

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 reconciliation of its power supply cost)	Case No. U-21262
recovery plan (Case No. U-21261) for the)	
<u>twelve months ending December 31, 2023.</u>)	

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on March 28, 2025.

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 April 18, 2025, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before May 2, 2025.

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

**Lesley C.
Fairrow**

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March 28, 2025
Lansing, Michigan

Lesley C. Fairrow
Administrative Law Judge

STATE OF MICHIGAN
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PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

Indiana Michigan Power Company (I&M or the Company) initiated this proceeding with an application to reconcile its power supply cost recovery (PSCR) costs and revenues for the 12 months ending December 31, 2023 that reported an under recovery of \$18,436,839. The application included the direct testimony of five witnesses and accompanying exhibits.

Attorney General Dana Nessel (Attorney General or AG) filed a notice of intervention, and Sierra Club and Citizens Utility Board of Michigan (CUB) each filed a petition to intervene.

At the May 8, 2024 prehearing conference held before Administrative Law Judge Lesley C. Fairrow, the Company, Staff, the Attorney General, Sierra Club and CUB appeared, intervention was granted to the AG, Sierra Club, and CUB, and a consensus schedule was adopted.

The parties' stipulated protective order was entered on the same day as the prehearing. I&M subsequently filed confidential testimony and exhibits. Staff, AG, Sierra

Club, and CUB filed both public and confidential testimony and exhibits. And I&M filed rebuttal testimony which was later revised.

The AG, Sierra Club, and CUB filed a joint motion to strike a portion of the pre-filed rebuttal testimony for I&M witness Jason Stegall claiming that it improperly supplemented the Company's direct case by proposing an adjusted calculation that the intervening parties did not have the opportunity to address in their direct testimony.¹ In its response, the Company contended that the information challenged was not available at the time it filed its main case and that Witness Stegall's rebuttal testimony explains shortfalls in the direct testimony of AG, Sierra Club, and CUB Witness Devi Glick.² The ALJ issued an oral ruling granting the motion on December 11, 2024.

At the evidentiary hearing held on December 11, 2024, by agreement of the parties, I&M Witness Jason Stegall was cross-examined, the testimony from the remaining witnesses was bound into the record without the need for them to appear, and all proffered exhibits were admitted into evidence. The Company and Staff filed initial briefs on January 16, 2025. The AG, Sierra Club, and CUB filed a public and confidential version of a joint brief on January 16, 2025. The Company, Staff, AG, Sierra Club, and CUB filed reply briefs on February 13, 2025.

The evidentiary record in this matter consists of 299 pages contained in a public transcript, plus a confidential transcript, and 35 admitted exhibits, including confidential exhibits that are not available in the public record.

¹ AG, Sierra Club, and CUB's Motion to Strike Improper Rebuttal and Brief in Support.

² I&M's Response to Motion to Strike and Brief in Support.

II.

OVERVIEW OF THE RECORD

Pertinent aspects of the evidentiary record are discussed in greater detail below.

A. I&M

1. Kimberly K. Chilcote

Kimberly K. Chilcote, Director of Coal Reagent Procurement for American Electric Power Service Corporation (AEPSC), testified on behalf of I&M and sponsored Exhibit IM-1.³ She said that I&M is a subsidiary of AEPSC.⁴

Ms. Chilcote described the coal market and I&M's coal purchasing strategy.⁵ She said I&M did not sell any coal during the reconciliation period.⁶ She also said I&M customers consumed approximately 45% less coal in 2023 than expected since 670,000 tons of coal less than forecasted was delivered during the reconciliation period.⁷ The overall cost of coal delivered in 2023 was \$4 per ton less than forecasted which saved I&M customers approximately \$5.6 million.⁸

According to Ms. Chilcote, the difference in actual deliveries and those forecasted was due to limited export demand, low natural gas prices, and little domestic winter demand.⁹ She explained that the Company reviewed and employed multiple methods to mitigate the disparity between the coal delivery forecast and the actual consumption including renegotiating agreements and using available inventory space at both Rockport

³ 2 Tr 33.

⁴ 2 Tr 31.

⁵ 2 Tr 34-36.

⁶ 2 Tr 43.

⁷ 2 Tr 38, 40.

⁸ 2 Tr 39.

⁹ 2 Tr 38-40.

and Cook Coal Terminal (CCT).¹⁰ She noted that larger coal piles result in increased safety risk to employees and equipment and that the inventory at Rockport and CCT increased by approximately 1.1 million tons and 560,000 tons respectively.¹¹ She also explained that the Company amended contracts with two of its suppliers to defer 960,000 tons of coal from 2023 into 2024, 2025, or 2026.¹² She said the deferral was the least cost option for I&M and its customers.¹³

Ms. Chilcote opined that I&M prudently managed its coal supplies and procured coal and coal-related transportation at the lowest reasonable delivered cost.¹⁴

2. Michelle M. Howell

Michelle M. Howell, Director of Transmission Settlements for AEPSC, testified and sponsored Exhibit IM-2.¹⁵

Ms. Howell described I&M's Open Access Transmission Tariff (OATT) expenses for the 2023 PSCR plan year.¹⁶ She explained that the OATT includes the following charges and expenses: Network Integration Transmission Service (NITS); firm and non-firm Point-to-Point (PTP) transmission credits; schedule 1A ancillary service credits; PJM Interconnection, LLC (PJM) transmission enhancement charges; and PJM administration charges.¹⁷ She said the NITS expense was \$7.8 million less than estimated for the 2023 calendar year due to a December 2022 FERC order removing the 50 basis point Regional Transmission Organization (RTO) incentive from Ohio Power Company and American

¹⁰ 2 Tr 38, 41.

¹¹ 2 Tr 41-42.

¹² 2 Tr 42-43.

¹³ 2 Tr 42-43.

¹⁴ 2 Tr 43.

¹⁵ 2 Tr 44.

¹⁶ 2 Tr 49-50.

¹⁷ 2 Tr 49.

Electric Power (AEP) Ohio Transmission Company, Inc. annual revenue requirements.¹⁸ Ms. Howell reported that the firm and non-firm PTP transmission credits and the PJM administrative charges were \$400,000 and \$200,000 less than forecasted due to a change in market conditions compared to past years.¹⁹ She said there was no significant variance between the actual schedule 1A ancillary service credits and PJM transmission enhancement charges and the forecast.²⁰ Ms. Howell concluded that the costs and credits reflected in the OATT during the 2023 PSCR reconciliation period were reasonable.²¹

3. Keith A. Steinmetz

Keith A. Steinmetz, I&M's Manager of Nuclear Engineering, testified about I&M's nuclear fuel costs.

Mr. Steinmetz said that the 2023 costs were affected by I&M's long-term contracts for the supply and disposal of nuclear fuel for the Cook Nuclear Plant, contracts for procurement of materials and services on a two to five-batch basis, and an agreement for the procurement of materials and service for the fuel cycle on a one-time spot procurement or short term basis.²² Mr. Steinmetz also reported that costs for seven leases including monthly rent, finance charges, and administration fees affected I&M's 2023 nuclear fuel costs.²³

¹⁸ 2 Tr 51-52.

¹⁹ 2 Tr 52-53, 55-56.

²⁰ 2 Tr 53.

²¹ 2 Tr 56.

²² 2 Tr 63-64.

²³ 2 Tr 65-67.

Mr. Steinmetz reported that the Cook Nuclear Plant operations were “very stable” during 2023 with only Cook Nuclear Unit 1 shutting down for a planned refueling outage from October 14 through November 14, 2023.²⁴

According to Mr. Steinmetz, I&M took proper and effective action to minimize its 2023 nuclear costs by refueling on an 18-month cycle, judiciously using the secondary nuclear market, and adjusting nuclear fuel cycle designs to meet the energy or regulatory requirements with a minimum impact on fuel cycle economics.²⁵

4. Jason Walcutt (Denzil L. Welsh)

Jason Walcutt, a Regulatory Consultant Principal at I&M, testified and adopted the pre-filed testimony of I&M Regulatory Analysis & Case Manager, Denzil Welsh²⁶ who also sponsored Exhibits IM-3 and IM-4.²⁷

Witness Walcutt presented the Company’s reconciliation of revenues collected from customers located in I&M’s Michigan retail jurisdiction under the PSCR factors billed in 2023, and the allowance for the cost of power supply included in base rates, with the amounts expensed and included in the cost of power supply for 2023.²⁸ Mr. Walcutt testified that I&M’s customers benefited from very stable fuel costs primarily due to the low-cost energy produced by the Cook Nuclear Plant but that there was an increase in costs of approximately \$32 million due to a decrease in Off System Sales.²⁹ According to Mr. Walcutt, I&M experienced a cumulative under-recovery of PSCR costs, development

²⁴ 2 Tr 68.

²⁵ 2 Tr 67-68, 71-72.

²⁶ Consistent with the parties’ briefs, this PFD refers to the testimony as being that of Witness Walcutt (even though the transcript references Witness Welsh).

²⁷ 2 Tr 74, 78, 83

²⁸ 2 Tr 82-83.

²⁹ 2 Tr 94; Exhibit IM-3, p 3.

costs related to the Capacity Purchase Agreement (CPA) and power purchase agreements (PPAs) approved by the Commission in Case No. U-21189, and associated interest through December 31, 2023 for a total under recovery of \$18,436,839.³⁰ He said that the Company requested a PSCR factor of 5.08 mills/kWh in its 2023 PSCR plan.³¹

Mr. Walcutt testified that the PSCR cost calculation excludes Rockport Unit 2 because that plant has been operated as a merchant facility since December 8, 2022.³² He said this was described in the Company's 2022 PSCR Reconciliation (Case No. U-21053), the Company's IRP (Case No. U-21189), and in the testimony accompanying the Company's 2023 PSCR Plan (Case No. U-21261).³³

Mr. Walcutt also testified that the Company recorded an accounting adjustment that was related to American Electric Power Generating Company (AEG) income tax and depreciation expenses that was addressed in the 2022 PSCR reconciliation (Case No. U-21053).³⁴ He said the adjustment appears as an additional cost of approximately \$1.4 million.³⁵ Mr. Walcutt also reported a separate correction of \$301,732 for increased cogeneration/Distributed Generation costs.³⁶

Mr. Walcutt also testified that the Company is seeking approval for three new items: (1) the development costs associated with the CPA and solar PPAs approved by the Commission in Case No. U-21189; (2) prospective energy-related expenses

³⁰ 2 Tr 84-85, 92; Exhibit IM-3, p 2.

³¹ 2 Tr 85.

³² 2 Tr 86-87.

³³ 2 Tr 86-87.

³⁴ 2 Tr 90.

³⁵ 2 Tr 90, referencing Exhibit IM-3, p 3.

³⁶ 2 Tr 91.

associated with certain demand response programs the Company offers; and (3) the updated I&M Load and Energy Hedging Policy.³⁷

Mr. Walcutt testified that I&M seeks to recover \$115,687 in expenses the Company incurred to develop and finalize the CPA and PPAs.³⁸ He used the costs for the services provided by I&M's independent monitor, Charles River Associates, to comply with the Commission's Competitive Procurement Guidelines and the costs for administration of the 2022 All Source RFP and PPA negotiations and contract development, as examples of the costs.³⁹ He said the costs were incurred from August 2022 through December 2023, but they are not ongoing and are not otherwise captured by the ratemaking process.⁴⁰

According to Mr. Walcutt, I&M is also proposing to recover the energy related costs associated with its demand response programs in its future PSCR cases.⁴¹ He said that I&M has voluntary programs to curtail customer usage and lower I&M's demand and energy needs during periods of high energy prices, high system demand, and during PJM or I&M system emergencies.⁴² During the designated period, the Company compensates that customer for the curtailed energy according to the terms of the respective program and all customers benefit from the discounted system energy costs.⁴³ The Company did not make any such payments in 2023 but is seeking to recover the payments in future PSCR cases.⁴⁴

³⁷ 2 Tr 83.

³⁸ 2 Tr 87; Exhibit IM-3.

³⁹ 2 Tr 87-88.

⁴⁰ 2 Tr 87.

⁴¹ 2 Tr 89.

⁴² 2 Tr 89.

⁴³ 2 Tr 89.

⁴⁴ 2 Tr 89; Exhibit IM-3, p 3, line 19.

Mr. Walcutt also provided the hedging activity for 2023 and said the Company is asking the Commission to approve its updated Load and Energy Hedging Policy which uses a 36-month planning horizon.⁴⁵ He said the Company liquidated a hedge position in October 2023 during planned outages for Rockport Unit 1 and Cook Unit 1 which resulted in a credit to customers of \$1,329,906.⁴⁶

Mr. Walcutt opined that the actual 2023 PSCR costs were reasonable and prudent and testified that the Company is requesting the Commission: (1) approve the reconciliation of its 12-month power supply costs, revenues, and interest for 2023; (2) determine that the power supply costs as presented were reasonably and prudently incurred; (3) authorize I&M to roll in the net actual under-recovered amount of \$18,436,839 in its 2024 PSCR Plan case (Case No. U-21427); (4) approve the Company's request to recover energy curtailment costs in this PSCR reconciliation and future reconciliation case filings; and (5) approve the revised I&M Load and Energy Hedging Policy.^{47 48}

5. Jason M. Stegall

Jason M. Stegall, Director of Regulatory Services for AEPSC testified and sponsored Exhibits IM-5, IM-6, and IM-7.⁴⁹ He described the Company's participation in the PJM and said that I&M participates with PJM as a load serving entity, a generation

⁴⁵ 2 Tr 83, 93-94; Exhibit IM-4.

⁴⁶ 2 Tr 92-93.

⁴⁷ See Confidential Exhibit IM-4.

⁴⁸ 2 Tr 96-97.

⁴⁹ Tr 2 Tr 103-104.

owner, and a transmission owner.⁵⁰ He said that I&M self-supplies its capacity, but participates in the daily energy and ancillary service markets.⁵¹

Witness Stegall also testified about I&M's share of energy received from Ohio Valley Electric Corporation (OVEC) under an Intercompany Power Agreement (ICPA) and gave an overview of the history of OVEC and the ICPA.⁵² He said regional utilities, also known as sponsoring companies, purchase certain power and energy produced by OVEC from OVEC under the ICPA.⁵³ He said the agreement was signed in 1953 and successive amendments were submitted over the years to and accepted for filing by the FERC through 2040.⁵⁴ I&M is a party to the ICPA and Witness Stegall testified that I&M and its customers have benefitted from I&M's participation in the ICPA since inception.⁵⁵ He said the OVEC ICPA is used to meet the capacity and energy needs of all of I&M's customers, of which Michigan retail customers represent approximately 15 percent.⁵⁶ Mr. Stegall opined that the Company's decision to extend the ICPA in 2010 was reasonable and prudent and has resulted in \$104.5 million of cumulative value to its customers.⁵⁷

According to Witness Stegall, the Commission's order in the 2022 PSCR plan case (Case No. U-21052) directed the Company to evaluate its long-term contracts as markets change over time by addressing those changes, including taking meaningful steps to renegotiate provisions of the ICPA.⁵⁸ Mr. Stegall testified that the ICPA does not have any

⁵⁰ 2 Tr 108-109, 116.

⁵¹ 2 Tr 116-117.

⁵² 2 Tr 107, 118-132.

⁵³ 2 Tr 131-132.

⁵⁴ 2 Tr 132-133.

⁵⁵ 2 Tr 132, 134.

⁵⁶ 2 Tr 135.

⁵⁷ 2 Tr 128, 132-133.

⁵⁸ 2 Tr 119.

provision for early termination by one or more of the sponsoring companies so any early exit would be the result of that sponsoring company renegotiating with the remaining sponsor companies and obtaining their unanimous approval.⁵⁹ He said of the 13 sponsoring companies, only one has sought to exit or withdraw from the ICPA without seeking unanimous agreement of all the signatories to the ICPA and FERC approval, and it withdrew this effort after a federal Court of Appeals decision referenced FERC jurisdiction.⁶⁰ Mr. Stegall said I&M analyzed terminating the ICPA early as part of its most recent integrated resource plan case (Case No. U-21189) and found that it was more costly to customers to do so.⁶¹ Mr. Stegall testified that the Company attempted to renegotiate with OVEC in January 2022 but was not successful, and in January 2024 I&M sent a letter to the OVEC board of directors citing its intention to exit the ICPA.⁶² He noted that according to its 2022 balance sheet, OVEC is primarily debt-financed and any efforts I&M makes to sell or renegotiate its share of the ICPA must accommodate all of OVEC's debt agreements, decommissioning obligations, and post-retirement benefit obligations.⁶³

Mr. Stegall recommended using the contracts for the Company's Mayapple and Lake Trout solar facilities referenced in Case Nos. U-21189 and U-21377 as benchmarks for the ICPA, citing the recommendation to do so in the PFD issued in Case No. U-21261.⁶⁴ He noted that the levelized cost of energy in both contracts exceed the ICPA's average cost in 2023.⁶⁵ He also noted that, unlike the contracts used for benchmarking

⁵⁹ 2 Tr 135.

⁶⁰ 2 Tr 134, 136.

⁶¹ 2 Tr 121.

⁶² 2 Tr 119-120, 135-136.

⁶³ 2 Tr 120-121, 135-136.

⁶⁴ 2 Tr 125-126.

⁶⁵ 2 Tr 124.

in the Company's 2020 PSCR reconciliation case (Case No. U-20530), the renewable resources in the Mayapple and Lake Trout contracts are being constructed to provide energy and capacity for I&M's Michigan customers.⁶⁶ And he argued that given that the Michigan legislature has set forth its goal to transition solely to clean energy by 2040 with the Michigan Clean Energy and Jobs Act of November 2023, the existing coal resources no longer represent the market to which the ICPA can be compared.⁶⁷

Mr. Stegall noted that in the 2020 PSCR reconciliation case (Case No. U-20530), the Commission disallowed approximately \$1.3 million of costs using the Michigan Public Power Agency (MPPA) billings from Consumers Energy for Campbell 3, the MPPA billings from DTE Energy for the Belle River plant, and the Consumers Energy PPA with Midland Cogeneration Venture Limited (MCV) as benchmark comparisons to the costs associated with the ICPA.⁶⁸ He contended that those resources were unable to deliver energy and capacity into PJM.⁶⁹ He also noted that the ALJ in the 2021 PSCR reconciliation case (Case No. U-20805) found the MCV contract was "less relevant as a point of comparison" and noted that the Consumers had renegotiated it.⁷⁰ And he testified that the Company obtained copies of the MPPA/DTE and MPPA/Consumers agreements and found that MPPA is a partial owner of the facilities at Belle River and Campbell and made initial investments of \$590 million and \$44.37 million of capital which he compared

⁶⁶ 2 Tr 124-125, 129-130.

⁶⁷ 2 Tr 125.

⁶⁸ 2 Tr 123, 129-130.

⁶⁹ 2 Tr 130.

⁷⁰ 2 Tr 130.

to I&M's \$0 investment of capital prior to purchasing energy and capacity from OVEC.⁷¹ He said the Commission should take this into account when comparing the contracts.⁷²

Mr. Stegall said the cost of OVEC energy exceeded that of I&M's load which he said was reflective of the market and does not mean that the arrangement is not economical since it is a long-term contract that will be evaluated based on the price and availability of a replacement resource over the life of the contract.⁷³ Referencing Exhibit IM-5, Mr. Stegall further testified that his analysis of the demand and energy costs billed under the ICPA compared to the 2012 transfer price schedule, found that the ICPA has resulted in \$104.5 million of cumulative value to customers. He added that looking at the transfer price year-by-year shows that the cost of power under the ICPA has been less than the annual transfer price by \$44 million on a cumulative basis through 2023.⁷⁴ He said that because the ICPA is a long-term contract, the Company plans to continue to compare the cost of the ICPA to the transfer price on a cumulative basis going forward, and if the annual comparison shows 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.⁷⁵

Witness Stegall described the Rockport plant as a 2-unit generating facility in Rockport, Indiana operated by I&M.⁷⁶ He said that because Unit 1 is jointly owned by I&M and AEP Generating Company (AEG) and under a FERC-approved contract, the Unit

⁷¹ 2 Tr 131.

⁷² 2 Tr 131.

⁷³ 2 Tr 118-119, 131-132.

⁷⁴ 2 Tr 126-128.

⁷⁵ 2 Tr 128-129.

⁷⁶ 2 Tr 137.

Power Agreement (UPA), I&M purchases all of AEG's shares, this case only includes UPA billings for 50% of the costs associated with Unit 1.⁷⁷ He said I&M and AEG each lease a 50% share of Unit 2 with full entitlement to its energy and capacity.⁷⁸ He said that AEG has no employees and does not participate in the day-to-day management of the Rockport Units.⁷⁹ Mr. Stegall testified that the costs included in this case do not include fuel and fuel-related costs for Unit 2 and do not include Unit 2 costs previously billed through the Company's UPA with AEG.⁸⁰ He also said that the costs that I&M incurs under the UPA are the same Rockport-related capital investments and O&M expenses that I&M incurs and recovers through base rates with the ongoing operating costs such as fuel and consumable costs for Unit 1 reviewed in this case.⁸¹ According to Mr. Stegall, I&M is not able to decline to purchase its share of Rockport energy under the UPA.⁸² And he opined that the Commission's application of the Code of Conduct, if any, to the UPA should exclude the non-fuel charges I&M incurs.⁸³

Mr. Stegall concluded that the Company's participation in PJM continues to provide benefits to customers, that the ICPA has a lower total cost to customers on a dollar per megawatt-hour basis than the Company's recently approved renewable energy purchase agreements, and that the cumulative benefit of the ICPA when compared to the transfer price from 2013 to 2022 is \$44.0 million when the price current year price matches the

⁷⁷ 2 Tr 137-138.

⁷⁸ 2 Tr 137-138.

⁷⁹ 2 Tr 138.

⁸⁰ 2 Tr 138.

⁸¹ 2 Tr 139.

⁸² 2 Tr 140.

⁸³ 2 Tr 159.

price in the Staff's annual update filing and \$104.5 million when the 2012 transfer price schedule is used.⁸⁴

B. Attorney General / CUB / Sierra Club

1. Devi Glick

Devi Glick, Senior Principal at the energy and environmental research and consulting firm, Synapse Energy Economics, Inc., testified on behalf of the Attorney General, CUB, and Sierra Club and sponsored Exhibits CUB-1 through CUB-20. She evaluated I&M's request to recover costs paid for power from the OVEC, costs paid to AEG, and the fuel and power purchase costs related to Rockport Unit 1.⁸⁵

Witness Glick opined that I&M has been purchasing power from OVEC at above market value since 2017 and in 2023, the ICPA cost I&M customers \$33.2 million more than the cost of equivalent energy and capacity purchased from the market, and more than \$18 million more than the cost of long-term power supply benchmarks, with no additional value.⁸⁶ Witness Glick recommended the Commission disallow Michigan's share of compensation that I&M paid for OVEC services under the ICPA in 2023 which she calculated to be \$5 million.⁸⁷ She opined that the Company's Michigan customers should pay the difference between what I&M charged for OVEC power and the equivalent price to procure the energy and capacity from the PJM market.⁸⁸ She made an alternative recommendation for the Commission to disallow the Michigan jurisdictional share of the

⁸⁴ 2 Tr 158-159.

⁸⁵ 2 Tr 231.

⁸⁶ 2 Tr 233, 238-241, 243, 248, 252.

⁸⁷ 2 Tr 233-234, 255.

⁸⁸ 2 Tr 234.

\$18 million in excess compensation that I&M paid which, using MPPA's contract for Campbell Unit 3 and Belle River as a benchmark, she calculated to be \$2.7 million.⁸⁹

Ms. Glick noted that the OVEC plants at Clifty Creek and Kyger Creek operated at relatively high utilization levels in 2023 for older coal units with high operating costs, and that the OVEC plants incurred high energy market losses.⁹⁰ She said because utilities can minimize or avoid energy market losses through prudent economic commitment practices that lower utilization rates for plants with high operating costs relative to newer more efficient power plants, OVEC's high utilization and high market losses call into question the prudence of its operational practices.⁹¹

Witness Glick further testified that the Mayapple and Lake Trout solar facilities were not reasonable comparators for evaluating the value of OVEC power.⁹² She noted that the assumed lifespan of those resources is 20 years which is less than the industry standard of 30 years for new gas resources.⁹³ She also noted that the average cost of power over a plant lifetime does not reflect the cost of power in a single specific year where market factors may be driving higher or lower relative costs and utilization and that the Commission previously established that the transfer price is only to be used for planning purposes.⁹⁴ Instead, she offered several long-term supply comparators she found were more reasonably able to evaluate whether the ICPA costs are reasonable and compliant with the Commission's Code of Conduct including MPPA's agreements with

⁸⁹ 2 Tr 234, 256-257.

⁹⁰ 2 Tr 235.

⁹¹ 2 Tr 235-236.

⁹² 2 Tr 245-246.

⁹³ 2 Tr 244-245.

⁹⁴ 2 Tr 245.

DTE for the Belle River resource and with Consumers for J. H. Campbell 3, and the cost of replacement capacity resources as represented by Cost of New Entry (CONE).⁹⁵

Ms. Glick testified that the Commission directed I&M to undertake additional efforts to reduce its power costs in prior cases including in the 2020 PSCR plan case (Case No. U-20529), the 2020 PSCR reconciliation case (Case No. 20503), and issued Section 7 warnings in the 2021 PSCR plan case (Case No. U-20804) after finding the Company was seeking to recover uneconomic costs from its customers, and again in the 2022 PSCR plan case (Case No. U-21052).⁹⁶ She opined the Commission's warning that I&M would not be able to recover costs that resulted from unreasonable and imprudent decisions included continuing to participate in the ICPA and that I&M has only made minimal efforts to minimize the cost of OVEC power.⁹⁷

Ms. Glick also presented her analysis of I&M's bills from AEG through the UPA and said I&M paid excess and above market costs to AEG for power from Rockport in 2023.⁹⁸ Ms. Glick described Rockport as a two-unit coal-fired power station that I&M operates.⁹⁹ She said Unit 1 is 50% owned by I&M and 50% owned by AEG and AEG sells 100% of its power back to I&M with a return on common equity of 12.16% through the UPA.¹⁰⁰ ¹⁰¹ Ms. Glick said I&M admitted that Rockport Unit 1 lost money on an energy

⁹⁵ 2 Tr 246-250.

⁹⁶ 2 Tr 253-254.

⁹⁷ 2 Tr 255.

⁹⁸ 2 Tr 257-260, 263.

⁹⁹ 2 Tr 257.

¹⁰⁰ 2 Tr 257-258, 260.

¹⁰¹ Ms. Glick testified that Unit 2 was owned by non-affiliated parties and leased back to I&M and AEG but has operated as a merchant facility since December 2022 and is not part of this case. See 2 Tr 257.

basis that amounted to more than \$5.6 million for the 50% share from AEG (\$11.2 million in total energy market losses).¹⁰²

Ms. Glick testified that the Commission has not specifically approved charges related to the AEG share of Rockport Unit 1 and that the Commission has not adjudicated the UPA's compliance with its Code of Conduct.¹⁰³ She also said that I&M did not provide benchmarks to determine if the cost of the UPA is compliant with the affiliate price cap in the Code of Conduct.¹⁰⁴ And when she analyzed the cost of the Rockport power from the AEG contract, she found it to be twice as much as other options.¹⁰⁵

Ms. Glick concluded that ratepayers would have been better off in 2023 if the OVEC and Rockport plants had not operated and she recommended the Commission disallow Michigan's jurisdictional share of the excess compensation I&M paid AEG for power from Rockport under the UPA which she calculated to be either approximately \$9.4 million (when compared to the PJM) or \$7.7 million (when compared to the benchmarks for MPPA's purchase of power from Campbell Units 3 and Belle River).¹⁰⁶ She also recommended the Commission disallow an additional \$846,188 for the excess fuel cost that I&M incurred from the portion of Rockport Unit 1 that it owns.¹⁰⁷

C. Staff

1. Raushawn D. Bodiford

Raushawn D. Bodiford, a Public Utilities Engineer for the Commission, testified and sponsored Exhibits S-2.0, S-2.1, and S-2.2. He said Staff reviewed I&M's 2023 PSCR

¹⁰² 2 Tr 261-263.

¹⁰³ 2 Tr 260.

¹⁰⁴ 2 Tr 33.

¹⁰⁵ 2 Tr 261-264.

¹⁰⁶ 2 Tr 233-234, 264-265.

¹⁰⁷ 2 Tr 264-265.

reconciliation application and assessed it for reasonableness and prudence.¹⁰⁸ He generally found the Company acted in accordance with the approach prescribed in the 2023 PSCR plan from an operational standpoint and regarding fuel procurement and management.¹⁰⁹

Mr. Bodiford noted that the Company had less demand in 2023 for its more costly coal-fired generation than was projected, which resulted in \$11,250,026 less in 2023 fossil generation costs than forecasted.¹¹⁰ He also found that the Company had \$7,892,373 more in 2023 nuclear generation costs than projected due to producing 594,821 MWhs of additional generation above the projected amount.¹¹¹

According to Staff's review of the generation outages that lasted longer than 28 days in 2023, including those at the Rockport Plant, the outages were either planned or required for maintenance and the repairs were managed to maximize operator safety and operational reliability.¹¹² Mr. Bodiford concluded the Company acted reasonably and prudently in managing the outages.¹¹³

Witness Bodiford provided a summary of the Commission's prior rulings related to OVEC and the ICPA and opined that based on those rulings the Company is required to show that the amended ICPA is compliant with the pricing provisions under Mich Admin Code, R 460.10108 (Rule 8(4)), the Code of Conduct (MCL 460.10ee), or Act 304 (MCL 460.6j).¹¹⁴ He said that the Commission has also evaluated the Company's reliance on

¹⁰⁸ 2 Tr 281-282.

¹⁰⁹ 2 Tr 296.

¹¹⁰ 2 Tr 283.

¹¹¹ 2 Tr 283.

¹¹² 2 Tr 284, 296.

¹¹³ 2 Tr 296

¹¹⁴ 2 Tr 284-285.

the Mayapple and Lake Trout solar contracts as benchmarks for cost comparison to the ICPA to ensure compliance with the pricing provisions outlined in Rule 8(4) and found that they were not appropriate benchmarks.¹¹⁵ Mr. Bodiford testified that Staff found I&M's explanations for using the Lake Trout and Mayapple solar contracts as benchmarks in this case were no different than prior cases.¹¹⁶ He said that the Commission has also rejected the Company's use of the transfer price as a benchmark for comparison to the ICPA in the past and that I&M has not provided an argument in this case to overcome the issues described in that prior analysis.¹¹⁷

Mr. Bodiford opined that I&M's ICPA costs for 2023 are unreasonable due to noncompliance with the Code of Conduct.¹¹⁸ He said that Staff applied the same methodology used in the 2022 PSCR reconciliation case and found that the MPPA costs relating to Belle River and Campbell Unit 3 were the fairest benchmarks for calculating a disallowance for ICPA costs, using a weighted average.¹¹⁹ Applying this methodology, Mr. Bodiford said that Staff determined that I&M's costs for the ICPA in 2023 were \$18,307,574 above the market benchmark which equated to a cost recovery disallowance of \$2,627,766 for I&M's Michigan jurisdictional allocation of the ICPA generation.¹²⁰

Witness Bodiford also evaluated I&M's request for energy-related costs incurred because of customers participating in demand response programs which the Company labeled as "curtailment costs."¹²¹ Mr. Bodiford said that it was more consistent with

¹¹⁵ 2 Tr 286-288, referencing Case No. U-21261, May 23, 2024 Order, p 20.

¹¹⁶ 2 Tr 287-288.

¹¹⁷ 2 Tr 288-290.

¹¹⁸ 2 Tr 296.

¹¹⁹ 2 Tr 290-292

¹²⁰ 2 Tr 292-294, 296-297; Exhibit S-2.2.

¹²¹ 2 Tr 294-295.

industry standards for such costs to be included as O&M expenses and addressed in a rate case proceeding and he recommended the Commission disallow the curtailment costs in this case for that reason.¹²²

Mr. Bodiford said Staff found the Company's revised Load and Energy Hedging Policy to be reasonable and recommended the Commission approve it.¹²³

2. Dolores A. Midkiff-Powell

Dolores A. Midkiff-Powell, the Manager for Energy Cost Recovery Reconciliation Section of the Michigan Public Service Commission's Regulated Energy Division testified and sponsored Exhibits S-1 and S-1.1.

Witness Midkiff-Powell testified that Staff adjusted I&M's filed case in four areas:

1. Added nuclear adjustments.¹²⁴
2. Used the Company's net under recovery of \$8,855,873 as the beginning balance for the 2023 PSCR reconciliation in accordance with the Commission's Order from the 2022 PSCR reconciliation case.¹²⁵
3. Disallowed \$2,627,766 in costs related to the OVEC ICPA as recommended by Staff Witness Raushawn Bodiford.¹²⁶
4. Adjusted for flow through interest because of the other adjustments.¹²⁷

Staff Witness Midkiff-Powell also testified that the \$115,687 requested for PPA negotiations and contract development should be disallowed since those costs are not authorized under Act 304, were not approved in the 2022 IRP case (Case No. U-21189),

¹²² 2 Tr 295-296.

¹²³ 2 Tr 294-296.

¹²⁴ 2 Tr 273-274; Exhibits S-1, line 15; Exhibit S-1.1, line 35.

¹²⁵ 2 Tr 273-274; Exhibit S-1, line 34; Case No. U-21053, September 26, 2024 Order, p 14.

¹²⁶ 2 Tr 274; Exhibit S-1, line 16.

¹²⁷ 2 Tr 274.

and should be addressed in a rate case.¹²⁸ According to Ms. Midkiff-Powell, Staff calculated that I&M had an under-recovery in 2023 of \$16,352,949 including interest.¹²⁹

D. I&M's Rebuttal Testimony

The Company presented rebuttal testimony of Mr. Walcutt and Mr. Stegall.

Mr. Walcutt addressed the development costs for the Montpelier capacity purchase agreement (CPA) and the Sculpin and Elkhart County PPAs should be recoverable in this PSCR filing.¹³⁰ He said that the costs the Company incurred were reasonable and necessary, and included costs to implement and execute the 2022 All Source RFP, develop a shortlist, negotiate and execute the agreements, and use an independent monitor, in accordance with the Commission's competitive procurement guidelines.¹³¹ He said that the Commission found that the development costs could be recovered through the PSCR process over a two year period but the Company included the full recovery of the development costs in the 2024 PSCR reconciliation year.¹³² He said that if the Commission does not approve recovery of the development costs in this PSCR case, the Commission should authorize I&M to record the costs to a regulatory asset to be recovered in I&M's next rate case.¹³³

Witness Stegall took issue with the benchmarks for the ICPA and the UPA that Witness Glick proposed, testifying that her position was inconsistent with prior Commission orders to evaluate the ICPA against other long-term supply options and contradicts her arguments against the Company's proposed benchmarks because the

¹²⁸ 2 Tr 274-275.

¹²⁹ 2 Tr 275.

¹³⁰ 2 Tr 99.

¹³¹ 2 Tr 99-100.

¹³² 2 Tr 100.

¹³³ 2 Tr 100-101.

CONE resource she offers as a comparator is also a hypothetical new resource that is not able to perform during the review period.¹³⁴ He also said that the cost disallowance calculations made by Witnesses for Staff and the AG did not apply the Commission's methodology from Case Nos. U-20805 and U-21053 which compared the benchmark price to the demand and energy costs OVEC billed to the Company under the ICPA.¹³⁵ He said that if the Commission follows the methods established in prior cases, the Company would be disallowed \$2,250,305 of Michigan jurisdictional costs that exceed the Commission's benchmark using the Michigan Energy Allocation Factor of 14.3537%.¹³⁶ Mr. Stegall acknowledged that the Company presented the transfer price and the new solar resources as comparators to the ICPA and that the Commission has rejected those as alternatives, but he said that when the direct case was filed the Company did not yet know whether the Commission would accept those proposed comparators.¹³⁷ Mr. Stegall described the UPA as a "unique contract" involving Rockport Unit 1.¹³⁸ He said that Witness Glick failed to recognize that the Commission's prior evaluation of the UPA under the Commission's Code of Conduct focused on excess energy costs.¹³⁹ And he said that if the Commission followed that prior methodology, \$793,238 in energy-only costs would be disallowed.¹⁴⁰

¹³⁴ 2 Tr 162, 164, 167-169.

¹³⁵ 2 Tr 162, 173-179.

¹³⁶ 2 Tr 174, 186; Exhibit IM-3.

¹³⁷ 2 Tr 163-164.

¹³⁸ 2 Tr 186.

¹³⁹ 2 Tr 162, 183-186.

¹⁴⁰ 2 Tr 162, 183-186.

III.

DISCUSSION

A. Positions of the Parties

I&M requests that the Commission enter an order approving the reconciliation of its 12-month power supply costs, revenues, and interest for 2023, and determine that the Company's power supply costs were reasonably and prudently incurred and resulted in an under-recovery amount of \$18,436,839.¹⁴¹

The Attorney General, CUB, and Sierra Club jointly recommend the Commission's order include disallowances of \$14.34 million described further below.¹⁴²

Staff recommends that the Commission enter an order approving the Company's reconciliation application with adjustments discussed further below that result in an under recovery of \$16,286,307 inclusive of interest.¹⁴³

B. Legal Standards

Act 304 (MCL 460.6j) provides for a PSCR process that allows a utility "to charge customers for the anticipated costs associated with the supply of electric power, such as the cost of coal or other fuel burned by generating plants."¹⁴⁴ A utility is obligated to file a PSCR plan annually and a five-year forecast of its power supply requirements.¹⁴⁵ In the plan, the utility sets forth its expected sales and proposes a per-unit cost (the PSCR

¹⁴¹ I&M's Brief, 6-7.

¹⁴² AG's Brief, 41, 55.

¹⁴³ Staff's Brief, 11.

¹⁴⁴ *Attorney General v Michigan Public Service Commission*, 237 Mich App 27, 30 (1999).

¹⁴⁵ MCL 460.6j(3)-(5).

factor) to charge customers.¹⁴⁶ Through a contested case, the Commission approves, disapproves, or modifies the plan for the upcoming year, and evaluates the forecast.¹⁴⁷

At the conclusion of the PSCR plan year, the actual costs incurred are reviewed through the reconciliation process:

At the [PSCR] the commission shall reconcile the revenues recorded pursuant to the power supply cost recovery factors and the allowance for cost of power supply included in the base rates established in the latest commission order for the utility with the amounts actually expensed and included in the cost of power supply by the utility. The commission shall 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.¹⁴⁸

Projected PSCR costs in an approved plan may be recovered, while any excess costs are reviewed to determine whether the excess costs incurred were beyond the utility's ability to control through reasonable and prudent actions.¹⁴⁹ The mechanisms for refunding the costs over-recovered, or collecting the costs under-recovered, along with the method for calculating interest on either, are set forth in MCL 460.6j(14),(15),(16). The utility has the burden of presenting evidence in support of recovering its PSCR costs, and to demonstrate that such costs are attributable to reasonable and prudent management decisions.¹⁵⁰ The burden of proof is based on a preponderance of the evidence.¹⁵¹

¹⁴⁶ *In re Indiana Michigan Power Company*, __ Mich App ____ (Case No. 365180 released January 18, 2024), citing MCL 460.6j(1)(c) and (3).

¹⁴⁷ MCL 460.6j(6)-(7).

¹⁴⁸ MCL 460.6j(12).

¹⁴⁹ MCL 460.6j(15).

¹⁵⁰ See, Case No. U-15675, January 25, 2010 Order, p 9; Case No. U-13562, June 27, 2003 Order, p 3.

¹⁵¹ *Dillon v Lapeer State Home & Training School*, 364 Mich 1, 8 (1961), and *BCBSM v Governor*, 422 Mich 1, 88-89 (1985).

C. Contested Issues

1. Beginning Balance and Power Supply Cost Recovery Calculations

The parties began with different initial balances for their respective calculations, which is understandable since this filing was initiated prior to the reconciliation of the 2022 PSCR plan was completed. Through Witness Walcutt, I&M calculated a total under-recovery of \$18,436,839 including interest as of December 31, 2023 which was based on projected 2023 PSCR costs and an estimate of the 2022 over/under recovery.¹⁵² Staff by way of Witness Midkiff-Powell recommends adjusting the beginning balance to \$8,855,873 which is the actual under recovered amount approved by the Commission in the 2022 PSCR reconciliation case.¹⁵³ As recommended by Staff and consistent with the Commission's past practice, this PFD recommends adopting the Commission-approved beginning net under recovery amount of \$8,855,873 as the Company's 2023 power supply cost recovery reconciliation beginning balance.¹⁵⁴

2. Solar Power Purchase Agreement (PPA) costs

In its PSCR reconciliation application, I&M requested approval of development costs associated with the capacity purchase agreement and solar PPAs approved by the Commission in the Company's IRP case (Case No. U-21189).¹⁵⁵ The Company presented evidence during this case to support its claim that costs of \$39,500 were incurred in 2022 and \$73,187 in 2023, for a requested recovery of \$115,687 (Michigan jurisdictional).¹⁵⁶ Relying on testimony from Company Witness Walcutt, I&M, in its brief contends the costs

¹⁵² Exhibit IM-3, p 2; I&M's Brief, p 6.

¹⁵³ 2 Tr 274; See Case No. U-21053, September 26, 2024 Order, pp 3, 14.

¹⁵⁴ See Case No. U-21053, September 26, 2024 Order, pp 3, 14.

¹⁵⁵ 2 Tr 87-88; Exhibit IM-3, p 2.

¹⁵⁶ 2 Tr 87; Exhibit IM-3, p. 2, line 14.

were necessary to purchase power, are not ongoing in nature, and will not otherwise be captured by the ratemaking process.¹⁵⁷ The Company further argues that the Commission required it to incur many of the costs, including the independent monitor, and that the Commission authorized it to seek recovery in subsequent PSCR filings.¹⁵⁸

Staff contends that only Act 304 (MCL 460.6j) dictates which costs may be recovered in a PSCR reconciliation, and contract development and negotiations are not included so the amount requested should be disallowed.¹⁵⁹ Staff offers Staff Witness Midkiff-Powell's testimony and Company Witness Walcutt's rebuttal testimony to support its position that the requested development costs should be reviewed in the Company's next rate case.¹⁶⁰

This PFD finds that the Company asked to recover development costs associated with the PPAs in its IRP filing and the Commission authorized recovery of those costs through the PSCR clause and factors in the PSCR case.¹⁶¹ And because there is no evidence on this record to refute the Company's assertion that the costs were reasonable and prudent, this PFD recommends I&M be allowed to recover the costs "over a period of two years" as previously decided by the Commission.¹⁶²

3. Future energy-related demand response program costs

Through testimony from Company Witness Walcutt, the Company seeks to recover future costs associated with compensating customers that participate in curtailment

¹⁵⁷ I&M's Brief, pp 18-20.

¹⁵⁸ I&M's Brief, p 20 citing Case No. U-21189, October 10, 2024 Order, p 4.

¹⁵⁹ Staff's Brief, p 4.

¹⁶⁰ 2 Tr 101, 275; Staff's Brief, pp 4-5; Staff's Reply Brief, pp 1-2.

¹⁶¹ Case No. U-21189, October 10, 2024 Order, p 4.

¹⁶² Case No. U-21189, October 10, 2024 Order, p 4.

demand response programs.¹⁶³ Witness Walcutt testified that no costs were incurred during the 2023 reconciliation period but that there are multiple programs customers can participate in to curtail their usage and lower the Company's demand and energy needs during periods of high energy prices, high system demand, and during PJM or I&M system emergencies, and that such costs should be addressed in PSCR proceedings.¹⁶⁴ While the Company "acknowledges that utilities typically recover program administration costs as O&M," I&M argues that energy related costs "likely will vary year-to-year depending on demand, participation, and real time pricing" and including the costs in O&M expense "risks the possibility that base rates reflect a cost that is not incurred every year."¹⁶⁵

Staff argues that these energy costs should be included in the Company's next rate case and not in this proceeding.¹⁶⁶ Staff relies on Witness Bodiford's testimony that it is standard for these costs to be recovered as part of O&M expense in a rate case.¹⁶⁷

This PFD agrees with Staff that only PSCR costs should be included in a PSCR reconciliation case.¹⁶⁸ For this reason, noting that no costs were incurred during the 2023 reconciliation period and no disallowance is necessary, this PFD recommends the Commission not include energy-related demand response program costs in future PSCR proceedings but instead review whether recovery of those costs is appropriate as part of the Company's O&M expense in a rate proceeding.

¹⁶³ I&M's Brief, pp 21-22.

¹⁶⁴ I&M's Brief, pp 21-22.

¹⁶⁵ I&M Brief, p 22.

¹⁶⁶ Staff's Brief, p 5; Staff's Reply, pp 2-3.

¹⁶⁷ Staff's Brief, p 5; 2 Tr 295.

¹⁶⁸ See MCL 460.6j.

4. ICPA costs

I&M asks the Commission to approve recovery of its ICPA costs.¹⁶⁹ The Company's brief relied on the testimony of Mr. Stegall to support its position that it reasonably and prudently managed the ICPA under the market conditions during the plan year which resulted in demand at about the same level as in 2021 and 2022, a decline in pricing, but consistent ICPA energy costs.¹⁷⁰ I&M pointed to Mr. Stegall's testimony that the overall economics, over the lifetime of the long term contract, must be evaluated although "there may be periods when the contract appears uneconomic."¹⁷¹ I&M maintains that the ICPA has saved customers \$54 million in energy costs since 2017.¹⁷² It contends that the three instances that it contacted OVEC in 2022, 2023, and 2024 to manage the ICPA by initiating renegotiation discussions, raise concerns, and offering to sell its contractual rights under the ICPA amount to good faith efforts to minimize the costs of the ICPA.¹⁷³ The Company argues that even if those efforts were unsuccessful, it should be granted full recovery of its 2023 ICPA costs because it has tried "every path available to follow the Commission's directive" to minimize its costs.^{174 175}

In her brief¹⁷⁶, the AG argues that the ICPA is not delivering value to ratepayers given that I&M paid more for OVEC services than the equivalent market value services

¹⁶⁹ I&M's Brief, pp 22-34.

¹⁷⁰ I&M's Brief, pp 23-24.

¹⁷¹ I&M's Brief, p 24.

¹⁷² I&M's Brief, p 24; I&M's Reply, p 4.

¹⁷³ I&M's Brief, pp 25-28.

¹⁷⁴ I&M's Brief, p 28.

¹⁷⁵ The Company offers an alternative argument where the Commission accepts the Company's proposed market proxies: the levelized cost of energy (LCOE) for the Company's approved solar projects, Mayapple and Lake Trout; and the cumulative transfer price as evidence that the ICPA complied with the Code of Conduct.

¹⁷⁶ The AG argues on behalf of herself, Sierra Club and CUB.

during the plan year and that OVEC lost money through operational mismanagement.¹⁷⁷ She relies on the testimony from Witness Glick who found I&M's ICPA costs to be unreasonable and initially calculated a disallowance in the amount of \$2,712,925 but conceded in her brief that Witness Glick used the Michigan jurisdictional energy ratio of 15.08% instead of 14.35% and that a disallowance of \$2,582,262 is warranted.¹⁷⁸ The AG offers an alternate argument that the Commission disallow \$5 million, which she says is Michigan's jurisdictional share of the total \$33.2 million in excess compensation that I&M paid for OVEC services under the ICPA when compared to the PJM market because the Company has known for years that the OVEC plants lose significant money but has not taken steps to minimize losses.¹⁷⁹

Staff references Witness Bodiford's testimony that based on the methodology used from Case No. U-20805, as modified in Case No. U-21053, and with one additional adjustment, Staff determined the ICPA costs in 2023 are unreasonable due to non-compliance with the Code of Conduct.¹⁸⁰ Staff initially recommended a disallowance of \$2,627,766 but in its brief and reply brief acknowledged a calculation error as noted by Company Witness Stegall on rebuttal and proposed a disallowance of \$2,250,305.¹⁸¹

The Commission has addressed the Company's ICPA with the OVEC multiple times.¹⁸² Indeed, in the 2023 PSCR plan case for which the costs this case reconciles, the Commission noted that I&M had not demonstrated that "the plan year costs of the

¹⁷⁷ AG's Brief, pp 14, 16, 26, 31-32, 34; AG's Reply, p 1-3.

¹⁷⁸ AG's Brief, pp 14, 16, 26, 31-32, 34-35; AG's Reply, pp 3-5.

¹⁷⁹ AG's Brief, pp 41-45.

¹⁸⁰ Staff's Brief, pp 6-9.

¹⁸¹ Staff's Brief, pp 8-9; Staff's Reply, pp 3-4.

¹⁸² See Case No. U-21053, September 26, 2024 Order, pp 3-8, 14; Case No. U-21052, June 22, 2023 Order, pp 21-24;

ICPA, a contract which has never approved by the Commission” were just and reasonable nor was there evidence that I&M attempted to renegotiate the terms of the ICPA.¹⁸³ And based on Commission precedent and the January 2024 Michigan Court of Appeals opinion in *In re Indiana Michigan Power Company*, ___ Mich App ___ (2024) (Docket No. 365180) this PFD analyzes I&M’s OVEC ICPA costs for compliance with the Code of Conduct and the market-price cap provisions and agrees with Staff and the rebuttal testimony of I&M Witness Stegall that by applying the methodology used in Case Nos. U-20805 and U-21053, disallowances of \$2,250,305 are appropriate for the 2023 plan year. This PFD rejects the AG’s alternative recommendation for a disallowance of \$5.0 million because specific evidence that the Company acted unreasonably or imprudently is absent from the record.

Because the Company raises other arguments that are the same or similar to those that have been addressed in the past, including the market proxies that should be used as benchmark comparators to the ICPA, this PFD does not individually address those arguments but instead incorporates the past holdings of the Commission and Michigan Court of Appeals.¹⁸⁴

5. UPA costs

I&M is seeking recovery of its UPA costs for 2023 which according to Witness Stegall amounts to \$22,651,191 in revenues and \$28,390,211 of energy charges.¹⁸⁵ As

¹⁸³ Case No. U-21261, May 23, 2024 Order, pp 20-21.

¹⁸⁴ *In re Indiana Michigan Power Company*, ___ Mich App ___ (2024) (Docket No. 365180); *lv den* 8 NW3d 564 (2024); Case No. U-21052, June 22, 2023 Order, 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).

¹⁸⁵ I&M’s Brief, p 36.

part of the analysis, the Company also asks the Commission to find that its operation and management of Rockport Unit 1 was reasonable and prudent.¹⁸⁶

Staff supports the recommendation provided by Company Witness Stegall on rebuttal which followed a method of calculating an energy-only cost comparison when evaluating the Company's compliance with the Code of Conduct and resulted in a disallowance of \$793,238 in UPA costs.¹⁸⁷ In Staff's Reply Brief, it noted that the Commission found a disallowance of energy-related costs reasonable and prudent in the prior PSCR reconciliation case (Case No. U-20805).

The AG¹⁸⁸ argues that the Commission should not limit a UPA cost disallowance to the energy-only costs since I&M is seeking recovery of UPA costs associated with Rockport Unit 1 and the Commission's prior review and disallowance was of costs associated with Rockport Unit 2.¹⁸⁹ Instead, she recommends the Commission disallow \$9.34 million of the Company's UPA costs based on Witness Glick's testimony that I&M did not propose an appropriate benchmark against which to measure the reasonableness of its 2023 UPA costs and when comparing them to the same long term supply benchmarks used to evaluate the reasonableness of the ICPA costs, I&M customers would have been better off if Rockport Unit 1 had not operated in 2023.¹⁹⁰ The AG offers an alternative recommendation to disallow \$7.7 million in UPA costs based on Witness Glick's calculation of the Michigan jurisdiction share of excess costs using the weighted average of the MPPA Belle River and Campbell contracts as a market proxy. The AG

¹⁸⁶ I&M's Brief, p 37.

¹⁸⁷ Staff's Brief, p 10.

¹⁸⁸ The AG argues on behalf of herself, Sierra Club and CUB.

¹⁸⁹ AG's Brief, pp 53-54; AG's Reply, pp 7-8.

¹⁹⁰ AG's Brief, pp 48-51; AG's Reply, p 10.

also recommends that the Commission disallow an additional \$846,188 for the excess fuel costs that I&M incurred from the portion of Rockport Unit 1 that it owns.¹⁹¹

This PFD finds that the evidence, as cited by the AG, supports the conclusion that the UPA costs associated with Rockport Unit 1 were not reasonable and prudent. The Company's own witness acknowledged on rebuttal that evaluating the Company's compliance with the Code of Conduct results in disallowance.¹⁹² This PFD agrees that the UPA costs associated with Rockport Unit 1 were not previously addressed by the Commission and notes that Company Witness Stegall described the UPA as a "unique contract" involving Rockport Unit 1. And because this PFD further agrees with the AG's argument that the Commission has not approved the Rockport Unit 1 capacity costs in the past, which was the reason for limiting a disallowance to energy-only costs for Unit 2 in the prior case, this PFD recommends the Commission disallow approximately \$10.18 million in excess capacity and fuel costs associated with Rockport Unit 1 by using the same comparison benchmarks to evaluate the reasonableness of the ICPA costs.

IV.

CONCLUSION

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

1. Revise the beginning PSCR balance to reflect a net underrecovery of \$8,855,873 in accordance with the Commission's previous order.¹⁹³

¹⁹¹ AG's Brief, p 52.

¹⁹² 2 Tr 162, 183-186.

¹⁹³ Case No. U-21053, September 26, 2024 Order, pp 3, 14.

2. Approve I&M's development costs associated with the PPAs over a period of two years in accordance with the Commission's previous order.¹⁹⁴

3. Reject I&M's request to include energy-related costs in future PSCR proceedings but review whether recovery of those costs is appropriate as part of the Company's next rate proceeding.

4. Adopt a disallowance for OVEC ICPA costs of \$2,250,305.

5. Adopt a disallowance for UPA costs of approximately \$10.18 million.

6. Approve the other provisions of I&M's 2023 PSCR reconciliation not otherwise delineated.

Any contention advanced by a party to this case that is not expressly addressed and determined in this PFD is, after being given full consideration based on the record and arguments of the parties, rejected.

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

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Lesley Carr Fairrow
Administrative Law Judge

Issued and Served:
March 28, 2025