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 A Power Supply Cost Recovery Reconciliation Proceeding for the 12-month period Ending December 31, 2022.	))))))	Case No. U-21053

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 June 3, 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 June 24, 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 July 8, 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

James M. Varchetti

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Date: 2024.06.03 15:54:31 -04'00'

June 3, 2024
Lansing, Michigan

James M. Varchetti
Administrative Law Judge

STATE OF MICHIGAN

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

Indiana Michigan Power Company ("I&M" or "the company") filed its application to reconcile its 2022 PSCR plan in this docket on March 31, 2023. The company subsequently filed a revised application on May 12, 2023. The revised application reported a 2022 under recovery totaling $10,832,446. The company's application was accompanied by the testimony and exhibits of seven witnesses: Jeffery C. Dial, Keith A. Steinmetz, Michelle M. Howell, Robert A. Jessee, Denzil L. Welsh, Jon C. Walter, and Jason M. Stegall. At the May 10, 2023, prehearing held by Administrative Law Judge Katherine E. Talbot, the company and Staff appeared, and a protective order was entered. A second prehearing was scheduled for May 25, 2023, at which a consensus schedule for this matter was adopted. The schedule was subsequently revised three times on June 8, 2023, November 22, 2023, and December 11, 2023.

Consistent with the schedule established on December 11, 2023, Staff filed the testimony and exhibits of three witnesses: Raushawn D. Bodiford, Dolores Midkiff-Powell, and Katie J. Smith. This matter was then reassigned to the undersigned Administrative Law Judge on January 12, 2024. Consistent with the governing schedule, I&M filed the rebuttal testimony of two of its witnesses, Mr. Stegall and Mr. Walter, on February 13, 2024.

A cross-examination hearing was held on March 7, 2024; however, the parties waived cross-examination of the witnesses and presented testimony and evidence to be bound into the record. Pursuant to the governing schedule, the parties thereafter timely filed initial briefs on April 5, 2024, and reply briefs on May 3, 2024.

The record in this case is contained in three public transcripts totaling 226 pages, with a confidential version of the testimony of witness Stegall bound into a separate record, and a total of 23 exhibits. A brief overview of the record in this matter is provided below.

II.

OVERVIEW OF THE RECORD

As discussed below, a total of ten witnesses testified in this matter. The direct testimony of each party is addressed first, followed by a brief review of the rebuttal testimony.

A. Indiana Michigan Electric Company

I&M presented the direct testimony of seven witnesses and 17 exhibits:

Jeffery C. Dial, Director of Coal, Transportation, and Reagent Procurement for American Electric Power Service Corporation (AEPSC), discussed I&M's coal purchases,

including an overview of the coal market, an explanation of I&M's purchasing strategy and coal supply agreements, as well as its use of the Cora Terminal. He compared actual coal costs to the plan forecast with details in Exhibit IM-1, and he testified to the reasonableness and prudence of I&M's procurements.

Keith A. Steinmetz, Manager of Nuclear Engineering for I&M, testified to support the reasonableness and prudence of I&M's operation of the Cook nuclear plant. He provided an overview of the responsibilities of his department, a description of major nuclear fuel contracts, a discussion of actions I&M took to minimize nuclear costs, and a comparison to the plan case forecast for the Cook nuclear units.

Michelle M. Howell, Director of Transmission Settlements for AEPSC, discussed costs included in I&M's reconciliation associated with AEP's Open Access Transmission Tariff (OATT), including a discussion of the components of the charges and credits, as well as a comparison of the plan forecast to actual costs in Exhibit IM-2. She testified that the costs reflected in I&M's 2022 reconciliation were reasonable.

Robert A. Jessee, the facility manager of the company's Rockport plant, discussed notable outages of Rockport Units 1 and 2 during the reconciliation period, and he testified that the company prudently managed the situations to minimize the outage length while also addressing safety concerns. Mr. Jessee described the outages in detail in Exhibit IM-3.

Denzil L. Welsh, Regulatory Analysis & Case Manager for I&M, presented a reconciliation of revenues collected from customers located within I&M's Michigan retail jurisdiction in 2022 along with a discussion of how Rockport Unit 2 is excluded from PSCR costs beginning in December of 2022. He also provided support for the calculation of

interest in accordance with the PSCR statute, an explanation of the total under recovery balance, and a summary of the differences between projected and actual 2022 PSCR plans. Mr. Welsh presented his calculations in Exhibit IM-4.

Jon C. Walter, Consumer and Energy Efficiency Programs Manager for I&M, addressed I&M's shortfall in meeting the company's Energy Waste Reduction (EWR) targets. He sponsored Exhibits IM-5 and IM-6 to address EWR compliance. He also provided testimony supporting the results of the company's analysis and testimony concluding that the PSCR costs incurred by the company were reasonable and prudent.

Jason M. Stegall, Director of Regulatory Services for AEPSC, testified in support of the costs associated with I&M's Intercompany Power Agreement (ICPA) with the Ohio Valley Electric Corporation (OVEC). He addressed the Commission's recent orders concerning this agreement, and proposed what he considered an appropriate market comparison to use in applying the affiliate price cap. He also presented Exhibits IM-7, IM-8, and confidential Exhibit IM-9 in support of this testimony. Mr. Stegall also addressed I&M's operation of the Rockport plant in 2022.

B. Staff

Staff filed the testimony and exhibits of three witnesses and six exhibits:

Raushawn D. Bodiford, a Public Utilities Engineer in the Energy Operations Division, presented Staff's review of the company's PSCR reconciliation filing including a comparison to the plan case projections. He opined that the company's procurements were generally reasonable and that the company prudently managed planned and forced outages. He also specifically addressed I&M's costs under the OVEC ICPA, testifying that Staff recommended a disallowance of $1,917,732 calculated using a benchmark

preferred by Staff. Mr. Bodiford sponsored Exhibits S-3.0 through S-3.2 to support his testimony.

Dolores Midkiff-Powell, Manager for Energy Cost Recovery Reconciliation in the Regulated Energy Division, presented Staff's recommendations regarding the company's PSCR reconciliation, including explanations of Staff's adjustments to the company's under recovery calculations. She presented Exhibit S-1 in support of her testimony.

Katie J. Smith, an Economic Specialist in the Energy Waste Reduction (EWR) Section of the Energy Resources Division, presented Staff's analysis regarding the company's failure to achieve its EWR target for the year 2021. She provided the Commission with multiple alternatives to address I&M's failure to meet its EWR target and explained Staff's preferred proposal. She presented Exhibit S-2 in support of her testimony.

C. Rebuttal Testimony

The company presented the rebuttal testimony of two witnesses: Mr. Walter and Mr. Stegall.

Mr. Walter addressed Ms. Smith's EWR analysis, and he contended that her approach significantly overstated the impact of I&M's EWR compliance shortfall in various ways. While defending the analysis originally presented in his direct testimony, he also provided alternative analyses in Exhibit IM-9a which utilized adjusted values or methodologies that he contended were more appropriate.

In turn, Mr. Stegall took issue with Mr. Bodiford's recommended disallowance regarding the OVEC ICPA and asserted that the Commission should adopt I&M's analysis, which concluded that a disallowance was unnecessary. Alternatively, Mr. Stegall

criticized Staff's selected benchmarks for a potential disallowance and suggested that the Commission should consider using one of the company's recent renewable energy contracts as a benchmark instead. He presented Exhibits IM-10 and IM-11 to support his rebuttal testimony.

III.

DISCUSSION

In general, Staff raised no concerns with most of the company's operational decisions or expenses such as coal procurement, nuclear fuel, and various other PSCR-related expenses. Accordingly, this PFD recommends that the company's PSCR expenses which have been reviewed by Staff and which have not generated any dispute should be approved as reasonably and prudently incurred.

However, based upon the testimony submitted and the briefs of the parties, three disputed issues require resolution: (1) the appropriate beginning balance for this reconciliation proceeding; (2) a potential disallowance of ICPA costs for failure to comply with the Code of Conduct; and (3) the appropriate analysis of I&M's EWR shortfall. This PFD will address each disputed issue *ad seriatim*:

A. Beginning Balance and PSCR Calculations

The parties utilized different initial balances for their respective calculations, which is understandable given that reconciliation filings are often filed before the reconciliation of the prior year's PSCR plan has been completed. The Commission recently issued its decision in Case No. U-20805 resolving the company's reconciliation for 2021 and directing that the beginning balance of the company's 2022 power supply cost recovery

reconciliation, i.e., this case, shall be a net underrecovery of $4,386,719 inclusive of interest.[1]

Further, Ms. Midkiff-Powell testified that the company's PSCR calculations needed to correct the short-term interest rate for July of 2022 from 2.36% to 2.13% per the applicable interest rates that the company provided to Staff through an audit request.[2] The company did not challenge or refute this testimony.

Accordingly, this PFD recommends adopting the Commission-directed beginning net underrecovery of $4,386,719 as the beginning balance for this proceeding and adopting Staff's recommended correction of the short-term interest rate in July of 2022.

B. OVEC ICPA

I&M's 2022 PSCR costs include power generated by the Ohio Valley Electric Corporation (OVEC) and supplied to I&M under the terms of the Inter-Company Power Agreement (ICPA), as amended. Exhibit IM-7 reports that in 2022 I&M paid OVEC approximately $58.7 million for 867,246 MWh of electric energy, or $67.69/MWh.[3] Exhibit IM-4 also reports that in the underlying plan case, I&M forecasted total OVEC ICPA costs of approximately $51.9 million, generation of 812,647 MWh, and a per-MWh cost of $63.91/MWh.[4] The underlying plan case order in Case No. U-21052, and the Commission's recent order in Case No. U-20805 related to the ICPA are reviewed by way of background in section 1 below; section 2 reviews the testimony presented in this case;

[1] Case No. U-20805, April 11, 2024, Order, p 20.
[2] 3 Tr 209.
[3] Exhibit IM-7, page 1.
[4] Exhibit IM-4, page 3, line 13.

section 3 reviews the positions of the parties; and section 4 presents findings, conclusions, and recommendations.

1. Background

The ICPA has been a source of dispute in numerous past cases, although only the most recent and relevant cases will be briefly discussed herein. In Case No. U-21052, the plan case underlying this reconciliation, the Commission held that the ICPA is an affiliate transaction subject to the Code of Conduct, including the Code's price cap,[5] and that it was appropriate to issue a warning under MCL 460.6j(7) (i.e. a "section 7 warning") that the Commission would be unlikely to allow I&M to recover the full costs of the ICPA.[6] In doing so, the Commission rejected I&M's numerous legal challenges that asserted that it was improper to apply the Code of Conduct to the ICPA. To support its position, the Commission adopted by reference the reasoning it used in several previous orders addressing the ICPA as well as the reasoning stated in the proposal for decision (PFD) in that case.[7] The Commission agreed that it was appropriate to apply the Code of Conduct's price cap, but the Commission stated that it would look to the evidence presented in the corresponding PSCR reconciliation (i.e., in the instant case) to determine an appropriate proxy to calculate any disallowance.[8]

Notably, in recently decided Case No. U-20805, which addressed I&M's PSCR reconciliation for the year 2021, the Commission addressed the subject of a proper proxy for the ICPA when calculating a disallowance. The Commission stated that "recognizing

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[5] Mich Admin Code, R 460.10108(4), sometimes referred to as Rule 8(4).
[6] See Case No. U-21052, June 22, 2023, Order, p 19-22.
[7] Case No. U-21052, June 22, 2023, Order, p 21.
[8] Case No. U-21052, June 22, 2023, Order, p 23.

the benefit customers receive because of a long-term agreement like the ICPA, the Commission finds it appropriate to compare the ICPA to other comparable long-term agreements, adjusted as necessary to ensure a fair comparison to appropriately determine reasonableness and prudence of expenses charged to I&M's customers in 2021."[9] The Commission thereafter adopted a disallowance based upon a comparison of the ICPA to three other long-term power agreements: the Michigan Public Power Agency (MPPA)/Belle River contract, MPPA/Campbell Unit 3 contract, as well as the Michigan Cogeneration Venture (MCV) agreement.[10]

2. Testimony

In direct testimony, Mr. Stegall provided a general description of the OVEC, its coal-fired generating facilities, and I&M's benefits and obligations under the most recent agreement, the Amended and Restated ICPA from 2010.[11] He testified that the sale of electricity from the ICPA in 2022 produced $61,595,412 in revenue, which resulted in $33,780,030 of net energy margins.[12] He stated that charges billed under the ICPA totaled $32,180,828, so the margins exceed the charges billed under the ICPA by $1,599,202.[13] Mr. Stegall contended that it would be inappropriate to disallow ICPA costs because the energy value of the ICPA exceed costs in the review period.[14]

Mr. Stegall also addressed the issue of identifying a suitable proxy to the OVEC ICPA for the purpose of any potential disallowance under the Code of Conduct.

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[9] Case No. U-20805, April 11, 2024, Order, p 14.
[10] Case No. U-20805, April 11, 2024, Order, p 14.
[11] 3 Tr 108-111.
[12] 3 Tr 113.
[13] 3 Tr 113.
[14] 3 Tr 114.

Mr. Stegall proposed using the transfer price as determined under Act 295 and published annually in Case No U-15800; he described the transfer price as "the Commission staff's calculation of the cost of conventional generation currently used to determine the amount of excess cost of a renewable resource subject to recovery in the Michigan utilities' Renewable Energy Plan filings."[15] Mr. Stegall explained that his proposal was essentially the same as that previously made by the company in the above-mentioned Case No. U-20805:

> As the Company proposed in Case No. U-20805, it will continue to compare the cost of the ICPA to the transfer price on a cumulative basis. If, during a future PSCR reconciliation proceeding, the Company's annual comparison results in a situation where the cumulative costs under the ICPA exceed the costs of the same amount of energy under the transfer price, the Company will include that deficiency, net of any previously issued credit, as a credit in its PSCR Reconciliation revenue requirement.[16]

Mr. Stegall opined that it was reasonable to compare the ICPA to the transfer price on cumulative basis because the ICPA is a long-term contract, and such contracts are intended to secure long-term benefits that act as a hedge against price fluctuations.[17]

Mr. Stegall provided a comparison of the ICPA costs to the transfer prices using his method in Exhibit IM-7 covering the years 2013 through 2022. Notably, Mr. Stegall excluded all transmission and PJM costs billed under the ICPA from his calculations; he explained that any new resource would need to connect to the PJM system, would be obligated to pay all PJM charges, and that Staff's calculations also exclude these costs.[18] Accordingly, he restated the ICPA cost as $67.69/MWh in 2022, with the calculated

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[15] 3 Tr 116.
[16] 3 Tr 115.
[17] 3 Tr 115.
[18] 3 Tr 117-118.

values for other years shown in Exhibit IM-7. Mr. Stegall testified that using his approach, the cost of power under the ICPA since 2013 has been less than the annual transfer price by a total of $56.4 million on a cumulative basis through 2022.[19] Accordingly, he opined that his method to compare ICPA costs to the transfer price supported the reasonableness and prudence of the costs I&M incurred under the ICPA through 2022.[20]

For Staff, Mr. Bodiford disputed that the transfer price is an appropriate proxy for the market price on a dollar-per-megawatt basis. He noted that the Commission already discussed and determined proper uses for the transfer price in the past:

> Pursuant to Section 47(2)(b) of Act 295, the Commission is required to annually set a transfer price for renewables costs that will flow through the company's PSCR. The transfer price is simply a mechanism for estimating and allocating the reasonable and prudent costs of renewable energy between the PSCR and the REP surcharge.[21]

He further asserted that the Commission stated that the transfer price schedule was appropriate "for planning purposes, such as the calculation of surcharges, only."[22] Mr. Bodiford also emphasized that the Commission previously stated that the cost comparison of prior power transactions costs are the fairest benchmarks for calculating a disallowance.[23] Mr. Bodiford critiqued I&M for failing to heed the Commission's previous statements regarding appropriate benchmarks for the ICPA, and he asserted that Staff

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[19] 3 Tr 118.

[20] Notably, while the ICPA may have accumulated a net "bank of savings" over several years using Mr. Stegall's cumulative comparison method, costs under the ICPA were approximately $3.9 million more expensive than the transfer price in 2022, the year at issue in this case. See Exhibit IM-7.

[21] 3 Tr 195 (quoting Case No. U-15806, August 25, 2009, Order, p 12).

[22] 3 Tr 195 (quoting Case No. U-17302).

[23] 3 Tr 195 (citing Case No. 20530, February 2, 2023, Order, p 11).

"is again not compelled by the Company's arguments for use of a different benchmarking tool[.]"[24]

To calculate a disallowance, Mr. Bodiford recommended using an iteration of the methodology recommended in the PFD for Case No. U-20805, i.e. I&M's 2021 PSCR reconciliation case. That methodology suggested that the MPPA costs relating to Belle River and Campbell Unit 3 were the fairest benchmarks for calculating a disallowance for ICPA costs.[25] Further, he explained that this methodology removed transmission and administrative costs from the Belle River and Campbell Unit 3 expenses.[26] Mr. Bodiford explained that the disallowance would be calculated by comparing the ICPA costs to the average of the adjusted MPPA/Belle River and MPPA/Campbell 3 costs, and that difference would then be multiplied by I&M's share of OVEC generation, and then multiplied by I&M's Michigan jurisdictional allocation to determine the disallowance.[27]

Mr. Bodiford testified that the appropriate adjusted cost for MPPA/Campell 3 was $38.61/MWh, the adjusted cost for MPPA/Belle River was $66.05/MWh, and that the average of these two values was $52.33/MWh.[28] He compared this average to I&M's reported costs of $67.69/MWh under the ICPA finding there to be a difference of $15.36/MWh, which he then multiplied both by I&M's generation from the ICPA (867,246

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[24] 3 Tr 195-196.
[25] 3 Tr 196-198. Notably, the recommendation in that PFD found that a comparison of OVEC to the Midland Cogeneration Venture (MCV) costs was less relevant as a point of comparison because the MCV is a combined-cycle gas generating plant while OVEC's plants uses coal-fired generators. See *id*, see also Case No. U-20805, December 1, 2023, PFD, p 49-50.
[26] 3 Tr 198 (citing Case No U-20805, December 1, 2023, PFD, p 49).
[27] 3 Tr 199.
[28] 3 Tr 200.

MWhs) and then by I&M's Michigan jurisdictional allocation (14.4%) to arrive at a proposed disallowance of $1,917,732.[29]

In rebuttal, Mr. Stegall emphasized that it was unnecessary to apply a disallowance when the ICPA produced a net benefit in 2022, that is, when the sale of energy provide by the ICPA exceeded the costs charged thereunder.[30] He further argued that if a benchmark was needed, then the Commission's transfer price was an appropriate benchmark for comparison because it is the Commission's own mechanism for estimating reasonable and prudent costs.[31]

If the Commission would not accept the transfer price, then Mr. Stegall offered two of the company's recent renewable energy contracts—the Mayapple and the Lake Trout solar facilities—as a benchmarks instead. He asserted that the levelized cost of energy (LCOE) for both solar facilities exceed the ICPA's average cost in 2022.[32] He argued that these solar facilities are apt benchmarks because—unlike the coal-fired plants offered as benchmarks by Staff—they are company resources, located within the footprint of the PJM regional transmission operator, and align with Michigan's planned transition to clean energy.[33]

Mr. Stegall critiqued the Commission's decision to evaluate the ICPA's adherence to the Code of Conduct by looking to comparisons with other long-term supply options. He stated that the Commission did not provide specific factors to be considered when making market comparisons, and he opined that this approach leaves the company

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[29] 3 Tr 200; See also Exhibit S-3.2 to support Staff's calculation of the disallowance.
[30] 3 Tr 141; 143-144.
[31] 3 Tr 142-143.
[32] 3 Tr 145. Notably, I&M placed the cost per megawatt-hour for these facilities in the confidential record.
[33] 3 Tr 145-146.

"forced to guess what 'market' its decisions will be compared to at the end of the year."[34] He contended that, if the Commission plans to use market price comparisons, then the Commission should inform the company before its PSCR Plan what market price comparison the Commission intends to utilize.[35] He highlighted the fact that in Case No U-20530, the benchmark comparison included the MCV, whereas the PFD in Case No. U-20805, and Staff in the instant case, both excluded the MCV contract as an outlier.[36]

Mr. Stegall also objected to the method used to calculate the disallowance in previous cases and as proposed by Staff in the instant case. He argued that rather than using an arithmetic average that equally weighs benchmark comparators, the Commission should instead "require all contracts compared to the ICPA to be combined on a weighted average basis."[37] Mr. Stegall also contended that the Commission should "account for differences in the contracts compared to the ICPA."[38] In this vein, he distinguished the MPPA contracts from the ICPA by noting that MPPA has an ownership interest in Belle River and Campbell 3, and MPPA reports operating costs in O&M categories while I&M has no ownership interest in OVEC and records costs as purchased power expenses.[39] He further contended that the scheduled retirement of Campbell 3 in 2025 and the conversion of Belle River to natural gas in 2028 would negate any

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[34] 3 Tr 147.
[35] 3 Tr 147.
[36] 3 Tr 151-152. Notably, Mr. Stegall states that the company agrees that the MCV contract is not comparable to the ICPA and should not be used as a comparator in this case or in future cases.
[37] 3 Tr 153.
[38] 3 Tr 154.
[39] 3 Tr 154.

comparability between those contracts and the ICPA, which would therefore require new comparators in future cases.[40]

Finally, while maintaining that a disallowance was unnecessary, he contended that Staff's comparison of the ICPA to Belle River and Campbell 3 was flawed because it "does not identify comparable costs in order to provide an 'apples-to-apples' comparison between the three contracts."[41] Toward this end, he compared monthly OVEC bills with the MPPA financial statements in Staff Exhibit S-3.1 to break out several individual cost contributors, including but not limited to transmission costs, administrative and general costs, depreciation, taxes, and debt service.[42] Later, he excluded taxes from the ICPA for the sake of comparison because MPPA is a tax-exempt entity, and he also added an average rate of return for each MPPA contract to "ensure that had an investor-owned utility purchased an ownership interest in a generating facility in the way MPPA has, it would incur a cost related to the capital provided by its investors."[43] After making these adjustments, he compared the weighted (rather than arithmetic) average of his newly adjusted Campbell 3 and Belle River costs, $69.75/MWh, to the cost of the adjusted ICPA, $68.09/MWh.[44] He concluded that this adjusted analysis showed that the ICPA was "in line with a portfolio that includes both MPPA contracts once all three are presented on a comparable basis."[45]

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[40] 3 Tr 155.
[41] 3 Tr 156.
[42] 3 Tr 156-157; see also Table JMS-1R at 3 Tr 157.
[43] 3 Tr 161-162; see also Table JMS-3R at 3 Tr 162.
[44] 3 Tr 162; see also Table JMS-3R at 3 Tr 162.
[45] 3 Tr 162.

3. Positions of the Parties

In briefing, the company maintains that a disallowance is unnecessary because sales of the ICPA's energy in 2022 produced a net benefit after subtracting the charges billed by OVEC.[46] The company also maintains that the transfer price is an appropriate comparator and that the cost of the ICPA compares favorably to the transfer price on a cumulative basis.[47] I&M asserts that as an alternative, the Commission should compare the ICPA to the costs of two of the company's new solar facilities, Mayapple and Lake Trout, which both had a LCOE that exceeded the ICPA's average cost in 2022.[48]

The company asserts that there are five issues with Staff's arguments: (1) Staff does not acknowledge the ICPA's $1.6 million in net benefits in 2022; (2) inconsistency in past cases (i.e., U-20530 and the PFD in U-20805) regarding whether to use the MCV as a comparator; (3) the failure to combine comparators using a weighted average basis; (4) the failure to account for various material differences in contracts; and (5) the fact that Staff's proposed comparators will retire (Campbell Unit 3) or be converted to run on natural gas (Belle River) in the near future.[49] The company reiterates testimony from Mr. Stegall arguing that the ICPA is reasonable and prudent after several adjustments are made to the MPPA contracts to adjust for differences between the MPPA contracts and the ICPA.[50]

I&M also presents an extensive series of legal arguments maintaining that the Code of Conduct cannot apply to the ICPA while acknowledging that the Michigan Court

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[46] I&M pp 28, 32-34.
[47] I&M pp 28-30; 35-36.
[48] I&M pp 34, 35.
[49] I&M p 37-39.
[50] I&M p 40-41.

of Appeals recently reached the opposite conclusion in a published opinion.[51] The company contends that the Code of Conduct is invalid as applied to the ICPA because, as an administrative rule, it exceeds the powers granted to the Commission and is being applied in an arbitrary and capricious manner.[52] The company also contends that the delegation of legislative authority used to create the Code of Conduct was unlawful.[53] The company argues that the Code of Conduct cannot apply retroactively to the ICPA because the ICPA predates the Code of Conduct and because there is no legislative indication that it was intended to apply retroactively.[54] Further, the company contends that even if applied prospectively, the Code of Conduct would violate the respective Contract Clauses, Taking Clauses, and Due Process Clauses of both the U.S. and Michigan Constitutions.[55] The company also asserts that the Code of Conduct does not apply to the ICPA because it is a federally regulated wholesale power agreement outside of the Commission's jurisdiction and the Commission cannot set the price of federally regulated wholesale contracts.[56]

In its initial brief, Staff generally repeats the arguments presented by its witnesses, asserts that the company provided inapt comparators, recaps the recent Court of Appeals decision upholding the Commission's application of the Code of Conduct to the ICPA, and recommends a disallowance of $1,917,732.[57]

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[51] I&M p 42; see also *In re Application of Indiana Michigan Power Company*, ___ Mich App ___; ___ NW2d ___ (2024) (Docket No. 365180). Notably, I&M explains that it filed an application for leave to appeal from this decision with the Michigan Supreme Court. That application remains pending as of the date of this PFD.
[52] I&M p 44-49.
[53] I&M p 49-52.
[54] I&M p 52-57.
[55] See generally I&M p 57-65.
[56] See generally I&M p 66-71.
[57] See generally Staff p 4-11.

The company replies that Staff "glosses over the fact the record contains evidence that the PJM market energy value alone of the exact resource Staff is proposing a disallowance for produced a profit that offset the total cost billed by OVEC."[58] The company contends that it is not reasonable or logical to conclude that the ICPA did not comply with the market price cap when it generated more PJM market revenue that it cost.[59] The company argues that Staff is essentially stating that it does not matter that the company's customers benefited from the ICPA in 2022 because I&M still ostensibly paid more than the market value for OVEC power.[60] The company asserts that this case demonstrates that the Code of Conduct's price cap and Act 304's reasonable and prudent standard cannot coexist because it is illogical to believe that it was unreasonable and imprudent to rely on a resource that results in revenues that offset the total cost paid.[61]

The company also contends that its Lake Trout and Mayapple solar projects are appropriate proxies to compare to the ICPA. The company argues that an administrative law judge in a previous case asserted that it was appropriate to consider Lake Trout and Mayapple in determining whether ICPA costs are reasonable.[62] According to the company, these solar resources are relevant to the market analysis because they represent the likely type of resource that would replace the ICPA under current market conditions.[63] The company also emphasizes that Lake Trout and Mayapple are in the PJM regional transmission organization, unlike the MPPA agreements proposed by

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[58] I&M Reply p 3.
[59] I&M Reply p 3.
[60] I&M Reply p 4.
[61] I&M Reply p 4.
[62] I&M Reply p 5.
[63] I&M Reply p 5.

Staff.[64] The company also repeats arguments presented in its initial brief regarding the ICPA as a federally-regulated contract outside of the Commission's jurisdiction.[65]

Staff replies that the company is incorrect to focus on the alleged net benefit provided by the ICPA in 2022. Staff explains that it "has an obligation to evaluate the ICPA costs to ensure their compliance with the Code of Conduct, not whether or not it provides a net benefit in a given year, which depends on numerous variables."[66] Staff argues that the company's focus on the ICPA's ostensible net benefit in 2022 is an attempt to factually distinguish this case from previous cases, but it "ignores that the purchase price was unreasonable."[67] Staff explains that the unreasonableness of a purchase price for failure to abide by the Code of Conduct cannot be negated by other revenues generated from the sale of power from that same source, and the net benefit could have been larger if the purchase price complied with the Code of Conduct.[68]

Staff repeats that the Commission previously rejected the company's argument that the transfer price is an appropriate proxy.[69] Staff also argues that I&M's Mayapple and Lake Trout solar resources are not appropriate comparators for the reasons stated in Case No. U-20805, which adopted the reasoning of the PFD in that case.[70] The concerns in that case regarding solar resources in that case were that that those facilities were not to be built or available until 2026 or 2028, they were acquired to meet IRP and renewable energy requirements and are not analogous to the ICPA's coal-fired

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[64] I&M Reply p 7.
[65] I&M Reply p 7-9.
[66] Staff Reply p 2.
[67] Staff Reply p 2.
[68] Staff Reply p 2-3.
[69] Staff Reply p 3-4.
[70] Staff Reply p 7.

generation, and they were PPAs negotiated by the company itself under circumstances wherein the company was required to pay more than the initial bid prices.[71]

Staff also addressed the various methods by which the company proposed to modify comparisons of the ICPA with the MPPA contracts. Overall, Staff contends that it "does not disagree" with attempting to account for differences when comparing the ICPA to other contracts, but Staff objects to adjustments if the pertinent information is unavailable, unverifiable, or speculative.[72]

Staff rejects I&M's contention that an adjustment should be made because MPPA made an initial investment in Campbell 3 and Belle River whereas I&M made no initial investment in OVEC. Staff contends that "[t]he initial investment flow-through is not verified as reflected in the $/MWh costs for the energy. Therefore, any costs imputed to the cost comparison, derived from these assumptions, is speculative."[73] Staff rejects the company's claim that an adjustment should be made to recognize that all capital has a cost in relation to debt financing; Staff asserts that the company's argument or adjustment in this vein is not well-substantiated and should not be imputed into comparison calculations.[74] Staff rejects the company's proposed adjustment to include a cost of return on Campbell 3 and Belle River because it represents an entirely hypothetical calculation of the MPPA's benefit of being a public power agency rather than an investor-owned utility.[75]

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[71] Staff Reply pp 7, 8 (citing the PFD issued in Case No. U-20805).
[72] Staff Reply p 9.
[73] Staff Reply p 4.
[74] Staff Reply p 6.
[75] Staff Reply p 6.

However, Staff agrees that it is reasonable to remove the effect of taxes from the ICPA since the MPPA is a tax-exempt entity whereas the company is not.[76] Staff also agreed that if O&M costs are present in the OVEC price, then Staff would consider including them in the MPPA price to make the comparison more reasonable, although Staff also contends that the O&M costs should be clearly quantifiable and that the company should prove that their inclusion makes the comparison more reasonable.[77] Additionally, Staff "does not disagree" that if the ICPA is to be compared to other contracts, then the comparators could be combined on a weighted-average basis.[78]

4. Findings, Conclusions, and Recommendations

The company presented two distinct lines of argument regarding the ICPA. First, the company presented several arguments opposing the application of the Code of Conduct to the ICPA. Second, the company presented arguments disputing the appropriate comparators for the ICPA. Both lines of arguments will be addressed separately.

a. Arguments Opposing the Application of the Code of Conduct

As an initial matter, several of the company's arguments opposing the application of the Code of Conduct to the ICPA have been rejected by the Michigan Court of Appeals and have also been rejected in past Commission cases, including but not limited to the PSCR case underlying this reconciliation. These previously addressed and refuted arguments include the company's contentions: (1) that the Code of Conduct goes beyond the legislative intent with regard to its price cap provision; (2) that the Code of Conduct

[76] Staff Reply p 5.
[77] Staff Reply p 5.
[78] Staff Reply p 8.

cannot be harmonized with the reasonable-and-prudent standard of Act 304; (3) that the Code of Conduct is not aligned with or is an improper delegation of authority when viewed in the light of its enabling act, MCL 460.10ee; and (4) that application of the Code of Conduct to the ICPA would be an unlawful retroactive impairment of I&M's vested rights. See *In re Application of Indiana Michigan Power Company*, ___ Mich App ___; ___ NW2d ___ (2024) (Docket No. 365180); slip op at 8-16; See also Case No. U-21052, Order, June 22, 2023, p 21.[79] This PFD will not individually address these arguments because they have already been decided against the company in a published and binding decision of this State's intermediate appellate court and by past Commission precedent, which is hereby incorporated by reference as if fully restated herein.[80]

Other arguments challenging the Code of Conduct's application that were not specifically addressed by the recent Court of Appeals decision[81] have also previously been addressed in past Commission cases. These previously refuted arguments include the company's contentions: (1) that the application of the Code of Conduct is arbitrary and capricious; (2) that application of the Code of Conduct to the ICPA would violate the respective Contract and Takings Clauses of the U.S. and Michigan Constitutions; (3) that the Code of Conduct does not apply to federally regulated wholesale service contracts

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[79] In Case No. U-21052, the Commission itself incorporated by reference its holdings in three previous orders and continued stating that "and, finding the ALJ's analysis in the instant proceeding at pages 24-31 of the PFD to be well-reasoned and aligned with the Commission's previous decisions on this issue, adopts the PFD." See also Case No. U-21052, PFD, March 29, 2023, p 24-31 (Containing the section of the adopted PFD that analyzes and rejects I&M's various arguments concerning the Code of Conduct).

[80] Case No. U-21052, Order, June 22, 2023, p 21 (Incorporating by reference past Commission holdings (which this PFD now also considers to be incorporated by reference herein as well) and adopting the reasoning of the March 29, 2023, PFD issued in that case).

[81] See *In re Application of Indiana Michigan Power Company*, ___ Mich App ___; ___ NW2d ___ (2024) (Docket No. 365180); slip op at 16, n 15 (Declining to address I&M's constitutional arguments regarding the Contract and Takings Clauses of the Michigan and U.S. Constitutions because such issues were not properly presented to the Court).

such as the ICPA or that the Commission cannot set the price of such contracts. While the doctrines of *res judicata* and collateral estoppel are not applicable in an administrative context, issues decided by the Commission through a contested case should not be relitigated absent a showing of new evidence or a change in circumstances. See *Application of Consumers Energy Co*, 291 Mich App 106, 122; 804 NW2d 574 (2010). Therefore, this PFD will not individually address these arguments because there is no new evidence or change in circumstances that would warrant revisiting the Commission's already well-settled legal analyses of these issues. Instead, this PFD incorporates by reference, as if fully restated herein, the relevant portions of several previous Commission orders which already addressed and rejected these arguments.[82]

However, one argument presented by the company has not been squarely addressed in past Commission decisions: the contention that application of the Code of Conduct violates I&M's right to due process under the respective Due Process Clauses of the Michigan Constitution[83] and the U.S. Constitution.[84] Michigan's Due Process Clause provides safeguards that are coextensive with that of its federal counterpart.[85] In administrative proceedings, before a person may be deprived of property by

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[82] These decisions incorporated by reference include Case No. U-21052, Order, June 22, 2023, p 21 (incorporating previous Commission orders and adopting the analysis of the PFD issued in that case); Case No. U-21261, Order, May 23, 2024, p 21 (incorporating previous Commission orders, noting the recent Court of Appeals decision in COA docket No. 365180, and adopting the analysis of the PFD in that case); Case No. U-20805, Order, April 11, 2024, p 13 (agreeing that the application of the Code of Conduct and market-price cap to the ICPA is well-settled per Commission precedent and affirmed by the Michigan Court of Appeals); Case No. 20530, Order, February 2, 2023, p 10-13 (addressing arguments related to the application of the Code of Conduct to the ICPA).

[83] Const 1963, art 1, § 17.

[84] US Const, Am V.

[85] *English v Blue Cross Blue Shield of Mich*, 263 Mich App 449, 459; 688 NW2d 523 (2004).

administrative rule, due process requires "that person must be afforded notice, an opportunity to be heard, and a written statement of findings."[86]

I&M contends that any disallowance would violate its right to due process because the ICPA predates the Code of Conduct and because a disallowance would unlawfully apply "20/20 hindsight" to the company's decision to enter the ICPA.[87] Neither of these arguments clearly implicates procedural due process because neither addresses notice or an opportunity to be heard in relation to this proceeding, both of which have clearly been provided to the company. Further, both of I&M's arguments in this vein have been addressed by the aforementioned Court of Appeals decision concerning I&M's ICPA. Indeed, the Court of Appeals noted that the Code of Conduct's market-price cap was already in effect in 2001, which predates the ICPA's most recent restatement in 2010.[88] Further, the Court of Appeals held that the Commission was applying the price cap prospectively as part of a reconciliation such that it was not forcing I&M to obviate vested contractual rights.[89]

In any event, I&M's due process claim would fail even if independently addressed on its substantive merits. I&M asserts that any disallowance under the Code of Conduct would deprive I&M of its "right to recoup costs expended to serve customers[.]"[90] Due process is violated only when legislation impairs vested rights.[91] "To constitute a vested

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[86] *Mich Electric Coop Ass'n v Mich Pub Serv Comm*, 267 Mich App 608, 622; 705 NW2d 709 (2005).
[87] See I&M pp 64, 65.
[88] *In re Application of Indiana Michigan Power Company*, ___ Mich App ___; ___ NW2d ___ (2024) (Docket No. 365180); slip op at 15.
[89] *In re Application of Indiana Michigan Power Company*, ___ Mich App ___; ___ NW2d ___ (2024) (Docket No. 365180); slip op at 15.
[90] I&M p 63.
[91] *Attorney General v Mich Pub Serv Comm*, 249 Mich App 424, 435; 642 NW2d 691 (2002).

right, the interest must be something more than such a mere expectation as may be based upon an anticipated continuance of the present general laws; it must have become a title, legal or equitable, to the present or future enjoyment of property[.]"[92] Simply put, I&M has no vested property right to recover all costs incurred under the ICPA. The Commission previously pointed out that the company failed to apply for a certificate of necessity for the ICPA under MCL 460.6s before signing the ICPA extension in 2010, and approval of such a certificate could have guaranteed cost recovery under law.[93] Instead, because I&M failed to present the ICPA to the Commission for approval, the Commission has the duty under statute to continuously evaluate the reasonableness of the PSCR plan and factors on an annual basis, including the costs arising under the ICPA and its amendments.[94] Accordingly, I&M has no vested property right to continual recovery of all costs incurred under the ICPA, and this fact vitiates the company's claim.

Finally, the company contends that there is simply no need to apply the Code of Conduct or calculate a disallowance because sales of the ICPA's energy in 2022 produced a net benefit after subtracting the charges billed by OVEC. This PFD rejects this argument for the reasons stated by Staff. The company's argument in this vein overlooks the plain text of Rule 8(4) and its purpose of preventing discrimination or favoritism between regulated utilities and their affiliates. Rule 8(4) does not focus on whether an affiliate contract proves to be a net benefit or net detriment to the company in a specific year, but rather, whether compensation under the affiliate contract is aligned

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[92] *Attorney General*, 249 Mich App at 436, quoting *In re Certified Question (Fun 'N Sun RV, Inc v Michigan)*, 447 Mich 765, 787-788; 527 NW2d 468 (1994).
[93] Case No. U-20804, November 18, 2021, Order, p 17-18.
[94] Case No. U-20529, May 13, 2021, Order, p 14.

with a market price.[95] Accordingly, the company's argument is unavailing because it focuses on a circumstance that is not pertinent to the Code of Conduct.

In sum, none of the company's various arguments opposing the application of the Code of Conduct have legal merit. Instead, most of the company's arguments in this vein have already been thoroughly addressed and rejected *ad nauseam* in past Commission cases and now also by the Michigan Court of Appeals.

b. Arguments Disputing Appropriate Comparators

The company proposes the transfer price as an appropriate comparator for ICPA pricing, but this PFD rejects that comparison for the reasons stated by Staff. The Commission previously explained that the transfer price has a specific purpose, and it is neither intended nor designed to be used as a market comparator in this context. Further, the Commission has stated that the fairest benchmarks for the ICPA are other comparable long-term agreements.[96] Accordingly, the company's reliance on the transfer price is misplaced and non-responsive to Commission precedent, which seeks comparisons with other long-term agreements.

In the alternative, the company also proposes its Mayapple and Trout Lake solar projects as comparators noting that they have higher LCOEs than the ICPA. This PFD rejects these comparators for one of the same reasons asserted in Staff's reply briefing. The Commission implicitly rejected a comparison to such resources in recently decided

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[95] Instead, the rule states in pertinent part that "If an affiliate or other entity within the corporate structure provides services or products to a utility, and the cost of the service or product is not governed by section 10ee(8) of 2016 PA 341, MCL 460.10ee(8), compensation is at the lower of market price or 10% over fully allocated embedded cost." Mich Admin Code, R 460.10108(4).

[96] Case No. U-20805, Order, April 11, 2024, p 14; see also Case No. U-20530, Order, February 2, 2023, p 11.

Case No. U-20805. As Staff points out, the PFD in that case (with which the Commission generally expressed agreement) found such resources to be inapt comparators because: (1) they would not be built or operational for several more years; (2) they were acquired to meet IRP and renewable energy requirements and are significantly different from coal-fired OVEC resources; and (3) because they are PPAs that the company itself negotiated.[97] The first concern, standing alone, is sufficient for this PFD to exclude Mayapple and Lake Trout from consideration as comparators because they are not operational in the relevant plan year to utilize as a basis for comparison. Further, the Commission has more recently and explicitly rejected comparisons of the ICPA to these resources.[98]

This PFD agrees with Staff and finds that the MPPA/Belle River and MPPA/Campbell unit 3 costs are reasonable and appropriate comparable costs to use when evaluating the ICPA. Indeed, both contracts involve coal-fired generation analogous to OVEC's generation and both contracts have been used as comparators in previous reconciliation cases involving the ICPA.[99]

The company objects to this comparison unless adjustments are made that align with Mr. Stegall's recommended adjustments to the MPPA contracts. This PFD notes that the Commission has recently stated that comparisons between long-term contracts can

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[97] Case No. U-20805, Order, April 11, 2024, pp 6; 13-14.
[98] Case No. U-21261, Order, May 23, 2024, p 20.
[99] See Case No. U-20530, Order, February 2, 2023, pp 8, 11 (adopting a disallowance based upon comparisons to Belle River and MCV); See also Case No. U-20805, Order, April 11, 2024, p 14 (adopting a disallowance based upon comparisons to Belle River, MCV, and Campbell Unit 3). This PFD notes that it does not take the MCV into consideration as a comparator only because that contract has not been specifically presented as a comparator by the parties in this case.

be "adjusted as necessary to ensure a fair comparison[.]"[100] While adjustments may be appropriate at times to make the comparison more equitable, this PFD agrees with Staff that adjustments should not be made if the pertinent information to substantiate the adjustment is unavailable, unverifiable, or speculative. For that reason, this PFD agrees with the company and Staff that it is reasonable to remove the effect of taxation from the ICPA since the MPPA is a tax-exempt entity whereas the company is not; further, the effect of taxation on the ICPA is susceptible to objective calculation and is not speculative. However, this PFD rejects the company's proposed adjustment to add an average return on net position to the cost of the MPPA contracts because it is a speculative adjustment meant to estimate the effect of the MPPA's status as a public power agency rather than an investor-owned utility. Simply put, it is not an appropriate adjustment because it is entirely speculative and is not susceptible to objective calculation.

Finally, this PFD agrees with Staff that it would not be inappropriate to use, as the company suggests, a weighted average of comparators to account for the relative difference in energy provided under the respective contracts. However, this PFD also finds that the company has not provided any particularly compelling reasoning to require the use of a weighted average either, aside from the fact that doing so would have a greater impact in this case than it would have had if it was applied in past cases. In previous cases, the Commission implicitly used an arithmetic average rather than a

[100] Case No. U-20805, April 11, 2024, Order, p 14.

weighted average, and this PFD advocates continuing to utilize that methodology both for the sake of consistency and because it is not inappropriate to do so.[101]

Based upon these considerations, this PFD recommends utilizing the disallowance calculation and figures recommended by Staff because it is aligned with Commission precedent.[102] However, this PFD also recommends making the company's proposed adjustment to exclude the effect of taxation on the ICPA ($1.09/MWh).[103] When that amount is removed from the cost of the ICPA, it then has an adjusted cost of $66.60/MWh in 2022, which is $14.27/MWh more than the arithmetic average of the combined benchmark Campell 3 and Belle River costs ($52.33/MWh). When that difference is multiplied by I&M's 2022 generation from the ICPA (867,246 MWhs), and then by I&M's Michigan jurisdictional share (14.4%), the resulting disallowance is $1,782,086. Accordingly, this PFD recommends that the Commission adopt that amount as a disallowance for the ICPA's noncompliance with the Code of Conduct.

C. EWR Shortfall

In Case No. 21207, I&M's 2021 EWR Reconciliation, the settlement agreement reached provided that "I&M is required to address the 2021 EWR energy savings performance relative to the 1% legislative standard in its next PSCR Reconciliation, consistent with Commission Order in U-20867, dated January 10, 2022."[104] In turn, the Commission's Order in Case No. U-20867 directed I&M as follows:

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[101] See generally Case No. U-20530, Order, February 2, 2023, pp 8, 11; Case No. U-20805, Order, April 11, 2024, p 14. This PFD notes that these Commission orders implicitly adopted disallowances based upon an arithmetic average as there was no mention of weighting the comparator contracts.
[102] See 3 Tr 200; See also Exhibit S-3.2.
[103] See 3 Tr 161.
[104] Case No. 21207, October 5, 2022, Settlement Order, p 4.

> to provide a detailed explanation and supporting documentation of the impacts of its failure to comply with the EWR savings requirements of Act 295, as amended by Act 342, on its power supply costs and needs, consistent with the Commission's authority to "consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue was not considered adequately at a previously conducted power supply and cost review."[105]

Notably, this direction was given in relation to I&M's 2021 PSCR reconciliation filing, Case No. U-20805. This PFD interprets the settlement agreement reached in Case No. U-21207 to require I&M to present, in the instant 2022 PSCR reconciliation case for 2022, the same type of analysis that the Commission required to be presented in Case No. U-20805.

I&M's analysis to comply with this order and the recommendations of Staff are discussed below, with background on the Commission's decision in Case No. U-20805 discussed in subsection 1, a review of testimony in this case in subsection 2, the positions of the parties in subsection 3, and findings, conclusions, and recommendations presented in subsection 4.

1. Background

As mentioned above, the Commission previously directed I&M to address to its unprecedented EWR shortfall in Case No. U-20805. The Commission's recent order in that case provides guidance for the instant case because the issue presented is identical, and the parties presented many of the same arguments in that case that are presented in the current one. In Case No. U-20805, the Commission adopted the PFD's conclusion that only PSCR costs should be considered in the reconciliation and that the company's

[105] Case No. U-20867, March 17, 2022, Order, p 10.

PSCR costs should be reduced by the total energy and capacity value of the savings shortfall that would have been avoided had I&M met its EWR savings target.[106]

2. Testimony

Mr. Walter presented the company's position in his testimony as well as in Exhibits IM-5 and IM-6. He stated that the company used 2022 PSCR costs as the relevant costs to be utilized in the analysis.[107] He further stated that the company made two "key assumptions" in its analysis: (1) that had I&M achieved EWR compliance at the 1% standard for 2021, that incremental performance would have reduced the cost of power supply fuel and market purchases to retail customers over the lifetime of the additional EWR investment; and (2) that I&M had to determine a counterfactual sales baseline to be used over the life of the EWR measures.[108] Mr. Walter explained his second key assumption as follows:

> To determine this counterfactual sales baseline, the Company assumed that the level of EWR shortfall for 2021 would reduce the Company's annual retail sales for the average life of the 2021 EWR Plan portfolio of measures. Further, in order to equate these future impacts with EWR measure benefit determination, the Company applied present value discounting to the future impacts using the Company's weighted average cost of capital.[109]

Mr. Walters expounded upon the EWR-related component of the company's analysis:

> The EWR component of the analysis, which is shown as EWR Performance in Exhibit IM-6 (JCW-2), first determines the level of 2021 EWR shortfall by taking the difference between 2021 actual EWR performance and the 2021 1% standard performance level based on actual 2021 kWh sales. EWR Plan 2021 budgets at the 1% compliance level are used to determine how much more EWR compliance would have cost. To determine the lifetime impact

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[106] Case No. U-20805, Order, April 11, 2024, p 19.
[107] 3 Tr 72-73.
[108] 3 Tr 73.
[109] 3 Tr 73-74.

> of EWR savings incremental performance to the 1% standard, the analysis uses the 2021 EWR Plan weighted average measure life of the portfolio and uplifts the energy savings amounts from at-the-meter to at-the-generator using I&M's energy system-loss factor.[110]

Further, Mr. Walters explained in detail the PSCR component of the company's analysis:

> In the PSCR component of the analysis, shown as PSCR Costs of Generation Supply Fuel & Market Purchases in Exhibit IM-6 (JCW-2), the Incremental Fuel Supply and Market Purchase Cost is determined. First, the 2021 energy savings shortfall from the EWR component is used to determine the counterfactual baseline of reduced retail kWh sales. This counterfactual baseline determines how much incremental cost was incurred in the PSCR using the 2022 PSCR Average Annual Cost of Energy Supply Fuel and Market Purchase Cost Rate (in $/kWh) which is the 2022 PSCR cost for energy-related costs only.
>
> Next, the Actual Cost of Energy Supply - Fuel and Market Purchases is determined by multiplying I&M Michigan actual retail sales and the 2022 PSCR Average Annual Cost of Energy Supply Fuel and Market Purchase Cost Rate (in $/kWh). To determine the Incremental Fuel Supply and Market Cost, the results of the two calculations described above are subtracted.[111]

Mr. Walters reported that his analysis showed that the incremental cost of EWR compliance exceeded the cost of increased fuel supply and market purchases borne by the company.[112] The figures he reported were incremental fuel supply and market purchase costs of $1,258,197 with avoided EWR incremental costs of $1,326,687, indicating that EWR compliance costs exceeded additional fuel supply costs by $68,490.[113] He concluded that the results of his analysis demonstrated that the PSCR costs were therefore prudent and reasonably incurred.[114]

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[110] 3 Tr 74.
[111] 3 Tr 74-75.
[112] 3 Tr 75.
[113] 3 Tr 75, Table JCW-1. See also Exhibit IM-6.
[114] 3 Tr 76.

Ms. Smith objected that the company's analysis was not an appropriate comparison of costs, and she explained:

> [A] more reasonable and prudent comparison would be all the expenses I&M's customers incurred, and will incur, for the Company's failure to comply with the Act. By only comparing EWR costs not incurred to the PSCR component of the customer's energy expenses or incremental fuel supply and market purchase costs is not comparing like costs.[115]

Ms. Smith testified that, given an average measure life (AML) of 11.49 years for the company's EWR programs, the company's customers will ultimately realize $729,190 of PSCR expenses caused by the company's EWR shortfall in 2021.[116] However, she testified that the "full picture" of the detriment to the company's customers is "much greater" because customers pay more than just the PSCR component of their bill.[117] Ms. Smith calculated that, had I&M achieved the 2021 EWR target, the total savings for all customers over the 11.49 year AML would be $9,476,465, a figure that already subtracted the EWR costs.[118] Ms. Smith opined that it was unreasonable for the company to claim that its failure to implement effective EWR measures had a positive financial effect on its customers; further, she opined that the failure to implement EWR measures at target levels resulted in increased greenhouse gas emissions and lower air quality.[119]

Ms. Smith presented a menu of seven options for the Commission to consider in response to the company's EWR shortfall:[120]

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[115] 3 Tr 217.
[116] 3 Tr 218.
[117] 3 Tr 218.
[118] 3 Tr 220.
[119] 3 Tr 221.
[120] See 3 Tr 221-223 for the seven EWR-related proposals.

The first option she presented was an adjustment of $63,463 to reflect the application of the PSCR rate of $0.0141 to the first year EWR savings shortfall of 4,506,473 kWh.

The second option was to order the above-mentioned calculation each year over the 11.49-year life of the EWR measures, with the 12th year prorated to reflect only 0.49 of the annual savings, and the per-kWh savings adjusted to reflect the PSCR rate then in effect.

The third option was identical to the second option, but it would allow the company to make up for the EWR shortfall in future years with additional energy savings; Ms. Smith provided an example of that calculation.

The fourth option she proposed was for the Commission to reduce PSCR costs by $575,762 in this reconciliation, calculated by multiplying the first-year savings shortfall (4,506,473 kWh) by the company's total revenue per kWh of $0.1278.

The fifth option was to adopt the method of calculation in option four and then apply it for each year of the 11.49-year life of the EWR measures (with the 12th year prorated), similar to the second option.

The sixth option was to determine that the lifetime net cost to ratepayers that she calculated of $6,267,511 should be returned to customers through rates.

The seventh option she identified was to reduce the company's PSCR costs by $575,762 this year, and it would make the same calculations in future years through the

11.49-year life of the measures as explained in the fifth option, but it would also allow I&M to offset those future reductions with additional kWh savings (similar to option 3).[121]

Ms. Smith testified that she highly recommended option seven as the most appropriate, but she also stated that all the options she presented "are a more fair and equitable compensation to customers" when compared to the company's suggestion that their customers received a benefit from the company's failure to meet its EWR target.[122]

In rebuttal, Mr. Walter contended that Staff's "assertions are inconsistent with the Commission's order directing I&M to undertake the EWR compliance analysis[.]"[123] He explained that:

> I&M analyzed the appropriate costs in good faith using both EWR and PSCR methodologies to create alignment, reasonableness, and prudency across two different perspectives - one that considers near term annual cost only in the PSCR versus EWR that considers the present value of lifetime benefits accruing to customers for the avoidance of a future capacity and energy supply resource asset-based expenditure.[124]

He defended I&M's decision to solely use PSCR fuel and market purchase costs because those costs vary based upon how much energy customers consume such that they would be affected by EWR measures.[125] He contrasted the variable nature of PSCR fuel and market purchase costs to fixed costs, such as those incurred in generation and distribution; further, he criticized Ms. Smith's calculation for using all costs, including fixed costs, which he asserted results in Mr. Smith's calculations "significantly overstating the impact of I&M['s] EWR compliance shortfall."[126] He calculated that the EWR savings

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[121] See 3 Tr 221-223 for the seven EWR-related proposals.
[122] 3 Tr 223-224.
[123] 3 Tr 79.
[124] 3 Tr 81.
[125] 3 Tr 83.
[126] 3 Tr 84.

shortfall of 4,506,473 kWh would contribute only 0.16% or 0.842 MW to the company's peak demand of 540.569 MW, and thus he contended that "the 2021 EWR compliance shortfall would not expect to cause any additional fixed cost expenditure for system capacity."[127]

Mr. Walter also objected that Ms. Smith "did not apply a present value discounting approach to the future year energy savings whereas I&M's analysis did."[128] He testified that Ms. Smith therefore "overstates the effect of future savings for customers and is not consistent with the commonly used methodology for evaluating the cost of future energy supply, both in the industry and in other Commission proceedings such as the Commission's renewable transfer price."[129] He asserted that without discounting and by including fixed costs, Ms. Smith's approach "results in a financial penalty that is not reflective of the impact the EWR shortfall had on I&M's power supply costs."[130]

Mr. Walter testified that, while he stood behind his original analysis, he also prepared an alternative analysis, reflected in his rebuttal Exhibit IM-9a, that uses Ms. Smith's approach and methodology except for the use of I&M's 2021 total revenue. He testified that his alternative analysis "maintains the appropriate use of PSCR fuel and market supply variable costs consistent with the Commission's Order in Case No. U-21207."[131] He testified that his alternative analysis demonstrated that I&M's net expenditures for additional energy generation and purchases were $21,252 less than the

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[127] 3 Tr 84-85.
[128] 3 Tr 86.
[129] 3 Tr 86.
[130] 3 Tr 86.
[131] 3 Tr 87. Note that in footnote 2 at 3 Tr 87, Mr. Walter described an additional correction to Ms. Smith's calculations that combines the EWR cost of commercial and industrial customers with EWR cost of residential customers.

cost of incremental EWR compliance; thus, his alternative analysis without present value discounting implied that customers benefited from I&M's failure to meet the EWR target.[132]

Mr. Walter further testified that other costs should be factored into Staff's analysis, including the incremental costs that customers would pay for the EWR measures not covered by the company's rebates, as well as the financing costs some customers would incur to pay their share of EWR measures. He included in Exhibit IM-9a a second "alternative analysis" to reflect these costs, citing column 4 of that exhibit, and information gleaned from the company's EWR reconciliation filing.[133] He contended that when these additional costs are applied, EWR compliance appeared even more expensive than the company's failure to reach the EWR compliance.[134]

Mr. Walter also presented a third alternative analysis in column 5 of Exhibit IM-9a which reflected the EWR costs I&M would have incurred if the shortfall of EWR savings were achieved through a one-year measure life resource that compares directly to the one-year PSCR cost impact.[135] He testified that the company used its 2021 Home Energy Reports program costs to determine the rate used for incremental energy savings and compliance.[136] Using this analysis, he concluded "[w]hen compared against the PSCR fuel and market purchase costs, the cost of EWR incremental compliance energy savings is less, where the net cost outcome is $14,313 favorable to EWR compliance."[137]

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[132] 3 Tr 87.
[133] 3 Tr 87-89. See also Exhibit IM-9a, Column 4.
[134] 3 Tr 89.
[135] 3 Tr 89-90. See also Exhibit IM-9a, Column 5.
[136] 3 Tr 91.
[137] 3 Tr 91.

3. Positions of the Parties

In initial briefing, the company repeats the EWR analysis presented by Mr. Walter, recounts Staff's position, and recaps Mr. Walter's opposition to Staff's methodology and Staff's seven different proposals for assessing the impact of the EWR shortfall.[138]

Staff's brief reiterates that the Commission should reject the company's position that its customers were positively affected by the company's failure to meet its EWR target and should adopt one of Staff's proposals for addressing the EWR shortfall.[139]

In reply, the company rests on its initial brief but also notes that the Commission recently addressed the company's EWR impact analysis in Case No. U-20805. The company notes that in that case, the Commission stated that the analysis should consider "PSCR costs that would have been avoided had I&M met the 1% target in its approved EWR plan."[140] The company maintains that its EWR impact analysis was appropriate, aligned with the Commission's directions, and recommends that the Commission should not impose a penalty related to EWR obligations in a PSCR proceeding.[141] Staff's reply provides no further arguments on this issue.

4. Findings, Conclusions, and Recommendations

As discussed in section 1, the Commission recently decided that, when addressing EWR shortfalls in the PSCR context, the company's PSCR costs should be reduced by the total energy and capacity value of the EWR savings shortfall that would have been avoided had the company met its EWR savings target.[142] The same approach toward the

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[138] I&M p 18-27.
[139] Staff p 11-14.
[140] I&M Reply p 9 (quoting Case No. U-20805, Order, April 11, 2024, p 19.)
[141] I&M Reply p 9.
[142] See Case No. U-20805, Order, April 11, 2024, p 19.

company's 4,506,473 kWh EWR shortfall[143] is appropriate in the instant case in order to maintain consistency with Commission precedent. Accordingly, this PFD recommends that the Commission disallow PSCR costs that would have been avoided had I&M met its EWR target in a manner consistent with the Commission's Order in Case No. U-20805.[144]

The parties' various arguments related to other methods of addressing the EWR shortfall need not be considered further because the Commission has already determined how to address EWR shortfalls in PSCR reconciliation proceedings, and there is no new evidence or change of circumstance that would require reconsideration of the methodology selected by the Commission. See *Application of Consumers Energy Co*, 291 Mich App at 122 (stating that issues decided in earlier PSC proceedings need not be relitigated in later proceedings unless there is new evidence or a change in circumstances).

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[143] 3 Tr 217. See also Exhibit S-2, Line 1.2.

[144] See Case No. U-20805, Order, April 11, 2024, p 19 (adopting the disallowance calculation presented on pages 83-84 of the December 1, 2023, PFD entered in that case). This PFD notes that it is unclear whether the market value of energy and capacity value, as were used to calculate the disallowance in Case No. U-20805, are present in the current record.

IV.

CONCLUSION

Based upon the findings and conclusions above, this PFD recommends that the Commission:

(1) Revise the beginning balance to reflect a net underrecovery of $4,386,719 in accordance with the Commission's previous order;[145]

(2) Revise the PSCR calculations to reflect the proper interest rate in July of 2022 as recommended by Staff;

(3) Adopt a disallowance for OVEC ICPA costs of $1,782,086 using the methodology explained above; and

(4) Adopt a disallowance of PSCR costs that would have been avoided had I&M met its EWR target in a manner consistent with the Commission's Order in Case No. U-20805.

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

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James M. Varchetti
Administrative Law Judge

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[145] Case No. U-20805, April 11, 2024, Order, p 20.