a 2016 report by AES Services Corp presented to OVEC's Board of Directors, which report assessed a negative valuation of the ICPA.[40] In a similar vein, Sierra Club asserts that Duke Energy Ohio and FirstEnergy Solutions -- two other utilities that are also OVEC co-sponsors -- have likewise determined that the OVEC ICPA is uneconomical.[41] Ms. Glick also testified that the credit rating agency Moody's conducted an assessment of the ICPA that, when scaled to match I&M's share, suggested annual losses ranging from $16 million to $20 million relative to market alternatives.[42]

Sierra Club also provides benchmarks for long-term supply agreements to compare against the ICPA in response to the Commission's previous statement that long-term supply options were appropriate for cost comparisons with the OVEC ICPA.[43]

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[37] Id., p. 13.
[38] Id., citing 2 Tr 186.
[39] Id., p. 14-15. Citations omitted.
[40] Id., p. 15.
[41] Id., p. 16.
[42] Id.
[43] Id., p. 17.

Ms. Glick calculates OVEC's 2023 PSCR total cost per MWh at $64.43, which Sierra Club asserts is much higher than any of the alternative long-term supply options identified by Sierra Club.[44] In response to I&M's assertion that some of these benchmarks are not "available" to I&M, Sierra Club counters that the Commission has observed "it would be difficult to produce comparisons that are 100% identical to the OVEC units," but "comparisons can be made."[45]

Noting that I&M asserts that the cost of the I&M and NIPSCO renewable RFPs cannot be compared to the cost of the OVEC units because the renewable resources are not dispatchable, Sierra Club counters that the Commission in its request for long-term supply options to compare costs did not limit the resource types that could provide useful information to just dispatchable resources, and that the NIPSCO bid for solar plus battery storage is a dispatchable resource, and is much cheaper at $43.30 per MWh than OVEC.[46]

Serra Club asserts that I&M's IRP analysis does not show that the OVEC costs are not excessive. Noting that I&M asserts that its net present value analysis of the revenue requirement to terminate the ICPA which it filed in its IRP case purports to show that terminating the ICPA in 2030 would cost $54 million more than continuing under it until 2040, Sierra Club counters that a) I&M assumed ratepayers were responsible for all outstanding debt after the ICPA's termination, which it asserts is an unreasonable assumption given that I&M never received approval from the Commission for the ICPA, and b) the IRP analysis assumes also that OVEC will install upgrades to

[44] Id., p. 18; 2 Tr 195, Table 3.
[45] Id., p. 19, quoting Case No. U-20530, Order, February 2, 2023, p 11.
[46] Id., p. 19-20.

comply with ELG and CCR requirements to keep the units online through the end of the ICPA in 2040, but the I&M IRP studies failed to consider a scenario by which the ELG and CCR costs were avoided.[47] Sierra Club concludes that I&M's IRP analysis is an outlier as its results deviate from the data that I&M provided in this PSCR docket, the results of every study conducted by OVEC owners in recent years, and the actual experience of OVEC Sponsors since at least 2017.[48]

Sierra Club argues that I&M witness Stegall's comparison of OVEC energy charges to the PJM energy market price is misleading and irrelevant to the overall reasonableness of the ICPA to Michigan customers because I&M seeks to charge total OVEC costs -- including demand and transmission charge costs -- to customers through the PSCR clause.[49]

Sierra Club asserts that despite knowing that the OVEC plants are projected to lose significant money year-after-year, I&M has taken no actions to minimize those losses. Sierra Club points to I&M's unwillingness to take any steps to reign in continued capital spending at these 1950s-era coal-burning plants, with I&M being unable to point to any actions that it is taken to protect customers from the harm caused by the operation and retention of the units.[50] Noting that I&M has chosen to retire the 1980s-era Rockport units in 2028 to avoid the need for ELG capital expenditures, Sierra Club states that AEP, I&M, and the other OVEC owners have chosen to proceed with ELG and CCR expenditures in order to continue operating these 1950s-era coal units beyond

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[47] Id., p. 20-21. Citations omitted.
[48] Id., p. 21.
[49] Id., p. 22.
[50] Id., p. 22-23.

2028.[51] Sierra Club notes that I&M asserts that OVEC and not I&M controlled the decision on whether to move forward with environmental upgrades, but asserts that there is no evidence that any AEP or I&M representatives on either the OVEC or IKEC Boards of Directors voted against these CCR/ELG expenditures or even requested any contemporaneous analysis of whether this spending was economic.[52] Sierra Club argues,

> Because I&M has never received Commission approval for taking on its share of the ELG and CCR capital costs at OVEC, it would be inappropriate to permit recovery of these costs from captive Michigan customers in the PSCR. Thus under the Commission's standard -- that because "the ICPA has never been approved by the Commission" therefore "each time associated costs are submitted, they must be reviewed for reasonableness and prudence" -- I&M's share of these costs are not permissible in customers rates. . . With high-cost power plants like the OVEC units, utilities will generally consider retiring the plants rather than incurring additional capital investments to keep the plants online. But, in this case, I&M is simply proposing to charge its Michigan customers for a pro rata share of the cost of ELG and CCR compliance at OVEC without having presented any evidence that it evaluated these expenditures and concluded that customers benefit from continued operation of these plants. This approach should not be permitted.[53]

Sierra Club also recommends that the Commission should encourage I&M to commit the Rockport units into the PJM energy market economically by warning I&M that in future PSCR reconciliation proceedings it is unlikely to permit recovery of operational costs associated with uneconomic self-commitment decisions.[54]

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[51] Id.
[52] Id., p. 24.
[53] Id., p. 24-25. Citation omitted.
[54] Id.

B. Staff

Staff asserts that the I&M's plan is reasonable and prudent, and Staff therefore recommends that the Commission approve the utility's plan as filed.[55]

Mr. Bodiford testified that Staff reviewed the company's filing to ensure consistency with past Commission orders, and to assess the reasonableness and prudence of the plan.[56] He indicated that Staff's review found that I&M's plan did not introduce any new issues and is consistent with past Commission approvals.[57] Mr. Bodiford added that I&M's plan assumes utilization of its existing resources within the PJM Interconnection market construct, and that the projections that produce the factors provide a reasonable representation of future events.[58]

Mr. Bodiford states that Staff compared the 2023 PSCR plan to I&M's 2022 PSCR plan in Case No. U-21052, and notes that I&M is requesting a lower PSCR factor in 2023 compared to its 2022 requested PSCR factor.[59] He adds that the main differences driving the lower PSCR factor for 2023 are decreases in the costs related to the termination of I&M's previous lease agreement with AEG for 50% ownership share of Rockport Unit 2 generation, as well as additional savings in projected off system sales margins for 2023 as compared to 2022.[60] He states that the 2023 PSCR plan factor includes a prior year roll-in of an under-recovery of ($7,242,106) while the 2022 PSCR plan factor included a projected roll-in of an under-recovery of ($4,034,386)

[55] Staff Initial Brief, p. 9.
[56] 2 Tr 157.
[57] Id.
[58] Id.
[59] 2 Tr 158.
[60] 2 Tr 159.

(Order U-20530, page 20).[61] He asserts that in 2023 I&M has projected power cost savings that more than offset the $3,207,720 increase in projected under-recovery.[62]

Noting that I&M asserts that the estimated under-recovery that has been rolled into the 2023 PSCR factor is calculated the same as in previous years by using actual amounts for January through July 2022, preliminary actual amounts for August 2022, with the rest of the months in 2023 being estimated, Mr. Bodiford states that these explanations are reasonable for the purpose of including an estimated under-recovery in the 2023 PSCR plan factor with the understanding that the roll-in is a projection that will be reconciled and reviewed for reasonableness and prudence in the 2023 reconciliation case.[63]

Mr. Bodiford states that per the Commission's order in Case No. U-20529, I&M will be required to demonstrate that the amended ICPA, an affiliate contract, is in compliance with the pricing provisions under Rule 8(4), and that it is Staff's expectation that any contractual purchases that I&M has agreed to with OVEC will be evaluated, and verification of compliance with rule 8(4) will be provided to Staff as part of the reconciliation proceedings for this case.[64] He adds that I&M has provided enough information for Staff to determine that its costs are reasonable and its forecasting procedures are prudent for the purposes of establishing a PSCR billing factor for its customers for the 2023 PSCR plan year, noting that the projected OVEC costs will be evaluated again in its 2024 PSCR plan when I&M files that case, with the actual 2023

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[61] 2 Tr 160.
[62] 2 Tr 161.
[63] Id.
[64] 2 Tr 161, 163.

OVEC ICPA purchases being evaluated for reasonableness in the 2023 PSCR reconciliation case.[65]

Regarding Staff's determination that the projected costs from the OVEC ICPA are reasonable, Mr. Bodiford states that a utility makes the best decision with the information available at the time, with utility actions in Act 304 cases are evaluated for reasonableness and prudence based on the information that the utility had available at the time it made the decision.[66] He adds that, therefore, I&M's decision to extend the OVEC ICPA to 2040 would have to be found to be unreasonable based on the information that I&M knew in the 2011 timeframe when it made the decision to extend the ICPA to 2040.[67] He states that while I&M has committed itself to a long-term contract with OVEC, that does not mean that I&M should not be regularly evaluating the economics of the contract.[68] He states that if the contract is no longer reasonable in the future, then Staff would fully expect I&M to be taking actions to exit and/or modify the contract or to show that the contract is still just and reasonable for customers.[69]

Mr. Bodiford concludes that Staff is recommending that I&M's 2023 PSCR factor be approved as reasonable for collecting costs from its customers that will be reconciled and reviewed for reasonableness and prudence in I&M's 2023 PSCR reconciliation case.[70]

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[65] 2 Tr 163-164.
[66] 2 Tr 164.
[67] Id.
[68] 2 Tr 164.
[69] 2 Tr 164-165.
[70] Id.

V.

ANALYSIS

In prior Orders, the Commission has set forth principles and made findings applicable to the contested issues in this case.

In I&M's 2018 PSCR plan case, the Commission stated:

> [T]he utility has a responsibility to arrange least-cost fuel and purchased power to serve customers under Michigan's Act 304. Part of this responsibility involves the utility examining existing contracts as market conditions or other factors change over time and pursuing amendments or new contractual arrangements for fuel or power supply through good faith negotiations (with affiliates or independent third parties as applicable) and/or filings at FERC to institute changes. Thus, the question at issue here is whether I&M demonstrated it acted in a reasonable and prudent manner in this regard or has been complacent by not pursuing changes to the existing affiliate wholesale power agreement.
>
> . . .
>
> I&M must demonstrate to this Commission, in the PSCR reconciliation proceeding and future plan cases, that its wholesale purchases from affiliates are just and reasonable under current market conditions, tax structures, and I&M's participation in PJM Interconnection, L.L.C. (PJM), and that the utility is taking appropriate actions to minimize costs to ratepayers pursuant to Act 304. [71]

Similarly, in I&M's 2020 PSCR plan case, while addressing the ICPA, the Commission stated:

> [T]he Commission also has the duty under statute to continuously evaluate the reasonableness of the PSCR plan and factors, including the cost arising under the ICPA and its amendments. This is particularly true for cases involving affiliate transactions that implicate the Code of Conduct.
>
> . . .
>
> the Commission has previously held that a recognition of the benefits of long-term agreements does not absolve a utility from monitoring and responding to market conditions and system needs and making good faith efforts to manage existing contracts [including] meaningful attempts to

[71] Case No. U-18404, Order, June 7, 2019, p. 7-8 (citations omitted).

> renegotiate contract provisions to ensure continued value for ratepayers as market conditions change.
>
> . . .
>
> [O]n a going forward basis, the Commission . . . will look to comparisons with other long-term supply options as informative as to whether this particular contract adheres to the requirements of the Code of Conduct.'[72]

In that case, the Commission also stated that "because the ICPA contractual rates may vary from year to year, under Act 304, each PSCR case involves a new plan with appropriate PSCR factors in which the Commission determines the reasonableness and prudence of the PSCR plan.[73] The Commission also stated:

> Similarly, the Commission recently held that the additional scrutiny of the Code of Conduct compliance in the reconciliation proceedings is particularly applicable when the costs to be addressed have not been previously adjudicated by the Commission on the merits under the Code of Conduct or under Act 304, despite previous Commission approval for recovery of contract costs. The ICPA and amendments, in this case, have similarly not been subjected to scrutiny under the Code of Conduct, despite prior Commission approval for recovery of the associated costs.[74]

Finally, in I&M's 2019 PSCR reconciliation case, the Commission questioned whether the ICPA is in the best interests of I&M's customers.

> The Commission . . . reiterates that I&M remains under a continuing obligation to demonstrate the reasonableness and prudence of its power supply arrangements, especially when the transaction is between affiliates. This is particularly true given the evidence on the record that when considering total costs – and not just the variable energy costs – OVEC's costs will exceed revenues attributable to the plant for the foreseeable future, ultimately resulting in higher costs for I&M's customers. . . the Commission expresses its ongoing concern relating to the fundamental economics of the OVEC units and whether I&M's

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[72] Case No. U-20529, Order, May 13, 2021, pp. 14-15, 18-19 (citations and quotations omitted).
[73] Id., p. 10. See, also, Case No. U-20530, Order, February 2, 2023, p. 10, 12.
[74] Case No. U-20529, Order, May 13, 2021, p. 17-18 (citations omitted). See, also, Case No. U-20530, Order, February 2, 2023, p. 10.

> continuing participation in the ICPA is truly in the best interest of its customers.[75]

In I&M's 2020 PSCR reconciliation case, the Commission reiterated the applicability of the Code of Conduct here:

> The very purpose of the Commission's Code of Conduct is to protect customers from exactly this type of arrangement, namely where a utility contracts with an affiliate for above-market-cost power to the detriment of its customers. I&M, of course, remains free to continue to make whatever business decisions it wishes in terms of continuing to participate in the ICPA. What it cannot do is continue to recover the costs of any unreasonable and imprudent decisions from its customers.[76]
> . . .
>
> The Commission agrees . . . that Act 304 and the Code of Conduct must be read in harmony, and the fact that I&M must meet the standards of Act 304 for all of its PSCR costs, and must meet Code of Conduct requirements for costs incurred with affiliates, does not mean that the Code of Conduct conflicts with PSCR statutes.[77]

A. The OVEC ICPA

Ms. Glick asserts that I&M estimates that it will lose $76.5 million in energy market revenue and capacity over the five-year PSCR forecast period (2023-2027) (on a present value basis), or an average of $18.6 million per year above market, by purchasing energy and capacity from OVEC under the ICPA. As such, the Sierra Club asserts that I&M's paying OVEC above-market prices for power violates the Code of Conduct.[78] This PFD agrees.

Ms. Glick states that during the 2023 PSCR year, I&M projects it will be billed $[redacted] for 784,149 MWh., which works out to a cost of [redacted].[79] Ms. Glick

[75] Case No. U-20224, Order, June 23, 2021, p. 12.
[76] Case No. U-20530, Order, February 2, 2023, p. 12-13.
[77] Id., p. 18.
[78] 2 Tr 178, 186. Citation to confidential material omitted.
[79] 2 Tr 181 (2 Tr 259 Confidential). Citations omitted.

states that I&M is projecting to pay between $[redacted] over the remainder of the PSCR Plan period (2024–2027), and that these forecasted costs for the PSCR period are far above what I&M has paid for OVEC power in the past, and reflect a nearly doubling in the cost per MWh to operate OVEC.[80] She adds that the forecasted PSCR costs are also much higher than OVEC's own projections of the ICPA billable costs be over the remaining life of the contract, such that I&M will be paying substantially above market price for power from OVEC over the entire PSCR plan period.[81]

Ms. Glick states that in order for the ICPA to be economical on a forward-going basis, the capacity portion of OVEC's services would have to be valued at an average of $418.3/MW-Day ($2022) over the PSCR forecast period (2023–2027), which is just below the cost of new entry ("CONE") value calculated by Brattle Group in April 2022 for a new combined-cycle unit at $464/MW-Day and above the cost for a new combustion-turbine unit at $372/MW-Day in $2022 assuming an online date of June 1, 2026/2027.[82] She asserts that it is not reasonable or prudent to assume capacity prices at this level will ever materialize, let alone be sustained over a period of time.[83]

Regarding Ms. Glick's assertions that during the PSCR plan period, I&M projects utilization at OVEC to drop from just under [redacted] percent in 2023 to between [redacted] and [redacted] percent between 2025–2027, Ms. Glick states that the OVEC economic analysis I&M submitted in its IRP case (Case No. U-21189) likely does not utilize the same forecast of declining utilization that I&M used in this current PSCR Plan case, which she asserts

[80] Id., Table 1 (confidential material included). Citation omitted.
[81] 2 Tr 184-185.
[82] 2 Tr 188. Citation omitted.
[83] Id.

is concerning because I&M is claiming that its integrated resource plan ("IRP") analysis supports its claim that continuing to rely on OVEC is in the best interest of its ratepayers.[84] I&M counters that it is not unusual for forecasts created at different times to vary," and that the forecast included in the IRP "was subject to the extensive scrutiny and analysis necessary to develop an IRP in accordance with Commission requirements.[85]

This PFD notes that I&M does not dispute Ms. Glick's assertion that the OVEC utilization forecast projected in this case showed a greatly reduced utilization percentage and was not used in its IRP. Similarly, this PFD notes that the IRP case was settled, with the Commission's order approving the settlement stating that the Commission was not approving any costs incurred pursuant to the ICPA.[86] Moreover, this PFD notes that I&M has not rebutted that the IRP analysis assumed that OVEC would install upgrades to comply with federal ELG and CCR rules to keep the units online through the end of the ICPA in 2040, and has not compared these compliance costs with a scenario where the requirements were avoided by retiring the units before compliance was required.[87]

Ms. Glick states that there are several long-term supply cost comparisons she assessed which demonstrate that the costs charged under the ICPA are unreasonable and not compliant with the Code of Conduct, which include the following comparisons:

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[84] 2 Tr 182 (2 Tr 259 Confidential); 2 Tr 183.
[85] 2 Tr 146.
[86] See, Case No. U-21189, Order, February 2, 2023, p. 101: ("The Commission notes that the settlement agreement results in no cost approvals of any kind with regard to the OVEC ICPA. . . . Costs will continue to be reviewed in other proceedings such as the PSCR plan and reconciliation proceedings, as will the reasonableness and prudence of the ICPA.")
[87] Sierra Club Reply Brief, p. 2.

Staff In-year Transfer Price

Cost of new entry CONE for a combined-cycle plant

CONE for combustion turbine

PJM base residual auction (BRA)

I&M renewable RFP results solar and wind

NIPSCO RFP results solar, battery storage and wind.[88]

This PFD notes that excess costs calculated by Ms. Glick incurred under the ICPA relative to the benchmarks range from $6 million to $23.2 million (excluding as an outlier the $34.9 million calculated for the PJM BRA (base residual auction)).[89] This PFD also notes that I&M does not dispute the amounts calculated.

Similarly, Ms. Glick states that several forward-looking analyses on the economics of maintaining and operating OVEC units were conducted, with findings aligned with her findings from her analysis of the ICPA, including

> In August 2022, in IRP Case No. U-21189, I&M's analysis found that terminating the ICPA in 2030 was $54 million more costly than continuing it until 2040.
>
> In April, 2019, FirstEnergy Solutions, an OVEC sponsoring company, had a forward-looking analysis conducted through 2040 which found projected losses, scaled to I&M's share, of $267 million relative to market alternatives.
>
> In December 2018, Moody's Analytics conducted an assessment of the ICPA, scaled to I&M's share, which found annual losses of $16–$20 million.
>
> In March, 2017, Duke Energy Ohio, an OVEC sponsor, hired ICF International to conduct a forward-looking analysis of the ICPA, which

[88] 2 Tr 195, Table 3. Citations omitted.
[89] Id.

> projected losses in the ICPA scaled to I&M's share of 67$ million relative to market alternatives between 2020 and 2025.
>
> In 2015 and 2016, I&M's AEP affiliate AEPSC performed a forward looking analysis of the ICPA (Merchant Analysis), which found that the plants would be uneconomic into the 2030s, and that on a present value basis, the ICPA was projected to have a net negative value.[90]

Regarding I&M's IRP NPV analysis, Ms. Glick asserts that I&M assumed ratepayers were responsible for all outstanding debt after the ICPA's termination.[91] She also states that the IRP analysis assumes that OVEC will install upgrades to comply with ELG and CCR requirements to keep the units online through the end of the ICPA in 2040, and that I&M ratepayers are responsible for paying the $[redacted] million in costs through the PSCR factor.[92] She adds that the Commission has neither approved nor disapproved of the ELG and CCR investments, and that I&M never performed any analysis that evaluated whether compliance was the best option for ratepayers relative to retirement in 2028 and termination of the ICPA at that time.[93] She states that these project costs are problematic when compared with the I&M's projected revenue or losses from continuing to purchase power under the ICPA.

> I&M's portion of the $[redacted] million in costs that OVEC is planning to charge its sponsoring companies for the environmental projects is $[redacted] million. These are avoidable costs that it is proposing to incur and pass on to its ratepayers in the near term. Meanwhile, the Company projected that it would save only $[redacted] million if it continued to operate the OVEC plants beyond 2030 (relative to a scenario where it terminated its OVEC contract in 2030). This means I&M is charging its customers $[redacted] million over the last two years and the current year (2023) for the possibility that it may save $[redacted] million a decade for now (between the years 2030 and 2040).[94]

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[90] 2 Tr 200, Table 4. Citations omitted.
[91] 2 Tr 201.
[92] 2 Tr 201 (2 Tr 279 Confidential). Citation omitted.
[93] 2 Tr 202.
[94] 2 Tr 207 (2 Tr 284 Confidential).

Ms. Glick adds that when asked about its role and knowledge of CCR and ELG investments, I&M claimed that OVEC and not I&M controlled the decision on whether to move forward with environmental upgrades.[95]

For its part, Staff determined that I&M has provided enough information for Staff to determine that its costs are reasonable and its forecasting procedures are prudent for the purposes of establishing a PSCR billing factor for its customers for the 2023 PSCR plan year.[96] Further, Staff asserts that it shares the Commission's concerns reiterated in numerous I&M PSCR plan and reconciliation case orders regarding the reasonableness of ICPA costs, which concerns have not been allayed by I&M.[97] Thus, because I&M and OVEC are affiliates and the amended ICPA is an affiliate contract that must be in compliance with the Code of Conduct, Staff asserts that I&M must demonstrate in the future reconciliation proceeding that the amended ICPA is in compliance with the pricing provision in Rule 8(4) of the Code of Conduct.[98]

Sierra Club counters that Staff's position did not preclude a Section 7 warning in Case Nos. U-20804 or U-21052 and it does not preclude such a warning here.[99]

For its part, I&M offered other arguments against the challenges raised by the Sierra Club.

I&M asserts that its portfolio of resources should be evaluated "as a whole and in light of the Company's existing sources of electrical generation", and that PSCR plan

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[95] 2 Tr 208. Citations omitted.
[96] 2 Tr 163.
[97] Staff Reply Brief, p. 3.
[98] Staff Initial Brief, p. 6-7.
[99] Sierra Club Reply Brief, p. 15.

cases are not the proper venue to "evaluate the economics of individual resources."[100] Sierra Club counters that I&M's position is contrary to the statute and prior Commission decisions.[101] Noting that Section 3 of the PSCR statute states the plan shall describe "all major contracts and power supply arrangements" entered into by the utility, Sierra Club argues that the authority to amend the plan, and the directive that the plan shall not reflect items that would likely be disallowed in the reconciliation must be interpreted as amending the plan with respect to individual resources, decisions, and costs.[102]

Moreover, this PFD notes that the Commission has repeatedly stated that I&M's responsibilities specifically apply to this particular OVEC ICPA. See, Case No. U-18404 ("[T]he issue is whether I&M has been complacent by not pursuing changes to the existing affiliate wholesale power agreement."); Case No. U-20529 ("[T]he Commission also has the duty under statute to continuously evaluate the reasonableness of the PSCR plan and factors, including costs arising under the ICPA and its amendments.")[103] Similarly, as Sierra Club notes, the Commission's Section 7 warnings to I&M in Case Nos. U-20804 and U-21052 specifically referenced the OVEC costs and I&M's decisions concerning the ICPA.[104]

I&M asserts that a comparison of OVEC energy costs to the revenues I&M received from selling its share of energy shows that I&M has received a net benefit from OVEC energy.[105] However, Ms. Glick asserts that Mr. Stegall claims that OVEC has

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[100] I&M Initial Brief, p. 25-26. Citations omitted.
[101] Sierra Club Reply Brief, p. 4.
[102] Id., p. 5.
[103] Case No. U-18404, Order, June 7, 2019, p. 7; Case No. U-20529, Order, May 13, 2021, p. 14. Citation omitted.
[104] Sierra Club Reply Brief, p. 5. Citations omitted.
[105] 2 Tr 122-123.

been profitable on an energy-only basis in every year except 2020 ignores over half of the costs billed by OVEC to I&M for demand charges, which are significantly larger than the associated capacity value.[106] This PFD agrees that this energy-only comparison is incomplete as I&M seeks to recover all OVEC costs – including demand charges – from customers through the PSCR.

Noting that Ms. Glick presents her comparisons on a dollar per Megawatt-hour basis, I&M argues that every resource cannot be summarized to a single dollar per Megawatt-hour metric because presenting capacity costs on a dollar per Megawatt-hour basis can make resources with high load factors, or high energy output per Megawatt of capacity, appear less expensive when compared to similar resources with load factors, low energy output per megawatt of capacity, or when compared to resources that may produce energy but not provide significant amounts of capacity to meet PJM capacity requirements.[107]

This PFD agrees that this comparison may show that a capacity resource may uneconomic, but finds that such a comparison is not necessarily inaccurate. As Ms. Glick states,

> "A higher capacity factor for OVEC means more energy market revenues to make the plant look more economic than it actually is. Lower utilization is good in reducing fuel costs incurred from uneconomic plant operations, but bad in that ratepayers are now paying high fixed costs for very few MWh of electricity."[108]

Regarding capacity costs, I&M argues that Ms. Glick bases her economic evaluations on the use of capacity price from the PJM BRA despite the fact that I&M

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[106] 2 Tr 189, Table 2.
[107] Id., p. 29. Citation omitted.
[108] 2 Tr 184.

does not participate in RPM auctions and the Commission has never accepted this as an appropriate capacity price for the long-term agreements included in I&M PSCR Plan.[109] This PFD notes that in I&M's 2019 PSCR reconciliation case, while the Commission was "unpersuaded" that "a comparison between the short-term PJM capacity market and the OVEC ICPA" was sufficient to warrant a disallowance, the Commission did find that the evidence in that case indicated that when considering total costs, OVEC's costs "will exceed revenues attributable to the plant for the foreseeable future, ultimately resulting in higher costs for I&M's customers."[110] This PFD also notes that in the 2021 PSCR Plan case, the Commission has stated that a review of PJM capacity prices in conjunction with three other power purchase benchmarks was a sufficient basis for a Section 7 warning.[111] Further, this PFD notes that the Commission in U-20804 specifically held that net CONE may be one of the "appropriate proxies for calculating market price and I&M's resulting PSCR factor."[112]

I&M asserts that the prices used by witness Glick from the 2021 Informational RFP are out of date, as the informational RFP was issued to obtain market information and near-term indicative pricing to inform I&M's IRP process only and that when compared to more accurate and current market prices from I&M's 2022 All-Source RFP, the OVEC prices align with the bids I&M received.[113] Mr. Stegall testified that, in Case No. U-21189, I&M sought Commission approval for three new renewable resources: a solar purchase-sale agreement (PSA) which, had a levelized cost of energy (LCOE) of

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[109] 2 Tr 140.
[110] Case No. U-20224, Order, June 23, 2021, p. 7, 12.
[111] Case No. U-20804, Order, November 18, 2021, p. 16-17. ("The present case differs from Case No. U-20529 in that additional evidence of appropriate market comparisons was presented on the record.")
[112] Case No. U-20804, Order, November 18, 2021, p. 22
[113] 2 Tr 147; I&M Initial brief, p. 32.

$[redacted] per Megawatt-hour; two purchased power agreements (PPA), had an energy cost of $[redacted] per Megawatt-hour, and another solar PSA resource with a cost of $[redacted] per Megawatt-hour.[114]

The Sierra Club asserts that a comparison to these recent solar contracts is inappropriate. Sierra Club notes that the Commission declined to approve the large amounts of contingency costs for one contract (Mayapple LCOE) and another (Lake Trout) has not been approved and remains pending in U-21377.[115] Sierra Club notes that I&M testified in Case Nos. U-21189 and U-21377 that it negotiated the contract prices during extraordinary solar market conditions in 2023.[116] Sierra Club notes Staff testimony "that prices for solar are inflated in 2023 due to 'a high level of uncertainty regarding pricing of components, component shortages, and a labor shortage, all exacerbated by increased demand with the passage of the Inflation Reduction Act (IRA) in 2022.'"[117] Sierra Club states that none of these solar projects have been built yet and

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[114] 2 Tr 147 (2 Tr 241 Confidential).
[115] Sierra Club Reply brief, p. 5-6.
[116] Id., p. 6.
[117] Sierra Club Reply Brief, P. 6, citing Case No. U-21189, Order, August 30, 2023, p. 19, quoting Staff witness Heidemann. This PFD notes that Sierra Club's statement in its brief -- "The Commission also noted Staff's testimony that prices for solar are inflated in 2023 due to 'a high level of uncertainty regarding pricing of components, component shortages, and a labor shortage, all exacerbated by increased demand with the passage of the Inflation Reduction Act (IRA) in 2022'" (Sierra Club Reply Brief, p. 6, citing Staff witness Heidemann's testimony referenced in Case No. U-21189, Order, August 30, 2023, p. 19) -- misrepresents this testimony. At p. 18-19, the Commission's Order states:

> With respect to the LCOEs of the Mayapple Solar Project PSA and the Lake Trout project, he [Mr. Heidemann] contended that:
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> > [m]uch of what Staff sees about solar pricing is confidential due to the fact that it is market sensitive material, so it can only be spoken about in generalities. That being said, both Mayapple and Lake Trout are not outside what Staff has seen recently in terms of market prices for solar. Other utilities are seeing a general rise in solar prices. *Staff does not speculate if this is a long-term trend or a short-term blip in the market* reflecting a high level of uncertainty regarding pricing of components, component shortages, and a labor shortage, all exacerbated by increased demand with the passage of the Inflation Reduction Act (IRA) in 2022. (emphasis added)

have commercial operation dates starting in the mid-2020s, and thus, they do not reflect costs for power during the 2023 PSCR plan year.[118]

This PFD disagrees. The Commission in Case No. U-21189 concluded that the projects at issue there including the Mayapple solar project "are the result of competitive solicitation and should be approved as reasonable and prudent," and that "negotiations are a common part of the competitive solicitation process."[119] Similarly, in Case No. U-21377, the Commission found that the Lake Trout LCOE is within the range of acceptable prices and that the capital costs are reasonable.[120] And while the Commission reserved judgement on the contingency costs projected for both Mayapple and Lake Trout projects, the PFD notes that no contingency costs are referenced regarding the other two solar contracts I&M references.

Moreover, this PFD disagrees that unusual market conditions per se render any corresponding market prices invalid for comparison purposes. Rather, by definition, market conditions – whether changing or stable – determine market prices. Moreover, the fact that the current market prices may have changed from those in the past or may change in the future, or that the current market prices might be reasonably characterized as unusual or exceptional, does not change the fact that the prices are "market prices", reflective of the "market".

Thus, this PFD finds it appropriate to consider these comparisons when assessing whether the ICPA costs are reasonable.

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[118] Id., p. 6-7.
[119] Case No. U-21189, Order, August 30, 2023, p. 50; p. 52 ("[T]he Commission also concludes that . . . the final costs for the Mayapple Solar Project PSA are reasonable and prudent.").
[120] Case No. U-21377, Order, December 21, 2023, p. 13.

Regarding Ms. Glick's comparison to renewable RFPs identified by NIPSCO, I&M states that these resources are not available to I&M and are located in Midwest Independent System Operator (MISO), not PJM.[121] I&M asserts that to supply energy to I&M, they would need transmission access to PJM, which would require additional transmission costs not included in Ms. Glick's analysis.[122] I&M chastises Ms. Glick for ignoring the 2022 All-Source RFP which did allow for MISO projects with firm transmission to PJM.[123] However, this PFD notes that I&M did not attempt to calculate or project any additional transmission costs to access PJM.

In sum, regarding I&M's challenges to the comparisons offered by Sierra Club, this PFD notes the Commission's recent statement in I&M's 2022 PSCR Plan case:

> Sierra Club presented multiple long-term supply alternatives with which to compare the cost of the ICPA, and the Commission agrees with the ALJ that these comparisons sufficiently demonstrate that the ICPA costs are excessive. While all of the benchmarks may not be perfect apples-to-apples comparisons, as it is difficult to produce comparisons that are identical to the OVEC units, the Commission finds it reasonable to judge the costs of the ICPA based on long-term alternatives. . .[124]

B. Code of Conduct

I&M makes a series of arguments opposing the application of the Code of Conduct to the ICPA in this proceeding. These arguments are repetitive of the arguments made by I&M in prior PSCR cases, which have been rejected by the Commission and the Court of Appeals.

At the outset, for purposes of assessing the applicability of the Code of Conduct pricing provision (Rule 8(4)), this PFD notes that while I&M's witnesses do not assert

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[121] 2 Tr 148.
[122] Id.
[123] Id.
[124] Case No. U-21052, Order, June 22, 2023, p. 20.

that I&M does not consider OVEC to be an affiliate, I&M suggests as much, making arguments which "assum[e] *arguendo* that the ICPA is within the scope of the COC's [Code of Conduct] reach."[125] Regardless, this PFD notes that the Commission has repeatedly found that I&M and OVEC are affiliates under Rule 8 such that the pricing provisions apply to the ICPA.[126]

I&M contends that applying the Code of Conduct's "price cap" goes beyond the Legislature's intent and negates Act 304's framework for evaluating power supply costs under the reasonableness and prudence standard, arbitrarily and capriciously replacing it with comparisons of cost against market prices.[127] The Commission has rejected this argument, concluding that the Code of Conduct was itself implemented by the Commission pursuant to a legislative mandate.

> I&M makes similar arguments in this case as in previous proceedings that the Code of Conduct does not apply to the ICPA and that the Code of Conduct cannot be read in harmony with Act 304. . . Finding this issue to be well-settled . . the Commission incorporates by reference the discussions in its previous orders, and . . adopts the PFD. . . I&M does not assert that facts or circumstances have changed with respect to the company's relationship with OVEC or the nature of the ICPA such that the Code of Conduct and its affiliate pricing provisions would no longer be applicable. Therefore, the Commission finds that the Code of Conduct applies to the ICPA as an affiliate contract and that the Code of Conduct does not interfere with the requirements under Act 304.[128]

The Commission's finding in this regard was recently affirmed by the Court of Appeals. See, *In re Application of the Indiana Michigan Power Company*, Court of Appeals, No. 365180, January 18, 2024, p. 16:

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[125] I&M Initial Brief, p. 37.
[126] See, e.g., Case No. U-20529, Order, May 13, 2021, p. 16-17; Case No. U-20224, Order, June 23, 2021, p. 11; Case No. U-20530, Order, February 2, 2023, p. 18-19; Case No. U-21052, Order, June 22, 2023, p. 22. See, also, Case No. U-20530, PFD, April 18, 2022, p. 49-54.
[127] I&M Initial Brief, p. 38-41.
[128] Case No. U-21052, Order, June 22, 2023, p. 21-22. Citations omitted.

> The plain language of the Code of Conduct indicates that it applies to the transaction at issue, and its application does not conflict with the standards of reasonableness and prudence from Act 304. In addition, a close reading of pertinent caselaw indicates that the Code of Conduct complies with its enabling statute. Accordingly, the PSC did not exceed its authority by applying the code.[129]

Next, I&M argues that the ICPA predates the Code of Conduct and that the Commission cannot apply the Code of Conduct retroactively to contracts that predate its adoption.[130] Again, the Commission has rejected this argument, stating that the decisions made in a PSCR case are "applied prospectively to inform reconciliations and not retroactively to PSCR factors set in earlier plan years."[131] Again, the Court recently agreed. See, *In re Application of the Indiana Michigan Power Company*, *supra*, at 16. ("Further, no retroactive application of law took place.")

Further, I&M argues that a disallowance based on the Code of Conduct would violate the respective Contract Clauses of the Michigan and United States Constitutions by impairing I&M's rights or obligations under the ICPA.[132] However, while the Michigan and U.S. Constitution's Contract Clauses generally prohibit laws from impairing the obligations of contracts, courts have long held that the prohibition is not absolute because it must be "accommodated to the inherent police power of the State to

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[129] The Court declined to address I&M's arguments that applying the Code of Conduct in this case would be an unconstitutional regulatory taking and violate the Contracts Clause, noting I&M's limited attempts to raise constitutional issues by way of statements in footnotes. Id., n. 15.
[130] I&M Initial Brief, p. 45-49 (Citing *Lafontaine Saline, Inc v Chrysler Group, LLC*, 496 Mich 26; 852 NW2d 78 (2014) for the factors addressing retroactive application of statutes).
[131] Case No. U-20804, Order, November 18, 2021, p. 17.
[132] I&M Initial Brief, p. 49-52.

safeguard the vital interest of its people" under a three-part test,[133] and the Code of Conduct meets all three prongs of the test.[134]

I&M also argues that the application of the Code of Conduct would violate the respective Takings Clauses of the Michigan and United States Constitutions.[135] Noting that questions regarding the Takings Clause involve a special analysis for utility regulation, with "[t]he guiding principle" being that the Constitution protects utilities from being limited to a charge for their property which is so 'unjust' as to be confiscatory, this PFD finds – and previously the Commission found -- that I&M fails to argue that any potential disallowance under the Code of Conduct would render the overall PSCR plan or factors so low as to be confiscatory."[136]

I&M next argues that the Commission's own August 28, 2018 Order in Case No. U-18361 suggests that the Code of Conduct does not apply to federally regulated wholesale service agreements such as the ICPA.[137] The Commission has previously rejected this argument, concluding that the Code of Conduct applies because the power I&M purchases through the ICPA is used to serve I&M's retail customers, with the Commission not passing judgment on the reasonableness of a FERC-approved rate but

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[133] *Romein v Gen Motors Corp*, 436 Mich 515, 534; 462 NW2d 555 (1990) quoting *Energy Reserves Group, Inc v Kansas Power & Light Co*, 459 US 400, 410; 103 S Ct 697, 704; 74 L Ed 2d 569 (1983).
[134] Case No. U-21052, Order, June 22, 2023, p. 21 ("[T]he Commission incorporates by reference the discussions in its previous orders, and, finding the ALJ's analysis . . to be well-reasoned and aligned with the Commission's previous decisions on this issue, adopts the PFD."); U-21052, PFD, March 29, 2023, p. 28-29.
[135] I&M Initial Brief, p. 52-55.
[136] See, Case No. U-21052, Order, June 22, 2023, p. 21 ("[T]he Commission incorporates by reference the discussions in its previous orders, and, finding the ALJ's analysis . . to be well-reasoned and aligned with the Commission's previous decisions on this issue, adopts the PFD."); U-21052, PFD, March 29, 2023, p. 29-30.
[137] I&M Initial Brief, p. 56.

rather evaluating the reasonableness and prudence of I&M's decision to purchase from OVEC, an affiliate.[138]

C. Rockport

Ms. Glick asserts that Rockport power is projected to be extremely expensive going forward, with I&M's projected costs for 2024–2027 are now roughly double what I&M projected in the prior PSCR docket, with cost increases in large part due to the large drop in Rockport's projected capacity factor.[139] Ms. Glick projects that Rockport Unit 1 will incur $246.6 million (present value) in excess costs relative to the market value of energy and capacity based on unit cost data over the next five years, or an average of $55.1 million per year.[140] She adds that I&M is projecting a forward-going capacity factor at Rockport 1 of less than 4 percent for the years 2024–2027.[141] This an extremely low utilization level and clearly shows how uneconomic this unit is to operate. Thus, she argues that the Commission should encourage I&M to commit the Rockport units into the PJM energy market economically by signaling to I&M that in future PSCR reconciliation proceedings it is unlikely to permit recovery of operational costs associated with uneconomic self-commitment decisions.[142]

I&M counters that its generating units are operated to meet the total PJM load requirements on the most economical basis.[143] I&M argues that in developing the generational forecast its operation was simulated by a simulation model (*PLEXOS*)

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[138] Case No. U-21052, Order, June 22, 2023, p. 21; Case No. U-21052, PFD, March 29, 2023, p. 30-31; Case No. U-20804, Order, November 18, 2021, p. 16; Case No. U-20529, Order, May 13, 2021, p. 20-21.
[139] 2 Tr 214-215, Table 5, 2 Tr 217.
[140] 2 Tr 215-216, Confidential Figure 5. Citations omitted.
[141] 2 Tr 217. Citation omitted.
[142] 2 Tr 217-218. Citation omitted.
[143] 2 Tr 41.

which commits units in PJM based on variable energy costs and which model will not dispatch or run Rockport units uneconomically.[144] I&M argues that any signaling to I&M by the Commission that Rockport costs may be disallowed due to imprudent commitment decisions is unnecessary because I&M recognizes its obligation to operate the Rockport units in customers' best interests.[145]

This PFD finds – and the Commission agrees -- it is inappropriate to assume before the fact that I&M will necessarily make imprudent commitment decisions going forward contrary to the forecasted economical dispatch from the Rockport units, and finds that the associated reconciliation proceeding is the more appropriate venue for evaluating operational decisions.[146]

V.

CONCLUSION

Sierra Club's requests that the Commission should amend I&M's plan by removing the costs of the OVEC ICPA from the maximum PSCR factor for the plan year. This PFD disagrees. This PFD notes that while the Commission has previously sustained challenges to I&M's PSCR plans based on the same general assertions as Sierra Club makes in this case, the Commission has refrained from amending I&M's PSCR plans. However, this PFD agrees with Sierra Club that a Section 7 warning is warranted and thus recommends that the Commission issue a warning that the Commission is unlikely to permit I&M to recover any uneconomic costs as set forth in

[144] Id.
[145] 2 Tr 150.
[146] Case No. U-21052, Order, June 22, 2023, p. 23.

I&M's plan and forecast without good faith efforts to manage the ICPA and renegotiate contract provisions to ensure continued value for ratepayers.

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

Jonathan F. Thoits

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Administrative Law Judge

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