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 12 months ending December 31, 2024	)))))	Case No. U-21427

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 August 2, 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 August 23, 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 September 6, 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: 2024.08.02 09:36:10 -04'00'

August 2, 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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In the matter of the application of INDIANA MICHIGAN POWER COMPANY for approval to implement a power supply cost recovery plan for the 12 months ending December 31, 2024	))))))	Case No. U-21427

PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

On September 29, 2023, Indiana Michigan Power Company (I&M) filed its application with the Public Service Commission pursuant to 1982 PA 304 (Act 304), MCL 460.6j, requesting approval of its Power Supply Cost Recovery (PSCR) plan and monthly PSCR Factors for the 12-month period encompassing January 2024 through December 2024. I&M's application sought approval of a PSCR factor of 11.44 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 Case No. U-15004, I&M's 2007 PSCR Plan.

Pursuant to due notice, a pre-hearing conference was conducted on November 16, 2023. I&M and Commission Staff appeared at that proceeding, the Attorney General

intervened by right,[1] and intervention was granted to Sierra Club and the Citizens Utility Board (collectively referred to in this PFD as "Sierra Club"[2]).

Based upon the schedule established at the pre-hearing conference, a hearing was held on May 9, 2024. During the hearing, I&M witness Jason Stegall was cross-examined, and I&M entered the testimony of the following witnesses:

1. Hazel A. Baker, Resource Planning Analyst in the Corporate Planning and Budgeting Department, American Electric Power Service Corporation (AEPSC)[3] (Direct);

2. Keith A. Steinmetz, Manager of Nuclear Engineering for I&M (Direct);

3. Darryl H. Scott, Manager of Reagents Procurement & Coal Combustion Products, AEPSC (Direct);

4. Shelli A. Sloan, Director of Financial Support and Special Projects in the Corporate Planning and Budgeting Department, AEPSC (Direct);

5. Michelle M. Howell, Director of Transmission Settlements, AEPSC (Direct);

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

7. Jason M. Stegall, Director of Regulatory Services, AEPSC (Direct and Rebuttal).

Through these witnesses, I&M entered exhibits IM-1 through IM-22.[4]

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

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[1] Notably, the Attorney General did not participate in this proceeding beyond filing a notice of intervention.
[2] For simplicity this PFD refers to both Sierra Club and Citizens Utility Board simply as Sierra Club because these parties jointly filed testimony and briefing.
[3] As was explained by several witnesses, AEPSC supplies engineering, financing, accounting, and other support services to subsidiaries of American Electric Power, one of which is I&M.
[4] Certain testimony and exhibits filed by I&M or other parties in this case are deemed confidential and have been filed under seal.

Sierra Club entered the direct testimony of Devi Glick, a Senior Principal at Synapse Energy Economics, an energy and environmental research and consulting firm, and Sierra Club entered exhibits SC-1 through SC-13C, SC-15, SC-17 through SC-38, SC-40 through SC-42, and SC-44 through SC-47.[5]

The evidentiary record is contained in the public and confidential testimony and exhibits bound into the record during the May 9, 2024, hearing. I&M, Staff, and Sierra Club filed initial briefs on June 7, 2024, and I&M and Sierra Club thereafter filed reply briefs on June 28, 2024.[6]

II.

STATUTORY REQUIREMENTS

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)(b).

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

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[5] Again, certain exhibits have been deemed confidential and are filed under seal. Their confidential nature, at least for exhibits submitted by Sierra Club, is designated by the letter "C" appended to the exhibit number.
[6] I&M and Sierra Club filed both public briefs and confidential briefs with sensitive information redacted. References to briefing in this PFD will generally be to the publicly available brief unless otherwise noted.

this information, the utility is to request specific PSCR factors for each of the 12 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 2024 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 2024 through 2028, the annual and monthly projections of: actual and forecasted seasonal peak internal demands, energy requirements, and load factors through 2028; 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 classes, other internal requirements, and the total internal energy requirements for I&M; month-by-month projections for 2024 and for the five-year forecast period 2024-2028 of I&M's energy sales into the PJM[7] market; I&M's expected capacity resources for the 2024 summer peak and I&M's committed capacity/energy purchase agreements; a projected

[7] PJM is the Regional Transmission Organization (RTO) to which I&M belongs.

PJM view of summer peak demands, capabilities, and margins for I&M for the 2024/25 PJM planning year through the 2028/29 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.

I&M provided extensive record evidence to support its projections for these aspects of its PSCR plan and 5-year forecast.[8] Based upon this record and the lack of objection from intervening parties, the projections for these categories as used to develop the proposed PSCR factor should be accepted.

The sole issues that are contested by the parties in this proceeding are: (1) the projected costs for purchased power from 2024 through 2028 under an Inter-Company Power Agreement (ICPA) with the Ohio Valley Electric Corporation (OVEC);[9] (2) whether the Commission's Code of Conduct[10] applies to the ICPA, and (3) I&M's commitment decisions regarding its Rockport facility. I&M's evidentiary presentation related to these disputed issues is discussed below in further detail.

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[8] See generally Exhibits IM-1 through IM-5, IM-7, IM-10 through IM-21. See also 2 Tr 21-42 (Testimony of Hazel A. Baker).

[9] The projected purchases from OVEC for the plan year and for the 5-year forecast are contained in Exhibits IM-8 and IM-9.

[10] MCL 460.10ee authorized the Commission to establish a code of conduct to prevent cross-subsidization, preferential treatment, and unlawful information sharing between a utility's regulated electric, steam, or natural gas services and unregulated programs and services. See MCL 460.10ee(1). The Commission has promulgated rules pursuant to this statutory authority at Mich Admin Code, R 460.10101 through R 460.10113, referred to as the Code of Conduct.

A. The OVEC ICPA

Mr. Stegall provided a brief overview and history of OVEC and the ICPA, including the ICPA's most recent restatement in 2010 extending the agreement's duration from 2026 to 2040.[11] Under the terms of the ICPA, OVEC sells power and energy produced by OVEC to its Sponsoring Companies, including but not limited to I&M. Mr. Stegall testified that I&M purchases 7.85% of OVEC's capacity and energy at cost, and that I&M uses 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.[12]

Mr. Stegall stated 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.[13] He stated that OVEC is primarily debt-financed, so any renegotiation would need to be carried out in a way that does not violate its borrowing agreements, and he added that any change in the ICPA would require FERC[14] approval because the ICPA is a FERC-approved contract.[15] Mr. Stegall recounted that only one Sponsoring Company, First Energy Solutions, sought to withdraw from the ICPA without seeking unanimous agreement of all the signatories to the ICPA and FERC approval, but that company withdrew its efforts after suffering a setback from a federal Court of Appeals decision that referenced FERC jurisdiction.[16] He opined that there was

[11] 2 Tr 121.
[12] 2 Tr 123.
[13] 2 Tr 122.
[14] Federal Energy Regulatory Commission
[15] 2 Tr 122.
[16] 2 Tr 122-123.

no reason to believe that I&M could achieve a different result if it attempted to exit the ICPA.[17]

Mr. Stegall stated 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, and in Case No. U-21052, the Commission instructed I&M to take meaningful steps to minimize costs or to renegotiate the ICPA. He asserted that, as provided in a confidential exhibit,[18] OVEC reported its continuous improvement efforts in 2022, and that OVEC has identified $9 million in future savings.[19] Mr. Stegall also asserts that OVEC's continuous improvement process has been in place since 2013 and has yielded $26.7 million in savings.[20] Further, Mr. Stegall contends that I&M has taken additional steps to manage the ICPA since the Commission issued its order in Case No. U-21053 citing Confidential Exhibit IM-22, which is a letter from I&M addressed to OVEC.[21]

Addressing the long-term value of the ICPA, Mr. Stegall testified that three evaluations found the ICPA to be favorable to other alternatives. He stated that two of these evaluations were benchmark studies filed with FERC in 2004 and 2011 that were associated with I&M's respective decisions to extend the ICPA.[22] The third evaluation was I&M's modeling associated with its most recent IRP in Case No. U-21189. Mr. Stegall explained that the company modeled the early termination of the ICPA in 2022 and 2030 and found that the net present value of incremental costs to exit the agreement would be

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[17] 2 Tr 123.
[18] As this PFD notes at a later point, it appears that the confidential exhibit reference by Mr. Stegall regarding OVEC cost-cutting measures was not admitted into evidence in this proceeding.
[19] 2 Tr 124.
[20] 2 Tr 124.
[21] 2 Tr 125; see also Exhibit IM-22 (Confidential).
[22] 2 Tr 125.

higher than the net present value of the costs of the company's generation portfolio that include the ICPA by $169 million to $346 million (for a 2022 exit) or by $54 million to $128 million (for a 2030 exit).[23]

Mr. Stegall performed a comparison of OVEC energy costs to the net revenues I&M received from selling its share of energy from 2017 through August of 2023, and that comparison shows that aside from 2020 and the first eight months of 2023, I&M received a net benefit from OVEC energy.[24] Mr. Stegall also compared the cost of energy purchased from OVEC to the energy cost of the Midland Cogeneration Venture (MCV) facility and to the load-weighted average cost of the PJM day ahead energy market since 2016. He asserted that the energy costs of OVEC, unlike those of MCV or market prices, provided a stable and, on average, lower energy price in times of market fluctuations.[25] He concluded that I&M benefits from the ICPA because its cost of energy is generally below market price and has provided price stability that is expected to continue into the planning period.[26]

B. Rockport

Ms. Baker stated that the Rockport Plant consists of two 1,300 MW 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 reflecting the following Rockport Unit 1 related arrangements: (a) I&M's 50% ownership share of Rockport Unit 1 (i.e., 660 MW of Unit 1), and (b) AEG's 50% share of Rockport Unit 1

[23] 2 Tr 126.
[24] 2 Tr 126-127; see also Table JMS-1 at 2 Tr 127.
[25] 2 Tr 127-128; see also Figure JMS-1 at 2 Tr 128.
[26] 2 Tr 128-129.

(i.e., 660 MW of Unit 1).[27] She asserted that I&M's lease on Rockport Unit 2 concluded in 2022 and I&M is no longer entitled to energy from Rockport Unit 2.[28] Ms. Baker testified that under the terms of the Unit Power Agreement (UPA) between I&M and AEG, AEG makes available to I&M up to 100% of the power and energy from its share of Rockport Unit 1 with I&M, in turn, paying AEG amounts sufficient to cover AEG's operating and other expenses related to the amount of power sold to I&M.[29]

Ms. Baker testified 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 and subject to transmission limitations.[30] She stated that such operation was simulated in the development of the generation forecast by means of the PLEXOS® simulation model, a computer program developed by the firm Energy Exemplar.[31] Ms. Baker explained that I&M models the commitment and dispatch of the Rockport unit in PJM as economic, and that the model commits Rockport Unit 1 in PJM based on variable energy costs (i.e. fuel and variable O&M[32]), which is the same basis that the PJM market-price is determined.[33] She added that the 2024 plan year and five-year forecast do not include any uneconomic commitment or uneconomic operation of Rockport Unit 1.[34]

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[27] 2 Tr 28.
[28] 2 Tr 28.
[29] 2 Tr 28.
[30] 2 Tr 40.
[31] 2 Tr 40-41.
[32] Operations and Maintenance.
[33] 2 Tr 41.
[34] 2 Tr 41.

Mr. Stegall states that the UPA is a wholesale contract between I&M and its affiliate AEG that authorizes I&M to purchase energy and capacity at a cost-based mechanism defined in that agreement.[35] He acknowledges that the purchases of Rockport Unit 1 energy and capacity under the UPA are included in I&M's forecast of PSCR costs.[36] He explained that the UPA allowed I&M to rely on the revenue stream from the UPA as collateral for the financing needed to construct the Rockport Generating Plant.[37] 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; 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.[38]

Mr. Stegall also addressed the operation of the Rockport Plant and provided information on the company's strategies for managing coal inventory and ensuring reasonable operation of the plant.[39] He opined that the Commission should accept I&M's forecast of Rockport costs and approve the PSCR plan as filed. He added that I&M recognizes that its decision-making with regard to how it offers Rockport energy into the PJM market is subject to Commission review and that the company will present information regarding its decisions in the subsequent reconciliation filing.[40]

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[35] 2 Tr 129.
[36] 2 Tr 129.
[37] 2 Tr 129.
[38] 2 Tr 130.
[39] See generally 2 Tr 130-133.
[40] 2 Tr 133-134.

IV.

CHALLENGES TO THE 2024 PSCR PLAN & 5-YEAR FORECAST

A. Sierra Club

Sierra Club raises several issues with respect to both the ICPA and I&M's operation of the Rockport facility. Specifically, 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 2024 plan year.

2. The OVEC contract is likely to cost more than equivalent market products and services during the five-year forecast period from 2024 to 2028, based on I&M's own forecasts of PJM market prices (energy and capacity) and other power purchase benchmarks and agreements.

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

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 2024-2028.

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.[41]

Sierra Club specifies that the Commission should affirm its previous holdings that OVEC and I&M are affiliates under Michigan law such that the Code of Conduct and its

[41] Sierra Club Initial Brief p 6.

market-price cap applies to the ICPA.[42] Sierra Club contends that the OVEC ICPA incurs excessive costs such that it is not reasonable and prudent under market conditions in either the 2024 plan year or during the 2024-2028 5-year forecast period.[43] Sierra Club argues that over the PSCR period from 2024 to 2028, the OVEC ICPA is expected to cost I&M $101.5 million in present value terms more than the market value of services provided, or an average of $23 million per year.[44] Sierra Club states that this calculation was made using OVEC and I&M's own data by comparing the projected cost of the 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.[45]

Sierra Club argues that the uneconomic nature of the ICPA is shown by a 2016 report by AES Services Corporation presented to OVEC's Board of Directors, which assessed a negative valuation of the ICPA.[46] 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.[47] 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.[48]

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[42] Sierra Club Initial Brief p 14.
[43] Sierra Club Initial Brief p 16.
[44] Sierra Club Initial Brief p 16, citing 2 Tr 225-226.
[45] Sierra Club Initial Brief p 17-18.
[46] Sierra Club Initial Brief p 18.
[47] Sierra Club Initial Brief p 19, citing 2 Tr 239 and Exhibits SC-25 and SC-28.
[48] Sierra Club Initial Brief p 19, citing 2 Tr 239 and Exhibits SC-27.

Sierra Club also provides benchmarks for cost comparisons against the ICPA, and argues that with a combined energy and capacity cost of $91.87 per MWh, the ICPA is more expensive in 2024 than other provided benchmarks for long-term supply, including but not limited to the PJM BRA[49] or CONE[50] for various types of generation plants.[51] While I&M may dispute the propriety of comparisons to the BRA or CONE, Sierra Club states that the Commission has suggested that both are appropriate proxies by which to the judge the ICPA.[52]

Sierra Club asserts that I&M's IRP analysis does not show that the OVEC costs are reasonable. 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 $28 million more than continuing under it until 2040, Sierra Club asserts that I&M later updated its analysis to correct errors and found a cost savings of $54 million.[53] In any event, Sierra Club counters that: (1) 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; (2) the IRP analysis assumes that OVEC will install upgrades to comply with ELG[54] and CCR[55] environmental requirements to keep the units online through the end of the ICPA in 2040, but the I&M IRP studies failed to consider a

[49] Base Residual Auction. See 2 Tr 236.
[50] Cost of New Entry. See 2 Tr 234-235.
[51] Sierra Club Initial Brief p 21, citing 2 Tr 234 Table 3.
[52] Sierra Club Initial Brief p 22, citing Case No. 21261, Order, May 23, 2024, p 19 and Case No. U-20804, Order, November 18, 2021, p 22.
[53] Sierra Club Initial Brief p 22-23, citing 2 Tr 239-240, which in turn cites Case No. U-21189, Modeling Rebuttal Testimony of Jason Stegall, p 3.
[54] Effluent Limitation Guidelines
[55] Coal Combustion Residuals

scenario by which the ELG and CCR costs were avoided; and (3) the IRP analysis does not include the cost of complying with the 2024 ELG update rule, Good Neighbor Plan,[56] or final GHG[57] standards.[58] 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 studies conducted by OVEC owners in recent years, and the actual experience of OVEC Sponsors since at least 2017.[59]

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. Sierra Club argues that the Commission has repeatedly rejected this "energy only" comparison finding that it does not demonstrate that the ICPA is an economic contract.[60]

Sierra Club contends that, despite knowing that the OVEC units are uneconomic, I&M has not taken steps to minimize losses associated with operations or investment decisions for the OVEC units. Sierra Club asserts that I&M either supported or acquiesced to OVEC's decision to incur nine-figure capital costs to upgrade its plants to meet new ELG and CCR standards.[61] Sierra Club notes that I&M chose to retire its own Rockport units in 2028 to avoid the cost of such expenditures, and Sierra Club further notes that

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[56] An environmental regulation aimed at reducing interstate ground-level ozone.
[57] Green House Gas
[58] Sierra Club Initial Brief p 23-25.
[59] Sierra Club Initial Brief p 26.
[60] Sierra Club Initial Brief p 26.
[61] Sierra Club Initial Brief p 27, 28.

the record contains no evidence that any AEP or I&M representatives on the OVEC Board of Directors voted against these CCR/ELG expenditures or even requested any contemporaneous analysis of whether this spending was economic.[62] Sierra Club asserts that any Michigan jurisdictional share of I&M's costs for OVEC's CCR/ELG expenditures should not be recoverable in the PSCR process.[63] Sierra Club further argues that OVEC's plans for environmental upgrades are not fully compliant with the April 2024 final rule or final GHG standards such that OVEC's plants will likely need additional capital expenditures for further retrofitting to continue operation.[64] Based upon these arguments, Sierra Club argues that the Commission should determine that the ICPA is not reasonable and prudent in the plan year or forecasted years and should issue a Section 7 warning.

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.[65]

B. Staff

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.[66] 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.[67] Mr. Bodiford added that I&M's

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[62] Sierra Club Initial Brief p 28.
[63] Sierra Club Initial Brief p 28-29.
[64] Sierra Club Initial Brief p 29.
[65] Sierra Club Initial Brief p 31.
[66] 2 Tr 264.
[67] 2 Tr 264.

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.[68]

Mr. Bodiford states that Staff compared the 2024 PSCR plan to I&M's 2023 PSCR plan in Case No. U-21261, and notes that I&M is requesting a higher PSCR factor in 2024 compared to its 2023 requested PSCR factor.[69] He states that the main differences driving the higher PSCR factor for 2024 are increases in energy costs, costs related to transmission, and the roll-in of a large under-recovered balance from 2023.[70] He states that the 2024 PSCR plan factor includes a prior year roll-in of an under-recovery of ($14,714,396) while the 2023 PSCR plan factor included a projected roll-in of an under-recovery of ($7,242,106).[71] He asserts that I&M's 2024 prior year roll-in under-recovery represents a 103% increase over the previous plan case projection and accounts for nearly 40% of the company's requested PSCR factor increase.[72]

Noting that I&M asserts that the estimated under-recovery that has been rolled into the 2024 PSCR factor is calculated the same as in previous years by using actual amounts for January through July 2023, preliminary actual amounts for August 2023, 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 2024 PSCR plan factor with the understanding that the roll-in is a projection that will

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[68] 2 Tr 264.
[69] 2 Tr 265.
[70] 2 Tr 266.
[71] 2 Tr 267.
[72] 2 Tr 267.

be reconciled and reviewed for reasonableness and prudence in the 2024 reconciliation case.[73]

Mr. Bodiford took issue with I&M witness Sloan's characterization of purchases from OVEC as "non-affiliated purchases" because the Commission and the Michigan Court of Appeals have held that OVEC and I&M are affiliates.[74] 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 the Code of Conduct's Rule 8(4), and that Staff expects 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.[75]

Mr. Bodiford 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 2024 PSCR plan year, noting that the projected OVEC costs will be evaluated again in its 2025 PSCR plan when I&M files that case, with the actual 2024 OVEC ICPA and UPA purchases being evaluated for reasonableness in the 2024 PSCR reconciliation case.[76]

Regarding Staff's determination that the projected costs from the UPA and ICPA are reasonable, Mr. Bodiford states that utility actions in Act 304 cases are evaluated for reasonableness and prudence based on the information that the utility had available at

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[73] 2 Tr 268.
[74] 2 Tr 269, citing Case No. U-20530, Order, February 2, 2023, p 18 and *In re Application of Indiana Michigan Power Company*, ___ Mich App ___; ___ NW2d ___ (2024) (Docket No. 365180); slip op at 15.
[75] 2 Tr 268, 269.
[76] 2 Tr 270.

the time it made the pertinent decision.[77] He adds that, therefore, I&M's decision to extend the OVEC ICPA to 2040 and amend the UPA in 2018 would have to be found to be reasonable based on the information that I&M knew at the time of the amendment or extension.[78] He states that while I&M has committed itself to long-term contracts, that does not mean that I&M should not be regularly evaluating the economics of the contract.[79] He states that if the contract is no longer reasonable in the future, then Staff would fully expect I&M to take actions to exit or modify the contract or to show that the contract remains just and reasonable for customers.[80]

Mr. Bodiford concludes that Staff is recommending that I&M's 5-year forecast be approved and that the 2024 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 2024 PSCR reconciliation case.[81]

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)

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[77] 2 Tr 271.
[78] 2 Tr 271.
[79] 2 Tr 271.
[80] 2 Tr 271.
[81] 2 Tr 272; Staff Initial Brief p 5.

> 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.
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> 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.[82]

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[.]
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> [T]he 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. Such efforts may entail meaningful attempts to renegotiate contract provisions to ensure continued value for ratepayers as market conditions change.
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> [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.[83]

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[82] Case No. U-18404, Order, June 7, 2019, p 7-8 (citations omitted).
[83] Case No. U-20529, Order, May 13, 2021, pp 14, 15, 18-19 (citations and quotations omitted).

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.[84] 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.[85]

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. . . . [T]he Commission expresses its ongoing concern relating to the fundamental economics of the OVEC units and whether I&M's continuing participation in the ICPA is truly in the best interest of its customers.[86]

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

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[84] Case No. U-20529, Order, May 13, 2021, p 10. See also Case No. U-20530, Order, February 2, 2023, pp 10, 12.
[85] 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.
[86] Case No. U-20224, Order, June 23, 2021, p 12.

> 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.[87]
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> 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.[88]

More recently, the Commission has reiterated that it has a duty to customers to assure that utilities are not subsidizing uneconomic, unreasonable, and imprudent decisions through customer rates and that the Commission's decisions in I&M's PSCR proceedings do not dictate the business decisions of I&M but merely establish what costs are appropriate to recover from ratepayers.[89]

A. The OVEC ICPA

1. Economics of the ICPA

Ms. Glick contends that, from using projections from OVEC and I&M, during the 5-year PSCR forecast period of 2024-2028, the ICPA is expected to cost I&M $101.5 million (on a present value basis) more than the market value of services provided, or roughly $23.0 million per year.[90] As such, Sierra Club asserts that I&M is paying OVEC above-market prices and is therefore in conflict with the Code of Conduct's market-price cap.[91] This PFD agrees.

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[87] Case No. U-20530, Order, February 2, 2023, pp 12-13.
[88] Case No. U-20530, Order, February 2, 2023, p 18.
[89] Case No. U-20804, Order, November 18, 2021, p 19.
[90] 2 Tr 225-227.
[91] See Mich Admin Code, R 460.10108(4).

Ms. Glick testified that during the 2024 PSCR year, I&M projects that it will be billed over $50 million for approximately 544,744 MWh, which equates to a cost of approximately $91.87/MWh.[92] She added that I&M projects that it will pay between $97.54/MWh and $414.63/MWh over the remainder of the forecast period, i.e. from 2025 through 2028.[93] Ms. Glick characterized these forecasted costs as "alarmingly high," even higher than OVEC's own projections of ICPA billable costs over the remaining life of the contract, and she suggested that I&M will be paying prices substantially above the market price for power over the entire PSCR period.[94]

Ms. Glick stated that for the ICPA to be economical in the future, the capacity portion of OVEC's services would need to be valued at an average of $481.10/MW-Day (in 2024 dollars) over the PSCR forecast period, which is just below the CONE value calculated by Brattle Group in April 2022 for a new combined-cycle gas turbine and above the cost for a new combustion turbine.[95] She contends that it would be unreasonable to assume that capacity prices at that level would ever materialize or be sustained over a significant period of time.[96]

Ms. Glick further testified that during the PSCR period, I&M projected utilization at OVEC to dwindle from roughly 37 percent in 2024 to just 6 percent by 2028.[97] She explained that this projection deviated from previous I&M projections and was beneficial insofar as reducing fuel costs incurred from uneconomic plant operations but detrimental

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[92] 2 Tr 219.
[93] 2 Tr 224.
[94] 2 Tr 224-225.
[95] 2 Tr 227.
[96] 2 Tr 228.
[97] 2 Tr 221.

in that there are high fixed costs that ratepayers are forced to pay in exchange for relatively few MWh of electricity.[98]

I&M argues that the ICPA is economical for its customers because it has been profitable for most of the last several years when viewed on an energy-only basis.[99] However, this PFD agrees with Sierra Club that this is an incomplete metric because I&M seeks to charge total OVEC costs through the PSCR process, including demand charges, not just energy charges. Thus, an energy-only analysis does not offer a full picture of the economics of the ICPA. Further, the Commission has previously declined to embrace this energy-only comparison offered by I&M to justify costs under the ICPA.[100]

I&M further argues that if Sierra Club takes issue with the price of demand charges under the ICPA, then that issue rests within FERC's jurisdiction; alternatively, I&M asserts that if Sierra Club takes issue with I&M's participation in the ICPA, then that issue is properly raised in an IRP proceeding.[101] In making these arguments, I&M suggests that a PSCR proceeding is not the proper venue to evaluate demand charges or I&M's participation in the ICPA.[102] However, the issues being evaluated in this proceeding are not demand charges per se, nor I&M's participation in the ICPA. Instead, the issues implicated in this matter are review under Act 304 and compliance with the Code of Conduct. Accordingly, I&M's arguments in this vein lack topicality and will not be further addressed.

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[98] 2 Tr 223.
[99] 2 Tr 127.
[100] Case No. U-21261, Order, May 23, 2024, p 19 (Agreeing that "[T]he energy-only comparison presented by I&M does not demonstrate that the ICPA is an economic contract[.]").
[101] I&M Reply p 11-14.
[102] I&M Reply p 11-12.

2. Benchmark Comparisons

Ms. Glick presented several long-term supply cost comparisons demonstrating that the costs charged under the ICPA are unreasonable and are not aligned with market prices. These benchmarks included comparisons to:

(1) the In-Year Transfer Price ($62.11/MWh);

(2) CONE for a combined-cycle plant ($60.62/MWh);

(3) gross avoidable costs for existing generation for coal ($63.87/MWh), combined cycle ($39.44/MWh), and combustion turbine ($84.80/MWh); and

(4) the PJM BRA ($37.90/MWh).[103]

All of Sierra Club's proposed benchmarks have costs significantly lower than the $91.87/MWh cost incurred under the ICPA,[104] and this PFD notes that the excess costs calculated by Ms. Glick under the ICPA relative to these benchmarks range from $3.85 million up to $29.40 million.[105]

I&M takes issue with these benchmarks and the methodology used to calculate costs. I&M contends that Sierra Club used the PJM BRA price to help create these comparisons, and in doing so, converted capacity values from dollars per Megawatt-day to dollars per Megawatt-hour.[106] I&M contends that this conversion necessitated the assumption of a net capacity factor for each resource, and that the selection of such a factor can be used to manipulate the capacity value to create a desired result.[107] I&M asserts that Sierra Club's analysis is therefore flawed and unreliable because the net

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[103] 2 Tr 234.
[104] See 2 Tr 234.
[105] 2 Tr 234.
[106] I&M Initial Brief, pp 25-27.
[107] I&M Initial Brief, pp 25-27; See also I&M Reply pp 9-10.

capacity factors selected create Sierra Club's desired result, i.e. a result in which OVEC appears uneconomic when compared to the selected benchmarks.

This PFD agrees with I&M that presenting capacity costs on a dollar-per-Megawatt-hour basis can potentially make resources with a higher capacity factor appear more economic than those with lower capacity factors; indeed, Ms. Glick essentially suggested as much in part of her testimony, albeit in the context of addressing a projected decline in OVEC's capacity factor.[108] However, this PFD finds that converting capacity costs to a dollar-per-Megawatt-hour value for comparison purposes is not per se inaccurate simply because the selected capacity factor can affect the resulting comparison. This PFD notes that I&M did not specifically establish that the capacity factors selected by Sierra Club for these calculations were unreasonable.[109]

I&M further argues that as a fixed resource requirement (FRR) entity within PJM, I&M does not participate in the PJM auction and that the Commission has never accepted the PJM auction price as an appropriate capacity price comparison for a long-term agreement like the ICPA. However, I&M's contention is inaccurate because the

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[108] See 2 Tr 223.

[109] This PFD acknowledges that I&M did make one specific comparison. I&M noted Sierra Club's use of OVEC's 2024 capacity factor to calculate OVEC's 2024 capacity cost in dollars per megawatt-hour. I&M compared this to Sierra Club's calculation of the capacity cost for CONE for a combined-cycle plant, for which Sierra Club utilized a different, and higher, capacity factor. I&M conceded that there was no calculation using the same capacity factor for both on record, but cited Table JMS-1 for the proposition that lower capacity factors would make a resource appear more expensive and less economic. See I&M Reply p 10-11 (citing confidential information); see also Table JMS-1 at 2 Tr 142. Based upon this reasoning, I&M concluded that "if one were to assume the same capacity factor for OVEC and a combined-cycle unit to create a Megawatt-per-hour metric, then the conversion would show that OVEC aligns with market price and/or would be cheaper." I&M Reply p 11. However, the basis for I&M's premise that the capacity factor must be the same when making a market comparison, while it may be intuitively appealing, is not explained or supported. For example, if a new combined cycle plant was constructed—which is what CONE represents in this context—one might reasonably expect that its capacity factor would not be identical to that of OVEC's older, coal-fired units.

Commission has recently stated otherwise in Case No. U-21261.[110] To make its argument, I&M cited older precedent in which the Commission warned that a comparison with the PJM market was insufficient by itself to warrant a disallowance when compared to the ICPA as a long-term contract.[111] However, the Commission did not categorically reject the PJM auction as a benchmark under all circumstances, particularly if it was merely included in conjunction with several other benchmarks.[112] The Commission has also stated that other benchmarks, like CONE, which Sierra Club presented in this case, may be one of the "appropriate proxies for calculating market price and I&M's resulting PSCR factor."[113] Accordingly, this PFD does not find Sierra Club's presentation of the PJM BRA price to be improper, particularly when it is included in conjunction with other benchmarks.

Further, this PFD notes that even disregarding the PJM BRA price as a proposed standalone benchmark, the remaining proposed benchmarks would still support the conclusion that the ICPA is significantly more expensive than all the other benchmarks provided. This PFD concludes that Sierra Club has presented several alternatives with which to compare the costs of the ICPA, and while none are a perfect apples-to-apples comparison with the OVEC units, they sufficiently demonstrate that the ICPA costs are excessive compared to alternatives.

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[110] Case No. U-21261, Order, May 23, 2024, p 19 ("[T]he capacity cost comparison based on economic evaluations of the PJM BRA capacity price is a reasonable point of comparison on which to judge the reasonableness of the ICPA.")
[111] See Case No. U-20224, Order, June 23, 2021, p 12; Case No. U-20529, Order, May 13, 2021, p 18.
[112] Case No. U-20804, Order, November 18, 2021, pp 16-17 ("The present case differs from Case No. U-20529 in that additional evidence of appropriate market comparisons was presented on the record.").
[113] Case No. U-20804, Order, November 18, 2021, p 22.

3. Forward-Looking Assessments of the ICPA

Ms. Glick also suggests that several forward-looking assessments of the OVEC units were conducted with results that generally align with her long-term negative assessment of the ICPA. These assessments include: (1) a 2016 analysis of the ICPA by AEP Services Corporation (an affiliate of I&M's parent company, AEP) which assessed a net negative valuation of the ICPA; (2) a 2017 assessment conducted by ICF International for Duke Energy Ohio (an OVEC sponsor) that projected losses for the ICPA when scaled to I&M's share of $67 million relative to market alternatives from 2020 to 2025; (3) a 2018 assessment by Moody's Analytics that projected annual losses for the ICPA of $16-$20 million; and (4) a 2019 assessment by FirstEnergy Solutions (an OVEC sponsor) suggesting that the ICPA had a negative value of $267 million through 2040 when scaled to I&M's share.[114]

I&M asserts that the above studies are outdated and do not consider I&M's specific situation.[115] I&M points to its own more recent analysis of the ICPA as part of its IRP in Case No. U-21189 to suggest that the ICPA is an economic resource for its customers when compared to exiting the ICPA.[116] I&M and Sierra Club present differing views about the results of I&M's IRP study. Perhaps inadvertently, Sierra Club itself presents inconsistent statements regarding the IRP analysis. Sierra Club argues that I&M revised its IRP study and found a $54 million cost savings from exiting the ICPA in 2030, but Sierra Club also presented testimony from Ms. Glick acknowledging that the study found that exiting the ICPA in that year would be $54 million more costly than maintaining

[114] 2 Tr 239 (citations to various exhibits omitted).
[115] I&M Initial Brief, pp 29-30.
[116] I&M Initial Brief, p 28.

participation in the ICPA.[117] For its part, I&M maintains that while the company revised its IRP modeling in response to intervenor criticism, the results still showed that it would be more costly for I&M to exit the ICPA early and replace it with generation from another source.[118] Sierra Club's claim that the IRP study showed a cost savings appears to stem from a citation to Mr. Stegall's rebuttal testimony in Case No. U-21189,[119] but upon review, this PFD finds that this citation does not appear to support Sierra Club's position that I&M's revised IRP modelling showed any cost savings from exiting the ICPA in 2030.[120] Thus, this PFD declines to accord any weight to the argument that I&M's IRP study ostensibly found a cost savings from exiting the ICPA in 2030.

While I&M's modeling of the ICPA in 2021-2022 for its IRP may be more recent than the studies presented by Sierra Club, this PFD agrees with Sierra Club that the IRP analysis may nevertheless be an inaccurate reflection of the long-term economic trajectory of the ICPA. Sierra Club argues that the IRP modelling of the ICPA in 2021-2022 likely did not use the same forecast of dramatically declining OVEC plant utilization that I&M now projects in the current case.[121] This PFD notes that I&M did not dispute that the OVEC utilization forecast projected in this case showed a dramatically reduced

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[117] Compare Sierra Club Initial Brief pp 22-23, Sierra Club Reply p 16, and 2 Tr 240 (stating that the revised IRP study found a cost savings of $54 million from exiting the ICPA), with 2 Tr 239 and Table 4 located therein (acknowledging that the IRP study diverges from Ms. Glick's analysis and stating that the IRP study showed exiting the ICPA in 2030 was $54 million more costly than maintaining participation in the agreement).
[118] I&M Reply p 18.
[119] See 2 Tr 240 n 56 (citing page 3 of Mr. Stegall's Modeling Rebuttal Testimony in Case No. U-21189).
[120] Case No. U-21189, Stegall Modelling Rebuttal Testimony, August 2, 2022, p 3. This testimony was bound into the record in Case No. U-21189 at page 710 of Volume 2 of the transcript, which was filed on August 29, 2022. Notably, after he presented revised figures regarding the OVEC ICPA, Mr. Stegall maintained his conclusion that the financial impact of exiting the ICPA remained more costly than the company's preferred portfolio, which included the ICPA until its termination in 2040.
[121] 2 Tr 222-223; See also Sierra Club Reply, pp 18-20.

utilization trend that was not used in IRP modeling. Both Sierra Club and I&M have suggested that a resource's utilization/capacity factor can significantly affect its economics,[122] which suggests that the projected steep decline in utilization would have a meaningful effect on the economics of the OVEC units in modeling.

Additionally, Sierra Club appears correct that the 2021-2022 IRP modeling did not—and likely could not—fully account for increased costs that may result from OVEC's need to bring its coal-fired plants into compliance with new federal environmental regulations going into effect in 2024, including an updated ELG rule, the Good Neighbor Plan, and final GHG standards. As both I&M and Sierra Club recognize, enforcement of the Good Neighbor Plan is currently stayed by a recent decision of the U.S. Supreme Court.[123] Nevertheless, Ms. Glick estimated that OVEC could incur costs of $43 million per year starting in 2026 simply to comply with that rule alone should it go into effect.[124] Concerns relating to the OVEC utilization forecast and the evolving regulatory environment illustrate that the IRP modelling of the ICPA from 2021-2022, while more recent than assessments presented by Sierra Club, is unlikely to be an accurate representation of the long-term economic trajectory of the ICPA.

Further, this PFD notes that IRP Case No. U-21189 resulted in a Settlement Agreement that contained no cost approvals for the ICPA, and the Settlement Agreement stated that nothing in the agreement was to be construed as an approval of the ICPA or

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[122] See 2 Tr 223; see also I&M Initial Brief, p 26.
[123] I&M Reply p 20, citing *Ohio v Environmental Protection Agency*, 603 US ___; ___ S Ct ___; ___ L Ed 2d ___ (2024) (Docket No. 23A349) (Issued June 27, 2024) (Staying enforcement of the EPA's Good Neighbor Plan to curtail interstate pollution). Sierra Club also acknowledges that enforcement of this environmental rule has been stayed adding that the Supreme Court did not rule on the substance of challenges to the rule. Sierra Club Reply, p 18, n 64.
[124] 2 Tr 243.

any of its amendments.[125] Accordingly, while I&M makes much of the fact that its analysis of the ICPA was presented as part of an IRP proceeding, the Commission did not specifically give the OVEC ICPA its endorsement and merely approved a Settlement Agreement that largely maintained the status quo in relation to the ICPA.

Given these circumstances, this PFD does not view the analysis that I&M presented in its IRP regarding the ICPA as adequate to refute the negative assessments of the ICPA presented by Sierra Club, which consisted of Ms. Glick's own analysis and the four previously mentioned assessments of the ICPA conducted by third parties.

4. I&M's Management of the ICPA

The Commission has stated that I&M, like all utilities, is obligated to examine existing contracts as market conditions or other factors change over time and to pursue amendments or new contractual arrangements through good-faith negotiations.[126] Indeed, with respect to the ICPA, the Commission has cautioned I&M that it will closely scrutinize costs incurred under the ICPA and would expect to see evidence that the company has taken steps to minimize costs, which could include efforts to renegotiate the contract.[127] Indeed, the Commission has previously stated that it is unlikely to allow full recovery of power supply costs associated with the ICPA "without good faith efforts by I&M to minimize costs or to renegotiate the contract to achieve positive value for its ratepayers."[128]

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[125] See Case No. U-21189, February 2, 2023, Order, p 101; see also the Settlement Agreement attached to said February 2, 2023, Order as Exhibit A, p 4 ¶ 1d.
[126] Case No. U-18404, Order, June 7, 2019, p 7.
[127] Case No. U-20529, Order, May 13, 2021, p 18; see also Case No. U-20804, Order, November 18, 2021, p 19.
[128] Case No. U-21052, Order, June 22, 2023, p 19.

Sierra Club contends that I&M has not taken steps to minimize losses or protect its customers despite knowing that the ICPA is uneconomic.[129] Sierra Club faults I&M for either supporting or acquiescing to OVEC's decision to upgrade—rather than retire—its coal-fired generating units to ensure compliance with ELG and CCR regulations necessary to continue operating beyond 2028.[130] Sierra Club contends that the total cost of the capital expenditures for these upgrades will be in the nine-figure range, and I&M's Michigan ratepayers will bear their proportional share of the financial responsibility.[131]

I&M responds that such decisions are generally controlled by OVEC and that the Commission must consider actions that are within I&M's control, which I&M contends that Sierra Club "inflate[s] significantly."[132] I&M also asserts that it has complied with Commission directives to take meaningful steps to manage the ICPA.[133] In this vein, I&M contends that it presented evidence of OVEC's efforts to reduce costs as well as evidence of I&M's own efforts to renegotiate the ICPA. Regarding reduced costs, I&M directs attention to a 2022 presentation to OVEC's Board of Directors discussing the results of OVEC's continuous improvement efforts.[134] However, perhaps through inadvertence, the confidential exhibit JMS-2 referenced by I&M regarding cost-cutting measures does not appear to have been entered into evidence by I&M.[135] Accordingly, the supporting

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[129] Sierra Club Initial Brief, p 27.
[130] Sierra Club Initial Brief pp 27-28.
[131] Sierra Club Initial Brief pp 28-30.
[132] I&M Reply p 16.
[133] I&M Reply p 17.
[134] I&M Initial Brief p 30; 2 Tr 124.
[135] This PFD notes that confidential exhibit JMS-2 referenced by I&M is not listed on the company's official exhibit list, nor does it appear on the index of exhibits admitted during the May 9, 2024, hearing in this matter. See 2 Tr 12-14. Notably, Confidential Exhibit IM-22 (JMS-1) is listed on the exhibit list and transcript index as "OVEC Continuous Improvement efforts in 2022." Nevertheless, that exhibit appears to be misidentified because Confidential Exhibit IM-22's actual content is a letter relating to I&M's efforts to renegotiate the ICPA; it is not a 2022 report about OVEC's cost-cutting measures.

evidence related to these cost-cutting measures is not in the record. In any event, I&M's description of these measures suggests that they were efforts made by OVEC such that they are not evidence of actions within I&M's control to manage costs under the ICPA.[136]

I&M also specifically highlights that it is seeking to renegotiate the ICPA or to otherwise initiate discussions between OVEC's sponsoring companies to address concerns regarding the ICPA.[137] For its part, Sierra Club neglects to acknowledge or address I&M's efforts in this vein. This PFD finds that I&M has taken a first step toward managing the ICPA by seeking to initiate discussions regarding renegotiation of the contract. Even so, based upon the limited evidence presented in this record, this PFD is not prepared to conclude that I&M has made the type of meaningful, good-faith efforts that the Commission has previously referenced.[138] The evidence of I&M's negotiation efforts presented in this case is limited to a single letter sent by I&M to OVEC.[139] As of the date of this PFD, approximately 10 months have elapsed since the date of the letter. However, I&M has provided no follow-up information in this docket regarding the results of its letter or its presumably continuing efforts to seek renegotiation. Accordingly, this record is insufficient to evaluate whether I&M's efforts are a mere gesture or whether they are the starting point for the type of meaningful, good-faith efforts that the Commission has previously referenced.

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[136] See 2 Tr 124 (Describing OVEC's cost cutting measures).
[137] I&M Reply p 17; see also Exhibit IM-22 (Confidential).
[138] See e.g. Case No. U-20529, Order, May 13, 2021, p 15; Case No. U-20804, Order, November 18, 2021, p 19; Case No. U-21052, Order, June 22, 2023, p 19.
[139] See Exhibit IM-22 (Confidential).

B. The Code of Conduct

Rule 8(4) of The Code of Conduct, in relevant part, states: "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."[140] Thus, Rule 8(4) places limits on compensation for services rendered by an affiliate to a utility.

As an initial matter, this PFD notes that I&M witness Sloan categorized purchases from OVEC as "non-affiliated purchases" which implies that the Code of Conduct would not apply to the ICPA as an allegedly non-affiliate transaction.[141] This PFD rejects this categorization because the Commission has repeatedly found that I&M and OVEC are affiliates[142] under the Code of Conduct such that Rule 8(4) and its pricing provisions apply to the ICPA.[143] Accordingly, this PFD reaffirms that I&M and OVEC are affiliates and that the Code of Conduct and its pricing provisions apply to the ICPA.

I&M presents a series of arguments that oppose the application of the Code of Conduct to the ICPA in this proceeding. Specifically, I&M argues: (1) that the Code of Conduct unlawfully supplants Act 304's reasonableness and prudence standard and goes beyond the legislative intent with regard to its price cap provision; (2) that the application of the Code of Conduct is arbitrary and capricious; (3) that the Code of Conduct is not

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[140] Mich Admin Code, R 460.10108(4), sometimes referred to as "Rule 8(4)."
[141] See 2 Tr 84.
[142] See Mich Admin Code, R 460.10102(1)(a) (Providing the definition of an affiliate).
[143] See, e.g., Case No. U-20529, Order, May 13, 2021, pp 16-17; Case No. U-20224, Order, June 23, 2021, p 11; Case No. U-20530, Order, February 2, 2023, pp 18-19; Case No. U-21052, Order, June 22, 2023, p 22; Case No. U-20804, Order, November 18, 2021, p 13.

aligned with or is an improper delegation of authority when viewed in the light of its enabling act, MCL 460.10ee; (4) that application of the Code of Conduct would be an unlawful retroactive impairment of I&M's rights; (5) that application of the Code of Conduct would violate the respective Contract and Takings Clauses of the U.S. and Michigan Constitutions; and (6) that the Code of Conduct does not apply to federally regulated wholesale service contracts such as the ICPA or that the Commission cannot set the price of such contracts.[144]

These arguments are duplicative of the arguments made by I&M in several previous PSCR cases, all of which have been addressed and rejected by the Commission. While the doctrines of res judicata and collateral estoppel are not applicable in an administrative rate-making 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.[145] Therefore, this PFD will not individually address these arguments because there appears to be no new evidence or change in circumstances that would warrant revisiting the Commission's well-settled legal analyses of these arguments. 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.[146]

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[144] See generally I&M Initial Brief, pp 32-55; I&M Reply pp 3-6.
[145] *Application of Consumers Energy Co*, 291 Mich App 106, 122; 804 NW2d 574 (2010); see also *Pennwalt Corp v Pub Serv Comm*, 166 Mich App 1, 9; 420 NW2d 156 (1988).
[146] 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, pp 10-13 (Addressing arguments related to the

Further, the Michigan Court of Appeals reviewed and rejected several of I&M's arguments in this vein as well. See *In re Application of Indiana Michigan Power Company*, ___ Mich App ___; ___ NW2d ___ (2024) (Docket No. 365180); slip op at 8-16.[147] Accordingly, this PFD rejects all of I&M's legal challenges to the application of the Code of Conduct to the ICPA because they have already been reviewed and rejected by the Commission, by the Michigan Court of Appeals, or in some instances by both.

C. Rockport

Ms. Glick asserts that Rockport power costs for 2024-2028 are projected to be extremely expensive, with cost increases in large part due to a large drop in Rockport's projected capacity factor.[148] Ms. Glick projects that Rockport Unit 1 will incur $466.3 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 $112.5 million per year.[149] She adds that I&M is projecting a forward-going capacity factor at Rockport 1 of less than 10 percent for the years 2025–2028, which she asserts is an "extremely low utilization level" that demonstrates that the Rockport plant is largely uneconomic to operate.[150] Thus, Sierra Club argues that the Commission should encourage I&M to commit the Rockport units into the PJM energy market economically, i.e. only when justified by economics or need for reliability, by signaling to I&M that in future PSCR

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application of the Code of Conduct to the ICPA); Case No. 20529, Order, May 13, 2021, pp 19-21 (Addressing federal preemption and FERC approval); Case No. U-20804, Order, November 18, 2021 pp 13-23.

[147] This PFD further notes that I&M's application for leave to appeal from this decision of the Michigan Court of Appeals was recently denied by the Michigan Supreme Court in a July 12, 2024, Order in MSC Docket No. 166763.

[148] 2 Tr 254.

[149] 2 Tr 255.

[150] 2 Tr 257.

reconciliation proceedings it is unlikely to permit recovery of operational costs associated with uneconomic self-commitment decisions.[151]

I&M counters that the issue of I&M's commitment decisions regarding Rockport has been addressed in several prior PSCR plan and reconciliation cases, I&M recognizes its obligation to operate Rockport economically, and that the company has made the necessary changes in its processes to comply with past Commission orders.[152] Further, I&M contends that the appropriate forum to address commitment decisions is in PSCR reconciliation cases and that the Commission has previously stated that it is not appropriate to assume before the fact that I&M will necessarily make imprudent commitment decisions regarding Rockport.[153] I&M also notes that the Commission recently rejected an identical request from Sierra Club regarding Rockport in I&M's 2023 PSCR plan.[154]

This PFD finds that it is unnecessary to warn I&M that its commitment decisions regarding Rockport will be closely scrutinized because the company has already acknowledged its obligation to operate Rockport in an economical manner and to document its commitment decisions for later review in a reconciliation proceeding. Further, I&M is correct that the Commission has previously addressed this issue stating that it is inappropriate to assume, before the fact, that I&M will necessarily make imprudent commitment decisions in contravention of its planned operations and that

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[151] Sierra Club Initial Brief, p 31.
[152] I&M Initial Brief, p 31.
[153] I&M Initial Brief, p 31 (citing Case No. U-21052, Order, June 22, 2023, p 24.).
[154] I&M Reply, p 22 (citing Case No. U-21261, Order, May 23, 2024, p 21).

operational decisions regarding Rockport are best evaluated in the company's corresponding reconciliation case.[155]

VI.

CONCLUSION

This PFD declines to recommend issuing any warning regarding I&M's Rockport commitment decisions because it is unwarranted for the reasons discussed above.

This PFD reaffirms that OVEC and I&M are affiliates under the Code of Conduct such that Rule 8(4) applies to the ICPA, and this PFD also rejects I&M's various legal challenges to the Code of Conduct because they have already been reviewed and rejected by the Commission, the Michigan Court of Appeals, or by both bodies.

This PFD agrees with Sierra Club that the ICPA costs I&M proposes to recover are unreasonable under Act 304 considering market conditions and the currently known record information regarding I&M's decisions relating to managing the ICPA. Further, the costs are in excess of the Code of Conduct's market-price cap. Witness Glick recommended amending the PSCR plan by removing above-market costs from the maximum PSCR factor for the 2024 plan year, but this PFD declines to recommend doing so because the Commission has generally refrained from amending I&M's PSCR plans on this basis.[156] However, this PFD agrees with Sierra Club that a Section 7 warning is warranted and recommends that the Commission issue a warning that, on the basis of

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[155] Case No. U-21052, Order, June 22, 2023, p 24; see also Case No. U-21261, Order, May 23, 2024, p 21 ("The Commission agrees that I&M's operational decisions pertaining to the Rockport unit are best evaluated in the company's corresponding PSCR reconciliation case.").

[156] See e.g. Case No. U-21261, Order, May 23, 2024, p 22 (Approving I&M's 2023 PSCR plan without amending the plan); Case No. U-21052, Order, June 22, 2023, p 24 (Approving I&M's 2022 PSCR plan without amending the plan).

present evidence, the Commission is unlikely to permit I&M to recover uneconomic ICPA costs as set forth in I&M's plan and forecast without further and more detailed evidence that the company is taking reasonable and prudent steps to manage the ICPA, which can include meaningful, good-faith efforts to renegotiate contract provisions to ensure continued value to ratepayers.

This PFD acknowledges that I&M presented evidence that it took an initial step toward renegotiating the ICPA in this case,[157] but as discussed above, the limited and now somewhat stale record evidence presented by I&M precluded adequate consideration of the nature and character of I&M's efforts. However, the corresponding reconciliation case for the plan year affords I&M the opportunity to present additional evidence and updated information regarding its efforts to manage the ICPA. Accordingly, this PFD suggests that the corresponding PSCR reconciliation case may be the appropriate venue to reassess the nature and extent of I&M's efforts to prudently manage the ICPA.

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

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James M. Varchetti
Administrative Law Judge

Issued and Served:
August 2, 2024

[157] See Exhibit IM-22 (Confidential).